

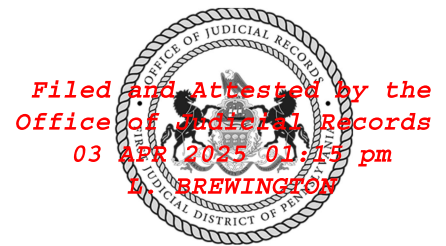
KLINE & SPECTER, P.C.

By: SHANIN SPECTER, PA ID# 40928
JAMES J. WALDENBERGER, PA ID# 83837
PHILIP M. PASQUARELLO, PA ID# 326263
CHEYANNE N. COPE, PA ID# 335996

1525 Locust Street, 19th Floor
Philadelphia, PA 19102
(215) 772-1000

shanin.specter@klinespecter.com
jim.waldenberger@klinespecter.com
philip.pasquarello@klinespecter.com
cheyanne.cope@klinespecter.com

Attorneys for Plaintiff



HANK SCHMOYER AND DONNA
SCHMOYER, H/W
4101 Sand Spring Road, Apartment E4
Schnecksville, PA 18078

Plaintiffs,

v.

KIA CORPORATION
12 Heolleung-ro, Seocho-gu
Seoul, Republic of Korea 06797

and

KIA AMERICA, INC.
111 Peters Canyon Road
Irvine, California 92606

and

KIA MOTORS AMERICA, INC.
111 Peters Canyon Road
Irvine, California 92606

and

KIA MOTORS AMERICA, INC.
7553 Morris Court
Suite 100
Allentown, PA 18106

and

COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

MARCH TERM, 2025

NO.

COMPLAINT IN CIVIL ACTION

JURY TRIAL DEMANDED

ALLENTOWN CAR CONNECTION, INC. d/b/a
ALLENTOWN KIA
2000 Market St., Suite 1440
Philadelphia, PA 19103

and

ADRIAN ZIMMERMAN
44 Moore Road
Mohnton, PA 19540

and

JERRY MARTIN
200 Freiburger Road
Sandusky, Michigan 48471

and

ABC COMPANIES NOS 1-5
(fictitious designation for manufacturers and/or
designers of subject 2022 Kia Sorento)

and

ABC COMPANIES NOS 6-10
(fictitious designation for owners of Allentown
Kia dealership at 2350 Lehigh Street, Allentown,
PA)

Defendants.

NOTICE TO DEFEND

"NOTICE"

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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(215) 238-1707

"AVISO"

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas dispuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion.

Hace falta asentar una comparencia escrita en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO, VAYA EN PERSONA O LLAME PER TELEFONO A LA OFICINA QUE SE ENCUENTRA ESCRITA ABAJO. ESTA OFICINA PUEDE PROVEER DE USTED INFORMACION SOBRE EMPLEAR A UN ABOGADO. SI USTED NO TIENE SUFICIENTE DINERO PARA EMPLEAR UN ABOGADO, ESTA OFICINA PUEDE PODER PROVEER DE USTED LA INFORMACION SOBRE LAS AGENCIAS QUE PUEDEN OFRECER SERVICIOS LEGAL A LAS PERSONAS ELEGIBLES EN UN HONORARIO REDUCIDO O NINGUN HONORARIO.

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(215) 238-1701

CIVIL ACTION – COMPLAINT

PARTIES

1. Plaintiffs, Hank and Donna Schmoyer, husband and wife, are adult citizens of the Commonwealth of Pennsylvania, residing therein at 4101 Sand Spring Road, Apartment E4, Schnecksville, PA 18078.

2. Defendant Kia Corporation is a corporation with its principal place of business at 12 Heolleung-ro, Seocho-gu, Seoul, Republic of Korea 06797, which was at all relevant times in the business of designing, manufacturing, marketing, distributing and selling automobiles that are sold throughout the United States, including the Commonwealth of Pennsylvania, and in particular, an automobile known as the 2022 Kia Sorento, more specifically identified as VIN#5XYRLDLC0NG098413 (hereinafter referred to as the "subject vehicle"), which was sold from its dealership located at 2350 Lehigh Street, Allentown, Pennsylvania.

4. At all relevant times, Defendant Kia Corporation regularly conducted business in the Commonwealth of Pennsylvania and Philadelphia County.

5. At all relevant times, Defendant Kia Corporation was acting by and through its agents, servants and/or employees who were acting within the course and scope of their agency, service, and/or employment with Defendant Kia Corporation.

6. Defendant Kia America, Inc. is a California corporation with its principal place of business at 111 Peters Canyon Road, Irvine, California 92606, which was at all relevant times in the business of designing, manufacturing, marketing, distributing and selling automobiles that are sold throughout the United States, including the Commonwealth of Pennsylvania, and in particular, the subject vehicle sold from its dealership located at 2350 Lehigh Street, Allentown, Pennsylvania.

7. At all relevant times, Defendant Kia America, Inc. regularly conducted business in the Commonwealth of Pennsylvania and Philadelphia County.

8. At all relevant times, Defendant Kia America, Inc. was acting by and through its agents, servants and/or employees who were acting within the course and scope of their agency, service, and/or employment with Defendant Kia America, Inc.

9. Defendant Kia Motors America, Inc. is a California corporation with its principal place of business at 7553 Morris Court, Suite 100, Allentown, PA 18106, which was at all relevant times in the business of designing, manufacturing, marketing, distributing and selling automobiles that are sold throughout the United States, including the Commonwealth of Pennsylvania, and in particular, the subject vehicle sold from its dealership located at 2350 Lehigh Street, Allentown, Pennsylvania.

10. At all relevant times, Defendant Kia Motors America, Inc. regularly conducted business in the Commonwealth of Pennsylvania and Philadelphia County.

11. At all relevant times, Defendant Kia Motors America, Inc. was acting by and through its agents, servants and/or employees who were acting within the course and scope of their agency, service, and/or employment with Defendant Kia Motors America, Inc.

12. Defendant Kia Motors America, Inc. (hereinafter referred to as “KMAI”) is a California corporation with its principal place of business at 111 Peters Canyon Road, Irvine, California 92606, which was at all relevant times in the business of designing, manufacturing, marketing, distributing and selling automobiles that are sold throughout the United States, including the Commonwealth of Pennsylvania, and in particular, the subject vehicle sold from its dealership located at 2350 Lehigh Street, Allentown, Pennsylvania.

13. At all relevant times, Defendant KMAI regularly conducted business in the Commonwealth of Pennsylvania and Philadelphia County.

14. At all relevant times, Defendant KMAI was acting by and through its agents, servants and/or employees who were acting within the course and scope of their agency, service, and/or employment with Defendant KMAI.

15. Defendant Allentown Car Connection, Inc. d/b/a Allentown Kia (hereinafter referred to as “Allentown Kia”) is a Pennsylvania corporation with its registered office at 2000 Market St., Suite 1440, Philadelphia, PA 19103, which was at all relevant times in the business of marketing, distributing, and selling automobiles in the Commonwealth of Pennsylvania, and in particular, the subject vehicle from its dealership located at 2350 Lehigh Street, Allentown, Pennsylvania.

16. At all relevant times, Allentown Kia regularly conducted business in the Commonwealth of Pennsylvania and Philadelphia County.

17. At all relevant times, Defendant Allentown Kia was acting by and through its agents, servants, and/or employees who were acting within the course and scope of their agency, service, and/or employment with Defendant Allentown Kia.

18. Defendant Adrian Zimmerman is an adult citizen of Pennsylvania, residing therein at 44 Moore Road, Mohnton, PA 19540, and committed tortious activity in the Commonwealth of Pennsylvania, such as that he has purposefully availed himself to the laws of the Commonwealth of Pennsylvania and can reasonably expect to be sued in Pennsylvania.

19. Defendant Jerry Martin is an adult citizen of Michigan, residing therein at 200 Freiburger Road, Sandusky, Michigan 48471, and committed tortious activity in the Commonwealth of Pennsylvania, such as that he has purposefully availed himself to the laws of the Commonwealth of Pennsylvania and can reasonably expect to be sued in Pennsylvania.

20. Defendants ABC Companies Nos. 1 – 5 are fictitious designations for any and all currently unknown companies involved in the design, manufacture and/or sale of the subject vehicle. A reasonable search to determine the actual name of these companies has been conducted.

21. Defendants ABC Companies Nos. 6 – 10 are fictitious designations for any and all currently unknown companies that own the Allentown Kia dealership located at 2350 Lehigh Street, Allentown, Pennsylvania. A reasonable search to determine the actual name of these companies has been conducted.

22. At all relevant times hereto, all Defendants were directly liable and also vicariously liable for the negligent, reckless, and/or intentional and willful acts or omissions of their

employees, agents, ostensible agents, and/or brokers who were acting within the course and scope of their employment.

23. At all relevant times hereto, all Defendants were the employees, agents, ostensible agents and/or brokers of one another.

VENUE

24. The preceding paragraphs are incorporated by reference as if fully set forth herein.

25. Venue in this action is properly laid in Philadelphia County pursuant to Pa.R.C.P. 2179(a), as Defendant Allentown Kia has its registered office in Philadelphia County and Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI and/or Allentown Kia regularly conduct business in Philadelphia County.

26. The amount in controversy exceeds the local rules for amounts in controversy requiring arbitration.

OPERATIVE FACTS

27. The preceding paragraphs are incorporated by reference as if set forth herein.

28. On February 22, 2022, Defendants Kia Corporation, Kia America, Inc., Allentown Kia, Kia Motors America, Inc., KMAI and/or ABC Companies Nos. 6 -10 sold the subject vehicle, which was designed, manufactured and/or distributed by Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI and/or ABC Companies Nos. 1 - 5, to Plaintiff Hank Schmoyer.

29. On April 29, 2023, Plaintiff Hank Schmoyer was operating the subject vehicle with Plaintiff Donna Schmoyer sitting in the front passenger seat.

30. At approximately 11:00 a.m., the subject vehicle was involved in a three-vehicle accident while traveling southbound on Route 222 in Lancaster County, Pennsylvania.

31. At the time of the accident, Defendant Adrian Zimmerman was the driver of a 2015 Chevrolet Silverado (hereinafter referred to as the “pick-up truck”).

32. At all relevant times, Defendant Jerry Martin owned the pick-up truck operated by Defendant Adrian Zimmerman and entrusted it to him.

33. At the time of the accident, the subject vehicle was rear-ended by the pick-up truck.

34. At the time of the accident, the subject vehicle’s front passenger seat frame and associated structures failed to maintain their structural integrity, which resulted in the front passenger seatback collapsing, which caused severe and permanent injuries to Plaintiff Donna Schmoyer.

35. At the time of the accident, the subject vehicle experienced significant trunk intrusion, which resulted in minimization of the occupant survival space, which caused severe and permanent injuries to Plaintiff Donna Schmoyer.

36. The negligence and recklessness of the Defendants and their agents and/or employees, as well as the defective manufacture and design of the subject vehicle, was a factual cause of and/or was a substantial factor in causing harm to Plaintiffs, for which all Defendants are jointly and/or severally liable:

Donna Schmoyer

- a. Spinal cord fracture subluxation at T5 and T6;
- b. Retrolisthesis at T5 and T6;
- c. Complete thoracic spinal cord injury;
- d. Spinal cord injury with resulting paralysis and neurologic injury;
- e. Paraplegia;

- f. Complete paralysis and lack of function, feeling, and sensation from the chest down;
- g. Lower extremity spasms;
- h. Bowel and/or bladder dysfunction;
- i. Right pleural effusion;
- j. Abdominal wall contusion;
- k. All incident-related injuries and conditions set forth in her medical records;
- l. Severe impairment of bodily functioning;
- m. Substantial disability to perform activities of daily functioning;
- n. Past and future severe pain and suffering;
- o. Past and future medical expenses;
- p. Past and future loss of life's pleasures;
- q. Past and future anxiety and fear;
- r. Past and future severe emotional distress;
- s. Past and future embarrassment and humiliation;
- t. Past and future disfigurement;
- u. All other damages recoverable by Pennsylvania law.

Hank Schmoyer

- a. Loss of services, society, comfort, and companionship
- b. Past and future severe emotional distress, including the distress of watching his wife become paralyzed;
- c. All other damages recoverable by Pennsylvania law.

COUNT I
STRICT LIABILITY
DEFECTIVE DESIGN AND MANUFACTURE

Plaintiffs

v.

**Defendants, Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI,
Allentown Kia, ABC Companies Nos. 1-5, and ABC Companies Nos. 6-10**

37. The preceding paragraphs are incorporated by reference as if fully set forth herein.

38. Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10 designed, manufactured, marketed, distributed and sold the subject vehicle prior to the aforementioned accident, in which the subject vehicle was defective at the time it was designed, manufactured, distributed, and sold by said Defendants.

39. Defendant Allentown Kia, marketed, distributed, and sold the subject vehicle prior to the aforementioned accident, in which the subject vehicle was defective at the time it was sold by Allentown Kia on February 22, 2022.

40. At all relevant times, the subject vehicle was defectively designed and manufactured, and was unsafe and unreasonably dangerous for its intended and foreseeable uses and users when it left the control of Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10.

41. The subject vehicle was defective in its manufacture and design, unreasonably dangerous and should not have been marketed and sold because of said defects, which include one or more of the following:

- a. Defective design and/or manufacture of the seatback structure resulting in failure to withstand forces and stresses from foreseeable rear-end accidents

which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;

- b. Defective design and/or manufacture of the seatback structure resulting in inadequate strength of the seatback structure for predictable loads and foreseeable accidents;
- c. Defective design and/or manufacture of the seatback structure resulting in failure of the seat frame to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- d. Defective design and/or manufacture of the seatback structure resulting in the inadequate strength of the seat frame for predictable loads and foreseeable accidents;
- e. Defective design and/or manufacture of the seatback structure resulting in the failure of the seat cushion to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- f. Defective design and/or manufacture of the seatback structure resulting in the inadequate strength of the seat cushion for predictable loads and foreseeable accidents;
- g. Defective design and/or manufacture of the assembly of the seat recliner resulting in failure to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- h. Defective design and/or manufacture of the assembly of the seat recliner resulting in the inadequate strength of the assembly of the seat recliner for predictable loads and foreseeable accidents;
- i. Defective design and/or manufacture associated with the occupant survival space, namely in that the subject vehicle exhibits severe occupant survival

intrusion, due to the defectively inadequate structural strength of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures;

- j. Defective design and/or manufacture resulting in inadequate structural strength of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures associated with the lack of survival space, more specifically in that significant trunk intrusion occurred, and the front passenger seat frame and associated structures of the subject vehicle failed to maintain structural integrity;
- k. Defective design and/or manufacture of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures associated with the failure to adhere to proper safety standards in order to ensure that the seat structure does not fail, thereby exposing occupants to risk of serious bodily harm;
- l. Defective design and/or manufacture of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures which allow the occupants of the subject vehicle to be exposed to enhanced risk of injury due to seat structure failure;
- m. Defective design and/or manufacture of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures which resulted in failure to provide adequate safeguards to prevent seat structure failure, thereby exposing occupants to serious risk of bodily harm;
- n. Defects which occurred due to inadequate testing and inspection of the subject vehicle and its components before it left the control of defendants;
- o. Defects associated with inadequate warnings and instructions to advise ultimate consumers and passengers of the subject vehicle with associated risks of seat structure failure;
- p. Defects which include inadequate warnings that were not conspicuous, which should have informed foreseeable users of the product of the inherent dangers of the subject vehicle relating to the seatback, seat frame, seat cushion, recliner assembly, and supporting structures;

- q. Defects associated with the failure to design, manufacture, test and inspect the subject vehicle to prevent failure of the seat structure as referenced herein;
- r. Defects associated with the lack of necessary modifications, alterations and after-market repairs of the of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures to eliminate the dangerous and unreasonable hazardous condition of the subject vehicle after it left the control of defendants;
- s. Defective design and/or manufacture of the seatbelt associated with the front passenger seatbelt location, namely in that the seatbelt is integrated into the vehicle interior wall instead of the seat itself; and
- t. Defective design and/or manufacture of the seat structure, namely in that it lacked strength and stability due to inadequate materials and/or insufficient amount of materials;
- u. Failure to include front seat seatbelt integration into the seat itself;
- v. Failure to use adequate and/or a sufficient amount of materials for the seat structure;
- w. Failure to properly design and/or manufacture the seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- x. Failure to properly design and/or manufacture the seatbelt assembly;
- y. Use of inadequate materials for seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- z. Use of excessive welding points for the seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- aa. Failure to properly design and/or manufacture the trunk and/or passenger compartment so as to allow minor trunk intrusion to cause reduction of occupant survival space and/or rear seat displacement;
- bb. Use of inadequate materials for the trunk and/or passenger compartment, and supporting structures;

- cc. Improper configuration of the trunk and/or passenger compartment;
- dd. Failure to provide and/or implement necessary modifications, alterations and/or after-market repairs of the subject product to eliminate the dangerous and unreasonable hazardous condition of the subject vehicle after it left the control of Defendants; and
- ee. Other defects as may be ascertained through discovery and demonstrated by evidence at the trial of this case.

42. At the time of the accident, the subject vehicle was operated by Plaintiff Hank Schmoyer without substantial change from its condition when it was sold, distributed, and/or supplied by Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10.

43. The risk of seat structure failure is not common knowledge and was unknowable and unacceptable to the ordinary user and passenger, including Plaintiffs Hank and Donna Schmoyer.

44. The subject vehicle did not perform as safely as an ordinary consumer would have expected it to perform when used in an intended way and/or used in an unintended but reasonably foreseeable way, and thus was defective under the consumer expectation test.

45. A reasonable person would conclude that the possibility and seriousness of harm outweighed the burden or cost of making the subject vehicle safe.

46. If the subject vehicle was designed and/or manufactured to include front seat seatbelt integration into the seat itself and with adequate seat construction materials, those would not have impaired the functionality, efficiency, or efficacy of driving or the subject vehicle itself.

47. Such alternative designs were feasible and would have required little to no extra cost in manufacturing the subject vehicle.

48. Such alternative designs were necessary given the serious, grave dangers of rear-end car accidents.

49. Based on the known probability and seriousness of harm potentially caused by the defects in the design of the subject vehicle, and the fact that taking basic precautions to this product would require little to no extra cost, this product was also defective under the risk-utility test.

50. Plaintiffs Hank and Donna Schmoyer's severe injuries and/or damages were caused by the defects in the design and/or manufacture of the subject vehicle for which Defendants, Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10 are strictly liable.

51. At the time the subject vehicle left the possession and control of Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10, it was in a defective condition and was unreasonably dangerous to Plaintiffs Hank and Donna Schmoyer and other foreseeable users and passengers of the subject vehicle.

52. The subject vehicle malfunctioned during intended and foreseeable use, causing the injuries and damages sustained by Plaintiffs set forth above.

53. By reason of their conduct in designing, manufacturing, marketing, distributing, and/or selling the defective subject vehicle, Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10 are strictly liable for the injuries and damages sustained by Plaintiffs as set forth above.

54. As a direct and proximate result of the aforementioned defective design and/or manufacture of the subject vehicle by Defendants Kia Corporation, Kia America, Inc., Kia Motors

America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10, Plaintiffs suffered the harm described herein.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

COUNT II

NEGLIGENCE

Plaintiffs

v.

**Defendants, Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI,
Allentown Kia, ABC Companies Nos. 1-5, and ABC Companies Nos. 6-10**

55. The preceding paragraphs are incorporated by reference as if fully set forth herein.

56. Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10 were negligent and reckless in designing, manufacturing, marketing, distributing, and selling the subject vehicle in one or more of the following ways:

- a. Failure to use reasonable and proper care in designing, manufacturing, marketing, distributing, and selling the subject vehicle so as to avoid the risk of serious bodily injury from a necessary and foreseeable manner of use of the product;
- b. Failure to use reasonable and proper care in designing, manufacturing, marketing, distributing, and selling the subject vehicle such that it was safe for the intended users and passengers of the product;
- c. Failure to perform adequate testing and to make necessary design modifications so as to ensure the safety of Plaintiffs and similarly situated individuals who used the subject vehicle;
- d. Failure to adhere to proper safety standards in order to ensure that the seat structure does not fail, thereby exposing occupants to risk of serious bodily harm;

- e. Failure to design and/or manufacture the seatback structure to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- f. Failure to design and/or manufacture the seatback structure with adequate strength for predictable loads and foreseeable accidents;
- g. Failure to design and/or manufacture the seat frame to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- h. Failure to design and/or manufacture the seat frame with adequate strength for predictable loads and foreseeable accidents;
- i. Failure to design and/or manufacture the seat cushion to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- j. Failure to design and/or manufacture the seat cushion with adequate strength for predictable loads and foreseeable accidents;
- k. Failure to design and/or manufacture the assembly of the seat recliner to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- l. Failure to design and/or manufacture the assembly of the seat recliner with adequate strength for predictable loads and foreseeable accidents;
- m. Failure to design and/or manufacture the subject vehicle to prevent significant occupant survival intrusion;
- n. Failure to provide adequate safeguards to prevent seat structure failure, thereby exposing occupants to serious risk of bodily harm;

- o. Failure to include adequate warnings and instructions to advise ultimate consumers and passengers of the subject vehicle with associated risks of seat structure failure;
- p. Failure to include adequate warnings that were conspicuous so as to inform foreseeable users of the product of the inherent dangers of the subject vehicle;
- q. Failure to include front seat seatbelt integration into the seat itself;
- r. Failure to use adequate and/or a sufficient amount of materials for the seat structure;
- s. Failure to properly design and/or manufacture the seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- t. Failure to properly design and/or manufacture the seatbelt assembly;
- u. Use of inadequate materials for seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- v. Use of excessive welding points for the seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- w. Failure to properly design and/or manufacture the trunk and/or passenger compartment so as to allow minor trunk intrusion to cause reduction of occupant survival space and/or rear seat displacement;
- x. Use of inadequate materials for the trunk and/or passenger compartment, and supporting structures;
- y. Improper configuration of the trunk and/or passenger compartment;
- z. Inadequate testing for crashworthiness and/or load capacity;
- aa. Failure to provide and/or implement necessary modifications, alterations and/or after-market repairs of the subject product to eliminate the dangerous and unreasonable hazardous condition of the subject vehicle after it left the control of Defendants; and

bb. Other actions and/or omissions as may be ascertained through discovery and demonstrated by evidence at the trial of this case.

57. Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., Allentown Kia, KMAI, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10, and/or their agents and employees, either knew or should have known that their wrongful conduct posed a likelihood of serious bodily injury to users of the subject vehicle, including but not limited to complete spinal cord injury and paraplegia.

58. As a direct and proximate result of the aforementioned negligent and reckless conduct of Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10 and/or their agents and employees, Plaintiffs suffered the harm described herein.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

COUNT III

BREACH OF EXPRESS WARRANTY

Plaintiffs

v.

Defendants, Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and ABC Companies Nos. 6-10

59. The preceding paragraphs are incorporated by reference as if fully set forth herein.

60. Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10 expressly warranted that the subject vehicle, seatback, seat frame, seat cushion, recliner assembly, trunk and/or passenger compartment were safe to members of the consuming public, including Plaintiffs.

61. More specifically, the 2022 Kia Sorento owner's manual for the subject vehicle expressly warranted that the front seats, second row seats, third row seats, seatbelt, seatback angle, seat cushion height, seat cushion tilt, headrest, lumbar support, and restraint system were safety features of the subject vehicle.

62. The subject vehicle does not conform to these express representations because it was not safe for the reasons set forth above. Consequently, Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10 breached these express warranties.

63. As a direct and proximate result of the aforementioned breach of express warranty by Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10, Plaintiffs suffered the harm described herein.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

COUNT IV

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

Plaintiffs

v.

**Defendants, Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI,
Allentown Kia, ABC Companies Nos. 1-5, and ABC Companies Nos. 6-10**

64. The preceding paragraphs are incorporated by reference as if fully set forth herein.

65. At all relevant times, Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-

10, were in the business of designing, manufacturing, marketing, distributing, and selling automobiles, including the subject vehicle.

66. At all relevant times, Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10, were merchants with respect to the sale of automobiles, including the subject vehicle.

67. At all relevant times, Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10, impliedly warranted that the subject vehicle was merchantable, reasonably safe, fit for ordinary purposes, and free from defect.

68. Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10, breached the implied warranty of merchantability in that the subject vehicle was not fit for ordinary purposes at the time it was sold to Plaintiffs Hank and Donna Schmoyer.

69. The subject vehicle was not merchantable and it was unfit for ordinary purposes because of the following defects:

- a. Defective design and/or manufacture of the seatback structure resulting in failure to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- b. Defective design and/or manufacture of the seatback structure resulting in inadequate strength of the seatback structure for predictable loads and foreseeable accidents;
- c. Defective design and/or manufacture of the seatback structure resulting in failure of the seat frame to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;

- d. Defective design and/or manufacture of the seatback structure resulting in the inadequate strength of the seat frame for predictable loads and foreseeable accidents;
- e. Defective design and/or manufacture of the seatback structure resulting in the failure of the seat cushion to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- f. Defective design and/or manufacture of the seatback structure resulting in the inadequate strength of the seat cushion for predictable loads and foreseeable accidents;
- g. Defective design and/or manufacture of the assembly of the seat recliner resulting in failure to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- h. Defective design and/or manufacture of the assembly of the seat recliner resulting in the inadequate strength of the assembly of the seat recliner for predictable loads and foreseeable accidents;
- i. Defective design and/or manufacture associated with the occupant survival space, namely in that the subject vehicle exhibits severe occupant survival intrusion, due to the defectively inadequate structural strength of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures;
- j. Defective design and/or manufacture resulting in inadequate structural strength of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures associated with the lack of survival space, more specifically in that significant trunk intrusion occurred, and the front passenger seat frame and associated structures of the subject vehicle failed to maintain its structural integrity;
- k. Defective design and/or manufacture of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures associated with the failure to

adhere to proper safety standards in order to ensure that the seat structure does not fail, thereby exposing occupants to risk of serious bodily harm;

- l. Defective design and/or manufacture of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures the which allow the occupants of the subject vehicle to be exposed to enhanced risk of injury due to seat structure failure;
- m. Defective design and/or manufacture of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures which resulted in failure to provide adequate safeguards to prevent seat structure failure, thereby exposing occupants to serious risk of bodily harm;
- n. Defects which occurred due to inadequate testing and inspection of the subject vehicle and its components before it left the control of defendants;
- o. Defects associated with inadequate warnings and instructions to advise ultimate consumers and passengers of the subject vehicle with associated risks of seat structure failure;
- p. Defects which include inadequate warnings that were not conspicuous, which should have informed foreseeable users of the product of the inherent dangers of the subject vehicle relating to the seatback, seat frame, seat cushion, recliner assembly, and supporting structures;
- q. Defects associated with the failure to design, manufacture, test and inspect the subject vehicle to prevent failure of the seat structure as referenced herein;
- r. Defects associated with the lack of necessary modifications, alterations and after-market repairs of the of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures to eliminate the dangerous and unreasonable hazardous condition of the subject vehicle after it left the control of defendants;
- s. Defective design and/or manufacture of the seatbelt associated with the front passenger seatbelt location, namely in that the seatbelt is integrated into the vehicle interior wall instead of the seat itself; and

- t. Defective design and/or manufacture of the seat structure, namely in that it lacked strength and stability due to inadequate materials and/or insufficient amount of materials;
- u. Failure to include front seat seatbelt integration into the seat itself;
- v. Failure to use adequate and/or a sufficient amount of materials for the seat structure;
- w. Failure to properly design and/or manufacture the seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- x. Failure to properly design and/or manufacture the seatbelt assembly;
- y. Use of inadequate materials for seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- z. Use of excessive welding points for the seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- aa. Failure to properly design and/or manufacture the trunk and/or passenger compartment so as to allow minor trunk intrusion to cause reduction of occupant survival space and/or rear seat displacement;
- bb. Use of inadequate materials for the trunk and/or passenger compartment, and supporting structures;
- cc. Improper configuration of the trunk and/or passenger compartment;
- dd. Defects which occurred due to inadequate testing and inspection of the subject vehicle and its components before it left the control of Defendants;
- ee. Defects associated with the lack of necessary modifications, alterations and after-market repairs of the subject product to eliminate the dangerous and unreasonable hazardous condition of the subject vehicle after it left the control of Defendants; and
- ff. Other defects as may be ascertained through discovery and demonstrated by evidence at the trial of this case.

70. As a direct and proximate result of the aforementioned breach of the implied warranty of merchantability by Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10, Plaintiffs suffered the harm described herein.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

COUNT V

**BREACH OF IMPLIED WARRANTY OF
FITNESS FOR A PARTICULAR PURPOSE**

Plaintiffs

v.

**Defendants, Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI,
Allentown Kia, ABC Companies Nos. 1-5, and ABC Companies Nos. 6-10**

71. The preceding paragraphs are incorporated by reference as if fully set forth herein.

72. Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10 designed, manufactured, marketed, distributed, and sold automobiles, including the subject vehicle, with an implied warranty that the product was fit for the specific use and particular purpose of passenger transportation.

73. At all relevant times, Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10 knew that consumers, including Plaintiffs Hank and Donna Schmoyer, would rely on Defendants' skill and/or judgment to furnish suitable goods for passenger transportation.

74. Plaintiffs Hank and Donna Schmoyer relied on said Defendants' skills and/or judgment when they purchased the subject vehicle on February 22, 2022.

75. The subject vehicle was not fit for the specific use and particular purpose of passenger transportation, because of the unreasonable risk of bodily injury associated with its use, which includes one or more of the following:

- a. Defective design and/or manufacture of the seatback structure resulting in failure to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- b. Defective design and/or manufacture of the seatback structure resulting in inadequate strength of the seatback structure for predictable loads and foreseeable accidents;
- c. Defective design and/or manufacture of the seatback structure resulting in failure of the seat frame to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- d. Defective design and/or manufacture of the seatback structure resulting in the inadequate strength of the seat frame for predictable loads and foreseeable accidents;
- e. Defective design and/or manufacture of the seatback structure resulting in the failure of the seat cushion to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;
- f. Defective design and/or manufacture of the seatback structure resulting in the inadequate strength of the seat cushion for predictable loads and foreseeable accidents;
- g. Defective design and/or manufacture of the assembly of the seat recliner resulting in failure to withstand forces and stresses from foreseeable rear-end accidents which rendered the vehicle defective, uncrashworthy, unsafe and unreasonably dangerous for ultimate uses, consumers, and passengers of the subject vehicle;

- h. Defective design and/or manufacture of the assembly of the seat recliner resulting in the inadequate strength of the assembly of the seat recliner for predictable loads and foreseeable accidents;
- i. Defective design and/or manufacture associated with the occupant survival space, namely in that the subject vehicle exhibits severe occupant survival intrusion, due to the defectively inadequate structural strength of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures;
- j. Defective design and/or manufacture resulting in inadequate structural strength of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures associated with the lack of survival space, more specifically in that significant trunk intrusion occurred, and the front passenger seat frame and associated structures of the subject vehicle failed to maintain its structural integrity;
- k. Defective design and/or manufacture of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures associated with the failure to adhere to proper safety standards in order to ensure that the seat structure does not fail, thereby exposing occupants to risk of serious bodily harm;
- l. Defective design and/or manufacture of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures the which allow the occupants of the subject vehicle to be exposed to enhanced risk of injury due to seat structure failure;
- m. Defective design and/or manufacture of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures which resulted in failure to provide adequate safeguards to prevent seat structure failure, thereby exposing occupants to serious risk of bodily harm;
- n. Defects which occurred due to inadequate testing and inspection of the subject vehicle and its components before it left the control of defendants;
- o. Defects associated with inadequate warnings and instructions to advise ultimate consumers and passengers of the subject vehicle with associated risks of seat structure failure;
- p. Defects which include inadequate warnings that were not conspicuous, which should have informed foreseeable users of the product of the inherent dangers

of the subject vehicle relating to the seatback, seat frame, seat cushion, recliner assembly, and supporting structures;

- q. Defects associated with the failure to design, manufacture, test and inspect the subject vehicle to prevent failure of the seat structure as referenced herein;
- r. Defects associated with the lack of necessary modifications, alterations and after-market repairs of the of the seatback, seat frame, seat cushion, recliner assembly, and supporting structures to eliminate the dangerous and unreasonable hazardous condition of the subject vehicle after it left the control of defendants;
- s. Defective design and/or manufacture of the seatbelt associated with the front passenger seatbelt location, namely in that the seatbelt is integrated into the vehicle interior wall instead of the seat itself; and
- t. Defective design and/or manufacture of the seat structure, namely in that it lacked strength and stability due to inadequate materials and/or insufficient amount of materials;
- u. Failure to include front seat seatbelt integration into the seat itself;
- v. Failure to use adequate and/or a sufficient amount of materials for the seat structure;
- w. Failure to properly design and/or manufacture the seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- x. Failure to properly design and/or manufacture the seatbelt assembly;
- y. Use of inadequate materials for seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- z. Use of excessive welding points for the seatback, seat frame, seat cushion, recliner assembly, headrest, and supporting structures;
- aa. Failure to properly design and/or manufacture the trunk and/or passenger compartment so as to allow minor trunk intrusion to cause reduction of occupant survival space and/or rear seat displacement;

- bb. Use of inadequate materials for the trunk and/or passenger compartment, and supporting structures;
- cc. Improper configuration of the trunk and/or passenger compartment;
- dd. Defects which occurred due to inadequate testing and inspection of the subject vehicle and its components before it left the control of Defendants;
- ee. Defects associated with the lack of necessary modifications, alterations and after-market repairs of the subject product to eliminate the dangerous and unreasonable hazardous condition of the subject vehicle after it left the control of Defendants; and
- ff. Other defects as may be ascertained through discovery and demonstrated by evidence at the trial of this case.

76. As a direct and proximate result of the aforementioned breach of the implied warranty of fitness for a particular purpose by Defendants Kia Corporation, Kia America, Inc., Kia Motors America, Inc., KMAI, Allentown Kia, ABC Companies Nos. 1-5, and/or ABC Companies Nos. 6-10, Plaintiffs suffered the harm described herein.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

COUNT VI
NEGLIGENCE

Plaintiffs

v.

Defendant, Adrian Zimmerman

77. The preceding paragraphs are incorporated by reference as if fully set forth herein.

78. Defendant Adrian Zimmerman owed a duty to Plaintiffs to use due care and caution in the operation and control of the pick-up truck while he was driving on April 29, 2023.

79. Defendant Adrian Zimmerman breached that duty and was negligent and reckless in one or more of the following respects:

- a. Failing to properly operate and control the pick-up truck;
- b. Driving at an excessive rate of speed under the circumstances;
- c. Failing to maintain a proper lookout;
- d. Causing a collision with the subject vehicle;
- e. Inattentive driving;
- f. Driving while distracted;
- g. Failing to maintain control of the pick-up truck;
- h. Failing to operate the pick-up truck in such a manner so as to avoid the aforesaid occurrence;
- i. Failing to break or stop the pick-up truck before it rear-ended the subject vehicle;
- j. Failing to yield;
- k. Failing to heed the traffic conditions then and there existing;
- l. Failing to exercise reasonable care in the operation of a motor vehicle;
- m. Failing to use due care under the circumstances;
- n. Failing to exercise proper precaution; and
- o. Other acts or omissions constituting negligence as may be ascertained through discovery and demonstrated by evidence at the trial of this case.

80. As a direct and proximate result of the aforementioned negligent and reckless conduct of Defendant Adrian Zimmerman, Plaintiffs suffered the harm described herein.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

COUNT VII
NEGLIGENCE
VICARIOUS LIABILITY

Plaintiffs
v.
Defendant, Jerry Martin

81. The preceding paragraphs are incorporated by reference as if fully set forth herein.

82. At all relevant times, Defendant Adrian Zimmerman was the employee, agent, worker, and/or servant, of Defendant Jerry Martin, and was acting within the course and scope of authority and employment in furtherance of their employment and/or agency.

83. Defendant Jerry Martin is vicariously liable for the negligence, carelessness and recklessness of his employees, agents, workers and/or servants, including, but not limited to, Defendant Adrian Zimmerman, which consisted of one or more of the following:

- a. Failing to properly operate and control the pick-up truck;
- b. Driving at an excessive rate of speed under the circumstances;
- c. Failing to maintain a proper lookout;
- d. Causing a collision with the subject vehicle;
- e. Inattentive driving;
- f. Driving while distracted;
- g. Failing to maintain control of the pick-up truck;
- h. Failing to operate the pick-up truck in such a manner so as to avoid the aforesaid occurrence;
- i. Failing to break or stop the pick-up truck before it rear-ended the subject vehicle;
- j. Failing to yield;

- k. Failing to heed the traffic conditions then and there existing;
- l. Failing to exercise reasonable care in the operation of a motor vehicle;
- m. Failing to use due care under the circumstances;
- n. Failing to exercise proper precaution; and
- o. Other acts or omissions constituting negligence as may be ascertained through discovery and demonstrated by evidence at the trial of this case.

84. At all relevant times, Defendant Jerry Martin acted and/or failed to act through its employees, agents, workers, and servants, including but not limited to Defendant Adrian Zimmerman, each and all of whom were acting within the course and scope of authority and employment in furtherance of their employment and/or agency.

85. The above referenced conduct, for which Defendant Jerry Martin is vicariously liable, was a direct and proximate cause of, and/or a substantial contributing factor to, Plaintiffs' harm as described herein.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

COUNT VIII
NEGLIGENT ENTRUSTMENT

Plaintiffs
v.
Jerry Martin

86. The preceding paragraphs are incorporated by reference as if fully set forth herein.

87. At all relevant times, Defendant Jerry Martin owned and/or controlled the pick-up truck operated by Defendant Adrian Zimmerman.

88. At the time of the accident, Defendant Jerry Martin negligently entrusted Defendant Adrian Zimmerman to operate the pick-up truck.

89. At the time Defendant Jerry Martin negligently entrusted Defendant Adrian Zimmerman with the pick-up truck, Jerry Martin knew or should have known that Adrian Zimmerman was incompetent to operate the pick-up truck.

90. At the time Defendant Jerry Martin negligently entrusted Defendant Adrian Zimmerman with the pick-up truck, Jerry Martin knew or should have known Adrian Zimmerman would operate the pick-up truck in a manner that created an unreasonable risk of harm to other individuals.

91. At the time of the accident, Defendant Adrian Zimmerman operated the pick-up truck in a manner that created an unreasonable risk of harm to other individuals in one or more of the following aspects:

- a. Failing to properly operate and control the pick-up truck;
- b. Driving at an excessive rate of speed under the circumstances;
- c. Failing to maintain a proper lookout;
- d. Causing a collision with the subject vehicle;
- e. Inattentive driving;
- f. Driving while distracted;
- g. Failing to maintain control of the pick-up truck;
- h. Failing to operate the pick-up truck in such a manner so as to avoid the aforesaid occurrence;
- i. Failing to break or stop the pick-up truck before it rear-ended the subject vehicle;
- j. Failing to yield;
- k. Failing to heed the traffic conditions then and there existing;

- l. Failing to exercise reasonable care in the operation of a motor vehicle;
- m. Failing to use due care under the circumstances;
- n. Failing to exercise proper precaution; and
- o. Other acts or omissions constituting negligence as may be ascertained through discovery and demonstrated by evidence at the trial of this case.

92. As a direct and proximate result of the aforementioned negligent entrustment by Defendant Jerry Martin, Plaintiffs suffered the harm described herein.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

COUNT IX
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Plaintiff, Hank Schmoyer

v.

All Defendants

93. The preceding paragraphs are incorporated by reference as if fully set forth herein.

94. The crash of April 29, 2023 and Plaintiffs' harm, caused by Defendants' aforementioned conduct and defective subject vehicle, was, by every measure, a traumatic event.

95. Plaintiff Hank Schmoyer was in the zone of danger, as he was inside subject vehicle when the crash occurred.

96. Plaintiff Hank Schmoyer's wife, Donna Schmoyer, was catastrophically injured in front of him.

97. Plaintiff Hank Schmoyer had a sensory and contemporaneous observation of this incident and the injury to his wife, Donna Schmoyer.

98. Plaintiff Hank Schmoyer was in personal danger due to the crash, feared the physical impact that would result therefrom, and actually did suffer physical injuries as a result of the crash.

99. As a result of being injured in the crash, and witnessing the catastrophic injuries to his wife, Donna Schmoyer, Plaintiff Hank Schmoyer suffered and continues to suffer severe emotional distress, psychological pain, emotional scarring, fear, anxiety, mental anguish, and other debilitating emotional, psychological and mental injuries, some or all of which manifested as a physical injury, the full extent of which may not have yet been realized.

100. Plaintiff Hank Schmoyer was in the zone of danger and has a negligent infliction of emotional distress claims for the injuries he observed, witnessed and perceived to his wife, Donna Schmoyer.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

COUNT X
LOSS OF CONSORTIUM

Plaintiff Hank Schmoyer

v.

All Defendants

101. The preceding paragraphs are incorporated by reference as if fully set forth herein.

102. At all relevant times, Plaintiff Hank Schmoyer was married and continues to be married to Plaintiff Donna Schmoyer.

103. As a direct and proximate result of the strict liability, negligence, and other legal liability of all Defendants, as described herein and are incorporated by reference as fully set forth herein, Plaintiff Hank Schmoyer, has suffered the loss of services, society, comfort, and companionship of his wife in the past and will continue to do so in the future.

104. As a direct and proximate result of the strict liability, negligence, and other legal liability of all Defendants, as described herein and are incorporated by reference as fully set forth herein, Plaintiff Hank Schmoyer, claims the full measure of damages allowable under Pennsylvania law for the loss of consortium of his wife, Plaintiff Donna Schmoyer.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against all Defendants, jointly and/or severally, for sums in excess of the prevailing arbitration limits.

Respectfully submitted,

KLINE & SPECTER



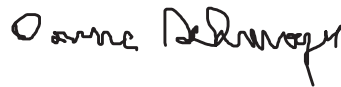
Date: March 31, 2025

By:

SHANIN SPECTER, ESQUIRE
JAMES J. WALDENBERGER, ESQUIRE
CHEYANNE N. COPE, ESQUIRE
PHILIP M. PASQUARELLO, ESQUIRE
Attorneys for Plaintiffs

VERIFICATION

We, Donna Schmoyer and Hank Schmoyer, hereby verify that the within Complaint is based on first-hand information and on information furnished to counsel and obtained by them during this lawsuit. The language of the document is that of counsel and not of the Affiants. To the extent that the contents of the document are based on information furnished to counsel and obtained by them during this lawsuit, the Affiants have relied upon counsel in taking this verification. All statements are founded upon reasonable belief. This verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



DONNA SCHMOYER

Date: 12/11/2024



HANK SCHMOYER

Date: 12/11/2024