

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**JESSICA LOVEJOY**

Plaintiff

**and**

**HOMER SIMPSON, MARGE SIMPSON, OTTO MANN, SHELBYVILLE SHIPPING,  
THE TOWN OF SPRINGFIELD, and DUFF GENERAL INSURANCE COMPANY**

Defendant

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**MEDIATION MEMORANDUM OF THE DEFENDANTS,  
OTTO MANN and SHELBYVILLE SHIPPING**

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Date and Time:	<b>March 28, 2019</b>
Location:	<b>McCague Borlack LLP</b>
Mediator:	<b>Van Krkachovski</b>
Lawyers for the Plaintiff,	<b>Jessica Grant</b>
Lawyers for the Defendants, Otto Man and Shelbyville Shipping	<b>Eric W.D. Boate</b>
Lawyers for the Defendants, Homer Simpson and Marge Simpson	<b>Matthew Dugas</b>
Lawyers for the Defendant, Duff General Insurance Company	<b>Bogdan Miscevic</b>

Court File No.:

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**FACTUAL AND LEGAL ISSUES IN DISPUTE**

The Defendants state that the following factual and legal issues are in dispute and remain to be resolved:

**ISSUE**

- Whether the the Plaintiff, Jessica Lovejoy, can establish that the Defendants have any liability for the motor vehicle accident;
- Whether the Plaintiff, Jessica Lovejoy, can meet her onus in establishing that as a result of the July 1, 2016 accident she has sustained impairments or disfigurements which cross the *Insurance Act* “threshold”;

- Whether the Plaintiff can meet her onus in establishing that as a result of the July 1, 2016 accident that her injuries surpass the statutory deductible; and
- Whether the Plaintiff can establish that her damages, if any, can be attributed to the July 1, 2016 accident.

### **PARTIES'S POSITION AND INTERESTS**

The Defendants wish to achieve an appropriate resolution of this matter given the nature of the motor vehicle accident at issue as well as the medical and legal issues discussed herein.

### **THE ACTIONS AND THE APPLICABLE INSURANCE REGIME**

This matter arises out of a motor vehicle accident, which occurred on July 1, 2016.

This action is subject to the *Insurance Act*. As such, the Plaintiff is required to establish that as a result of the accident, she sustained a permanent serious disfigurement, or a permanent serious impairment of an important physical, mental or psychological function (the “threshold”). If she is unsuccessful in this regard, non-pecuniary damages cannot be awarded to her.

However, even if the Plaintiff is successful in establishing threshold crossing disfigurements or impairments, pursuant to Ontario Regulation 221/15 she will still be subjected to a statutory deductible.

Additionally, pursuant to section 267 of the *Insurance Act*, any pecuniary losses that can be proven are subjected to the appropriate deductions and limited to 70% of the Plaintiff's gross pre-accident weekly income up to the date of Trial, and 100% of his gross weekly income thereafter.

Examinations for Discovery have been conducted and undertakings are complete.

This action will be tried by Judge alone.

### **LIABILITY**

### Liability of Otto Mann and Shelbyville Shipping

Mr. Mann has been a truck driver for Shelbyville Shipping for the past 20 years. He was recently promoted to Lead Shipper, a very prestigious position in the trucking industry, due to his work ethic and commitment to safe driving. On July 1, 2016, Otto Mann was having a pretty good day. He was driving northbound on a quiet street, Maple Avenue, on his way to make his first delivery of the day.

Due to back pain issues, Mr. Mann has prescribed medical marijuana and chose to consume a prescribed medical marijuana edible donut while on his way to his first delivery. Mr. Mann was advised by his doctor that these donuts contained only 100% CBD, meaning the donuts would ease his pain but not affect his ability to drive. The donut package did not have any alerts or warnings about driving while eating the donut. Since Marijuana is now legalized, he did not see an issue with eating the donut while driving. Further, studies show that CBD does not give the consumer any psychoactive effects and is even considered an option for circumstances requiring high cognitive function.<sup>1</sup>

While driving down Maple Avenue on July 1, 2016, Mr. Mann slowed down as he approached Elm Street in preparation for making a right turn at the light. While making his right turn, the Plaintiff on her bicycle came barrelling down the road, tried to pass him and biked right into the right side of his truck. She was not in his line of sight prior to his turn nor did he notice any reflective gear or lamp on the bicycle, as required under the *Highway Traffic Act*.

There is no evidence to prove that Mr. Mann did not have his right turn signal on. Mr. Mann was in the habit of using his turn signals and did not remember because it was second nature to him, like turning off the stove or locking the front door. There is no reason for him to believe that he did not turn on his turn signal. Mr. Mann was driving the proper speed and was following the rules of the road; there has been no evidence produced to date to prove otherwise.

### Liability of Homer and Marge Simpson

With respect to the Defendants Marge and Homer Simpson, it is clear that they acted negligently by not having control over their invited guests. Not only did Marge Simpson witness the Plaintiff in an inebriated state, she did nothing to try and ensure the Plaintiff's safety, not even ask if she was okay.

In the recent 2017 case *Wardak v Froom*, Justice Matheson found that a paternal relationship existed where the Plaintiff, an underage and invited guest had consumed alcohol at the Defendant's home and later got into an accident. In *Wardak*, the Defendants hosted birthday

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<sup>1</sup> <https://medicalmarijuana.ca/resource-center/driving-cannabis/>

party for their son who had turned 19. The event was “bring your own booze” and the parents were at home throughout the duration of the party. The Plaintiff was an 18 year old guest who consumed alcohol at the party. The Plaintiff was the Defendant’s neighbour and they knew he was underage. The Plaintiff left the party and walked a short distance home where he then got into his car. He subsequently drove into a fire hydrant and was involved in a single vehicle accident which rendered him quadriplegic.

Justice Matheson considered the following factors, which assists in informing social hosts of their obligations to their guests:

- although not serving or encouraging the Plaintiff to drink, the Defendants knew that there was drinking at the party and that some guests were underage;
- the two Defendants were monitoring the party and went down to the basement to check on the party guests approximately eight times;
- there was evidence from partygoers that there was drinking and Beer Pong going on in the basement and the Plaintiff was intoxicated;
- nothing was done by the Defendants to stop the Plaintiff from drinking after a first occasion when he came upstairs to leave and one of the Defendants saw him wobbling and acting ‘odd’;

The facts in this case at hand are similar. Homer and Marge Simpson knew that Bartholomew’s friends were underage. Although no alcohol was provided or encouraged, Marge Simpson knew of the Plaintiff’s inebriated state and did nothing about it. It is clear that Homer and Marge Simpson acted negligently in breaching their paternal duty to the Plaintiff which ultimately resulted in her injuries.

It is the Defendants’ position that Homer and Marge are liable for the injuries sustained by the Plaintiff.

#### Contributory Negligence of the Plaintiff

It is evident that the Plaintiff has significantly contributed to her own injuries in this case.

The Plaintiff gave evidence at her examination for discovery that she drank 6 wine coolers before riding her bicycle home. Section 8 of The *Liquor Licence Act* state, “No person under nineteen years of age shall have, consume, attempt to purchase, purchase or otherwise obtain liquor. R.S.O. 1990, c. L.19, s. 30 (8).” Seeing as the Plaintiff is only 17, not only did the plaintiff break the law, but she put herself and others at serious risk for injury by consuming alcohol underage and subsequently riding her bike down a public road. Additionally, she breached Section 31(4) of the *Liquor Licence Act* which indicates that a person shall not be intoxicated in public.

The Plaintiff also admitted to breaching the *Highway Traffic Act* by testifying that she did not secure her helmet properly to her head prior to the accident. Section 104 (2.1) of the *Highway Traffic Act* states:

Subject to subsection 103.1(2) [equipment for power assisted bicycles], no person shall ride or operate a bicycle on a highway unless the person is wearing a bicycle helmet that complies with the regulations and the chin strap of the helmet is securely fastened under the chin. 2009, c. 5, s. 36 (1);

Further, the Plaintiff, not wanting to be late for her curfew, admitted to rushing home by cycling fast down the road. While rushing, she noticed the Shelbyville Shipping truck ahead of her, wanted to pass the truck. Her rushing contributed to her inability to properly assess the direction the truck was going and avoid the collision.

The rules of the road dictate that if a cyclist wants to pass a driver who is making a right turn at an intersection, the cyclist is to pass the right-turning vehicle on *the left side* and only when it is safe to do so. The Plaintiff admitted at her examination for discovery that she was not certain whether the truck was turning or would be continuing straight, but it did not matter because her intention was to pass. The Plaintiff admission that she was not sure what Mr. Mann's next move was and yet still proceeded to pass him proves that she was not abiding by the rules of the road, as she should have taken the time to assess the proper way to pass a vehicle ahead of her, and in turn struck the right side of Mr. Mann's vehicle. Further, the Plaintiff should have known that the right turn was a possibility since Mr. Mann slowed down in front of her prior to making the right turn onto Elm Street.

The Plaintiff acted negligently in not properly assessing the situation. The Plaintiff testified to seeing the truck in front of her and wanting to pass it to avoid being late for her curfew. She knew there were no bike lanes ahead and instead of evaluating the situation safety and following her obligation to not pass a vehicle unless it was safe to do so, she decided to play chicken with the Shelbyville Shipping truck ahead.

#### Liability of the Town of Springfield

With regard to the Township of Springfield, it is clear that their lack of signage indicating that the bicycle lane was ending constitutes negligence. The town has a duty to protect individuals who are using their roadways. Without proper signage to indicate that the bicycle lane ended, the Town of Springfield places all drivers and cyclist at risk for significant injury.

Conclusion

Based on the foregoing, it is the Defendants' position that the Co-Defendants, as well as the Plaintiff will be found to have the lion's share of liability.

**DAMAGES**

The Plaintiffs' damages from the accident are in dispute.

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ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of March, 2019.

**McCAGUE BORLACK LLP**  
Barristers and Solicitors  
59 Collier Street  
Barrie, ON L4M 1G7



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**Eric W.D. Boate**  
Tel: (416) 860-0001  
Fax: (416) 860-0003

Lawyers for the Defendants,  
Otto Mann and Shelbyville