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Attorney for the Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

**JOHN COLSON, HOWARD FRANKEL  
AND PEARL FRANKEL,**

Plaintiffs,

vs.

**EARTHCORE DEVELOPMENT, INC.;  
ZACHARRIAH SCHOOSE; BRADLEY  
COOLEY; BLACK CORPORATIONS  
I – III; JOHN DOES I – II AND JANE  
DOES I – II,**

Defendants.

No.: CV2018-015281

**PLAINTIFFS' MEDIATION  
MEMORANDUM**

(Mediator: Michael Herzog, Esq.)

Plaintiffs John Colson, Howard Frankel, and Pearl Frankel by and through undersigned counsel, pursuant to Rule 26.1, Arizona Rules of Civil Procedure, hereby provide their Memorandum for the upcoming Mediation in this matter on August 17, 2020.

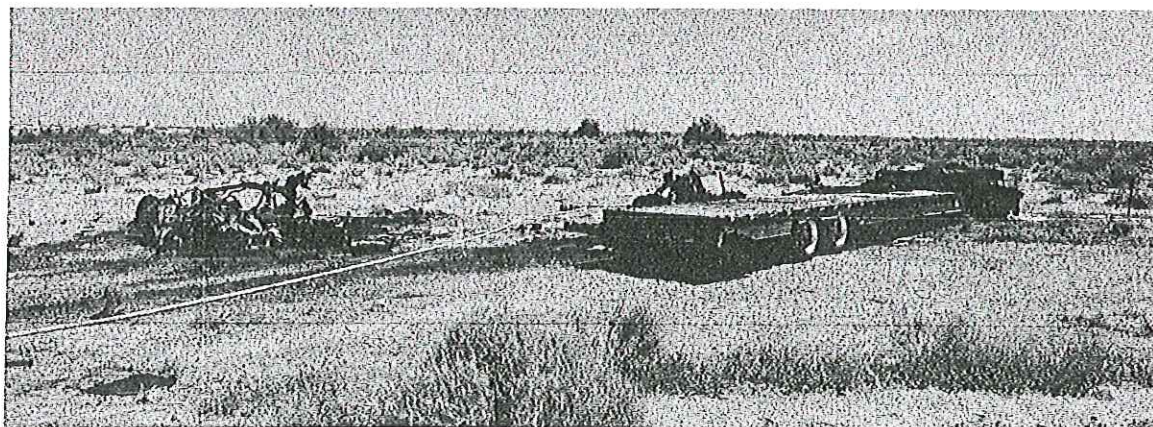
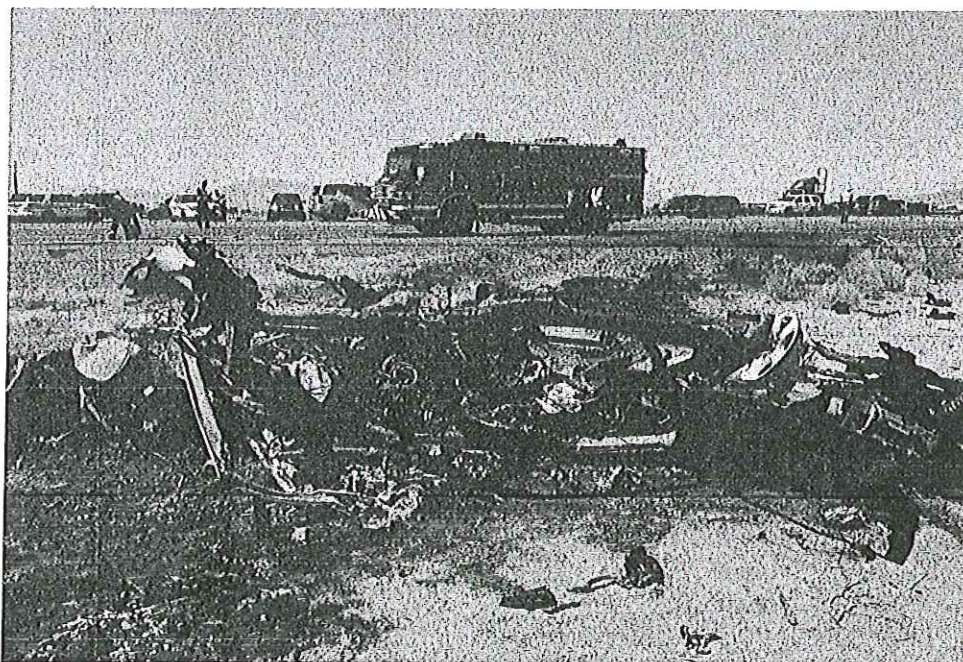
**I. SUMMARY OF THE CASE**

On August 29, 2018, Plaintiffs John Colson and Howard and Pearl Frankel got the call every parent dreads. Howard and Pearl Frankel learned that their daughter, Kimberly, and their grandchildren, 5 year old Solomon and 3 year old Tova, had been



1 killed in a tragic and fiery crash on Interstate 10 that morning. They then  
2 accompanied the DPS Trooper to break the unthinkable news to John: his children  
3 were never coming home.

4 In the days and weeks that followed, Plaintiffs learned the crash was caused by  
5 an eastbound semi-truck driver, who inexplicably crossed the center median of the  
6 freeway, and crashed into Kimberly's westbound vehicle while she was taking her  
7 children to play in their favorite park. The semi-truck impacted several other vehicles  
8 as it crossed the westbound lanes. An explosion occurred and the semi-truck and  
9 Kimberly's vehicle were engulfed in flames. Kimberly, Solomon and Tova's bodies  
10 were burned beyond recognition.





1 Since that time, John, Howard and Pearl, have sought to understand why this  
2 horrible, preventable tragedy occurred. They filed this lawsuit in hopes of getting  
3 answers to their questions, and to seek fair and equitable punishment for those  
4 responsible for the deaths of Kimberly, Solomon and Tova. They have pushed the  
5 State to pursue criminal charges against the Defendants, which so far have not borne  
6 fruit, so instead they are limited to the civil justice system, which lacks the ability to  
7 inflict a satisfactory punishment on the Defendants. Plaintiffs have been frustrated  
8 throughout this process by their seeming inability to avenge Kimberly, Solomon and  
9 Tova through the judicial system.

## 10 11 II. FACTUAL BASIS OF CLAIM

12 The semi-truck driver, Defendant Bradley Cooley, was employed by  
13 Defendant Earthcore Development, Inc., which is owned by Defendant Zachariah  
14 Schoose. Cooley had been a commercial semi-truck driver since 1998, and had been  
15 employed by Earthcore and Schoose for approximately ten months prior to the crash.  
16 He has no memory of the events preceding the collision. He remembers going to  
17 work that morning around 5 a.m., and waking up in the hospital weeks later.

18 On August 29, 2018, Defendant Cooley was driving a semi tractor-trailer  
19 owned by Defendants Earthcore Development Inc. and Zachariah Schoose eastbound  
20 on I-10 when he negligently left the eastbound travel lanes, crossed the cable median  
21 barrier, and collided with multiple westbound vehicles, including one being driven by  
22 Kimberly Frankel. The collision caused the deaths of Kimberly Frankel, Solomon  
23 Colson and Tova Colson.

## 24 25 III. LEGAL BASIS OF CLAIM

26 At all times relevant here, Defendant Bradley Cooley was driving the semi-  
27 tractor-trailer within the course and scope of his employment by Defendant Earthcore  
28 Development, Inc. and/or Defendant Zachariah Schoose. Defendant Cooley  
negligently and/or recklessly caused this collision, resulting in the deaths of Kimberly

1 Frankel, Solomon Colson and Tova Colson. Defendants Earthcore Development, Inc.  
2 and/or Zachariah Schoose are vicariously liable for any negligent acts or omissions  
3 on the part of their employee/agent Defendant Bradley Cooley.

4 Defendants Earthcore Development, Inc. and Zacariah Schoose negligently,  
5 and/or with conscious disregard for the safety of others, hired, failed to supervise,  
6 and/or retained Defendant Bradley Cooley as a driver of Earthcore Development  
7 and/or Zachariah Schoose's tractor-trailer. Defendants' conduct was the cause of the  
8 collision which caused the deaths of Kimberly Frankel, Solomon Colson and Tova  
9 Colson.

10 The Defendants, acting in their own interests, consciously disregarded a  
11 substantial risk that their conduct might significantly injure or kill others.

12 As a direct and proximate result of the conduct of the Defendants, John Colson  
13 has been deprived of the love, affection, comfort, companionship, and care of his son,  
14 Solomon Colson, and his daughter, Tova Colson, and has experienced, and will  
15 continue to experience, pain, grief, sorrow, anguish, stress, and mental suffering as a  
16 result of their deaths.

17 As a direct and proximate result of the negligence of the Defendants, Howard  
18 Frankel and Pearl Frankel have each been deprived of the love, affection, comfort,  
19 companionship, and care of their daughter, Kimberly Frankel, and each has  
20 experienced, and will continue to experience, pain, grief, sorrow, anguish, stress,  
21 mental suffering as a result of her death.

22 As a further direct and proximate result of Defendants' conduct, John Colson,  
23 Howard Frankel, and Pearl Frankel, have incurred expenses for Kimberly, Solomon  
24 and Tova's funerals and burials.

#### 25 IV. EVIDENCE TO BE PRESENTED

26 We will never know for certain what caused Defendant Cooley to cross the  
27 eastbound travel lanes, drive through the median, and enter the eastbound lanes,  
28 destroying everything in his path. However, during the course of discovery in this



1 case, some very damaging facts about Cooley's personal and medical history were  
2 discovered, which impacted his ability to drive commercial vehicles professionally,  
3 and likely caused or contributed to the collision. Defendant Cooley has not been  
4 honest about his history – he has lied to medical examiners to obtain his CDL, and he  
5 may have lied to his employer about his condition. He even lied about his knowledge  
6 of his condition and his medications in his deposition.  
7

8 **Fact:** Defendant Bradley Cooley had a history of seizures prior to the crash.

9 **Fact:** Defendant Bradley Cooley had a history of alcohol abuse prior to the  
10 crash.

11 **Fact:** Defendant Bradley Cooley had been prescribed anti-seizure medications  
12 and had been instructed not to drive while taking these medications prior to the crash.

13 **Fact:** Defendant Bradley Cooley lied about all of these facts on his application  
14 for a Commercial Driver's License.

15  
16 **A. Cooley's Medical History:**

17 In December 2016, Cooley sought treatment for episodes of dizziness and  
18 partial confusion which lasted a few seconds to a minute.

19 In January 2017, Cooley sought treatment for nausea, vomiting and lack of  
20 appetite, and admitted to drinking 6 ounces of hard alcohol every night. His doctor  
21 opined he was likely drinking "double" that amount. His doctor expressed concern  
22 that Cooley "is a truck driver driving the big rigs out on the highway", attributed his  
23 symptoms to alcohol abuse, and recommended alcohol cessation.

24 On January 31, 2017, Cooley sought treatment in the emergency room for  
25 weakness, fatigue, loss of appetite, and nausea/vomiting for the past three months. He  
26 described an episode earlier in the day when he had suffered pressure in his head,  
dizziness, and bit his tongue.

27 The records indicate Cooley "**presented to the ED after experiencing an**  
28 **episode resembling a grand mal seizure**. The patient woke up from sleep, confused,

1 clenching his teeth and he had bitten his tongue. On further questioning, **he reported**  
2 **multiple other episodes that have occurred over the last 4 months that resemble**  
3 **seizures.**" Keppra was prescribed to prevent additional seizures.

4 Keppra's warning label includes the following admonition:

5 **This drug may make you dizzy or drowsy, especially**  
6 **during the first month of treatment. Alcohol**  
7 **or marijuana (cannabis) can make you more dizzy or**  
8 **drowsy. Do not drive, use machinery, ride a bicycle,**  
9 **or do anything that needs alertness until you can do**  
10 **it safely. Limit alcoholic beverages. Talk to your**  
11 **doctor if you are using marijuana (cannabis).**

12 The following day he was evaluated by a neurologist, Dr. Suber, who noted  
13 Cooley minimized his use of alcohol and suspected that he overused it. Dr. Suber  
14 noted the emergency room records indicated Cooley has 3 vodka cocktails/day and  
15 has for 10 years, and "apparently the patient was in a withdrawal state when the  
16 episode occurred". His initial impression was "probably withdrawal seizure". An  
17 abdominal ultrasound revealed early cirrhosis of his liver. Cooley was released from  
18 the hospital with seizure precautions and medications, and a referral to Alcoholics  
19 Anonymous.

20 After Dr. Suber reviewed the MRI, which revealed a brain lesion or tumor, he  
21 amended Cooley's diagnosis to **new onset seizures due to brain lesion, and alcohol**  
22 **abuse with risk for withdrawals.** Cooley was instructed to follow up with Dr. Suber  
23 for his seizures and Dr. Marsella for further management of his brain lesions.

24 In March, 2017, Dr. Suber instructed Cooley to continue taking seizure  
25 medications and anticonvulsants. **He instructed Cooley that he was not allowed to**  
26 **drive for three months per the Arizona Revised Statutes.**

27 The patient returns to the office following their discharge from Banner Desert Medical Center.

28 Workup at the hospital was basically negative. EEG was normal. Seizure precautions were recommended. He was  
continued on anticonvulsants. No driving for 3 months per Arizona revised statutes. Side effects of medication were  
discussed.

He diagnosed him with generalized convulsive seizures, and instructed him to  
continue Keppra and seizure precautions for next 3-6 months.



In July, 2017, Cooley sought treatment in the emergency room for chest pain, back pain, shortness of breath. He reported that the pain started while he was driving. He admitted he drank alcohol daily. All of the tests that were done were negative, and Cooley was diagnosed with non-cardiac chest pain, costochondritis and **alcohol abuse**. He was offered resources to help with his alcohol abuse, but he refused.

In November, 2017, Cooley was diagnosed with epilepsy.

2. Assessment Epilepsy (G40.909).  
Patient Plan Continue Keppra  
refer neuro for monitoring

In December, 2017, Cooley's epilepsy diagnosis was affirmed.

2. Assessment Epilepsy (G40.909).  
Patient Plan Continue Keppra bid

On December 14, 2017, Cooley had his medical examination for his CDL. He denied having seizures and epilepsy, dizziness, weakness, fainting or passing out, and having ever spent the night in a hospital. He disclosed that he was taking Pravastatin for cholesterol, but failed to report that he was taking Keppra.

Last Name: <u>Cooley</u>		First Name: <u>Bradley</u>		DOB: <u>8/17/77</u>	Exam Date: <u>12/4/17</u>
Do you have or have you ever had:				Not Yes No Sure	
1. Head/brain injuries or illnesses (e.g., concussion)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	16. Dizziness, headaches, numbness, tingling, or memory loss	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
2. Seizures, epilepsy	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	17. Unexplained weight loss	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
3. Eye problems (except glasses or contacts)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	18. Stroke, mini-stroke (TIA), paralysis, or weakness	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
4. Ear and/or hearing problems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	19. Missing or limited use of arm, hand, finger, leg, foot, toe	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
5. Heart disease, heart attack, bypass, or other heart problems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	20. Neck or back problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
6. Pacemaker, stents, implantable devices, or other heart procedures	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	21. Bone, muscle, joint, or nerve problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
7. High blood pressure	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	22. Blood clots or bleeding problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
8. High cholesterol	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	23. Cancer	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
9. Chronic (long-term) cough, shortness of breath, or other breathing problems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	24. Chronic (long-term) infection or other chronic diseases	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
10. Lung disease (e.g., asthma)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	25. Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
11. Kidney problems, kidney stones, or pain/problems with urination	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	26. Have you ever had a sleep test (e.g., sleep apnea)?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
12. Stomach, liver, or digestive problems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	27. Have you ever spent a night in the hospital?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
13. Diabetes or blood sugar problems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	28. Have you ever had a broken bone?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
Insulin used	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	29. Have you ever used or do you now use tobacco?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
14. Anxiety, depression, nervousness, other mental health problems	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	30. Do you currently drink alcohol?	<input checked="" type="radio"/> <input type="radio"/> <input type="radio"/>
15. Fainting or passing out	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	31. Have you used an illegal substance within the past two years?	<input checked="" type="radio"/> <input type="radio"/> <input type="radio"/>
	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	32. Have you ever failed a drug test or been dependent on an illegal substance?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>

Other health condition(s) not described above:

☐ Yes ☒ No ☐ Not Sure

Did you answer "yes" to any of questions 1-32? If so, please comment further on those health conditions below.

☒ Yes ☐ No ☐ Not Sure

OCCASIONAL Beer

Are you currently taking medications (prescription, over-the-counter, herbal remedies, dietary supplements)?  
If "yes," please describe below.

☒ Yes ☐ No ☐ Not Sure

PRAVASTATIN 20mg 1x daily Dr. Shockey  
MESA, AZ

Attach additional sheets if necessary!

EMPLOYER  
COPY

This could NOT have been a mere oversight. In his deposition, Cooley claimed he didn't know what Keppra was for – he said he thought it was for his brain tumor. (Exhibit 2, Page 25, Lines 13-14) However, if this were true, he would have listed it on his CDL medical examination form as one of the medications he was taking. He would not have had a reason to hide it if he didn't know what it was. The fact that he hid this medication from the examiner, and lied in his answers to multiple questions, shows he knew he had seizures, he knew he was on anti-seizure medications, he knew (as documented repeated in Dr. Suber's records as early as March, 2017) that he was not supposed to be driving AT ALL, much less driving a semi-tractor trailer. With a sick, selfless, reckless disregard for the safety of others, he lied about all of this on his CDL application and in his examination so he could keep his license, and his job, and ultimately, so he could cause this horrific preventable tragedy.

The other possibility is that Cooley had stopped taking Keppra, which he knew he needed to take to prevent seizures, and perhaps that is the reason he didn't disclose it on his application. This option is almost worse, because it suggests that he elected to knowingly stop taking medication that would prevent him from having a seizure while driving, which endangered the lives of everyone around him every time he was on the road, simply because he didn't want to take it or didn't like how it made him



1 feel. John Colson, Howard Frankel and Pearl Frankel don't like how the loss of their  
2 children and grandchildren makes them feel either, but they don't have an option to  
3 stop taking their grief. Not disclosing that he was on the medication was a criminal  
4 act, but not taking medication he knew he needed to take to prevent seizures just  
5 because he didn't want to or so he wouldn't have to disclose it is even worse.

6 In January, 2018, **Cooley felt dizzy and passed out**. His wife heard him fall  
7 and **found him "on the floor shaking with foam coming out of his mouth"**. This  
8 lasted for less than one minute. She called 911. In the emergency room, Cooley  
9 denied having a history of seizure, but admitted he had a syncopal episode last year.  
10 **"States he is prescribed Keppra, but has not taken it in 3 days"**. He was  
11 **diagnosed with a seizure**, and a hematoma to his head (from the fall during the  
12 seizure). Ambulance records indicate his wife "found husband in **full tonic clonic**  
13 **seizure, lasted approximately 2 minutes, patient slow to respond...had similar**  
14 **seizure 1 year ago"**, and that he was not taking his seizure medication. The  
15 paramedics noted he was awake, confused, and unable to follow commands.

16 On January 29, 2018, Cooley reported to Dr. Suber that he did not like the way  
17 Keppra made him feel. He admitted that about 3 weeks earlier, he had had a repeat  
18 seizure and was seen at hospital. Dr. Suber recommended a trial of Vimpat and **again**  
19 **instructed him not to drive for three months per Arizona Revised Statutes**.

20 2018-01-29 OV:

21 He does not like the way Keppra makes him feel. About 3 weeks ago, the patient had a repeat seizure and was seen at  
22 one of the local hospitals. The patient will now be on a trial of Vimpat initially at 50 mg b.i.d. p.o. and he will follow-up in  
about one month, so the dose of Vimpat can be increased to 100 mg b.i.d. p.o.; seizure precautions were recommended. No  
driving for 3 months per Arizona revised statutes.

23 On August 29, 2018, Cooley lost control of his semi-truck and killed Kimberly  
24 Frankel, Solomon Colson and Tova Colson.

25 **B. Deposition Testimony**

26 **1. Bradley Cooley**

27 During his deposition, Cooley was asked about his medical history, and  
28 admitted he had gone to the hospital in 2017 because he felt dizzy and lightheaded.

1 He minimized his diagnosis and pretended not to understand the facts of his condition  
2 as outlined above.

3  
4 Q: Do you know if there was a seizure diagnosis?

5 A: No, they didn't – I just went because my head was  
6 feeling funny.

7 Q: Have you ever read any of the medical records in this  
8 case?

9 A: I haven't.

10 Q: Okay. Have you ever read any of your prior medical  
11 records?

12 A: No.

13 Q: Okay. Did you ever inform your family members – I  
14 presume you informed your family members of that  
15 scary episode back in January of 2018?

16 A: Yes.

17 Q: Did you ever characterize your – those – whatever  
18 occurred in January in 2018 as a "seizure"?

19 A: No.

20 Q: Is there any reason you're aware of that your family  
21 members would have characterized it as a seizure?

22 A: I don't think so. (Exhibit 2, Page 23, Line 21 through  
23 Page 24, Line 14)

24 \* \* \* \* \*

25 Q: If your family members told the medical providers at  
26 Chandler Regional Hospital that you had had a prior  
27 history of seizures, you don't have any reasons to  
28 dispute that they may have told the medical providers  
that?



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A: I don't know why they would tell them that.

Q: Were you on any particular type of medication?

A: Yeah. When I went to the hospital, they put me on – I left there and they give me medication called Keppra.

Q: Okay. Do you know that Keppra is for?

A: Not really. I didn't know at the time. It wasn't explained.

Q: Do you know if Keppra is a medication which people are given for seizures?

A: I know now. (Exhibit 2, Page 24, Line 18 through Page 25, Line 6)

\* \* \* \* \*

Q: Okay. And again, as you sit here today, you don't have any recollection of ever having a conversation with any family members regarding anything having to do with a seizure in January of 2018?

A: No. (Exhibit 2, Page 26, Lines 3-7)

When asked about his last medical examination for his commercial driver's license prior to the collision, Defendant Cooley continued minimize the seriousness of his condition, his knowledge of it, and the lies he told to hide it.

Q: Do you remember if you had one [a CDL medical examination] in 2018?

A: I don't.

Q: If you had had one in 2018, would you have reported that episode that occurred in January 2018?

A: What would be to record?

Q: I don't know. I don't know if it would be something that's pertinent on your -

A: I don't think it's anything even a question on your medical -

Q: Okay.

A: - report.

Q: Would you have reported the fact that you were on Keppra?

A: I didn't know exactly what it was at the time. (Exhibit 2, Page 43, Lines 10-23)

Last Name: <u>Cookley</u> First Name: <u>Bradley</u> DOB: <u>8/17/77</u> Exam Date: <u>12/4/17</u>	
Do you have or have you ever had:	Yes No Not Sure
1. Head/brain injuries or illnesses (e.g., concussion)	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
2. Seizures, epilepsy	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
3. Eye problems (except glasses or contacts)	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
4. Ear and/or hearing problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
5. Heart disease, heart attack, bypass, or other heart problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
6. Pacemaker, stents, implantable devices, or other heart procedures	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
7. High blood pressure	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
8. High cholesterol	<input checked="" type="radio"/> <input type="radio"/> <input type="radio"/>
9. Chronic (long-term) cough, shortness of breath, or other breathing problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
10. Lung disease (e.g., asthma)	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
11. Kidney problems, kidney stones, or pain/problems with urination	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
12. Stomach, liver, or digestive problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
13. Diabetes or blood sugar problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
Insulin used	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
14. Anxiety, depression, nervousness, other mental health problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
15. Fainting or passing out	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
16. Dizziness, headaches, numbness, tingling, or memory loss	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
17. Unexplained weight loss	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
18. Stroke, mini-stroke (TIA), paralysis, or weakness	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
19. Missing or limited use of arm, hand, finger, leg, foot, toe	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
20. Neck or back problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
21. Bone, muscle, joint, or nerve problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
22. Blood clots or bleeding problems	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
23. Cancer	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
24. Chronic (long-term) infection or other chronic diseases	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
25. Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
26. Have you ever had a sleep test (e.g., sleep apnea)?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
27. Have you ever spent a night in the hospital?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
28. Have you ever had a broken bone?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
29. Have you ever used or do you now use tobacco?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
30. Do you currently drink alcohol?	<input checked="" type="radio"/> <input type="radio"/> <input type="radio"/>
31. Have you used an illegal substance within the past two years?	<input checked="" type="radio"/> <input type="radio"/> <input type="radio"/>
32. Have you ever failed a drug test or been dependent on an illegal substance?	<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>

Other health condition(s) not described above:

☐ Yes ☒ No ☐ Not Sure

Did you answer "yes" to any of questions 1-32? If so, please comment further on those health conditions below.

☒ Yes ☐ No ☐ Not Sure

OCCASIONAL BEER



Are you currently taking medications (prescription over-the-counter, herbal remedies, or supplements)?  
If "yes," please describe below.

☒ Yes ☐ No ☐ Not Sure

Pravastatin 20mg 1x daily Dr. Shockey  
MESA, AZ

The record speaks for itself. Cooley deliberately concealed his condition and the medication during his medical examination, in order to obtain a license to kill.

Eleven months after the crash, in July, 2019, Defendant Cooley was evaluated by a specialist regarding his liver disease. At that time, he admitted to a "long history of alcohol abuse. He was drinking half a bottle of vodka daily. In August of last year, he had a serious accident. He broke his back and his neck. He had injuries to his face and a traumatic brain injury. At that point he went from drinking vodka (to) drinking beer, drinking 6 beers a day....While drinking (as) heavily as he was he still worked 60 hours per week prior to his accident...**he did have seizures in the past.**" Yet four months later, in his deposition, under oath, he denied ever having a seizure, or ever having been told he had a seizure, or ever having an alcohol abuse problem.

## 2. Brett Cooley

Defendant Cooley testified that his brother, Brett, was his boss at Earthcore. He believed Brett was a "partial owner" of the company, and described Brett as the "head boss", and "the one that runs everything and makes everything run". (Exhibit 2, Page 17, Lines 16-17 and 19, and Page 18, Lines 24-25) He also testified that Brett knew about the incident that occurred in January 2017, when he was diagnosed with a brain tumor.

When Brett was asked about this in his deposition though, he lied, just like his brother. He denied having any knowledge of his brother's health, claimed he did not know about the seizure, and claimed Bradley had not had any substance abuse or alcohol problems in the past 15 years – despite also testifying that they were "close". (Exhibit 3, Page 47, Lines 22-24 and Page 48, Lines 11-13) Neither of the Cooleys will be credible witnesses.

1                   3.    Zachariah Schoose

2                   Defendant Zachariah Schoose testified that he did not have any knowledge of  
3                   Brad's health problems, seizure disorders or that he had been diagnosed with epilepsy  
4                   prior to the collision.  
5

6                   Q:   Had you known that, would you have allowed him to  
7                   drive your big rig?

8                   A:   Absolutely not. No.  
9

10                  Q:   And why not?

11                  A:   Because it would be a danger to anybody on the road.  
12                  (Exhibit 4, Page 52, Lines 12-17)

13                  Tragically, Defendant Schoose did allow Cooley to drive his big rig, and to  
14                  endanger everyone on the roadway, with disastrous results.

15                  During the course of their investigation, the Arizona Department of Public  
16                  Safety found numerous violations in Defendant Earthcore's practices, policies,  
17                  records and recordkeeping, and issued citations for 12 critical violations. DPS  
18                  Trooper Livingston met with Zachariah Schoose and his wife, Jennifer, to go over  
19                  these with them in person after the crash.

20                  When asked about these 12 critical violations during his deposition, Defendant  
21                  Schoose claimed:

22                  A:   I have not received those until this – you're reading it to  
23                  me for the first time. Well – yeah.

24                  Q:   Okay. So let me ask a question just to make sure that  
25                  I'm clear. Are you telling me as you sit here today that  
26                  you've never received the recommended safety  
27                  procedures that were prepared by the Arizona  
28                  Department of Public Safety for Earthcore following  
                     the crash?

                  A:   Correct. (Exhibit 4, Page 61, Lines 9-16)



1 Even after being shown the document listing the critical violations, Defendant  
2 Schoose claimed to not recognize it, and swore under oath that he didn't remember  
3 ever receiving it from DPS. As a result, none of the safety recommendations have  
4 been implemented to this day.

5 The following is the email exchange between Trooper Livingston and Jennifer  
6 Schoose, scheduling the appointment to review the critical violations Defendant  
7 Schoose denied any knowledge of:  
8

9 From: Chase Livingston <CLIVINGSTON@AZDPS.GOV>  
Sent: Monday, September 24, 2018 8:39 AM  
To: Jennifer Schoose <jennifer@earthcoredevelopment.com>  
Subject:

10 Good morning, will you both be available this Thursday at 10am to close out the compliance review? It only takes a few minutes.

11 Thank you,  
12 Trooper Chase Livingston #7252  
13 Arizona Department of Public Safety  
14 520-705-4716  
15 [clivingston@azdps.gov](mailto:clivingston@azdps.gov)

16  Jennifer Schoose <jennifer@earthcoredevelopment.com>  
17 To: Chase, <clive>  
18 Hi Chase,  
19 Yes we will be here! See you then  
20 Thank you,  
21 Jennifer Schoose  
22 4025 E. Presidio St  
23 Mesa AZ 85215  
24 Direct (480) 417-6899  
25 Fax (480) 717-3757  
26 [jennifer@earthcoredevelopment.com](mailto:jennifer@earthcoredevelopment.com)  
27 **EARTH**  
28

20 In the spring of 2020, after Defendant Cooley's medical conditions came to  
21 light, his employment was terminated by Earthcore. Defendant Schoose explained  
22 that:

23 A: ...we felt that he was untruthful to us in – in the hiring  
24 process, and so we told him that we had to terminate him  
25 based on – on that.

26 Q: Untruthful in what way, Zach?

27 A: His ability or his – his ability to safely perform his  
28 duties because of his health condition. And his – well  
that's it.

1 Q: What did you find out about his health condition that  
2 made you believe he was unable to safely perform his  
3 duties?

4 A: In a document somewhere, it was disclosed that he – he  
5 was, you know, subscrip – or prescribed a seizure  
6 medication and that it – that he had a seizure disorder.  
7 And I – I told him that verbally, and he said, "What  
8 document? No, I haven't." so to this day, he still – he  
not sure what's going on.

9 Q: What document did you see?

10 A: I'm not sure.

11 Q: When – when did that termination occur?

12 A: Like I said, I'm not exactly sure, but two or three  
13 months ago, three or four months ago.

14 Q: Just recently?

15 A: Just recently. We – we didn't let him – we didn't let  
16 him, obviously, back in any vehicles for us between the  
17 time of the accident because nobody kind of knew what  
18 happened. (Exhibit 4, Page 64, Line 9 through Page 65,  
19 Line 10)

20  
21 4. Jennifer Schoose

22 Jennifer Schoose, aesthetician and laser technician turned office manager for  
23 her husband's company, testified that she knew the DOT had "a few things that they  
24 had concerns with" after they reviewed Earthcore's records. She did not remember  
25 receiving any sort of written recommendations from DPS, and she was dismissive  
26 when asked if they ever corrected the violations, saying glibly, "if we never got them,  
27 we wouldn't know exactly what to fix". (Exhibit 5, Page 32, Lines 1-2) She admitted  
28 that she told the DPS Trooper that "all the rules to follow were very confusing and  
hard to find." (Page 32, Lines 10-15) She had started working for Earthcore in



1 October, 2017, and took her guidance from Brett. She had no idea who was  
2 responsible for understanding the FMCSA regulations. (Exhibit 5, Page 33, Line 10  
3 through Page 34, Line 2)

4 It is obvious neither of the Schooses took their responsibilities as commercial  
5 trucking owners/operators seriously. They did not know the laws, rules and  
6 regulations they were supposed to follow; they made no attempt to learn them; and  
7 they were not the least bit concerned with the violations they made which resulted in  
8 this tragedy.

9 Jennifer testified during her deposition in May that she and Zachariah were  
10 getting divorced. As of the date of this memorandum, nothing has been filed in  
11 family court. She and Zachariah moved their personal residence into a trust in early  
12 2019 after the collision, and created a separate trust to purchase a lot in Walking Stick  
13 at Las Sendas, a luxury residential community of multi-million dollar homes. It  
14 seems clear the Schooses don't want this tragedy and the deaths of three innocent  
15 people to cost them anything.

16  
17 5. Officer Kris Buchanan

18 Officer Kris Buchanan of the Chandler Police Department is the brother-in-law  
19 of Defendant Bradley Cooley. He heard about the crash while he was on duty, and  
20 later got a call from either his sister or mother asking him to go to the hospital to  
21 identify Cooley after the crash. Unlike his in-laws, he seems to be a decent and honest  
22 human being. He testified that prior to the collision, he was aware that Cooley had  
23 had a seizure, and that there had been a family discussion about it.

24 He testified that he had heard of Cooley "possibly having an episode – or a  
25 seizure at one point in his life". (Exhibit 6, Page 8, Lines 14-16) He was aware of  
26 that before the accident. He believed it was a couple years before the accident. He  
27 knew Cooley he had gotten medical treatment for it, but did not know the extent of  
28 treatment or if he took medicine for it. (Page 9, Line 5 through Page 10, Line 3)

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Q: Did it ever dawn on you that perhaps there might be some sort of an issue that somebody who theoretically had a seizure was driving tractor-trailer rigs for a living?

A: I know that it had come up as a concern of mine. Without knowing any of the details around the incident, I – in my law enforcement brain I merely assumed that all of the medical steps would have been completed through MVD in order for him to keep and maintain his CDL. (Exhibit 6, Page 12, Lines 6-14)

\* \* \* \* \*

A: I know there's certain rules that go along with that, so I just assumed that those were – that MVD did their job and that the steps that needed to be taken were taken. (Exhibit 6, Page 12, Lines 16-19)

\* \* \* \* \*

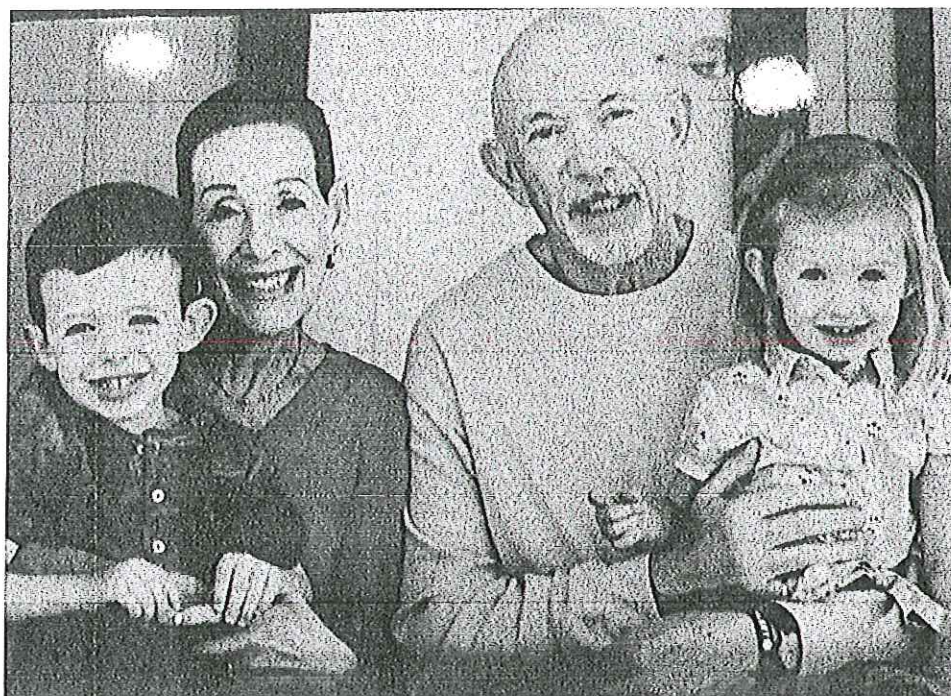
Q: ...being aware of the possibility of a seizure incident, it at least dawned on you, knowing that Brad Colley drives or drove tractor-trailer rigs, that that could be certainly a safety concern, correct?

A: Correct. (Exhibit 6, Page 13, Lines 19-23)

Officer Buchanan testified that regrettably, he never had a specific conversation with Brad or Courtney about it – he just was concerned. (Exhibit 6, Page 13, Line 24 through Page 14, Line 2) He didn't know the exact rules or process involved in reporting something like that as he is not a commercial vehicle officer, but with 18+ years with the Chandler Police Department, he knew there was some cause for concern.



C. Damages



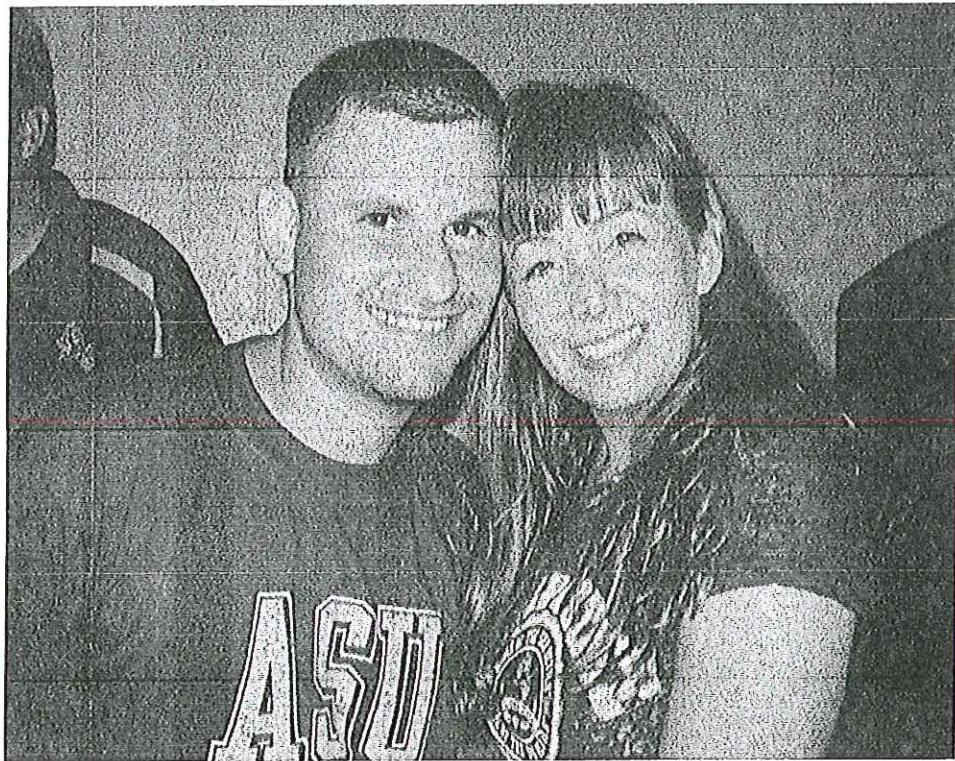
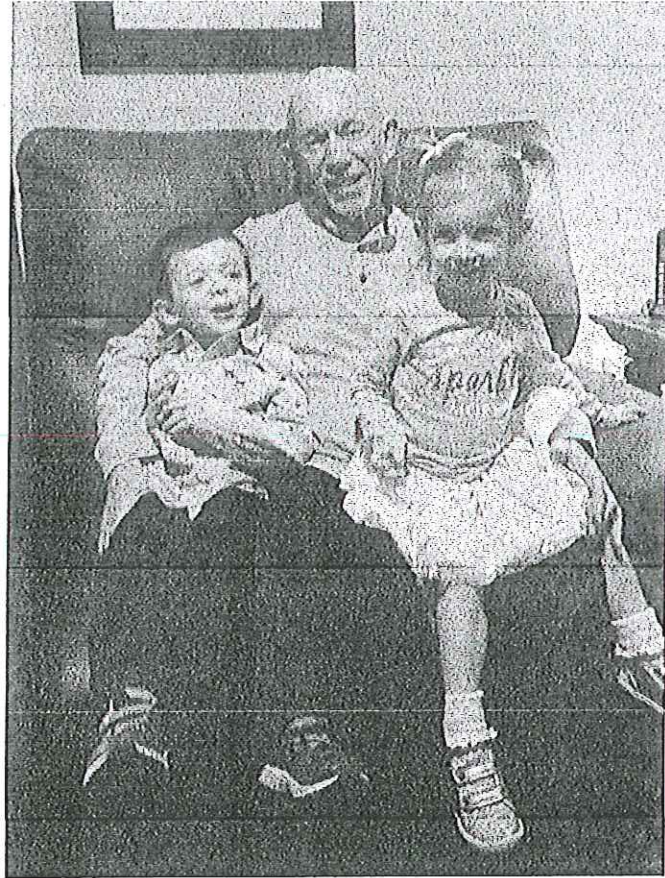


ZACHAR LAW FIRM, P.C.

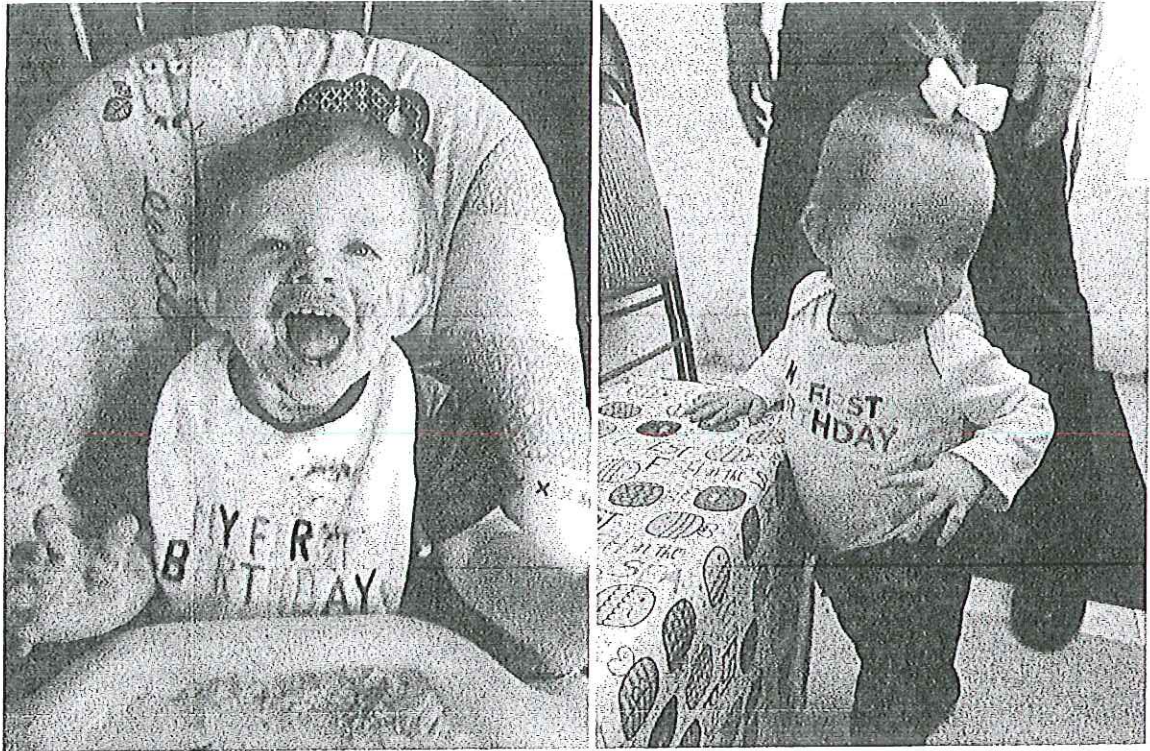
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Phoenix, Arizona 85020

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As a result of this preventable tragedy, caused by the Defendants' selfish, reckless and negligent acts, Plaintiff John Colson lost his 5 year old son and 3 year old daughter. His heart is broken, and will never mend. Plaintiffs Howard and Pearl Frankel lost their daughter, and their grandchildren, and their lives as they knew them. There is no recovery from their losses.

If true justice were to be done, Defendant Cooley would be sent to prison for many, many years to pay for his careless and reckless decisions, which precipitated his destroying the Colson and Frankel families. Defendant Earthcore would be forced out of business, and would also face criminal charges for allowing Cooley to drive a semi-truck with a known history of seizures. The State has so far failed to take the proper action to avenge these deaths. Plaintiffs are not looking for retaliation so much as a reckoning for the irreparable harm the Defendants have done. The wrong can never be righted, the damage cannot be undone, but the Defendants can be held accountable for the deaths of three innocent people.



V. CONCLUSION

This is not a case about money, because money cannot bring Kimberly, Solomon and Tova back to life. Howard and Pearl Frankel, and John Colson, will never recover from their losses. They will never be the same. Their families will never be the same. And yet, Defendants Cooley's and Schoose's families are still intact. Their lives are the same. They do not wake up each morning without their children, or go to sleep at night knowing their loved ones are gone.

Plaintiffs need the Defendants to be held accountable for their negligence. They need them to pay for their recklessness and carelessness. The policy limits are meaningless, because the money is not enough, and it will never be enough. This case will not settle without a significant personal contribution from Defendants Schoose. John Colson will never see his children grow up, graduate high school, start careers, get married, or have children of their own. He will miss the millions of moments and milestones along the way. Howard and Pearl lost their daughter and grandchildren, and have been robbed of all of the events, moments and milestones along the way. Plaintiffs need the Defendants to experience a loss of some kind, of a magnitude large enough to give them just the tiniest taste of the pain Plaintiffs experience each and every day of their lives because of what the Defendants did.

Should the Defendants fail to offer a fair sum to resolve these claims at mediation, Plaintiffs will prevail at trial, and the verdict will be significant.

DATED this 10<sup>th</sup> day of August, 2020.

/s/Christopher J. Zachar  
Christopher J. Zachar, Esq.  
Attorney for the Plaintiffs



1 ORIGINAL of the foregoing  
2 delivered this 10<sup>th</sup> day of  
3 August, 2020, TO:

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