

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

TONYA MUSSKOPF and )  
AUSTIN JARVIS, )

Plaintiffs, )

vs. )

Case No. 22SL-CC02521

MISSOURI HIGHWAYS AND )  
TRANSPORTATION COMMISSION, *et al.*, )

Defendants. )

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION'S  
ANSWER TO DEFENDANT THE ESTATE OF  
STANLEY W. McFADDEN'S CROSSCLAIM**

COMES NOW Missouri Highways and Transportation Commission, ("MHTC"), by and through undersigned counsel, and for its Answer to Defendant The Estate of Stanley W. McFadden's Crossclaim ("Crossclaim"), states to the Court as follows:

1. MHTC admits the allegations contained in paragraph 1 of the Crossclaim but denies the allegations asserted by Tonya Musskopf and Austin Jarvis in their Second Amended Petition.
2. MHTC admits the allegations contained in paragraph 2.
3. MHTC admits the allegations contained in paragraph 3.
4. MHTC admits the allegations contained in paragraph 4.
5. MHTC admits the allegations contained in paragraph 5 but denies the allegations asserted by Tonya Musskopf and Austin Jarvis in their Second Amended Petition.
6. MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations contained in Paragraph 6.
7. MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations contained in Paragraph 7.

8. MHTC denies the allegations contained in paragraph 8.
9. MHTC denies the allegations contained in paragraph 9.
10. MHTC admits the allegations contained in paragraph 10 but denies the allegations asserted by Tonya Musskopf and Austin Jarvis in their Second Amended Petition.
11. MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations contained in Paragraph 11.
12. MHTC denies the allegations contained in paragraph 12.
13. MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations contained in Paragraph 13.
14. MHTC denies the allegations asserted against it in paragraph 14. MHTC is without sufficient information, knowledge, or belief to admit or deny the remaining allegations contained in paragraph 14.
15. MHTC denies the allegations asserted against it in paragraph 15. MHTC is without sufficient information, knowledge, or belief to admit or deny the remaining allegations contained in paragraph 15.
16. MHTC denies the allegations contained in paragraph 16.
17. MHTC denies the allegations asserted against it in paragraph 17. MHTC is without sufficient information, knowledge, or belief to admit or deny the remaining allegations contained in paragraph 17.

**Count I – Contribution Against the MHTC for the Death of Jaxx Jarvis**

18. In response to paragraph 18 of the Crossclaim, MHTC incorporates by reference its answers to all prior paragraphs as if fully restated herein.

19. In response to paragraph 19 of the Crossclaim, MHTC incorporates by reference its responses to paragraphs 44-48 of Plaintiff's Second Amended Petition as if fully restated herein.

20. MHTC denies the allegations contained in paragraph 20.

21. MHTC denies the allegations contained in paragraph 21.

**Count II – Contribution Against Michael J. Love for the Death of Jaxx Jarvis**

22. Count II, including Paragraphs 22 through Paragraph 25 are not directed toward MHTC; therefore, no response is required. In the event a response is required, MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations.

**Count III – Contribution against MHTC for the Death of Kaitlyn Anderson**

23. In response to paragraph 26 of the Crossclaim, MHTC incorporates by reference its answers to all prior paragraphs as if fully restated herein.

24. In response to paragraph 27 of the Crossclaim, MHTC incorporates by reference its responses to paragraphs 68-77 of Plaintiff's Second Amended Petition as if fully restated herein.

25. MHTC denies the allegations contained in paragraph 28.

26. MHTC denies the allegations contained in paragraph 29.

**Count IV – Contribution Against Michael J. Love for the Death of Kaitlyn Anderson**

27. Count IV, including Paragraphs 30 through Paragraph 33 are not directed toward MHTC; therefore, no response is required. In the event a response is required, MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations.

**Count V – Contribution Against Kristina Jordan for the Death of Jaxx Jarvis**

28. Count V, including Paragraphs 34 through Paragraph 37 are not directed toward MHTC; therefore, no response is required. In the event a response is required, MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations.

**Count VI – Contribution Against Kristina Jordan for the Death of Kaitlyn Anderson**

29. Count VI, including Paragraphs 38 through Paragraph 41 are not directed toward MHTC; therefore, no response is required. In the event a response is required, MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations.

**Count VII – Contribution Against Gary Ludwick for the Death of Jaxx Jarvis**

30. Count VII, including Paragraphs 42 through Paragraph 45 are not directed toward MHTC; therefore, no response is required. In the event a response is required, MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations.

**Count VIII – Contribution Against Gary Ludwick for the Death of Kaitlyn Anderson**

31. Count VIII, including Paragraphs 46 through Paragraph 49 are not directed toward MHTC; therefore, no response is required. In the event a response is required, MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations.

**Count IX – Contribution Against James Henson for the Death of Jaxx Jarvis**

32. Count IX, including Paragraphs 50 through Paragraph 53 are not directed toward MHTC; therefore, no response is required. In the event a response is required, MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations.

**Count X – Contribution Against James Henson for the Death of Kaitlyn Anderson**

33. Count X, including Paragraphs 54 through Paragraph 57 and the “WHEREFORE” statement following paragraph 57 of the Crossclaim are not directed toward MHTC; therefore, no response is required. In the event a response is required, MHTC is without sufficient information, knowledge, or belief to admit or deny the allegations.

AFFIRMATIVE DEFENSES

1. In further answer and by way of affirmative defense, MHTC denies each and every allegation contained in the Crossclaim that has not been specifically admitted herein, including but not limited to the “WHEREFORE” paragraphs.

2. The Crossclaim fails to state a claim upon which relief can be granted against MHTC on the basis that Defendant The Estate of Stanley W. McFadden has failed to allege facts that waive sovereign immunity pursuant to § 537.600 RSMo., in that Defendant The Estate of Stanley W. McFadden has failed to allege a dangerous condition of MHTC’s property and/or that Defendant The Estate of Stanley W. McFadden’s damages occurred as the result of the negligent operation of a motor vehicle by an employee of MHTC. MHTC further states that Defendant The Estate of Stanley W. McFadden has failed to show that Defendant The Estate of Stanley W. McFadden injuries and/or damages directly resulted from a dangerous condition of MHTC’s property and not the result of decedent, Stanley McFadden, and/or some other party’s own contributory or comparative negligence.

3. MHTC affirmatively states that if Defendant The Estate of Stanley W. McFadden sustained any injuries or damages as alleged, which MHTC specifically denies, the same were caused or contributed to be caused, in whole or in part, by the contributory or comparative negligence or fault or other culpable conduct of decedent Stanley W. McFadden, and/or other non-parties and not as a result of any negligence, or any culpable conduct on the part of MHTC. To wit:

- a. Stanley McFadden failed to use that degree of care exercised by persons of the same or similar age, judgment or experience;
- b. Stanley McFadden failed to keep a careful lookout;

- c. Stanley McFadden failed to yield the right of way;
- d. Stanley McFadden drove in excess of the posted speed limit;
- e. Stanley McFadden failed to keeps his vehicle under control;
- f. Stanley McFadden failed to obey traffic signals;
- g. Stanley McFadden failed to operate his motor vehicle with the highest degree of care; and,
- h. The alleged negligent acts of Stanley McFadden as alleged by Plaintiffs in The Petition, including but not limited to, McFadden not driving with the highest degree of care given his decision to drive with knowledge that the was suffering from seizures and/or loss of consciousness and McFadden's failure to realize or to take precautionary measures upon realizing that such a seizure/loss of consciousness could be occurring prior to this accident; and
- i. Any other acts or omissions which may be learned through further investigation and discovery in this matter.

Accordingly, Defendant The Estate of Stanley W. McFadden should be barred from recovery against MHTC or, in the alternative, the recovery against MHTC should be reduced due to the contributory or comparative negligence or fault, or other culpable conduct of decedent Stanley McFadden, and/or other non-parties and hereby request a percentage allocation of the same.

4. MHTC is immune from liability in tort under the Doctrine of Sovereign Immunity as it is a public entity of the State of Missouri that has not waived sovereign immunity.

5. Further answering, and by way of an affirmative defense, MHTC states that any liability on the part of MHTC is limited as provided by §§ 537.600 and 537.610, RSMo., and the sub-sections contained therein, and MHTC is not liable for prejudgment interest.

6. MHTC further states that it is protected from liability under sovereign immunity, and this has not been waived because Defendant The Estate of Stanley W. McFadden injuries or damages do not directly result from the negligent acts or omissions of a MHTC employee in the operation of a motor vehicle; and, Defendant The Estate of Stanley W. McFadden's injuries or damages did not directly result from a dangerous condition of MHTC property. MHTC further states that to the extent Defendant The Estate of Stanley W. McFadden's injuries or damages did result from a condition of MHTC's property, the injuries or damages were not caused by the negligent act or omission of an MHTC employee, nor created by MHTC.

7. MHTC further states that in the event sovereign immunity is waived, Defendant The Estate of Stanley W. McFadden's damages are limited to compensatory damages, shall not include costs or punitive damages, and MHTC's liability is limited to the amounts set forth on the first of January of each year, published by the Missouri Secretary of State in the Missouri Register, in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce, calculated by the director of the department of insurance, financial institutions and profession registration.

8. Further answering, and by way of an affirmative defense, MHTC states that pursuant to §§ 537.600 and 537.610, RSMo., and the sub-sections contained therein, it cannot be held liable for punitive, exemplary, or aggravating circumstances damages as § 537.600 only permits a Plaintiffs to seek compensatory damages when sovereign immunity is waived and § 537.610.3 states that no award against a public entity shall include punitive or exemplary damages.

9. Further, the Missouri Supreme Court has held that court costs cannot be recovered against MHTC. *Richardson v. State Highway & Transp. Com'n*, 863 S.W.2d 876, 882 (Mo. banc

1993) citing *State ex rel. Independence School District v. Jones*, 653 S.W.2d 178, 191 (Mo. banc 1983) (additional internal citations omitted).

10. MHTC affirmatively states that its liability, which MHTC specifically denies, is limited to the amounts set forth in §537.067 RSMo., and that the application of § 537.067 to any judgment rendered would be modified by the sovereign immunity limits as set forth in paragraph 7 of MHTC's Affirmative Defenses.

11. MHTC affirmatively states that Defendant The Estate of Stanley W. McFadden failed to comply with the terms of § 408.040 RSMo., in that Defendant The Estate of Stanley W. McFadden has not made a demand for payment or an offer of settlement; and further, has not sent such demand or offer in writing by certified mail, accompanied by an affidavit, referencing § 408.040, leaving the demand or offer open for ninety days.

12. MHTC affirmatively states that if Defendant The Estate of Stanley W. McFadden sustained any injuries or damages, which MHTC specifically denies, the same were directly caused or contributed to be caused by the acts or omissions of a person(s) or entity over whom MHTC had neither control nor right of control as set forth in paragraph 3, including subparagraphs, of MHTC's Answer and Affirmative Defenses.

13. MHTC affirmatively states that if Defendant The Estate of Stanley W. McFadden sustained any injuries or damages as alleged, the same were not caused by or contributed to by MHTC, but such alleged injuries or damages were caused or contributed to be caused, in whole or



in part, by the contributory or comparative negligence or fault of Stanley W. McFadden as alleged in Count III and Count VI of Plaintiffs' Second Amended Petition.

14. MHTC affirmatively states, that if Defendant The Estate of Stanley W. McFadden has sustained any injuries or damages as alleged, such injuries or damages were not caused by any act, error, omission, or breach by MHTC.

15. MHTC affirmatively states that if Defendant The Estate of Stanley W. McFadden sustained any injuries, the same were directly caused or contributed to be caused by intervening or superseding acts or omissions of Stanley W. McFadden as set forth in Plaintiffs' Second Amended Petition, or some yet to be determined person, entity, or object over which MHTC had no control.

16. Under the facts and circumstances of this case, as well as pursuant to Plaintiffs' allegation in paragraph 14 of Plaintiffs' Second Amended Petition, Kaitlyn Anderson was statutorily an employee of the Missouri Department of Transportation, and this cause of action is alleged to arise from her death in the course of that employment. RSMo. § 226.160 provides that: "The provisions of chapter 287 governing workers' compensation may be extended to include the employees of the state highways and transportation commission. . . . The state highways and transportation commission shall have authority by resolution to elect, under the provisions of section 287.030, to accept the provisions of chapter 287 and to pay compensation to its employees . . . for injury or death arising out of and in the course of their employment in accordance with the provisions and restrictions as set forth in chapter 287." Thus, under Missouri's worker's compensation laws, Defendant The Estate of Stanley W. McFadden is barred from recovery against MHTC in a civil lawsuit by the exclusivity provisions of Missouri's workers' compensation laws, including RSMo. § 287.120. **If decedent Jaxx Jarvis perished as alleged in the Petition, by virtue of § RSMo. §287.020(1) Jaxx Jarvis was, by definition, an "employee" of**

the Missouri Department of Transportation, and thus, under Missouri's worker's compensation laws, Defendant The Estate of Stanley W. McFadden is barred from recovery against MHTC in a civil lawsuit by the exclusivity provisions of Missouri's workers' compensation laws, including RSMo. § 287.120 for the same reasons as those claims are barred as to the death of Kaitlyn Anderson.

17. MHTC affirmatively states Defendant The Estate of Stanley W. McFadden should be barred from recovering against MHTC as decedents' injuries were covered under applicable Missouri workers' compensation laws and under Missouri's workers' compensation laws, in exchange for providing mandatory workers' compensation coverage – without regard to fault – employers and their employees are granted immunity from civil lawsuits arising out of workplace injuries. See § 287.120.

18. MHTC affirmatively states that the Court, pursuant to its Order and Judgment dated March 29, 2023, Granted MHTC's Motion for Judgment on the Pleadings as to Counts I and IV of Plaintiffs' Second Amended Petition and those counts were therefore dismissed pursuant to said Order and Judgment finding that the claims of Tonya Musskopf were statutorily barred. Therefore, Defendant The Estate of Stanley W. McFadden is barred from seeking contribution against MHTC for the claims of Tonya Musskopf.

19. MHTC asserts its arguments, as though fully set forth herein, contained in its Motion to Dismiss Plaintiffs' Second Amended Petition, or in the alternative, motion for judgment on the pleadings.

20. MHTC affirmatively states that, if Defendant The Estate of Stanley W. McFadden sustained injuries or damages as alleged and it is determined that MHTC was at fault in any way, which MHTC specifically denies, MHTC is entitled to a reduction and/or setoff of any judgment

against MHTC in the amount of all good faith settlement paid or to be paid by the other tortfeasors or party provided in RSMo. § 537.060. MHTC further reserves the right to challenge any settlement on the basis that it was not made in good faith but reasonable and otherwise enforceable.

21. MHTC reserves the right to amend its affirmative defenses to assert defenses and/or facts as they become known in the course of this litigation.

WHEREFORE, having fully answered Defendant The Estate of Stanley W. McFadden's Crossclaim, MHTC prays that Defendant The Estate of Stanley W. McFadden's Crossclaim be dismissed, for its costs herein incurred, and for such other relief as this Court deems just and proper.

Respectfully submitted,

**BATY OTTO CORONADO SCHEER PC**

*/s/ Theresa A. Otto*

Theresa A. Otto MBN 43453  
Patrick M. Hunt MBN 63898  
One Main Plaza  
4435 Main Street, Suite 1100  
Kansas City, MO 64111  
Telephone: 816-531-7200  
Facsimile: 816-531-7201  
[totto@batyotto.com](mailto:totto@batyotto.com)  
[phunt@batyotto.com](mailto:phunt@batyotto.com)

Rich Tiemeyer MBN 23284  
Chief Counsel

Jay L. Smith MBN 40768  
Assistant Chief Counsel

600 Northeast Colbern Rd.  
Lee's Summit, MO 64086-4712

Telephone: 816-607-2077  
Facsimile: 816-622-0399

[Jay.Smith@modot.mo.gov](mailto:Jay.Smith@modot.mo.gov)

**ATTORNEYS FOR DEFENDANT  
MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION**

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2023, the foregoing document was filed with the Court via the Missouri Case.net electronic filing system which served a copy electronically to all parties registered to receive such service, and I sent a copy via email to the following:

Andrew G. Mundwiller  
THE CAGLE LAW FIRM, LLC  
500 North Broadway, Suite 1605  
St. Louis, MO 63102  
Telephone: (314) 241-1700  
Facsimile: (888) 292-3677  
[andrew@caglellc.com](mailto:andrew@caglellc.com)  
**Attorney for Plaintiffs**

Bradley S. Russell  
Ryan J. Niehaus  
SANDERS WARREN & RUSSELL, LLP  
Compass Corporate Centre  
11225 College Blvd., Suite 450  
Overland Park, KS 662210  
Telephone: (913) 234-6100  
Facsimile: (913) 234-6199  
[b.russell@swrllp.com](mailto:b.russell@swrllp.com)  
[r.niehaus@swrllp.com](mailto:r.niehaus@swrllp.com)  
**Attorney for Defendant Stanley W. McFadden**

Debbie S. Champion  
Victor H. Essen  
RYNEARSON SUESS SCHNURBUSH  
CHAMPION, LLC  
500 North Broadway, Suite 1550  
St. Louis, MO 63102  
Telephone: (314) 421-4430  
Facsimile: (314) 421-4431  
[dchampion@rssclaw.com](mailto:dchampion@rssclaw.com)  
[vessen@rssclaw.com](mailto:vessen@rssclaw.com)  
**Attorney for Defendant Michael J. Love**

Matthew H. Noce  
REICHARDT NOCE & YOUNG LLC  
12444 Powerscourt Drive, Suite 160  
St. Louis, MO 63131  
Telephone: (314) 789-1199  
Facsimile: (314) 754-9795  
[mhn@reichardtnoce.com](mailto:mhn@reichardtnoce.com)  
**Attorneys for Defendants Kristina Jordan, Gary Ludwick**

Jeffrey J. Brinker  
Thomas S. Powell  
BRINKER & DOYEN, LLP  
34 N. Meramec Avenue, 5<sup>th</sup> Floor  
Clayton, MO 63105  
Telephone: (314) 863-6311  
Facsimile: (314) 863-8197  
[jbrinker@brinkerdoyen.com](mailto:jbrinker@brinkerdoyen.com)  
[tpowell@brinkerdoyen.com](mailto:tpowell@brinkerdoyen.com)  
**Attorneys for James Henson**

/s/ Theresa A. Otto  
**Attorneys for Defendant Missouri  
Highways And Transportation  
Commission**