

**Iowa Judicial Branch**

Case No. **LACV029917**  
County **Hamilton**

Case Title **ESTATE OF JOANNA J. RIZZO VS. ANTHONY R. NESSA**

You must file your Appearance and Answer on the Iowa Judicial Branch eFile System, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless the court has excused you from filing electronically (see Iowa Court Rule 16.302).

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Scheduled Hearing:

If you need assistance to participate in court due to a disability, call the disability access coordinator at **(641) 421-0990** . Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). For more information, see [www.iowacourts.gov/for-the-public/ada/](http://www.iowacourts.gov/for-the-public/ada/). **Disability access coordinators cannot provide legal advice.**

Date Issued **03/18/2022 11:08:23 AM**



District Clerk of Court or/by Clerk's Designee of Hamilton County  
**/s/ Colleen Soma**

IN THE IOWA DISTRICT COURT FOR HAMILTON COUNTY

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JAMES A. BERGERT Individually and  
as Administrator of the  
ESTATE OF JOANNA J. RIZZO,

Plaintiffs,

vs.

ANTHONY R. NESSA,  
TONY'S TIRE SERVICES, INC.,  
FARMERS MUTUAL HAIL  
INSURANCE COMPANY OF IOWA,

Defendants.

File No. LACV029917

**ORIGINAL NOTICE**

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**TO THE ABOVE-NAMED DEFENDANTS:**

You are hereby notified that there is now on file (as of **03/17/2022**) in the office of the above court a petition in the above-entitled action, a copy of which is attached. The plaintiffs' attorney is Erik A. Luthens, whose address is: Parrish-Sams Luthens Law, P.C., 2910 Westown Parkway, Ste. 203, West Des Moines, IA 50266; Tel: (515) 222-1697; Fax: (515) 222-2655; E-M: Erik.Luthens@PSL-Law.com; web-site: www.PSL-Law.com.

Defendants are further notified that the above referenced county utilizes electronic filing and that you are directed to I.R.Civ.Pr. 1.302(1) as well as Iowa Court Rule Chapter 16 for general rules and information on electronic filing and in particular, Chapter 16, Division VI concerning personal information in court filings.

Unless you serve within twenty (20) days of service of this notice upon you and within a reasonable time thereafter, file a motion or answer in the Iowa District Court for Hamilton County at the courthouse in Webster City, Iowa, judgment by default may be rendered against you for the relief demanded in the petition.

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Hamilton County Clerk of Court  
2300 Superior St., # 9  
Webster City, IA 50595

**Important:** You are advised to seek legal advice at once to protect your interests. **Note:** The attorney who is expected to represent you should be promptly advised of the service of this notice. If you require the assistance of

auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 515-286-3394. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

IN THE IOWA DISTRICT COURT FOR HAMILTON COUNTY

JAMES A. BERGERT Individually and  
as Administrator of the  
ESTATE OF JOANNA J. RIZZO,

Plaintiffs,

vs.

ANTHONY R. NESSA,  
TONY'S TIRE SERVICES, INC.,  
FARMERS MUTUAL HAIL  
INSURANCE COMPANY OF IOWA,

Defendants.

File No. LACV029917

**PETITION AT LAW  
&  
JURY DEMAND**

**COME NOW** the plaintiffs by and through counsel Erik A. Luthens of Parrish-Sams Luthens Law, P.C. and state:

**DIVISION 1.**

**Jurisdictional Allegations**

1. At all times material hereto, plaintiff James A. Bergert ("**James**" or "**plaintiff**"), is an individual and a resident of Hamilton County, Iowa.
2. At all times material hereto, plaintiff Joanna J. Rizzo ("**Joanna**" or "**plaintiff**"), was an individual and a resident of Hamilton County, Iowa. Joanna is now deceased.
3. At all times material hereto, James was legally married to Joanna.
4. At all times material hereto, James is the duly appointed, qualified and acting Administrator of the Estate of Joanna J. Rizzo, Hamilton Co. File No. ESPR017038 ("**Estate**").

5. At all times material hereto, Anthony R. Nessa ("**Nessa**"), is an individual and a resident of Hamilton County, Iowa.

6. At all times material hereto, Tony's Tire Services, Inc. ("**Tony's Tire Services**"):

- (a) is an active, Iowa corporation;
- (b) has its home office located at: 340 Closz Dr., Webster City, IA 50595;
- (c) has a registered agent for service of process: Anthony R. Nessa, 340 Closz Dr., Webster City, IA 50595.

7. At all times material hereto, defendant Farmers Mutual Hail Insurance Company of Iowa ("**Farmers Mutual**"):

- (a) is an insurance company domiciled in the State of Iowa;
- (b) is authorized to do business in the state of Iowa;
- (c) regularly operates in the State of Iowa;
- (d) has its home office located at: 6785 Westown Parkway, West Des Moines, IA 50266.

8. By reason of the damages incurred by the plaintiffs as described herein, plaintiffs are entitled to damages in a sum which exceeds the jurisdictional amount for Small Claims Court in the State of Iowa and meets the jurisdictional amount for the District Court in the State of Iowa.

**(Factual Allegations)**

9. On or about August 4, 2021 ("**subject date**"), James owned a 2000 Suzuki Grand Vitara motor vehicle ("**Bergert vehicle**").

10. On the subject date, Tony's Tire Services owned a 2007 International flat bed tow truck ("**Tony's Tire Services vehicle**").

11. On the subject date at approximately 9:35 p.m.:

- (a) James was operating the Bergert vehicle northbound on Interstate 35 at or near mile marker 141 in Hamilton County, Iowa at which time Joanna was a passenger in the Bergert vehicle.
- (b) Nessa was operating the Tony's Tire Services vehicle (also northbound on Interstate 35 and/or on the shoulder of the road, at or near mile marker 141 in Hamilton County, Iowa (north of the Bergert vehicle) at an unreasonably low, unsafe rate of speed for an interstate roadway.
- (c) Nessa, while operating the Tony's Tire Services vehicle northbound on Interstate 35 (and/or on the shoulder of the road) at a low, unsafe rate of speed at or near mile marker 141 in Hamilton County, Iowa, failed to yield to the northbound Bergert vehicle, causing the Bergert vehicle to take sudden evasive action by attempting to abruptly turn into the left (northbound) lane.
- (d) The passenger front side of the Bergert vehicle struck the driver's side rear corner of the bed of the Tony's Tire Services vehicle which literally sliced through the passenger

side of the Bergert vehicle, resulting in fatal injuries to Joanna (decapitation); injuries to James; and damage to the Bergert vehicle ("**subject collision**").

12. Set forth immediately below is a photo of the Bergert vehicle shortly after the subject collision:



13. Set forth immediately below is a photo of the Bergert vehicle shortly after the subject collision:





14. Set forth below is a photo of the Tony's Tire Services vehicle shortly after the subject collision:



15. Set forth below is a photo of the Tony's Tire Services vehicle shortly after the subject collision:





16. At the time of the subject collision, Nessa was operating the Tony's Tire Services vehicle with the consent of Tony's Tire Services, Inc.

17. At the time of the subject collision, while Nessa was operating the Tony's Tire Services vehicle, Nessa:

- (a) was operating the Tony's Tire Services vehicle at such a slow speed that it impeded or blocked the normal and

reasonable movement of the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa including, but not limited to, Iowa Code § 321.294;

- (b) failed to yield the right-of-way to the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa including, but not limited to, Iowa Code § 321.353;
- (c) failed to maintain control of the Tony's Tire Services vehicle, in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa including, but not limited to, Iowa Code § 321.288;
- (d) failed to keep and maintain a proper lookout in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;<sup>1</sup>
- (e) failed to otherwise operate the Tony's Tire Services vehicle in a careful and prudent manner in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa.

18. Immediately after the subject collision, Nessa knew or should have known that a collision between the Tony's Tire Services vehicle and the Bergert

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<sup>1</sup> See *Matuska v. Bryant*, 150 N.W.2d 716 (Iowa 1967).

vehicle had occurred. Notwithstanding, Nessa **refused to stay at the scene of the subject collision** and proceeded to drive the Tony's Tire Services vehicle to an unknown location to escape from the scene of the subject collision in violation of the Iowa Code including, but not limited to Iowa Code §§ 321.261 and/or 321.262 and/or 321.263.<sup>2</sup>

19. At approximately 9:53 p.m. on the subject date (after Nessa had fled the scene of the subject collision ), another Tony's Tire Services employee, Mark D. Jurgensen ("**Jurgensen**"), showed up at scene of the subject collision and orally informed Iowa State Patrol Trooper Colby Mooers (Badge #247) ("**Trooper Mooers**") that *he* (not Nessa) was operating the Tony's Tire Services vehicle at the time of the subject collision. At the time that Jurgensen made this oral statement to Trooper Mooers, Jurgensen knew that it was false.

20. In fact, shortly after the subject collision, Jurgensen personally prepared a **written statement** in the presence of law enforcement verifying that

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<sup>2</sup> Iowa Code § 321.263 Information and aid — leaving scene of personal injury accident.

1. The driver of a vehicle involved in an accident resulting in injury to or death of a person or damage to a vehicle which is driven or attended by a person shall give the driver's name, address, and the registration number of the vehicle the driver is driving and shall upon request and if available exhibit the driver's driver's license to the person struck, the driver or occupant of, or the person attending the vehicle involved in the accident and shall render to a person injured in the accident reasonable assistance, including the transporting or arranging for the transporting of the person for medical treatment if it is apparent that medical treatment is necessary or if transportation for medical treatment is requested by the injured person.

2. **If the accident causes the death of a person, all surviving drivers shall remain at the scene of the accident** except to seek necessary aid or to report the accident to law enforcement authorities. Before leaving the scene of the fatal accident, each surviving driver shall leave the surviving driver's driver's license, automobile registration receipt, or other identification data at the scene of the accident. After leaving the scene of the accident, a surviving driver shall promptly report the accident to law enforcement authorities, and shall immediately return to the scene of the accident or inform the law enforcement authorities where the surviving driver can be located.

he was driving the Tony's Tire Services vehicle at the time of the subject collision. At the time that Jurgensen made this written statement to Trooper Mooers, Jurgensen knew that it was false.

21. Approximately three hours after the subject collision:
  - (a) Jurgensen was informed by law enforcement that the subject collision resulted in a fatality (to Joanna);
  - (b) Upon hearing that the subject collision directly resulted in a fatality (Joanna), Jurgensen *recanted* his statements made to the Iowa State Patrol, i.e., that he was the driver of Tony's Tire Services vehicle at the time of the subject collision.
  - (c) Jurgensen further informed Trooper Mooers that Nessa was the person actually operating the Tony's Tire Services vehicle at the time of the subject collision, (not him).
  - (d) Jurgensen further informed Trooper Mooers that Nessa had **directly instructed him (Jurgensen) to go back to the scene of the subject collision to "take the blame" for the subject collision.**
  - (e) Jurgensen asked Trooper Mooers to shut off his in-car camera as he was recanting his prior statements. In response, Trooper Mooers informed Jurgensen that he was not allowed to shut off his in-car camera.

(f) Trooper Mooers further informed Jurgensen that he had provided a false report to law enforcement.

22. On Thursday, August 5, 2021, at approximately 12:56 a.m. (more than three hours *after* the subject collision had occurred), Nessa mysteriously *re-appeared* at the scene of the subject collision and, at that time, *admitted* to Iowa State Patrol Trooper James Monroe (badge #163) ("**Trooper Monroe**") that he was the person actually operating the Tony's Tire Services vehicle at the time of the subject collision.

23. On September 26, 2021, Iowa State Patrol Trooper Ben Miller (Badge #113) ("**Trooper Miller**") interviewed Jurgensen concerning his involvement with the subject collision ("**09.26.21 Jurgensen Interview**").

24. During the 09.26.21 Jurgensen Interview, Trooper Miller asked Jurgensen as to why he personally prepared a written statement in the presence of law enforcement verifying that *he* was driving the Tony's Tire Services vehicle at the time of the subject collision; in response, Jurgensen stated that he *never* told law enforcement that he was the person driving the Tony's Tire Services vehicle at the time of the subject collision.

25. During the 09.26.21 Jurgensen Interview, Jurgensen stated that he is still employed by Tony's Tire Services.

26. On December 7, 2021, Trooper Miller interviewed Luis Pena Cervantes ("**Pena Cervantes**") who was a passenger in the Tony's Tire Services

vehicle when the subject collision occurred ("**12.07.21 Pena Cervantes Interview**").

27. Pena Cervantes informed Trooper Miller that he contacted Tony's Tire Services on the subject date after his vehicle had gone into a ditch near Interstate 35 at or near mile marker 141 in Hamilton County, Iowa.

28. Pena Cervantes further informed Trooper Miller that after calling Tony's Tire Services on the subject date, Nessa (not Jurgensen) showed up and loaded his inoperable vehicle onto the bed of the Tony's Tire Services vehicle.

29. Pena Cervantes further informed Trooper Miller that Nessa (not Jurgensen) was operating the Tony's Tire Services vehicle when the subject collision occurred and that he (Pena Cervantes) was a passenger in the Tony's Tire Services vehicle.

30. Pena Cervantes further informed Trooper Miller that immediately after he felt the Bergert vehicle strike the rear of the Tony's Tire Services vehicle (subject collision), he immediately looked in the rearview mirror and saw "a vehicle flying by the side" of the Tony's Tire Services vehicle. The impact was so significant, Pena Cervantes thought that *his* vehicle had actually fallen off of the tow bed of the Tony's Tire Services vehicle.

31. Pena Cervantes further informed Trooper Miller that immediately after the subject collision, Nessa drove back onto the shoulder of Interstate 35 and exited the Tony's Tire Services vehicle to view the interstate and inspect the Tony's Tire Services vehicle.



32. Pena Cervantes further informed Trooper Miller that shortly thereafter, Nessa got back into the Tony's Tire Services vehicle and told Pena Cervantes that a car had just hit the Tony's Tire Services vehicle.

33. Since at least 1995, Nessa has shown a constant, flagrant disregard for traffic and related safety laws of the State of Iowa as evidenced by the following convictions:

(a) **State of Iowa vs. Anthony R. Nessa  
Buena Vista Co. File No. STP545991**

**Offense Date:** 07/01/1995

**Charge:** Speeding 55 or under zone (6 through 10 over) in violation of Iowa Code § 321.285-B

**Convicted:** 07/21/1995

(b) **State of Iowa vs. Anthony R. Nessa  
Boone Co. File No. STWG769180**

**Offense Date:** 12/28/1996

**Charge:** Speeding 55 or under zone (6 through 10 over) in violation of Iowa Code § 321.285-B

**Convicted:** 02/04/1997

(c) **State of Iowa vs. Anthony R. Nessa  
Kossuth Co. File No. STP0432386**

**Offense Date:** 11/23/1997

**Charge:** Speeding 55 or under zone (6 through 10 over) in violation of Iowa Code § 321.285-B

**Convicted:** 01/21/1998

(d) **State of Iowa vs. Anthony R. Nessa  
Hamilton Co. File No. STP052757**

**Offense Date:** 11/26/1997

**Charge:** Speeding 55 or under zone (6 through 10 over) in violation of Iowa Code § 321.285-B

**Convicted:** 01/20/1998

(e) **State of Iowa vs. Anthony R. Nessa  
Bremer Co. File No. STP090N6T**

**Offense Date:** 07/26/1998

**Charge:** Fail to maintain safety belts in violation of Iowa Code § 321.445

**Convicted:** 08/28/1998

(f) **State of Iowa vs. Anthony R. Nessa  
Franklin Co. File No. STOP010943**

**Offense Date:** 07/26/1999

**Charge:** Speeding 55 or under zone (6 through 10 over) in violation of Iowa Code § 321.285-G

**Convicted:** 08/04/1999

(g) **City of Webster City vs. Anthony R. Nessa  
Hamilton Co. File No. WCSTWH023098**

**Offense Date:** 01/26/2000

**Charge:** Speed in violation of Iowa Code § WC/63.09

**Convicted:** 02/28/2000

(h) **State of Iowa vs. Anthony R. Nessa  
Hamilton Co. File No. STP411587**

**Offense Date:** 10/08/2000

**Charge:** Fail to maintain safety belts in violation of Iowa Code § 321.445

**Convicted:** 11/13/2000

(i) **State of Iowa vs. Anthony R. Nessa  
Cerro Gordo Co. File No. STNR365734**

**Offense Date:** 06/10/2001

**Charge:** Vessel registration violation in violation of Iowa Code § 462A.5

**Convicted:** 06/18/2001

(j) **State of Iowa vs. Anthony R. Nessa  
Hamilton Co. File No. STWH024585**

**Offense Date:** 06/21/2001

**Charge:** Speed restrictions / failure to maintain minimum speed in violation of Iowa Code § 321.285(8)

**Convicted:** 08/21/2001

(k) **State of Iowa vs. Anthony R. Nessa  
Story Co. File No. STP956628**

**Offense Date:** 12/05/2008

**Charge:** (2) dark window / windshield in violation of Iowa Code § 321.438-B

**Convicted:** 01/17/2003

(l) **State of Iowa vs. Anthony R. Nessa  
Webster Co. File No. STP130488**

**Offense Date:** 12/05/2002

**Charge:** Speeding 55 or under zone (6 through 10 over) in violation of Iowa Code § 321.285-B

**Convicted:** 01/01/2003

(m) **City of Webster City vs. Anthony R. Nessa  
Hamilton Co. File No. WCSTWH027563**

**Offense Date:** 10/06/2003

**Charge:** Speed in violation of Iowa Code § WC/63.10

**Convicted:** 10/14/2003

(n) **State of Iowa vs. Anthony R. Nessa  
Kossuth Co. File No. STP135315**

**Offense Date:** 01/07/2004

**Charge:** Speeding 55 or under zone (6 through 10 over) in violation of Iowa Code § 321.285-B

**Convicted:** 03/19/2004

(o) **State of Iowa vs. Anthony R. Nessa  
Wright Co. File No. STP136123**

**Offense Date:** 12/23/2003

**Charge:** Defective breaking equipment in violation of Iowa Code § 321.430

**Convicted:** 02/11/2004

(p) **State of Iowa vs. Anthony R. Nessa  
Wright Co. File No. STW005304**

**Offense Date:** 11/24/2004

**Charge:** Speeding 55 or under zone (6 through 10 over) in violation of Iowa Code § 321.285-B

**Convicted:** 12/09/2004

(q) **State of Iowa vs. Anthony R. Nessa  
Webster Co. File No. STP73C6PW**

**Offense Date:** 03/15/2005

**Charge:** Speeding 55 or under zone (6 through 10 over) in violation of Iowa Code § 321.285-J

**Convicted:** 03/21/2005

(r) **State of Iowa vs. Anthony R. Nessa  
Dallas Co. File No. STP907178**

**Offense Date:** 07/09/2005

**Charge:** Failure to display registration plate in violation of Iowa Code § 321.37

**Convicted:** 08/16/2005

(s) **State vs. Anthony R. Nessa  
Buchanan Co. File No. STP540033**

**Offense Date:** 11/28/2005

**Charge:** Failure to maintain safety belts in violation of Iowa Code § 321.445

**Convicted:** 12/20/2005

(t) **State of Iowa vs. Anthony R. Nessa**  
**Cerro Gordo Co. File No. STA0030111**

**Offense Date:** 04/26/2010

**Charge:** Dark window / windshield in violation of Iowa Code § 321.438(2)

**Convicted:** 04/26/2010

(u) **State of Iowa vs. Anthony R. Nessa**  
**Cedar Co. File No. STA0020041**

**Offense Date:** 07/13/2012

**Charge:** Dark window / windshield in violation of Iowa Code § 321.438(2)

**Convicted:** 08/22/2012

(v) **City of Clear Lake vs. Anthony R. Nessa**  
**Cerro Gordo Co. File No. CLSTA0063664**

**Offense Date:** 08/03/2013

**Charge:** Speeding 55 OR more than (16 through 20 over) in violation of Iowa Code § CL/63.01D

**Convicted:** 08/15/2013

(w) **State vs. Anthony R. Nessa**  
**Story Co. File No. STA0075357**

**Offense Date:** 03/27/2014

**Charge:** Speeding 55 or under zone (11 through 15 over) in violation of Iowa Code § 321.285-C

**Convicted:** 05/02/2014



(x) **State of Iowa vs. Anthony R. Nessa  
Hamilton Co. File No. STSTA0046323**

**Offense Date:** 03/16/2016

**Charge:** Speeding 45 mph zone in violation of Iowa Code §  
ST/2.1-2.0411

**Convicted:** 05/04/2016

(y) **State of Iowa vs. Anthony R. Nessa  
Calhoun Co. File No. STA0013244**

**Offense Date:** 07/15/2017

**Charge:** Speeding over 55 zone (6 through 10 over) in  
violation of Iowa Code § 321.285

**Convicted:** 07/24/2017

(z) **State of Iowa vs. Anthony R. Nessa  
Hamilton Co. File No. STA0068297**

**Offense Date:** 10/09/2020

**Charge:** Speeding – road work zones (11-20 over) in  
violation of Iowa Code § 321.285

**Convicted:** 12/01/2020

34. At all times material hereto, Farmers Mutual issued an insurance policy to James and Joanna bearing policy number **APIA040559 ("Farmers Mutual policy")** which contained, among other provisions, uninsured (UM) coverage and underinsured (UIM) coverage for injuries such those sustained by James as well as Joanna / Estate of Joanna J. Rizzo relative to their losses associated with the operation and/or use of the Bergert vehicle at the time of the subject collision.

35. At all times material hereto, James is an insured within the reasonable interpretation of the Farmers Mutual policy.

36. At all times material hereto, Joanna is an insured within the reasonable interpretation of the Farmers Mutual policy.

37. James (individually) is legally entitled to recover compensatory damages from all of the defendants in this action.

38. James (as Administrator of the Estate of Joanna J. Rizzo) is legally entitled to recover compensatory damages from all of the defendants in this action.

39. James (individually) is legally entitled to recover punitive damages from Nessa in this action.

40. James (as Administrator of the Estate of Joanna J. Rizzo) is legally entitled to recover punitive damages from Nessa in this action.

41. James (individually) is legally entitled to recover punitive damages from Tony's Tire Services in this action.

42. James (as Administrator of the Estate of Joanna J. Rizzo) is legally entitled to recover punitive damages from Tony's Tire Services in this action.

**DIVISION 2.**

**James A. Bergert (individually)**

**vs.**

**Anthony R. Nessa**

**COMES NOW** plaintiff **James A. Bergert (individually)** and for his cause of action against defendant **Anthony R. Nessa** states:

1. James incorporates by reference, as though fully stated herein, each and every allegation set forth in this petition.

2. At the time of the subject collision, Nessa was negligent in operating the Tony's Tire Services vehicle in one or more of, but not limited to, the following respects:

- (a) was operating the Tony's Tire Services vehicle at such a slow speed that it impeded or blocked the normal and reasonable movement of the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (b) failed to yield the right-of-way to the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (c) failed to maintain control of the Tony's Tire Services vehicle, in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (d) failed to keep and maintain a proper lookout in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (e) failed to otherwise operate the Tony's Tire Services vehicle in a careful and prudent manner in violation of the common

law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa.

3. Any of Nessa's aforementioned acts of negligence is a proximate cause of the damages sustained by James (individually) in the subject collision as described hereinafter.

4. As a result of the subject collision, James (individually) has been injured and seeks recovery for the following:

- (a) past physical and mental pain and suffering;
- (b) past loss of full mind and body;
- (c) past medical, hospital and medication expenses;
- (d) past loss of earnings;
- (e) future physical and mental pain and suffering;
- (f) future loss of full mind and body;
- (g) future medical, hospital and medication expenses;
- (h) future loss of earning capacity;
- (i) the loss of spousal consortium of his wife, Joanna, including her love, affection, aid, services, society and companionship;
- (j) loss of use of and damage to the Bergert vehicle.

**WHEREFORE**, plaintiff **James A. Bergert (individually)** requests:

**(1)** Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Anthony R. Nessa** for such

**compensatory** damages as will fully, fairly, and adequately compensate him for his losses.

(2) Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Anthony R. Nessa** for such for **punitive** damages in an amount being fair, just and reasonable and which will punish and discourage defendant **Anthony R. Nessa** and others from like conduct in the future;

(3) Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Anthony R. Nessa** for **interest** on this judgment in the maximum amount allowed by law and for the costs of this action.

(4) Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Anthony R. Nessa** for the **costs** of this action.

**DIVISION 3.**

**James A. Bergert (as Administrator of the Estate of Joanna J. Rizzo)**

**vs.**

**Anthony R. Nessa**

**COMES NOW** plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and for the Estate's cause of action against defendant **Anthony R. Nessa** states:

1. James incorporates by reference, as though fully stated herein, each and every allegation set forth in this petition.

2. At the time of the subject collision, Nessa was negligent in operating the Tony's Tire Services vehicle in one or more of, but not limited to, the following respects:

- (a) was operating the Tony's Tire Services vehicle at such a slow speed that it impeded or blocked the normal and reasonable movement of the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (b) failed to yield the right-of-way to the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (c) failed to maintain control of the Tony's Tire Services vehicle, in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (d) failed to keep and maintain a proper lookout in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (e) failed to otherwise operate the Tony's Tire Services vehicle in a careful and prudent manner in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa.



3. Any of Nessa's aforementioned acts of negligence is a proximate cause of the damages sustained by James as Administrator of the Estate of Joanna J. Rizzo in the subject collision as described hereinafter.

4. As a result of the subject collision, James as Administrator of the Estate of Joanna J. Rizzo has been injured and seeks recovery for the following:

- (a) Joanna's pre-death physical and mental pain and suffering;
- (b) Joanna's pre-death loss of full mind and body;
- (c) Joanna's past medical, hospital and medication expenses;
- (d) the loss of value to the Estate of Joanna J. Rizzo;
- (e) the present value of the services which Joanna would have performed for James, but for Joanna's death;
- (f) the present value of the amount of financial support which Joanna would have contributed to James but for Joanna's death;
- (g) the interest on the reasonable burial expenses of Joanna from the time of Joanna's death until the time when those expenses would be paid.

**WHEREFORE**, plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** requests:

(1) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant

**Anthony R. Nessa** for such **compensatory** damages as will fully, fairly, and adequately compensate the Estate for its losses.

(2) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Anthony R. Nessa** for such for **punitive** damages in an amount being fair, just and reasonable and which will punish and discourage defendant **Anthony R. Nessa** and others from like conduct in the future;

(3) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Anthony R. Nessa** for **interest** on this judgment in the maximum amount allowed by law and for the costs of this action.

(4) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Anthony R. Nessa** for the **costs** of this action.

**DIVISION 4.**

**James A. Bergert (individually)**

**vs.**

**Tony's Tire Services, Inc.**

**COMES NOW** plaintiff **James A. Bergert (individually)** and for his cause of action against defendant **Tony's Tire Services, Inc.**, states:

1. James incorporates by reference, as though fully stated herein, each and every allegation set forth in this petition.

2. At the time of the subject collision, Nessa was negligent in operating the Tony's Tire Services vehicle in one or more of, but not limited to, the following respects:

- (a) was operating the Tony's Tire Services vehicle at such a slow speed that it impeded or blocked the normal and reasonable movement of the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (b) failed to yield the right-of-way to the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (c) failed to maintain control of the Tony's Tire Services vehicle, in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (d) failed to keep and maintain a proper lookout in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (e) failed to otherwise operate the Tony's Tire Services vehicle in a careful and prudent manner in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa.

3. Any of Nessa's aforementioned acts of negligence is a proximate cause of the damages sustained by James (individually) in the subject collision as described hereinafter.

4. As a result of the subject collision, James (individually) has been injured and seeks recovery for the following:

- (a) past physical and mental pain and suffering;
- (b) past loss of full mind and body;
- (c) past medical, hospital and medication expenses;
- (d) past loss of earnings;
- (e) future physical and mental pain and suffering;
- (f) future loss of full mind and body;
- (g) future medical, hospital and medication expenses;
- (h) future loss of earning capacity;
- (i) the loss of spousal consortium of his wife, Joanna, including her love, affection, aid, services, society and companionship;
- (j) loss of use of and damage to the Bergert vehicle.

**WHEREFORE**, plaintiff **James A. Bergert (individually)** requests:

**(1)** Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Tony's Tire Services, Inc.** for such **compensatory** damages as will fully, fairly, and adequately compensate him for his losses.

(2) Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Tony's Tire Services, Inc.** for such for **punitive** damages in an amount being fair, just and reasonable and which will punish and discourage defendant **Tony's Tire Services, Inc.** and others from like conduct in the future;

(3) Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Tony's Tire Services, Inc.** for **interest** on this judgment in the maximum amount allowed by law and for the costs of this action.

(4) Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Tony's Tire Services, Inc.** for the **costs** of this action.

**DIVISION 5.**

**James A. Bergert (as Administrator of the Estate of Joanna J. Rizzo)**  
**vs.**  
**Tony's Tire Services, Inc.**

**COMES NOW** plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and for the Estate's cause of action against defendant **Tony's Tire Services, Inc.** states:

1. James incorporates by reference, as though fully stated herein, each and every allegation set forth in this petition.

2. At the time of the subject collision, Nessa was negligent in operating the Tony's Tire Services vehicle in one or more of, but not limited to, the following respects:

- (a) was operating the Tony's Tire Services vehicle at such a slow speed that it impeded or blocked the normal and reasonable movement of the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (b) failed to yield the right-of-way to the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (c) failed to maintain control of the Tony's Tire Services vehicle, in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (d) failed to keep and maintain a proper lookout in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (e) failed to otherwise operate the Tony's Tire Services vehicle in a careful and prudent manner in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa.

3. Any of Nessa's aforementioned acts of negligence is a proximate cause of the damages sustained by James as Administrator of the Estate of Joanna J. Rizzo in the subject collision as described hereinafter.

4. As a result of the subject collision, James as Administrator of the Estate of Joanna J. Rizzo has been injured and seeks recovery for the following:

- (a) Joanna's pre-death physical and mental pain and suffering;
- (b) Joanna's pre-death loss of full mind and body;
- (c) Joanna's past medical, hospital and medication expenses;
- (d) the loss of value to the Estate of Joanna J. Rizzo;
- (e) the present value of the services which Joanna would have performed for James, but for Joanna's death;
- (f) the present value of the amount of financial support which Joanna would have contributed to James but for Joanna's death;
- (g) the interest on the reasonable burial expenses of Joanna from the time of Joanna's death until the time when those expenses would be paid.

**WHEREFORE**, plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** requests:

(1) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Tony's**

**Tire Services, Inc.** for such **compensatory** damages as will fully, fairly, and adequately compensate the Estate for its losses.

(2) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Tony's Tire Services, Inc.** for such for **punitive** damages in an amount being fair, just and reasonable and which will punish and discourage defendant **Anthony R. Nessa** and others from like conduct in the future;

(3) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Tony's Tire Services, Inc.** for **interest** on this judgment in the maximum amount allowed by law and for the costs of this action.

(4) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Tony's Tire Services, Inc.** for the **costs** of this action.

**DIVISION 6**

**James A. Bergert (individually)**

**vs.**

**Farmers Mutual Hail Insurance Company of Iowa**

**COMES NOW** plaintiff **James A. Bergert (individually)** and for his cause of action against defendant **Farmers Mutual** states:

1. James incorporates by reference, as though fully stated herein, each and every allegation set forth in this petition.



2. At the time of the date of the subject collision, Nessa was negligent in operating the Tony's Tire Services vehicle in one or more of, but not limited to, the following respects:

- (a) was operating the Tony's Tire Services vehicle at such a slow speed that it impeded or blocked the normal and reasonable movement of the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (b) failed to yield the right-of-way to the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (c) failed to maintain control of the Tony's Tire Services vehicle, in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (d) failed to keep and maintain a proper lookout in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (e) failed to otherwise operate the Tony's Tire Services vehicle in a careful and prudent manner in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa.

3. Any of Nessa's aforementioned acts of negligence is a proximate cause of the damages sustained by James (individually) in the subject collision as described hereinafter.

4. As a result of the subject collision, James (individually) has been injured and seeks recovery for the following:

- (a) past physical and mental pain and suffering;
- (b) past loss of full mind and body;
- (c) past medical, hospital and medication expenses;
- (d) past loss of earnings;
- (e) future physical and mental pain and suffering;
- (f) future loss of full mind and body;
- (g) future medical, hospital and medication expenses;
- (h) future loss of earning capacity;
- (i) the loss of spousal consortium of his wife, Joanna, including her love, affection, aid, services, society and companionship;
- (j) loss of use of and damage to the Bergert vehicle.

**WHEREFORE**, plaintiff **James A. Bergert (individually)** requests:

**(1)** Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Farmers Mutual** for such **compensatory** damages as will fully, fairly, and adequately compensate him for his losses.

(2) Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Farmers Mutual** for **interest** on this judgment in the maximum amount allowed by law and for the costs of this action.

(3) Entry of judgment in favor of plaintiff **James A. Bergert (individually)** and against defendant **Farmers Mutual** for the **costs** of this action.

**DIVISION 7.**

**James A. Bergert (as Administrator of the Estate of Joanna J. Rizzo)**  
**vs.**  
**Farmers Mutual Hail Insurance Company of Iowa**

**COMES NOW** plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and for the Estate's cause of action against defendant **Farmers Mutual** states:

1. James incorporates by reference, as though fully stated herein, each and every allegation set forth in this petition.

2. At the time of the date of the subject collision, Nessa was negligent in operating the Tony's Tire Services vehicle in one or more of, but not limited to, the following respects:

- (a) was operating the Tony's Tire Services vehicle at such a slow speed that it impeded or blocked the normal and reasonable movement of the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;

- (b) failed to yield the right-of-way to the Bergert vehicle in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (c) failed to maintain control of the Tony's Tire Services vehicle, in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (d) failed to keep and maintain a proper lookout in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa;
- (e) failed to otherwise operate the Tony's Tire Services vehicle in a careful and prudent manner in violation of the common law of the State of Iowa and the relevant provisions of section 321 of the Code of Iowa.

3. Any of Nessa's aforementioned acts of negligence is a proximate cause of the damages sustained by **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** in the subject collision as described hereinafter.

4. As a result of the subject collision, **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** has been injured and seeks recovery for the following:

- (a) Joanna's pre-death physical and mental pain and suffering;
- (b) Joanna's pre-death loss of full mind and body;
- (c) Joanna's past medical, hospital and medication expenses;

- (d) the loss of value to the Estate of Joanna J. Rizzo;
- (e) the present value of the services which Joanna would have performed for James, but for Joanna's death;
- (f) the present value of the amount of financial support which Joanna would have contributed to James but for Joanna's death;
- (g) the interest on the reasonable burial expenses of Joanna from the time of Joanna's death until the time when those expenses would be paid.

**WHEREFORE**, plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** requests:

(1) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Farmers Mutual** for such **compensatory** damages as will fully, fairly, and adequately compensate the Estate for its losses.

(2) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Farmers Mutual** for **interest** on this judgment in the maximum amount allowed by law and for the costs of this action.

(3) Entry of judgment in favor of plaintiff **James A. Bergert as Administrator of the Estate of Joanna J. Rizzo** and against defendant **Farmers Mutual** for the **costs** of this action.

**DIVISION 8.**  
**(Jury Demand)**

**COME NOW** the plaintiffs by and through counsel Erik A. Luthens of Parrish-Sams Luthens Law, P.C. and demand a jury trial on all issues in the above-entitled action.

**PARRISH-SAMS LUTHENS LAW, P.C.**

by /s/ *Erik A. Luthens*

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**ATTORNEY FOR PLAINTIFFS**