

ANGELA ROBY, ADMINISTRATRIX OF THE
ESTATE OF MICHAEL ROBY, et. al.

PLAINTIFF

v.

**FIRST AMENDED COMPLAINT OF SCOTT STINSON, ADMINISTRATOR AND
PERSONAL REPRESENTATIVE OF THE ESTATE OF THOMAS F. STINSON, JR.**

CHARLES BARLOW

and

YELLOW CAB CO. OF LOUISVILLE, LLC

and

PROCARENT, INC.

Serve: Procarent, Inc.
545 S. 3rd Street, Suite 310
Louisville, KY 40202

and

INTERLOCK INDUSTRIES, INC.

Serve: Interlock Industries, Inc.
545 S. 3rd Street, Suite 310
Louisville, KY 40202

* * * * *

Plaintiff, Scott Stinson, as the Administrator and Personal Representative of the Estate of Thomas F. Stinson, Jr. ("Estate of Stinson"), states the following for his First Amended Complaint against the Defendants:

1. This lawsuit involves a motor vehicle collision in which four people died on or about Oct. 28, 2012.

2. Plaintiff, Estate of Stinson, filed its original complaint in Jefferson Circuit Court on Jan. 25, 2013.

3. This Court subsequently granted a motion consolidating the claims of Estate of Stinson into the above-captioned senior action, The Estate of Michael Roby, for the purposes of discovery and trial and to avoid inconsistent rulings of law and fact.

4. On information and belief, all other plaintiffs in the above-captioned consolidated matter, with the exception of Estate of Stinson, have reached settlements agreements with the Defendants and are in the process of dismissing their claims with prejudice pending final administrative matters and the exchange of releases and waivers with Defendants.

5. Decedent, Thomas F. Stinson, Jr., was at all times relevant hereto a resident of Jefferson County, Kentucky, residing at 2429 Bardstown Road, Apt. E, Louisville, Kentucky, 40205.

6. Plaintiff, Scott Stinson, has been appointed as the Administrator and Personal Representative of the Estate of Thomas F. Stinson, Jr. *See* Probate Case No. 12-P-005057, filed in Jefferson District Court on Nov. 20, 2012.

7. Defendant, Charles M. Barlow ("Barlow") was at all times relevant hereto a resident of Jefferson County, Kentucky, residing at 620 E. Burnett Ave., Louisville, Kentucky, 40208. Mr. Barlow is currently incarcerated as Inmate #2440571 at the Wabash Valley Correctional Facility, 6908 S. Old U.S. Highway 41, Carlisle, IN 47838, with a projected release date of Nov. 19, 2034.

8. Defendant, Yellow Cab Co. of Louisville, LLC (“Yellow Cab”) was at all times relevant hereto a limited liability company incorporated in Kentucky, with its principal place of business in Jefferson County, Kentucky.

9. Defendant, Procarent, Inc. (“Procarent”) was at all times relevant hereto a corporation incorporated in Kentucky, with its principal place of business in Jefferson County, Kentucky.

10. Defendant, Interlock Industries, Inc. (“Interlock”) was at all times relevant hereto a corporation incorporated in Kentucky, with its principal place of business in Jefferson County, Kentucky.

11. At all times mentioned, Defendants Yellow Cab, Procarent, and Interlock were the representative, agent, employee, joint venture, or alter ego of each of the other entities and in doing the things alleged herein were acting within the scope of its authority as such. Specifically, each Defendant was but an instrumentality or conduit of the other in the prosecution of a single joint venture, namely the promotion, maintenance, and furtherance of the “Yellow Cab” taxi service that is the subject of this litigation. Therefore, it would be inequitable for any Defendant to escape liability for an obligation incurred as much for that Defendant’s benefit as for the other.

12. The events that transpired herein occurred in Jefferson County, Kentucky, and in Floyd County, Indiana.

13. This court has jurisdiction over both the parties and the subject matter. Additionally, Jefferson Circuit Court is the appropriate venue for these proceedings.

FACTUAL BACKGROUND

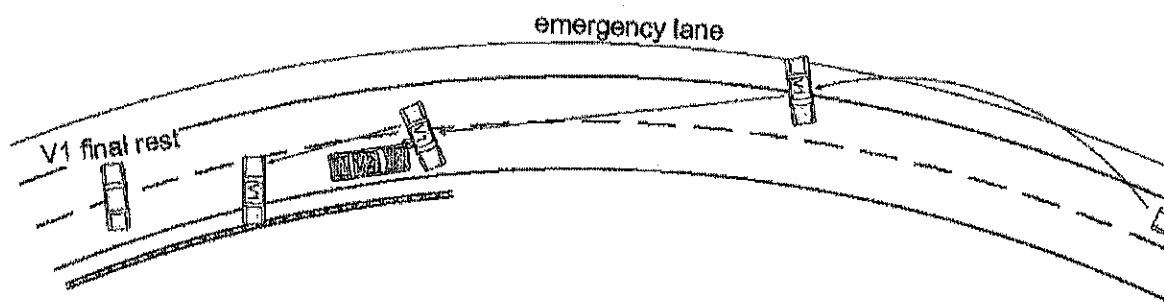
14. Defendant, Charles M. Barlow, was at all times relevant hereto a taxi cab driver for Yellow Cab, which in turn is managed and owned by Procarent and Interlock.

15. On or about Oct. 28, 2012, Barlow visited a variety of area taverns and retail establishments where he consumed multiple alcoholic beverages with three friends: Tara C. Hirsekorn, Michael W. Roby, and Laura L. Weigand.

16. Shortly before midnight, Barlow, Hirsekorn, Roby, and Weigand climbed into a Yellow Cab taxi, a four-door 2006 Ford Crown Victoria, and drove from Louisville, across the Ohio River into Indiana, and toward the Horseshoe Casino.

17. While traveling along Ind. 111, in Floyd County, Indiana, Barlow lost control of the Yellow Cab taxi, crossed the centerline of the highway at a rate of speed in excess of 80 miles per hour, and collided with a Cadillac Brougham driven by the decedent, Thomas F. Stinson, Jr..

18. The violent crash is depicted in the below reconstruction from the Floyd County Sheriff's Department, where Barlow's Yellow Cab taxi is Vehicle 1 and Stinson's car is Vehicle 2:



19. The impact of the crash, at a combined speed of more than 100 miles per hour, destroyed both vehicles and scattered plastic, metal, glass, and other debris in all directions, some of it more than 50 yards from the point of impact.

20. As a result of the impact, the Yellow Cab taxi cab burst into flames, killing passengers Hirsekorn, Roby, and Weigand. The driver, Barlow, survived.

21. Additionally, Mr. Stinson was gravely injured in the crash but initially survived.

22. Mr. Stinson was conscious when pulled from his vehicle. After waiting for help to arrive, Mr. Stinson was flown by helicopter to University of Louisville Hospital. Unfortunately, Mr. Stinson was later pronounced dead.

23. Defendant Barlow admitted to police that he had been drinking the night of the crash, and toxicology reports showed his blood-alcohol content of 0.17, which is twice the legal limit in Kentucky and Indiana.

24. Records from the Indiana Department of Correction show Barlow was convicted of felony charges in relation to the crash, including operation of a motor vehicle while intoxicated causing death, and reckless homicide.

25. Barlow became a Yellow Cab taxi driver on or about September 12, 2012, just weeks before the crash that is the subject of this lawsuit.

26. Yellow Cab and its related corporate entities, Procarent and Interlock, required new drivers to provide specific information about their criminal and driving backgrounds, and a "Leasing Checklist" for all new lessees of vehicles had to be approved by both a safety director and a general manager employed by Defendants.

27. Despite numerous shortcomings and omissions in Barlow's Leasing Checklist, including his failure to meet Defendants' criteria for driving record, Defendants approved Barlow's lease agreement.

28. Additionally, records produced by Defendants show that the safety director and general manager failed to sign Barlow's Leasing Checklist, in violation of Defendants' safety and leasing policies.

**COUNT I: NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS
(Charles Barlow)**

29. Plaintiff realleges and reincorporates each and every allegation above as if fully set forth herein.

30. Barlow owed a duty to Plaintiff to maintain, control and operate his Yellow Cab motor vehicle in such a way that it would not cause injuries to Plaintiff.

31. Barlow breached that duty when he negligently operated and controlled the vehicle as described above, causing it to strike the vehicle driven by Stinson, and resulting in Stinson's death.

32. By operating the vehicle while intoxicated and at an excessive speed, Barlow engaged in negligent, grossly negligent, and reckless conduct for which punitive damages are warranted.

33. As a direct and proximate cause of the acts and conduct of Barlow, Plaintiff was severely injured, experienced extreme pain and suffering, and ultimately died from his injuries.

34. Barlow is liable to Plaintiff Stinson for all damages flowing from his conduct, including but not limited to punitive damages, medical expenses, pain and suffering, fear, anxiety and emotional distress, permanent impairment, loss of future wages, wrongful death, and funeral expenses.

COUNT II: NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS
(Yellow Cab, Procarent and Interlock)

35. Plaintiff realleges and reincorporates each and every allegation above as if fully set forth herein.

36. Defendants Yellow Cab, Procarent and Interlock, at all times relevant hereto, owned the taxi cab driven by Barlow the night of the wreck.

37. Steven Coston, president of Procarent since January 2012, directly supervised the safety manager, general manager, and other key managers and employees at Yellow Cab at all times relevant to the subject matter of this lawsuit.

38. Coston reports directly to Mike Mackin, CEO of Procarent and an owner and board member of Interlock. Coston testified in his deposition that Mike Mackin is closely involved in the day-to-day business operations of Procarent.

39. At the time of Barlow's hiring, Coston reported directly to Craig Mackin, then-CEO of Procarent and also a board member of Interlock. Coston testified that Craig Mackin held a role at the time that is similar to the role currently held by Mike Mackin.

40. Procarent and Interlock, through their managers and owners, including but not limited to Steven Coston, Mike Mackin and Craig Mackin, exerted substantial control over the policies, procedures, and other business practices of Yellow Cab.

41. Yellow Cab, Procarent and Interlock (hereinafter "the Yellow Cab defendants") owed a duty to the public, and to Plaintiff in particular, to maintain, control and operate their motor vehicles, as well as all employees and or independent contractors operating their vehicles, in such a way that the vehicles would not cause injuries to the general public and to Plaintiff.

42. The Yellow Cab defendants owed a duty to the public, and to Plaintiff in particular, to make sure their drivers were reasonably safe in the operation of Yellow Cab taxis, and did not operate the taxis in a manner that is reckless, negligent, grossly negligent, or careless.

43. The Yellow Cab defendants breached their duty to the public and to Plaintiff when they failed to properly monitor their taxi cabs, and allowed Barlow to drive the vehicle at excessive speeds and under the influence of alcohol as described above.

44. As a direct and proximate cause of the acts and conduct of the Yellow Cab defendants, Plaintiff was severely injured, experienced extreme pain and suffering, and ultimately died from his injuries.

45. The Yellow Cab defendants are liable to Plaintiff Stinson for all damages flowing from their conduct, including but not limited to punitive damages, medical expenses, pain and suffering, fear, anxiety and emotional distress, permanent impairment, loss of future wages, wrongful death, and funeral expenses.

**COUNT III: NEGLIGENT/GROSSLY NEGLIGENT/RECKLESS
ENTRUSTMENT OF VEHICLE
(Yellow Cab, Procarent and Interlock)**

46. Plaintiff realleges and reincorporates each and every allegation above as if fully set forth herein.

47. The Yellow Cab defendants entrusted to Barlow the taxi cab vehicle that Barlow was driving the night of the wreck, and which was part of the fleet that it owned and operated.

48. At the time the Yellow Cab defendants entrusted the vehicle to Barlow, they knew or should have known that Barlow would operate the vehicle in a way that was reckless, careless, negligent and/or grossly negligent.

49. The Yellow Cab defendants failed to track and monitor the taxi cab vehicle as Barlow drove it across state lines, at a high rate of speed, in a manner that was reckless, negligent, grossly negligent and that resulted in the deaths of four people including Plaintiff Stinson.

50. The Yellow Cab defendants acted negligently when they approved a vehicle lease for Barlow despite a history of criminal behavior and reckless driving, and despite a failure to comply with their own internal safety and leasing guidelines as described above.

51. As a direct and proximate cause of the Yellow Cab defendants' negligent entrustment and leasing of their taxi cab to Barlow, Plaintiff was severely injured, experienced extreme pain and suffering, and ultimately died from his injuries.

52. The Yellow Cab defendants are liable to Plaintiff Stinson for all damages flowing from their conduct, including but not limited to punitive damages, medical expenses, pain and suffering, fear, anxiety and emotional distress, permanent impairment, loss of future wages, wrongful death, and funeral expenses.

**COUNT IV: VICARIOUS LIABILITY, RESPONDEAT SUPERIOR,
OSTENSIBLE AGENCY AND/OR AGENCY
(Yellow Cab, Procarent and Interlock)**

53. Plaintiff realleges and reincorporates each and every allegation above as if fully set forth herein.

54. At all times relevant to this case, the owners, directors, officers, operators, administrators, employees, agents, and drivers, including but not limited to Defendant Barlow, were employed by and/or acting (either as an actual agent or an apparent or implied agent) on behalf of the Yellow Cab defendants.

55. At all relevant times to this Complaint, the owners, directors, officers, operators, administrators, employees, agents and drivers, including but not limited to Defendant Barlow, acted within their respective capacities and scopes of employment for the Yellow Cab defendants.

56. The owners, directors, officers, operators, administrators, employees, agents and drivers, including but not limited to Defendant Barlow, negligently, grossly negligently and/or recklessly, directly and proximately caused personal injury and death to Plaintiff, including both acts of omission and acts of commission.

57. The Yellow Cab defendants are vicariously liable for the negligent acts of their employees and agents (whether actual, apparent or implied), including but not limited to Defendant Barlow, under the doctrine of respondeat superior.

58. As a direct and proximate result of the negligence of the owners, directors, officers, operators, administrators, employees, agents and drivers for which Yellow Cab is liable, Plaintiff sustained the injuries and damages as outlined above.

59. The Yellow Cab defendants are liable to Plaintiff Stinson for all damages flowing from their conduct, including but not limited to punitive damages, medical expenses, pain and suffering, fear, anxiety and emotional distress, permanent impairment, loss of future wages, wrongful death, and funeral expenses.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

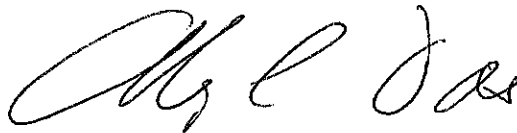
i. Judgment against the Defendants for damages, including but not limited to all compensatory damages, medical expenses, pain, suffering, humiliation, embarrassment, fear,

anxiety, lost wages, loss of life, funeral expenses and all other amounts which will fairly and reasonably compensate Plaintiff for the damages incurred as a result of the Defendant's conduct;

- ii. All costs herein expended;
- iii. A trial by jury;
- iv. All attorney fees and costs;
- v. Punitive damages; and
- vi. Any and all other relief to which Plaintiff may appear entitled, including the opportunity to amend this Complaint if necessary.

Respectfully submitted,

JONES WARD PLC



Alex C. Davis
Lawrence L. Jones II
John M. Doyle
Marion E. Taylor Building
312 S. Fourth Street, Sixth Floor
Louisville, Kentucky 40202
Tel. (502) 882-6000
Fax (502) 587-2007
Counsel for Plaintiff