

SUPREME COURT OF PRINCE EDWARD ISLAND

(General Section)

BETWEEN:

THE ESTATE OF ELIZABETH A. SOVIS by her executor, EDMUND A. AUNGER, AND  
EDMUND A. AUNGER

PLAINTIFFS

AND:

CLARENCE ARNOLD MOASE

DEFENDANT

STATEMENT OF DEFENCE

1. Except as hereinafter expressly admitted, the Defendant specifically denies each and every allegation contained in the Statement of Claim as if set forth and specifically denied herein. The Defendant denies that the Plaintiffs are entitled to the relief claimed in paragraph 1 of the Statement of Claim, or to any relief whatsoever.

2. The Defendant admits that he was operating his vehicle while impaired when that vehicle was involved in an accident with Elizabeth Sovis, while she was riding a bicycle on Route 13 at or near Hunter River, Prince Edward Island on July 14, 2012 (the "Accident").

3. The Defendant says that prior to the Accident he had been served alcohol by Jackson Holdings Inc. doing business as Blue Fin Restaurant & Lounge and/or The Back Rafter. After consuming that alcohol, the Defendant drove his vehicle and was involved in the Accident. The Defendant says the negligence or other fault of Jackson Holdings Inc., its employees or agents caused or contributed to the Accident, particulars of which include serving alcohol in the circumstances without taking reasonable steps to ensure that the Defendant would drive while impaired, and such further negligence or other fault as may become evident.

4. The Defendant says Elizabeth Sovis may have caused or contributed to her own injuries and/or death through failure to exercise reasonable skill and care for her own safety, and that the damages claimed must be reduced as a result.

5. The Defendant says that any cause of action surviving for the benefit of the Plaintiff Estate is limited to actual pecuniary loss as specified in s. 5 of the *Survival of Actions Act*, R.S.P.E.I. 1988, c. S-11, as amended. Further, the Defendant says that the Plaintiff Estate's claims for compensation and/or damages are limited to that recoverable under the *Fatal Accidents Act*, R.S.P.E.I. 1988, c. F-5, as amended.

6. The Defendant requires the Plaintiffs to prove any injuries, losses or other damages alleged to be resulting from the Accident.

7. With respect to the personal injury claim of Edmund Auger, the Defendant says that:

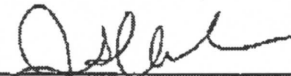
- (a) any injury, loss or damage suffered by the Plaintiff Edmund Auger is "*minor personal injury*" within the meaning of s. 254.1 of the *Insurance Act*, R.S.P.E.I. 1988, c. I-4 as amended;
- (b) any injury, loss or damage suffered by the Plaintiff Edmund Auger was caused or contributed to by pre-existing, intervening or subsequent causes for which the Defendant is not liable;
- (c) any injury, loss or damage suffered by the Plaintiff Edmund Auger was not reasonably foreseeable, and the Defendant is not liable therefore; and/or
- (d) the Plaintiff Edmund Auger did not take the appropriate modalities, treatment and/or retraining and/or has otherwise failed to mitigate.

8. The Defendant claims relief to the extent of all benefits and/or payments to which the Plaintiffs or the dependants are or were entitled under any contract of insurance and/or legislation, including (but not limited to) claiming relief to the extent of any and all benefits available pursuant to section B of any automobile insurance policy.

9. The Defendant pleads and intends to rely upon all of the provisions of the *Insurance Act, supra*, as amended, the *Highway Traffic Act*, R.S.P.E.I. 1988 c. H-5, as amended, the *Fatal Accidents Act, supra*, as amended, the *Survival of Actions Act, supra*, as amended, and the *Contributory Negligence Act*, R.S.P.E.I. 1988, c. C-21.

10. The Defendant respectfully requests that the Plaintiffs' action against him be dismissed with costs payable to the Defendant.

DATED at Charlottetown the 27<sup>th</sup> day of August, 2013



JANET M.R. CLARK

whose address for service is:

Stewart McKelvey

65 Grafton Street

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Solicitor for the Defendant, Clarence Arnold  
Moase

TO: Robert Tocchet and  
Paul W. Bender  
CAMPBELL LEA  
15 Queen Street, P.O. Box 429  
Charlottetown, PE C1A 7K7  
Solicitor for the Plaintiffs

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AUNGER, AND EDMUND A. AUNGER

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SUPREME COURT OF P.E.I.

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Proceeding Commenced At  
Charlottetown, Prince Edward Island

STATEMENT OF DEFENCE

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SM4261.347/JMRC/