

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ANTHONY BURGOS

Plaintiff,

v.

PENN LINE SERVICE, INC.,
PENN LINE CONSTRUCTION CORPORATION,
PENN LINE CORPORATION,
TOWNSHIP OF PINE,
ALLEGHENY COUNTY,
PENNSYLVANIA TURNPIKE COMMISSION,
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,
JOHN DOES (1-10),
ABC CORPORATIONS (1-10)

Defendants.

CIVIL DIVISION

JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT

Submitted on behalf of:

Plaintiff, Regina Burgos as Guardian of the Person of Anthony Burgos, Incapacitated

Counsel of Record for this Party:

Robert J. Mongeluzzi, Esquire
Pa. ID#: 36283

David L. Kwass, Esquire
Pa. ID#: 65856

Elizabeth A. Bailey, Esquire
Pa. ID#: 316689

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.
One Liberty Place
52nd Floor
1650 Market Street
Philadelphia, Pa 19103
(215) 496-8282
Facsimile: (215) 496-0999

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.

BY: ROBERT J. MONGELUZZI/DAVID L.

KWASS/ELIZABETH A. BAILEY

IDENTIFICATION NO.: 36283/65856/316689

52ND FLOOR

1650 MARKET STREET

PHILADELPHIA, PA 19103

(215) 496-8282

Attorneys for Plaintiffs

ANTHONY BURGOS

913 Hillboard Avenue

Erie, PA 16505

**ALLEGHENY COUNTY COURT
OF COMMON PLEAS**

Plaintiff,

v.

PENN LINE SERVICE, INC.

300 Scottdale Avenue

Scottdale, PA 15683

And

PENN LINE CONSTRUCTION

CORPORATION

300 Scottdale Avenue

Scottdale, PA 15683

And

PENN LINE CORPORATION

300 Scottdale Avenue

Scottdale, PA 15683

And

TOWNSHIP OF PINE

Municipal Building

230 Pearce Mill Road

Wexford, PA 15090

And

ALLEGHENY COUNTY
Allegheny County Law Department
445 Fort Pitt Boulevard #300
Pittsburgh, PA 15219

And

PENNSYLVANIA TURNPIKE
COMMISSION
700 South Eisenhower Boulevard
Middletown, PA 17057

And

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION
Office of Chief Counsel
100 Lackawanna Avenue
Scranton, PA, 18503

And

COMMONWEALTH OF PENNSYLVANIA
Office of the Attorney General
Strawberry Square, 16th Floor
Harrisburg, PA 17120

And

JOHN DOES (1-10)

And

ABC CORPORATIONS (1-10)

Defendants.

NOTICE	AVISO
<p>"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.</p> <p>"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.</p> <p><u>IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.</u></p>	<p>"Le han demandado en corte. Si usted quiere defenderse contra las demandas nombradas en las páginas siguientes, tiene veinte (20) días, a partir de recibir esta demanda y la notificación para entablar personalmente o por un abogado una comparecencia escrita y también para entablar con la corte en forma escrita sus defensas y objeciones a las demandas contra usted. Se avisa que si usted no se defiende, el caso puede continuar sin usted y la corte puede incorporar un juicio contra usted sin previo aviso para conseguir el dinero demandado en el pleito o para conseguir cualquier otra demanda o alivio solicitados por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.</p> <p>USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE ABOGADO (O NO TIENE DINERO SUFFICIENTE PARA PAGAR A UN ABOGADO), VAYA EN PERSONA O LLAME POR TELEFONO LA OFICINA NOMBRADA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASSISTENCIA LEGAL. <u>ESTA OFICINA PUEDE PROPORCIONARLE LA INFORMACION SOBRE CONTRATAR A UN ABOGADO.</u></p> <p><u>SI USTED NO TIENE DINERO SUFFICIENTE PARA PAGAR A UN ABOGADO, <u>ESTA OFICINA PUEDE PROPORCIONARLE INFORMACION SOBRE AGENCIAS QUE OFRECEN SERVICIOS LEGALES A PERSONAS QUE CUMPLEN LOS REQUISITOS PARA UN HONORARIO REDUCIDO O NINGUN HONORARIO.</u></u></p>
<p>ALLEGHENY COUNTY BAR ASSOCIATION LAWYER REFERRAL SERVICE 400 Koppers Building, 436 Seventh Avenue Pittsburgh, Pennsylvania 15219 (412) 261-6161"</p>	<p>ALLEGHENY COUNTY BAR ASSOCIATION LAWYER REFERRAL SERVICE 400 Koppers Building, 436 Seventh Avenue Pittsburgh, Pennsylvania 15219 (412) 261-6161</p>

COMPLAINT – CIVIL ACTION

1. Plaintiff, Anthony Burgos, is an adult individual residing at 913 Hillboard Avenue Erie, PA 16505.
2. Defendant, Penn Line Service, Inc. ("Penn Line Service"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business at the above-captioned address, which purposely established significant contacts in Pennsylvania and which, at all relevant times, engaged in substantial, continuous, regular and systematic business in the County of Allegheny in the Commonwealth of Pennsylvania.

3. At all relevant times, Defendant Penn Line Service was acting by and through its employees, servants and agents, acting within the course and scope of their employment, service and agency.

4. Defendant, Penn Line Construction Corporation (“Penn Line Construction”), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business at the above-captioned address, which purposely established significant contacts in Pennsylvania and which, at all relevant times, engaged in substantial, continuous, regular and systematic business in the County of Allegheny in the Commonwealth of Pennsylvania.

5. At all relevant times, Defendant Penn Line Construction was acting by and through its employees, servants and agents, acting within the course and scope of their employment, service and agency.

6. Defendant, Penn Line Corporation, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business at the above-captioned address, which purposely established significant contacts in Pennsylvania and which, at all relevant times, engaged in substantial, continuous, regular and systematic business in the County of Allegheny in the Commonwealth of Pennsylvania.

7. At all relevant times, Defendant Penn Line Corporation was acting by and through its employees, servants and agents, acting within the course and scope of their employment, service and agency.

8. For purposes of this Complaint, Defendants, Penn Line Service, Inc., Penn Line Construction Corporation, and Penn Line Corporation are referred to as “Penn Line Defendants.”

9. Defendant, Township of Pine (“Pine Township”), is a municipality in the Commonwealth of Pennsylvania, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with an address for service at the above-captioned address.

10. At all relevant times, Defendant Pine Township was acting by and through its employees, servants and agents, acting within the course and scope of their employment, service and agency.

11. Defendant, Allegheny County, is a county in the Commonwealth of Pennsylvania with an address for service at the above-captioned address.

12. At all relevant times, Defendant Allegheny County was acting by and through its employees, servants and agents, acting within the course and scope of their employment, service and agency.

13. Defendant, Pennsylvania Turnpike Commission (“Penn Turnpike”), is a political subdivision of the Commonwealth of Pennsylvania, with an address for service at the above-captioned address.

14. At all relevant times, Defendant Penn Turnpike was acting by and through its employees, servants and agents, acting within the course and scope of their employment, service and agency.

15. Defendant, Pennsylvania Department of Transportation (“PennDOT”), is a political subdivision of the Commonwealth of Pennsylvania, with an address for service at the above-captioned address.

16. At all relevant times, Defendant PennDOT was acting by and through its employees, servants and agents, acting within the course and scope of their employment, service and agency.

17. Defendant, Commonwealth of Pennsylvania (“Commonwealth”) is a governmental entity with an address for service at the above-captioned address.

18. At all relevant times, Defendant Commonwealth was acting by and through its employees, servants and agents, acting within the course and scope of their employment, service and agency.

19. At all relevant times, Defendant Pine Township, Defendant Allegheny County, Defendant Penn Turnpike, Defendant PennDOT, and Defendant Commonwealth (collectively “Commonwealth Defendants”) were responsible for the property, including the highway safety devices, at Mile Marker 33 on I-76, the Pennsylvania Turnpike, in Pine Township, Allegheny County, Pennsylvania.

20. Defendants, John Does (1-10), are currently unknown individuals responsible for planning, designing, installing, maintaining and/or repairing the guardrail located at and along Mile Marker 33.

21. Defendants, ABC Corporations (1-10) are corporations or other business entities which were responsible for planning, designing, installing, maintaining and/or repairing the guardrail located at and along Mile Marker 33.

22. At all times relevant hereto, Defendants ABC Corporations (1-10) acted by and through their agents, servants, workmen, and/or employees acting in the scope and course of their employment and/or to further the business interests of Defendants ABC Corporations (1-10)

23. Pursuant to Pennsylvania Rule of Civil Procedure 2005, Defendants John Does (1-10) and ABC Corporations (1-10) are currently unidentified, fictitious defendants added Doe designated to this action where their actual name/identity is unknown despite a reasonable and diligent search.

24. A reasonable and diligent search was conducted to determine the actual names/identities of John Does (1-10) and ABC Corporations (1-10).

25. Plaintiffs reserve the right to amend this Complaint and name said unknown individuals and/or entities, as aforementioned, as defendants pursuant to Pennsylvania Rules of Civil Procedure 2005 and 1033.

26. Prior to and including April 10, 2018, the Commonwealth Defendants, Penn Line Defendants, John Does (1-10), and/or ABC Corporations (1-10) were responsible for planning, designing, installing, maintaining and/or repairing the guardrail located at and along Mile Marker 33.

27. On or about April 10, 2018, Plaintiff Anthony Burgos was operating a 2004 Nissan Maxima while returning from a family trip to North Carolina. Plaintiff's girlfriend, Carrie Wilson, and their two minor children were also in the vehicle.

28. At approximately 5:23 a.m., while driving west on I-76 near Mile Marker 33, the Maxima drove over black ice, causing Mr. Burgos to lose control of the vehicle. The Maxima then struck the guardrail running along the right hand side of the Turnpike near Mile Marker 33.

29. Guardrails are longitudinal roadside safety barriers designed to protect motorists and reduce collision severity by preventing vehicles from veering off the roadway.

30. When properly installed, in general, guardrails are affixed to the side of the roadway using a single post design, as pictured below.



31. The guardrail at Mile Marker 33 was improperly installed with a double post, which prevented the guardrail from operating as it was designed and intended.



Photograph of the accident site, September 2014, with double post circled in red.

32. Use of a double post, like that at Mile Marker 33, can alter the intended behavior of the guardrail, negatively affecting the guardrail's designed crash dynamics and rendering the guardrail unreasonably dangerous in the event of vehicle impact.

33. In this April 2018 accident, as a result of the double post installation, rather than diverting safely away from the vehicle after impact, the guardrail speared and drove through the passenger compartment of the Maxima, crushing Mr. Burgos's right leg.

34. Mr. Burgos was extracted from the vehicle by fire rescue personnel and transported by air ambulance to UPMC Presbyterian Hospital in Pittsburgh, Pennsylvania.

35. As a direct and proximate result of Defendants' conduct, Mr. Burgos sustained severe and permanent injuries, including partial amputation of Mr. Burgos' right leg; hip and pelvis fractures requiring hardware and external fixation; revision surgeries; bone infections requiring follow up medical remediation; and psychological trauma.

36. As a further result of Defendants' conduct, Mr. Burgos has been caused to incur expenses for necessary and reasonable medical treatment.

37. As a further result of Defendants' conduct, Mr. Burgos will continue to require medical care for his injuries indefinitely into the future.

38. As a further result of the Defendants' conduct, Mr. Burgos has suffered and will continue to suffer severe physical pain, disability, mental anguish, embarrassment and humiliation, some or all of which are permanent in nature.

39. As a further result of the Defendants' conduct, Mr. Burgos has suffered a loss of earnings in his employment and an impairment of his earning capacity.

40. Defendants' conduct increased the risk of harm and/or was a factual cause and/or was a substantial factor in causing Mr. Burgos' injuries.

COUNT I – NEGLIGENCE
PLAINTIFF v. COMMONWEALTH DEFENDANTS, PENN LINE DEFENDANTS,
JOHN DOES (1-10), and ABC CORPORATIONS (1-10)

41. Plaintiff incorporates by reference all preceding paragraphs as if set forth here fully.

42. With respect to the Commonwealth Defendants in this matter, their liability is premised upon 42 Pa.C.S. § 8522(b)(4) Commonwealth real estate, highways and sidewalks.

43. The injuries sustained by Anthony Burgos were proximately caused by the joint and/or several negligence of the Commonwealth Defendants, Penn Line Defendants, John Does (1-10), and ABC Corporations (1-10) both generally and in the following respects:

- a. Improperly planning, designing, installing, and maintaining the subject guardrail;
- b. Utilizing improper assembly and installation techniques in installing the subject guardrail;
- c. Utilizing substandard and/or nonstandard parts in installing the subject guardrail;
- d. Utilizing an unsafe and defective double post design in installing the subject guardrail;
- e. Failing to comply with the guardrail manufacturer's instructions with respect to proper guardrail installation;
- f. Failing to contact the guardrail manufacturer to obtain information about the use of double post in guardrail installation
- g. Failing to perform engineering analyses of the impact of the use of a double post in the guardrail installation;

- h. Failing to consider the possibility of increased crash severity in the use of the a double post in the guardrail installation;
- i. Failing to perform crash tests on a double post guardrail system prior to installation on Commonwealth highways;
- j. Failing to investigate whether any engineering or crash testing had been done on guardrail systems utilizing a double post;
- k. Failing to consider the impact of the double post on the guardrail's crash dynamics;
- l. Failing to consider alternative designs to the guardrail system, including use of a single post instead of a double post;
- m. Failing to recognize that in a highway speed crash, the double post installation of the subject guardrail would cause the device to dangerously buckle and snap;
- n. Failing to maintain and/or identify the danger of the double post installation;
- o. Failing to remove or otherwise make safe the double post installation;
- p. Failing to follow acceptable guardrail installation and maintenance standards;
- q. Negligently hiring and retaining an unqualified installation contractor;
- r. Failing to supervise the installation contractor;
- s. Failing to adopt and enforce installation standards and guidelines;
- t. Failing to adopt and enforce adequate installation standards and guidelines; and

- u. Failing to take due care under the circumstances.
44. As a result of the Defendants' negligence, Anthony Burgos sustained devastating personal injuries and damages, as discussed more fully above.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants in an amount in excess of Thirty-Five Thousand Dollars (\$35,000.00), including delay damages, pursuant to Pa.R.C.P. 238, interest and allowable costs of suit and brings this action to recover the same.

COUNT II – STRICT PRODUCTS LIABILITY
PLAINTIFF v. PENN LINE DEFENDANTS, JOHN DOES (1-10), and ABC
CORPORATIONS (1-10)

45. Plaintiff incorporates by reference all preceding paragraphs as if set forth here fully.

46. Penn Line Defendants, John Does (1-10), and ABC Corporations (1-10), by and through their agents, servants, workers, contractors, designers, assemblers, manufacturers, sellers, suppliers and/or distributors, are strictly liable under §402(A) of the Restatement (Second) of Torts because:

- a. Defendants are in the business of designing, assembling, manufacturing, distributing, selling and/or supplying highway guardrails systems such as the guardrail system involved in the accident described above;
- b. Defendants marketed and/or placed the guardrail system involved in the subject accident into the general stream of commerce;
- c. The guardrail system was expected to and was encountered by motorists, including Plaintiff, without substantial change in the condition in which it

was designed, assembled, manufactured, distributed, sold and/or supplied by Penn Line Defendants;

- d. The guardrail system was distributed, sold and/or supplied by Defendants defectively designed in that the double post design and installation altered the guardrail crash dynamics and increased the severity of Mr. Burgos' crash and injuries;
- e. The product was in a defective condition as: (1) the danger contained therein is unknowable and unacceptable to the average or ordinary consumer; and/or (2) a reasonable person would conclude that the probability and seriousness of the harm caused by the product outweighed the burden or costs of taking precautions;
- f. The product was in a defective condition as it came with absolutely no warnings or information or inadequate warnings or information regarding the dangers and risks associated with the product.

47. The defective condition of the product caused Mr. Burgos' catastrophic injuries and death.

48. Penn Line Defendants, John Does (1-10), and ABC Corporations (1-10) by and through their agents, servants, workmen, contractors, designers, assemblers, manufacturers, sellers, suppliers and distributors, are strictly liable under §402(A) of the Restatement (Second) of Torts, and pursuant to Tincher v. Omega Flex, 104 A.3d 328 (Pa. 2014) and its progeny by:

- a. Assembling, manufacturing, selling, supplying and distributing a guardrail system with an improper post design;

- b. Assembling, manufacturing, selling, supplying and distributing a guardrail system that was not crashworthy;
- c. Assembling, manufacturing, selling, supplying and distributing a product in a defective condition;
- d. Assembling, manufacturing, selling, supplying and distributing a product that was unreasonably dangerous to motorists;
- e. Assembling, manufacturing, selling, supplying and distributing a product which was not reasonably fit, suitable, or safe for its intended and represented purpose;
- f. Assembling, manufacturing, selling, supplying and distributing a product which lacked necessary safety features to protect motorists of said product;
- g. Assembling, manufacturing, selling, supplying and distributing a product without simple and cost-effective safety devices;
- h. Failing to properly and reasonably manufacture, assemble, test and sell the guardrail system to ensure it was installed to properly protect passing motorists;
- i. Manufacturing, selling, supplying and distributing a guardrail system that when used as intended would cause serious injury to motorists;
- j. Failing to provide adequate warnings to the ultimate users of the guardrail about the significant risks associated with its use;

- k. Failing to provide adequate warnings to the ultimate users of the guardrail about the significant risk of buckling and other dangers and risks associated with its use;
- l. Failing to provide warnings to the ultimate users of the guardrail about the significant risk of buckling and other dangers and risks associated with its use;
- m. Designing, assembling, manufacturing, selling, supplying and distributing a product that was unreasonably dangerous to its intended and foreseeable users;
- n. Designing, assembling, manufacturing, selling, supplying and/or distributing a product was unreasonably dangerous for its intended and foreseeable uses;
- o. Designing, assembling, manufacturing, selling, supplying and distributing a product that was not safe for all of its intended and represented purposes;
- p. Designing, assembling, manufacturing, selling, supplying and distributing a product with inadequate or inappropriate materials;
- q. Failing to give any warnings and/or instructions of the possible risks of using the product that may be required, or that are created by inherent limitations in the safety of such use;
- r. Designing, assembling, manufacturing, selling, supplying and distributing a product, the risks of which outweigh its utility; and

s. Designing, assembling, manufacturing, selling, supplying and distributing a product where the danger contained therein is unknowable and unacceptable to the ordinary consumer.

49. By conducting themselves as described above, Penn Line Defendants, John Does (1-10), and ABC Corporations (1-10) were a substantial factor in, a factual cause of, and/or increased the risk of Mr. Burgos' injuries.

50. By reason of the breach of duties, pursuant to §402(A) of the Restatement (Second) of Torts and pursuant to Tincher v. Omega Flex, 104 A.3d 328 (Pa. 2014) and its progeny, by Penn Line Defendants, John Does (1-10), and ABC Corporations (1-10), by and through their agents, servants, workmen, contractors, suppliers, distributors and/or employees, Mr. Burgos was caused to sustain serious, catastrophic and permanent injuries as set forth above.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants in an amount in excess of Thirty-Five Thousand Dollars (\$35,000.00), including delay damages, pursuant to Pa.R.C.P. 238, interest and allowable costs of suit and brings this action to recover the same.

Respectfully submitted,

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.

By: /s/ Robert J. Mongeluzzi
ROBERT J. MONGELUZZI
DAVID L. KWASS
ELIZABETH A. BAILEY

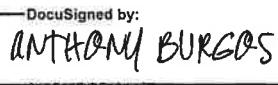
Attorneys for Plaintiff

Date: July 12, 2019

VERIFICATION

I, ANTHONY BURGOS, hereby verify that the facts set forth in the within Complaint are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of the 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

DATED: 7/12/19

DocuSigned by:

ANTHONY BURGOS
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