

FILED
OCT 05 2008
BARBARA DUNN, CIRCUIT CLERK
BY _____ D.C.

**IN THE CIRCUIT COURT FOR
THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI
at Jackson, Mississippi**

PAUL STEVEN POGUE, Individually;
Paul Steven Pogue as the Administrator
of the ESTATE OF DANIEL MARK POGUE;
SUSAN JANE JOINER;
JOHN THOMAS DEDOUSIS, SR.;
MADELINE MAIO DEDOUSIS;
and JOHN THOMAS DEDOUSIS, JR.

PLAINTIFFS

v.

Civil Action Number: 257-09835 CIV

KAREN C. IRBY
and
STUART M. IRBY

DEFENDANTS

AMENDED COMPLAINT

COME NOW the below named Plaintiffs, acting by and through their undersigned attorney of record, and bring this amended complaint against the below named Defendants, and for cause of action would respectfully state and show unto this Honorable Court the following, to-wit:

PARTIES

1.

Plaintiff PAUL STEVEN POGUE is an adult resident citizen of DeSoto County, Mississippi, who resides at 8475 Shady Oaks Cove in Olive Branch, Mississippi 38654. Plaintiff Paul Steven Pogue is the brother of Daniel Mark Pogue, Deceased, and brings this action as a Wrongful Death beneficiary of Daniel Mark Pogue pursuant to the provisions of

Section 11-7-13 of the Mississippi Code of 1972, Annotated, as amended. Plaintiff Paul Steven Pogue, the Estate of Daniel Mark Pogue, and Plaintiff Sarah Jane Joinder may hereinafter be referred to collectively as the "Pogue Plaintiffs."

2.

Plaintiff Paul Steven Pogue is also the duly appointed Administrator of the ESTATE OF DANIEL MARK POGUE, Deceased, pursuant to an order previously entered in cause number 65,453 in the Chancery Court of Rankin County, Mississippi, and Paul Steven Pogue brings this action on behalf of the estate aforesaid and also as the personnel representative of Daniel Mark Pogue, Deceased, pursuant to the provisions of Section 11-7-13 of the Mississippi Code of 1972, Annotated, as amended. Plaintiff Paul Steven Pogue, the Estate of Daniel Mark Pogue, and Plaintiff Sarah Jane Joinder may hereinafter be referred to collectively as the "Pogue Plaintiffs."

3.

Plaintiff SUSAN JANE JOINER is an adult resident citizen of Newton County, Mississippi, who resides at 380 Threatt Road, Collinsville, Mississippi 39325. Plaintiff Susan Jane Joiner is the mother of Daniel Mark Pogue, Deceased, and brings this action as a Wrongful Death beneficiary of Daniel Mark Pogue pursuant to the provisions of Section 11-7-13 of the Mississippi Code of 1972, Annotated, as amended. Plaintiff Paul Steven Pogue, the Estate of Daniel Mark Pogue, and Plaintiff Sarah Jane Joinder may hereinafter be referred to collectively as the "Pogue Plaintiffs."

4.

Plaintiff JOHN THOMAS DEDOUSIS, SR., is an adult resident citizen of the State of New Jersey. Plaintiff John Thomas Dedousis, Sr., is the father of Lisa Ann Dedousis, Deceased, and brings this action as the personal representative of Lisa Ann Dedousis and also as a Wrongful Death beneficiary of Lisa Ann Dedousis pursuant to the provisions of Section 11-7-13 of the Mississippi Code of 1972, Annotated, as amended. Plaintiff John Thomas Dedousis, Sr., Plaintiff Madeline Maio Dedousis, and Plaintiff John Thomas Dedousis, Jr., may hereinafter be referred to collectively as the "Dedousis Plaintiffs."

5.

Plaintiff MADELINE MAIO DEDOUSIS is an adult resident citizen of the State of New Jersey. Plaintiff Madeline Maio Dedousis is the mother of Lisa Ann Dedousis, Deceased, and brings this action as a Wrongful Death beneficiary of Lisa Ann Dedousis pursuant to the provisions of Section 11-7-13 of the Mississippi Code of 1972, Annotated, as amended. Plaintiff John Thomas Dedousis, Sr., Plaintiff Madeline Maio Dedousis, and Plaintiff John Thomas Dedousis, Jr., may hereinafter be referred to collectively as the "Dedousis Plaintiffs."

6.

Plaintiff JOHN THOMAS DEDOUSIS, JR., is an adult resident citizen of the State of New Jersey who resides at 4 Morgan Way, Scotch Plains, New Jersey 07076. Plaintiff John Thomas Dedousis, Jr., is the brother of Lisa Ann Dedousis, Deceased, and brings this action as a Wrongful Death beneficiary of Lisa Ann Dedousis pursuant to the provisions of

Section 11-7-13 of the Mississippi Code of 1972, Annotated, as amended. Plaintiff John Thomas Dedousis, Sr., Plaintiff Madeline Maio Dedousis, and Plaintiff John Thomas Dedousis, Jr., may hereinafter be referred to collectively as the "Dedousis Plaintiffs."

7.

Defendant KAREN C. IRBY is an adult resident citizen of Hinds County, Mississippi, who may be served with process of this Court at 3940 Stuart Place, Jackson, Mississippi 39211.

8.

Defendant STUART M. IRBY is an adult resident citizen of Hinds County, Mississippi, who may be served with process of this Court at 3940 Stuart Place, Jackson, Mississippi 39211.

JURISDICTION AND VENUE

9.

This civil action arises from a motor vehicle accident which resulted in the death of Daniel Mark Pogue and Lisa A. Dedousis, and the Plaintiffs herein are seeking actual, compensatory, and other damages in an amount in excess of Two Hundred Dollars (\$200.00); therefore, pursuant to Section 9-7-81 of the Mississippi Code of 1972, Annotated, as amended, original jurisdiction of this matter is in the circuit court.

10.

The motor vehicle accident which gives rise to this civil action occurred on or about Wednesday, February 11, 2009, within the municipal incorporation limits of the City of

Jackson in the First Judicial District of Hinds County, Mississippi; therefore, because the event which caused the Plaintiffs' injuries, damages, and losses occurred within the First Judicial District of Hinds County, Mississippi, the proper venue for this action is in the First Judicial District of Hinds County, Mississippi, pursuant to the provisions of Section 11-11-3 of the Mississippi Code of 1972, Annotated, as amended.

11.

The Circuit Court for the First Judicial District of Hinds County, Mississippi, has both subject matter jurisdiction and venue jurisdiction over this civil action, and this civil action is properly brought in the Circuit Court for the First Judicial District of Hinds County, Mississippi. Furthermore, Defendant Karen C. Irby and Defendant Stuart M. Irby, as residents of the First Judicial District of Hinds County, are subject to the jurisdiction of the Circuit Court for the First Judicial District of Hind County, Mississippi.

JURY TRIAL DEMANDED

12.

The Plaintiffs hereto, pursuant to Rule 38 of the Mississippi Rules of Civil Procedure, specifically demand that this civil action be tried before a jury as is their right pursuant to Article III, Section 31, of the Mississippi Constitution of 1890, and Amendment VII of the Constitution of the United States.

FACTS

13.

This civil action arises from a two-vehicle motor vehicle accident which occurred at approximately 10:18 o'clock, p.m. (2218 hours), on Wednesday, the 11th day of February, 2009, on Old Canton Road within the municipal incorporation limits of the City of Jackson in the First Judicial District of Hinds County, Mississippi. At the location on Old Canton Road where the aforesaid accident occurred, Old Canton Road runs generally from the west/southwest to the east/northeast. At the location on Old Canton Road where the aforesaid accident occurred, Old Canton Road is a five-lane roadway, with two traffic lanes for traffic traveling east/northeast, two traffic lanes for traffic traveling west/southwest, and a center turning lane. At the time of the accident, the weather was clear and the roadway was dry.

14.

Immediately prior to the accident, Daniel Mark Pogue was traveling east/northeast on Old Canton Road and was driving a 2007 model Chevrolet C1500 pick-up truck which was occupying, or traveling in, the outside (or right) traffic lane for vehicles traveling in the east/northeast direction. Also traveling with Daniel Mark Pogue in the aforesaid Chevrolet pick-up truck was Lisa A. Dedousis, who was occupying the front-right passenger seat.

15.

Immediately prior to the accident, Defendant Karen C. Irby was traveling west/southwest on Old Canton Road and was driving or operating a 2006 model Mercedes

automobile which was occupying, or traveling in, the inside (or left) traffic lane for vehicles traveling in the west/southwest direction. Also traveling with Defendant Karen C. Irby in the aforesaid Mercedes was Defendant Stuart M. Irby, who was occupying the front-right passenger seat.

16.

The accident occurred when the aforesaid Mercedes which was being driven by Defendant Karen C. Irby left its proper lane of traffic and crossed the center turning lane of Old Canton Road, then crossed the inside (or left) traffic lane for vehicles traveling in the east/northeast direction, before finally entering into the outside (or right) traffic lane for vehicles traveling in the east/northeast direction where the aforesaid Mercedes collided with the driver's side of the Chevrolet pick-up truck which was being driven by Daniel Mark Pogue. The force of the collision of the two vehicles knocked the Chevrolet pick-up truck off of the roadway and into a brick wall where the Chevrolet pick-up burst into flames while Daniel Mark Pogue and Lisa A. Dedousis were trapped inside, resulting in the deaths of Daniel Mark Pogue and Lisa A. Dedousis.

17.

Defendant Karen M. Irby was, at the time of the accident, negligently operating the aforesaid 2006 model Mercedes automobile by driving carelessly, driving recklessly, driving too fast for the circumstances then and there existing, not maintaining proper control of the said automobile, failing to be alert while operating a motor vehicle on the roadway, failing to use due care for the safety of others, driving while under the influence of intoxicating

alcohol (and/or other intoxicants), and other acts of negligence and negligence *per se* which may be discovered in the course of this litigation.

18.

The collision of the aforesaid 2006 model Mercedes automobile being driven by Defendant Karen C. Irby with the Chevrolet pick-up truck being driven by Daniel Mark Pogue and occupied by Lisa A. Dedousis was due to the negligence and negligent acts of Defendant Karen C. Irby.

19.

Daniel Mark Pogue was, at the time of the accident, a competent and safe driver and was exercising ordinary and reasonable care and caution while operating the aforesaid Chevrolet pick-up truck, and Daniel Mark Pogue was observing and complying with all of the rules, regulations, statutes, and ordinances applicable to him and his Chevrolet pick-up truck at the time of the accident.

20.

Daniel Mark Pogue was not negligent in any manner, and neither Daniel Mark Pogue or Lisa A. Dedousis committed any act, or failed to commit any act, which may have caused or contributed to the aforesaid collision between the 2006 model Mercedes automobile driven by Defendant Karen C. Irby and the Chevrolet pick-up truck being driven by Daniel Mark Pogue.

21.

As a result of the collision aforesaid, Daniel Mark Pogue suffered burns and severe bodily injuries which resulted in his death, and Lisa A. Dedousis also suffered burns and severe bodily injuries which result in her death. Plaintiff Paul Steven Pogue, individually as a wrongful death beneficiary of Daniel Mark Pogue and also as the Administrator of the Estate of Daniel Mark Pogue, and Plaintiff Susan Jane Joiner (who is also a wrongful death beneficiary of Daniel Mark Pogue) bring this action to recover for the injuries, damages, and losses which were suffered and sustained by Daniel Mark Pogue, and also for the injuries, damages, and losses which were sustained by Daniel Mark Pogue, by the aforesaid Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue. The injuries, damages, and losses aforesaid are a direct result of the aforesaid collision and the wrongful death of Daniel Mark Pogue, and the acts of negligence and negligent *per se* of Defendant Karen C. Irby are a direct and proximate cause, or are a proximate contributing cause, of the collision and of the injuries and death of Daniel Mark Pogue, and of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue.

22.

At the time of the accident previously described herein, Defendant Stuart M. Irby was the owner of the 2006 model Mercedes automobile that Defendant Karen C. Irby was driving, and, as the owner of said motor vehicle, Defendant Stuart M. Irby had the sole and exclusive right to control the said motor vehicle and its use.

Defendant Stuart M. Irby is liable to the Pogue Plaintiffs for the injuries, damages, and losses sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue as aforesaid, because Defendant Stuart M. Irby is guilty of negligent entrustment of the said 2006 model Mercedes automobile to Defendant Karen C. Irby, whose acts of negligence and negligence *per se* in driving or otherwise operating the said motor vehicle which had been negligently entrusted to her were a direct and proximate cause (or were a proximate contributing cause) of the collision and the injuries, damages, and losses suffered by Daniel Mark Pogue and by the Pogue Plaintiffs; therefore, such act of negligent entrustment by Defendant Stuart M. Irby is a proximate cause, or is a proximate contributing cause, of the collision aforesaid and of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue. Defendant Stuart M. Irby knew, or should have known, that immediately prior to the motor vehicle accident which gives rise to this civil action that Karen C. Irby had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and was unable to safely drive or operate a motor vehicle, and, therefore, Defendant Stuart M. Irby knew, or should have known, that Karen C. Irby was incapable of driving or operating the aforesaid Mercedes automobile safely; thus, because the negligent entrustment of the said 2006 model Mercedes automobile to Karen C. Irby by Defendant Stuart M. Irby as aforesaid is a proximate cause, or is a proximate contributing cause, of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue and by the Pogue

Plaintiffs as aforesaid, Defendant Stuart M. Irby is liable to the Plaintiffs for the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue.

24.

Defendant Stuart M. Irby is liable to the Pogue Plaintiffs for the injuries, damages and losses sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue, as aforesaid because Defendant Stuart M. Irby is guilty of negligent entrustment of the said 2006 model Mercedes automobile to Defendant Karen C. Irby, whose acts of negligence and negligence *per se* in driving or otherwise operating the said motor vehicle which had been negligently entrusted to her were a direct and proximate cause (or proximate contributing cause) of the collision and the injuries, damages, and losses suffered by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue; therefore, such act of negligent entrustment by Defendant Stuart M. Irby is a proximate cause, or is a proximate contributing cause, of the collision aforesaid and of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue. Defendant Stuart M. Irby knew, or should have known, that Karen C. Irby was subject to experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle, and, therefore, Defendant Stuart M. Irby knew, or should have known, that Karen C. Irby was incapable of driving or operating the aforesaid Mercedes automobile safely; thus, because the negligent entrustment of the said 2006 model Mercedes automobile to Karen C. Irby by

Defendant Stuart M. Irby as aforesaid is a proximate cause, or is a proximate contributing cause, of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue as aforesaid, Defendant Stuart M. Irby is liable to the Pogue Plaintiffs for the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue.

25.

At all times pertinent to this civil action, and specifically including at all times prior to the motor vehicle collision which gives rise to this civil action, Defendant Karen C. Irby had a history of driving after drinking alcoholic beverages and driving while under the influence of intoxicating alcohol (and/or other intoxicants) when she was unable to safely drive or operate a motor vehicle, and Defendant Karen C. Irby knew (or should have known) that immediately prior to the motor vehicle accident which gives rise to this civil action that she had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and was unable to safely drive or operate a motor vehicle, and Defendant Karen C. Irby knew (or should have known) that she was subject to experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle. Even though Defendant Karen C. Irby had actual knowledge of the facts aforesaid (or, though the exercise of reasonable care, should have had knowledge of the facts aforesaid), Defendant Karen C. Irby willfully, intentionally, and negligently was driving or otherwise operating the aforesaid 2006 model

Mercedes automobile at the time of the motor vehicle collision which gives rise to this civil action. The Pogue Plaintiffs would state and show unto this Honorable Court that Defendant Karen C. Irby's act of driving or operating the motor vehicle as aforesaid evinces a willful, wanton, and/or reckless disregard for the safety of others (specifically including Daniel Mark Pogue) by Defendant Karen C. Irby, and, therefore, the Pogue Plaintiffs are entitled to an award of punitive damages against Defendant Karen C. Irby. Furthermore, Defendant Karen C. Irby is guilty of other intentional acts and/or other acts of negligence which was/were a proximate cause, or a proximate contributing cause, of the collision which evince a willful, wanton, and/or reckless disregard for the safety of others (specifically including Daniel Mark Pogue) by Defendant Karen C. Irby, and, therefore, the Pogue Plaintiffs are entitled to an award of punitive damages against Defendant Karen C. Irby.

26.

At all times pertinent to this civil action, and specifically including at all times prior to the motor vehicle collision which gives rise to this civil action, Defendant Stuart M. Irby knew (or should have known) that Karen C. Irby had a history of driving after drinking alcoholic beverages and driving while under the influence of intoxicating alcohol (and/or other intoxicants) when she was unable to safely drive or operate a motor vehicle, and Defendant Stuart M. Irby knew (or should have known) that immediately prior to the motor vehicle accident which gives rise to this civil action that Karen C. Irby had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and was unable to safely drive or operate a motor vehicle, and Defendant Stuart

M. Irby knew (or should have known) that Karen C. Irby was subject to experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle. Even though Defendant Stuart M. Irby had actual knowledge of the facts aforesaid (or, though the exercise of reasonable care, should have had knowledge of the facts aforesaid), Defendant Stuart M. Irby negligently entrusted the use of the aforesaid 2006 model Mercedes automobile to Karen C. Irby, and, by entrusting Karen C. Irby with the aforesaid 2006 model Mercedes automobile, Defendant Stuart M. Irby knowingly facilitated Karen C. Irby's ability to engage in the reckless conduct and behavior which resulted in the death of Daniel Mark Pogue and the injuries, damages, and losses which were suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue. The Pogue Plaintiffs would state and show unto this Honorable Court that such act of negligent entrustment by Defendant Stuart M. Irby as aforesaid evinces a willful, wanton, and/or reckless disregard for the safety of others (specifically including Daniel Mark Pogue) by Defendant Stuart M. Irby, and, therefore, the Plaintiffs are entitled to an award of punitive damages against Defendant Stuart M. Irby. Furthermore, Defendant Stuart M. Irby is guilty of other intentional acts and/or other acts of negligence which was/were a proximate cause, or a proximate contributing cause, of the collision which evince a willful, wanton, and/or reckless disregard for the safety of others (specifically including Daniel Mark Pogue) by Defendant Stuart M. Irby, and, therefore, the Pogue Plaintiffs are entitled to an award of punitive damages against Defendant Stuart M. Irby.

27.

As a result of the collision aforesaid, Lisa A. Dedousis suffered burns and severe bodily injuries which resulted in her death. The Dedousis Plaintiffs bring this action to recover for the injuries, damages, and losses which were suffered and sustained by Lisa A. Dedousis, and also for the injuries, damages, and losses which were sustained by the aforesaid Dedousis Plaintiffs. The injuries, damages, and losses aforesaid are a direct result of the aforesaid collision and the wrongful death of Lisa A. Dedousis, and the acts of negligence and negligent *per se* of Defendant Karen C. Irby are a direct and proximate cause, or are a proximate contributing cause, of the collision and of the injuries and death of Lisa A. Dedousis and of the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs.

28.

At the time of the accident previously described herein, Defendant Stuart M. Irby was the owner of the 2006 model Mercedes automobile that Defendant Karen C. Irby was driving, and, as the owner of said motor vehicle, Defendant Stuart M. Irby had the sole and exclusive right to control the said motor vehicle and its use.

29.

Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages and losses sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs because Defendant Stuart M. Irby is guilty of negligent entrustment of the said 2006 model Mercedes automobile to Defendant Karen C. Irby, whose acts of negligence and negligence *per se* in driving or

otherwise operating the said motor vehicle which had been negligently entrusted to her were the direct and proximate cause (or were a proximate contributing cause) of the collision and the injuries, damages, and losses suffered by Lisa A. Dedousis and by the Dedousis Plaintiffs; therefore, such act of negligent entrustment by Defendant Stuart M. Irby is a proximate cause, or is a proximate contributing cause, of the collision aforesaid and of the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs. Defendant Stuart M. Irby knew, or should have known, that immediately prior to the motor vehicle accident which gives rise to this civil action that Karen C. Irby had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and was unable to safely drive or operate a motor vehicle, and, therefore, Defendant Stuart M. Irby knew, or should have known, that Karen C. Irby was incapable of driving or operating the aforesaid Mercedes automobile safely; thus, because the negligent entrustment of the said 2006 model Mercedes automobile to Karen C. Irby by Defendant Stuart M. Irby as aforesaid is a proximate cause, or is a proximate contributing cause, of the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs as aforesaid, Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs.

30.

Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages, and losses sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs as aforesaid because

Defendant Stuart M. Irby is guilty of negligent entrustment of the said 2006 model Mercedes automobile to Defendant Karen C. Irby, whose acts of negligence and negligence *per se* in driving or otherwise operating the said motor vehicle which had been negligently entrusted to her were a direct and proximate cause (or proximate contributing cause) of the collision and the injuries, damages, and losses suffered by Lisa A. Dedousis and by the Dedousis Plaintiffs; therefore, such act of negligent entrustment by Defendant Stuart M. Irby is a proximate cause, or is a proximate contributing cause, of the collision aforesaid and of the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs. Defendant Stuart M. Irby knew, or should have known, that Karen C. Irby was subject to experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle, and, therefore, Defendant Stuart M. Irby knew, or should have known, that Karen C. Irby was incapable of driving or operating the aforesaid Mercedes automobile safely; thus, because the negligent entrustment of the said 2006 model Mercedes automobile to Karen C. Irby by Defendant Stuart M. Irby as aforesaid is a proximate cause, or is a proximate contributing cause, of the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs as aforesaid, Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs.

At all times pertinent to this civil action, and specifically including at all times prior to the motor vehicle collision which gives rise to this civil action, Defendant Karen C. Irby had a history of driving after drinking alcoholic beverages and driving while under the influence of intoxicating alcohol (and/or other intoxicants) when she was unable to safely drive or operate a motor vehicle, and Defendant Karen C. Irby knew (or should have known) that immediately prior to the motor vehicle accident which gives rise to this civil action that she had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and was unable to safely drive or operate a motor vehicle, and Defendant Karen C. Irby knew (or should have known) that she was subject to experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle. Even though Defendant Karen C. Irby had actual knowledge of the facts aforesaid (or, though the exercise of reasonable care, should have had knowledge of the facts aforesaid), Defendant Karen C. Irby willfully, intentionally, and negligently was driving or otherwise operating the aforesaid 2006 model Mercedes automobile at the time of the motor vehicle collision which gives rise to this civil action. The Dedousis Plaintiffs would state and show unto this Honorable Court that Defendant Karen C. Irby's act of driving or operating the motor vehicle as aforesaid evinces a willful, wanton, and/or reckless disregard for the safety of others (specifically including Lisa A. Dedousis) by Defendant Karen C. Irby, and, therefore, the Dedousis Plaintiffs are entitled to an award of punitive damages against Defendant Karen C. Irby. Furthermore,

Defendant Karen C. Irby is guilty of other intentional acts and/or other acts of negligence which was/were a proximate cause, or a proximate contributing cause, of the collision which evince a willful, wanton, and/or reckless disregard for the safety of others (specifically including Lisa A. Dedousis) by Defendant Karen C. Irby, and, therefore, the Dedousis Plaintiffs are entitled to an award of punitive damages against Defendant Karen C. Irby.

32.

At all times pertinent to this civil action, and specifically including at all times prior to the motor vehicle collision which gives rise to this civil action, Defendant Stuart M. Irby knew (or should have known) that Karen C. Irby had a history of driving after drinking alcoholic beverages and driving while under the influence of intoxicating alcohol (and/or other intoxicants) when she was unable to safely drive or operate a motor vehicle, and Defendant Stuart M. Irby knew (or should have known) that immediately prior to the motor vehicle accident which gives rise to this civil action that Karen C. Irby had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and was unable to safely drive or operate a motor vehicle, and Defendant Stuart M. Irby knew (or should have known) that Karen C. Irby was subject to experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle. Even though Defendant Stuart M. Irby had actual knowledge of the facts aforesaid (or, though the exercise of reasonable care, should have had knowledge of the facts aforesaid), Defendant Stuart M. Irby negligently entrusted the use of the aforesaid 2006 model Mercedes automobile to Karen C. Irby, and, by entrusting Karen

C. Irby with the aforesaid 2006 model Mercedes automobile, Defendant Stuart M. Irby knowingly facilitated Karen C. Irby's ability to engage in the reckless conduct and behavior which resulted in the death of Lisa A. Dedousis and the injuries, damages, and losses which were suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs. The Dedousis Plaintiffs would state and show unto this Honorable Court that such act of negligent entrustment by Defendant Stuart M. Irby as aforesaid evinces a willful, wanton, and/or reckless disregard for the safety of others (specifically including Lisa A. Dedousis) by Defendant Stuart M. Irby, and, therefore, the Dedousis Plaintiffs are entitled to an award of punitive damages against Defendant Stuart M. Irby. Furthermore, Defendant Stuart M. Irby is guilty of other intentional acts and/or other acts of negligence which was/were a proximate cause, or a proximate contributing cause, of the collision which evince a willful, wanton, and/or reckless disregard for the safety of others (specifically including Lisa A. Dedousis) by Defendant Stuart M. Irby, and, therefore, the Dedousis Plaintiffs are entitled to an award of punitive damages against Defendant Stuart M. Irby.

COUNT I.

ACTS OF NEGLIGENCE, NEGLIGENCE *PER SE*,
AND INTENTIONAL ACTS OF DEFENDANT KAREN C. IRBY

33.

For Count I, the Plaintiffs, by this reference, hereby adopt, incorporate, and re-assert all of the allegations, averments, and statements of fact contained in Paragraphs 1-32, *supra*, of this amended complaint.

34.

The acts of negligence, negligence *per se*, and/or intentional acts of Defendant Karen C. Irby are a direct and proximate cause, or a proximate contributing cause, of the collision and the injuries and subsequent death of Daniel Mark Pogue and death of Lisa A. Dedousis, and of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, by the Estate of Daniel Mark Pogue, and of the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and the Dedousis Plaintiffs. The acts of negligence and negligence *per se* of Karen C. Irby include, but are not limited to, the following, to-wit:

- a) driving carelessly;
- b) driving recklessly;
- c) driving too fast for the circumstances then and there existing;
- d) failing to maintaining proper control of the motor vehicle she was driving;
- e) failing to keep a proper lookout ahead;

- f) failing to be alert while operating a motor vehicle on the roadway;
- g) failing to use due care for the safety of others;
- h) driving while under the influence of intoxicating alcohol (and/or other intoxicants);
- i) driving an automobile at a time when she knew she might experience a "black out" and lose consciousness;
- j) driving an automobile in violation of Section 63-3-603, Section 63-3-1201, Section 63-3-1213, and/or Section 63-11-30 of the Mississippi Code of 1972, Annotated, as amended, and/or other applicable statutes, ordinances, and regulations; and,
- k) other acts of negligence, negligence *per se*, and/or intentional acts which may be discovered in the course of this litigation.

35.

As a direct result of the aforesaid acts of negligence, negligence *per se*, and intentional acts by Defendant Karen C. Irby, Daniel Mark Pogue and Lisa A. Dedousis suffered and sustained fatal bodily injuries, and, because of the wrongful death of Daniel Mark Pogue, the Pogue Plaintiffs, and the Estate of Daniel Mark Pogue suffered and sustained injuries, damages, and losses, and Defendant Karen C. Irby is liable to Daniel Mark Pogue, the Pogue Plaintiffs, and the Estate of Daniel Mark Pogue for the said injuries, damages, and losses, and, further, because of the wrongful death of Lisa A. Dedousis, the Dedousis Plaintiffs suffered and sustained injuries, damages, and losses, and Defendant Karen C. Irby is liable to Lisa A. Dedousis and the Dedousis Plaintiffs for the said injuries, damages, and losses.

COUNT II.

**ACTS OF NEGLIGENCE, NEGLIGENCE *PER SE*,
AND INTENTIONAL ACTS OF DEFENDANT STUART M. IRBY**

36.

For Count II, the Plaintiffs, by this reference, hereby adopt, incorporate, and re-assert all of the allegations, averments, and statements of fact contained in Paragraphs 1-35, *supra*, of this amended complaint.

37.

At the time of the motor vehicle accident previously described herein, Defendant Stuart M. Irby was the owner of the 2006 model Mercedes automobile that Karen C. Irby was driving, and, as the owner of said motor vehicle, Defendant Stuart M. Irby had the sole and exclusive right to control the said motor vehicle and its use.

38.

Defendant Stuart M. Irby is liable to the Pogue Plaintiffs for the injuries, damages, and losses suffered and sustained Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue, because Defendant Stuart M. Irby is guilty of negligent entrustment of the 2006 model Mercedes automobile to Karen C. Irby, whose acts of negligence and negligence *per se* in driving or otherwise operating the said motor vehicle which had been negligently entrusted to her were a direct and proximate cause, or a proximate contributing cause, of the collision and the injuries, damages, and losses suffered by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue. Defendant Stuart M. Irby, as the husband of Karen C. Irby, knew (or should have known) that

immediately prior to the motor vehicle accident which gives rise to this civil action that Karen C. Irby had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and, therefore, Defendant Stuart M. Irby knew, or should have known, that Karen C. Irby was incapable of driving or operating the aforesaid Mercedes automobile safely; thus, because the negligent entrustment of the said 2006 model Mercedes automobile to Karen C. Irby by Defendant Stuart M. Irby as aforesaid is a proximate cause, or is a proximate contributing cause, of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue as aforesaid, Defendant Stuart M. Irby is liable to the Pogue Plaintiffs for the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue.

39.

Defendant Stuart M. Irby is liable to the Pogue Plaintiffs for the injuries, damages, and losses suffered and sustained Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue, because Defendant Stuart M. Irby is guilty of negligent entrustment of the 2006 model Mercedes automobile to Karen C. Irby, whose acts of negligence and negligence *per se* in driving or otherwise operating the said motor vehicle which had been negligently entrusted to her were a direct and proximate cause, or a proximate contributing cause, of the collision and the injuries, damages, and losses suffered by Daniel Mark Pogue and by the Pogue Plaintiffs. Defendant Stuart M. Irby, as the husband of Karen C. Irby, knew (or should have known) that Karen C. Irby was subject to

experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle, and, therefore, Defendant Stuart M. Irby knew (or should have known) that Karen C. Irby was incapable of driving or operating the aforesaid Mercedes automobile safely; thus, because the negligent entrustment of the said 2006 model Mercedes automobile to Karen C. Irby by Defendant Stuart M. Irby as aforesaid is a proximate cause, or is a proximate contributing cause, of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue as aforesaid, Defendant Stuart M. Irby is liable to the Pogue Plaintiffs for the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue.

40.

Defendant Stuart M. Irby is liable to the Pogue Plaintiffs for the injuries, damages, and losses suffered and sustained Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue, because Defendant Stuart M. Irby is guilty of other acts of negligence, negligence *per se*, and/or intentional acts which was/were a proximate cause, or a proximate contributing cause, of the collision and of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue as aforesaid, Defendant Stuart M. Irby is liable to the Pogue Plaintiffs for the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue.

Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages, and losses suffered and sustained Lisa A. Dedousis and by the Dedousis Plaintiffs, because Defendant Stuart M. Irby is guilty of negligent entrustment of the 2006 model Mercedes automobile to Karen C. Irby, whose acts of negligence and negligence *per se* in driving or otherwise operating the said motor vehicle which had been negligently entrusted to her were the direct and proximate cause, or proximate contributing cause, of the collision and the injuries, damages, and losses suffered by Lisa A. Dedousis and by the Dedousis Plaintiffs. Defendant Stuart M. Irby, as the husband of Karen C. Irby, knew (or should have known) that immediately prior to the motor vehicle accident which gives rise to this civil action that Karen C. Irby had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and, therefore, Defendant Stuart M. Irby knew, or should have known, that Karen C. Irby was incapable of driving or operating the aforesaid Mercedes automobile safely; thus, because the negligent entrustment of the said 2006 model Mercedes automobile to Karen C. Irby by Defendant Stuart M. Irby as aforesaid is a proximate cause, or is a proximate contributing cause, of the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs as aforesaid, Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs.

Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages, and losses suffered and sustained Lisa A. Dedousis and by the Dedousis Plaintiffs, because Defendant Stuart M. Irby is guilty of negligent entrustment of the 2006 model Mercedes automobile to Karen C. Irby, whose acts of negligence and negligence *per se* in driving or otherwise operating the said motor vehicle which had been negligently entrusted to her were the direct and proximate cause, or proximate contributing cause, of the collision and the injuries, damages, and losses suffered by Lisa A. Dedousis and by the Dedousis. Defendant Stuart M. Irby, as the husband of Karen C. Irby, knew (or should have known) that Karen C. Irby was subject to experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle, and, therefore, Defendant Stuart M. Irby knew (or should have known) that Karen C. Irby was incapable of driving or operating the aforesaid Mercedes automobile safely; thus, because the negligent entrustment of the said 2006 model Mercedes automobile to Karen C. Irby by Defendant Stuart M. Irby as aforesaid is a proximate cause, or is a proximate contributing cause, of the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs as aforesaid, Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs.

43.

Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages, and losses suffered and sustained Lisa A. Dedousis and by the Dedousis Plaintiffs, because Defendant Stuart M. Irby is guilty of other acts of negligence, negligence *per se*, and/or intentional acts which was/were a proximate cause, or a proximate contributing cause, of the collision and of the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs as aforesaid, Defendant Stuart M. Irby is liable to the Dedousis Plaintiffs for the injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs.

DAMAGES OF THE PLAINTIFFS

44.

As a direct and proximate consequence of the above described negligent acts, negligence *per se*, and/or intentional acts of Defendant Karen C. Irby and/or Defendant Stuart M. Irby, the said Defendants are liable to the Pogue Plaintiffs for injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue, and the said Defendants are liable to the Dedousis Plaintiffs for injuries, damages, and losses suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs, including, but not limited to, the following, to-wit:

- a) Daniel Mark Pogue's pain and suffering, and loss of the joy of life, caused by the bodily injuries he sustained in the accident;
- b) loss of love, society, and companionship, suffered and sustained by the Pogue Plaintiffs;

- c) loss of familial services, gifts, gratuities, remembrances, and support, suffered and sustained by the Pogue Plaintiffs;
- d) lost wages of Daniel Mark Pogue, loss of future earnings of Daniel Mark Pogue, and the present net cash value for Daniel Mark Pogue's life expectancy;
- e) expenses for emergency services, medical expenses, hospital expenses, doctor expenses, funeral expenses, and all other losses arising from death of Daniel Mark Pogue;
- f) the loss of use of the 2007 model Chevrolet C1500 pick-up truck;
- g) the loss of the value of the 2007 model Chevrolet C1500 pick-up truck;
- h) other injuries, damages, and losses of the Pogue Plaintiffs which may be shown at the trial of this action;
- i) Lisa A. Dedousis's pain and suffering, and loss of the joy of life, caused by the bodily injuries he sustained in the accident;
- j) loss of love, society, and companionship, suffered and sustained by the Dedousis Plaintiffs;
- k) loss of familial services, gifts, gratuities, remembrances, and support, suffered and sustained by the Dedousis Plaintiffs;
- l) lost wages of Lisa A. Dedousis, loss of future earnings of Lisa A. Dedousis, and the present net cash value for Lisa A. Dedousis's life expectancy;
- m) expenses for emergency services, medical expenses, hospital expenses, doctor expenses, funeral expenses, and all other losses arising from death of Lisa A. Dedousis; and,
- n) other injuries, damages, and losses of the Dedousis Plaintiffs which may be shown at the trial of this action.

PUNITIVE DAMAGES

45.

At all times pertinent to this civil action, and specifically including at all times prior to the motor vehicle collision which gives rise to this civil action, Defendant Karen C. Irby had a history of driving after drinking alcoholic beverages and driving while under the influence of intoxicating alcohol (and/or other intoxicants) when she was unable to safely drive or operate a motor vehicle, and Defendant Karen C. Irby knew (or should have known) that immediately prior to the motor vehicle accident which gives rise to this civil action that she had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and was unable to safely drive or operate a motor vehicle, and Defendant Karen C. Irby knew (or should have known) that she was subject to experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle. Even though Defendant Karen C. Irby had actual knowledge of the facts aforesaid (or, though the exercise of reasonable care, should have had knowledge of the facts aforesaid), Defendant Karen C. Irby willfully, intentionally, and negligently was driving or otherwise operating the aforesaid 2006 model Mercedes automobile at the time of the motor vehicle collision which gives rise to this civil action. The Pogue Plaintiffs and the Dedousis Plaintiffs would state and show unto this Honorable Court that Defendant Karen C. Irby's act of driving or operating the motor vehicle as aforesaid evinces a willful, wanton, and/or reckless disregard for the safety of others (specifically including Daniel Mark Pogue and/or Lisa A. Dedousis) by Defendant Karen C.

Irby, and, therefore, the Pogue Plaintiffs and the Dedousis Plaintiffs are entitled to an award of punitive damages against Defendant Karen C. Irby.

46.

Defendant Karen C. Irby is further liable to the Pogue Plaintiffs and the Dedousis Plaintiffs for punitive damages because Defendant Karen C. Irby is guilty of other acts of negligence, negligence *per se*, and/or intentional acts which evince a willful, wanton, and/or reckless disregard for the safety of others (specifically including Daniel Mark Pogue and/or Lisa A. Dedousis) by Defendant Karen C. Irby and which was/were a proximate cause, or a proximate contributing cause, of the collision and of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, by the Estate of Daniel Mark Pogue, by Lisa A. Dedousis, and by the Dedousis Plaintiffs as aforesaid.

47.

At all times pertinent to this civil action, and specifically including at all times prior to the motor vehicle collision which gives rise to this civil action, Defendant Stuart M. Irby knew (or should have known) that Karen C. Irby had a history of driving after drinking alcoholic beverages and driving while under the influence of intoxicating alcohol (and/or other intoxicants) when she was unable to safely drive or operate a motor vehicle, and Defendant Stuart M. Irby knew (or should have known) that immediately prior to the motor vehicle accident which gives rise to this civil action that Karen C. Irby had been drinking alcoholic beverages and was under the influence of intoxicating alcohol (and/or other intoxicants) and was unable to safely drive or operate a motor vehicle, and Defendant Stuart

M. Irby knew (or should have known) that Karen C. Irby was subject to experiencing "black outs" during which she lost consciousness and during which she would be unable to safely drive or operate a motor vehicle. Even though Defendant Stuart M. Irby had actual knowledge of the facts aforesaid (or, though the exercise of reasonable care, would have had knowledge of the facts aforesaid), Defendant Stuart M. Irby negligently entrusted the use of the aforesaid 2006 model Mercedes automobile to Karen C. Irby, and, by entrusting Karen C. Irby with the aforesaid 2006 model Mercedes automobile, Defendant Stuart M. Irby knowingly facilitated Karen C. Irby's ability to engage in the reckless conduct and behavior which resulted in the death of Daniel Mark Pogue and in the death of Lisa A. Dedousis and the injuries, damages, and losses which were suffered and sustained by the Pogue Plaintiffs and by the Dedousis Plaintiffs. The Plaintiffs would state and show unto this Honorable Court that such act of negligent entrustment and knowing facilitation by Defendant Stuart M. Irby as aforesaid evinces a willful, wanton, and/or reckless disregard for the safety of others (specifically including Daniel Mark Pogue and/or Lisa A. Dedousis) by Defendant Stuart M. Irby, and, therefore, the Pogue Plaintiffs and the Dedousis Plaintiffs are entitled to an award of punitive damages against Defendant Stuart M. Irby.

48.

Defendant Stuart M. Irby is further liable to the Pogue Plaintiffs and the Dedousis Plaintiffs for punitive damages because Defendant Stuart M. Irby is guilty of other acts of negligence, negligence *per se*, and/or intentional acts which evince a willful, wanton, and/or reckless disregard for the safety of others (specifically including Daniel Mark Pogue and/or

Lisa A. Dedousis) by Defendant Stuart M. Irby and which was/were a proximate case, or a proximate contributing cause, of the collision and of the injuries, damages, and losses suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, by the Estate of Daniel Mark Pogue, by Lisa A. Dedousis, and by the Dedousis Plaintiffs as aforesaid.

PLAINTIFFS' REQUEST FOR RELIEF

49.

WHEREFORE, PREMISES CONSIDERED, the Pogue Plaintiffs demand judgment against Defendant Karen C. Irby and Defendant Stuart M. Irby for compensatory damages in the amount of Ten Million Dollars (\$10,000,000.00) to fully compensate the Pogue Plaintiffs for the aforesaid injuries, damages, and losses which were suffered and sustained by Daniel Mark Pogue, by the Pogue Plaintiffs, and by the Estate of Daniel Mark Pogue, together with an award for all costs of bringing this action, including Court costs, fees, and expenses, and specifically including attorneys' fees and the Pogue Plaintiffs' litigation costs and litigation expenses.

50.

Furthermore, the Dedousis Plaintiffs demand judgment against Defendant Karen C. Irby and Defendant Stuart M. Irby for compensatory damages in the amount of Ten Million Dollars (\$10,000,000.00) to fully compensate the Dedousis Plaintiffs for the aforesaid injuries, damages, and losses which were suffered and sustained by Lisa A. Dedousis and by the Dedousis Plaintiffs, together with an award for all costs of bringing this action, including

Court costs, fees, and expenses, and specifically including attorneys' fees and the Dedousis Plaintiffs' litigation costs and litigation expenses.

51.

The Pogue Plaintiffs and the Dedousis Plaintiffs further demand judgment against Defendant Karen C. Irby and Defendant Stuart M. Irby for punitive damages in the amount of Twenty Million Dollars (\$20,000,000.00).

RESPECTFULLY SUBMITTED this the 5th day of OCTOBER, 2009.

**PAUL STEVEN POGUE, Individually;
Paul Steven Pogue as Administrator of the
ESTATE OF DANIEL MARK POGUE;
SUSAN JANE JOINER;
JOHN THOMAS DEDOUSIS, SR.;
MADELINE MAIO DEDOUSIS;
and JOHN THOMAS DEDOUSIS, JR.,
Plaintiffs**

By: 
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