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CIRCUIT COURT FOR THE STATE OF OREGON

COUNTY OF MULTNOMAH

KEVIN GREENOUGH, in his capacity as
Personal Representative of the Estate of
MARTIN GREENOUGH,

Plaintiff,

vs.

KENNETH BRITT SMITH, an individual;
STATE OF OREGON, a government entity;
CITY OF PORTLAND, a government entity,

Defendant.

) Case No.

)
) **COMPLAINT**
) (PERSONAL INJURY; WRONGFUL
) DEATH)

) **Claims Not Subject to**
) **Mandatory Arbitration**

) (Jury Trial Demanded)

) Amount claimed (ORS 21.160(d))
) Amount jury determines to be reasonable
) but not to exceed \$3,651,550
)

Plaintiff alleges as follows:

PARTIES

1.

Kevin Greenough is the personal representative of the Estate of Martin Greenough. A probate case has been filed in Multnomah County, Case No. 16PB00156. Mr. Greenough was a resident of and domiciled in Multnomah County in the State of Oregon when he died on December 12, 2015.

2.

At all material times defendant Kenneth Britt Smith was and is a resident of and domiciled in Multnomah County in the State of Oregon.

3.

At all material times, the State of Oregon, Oregon Department of Transportation is an agency of the State of Oregon and is subject to the administrative rules and laws of the State of Oregon.

4.

At all material times, the City of Portland was and is a municipal corporation chartered by and subject to the laws of the State of Oregon.

5.

At all material times, defendants' respective officers, agents, and employees were voluntarily acting for and subject to the control of such defendants within the course and scope of such persons' authority, employment, and agency responsibilities or duties with and for defendants in furtherance of and in service of the defendants' business, respectively.

6.

At all material times, all actions occurred or had their nexus of origin in Multnomah County in the State of Oregon.

BACKGROUND FACTS

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7.

At all material times, NE Portland Highway (also known as NE Lombard Street) and NE 42 Avenue were public roads in Multnomah County in the State of Oregon.

8.

On Saturday December 12, 2015 at about 8:38 p.m., Martin Greenough was biking home from work along NE Portland Highway. His bicycle was equipped, affixed to the frame below the seat facing towards the rear of the bicycle, with a flashing red light. He was wearing a helmet.

9.

On or about December 12, 2015 at 8:38 p.m., defendant Smith was driving a 2004 Ford Crown Victoria east bound on NE Portland Highway at a speed of approximately 45 miles per hour.

10.

As defendant Smith approached NE Portland Highway and NE 42nd Avenue, he began drifting over to the right side of the street. The tires of defendant Smith's vehicle made contact with the guard rail. After striking the guard rail, defendant Smith's vehicle struck Mr. Greenough's bicycle from behind. Mr. Greenough was ejected from his bicycle and into the windshield of defendant Smith's vehicle. Defendant Smith continued to travel east bound on NE Portland Highway. Mr. Greenough was thrown from defendant Smith's vehicle, coming to rest

1 approximately 145 feet east of the area of impact. Defendant Smith did not stop his vehicle until
2 it broke down near Sandy Boulevard and Interstate 205.

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4 11.

5 Prior to Defendant Smith's vehicle colliding with Mr. Greenough, he took no action to
6 avoid the collision. Defendant Smith was driving under the influence of intoxicants. Defendant
7 Smith fled the scene to try to avoid responsibility.
8

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10 12.

11 NE Portland Highway is a US Highway managed by the State of Oregon.
12

13 13.

14 NE 42nd Street is a bypass bridge over NE Portland Highway. The City of Portland
15 Bridge Unit manages the bypass bridge.
16

17
18 14.

19 At the point of the collision between Mr. Greenough and defendant Smith, the 42nd
20 Street bypass bridge creates a pinch point on NE Portland Highway that results in the elimination
21 of the shoulder/bike lane for approximately 200 feet eastbound.
22

23 15.

24
25 The Oregon Department of Transportation has been aware of the pinch point for at least a
26 year before the collision. An improvement project that would have included the pinch point was

1 proposed in a State Transportation Improvement Program (STIP), but was not included in
2 funding for 2019-2021.

3
4 16.

5 The City of Portland has been aware of the pinch point for at least a year before the
6 collision.
7

8 17.

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10 Upon information and belief, the Oregon Department of Transportation was responsible
11 for managing this hazardous pinch point.
12

13 18.

14 Upon information and belief, the City of Portland was responsible for managing this
15 hazardous pinch point.
16

17 19.

18
19 Mr. Greenough was not responsible for his death.
20

21 **PLAINTIFF'S FIRST CLAIM FOR RELIEF**

22 **(Smith-Negligence)**

23 20.

24
25 Plaintiff re-alleges paragraphs 1-19 above as if fully set forth here.
26

///

21.

Defendant Smith was negligent and at fault in one or more of the following particulars:

- (a) driving while under the influence of intoxicants;
- (b) failure to keep and maintain a reasonable lookout for bicyclists in the roadway;
- (c) failure to observe and obey traffic signs posted for bicyclists in the roadway;
- (d) failure to maintain reasonable control of his vehicle under the circumstances;
- (e) failure to drive at a reasonable speed under the circumstances;
- (f) failure to stop and provide assistance to an injured party; and
- (g) failure to stop, slow, turn, or otherwise avoid colliding with Mr. Greenough.

(Smith-Negligence Per Se)

22.

Plaintiff re-alleges paragraphs 1-19 above as if fully set forth.

23.

Defendant Smith was negligent per se in violating:

- (a) ORS 163.118 (manslaughter in the first degree), which states: "Criminal homicide constitutes manslaughter in the first degree when: (a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life;... (d) It is committed

1 recklessly or with criminal negligence by a person operating a motor vehicle while under the
2 influence of intoxicants in violation of ORS 813.010 and: (A) The person has at least three
3 previous convictions for driving while under the influence of intoxicants under ORS 813.010, or
4 its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current
5 offense; or (B)(i) The person has a previous conviction for any of the crimes described in
6 subsection (2) of this section, or their statutory counterparts in any jurisdiction; and (ii) The
7 victim's serious physical injury in the previous conviction was caused by the person driving a
8 motor vehicle. (2) The previous convictions to which subsection (1)(d)(B) of this section applies
9 are: (a) Assault in the first degree under ORS 163.185; (b) Assault in the second degree under
10 ORS 163.175; or (c) Assault in the third degree under ORS 163.165.

12 (b) ORS 163.125 (manslaughter in the second degree) which states: "Criminal homicide
13 constitutes manslaughter in the second degree when: (a) It is committed recklessly;..."

15 (c) ORS 813.010 (driving under the influence of intoxicants) which states: "A person
16 commits the offense of driving while under the influence of intoxicants if the person drives a
17 vehicle while the person: (a) Has 0.08 percent or more by weight of alcohol in the blood of the
18 person as shown by chemical analysis of the breath or blood of the person made under ORS
19 813.100, 813.140 or 813.150; (b) Is under the influence of intoxicating liquor, a controlled
20 substance or an inhalant; or (c) Is under the influence of any combination of intoxicating liquor,
21 an inhalant and a controlled substance."

23 (d) ORS 811.140 (reckless driving) which states: "A person commits the offense of
24 reckless driving if the person recklessly drives a vehicle upon a highway or other premises
25 described in this section in a manner that endangers the safety of persons or property."

26 (e) ORS 811.705 (failure to perform duties of driver to injured persons) which states:

1 "A person commits the offense of failure to perform the duties of a driver to injured persons if
2 the person is the driver of any vehicle involved in an accident that results in injury or death to
3 any person and does not do all of the following: (a) Immediately stop the vehicle at the scene of
4 the accident or as close thereto as possible...(b) Remain at the scene of the accident until the
5 driver has fulfilled all of the requirements under this subsection.(c) Give to the other driver or
6 surviving passenger or any person not a passenger who is injured as a result of the accident the
7 name and address of the driver and the registration number of the vehicle that the driver is
8 driving and the name and address of any other occupants of the vehicle.(d) Upon request and if
9 available, exhibit and give to the persons injured or to the occupant of or person attending any
10 vehicle damaged the number of any document issued as official evidence of a grant of driving
11 privileges. (e) Render to any person injured in the accident reasonable assistance, including the
12 conveying or the making of arrangements for the conveying of such person to a physician,
13 surgeon or hospital for medical or surgical treatment, if it is apparent that such treatment is
14 necessary or if such conveying is requested by any injured person. (f) Remain at the scene of an
15 accident until a police officer has arrived and has received the required information, if all persons
16 required to be given information under paragraph (c) of this subsection are killed in the accident
17 or are unconscious or otherwise incapable of receiving the information. The requirement of this
18 paragraph to remain at the scene of an accident until a police officer arrives does not apply to a
19 driver who needs immediate medical care, who needs to leave the scene in order to secure
20 medical care for another person injured in the accident or who needs to leave the scene in order
21 to report the accident to the authorities, so long as the driver who leaves takes reasonable steps to
22 return to the scene or to contact the nearest police agency."
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1 (f) ORS 163.195 (recklessly endangering another person) which states: "A person
2 commits the crime of recklessly endangering another person if the person recklessly engages in
3 conduct which creates a substantial risk of serious physical injury to another person."

4 **PLAINTIFF'S SECOND CLAIM FOR RELIEF**

5 **(State of Oregon-Negligence)**

6 24.

7 Plaintiff re-alleges paragraphs 1-23 above as if fully set forth here.

8 25.

9 Defendant State of Oregon was negligent and at fault in one or more of the following
10 particulars:
11

12 (a) failure to ensure that NE Portland Highway was adequately marked to provide for safe
13 travel for both motor vehicles and bicycles; and

14 (b) failure to adequately maintain NE Portland Highway to provide for safe travel for
15 both motor vehicles and bicycles;

16 (c) failure to adequately inspect or repair NE Portland Highway to provide for safe travel
17 for both motor vehicles and bicycles.
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19 **(State of Oregon-Negligence Per Se)**

20 26.

21 Plaintiff re-alleges paragraphs 1-25 above as if fully set forth here.

22 27.

23 Defendant State of Oregon was negligent per se in violating:
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1 Oregon Administrative Rule 734-020-0060 (Bicycle Lane and Paths) which states: "(a) Signing
2 and Marking: (A) All bicycle signing and markings on the State Highway System or installed on
3 local city streets or county roads under state contract or agreement shall be in conformance with
4 the current Department of Transportation "**Sign Policy and Guidelines for the State Highway**
5 **System**" and the "**Traffic Line Manual**." Any signing or markings not included in these
6 guidelines or manual, but which is deemed necessary and required for the bicycle facility shall
7 conform to the **Manual on Uniform Traffic Control Devices** as adopted by the Oregon
8 Transportation Commission; (B) The standard width longitudinal painted solid line separating
9 the motor vehicle travel way and a bike lane shall be a solid nominal eight-inch wide white stripe
10 as required by OAR 734-020-0055; and (C) The desirable width for a one-way bike lane on the
11 State Highway System or installed on local city streets or county roads under state contract or
12 agreement is six feet. Where six feet is not practical to achieve because of physical or economic
13 constraints, a minimum width of four feet may be designated as a bike lane."
14

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16 **PLAINTIFF'S THIRD CLAIM FOR RELIEF**

17 **(City of Portland-Negligence)**

18 28.

19 Plaintiff re-alleges paragraphs 1-25 above as if fully set forth here.

20 29.

21 Defendant City of Portland was negligent and at fault in one or more of the following
22 particulars:
23

24 (a) failure to ensure that the NE 42nd Avenue overpass was adequately marked to provide
25 for safe travel for both motor vehicles and bicycles; and
26

1 (b) failure to adequately maintain the NE 42nd Avenue overpass to provide for safe travel
2 for both motor vehicles and bicycles;

3 (c) failure to adequately inspect or repair the NE 42nd Avenue overpass to provide for
4 safe travel for both motor vehicles and bicycles.

5
6 **(City of Portland-Negligence Per Se)**

7
8 30.

9 Plaintiff re-alleges paragraphs 1-27 above as if fully set forth here.

10 31.

11 Defendant City of Portland was negligent per se in violating: City of Portland
12 Transportation Policy & Administrative Rule TRN-2.01 (Traffic Control Devices), Section 2
13 (adopting Manual on Uniform Control Devices, Millennium Edition (MUTCD) as administrative
14 rule); MUTCD, Section 3A.06s Functions, Widths, and Patterns of Longitudinal Pavement
15 Marking; MUTCD, Section 9C.02 General Principles (bicycle facilities); MUTCD, Section
16 9C.04(02), Markings for Bicycle Lanes "(longitudinal pavement markings shall be used to define
17 bicycle lanes").
18

19 **DAMAGES**

20 32.

21 Defendants' negligence and fault caused the death of Mr. Greenough and the damages
22 claimed in this pleading.
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33.

As a result of defendants' negligence and fault, plaintiff Greenough requests the following damages, including but not limited to damages pursuant to Oregon's wrongful death statute, ORS 30.020, as follows:

(a) Just, fair, and reasonable compensation for pecuniary loss to the decedent's estate in the amount the jury determines to be reasonable but not to exceed a maximum amount \$904,800 (present value), or alternatively, \$1,651,550 (present value), if the jury determines that the decedent would have attained an advanced degree.

(b) Just, fair, and reasonable compensation to the decedent's parents for loss of the society, companionship, and services of the decedent in the amount the jury determines to be reasonable but not to exceed the maximum amount of \$2,000,000.

34.

Plaintiff reserves the right to amend this Complaint to assert punitive damages.

PRAYER

WHEREFORE, plaintiff demands judgment against defendants for the following relief:

1. A judgment in favor of plaintiff and against defendants;
2. Economic damages in the amount the jury determines to be reasonable but not to exceed either \$904,800(present value), or alternatively, \$1,651,550(present value).
3. Human Damages (non economic) in the amount the jury determines to be reasonable but not to exceed a maximum amount of \$2,000,000;
4. The total award amount against Defendant State of Oregon shall not to exceed the maximum statutory amount of \$2,048,300 (present value); The total award amount against Defendant City of Portland shall not exceed the maximum statutory amount of \$682,800.

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- 4. For post judgment interest at the statutory rate;
- 5. For plaintiff's costs and disbursements; and
- 6. For such other relief as the Court deems appropriate.

DATED: 4/19/16

ATTORNEY FOR PLAINTIFF

s/Erik Graeff

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