

**STATE OF MICHIGAN
37th CIRCUIT COURT FOR THE COUNTY OF CALHOUN
BRANCH XX**

**JEFFREY THOMAS POTTER, the
Administrator of the ESTATE OF
KATHERINE ANNE POTTER, and
JEFFREY THOMAS POTTER, individually,**

Plaintiffs,

v

**CHARLES THEODORE SHRACKLE,
individually, and THE SHRACKLE
CONSTRUCTION COMPANY,
INC., a Michigan corporation,**

Defendants.

Case No. 11-00275-NI

Hon. I. Emma Bulley

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

**J. Cheever Loophole (P99906)
Attorney for Plaintiffs
SLIPP, TRIPP, and FALLE
555 North Michigan Avenue, Suite 312
Battle Creek, Michigan 49010-7793
269/999-0000**

COMPLAINT

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

FIRST CLAIM FOR RELIEF- NEGLIGENCE

NOW COMES PLAINTIFFS, by their and through attorneys, Slipp, Tripp, and Falle, for complaint against the defendants, as named below, state:

1. Plaintiff, Jeffrey Thomas Potter, administrator (hereinafter “Personal Representative”) of the Estate of Katherine Anne Potter (hereinafter “Estate”), was appointed as personal representative of the Estate filed in Calhoun County Probate Court, 161 East Michigan Avenue, Battle Creek, Michigan 49014, on December 15, 2010, and assigned Case Number 10-0645-DE.
2. Plaintiff, Jeffrey Thomas Potter (hereinafter “Mr. Potter”), is an adult and the husband of the decedent Katherine Anne Potter, and resides at 4920 Thorndale Avenue, in the City of Battle Creek, Calhoun County, Michigan 49010-4920.
3. Defendant, Charles Theodore Shrackle (hereinafter “Mr. Shrackle”), is an adult who resides at 1701 West Johnson Street, in the City of Battle Creek, Calhoun County, Michigan 49011.
4. Defendant, Shrackle Construction Company, Inc. (hereinafter “SCC”), is a Michigan corporation doing business in Calhoun County, Michigan, located at 2102 Clover Lane, in the City of Battle Creek, Michigan 49010, and whose registered agent is Charles Theodore Shrackle, whose office is located at 1701 West Johnson Street, in the City of Battle Creek, Calhoun County, Michigan 49011.
5. Katherine Anne Potter (hereinafter “Mrs. Potter”) died on December 4, 2010.
6. Mr. Potter and Mrs. Potter were married at the time of her death and had been married for 20 years.
7. Mr. Potter is the duly appointed administrator of Mrs. Potter’s probate estate.

8. On November 30, 2010, at about 3:30 p.m., Mrs. Potter was walking in an easterly direction across Mattis Avenue at the intersection of Mattis and Kirby Avenues in the City of Battle Creek, Michigan (hereinafter “the Time and Place”).
9. At the Time and Place, Mr. Shrackle was driving a 2001 Toyota pickup truck (hereinafter “the Vehicle”) in the left-hand lane traveling west on Kirby Avenue.
10. At the time place Mr. Shackle made a left turn onto southbound Mattis Avenue.
11. At the Time and Place, the Vehicle struck Mrs. Potter.
12. Mr. Shrackle’s truck carried Mrs. Potter’s body in front of it.
13. Mrs. Potter suffered serious injuries including, but not limited to broken bones, severe head trauma, and unconsciousness, as the result from being struck by the Vehicle.
14. Mrs. Potter was transported from the scene of the accident by Battle Creek ambulance to the Battle Creek Health System located at 300 North Avenue, in the City of Battle Creek, in the County of Calhoun, Michigan 49017.
15. Mrs. Potter died on December 4, 2010 as a result of her severe head trauma which was sustained when she was struck by the truck.
16. The truck driven by Mr. Shrackle was owned by SCC, and at the time that Mrs. Potter was struck by the truck, Mr. Shrackle was performing duties for and acting on behalf of SCC.
17. Mr. Shackle had a duty of care to operate the vehicle in a safe and prudent manner.
18. At the time of the accident, Mr. Shrackle was driving the truck in a careless, negligent, and reckless manner, and violated his duty of care to avoid striking the pedestrian Mrs. Potter who was lawfully walking across the street.

19. At the time of the accident, Mr. Shrackle carelessly, negligently, and recklessly failed to keep a proper lookout, to heed the fact that Mrs. Potter was crossing the street in the immediate path of his truck, or to take any action to avoid striking Mrs. Potter.
20. At the time of the accident, Mr. Shackle carelessly, negligently, and recklessly, failed to keep the duty of care by talking on a cellular phone.
21. At the time of the accident, Mr. Shrackle went too fast around the corner.
22. At the time of the accident, Mr. Shrackle carelessly, negligently, and recklessly failed to give proper warning of the sudden and unexpected approach of his truck by either sounding his horn or giving any other signal or warning.
23. Mr. Shrackle's negligence caused Mrs. Potter to suffer severe physical pain and suffering from the date that her injuries were incurred on November 30, 2010, until her death on December 4, 2010.
24. Mr. Shrackle's negligence caused Mrs. Potter to incur reasonable expenses for medical, hospital, surgical care, and the loss of wages from the time of the collision until her death, in a sum greater than \$25,000.00.
25. Mr. Shrackle's negligence caused Mr. Potter, as personal representative of the Estate, to incur reasonable funeral and burial expenses.

SECOND CLAIM FOR RELIEF- WRONGFUL DEATH

26. Plaintiffs re-allege paragraphs 1 through 25, and incorporate them by reference.
27. Mr. Shrackle committed a neglectful, wrongful act for which he is at fault when his vehicle struck Mrs. Potter.

28. The act resulted in the death of Mrs. Potter.
29. Had the death had not ensued, the injured party would have been entitled to maintain an action and recover damages.
30. Mr. Shrackle and Shrackle Construction Incorporated are is liable for the death of Mrs. Potter.
31. Mr. Shrackle's wrongful act caused the Personal Representative of the Estate of Mrs. Potter, to suffer damages for the:
- (a) loss of reasonable medical;
 - (b) loss of reasonable hospital;
 - (c) loss of reasonable funeral;
 - (d) loss of reasonable burial;
 - (e) reasonable pain and suffering while conscious;
 - (f) loss of reasonably expected net income of Mrs. Potter; and
 - (g) loss of attorney fees and costs.
32. Mr. Shrackle's negligence caused Mr. Potter, as the surviving spouse of Mrs. Potter, to suffer damages for the:
- (a) loss of reasonably expected financial support of Mrs. Potter;
 - (b) loss of services;
 - (c) loss of gifts or other valuable gratuities;
 - (d) loss of society, companionship, and consortium;
 - (e) reasonable emotional pain and suffering;
 - (f) protection, care, and assistance of Mrs. Potter, whether voluntary or obligatory, to Mr. Potter;

- (g) comfort, guidance, and advise of Mrs. Potter to Mr. Potter;
- (h) compensation of attorney's fees; and
- (i) compensation of court costs.

WHEREFORE, the plaintiffs respectfully request this honorable court to demand judgment against the defendants, jointly and severally, for an amount in excess of \$25,000.00, together with interest thereon and costs and attorneys' fees; and for such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury in this matter.

SLIPP, TRIPP, AND FALLE

By:

Date: _____

J. Cheever Loophole (P99906)
Attorneys for the Plaintiffs
555 North Michigan Avenue, Suite 312
Battle Creek, Michigan 49010-7793
269/999-0000