IN THE IOWA DISTRICT COURT IN AND FOR MARION COUNTY

KRISTINE KOHRS, in her individual capacity and as Executor of the Estate of LINDSEY RIETVELD, Deceased, Plaintiff, v. DENNIS MOCKENHAUPT, WAL-MART PROPERTY TAX DEPT, WAL-MART STORES, INC. d/b/a WALMART, WAL-MART, WALMART SUPERCENTER, and WAL-MART SUPERCENTER and TRANSYSTEMS CORPORATION, CHRISTOPHER RHEA, and BRR ARCHITECTURE, INC.	Law No.: PETITION AT LAW AND JURY DEMAND

COMES NOW the Plaintiff, Kristine Kohrs, Executor of the Estate of Lindsey Rietveld, Deceased, and for her causes of action against Defendants Dennis Mockenhaupt, Wal-Mart Property Tax Dept and Wal-Mart Stores, Inc. d/b/a Walmart, Wal-Mart, Walmart Supercenter and Wal-Mart supercenter, TranSystems Corporation, Christopher Rhea, and BRR architecture, Inc. states to this Honorable Court as follows:

I. INTRODUCTION

1. WMPTD and Wal-Mart (collectively, Wal-Mart) operate a 100,000 square foot retail establishment more commonly known as the Walmart Supercenter in Pella, Iowa (Pella Supercenter) with a street address of 1650 Washington St., Pella, Iowa 50219. To reach the main entrance of the Pella Supercenter from Washington Street, one need only turn north, proceed in a straight line for approximately 80-100 yards via an access road, then continue in a straight line on the main aisle of the Pella Supercenter's parking lot for another 80-100 yards. On December 1, 2016 at approximately 9:54 a.m., Defendant Dennis Mockenhaupt (Mockenhaupt) alleged that

he began choking on coffee as he was driving his 2014 Fort F-150 toward the Pella Supercenter. Mockenhaupt alleges that lost he consciousness as he drove through the entrance of the store, killing Lindsey Rietveld, Carrie Zugg, and Ruth DeJong. Mockenhaupt's path from Washington Street to the main entrance of the Pella Supersenter was not obstructed.

II. PARTIES

2. Plaintiff Kristine Kohrs, Executor of the Estate of Lindsey Rietveld, deceased, has been appointed by the Marion County Probate Court to administer the Estate of Lindsey Rietveld, commencing on December 27, 2016.

3. Decedent Lindsey Rietveld (Lindsey) before her death was a resident of Marion County, Iowa.

4. Defendant Dennis Mockenhaupt (Mockenhaupt) is a resident of Marion County, Iowa.

5. Defendant Wal-Mart Property Tax Dept (WMPTD) is an entity that owns 16.48 acres of real property in Marion County, Iowa, on which it operates a 100,000 square foot retail store.

6. Defendant Wal-Mart Stores, Inc. d/b/a Walmart, Wal-Mart, Walmart Supercenter and Wal-Mart Supercenter (Wal-Mart) is a Delaware for-profit corporation, authorized under Iowa law to operate a 100,000 square foot retail store in Marion County, Iowa.

7. Defendant TranSystems Corporation is an entity located at 100 Portland Avenue S. Suite 275, Minneapolis, Minnesota 55401, which drafted a site plan for the Wal-Mart store located at 1650 Washington Street, Pella, Iowa 50219 in Marion County, Iowa.

8. Defendant Christopher Rhea is an Architect for BRR Architecture, Inc., headquartered in 6700 Antioch Plaza, Suite 300, Merriam, Kansas 66204, which drafted a site plan for the Wal-Mart store located at 1650 Washington Street, Pella, Iowa 50219 in Marion County, Iowa.

9. Defendant BRR Architecture, Inc. is a firm headquartered in 6700 Antioch Plaza, Suite 300, Merriam, Kansas 66204, which employs Defendant Christopher Rhea who drafted a site plan for the Wal-Mart store located at 1650 Washington Street, Pella, Iowa 50219 in Marion County, Iowa.

III. JURISDICTION AND VENUE

10. Pursuant to I.C.A. § 619.18, Plaintiff certify that the prayer for relief exceeds applicable jurisdictional requirements for the amount in controversy.

11. Venue in Marion County is proper.

IV. STATEMENT OF FACTS

12. At all times relevant hereto, Defendant WMPTD has been listed as the primary owner of record of the real property more commonly known as the Walmart Supercenter in Pella, Iowa with a street address of 1650 Washington St., Pella, Iowa 50219.

13. At all times relevant hereto, upon information and belief, Defendants WMPTD and Wal-Mart (collectively, Wal-Mart) operated a 100,000 square foot retail establishment more commonly known as the Walmart Supercenter in Pella, Iowa (Pella Supercenter) with a street address of 1650 Washington St., Pella, Iowa 50219.

14. The Pella Supercenter is situated just to the north of Iowa Highway 163, which for this stretch of business district is known as Washington Street.

15. To reach the main entrance of the Pella Supercenter from Washington Street, one need only turn north, proceed in a straight line for approximately 80-100 yards via an access road, then continue in a straight line on the main aisle of the Pella Supercenter's parking lot for another 80-100 yards.

16. For the entire 160-200 yards between Washington Street and the store entrance, there are no obstructions, including no stop or other traffic signs or lights, curves or curbs, or other methods of redirecting the parking or direction of traffic that travels from Washington Street to the Pella Supercenter enterance.

17. On December 1, 2016 at approximately 9:54 a.m., Defendant Dennis Mockenhaupt (Mockenhaupt) was driving a 2014 Ford F-150 east on Washington Street when he turned north onto the access road, heading to the Pella Supercenter to shop.

18. Mockenhaupt reported to police that as he turned off of Washington Street he began to choke on coffee, could not get any air and eventually lost consciousness.

19. Despite the choking, Mockenhaupt continued to drive the vehicle down the access road and then via the parking lot's main aisle, and according to airbag module data, the vehicle accelerated as it approached the Pella Supercenter main entrance.

20. According to the data, when the F-150 struck the front entrance, it was travelling at 48 mph.

21. The Pella Supercenter's front entrance consisted of a sidewalk with five decorative bollards set approximately 8-10 feet south and in front of the large glass doors that span approximately 25 feet from east to west.

22. Each bollard was made of two parts: an approximately 6-inch diameter embedded bollard between 24 and 36 inches above grade, which has only a very thin steel wall that was filled with concrete, and a decorative cast iron bollard cover imported from China that bolted over the embedded bollard. The origin of the embedded bollard is at this time unknown.

23. Just before Mockenhaupt's F-150 struck the entrance, Lindsey and her husband, Robert Rietveld (Robert), were entering the Pella Supercenter to shop.

24. Other people were also at or near the entrance, including store employee, Carrie Zugg (Carrie) and patron Robert DeJong (RD), who was sitting in the vestibule by the left wall.

25. Mockenhaupt's F-150 encountered only a single bollard on their path into the store, which shattered on impact.

26. At some point before they reached him, Robert saw Mockenhaupt's F-150 and moved out of its way.

27. But others were unable to avoid the impact, and as Mockenhaupt continued to travel forward, the F-150 first struck Lindsey and Carrie, and then RD.

28. Lindsey and Carrie were both thrown by the impact with the truck and debris, with Lindsey ending up approximately 15 feet inside the door, and Carrie being flung far down the main aisle.

29. After striking Carrie, Lindsey and RD, Mockenhaupt and the F-150 continued to travel in the store, striking RD's wife, Ruth DeJong (Ruth) and dragging her with the truck as it barreled into the produce section.

30. Ruth was pinned between the truck and a large freezer, which had been struck by the truck with such force that it was pushed all the way into the next aisle.

31. Robert observed Lindsey being struck.

32. Witnesses reported that Lindsey breathed at least once while Robert was watching, and that Robert continued to watch while others were trying to revive her.

33. Lindsey, Carrie and Ruth all died as a result of their injuries.

34. Lindsey's official cause of death was multiple blunt force injuries that included multiple hemorrhages of the head and neck, fractured pelvis, ribs, T2 vertebrae and both legs, and lacerations to her liver, lungs and aorta.

35. As a direct and proximate result of Defendants' tortious actions, the Estate of Lindsey Rietveld has suffered the following damages:

a. pre-death physical and mental pain and suffering on behalf of Lindsey;

b. pre-death loss of full function of the mind and body on behalf of Lindsey;

c. the present worth or value of the estate that would reasonably be expected to have saved and accumulated as a result of Lindsey's efforts between the time of her premature death and the end of her natural life, had she lived; and

d. interest on the premature funeral and burial expenses of Lindsey from the time of her death until the time such expenses would have been paid, had she lived out the course of her natural life.

36. As a direct and proximate result of Defendants' tortious actions, Plaintiff has suffered in loss of consortium, services, companionship, society and industry of her daughter, and seeks damages for said losses.

V. COUNT I – DEFENDANT MOCKENHAUPT NEGLIGENTLY OPERATED HIS VEHICLE.

37. Plaintiff restate and incorporates each allegation in ¶¶ 1-36 above into this Count I.

38. Defendant Mockenhaupt negligently failed his duties to Lindsey, including in the following particulars:

a. Failure to maintain control of the vehicle;

b. Failure to maintain a proper lookout;

c. Failure to operate the vehicle in a careful and prudent manner;

d. Failure to drive at a careful speed, having due regard for the traffic, surface and width of the road;

e. Failure to use ordinary care when road conditions required it; and

f. Failure to exercise reasonable care.

39. As a direct and proximate result of Defendant Mockenhaupt's actions and failures of his duties, Plaintiff have been damaged as set out above.

WHEREFORE, Plaintiff prays for judgment against Defendants Mockenhaupt in amounts that will fully and fairly compensate her for her injuries, for interest allowed by law and for the costs of this action.

VI. COUNT II – WMPTD AND WAL-MART WERE NEGLIGENT WHEN THEY FAILED TO ERECT ADEQUATE SECURITY DEVICES OR BOLLARDS.

40. Plaintiff restates and incorporate each allegation in ¶¶ 1-36 above into this Count II.

41. At all times material hereto, Defendants WMPTD and Wal-Mart had a duty to ensure the security of employees, patrons and other visitors (invitees) to the Pella Supercenter.

42. That duty included the duty to exercise reasonable care in the installation of security devices intended to protect invitees from unreasonable risks of injury.

43. The hazards of vehicles striking store entrances, such as that at Pella Supercenter, and causing injury to people and property was well-known in December 2016, both within the general population and with operators of retail establishments.

44. To protect people and property, Walmart, like most retail operators, makes it usual practice to install security bollards comprised of steel bollards embedded into a concrete footing in front of entrance doors. The purpose of such installation is to protect people and property from wayward vehicles even at a relatively high rate of speed.

45. To protect people and property, standard practices for such retail entrances is to erect security bollards at intervals no more than 5 feet apart, such that any vehicle driving toward the entrance will impact more than one bollard and thus increase the crash resistance of the installation.

46. The bollards erected by Defendants at the Pella Supercenter failed to meet industry standards, to wit:

a. The embedded bollards struck by the vehicle failed completely and were bend over by the impact. The use of an undersized bollard with insufficient steel strength and set too far apart from the bollard closest to it made it an ineffective barrier. The failute to install an effective bollard constitutes a deficiency with regard to standard practice for Walmart and other large retailers.

b. The decorative bollards being made in China offered no structural support or impact resistance. In fact, the decorative bollard broke off at the base, leaving shattered pieces scattered on the sidewalk and a major portion torn off and propelled towards the entrance.

c. The bollards were spaced too far apart, such that Mockenhaupt's F-150 only struck one on their essentially unimpeded drive through the entrance.

47. Defendants' failure to erect effective bollards or space them effectively according to prevailing Walmart or other retailer's standards was a breach of their duty of care.

48. Defendants' failure to protect their invitees with sufficient security devices was a breach of their duty of care.

49. As a direct and proximate result of Defendants' failure to meet their duties of care, Plaintiff have been damaged as set out above.

WHEREFORE, Plaintiff prays for judgment against Defendants WMPTD and Wal-Mart in amounts that will fully and fairly compensate her for her injuries, for interest allowed by law and for the costs of this action. In addition, Plaintiff prays for, as an additional judgment against Defendants WMPTD and Wal-Mart for punitive damages in an amount sufficient to punish these defendants and deter them and others from such conduct in the future, as well as interest thereon.

VII. COUNT III – WMPTD, WAL-MART, TRANSYSTEMS CORPORATION, CHRISTOPHER RHEA, AND BRR ARCHITECTURE, INC. NEGLIGENTLY DESIGNED AND CONSTRUCTED THE PELLA SUPERCENTER.

50. Plaintiff restates and incorporates each allegation in ¶¶ 1-36 above into this Count III.

51. At all times material hereto, Defendants WMPTD and Wal-Mart had a duty to ensure the security of employees, patrons and other visitors (invitees) to the Pella Supercenter.

52. At all times material hereto, Defendants TranSystems Corporation, Christopher Rhea, and BRR Architecture, Inc. had a duty to ensure that the site plan layout for the store and the parking lot were safely designed.

53. That duty included the duty to exercise reasonable care in the design and construction of the parking lot to protect invitees from unreasonable risks of injury.

54. The hazard from drivers of vehicles losing control and/or intentional driving in retail establishment parking lots, such as that at Pella Supercenter, and causing injury to people and property, was well-known in December 2016, both within the general population and with operators of retail establishments.

55. The hazard of vehicles striking store entrances, such as that at the Pella Supercenter, and causing injury to people and property was well-known in December 2016, both within the general population and with operators or retail establishments.

56. To protect people and property, the industry standard for retail operators is to design and construct parking lot drive aisles so that out-of-control and/or intentionally driven vehicles cannot proceed directly for any significant distance and, thus, cannot develop high rates of speed.

57. To protect people and property, the industry standard of retail operators is to design and construct parking lot drive aisles with obstructions such as stop signs, curves, curbs, redirections

of parking and redirection of traffic, in order to turn vehicles from a straight path and limit vehicle speed.

58. The parking lot designed and constructed by Defendants at the Pella Supercenter failed to meet industry standards, to wit:

a. The drive aisles were constructed such that an out-of-control and/or intentionally driven vehicle could proceed in a straight line for 160-200 yards without impediment;

b. The drive aisles were constructed such that an out-of-control and/or intentionally driven vehicle could reach a significant speed, up to at least 48 mph, while in the parking lot and approaching the store; and

c. The parking lot was constructed such that no obstructions were erected to turn vehicles from a straight path and limit vehicle speed.

59. Defendants' failure to design and construct the parking lot according to industry standards was a breach of their duty of care.

60. Defendants' failure to protect their invitees with a safely designed parking lot was a breach of their duty of care.

61. As a direct and proximate result of Defendants' failure to meet their duties of care, Plaintiff have been damaged as set out above.

WHEREFORE, Plaintiff prays for judgment against Defendants WMPTD, Wal-Mart, TranSystems Corporation, Christopher Rhea, and BRR Architecture, Inc. in amounts that will fully and fairly compensate her for her injuries, for interest allowed by law and for the costs of this action. In addition, Plaintiff prays for, as an additional judgment against Defendants WMPTD, Wal-Mart, TranSystems Corporation, Christopher Rhea, and BRR Architecture, Inc., punitive

damages in an amount sufficient to punish these defendants and deter them and others from such conduct in the future, as well as interest thereon.

VIII. COUNT IV - WMPTD AND WAL-MART WERE GROSSLY NEGLIGENT WHEN THEY FAILED TO ERECT ADEQUATE SECURITY DEVICES OR BOLLARDS.

62. Plaintiff restates and incorporates each allegation in ¶¶ 1-36, 40-49 above into this Count IV.

63. At all times material hereto, Defendants knew or should have known of the great risk of harm to people and property from vehicles striking store entrances.

64. At all times material hereto, WMPD and Wal-Mart had actual knowledge that the decorative bollards at the entrance of the Pella Supercenter were inadequate to prevent harm to people and property.

65. At all times material hereto, Defendants knew or should have known that the installation of the bollards at the Pella Supercenter did not meet Walmart or other large retailer standards for security bollards at store entrances. These bollards were undersized, were not sufficient in strength, and were spaced too far apart to withstand the impact of a vehicle and failed completely both as to the embedded bollard and the decorative cover bolted over it.

66. At all times material hereto, Defendants knew or should have known that the installation of the bollards at the Pella Supercenter failed to meet Walmart and other large retailer standards to erect security bollards at intervals no greater than 5 feet apart, so that any vehicle driving toward the entrance would encounter more than one.

67. Defendants did not erect security devices and bollards according to their own or other large retailer standards as set out above.

68. At all times material hereto, Defendants acted with willful, wanton and reckless disregard for Lindsey's and Robert's rights as stated herein.

WHEREFORE, Plaintiff prays for judgment against Defendants WMPTD and Wal-Mart in amounts that will fully and fairly compensate her for her injuries, for interest allowed by law and for the costs of this action. In addition, Plaintiff prays for, as an additional judgment against Defendants WMPTD and Wal-Mart for punitive damages in an amount sufficient to punish these defendants and deter them and others from such conduct in the future, as well as interest thereon.

IX. COUNT V – WMPTD, WAL-MART, TRANSYSTEMS CORPORATION, CHRISTOPHER RHEA, AND BRR ARCHITECTURE, INC. WERE GROSSLY NEGLIGENT IN THEIR DESIGN AND CONSTRUCTION OF THE PELLA SUPERCENTER.

69. Plaintiff restates and incorporates each allegation in ¶¶ 1-36, 50-61 above into this Count V.

70. At all times material hereto, Defendants had actual knowledge that the design and construction of the Pella Supercenter and parking lot was unsafe.

71. At all times material hereto, Defendants knew or should have known of the great risk of harm to people and property from out-of-control and intentionally driven vehicles in retail establishment parking lots.

72. At all times material hereto, Defendants knew or should have known of the great risk of harm to people and property from vehicles striking store entrances of retail establishments.

73. At all times material hereto, Defendants knew or should have known that the industry standard for the design and construction of retail establishment parking lot aisles was to prevent out-of-control and intentionally driven vehicles from proceeding in a straight line for any significant distance in order to prevent travelling at high speeds.

74. At all times material hereto, Defendants knew or should have known that the industry standard for the design and construction of retail establishment parking lot aisles was to erect obstructions such as stop signs, curves, curbs, redirection of parking and redirection of traffic, in order to turn vehicles from a straight path and limit vehicle speed.

75. Defendants did not design and construct the parking lot according to industry standards as set out above.

76. At all times material hereto, Defendants acted with willful, wanton and reckless disregard for Lindsey's and Robert's rights as stated herein.

WHEREFORE, Plaintiff prays for judgment against Defendants WMPTD, Wal-Mart, TranSystems Corporation, Christopher Rhea, and BRR Architecture, Inc. in amounts that will fully and fairly compensate her for her injuries, for interest allowed by law and for the costs of this action. In addition, Plaintiff prays for, as an additional judgment against Defendants WMPTD, Wal-Mart, TranSystems Corporation, Christopher Rhea, and BRR Architecture, Inc., punitive damages in an amount sufficient to punish these defendants and deter them and others from such conduct in the future, as well as interest thereon.

X. COUNT VI – DEFENDANTS WMPTD AND WAL-MART SHOULD BE HELD LIABLE UNDER A THEORY OF PREMISES LIABILITY.

77. Plaintiff restates and incorporates each allegation in ¶¶ 1-76 in this Count VI.

78. At all times material hereto, Defendants owned and/or controlled the premises at the Pella Supercenter.

79. At all times material hereto, Defendants knew or in the exercise of reasonable care should have known of the great risk of injury to people and property from out-of-control and/or intentionally driven vehicles in retail establishment parking lots.

80. At all times material hereto, Defendants knew or in the exercise of reasonable care should have known of the great risk of injury to people and property from vehicles striking the entrances of retail establishments.

81. Defendants' construction and maintenance of a roadway and parking lot aisle, without obstruction, for a straight distance of 160-200 yards before the Pella Supercenter store entrance was a condition that involved an unreasonable risk of injury to Plaintiff.

82. Defendants' construction and maintenance of decorative bollards of such weak construction that they did not provide sufficient protection for the Pella Supercenter entrance was a condition that involved an unreasonable risk of injury to Plaintiff.

83. Defendants' construction and maintenance of bollards that were not sufficiently close together to provide sufficient protection for the Pella Supercenter entrance was a condition that involved an unreasonable risk of injury to Plaintiff.

84. Defendants knew or should have known either that Plaintiff would not discover the conditions and/or could not protect themselves from them.

85. As a direct and proximate result of Defendants' failures, Plaintiff have been injured as set out above.

86. At all times material hereto, Defendants acted willfully and wantonly, with reckless disregard for Plaintiff's rights.

WHEREFORE, Plaintiff prays for judgment against Defendants WMPTD and Wal-Mart in amounts that will fully and fairly compensate her for her injuries, for interest allowed by law and for the costs of this action. In addition, Plaintiff prays for, as an additional judgment against Defendants Wal Mart Property Tax Dept and Wal-Mart Stores, Inc., punitive damages in an

amount sufficient to punish these defendants and deter them and others from such conduct in the future, as well as interest thereon.

XI. COUNT VII – ALL DEFENDANTS SHOULD BE HELD LIABLE TO PLAINTIFF FOR LOSS OF CONSORTIUM OF HER DAUGHTER LINDSEY.

87. Plaintiff restates and incorporates each allegation in ¶¶ 1-86 above into this Count VII.

88. Plaintiff is the mother of Lindsey.

89. Lindsey has been injured by Defendants as pleaded herein.

90. As a direct and proximate result of Lindsey's injuries, Plaintiff has lost the companionship, comfort, guidance, affection, general usefulness, industry, aid, and attention of her daughter, Lindsey.

91. As set out above, the actions of Defendants WMPTD and Wal-Mart were willful and wanton and done with reckless disregard to Robert's rights, entitling him to punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants WMPTD and Wal-Mart in amounts that will fully and fairly compensate her for her injuries, for interest allowed by law and for the costs of this action. In addition, Plaintiff prays for, as an additional judgment against Defendants Wal Mart Property Tax Dept and Wal-Mart Stores, Inc., punitive damages in an amount sufficient to punish these defendants and deter them and others from such conduct in the future, as well as interest thereon.

XII. JURY DEMAND

92. Plaintiff requests trial by jury on all counts so triable.

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