

**DISTRICT COURT, PITKIN COUNTY,
COLORADO**

506 E. Main Street,
Aspen, Colorado 81611
(970) 925-7635

DATE FILED: September 3, 2021 8:18 AM

Plaintiff: INDIA CARDAMONE

v.

**Defendant: AMERICAN EMERGENCY
RESPONSE & RECOVERY, LLC; A FLORIDA
LIMITED LIABILITY COMPANY, JOSEPH
LIPSEY, III; SHIRA LIPSEY; AND JOSEPH
LIPSEY, IV**

Attorneys for Plaintiff:

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⌘ COURT USE ONLY ⌘

Case Number:

Div:

COMPLAINT AND JURY DEMAND

Plaintiff, India Cardamone by and through its counsel, THE LAW OFFICES OF DANIEL E. BECNEL, III & KATHRYN BECNEL, for its Complaint against Defendant, American Emergency Response & Recovery, LLC; a Florida Limited Liability Company; Joseph Lipsey, III; Shira Lipsey; and Joseph Libsey, IV states and alleges as follows:

JURISDICTION AND VENUE

1. At all times relevant to the subject incident, Plaintiff India Cardamone was an individual residing in the City of Aspen, County of Pitkin, State of Colorado.

2. At all times relevant to the car crash that is the subject matter of this Complaint, Defendant American Emergency Response & Recovery, LLC., was an active Florida limited

liability company. The registered agent for AERR is Corpdirect Agents, Inc. 1200 South Pine Island Road, Miami, FL 33324.

3. At all times relevant to the car crash that is the subject matter of this Complaint, Defendant Joseph Lipsey, III, resided and had significant ties to Colorado through his family's residence with an address of 32 Prospector Road, Aspen, Colorado 81611. Defendant Joseph Lipsey, III was physically present in Aspen, CO on the day of the crash, on November 7, 2018.

4. At all times relevant to the subject incident, Defendant Shira Lipsey was a resident of and domiciled in the State of Colorado, with a principal residence address of 32 Prospector Road, Aspen, Colorado 81611.

5. At all times relevant to the subject incident, Defendant Joseph Lipsey, IV an individual, with a date of birth in the year 2000, was a resident of and domiciled in the State of Colorado, with a principal residence address of 32 Prospector Road, Aspen, Colorado 81611.

6. Jurisdiction is proper in this State and District pursuant to C.R.S. § 13-1-124(1)(a)-(c).

7. Venue is proper in this District and Court pursuant to Colo.R.Civ.P. 98(c)(5) as Pitkin County is where the incidents that are subject matter of the Complaint occurred.

THE PARTIES

8. Plaintiff India Cardamone (hereinafter "India"), an individual, is a resident of and domiciled in the State of Colorado, with a principal residence of 1480 Silver King Drive, Aspen, Colorado 81611. India was a passenger in the 2017 Tesla involved in the crash of November 7, 2018.

9. Defendant American Emergency Response & Recovery, LLC., "AERR") is an active Florida limited liability company. The registered agent for AERR is Corpdirect Agents, Inc., 1200 South Pine Island Road, Miami, FL 33324. AERR is the owner of the 2017 Tesla vehicle involved in the crash that occurred on November 7, 2018, in Aspen, Colorado. Defendants Joseph Lipsey, III and Shira Lipsey are the managing members of Defendant AERR. Defendant Joseph Lipsey, IV maintains a 5% ownership interest of AERR, along with his natural sibling, Louise Lipsey.

10. Defendant Joseph Lipsey, III, is the natural father of Defendant Joseph Lipsey, IV and spouse of Defendant Shira Lipsey. Defendant Joseph Lipsey, III is a resident and domiciled in the State of Tennessee with an address of 1100 E. 16th Street, Chattanooga, Tennessee, 37408, however, Joseph Lipsey, III resided at an address of 32 Prospector Road, Aspen, Colorado, 81611, which was the family home until the home was sold on 9/23/2020, where he spent time with his wife, Defendant Shira Lipsey, and their two children, that includes Defendant Joseph Lipsey, IV.

11. Defendant Shira Lipsey, an individual, spouse of Defendant Joseph Lipsey, III, and natural mother of Defendant Joseph Lipsey, IV, was a resident and domiciled in the State of Colorado, with a principal residence address of 32 Prospector Road, Aspen, Colorado 81611 until 9/23/2020. Defendant Shira Lipsey is managing member of Defendant AERR and holds a 90% ownership over Defendant AERR.

12. Defendant Joseph Lipsey, IV, an individual, with a date of birth in the year 2000, is the natural child of Defendant Joseph Lipsey, III and Defendant Shira Lipsey, and minority owner of Defendant AERR, and was a resident of and domiciled in the State of Colorado, with a principal residence address of 32 Prospector Road, Aspen, Colorado 81611 until 9/23/2020. Joseph Lipsey, IV was driving the 2017 Tesla involved in the crash of November 7, 2018. Defendant Joseph Lipsey, IV holds a 5% ownership stake of Defendant AERR and is part-owner of the 2017 Tesla.

FACTUAL ALLEGATIONS

13. Plaintiff hereby incorporates paragraphs 1 – 12, above.

14. On November 7, 2018, Joseph Lipsey, IV, while operating his 2017 Tesla vehicle (hereinafter “Tesla”), crashed the Tesla at a high speed into Maroon Creek just outside of Aspen, Colorado, and caused serious bodily injuries to Plaintiff, who was a front seat passenger.

15. As background, the Tesla involved in the crash was owned by AERR and used by, and under the control of, Defendants Joseph Lipsey, III and Shira Lipsey. Defendants Joseph Lipsey, III and Shira Lipsey are the sole managing members of AERR and the natural parents of Defendant Joseph Lipsey, IV and his sister, Louise Lipsey, each having a 5% ownership in AERR.

Course of Conduct of Reckless Neglect and Lack of Supervision by Defendants Joseph Lipsey, III and Shira Lipsey over Defendant Joseph Lipsey, IV

16. Defendants Joseph Lipsey, III and Shira Lipsey purchased the Tesla for Joseph Lipsey, IV despite the fact he did not have a valid Driver's License at the time. The Lipsey's allowed him to drive the Tesla without a license and later alone when he only had a driving permit.

Negligence of Defendant Joseph Lipsey, IV

17. On the afternoon of November 7, 2018, and before the subject crash, four (4) teenagers gathered at the Lipseys' 32 Prospector Road, Aspen, Colorado home: Joseph Lipsey, IV; and plaintiff India; Jack Jungquist (hereinafter “JJ”); Lillian Royer (hereinafter “Lily”); and William Laing (hereinafter “WL”). All attended Aspen High School at the time.

18. Lily began driving the Tesla previously outlined in the petition from the Prospector Road home. At some point Lily pulled over, and Joseph Lipsey, IV demanded to drive “his” car. Lily and Joseph Lipsey, IV switched seats, and Joseph Lipsey, IV began driving the Tesla.

19. Defendant Joseph Lipsey, IV proceeded to drive in a reckless manner at extreme speeds downhill around the curves heading north on the pitch black Maroon Creek Road, at a high rate of speed while in the “Insane Mode” of the Tesla.

20. Joseph Lipsey, IV lost control of the Tesla while attempting to negotiate a left bending curve at high speed. The Tesla began a broadside slide of 37.1 feet down Maroon Creek Road until the vehicle left the roadway and continued the slide off the road until it became airborne and struck a tree mid-air with its front-end. The Tesla vehicle then rolled, overturning twice, down the hillside and embankment towards the bottom of Maroon Creek, which runs parallel to and the east of Maroon Creek Road, and traveled nearly 300 feet before coming to a stop upside down in the Maroon Creek.

21. Plaintiff India lost consciousness from the crash and her injuries, but awoke and was able to escape the flooding Tesla in freezing temperatures. Instead of assisting the other passengers, Defendant Joseph Lipsey, IV left the car and all other individuals. JJ and WL attempted to help each other escape the wreckage. Joseph Lipsey, IV did not help any of his passengers.

22. On the scene, Defendant Joseph Lipsey, IV was cited by Colorado State Patrol Trooper J. Carbajal for Careless Driving (caused bodily injury) under C.R.S. §42-4-1402(2)(b) and Driving without a Driver’s License under C.R.S. §42-2-101(1). Joseph Lipsey, IV was ultimately charged with six criminal counts in connection with the November 7, 2018 crash.

23. As a result of the November 7, 2018 crash, Defendant Joseph Lipsey, IV pleaded guilty to Vehicular Assault pursuant to C.R.S. § 18-3-2015(1)(a), a class 4 felony, for which he received a Deferred Sentence and Judgment. Also stemming from the November 7, 2018 crash, Joseph Lipsey, IV pled guilty to Reckless Endangerment pursuant to C.R.S. § 18-3-208, a class 3 misdemeanor.

24. Among the elements of the crime of Vehicular Assault, to which Defendant Joseph Lipsey, IV pleaded guilty, are that he drove a motor vehicle in a reckless manner and that such conduct was the proximate cause of serious bodily injury.

25. Among the elements of the crime of Reckless Endangerment to which Defendant Joseph Lipsey, IV pleaded guilty is engaging in conduct which created a substantial risk of serious bodily injury.

26. Plaintiff India suffered serious physical, emotional, and psychological injuries as a result of this accident.

27. As a result of this car crash, Plaintiff suffered serious injuries, damages, and losses as set forth in more particularity below.

FIRST CLAIM FOR RELIEF
(Negligence – Defendant Joseph Lipsey, IV)

28. Plaintiff hereby incorporates paragraphs 1 – 27 above.

29. Defendant Joseph Lipsey, IV owed a duty to Plaintiff and others on the roadway to operate his vehicle in a safe and reasonable manner.

30. Defendant Joseph Lipsey, IV breached this duty when he negligently drove the Tesla at high speeds, ignoring the pleas from the passengers asking him to slow down, on a dark windy mountain road without a driver’s license with a vehicle full of other teenagers.

31. As a direct result of Defendant Joseph Lipsey, IV’s negligence, Plaintiff sustained serious injuries, damages, and losses.

SECOND CLAIM FOR RELIEF
(Negligence *per se* - Defendant Joseph Lipsey, IV)

32. Plaintiff hereby incorporates paragraphs 1 – 31 above.

33. Defendant Joseph Lipsey, IV pled guilty to Vehicular Assault pursuant to C.R.S. § 18-3-2015(1)(a), a class 4 felony, and to Reckless Endangerment pursuant to C.R.S. § 18-3-208, a class 3 misdemeanor as a result of the November 7, 2018 accident. Defendant Joseph Lipsey, IV’s violation of these statutes as well as C.R.S. § 42-2-101(1), Licenses for Drivers Required, constitutes negligence *per se*.

34. As a result of Defendant Joseph Lipsey, IV’s negligence *per se*, Plaintiff sustained serious injuries, damages, and losses.

THIRD CLAIM FOR RELIEF
(Negligence *per se* - Defendant Joseph Lipsey, III and Shira Lipsey)

35. Plaintiff hereby incorporates paragraphs 1 – 34 above.

36. Defendant Joseph Lipsey, III and Shira Lipsey allowed Defendant Joseph Lipsey, IV free use of the Tesla despite knowing that their teenage son was unlicensed in violation of C.R.S. §42-2-40, which constitutes negligence *per se*.

37. As a result of Defendant Joseph Lipsey, III and Shira Lipsey’s negligence, Plaintiff sustained serious injuries, damages, and losses.

FOURTH CLAIM FOR RELIEF
(Punitive Damages – Defendants Joseph Lipsey, III and Shira Lipsey)

38. Plaintiff hereby incorporates paragraphs 1 – 37 above.

39. Defendants Joseph Lipsey, III and Shira Lipsey entered into a course of conduct of willful, wanton, and reckless behavior that lasted years, wherein:

- a. Defendants Joseph Lipsey, III and Shira Lipsey actively and intentionally encouraged their children and other teenagers to break the law by providing alcohol to their children and high school children's friends at numerous house parties at their Aspen residence;
- b. Defendants Joseph Lipsey, III and Shira Lipsey knew with certainty and were unconcerned that Defendant Joseph Lipsey, IV had never obtained a driver's license;
- c. Despite their knowledge of their son's unlicensed status Defendants Joseph Lipsey, III and Shira Lipsey willfully, wantonly, and recklessly provided access to vehicles which they controlled and/or operated to their son, Defendant Joseph Lipsey, IV, who drove these vehicles at his discretion;
- d. Defendants Joseph Lipsey, III and Shira Lipsey's reckless conduct over the years of providing access to family vehicles to their unlicensed teenage son was done purposefully and with conscious disregard of the rights and safety of others.

40. As a result of Defendants Joseph Lipsey, III and Shira Lipsey's willful, wanton, and reckless course of conduct by purchasing him a Tesla while he possesses no valid driver's license then allowing him to drive said Tesla without a valid license. They further allowed him to drive the Tesla without an adult in the car when he only had a driving permit.

41. In accordance with C.R.S. §13-21-102, the willful and wanton course of conduct of Defendants Joseph Lipsey, III and Shira Lipsey entitles Plaintiff to exemplary damages.

FIFTH CLAIM FOR RELIEF
(Punitive Damages – Defendants Joseph Lipsey, IV)

42. Plaintiff hereby incorporates paragraphs 1 – 41 above.

43. Defendant Joseph Lipsey, IV knew he was violating Colorado law when he drove the Tesla on November 7, 2018, without a driver's license.

44. Defendant Joseph Lipsey, IV demonstrated a complete and intentional disregard for both the safety of his teenage passengers, including Plaintiff, and the consequences of his reckless driving by:

a. Driving at speeds in excess of 90 mph on a dark unlit curvy two-lane mountain road.

45. Defendant Joseph Lipsey, IV's willful, wanton, and reckless behavior caused Plaintiff and the other Tesla passengers' serious injuries.

46. In accordance with C.R.S. §13-21-102, the willful and wanton course of conduct of Defendants Joseph Lipsey, IV entitles Plaintiff to exemplary damages.

SIXTH CLAIM FOR RELIEF

(Doctrine of Negligent Entrustment – Defendants Joseph Lipsey, III and Shira Lipsey)

47. Plaintiff hereby incorporates paragraphs 1 – 41 above.

48. The Tesla is titled in the name of AERR.

49. Defendants Joseph Lipsey, III and Shira Lipsey are the sole managing members of Defendant AERR and control the operation and use of the Tesla vehicle.

50. Since Defendant Joseph Lipsey, IV's 16th birthday, and up to the car crash of November 7, 2018, Defendants Joseph Lipsey, III and Shira Lipsey allowed Defendant Joseph Lipsey IV access to vehicles that they controlled and/or possessed which he frequently drove to and from high school and around Aspen, Colorado.

51. Defendants Joseph Lipsey, III and Shira Lipsey knew that Defendant Joseph Lipsey, IV had never possessed a valid driver's license and allowed him to drive their vehicle.

52. As a result of Defendants Joseph Lipsey, III and Shira Lipsey's actions, Plaintiff sustained serious injuries, damages, and losses.

SEVENTH CLAIM FOR RELIEF

(Doctrine of Negligent Entrustment – Defendant AERR)

53. Plaintiff hereby incorporates paragraphs 1 – 52 above.

54. The Tesla is titled in the name of AERR.

55. Defendants Joseph Lipsey, III and Shira Lipsey are the sole managing members of Defendant AERR and are thus agents of Defendant AERR. As agents of Defendant AERR, Defendants Joseph Lipsey, III and Shira Lipsey controlled the operation and use of the Tesla and, in fact, used its as one of two family vehicles in Aspen, Colorado.

56. Defendant Joseph Lipsey, IV never obtained a driver's license prior to November 7, 2018.

57. Defendant Joseph Lipsey, IV had a driving permit, which only allowed him to drive when accompanied by another licensed adult.

58. Since Defendant Joseph Lipsey, IV's 16th birthday, and up to the car crash of November 7, 2018, Defendants Joseph Lipsey, III and Shira Lipsey negligently allowed Defendant Joseph Lipsey, IV to drive other family vehicles, including the Tesla once purchased, knowing that Joseph Lipsey, IV did not have a driver's license.

59. As a result Defendant AERR's tacit, if not outright, permission to allow an unlicensed driver to operate and use the Tesla through its agents, Defendants Joseph Lipsey, III and Shira Lipsey, Defendant Joseph Lipsey, IV recklessly drove and crashed the Tesla on the night of November 7, 2018 resulting in serious injuries to Plaintiff and passengers.

EIGHTH CLAIM FOR RELIEF

(Vicarious Liability Under the Family Car Doctrine – Defendants Joseph Lipsey, III and Shira Lipsey)

60. Plaintiff hereby incorporates paragraphs 1 – 59 above.

61. Defendants Joseph Lipsey, III and Shira Lipsey are both heads of the Lipsey household, which includes Defendant Joseph Lipsey, IV.

62. Defendants Joseph Lipsey, III and Shira Lipsey had control of the use of the Tesla.

63. Defendants Joseph Lipsey, III and Shira Lipsey gave implicit permission, through a course of conduct as set forth above to Defendant Joseph Lipsey, IV to drive the Tesla at his pleasure.

64. Defendant Joseph Lipsey, IV operated and used the Tesla on November 7, 2018.

65. Defendant Joseph Lipsey, IV was negligent in his operation of the Tesla on November 7, 2018.

66. Defendants Joseph Lipsey, III and Shira Lipsey are vicariously liable for the damages to Plaintiff caused by Joseph Lipsey, IV's reckless driving of the Tesla on November 7, 2018.

DAMAGES

67. Plaintiff hereby incorporates paragraphs 1 – 66 above.

68. As a direct result of Defendants' negligence, Plaintiff sustained serious injuries, some permanent, including, but not limited to her cervical spine, brain trauma, concussion, head,

double vision, lacerations, anxiety, depression, and PTSD. Specifically, Plaintiff was diagnosed with the following:

- a. **Brain:** traumatic brain injury, concussion, memory loss, severe headaches, double vision;
- b. **Neck and Spine:** neck pain, stiffness and swollen glands;
- c. **Multiple abrasions and muscle pain:** multiple abrasions and pain to the body
- d. **Mental health:** acute stress response; chronic post-traumatic stress disorder (PTSD); stress, anxiety disorder; and depression.

69. As further result of Defendants' negligence, Plaintiff has sustained economic and non-economic losses, including but not limited to, lost schooling, past and future medical expenses, pain and suffering, loss of enjoyment of life, mental anguish, impairment, and substantial inconvenience.

70. Plaintiff respectfully requests that this Court enter Judgment in her favor and against Defendants, and award her all relief as allowed by law, including but not limited to, the following:

- a. Actual economic damages, including past and future medical expenses, as established at trial;
- b. Compensatory damages, including, but not limited to, damages for past and future pecuniary losses, physical pain and suffering, emotional pain and suffering, impairment and substantial inconvenience, mental anguish, loss of enjoyment of life, and other non pecuniary losses to be determined at trial by a jury;
- c. Pre-judgment from date this action accrued and post-judgment interest at the highest lawful rate;
- d. Punitive damages;
- e. Attorney's fees, costs, and expert witness fees; and
- f. Such further relief as justice requires.

PLAINTIFF DEMANDS A JURY TRIAL IN THIS MATTER

Respectfully submitted this 3rd day of September, 2021.

/s/ Daniel E. Becnel, III

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/s/ Kathryn Becnel

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Plaintiff's Address:

1480 Silver King Drive,
Aspen, Colorado 81611

In accordance with C.R.C.P. 121 § 1-29(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

Certificate of Service

I hereby certify that on this 3rd day of September 2021, I electronically filed the foregoing with the Clerk of Court by using the ICCES System, which will send a notice of electronic filing to all counsel of record.

/s/ Daniel E. Becnel, III

Daniel E. Becnel, III
(Original Signature on File)

/s/ Kathryn Becnel

Kathryn Becnel
(Original Signature on File)