

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

|    |                                                      |                                      |
|----|------------------------------------------------------|--------------------------------------|
| 6  | DAVID B. SALE, personal representative of the )      | Case No. 1012-17188                  |
| 7  | Estate of Danielle Nicole Sale, an individual, and ) |                                      |
| 8  | ROBERT ERIK GITTINGS, an individual, )               | COMPLAINT                            |
| 9  | Plaintiffs, )                                        | (Wrongful Death: Negligence; Strict  |
| 10 | vs. )                                                | Product Liability)                   |
| 11 | TRIMET, assumed business name of Tri-County )        | (Personal injury: Negligence; Strict |
| 12 | Metropolitan Transportation District of Oregon, )    | Product Liability                    |
| 13 | a municipal corporation; SANDI L. DAY, an )          | CLAIM NOT SUBJECT TO                 |
| 14 | individual; FRED HANSEN, an individual; )            | MANDATORY ARBITRATION                |
| 15 | STEPHEN R. BANTA, an individual; )                   |                                      |
| 16 | SHELLEY LOMAX, an individual; NEW )                  | Principal Amount Prayed For:         |
| 17 | FLYER OF AMERICA, INC., a North Dakota )             | \$20,000,000                         |
| 18 | business corporation; NEW FLYER )                    |                                      |
| 19 | INDUSTRIES, INC., an Ontario business )              |                                      |
| 20 | corporation; NEW FLYER INDUSTRIES )                  |                                      |
| 21 | CANADA ULC, an Ontario business )                    |                                      |
| 22 | corporation; HADLEY PRODUCTS CORP., a )              |                                      |
| 23 | Michigan profit corporation; ACME )                  |                                      |
| 24 | SPECIALTY MANUFACTURING CO., an )                    |                                      |
| 25 | Ohio business corporation; and ROSCO INC., a )       |                                      |
| 26 | New York business corporation, )                     |                                      |
|    | Defendants. )                                        |                                      |

Plaintiffs allege:

**Allegations as to Parties**

1.

Plaintiff David B. Sale is the personal representative of the Estate of Danielle Nicole Sale, who on April 24, 2010, was struck and killed by a bus in Portland, Multnomah County, Oregon. Plaintiff Sale is a resident of Vancouver, Washington. Danielle Sale is Plaintiff Sale's daughter. At the time of her death she was 22 years old and was also a resident of Vancouver,

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1 Washington. Her estate is being probated in Multnomah County, Oregon.

2 2.

3 Plaintiff Robert Erik Gittings on April 24, 2010, was struck and severely injured by a bus  
4 in Portland, Multnomah County, Oregon. Plaintiff is a resident of Vancouver, Washington. At  
5 the time of injury he was 22 years old.

6 3.

7 Defendant Tri-County Metropolitan Transportation District of Oregon (“Tri Met”), is an  
8 Oregon municipal corporation headquartered in Portland, Multnomah County, Oregon. It owned  
9 and operated the bus that struck and killed Danielle Sale.

10 4.

11 Defendant Sandi L. Day drove Tri Met bus No. 2514 that struck and killed Danielle Sale.  
12 Defendant Day is a resident of Long Beach, Washington.

13 5.

14 Defendant Fred Hansen was General Manager of Tri Met from October, 1998, through  
15 June, 2010. Defendant Hansen is a resident of Portland, Oregon.

16 6.

17 Defendant Stephen R. Banta was Tri Met’s Executive Director of Operations, and  
18 oversaw Tri Met’s safety program, from May, 2007, to January, 2010. Defendant Banta is a  
19 resident of Arizona.

20 7.

21 Defendant Shelly Lomax was Tri Met’s Executive Director of Operations from January,  
22 2010, to date. Before that she was Director of Operations Support and Director of Safety and  
23 Security. Defendant Lomax is a resident of Oregon.

24 8.

25 Defendant New Flyer of America, Inc., a North Dakota business corporation, sold bus  
26 No. 2514 to Defendant Tri Met and completed the bus’s manufacture at its facility in St. Cloud,

Page 2 –COMPLAINT

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1 Minnesota.

2 9.

3 Defendant New Flyer Industries, Inc., an Ontario business corporation, began the  
4 manufacture of bus No. 2514 at its facility in Winnipeg, Manitoba, and then sent the bus to St.  
5 Cloud, Minnesota, for completion.

6 10.

7 Defendant New Flyer Industries Canada ULC, an Ontario business corporation, began the  
8 manufacture of bus No. 2514 at its facility in Winnipeg, Manitoba, and then sent the bus to St.  
9 Cloud, Minnesota, for completion.

10 11.

11 Defendant Hadley Products Corp. is a Michigan profit corporation that manufactured and  
12 furnished the left outside rear view mirror for bus No. 2514.

13 12.

14 Defendant Acme Specialty Manufacturing Co. is an Ohio business corporation that on  
15 information and belief manufactured and furnished the left outside mirror head assembly for bus  
16 No. 2514.

17 13.

18 Defendant Rosco Inc. is a New York business corporation that on information and belief  
19 manufactured and furnished a portion of the left outside mirror for bus No. 2514.

20 **Common Factual Allegations**

21 14.

22 At 11:57 p.m. Saturday, April 24, 2010, Danielle Sale and Plaintiff Gittings entered a  
23 signaled and marked crosswalk with the walk light. They entered together holding hands. They  
24 were in a group of five friends and family who were heading west across Northwest Broadway at  
25 the south portion of its intersection with Northwest Glisan Street in Portland.

26 15.

1 While Danielle Sale and Plaintiff Gittings were crossing Northwest Broadway in the  
2 protected crosswalk, Defendant Day struck and ran over them with Tri Met bus No. 2514, killing  
3 Danielle Sale and severely injuring Plaintiff Gittings.

4 16.

5 Defendant Day at the same time struck, ran over and killed Plaintiff Gittings' friend  
6 Jenee Hammel; and struck his friends Ryan Hammel and Jamie Hammel, causing them injuries  
7 for which they were treated and released from the hospital.

8 17.

9 Immediately before striking Danielle Sale and Plaintiff Gittings, Defendant Day was  
10 turning left onto southbound Broadway from a bus shelter on the north side of Northwest Glisan  
11 Street at Broadway.

12 18.

13 On August 4 and August 30, 2010, Plaintiffs gave Defendant Tri Met the notice required  
14 by ORS 30.275.

15 **Common Allegations of Negligence and Recklessness**

16 *Against Defendants Day and Tri Met*

17 19.

18 Defendant Day was acting within the scope of her employment as a Tri Met bus driver  
19 when she struck, ran over and killed Danielle Sale and injured Plaintiff Gittings.

20 20.

21 The negligence and recklessness of Defendant Day, and through her Defendant Tri Met,  
22 was a substantial factor in causing Danielle Sale's death and Plaintiff Gittings' injuries in the  
23 following particulars:

24 (a) Defendant Day illegally turned left onto Broadway from the right-hand lane of  
25 Glisan across two westbound lanes of traffic.

26 (b) While and after turning from Glisan, Defendant Day drove too fast through the

1 signaled protected crosswalk on Broadway.

2 (c) While and after turning left from Glisan, Defendant Day drove through the  
3 signaled and protected crosswalk on Broadway without maintaining a proper, or  
4 any, lookout.

5 (d) While and after turning left from Glisan, Defendant Day drove through the  
6 signaled and protected crosswalk on Broadway without stopping and remaining  
7 stopped for Danielle Sale or Plaintiff Gittings or the group in which they were  
8 walking.

9 (e) After striking and running over Danielle Sale and Plaintiff Gittings, Defendant  
10 Day continued driving down Broadway with Danielle Sale and Plaintiff Gittings  
11 caught under bus No. 2514.

12 **Common Allegations of Negligence**

13 *Against Defendants Hansen, Banta, Lomax and Tri Met*

14 21.

15 Defendants Hansen, Banta and Lomax were acting within the scope of their employment  
16 as Tri Met executives at all times material to this claim for relief.

17 22.

18 The negligence of Defendants Hansen, Banta and Lomax, and through them Defendant  
19 Tri Met, were a substantial factor in causing Danielle Sale's death and Plaintiff Gittings' injuries  
20 in the following particulars:

21 (a) Defendants and each of them established and approved systematic bus route  
22 schedules that were too tight, which they knew or should have known would  
23 cause driver safety lapses.

24 (b) Defendants and each of them established, approved and refused to change unsafe  
25 left-side outer rear view mirrors throughout Tri Met bus system, including bus  
26 No. 2514. Defendants and each of them knew or should have known these

1 mirrors created a hazardous driver blind spot during left turns.

2 (c) Defendants and each of them established, approved and refused to change an  
3 unsafe seat, left outside mirror and A-pillar arrangement throughout the Tri Met  
4 bus system, including bus No. 2514. Defendants and each of them knew or  
5 should have known this arrangement created a hazardous driver blind spot during  
6 left turns, particularly for short drivers such as Defendant Day.

7 (d) Defendants and each them maintained and approved a culture within Tri Met that  
8 failed to place safe and defensive driving as the top and overriding priority of Tri  
9 Met. Defendants and each of them knew or should have known that this culture  
10 was communicated to all Tri Met drivers, and that it substantially assisted,  
11 encouraged and produced unnecessary and unreasonable safety lapses on the part  
12 of many Tri Met drivers.

13 **Common Allegations of Strict Product Liability**

14 *Against Defendants New Flyer of America, Inc., New Flyer Industries, Inc.,*  
15 *New Flyer Industries Canada ULC, Hadley Products Corp.,*  
16 *Acme Specialty Manufacturing Co., and Rosco Inc.*

23.

17 The left outside rear view mirror on bus No. 2514 was unreasonably dangerous to  
18 Danielle Sale and Plaintiff Gittings as they walked across Broadway in the signaled and  
19 protected crosswalk, in that its size and placement created a hazardous driver blind spot during  
20 left turns.

21 24.

22 The condition of the left outside rear view mirror at the time bus No. 2514 struck, ran  
23 over and killed Danielle Sale and injured Plaintiff Gittings was intended to be, and was,  
24 substantially the same as when it left the hands of Defendants New Flyer of America, Inc., New  
25 Flyer Industries, Inc., New Flyer Industries Canada ULC, Hadley Products Corp., Acme  
26 Specialty Manufacturing Co., and Rosco, Inc.

1 25.

2 The size and placement of the left outside rear view mirror on bus No. 2514 was a  
3 substantial factor in causing the death of Danielle Sale and the injuries of Plaintiff Gittings.

4  
5 *Against Defendants New Flyer of America, Inc.,  
New Flyer Industries, Inc., and New Flyer Industries Canada ULC*

6 26.

7 The driver seat, left outside mirror and A-pillar arrangement in bus No. 2514 was  
8 unreasonably dangerous to Danielle Sale and Plaintiff Gittings as they walked across Broadway  
9 in the protected crosswalk, in that it created a hazardous driver blind spot during left turns,  
10 particularly for short drivers such as Defendant Day.

11 27.

12 The condition of the seat, left outside mirror and A-pillar arrangement in bus No. 2514 at  
13 the time it struck, ran over and killed Danielle Sale and injured Plaintiff Gittings was intended to  
14 be, and was, substantially the same as when it left the hands of Defendants New Flyer of  
15 America, Inc., New Flyer Industries, Inc., and New Flyer Industries Canada ULC.

16 28.

17 The driver seat, left outside mirror and A-pillar arrangement in bus No. 2514 was a  
18 substantial factor in causing the death of Danielle Sale and the injuries of Plaintiff Gittings.

19 **Plaintiff Sales' First Claim for Relief**

20 *Wrongful Death – Negligence – Against Defendants Day and Tri Met*

21 29.

22 Plaintiff Sale realleges and incorporates paragraphs 1-20.

23 30.

24 As a result of Danielle Sale's death, her estate has sustained non-economic damages,  
25 including decedent's pain and suffering, and economic damages, including rescue, burial and  
26 memorial services rendered to decedent, and pecuniary loss to her estate. In addition, decedent's

1 surviving father and mother have each been deprived of and suffered the loss of the services,  
2 society and companionship of the decedent, and suffered pecuniary loss, as a result of her death.  
3 Non-economic damages because of Danielle Sales' death total \$500,000, and economic damages  
4 total \$9.5 million.

5 **Plaintiff Sales' Second Claim for Relief**

6 *Wrongful Death – Negligence – Against Defendants Hansen, Banta, Lomax and Tri Met*

7 31.

8 Plaintiff Sales realleges and incorporates paragraphs 1-22 and 30.

9 **Plaintiff Sales' Third Claim for Relief**

10 *Wrongful Death – Strict Product Liability*

11 *Against Defendants New Flyer of America, Inc.; New Flyer Industries, Inc.;*  
12 *New Flyer Industries Canada ULC; Hadley Products Corp.;*  
*Acme Specialty Manufacturing Co.; and Rosco, Inc.*

13 32.

14 Plaintiff Sales realleges and incorporates paragraphs 1-18, 23-25, and 30.

15 **Plaintiff Sales' Fourth Claim for Relief**

16 *Wrongful Death – Strict Product Liability*

17 *Against Defendants New Flyer of America, Inc.; New Flyer Industries, Inc.;*  
18 *Abd New Flyer Industries Canada ULC*

19 33.

20 Plaintiff Sales realleges and incorporates paragraphs 1-18, 26-28, and 30.

21 **Plaintiff Gittings' First Claim for Relief**

22 *Negligence – Against Defendants Day and Tri Met*

23 34.

24 Plaintiff Gittings realleges and incorporates paragraphs 1-20.

25 35.

26 The conduct of the defendants against whom Plaintiff Gittings makes the allegations in



1 this claim for relief, and each of them, directly and proximately caused Plaintiff Gittings to  
2 sustain the following injuries:

- 3 (a) A fracture of his left lower ribs and a pleural effusion;
- 4 (b) Contusions of his left and right lungs;
- 5 (c) A hemopneumothorax and atelectasis of his left lung and chest cavity;
- 6 (d) A rupture of his spleen;
- 7 (e) Laceration of his left foot and ankle resulting in a de-gloving of a large portion of his  
8 left foot, with exposure and injury of the anterior tibial tendon and retinaculum,  
9 necessitating surgery;
- 10 (f) A fracture in the right side of his pelvis;
- 11 (g) A fracture of the left scapula;
- 12 (h) The loss of several front teeth;
- 13 (i) An epigastric artery bleed;
- 14 (j) A fracture of the fifth metatarsal of his left foot;
- 15 (k) A crush injury to his right thigh and groin, with the development of hematoma and  
16 lymphadenitis;
- 17 (l) Injury to his head, including loss of consciousness, concussion, and loss of mental  
18 acuity;
- 19 (m) A sprain and strain of the fifth finger in his left hand;
- 20 (n) A sprain and strain of his left ankle;
- 21 (o) Abrasions, cuts and scars on his face, tongue, chin, back and torso;
- 22 (p) A laceration of his right flank;
- 23 (q) Bruising and swelling of his face, mouth, head, neck, chest, abdomen, back, arms,  
24 shoulders, pelvis, legs, ankles and feet;
- 25 (r) Mental and emotional distress;
- 26 (s) Depression.

1 36.

2 As a direct and proximate cause of the negligence of the defendants and each of them  
3 against whom Plaintiff makes allegations in this claim for relief, Plaintiff Gittings has incurred  
4 expenses for reasonable and necessary medical treatment for his injuries, all to his economic  
5 damage in the sum of \$250,000.

6 37.

7 Plaintiff Gittings has suffered additional economic damage of \$4.75 million, and  
8 noneconomic damages of \$5 million.

9 **Plaintiff Gittings' Second Claim for Relief**

10 *Negligence – Against Defendants Hansen, Banta, Lomax and Tri Met*

11 38.

12 Plaintiff Gittings realleges and incorporates paragraphs 1-22 and 35-37.

13 **Plaintiff Gittings' Third Claim for Relief**

14 *Strict Product Liability*

15 *Against Defendants New Flyer of America, Inc.; New Flyer Industries, Inc.;*  
16 *New Flyer Industries Canada ULC; Hadley Products Corp.;*  
*Acme Specialty Manufacturing Co.; and Rosco, Inc.*

17 39.

18 Plaintiff Sales realleges and incorporates paragraphs 1-18, 23-25, and 35-37.

19 **Plaintiff Gittings' Fourth Claim for Relief**

20 *Strict Product Liability*

21 *Against Defendants New Flyer of America, Inc.; New Flyer Industries, Inc.;*  
22 *Abd New Flyer Industries Canada ULC*

23 40.

24 Plaintiff Sales realleges and incorporates paragraphs 1-18, 26-28, and 35-37.

1 **Prayers for Relief**

2 WHEREFORE, Plaintiff David B. Sale prays for judgment:

3 (a) On his first claim for relief for wrongful death and negligence against Defendants  
4 Day and Tri Met, in the sum of \$10 million.

5 (b) On his second claim for relief for wrongful death and negligence against Defendants  
6 Hansen, Banta, Lomax and Tri Met, in the same sum of \$10 million.

7 (c) On his third claim for relief for wrongful death and strict product liability against  
8 Defendants New Flyer of America, Inc., New Flyer Industries, Inc., New Flyer  
9 Industries Canada ULC, Hadley Products Corp., Acme Specialty Manufacturing Co.,  
10 and Rosco Inc. in the same sum of \$10 million.

11 (d) On this forth claim for relief for wrongful death and strict product liability against  
12 Defendants New Flyer of America, Inc., New Flyer Industries, Inc., and New Flyer  
13 Industries Canada ULC in the same sum of \$10 million.

14 (e) For his costs and disbursements.

15 (f) For such further relief as the Court deems just.

16 WHEREFORE, Plaintiff Gittings prays for judgment:

17 (a) On his first claim for relief for negligence against Defendants Day and Tri Met, in the  
18 sum of \$10 million.

19 (b) On his second claim for relief for negligence against Defendants Hansen, Banta,  
20 Lomax and Tri Met, in the same sum of \$10 million.

21 (c) On his third claim for relief for strict product liability against Defendants New Flyer  
22 of America, Inc., New Flyer Industries, Inc., New Flyer Industries Canada ULC,  
23 Hadley Products Corp., Acme Specialty Manufacturing Co., and Rosco Inc. in the  
24 same sum of \$10 million.

25 (d) On this forth claim for relief for strict product liability against Defendants New Flyer  
26 of America, Inc., New Flyer Industries, Inc., and New Flyer Industries Canada ULC

1 in the same sum of \$10 million.

2 (e) For his costs and disbursements.

3 (f) For such further relief as the Court deems just.

4 DATED December 7, 2010.

5 Respectfully Submitted,

6 KIRKLIN THOMPSON & POPE LLP

7  
8 /s/ George Kirklin

9 By \_\_\_\_\_  
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11 /s/ Stephen C. Thompson

12 By \_\_\_\_\_  
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14  
15 /s/ Rick Pope

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18 Attorneys for Plaintiff David B. Sale

19 Trial Attorneys