

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 08-56892 CA 27

WILSON TORRES, individually, and
as Personal Representative of the Estate
of MYRIAM DEL SOCORRO LOPEZ,

Plaintiff,

vs.

LUIS ENRIQUE CRUZ-GOVIN,
LUIS N. CRUZ, JR. a/k/a LUIS
CRUZ-GOVIN, and CLARIBEL
LOPEZ-CRUZ

Defendants.

PLAINTIFF'S FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, WILSON TORRES, individually and as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, by and through his undersigned counsel, and files this First Amended Complaint, and sues the Defendants, LUIS ENRIQUE CRUZ-GOVIN, LUIS N. CRUZ, JR. a/k/a LUIS CRUZ-GOVIN and CLARIBEL LOPEZ-CRUZ, and alleges:

I. Jurisdiction and Facts Common to All Allegations

1. This is an action for damages in excess of the sum of Fifteen Thousand (\$15,000.00) Dollars.

2. This action is being brought for injuries sustained by Plaintiff, WILSON TORRES, and pursuant to the Florida Wrongful Death Act for the death of MYRIAM DEL SOCORRO LOPEZ.

3. At all times material herein the Plaintiff, WILSON TORRES, was and is a resident of Miami-Dade County, Florida and is otherwise *sui juris*. Plaintiff, WILSON TORRES, was married to Myriam del Socorro Lopez, deceased. They have two children; [REDACTED], age 16 and [REDACTED], age 11.

4. At all material times herein the Plaintiff, WILSON TORRES, was and is the duly appointed Personal Representative of the Estate of his beloved wife, MYRIAM DEL SOCORRO LOPEZ.

5. At all material times herein, MYRIAM DEL SOCORRO LOPEZ was the Natural Mother of her two minor children, [REDACTED].

6. As Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, Plaintiff, Wilson Torres brings this action for the decedent's wrongful death in his representative capacity on behalf of the following survivors and/or beneficiaries:

- a. [REDACTED], minor son of decedent;
- b. [REDACTED], minor daughter of decedent;
- c. Wilson Torres, husband of decedent

7. At all times material herein the Defendant, LUIS ENRIQUE CRUZ-GOVIN, was and is a resident of Miami-Dade County, Florida and is otherwise *sui juris*.

8. At all times material herein the Defendant, LUIS N. CRUZ, JR. a/k/a LUIS CRUZ-GOVIN, was and is the father of Defendant LUIS ENRIQUE CRUZ-GOVIN is a resident of Broward County, Florida and is otherwise *sui juris*.

9. At all times material herein the Defendant, CLARIBEL LOPEZ-CRUZ, was and is the mother of Defendant LUIS ENRIQUE CRUZ-GOVIN and is a resident of Miami-Dade County, Florida and is otherwise *sui juris*.

10. At all times material herein, Defendant, LUIS N. CRUZ, JR. a/k/a LUIS CRUZ-GOVIN was the owner of a 2008 Subaru, license plate number [REDACTED].

11. On or about September 11, 2008, Defendant, LUIS ENRIQUE CRUZ-GOVIN was the permissive driver of a 2008 Subaru, license plate number [REDACTED].

12. Defendant, LUIS ENRIQUE CRUZ-GOVIN was an incompetent driver and would, as a course of habit, utilize his car in an unsafe and dangerous manner on the streets of Miami-Dade County.

13. Defendants, LUIS N. CRUZ, JR. a/k/a LUIS CRUZ-GOVIN and CLARIBEL LOPEZ-CRUZ, allowed their son, LUIS ENRIQUE CRUZ-GOVIN, to operate the 2008 Subaru when they had the express knowledge the LUIS ENRIQUE CRUZ-GOVIN utilized the 2008 Subaru in a negligent and reckless manner and would oftentimes operate the car willfully, wantonly and unsafely and at high rates of speed.

14. On or about September 11, 2008, Defendant, LUIS ENRIQUE CRUZ-GOVIN operated the 2008 Subaru in a negligent, careless, reckless, willful and wanton manner, at the area in and around SW 42nd Street and SW 127th Avenue.

15. LUIS ENRIQUE CRUZ-GOVIN was driving at an excessively high rate of speed, under the influence of drugs and/or alcohol and/or prescription medication and lost control of the 2008 Subaru, crashing violently into a Ford operated by Plaintiff, WILSON TORRES.

16. As a result of the accident, Plaintiff, WILSON TORRES, was severely injured and was airlifted to Jackson Memorial Hospital's Ryder Trauma Center. WILSON TORRES' wife, MYRIAM DEL SOCORRO LOPEZ, was tragically killed in the accident.

II. Allegations against all Defendants

COUNT I - CALIMS AGAINST LUIS ENRIQUE CRUZ-GOVIN

Plaintiff hereby adopts and incorporates herein paragraphs 1-16.

17. On or about September 11, 2008, Defendant, LUIS ENRIQUE CRUZ-GOVIN, operated a 2008 Subaru at or near the intersection of SW 42nd Street and SW 127th Avenue in Miami, Florida.

18. The 2008 Subaru operated by LUIS ENRIQUE CRUZ-GOVIN on or about September 11, 2008 was owned by Defendant, LUIS N. CRUZ, JR. a/k/a LUIS CRUZ-GOVIN.

19. Defendant, LUIS ENRIQUE CRUZ-GOVIN was operating the 2008 Subaru with the permission of LUIS N. CRUZ, JR. a/k/a LUIS CRUZ-GOVIN, his father.

20. On September 11, 2008, LUIS ENRIQUE CRUZ-GOVIN was residing with his custodial parent, CLARIBEL LOPEZ CRUZ, and was granted express permission by his Mother to operate the 2008 Subaru.

21. At the above time and place, LUIS ENRIQUE CRUZ-GOVIN negligently and/or carelessly and/or recklessly and/or willfully and/or wantonly operated and/or maintained the 2008 Subaru so that it collided with a vehicle being operated by Plaintiff, WILSON TORRES and decedent, MYRIAM DEL SOCORRO LOPEZ.

22. On September 11, 2008, at the time of the crash, LUIS ENRIQUE CRUZ-GOVIN had illicit and illegal drugs, alcohol, and over-the-counter medications in his vehicle.

23. On September 11, 2008, at the time of the crash, LUIS ENRIQUE CRUZ-GOVIN was under the influence of drugs and/or alcohol and/or prescription medication and/or over-the-counter medication which impaired his ability to operate the 2008 Subaru in a safe manner.

24. As a direct and proximate result of the negligence and/or carelessness and/or recklessness and/or willfulness and/or wantonness of the Defendant, LUIS ENRIQUE CRUZ-GOVIN as hereinabove alleged, Plaintiff, WILSON TORRES, was caused to suffer significant bodily injury, pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money and aggravation of a previously existing condition. The losses are either permanent or continuing in nature and the Plaintiff, will suffer the losses in the future.

25. As a direct and proximate result of the negligence and/or carelessness and/or recklessness and/or willfulness and/or wantonness of the Defendant, LUIS ENRIQUE CRUZ-GOVIN as hereinabove alleged, MYRIAM DEL SOCORRO LOPEZ was tragically killed. Plaintiff, WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, has in the past and will in the future suffer the following damages:

a. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, sues the above-named Defendant for medical, funeral and burial expenses due to the death of MYRIAM DEL SOCORRO LOPEZ which have become a charge of her Estate and/or that have been paid on behalf of the Decedent;

b. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, on behalf of himself as surviving husband, sues the above-named Defendant for loss of support and services, for loss of companionship of his wife, for anguish, and for mental pain and suffering resulting from the loss of his beloved wife;

c. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, on behalf of her surviving minor son, James Torres, sue the above-named Defendant for loss of support and services, for loss of parental

companionship, instructions and guidance and for mental pain and suffering resulting from the loss of his beloved mother;

d. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ on behalf of her surviving minor daughter, Jessica Torres, sue the above-named Defendant for loss of support and services, for loss of parental companionship, instructions and guidance and for mental pain and suffering resulting from the loss of his beloved mother;

26. As a result of Defendant LUIS ENRIQUE CRUZ-GOVIN's carelessness, recklessness, willfulness and/or wantonness and described herein, Plaintiff also seeks punitive damages pursuant to Fla. Stat. sec. 768.72 to act as a deterrent to LUIS ENRIQUE CRUZ-GOVIN and others similarly situated from similar misconduct in the future.

WHEREFORE, the Plaintiff, WILSON TORRES, individually and as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, demands judgment for damages as described above against the Defendant, LUIS ENRIQUE CRUZ-GOVIN, and such other and further relief as this Honorable Court deems just and appropriate. Plaintiff further demands a trial by jury of all issues triable as of right by a jury.

COUNT II - CLAIMS AGAINST LUIS N. CRUZ, JR. a/k/a LUIS CRUZ-GOVIN

Plaintiff hereby adopts and incorporates herein paragraphs 1-26.

27. At all times material herein, Defendant, LUIS N. CRUZ, JR. a/k/a LUIS CRUZ-GOVIN was and is the lawful owner and/or registered owner of a 2008 Subaru, license plate number 756JVZ.

28. On or about September 11, 2008, Defendant LUIS N. CRUZ a/k/a LUIS CRUZ-GOVIN voluntarily entrusted said 2008 Subaru to his son, LUIS ENRIQUE CRUZ-GOVIN.

29. On or about September 11, 2008, when LUIS N. CRUZ a/k/a LUIS CRUZ-GOVIN voluntarily entrusted the 2008 Subaru to his son, LUIS ENRIQUE CRUZ-GOVIN, he did so with direct knowledge that LUIS ENRIQUE CRUZ-GOVIN was a reckless and/or careless driver.

Further, he entrusted said vehicle to his son with direct knowledge that LUIS ENRIQUE CRUZ-GOVIN had a habit of driving negligently and/or carelessly and/or recklessly.

30. By entrusting the Subaru to his son, LUIS N. CRUZ a/k/a LUIS CRUZ-GOVIN knowingly, reckless, willfully and wantonly endangered other drivers of the roadways of Miami-Dade County, including Wilson Torres and Myriam Socorro Lopez.

31. On or about September 11, 2008, LUIS ENRIQUE CRUZ-GOVIN operated said 2008 Subaru in a negligent and/or careless and/or reckless and/or willful and/or wanton manner, colliding at a high rate of speed with a Ford operated by Plaintiff, WILSON TORRES.

32. As a direct and proximate result of the negligence of LUIS ENRIQUE CRUZ-GOVIN, as hereinabove alleged, Plaintiff, WILSON TORRES, was caused to suffer significant bodily injury, pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money and aggravation of a previously existing condition. The losses are either permanent or continuing in nature and the Plaintiff, will suffer the losses in the future.

33. As a direct and proximate result of the negligence of LUIS ENRIQUE CRUZ-GOVIN as hereinabove alleged, MYRIAM DEL SOCORRO LOPEZ was tragically killed. Plaintiff, WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, has in the past and will in the future suffer the following damages:

- a. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, sues the above-named Defendant for medical, funeral and burial expenses due to the death of MYRIAM DEL SOCORRO LOPEZ which have become a charge of her Estate and/or that have been paid on behalf of the Decedent;
- b. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, on behalf of himself as surviving husband, sues the above-named Defendant for loss of support and services, for loss of companionship of his

wife, for anguish, and for mental pain and suffering resulting from the loss of his beloved wife;

c. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, on behalf of her surviving minor son, James Torres, sue the above-named Defendant for loss of support and services, for loss of parental companionship, instructions and guidance and for mental pain and suffering resulting from the loss of his beloved mother;

d. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ on behalf of her surviving minor daughter, Jessica Torres, sue the above-named Defendant for loss of support and services, for loss of parental companionship, instructions and guidance and for mental pain and suffering resulting from the loss of his beloved mother;

34. As the lawful owner and/or registered owner and/or registered lessor of the 2008 Subaru, Defendant, LUIS N. CRUZ a/k/a LUIS CRUZ-GOVIN is vicariously responsible for the negligent acts of the permissive driver pursuant to the dangerous instrumentalities doctrine.

35. As a result of the reckless and/or grossly negligent decision by LUIS N. CRUZ a/k/a LUIS CRUZ-GOVIN to entrust a vehicle to his son with the direct knowledge of his son's habitual dangerous driving, Plaintiff seeks punitive damages from LUIS N. CRUZ a/k/a LUIS CRUZ-GOVIN pursuant to Fla. Stat. sec. 768.72 to act as a deterrent to LUIS N. CRUZ a/k/a LUIS CRUZ-GOVIN and others similarly situated from similar misconduct in the future.

WHEREFORE, the Plaintiff, WILSON TORRES, demands judgment for damages against the Defendant, LUIS N. CRUZ a/k/a LUIS CRUZ-GOVIN, and such other and further relief as this Honorable Court deems just and appropriate. Plaintiff further demands a trial by jury of all issues triable as of right by a jury.

COUNT III - CLAIMS AGAINST CLARIBEL LOPEZ-CRUZ

Plaintiff hereby adopts and incorporates herein paragraphs 1-26.

36. Defendant, CLARIBEL LOPEZ-CRUZ is the mother of LUIS ENRIQUE CRUZ-GOVIN.

37. At all times material herein, LUIS ENRIQUE CRUZ-GOVIN resided with, and was under the parental control of, CLARIBEL LOPEZ-CRUZ.

38. On or about April September 11, 2008, LUIS ENRIQUE CRUZ-GOVIN, operated a 2008 Subaru at or near the intersection of SW 42nd Street and SW 127th Avenue in Miami, Florida.

39. At the above time and place, LUIS ENRIQUE CRUZ-GOVIN negligently and/or carelessly and/or recklessly and/or willfully and/or wantonly operated and/or maintained the 2008 Subaru so that it collided at a high rate of speed with a vehicle being operated by Plaintiff, WILSON TORRES.

40. Defendant, CLARIBEL LOPEZ-CRUZ had a duty to supervise her minor child and to prevent him from committing negligent acts that she either knew he was committing or she reasonably should have known were being committed.

41. Defendant, CLARIBEL LOPEZ-CRUZ knew, or in the exercise of reasonable care, should have known that her son, LUIS ENRIQUE CRUZ-GOVIN was an incompetent and/or negligent and/or dangerous driver.

42. With that knowledge in hand, Defendant, CLARIBEL LOPEZ-CRUZ had a duty to supervise her minor child so as to prevent him from causing harm to others.

43. Defendant, CLARIBEL LOPEZ-CRUZ, breached said duty by permitting her son to continue to drive negligently and/or dangerously.

44. Defendant, CLARIBEL LOPEZ-CRUZ had direct knowledge of the habitually dangerous way in which her son, LUIS ENRIQUE CRUZ-GOVIN operated vehicles on the road and highways of Miami-Dade County.

45. Prior to the incident of September 11, 2008, CLARIBEL LOPEZ-CRUZ suspended the driving privileges of her son, LUIS ENRIQUE CRUZ-GOVIN and refused to buy him a new car when his car lease expired.

46. With the knowledge of his dangerous propensities to drive at high rates of speed, CLARIBEL LOPEZ-CRUZ lifted her own imposed suspension of her son's license and allowed him to continue to drive recklessly throughout Miami-Dade County.

47. Defendant, CLARIBEL LOPEZ-CRUZ had direct knowledge that her son, LUIS ENRIQUE CRUZ-GOVIN had a habitual drug problem and drank alcohol. With that knowledge available to her, CLARIBEL LOPEZ-CRUZ continued to allow her son, LUIS ENRIQUE CRUZ-GOVIN to operate a motor vehicle, thus endangering the lives of drivers on the streets of Miami-Dade County.

48. As a direct and proximate result of Defendant's negligent supervision of her son, he was able to continue operating the 2008 Subaru in a negligent and/or dangerous manner, and, ultimately, collided with the car driven by WILSON TORRES.

49. As a direct and proximate result of Defendant's negligent supervision of her son, as hereinabove alleged, Plaintiff, WILSON TORRES, was caused to suffer significant bodily injury, pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money and aggravation of a previously existing condition. The losses are either permanent or continuing in nature and the Plaintiff, will suffer the losses in the future.

50. As a direct and proximate result of the negligent entrustment by Defendant, CLARIBEL LOPEZ-CRUZ, MYRIAM DEL SOCORRO LOPEZ was tragically killed. Plaintiff,

WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, has in the past and will in the future suffer the following damages:

a. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, sues the above-named Defendant for medical, funeral and burial expenses due to the death of MYRIAM DEL SOCORRO LOPEZ which have become a charge of her Estate and/or that have been paid on behalf of the Decedent;

b. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, on behalf of himself as surviving husband, sues the above-named Defendant for loss of support and services, for loss of companionship of his wife, for anguish, and for mental pain and suffering resulting from the loss of his beloved wife;

c. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ, on behalf of her surviving minor son, James Torres, sue the above-named Defendant for loss of support and services, for loss of parental companionship, instructions and guidance and for mental pain and suffering resulting from the loss of his beloved mother;

d. WILSON TORRES, as Personal Representative of the Estate of MYRIAM DEL SOCORRO LOPEZ on behalf of her surviving minor daughter, Jessica Torres, sue the above-named Defendant for loss of support and services, for loss of parental companionship, instructions and guidance and for mental pain and suffering resulting from the loss of his beloved mother;

51. As the signatory on her underage son's driver's license, Defendant, CLARIBEL LOPEZ-CRUZ is vicariously responsible for the negligent, willful and/or wanton acts of her son, LUIS ENRIQUE CRUZ-GOVIN, pursuant to Fla. Stat. sec. 322.09.

52. As a direct and proximate result of the reckless and/or grossly negligent decision by CLARIBEL LOPEZ-CRUZ to completely fail to supervise her son, Plaintiff seeks punitive damages from CLARIBEL LOPEZ-CRUZ pursuant to Fla. Stat. sec. 768.72 to act as a deterrent to CLARIBEL LOPEZ-CRUZ and others similarly situated from similar misconduct in the future.

WHEREFORE, the Plaintiff, WILSON TORRES, demands judgment for damages against the Defendant, CLARIBEL LOPEZ-CRUZ, and such other and further relief as this Honorable Court

deems just and appropriate. Plaintiff further demands a trial by jury of all issues triable as of right by a jury.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was this _____ day of June, 2009, mailed to: Deana M. Sisk, Esquire, Arend & Sisk, P.A., Attorneys for Claribel Lopez-Cruz, P. O. Box 9, Ft. Myers, FL 33902-0009 and Andrew S. Connell, Esquire, Marlow Connell, et al, Attorney for Luis Enrique Cruz-Govin and Luis N. Cruz, Jr. a/k/a Luis Cruz-Govin, 4000 Ponce De Leon Blvd.#570, Coral Gables, FL 33146.

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By: _____
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