

IN, THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY,  
FLORIDA

CASE NO.:

MARY KATHERINE BELOWSKY and  
SCOTT DUCHENE, as Co-Personal  
Representatives of the ESTATE OF  
NICHOLAS F. IMMESBERGER,  
Deceased,

Plaintiffs,

vs.

ELDRICK TONT WOODS a/k/a "TIGER"  
WOODS, an Individual; ERICA  
HERMAN, an Individual; and THE  
WOODS JUPITER, INC., a Foreign Profit  
Corporation,

Defendants.

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### **COMPLAINT**

The Plaintiffs, MARY KATHERINE BELOWSKY and SCOTT DUCHENE, as Co-Personal Representatives of the ESTATE OF NICHOLAS F. IMMESBERGER, by and through their undersigned attorney, hereby sue the Defendants, ELDRICK TONT WOODS a/k/a TIGER WOODS, an Individual ("TIGER"); ERICA HERMAN, an Individual ("HERMAN"); and THE WOODS JUPITER, INC., ("THE WOODS") a Foreign Profit Corporation; and, as grounds therefore allege:

### **GENERAL ALLEGATIONS**

1. This Complaint is filed against all named Defendants as a result of the tragic death of NICHOLAS F. IMMESBERGER, after employees, management and owners of THE WOODS

over-served a young man alcohol who they knew was suffering with the disease of alcoholism. The employees, management and owners of THE WOODS not only ignored IMMESBERGER's disease, they fueled it by over-serving him alcohol to the point of severe intoxication and then sending him out to his car to drive home. As a result of this negligence IMMESBERGER crashed his vehicle and died on December 10, 2018, after leaving THE WOODS.

2. That this is an action for damages in excess of Fifteen Thousand (\$15,000.00) Dollars within the jurisdictional limits of this Court.

3. That at all times material hereto, Defendant, TIGER, maintained a home in Palm Beach County Florida, and maintained an ownership interest in THE WOODS. He knew IMMESBERGER personally and through information and believe, HERMAN had discussed IMMESBERGER and his drinking of alcohol with TIGER.

4. THE WOODS is TIGER's "Flagship Resaurant and Bar."

5. That at all times material hereto, Defendant, HERMAN, was and is a Palm Beach County Resident and the General Manager of THE WOODS. HERMAN personally knew IMMESBERGER, specifically recruited him to work at THE WOODS and was well aware of IMMESBERGER's habitual abuse of alcohol.

6. That at all times material hereto, Defendant, THE WOODS JUPITER, INC. (hereinafter "THE WOODS"), was a bar and restaurant licensed to do business in Palm Beach County, Florida.

7. That Plaintiff, MARY KATHERINE BELOWSKY (hereinafter "BELOWSKY"), is a Florida resident, and is the Co-Personal Representative of the ESTATE OF NICHOLAS F. IMMESBERGER.

8. That Plaintiff, SCOTT DUCHENE (hereinafter "DUCHENE"), is a Florida resident, and is the Co-Personal Representative of the ESTATE OF NICHOLAS F. IMMESBERGER.

9. That the Plaintiffs have satisfied all conditions precedent to the filing of this suit.

10. That on or about 6:00 p.m. on December 10, 2018, the Decedent, NICHOLAS F. IMMESBERGER (hereinafter "IMMESBERGER") was the driver of a 1999 Chevrolet Corvette bearing tag number Y00SWU, traveling northbound at or near 6539 SE Federal Highway, 150 feet north of SE Colonial Drive, in Unincorporated Martin County, Florida.

11. IMMESBERGER worked as a bartender at THE WOODS.

12. On December 10, 2018, IMMESBERGER had finished work at THE WOODS at or around 3:00 p.m. and stayed at THE WOODS sitting at the bar area until beginning on his drive home.

13. Employees and management at THE WOODS served IMMESBERGER alcohol to the point of severe intoxication. So much alcohol was served to IMMESBERGER by the employees and managers at THE WOODS that he had a blood alcohol of approximately .256, which is over three times the legal limit of .08.

14. After leaving THE WOODS, and on his way home at the above time and place, the Decedent, IMMESBERGER lost control of the above described motor vehicle.

15. His vehicle traveled across the northbound lanes of SE Federal Highway in a northeasterly direction while rotating clockwise, traveled across the paved shoulder of the roadway onto the eastern grass divider, continued down the grass embankment and up a culvert, became airborne, and, upon landing, impacted a sign and a utility trailer, before coming to rest on its right side.

16. As a direct and proximate result of the above described automobile crash, the Decedent, IMMESBERGER, suffered fatal injuries.

17. As a result of working at THE WOODS, IMMESBERGER was well known to TIGER, HERMAN, and all of the employees and management at THE WOODS. In fact, HERMAN was the one that recruited and specifically asked IMMESBERGER to work as a bartender at THE WOODS.

18. For a period of approximately one year prior to the crash which took his life, the employees and management at THE WOODS not only promoted drinking alcohol by its employees, including IMMESBERGER, but it also allowed employees to drink on and off the job at THE WOODS.

19. In fact, on numerous occasions prior to the fateful crash of December 10, 2018, THE WOODS served IMMESBERGER so much alcohol that he was unable to function properly and had to be taken from THE WOODS bar by family members and friends to be driven home.

20. The employees and management at THE WOODS continued to serve IMMESBERGER alcohol to the point of intoxication knowing that he had driven to work and had no other way home.

21. The employees and management at THE WOODS had direct knowledge that IMMESBERGER had a habitual problem with alcohol. In fact, employees and managers knew that IMMESBERGER had attended Alcoholic Anonymous meetings prior to the night of his crash and was attempting to treat his disease. Despite this, the employees and management at THE WOODS continued to serve IMMESBERGER alcohol while he was working as well as after work, while he sat at the bar.

22. IMMESBERGER was served so much alcohol by THE WOODS bar on December 10, 2018, that one of THE WOODS' own employees noted the strong odor of alcohol emanating from IMMESBERGER before he was allowed to leave the bar on the night of the crash.

23. The employees and management at THE WOODS were further aware that IMMESBERGER had previously crashed another vehicle just one month before his fatal crash again while driving home after employees and/or management at THE WOODS had over served him alcohol while he was battling the disease of alcoholism.

24. IMMESBERGER's disease was so bad that even one of IMMESBERGER's close friends told employees at THE WOODS to stop serving IMMESBERGER alcohol prior to his fatal crash.

25. WOODS and HERMAN had direct knowledge of IMMESBERGER's problem with alcohol, and despite this they were drinking with IMMESBERGER at THE WOODS bar only a few nights before the fatal crash of December 10, 2018.

26. On the date of the crash, THE WOODS is/was in possession of security camera footage showing IMMESBERGER drinking alcohol at the bar after getting off his work shift at approximately 3:00 p.m. on December 10, 2018.

#### **WRONGFUL DEATH ALLEGATIONS**

27. That upon his death, on December 10, 2018, the Decedent, IMMESBERGER, was a resident of Palm Beach County, Florida.

28. That upon his death, on December 10, 2018, the Decedent, IMMESBERGER, left the following beneficiaries and/or survivors in a wrongful death action upon whose behalf a claim is hereby made:

- a. The Estate of Nicholas F. Immesberger;

- b. Mary Katherine Belowsky, the mother of the Decedent, whose date of birth is May 12, 1973; and
- c. Scott Duchene, the father of the Decedent, whose date of birth is July 27, 1966.

29. That at all times relevant hereto, beneficiary and/or survivor, Mary Katherine Belowsky, was and is the mother of the Decedent.

30. That the negligence of the Defendants, as named above, caused or contributed to the death of the Decedent, IMMESBERGER, as herein below alleged.

31. That as a direct and proximate result of the acts of negligence of the Defendants, Plaintiff, BELOWSKY, as Co-Personal Representative of the ESTATE OF NICHOLAS F. IMMESBERGER, has been injured, and suffered damages, to wit:

- a) The Estate of Nicholas F. Immesberger or another survivor has incurred medical and funeral expenses due to Nicholas F. Immesberger's death;
- b) The surviving parent, Mary Katherine Belowsky, has lost the Decedent's companionship and affection and protection and has experienced and will continue to experience mental pain and suffering, both in the past from the date of the Decedent's injury and death, and will experience mental pain and suffering in the future.
- c) The surviving parent, Mary Katherine Belowsky, has lost the financial economic support and services of her son, in the past and in the future.
- d) The surviving parent, Scott Duchene, has lost the Decedent's companionship and affection and protection and has experienced and will continue to experience mental pain and suffering, both in the past from the date of the Decedent's injury and death, and will experience mental pain and suffering in the future.
- e) The surviving parent, Scott Duchene, has lost the financial economic support and services of his son, in the past and in the future.
- f) The Estate of Nicholas F. Immesberger has sustained damages in the form of loss of net accumulations, funeral and burial bills, and economic losses as a result of Nicholas F. Immesberger's death.

- g) The Estate of Nicholas F. Immesberger; Mary Katherine Belowsky, as a survivor; and Scott Duchene, as a survivor, have lost all other damages, as available under Florida law.

**COUNT I – FLORIDA STATUTE § 768.125 LIABILITY FOR KNOWINGLY  
SERVING A PERSON HABITUALLY ADDICTED TO ALCOHOLIC BEVERAGES  
AGAINST DEFENDANT, ELDRICK TONT WOODS a/k/a TIGER WOODS**

32. The Plaintiffs hereby reallege and re-aver all the General Allegations and Wrongful Death Allegations contained in paragraphs 1 through 31 above, as though fully set forth herein.

33. A few days prior to the subject automobile crash and IMMESBERGER's death, IMMESBERGER consumed alcoholic beverages at the bar inside THE WOODS in the company of TIGER AND HERMAN.

34. At all times material hereto, TIGER knew, or reasonably should have known, that IMMESBERGER was habitually addicted to the use of any or all alcoholic beverages, and/or was a habitual drunkard.

35. At all times material hereto, TIGER and/or his employees, agents, and/or apparent agents, served IMMESBERGER alcohol, leading to his intoxication.

36. TIGER is individually liable in this action because he individually participated in the serving of alcohol to IMMESBERGER with the personal knowledge that IMMESBERGER had a habitual problem with alcohol.

37. TIGER was directly responsible for ensuring that his employees and management at his "Flagship Restaurant" were not over serving its employees/customers. *See White v. Wal-Mart Stores, Inc.*, 918 So. 2d 357 (Fla. 1<sup>st</sup> DCA 2005).

38. At all times material hereto, TIGER sold and/or furnished alcoholic beverages to IMMESBERGER and violated Fla. Stat. § 768.125 because IMMESBERGER was a person

habitually addicted to the use of any or all alcoholic beverages, and therefore TIGER is liable for the death of IMMESBERGER due to his intoxication and as a result of the subject automobile crash.

39. That as a direct and proximate result of the violation of Fla. Stat. § 768.125 by Defendant, TIGER, Plaintiff, IMMESBERGER, died in the subject automobile crash.

40. As a consequence of the foregoing, as Co-Personal Representatives of the ESTATE OF NICHOLAS F. IMMESBERGER, for and on behalf of the survivors under the Florida Wrongful Death Act, all survivors have suffered the loss of the Decedent's support and services and his companionship and society; have experienced mental pain and suffering; and have sustained the loss of the Decedent's probable net income and net accumulations and household services, and medical and funeral expenses due to the Decedent's injury and death.

41. As a consequence of the foregoing, the ESTATE OF NICHOLAS F. IMMESBERGER has lost prospective net accumulations and medical and funeral expenses due to the Decedent's injury and death.

WHEREFORE, the Plaintiffs, MARY KATHERINE BELOWSKY and SCOTT DUCHENE, as Co-Personal Representatives of the ESTATE OF NICHOLAS F. IMMESBERGER, request that the Court enter judgment in their favor and against the Defendant, THE WOODS JUPITER, INC., for all appropriate damages plus costs and demand a trial by jury.

**COUNT II – FLORIDA STATUTE § 768.125 LIABILITY FOR KNOWINGLY  
SERVING A PERSON HABITUALLY ADDICTED TO ALCOHOLIC BEVERAGES  
AGAINST DEFENDANT, ERICA HERMAN**

42. The Plaintiffs hereby reallege and re-aver all the General Allegations and Wrongful Death Allegations contained in paragraphs 1 through 31 above, as though fully set forth herein.



43. A few days prior to the subject automobile crash and IMMESBERGER's death, IMMESBERGER consumed alcoholic beverages at the bar inside THE WOODS in the company of TIGER AND HERMAN.

44. At all times material hereto, HERMAN knew, or reasonably should have known, that IMMESBERGER was habitually addicted to the use of any or all alcoholic beverages, and/or was a habitual drunkard.

45. At all times material hereto, HERMAN and/or her employees, agents, and/or apparent agents, served IMMESBERGER alcohol, leading to his intoxication.

46. HERMAN is individually liable in this action because she individually participated in the serving of alcohol to IMMESBERGER with the personal knowledge that IMMESBERGER had a habitual problem with alcohol.

47. HERMAN was directly responsible for ensuring that her employees and management her boyfriend's "Flagship Restaurant" were not over serving its employees/customers. *See White v. Wal-Mart Stores, Inc.*, 918 So. 2d 357 (Fla. 1<sup>st</sup> DCA 2005).

48. At all times material hereto, HERMAN sold and/or furnished alcoholic beverages to IMMESBERGER and violated Fla. Stat. § 768.125 because IMMESBERGER was a person habitually addicted to the use of any or all alcoholic beverages, and therefore HERMAN is liable for the death of IMMESBERGER due to his intoxication and as a result of the subject automobile crash.

49. That as a direct and proximate result of the violation of Fla. Stat. § 768.125 by Defendant, HERMAN, Plaintiff, IMMESBERGER, died in the subject automobile crash.

50. As a consequence of the foregoing, as Co-Personal Representatives of the ESTATE OF NICHOLAS F. IMMESBERGER, for and on behalf of the survivors under the

Florida Wrongful Death Act, all survivors have suffered the loss of the Decedent's support and services and his companionship and society; have experienced mental pain and suffering; and have sustained the loss of the Decedent's probable net income and net accumulations and household services, and medical and funeral expenses due to the Decedent's injury and death.

51. As a consequence of the foregoing, the ESTATE OF NICHOLAS F. IMMESBERGER has lost prospective net accumulations and medical and funeral expenses due to the Decedent's injury and death.

WHEREFORE, the Plaintiffs, MARY KATHERINE BELOWSKY and SCOTT DUCHENE, as Co-Personal Representatives of the ESTATE OF NICHOLAS F. IMMESBERGER, request that the Court enter judgment in their favor and against the Defendant, THE WOODS JUPITER, INC., for all appropriate damages plus costs and demand a trial by jury.

**COUNT III – FLORIDA STATUTE § 768.125 LIABILITY FOR KNOWINGLY  
SERVING A PERSON HABITUALLY ADDICTED TO ALCOHOLIC BEVERAGES  
AGAINST DEFENDANT, THE WOODS JUPITER, INC.**

52. The Plaintiffs hereby reallege and re-aver all the General Allegations and Wrongful Death Allegations contained in paragraphs 1 through 31 above, as though fully set forth herein.

53. At all times material hereto, the employees, agents, apparent agents and/or owners of THE WOODS knew, or reasonably should have known, that IMMESBERGER was habitually addicted to the use of any or all alcoholic beverages, and/or was a habitual drunkard.

54. At all times material hereto, THE WOODS and/or its employees, agents, apparent agents and/or owners, served IMMESBERGER alcohol, leading to his intoxication.

55. At all times material hereto, THE WOODS and/or its employees, agents, apparent agents and/or owners violated Fla. Stat. § 768.125 and it is therefore liable for the death of IMMESBERGER due to his intoxication and as a result of the subject automobile crash.

56. That as a direct and proximate result of the violation of Fla. Stat. § 768.125 by Defendant, THE WOODS, Plaintiff, IMMESBERGER, died in the subject automobile crash.

57. As a consequence of the foregoing, as Co-Personal Representatives of the ESTATE OF NICHOLAS F. IMMESBERGER, for and on behalf of the survivors under the Florida Wrongful Death Act, all survivors have suffered the loss of the Decedent's support and services and his companionship and society; have experienced mental pain and suffering; and have sustained the loss of the Decedent's probable net income and net accumulations and household services, and medical and funeral expenses due to the Decedent's injury and death.

58. As a consequence of the foregoing, the ESTATE OF NICHOLAS F. IMMESBERGER has lost prospective net accumulations and medical and funeral expenses due to the Decedent's injury and death.

WHEREFORE, the Plaintiffs, MARY KATHERINE BELOWSKY and SCOTT DUCHENE, as Co-Personal Representatives of the ESTATE OF NICHOLAS F. IMMESBERGER, request that the Court enter judgment in their favor and against the Defendant, THE WOODS JUPITER, INC., for all appropriate damages plus costs and demand a trial by jury.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served through process service or Florida Court's E-Filing System on this 13 day of May, 2019.

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