

IN THE STATE COURT OF COBB COUNTY

STATE OF GEORGIA 

| | | |
|------------------------------------|---|-----------------------|
| (1) PETE GUY, as the Administrator |) | |
| of the Estate of Annie Guy, |) | |
| deceased; and |) | |
| (2) PETE GUY, LINDA SMITH, |) | CIVIL ACTION FILE NO. |
| NAYLOR GUY, JR., LIZZIE G. |) | |
| MERCER, and MARY ANN WHITE, |) | |
| as the surviving children of ANNIE |) | |
| GUY, deceased, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| (1) ALBERT EARL CARREKER, JR.; |) | |
| (2) J-MAR TRUCKING, INC.; |) | |
| (3) ZURICH AMERICAN |) | |
| INSURANCE COMPANY; |) | |
| (4) JOSEPH ALAN MCELROY; |) | |
| (5) FAIRFIELD TRUCKING, INC.; and |) | |
| (6) CLARENDON NATIONAL |) | |
| INSURANCE COMPANY, |) | |
| |) | |
| Defendants. |) | |

COMPLAINT FOR WRONGFUL DEATH
AND DEMAND FOR JURY TRIAL

COME NOW, the above Plaintiffs and show this Court the following:

I. Parties, Jurisdiction, and Venue

1.

Pete Guy of Dallas, Georgia, has been appointed as the Administrator of the Estate of Annie Guy by the Probate Judge of Paulding County, Georgia.

2.

On the 25th of March, 2000, Annie Guy had no spouse.

3.

Annie Guy was survived by five children. Her five children are (Collectively referred to as the "Guy Children"):

- (a) Pete Guy, a resident of Georgia;
- (b) Linda Smith, a resident of Georgia;
- (c) Naylor Guy, Jr., a resident of Georgia;
- (d) Lizzie G. Mercer, a resident of Alabama; and
- (e) Mary Ann White, a resident of Georgia.

4.

Each of the Guy children is over the age of eighteen and competent.

5.

Annie Guy was a resident of Paulding County, Georgia, on the 25th of March, 2000, the date of her death.

6.

Defendant, Albert Earl Carreker, Jr. ("Carreker"), is a resident of the State of Florida. He resides at 5510 Cruzat Way, Pensacola, Florida 32507.

7.

Defendant, J-MAR Trucking, Inc. ("J-MAR Trucking"), is a foreign (non-Georgia) corporation with a business address at 2797 Highway 21, Atmore, Alabama 36502.

8.

J-MAR Trucking is a motor carrier.

9.

J-MAR Trucking's United States Department of Transportation Carrier Number is 255250.

10.

J-MAR Trucking's Interstate Commerce Commission Motor Carrier Number is 170451.

11.

J-MAR Trucking is engaged in interstate trucking commerce.

12.

J-MAR Trucking maintains its registered agent in the State of Georgia at Route 2, Box 113, Alamo, Wheeler County, Georgia 30411.

13.

J-MAR Trucking's registered agent for service of process in the State of Georgia is Martha Y. White at Route 2, Box 113, Alamo, Wheeler County, Georgia 30411.

14.

On the 25th of March, 2000, J-MAR Trucking had an active authority status with the Federal Motor Carrier Safety Administration.

15.

J-MAR Trucking was licensed and insured in accordance with Federal Motor Carrier Safety Administration rules and regulations.

16.

J-MAR Trucking had a policy of indemnity insurance with Zurich American Insurance Company ("Zurich Insurance") that provided coverage that was in effect on the 25th of March, 2000.

17.

Zurich Insurance is a foreign (non-Georgia) corporation.

18.

Zurich Insurance's registered agent for service of process in the State of Georgia is Karen Hughes at Suite 1800, 3003 Summit Boulevard, Atlanta, Dekalb County, Georgia 30319.

19.

Zurich Insurance is named as Defendant in this case by virtue of the fact that it issued a policy of indemnity insurance to J-MAR Trucking.

20.

"If a policy of indemnity insurance is given in lieu of bond, it shall be permissible to join the motor carrier and the insurance carrier in the same action, whether arising in tort or contract." O.C.G.A. § 46-7-12 (e).

21.

Zurich Insurance is not a joint tortfeasor. Zurich Insurance is joined by virtue of its contractual obligation to pay for the negligence of the motor carrier, the agents, employees, drivers, and servants of its insured.

22.

Defendant, Joseph Alan McElroy ("McElroy"), is a resident of the State of Georgia.

23.

Defendant, Fairfield Trucking, Inc. ("Fairfield Trucking"), is a foreign (non-Georgia) corporation with a business address at P.O. Box 272, Hamburg, Arkansas

71646.

24.

Fairfield Trucking is a motor carrier.

25.

Fairfield Trucking's United States Department of Transportation Carrier Number is 277059.

26.

Fairfield Trucking's Interstate Commerce Commission Motor Carrier Number is 100597.

27.

Fairfield Trucking is engaged in interstate trucking commerce.

28.

Fairfield Trucking maintains its registered agent in the State of Georgia at 49 Atlanta Street, Marietta, Cobb County, Georgia 30060-1977.

29.

Fairfield Trucking's registered agent for service of process in the State of Georgia is Process Agent Service Company, Inc., located at 49 Atlanta Street, Marietta, Cobb County, Georgia 30060-1977.

30.

The process agent and company representative of Process Agent Service Company, Inc. in the State of Georgia is Charles N. Dalziel, Jr., located at 49 Atlanta Street, Marietta, Cobb County, Georgia 30060-1977.

31.

On the 25th of March, 2000, Fairfield Trucking had an active authority status with the Federal Motor Carrier Safety Administration.

32.

Fairfield Trucking was licensed and insured in accordance with the Federal Motor Carrier Safety Administration rules and regulations.

33.

Fairfield Trucking had a policy of indemnity insurance with Clarendon National Insurance Company ("Clarendon Insurance") that provided coverage that was in effect on the 25th of March, 2000.

34.

Clarendon Insurance is a foreign (non-Georgia) corporation.

35.

Clarendon Insurance's registered agent for service of process in the State of Georgia is CT Corporation located at 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia.

36.

The process agent and company representative of CT Corporation in the State of Georgia is Dale Morris, located at 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia.

37.

Clarendon Insurance is named as a Defendant in this case by virtue of the fact that it issued a policy of indemnity insurance to Fairfield Trucking.

38.

Clarendon Insurance is not a joint tortfeasor. Clarendon Insurance is joined by virtue of its contractual obligation to pay for the negligence of the motor carrier, the agents, the employees, drivers, and servants of its insured.

39.

Fairfield Trucking is subject to the jurisdiction and venue of this Court in accordance with O.C.G.A. § 14-2-510 (b) (1).

40.

Jurisdiction and venue is proper in this Court because at least one of the joint Defendant tortfeasors, namely Fairfield Trucking, resides in Cobb County, Georgia. O.C.G.A. § 9-10-31 (a).

41.

This case is not properly removable to Federal Court because, pursuant to 28 U.S.C. § 1441 (b), some of the Defendant tortfeasors are citizens of the State of Georgia for diversity purposes, thus precluding removal to Federal Court.

II. Operative Facts

42.

On the 25th of March, 2000, three motor vehicles were involved in a motor vehicle collision that occurred on I-20 westbound beyond exit 26, Villa Rica, Douglas County, Georgia, ("The Collision").

43.

On the date of The Collision Carreker was driving a eighteen wheeler truck ("J-MAR Eighteen Wheeler") for J-MAR Trucking. Carreker was acting within the course and scope of duties for J-MAR Trucking.

44.

On the date of This Collision McElroy was driving an eighteen wheeler truck for Fairfield Trucking ("Fairfield Eighteen Wheeler"). McElroy was acting in the course and scope of duties of his employment for Fairfield Trucking.

45.

Carreker was an employee, servant, or agent for J-MAR Trucking on the date of This Collision.

46.

McElroy was an employee, servant, or agent for Fairfield Trucking on the date of This Collision.

47.

Carreker was a driver of an eighteen wheeler tractor trailer for J-MAR Trucking at the time of This Collision.

48.

McElroy was a driver of an eighteen wheeler tractor trailer truck for Fairfield Trucking at the time of This Collision.

49.

J-MAR Trucking approved and disapproved of the drivers of tractor trailer trucks that were operated on behalf of J-MAR Trucking.

50.

Fairfield Trucking approved and disapproved of the drivers of tractor trailer trucks that were operated on behalf of Fairfield Trucking.

51.

On the date of This Collision, Annie Guy was driving a 1995 Ford Ranger pick up truck ("Guy Vehicle") westbound on Interstate 20 in Villa Rica, Douglas County, Georgia.

52.

On the date of This Collision, Carreker was driving a J-MAR Eighteen Wheeler westbound on Interstate 20 in Villa Rica, Douglas County, Georgia.

53.

On the date of This Collision, McElroy was driving a Fairfield Eighteen Wheeler westbound on Interstate 20 in Villa Rica, Douglas County, Georgia.

54.

The Guy Vehicle was westbound in the far right lane on Interstate 20 westbound.

55.

Annie Guy, the driver of the Guy Vehicle, maintained her position in the far right lane because she intended to take the immediate next exit off of Interstate 20.

56.

The Guy Vehicle did not attempt to merge left into the middle lanes of Interstate 20 westbound.

57.

The J-MAR Eighteen Wheeler and the Fairfield Eighteen Wheeler negligently collided with one another. The J-MAR Eighteen Wheeler negligently collided with the Guy Vehicle.

58.

The Guy Vehicle was forced out of control. The Guy Vehicle rolled. The Guy

Vehicle landed in the woods on the north side of Interstate 20 westbound.

59.

The driver of the Guy Vehicle, Annie Guy, suffered serious injuries proximately causing her death.

60.

Annie Guy's death was proximately caused by the combined negligence of the two eighteen wheelers.

61.

This Collision and the wrongful death of Annie Guy were the proximate result of the combined tortious conduct of Carreker, J-MAR Trucking, McElroy, and Fairfield Trucking, without any carelessness, negligence, or wrongful conduct on the part of Annie Guy.

III. Liability of Defendant Tortfeasors
(Carreker, McElroy, J-MAR Trucking, and Fairfield Trucking)

62.

J-MAR Trucking is liable for the following tortious acts and omissions, which, include, but are not necessarily limited to, the following:

(a) J-MAR Trucking is liable under the Doctrine of Respondeat Superior for the torts of its employees, servants, and agents, including Carreker, as set forth below;

(b) J-MAR Trucking was negligent in its own right under the Doctrine of Negligent Entrustment, negligent hiring, training, controlling, and supervising of its drivers;

(c) J-MAR Trucking had an affirmative duty to discover their drivers' driving records, prior traffic violations, habitual recklessness, and driver's medical history; and

(d) J-MAR Trucking in the exercise of reasonable care should have known of any of their drivers' incompetence.

63.

Carreker is liable for the following tortious acts and omissions, which include, but are not necessarily limited to the following:

(a) Traveling too fast for conditions in violation of O.C.G.A. § 40-6-180 and O.C.G.A. § 40-6-181;

(b) Failing to maintain his lane in violation of O.C.G.A. § 40-6-48;

(c) Improper passing in violation O.C.G.A. § 40-6-42;

(d) Following too closely in violation of O.C.G.A. § 40-6-49;

(e) Driving in a reckless disregard for the safety of others in violation of O.C.G.A. § 40-6-390;

(f) Failing to move J-MAR Eighteen Wheeler from his lane of traffic without first ascertaining that such movement could be made with safety in violation of O.C.G.A. § 40-6-48 (1);

(g) Executing an improper lane change and use of signals in violation of O.C.G.A. § 40-6-123; and

(h) Failing to exercise ordinary diligence in violation of O.C.G.A. § 51-1-2.

64.

Fairfield Trucking is liable for the following tortious acts and omissions, which, include, but are not necessarily limited to, the following:

(a) Fairfield Trucking is liable under the Doctrine of Respondeat Superior for the torts of its employees, servants, and agents, including McElroy, as set forth below;

(b) Fairfield Trucking was negligent in its own right under the Doctrine of Negligent Entrustment, negligent hiring, training, controlling, and supervising of its drivers;

(c) Fairfield Trucking had an affirmative duty to discover their drivers' driving records, prior traffic violations, habitual recklessness, and driver's medical history; and

(d) Fairfield Trucking in the exercise of reasonable care should have known of any of their drivers incompetence.

65.

McElroy is liable for the following tortious acts and omissions, which include, but are not necessarily limited to the following:

(a) Traveling too fast for conditions in violation of O.C.G.A. § 40-6-180 and O.C.G.A. § 40-6-181;

(b) Failing to maintain his lane in violation of O.C.G.A. § 40-6-48;

(c) Driving in a reckless disregard for the safety of others in violation of O.C.G.A. § 40-6-390;

(d) Failing to move Fairfield Eighteen Wheeler from his lane of traffic without first ascertaining that such movement could be made with safety in violation of O.C.G.A. § 40-6-48 (1); and

(e) Failing to exercise ordinary diligence in violation of O.C.G.A. § 51-1-2.

66.

The conduct of each of the four Defendant tortfeasors, individually and in concert with each other, proximately caused The Collision and resulting damages.

67.

The conduct of each of the Defendant tortfeasors amounts to conscious indifference to the consequences sufficient to warrant and demand and justify an award of punitive damages pursuant to O.C.G.A. § 51-12-5.1.

IV. Damages

68.

Plaintiff, Pete Guy, as the Administrator of the Estate of Annie Guy, deceased, claims damages for the following:

- (a) Compensatory damages for the shock, fright, and terror experienced by decedent, Annie Guy, prior to her death resulting from This Collision;
- (b) Compensatory damages for all components of the mental and physical pain and suffering endured by the decedent, Annie Guy, upon impact until the time of her death;
- (c) Special damages for the funeral and burial expenses;
- (d) Special damages for the property damage to the Guy Vehicle; and
- (e) Punitive damages pursuant to O.C.G.A. § 51-12-51.1, in such an amount that the jury deems just and appropriate to penalize, punish, and deter the Defendant tortfeasors in the future.

69.

The Guy Children, in their capacity as the surviving children, claim compensatory damages representing the full value of the life of their deceased mother. The Guy Children bring this action to recover the full value of their deceased mother's life under the applicable laws of the State of Georgia, without deduction for necessary or other personal expenses of their mother had she lived. O.C.G.A. § 51-4-1.

70.

In determining the value of Annie Guy's life, the jury may consider her relationships, living conditions, and family circumstances. The standard for measuring such damages is the enlightened conscience of impartial jurors.

V. Prayers for Relief

71.

Wherefore, the Plaintiffs pray that:

(a) Summons of process issue pursuant to Georgia law and that all Defendants be served as provided by Georgia law;

(b) Plaintiffs, the Guy Children, as the surviving children of their deceased mother, Annie Guy, recover damages sufficient to compensate fully, fairly, and completely for the full value of the life of Annie Guy;

(c) Plaintiff, Pete Guy, as the Administrator of the Estate of Annie Guy, recover damages for Annie Guy's shock, fright, terror, mental and physical pain and suffering, special damages for decedent's funeral and burial expenses, special damages for the Guy Vehicle, and all that is permitted under Georgia law;

(d) Plaintiff, Pete Guy, as the Administrator of the Estate of Annie Guy, deceased, have and receive judgment for punitive damages against Defendants for a sum of money to be determined by a fair and impartial jury;

(e) All issues be determined by a fair and impartial jury;

(f) All costs be assessed against Defendants for the cost of bringing this suit; and

(g) For other and further relief as the Court shall deem just and appropriate.

This ___ day of _____, 2001.

Respectively submitted,
FLOURNOY & MORGAN, LLP

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