

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CHRISTOPHER W. PITTS and
TERESA PITTS, husband and wife,

Plaintiff,

v.

BULK LOGISTICS, INC.; SCHWERMAN
TRUCKING CO.; TANKSTAR USA, INC.;
WILLIE J. CHANDLER, JR.; and
CONTINENTAL CASUALTY COMPANY,

Defendants.

CIVIL ACTION FILE

NO. 10EV009965

COMPLAINT FOR DAMAGES

COMES NOW Plaintiffs, CHRISTOPHER W. PITTS and TERESA PITTS, by and through their counsel of record, and files this Complaint, showing this Honorable Court as follows:

PARTIES, JURISDICTION, AND VENUE

1.

CHRISTOPHER W. PITTS ("MR. PITTS") sustained serious personal injuries as a result of a motor vehicle collision that occurred at approximately 4:49 a.m. on May 29, 2008, on Georgia Highway 8 westbound in Douglas County, Georgia. He brings this action to recover damages proximately caused from that collision. TERESA PITTS ("MRS. PITTS") brings her claim for loss of consortium resulting from the injuries her husband sustained from this collision. Pursuant to Georgia law, Plaintiffs MR. PITTS and MRS. PITTS are the proper parties to bring this action.

2.

Defendant BULK LOGISTICS, INC. (“BULK LOGISTICS”) is a foreign corporation, operating for the purpose of pecuniary profit and gain, and qualified to do business in the State of Georgia. BULK LOGISTICS can be served, according to the Georgia Secretary of State, with a copy of the Complaint and Summons through its registered agent, **CT Corporation System, 1201 Peachtree Street N.E., Fulton County, Atlanta, Georgia, 30361**. Once served with process, Defendant BULK LOGISTICS is subject to the jurisdiction and venue of this Court.

3.

Defendant BULK LOGISTICS is an interstate common carrier based in Wisconsin. BULK LOGISTICS is registered with the U.S. Department of Transportation, under D.O.T. Number 746426.

4.

Defendant SCHWERMAN TRUCKING CO. (“SCHWERMAN”) is a foreign corporation, operating for the purpose of pecuniary profit and gain, and qualified to do business in the State of Georgia. SCHWERMAN can be served, according to the Georgia Secretary of State, with a second original of the Complaint and Summons through its registered agent, **Corporation Process Company, 2180 Satellite Boulevard, Suite 400, Duluth, Gwinnett County, Georgia, 30097**. Once served with process, Defendant SCHWERMAN is subject to the jurisdiction and venue of this Court.

5.

Defendant SCHWERMAN is an interstate common carrier based in Wisconsin. SCHWERMAN is registered with the U.S. Department of Transportation, under D.O.T. Number 46595, and is registered with an ICC Motor Carrier Number 124078.

6.

Defendant TANKSTAR USA, INC. ("TANKSTAR") is a foreign corporation, operating for the purpose of pecuniary profit and gain, and registered to do business in the State of Wisconsin. TANKSTAR can be served, according to the Wisconsin Secretary of State, with a second original of the Complaint and Summons through its registered agent, **Michelle M. Larson, 611 South 28th Street, Milwaukee, Wisconsin, 53215.**

7.

TANKSTAR is subject to the jurisdiction of this Court under the authority of O.C.G.A. § 9-10-91 in that TANKSTAR committed a tortious act within Georgia and/or transacted business in Georgia and purposefully availed itself of Georgia business opportunities, as more fully shown by facts set forth below. TANKSTAR is also subject to the jurisdiction of this Court under the authority of O.C.G.A. §§ 40-12-1 *et seq.*, and may be served by serving the Secretary of State, State of Georgia, as agent, as provided by said laws. Consequently, pursuant to O.C.G.A. §§ 9-10-91 *et seq.* and 40-12-1 *et seq.*, once served with process, Defendant TANKSTAR is subject to the jurisdiction and venue of this Court.

8.

Upon information and belief, at all times pertinent to this action, Defendant TANKSTAR was doing business as, or was operating under the name of BULK LOGISTICS and/or SCHWERMAN.

9.

Upon information and belief, at all times pertinent to this action, Defendant TANKSTAR was involved in a joint venture and/or joint enterprise with BULK LOGISTICS and/or SCHWERMAN.

10.

At all times material to the motor vehicle collision forming the basis of this action, Defendant TANKSTAR, BULK LOGISTICS, and/or SCHWERMAN acted as either a motor contract carrier of property through the State of Georgia or as a motor common carrier of property through the State of Georgia pursuant to one or more permits to operate as a motor carrier issued by the Interstate Commerce Commission, or by the United States Department of Transportation, or both.

11.

Defendant WILLIE J. CHANDLER, JR. (“CHANDLER”) is a resident of the State of Alabama and may be served with a second original of the Complaint and Summons at his residence located at 2855 Washington Street, Birmingham, Alabama, 35210. Once served, Defendant CHANDLER is subject to the jurisdiction and venue of this.

12.

Defendant CONTINENTAL CASUALTY COMPANY (“CONTINENTAL CASUALTY”) is a foreign insurance corporation and provided liability insurance on the

tractor-trailer unit that was involved in the motor vehicle collision in Douglas County, Georgia, out of which this cause of action arises. CONTINENTAL CASUALTY is subject to the jurisdiction of this Court as the insurer of the motor carrier(s) that was (or were) operating the tractor-trailer in Georgia pursuant to O.C.G.A. § 46-7-12 and § 46-7-12.1.

13.

Defendant CONTINENTAL CASUALTY was transacting business in the State of Georgia and in Fulton County, Georgia on the date of the incident giving rise to this Complaint, and at all material times hereto, and is subject to the venue of this Court pursuant to O.C.G.A. § 33-4-1.

14.

Defendant CONTINENTAL CASUALTY may be served pursuant to O.C.G.A §§ 9-11-4, 14-2-1510 and 33-4-3 with a second original of the Complaint and Summons through its registered agent, **CT Corporation System, 1201 Peachtree Street N.E., Fulton County, Atlanta, Georgia, 30361.**

15.

The provisions of 49 CFR §§ 301-339, commonly referred to as the “Federal Motor Carrier Safety Regulations” or “FMCSR” are applicable to this case.

GENERAL FACTS

16.

Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if each were fully set forth in their entirety.

17.

On May 29, 2008, at approximately 4:49 a.m., Plaintiff MR. PITTS was driving a 2001 Chrysler Sebring westbound on Georgia Highway 8 in Douglas County, Georgia.

18.

At the same time and place, Defendant CHANDLER was driving a 2000 International Harvester tractor-trailer eastbound on Georgia Highway 8.

19.

The tractor-trailer Defendant CHANDLER was driving was owned and maintained by Defendant BULK LOGISTICS and/or Defendant SCHWERMANN and/or Defendant TANKSTAR.

20.

The morning of the collision was dark and there was fog on or near the roadway.

21.

Defendant CHANDLER made an improper turn, blocking both the east and westbound lanes of Georgia Highway 8.

22.

The location where Defendant CHANDLER made this improper turn was in close proximity to the crest of hill such that this action caused an unreasonable danger to approaching traffic.

23.

Plaintiff MR. PITTS, despite using reasonable care and despite taking evasive action, could not avoid impacting and under-riding the side of the trailer Defendant CHANDLER was hauling.

24.

MR. PITTS was severely and permanently injured as a result of the collision.

COUNT I – NEGLIGENCE OF WILLIE J. CHANDLER, JR.

25.

Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if each were fully set forth in their entirety.

26.

At all times relevant hereto, MR. PITTS exercised ordinary care in his actions leading up to the collision at issue.

27.

Defendant CHANDLER was negligent in the operation of the tractor-trailer at issue in the following ways:

- (a) Failing to maintain lane;
- (b) Improper U-turn;
- (c) Improper turn;
- (d) Improper maneuver on roadway;
- (e) Failing to maintain a diligent and proper lookout;
- (f) Failing to keep his vehicle under control;
- (g) Driving in a reckless manner;
- (h) Failing to yield the right of way;
- (i) Violating state trucking regulations and Federal Motor Carrier Safety Regulations; and
- (j) Otherwise failing to operate his vehicle in a safe and prudent manner in view of the conditions that existed at the time of the incident.

28.

Defendant CHANDLER was also negligent *per se* in that he violated a number of laws and regulations governing his operation of a commercial motor vehicle, including:

- (a) Failing to abide by basic rules of the road, O.C.G.A. § 40-6-180;
- (b) Failing to yield while entering roadway, O.C.G.A. § 40-6-73;
- (c) Failing to exercise due care, O.C.G.A. § 40-6-241;
- (d) Illegal U-turn under Georgia law;
- (e) Other failures as set out in O.C.G.A. Title 40, Chapter 6, state trucking regulations; and
- (f) Other failures as set out in the Federal Motor Carrier Safety Regulations, as adopted by the Georgia Department of Transportation Safety Rules & Regulations, and pursuant to O.C.G.A. §§ 47-7-1 *et seq.*

29.

The collision at issue was the direct and proximate result of the negligence of Defendant CHANDLER.

30.

As a direct and proximate cause of the negligence and negligence *per se* of Defendant CHANDLER, MR. PITTS sustained physical and emotional injuries and pain and suffering.

COUNT II – NEGLIGENCE OF BULK LOGISTICS, INC.

31.

Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if each were fully set forth in their entirety.

32.

At all times material hereto, Defendant CHANDLER, was an employee or agent of Defendant BULK LOGISTICS, acting within the scope and course of his employment or agency.

33.

Defendant BULK LOGISTICS is liable for the negligent actions and omissions of Defendant CHANDLER pursuant to the doctrine of *respondeat superior*.

34.

Defendant BULK LOGISTICS was engaged in a joint venture with SCHWERMAN and/or TANKSTAR to operate commercial vehicles on the roadway in interstate commerce and is therefore liable for damages caused in this case.

35.

Defendant BULK LOGISTICS was also independently negligent in the following ways:

- a. Negligently hiring or contracting with Defendant CHANDLER to drive the tractor-trailer at issue;
- b. Negligently training Defendant CHANDLER in the inspection of the tractor-trailer;
- c. Negligently entrusting Defendant CHANDLER to drive a tractor-trailer professionally;
- d. Negligently retaining Defendant CHANDLER to drive the tractor-trailer at issue;
- e. Failing to conduct proper and required checks on the background of its employee, agent and/or contractor, Defendant CHANDLER;

- f. Failing to supervise its employee, agent and/or contractor, Defendant CHANDLER;
- g. Failing to exercise ordinary care to determine its employees', agents' and/or contractors' fitness for the task of driving a commercial vehicle interstate;
- h. Failing to have or enforce an appropriate policy on properly and safely performing U-Turns on two-lane roads;
- i. Failing to properly maintain the tractor-trailer at issue in this case;
- j. Negligently routing this driver and/or negligently allowing this driver to make illegal and dangerous turns;
- k. Otherwise violating state laws and federal regulations governing trucking companies; and
- l. Otherwise failing to act as a reasonably prudent company under the circumstances.

36.

Defendant BULK LOGISTICS had a duty to promulgate and enforce rules and regulations to ensure its drivers and vehicles were reasonably safe, and negligently failed to do so.

37.

As a direct and proximate result of the negligence of Defendants CHANDLER and BULK LOGISTICS and the ensuing collision, MR. PITTS sustained physical and emotional injuries and pain and suffering.

38.

Defendant BULK LOGISTICS is liable to for all damages allowed by law for the injuries, damages, and losses sustained by MR. PITTS.

COUNT III – NEGLIGENCE OF SCHWERMAN TRUCKING CO.

39.

Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if each were fully set forth in their entirety.

40.

At all times material hereto, Defendant CHANDLER, was an employee or agent of Defendant SCHWERMAN , acting within the scope and course of his employment or agency.

41.

Defendant SCHWERMAN is liable for the negligent actions and omissions of Defendant CHANDLER pursuant to the doctrine of *respondeat superior*.

42.

Defendant SCHWERMAN was engaged in a joint venture with BULK LOGISTICS and/or TANKSTAR to operate commercial vehicles on the roadway in interstate commerce and is therefore liable for damages caused in this case.

43.

Defendant SCHWERMAN was also independently negligent in the following ways:

- a. Negligently hiring or contracting with Defendant CHANDLER to drive the tractor-trailer at issue;

- b. Negligently training Defendant CHANDLER in the inspection of the tractor-trailer;
- c. Negligently entrusting Defendant CHANDLER to drive a tractor-trailer professionally;
- d. Negligently retaining Defendant CHANDLER to drive the tractor-trailer at issue;
- e. Failing to conduct proper and required checks on the background of its employee, agent and/or contractor, Defendant CHANDLER;
- f. Failing to supervise its employee, agent and/or contractor, Defendant CHANDLER;
- g. Negligently routing this driver and/or negligently allowing this driver to make illegal and dangerous turns;
- h. Failing to exercise ordinary care to determine its employees', agents' and/or contractors' fitness for the task of driving a commercial vehicle interstate;
- i. Failing to have or enforce an appropriate policy on properly and safely performing U-Turns on two-lane roads;
- j. Failing to properly maintain the tractor-trailer at issue in this case;
- k. Otherwise violating state laws and federal regulations governing trucking companies; and
- l. Otherwise failing to act as a reasonably prudent company under the circumstances.

44.

Defendant SCHWERMAN had a duty to promulgate and enforce rules and regulations to ensure its drivers and vehicles were reasonably safe, and negligently failed to do so.

45.

As a direct and proximate result of the negligence of Defendants CHANDLER and SCHWERMAN and the ensuing collision, MR. PITTS sustained physical and emotional injuries and pain and suffering.

46.

Defendant SCHWERMAN is liable to for all damages allowed by law for the injuries, damages, and losses sustained by MR. PITTS.

COUNT IV – NEGLIGENCE OF TANKSTAR USA, INC.

47.

Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if each were fully set forth in their entirety.

48.

At all times material hereto, Defendant CHANDLER, was an employee or agent of Defendant TANKSTAR, acting within the scope and course of his employment or agency.

49.

Defendant TANKSTAR is liable for the negligent actions and omissions of Defendant CHANDLER pursuant to the doctrine of *respondeat superior*.

50.

Defendant TANKSTAR owns 100% of Defendant Bulk Logistics.

51.

Defendant TANKSTAR was engaged in a joint venture with BULK LOGISTICS and/or SCHWERMANN to operate commercial vehicles on the roadway in interstate commerce and is therefore liable for damages caused in this case.

52.

Defendant TANKSTAR was also independently negligent in the following ways:

- a. Negligently hiring or contracting with Defendant CHANDLER to drive the tractor-trailer at issue;
- b. Negligently training Defendant CHANDLER in the inspection of the tractor-trailer;
- c. Negligently routing this driver and/or negligently allowing this driver to make illegal and dangerous turns;
- d. Negligently entrusting Defendant CHANDLER to drive a tractor-trailer professionally;
- e. Negligently retaining Defendant CHANDLER to drive the tractor-trailer at issue;
- f. Failing to conduct proper and required checks on the background of its employee, agent and/or contractor, Defendant CHANDLER;
- g. Failing to supervise its employee, agent and/or contractor, Defendant CHANDLER;
- h. Failing to exercise ordinary care to determine its employees', agents' and/or contractors' fitness for the task of driving a commercial vehicle interstate;

- i. Failing to have or enforce an appropriate policy on properly and safely performing U-Turns on two-lane roads;
- j. Failing to properly maintain the tractor-trailer at issue in this case;
- k. Otherwise violating state laws and federal regulations governing trucking companies; and
- l. Otherwise failing to act as a reasonably prudent company under the circumstances.

53.

Defendant TANKSTAR had a duty to promulgate and enforce rules and regulations to ensure its drivers and vehicles were reasonably safe, and negligently failed to do so.

54.

As a direct and proximate result of the negligence of Defendants CHANDLER and TANKSTAR and the ensuing collision, MR. PITTS sustained physical and emotional injuries and pain and suffering.

55.

Defendant TANKSTAR is liable to for all damages allowed by law for the injuries, damages, and losses sustained by MR. PITTS.

COUNT V – DIRECT ACTION AGAINST CONTINENTAL CASUALTY COMPANY

56.

Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if each were fully set forth in their entirety.

57.

Defendant CONTINENTAL CASUALTY provided liability insurance on the tractor-trailer unit that was involved in the motor vehicle collision in Douglas County, Georgia, out of which this cause of action arises.

58.

Defendant CONTINENTAL CASUALTY agreed to provide insurance coverage to Defendant BULK LOGISTICS and/or Defendant SCHWERMAN and/or Defendant TANKSTAR in consideration for the price of insurance premiums.

59.

Defendant CONTINENTAL CASUALTY was transacting business in the State of Georgia and in Fulton County, Georgia on the date of the incident giving rise to this Complaint, and at all material times hereto, and is subject to the venue of this Court pursuant to O.C.G.A. § 33-4-1.

60.

MR. PITTS, as a member of the public injured due to a common carrier's negligence, is a third party beneficiary to that agreement. Pursuant to O.C.G.A. § 46-7-12, Defendant CONTINENTAL CASUALTY is subject to this Direct Action.

COUNT VI - LOSS OF CONSORTIUM

61.

Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if each were fully set forth in their entirety.

62.

Defendants' negligence were the direct and proximate causes of injuries and damages to MR. PITTS.

63.

As a result of MR. PITTS's serious injuries, MRS. PITTS has suffered the loss of companionship of her husband, the loss of society, and the loss of consortium.

64.

MRS. PITTS is entitled to compensation for the loss of consortium she has suffered as the result of MR. PITTS's serious injuries, which were directly and proximately caused by Defendants' negligence.

COUNT VII – PUNITIVE DAMAGES

65.

Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if each were fully set forth in their entirety.

66.

Defendants' acts were willful, wanton, and demonstrated that entire want of care which raises the presumption of a conscious indifference to consequences.

67.

Accordingly, Defendants are liable to Plaintiffs for punitive damages to punish, penalize, and deter Defendants from similar conduct in the future.

COUNT VIII – DAMAGES

68.

Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if each were fully set forth in their entirety.

69.

Each of the Defendants acted in a manner which either alone, or combined and concurring with the actions of the other Defendants' acts of negligence, directly and proximately caused the collision and MR. PITTS's injuries.

70.

MR. PITTS is entitled to recovery for all damages he has suffered to the full extent allowed under Georgia law, including both economic and non-economic damages.

71.

MRS. PITTS is entitled to compensation for the loss of consortium she has suffered as the result of MR. PITTS's serious injuries.

WHEREFORE, Plaintiffs pray that the following relief be granted:

- a. A trial by jury;
- b. For Summons and Complaint to issue against the Defendants;
- c. For judgment against the Defendants, jointly and severally, to compensate Plaintiffs for their pain and suffering, past, present, and future;

- d. For judgment against the Defendants, jointly and severally, in an amount sufficient to compensate Plaintiffs for the medical expenses incurred to date, as well as for medical expenses which will be incurred in the future;
- e. For judgment against the Defendants, jointly and severally, in an amount sufficient to compensate Plaintiffs for lost wages incurred, including future lost wages or ability to earn income;
- f. For judgment against the Defendants, jointly and severally, in an amount sufficient to compensate Plaintiffs for loss of consortium;
- g. For all such other economic and non-economic losses as may be shown at the hearing of this matter to the full extent allowed under Georgia law;
- h. That Plaintiffs obtain judgment against the Defendants in an amount determined to be fair and reasonable in the minds of a fair and impartial jury;
- i. Punitive damages be recovered in an amount the jury believes to be just, fair and equitable, given the facts and issues in this case;
- j. Court costs, discretionary costs, and prejudgment interest; and
- k. For all such further and general relief which this Court deems just and proper.

This 30th day of April, 2010.

FRIED ROGERS GOLDBERG LLC

/s/ Joseph A. Fried

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