

IN THE SUPERIOR COURT OF RICHMOND COUNTY  
STATE OF GEORGIA

CLERK OF SUPERIOR COURT  
AND JUVENILE COURT  
FILED FOR RECORD

12 APR 18 PM 3:31

ELAINE C. JOHNSON, CLERK  
RICHMOND COUNTY, GA.

ANNIE LAURA OLIVER GRAY, )  
Individually and as Executrix of the )  
Estate of Robert Earl Gray, Deceased )  
Plaintiff, )

Civil Action No. 2012RCCV240

v. )

GEMINI MOTOR TRANSPORT, L.P.; )  
HENRY C. FORTENBERRY; and )  
NATIONAL UNION FIRE )  
INSURANCE COMPANY OF )  
PITTSBURGH, PA )  
Defendants. )

CARL C. BROWN, JR.

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**COMPLAINT  
JURY TRIAL DEMANDED**

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COMES NOW Plaintiff Annie Laura Oliver Gray, individually and in her capacity as Executrix of the Estate of Robert Earl Gray, deceased, and files this her Complaint against Defendants Gemini Motor Transport, L.P., Henry C. Fortenberry, and National Union Fire Insurance Company of Pittsburgh, PA, showing the Court as follows:

1.

Lieutenant General Robert Earl Gray sustained serious personal injuries and ultimately died as a result of a motor vehicle collision with a tractor trailer that occurred at approximately 6:38 a.m., on November 23, 2011, in Jenkins County, Georgia. The collision was caused by Defendant Fortenberry, who was acting within the course and scope of his employment or agency with Defendant Gemini Motor Transport, L.P. at the time of the collision.

**PARTIES, JURISDICTION, AND VENUE**

2.

**Annie Laura Oliver Gray** (“Plaintiff Gray”) brings this suit individually and as the duly appointed Executrix for the **Estate of Robert Earl Gray** (“the Estate”). At the time of the collision at issue, Plaintiff Gray and her husband, **Lieutenant General Robert Earl Gray** (“General Gray”), resided in Columbia County, Georgia. Plaintiff Gray is the proper party to bring this action to recover all damages allowable by law for the injuries and subsequent death of General Gray.

3.

Defendant **Henry C. Fortenberry** (“Fortenberry”) was the driver of the tractor trailer involved in the subject collision. He is a resident of the Richmond County, Georgia, and may be served with process at **3015 Sterling Road, Augusta, Georgia 30907**.

4.

Defendant **Gemini Motor Transport, L.P.** (“Gemini Motor”) is an interstate motor carrier existing under the laws of the State of Oklahoma with its principal place of business in Oklahoma. Gemini Motor is registered with the U.S. Department of Transportation under U.S. D.O.T. Number 913300, and is registered with the ICC Motor Carrier Number 395777. Gemini Motor is a foreign limited partnership authorized to transact business in the State of Georgia and may be served with process through its registered agent, **CT Corporation System** at **1201 Peachtree Street, NE, Atlanta, Georgia 30361**.

5.

Defendant **National Union Fire Insurance Company of Pittsburg, PA** (“National Union Insurance”) is a foreign insurance company organized in Pennsylvania and based out of New York. National Union Insurance provided liability insurance to Gemini Motor for the tractor trailer unit that was involved in the collision at issue in this case. It was also transacting business in Richmond County, Georgia at the time of the subject collision and at all material times hereto. Accordingly, National Union Insurance is subject to the jurisdiction of this Court pursuant to O.C.G.A. § 40-2-140, O.C.G.A. § 33-4-1, and other applicable Georgia law. National Union Insurance may be served with process through its registered agent, **Corporation Service Company at 40 Technology Parkway South, #300, Norcross, Georgia 30092.**

6.

In addition, on information and belief, Defendant National Union is a subsidiary of another insurer, Chartis. Chartis was also transacting business in Richmond County, Georgia, on the date of the subject collision and at all material times hereto. Accordingly, National Union Insurance, operating through Chartis, is subject to the venue of this Court pursuant to O.C.G.A § 40-2-140, O.C.G.A. § 33-4-1, and other applicable Georgia law.

7.

All Defendants are subject to the jurisdiction and venue of this Court.

#### **GENERAL FACTS**

8.

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

9.

On the morning of November 23, 2011, at approximately 6:38 a.m., General Gray was driving a 2004 Ford Ranger pickup truck westbound on Georgia 23, a rural two-lane undivided highway in Jenkins County, Georgia.

10.

At the same time, Defendant Henry Fortenberry is driving a 2011 Freightliner and pulling a 2006 Beall Bast trailer Southbound on Georgia 21, a four-six lane divided highway.

11.

The posted speed limit for this stretch of Georgia 21 is 55 miles per hour.

12.

Defendant Fortenberry is just approaching the Georgia 21 bypass at its intersection with Georgia 23. He's driving at a high rate of speed.

13.

It's dawn and raining. The pavement on the highway is wet.

14.

At the intersection of Georgia 23 and the Georgia 21 bypass, Defendant Fortenberry's tractor trailer, while being driven at a high rate of speed, violently and with great force collides with the passenger side of General Gray's pickup truck.

15.

Following the collision with Defendant Fortenberry's tractor trailer, General Gray's pickup truck comes to a rest in the ditch approximately 18 feet from the west fog line of the Georgia 21 bypass.

16.

General Gray is partially ejected from his pickup truck and suffers serious injuries. He dies as a result of the injuries sustained in the wreck.

17.

General Gray, despite using reasonable care, could not avoid the collision with the tractor trailer driven by Defendant Fortenberry.

### **COUNT I**

#### **NEGLIGENCE OF HENRY C. FORTENBERRY**

18.

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

19.

At all times relevant, General Gray exercised ordinary care in his actions leading up to the subject collision.

20.

At all relevant times, Defendant Fortenberry owed certain duties to members of the driving public, including General Gray.

21.

Defendant Fortenberry was negligent in at least the following specific ways:

- (a) Failing to maintain a proper lookout;
- (b) Failing to use extreme caution while driving in the rain and on wet pavement;
- (c) Driving too fast for conditions;
- (d) Failing to keep his vehicle under control;

- (e) Failing to abide by the basic rules of the road;
- (f) Driving his vehicle in reckless disregard for the safety of other people on the road;
- (g) Failing to exercise due care;
- (h) Allowing himself to become distracted while operating a commercial motor vehicle;
- (i) Failing to drive defensively;
- (j) Failing to adhere to safe driving principles expected of professional truck drivers with commercial driver's licenses;
- (k) Failing to operate his tractor trailer in accordance with generally accepted safety principles and practices of the trucking industry;
- (l) Failing to operate his tractor trailer in a safe and prudent manner in view of the conditions that existed at the time of the subject collision; and
- (m) Otherwise failing to use that degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances.

22.

Defendant Fortenberry, at the time of the subject collision was operating a commercial motor vehicle in interstate commerce and was subject to the Federal Motor Carrier Safety Regulations.

23.

Defendant Fortenberry was also subject to the laws of the State of Georgia governing the operation of a motor vehicle on Georgia's public roadways at the time of the subject collision.

24.

Defendant Fortenberry was negligent *per se* in that he violated Federal Motor Carrier Safety Regulations, State trucking safety rules, and various rules of the road as incorporated into O.C.G.A. § 40, Chapter 6, all of which govern his conduct in the operation of a commercial motor vehicle on a Georgia highway.

25.

Defendant Fortenberry was also specifically negligent *per se* in that he violated 49 C.F.R. § 392.14 and trucking safety rules in the State of Georgia by failing to use extreme caution while driving a commercial motor vehicle in hazardous conditions such as rain, mist, and/or fog while such conditions adversely affect visibility or traction.

26.

Defendant Fortenberry's negligent conduct proximately caused the collision at issue in this case.

27.

As a direct and proximate cause of Defendant Fortenberry's negligent conduct, General Gray suffered severe injuries that resulted in his pain, suffering, and death.

28.

By virtue of Defendant Fortenberry's negligent conduct, Defendant Fortenberry is liable to Plaintiff Gray for all damages allowed under the law and as set forth more fully in the damages section below.

COUNT II

GEMINI MOTOR TRANSPORT, L.P.'S LIABILITY FOR  
THE NEGLIGENCE OF HENRY C. FORTENBERRY

29.

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

30.

Defendant Gemini Motor owned and/or leased the tractor driven by Defendant Fortenberry at the time of the subject collision.

31.

Defendant Gemini Motor owned and/or leased the trailer operated by Defendant Fortenberry at the time of the subject collision.

32.

At the time of the subject collision, Defendant Fortenberry was employed by Defendant Gemini Motor as a commercial motor vehicle driver.

33.

At the time of the subject collision, Defendant Fortenberry was acting as an agent of Defendant Gemini Motor.

34.

At the time of the subject collision, Defendant Fortenberry was driving a tractor trailer under dispatch for Defendant Gemini Motor.

35.

At the time of the subject collision, Defendant Fortenberry was a permissive user of the tractor trailer involved in the subject collision.



36.

At the time of the subject collision, Defendant Fortenberry was acting within the course and scope of his employment or agency with Defendant Gemini Motor.

37.

Under the principles of *respondeat superior*, actual agency, apparent agency, and/or lease liability, Defendant Gemini Motor is vicariously liable and legally responsible for the negligent acts and omissions of Defendant Fortenberry.

38.

By virtue of imputed liability, Defendant Gemini Motor is liable to Plaintiff Gray for all damages allowed under the law and as set forth more fully in the Damages section below.

### **COUNT III**

#### **INDEPENDENT NEGLIGENCE OF GEMINI MOTOR TRANSPORT, L.P.**

39.

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

40.

Upon information and belief, Defendant Fortenberry failed to take alcohol and drug tests, as required under Federal law.

41.

Defendant Gemini Motor was independently negligent in at least the following ways:

- (a) Negligently hiring or contracting with Defendant Fortenberry to drive the tractor trailer at issue;

- (b) Negligently failing to properly train Defendant Fortenberry;
- (c) Negligently entrusting Defendant Fortenberry to drive a tractor trailer professionally;
- (d) Negligently retaining Defendant Fortenberry to drive the tractor trailer at issue;
- (e) Negligently failing to properly supervise Defendant Fortenberry;
- (f) Failing to conduct proper and required checks on the background of its employee, agent and/or contractor, Defendant Fortenberry;
- (g) Failing to have or enforce an appropriate policy on properly and safely operating a commercial motor vehicle in hazardous weather conditions;
- (h) Failing to properly maintain the tractor and/or trailer at issue in this case;
- (i) Otherwise violating state laws and federal regulations governing trucking companies; and
- (j) Otherwise failing to act as a reasonably prudent company under the circumstances.

42.

Defendant Gemini Motor 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.

43.

By way of summary and in at least the ways outlined herein, Defendant Gemini Motor was independently negligent in hiring, training, supervising, and managing Defendant Fortenberry and in entrusting him to operate a tractor trailer on the public highways.

44.

Defendant Gemini Motor's negligence is a proximate cause of the collision that resulted severe injuries and ultimately the death of General Gray.

45.

By virtue of Defendant Gemini Motor's negligent conduct, Defendant Gemini Motor is liable to Plaintiff Gray for all damages allowed under the law and as set forth more fully in the Damages section below.

**COUNT IV**

**DIRECT ACTION AGAINST NATIONAL UNION FIRE INSURANCE COMPANY OF  
PITTSBURGH, PA**

46.

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

47.

Defendant National Union Insurance is subject to a direct action as the insurer for Gemini Motor pursuant to O.C.G.A. § 40-2-140.

48.

Defendant National Union Insurance was the insurer of Defendant Gemini Motor at the time of the subject collision and issued a liability policy to comply with the filing requirements under Georgia law for intrastate transportation.

49.

Defendant National Union Insurance and Defendant Gemini Motor are subject to the filing requirements outlined in O.C.G.A. § 40-2-140.

50.

Defendant National Union Insurance agreed to provide insurance coverage to Defendant Gemini Motor in consideration for the price of insurance premiums.

51.

General Gray, 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 National Union Insurance is subject to this direct action.

52.

Defendant National Union Insurance is responsible for any judgment rendered against Defendants Fortenberry and Gemini Motor.

#### **DAMAGES**

53.

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

54.

Defendants' negligent conduct proximately caused General Gray to suffer pre-impact mental anguish during the moments leading up to the collision where General Gray likely saw the Gemini Motor tractor trailer heading straight towards the passenger side of his vehicle knowing that an impact was inevitable.

55.

Defendants' negligent conduct also proximately caused General Gray to suffer severe physical injuries and attendant pain and mental anguish during and after the impact.

56.

As a direct and proximate result of Defendants' negligence, the Estate of Robert Earl Gray has incurred and is entitled to recover special damages, including, but not limited to, medical expenses, funeral expenses, burial expenses, and other miscellaneous expenses in an amount that is will be proven at trial. The Estate is also entitled to recover for General Gray's general damages, including pre-death pain and suffering.

57.

As a direct and proximate result of Defendants' negligence, Plaintiff Gray is entitled to recover for the wrongful death of General Gray, including the full value of his life as permitted under Georgia law.

#### **COUNT V**

#### **PUNITIVE DAMAGES AGAINST HENRY C. FORTENBERRY AND GEMINI MOTOR TRANSPORT, L.P.**

58.

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

59.

The actions of Defendant Gemini Motor and their driver, Fortenberry, demonstrate a reckless indifference or disregard for the safety of others or that entire want of care that would raise the presumption of conscious indifference to consequences and which warrant the imposition of punitive damages.

60.

Accordingly, Defendants Gemini Motor and Fortenberry are liable to Plaintiff for punitive damages to punish, penalize, and deter them from similar conduct in the future.

**DEMAND FOR JURY TRIAL**

61.

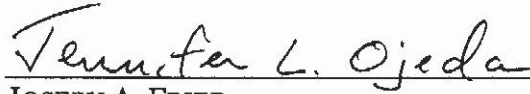
Plaintiff hereby demands a trial by jury.

**WHEREFORE**, Plaintiff Gray prays that this Court award the following relief against Defendants:

- (a) That process be issued and service be had upon Defendants as provided by law;
- (b) That judgment be entered against Defendants and in favor of Plaintiff for all damages allowed by law for the injuries, damages, and losses sustained by Plaintiff and the Estate of Robert Earl Gray;
- (c) For a jury trial on all issues so triable;
- (d) For punitive damages against Defendants;
- (e) For all costs of this action including attorneys' fees and expenses;
- (f) For pre-judgment and post-judgment interest; and
- (g) For such further relief as the Court deems just and proper.

This 18<sup>th</sup> day of April, 2012.

**FRIED ROGERS GOLDBERG LLC**



JOSEPH A. FRIED

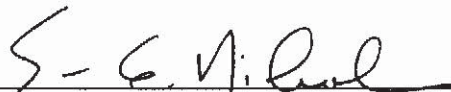
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