

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SHERRIN COLLINS PITTMAN and
SAM PITTMAN, INDIVIDUALLY
and as Surviving Parents of
CATHERINE MCKAY PITTMAN,
DECEASED

Plaintiffs,

v.

TOTAL TRANSPORTATION OF
MISSISSIPPI, LLC, U.S. XPRESS
ENTERPRISES, INC., U.S. XPRESS,
INC., U.S. XPRESS LEASING, INC.,
NEW MOUNTAIN LAKE
HOLDINGS, LLC, MOUNTAIN
LAKE RISK RETENTION GROUP,
INC., and JOHN WAYNE JOHNSON

Defendants.

JURY TRIAL DEMANDED

Civil Action File No.

COMPLAINT FOR DAMAGES

COME NOW, SHERRIN COLLINS PITTMAN and SAM PITTMAN, individually and as surviving parents of CATHERINE MCKAY PITTMAN, deceased, Plaintiffs in the above-captioned lawsuit and file this Complaint for Damages against TOTAL TRANSPORTATION OF MISSISSIPPI, LLC, U.S. XPRESS ENTERPRISES, INC., U.S. XPRESS, INC., U.S. XPRESS LEASING, INC., NEW MOUNTAIN LAKE HOLDINGS, LLC, MOUNTAIN LAKE RISK RETENTION GROUP, INC., and JOHN WAYNE JOHNSON and showing this

Honorable Court as follows:

NATURE OF ACTION

1.

At approximately 5:50 am on April 22, 2015, seven Georgia Southern University nursing students, traveling in two vehicles, were stopped in a long line of traffic on Interstate 16 eastbound in Bryan County, Georgia. John Wayne Johnson, who was operating a tractor-trailer eastbound on I-16, slammed into the back of the stopped vehicles at highway speed. There is no evidence that Mr. Johnson allowed or took any evasive action before impact.

2.

The first car that John Wayne Johnson struck was a Toyota Corolla, in which Emily Clark, McKay Pittman, and Caitlyn Baggett were traveling. The tractor-trailer plowed straight into, and then over, the Toyota Corolla, ripping off the roof and causing it to burst into flames.

3.

After running over the Toyota, John Wayne Johnson slammed into the Ford Escape that Abbie DeLoach was driving. Abbie's passengers were Morgan Bass, Megan Richards, and Brittney McDaniel.

4.

After launching the Ford Escape out of its path, John Wayne Johnson and his tractor-trailer continued forward, striking several other vehicles before coming to a rest.

5.

Emily Clark, Morgan Bass, Abbie DeLoach, McKay Pittman, and Caitlyn Baggett died as a result of their injuries. Megan Richards and Brittney McDaniel were severely and permanently injured. Others were injured as well.

6.

There was nothing that anyone in the Toyota or the Ford could have done to avoid or minimize the collision or the damages resulting therefrom.

7.

At the time of the collision, John Wayne Johnson was operating the tractor-trailer in the course and scope of his employment and/or agency with Total Transportation of Mississippi, LLC, U.S. Xpress Enterprises, Inc., U.S. Xpress, Inc., U.S. Xpress Leasing, Inc., and/or New Mountain Lake Holdings, LLC.

PARTIES, JURISDICTION, AND VENUE

8.

Plaintiffs are citizens and residents of the Northern District of Georgia.

9.

McKay Pittman was a citizen and resident of Fulton County Georgia at the time of her death.

10.

McKay Pittman lived in Fulton County for her entire life. The vast majority of the evidence in this action will be related to establishing the beauty and value of McKay Pittman's life. Most of this evidence will come from witnesses located in the Northern District of Georgia.

11.

Defendant Total Transportation of Mississippi, LLC ("Total Transportation") is a foreign limited liability company organized under the laws of Mississippi with its principal place of business located at 125 Riverview Drive, Richland, Mississippi 39218. Therefore, Total Transportation is not a citizen of Georgia. Total Transportation does not maintain a registered agent for service of process in this State. Total Transportation may be served with legal process by serving its registered agent for service in Mississippi, John D. Stomps, at 125 Riverview Drive, Richland, Mississippi 39218. Alternatively, service is proper on the Secretary of State pursuant to the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-1 *et seq.*

12.

At all relevant times, Defendant Total Transportation was and is engaged in business as an interstate motor carrier transporting goods for compensation and does business in Georgia, including in and through the Northern District of Georgia.

13.

Defendant U.S. Xpress Enterprises, Inc. is a corporation organized and existing under the laws of Nevada with its principal place of business located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. Therefore, U.S. Xpress Enterprises, Inc. is not a citizen of Georgia. U.S. Xpress Enterprises, Inc. may be served with legal process by serving its registered agent for service, Corporation Service Company, 40 Technology Parkway South #300, Norcross, Georgia 30092.

14.

U.S. Xpress Enterprises, Inc. is authorized to and does transact business in the State of Georgia.

15.

Defendant U.S. Xpress, Inc. is a corporation organized and existing under the laws of Nevada with its principal place of business located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. Therefore, U.S. Xpress, Inc. is not a citizen of Georgia. U.S. Xpress, Inc. may be served with legal process by serving its

registered agent for service, Corporation Service Company, 40 Technology Parkway South #300, Norcross, Georgia 30092. Alternatively, service is proper on the Secretary of State pursuant to the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-1 *et seq.*

16.

At all relevant times, Defendant U.S. Xpress, Inc. was and is engaged in business as an interstate motor carrier transporting goods for compensation and does business in Georgia, including in and through the Northern District of Georgia.

17.

Defendant U.S. Xpress Leasing, Inc. is a corporation organized and existing under the laws of Tennessee with its principal place of business located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. Therefore, U.S. Xpress Leasing is not a citizen of Georgia. U.S. Xpress Leasing, Inc. may be served with legal process by serving its registered agent for service, Corporation Service Company, 40 Technology Parkway South #300, Norcross, Georgia 30092.

18.

U.S. Xpress Leasing, Inc. is authorized to and does transact business in the State of Georgia.

19.

Defendant New Mountain Lake Holdings, LLC is a foreign limited liability company organized and existing under the laws of Nevada with its principal place of business located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. Therefore, New Mountain Lake Holdings, LLC is not a citizen of Georgia. New Mountain Lake Holdings, LLC does not maintain a registered agent for service of process in this State. New Mountain Lake Holdings, LLC may be served with legal process by serving its registered agent for service in Nevada, CSC Services of Nevada, Inc., 2215-B Renaissance Dr., Las Vegas, NV 89119.

20.

New Mountain Lake Holdings, LLC transacts business in the State of Georgia.

21.

Defendant Mountain Lake Risk Retention Group, Inc. (“Mountain Lake Risk”) is an insurance company organized and existing under the laws of Vermont with its principal place of business located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. Therefore, Mountain Lake Risk is not a citizen of Georgia. Mountain Lake Risk may be served with legal process by serving its registered agent for service in Vermont, Corporation Process Company, 100 North Main Street, Suite 2, Barre, Vermont, 05641.

22.

Mountain Lake Risk transacts business in the State of Georgia.

23.

Defendant John Wayne Johnson's last known address is 6777 Rasberry Lane, Apartment 1913, Shreveport, Louisiana 71129. Therefore, he is not a citizen of Georgia. John Wayne Johnson may be served with legal process at his address. Alternatively, service is proper on the Secretary of State pursuant to the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-1 *et seq.*

24.

Defendants are subject to the jurisdiction and venue of this Court pursuant to 28 U.S.C § 1332, 28 USC § 1391(b), Ga. Const. Art. VI, § 2, ¶ IV, O.C.G.A. § 9-10-91, O.C.G.A. § 9-10-93, O.C.G.A. § 33-4-1, O.C.G.A. § 14-2-510, O.C.G.A. § 40-12-3 and other applicable law.

25.

U.S. Xpress, Inc. is a wholly-owned subsidiary of U.S. Xpress Enterprises, Inc.

26.

U.S. Xpress Leasing, Inc. is a wholly-owned subsidiary of U.S. Xpress Enterprises, Inc.

27.

U.S. Xpress Enterprises, Inc. is a parent company of Total Transportation.

28.

U.S. Xpress Enterprises, Inc. is wholly-owned and privately held by New Mountain Lake Holdings, LLC.

29.

On information and belief, U.S. Xpress Enterprises, Inc., U.S. Xpress, Inc., U.S. Xpress Leasing, Inc., and New Mountain Lake Holdings, LLC (hereinafter jointly referred to as the “U.S. Xpress Defendants”) operated Total Transportation as a joint venture.

30.

Mountain Lake Risk provided liability insurance coverage to Total Transportation for this collision under Policy Number TTS239097-14.

31.

Mountain Lake Risk provided liability insurance coverage to U.S. Xpress, Inc. for this collision under Policy Number USX-188121-14.

32.

Defendant Mountain Lake Risk insures Total Transportation and the U.S. Xpress Defendants. Accordingly, Plaintiffs have a direct action against Mountain Lake Risk pursuant to O.C.G.A. § 40-1-112 and O.C.G.A. §40-2-140(d)(4).

33.

This Court has subject matter jurisdiction over the claims asserted in this Complaint.

34.

The amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

35.

There is complete diversity among the parties as neither Plaintiff is a citizen of the same state as any Defendant.

36.

Jurisdiction is proper pursuant to 28 U.S.C § 1332.

37.

Venue is proper in this Court pursuant to 28 USC § 1391(b).

OPERATIVE FACTS

38.

On the morning of April 22, 2015, the weather was clear and Interstate 16 in Bryan County, Georgia was dry.

39.

There had been an earlier collision on Interstate 16 Eastbound and traffic was backed up for a long distance and at a stop.

40.

One of the stopped vehicles near the back of the line (near mile marker 141) was a Ford Escape (“Ford”).

41.

Abbie DeLoach was driving the Ford, and Morgan Bass, Megan Richards, and Brittney McDaniel were passengers in the Ford.

42.

Behind the Ford was a Toyota Corolla (“Toyota”) that was also stopped in the traffic.

43.

Emily Clark was driving the Toyota, and McKay Pittman and Caitlyn Baggett were passengers in the Toyota.

44.

All seven of the young women in the Ford and the Toyota were nursing students at Georgia Southern University and were headed toward their last day of clinical rotations at a Savannah hospital.

45.

At or about 5:50 am, a tractor-trailer driven by John Wayne Johnson was barreling down Interstate 16 Eastbound and approaching the stopped traffic ahead.

46.

Johnson never applied the brakes and never attempted any maneuver to avoid a collision before plowing into and over the Toyota.

47.

The roof of the Toyota was torn off and the Toyota burst into flames.

48.

The three occupants of the Toyota were trapped inside the Toyota while it burned.

49.

After hitting and driving over the Toyota, the tractor-trailer smashed into the rear of the Ford Escape, driving it forward and causing it to overturn.

50.

Chris Wise, an eyewitness to the collision, described the collision as the loudest noise he had ever heard and said that it sounded “like a bomb.”

51.

Emily Clark, Morgan Bass, Abbie DeLoach, McKay Pittman, and Caitlyn Baggett sustained severe and catastrophic injuries as a proximate result of the collision that ultimately led to their untimely death.

52.

Megan Richards and Brittney McDaniel were severely and permanently injured in the collision, and witnessed the horrific deaths of their friends.

53.

McKay Pittman was an innocent victim who in no way contributed to causing any collision or any injury to herself or anyone else on April 22, 2015. There was nothing she could do to avoid or minimize the collision or any of the damages resulting therefrom.

54.

McKay Pittman did nothing to contribute to her own fatal injuries.

55.

At the time of the collision, Johnson was an agent and/or employee of Defendant Total Transportation.

56.

At the time of the collision, Johnson was acting in the course and scope of his employment with Total Transportation and in the furtherance of the business of Total Transportation.

57.

At the time of the collision, Johnson was an agent and/or employee of one or more of the U.S. Xpress Defendants.

58.

At the time of the collision, Johnson was acting in the course and scope of his employment with one or more of the U.S. Xpress Defendants and in furtherance of the business of one or more of the U.S. Xpress Defendants.

59.

The tractor-trailer driven by Johnson on April 22, 2015 was owned by U.S. Xpress Leasing, Inc.

60.

The U.S. Xpress tractor-trailer driven by Johnson on April 22, 2015 was equipped with a Collision Avoidance System.

61.

The Collision Avoidance System on the U.S. Xpress tractor-trailer being driven by Johnson was designed to provide audible and/or visible warnings to the driver when the tractor-trailer approached an object in the roadway, such as another vehicle that was stopped or slowed.

62.

Total Transportation, Mountain Lake Risk, and the U.S. Xpress Defendants all have two officers in common: Max Fuller and Ray Harlin.

63.

Total Transportation's current Director of Safety and Recruiting, Bob Viso, Jr., previously worked for U.S. Xpress Defendants for fourteen years, including heading up Safety and Driver Training areas for U.S. Xpress Defendants for five years.

64.

Mountain Lake Risk provides liability coverage to Total Transportation and U.S. Xpress Defendants.

65.

New Mountain Lake Holdings, LLC and Mountain Lake Risk have the same principal place of business as U.S. Xpress Enterprises, Inc., U.S. Xpress, Inc., and U.S. Xpress Leasing, Inc.

66.

The collision was caused by the negligence of Defendants Johnson, Total Transportation, and the U.S. Xpress Defendants.

67.

The collision was foreseeable to Johnson, Total Transportation, and the U.S. Xpress Defendants and could have been avoided had said Defendants acted in a safe and prudent manner as required by Georgia law and in accordance with the standards required of professional truck drivers and motor carriers.

68.

At the time of the subject wreck, Johnson had a duty to drive in conformance with the Federal Motor Carrier Safety Regulations and Georgia law as well as the industry and corporate standards and guidelines emanating from these safety regulations and Georgia law, including, but not limited to, the Required Knowledge and Skills set forth in 49 CFR Sections 383.111 and 383.113 as well as the mandates of 49 CFR Sections 390-395.

69.

On April 22, 2015, Mountain Lake Risk Policy Number TTS239097-14 was in force and covered Defendants Johnson and Total Transportation for their liability for the collision.

70.

On April 22, 2015, Mountain Lake Risk Policy Number USX-188121-14 was in force and covered Defendants Johnson, Total Transportation, and the U.S. Xpress Defendants for their liability for the collision.

71.

As a direct and proximate result of the Defendants' negligence, McKay Pittman suffered severe and catastrophic injuries that eventually led to her untimely death. Prior to her death, McKay Pittman endured physical and mental

pain and suffering, mental anguish, and the knowledge of her impending death as she was being burned to death.

72.

Prior to and during the wreck, McKay Pittman experienced shock, fright, and terror.

73.

Before she died, McKay Pittman suffered severe and painful injuries to her body and mind as a result of the injuries she sustained in the wreck.

74.

At the time of the collision, Defendant Johnson had sleep apnea.

75.

At the time of the collision, Defendant Johnson had a history of falling asleep at the wheel of a commercial motor vehicle.

LIABILITY OF DEFENDANTS

COUNT ONE

(Johnson's Negligence and Negligence *Per Se*)

76.

Plaintiffs incorporate herein by reference the allegations of the previous paragraphs of this Complaint for Damages as if each were fully set forth herein in their entirety.

77.

Defendant Johnson had a duty to operate his commercial vehicle in a safe and prudent manner in accordance with his training as a professional commercial motor vehicle driver and so as not to endanger the lives and welfare of McKay Pittman and the motoring public. This duty included keeping a proper lookout, paying attention, keeping a safe distance from vehicles in front of him, and operating his commercial vehicle at a reasonable and prudent speed in accordance with the conditions of the roadway and all traffic laws and regulations.

78.

As a professional truck driver, Defendant Johnson also had a duty to operate his tractor-trailer in accordance with the standards required of commercial vehicle drivers and in accordance with the required skills and knowledge set forth in 49 CFR Sections 383.111 and 383.113; the mandates of 49 CFR Sections 390-395; and industry and corporate standards and guidelines that emanate from these safety regulations.

79.

As a professional truck driver subject to the Federal Motor Carrier Safety Regulations, Defendant Johnson also had a duty not to operate any commercial motor vehicle while he has any untreated sleep issues or sleep disorders.

80.

Defendant Johnson breached those duties and is liable for his tortious acts and omissions, which include, but are not limited to, the following:

- (a) Failing to keep a lookout for vehicles and traffic ahead;
- (b) Failing to perform a proper visual search;
- (c) Failing to properly manage his space;
- (d) Following too closely;
- (e) Failing to yield the right of way to vehicles in front of him on the roadway;
- (f) Failing to drive at a safe and reasonable speed under the conditions;
- (g) Failing to drive defensively;
- (h) Operating a motor vehicle while distracted;
- (i) Operating a motor vehicle while fatigued;
- (j) Failing to operate the vehicle in a safe and prudent manner, thereby placing the lives and well-being of the public in general, and McKay Pittman in particular, in grave danger;
- (k) Failing to adhere to safe driving principles expected of professional drivers;
- (l) Failing to operate the truck in accordance with generally accepted safety principles for professional drivers and/or the commercial motor vehicle industry;

- (m) Failing to operate the truck in a safe and prudent manner in view of the conditions that existed at the time of the subject collision;
- (n) Violating the Georgia Uniform Rules of the Road including O.C.G.A. § 40-6-49 (following too closely); O.C.G.A. § 40-6-180 (failing to drive his vehicle at a reasonable and prudent speed under the conditions O.C.G.A. § 40-6-241 (failing to operate his vehicle with due care); O.C.G.A. § 40-6-390 (driving a vehicle in reckless disregard of the safety of persons or property); and any other violations, each of which constitute negligence *per se*;
- (o) Failing to test for sleep apnea and other sleep disorders after falling asleep at the wheel of a commercial motor vehicle in 2011;
- (p) Otherwise failing to act reasonably and prudently as a professional driver should under the circumstances; and
- (q) Such other specifications of negligence that shall be added by amendment or proven at trial.

81.

As a result of the foregoing breaches of duties, McKay Pittman suffered the losses and injuries described herein and ultimately died of those injuries.

82.

Alone or in conjunction with the negligence of the other Defendants, Defendant Johnson's negligence proximately caused the injuries to, and death of, McKay Pittman.

83.

Defendant Johnson is liable to Plaintiffs for all damages allowed by law for the injuries, death, damages and losses sustained by Plaintiffs as a result of his negligence.

COUNT TWO

(Punitive Damages Against Johnson)

84.

Plaintiffs incorporate herein by reference the allegations of the previous paragraphs of this Complaint for Damages as if each were fully set forth herein in their entirety.

85.

Johnson has been guilty of such willful misconduct, malice, fraud, wantonness, oppression, and an entire want of care sufficient to raise the presumption of conscious indifference to consequences.

86.

Johnson's misconduct is so aggravating it authorizes, warrants, and demands

the imposition of substantial punitive damages against Johnson pursuant to O.C.G.A. § 51-12-5.1.

87.

Any cap on the amount of punitive damages applied in this case would be unconstitutional for several reasons, including that it contravenes the inviolate right to trial by jury contained in Georgia's Constitution.

COUNT THREE

(Respondeat Superior Against Total Transportation and the U.S. Xpress Defendants)

88.

Plaintiffs incorporate herein by reference the allegations of Paragraphs 1 through 93 of this Complaint for Damages as if each were fully set forth herein in their entirety.

89.

At all times material hereto, Defendant Johnson was acting within the course and scope of his employment or agency with Defendants Total Transportation and the U.S. Xpress Defendants and was furthering the business interests of Defendants Total Transportation and the U.S. Xpress Defendants.

90.

Defendants Total Transportation and the U.S. Xpress Defendants are liable under the doctrine of *respondeat superior* and the rules of agency for the tortious acts and omissions of their agents, employees, members, representatives, servants, or contractors pursuant to O.C.G.A §§ 51-2-2, 51-2-5, 14-11-301, and other applicable law. These acts and omissions include, but are not limited to, the acts and omissions committed by Defendant Johnson on April 22, 2015, which are described above and were committed within the course and scope of his agency or employment with Defendants Total Transportation and the U.S. Xpress Defendants.

91.

As a result of the foregoing breaches of duties, McKay Pittman suffered the losses and injuries noted herein and ultimately died of those injuries.

92.

Alone or in conjunction with the negligence of the other Defendants, Defendants Johnson's, Total Transportation's and the U.S. Xpress Defendants' negligence proximately caused the injuries to and death of McKay Pittman.

93.

Defendants Total Transportation and the U.S. Xpress Defendants are liable to Plaintiffs for all damages allowed by law for the injuries, death, damages and

losses sustained by Plaintiffs as a result of the negligence of Defendant Johnson and/or their own independent negligence.

COUNT FOUR

(Total Transportation's and the U.S. Xpress Defendants' Negligence)

94.

Plaintiffs incorporate herein by reference the allegations of Paragraphs 1 through 93 and 97 through 102 of this Complaint for Damages as if each were fully set forth herein in their entirety.

95.

As an employer, Defendants Total Transportation and the U.S. Xpress Defendants are also independently negligent in hiring, qualifying, training, entrusting, supervising and retaining Defendant Johnson in connection with his operation of a commercial motor vehicle and for otherwise failing to act as a reasonable and prudent employer and motor carrier would under the same or similar circumstances.

96.

Defendants Total Transportation and the U.S. Xpress Defendants failed to ensure that their tractor-trailer and driver complied with federal and state laws and regulations.

97.

Defendants Total Transportation and the U.S. Xpress Defendants failed to properly inspect, maintain, service, or repair the tractor Johnson was driving.

98.

As a an employer and motor carrier, Defendants Total Transportation and the U.S. Xpress Defendants had certain duties and responsibilities as defined by the Federal Motor Carrier Safety Regulations, other federal law and regulations, Georgia law and industry standards including the duty to properly qualify Defendant Johnson, the duty to properly train Defendant Johnson, the duty to properly inspect and maintain its vehicles, the duty to make sure its employees are medically able to operate commercial motor vehicles, the duty to prevent its employees from operating a commercial motor vehicle while they have any untreated sleep conditions or disorders and the duty to otherwise establish and implement necessary management controls and systems for the safe operation of its motor vehicles.

99.

Defendants Total Transportation and the U.S. Xpress Defendants were independently negligent in failing to meet their duties and responsibilities under the Federal Motor Carrier Safety Regulations, other federal law and regulations, Georgia law and industry standards.

100.

As a result of the foregoing breaches of duties, McKay Pittman suffered the losses and injuries noted herein and ultimately died of those injuries.

101.

Alone or in conjunction with the negligence of the other Defendants, Defendants Total Transportation and the U.S. Xpress Defendants' negligence proximately caused the injuries to and death of McKay Pittman.

102.

Defendants Total Transportation and the U.S. Xpress Defendants are liable to Plaintiffs for all damages allowed by law for the injuries, death, damages and losses sustained by Plaintiffs as a result of the negligence of Defendant Johnson and/or their own independent negligence.

COUNT FIVE

(Joint Venture, Alter Ego, Agency and Piercing the Corporate Veil Against Total Transportation and the U.S. Xpress Defendants)

103.

Plaintiffs incorporate herein by reference the allegations of Paragraphs 1 through 93 and 97 through 111 of this Complaint for Damages as if each were fully set forth herein in their entirety.

104.

On information and belief, the U.S. Xpress Defendants operated Total Transportation as a joint venture and acted in the scope of authority of such agency and in the scope of and in furtherance of their joint venture at the time this cause of action arose, thereby rendering the U.S. Xpress Defendants liable for the acts and omissions of Total Transportation as well as its employees, agents, and servants.

105.

On information and belief, the U.S. Xpress Defendants abused the corporate forms of the U.S. Xpress Defendants and Total Transportation such that they are each other's alter egos and an instrumentality for the transaction of each other's affairs. The U.S. Xpress Defendants disregarded the separateness of these legal Defendants for the purpose of perpetrating a sham to defeat justice as well as tort, statutory, and contractual responsibility.

106.

At all times relevant to this Complaint, the U.S. Xpress Defendants had control over the time, manner, and method of Total Transportation's operations and persons working at Total Transportation, including Defendant Johnson and persons responsible for hiring, training and supervising drivers and setting the policies and procedures for safety training and implementation for Total Transportation.

107.

Under the doctrine of alter ego, the U.S. Xpress Defendants are liable for the activities of any business Defendants so organized and controlled and its business conducted in such a manner as to make it merely an agency, instrumentality, or alter ego of the U.S. Xpress Defendants. Total Transportation was so organized and controlled and its business conducted in such a manner as to make it merely an agent, instrumentality, or alter ego of the U.S. Xpress Defendants.

108.

The U.S. Xpress Defendants disregarded the corporate identity of the U.S. Xpress Defendants and Total Transportation to such a degree that the U.S. Xpress Defendants made Total Transportation their alter ego and a mere instrumentality for the transaction of the U.S. Xpress Defendants' affairs such that the separate identities of Total Transportation and the U.S. Xpress Defendants no longer existed. The U.S. Xpress Defendants and Total Transportation disregarded the separateness of the legal Defendants for the purpose of perpetrating a sham to defeat justice as well as tort, statutory, and contractual responsibility.

109.

On April 22, 2015, Johnson was acting in furtherance and in the scope of Total Transportation and the U.S. Xpress Defendants' business and joint venture.

110.

There was a unity of interest between Total Transportation and the U.S. Xpress Defendants such that the separate personalities of the respective Defendants ceased to exist.

111.

Adherence to the doctrine of separate corporate Defendants as between Total Transportation and the U.S. Xpress Defendants would promote injustice and/or fraud.

112.

With respect to the negligent acts and omissions causing the death of McKay Pittman on April 22, 2015, Total Transportation and the U.S. Xpress Defendants operated as a single economic entity.

113.

Total Transportation and the U.S. Xpress Defendants disregarded their separateness by commingling the companies' affairs on an interchangeable and/or joint basis and by confusing the otherwise separate properties, records, and/or control of the companies.

114.

Total Transportation and the U.S. Xpress Defendants combined their respective property, supplies, and/or labor in a joint undertaking for profit so as to

render all members of the venture liable for the negligence and/or negligence per se of the other members.

115.

As a consequence of their joint enterprise, Total Transportation and the U.S. Xpress Defendants owed a joint duty to McKay Pittman to use reasonable care for her safety.

116.

Under the doctrine of joint venture, Total Transportation and the U.S. Xpress Defendants are liable for the conduct of the other parties to the joint venture, as well as their employees, servants, and agents.

117.

On April 22, 2015, Johnson was acting as a dual servant of Total Transportation and the U.S. Xpress Defendants. Consequently, Total Transportation and the U.S. Xpress Defendants are liable for the torts of Johnson.

118.

The U.S. Xpress Defendants and Total Transportation operate as a joint venture in their motor carrier operations, including the training, hiring, and retention of drivers and setting the policies and procedures for safety training and implementation for Total Transportation.

119.

At all times relevant to this Complaint, the U.S. Xpress Defendants were responsible for and had control over the persons working at Total Transportation, including Defendant Johnson.

120.

At all times relevant to this Complaint, the U.S. Xpress Defendants were responsible for and exercised control over the time, manner, and method of Total Transportation's safety policies and procedures.

121.

At all times relevant to this Complaint, the U.S. Xpress Defendants were responsible for and exercised control over the time, manner, and method of the training, hiring, and retention of Total Transportation's drivers.

122.

Defendants Total Transportation and the U.S. Xpress Defendants are vicariously liable for the negligent acts and omissions of Defendant Johnson on April 22, 2015, which are described above and were committed within the course and scope of his agency or employment with Defendants Total Transportation and the U.S. Xpress Defendants.

123.

Defendants Total Transportation and the U.S. Xpress Defendants are independently negligent for selecting, hiring, training, supervising, retaining, qualifying, and/or entrusting Defendant Johnson as a driver of a commercial vehicle.

124.

As a result of the foregoing breaches of duties, McKay Pittman suffered the losses and injuries noted herein and ultimately died of those injuries.

125.

Alone or in conjunction with the negligence of the other Defendants, Defendants Total Transportation and the U.S. Xpress Defendants' negligence proximately caused the injuries to and death of McKay Pittman.

126.

Defendants Total Transportation and the U.S. Xpress Defendants are liable to Plaintiffs for all damages allowed by law for the injuries, death, damages and losses sustained by Plaintiffs as a result of the negligence of Defendant Johnson and/or their own independent negligence.

COUNT SIX

(Punitive Damages Against Total Transportation and the U.S. Xpress Defendants)

127.

Plaintiffs incorporate herein by reference the allegations of Paragraphs 1 through 93 and 97 through 135 of this Complaint for Damages as if each were fully set forth herein in their entirety.

128.

Total Transportation and the U.S. Xpress Defendants have been guilty of such willful misconduct, malice, fraud, wantonness, oppression, and an entire want of care sufficient to raise the presumption of conscious indifference to consequences.

129.

Total Transportation and the U.S. Xpress Defendants' misconduct is so aggravating it authorizes, warrants, and demands the imposition of substantial punitive damages against Total Transportation and the U.S. Xpress Defendants pursuant to O.C.G.A. § 51-12-5.1.

130.

Any cap on the amount of punitive damages applied in this case would be unconstitutional for several reasons, including that it contravenes the inviolate right

to trial by jury contained in Georgia's Constitution.

COUNT SEVEN

(Direct Action Against Mountain Lake Risk)

131.

Plaintiffs incorporate herein by reference the allegations of Paragraphs 1 through 93 and 97 through 135 of this Complaint for Damages as if each were fully set forth herein in their entirety.

132.

Defendant Mountain Lake Risk Retention Group, Inc. provided liability coverage for the tractor-trailer involved in the collision and Total Transportation's/the U.S. Xpress Defendants' employees and/or agents, including Defendant Johnson.

133.

Defendant Mountain Lake Risk Retention Group, Inc. was transacting business in the State of Georgia and in the Northern District of Georgia on the date of the subject wrecks, and at all material times hereto.

134.

Defendant Mountain Lake Risk Retention Group, Inc. agreed to provide insurance coverage to Defendants Johnson, Total Transport and the U.S. Xpress Defendants in consideration for the payment of insurance premiums.

135.

McKay Pittman as a member of the public injured due to a common carrier's negligence, is a third party beneficiary to the agreement between Defendant Mountain Lake Risk Retention Group, Inc. and Defendants Total Transportation, the U.S. Xpress Defendants and Johnson.

136.

Pursuant to O.C.G.A. § 40-1-112 and O.C.G.A. § 40-2-140, Defendant Mountain Lake Risk Retention Group, Inc. is subject to this Direct Action.

137.

Plaintiffs are entitled to receive payments from Defendant Mountain Lake Risk Retention Group, Inc. for the tort liability of Defendants Total Transportation, the U.S. Xpress Defendants and Johnson.

COUNT EIGHT

(Attorneys' Fees and Litigation Expenses Under O.C.G.A. § 13-6-11)

138.

Plaintiffs incorporate herein by reference the allegations of Paragraphs 1 through 93, Paragraphs 97 through 135 and Paragraphs 140 through 146 of this Complaint for Damages as if each were fully set forth herein in their entirety.

139.

Defendants have acted in bad faith, have been stubbornly litigious, and have caused the Plaintiffs unnecessary trouble and expense, such that Plaintiffs seek to recover from Defendants all costs of litigation, including attorneys' fees and expenses, pursuant to O.C.G.A. § 13-6-11 and all other applicable Georgia law.

140.

Defendants are liable for Plaintiffs' attorneys' fees and litigation expenses under O.C.G.A. § 13-6-11 and other applicable law.

DAMAGES

141.

Defendants acted in a manner which directly and proximately caused the subject collisions described above and resulting injuries to McKay Pittman that eventually led to her untimely death.

142.

As a result of Defendants negligence and misconduct, McKay Pittman suffered catastrophic and severe personal injuries and pain and suffering including fear, shock of impact, fright, physical pain and suffering, mental anguish, and knowledge of her impending death.

143.

Plaintiffs, as surviving parents of McKay Pittman, deceased, are entitled to recover compensatory damages for the wrongful death of McKay Pittman, the measure of which under Georgia law is the full value of her life, both economic and intangible, as determined by the enlightened conscience of a fair and impartial jury.

PRAYER FOR RELIEF

144.

WHEREFORE Plaintiffs pray for the following relief:

- (a) That summons issue requiring the Defendants to appear as provided by law to answer this Complaint;
- (b) That Plaintiffs have and recover all damages for all losses compensable under Georgia law as set forth above;
- (c) That all attorneys' fees, expenses, and costs be cast against the Defendants;
- (d) That service be had on the Defendants as provided by law;
- (e) That the Court award punitive damages against Defendants;
- (f) That all expenses of litigation, including attorney's fees, be cast against the Defendants; and
- (g) For such other and further relief as the Court deems just and proper.

This 19th day of May, 2015.

FRIED ROGERS GOLDBERG LLC

/s/ Joseph A. Fried

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