

IN THE CIRCUIT COURT, OF THE
EIGHTH JUDICIAL CIRCUIT, IN AND FOR, ALACHUA COUNTY, FLORIDA

CASE NO.: 2008-CA-4189

MATTHAN PROPHETE, an individual,

Plaintiff,

vs.

L & B TRANSFER, INC., a foreign
corporation, TIMOTHY HAYNES, an
individual, ANNABEL HAYNES, an
individual, and VERNON FIELDING,
an individual,

Defendants.

**SECOND AMENDED COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL**

The Plaintiff, MATTHAN PROPHETE, by and through his undersigned counsel and sues the Defendants, L & B TRANSFER, INC., a foreign corporation, TIMOTHY HAYNES, an individual, ANNABEL HAYNES, an individual, and VERNON FIELDING, an individual, and for this, his Amended Complaint would allege:

GENERAL ALLEGATIONS

1. This is an action for damages which exceeds the sum of Fifteen Thousand Dollars (\$15,000.00).

2. That at all times material to this cause of action, the Defendant, L & B TRANSFER, INC., was and is a foreign corporation, was the owner of the subject tractor/trailer, and regularly does business as a national trucking company and transportation carrier throughout the United States, including the State of Florida, specifically Alachua County, Florida.

3. That at all times material to this cause of action, the Defendants,

TIMOTHY HAYNES and ANNABEL HAYNES, were residents of Knoxville, Tennessee.

4. That at all times material to this cause of action, the Defendant, VERNON FIELDING, was a resident of the State of Georgia and was an employee, officer, and director of the Defendant, L&B TRANSFER, INC.

COUNT 1 - VICARIOUSLY LIABILITY OF DEFENDANT, L & B TRANSFER, INC.

5. Plaintiff, MATTHAN PROPHETE, reiterates and adopts paragraphs one
(1)

though four (4) and further states:

6. That on or about October 12, 2007, the Defendant, L & B TRANSFER, INC., owned a tractor/trailer, specifically a 1998 Freightliner tractor bearing vehicle identification number 1FUYDSEB4WL896929, with an attached trailer bearing vehicle identification number 1JJV532Y8PL185250.

7. That on or about October 12, 2007, said tractor/trailer was being operated with its implied/express consent and permission and knowledge, by Tommie Lewis, as an employee of the Defendant, L & B TRANSFER, INC., while Mr. Lewis was in the course, scope, agency, and service of his employment with the Defendant, L & B TRANSFER, INC.; that said Tommie Lewis was operating said tractor/trailer on Interstate 75 southbound at or near State Road 26, in Gainesville, Alachua County, Florida.

8. At that time and place, Mr. Lewis, while during the course and scope of his
employment with the Defendant, L & B Transfer, Inc., negligently operated and maintained said tractor/trailer causing his tractor/trailer to strike the rear of a motor vehicle being operated by the Defendant, ANNABEL HAYNES; that as a result, Mr. Lewis lost control of his tractor/trailer

and struck the vehicle being operated by Allen Finley, and then struck the tractor/trailer in which the Plaintiff, MATTHAN PROPHETE, was a passenger.

9. As a consequence of Mr. Lewis' relationship with the Defendant, L & B TRANSFER, INC., the Defendant, L&B TRANSFER, INC., is vicariously liable under the doctrine of respondeat superior for the damages suffered by the Plaintiff, MATTHAN PROPHETE, which were the direct and proximate result of the negligent acts and/or omissions of Mr. Lewis.

10. That as a direct and proximate result of the foregoing negligence of Mr. Lewis, the Plaintiff, MATTHAN PROPHETE, suffered bodily injury and resulting pain and suffering, impairment, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care, and treatment, loss of earnings, and loss of ability to earn money, and aggravation of a previously existing condition. The injuries to the Plaintiff are permanent with a reasonable degree of medical probability and said Plaintiff will continue to suffer the losses in the future.

WHEREFORE, the Plaintiff, MATTHAN PROPHETE, sues the Defendant, L & B TRANSFER, INC., for compensatory damages in an amount within the jurisdictional limits of this Court, to-wit: in excess of FIFTEEN THOUSAND DOLLARS (\$15,000), exclusive of interest and costs, and demands trial by jury of all issues.

COUNT II - NEGLIGENCE CLAIM AGAINST DEFENDANTS,
TIMOTHY HAYNES AND ANNABEL HAYNES

11. Plaintiff, MATTHAN PROPHETE, reiterates and adopts paragraphs one (1) through four (4) and further states:

12. That on or about October 12, 2007, the Defendant, TIMOTHY HAYNES,

owned a motor vehicle, specifically a 1998 Honda, bearing vehicle license number 495MVP that was being operated with his implied/express consent, by Defendant, ANNABEL HAYNES, on Interstate 75 southbound at or near State Road 26, in Gainesville, Alachua County, Florida.

13. At that time and place, Defendant, ANNABEL HAYNES, negligently operated and maintained said motor vehicle causing her vehicle to strike the vehicle being operated ahead of her by Allen Finley; that said negligence then caused or contributed to the vehicle being operated by Mr. Lewis and owned by the Defendant, L & B TRANSFER, INC., to strike the Defendant, HAYNES', vehicle and then Allen Finley, vehicle and then the tractor/trailer in which the Plaintiff, MATTHAN PROPHETE was a passenger; that said impact between the Defendant, L&B TRANSFER, INC., vehicle and the tractor/trailer in which the Plaintiff, MATTHAN PROPHETE, was a passenger, caused both to catch fire, causing severe burn injuries and other injuries to the Plaintiff.

14. That as a direct and proximate result of the foregoing negligence, the Plaintiff, MATTHAN PROPHETE, suffered bodily injury and resulting pain and suffering, impairment, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care, and treatment, loss of earnings, and loss of ability to earn money, and aggravation of a previously existing condition. The injuries to the Plaintiff are permanent with a reasonable degree of medical probability and said Plaintiff will continue to suffer the losses in the future.

WHEREFORE, the Plaintiff, MATTHAN PROPHETE, sues the Defendants, TIMOTHY HAYNES and ANNABEL HAYNES, for compensatory damages in an amount within the jurisdictional limits of this Court, to-wit: in excess of FIFTEEN THOUSAND DOLLARS (\$15,000), exclusive of interest and costs, and demands trial by jury of all issues.

COUNT III - NEGLIGENT HIRING, RETENTION AND SUPERVISION CLAIM
AGAINST DEFENDANT, VERNON FIELDING

15. Plaintiff, MATTHAN PROPHETE, reiterates and adopts paragraphs one (1)

through four (4) and further states:

16. At all times material to this cause, Defendant, VERNON FIELDING, was an employee, officer, and director of the Defendant, L & B TRANSFER, INC.

17. Since the Defendant, L&B TRANSFER, INC., was in the business of transporting goods interstate and for hire, they had a duty to comply with all applicable federal and state codes and regulations governing the hiring, retention, and supervising of their drivers, to include Mr. Lewis.

18. The Defendant, VERNON FIELDING, was the person that was ultimately responsible for hiring Mr. Lewis, was responsible for supervising Mr. Lewis, and was the person in charge of making the final decision whether to retain their drivers, to include Mr. Lewis.

19. Mr. Lewis was hired as an interstate truck driver by the Defendant, VERNON FIELDING, on or about June 24, 2004.

20. The Defendant, VERNON FIELDING, made the final decision to hire Mr. Lewis.

21. Prior to hiring any interstate truck driver, the Defendants, VERNON FIELDING and L&B TRANSFER, INC., were required to comply with 49 C.F.R. Section 391.21 and Section 391.23(hereinafter referred to as "Federal Regulations").

22. The Defendants, VERNON FIELDING and L&B TRANSFER, INC., had a company policy in place that before hiring a driver he was required to fully comply with the Federal Regulations, specifically 391.21 and 391.23.

23. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., before hiring Mr. Lewis, did not comply with Federal Regulations, specifically 391.21 and 391.23.

24. That the Plaintiff, MATTHAN PROPHETE, was in the class of persons the Federal Regulations were intended to protect and he suffered the type of injuries or damages the Federal Regulations were designed to protect.

25. Specifically, the Defendants, VERNON FIELDING and L&B TRANSFER, INC., failed to properly investigate Mr. Lewis' previous employers, failed to complete an employment application per the requirements of the Federal Regulations, failed to check the driving record for each state Mr. Lewis had previously operated a tractor/trailer (Mr. Lewis listed 48 states on his application), and failed to inquire with Mr. Lewis' previous employers any information about prior drug/alcohol use.

26. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., violated their own hiring policies by hiring Mr. Lewis without fully complying with the Federal Regulations and should never have hired Mr. Lewis until full compliance was met.

27. Additionally, the Defendants, VERNON FIELDING and L&B TRANSFER, INC., met with Mr. Lewis on June 24th and hired him the same day.

28. That on or about June 11, 2007, the Department of Transportation (DOT) conducted an audit of the Defendant, L&B TRANSFER, INC., and found the Defendants, VERNON FIELDING and L&B TRANSFER, INC., were in violation for failing to conduct a

proper background check, by failing to have a complete application on file, and by failing to conduct a proper driver background check.

29. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., negligence in hiring Mr. Lewis was negligence per se or in the alternative the Defendants, VERNON FIELDING and L&B TRANSFER, INC., were careless and negligent in the hiring of Mr. Lewis.

30. That on or about February 24, 2005, Mr. Lewis tested positive for marijuana
as part of a random drug test.

31. That as a result of the positive marijuana test the Defendant, VERNON FIELDING, terminated Mr. Lewis.

32. On or about July 9, 2005, the Defendant, VERNON FIELDING, rehired Mr.
Lewis.

33. Once again, the Defendants, VERNON FIELDING and L&B TRANSFER, INC., failed to comply with 391.21 and 391.23 in the hiring of Mr. Lewis. Had they done so, they would have discovered that on or about November 11, 2004 Mr. Lewis was cited for failing to keep in a proper lane while operating a tractor/trailer for the Defendant, L&B TRANSFER, INC.; that had they known of this moving violation and after testing positive for marijuana, the Defendant, VERNON FIELDING, would have and should have never rehired Mr. Lewis and would have and should have never retained Mr. Lewis as a truck driver.

34. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC.,

had no driver manual or any policies or procedures in place for their drivers, which is in violation of the Federal Regulations.

35. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., never had any policies or procedures in place in regards to driver safety, remedial training, or requiring their drivers to take any safety courses following a moving violation or substance abuse violation.

36. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., never conducted any annual reviews as it pertains to Mr. Lewis subsequent to Mr. Lewis being hired on or about June 24, 2004 up until the subject crash on October 12, 2007.

37. Had the Defendants, VERNON FIELDING and L&B TRANSFER, INC., conducted the required annual reviews they would have also discovered that Mr. Lewis was cited for failure to obey traffic signs or controlled device on July 26, 2005 while operating a tractor/trailer for the Defendant, L&B TRANSFER, INC.

38. Had the Defendants, VERNON FIELDING and L&B TRANSFER, INC., conducted the required annual reviews, they would have also discovered that Mr. Lewis was cited for failure to keep in a proper lane on September 1, 2005 while operating a tractor/trailer for the Defendant, L&B TRANSFER, INC.

39. Had the Defendants, VERNON FIELDING and L&B TRANSFER, INC., conducted the required annual reviews, they would have also discovered that Mr. Lewis was cited for speeding on February 18, 2007 while operating a tractor/trailer for the Defendant, L&B TRANSFER, INC.

40. That had the Defendant, VERNON FIELDING, known of these additional

moving violation and after testing positive for marijuana, the Defendant, VERNON FIELDING, would have and should have never retained Mr. Lewis as a truck driver.

41. At all times material to this cause, the Defendants, VERNON FIELDING
and

L&B TRANSFER, INC., owed a duty of care to the general motoring public to include the Plaintiff, MATTHAN PROPHETE, to hire and retain only competent and qualified drivers, who willingly obey all traffic laws and free from drugs; that the Defendants, VERNON FIELDING and L & B TRANSFER, INC., breached its duty owed to the Plaintiff, MATTHAN PROPHETE, and failed to supervise and control its employee, Mr. Lewis, in the operation of its motor vehicle in such a manner which created a foreseeable risk of injury to the Plaintiff, MATTHAN PROPHETE, and other persons similarly situated.

42. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., did negligently entrust custody and supervision of a dangerous instrumentality, specifically the 1998 Freightliner truck to its employee, Mr. Lewis, in such a manner that created a foreseeable risk of injury to the Plaintiff, MATTHAN PROPHETE, and other persons similarly situated.

43. After testing positive for marijuana, the Defendants, VERNON
FIELDING

and L&B TRANSFER, INC., negligently rehired Mr. Lewis and failed to properly supervise Mr. Lewis, failed to require him to go through any additional driver training, failed to require him to take any driver safety courses, and failed to have Mr. Lewis go through the proper drug rehabilitation and drug testing.

44. That Mr. Lewis was permitted to return to safety sensitive duties on or
about

his re-hire date of July 9, 2005.

45. That upon to his return to safety sensitive duties on or about July 9, 2005,
the

Defendants, VERNON FIELDING and L&B TRANSFER, INC., were required under the Federal Regulations, specifically 40.307(d), to have Mr. Lewis submit to six (6) unannounced drug tests and to pass all six (6) drug tests within twelve (12) months from July 9, 2005.

46. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., failed to comply with 40.307(d) and as a result should not have permitted Mr. Lewis to perform safety sensitive duties beyond July 9, 2006.

47. From July 9, 2005 until the subject crash, the Defendants, VERNON FIELDING and L&B TRANSFER, INC., failed to supervise Mr. Lewis and failed to monitor his driving in any way.

48. From July 9, 2006 up until the subject crash, the Defendants, VERNON FIELDING and L&B TRANSFER, INC., did not subject Mr. Lewis to any random drug tests in violation of Federal Regulations.

49. On or about June 11, 2007, just four (4) months prior to the subject crash, DOT cited the Defendant, L&B TRANSFER, INC. for failing to have a company designated with the proper training to determine which drivers should be subjected to reasonable suspicion drug testing.

50. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., had a verbal policy in place that any driver that tests positive to marijuana twice would be terminated.

51. That following the subject crash, Mr. Lewis once again tested positive for

marijuana.

52. From July 9, 2006 up until the subject crash, the Defendants, VERNON FIELDING and L&B TRANSFER, INC., never subjected Mr. Lewis to any reasonable suspicion drug testing and did not have any company designated with the proper training to determine who should be subject to reasonable suspicion drug testing in violation of the Federal Regulations.

53. That had the Defendants, VERNON FIELDING and L&B TRANSFER, INC., conducted any random drug testing or had an employee with the proper training for reasonable suspicion testing, any ongoing marijuana use on the part of Mr. Lewis would have or could been detected which would have lead to the termination of Mr. Lewis prior to the subject crash.

54. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., owed a duty to the general motoring public to include the Plaintiff, MATTHAN PROPHETE, to ensure that their employees were hired, retained, and supervised consistent with the Federal Regulations.

55. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., breached their duty owed to the general motoring public to include the Plaintiff, MATTHAN PROPHETE, by failing to comply with the Federal Regulations in the hiring of Mr. Lewis, by allowing Mr. Lewis to continue performing safety sensitive duties, and by failing to properly supervise Mr. Lewis after his initial positive marijuana test and multiple moving violations.

56. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., knew or should have known that Mr. Lewis had a marijuana abuse problem making him unsuitable to perform safety sensitive duties after the first failed drug test but failed to do anything to protect the safety of the general motoring public to include the Plaintiff, MATTHAN

PROPHETE, by failing to require Mr. Lewis to pass six (6) unannounced drug tests within twelve (12) months of his return to safety sensitive duties, by failing to subject Mr. Lewis to any subsequent random drug testing, by failing to subject Mr. Lewis to any reasonable suspicion drug testing, and by failing to have a company designated with the proper training to determine which drivers should be subjected to reasonable suspicion drug testing.

57. That the Defendants, VERNON FIELDING and L&B TRANSFER, INC., were negligent for failing to take adequate remedial action regarding the substance abuse tendencies of Mr. Lewis.

58. That as a result of the Defendants, VERNON FIELDING and L&B TRANSFER, INC.'s, negligence Mr. Lewis was permitted and allowed to continue operating a tractor/trailer for the Defendants even though he was unsuitable to do so.

59. That the foregoing negligence on the part of the Defendant, VERNON FIELDING, resulted in severe injuries to the Plaintiff, MATTHAN PROPHETE, as a result of the subject crash.

60. Defendant, VERNON FIELDING, knew, or should have known, that Mr. Lewis failed to possess the requisite training, skill, and/or judgment to properly and safely perform the duties required of him in operating the 1998 Freightliner owned by the Defendant, L & B TRANSFER, INC., at the time of the subject crash.

61. That as a direct and proximate result of the foregoing negligence on the part of the Defendant, VERNON FIELDING, the Plaintiff, MATTHAN PROPHETE, suffered bodily injury and resulting pain and suffering, impairment, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care, and treatment, loss of earnings, and loss of ability to earn money, and aggravation of a

previously existing condition. The injuries to the Plaintiff are permanent with a reasonable degree of medical probability and said Plaintiff will continue to suffer the losses in the future.

WHEREFORE, the Plaintiff, MATTHAN PROPHETE, sues the Defendant, VERNON FIELDING, for compensatory damages in an amount within the jurisdictional limits of this Court, to-wit: in excess of FIFTEEN THOUSAND DOLLARS (\$15,000), exclusive of interest and costs, and demands trial by jury of all issues.

COUNT VII
(CLAIM FOR DIRECT CORPORATE LIABILITY PUNITIVE DAMAGES AGAINST DEFENDANTS VERNON FIELDING AND L&B TRANSFER, INC.)

62. Plaintiff, MATTHAN PROPHETE, realleges paragraph numbers one (1) through four (4) and would further state:

63. This is an action for punitive damages in excess of \$15,000.00, exclusive of interest, costs and attorneys fees.

64. Evidence proffered by the Plaintiff, including evidence in the Court's record that the Plaintiff has obtained through Discovery, provides a reasonable basis for recovery of punitive damages.

65. Plaintiff has met and/or exceeded the Florida statutory evidentiary threshold requiring a reasonable showing of evidence providing a reasonable basis for recovery of punitive damages.

66. Defendant VERNON FIELDING, acting as president of L&B Transfer, Inc.,

engaged in the following intentional, willful conduct and/or grossly negligent with reckless indifference conduct sufficient to sustain an award of punitive damages against Defendants VERNON FIELDING and L&B TRANSFER, INC.:

- a. Failing to implement and/or maintain a drug testing policy and/or drug testing program at L&B Transfer, Inc. for company drivers, which included driver Tommie Lewis, who tested positive for marijuana following the subject crash;
- b. Failing to properly respond to federal citations/sanctions regarding Federal trucking regulation testing to include drug testing and reporting violations to include drug testing; that had they done so Tommie Lewis would never have been permitted to operate a tractor/trailer and should never have been behind the wheel of a tractor trailer on behalf of the Defendants; that despite the FDOT requiring the Defendants to train someone for reasonable suspicion drug testing, the Defendants ignored that FDOT's requirement and never obtained the required training thus allowing their drivers to take drugs without the Defendants being properly trained to detect such drug use;
- c. Knowing, condoning, ratifying, or consenting to the negligent hiring, retention, and/or supervision of L&B Transfer, Inc. company driver Tommie Lewis; that had they done what was required the Defendants would have never rehired Tommie Lewis after testing positive for marijuana in 2005; that the Defendants would have learned about numerous moving violations on the part of Tommie Lewis before and after his rehire; that the Defendants would have required Tommie Lewis to undergo 6 negative drug screens within a 12 month period per the FDOT guidelines but failed to do so and thus Tommie Lewis

should never been permitted to operate a tractor trailer and should not have been behind the wheel at the time of the subject accident.

67. The intentional, willful conduct and/or grossly negligent with reckless indifference conduct of Defendants, VERNON FIELDING and L&B TRANSFER, INC., caused or contributed to the loss, damages, or injury of the Plaintiff, MATTHAN PROPHETE, on or about October 12, 2007.

68. In making a claim for punitive damages, Florida Statutes §768.72, states as follows:

[N]o claim for punitive damages shall be permitted unless there is a “reasonable showing” by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.

69. Thus, the law in Florida is that in order to have a court permit a count for punitive damages, the Plaintiff must make a “reasonable showing” under §768.72 by way of a proffer to the court. Estate of Despain v. Avante Group, Inc., 900 So.2d 637, 642 (Fla. 5th DCA 2005). A punitive damage proffer is merely a representation of the evidence the party proposes to present and is not actual evidence. Id. A proffer according to the traditional notions of the term, connotes merely an offer of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Id. An evidentiary hearing is neither contemplated nor mandated by the statute in order to determine whether a “reasonable basis” has been established to plead punitive damages. Id.

WHEREFORE, the Plaintiff, MATTHAN PROPHETE, demands judgment for punitive damages together with costs against Defendants, VERNON FIELDING and L & B TRANSFER, INC. and further demands a trial by jury as to all issues so triable.

COUNT VIII
**(CLAIM FOR VICARIOUS CORPORATE LIABILITY PUNITIVE DAMAGES
AGAINST DEFENDANT L&B TRANSFER, INC.)**

70. Plaintiff, MATTHAN PROPHETE, realleges paragraph numbers one (1) through four (4) and paragraphs sixty-three (63) through sixty-nine (69), and would further state:

71. In the alternative to a jury finding the Defendants VERNON FIELDING and L&B TRANSFER, INC. liable under a theory of direct corporate liability for punitive damages, Defendant L&B TRANSER, INC. is liable for vicarious corporate liability for punitive damages.

72. Evidence proffered by the Plaintiff, including evidence in the Court's record that the Plaintiff has obtained through Discovery, provides a "reasonable basis" for recovery of punitive damages.

73. Plaintiff has met and/or exceeded the Florida statutory evidentiary threshold requiring a reasonable showing of evidence providing a reasonable basis for recovery of punitive damages.

74. On or about October 12, 2007, Defendant L&B TRANSFER, INC. employed driver Tommie Lewis, who was acting within the course and scope of his employment when he engaged in reckless, willful, and wanton conduct by driving while marijuana was in his system/while under the influence of marijuana, despite the FDOT guidelines not permitting truck drivers, at any time, to smoke marijuana..

75. Defendant L&B TRANSFER, INC. negligently hired, retained, or failed to

supervise Tommie Lewis, a driver for L&B Transfer, Inc., who was acting within the course and scope of his employment when he engaged in reckless, willful, and wanton conduct by driving under the influence of marijuana.

WHEREFORE, Plaintiff, MATTHAN PROPHETE, pursuant to Fla. Stat. §768.72, demands judgment for punitive damages against the Defendant, L&B TRANSFER, INC.. Plaintiff, demands trial by jury on all issues so triable.

Dated:

WIELAND, HILADO & DELATTRE, P.A.
790 N. Orange Avenue
P. O. Box 944
Orlando, FL 32802-0944
(407)841-7699
Attorneys for Plaintiff

TOM DELATTRE, ESQUIRE
Florida Bar # 0541451

