

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA**

MINNETTA BOWMAN and DAVID FEYRER,	:	No. 09-1083
individually and as the parents and guardians of	:	
D.F., a minor child,	:	Honorable Donetta W. Ambrose
	:	
Plaintiffs,	:	
	:	
-vs.-	:	
	:	
FREMIET COLOMER, FLEITAS TRANSPORT,	:	A TRIAL BY JURY
INC., TRANS PRO FREIGHTWAYS, INC.,	:	IS DEMANDED
THE SIMPLEX GROUP, INC., AND	:	
ELECTRIC INSURANCE COMPANY.	:	
	:	
Defendants.	:	

**SECOND AMENDED COMPLAINT IN CIVIL ACTION
FOR DAMAGES AND DECLARATORY JUDGMENT**

Pursuant to the Federal Rules of Civil Procedure, and the local rules of court for the Western District of Pennsylvania, Plaintiffs, Minnetta Bowman (“Ms. Bowman”) and David Feyrer (“Mr. Feyrer”), individually and as the parents and guardians of D.F., a minor child, file this complaint.

PARTIES

A. Plaintiffs

1. Ms. Bowman and Mr. Feyrer are adult individuals, they are married to each other, and they reside at 268 Meridian Road, Butler, Pennsylvania 16001. Ms. Bowman and Mr. Feyrer are citizens of the Commonwealth of Pennsylvania.

2. D.F. is an eleven year old girl. Ms. Bowman and Mr. Feyrer are D.F.’s natural parents and guardians.

3. D.F. resides with her parents, at the address pled in paragraph one, and is, therefore, likewise a citizen of Pennsylvania.

B. Defendants

4. Defendant, Fremiet Colomer (the “defendant driver”), is an adult individual who resides at 5102 SW 102nd Avenue, Miami, Florida 33185. The defendant driver is a citizen of the state of Florida.

5. Defendant, Fleitas Transport, Inc. (the “defendant trucking company”) is a corporation that has an address located at 621 SW 71 Court, Miami, Florida 33144. The defendant trucking company is organized under the laws of Florida, and its principal place of business is located in Florida. The defendant trucking company, therefore, is a citizen of the state of Florida.

6. Defendant, Trans Pro Freightways, Inc. (the “defendant owner”) is a corporation that has an address, for purposes of service of process, located at 3631 North Front Street, Harrisburg, Pennsylvania 17110. However, the defendant owner is organized under the laws of Florida, and its principal place of business is located in Florida. The defendant owner, therefore, is a citizen of the state of Florida.

7. Defendant, The Simplex Group, Inc. is a Florida corporation with its headquarters at 5800 NW 74th Avenue in Miami, FL 33166. It is a corporation organized under the laws of Florida and whose statutory agent is Infante, Zumpano, Hudson & Miloch LLC at 500 South Dixie Highway, Suite 302, Coral Gables, FL 33146. The Simplex Group, Inc. is a citizen of the state of Florida.

8. Defendant, Electric Insurance Company, is a corporation with its headquarters at 75 Sam Fonzo Drive in Beverly, MA 01915. Electric Insurance Company is a citizen of the Commonwealth of Massachusetts.

STATEMENT OF JURISDICTION

9. This case is brought under 28 U.S.C. §1332(a)(1), based upon diversity of citizenship. Because Plaintiffs are all citizens of Pennsylvania, Defendants are all citizens of Florida, and the amount in controversy (exclusive of interest and costs) exceeds \$75,000.00, diversity jurisdiction exists in this Honorable Court.

BACKGROUND FACTS

10. On January 14, 2009, Ms. Bowman was safely driving her vehicle northbound on Eagle Mill Road located in Butler, Pennsylvania.

11. D.F. was the only passenger in Ms. Bowman's vehicle.

12. A tractor trailer, driven by the defendant driver, was simultaneously being driven eastbound on SR 422 in slippery and dangerous conditions. The tractor trailer was, at all relevant times, owned by the defendant owner (and United States Department of Transportation No. 01403501 was displayed on the tractor trailer).

13. The motor carrier enforcement officer at the scene of the crash cited key defendant driver and owner for violation of 49 CFR 393.47(e) for having the left side brake out of adjustment on axle two.

14. The motor carrier enforcement officer at the scene of the crash cited key defendant driver and owner for violation of 49 CFR 393.53(b) for having a defective automatic slack adjustment system on the left side airbrakes on axle two.

15. The motor carrier enforcement officer at the scene of the crash cited key defendant driver and owner for violation of 49 CFR 393.47(b) for having mismatched brake chambers on axle two.

16. The motor carrier enforcement officer at the scene of the crash cited key defendant driver and owner for violation of 49 CFR 393.47(b) for having mismatched brake chambers on axle three.

17. The motor carrier enforcement officer at the scene of the crash cited key defendant driver and owner for violation of 49 CFR 393.9(a) for having an inoperable lamp to indicate whether the antilock braking system was operable.

18. At the time of the crash, the Federal Motor Carrier Safety Administration considered defendant Trans Pro Freightways to be deficient in the area of driver safety.

19. Trans Pro Freightways employed 95 drivers at the time of the crash. In the 2 1/2 years prior to the crash, motor carrier enforcement officers cited Trans Pro Freightways' drivers for being on the road illegally, or out of service, approximately 60 times.

20. In the year prior to this crash, Trans Pro Freightways' drivers were cited for failing to obey a traffic signal nine times.

21. When inspected by motor carrier enforcement officers, approximately one in five of Trans Pro Freightways' tractor trailers have been cited for being illegally on the road, or out of service.

22. The Simplex Group provides driver and supervisor training to Trans Pro Freightways, and in particular oversaw safety training and safety compliance for Defendant Fremiet Colomer. The Simplex Group provided safety compliance supervision and services to Trans Pro Freightways.

FIRST CAUSE OF ACTION

Negligence

*Plaintiffs, Minnetta Bowman and David Feyrer, individually and as the parents and guardians of
D.F. Feyrer v. Defendant, Fremiet Colomer*

23. Plaintiffs incorporate all facts and allegations above into this cause of action by reference.

24. The defendant driver operated his tractor trailer in an unsafe condition; drove at a speed that was too fast for the conditions; refused to stop for a red light at the intersection of Eagle Mill Road and SR 422; and, consequently, he crashed the tractor trailer into Ms. Bowman's and D.F.'s vehicle.

25. The defendant driver was negligent and reckless because he breached his duties to drive the tractor trailer in a safe and reasonable manner under the circumstances.

26. Further, defendant driver's conduct demonstrated a conscious disregard of the known risks to D.F. and Ms. Bowman and to the rest of the public by operating his tractor trailer in the manner stated.

27. As a direct and proximate result of the defendant driver's negligence and recklessness, Ms. Bowman and D.F. suffered severe, and permanent, injuries, including physical and mental pain and suffering and loss of capacity for the enjoyment of life.

28. As a direct and proximate result of the defendant driver's negligence and recklessness, Ms. Bowman has lost, and will continue to lose, wages.

29. As a direct and proximate result of the defendant driver's negligence and recklessness, D.F.'s future earning capacity has been greatly diminished, if not completely lost, and she has incurred, and will continue to incur, hundreds of thousands of dollars of medical expenses.

SECOND CAUSE OF ACTION

Negligence *per se*

*Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of
D.F. Feyrer v. Defendant, Fremiet Colomer*

30. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

31. The defendant driver violated state and federal statutes and regulations by, among other things, driving an unsafe vehicle, driving at a speed that was too fast for the conditions, refusing to stop for the red light at the intersection and 49 CFR §§350-399.

32. As a direct and proximate result of the defendant driver's violations of state and federal statutes and regulations, Ms. Bowman and D.F. sustained the damages described in causes of action above.

THIRD CAUSE OF ACTION

Vicarious Liability

*Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of
D.F. Feyrer v. Defendant, Fleitas Transport, Inc.*

33. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

34. At all relevant times, the defendant driver was the defendant trucking company's agent, employee, servant, and/or independent contractor and was acting within the course and scope of his employment, under the direct control of the defendant trucking company.

35. Accordingly, the defendant trucking company is vicariously liable for the defendant driver's aforementioned negligence.

36. Irrespective of the employment relationship, defendant trucking company is an interstate motor carrier subject to Federal Motor Carrier Safety Administration Regulations and is, therefore, responsible for the acts of defendant driver.

FOURTH CAUSE OF ACTION

Direct Negligence

*Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of
D.F. Feyrer v. Defendant, Fleitas Transport, Inc.*

37. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

38. The defendant trucking company had a duty to act reasonably in hiring and retaining the defendant driver, and to adopt and enforce policies, procedures, and rules to ensure that its driver(s) acted, and its vehicle(s) were operated and maintained, safely.

39. Defendant trucking company's conduct demonstrated a conscious disregard of the known risks to D.F. and Ms. Bowman and to the rest of the public.

40. The defendant trucking company breached its aforementioned duties, and those breaches directly and proximately caused the damages described in causes of action above.

FIFTH CAUSE OF ACTION

Negligence *per se*

*Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of
D.F. Feyrer v. Defendant, Fleitas Transport, Inc.*

41. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

42. The defendant trucking company violated—and encouraged defendant driver to violate—state and federal statutes and regulations.

43. As a direct and proximate result of the defendant trucking company's violations of state and federal statutes and regulations that were designed to protect people like Ms. Bowman and D.F., Ms. Bowman and D.F. sustained damages described in causes of action above.

SIXTH CAUSE OF ACTION

Vicarious Liability

*Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of
D.F. Feyrer v. Defendant, Trans Pro Freightways, Inc.*

44. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

45. At all relevant times, the defendant driver was the defendant owner's agent, employee, or servant, and was acting within the course and scope of his employment, under the direct control of the defendant owner.

46. Accordingly, the defendant owner is vicariously liable for the defendant driver's aforementioned negligence. See ¶¶8-18, supra.

47. Irrespective of the employment relationship, defendant owner is an interstate motor carrier subject to Federal Motor Carrier Safety Administration Regulations and is, therefore, responsible for the acts of defendant driver.

SEVENTH CAUSE OF ACTION

Direct Negligence

*Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of
D.F. Feyrer v. Defendant, Trans Pro Freightways, Inc.*

48. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

49. The defendant owner had a duty to act reasonably in hiring and retaining the defendant driver, and to adopt and enforce policies, procedures, and rules to ensure that its driver(s) acted, and its vehicle(s) were operated and maintained, safely.

50. Defendant owner's conduct demonstrated a conscious disregard of the known risks to D.F. and Ms. Bowman and to the rest of the public.

51. The defendant owner negligently and recklessly breached its aforementioned duties, and those breaches directly and proximately caused the damages described in causes of action above.

EIGHTH CAUSE OF ACTION

Negligence *per se*

Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of D.F. Feyrer v. Defendant, Trans Pro Freightways, Inc.

52. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

53. The defendant owner violated—and encouraged defendant driver to violate—state and federal statutes and regulations.

54. As a direct and proximate result of the defendant owner’s negligent and reckless violations of state and federal statutes and regulations, Ms. Bowman and D.F. suffered the damages described in causes of action above.

NINTH CAUSE OF ACTION

Vicarious Liability

Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of D.F. Feyrer v. Defendant, The Simplex Group, Inc.

55. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

56. At all relevant times, The Simplex Group, Inc. was the agent, employer, statutory employer, or otherwise responsible for the acts of defendant driver, defendant owner and/or defendant trucking company.

57. Accordingly, Simplex is vicariously liable for the defendant driver’s aforementioned negligence.

TENTH CAUSE OF ACTION

Direct Negligence

Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of D.F. Feyrer v. Defendant, The Simplex Group, Inc.

58. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

59. The Simplex Group, Inc. had a duty to act reasonably in advising in the hiring and retaining the defendant driver, and to adopt and enforce policies, procedures, and rules to ensure that Defendant Fremiet Colomer had the experience, training and knowledge to safely operate a tractor trailer in snowy and icy conditions, particularly when hauling an empty load.

60. Simplex's conduct demonstrated a conscious disregard of the known risks to D.F. and Ms. Bowman and to the rest of the public.

61. Simplex negligently and recklessly breached the duties described above, which directly and proximately caused the damages described in this complaint.

ELEVENTH CAUSE OF ACTION

Negligence *per se*

Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of D.F. Feyrer v. Defendant, The Simplex Group, Inc.

62. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

63. The Simplex Group, Inc. had knowledge that defendant driver was violated state and federal statutes and regulations, encouraged, and was complicit in these violations, including but not limited to violating 49 C.F.R. §§ 391.11 and 392.14.

64. As a direct and proximate result of Simplex's negligent and reckless violations of state and federal statutes and regulations, and knowledge and participation in Defendant Fremiet

Colomer violating state and federal laws and regulation, Ms. Bowman and D.F. suffered the damages described in causes of action above.

TWELFTH CAUSE OF ACTION

Loss of Consortium

Plaintiff, David Feyrer, individually v. All Defendants

65. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

66. As a direct and proximate result of Defendants' aforementioned negligence and recklessness, Mr. Feyrer has lost Ms. Bowman's aid, companionship and services.

THIRTEENTH CAUSE OF ACTION

Declaratory Judgment

Plaintiffs, Minnetta Bowman and David Feyrer, individually and as parents and guardians of D.F. Feyrer v. Electric Insurance Company

67. The trailer that Defendant Fremiet Colomer was pulling was owned by Transport International Pool, Inc. (TIP), a company wholly owned by the General Electric Company.

68. Electric Insurance Company provides insurance coverage for the General Electric Company.

69. Plaintiffs request that this Court declare that Defendant Fremiet Colomer is insured by Electric Insurance Company for the injuries to D.F. described in this complaint. An Electric Insurance Company policy provides insurance coverage for Defendant Colomer, including but not limited to the provision that, on information and belief, triggers insurance coverage for Mr. Colomer since he was operating a vehicle that was owned by General Electric Company. In the alternative, plaintiff requests that this Court declare that Electric Insurance Company must indemnify Defendant Fremiet Colomer for any judgment, settlement or verdict entered against Mr. Colomer.

WHEREFORE, against all defendants except Electric Insurance Company, Plaintiffs, Minnetta Bowman and David Feyrer, individually and as the parents and guardians of D.F. Feyrer, respectfully demand the following relief: judgment in their favor, and against all Defendants, in an amount in excess of \$75,000.00 (exclusive of costs and interest), together with punitive damages, costs and whatsoever other relief that this Honorable Court deems just, given the circumstances.

Further, plaintiffs demand that this Court declare that Electric Insurance Company provides insurance coverage applicable to the crash in which D.F. was injured.

A JURY TRIAL ON ALL CLAIMS IS DEMANDED

Respectfully submitted,

/s/ [^]

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