

CAUSE NUMBER DC-09-0044-H

DEBORAH BROCK AND	§	IN THE DISTRICT COURT
CHRIS BROCK	§	
Plaintiffs	§	
	§	
vs.	§	
	§	
MELVIN WAYNE MANSFIELD;	§	DALLAS COUNTY, TEXAS
DISTRIBUTION TRANSPORTATION	§	
SERVICES COMPANY; DTS TRUCK	§	
DIVISION COMPANY; AND SANTA FE	§	
AUTO INSURANCE COMPANY	§	
Defendants	§	160TH JUDICIAL DISTRICT COURT

PLAINTIFF’S FIRST AMENDED PETITION

Plaintiffs, Deborah and Chris Brock, files this their First Amended Petition against Melvin Wayne Mansfield, Distribution Transportation Services Company, DTS Truck Division Company and Santa Fe Auto Insurance Company.

A. Discovery Control Plan

Discovery shall be according to a “Level Three” discovery control plan. The Court entered a Level III Scheduling Order on November 6, 2009.

B. Parties

Plaintiffs Chris and Deborah Brock are individuals represented by the undersigned counsel and are residents of Dallas County, Texas.

Defendant, Distribution Transportation Services Company is a Missouri corporation who has answered and is before the Court for all purposes. It may be served via its attorney of record Steve Johnson, Esq., Johnson, Robinson Fifield, P.C., 1201 Elm Street Suite 4440, Dallas, Texas 75701.

Defendant, Melvin Wayne Mansfield., is an individual, who has answered and is before the Court for all purposes. It may be served via his attorney of record Steve Johnson, Esq., Johnson, Robinson Fifield, P.C., 1201 Elm Street Suite 4440, Dallas, Texas 75701.

Defendant, DTS Truck Division Company is a Missouri Corporation who has answered and is before the Court for all purposes. It may be served via its attorney of record Steve Johnson, Esq., Johnson, Robinson Fifield, P.C., 1201 Elm Street Suite 4440, Dallas, Texas 75701.

Defendant, Santa Fe Auto Insurance Company, is a Texas Corporation licensed to do business by the Texas Department of Insurance. It does not maintain an attorney for service with Texas Department of Insurance. Therefore, it may be served by leaving a copy of the process at its registered principal office 13702 Gamma Road, Dallas TX 75244. TEX. INS CODE 804.101 (b) (2).

C. Venue and Jurisdiction

Defendant Santa Fe Auto Insurance Company is a Texas corporation. Defendants Melvin Wayne Mansfield, DTS Truck Division Company, and Distribution Transportation Services Company are foreign residents who do business in Texas and use its roadways thus maintaining sufficient minimum contacts with Texas, and this suit arises out of those contacts.

Venue is proper in Dallas County, Texas because all or substantial portions of the events that make the basis of this claim occurred in Dallas County. Specifically, it is the location of the collision.

D. Plaintiffs' Causes of Action

Plaintiffs bring this cause of action under the following facts:

This lawsuit arises out of a serious tractor-trailer collision that occurred on May 14, 2009.



As shown in the above photograph, on May 14, 2009 Defendant Melvin Wayne Mansfield's negligent disregard of his duty to Plaintiffs caused a rear-end collision with Deborah Brock's Chevrolet Caprice, which resulted in serious personal injuries. Plaintiffs were stopped on Central Expressway approaching Midpark in Dallas County, Texas when Defendant collided with them at a high rate of speed. The force of the rear-end collision drove the Brock car into a pick up truck ahead, which in turn forced the pick up truck into a guardrail. Chris Brock was driving the Chevrolet Caprice, and Deborah Brock was a passenger. Several other motorists witnessed the collision and watched helplessly as the 18-wheeler slammed directly into the back of the Brock car.

The acts or omissions of Defendant Melvin Wayne Mansfield on May 14, 2009 all of which were negligent, also violated numerous provisions of the Texas Transportation Code and the Federal

Motor Vehicle Carrier Safety Regulations, all of which were, singularly or in combination, a proximate cause of the collision and injuries to Plaintiffs.

Further, DTS Truck Division Company and/or Distribution Transportation Services Company failed to properly train, monitor and/or audit their driver, Defendant Melvin Wayne Mansfield. DTS Truck Division Company and/or Distribution Transportation Services Company are also responsible under the doctrine of *respondent superior* as Defendant Melvin Wayne Mansfield was driving the tractor-trailer during the course and scope of his employment as defined by the Federal Motor Safety Carrier Regulations.

The conduct of all Defendants also constitutes *negligence per se*.

E. Causation

These acts and/or omissions by the Defendants, singularly or in any combination, were a proximate cause of the wreck and the damages suffered by Plaintiffs.

F. Negligence and/or Negligence Per Se of Defendant Melvin Wayne Mansfield

On May 14, 2009, Defendant Melvin Wayne Mansfield was guilty of one or more of the following acts of negligence and/or negligence *per se*, among others, which proximately caused the collision in question and the injuries and damages sustained by the Plaintiffs. Defendant Melvin Wayne Mansfield owed a duty to other motorists, including Plaintiffs, to operate his vehicle in a reasonable and prudent manner and he failed to do so. His negligent acts and/or omissions include, but are not limited to, the following:

- (a) Failing to know and/or observe Defendant DTS Truck Division Company's safety policies and procedures;
- (b) Failing to take proper evasive action;

- (c) Failing to know and/or observe Defendant Distribution Transportation Services Company's policies and procedures;
- (d) Failing to maintain a proper following distance, TEX. TRANSP. CODE § 545.062;
- (e) Failing to control his speed, TEX. TRANSP. CODE § 545.351;
- (f) Failing to obtain or have the necessary knowledge, training and experience to safely operate his vehicle;
- (g) Failing to maintain a proper lookout;
- (h) Operating his vehicle at a speed in excess of the posted limit; TEX. TRANSP. CODE § 545.206;
- (i) Failing to properly apply his brakes as a person using ordinary care would have done in violation of § 545.351 of the Texas Transportation Code;
- (j) Failing to maintain proper control of his vehicle as a person using ordinary care would have done under the same or similar circumstances;
- (k) Failing to maintain a knowledge and understanding of state and federal motor carrier safety regulations pertaining to procedures for safe vehicle operations in violation of 49 C.F.R. § 383.111;
- (l) Failing to have required knowledge of vehicle operation in violation of 49 C.F.R. 383.111;
- (m) Failing to have required skills in vehicle operation in violation of 49 C.F.R. 383.113;
- (n) Failing to have knowledge and compliance with the regulations in violation of 49 C.F.R. 390.3;
- (o) Failing to operate his vehicle and equipment in violation of 49 C.F.R. 392.2;
- (p) Operating his vehicle in excess of his hours of service in violation of 49 C.F.R. 395;
- (q) Failure to warn.

In fact, it is abundantly clear from the evidence in this case that Melvin Wayne Mansfield has complete disregard and/or lack of understanding of the standards of a professional truck

driver and the Federal Motor Carrier Safety Regulations. In the three months prior to the collision alone, Melvin Wayne Mansfield was cited for two moving violations and a log violation by law enforcement. Additionally, by way of illustration, Plaintiffs, would offer the following testimony to the Court and the jury to support this contention:

Q: *It says, "Use the four second rule, but in bad weather this should be at least 8-10 seconds." My questions is this: What's the four second rule?*

A: *I don't have no idea.* [Mansfield Deposition, Page 119, Lines 3-8]

Q: *Do you know how to calculate stopping distance?*

A: *No, sir. I don't.*

Q: *Is that information in the Federal Motor Carrier Safety Regulations?*

A: *I am sure it is.*

Q: *Do you know how to calculate following distance.*

A: *I just – no, sir. I don't know how to calculate it, no, sir.*

Q: *Okay.*

A: *I know how to look at it.*

Q: *Other than looking at do you know of any way or formula to calculate following distance?*

A: *No, sir.* [Id., Page 136, Lines 11-25].

All of the above acts and/or omissions, individually or in combination, were a proximate cause of the damages sustained by the Plaintiffs.

G Negligence and/or Negligence Per Se of DTS Truck Division Company

Defendant, DTS Truck Division Company, violated numerous federal and state statutes designed to protect and safeguard the motoring public, including the Plaintiffs, and Defendant DTS Truck Division Company, is therefore liable for negligence and/or negligence *per se*. Such acts and/or omissions were a proximate cause of the damages in question.

Defendant, DTS Truck Division Company, was also required to observe those rules and regulations violated by Defendant Melvin Wayne Mansfield. The conduct of Defendant, DTS Truck Division Company, in this case was negligence and/or negligence *per se* resulting in damages to the Plaintiffs. DTS Truck Division Company employed a driver whose disregard of the federal regulations and lack of understanding of basic driving rules meant it was not a matter of whether Melvin Wayne Mansfield would cause a catastrophic collision, but a matter of when he would do so. DTS Truck Division knew Melvin Wayne Mansfield was incompetent to drive an tractor-trailer, but continued to turn a blind eye to his numerous violations of Federal and state regulations, including but not limited to moving violations and log violations. This collision was the result of a massive system failure at DTS wherein they failed to take even minor steps to ensure the safety of the general public. By way of illustration, Plaintiffs, would offer the a brief sample of the evidence in this case to the Court and the jury to support this contention:

Q: ... Did you ever do a road – prior to going on the road for DTS, did you ever do a road test with DTS?

A: No, sir. [Mansfield Deposition, Page 23, Lines 9-12]

Q: So it would be a fair statement that while – the entire time that you were at DTS, you never attended a safety meeting and you never heard of anyone attending a safety meeting? Is that fair?

A: That's fair.

Q: As a professional driver, do you think that safety meetings are important?

A: Well sure. [Id., Page 25, Line 23 to Page 26 Line 6].

Q: You don't remember who the Safety Director was at DTS in May of 2009?

A: No, sir.

Q: Fair to say that you didn't have much interaction with the Safety Director?

A: No, sir. [Id., Page 44, Lines 17-22].

The evidence will show that DTS Truck Division was much more focused on maximizing the amount of miles its drivers drove to maximize profit without regard to safety. Melvin Wayne Mansfield had received a “mileage bonus” while at DTS, but never even had one safety meeting.

In fact, on the date of this collision, Melvin Wayne Masfield's log (see below) states that he went off duty at 7:00 p.m. and was in the sleeper berth at 9:00 p.m. This of course is patently false as it is undisputed that this collision occurred after 10:00 p.m. The reality is that any driving by Melvin Wayne Mansfield after 7:30 would have put him out of service. He falsified his logs in order to drive more hours. For its part, DTS Truck Division was more than willing to overlook repeated log violations in order to keep drivers operating, even going so far as to reward them for hitting high mileage benchmarks.

Q: Okay. You would call that a “rear-end collision”; wouldn’t you?

A: Yes.

Q: And it was Mr. Mansfield who allowed his tractor-trailer to hit the Brock car from the rear. Wasn’t it?

A: I don’t think he could prevent that.

Q: What did the internal investigation report say for DTS?

A: He wasn’t – ticketed so we don’t feel there was any Police Report. There were some obstacles in the truck. I don’t think he could avoid the accident. [Komadina Deposition, Page 20 Line 6 to Page 21 Line 2 (Objections and side bars omitted)].

Defendant, DTS Truck Division Company is also liable for Plaintiffs’ damages under the doctrine of *Respondent Superior* as Defendant Melvin Wayne Mansfield was driving in the course and scope of his employment as defined by the Federal Motor Carrier Regulations, including 49 C.F.R. § 390.5.

Further, Defendant, DTS Truck Division Company allowed the tractor-trailer to continue to be operated after the collision and failed to take basic steps to preserve relevant evidence in this case. Such conduct constitutes spoliation of evidence, for which these Plaintiffs now bring this additional claim for the appropriate legal relief and instruction based on such conduct.

H. Negligence and/or Negligence Per Se of Defendant

Distribution Transportation Services Company

Defendant, Distribution Transportation Services Company, violated numerous federal and state statutes designed to protect and safeguard the motoring public, including the Plaintiffs, and Defendant Distribution Transportation Services Company, is therefore liable for negligence

and/or negligence *per se*. Such acts and/or omissions were a proximate cause of the damages in question.

Defendant, Distribution Transportation Services Company, was also required to observe those rules and regulations violated by Defendant Melvin Wayne Mansfield. The conduct of Defendant, Distribution Transportation Services Company, in this case was negligence and/or negligence *per se* resulting in damages to the Plaintiffs.

Defendant, Distribution Transportation Services Company is also liable for Plaintiffs' damages under the doctrine of *Respondent Superior* as Defendant Melvin Wayne Mansfield was driving in the course and scope of his employment as defined by the Federal Motor Carrier Regulations, including 49 C.F.R. § 390.5.

Further, Defendant, Distribution Transportation Services Company allowed the tractor-trailer to continue to be operated after the collision and failed to take basic steps to preserve relevant evidence in this case. Such conduct constitutes spoliation of evidence, for which these Plaintiffs now bring this additional claim for the appropriate legal relief and instruction based on such conduct.

I. Joint Enterprise

Defendants DTS Truck Division Company and Distribution Transportation Services Company engaged at all material times in a joint enterprise for profit while allowing drivers to operate vehicles in an unsafe manner violating the rules of truck safety, the Federal Motor Carrier Safety laws, and the laws of the State of Texas. The Defendants conduct was a proximate cause of the Plaintiffs injuries and damages.

J. Claims Arising Out of the Collision Against Santa Fe Auto Insurance Company

At the time of this accident, Melvin Wayne Mansfield, was an underinsured driver. Plaintiffs are beneficiaries of Santa Fe Auto Insurance policy number 18-82145, and are entitled to benefits under the policy. Plaintiff Deborah Brock's damages are severe and extensive, thus exceeding the insurance policy of Melvin Wayne Mansfield and DTS Trucking and/or Distribution Transportation Services Company. Further, Plaintiffs are entitled to personal injury protection benefits under the policy.

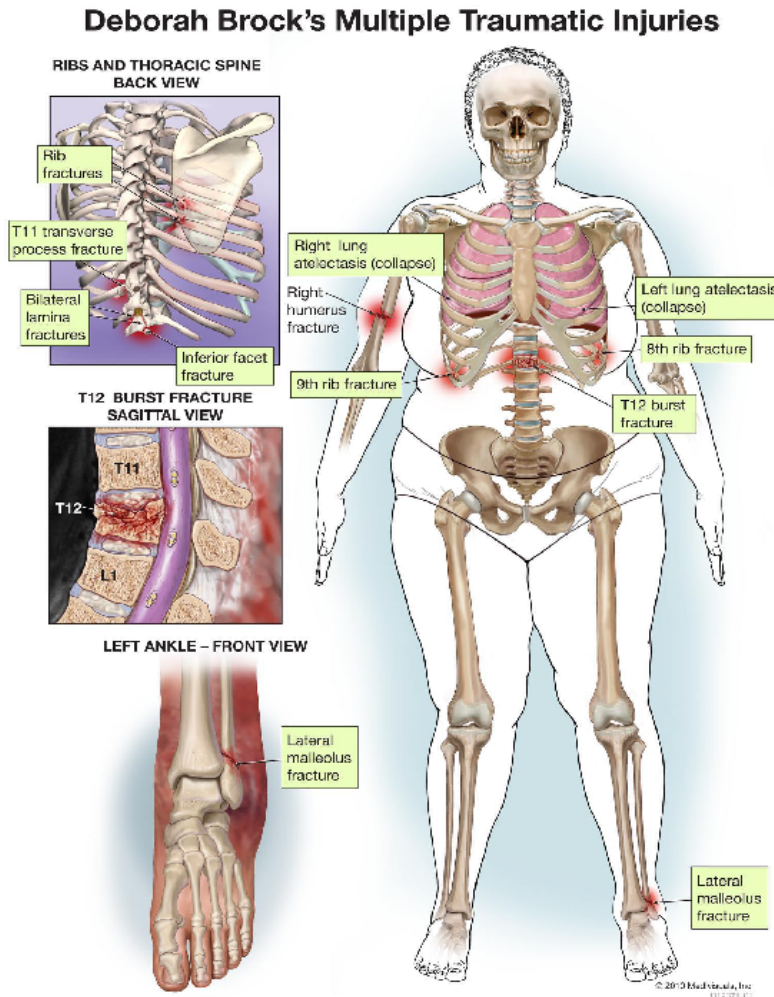
On the occasion in question, Santa Fe, by and through their agents, held out to the public that they would comply with the laws of the State of Texas and conduct their actions in compliance with their duty of good faith and fair dealing as well as reasonable and prudent insurance standards. Because of the special relationship which arose between Defendants and Plaintiffs, failure of Defendants to properly investigate and timely respond to reasonable requests submitted by Plaintiff constitutes a breach of their duty of good faith and fair dealing to Plaintiff. TEX. INS. CODE 542.055; TEX. INS. CODE 542.056. Specifically, Plaintiffs gave written notice of their claim on June 17, 2009 via fax to Santa Fe Auto Insurance Company. As of the filing of this petition, Santa Fe has still never responded to this correspondence. Additionally, such conduct is violation of TEX. INS. CODE 542.003. Defendant had the absolute obligation to either accept the claim or provide a valid basis for denying the claim. Santa Fe did neither.

K. Damages

1. Deborah Brock

Deborah Brock suffered severe, permanent and life altering injuries due to the negligence and gross negligence of Defendants, including, but not limited to, rib fractures, a T-12 burst

fracture, collapsed lungs, lateral malleolus fracture, and a right humerus fracture. Her injuries to her spine, humerus, and ankle required surgical intervention and the installation of permanent hardware. The illustration below gives a fair and accurate depiction of her most serious injuries.



There are certain elements of actual damages under Texas law which Plaintiff, Deborah Brock, is entitled to have a jury in this case consider separately in order to determine a sum of money for each element which will fairly and reasonably compensate her for her losses incurred

and to be incurred in the future. These damages, both in the past and those which will be incurred in the future, include:

- (a) Physical pain and suffering;
- (b) Mental anguish;
- (c) Physical impairment;
- (d) Loss of Earning Capacity;
- (e) Physical Disfigurement;
- (f) Damage to Personal Property; and
- (e) Reasonable and necessary Medical Care.

2. Chris Brock

There are certain elements of actual damages under Texas law which Plaintiff, Chris Brock, is entitled to have a jury in this case consider separately in order to determine a sum of money for each element which will fairly and reasonably compensate him for his losses incurred and to be incurred in the future. These damages, both in the past and those which will be incurred in the future, include:

- (a) Physical pain and suffering;
- (b) Mental anguish;
- (c) Physical impairment; and
- (d) Reasonable and necessary Medical Care.

**L. Additional Aggravating, Reckless and/or Dangerous Conduct
Representing Statutory Gross Negligence and Punitive Damages**

Plaintiffs would further show that the negligent acts and/or omissions of the Defendants as set forth above constitute an entire want to care as to indicate that such acts and/or omissions

were the result of conscious indifference to the rights, safety and welfare of others, including Plaintiffs, and thus amount to gross negligence as that term is defined by the laws of the State of Texas. As such, the jury should consider assessing punitive or exemplary damages.

The acts and/or omissions of the Defendants, when viewed objectively from their standpoint at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Further, the Defendants had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others, including Plaintiffs. Thus, the Defendants are liable for gross neglect and exemplary damages.

M. Demand for Jury

Plaintiffs demand a jury trial, and understand that the jury fee has already been paid.

N. Request for Disclosure

Plaintiffs previously made a Request for Disclosure to all Defendants, and requests that all Defendants supplement their requests in compliance with the Court's scheduling Order and the Texas Rules of Civil Procedure.

O. Prayer

For these reasons, Plaintiffs pray that upon final trial they have judgment for their actual damages; punitive damages; pre-judgment and post-judgment interest; costs of court; and for all other relief to which they may be entitled. Plaintiffs also pray that an adequate training, monitoring and auditing program for safety be implemented by DTS Truck Division Company and Distribution Transportation Services Company.

Respectfully submitted,
LAW OFFICES OF STEVEN C. LAIRD, P.C.

Steven C. Laird
Texas Bar No. 11795440
Wade A. Barrow
Texas Bar No. 24031844
1824 8th Avenue
Fort Worth, Texas 76110
817.531.3000
817.923.2228 – facsimile
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

On April 12, 2010, I certify that a true and correct copy of the above document was forwarded to all known counsel of record in accordance with the Texas Rules of Civil Procedure 21 and 21a.

Wade A. Barrow