

IN THE STATE COURT OF CHATHAM COUNTY

STATE OF GEORGIA

KIMBERLY DAWN XXXX and  
KELVIN MICHAEL XXXX,

Plaintiffs

vs.

KEITH ALLEN, STEF TRANSPORT,  
INC., SPARTI EXPRESS, INC. and  
PROGRESSIVE MOUNTAIN  
INSURANCE COMPANY,

Defendants

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CIVIL ACTION

FILE NO.:

**COMPLAINT FOR DAMAGES**

COME NOW the Plaintiffs in the above-styled complaint and hereby shows this Court the following:

**PARTIES, JURISDICTION AND VENUE**

1.

Plaintiffs, Kim XXXX and Michael XXXX, are residents of Habersham County, Georgia.

2.

Defendant Keith Allen is a resident of Newington, Screven County, Georgia, with a last known address of 105 Blue Hole Drive, Newington, Screven County, Georgia 30446, where he may be served with legal process. Defendant Keith Allen is subject to the jurisdiction of this court because he is a resident of Georgia.

3.

Defendant Stef Transport, Inc. is a Georgia corporation with its principal business address located at 201 Redan Drive, Savannah, Georgia 31410 and process may be served on its registered agent for service of process in Chatham County, Georgia, by serving its registered agent, Stefanos Vasilakos, at 201 Redan Drive, Savannah, Georgia 31410. Defendant Stef Transport, Inc. is subject to the jurisdiction of this court because this Defendant is a Georgia corporation.

4.

Defendant Sparti Express, Inc. is a Georgia corporation with its principal business address located at 38 Telfair Place, Savannah, Georgia 31415 and process may be served on its registered agent for service of process in Chatham County, Georgia, by serving its registered agent, Stefanos Vasilakos, at 38 Telfair Place, Savannah, Georgia 31415. Defendant Sparti Express, Inc. is subject to the jurisdiction of this court because this Defendant is a Georgia corporation.

5.

Defendant Progressive Mountain Insurance Company is a foreign corporation located at 6300 Wilson Mills Road, Mayfield Village, Ohio 44143, and process may be served on its registered agent for service of process in Fulton County, Georgia, by serving its registered agent, CT Corporation System, 1201 Peachtree Street, NE, Atlanta, Georgia 30361.

6.

Although headquartered in Ohio, this Defendant is subject to the jurisdiction of this court because it transacts business and has sufficient minimum contacts within the State of Georgia.

7.

Venue is proper in this court with respect to Defendant Keith Allen because he is a joint tortfeasor with Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc.

8.

Venue is proper in this court with respect to Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc., because each Defendant has its principal place of business in Chatham County, Georgia, and each Defendant's registered agent for service of process is located in Chatham County, Georgia.

9.

Venue is proper in this court with respect to Defendant Progressive Mountain Insurance Company pursuant to O.C.G.A. § 40-12-1, et seq., O.C.G.A. § 33-4-1, and O.C.G.A. § 46-7-12.

#### **OPERATIVE FACTS**

10.

In the dark morning traffic of Tuesday, October 29, 2013, Defendant Keith Allen was driving northbound on State Route Georgia 365.

11.

At all times relevant Defendant Keith Allen was driving a "semi truck" (*otherwise known as a commercial vehicle, tractor or power unit*).

12.

Attached to the "semi truck" was a full length cargo trailer, 43 feet long.

13.

Defendant Keith Allen drove the "semi truck" through the intersection of State Route 365 and the Entrance of Lanier Cold Storage in Hall County Georgia.

14.

As the "semi truck" and cargo trailer traveled thru the intersection both southbound lanes of oncoming traffic on State Route Georgia 365 were blocked.

15.

Plaintiff Kim XXXX was traveling southbound on State Route Georgia 365, as she approached the same intersection.

16.

Defendant Keith Allen failed to allow the appropriate distance for safe passage of southbound vehicles.

17.

The failure to allow the appropriate distance for safe passage caused the semi truck and cargo trailer to obstruct both southbound lanes of State Route Georgia 365.

18.

By obstructing both southbound lanes a collision occurred between Defendant Keith Allen's cargo trailer and Plaintiff Kim Posten's vehicle.

19.

As a result of the collision Plaintiff Kim XXXX suffered painful and permanent injury to her leg and body.

20.

As a direct result of the collision Plaintiff Kim XXXX no longer has full range of motion in her left leg.

21.

As a direct result of the collision Plaintiff Kim Posten's quality of life and health have been significantly diminished.

22.

On October 29, 2013, Plaintiff Kim XXXX was not at fault in causing the collision.

23.

At the time of the collision, Defendant Keith Allen failed to yield the right-of-way to oncoming traffic, including the vehicle driven by Plaintiff Kim XXXX.

24.

On Tuesday, October 29, 2013, Defendant Keith Allen was an employee and agent of Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc. At all times relevant to this complaint, Defendant Keith Allen was acting within the course and scope of his employment for the benefit of Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc.

25.

At all times relevant to this complaint, the "semi truck" and attached cargo trailer driven by Defendant Keith Allen was insured by Defendant Progressive Mountain Insurance Company.

26.

By insuring each Defendant, Progressive Mountain Insurance Company provides insurance coverage for each claim asserted by Plaintiff Kim XXXX and Plaintiff Kelvin Michael XXXX.

27.

Progressive Mountain Insurance Company is named as a Defendant in this action pursuant to Georgia law found at **O.C.G.A. § 46-7-12(c)**.

28.

The negligent acts of Defendant Keith Allen are attributable to each employer, Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc. Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc. are responsible under the legal theory of "respondeat superior".

29.

Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc. were each a "motor carrier" as defined under Title 46, Chapter 7 of the laws of Georgia so that "joinder" of their liability insurance carrier as a Defendant in this action is proper and allowed pursuant to **O.C.G.A. § 46-7-12(c)**.

30.

As a result of Defendant Keith Allen's improper and untimely decision to drive the "semi truck" and 43 foot cargo trailer across the busy intersection Plaintiff Kim XXXX was injured and has incurred debts, which are owed to her health care providers. Kim XXXX has been billed for services by ambulance, emergency medical technicians, hospitals, radiologists, orthopedic surgeons, emergency room physicians, physical therapists, and others as may be proved at trial. To date the total bills are approximately **\$70,079.31**. Plaintiff Kim XXXX reserves the right to adjust this dollar amount pled herein, pending future surgery and medical treatment for her injuries caused by Defendant Keith Allen.

31.

As a result of this collision, Plaintiff Kim XXXX will incur substantial future medical expenses.

32.

Plaintiff Kim XXXX is entitled to recover all her medical expenses related to the collision in this case, including but not limited to: ambulance, emergency medical technicians, hospitals, radiologist, orthopedic surgeons, therapists and such other medical expenses as may be proven at trial.

33.

As a result of this collision, Plaintiff Kim XXXX has lost time from her work and has sustained a significant loss of income.

### **LIABILITY OF THE DEFENDANTS**

34.

The act of driving the "semi truck" and 43 foot cargo trailer across oncoming traffic at State Route Georgia 365 in Hall County, violates the known and accepted rules and regulations as set forth under the Code of Federal Regulations and the laws of the State of Georgia.

35.

Each violation of the accepted rules and regulations created an unreasonable risk which injured Plaintiff Kim XXXX.

36.

Defendants Allen, Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc. are liable for the following acts, which include, but are not necessarily limited to, the following:

(a) Defendant Keith Allen violated established Georgia law found at **O.C.G.A. § 40-6-71**, known as failure to yield, amounting to negligence per se;

(b) Defendant Keith Allen failed to operate the tractor-trailer he was driving in a safe and prudent manner;

(c) Defendant Allen failed to keep a proper lookout to the front and sides for other vehicles;

(d) Defendant Allen failed to maintain the tractor-trailer he was driving under proper control;

(e) Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc., failed to inspect and maintain the tractor and trailer;

(g) Defendant Allen failed to exercise ordinary care to prevent injury to Plaintiff Kimberly Dawn XXXX;

(h) Defendant Allen drove the tractor-trailer in reckless disregard for the safety of the persons and/or property of others as established by Georgia Law found at **O.C.G.A. § 40-6-390**;

(i) In the event that Defendants do not admit the allegations set forth in paragraph 24 herein, Defendants Stef Transport, Inc and Defendant Sparti Express, Inc. are liable under the theory of the negligent hiring and retention of Defendant driver Keith Allen.

(j) By failing to follow the rules of the Federal Motor Carrier Safety Administration (act) as each apply to the facts of this case, specifically the failure to permit inspection, log book violations, safe operation and the total failure to test the blood or urine of Defendant driver Keith Allen following this collision; and

(k) By committing other negligent and reckless acts and omissions as may be shown by the evidence and proven at trial.

37.

Defendant Keith Allen has a history of traffic violations from the states of Pennsylvania, Illinois, South Carolina, North Carolina and Georgia.

38.

On November 14, 2012, in Dorchester County, South Carolina, Defendant Allen committed the misdemeanor traffic offense of titled Wheel and Axel Load Violation.

39.

On December 18, 2012, in Williamson County, Illinois Defendant Allen committed the misdemeanor traffic offense of improper driving while operating a tractor-trailer.

40.

On December 27, 2009, in Haywood County, North Carolina Defendant Allen committed the misdemeanor traffic offense of violating the rules of the road.

41.

On April 26, 2013, in Bucks County, Pennsylvania Defendant Allen committed and plead guilty to the misdemeanor traffic offense of failure to Obey to Traffic Control Devices.

42.

On August 22, 1998, in Broward County, Florida Defendant Allen committed and plead guilty to the felony offense Aggravated Battery, a violent crime.

43.

Defendants Stef Transport, Inc. and Defendant Sparti Express, Inc. knew or should have known of Defendant Keith Allen's criminal and driving history prior to his employment, yet he was still hired, retained and allowed to operate the "semi truck" and based on this information the collision in this case was foreseeable and preventable.

44.

The conduct of Defendant Stef Transport, Inc., Defendant Sparti Express, Inc. and Defendant Keith Allen, individually and in concert with each other, proximately caused the wreck and resulting damages to Plaintiffs.

45.

Defendant Progressive Mountain Insurance Company entered into a contract of insurance with Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc. to provide liability coverage in the event of a motor vehicle accident involving Defendant Stef Transport, Inc., Defendant Sparti Express, Inc. and their employees and/or agents, including Defendant Keith Allen.

46.

Plaintiffs are third-party beneficiaries under said contracts or policies of insurance and are entitled to receive payments from Defendant Progressive Mountain Insurance Company for the negligence of each Defendant.

### **DAMAGES CLAIMED**

47.

Defendant Keith Allen created an unjustified risk when he deliberately drove the long cargo trailer across oncoming traffic on State Route Georgia 365.

48.

The damages claimed by Plaintiffs were proximately caused by the acts and omissions of Defendant Keith Allen, Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc., for which they are jointly and severally liable.

49.

As a result of the above-described wreck, Plaintiff Kim XXXX has sustained substantial permanent injuries to her body and continues to suffer mentally and physically. Plaintiff Kim XXXX has incurred medical bills and lost income, and will continue to incur future medical bills and lost income, as a result of the wreck.

50.

Plaintiffs claim all general damages allowed under Georgia law, including but not limited to all elements of the mental and physical pain and suffering which Plaintiff Kim XXXX has endured and will endure in the future, to be determined by the enlightened conscience of a fair and impartial jury.

51.

Plaintiff Michael XXXX brings this action to recover for the loss of his wife's society, comfort, companionship, fellowship, conjugal relations and consortium due to injuries Plaintiff Kim XXXX has suffered and will suffer in the future as a result of the aforementioned wreck.

52.

There is no *bona fide* dispute as to the liability of Defendant Keith Allen, Defendant Stef Transport, Inc. and Defendant Sparti Express, Inc. for the collision and injuries sustained by Plaintiff Kim XXXX, and in the event any Defendant denies liability for this wreck, Plaintiffs are entitled to their costs of litigation, including reasonable attorney's fees and expenses of litigation, pursuant to the provisions of O.C.G.A. § 13-6-11.

53.

On October 31, 2013, counsel for Plaintiffs sent by email a letter requesting that evidence be preserved. The email was sent to jstaceyc@yahoo.com. A true and accurate copy of the email is attached as Plaintiffs' Complaint Exhibit "1". The email contained a letter as an attachment asking that evidence be preserved and made available for inspection. Defendants failed to make the semi tractor and 43 foot cargo trailer available for inspection and each Defendant failed to preserve blood and urine samples from Defendant driver Keith Allen. Evidence in this case has been lost or destroyed. Defendants have failed to preserve evidence that is necessary to contemplated or pending litigation. A jury can presume that this evidence would be harmful to the Defendants in this litigation.

54.

Evidence in the possession of the Defendants has been destroyed after being notified that certain evidence was important to Plaintiff case.

55.

Plaintiffs, as of March 19, 2014 have been denied the chance to inspect, photograph and preserve evidence in the possession of the Defendants.

56.

On November 1, 2013, counsel for Plaintiffs, for the second time, sent by regular mail and email a letter requesting that evidence be preserved. A true and accurate copy of the letter is attached as Plaintiffs' Complaint Exhibit "2". Plaintiffs' counsel again requested an inspection.

57.

Defendants have intentionally refused to preserve evidence in their possession, custody and control knowing that Plaintiffs will need the evidence to prosecute this case. The destruction of this evidence has caused Plaintiffs harm and will needlessly enlarge the scope of this litigation. This was done in bad faith.

#### **PRAYER FOR RELIEF**

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 the Plaintiffs have a trial by jury of six (6);
- (c) That Plaintiffs have and recover all damages for all losses compensable under Georgia law as set forth above;
- (d) That Plaintiff Kim XXXX have and recover all medical expenses incurred, past, present and future, of at least \$70,000.00 or more as may be proven at trial;
- (e) that Plaintiff Michael XXXX recover for his loss of consortium;

(f) That Plaintiffs have and recover their attorney's fees and expenses of litigation, should any of the Defendants deny liability for the above-noted wreck and for the bad faith destruction of evidence;

(g) That all costs be cast against the Defendants; and

(h) That Plaintiffs have such other and further relief as the Court shall deem just and appropriate.

This 20th day of March, 2014.

**MCDONALD & CODY, LLC**

By: \_\_\_\_\_

**P. GERALD CODY, JR.**

Georgia Bar No. 172765

**GUS MCDONALD**

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