

IN THE STATE COURT OF BRYAN COUNTY
STATE OF GEORGIA

ORIGINAL

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Rebecca G. Crowe
Clerk of Courts
Bryan County, Georgia

KIM DELOACH MCQUAIG, Individually,)
and as Surviving Parent of ABBIE LORENE)
DELOACH, deceased and as)
BONDED TEMPORARY ADMINISTRATRIX)
OF THE ESTATE OF ABBIE LORENE)
DELOACH)

Plaintiff,)

Civil Action No.: 2015-SV-072

v.)

TOTAL TRANSPORTATION OF MISSISSIPPI,)
LLC, MOUNTAIN LAKE RISK RETENTION)
GROUP, NATIONAL FIRE & MARINE)
INSURANCE COMPANY; NATIONAL)
UNION FIRE INSURANCE COMPANY OF)
PITTSBURGH, PA. AND LEXINGTON)
INSURANCE COMPANY)

Defendants.)

AMENDED AND RECAST COMPLAINT

COMES NOW the Plaintiff, Kim Deloach McQuaig, Individually, and as surviving parent of Abbie Lorene Deloach, deceased, and as Bonded Temporary Administratrix of the Estate of Abbie Lorene Deloach and files this her Complaint against Defendants, Total Transportation of Mississippi, LLC, showing to the Court as follows:

I. JURISDICTION AND VENUE

1. Plaintiff Kim Deloach McQuaig Deloach is the Mother of Abbie Lorene Deloach, deceased and Bonded Temporary Administratrix of the Estate of Abbie Lorene

Deloach. Kim Deloach McQuaig is a resident of Georgia. She brings Wrongful Death and Survival Actions against the Defendants.

2. Abbie Lorene Deloach was a resident of Georgia when she was killed in an automobile collision on I-16 in Ellabell, Bryan County, Georgia.
3. Defendant Total Transportation of Mississippi, LLC. (hereinafter referred to as "Total Transportation") is a Mississippi corporation licensed to do business within the State of Georgia and can be served with process through its registered agent John D. Stomps, 125 Riverview Drive, Richland, MS 39218. Defendant Total Transportation of Mississippi, LLC is registered with the United States Department of Transportation as a motor carrier.
4. Defendant Mountain Lake Risk Retention Group, Inc. ("Mountain Lake") is a Vermont corporation licensed to do business in the State of Georgia and can be served with process through its registered agent, Corporation Service Company, 100 North Main Street, Suite 2, Barre, Vermont 05641.
5. Defendant National Fire & Marine Insurance Company may be served with process through its registered agent.
6. Defendant National Union Fire Insurance Company of Pittsburgh, PA is a Pennsylvania corporation and can be served with process through its registered agent, Corporation Service Company, 40 Technology Parkway Southside 300, Norcross, Georgia 30092.
7. Defendant Lexington Insurance Company may be served with process through its

registered agent.

8. This cause of action is based upon injuries sustained by Plaintiff's daughter, Abbie Lorene Deloach, as a result of a motor vehicle collision occurring in Bryan County, Georgia.
9. Jurisdiction and venue are proper in this Court.

II. FACTUAL ALLEGATIONS

10. Plaintiff renews and reaffirms herein each and every allegation of all preceding paragraphs.
11. On April 22, 2015, Abbie Lorene Deloach was a passenger in a motor vehicle which was traveling east on I-16 in Ellabell, Bryan County, Georgia.
12. At the same time, Defendant, Total Transportation's employee was operating a tractor-trailer traveling east on I-16 in Ellabell, Bryan County, Georgia.
13. Suddenly, and without warning, Defendant Total Transportation's employee ran into the rear of the vehicle in which Abbie Lorene Deloach was a passenger.
14. As a result of this collision, Abbie Lorene Deloach tragically suffered fatal injuries and was killed.

III. CAUSES OF ACTION

NEGLIGENCE *PER SE*

15. Plaintiff renews and reaffirms herein each and every allegation of all preceding paragraphs.
16. Defendant Total Transportation's employee was negligent *per se* by following too

close in violation of O.C.G.A. § §40-6-49 among other violations.

17. By following too close, Defendant Total Transportation's employee failed to exercise regard for traffic and all other attendant circumstances, which negligence was the direct and proximate cause of the collision and the death of Abbie Lorene Deloach.
18. Defendant Total Transportation's employee acted recklessly, carelessly, and with total disregard of the rights and safety of other persons using said highway.
19. Defendant Total Transportation's employee had the last clear chance to avoid said collision.
20. Abbie Lorene Deloach was in no way negligent nor contributed to the accident in question.

NEGLIGENCE

21. Plaintiff renews and reaffirms herein each and every allegation of all preceding paragraphs.
22. Defendant Total Transportation's employee had a duty not to injure others while operating a motor vehicle on the roads of the State of Georgia.
23. Defendant Total Transportation's employee breached this duty by following too closely, failing to keep a proper lookout, driving at a speed greater than was reasonable and prudent under highway conditions, and driving without regard for the actual and potential hazards then existing.
24. Defendant Total Transportation's employee acted recklessly, carelessly, and with total disregard of the rights and safety of other persons in using said road.

25. Defendant Total Transportation's employee had the last clear chance to avoid said collision.
26. Abbie Lorene Deloach was in no way negligent nor caused the incident complained of in this Complaint.
27. The negligence of Defendant Total Transportation's employee was the direct and proximate cause of the accident and death of Abbie Lorene Deloach.

VICARIOUS LIABILITY OF DEFENDANT TOTAL TRANSPORTATION

28. Plaintiff renews and reaffirms herein each and every allegation of all preceding paragraphs.
29. Defendant Total Transportation's driver was employed by Defendant Total Transportation. at the time of the incident which forms the basis of this complaint.
30. Defendant Total Transportation's employee was acting within the course and scope of his employment with Defendant Total Transportation at the time of his collision with Abbie Lorene Deloach.
31. Defendant Total Transportation is liable for the negligent acts of its employees pursuant under the doctrine of respondeat superior.

BREACH OF CONTRACT

32. Plaintiff renews and reaffirms herein each and every allegation of all preceding paragraphs.
33. Because Insurance Defendants provide indemnity insurance to Defendant Total Transportation, it is subject to this direct action pursuant to O.C.G.A. § 40-1-112.

34. Defendant Total Transportation has breached its contract to provide for the protection of the public.
35. Defendant Total Transportation is directly liable to Plaintiff for damages he has sustained.

IV. INJURIES AND DAMAGES

WRONGFUL DEATH

36. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully stated herein.
37. Plaintiff Kim Deloach McQuaig, as the participating surviving parent of Abbie Lorene Deloach, brings this action against Defendants for the wrongful death of Abbie Lorene Deloach, and seek to recover the full value of her life. Abbie Lorene Deloach was 21 years old at the time of her death and had a remaining life expectancy of 58.73 years.

PUNITIVE DAMAGES

38. Plaintiff renews and reaffirms herein each and every allegation of all preceding paragraphs.
39. Defendants' actions show willful misconduct, wantonness, and/or the entire want of care which would raise the presumption of conscious indifference to the consequences.
40. Plaintiff is entitled to an award of punitive damages to punish, penalize and deter Defendants' conduct.

ATTORNEY'S FEES

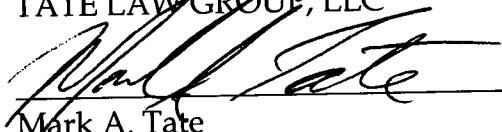
41. Plaintiff renews and reaffirms herein each and every allegation of all preceding paragraphs.
42. Defendants have acted in bad faith, has been stubbornly litigious and have caused Plaintiff unnecessary trouble and expense and, accordingly, are liable to Plaintiff for attorneys' fees and costs of litigation pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Plaintiff prays:

- (A) That Summons and Process be issued and served upon Defendants;
- (B) For a trial by a jury;
- (C) That Plaintiff be awarded an appropriate sum to compensate her for her injuries and damages;
- (D) That the Plaintiff be awarded attorneys' fees and all costs of litigation against Defendants;
- (E) That Plaintiff be awarded punitive damages; and
- (F) That Plaintiff recover such other and further relief as this Court deems just and proper.

Dated: May 3, 2015.

TATE LAW GROUP, LLC


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