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ORIGINAL

IN THE SUPERIOR COURT OF BRYAN COUNTY

STATE OF GEORGIA

CASE NO. 2015-V-172 (RO)

WILLIAM CRAIG CLARK and KATHY MARIE CLARK, Individually and as surviving parents of EMILY ELIZABETH CLARK, Deceased, and WILLIAM CRAIG CLARK, as Administrator of the Estate of EMILY ELIZABETH CLARK, deceased, PLAINTIFF

vs.

TOTAL TRANSPORTATION OF MISSISSIPPI, LLC, U.S. XPRESS ENTERPRISES, INC., U.S. XPRESS, INC., U.S. XPRESS LEASING, INC., NEW MOUNTAIN LAKE HOLDINGS, LLC, MOUNTAIN LAKE RISK RETENTION GROUP, INC., JOHN WAYNE JOHNSON, GREYWOLF LOGISTICS, INC., ARCH INSURANCE COMPANY, and ROBERT GORDON TAYLOE, DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

Robert D. Cheeley, and Brandon L. Peak  
Butler Wooten Cheeley & Peak LLC  
2719 Buford Highway  
Atlanta, Georgia 30324

AND

Billy N. Jones  
Jones Osteen & Jones  
P.O. Box 3800  
Hinesville, GA 31310

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 12th day of May, 2015.

Clerk of Superior Court

By: Billy N. Jones  
SEAL  
OFFICE OF THE CLERK  
Deputy Clerk

Superior Court, State, Juvenile and Magistrate  
Bryan County, Georgia

IN THE SUPERIOR COURT OF BRYAN COUNTY  
STATE OF GEORGIA

WILLIAM CRAIG CLARK and KATHY  
MARIE CLARK, Individually and as surviving  
parents of EMILY ELIZABETH CLARK,  
Deceased, and WILLIAM CRAIG CLARK, as  
Administrator of the Estate of EMILY  
ELIZABETH CLARK, deceased

Plaintiffs,

vs.

TOTAL TRANSPORTATION OF MISSISSIPPI,  
LLC, U.S. XPRESS ENTERPRISES, INC.,  
U.S. XPRESS, INC., U.S. XPRESS LEASING,  
INC., NEW MOUNTAIN LAKE HOLDINGS,  
LLC, MOUNTAIN LAKE RISK RETENTION  
GROUP, INC., JOHN WAYNE JOHNSON,  
GREYWOLF LOGISTICS, INC., ARCH  
INSURANCE COMPANY, and ROBERT  
GORDON TAYLOE,

Defendants.

Filed in Clerk's Office  
TIME \_\_\_\_\_

MAY 12 2015

Rebecca G. Crowe  
Clerk of Courts  
Bryan County Georgia

CIVIL ACTION FILE NO.

2015-V-172 (RO)

COMPLAINT

COME NOW Plaintiffs in the above-styled action and hereby file this Complaint,  
demanding a jury trial and showing this Honorable Court the following:

1.

During the early morning of April 22, 2015, seven Georgia Southern nursing students,  
traveling in two vehicles, were stopped at the tail end of a long line of traffic on I-16 (GA 404)  
Eastbound in Bryan County, Georgia. Second to last in the right lane of stopped traffic was a  
Ford Escape, in which Abbie DeLoach, Morgan Bass, Megan Richards, and Brittney McDaniel  
were occupants. Last in the right lane of stopped traffic was a Toyota Corolla, in which Emily  
Clark, Catherine Pittman, and Caitlyn Baggett were occupants. The traffic on I-16 was caused

by an earlier wreck approximately two miles east of the students. That wreck involved a tractor-trailer striking a Winnebago motor home, causing both of those large vehicles to block the roadway. Unbeknownst to the nursing students, a tractor-trailer owned by U.S. Xpress Leasing, Inc. driven by John Wayne Johnson, an agent/employee of interstate motor carrier Total Transportation of Mississippi LLC, was barreling down I-16 Eastbound behind them at full speed. Without any braking or maneuvering, the large tractor-trailer driven by John Wayne Johnson plowed straight into the rear of and then over the Toyota Corolla at highway speed, obliterating the Toyota and setting it ablaze. The tractor-trailer driven by John Wayne Johnson continued to move forward with a tremendous amount of force, striking the rear of and overturning the Ford Escape, knocking the Ford Escape off of the roadway, and causing a horrific wreck that sent seven vehicles, including another tractor-trailer and a diesel truck, plowing into each other. Emily Clark, Morgan Bass, Abbie DeLoach, Catherine Pittman, and Caitlyn Baggett lost their lives. Megan Richards and Brittney McDaniel were severely injured and watched their friends suffer and die.

2.

The claims asserted by Plaintiffs against Defendants arise out of the incidents described in the preceding paragraph.

### **PARTIES, JURISDICTION, AND VENUE**

3.

Plaintiffs William Craig Clark and Kathy Marie Clark, surviving parents of Emily Elizabeth Clark, are residents of the State of Georgia.

4.

William Craig Clark was duly appointed Administrator of the Estate of Emily Elizabeth Clark by the Probate Court of Cobb County.

5.

Emily Clark resided in Georgia at the time of her death.

6.

Defendant Total Transportation of Mississippi, LLC (“Total Transportation”) is a foreign limited liability company organized under the laws of Mississippi. Total Transportation’s principal place of business is located at 125 Riverview Drive, Richland, Mississippi 39218. Total Transportation does not maintain a registered agent for service of process in this State. Total Transportation may be served with legal process by serving its registered agent for service in Mississippi, John D. Stomps, at 125 Riverview Drive, Richland, Mississippi 39218. Alternatively, service is proper on the Secretary of State pursuant to the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-1 *et seq.*

7.

Defendant Total Transportation is engaged in business as an interstate motor carrier transporting goods for compensation and does business in Georgia, including in and through Bryan County, Georgia.

8.

Defendant U.S. Xpress Enterprises, Inc. is a corporation organized and existing under the laws of Nevada. U.S. Xpress Enterprises, Inc.’s principal place of business is located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. U.S. Xpress Enterprises, Inc. may be served with

legal process by serving its registered agent for service, Corporation Service Company, 40 Technology Parkway South #300, Norcross, Georgia 30092.

9.

Defendant U.S. Xpress, Inc. is a corporation organized and existing under the laws of Nevada. U.S. Xpress, Inc.'s principal place of business is located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. U.S. Xpress, Inc. may be served with legal process by serving its registered agent for service, Corporation Service Company, 40 Technology Parkway South #300, Norcross, Georgia 30092.

10.

Defendant U.S. Xpress, Inc. is engaged in business as an interstate motor carrier transporting goods for compensation and does business in Georgia, including in and through Bryan County, Georgia.

11.

Defendant U.S. Xpress Leasing, Inc. is a corporation organized and existing under the laws of Tennessee. U.S. Xpress Leasing, Inc.'s principal place of business is located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. U.S. Xpress Leasing, Inc. may be served with legal process by serving its registered agent for service, Corporation Service Company, 40 Technology Parkway South #300, Norcross, Georgia 30092.

12.

Defendant New Mountain Lake Holdings, LLC is a foreign limited liability company organized and existing under the laws of Nevada. New Mountain Lake Holdings, LLC's principal place of business is located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. New Mountain Lake Holdings, LLC does not maintain a registered agent for service of process

in this State. New Mountain Lake Holdings, LLC may be served with legal process by serving its registered agent for service in Nevada, CSC Services of Nevada, Inc., 2215-B Renaissance Dr., Las Vegas, NV 89119.

13.

U.S. Xpress, Inc. is a wholly-owned subsidiary of U.S. Xpress Enterprises, Inc.

14.

U.S. Xpress Leasing, Inc. is a wholly-owned subsidiary of U.S. Xpress Enterprises, Inc.

15.

U.S. Xpress Enterprises, Inc. is a parent company of Total Transportation.

16.

U.S. Xpress Enterprises, Inc. is wholly-owned and privately held by New Mountain Lake Holdings, LLC.

17.

On information and belief, U.S. Xpress Enterprises, Inc., U.S. Xpress, Inc., U.S. Xpress Leasing, Inc., and New Mountain Lake Holdings, LLC (hereinafter jointly referred to as the "U.S. Xpress Entities") operated Total Transportation as a joint venture and acted in the scope of authority of such agency and in the scope of and in furtherance of their joint venture at the time this cause of action arose, thereby rendering the U.S. Xpress Entities jointly and severally liable for the acts and omissions of Total Transportation as well as its employees, agents, and servants.

18.

On information and belief, the U.S. Xpress Entities abused the corporate forms of the U.S. Xpress Entities and Total Transportation such that they are each other's alter egos and an instrumentality for the transaction of each other's affairs. The U.S. Xpress Entities disregarded

the separateness of these legal entities for the purpose of perpetrating a sham to defeat justice as well as tort, statutory, and contractual responsibility.

19.

At all times relevant to this Complaint, the U.S. Xpress Entities exerted control over the time, manner, and method of Total Transportation's operations and personnel, including Defendant Johnson and persons responsible for hiring drivers and setting the policies and procedures for safety training and implementation for Total Transportation.

20.

Defendant Mountain Lake Risk Retention Group, Inc. ("Mountain Lake Risk") is an insurance company organized and existing under the laws of Vermont with its principal place of business located at 4080 Jenkins Road, Chattanooga, Tennessee 37421. Mountain Lake Risk may be served with legal process by serving its registered agent for service in Vermont, Corporation Process Company, 100 North Main Street, Suite 2, Barre, Vermont, 05641.

21.

Defendant Mountain Lake Risk insures Total Transportation and the U.S. Xpress Entities.

22.

Defendant John Wayne Johnson's last known residence address is 6777 Raspberry Lane, Apartment 2513, Shreveport, Louisiana 71129, where he may be served with legal process. Alternatively, service is proper on the Secretary of State pursuant to the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-1 *et seq.*

23.

Defendant Greywolf Logistics, Inc. ("Greywolf") is a Georgia corporation with its principal place of business located at 150 Puttenham Crossing, Pooler, Georgia 31322. Greywolf

may be served with legal process by serving its registered agent for service of process, Anthony Phillips, at 150 Puttenham Crossing, Pooler, Georgia 31322.

24.

Defendant Greywolf is engaged in business as an interstate motor carrier transporting goods for compensation and does business in Georgia, including in and through Bryan County, Georgia.

25.

Defendant Arch Insurance Company is an insurance company organized and existing under the laws of Delaware with its principal place of business located at 300 Plaza Three, 3rd Floor, Jersey City, New Jersey 07311. Arch Insurance Company may be served with legal process by serving its registered agent for service, Tyeasha Harris, c/o CT Corp. 1201 Peachtree Street NE, Atlanta, Georgia 30361.

26.

Defendant Robert Gordon Tayloe, the driver of the Greywolf tractor-trailer, is a resident of Laurens County, Georgia with a last known address of 1358 S. Poplar Springs Church Road, Dublin, Georgia 31021, where he may be served with legal process.

27.

Total Transportation is subject to the jurisdiction of this Court pursuant to authorities including the Georgia Long Arm Statute, O.C.G.A. § 9-10-91, and the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-3.

28.

Venue is proper with respect to Total Transportation pursuant to O.C.G.A. § 40-1-117(b), O.C.G.A. § 40-12-3, O.C.G.A. § 9-10-93 and other applicable law.



29.

U.S. Xpress Enterprises, Inc. is subject to the jurisdiction of this Court because it is authorized to and does transact business in the State of Georgia.

30.

Venue is proper with respect to U.S. Xpress Enterprises, Inc. pursuant to O.C.G.A. § 40-1-117(b), O.C.G.A. § 14-2-510(b), Ga. Const. Art. VI, § 2, ¶ IV, and other applicable law.

31.

U.S. Xpress, Inc. is subject to the jurisdiction of this Court because it is authorized to and does transact business in the State of Georgia.

32.

Venue is proper with respect to U.S. Xpress, Inc. pursuant to O.C.G.A. § 40-1-117(b), O.C.G.A. § 14-2-510(b), Ga. Const. Art. VI, § 2, ¶ IV, and other applicable law.

33.

U.S. Xpress Leasing, Inc. is subject to the jurisdiction of this Court because it is authorized to and does transact business in the State of Georgia.

34.

Venue is proper with respect to U.S. Xpress Leasing, Inc. pursuant to O.C.G.A. § 40-1-117(b), O.C.G.A. § 14-2-510(b), Ga. Const. Art. VI, § 2, ¶ IV, and other applicable law.

35.

New Mountain Lake Holdings, LLC is subject to the jurisdiction of this Court pursuant to authorities including the Georgia Long Arm Statute, O.C.G.A. § 9-10-91, and the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-3.

36.

Venue is proper with respect to New Mountain Lake Holdings, LLC pursuant to O.C.G.A. § 40-12-3, O.C.G.A. § 9-10-93 and other applicable law.

37.

Mountain Lake Risk is subject to the jurisdiction of this Court and is properly named and joined in this action pursuant to O.C.G.A. § 40-1-112(c), O.C.G.A. § 40-2-140(d)(4), and other applicable law.

38.

Venue is proper with respect to Mountain Lake Risk pursuant to O.C.G.A. § 33-4-1 and other applicable law.

39.

Johnson is subject to the jurisdiction of this Court pursuant to authorities including the Georgia Long Arm Statute, O.C.G.A. § 9-10-91, and the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-3.

40.

Venue is proper with respect to Johnson pursuant to multiple authorities, including O.C.G.A. § 9-10-93 and O.C.G.A. § 40-12-3.

41.

Greywolf is subject to the jurisdiction of this Court because it is authorized to and does transact business in the State of Georgia.

42.

Venue is proper with respect to Greywolf pursuant to O.C.G.A. § 40-1-117(b), O.C.G.A. § 14-2-510(b), Ga. Const. Art. VI, § 2, ¶ IV, and other applicable law.

43.

Arch Insurance Company is subject to the jurisdiction of this Court because it is authorized to and does transact business in the State of Georgia. Arch Insurance Company is properly named and may be properly joined in this action pursuant to O.C.G.A. § 40-1-112(c), O.C.G.A. § 40-2-140(d)(4), and other applicable law.

44.

Venue is proper in this Court as to Arch Insurance pursuant to O.C.G.A. § 33-4-1 and other applicable law.

45.

Tayloe is subject to the jurisdiction of this Court because he is a resident of this State.

46.

Venue is proper with respect to Tayloe because venue is proper with respect to a joint tortfeasor.

47.

Mountain Lake Risk provided liability insurance coverage to Total Transportation for this collision under Policy Number TTS239097-14.

48.

Mountain Lake Risk provided liability insurance coverage to U.S. Xpress, Inc. for this collision under Policy Number USX-188121-14.

49.

Arch Insurance Company provided liability insurance coverage to Greywolf for this collision under Policy Number TIPKG0020500.

50.

This Court has subject matter jurisdiction over the claims asserted in this Complaint.

51.

Venue and jurisdiction are not proper originally or by removal in the United States District Court because Plaintiffs and at least one Defendant are residents and citizens of Georgia.

**OPERATIVE FACTS**

52.

During the early morning of April 22, 2015, a wreck occurred on I-16 (GA 404) Eastbound near mile marker 143 in Bryan County, Georgia involving a tractor-trailer driven by Robert Gordon Tayloe and a Winnebago motor home ("First Wreck").

53.

Tayloe was an agent and/or employee of Greywolf and was operating in the course and scope of his employment with Greywolf at the time of the First Wreck.

54.

Because Tayloe was following too closely, the tractor-trailer he was driving struck the rear of the Winnebago motor home.

55.

As a result of this collision, both the tractor-trailer Tayloe was driving and the Winnebago motor home rolled over and slid along the roadway, coming to a rest on or near the roadway, blocking all or part of I-16 Eastbound.

56.

Eastbound traffic on I-16 was backed up following the First Wreck, while emergency crews worked to clean up and remove the large, overturned vehicles from the roadway.

57.

At or about 5:50 am on April 22, 2015, a Ford Escape ("Ford") was stopped in the right lane of backed-up traffic on I-16 Eastbound near mile marker 140-141 in Bryan County, Georgia.

58.

Abbie DeLoach was driving the Ford, and Morgan Bass, Megan Richards, and Brittney McDaniel were passengers in the Ford.

59.

Behind the Ford was a Toyota Corolla ("Toyota"), also stopped in the right lane of traffic resulting from the First Wreck.

60.

Emily Clark was driving the Toyota, and Catherine Pittman and Caitlyn Baggett were passengers in the Toyota.

61.

All seven of the young women in the Ford and the Toyota were nursing students at Georgia Southern University, and were headed toward their last day of clinical rotations at a Savannah hospital.

62.

The weather on the morning of April 22, 2015 was clear and I-16 in Bryan County, Georgia was dry. There was nothing obstructing Johnson's view of stopped traffic.

63.

Behind the Toyota, a tractor-trailer driven by John Wayne Johnson was barreling down I-16 Eastbound at highway speed, approaching the line of stopped traffic.

64.

Johnson was an agent and/or employee of Total Transportation and/or the U.S. Xpress Entities and was operating the tractor-trailer in the scope of his employment and/or agency.

65.

The tractor-trailer driven by Johnson was owned by U.S. Xpress Leasing, Inc.

66.

Because he was drowsy or some other inexplicable reason, Johnson did not slow or stop his large tractor-trailer in response to the long line of traffic in front of him that had been at a complete stop for several seconds as had every other vehicle and tractor-trailer that was stopped in the traffic.

67.

Johnson never applied the brakes, and never made any maneuver to try to avoid a collision, before slamming into the rear of the Toyota at highway speed. The tractor-trailer actually went up and over the Toyota, slicing the roof off and setting it ablaze with three young women inside burning.

68.

The U.S. Xpress tractor-trailer was equipped with a Collision Avoidance System.

69.

The Collision Avoidance System on the tractor-trailer owned by U.S. Xpress was designed to provide audible and/or visible warnings to the driver as the tractor-trailer approached an object in the roadway, such as another vehicle that was stopped or slowed.

70.

After striking the Toyota, the tractor-trailer driven by Johnson continued forward with such force that it caused a seven-vehicle pileup, slamming into the rear of the Ford carrying the other four Georgia Southern nursing students, as well as a diesel tanker truck, a Chevrolet S-10, a Chevrolet Silverado, and another tractor-trailer ("Second Wreck").

71.

The impact of the Second Wreck was so severe that the front end of the tractor-trailer owned by U.S. Xpress was completely destroyed, and the diesel engine dislodged from the tractor-trailer and went hurling down the road.

72.

The Toyota was severely damaged in the Second Wreck, and became fully engulfed in flames.

73.

The three occupants of the Toyota were trapped inside the Toyota while it was on fire.

74.

The Ford was also struck from the rear with tremendous force during the second wreck, causing it to be hurled off of the roadway and overturn.

75.

There was a significant amount of crush to the Ford in the Second Wreck, primarily in the rear and the driver's side.

76.

Emily Clark, Morgan Bass, Abbie DeLoach, Catherine Pittman, and Caitlyn Baggett sustained fatal injuries, which ultimately caused their deaths.

77.

Megan Richards and Brittney McDaniel were severely injured in the Second Wreck, but miraculously survived and witnessed the horrific conditions and deaths of their friends.

78.

Emily Clark was a totally innocent victim who in no way contributed to causing the First or Second Wrecks on April 22, 2015.

79.

At the time of the First Wreck, Tayloe was an agent and/or employee of Greywolf.

80.

At the time of the First Wreck, Tayloe was acting in the course and scope of his employment with Greywolf.

81.

At the time of the First Wreck, Tayloe was operating the commercial motor vehicle in the scope of his employment and in furtherance of Greywolf's business.

82.

The First Wreck was caused by the negligence of Defendants Tayloe and Greywolf.



83.

The First Wreck was foreseeable to Defendants Tayloe and Greywolf and could have been avoided had Defendants Tayloe and Greywolf acted in a safe and prudent manner as required by Georgia law and in accordance with the standards required of professional truck drivers and motor carriers.

84.

At the time of the Second Wreck, Johnson was an agent and/or employee of Total Transportation and/or the U.S. Xpress Entities.

85.

At the time of the Second Wreck, Johnson was acting in the course and scope of his employment with Total Transportation and/or the U.S. Xpress Entities.

86.

At the time of the Second Wreck, Johnson was operating the commercial motor vehicle in the scope of his employment and in furtherance of Total Transportation's and/or one or more of the U.S. Xpress Entities' business.

87.

The Second Wreck was caused by the negligence of Defendants either alone or in conjunction with one another.

88.

The Second Wreck was foreseeable to Defendants and could have been avoided had Defendants acted in a safe and prudent manner as required by Georgia law and in accordance with the standards required of professional truck drivers and motor carriers.

89.

On April 22, 2015, Mountain Lake Risk Policy Number TTS239097-14 was in force and covered Defendants Johnson and Total Transportation for their liability for the Second Wreck.

90.

On April 22, 2015, Mountain Lake Risk Policy Number USX-188121-14 was in force and covered Defendants Johnson, Total Transportation, and the U.S. Xpress Entities for their liability for the Second Wreck.

91.

On April 22, 2015, Arch Insurance Company Policy Number TIPKG0020500 was in force and covered Defendants Tayloe and Greywolf for their liability for the First and Second Wrecks.

92.

As a direct and proximate result of the Defendants' negligence, Emily Clark was fatally injured and later died.

93.

Prior to and during the wreck, Emily Clark experienced shock, fright, and terror.

94.

Emily Clark suffered severe and painful injuries to her body and mind as a result of the injuries she sustained in the wreck, but before she died on April 22, 2015 from the fatal injuries she sustained in the Second Wreck.

**LIABILITY OF DEFENDANTS**

**COUNT ONE**

**(Taylor's Negligence)**

95.

Plaintiffs re-allege and reincorporate Paragraphs 1-94 as if fully set forth herein verbatim.

96.

Defendant Taylor had a duty to operate his commercial vehicle in a safe and prudent manner in accordance with his training as a professional driver and so as not to endanger the lives and welfare of Emily Clark and the motoring public. This duty included keeping a proper lookout, paying attention, keeping a safe distance from vehicles in front of him, and operating his commercial vehicle at a reasonable and prudent speed in accordance with the conditions of the roadway and all traffic laws and regulations.

97.

As a professional truck driver, Defendant Taylor also had a duty to operate his tractor-trailer in conformance to the Federal Motor Carrier Safety Regulations and the industry and corporate standards that grow out of these regulations, including the required skills and knowledge set forth in 49 C.F.R. §§ 383.111 and 383.113 and the mandates of 49 C.F.R. §§ 390-395.

98.

Defendant Taylor breached those duties and is liable for his tortious acts and omissions, which include, but are not limited to, the following:

- (a) Violating pertinent rules of the road, with such violations amounting to

negligence *per se*. The pertinent violations include, but are not limited to, the following:

- (1) Failing to operate his vehicle with due care, in violation of O.C.G.A. § 40-6-241; and
  - (2) Following too closely, in violation of O.C.G.A. § 40-6-49.
- (b) Negligently following too closely and traveling too fast for the conditions; and
- (c) Negligently blocking or obstructing a busy roadway, thereby placing in danger the lives and welfare of the motoring public in general and Emily Clark in particular.

99.

As a result of the foregoing breaches of duties, Emily Clark suffered the losses and injuries noted herein and died.

100.

Alone or in conjunction with the negligence of the other Defendants, Defendant Tayloe's negligence proximately caused the injuries to and death of Emily Clark.

## **COUNT TWO**

### **(Greywolf's Negligence)**

101.

Plaintiffs re-allege and reincorporate Paragraphs 1-100 as if fully set forth herein verbatim.

102.

Defendant Greywolf is liable under the doctrine of *respondeat superior* for the tortious acts and omissions of its agents, employees, members, representatives, servants, or contractors pursuant to O.C.G.A §§ 51-2-2, 51-2-5, 14-11-301, and other applicable law. These acts and

omissions include, but are not limited to, the acts and omissions committed by Defendant Tayloe on April 22, 2015, which are described above.

103.

Defendant Greywolf negligently selected, hired, trained, supervised, retained, qualified, and/or entrusted Defendant Tayloe as a driver of a commercial vehicle.

104.

Defendant Greywolf further failed to ensure that its tractor-trailer and driver complied with federal and state laws and regulations.

105.

Defendant Greywolf failed to properly inspect, maintain, service, or repair the tractor Tayloe was driving.

106.

As a result of the foregoing breaches of duties, Emily Clark suffered the losses and injuries noted herein and died.

107.

Alone or in conjunction with the negligence of the other Defendants, Defendant Greywolf's negligence proximately caused the injuries to and death of Emily Clark.

### **COUNT THREE**

#### **(Johnson's Negligence)**

108.

Plaintiffs re-allege and reincorporate Paragraphs 1-107 as if fully set forth herein verbatim.

109.

Defendant Johnson had a duty to operate his commercial vehicle in a safe and prudent manner in accordance with his training as a professional driver and so as not to endanger the lives and welfare of Emily Clark and the motoring public. This duty included keeping a proper lookout, paying attention, keeping a safe distance from vehicles in front of him, and operating his commercial vehicle at a reasonable and prudent speed in accordance with the conditions of the roadway and all traffic laws and regulations.

110.

As a professional truck driver, Defendant Johnson also had a duty to operate his tractor-trailer in conformance to the Federal Motor Carrier Safety Regulations and the industry and corporate standards that grow out of these regulations, including the Required Skills and Knowledge set forth in 49 C.F.R. §§ 383.111 and 383.113 and the mandates of 49 C.F.R. §§ 390-395.

111.

Defendant Johnson breached those duties and is liable for his tortious acts and omissions, which include, but are not limited to, the following:

- (a) Violating pertinent rules of the road, with such violations amounting to negligence *per se*. The pertinent violations include, but are not limited to, the following:
  - (1) Failing to operate his vehicle with due care, in violation of O.C.G.A. § 40-6-241;
  - (2) Driving a vehicle in reckless disregard of the safety of persons or property, in violation of O.C.G.A. § 40-6-390; and

- (3) Following too closely, in violation of O.C.G.A. § 40-6-49.
- (b) Failing to operate the vehicle in a safe and prudent manner, thereby placing the lives and well-being of the public in general, and Emily Clark in particular, in grave danger;
- (c) Failing to operate the vehicle in accordance with state and federal law and regulations;
- (d) Negligently following too closely and traveling too fast for the conditions, which caused him to slam his tractor-trailer into the rear of the Toyota and Ford;
- (e) Operating his large tractor-trailer too fast for the conditions; and
- (f) Failure to keep a proper lookout.

112.

As a result of the foregoing breaches of duties, Emily Clark suffered the losses and injuries noted herein and died.

113.

Alone or in conjunction with the negligence of the other Defendants, Defendant Johnson's negligence proximately caused the injuries to and death of Emily Clark.

#### **COUNT FOUR**

**(Total Transportation and the U.S. Xpress Entities' Negligence and Punitive Damages)**

114.

Plaintiffs re-allege and reincorporate Paragraphs 1-113 as if fully set forth herein verbatim.

115.

Defendants Total Transportation and/or the U.S. Xpress Entities are liable under the doctrine of *respondeat superior* for the tortious acts and omissions of their agents, employees, members, representatives, servants, or contractors pursuant to O.C.G.A §§ 51-2-2, 51-2-5, 14-11-301, and other applicable law. These acts and omissions include, but are not limited to, the acts and omissions committed by Defendant Johnson on April 22, 2015, which are described above.

116.

Defendants Total Transportation and/or the U.S. Xpress Entities negligently selected, hired, trained, supervised, retained, qualified, and/or entrusted Defendant Johnson as a driver of a commercial vehicle.

117.

Defendants Total Transportation and/or the U.S. Xpress Entities failed to ensure that their tractor-trailer and driver complied with federal and state laws and regulations.

118.

Defendants Total Transportation and/or the U.S. Xpress Entities failed to properly inspect, maintain, service, or repair the tractor-trailer Johnson was driving.

119.

As a result of the foregoing breaches of duties, Emily Clark suffered the losses and injuries noted herein and died.



120.

Alone or in conjunction with the negligence of the other Defendants, Defendants Total Transportation and/or the U.S. Xpress Entities' negligence proximately caused the injuries to and death of Emily Clark.

121.

Total Transportation and/or the U.S. Xpress Entities have been guilty of such willful misconduct, malice, fraud, wantonness, oppression, and an entire want of care sufficient to raise the presumption of conscious indifference to the consequences.

122.

Total Transportation and/or the U.S. Xpress Entities' misconduct is so aggravating it authorizes, warrants, and demands the imposition of substantial punitive damages against Total Transportation and the U.S. Xpress Entities pursuant to O.C.G.A. § 51-12-5.1.

123.

Any cap on the amount of punitive damages applied in this case would be unconstitutional for a number of reasons, including that it violates the inviolate right to trial by jury contained in Georgia's Constitution.

#### **COUNT FIVE**

**(Joint Venture, Alter Ego, Agency, and Piercing the Corporate Veil)**

124.

Plaintiffs re-allege and reincorporate Paragraphs 1-123 as if fully set forth herein verbatim.

125.

On April 22, 2015, Johnson was acting in furtherance and in the scope of Total Transportation and/or the U.S. Xpress Entities' business and joint venture.

126.

There was a unity of interest between Total Transportation and the U.S. Xpress Entities such that the separate personalities of the respective entities ceased to exist.

127.

Adherence to the doctrine of separate corporate entities as between Total Transportation and the U.S. Xpress Entities would promote injustice and/or fraud.

128.

With respect to the negligent acts and omissions causing the death of Emily Clark on April 22, 2015, Total Transportation and the U.S. Xpress Entities operated as a single economic entity.

129.

Total Transportation and the U.S. Xpress Entities disregarded their separateness by commingling the companies' affairs on an interchangeable and/or joint basis and by confusing the otherwise separate properties, records, and/or control of the companies.

130.

Total Transportation and the U.S. Xpress Entities combined their respective property, supplies, and/or labor in a joint undertaking for profit so as to render all members of the venture liable for the negligence and/or negligence per se of the other members.

131.

Under the doctrine of joint venture, Total Transportation and the U.S. Xpress Entities are jointly and severally liable for the conduct of the other parties to the joint venture, as well as their employees, servants, and agents.

132.

On April 22, 2015, Johnson was acting as a dual servant of Total Transportation and the U.S. Xpress Entities. Consequently, Total Transportation and the U.S. Xpress Entities are liable for the torts of Johnson.

133.

The U.S. Xpress Entities and Total Transportation operate as a joint venture in their motor carrier operations, including the training, hiring, and retention of drivers and setting the policies and procedures for safety training and implementation for Total Transportation.

134.

At all times relevant to this Complaint, the U.S. Xpress Entities were responsible for and exercised control over the method of Total Transportation's safety policies and procedures.

135.

Under the doctrine of alter ego, the U.S. Xpress Entities are liable for the activities of any business entities so organized and controlled and its business conducted in such a manner as to make it merely an agency, instrumentality, or alter ego of the U.S. Xpress Entities. Total Transportation was so organized and controlled and its business conducted in such a manner as to make it merely an agent, instrumentality, or alter ego of the U.S. Xpress Entities.

136.

The U.S. Xpress Entities disregarded the corporate identity of the U.S. Xpress Entities and Total Transportation to such a degree that the U.S. Xpress Entities made Total Transportation their alter ego and a mere instrumentality for the transaction of the U.S. Xpress Entities' affairs such that the separate identities of Total Transportation and the U.S. Xpress Entities no longer existed. The U.S. Xpress Entities and Total Transportation disregarded the separateness of the legal entities for the purpose of perpetrating a sham to defeat justice as well as tort, statutory, and contractual responsibility.

**COUNT SIX**

**(Liability of Arch Insurance Company)**

137.

Plaintiffs re-allege and reincorporate Paragraphs 1-136 as if fully set forth herein verbatim.

138.

Defendant Arch Insurance Company provided liability coverage in the event of a motor vehicle collision involving the Greywolf tractor-trailer driven by Defendant Tayloe.

139.

Plaintiffs are third-party beneficiaries under said contract or policies of insurance.

140.

Plaintiffs are entitled to receive payments from Defendant Arch Insurance Company for the tort liability of Defendants Greywolf and Tayloe.

**COUNT SEVEN**

**(Liability of Mountain Lake Risk)**

141.

Plaintiffs re-allege and reincorporate Paragraphs 1-140 as if fully set forth herein verbatim.

142.

Defendant Mountain Lake Risk provided liability coverage in the event of a motor vehicle collision involving the tractor-trailer involved in the Second Wreck and Total Transportation and/or the U.S. Xpress Entities' employees and/or agents, including Defendant Johnson.

143.

Plaintiffs are third-party beneficiaries under said contract or policies of insurance.

144.

Plaintiffs are entitled to receive payments from Defendant Mountain Lake Risk for the tort liability of Defendants Total Transportation, the U.S. Xpress Entities, and Johnson.

**COUNT EIGHT**

**(Attorneys' Fees and Litigation Expenses Under O.C.G.A. § 13-6-11)**

145.

Plaintiffs re-allege and reincorporate Paragraphs 1-144 as if fully set forth herein verbatim.

146.

Defendants have acted in bad faith, have been stubbornly litigious, and have caused the Plaintiffs unnecessary trouble and expense, such that Plaintiffs seek to recover from Defendants

all costs of litigation, including attorneys' fees and expenses, pursuant to O.C.G.A. § 13-6-11 and all other applicable Georgia law.

147.

Defendants are liable for Plaintiffs' attorneys' fees and litigation expenses under O.C.G.A. § 13-6-11 and other applicable law.

**COUNT NINE**

**(Joint and Several Liability)**

148.

Plaintiffs re-allege and reincorporate Paragraphs 1-147 as if fully set forth herein verbatim.

149.

Defendants jointly and concurrently committed tortious acts and omissions. Accordingly, all Defendants are jointly and severally liable to Plaintiffs for the claims described herein.

**DAMAGES CLAIMED**

150.

The damages claimed by Plaintiffs were proximately caused by the tortious acts and omissions of Defendants, for which they are liable jointly and severally.

151.

Plaintiff William Craig Clark, as Administrator of the Estate of Emily Clark, deceased, claims all damages suffered by Emily Clark for which her Estate is entitled to recover, including the following:

- (a) pre-impact and post-impact shock, fright, and terror Emily Clark experienced prior to her death;

- (b) all components of the mental and physical pain and suffering endured by Emily Clark from the time of the wreck until she died, which shall include the post-impact fright, shock, and terror she endured;
- (c) medical bills, emergency transportation expenses, funeral and burial expenses;
- (d) attorneys' fees and litigation expenses pursuant to O.C.G.A. § 13-6-11; and
- (e) punitive damages to punish and deter Defendants pursuant to O.C.G.A. § 51-12-5.1 *et seq.* and other law.

152.

Plaintiffs William Craig Clark and Kathy Marie Clark, as surviving parents of Emily Clark, deceased, claim compensatory damages for the wrongful death of Emily Clark, the measure of which under Georgia law is the full value of her life, both economic and intangible, as determined by the enlightened conscience of a fair and impartial jury.

**PRAYER FOR RELIEF**

153.

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 Plaintiffs have and recover all damages for all losses compensable under Georgia law as set forth above;
- (c) That all attorneys' fees, expenses, and costs be cast against the Defendants;
- (d) That service be had on the Defendants as provided by law;
- (e) That the Court award punitive damages against Defendants;

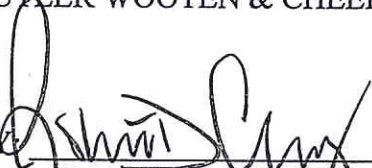
(f) That all expenses of litigation, including attorney's fees, be cast against the Defendants; and

(g) For such other and further relief as the Court deems just and proper.

This 12<sup>th</sup> day of May, 2015.

Respectfully submitted,

BUTLER WOOTEN & CHEELEY & PEAK LLP

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