

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

JUDITH FIELDER and WILLIAM FIELDER,

Plaintiffs,

v.

LATIUM USA TRADING LLC, d/b/a Superior
Mason Products, MICHAEL TURNER, and
UNITED STATES FIRE INSURANCE
COMPANY,

Defendants.

Civil Action No. 5:21-CV-00432

FIRST AMENDED COMPLAINT FOR DAMAGES

Plaintiffs Judith Fielder and William Fielder hereby file this First Amended Complaint for Damages against Latium USA Trading LLC, d/b/a Superior Mason Products, Michael Turner, and United States Fire Insurance Company, showing as follows.

PARTIES, JURISDICTION, AND VENUE

1.

Plaintiffs Judith Fielder and William Fielder are residents and citizens of Putnam County, Georgia, and are subject to the jurisdiction of this Court.

2.

Defendant Latium USA Trading LLC, d/b/a Superior Mason Products (“Latium”), is a limited liability company organized and existing under the laws of Delaware and with its principal place of business in New York. Latium manufactures and distributes commercial and residential building products for sale throughout Georgia and the United States of America, including regularly transporting its products over the roads of Georgia. Latium may be served with process by delivering a Summons and copy of this Complaint to its registered agent for

service of process, Corporation Service Company, 2 Sun Court, Ste. 400, Peachtree Corners, Gwinnett County, Georgia 30092.

3.

At all relevant times, Latium was engaged in the business of developing, manufacturing, marketing, advertising, distributing, promoting, selling, and transporting its products throughout Georgia. Latium regularly transports its products over the roads of Georgia and derives substantial revenue from its use of Georgia's roads and related goods and services.

4.

Latium is subject to personal jurisdiction in Georgia because it is and was at all relevant times authorized by the Secretary of State of Georgia to do or transact business in this State, and therefore is a resident of this State. In the alternative, Latium is subject to personal jurisdiction in Georgia pursuant to O.C.G.A. § 9-10-91 because it transacts business in this state, it committed a tortious act or omission within this state, and/or it committed a tortious injury in this state caused by an act or omission outside this state. Latium regularly does or solicits business, or engages in another persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in Georgia.

5.

On information and belief, Latium has no members who are citizens of Georgia.

6.

Defendant Michael Turner is a resident and citizen of Alabama. At all relevant times, Mr. Turner was engaged in the business of transporting products throughout Georgia and/or over the roads of Georgia on behalf of Latium. Mr. Turner may be served with process by delivering a Summons and copy of this Complaint to him at 102 Sumner Drive, Calera, Alabama 35040.

7.

Mr. Turner is subject to personal jurisdiction in Georgia pursuant to O.C.G.A. § 9-10-91 because he committed a tortious act or omission within this state or, in the alternative, pursuant to the Georgia Nonresident Motorist Act, O.C.G.A. § 40-12-3.

8.

At all relevant times, Mr. Turner was an actual or ostensible agent, servant, and/or employee of Latium and was acting within the course and scope of such employment or agency. Latium is vicariously liable for the actions and inactions of Mr. Turner.

9.

Defendant United States Fire Insurance Company (“US Fire”) is a New York insurance company with its principal place of business in New Jersey. US Fire issues, delivers, and performs insurance contracts throughout Georgia. US Fire may be served with process by delivering a Summons and copy of this Complaint to its registered agent for service of process, CT Corporation System, 289 S. Culver St., Lawrenceville, Gwinnett County, Georgia 30046-4805.

10.

US Fire is subject to personal jurisdiction in Georgia because it is and was at all relevant times authorized by the Secretary of State of Georgia to do or transact business in this State, and therefore is a resident of this State. In the alternative, US Fire is subject to personal jurisdiction in Georgia pursuant to O.C.G.A. § 9-10-91 because it transacts business in this state, it committed a tortious act or omission within this state, and/or it committed a tortious injury in this state caused by an act or omission outside this state. US Fire regularly does or solicits business,

or engages in another persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in Georgia.

11.

US Fire issued a policy of insurance, No. 1337480307, to Latium under which Mr. Turner was an insured, which was in effect at all times relevant hereto. US Fire is subject to suit by direct action pursuant to O.C.G.A. § 40-1-112.

12.

This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(1) because complete diversity exists among the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

13.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this action occurred in Putnam County, Georgia.

EVENTS FORMING THE BASIS OF THE CLAIMS

14.

The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

15.

On or about November 4, 2020, at approximately 10:30 a.m., Mrs. Fielder was driving northbound on highway GA-44 in Putnam County, approximately 1/3 mile north of the Putnam County/Jones County line. Mrs. Fielder was driving directly behind another vehicle driven by Mr. Hunter Willis.

16.

At the same time, Mr. Turner was driving a Freightliner M2 truck (“the Freightliner”) southbound on GA-44 in Putnam County, in the direction of the Jones County line, Mr. Willis, and Mrs. Fielder.

17.

The Freightliner had a gross vehicle weight of more than 10,001 pounds.

18.

Latium is a registered motor carrier, USDOT No. 2433757.

19.

Latium is a motor carrier as defined in O.C.G.A. § 40-1-100(12).

20.

The Freightliner is a commercial motor vehicle as defined in 49 C.F.R. § 390.5.

21.

The Freightliner is a scheduled vehicle under the US Fire liability policy.

22.

Mr. Turner was driving behind more than one vehicle on GA-44, including a farm tractor.

23.

At the place Mr. Turner was driving, GA-44 consisted of two travel lanes separated by a double yellow line.

24.

A double yellow line indicates that passing on the left is prohibited.

25.

At the place Mr. Turner was driving, the sight distance was reduced because GA-44 curved to his right.

26.

Mr. Turner attempted to pass the farm tractor and other vehicles in front of him by crossing the double yellow line into the northbound lane.

27.

Mr. Turner negligently and recklessly crossed a double yellow line in an attempt to pass the vehicles in front of him.

28.

Mr. Turner negligently and recklessly entered the northbound lane at a location where reduced sight distance restricted his ability to see oncoming traffic.

29.

Mr. Turner negligently and recklessly obstructed the northbound lane.

30.

Mr. Turner negligently and recklessly failed to keep a proper lookout for oncoming traffic.

31.

When Mr. Turner entered the northbound lane, Mr. Willis slowed promptly and moved toward the east (right) edge of the lane in an effort to avoid a collision with the Freightliner.

32.

At the location where Mr. Turner entered the northbound lane, there was a drop-off and no shoulder to the east of the northbound lane.

33.

Mrs. Fielder also slowed promptly and moved to the east in an effort to avoid a collision with the Freightliner, but in the process of doing so, collided with the rear of Mr. Willis's vehicle.

34.

After colliding with Mr. Willis's vehicle, Mrs. Fielder's vehicle crossed the southbound lane, left the roadway to the west, went down an embankment, and collided with some trees.

35.

At all relevant times leading up to the collision, Mrs. Fielder operated her vehicle reasonably.

36.

Mrs. Fielder was not negligent, and no act or omission by Mrs. Fielder caused or contributed to the collision.

37.

Mr. Willis was not negligent, and no act or omission by Mr. Willis caused or contributed to the collision.

38.

Mr. Turner did not stop or otherwise respond to the collision.

39.

Mr. Turner continued southbound on GA-44 and into Jones County until he was stopped by a City of Gray police officer in Gray, Georgia, approximately 14 miles from the crash site.

40.

Mr. Turner was wearing headphones that covered his ears at the time of the collision.

41.

Mr. Turner negligently and recklessly left the scene of the collision.

42.

Mr. Turner negligently and recklessly failed to render aid at the crash site or to call for emergency services.

43.

Mr. Turner negligently and recklessly failed to pay attention to the other vehicles on the road.

44.

Mr. Turner negligently and recklessly caused or contributed to Mrs. Fielder's collisions.

45.

Mrs. Fielder was transported by EMS to Medical Center Navicent Health in Macon, where she was hospitalized for nine days.

46.

As a result of this motor vehicle collision, Mrs. Fielder suffered serious injuries including, but not limited to, several broken ribs, a cracked kneecap, fractured sternum, a broken arm requiring surgery, a spinal compression fracture requiring surgery, a humeral head fracture, and pulmonary embolism. Mrs. Fielder has incurred and continues to incur damages as a direct and proximate result of this collision, including but not limited to medical costs in excess of \$316,000 and pain and suffering.

47.

At all times relevant hereto, Mr. Turner was an agent, servant, and/or employee of Latium and was acting within the course and scope of such employment or agency. Under the

laws of the State of Georgia, an employer is vicariously liable for the negligent acts or omissions of its agents, servants, and employees.

48.

Mr. Turner was cited for passing in a no-passing zone, in violation of O.C.G.A. § 40-6-46.

49.

Mr. Turner failed to appear for his court date or to pay the fine, and a bench warrant was issued on February 4, 2021, which remains outstanding.

COUNT I
NEGLIGENCE

50.

The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

51.

Mr. Turner had a duty to act reasonably so as not to cause injury to others on the road.

52.

Mr. Turner failed to act reasonably, breached his duty, and was negligent in one or more of the following ways:

- a. Entering the northbound lane by crossing a double yellow line;
- b. Passing other vehicles where passing was prohibited;
- c. Passing other vehicles where sight distances were restricted;
- d. Obstructing the northbound lane of travel;
- e. Failing to yield to a vehicle with the right-of-way;

- f. Failing to stop at the scene of an accident and to render aid or call for emergency services; and/or
- g. Failing to maintain a proper lookout for other vehicles.

53.

Mr. Turner's negligence directly and proximately caused Mrs. Fielder's collisions.

54.

Mr. Turner's negligence directly and proximately caused, in whole or in part, Mrs. Fielder's injuries and damages.

55.

Latium is liable in *respondeat superior* for the negligence of Mr. Turner.

56.

Plaintiff is entitled to recover from Defendants for her injuries and damages, including but not limited to past, present, and future pain and suffering, past, present, and future medical expenses, and other economic and noneconomic loss.

COUNT II

NEGLIGENCE PER SE (GEORGIA RULES OF THE ROAD)

57.

The preceding paragraphs are incorporated and realleged as if fully set forth herein.

58.

Mr. Turner was under a duty to follow the Georgia Rules of the Road, the violation of which constitutes negligence *per se*.

59.

Mr. Turner was negligent *per se* for violating one or more rules of the road intended to protect persons such as Mrs. Fielder from injury, including but not limited to the following:

- a. Passing another vehicle in a no-passing zone, O.C.G.A. § 40-6-46;
- b. Passing on the left where the left side was not clearly visible, O.C.G.A. § 40-6-44;
- c. Passing on the left where the left side was not free of oncoming traffic, O.C.G.A. § 40-6-44;
- d. Failure to yield the right-of-way to vehicles traveling in the proper direction, O.C.G.A. § 40-6-40;
- e. Failure to stop and to render assistance at the scene of an accident, O.C.G.A. § 40-6-270;
- f. Wearing a headset or headphone which would impair ability to hear, O.C.G.A. § 40-6-250;
- g. Engaging in actions which distracted him from safe operation of the vehicle, O.C.G.A. § 40-6-241;
- h. Failure to exercise due care, O.C.G.A. § 40-6-93; and/or
- i. Reckless driving, O.C.G.A. § 40-6-390.

60.

Mr. Turner's negligence *per se* directly and proximately caused, in whole or in part, Mrs. Fielder's collisions.

61.

Mr. Turner's negligence *per se* directly and proximately caused, in whole or in part, Mrs. Fielder's injuries and damages.

62.

Latium is liable in *respondeat superior* for the negligence of Mr. Turner.

63.

Plaintiff is entitled to recover from Defendants for her injuries and damages, including but not limited to past, present, and future pain and suffering, past, present, and future medical expenses, and other economic and noneconomic loss.

COUNT III

NEGLIGENCE PER SE (FEDERAL MOTOR CARRIER SAFETY REGULATIONS)

64.

The preceding paragraphs are incorporated and realleged as if fully set forth herein.

65.

Mr. Turner was under a duty to follow the Federal Motor Carrier Safety Regulations, the violation of which constitutes negligence *per se*.

66.

Mr. Turner was negligent *per se* for violating one or more regulations intended to protect persons such as Mrs. Fielder from injury, including but not limited to the following:

- a. Failure to operate a commercial motor vehicle in accordance with the laws of Georgia, 49 C.F.R. § 392.2; and/or
- b. Driving while fatigued, 49 C.F.R. § 392.3.

67.

Mr. Turner's negligence per se directly and proximately caused, in whole or in part, Mrs. Fielder's collisions.

68.

Mr. Turner's negligence per se directly and proximately caused, in whole or in part, Mrs. Fielder's injuries and damages.

69.

Latium is liable in *respondeat superior* for the negligence of Mr. Turner.

70.

Plaintiff is entitled to recover from Defendants for her injuries and damages, including but not limited to past, present, and future pain and suffering, past, present, and future medical expenses, and other economic and noneconomic loss.

COUNT IV

NEGLIGENT HIRING/RETENTION

71.

The preceding paragraphs are incorporated and realleged as if fully set forth herein.

72.

Latium owed a duty not to hire or retain drivers it knew or should have known posed a risk of harm to others.

73.

Latium breached that duty when it negligently hired, contracted with, and/or retained Mr. Turner as a driver and failed to exercise ordinary care to determine his fitness for the task of operating a commercial motor vehicle.

74.

Latium's negligence directly and proximately caused, in whole or in part, Mrs. Fielder's collisions.

75.

Latium's negligence directly and proximately caused, in whole or in part, Mrs. Fielder's injuries and damages.

76.

Plaintiff is entitled to recover from Latium for her injuries and damages, including but not limited to past, present, and future pain and suffering, past, present, and future medical expenses, and other economic and noneconomic loss.

COUNT V

NEGLIGENT TRAINING AND SUPERVISION

77.

The preceding paragraphs are incorporated and realleged as if fully set forth herein.

78.

Latium owed a duty to train and/or supervise its drivers in safely and prudently operating a commercial motor vehicle in compliance with federal and local laws and regulations.

79.

Latium breached this duty when it failed to exercise ordinary care to properly train and/or supervise Mr. Turner and to ensure his fitness for the task of operating a commercial motor vehicle.

80.

Latium's negligence directly and proximately caused, in whole or in part, Mrs. Fielder's collisions.

81.

Latium's negligence directly and proximately caused, in whole or in part, Mrs. Fielder's injuries and damages.

82.

Plaintiff is entitled to recover from Latium for her injuries and damages, including but not limited to past, present, and future pain and suffering, past, present, and future medical expenses, and other economic and noneconomic loss.

COUNT VI

LOSS OF CONSORTIUM

83.

The preceding paragraphs are incorporated and realleged as if fully set forth herein.

84.

As a further direct and proximate result of the acts and omissions of Defendants as alleged herein, Plaintiff William Fielder has been deprived of the society, companionship, and consortium of Plaintiff Judith Fielder.

85.

Plaintiff is entitled to recover from Defendants for his damages for loss of consortium.

COUNT VII

DIRECT ACTION

86.

The preceding paragraphs are incorporated and realleged as if fully set forth herein.

87.

US Fire was the insurer of Latium at all times relevant to the allegations in this Complaint and issued a liability policy to comply with the filing requirements under Georgia law.

88.

Latium is a motor carrier that is required to comply with the filing requirements identified in O.C.G.A. § 40-1-112.

89.

At all relevant times, Mr. Turner was driving the Freightliner on behalf of Latium and was an additional insured under the US Fire liability policy.

90.

Plaintiffs have a cause of action in tort against Mr. Turner arising from his actions or inactions while operating a commercial motor vehicle on behalf of Latium.

91.

Latium is liable in *respondeat superior* for the negligence of Mr. Turner.

92.

Plaintiffs have causes of action in tort against Latium for Mr. Turner's negligence and for Latium's negligence in hiring, retaining, training, and/or supervising Mr. Turner.

93.

Regardless of Latium's compliance or non-compliance with the statutory filing requirements, Plaintiffs may join its insurance carrier, US Fire, in this cause of action pursuant to O.C.G.A. § 40-1-112.

94.

US Fire is subject to a direct action pursuant to O.C.G.A. § 40-1-112.

95.

US Fire is directly responsible for any judgment rendered against Mr. Turner and/or Latium pursuant to the direct action provision in O.C.G.A. § 40-1-112.

96.

Plaintiffs are entitled to recover from Latium for their injuries and damages, including but not limited to past, present, and future pain and suffering, past, present, and future medical expenses, loss of consortium, and other economic and noneconomic loss.

COUNT VIII

PUNITIVE DAMAGES

97.

The preceding paragraphs are incorporated and realleged as if fully set forth herein.

98.

Mr. Turner's and Latium's actions, which include but are not limited to crossing a double-yellow line to pass in a no-passing zone, entering into the opposite lane of travel despite insufficient sight distances, and fleeing the scene of the wreck, were willful, reckless, and displayed that entire want of care which would raise the presumption of conscious indifference to the consequences.

99.

Punitive damages should be imposed in an amount sufficient to penalize Mr. Turner and Latium and to deter such willful, wanton, and reckless conduct in the future.

100.

Plaintiffs are entitled to recover punitive damages from Defendants pursuant to O.C.G.A. § 51-12-5.1.

COUNT IX

EXPENSES OF LITIGATION, O.C.G.A. § 13-6-11

101.

The preceding paragraphs are incorporated and realleged as if fully set forth herein.

102.

Mr. Turner and Latium have acted in bad faith, been stubbornly litigious, and/or have caused Plaintiffs unnecessary trouble and expense.

103.

Mr. Turner's actions in attempting to pass in a no-passing zone with limited sight distance, wearing over-the-ear headphones that distracted him and impaired his ability to hear, leaving the scene of the wreck, and failing to pay his traffic citation or to appear for his court date demonstrate bad faith in the underlying actions leading to this lawsuit.

104.

Plaintiffs are entitled to recover the expenses of litigation, including attorneys' fees, pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Plaintiffs pray and respectfully demand as follows:

- A. That summons and process issue and the Defendants be served with this Complaint as required by law and the Defendants be required to appear and answer;
- B. That judgment be entered in favor of the Plaintiffs and against the Defendants;

- C. That Plaintiffs receive a TRIAL BY JURY;
- D. That Plaintiffs be awarded all past and future medical bills, past and future pain and suffering, loss of consortium, and all other economic and noneconomic damages in such an amount as may be shown by the evidence and determined by the trier of fact;
- E. That Plaintiffs be awarded all compensatory, general, special, punitive, and other damages allowable by law as may be shown by the evidence and determined by the trier of fact;
- F. That Plaintiffs be awarded all costs, attorneys' fees, and other expenses attributable to this action; and
- G. That Plaintiffs be granted such other and further relief as this Court may deem just and proper.

Respectfully submitted this 27th day of May, 2022.

HARRIS LOWRY MANTON LLP

/s/ Jed D. Manton
JED D. MANTON
Georgia Bar No. 868587
jed@hlmlawfirm.com
MADELINE E. McNEELEY
Georgia Bar No. 460652
molly@hlmlawfirm.com

1418 Dresden Dr. NE, Unit 250
Brookhaven, GA 30319
(404) 961-7650
(404) 961-7651 (fax)

BUZZELL, WELSH & HILL, LLP

/s/ Steven R. McNeel
STEVEN R. McNEEL
Georgia Bar No. 306641
smcneel@bwhlegal.com

200 Third St.
P.O. Box 1017
Macon, GA 31202-1017

(478) 742-8820
(478) 742-3088 (fax)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing FIRST AMENDED COMPLAINT FOR DAMAGES with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Brent Wardrop
Quintairos, Prieto, Wood & Boyer, P.A.
365 Northridge Rd., Ste. 230
Atlanta, GA 30350

Attorneys for Defendants

This 27th day of May, 2022.

/s/ Jed D. Manton _____
Jed D. Manton
Georgia Bar No. 868587