State Court of Fulton County 1/16/2017 12:42:39 PM LeNora Ponzo, Clerk **Civil Division**

IN THE STATE COURT OF FULTON COUNTY STATE OF GEORGIA

| KENT WHITE, | |
|---|-------------------|
| Plaintiff, | |
| v. | Civil Action No.: |
| PEMBERTON TRUCK LINES INC.; CHEROKEE INSURANCE COMPANY; WILLIAM EDWARD JOHNSON II; AND JOHN DOES 1-3 | |
| Defendants. | |
| | |
| COMPLAINT | |

COMPLAINT

This case arises from a trucking collision. Plaintiff in the above-styled action respectfully files this Complaint and demand for jury trial, showing the Court the following:

PARTIES, JURISDICTION, AND VENUE

1.

Plaintiff Kent White ("Plaintiff") is a resident of Fulton County, Georgia.

2.

Defendant Pemberton Truck Lines Inc. ("Pemberton") is a motor carrier.

3.

Pemberton is a corporation existing under the laws of Tennessee and registered with the Tennessee Secretary of State.

Because, as Pemberton acknowledges, "80% of [its] miles are run for dedicated accounts in Tennessee, *Georgia*, and Florida" and because Pemberton otherwise transacts business in Georgia, Pemberton *should have* registered to do business in Georgia with the Georgia Secretary of State. *See* O.C.G.A. § 14-2-1501.

5.

Pemberton has not registered to do business in Georgia with the Georgia Secretary of State.

6.

Pemberton's principal address and principal office is 2530 Mitchell Street, Knoxville, Tennessee, 37917.

7.

Pemberton can be served with process:

- a) "by registered or certified mail or statutory overnight delivery, return receipt requested, addressed to the secretary of the corporation at its principal office" pursuant to O.C.G.A. § 14-2-504;
- b) at its principal address pursuant to O.C.G.A. § 9-11-4(e)(2); or
- c) by serving the Georgia Secretary of State provided that the complaint and process are "forthwith sent by registered or certified mail or statutory overnight delivery" to Pemberton's principal office pursuant to O.C.G.A. § 40-12-2 (Nonresident Motor Act).

¹ Pemberton's Webpage (emphasis added) (Ex. A).

This Court has jurisdiction over Pemberton pursuant to O.C.G.A. § 9-10-91 (long-arm statute). *See also Farrie v. McCall*, 256 Ga. App. 446, 447-48 (2002).

9.

Venue is proper as to Pemberton under O.C.G.A. § 40-12-3 (Nonresident Motor Act). *See also Gault v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 208 Ga. App. 134, 136 (1993).

10.

Defendant Cherokee Insurance Company ("Cherokee") is an insurance company that provided liability insurance to Pemberton at the time of the collision described herein.

11.

Cherokee is a company with its principal place of business at 34200 Mound Road,

Sterling Heights, Michigan, 48310 and an alternative mailing address of P.O. Box 159, Warren,

Michigan, 48089.

12.

Cherokee can be served with process:

- a) "by registered or certified mail or statutory overnight delivery, return receipt requested, addressed to the secretary of the corporation at its principal office" pursuant to O.C.G.A. § 14-2-504; or
- b) delivering a copy of process to Cherokee's principal place of business pursuant to O.C.G.A. § 9-11-4(e).

13.

This Court has jurisdiction over Cherokee pursuant to O.C.G.A. § 9-10-91 (long-arm

14.

Cherokee is subject to this direct action pursuant to O.C.G.A. §§ 40-2-140(d)(2) and 40-1-112(c).

15.

Defendant William Edward Johnson II ("Johnson") drove the truck that collided with Plaintiff's vehicle as described herein.

16.

Johnson resides at 14640 N. US Highway 441, Citra, Florida, 32113.

17.

Johnson can be served with process:

- a) personally at his residence pursuant to O.C.G.A. § 9-11-4(e)(7); or
- b) by serving the Georgia Secretary of State provided that the complaint and process are "forthwith sent by registered or certified mail or statutory overnight delivery" to Pemberton's principal office pursuant to O.C.G.A. § 40-12-2 (Nonresident Motor Act).

18.

This Court has jurisdiction over Johnson pursuant to O.C.G.A. § 9-10-91 (long-arm statute). *See also Farrie v. McCall*, 256 Ga. App. 446, 447-48 (2002).

19.

Venue is proper as to Johnson under O.C.G.A. § 40-12-3 (Nonresident Motor Act). *See also Gault v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 208 Ga. App. 134, 136 (1993).

FACTS

20.

On April 24, 2015, Plaintiff was driving on State Route 16 in Coweta County, Georgia.

21.

Plaintiff slowed down and began a left turn.

22.

A tractor-trailer owned and operated by Pemberton and driven by Johnson ("the Pemberton truck") had been traveling behind Plaintiff.

23.

The Pemberton truck was driving too fast, violating the rules of the road, and otherwise operating in a negligent and reckless manner.

24.

The Pemberton truck improperly, negligently, and recklessly attempted to pass the vehicle that Plaintiff was driving by passing on Plaintiff's left.

25.

The Pemberton truck improperly, negligently, and recklessly struck the vehicle that Plaintiff was driving.

26.

The collision caused serious injuries to Plaintiff.

VICARIOUS LIABILITY

27.

Pemberton is vicariously liable for Johnson's misconduct.

28.

Johnson was an employee of Pemberton pursuant to 49 C.F.R. § 390.5 and other Federal Motor Carrier Safety Regulations ("FMCSR").

29.

Johnson was an employee, or statutory employee, of Pemberton pursuant to *PN Express*, *Inc. v. Zegel* and other Georgia law. 304 Ga. App. 672, 675-79 (2010).

30.

Pemberton is liable under the theories of respondeat superior and vicarious liability.

INSURER'S LIABILITY

31.

Cherokee provided a policy of liability insurance to Pemberton that was in full force and effect at the time of the collision.

32.

Cherokee is subject to a direct action pursuant to O.C.G.A. §§ 40-2-140(d)(2) and 40-1-112(c).

LIABILITY OF ALL DEFENDANTS

33.

All defendants ("Defendants") are liable per se because Johnson violated the rules of the

road and governing regulations, including but not limited to:

- a) O.C.G.A. § 40-6-44 (passing),
- b) O.C.G.A. § 40-6-49 (following too closely),
- c) O.C.G.A. § 40-6-48 (maintaining lane),
- d) O.C.G.A. § 40-6-46 (passing zones),
- e) O.C.G.A. § 40-6-42 (overtaking on the left),
- f) O.C.G.A. § 40-6-45 (limitations on driving on left),
- g) O.C.G.A. § 40-6-390 (reckless driving),
- h) O.C.G.A. § 40-6-180 (reasonable and prudent speed),
- i) O.C.G.A. § 40-6-181 (speed limits),
- j) the rules governing the operation of commercial vehicles as may be identified in the Commercial Drivers Manual of Georgia ("CDL"), and
- k) the Federal Motor Carrier Safety Regulations ("FMCSR").

34.

Defendants are liable because Johnson acted negligently in his operation of the Pemberton truck.

35.

Defendants are liable because Johnson acted recklessly, wantonly, or willfully in his operation of the Pemberton truck.

LIABILITY OF PEMBERTON

36.

Pemberton is liable under a theory of negligent or reckless hiring, training, and/or

37.

Pemberton is liable per se for violating the FMCSR.

CAUSATION

38.

The misconduct of Pemberton and Johnson proximately caused the collision.

39.

The collision proximately caused Plaintiff's damages.

DAMAGES

40.

Plaintiff sustained serious personal injuries, necessitating surgery.

41.

Defendants are liable for punitive damages.

42.

Plaintiff seeks to recover, and is entitled to recover, for:

- a) personal injuries;
- b) fright, shock, and terror;
- c) past, present, and future pain and suffering;
- d) disability;
- e) disfigurement;

- f) mental anguish;
- g) loss of capacity for the enjoyment of life;
- h) incidental expenses;
- i) lost earnings;
- j) past, present, and future medical expenses;
- k) diminished quality of life; and
- 1) punitive damages.

CONCLUSION

43.

Plaintiff respectfully requests that:

- a) process issue as provided by law,
- b) Plaintiff have trial by jury against Defendants,
- c) judgment be awarded to Plaintiff and against Defendants,
- d) Plaintiff be awarded damages in amounts to be shown at trial, and
- e) Plaintiff have such other relief as this Court deems just and appropriate.

[Signature on next page]

This 12th day of January, 2017.

Respectfully submitted,

BUTLER TOBIN LLC

BY: /s/ J.E. Butler III

JAMES E. BUTLER III

Georgia Bar No. 116955

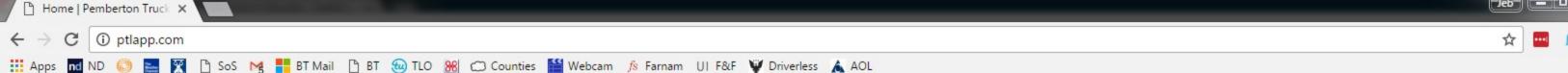
DARREN M. TOBIN

Georgia Bar No. 200383

1932 N. Druid Hills Rd. NE Suite 250 Atlanta, Georgia 30319 jeb@butlertobin.com darren@butlertobin.com (t) 404 587 8423 (f) 404 581 5877

ATTORNEYS FOR PLAINTIFF

EXHIBIT A









WELCOME TO PEMBERTON TRUCK LINES

Pemberton Truck Lines, Inc. is a privately held common and contract truck load carrier based in Knoxville, Tennessee. We began business in 1982 as a small local cartage company. Today our fleet consists of 200 tractors and 600 van trailers. We operate throughout the continental United States, primarily in the 20 states east of the Mississippi River. We have a very strong presence in the Southeast. Approximately 80% of our miles are run for dedicated accounts in Tennessee, Georgia, and Florida.

Our Corporate Headquarters is based in Knoxville, TN. We also have a terminal location in Haines City, FL. We have a state of the art computer system that handles all areas of our operation, including Dispatch, Payroll, Safety, Human Resources, and Maintenance. Our highly trained office personnel provide coverage 24 hours a day, 7 days a week, to insure outstanding customer service.

We utilize late model tractors that are equipped with satellite tracking and communication. We utilize recent model 53 foot high cube van trailers. Our full service Maintenance Operation insures our equipment is in outstanding condition.

Pemberton Truck Lines is committed to being the leader in transportation services. We focus our attention on the specific needs of our customers, and on our drivers who are the heartbeat of our business.

We are committed to Safety First. And, we deliver on time!

Pemberton Truck Lines is DRIVEN BY THE BEST - DRIVEN TO BE THE BEST!