

IN THE SUPERIOR COURT OF BRYAN COUNTY
STATE OF GEORGIA

Filed in Open Court
TIME 8:50 AM

MEGAN REBECCA RICHARDS,)
)
Plaintiff,)
)
v.)
)
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.)

JAN 18 2017
Rebecca G. Crowe
Clerk of Courts
Bryan County Georgia

CIVIL ACTION
FILE NO. 2015-V-174 (RO)

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes a Pre-Trial Order entered in the above-styled case pursuant to Uniform State Court Rule 7.2:

(1) **The name, address and phone number of the attorneys who will conduct the trial are as follows:**

For Plaintiff:
Bob Cheeley (Lead Counsel)
Patrick Dawson
Keith Pittman
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For Defendants 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., and John Wayne Johnson:

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Additional counsel for U.S. Xpress Enterprises, Inc., U.S. Xpress, Inc., U.S. Xpress Leasing, Inc., New Mountain Lake Holdings, LLC, and Mountain Lake Risk Retention Group, Inc.:

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For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

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(2) The estimated time required for trial:

For Plaintiff:

Plaintiff estimates the time required for trial to be 4-5 business days.

For Defendants 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., and John Wayne Johnson:

6-7 days.

For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

The estimated time required for trial is 5 days.

(3) There are no motions or other matters pending for consideration by the court except as follows:

For Plaintiff:

(1) Plaintiff's Motion for Adverse Inference Charge for Spoliation of Evidence on Defendant Johnson's iPhone, for which Motion the Court deferred its ruling at the Pretrial conference in this matter; (2) Plaintiff's Motions in Limine for which the Court also deferred its rulings, as set forth in the transcript for the Pre-Trial conference; and (3) Plaintiff's deposition designations and objections to Defendants' deposition designations.

For Defendants 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., and John Wayne Johnson:

Defendants' Motions *in Limine* for which the Court has deferred its rulings, as set forth in the transcript from the Pre-Trial Conference, Defendants' Motion *in Limine* to Preclude Any Witness from Relying on the MRI Report and/or Testimony of Dr. Scott Forseen, Defendants' Motion *in Limine* Regarding the Driving Maneuvers of Abbie DeLoach, Defendants' deposition designations and objections to Plaintiff's deposition designations, and Defendants' counter deposition designations.

(4) The jury will be qualified as to relationship with the following:

For Plaintiff:

- a) Is there anyone who is related by blood or marriage to Megan Rebecca Richards?
- b) Is there anyone who is related by blood or marriage to Megan Rebecca Richards?
- c) Is there anyone who is related by blood or marriage to Robert D. Cheeley, Patrick Dawson, Keith Pittman, Billy N. Jones, Noel Osteen, and Carl Varnedoe?
- d) Is there anyone related by blood or marriage to John Wayne Johnson, a defendant in this case who is in prison?
- e) Is there anyone related by blood or marriage to Robert Gordon Tayloe, a defendant in this case who lives in Laurens County, Georgia?
- f) Is there anyone who is related by blood or marriage to Michael D. Hostetter, Patrick N. Arndt, David A. Dial, Richard H. Hill, II, Jackson A. Dial, J. Mark A. Barber, Suneel C. Gupta, Matthew F. Barr, Sherrie M. Brady, or Randi M. Warren?
- g) Is there anyone who is an officer, director, agent, employee, shareholder, member or manager of any of the following companies, or an insurance policy holder with:
 - 1. Total Transportation of Mississippi, LLC
 - 2. U.S. Xpress Enterprises, Inc.
 - 3. U.S. Xpress, Inc.
 - 4. U.S. Xpress Leasing, Inc.
 - 5. New Mountain Lake Holdings, LLC
 - 6. Mountain Lake Risk Retention Group, Inc.

7. Greywolf Logistics, Inc.
8. Arch Insurance Company
9. American International Group, Inc., also known as "AIG"
10. National Fire & Marine Insurance Company
11. National Union Fire Insurance Co.
12. Lexington Insurance Co.
13. Cheeley Law Group
14. Jones Osteen & Jones
15. Nall & Miller, LLP
16. Weinberg Wheeler Hudgins Gunn & Dial, LLC
17. Arnold & Stafford
18. Baker, Donelson, Bearman, Caldwell & Berkowitz P.C.
19. Hawkins Parnell Thackston & Young LLP

For Defendants 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., and John Wayne Johnson:

Defendants 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., and John Wayne Johnson object to the jury being qualified to any insurer other than Lexington Insurance Co. because it is the only insurer for these Defendants with a financial interest remaining in the case.

1. John Wayne Johnson
2. John Stomps
3. Total Transportation of Mississippi, LLC
4. U.S. Xpress Enterprises, Inc.
5. U.S. Xpress Leasing, Inc.
6. New Mountain Lake Holdings, LLC
7. Mountain Lake Risk Retention Group, Inc.
8. Robert D. Cheeley
9. Cheeley Law Group, LLC
10. Billy N. Jones
11. Jones Osteen & Jones
12. Other counsel for Plaintiff having a financial interest in the case
13. U.S. Xpress, Inc.

For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

Counsel for all parties; Megan Rebecca Richards, 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.

(5) a. All discovery has been completed, unless otherwise noted below, and the court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

b. Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or non-joinder of any parties.

(6) The following is Plaintiff's brief and succinct outline of the case and contentions:

This lawsuit is brought by Megan Rebecca Richards, as the "Plaintiff," against Defendants Total Transportation of Mississippi, LLC ("Total"), U.S. Xpress Enterprises, Inc., U.S. Xpress Leasing, Inc., U.S. Xpress, Inc., Mountain Lake Risk Retention Group, Inc., New Mountain Lake Holdings, LLC, John Wayne Johnson ("Johnson"), Robert Gordon Tayloe ("Tayloe"), Greywolf Logistics, Inc. ("Greywolf"), and Arch Insurance Company.¹

On April 22, 2015, at approximately 5:50 AM, seven Georgia Southern nursing students, traveling in two vehicles (a Ford Escape and a Toyota Corolla), were stopped at the end of a line of traffic approximately .8 mile in length on I-16 (GA 404) eastbound in Bryan County, Georgia. The traffic had stopped due to a wreck caused by Defendants Greywolf and its driver Tayloe. That wreck involved a tractor-trailer striking a Winnebago motor home, causing both of those

¹ U.S. Xpress Enterprises, Inc., U.S. Xpress Leasing, Inc., U.S. Xpress, Inc., Mountain Lake Risk Retention Group, Inc., and New Mountain Lake Holdings, LLC are collectively referred to as the "U.S. Xpress Entities." Defendants Tayloe, Greywolf and Arch Insurance Company are collectively referred to as the "Greywolf Defendants."

large vehicles to block the roadway. The Ford Escape driven by Georgia Southern nursing student Abbie DeLoach, had three passengers: Megan Richards, Morgan Bass and Brittney McDaniel. Immediately behind the DeLoach Ford Escape was the Toyota Corolla driven by Georgia Southern nursing student Emily Clark, with passengers Catherine Pittman and Caitlyn Baggett. Both the Ford Escape and the Toyota Corolla were stopped in the right-hand lane of the roadway immediately behind a tanker truck owned by Sheppard Trucking.

A tractor-trailer owned by U.S. Xpress Leasing, Inc. and Total Transportation of Mississippi, LLC and driven by John Wayne Johnson, who was an agent/employee of interstate motor carrier Total Transportation of Mississippi LLC and US Xpress Enterprises, was traveling on I-16 eastbound at a speed of 68 MPH. The weather was clear and the road surface was dry. There was nothing to obscure Defendant Johnson's view. Although Johnson denies he fell asleep, he has no explanation why he did not observe the long line of red tail lights, nor why he did not apply his brakes or steer off the roadway to avoid colliding with stopped traffic. Without any braking or attempt to avoid a collision, the tractor-trailer driven by Johnson violently collided with the rear of the Corolla, shearing the roof off the car and setting it ablaze. The tractor trailer then collided with the rear of the Ford Escape, which caused that passenger vehicle to be violently driven into the rear of the Sheppard tanker truck and overturning twice onto the shoulder of the roadway.

Abbie DeLoach, Emily Clark, Morgan Bass, Catherine Pittman, and Caitlyn Baggett lost their lives. Megan Richards sustained a traumatic brain injury (TBI) due to shearing of the axons in the brain from the extremely high change in velocity (Delta V) which her body experienced in these several collisions between being rear-ended and slammed violently into the rear of a tanker truck. Megan also sustained a fractured shoulder and fractures to her lower spine.

Megan has been diagnosed with Post Traumatic Stress Disorder (PTSD), depression, and anxiety as a result of her injuries suffered in the wreck, as well as fearing that she would die in the violent collision, watching the Toyota burn and learning that three of her friends suffered and died in that vehicle, learning that Abbie DeLoach was pinned behind the steering wheel and died a slow and painful death from asphyxiation, and being reminded that Morgan Bass was ejected and died when her body slammed against the earth during the rollover and was lying face down in the grass just outside Megan's passenger door.

Although Johnson admits he did not see the vehicles stopped ahead of him before the wreck, Defendant cannot explain why he didn't see them. Plaintiff contends there are three possible explanations. First, and most probable, Johnson was likely looking at sexually explicit photos/videos contained in text messages which he had been exchanging with a woman named Anastasia in Shreveport, Louisiana. Johnson admitted in his deposition that he and Anastasia had been exchanging "sexting" messages. It appears that he was likely watching earlier versions of those sext messages because he would not provide the four-digit code to access his iPhone to plaintiff's expert. Second, Johnson could have fallen asleep immediately before the wreck. However, Johnson has denied he fell asleep. Third, Johnson was distracted and not looking where he was going. This too, is unlikely, because Johnson had almost one mile of clear view prior to the point of impact.

Abbie DeLoach undoubtedly saw the tractor trailer approaching at a high rate of speed in her rearview mirrors. The Ford Escape's ECM (black box) reveals that Abbie turned her steering wheel sharply to the right and applied full throttle to the accelerator in a futile attempt to get off the road. All of these facts add to Megan Richard's PTSD, knowing that Abbie was filled with terror before impact.

Johnson admits he negligently caused the April 22, 2015 wreck and his negligence proximately caused Megan Richards injuries. Johnson admits Megan Richards is a totally innocent victim and doesn't contend anyone else is at fault. Total admits it is responsible for Johnson's negligence under the doctrine of *respondeat superior*.

Defendants Total, U.S. Xpress Entities, or one of them, were negligent in failing to adequately equip that tractor Defendant Johnson was driving. The tractor was registered to Defendant U.S. Xpress Leasing, Inc. and Defendant Johnson has stated that the absence of a CB radio in his cab prevented him from learning about the stopped traffic.

Plaintiff contends Johnson was acting in furtherance and in the scope of Total and/or the U.S. Xpress Entities' business and joint venture. Plaintiff contends there was a unity of interest between Total and the U.S. Xpress Entities such that the separate personalities of the respective entities ceased to exist. Plaintiff contends Total and the U.S. Xpress Entities combined their respective property, supplies, and/or labor, and even *a joint bank account* in an undertaking for profit. Defendant U.S. Xpress would make cash advancements to Total to fund operations. Therefore, it is clear that Total could not exist on its own without the financial support of the parent company.

Plaintiff contends Total and the U.S. Xpress Entities are jointly and severally liable under the doctrine of joint venture for the conduct of the other parties to the joint enterprise, as well as their employees, servants, and agents. Plaintiff contends Total was so organized and controlled and its business conducted in such a manner by the U.S. Xpress Entities to make it merely an agent, instrumentality, or alter ego of the U.S. Xpress Entities.

Plaintiff contends Defendant Johnson has been guilty of such willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care sufficient to raise the presumption of

conscious indifference to the consequences. Plaintiff contends this misconduct is so aggravating that it authorizes, warrants, and demands the imposition of punitive damages against Defendants Johnson, Total and the U.S. Xpress Entities.

The Greywolf Defendants admit that Robert Gordon Tayloe ("Tayloe") negligently caused the first wreck, which was approximately .8 mile east; that he was acting in the course and scope of his employment with Greywolf and, that Greywolf is responsible for Tayloe's negligence under the doctrine of *respondeat superior*.

Plaintiff may make an offer of proof as the following: First, the acknowledgment by Total's CEO, John Stomps, and its Safety Director, Robert Viso, that the company violated its own rules when it hired Johnson, due to his deplorable driving record. Plaintiff thus contends that Total and the U.S. Express Entities are guilty of negligently hiring Johnson as a driver. These Defendants are also guilty of negligent training: Johnson did not know it was a violation of federal law to text while driving; and of negligent retention: an incomplete audit was performed to weed out "bad hires" of Total's former recruiting director, Becky Brandt, but it did not include all hiring done by Brandt. Two or three drivers were fired, yet, Johnson, who was hired 2 weeks before the audit's start date, escaped having his file reviewed. Therefore, Total and the U.S. Express Entites had a second chance to avoid this tragedy but negligently performed the audit. Further, Defendant U.S. Xpress Entities, or one of them, were negligent in the training of Total's employees, including Brandt, to strictly adhere to the driver hiring policies, which were established by U.S. Xpress. According to Stomps, Viso and Fuller, Brandt was terminated because she violated the hiring policies but no action was taken by any of the defendants to review *all drivers* who were hired under Brandt's tenure.

(7) a. The following is Defendants 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., and John Wayne Johnson's brief and succinct outline of the case and contentions:

Defendants 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., and John Wayne Johnson object to Plaintiff's "brief and succinct" outline of the case. The outline contains argumentative, speculative, irrelevant, incorrect, and prejudicial commentary and is otherwise erroneous. The outline also violates several Orders from this Court. For instance, the first paragraph on page 8 violates the Court's ruling that all evidence of any conscious pain and suffering that the other women in the accident might have experienced is precluded at trial. Plaintiff's counsel even represented in open court that they were not going to present such evidence. (*See* Pre-Trial Hearing Transcript, p. 129 (ATTORNEY CHEELEY: "We're not going to put in any evidence that these girls had conscious pain and suffering.")). The outline also discusses evidence which should be precluded under Georgia's "Impact Rule." (*Id.*).

The second paragraph on page 8 discussing why Johnson did not see the vehicles in front of him contains rank speculation regarding Johnson's alleged text messaging and is false regarding Johnson not providing his passcode. These issues are also subject to the pending Motions *in Limine* regarding Johnson's alleged sexting and any reference to his iPhone passcode.

The third paragraph on page 8, discussing Abbie DeLoach's driving maneuvers just prior to the accident, is in direct violation of the Court's ruling on the conscious pain and suffering of the other women involved in the accident. It is also irrelevant and prejudicial because Plaintiff does not recall Ms. DeLoach making these maneuvers prior to impact and because Ms. DeLoach's pain and suffering is not at issue in this case.

The third and fourth paragraphs on page 9 are all irrelevant because the claims of punitive damages against Total and the U.S. Xpress Defendants have been dismissed, and the direct negligence claims as to negligent hiring, training, retention, supervision, qualification, entrustment, maintenance, inspection, service and repair have also been dismissed. Defendants also object to the claim that Johnson stated that the absence of a CB radio in his cab prevented him from learning about the stopped traffic. This is a mischaracterization.

Defendants object to any claim of punitive damages against Johnson proceeding at trial, as the Complaint has never been amended.

The last paragraph on page 10 is irrelevant because the punitive damages claim as to the claims for negligent hiring, training, retention, supervision, qualification, entrustment, maintenance, inspection, service and repair have been dismissed, as have the claims of independent negligence.

This action arises out of two separate tractor-trailer accidents which occurred on I-16 Eastbound near mile marker 143 in Bryan County, Georgia on April 22, 2015. The first accident occurred in the early morning hours when a tractor-trailer driven by Defendant Robert Gordon Tayloe ("Mr. Tayloe") in the course and scope of his employment with Defendant Greywolf Logistics, Inc. ("Greywolf") collided with a Winnebago ("First Accident"). As a result of the First Accident, traffic on I-16 Eastbound backed up while emergency crews worked to remove the vehicles and other debris from the Interstate.

At approximately 5:45 a.m., another accident occurred after a tractor-trailer driven by Defendant John Wayne Johnson ("Mr. Johnson"), in the course and scope of his employment with Defendant Total Transportation of Mississippi, LLC ("Total"), struck a Toyota Corolla and then a Ford Escape ("Escape") that were at the end of the backed up traffic ("Second Accident"). Megan Richards ("Ms. Richards"), who was a passenger in the Escape, was injured as a result of the Second Accident. Mr. Johnson has admitted that his negligence caused the Second Accident and certain injuries to Ms. Richards. Defendant Total has admitted that Mr. Johnson was in the course and scope of his employment at the time of the Second Accident and that it is vicariously liable for Mr. Johnson's negligence.

Mr. Johnson denies that he intended to cause the Second Accident, and there is no evidence showing otherwise. The U.S. Xpress Entities further deny Plaintiff's joint venture and alter ego claims. These Defendants contend that they are totally separate entities, and that Total Transportation was not acting under their control or in furtherance of their business at the time of the accident.

Finally, Total and the U.S. Xpress Entities deny that they are liable to Plaintiff for punitive damages while Johnson, Total and the U.S. Xpress Entities deny that they are liable to

Plaintiff for attorneys' fees.

b. The following is Greywolf Defendants' brief and succinct outline of the case and contentions:

Defendant GreyWolf employed Mr. Robert Tayloe on the date of the subject incident. Arch Insurance Company insures GreyWolf and Mr. Tayloe.

Defendants deny that Plaintiff is entitled to recover in this action, as the second collision which involved Plaintiff was too remote in time and distance to be considered a proximate result of any act or omission of Tayloe.

Defendants further deny that Plaintiff is entitled to the damages which she alleges in this case.

(8) The issues for determination by the jury are as follows:

For Plaintiff:

- CPM
- a) ~~Whether Defendant Total and the U.S. Xpress Entities, or any one of them, negligently failed to adequately equip the tractor that Defendant Johnson was driving with devices which would have allowed this wreck to be avoided;~~
 - b) Whether Defendant Total and the U.S. Xpress Entities, or any one of them, are to be considered as one corporate common enterprise, whether Defendant Total and the US Xpress Entities, or any one of them, were operating as dual agents, or whether the separate identities of Defendant Total and the US Xpress Entities, or any one of them, are to be otherwise disregarded under the law;
 - c) Whether the U.S. Xpress Entities are liable for damages for which Defendants Johnson and Total are responsible;
 - d) Whether Defendant Tayloe was negligent in causing the April 22, 2015 collisions, for which negligence Defendant Greywolf is liable under the doctrine of *respondeat superior*;
 - e) The amount of compensatory damages to be awarded to Plaintiff Megan Richards for her physical, mental and psychological pain and suffering;
 - f) The apportionment of damages among the Defendants;
 - g) Whether the conduct of Defendant Johnson manifested willful misconduct, malice, fraud,

wantonness, oppression, or an entire want of care to raise the presumption of conscious indifference to the consequences and, if so, the amount of punitive damages to be awarded for such misconduct against Defendants Johnson, Total, the U.S. Xpress Entities, or any one of them.

For Defendants 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., and John Wayne Johnson:

These Defendants object to the issue of whether Total and/or the U.S. Xpress Entities negligently failed to adequately equip the tractor that Johnson was driving to be submitted to the jury for consideration. This Court has dismissed all claims of independent negligence against Total and the U.S. Xpress.

These Defendants have admitted that (1) Mr. Johnson's conduct was negligent; (2) Mr. Johnson's conduct was the proximate cause of the Second Accident and certain injuries to Ms. Richards; and (3) Mr. Johnson was working within the scope of his employment with Total when the Second Accident occurred. The following issues remain for jury determination:

- (a) The amount of Plaintiff's compensatory damages;
- (b) Whether Mr. Tayloe was negligent in causing the First Accident;
- (c) Whether Defendant Greywolf is liable for Mr. Tayloe's alleged negligence under the doctrine of *respondeat superior*;
- (d) Whether Greywolf negligently hired, trained, retained, supervised, and/or entrusted Mr. Tayloe as a driver of a commercial vehicle;
- (e) Whether Greywolf failed to ensure that its tractor-trailer and driver complied with federal and state laws and regulations;
- (f) Whether Greywolf failed to properly inspect, maintain, service, or repair the tractor Tayloe was driving;
- (g) Whether Johnson was an agent and/or employee of the U.S. Xpress Entities;
- (h) Whether Plaintiff has shown, by clear and convincing evidence, that Johnson acted with willful misconduct, malice, fraud, wantonness, oppression, and/or an entire want of care sufficient to raise the presumption of conscious indifference to the consequences;

- (i) The amount of punitive damages, if any;
- (j) Whether the U.S. Xpress Entities are liable to Ms. Richards under Plaintiff's joint venture, alter ego and agency theories;

For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

Negligence, causation and damages.

(9) Specifications of negligence including applicable code sections are as follows:

For Plaintiff:

Plaintiff contends Johnson failed to operate his vehicle with due care, in violation of O.C.G.A. § 40-6-241. Plaintiff contends Johnson received and/or sent sexually explicit text messages with at least one young woman while operating his commercial vehicle in violation of O.C.G.A. § 40-6-241.2, and that Defendant Johnson was likely looking at those text messages at the time of this collision. Plaintiff contends Johnson drove a vehicle with a reckless disregard for the safety of persons and property, in violation of O.C.G.A. § 40-6-390. Plaintiff contends Johnson followed too closely, in violation of O.C.G.A. § 40-6-49.

Plaintiff contends Johnson failed to operate the vehicle in a safe and prudent manner, thereby placing the lives and well-being of the public in general, including the two car loads of Georgia Southern nursing students, including Megan Richards in particular, in grave danger; failed to operate the vehicle in accordance with state and federal law and regulations; traveled too fast for the conditions; and failed to keep a proper lookout and safe distance from traffic immediately in front of his tractor trailer.

Plaintiff also contends Johnson 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. §§ 383, 384, 390-395, including without

limitation, 49 C.F.R. § 392.80.

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

Plaintiff contends the U.S. Xpress Entities were negligent in the training of Total's employees to strictly adhere to the driver hiring policies established by U.S. Xpress; in not taking action to review all drivers who were hired under Brandt's tenure; and in failing to adequately equip the tractor Defendant Johnson was driving with safety features which would have alerted Johnson of the first wreck, such as a CB radio and autonomous braking feature.

Plaintiff contends Tayloe failed to operate his vehicle with due care, in violation of O.C.G.A. § 40-6-241. Plaintiff contends Tayloe followed too closely, in violation of O.C.G.A. § 40-6-49. Plaintiff contends Tayloe traveled too fast for the conditions; and negligently blocked or obstructed a busy roadway, thereby placing in danger the lives and welfare of the motoring public in general and Megan Richards in particular.

For Defendants:

Defendants 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., and John Wayne Johnson object to the allegations concerning Johnson's allegedly sending or receiving text messages from a female acquaintance, as that has been proven to be false and is the subject of pending Motions *in Limine*.

Plaintiff's second paragraph, referring to "placing the lives and well-being of the public in general" is a violation of the Reptile rule.

Any and all allegations of negligence as to Total Transportation of Mississippi, LLC, U.S. Xpress Enterprises, Inc., U.S. Xpress, Inc., U.S. Xpress Leasing, Inc., New Mountain Lake Holdings, LLC, and Mountain Lake Risk Retention Group, Inc. are irrelevant because the punitive damages claim as to their alleged negligent hiring, training, supervision, retention, qualification, entrustment, maintenance, inspection, service and repair have been dismissed, as

have the claims of independent negligence.

(10) If the case is based on a contract, either oral or written, the terms of the contract are as follows (or, the contract is attached as an Exhibit to this order).

Not applicable.

(11) The types of damages and the applicable measure of the damages are stated as follows:

For Plaintiff:

- 1) Plaintiff may seek special damages for her medical expenses, in the amounts shown by the evidence.
- 2) Plaintiff will seek the following compensatory damages, all of which are measured by the enlightened conscience of fair and impartial jurors:
 - a. Megan Rebecca Richards' fright, shock, and terror; and
 - b. Megan Rebecca Richards' mental, psychological, and physical pain and suffering.
- 3) Plaintiff seeks punitive damages against Defendant Johnson, Total, the U.S. Xpress Entities, or any one of them, which are measured by the enlightened conscience of fair and impartial jurors.

For Defendants 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., and John Wayne Johnson:

Defendants Johnson, Total and the U.S. Xpress entities object to Megan Rebecca Richards' post-impact fright, shock, and terror as not recoverable under Georgia law.

Total and Mr. Johnson have admitted that Mr. Johnson was negligent and that Mr. Johnson's negligence proximately caused Plaintiff's damages and injuries occurring in the accident to the extent they are proven at trial. Thus, Plaintiff is entitled to compensatory damages to the extent that such special and compensatory damages are proven at trial.

For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

Medical Expenses
Pain and suffering

(12) If the case involves divorce, each party shall present to the court at the pre-trial conference the affidavits required by Rule 24-2.

Not Applicable.

(13) The following facts are stipulated:

For Plaintiff:

Plaintiff's proposed Stipulations have been provided to the Defendants and the parties will consider same in advance of trial.

For Defendants 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., and John Wayne Johnson:

1. Mr. Johnson was negligent in his operation of his tractor-trailer on April 22, 2015;
2. Mr. Johnson's negligence was the proximate cause of the Second Accident;
3. Mr. Johnson's negligence was the proximate cause of Ms. Richards' injuries occurring in the accident to the extent her injuries are proven at trial;
4. Mr. Johnson was acting within the course and scope of his employment with Total at the time of the Second Accident; and
5. Total is liable to Ms. Richards under the doctrine of *respondeat superior* for the negligence of Mr. Johnson.

For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

1. Defendant Greywolf Logistics, Inc., hereafter referred to as "Defendant Greywolf," is engaged in business as an interstate motor carrier transporting goods for compensation.
2. On April 22, 2015, Defendant Robert Gordon Tayloe, hereafter referred to as "Defendant Tayloe," was operating a tractor-trailer in furtherance of Defendant Greywolf's business.
3. During the early morning of April 22, 2015, a wreck occurred on I-16 Eastbound near mile marker 143 in Bryan County, Georgia, involving the tractor-trailer driven by Defendant Tayloe and a Winnebago motor home.
4. Defendant Tayloe negligently caused the April 22, 2015 wreck involving the tractor-trailer he was driving in the scope of his employment with Greywolf and the motor home.

5. As a result of this collision, both the tractor-trailer Defendant 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.
6. Eastbound traffic on I-16 was backed up following this collision, while emergency crews worked to clean up and remove the large, overturned vehicles from the roadway.
7. Defendant Arch Insurance Company provides liability insurance coverage to Defendant Greywolf for this collision.

(14) The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiff or Defendants. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

The parties have agreed to exchange any exhibits identified by an opposing party from the exhibit lists exchanged between the parties pursuant to the Agreed Scheduling Order. The parties reserve the right to amend their list of exhibits prior to the time of trial. The parties' respective exhibit lists will be submitted to the Court at the start of trial, or at such other time as directed by the Court. The parties will mark their exhibits in advance of trial, and will present their final lists of exhibits to the Court at the start of trial.

The parties stipulate to the authenticity of documents produced by the parties in response to discovery requests in this case and all other cases arising out of the April 22, 2015 wreck.

The parties reserve all objections to another party's exhibits until such time as the parties have had the opportunity to inspect the opposing parties' documentary and physical evidence.

For Plaintiff:

Plaintiff respectfully suggests to the Court and opposing parties that the party then presenting evidence during trial identify, each morning of trial and if necessary, after the lunch

break each day of trial, those exhibits they, it, or he plan to present to the jury in the next session, so any objections thereto can then be heard by the Court in advance.

For Defendants 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., and John Wayne Johnson:

Defendants object to any items listed in Plaintiff's Exhibit List to the extent that said items are generally, rather than specifically, identified and it is impossible for Defendants to determine if said documents and things have been previously identified and produced. Defendants further object to Plaintiff's list of documents and things to the extent that any of said documents and things were identified for the first time in Plaintiff's portion of the Consolidated Pre-Trial Order and these Defendants have not been permitted to inspect and review said documents and things or to elicit testimony concerning said documents and things. Defendants further object to the extent that items identified in Plaintiff's portion of the Pre-Trial Order are unrelated to Plaintiff's joint venture, alter ego and agency claims, and/or Plaintiff's injuries and/or damages.

Defendants reserve the right to supplement and amend their exhibit list. Further, Defendants do not stipulate to the authenticity of any exhibit listed by the Plaintiff until such time as the marked exhibit is made available for inspection. Finally, Defendants reserve the right to object to the exhibits listed on any other basis authorized by law.

Defendants Johnson, Total and the U.S. Xpress Entities do not agree to stipulate to the use or authenticity of any photographs until they have had an opportunity to review the photographs and raise proper objections.

For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

- 1) All exhibits attached to depositions taken in the case;

- 2) The transcripts of the depositions taken in the case, if needed for purpose of impeachment or unavailability of a witness;
- 3) Documents related to the subject accidents;
- 4) Plaintiff's medical records;
- 5) All documents listed by Plaintiff and Co-Defendants herein;
- 6) All documents produced by the Plaintiff and Defendants in discovery;
- 7) Robert Tayloe's employment file;
- 8) Accident Reports;
- 9) All documents exchanged between the parties;
- 10) Driver logs; and,
- 11) Defendants reserve the right to supplement this list prior to trial.

(15) Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows:

See Plaintiff's Motions in Limine; and Plaintiff's Motion for Adverse Inference Charge for Spoliation of Evidence on Defendant Johnson's iPhone.

Also, Plaintiff does anticipate filing trial briefs to address evidentiary and other issues before trial and as such issues may arise.

(16) a. Special authorities relied upon by Defendants 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., and John Wayne Johnson relating to peculiar evidentiary or other legal questions are as follows:

Defendants refer this Court to the legal authorities cited in their Motions for Summary Judgment, Motions *in Limine*, Brief in Opposition to Plaintiff's Omnibus Motions *in Limine*, Motion for Reconsideration as to the Court's Ruling on the "Impact Rule" Motion for Summary Judgment and Motion *in Limine*, Brief in Opposition to Plaintiff's Motion for an Adverse

Inference Instruction, and Brief in Opposition to Plaintiff's Motion for Reconsideration as to the Court's Ruling on these Defendants' Motions for Summary Judgment on the Punitive Damages and Independent Negligence Claims. Defendants further refer this Court to any trial brief that Defendants may file prior to trial. Defendants reserve the right to file additional motions *in limine* and trial briefs as are warranted by the evidence and as permitted under Georgia law. Defendants reserve the right to supplement their response to this section.

b. For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

None.

(17) All requests to charge anticipated at the time of trial will be submitted to the Court at the start of the trial.

The parties reserve the right to submit additional requests after the start of the trial to cover unanticipated points.

(18) The testimony of the following persons may be introduced by depositions:

For Plaintiff:

- a) Rob Robenholt
- b) Dr. Ellen Shaver
- c) Dr. Scott Forseen
- d) Dawn Gorey
- e) Becky Brandt
- f) Max Fuller
- g) John Wayne Johnson
- h) Dr. Michael Lichtman
- i) John Stomps

- j) Robert Viso
- k) Denise Hill
- l) Dr. Jeremy Beckworth
- m) Plaintiff reserves the right to introduce all or part of the deposition of any person who has been deposed in this case and is unable to attend for a legally sufficient reason.
- n) Plaintiff also reserves the right to introduce part or all of any other deposition taken in the case to which Plaintiff does not object.

Any objections to the depositions or questions or arguments in the depositions shall be called to the attention of the Court prior to trial, in accordance with the Agreed Scheduling Order. The parties have designated those portions of depositions they may use at trial, and have noted objections to those portions designated by other parties. There will likely remain objections which the Court will have to decide that the parties have not been able to resolve amongst themselves.

Plaintiff notes that videotaped depositions are ordinarily edited for use at trial pursuant to agreement about or Court rulings about objections to designated portions, and that editing process takes some time. The alternative is to edit out all objections (to the extent that can be done, e.g., except in instances when counsel was “talking over” the witness) so that the videotaped depositions may be played at trial without the jury hearing such objections, whereupon any party insisting upon an objection can stop the playing of the deposition and take that objection up with the Court.

For Defendants 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., and John Wayne Johnson:

1. John Wayne Johnson
2. John Stomps

3. Rebecca Brandt
4. Dawn Gorey
5. Robert Viso
6. Max Fuller
7. Dr. Ellen Shaver, M.D.
8. Dr. Michael Lichtman
9. Denise Hill
10. Dr. William Beckworth, M.D.
11. Dr. Scott Forseen, M.D.
12. Robert Stone
13. William Robenolt
14. Dr. Rachel Lacy
15. Dr. John Sass
16. Jacob Lane
17. Dr. Kellie Lane, M.D.
18. Amanda Richards
19. Dalton Richards

Defendants reserve the right to introduce deposition testimony of any and all witnesses who are not subject to the subpoena power of this Court or who are otherwise unavailable to testify at trial. Any objections to the depositions or questions or arguments in the depositions shall be called to the attention of the Court prior to trial.

For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

Any person who is deemed to be unavailable per Georgia law.

(19) The following are lists of witnesses the

a. Plaintiff will have present at trial:

Megan Rebecca Richards

b. Plaintiff may have present at trial:

1. W. Jeremy Beckworth, MD
2. Deputy Daniel Brackson
3. Rebecca Brandt
4. G. Bryant Buchner
5. Trooper Roger Cason
6. James M. Chambers
7. Vinod Chopra, M.D.
8. Caroline Coon
9. Taylor Cox
10. Michael Daniels, PhD.
11. William Delp, DO
12. Christy Dubert, PhD.
13. Deputy James Randall Fields
14. Max Fuller
15. Alexis M. Gage, M.D.
16. Sgt. Ben Garrett
17. J.P. Gingras
18. Dawn Gorey
19. Marisa Griffiths
20. James Earl Harmon
21. Denise Hill, LCSW
22. Dalton Hunter
23. Greg L. Johnson
24. John Wayne Johnson
25. K. Kigore
26. Kourtney Knight
27. Rachel Lacy, Psy.D
28. Kellie Lane, MD
29. Trooper Richard Lester
30. Michael Lichtman, MD
31. David McAuley
32. Terry McCorkel
33. Jamie McBurney
34. Brittany McDaniel
35. Deputy Lewis McLamb
36. Terry Medley
37. Cayne Monroe
38. Victoria Pape

39. Amanda Richards
40. Dalton Richards
41. Megan Richards
42. Melissa Richards
43. William Robenolt
44. Armita Roberts
45. Sgt. C.N. Rodenwolt
46. John Sass, PhD.
47. Ellen Shaver, MD
48. John D. Stomps
49. Randy Stone
50. Robert Gordon Tayloe, III
51. Ryan Todd
52. Anastasia Tillman
53. Harold Ryan Todd
54. Trooper Colin Wheeler
55. Christopher J. Wise
56. Amber Wrens, R.N.
57. Jacob Lane
58. Scott Forseen, MD
59. Kim DeLoach McQuaig

Plaintiff also reserve the right to call any person on the witness lists submitted by Defendants Johnson, Total, the U.S. Xpress Entities, Greywolf, Arch, and Tayloe to whom Plaintiff do not object, or any other witnesses who were properly identified as witnesses in the case or whose depositions were taken in the case, as well as any so called corporate representatives.

- c. **Defendants 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., and John Wayne Johnson will have present at trial:**

None.

- d. **Defendants 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., and John Wayne Johnson may have present at trial:**

1. John Wayne Johnson

2. John Stomps
3. Rebecca Brandt
4. Dawn Gorey
5. Robert Viso
6. Max Fuller
7. David Costello
8. Lisa Pate
9. Any witness listed as a “will” or “may” call witness by Plaintiff
10. Any individual needed for impeachment or rebuttal or as may be necessary to authenticate documents and things
11. Corporate representatives of each of the US Xpress and Mountain Lake entities to discuss internal corporate structure and relationships between the entities.

Defendants reserve the right to supplement their witness list prior to trial should it become necessary as a result of Plaintiff’s identification of documents, things, or witnesses for the first time in Plaintiff’s portion of the Pre-Trial Order.

e. Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe will have present for trial:

None.

f. Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe may have present for trial:

Robert Tayloe;

Tisha Phillips;

Jennifer Moye;

Anthony Phillips; and,

Yale H. Caplan, Ph.D.

Any witness listed by Plaintiff herein

Any witness identified during discovery.

Defendants reserve the right to supplement this list prior to trial. Defendants further object to any reference or testimony by any individual not identified by Plaintiff in discovery.

Opposing counsel may rely on representation by the designated party that he will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

(20) The form of all possible verdicts to be considered by the jury are as follows:

For Plaintiff:

Plaintiff will submit a proposed verdict form prior to verdict.

For Defendants 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., and John Wayne Johnson:

Defendants will submit a proposed verdict form prior to verdict.

For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

Defendants reserve the right to prepare a verdict form at trial.

(21) a. The possibilities of settling the case are:

For Plaintiff:

Not even close.

For Defendants 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., and John Wayne Johnson:

None.

For Defendants Greywolf Logistics, Inc., Arch Insurance Company, and Robert Gordon Tayloe:

The possibilities of settling the case are fair at this time.

- b. **The parties request that the case be reported.**
- c. **The cost of take-down will be paid for equally among the parties, split 1/3 Plaintiff, 1/3 Defendants Johnson, Total, and the U.S. Xpress Entities, and 1/3 Defendants Tayloe, Greywolf, and Arch.**
- d. **Other matters: 12 jurors will be required at trial.**

Respectfully submitted by,

For the Plaintiff, Megan Rebecca Richards:

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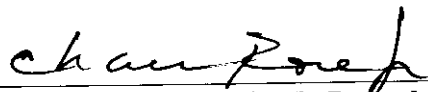
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*Attorney for Defendants Arch Insurance Co.,
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Tayloe*

**It is hereby ordered that the foregoing, including the attachments thereto, constitute the
PRE-TRIAL ORDER in the above case and supersede the pleadings which may not be
further amended except by order of the court to prevent manifest injustice.**

SO ORDERED this 18th day of January, 2017.



HONORABLE Charles P. Rose, Jr.
Judge, Superior Court of Bryan County