

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

RICKY E. YOUNG

Plaintiff,

v.

**NESTLE TRANSPORTATION CO. and
ACE AMERICAN INSURANCE
COMPANY,**

Defendants.

*
*
*
*
*
*
*
*
*
*
*
*
*

CIVIL ACTION FILE NO: 5:12-CV-43

COMPLAINT FOR DAMAGES

NOW COMES the Plaintiff in the above styled action and herewith states his complaint against the Defendants by showing the court the following:

1.

Plaintiff is a resident of the State of Georgia and resides in Kathleen, Georgia.

2.

The Defendant Nestle Transportation Co. (hereinafter referred to as “Nestle”) is a foreign corporation organized under the laws of the State of Illinois. Said corporation is not registered to do business in the State of Georgia, but does conduct business within the Middle District of Georgia. Said corporation maintains its principal office in Dekalb, Illinois and is subject to the jurisdiction and venue of this court by service of process upon its registered agent, C T Corporation System at 208 S. LaSalle Street, Suite 814, Chicago, Illinois 60604.

3.

The Defendant ACE AMERICAN INSURANCE COMPANY is a foreign insurance corporation organized under the laws of the State of Pennsylvania. Said corporation is registered to do business in the State of Georgia and conducts business within the Middle District of Georgia. Said corporation maintains its principal office in Philadelphia, Pennsylvania and is subject to the jurisdiction and venue of this court by service of process upon its registered agent, Mr. Mark G. Irwin, 500 Colonial Center Parkway, Suite 200, Roswell, Fulton County, Georgia 30076.

4.

Jurisdiction is proper in this Court pursuant to 28 U.S.C. Section 1332 as there exists a complete diversity of citizenship between parties and the amount of controversy is in excess of \$75,000.00. In addition, this case involves federal questions which invoke the jurisdiction of this Court pursuant to 28 U.S.C. Section 1331. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391 as the events giving rise to this lawsuit occurred within this district.

5.

On or about December 5, 2010, a collision occurred between the vehicle in which Plaintiff was a passenger and a 2009 Freightliner tractor trailer bearing vehicle identification number 1FUPCDZBXXXPA18424, tag number P690666 with trailer tag number T440545. Said tractor trailer truck was owned by Nestle Transportation Company. Said collision occurred in the following manner: At approximately 2:01 a.m., the 2000 Honda Civic in which Plaintiff was a passenger was traveling southbound on Interstate Highway 75 in Peach County, Georgia a safe distance behind the 2009 Freightliner referenced above when suddenly and without warning the drive shaft of the tractor trailer rig became detached from the rig's undercarriage, dropped onto the roadway and collided with the vehicle in which Plaintiff was traveling. The violent impact of the drive shaft destroyed the right front tire and rim of the Honda Civic causing the vehicle to smash into the ditch embankment along the right shoulder of the road.

6.

The sole and proximate cause of the aforementioned collision was the negligence of the driver of the 2009 Freightliner tractor-trailer rig by operating a vehicle in an unsafe state of repair and not in proper working order. The negligent driver of the 2009 Freightliner admitted at the scene that the drive shaft had fallen off of his vehicle and that he made an attempt to remove it from the roadway following the collision.

7.

At all times relevant, the driver of the 2009 Freightliner tractor-trailer rig was operating said truck under the authority of and with the permission of the Defendant "Nestle". Therefore, Defendant "Nestle" is liable for the negligence of the driver of their vehicle under the doctrine of respondeat superior.

8.

At all times relevant, the truck owned and operated by Defendant “Nestle” was insured by Defendant ACE AMERICAN INSURANCE COMPANY as the primary insurer through policy number ISAH08250303 AOS NHI. Evidence of coverage was posted as required by the laws of the United States and State of Georgia. Said insurance is required by federal and Georgia law for the protection of the general public against injuries caused by the operation of motor carrier vehicles. Plaintiff is a third party beneficiary to said insurance coverage. Therefore, the Defendant ACE AMERICAN INSURANCE COMPANY is proper party to this action pursuant to O.C.G.A. Section 46-7-12.1.

9.

As a result of the forces of energy created by the collision Plaintiff experienced an onset of a throbbing type pain in his right hip, right arm and the right side of his neck. On December 28, 2010, Plaintiff consulted Khalid Al-Sharif, M.D. of Houston Medical Associates. The examination revealed a contusion to the right shoulder with a rotator cuff tear, contusion to the lumbar spine and right SI joint with possible lumbar radiculopathy. Dr. Al-Sharif ordered an MRI after Plaintiff reported continuous pain in subsequent visits. Said MRI was performed on January 19, 2011 and revealed impingement and partial tears of the supraspinatus tendon and subscapularis tendon of the rotator cuff along with joint effusion and subacromial fluid collection related to the rotator cuff pathology. Dr. Al-Sharif then referred Plaintiff to Kinnebrew Orthopedic & Sports Medicine. On June 15, 2011 Todd Kinnebrew, M.D. performed an arthroscopy of the right shoulder with subacromial decompression, Mumford arthroplasty and debridement of the partial rotator cuff tear and biceps tendon tear. Plaintiff subsequently underwent an extensive regimen of rehabilitative physical therapy at Elite Sport & Spine in Hawkinsville, GA. The injuries suffered by Plaintiff are severe and did then, do now and, in all likelihood, will in the future cause him to experience pain and suffering.

10.

As the direct and proximate result of undergoing the medical care for the treatment of his injuries, Plaintiff has incurred numerous medical expenses for the treatment of his injuries. To date, Plaintiff has incurred the following medical expenses:

- a) Houston Medical Associates \$ 850.00
- b) Kinnebrew Orthopedics & Sports Medicine \$ 8,490.00
- c) Perry Hospital/Houston Healthcare \$ 11,785.43
- d) Robins Anesthesia \$ 949.00
- e) Elite Physical Therapy \$ 1,950.00

11.

At the time of the subject collision, Plaintiff was gainfully employed. As the direct and proximate result of his injuries, Plaintiff has been unable to work since the day of the collision and has incurred substantial lost wages. As his injuries are severe and permanent, Plaintiff will, in all likelihood, incur additional lost wages in the future.

12.

The sole and proximate cause of the Plaintiff's injuries and damages was the negligence of the driver of the 2005 Freightliner tractor-trailer rig. Under the doctrine of respondeat superior, Defendants are liable for the negligence of the driver.

WHEREFORE, Plaintiff demands a trial by a jury of twelve and prays for judgment against the Defendants, jointly and severally in the amount of \$275,000.00 in general damages for Plaintiff's pain, suffering and loss of use of his body; for special damages in the amount of medical expenses and lost wages as shown by the evidence; together with the costs of this action.

405 Love Avenue
Tifton, GA 31794
(229) 388-0082

/s/ Craig Alan Webster
CRAIG ALAN WEBSTER
Attorney for Plaintiff
Ga. State Bar No.: 744950

688 Walnut Street
Suite 103
Macon, GA 31201
(478) 746-1468

/s/ Blake J. Smith
BLAKE J. SMITH
Attorney for Plaintiff
Ga. State Bar No.: 654855

423 N. Tift Avenue
Tifton, GA 31794
(229) 387-2555

/s/ Gary C. Vowell, Jr.
GARY C. VOWELL, JR.
Attorney for Plaintiff
Ga. State Bar No.: 510788

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ricky E. Young

(b) County of Residence of First Listed Plaintiff Dodge (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Craig Alan Webster, 405 Love Avenue, Tifton, Georgia 31794 (229) 388-0082; cwebster@twflaw.com

DEFENDANTS

Nestle Transportation Co. and ACE American Insurance Company

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL INJURY, PERSONAL PROPERTY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Diversity action brought under 28 U.S.C. Section 1332

Brief description of cause: Automobile collision

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

5:12-CV-43

DATE SIGNATURE OF ATTORNEY OF RECORD

02/02/2012

Craig Alan Webster

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.