

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

**PERRY THOMAS, Individually and as the
Surviving Spouse of JENNIFER PARTEE
THOMAS, Deceased, and as Guardian and
Next Friend of ANDREW PAYNE
THOMAS,**

**DARRELL RODNEY PARTEE,
Individually and as Administrator of the
Estate of JENNIFER PARTEE THOMAS,
Deceased, and**

MARY DENISE PARTEE,

Plaintiffs,

v.

**YURIEN B. CHAVEZ,
US XPRESS TRANSPORT CORP., and
PROGRESSIVE EXPRESS INSURANCE
COMPANY,**

Defendants.

CIVIL ACTION FILE NO.

JURY TRIAL DEMANDED

COMPLAINT

COME NOW Perry Thomas, Individually and as the Surviving Spouse of Jennifer Partee Thomas, Deceased, and as Guardian and Next Friend of Andrew Payne Thomas, Darrell Rodney Partee, Individually and as Administrator of the Estate of Jennifer Partee Thomas, Deceased, and Mary Denise Partee, Plaintiffs herein, and file this Complaint against Yurien B. Chavez, US Xpress Transport Corp., and Progressive Express Insurance Company, showing the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1.

Plaintiff Perry Thomas (“Plaintiff Thomas”) is the surviving spouse of Jennifer Partee Thomas (“Jennifer Thomas”) and the guardian and next friend of their minor son, Andrew Payne Thomas (“Payne Thomas”).

2.

Plaintiff Thomas is a citizen of the State of Georgia domiciled in Gray, Jones County, Georgia, and submits to the jurisdiction of this Court.

3.

Plaintiff Darrell Rodney Partee (“Defendant Darrell Partee”) is a citizen of the State of Georgia domiciled in Gray, Jones County, Georgia, and submits to the jurisdiction of this Court.

4.

Plaintiffs Darrell Partee is also the Administrator of the Estate of Jennifer Thomas.

5.

At the time of her death, Jennifer Thomas was a citizen of the State of Georgia domiciled in Gray, Jones County, Georgia.

6.

Plaintiff Mary Denise Partee (“Plaintiff Denise Partee”) is a citizen of the State of Georgia domiciled in Gray, Jones County, Georgia, and submits to the jurisdiction of this Court.

7.

Defendant Yurien B. Chavez (“Defendant Chavez”) is a citizen of the State of Florida domiciled in Miami, Florida and may be served with summons and process at 5077 NW 7th Street, Apt. 1515, Miami, FL 33126-3466.

8.

Defendant US Xpress Transport (“Defendant US Xpress Transport”) is a Florida corporation and may be served with summons and process by serving its registered agent, Yordanis Suarez, 11230 NW 5 Terrace, Miami, FL 33172.

9.

At all times relevant hereto, Defendant US Xpress was an interstate motor carrier operating on the roads of the State of Georgia.

10.

Defendant Progressive Express Insurance Company (“Defendant Progressive Express”) is an Ohio corporation authorized to transact business in Georgia. Defendant Progressive Express may be served with summons and process by serving its registered agent, Linda Banks c/o CT Corporation System, 289 South Culver Street, Lawrenceville, GA 30046-4805.

11.

The amount in controversy exceeds \$75,000.

12.

This Court has jurisdiction over this action. 28 U.S.C.A. § 1332(a)(1).

13.

Venue is proper in this Court as a substantial part of the events or omissions giving rise to the claim occurred in the Middle District of Georgia. 28 U.S.C. § 1391(b)(2).

GENERAL ALLEGATIONS

14.

Plaintiffs re-allege and incorporate paragraphs 1-13 above as if they were fully restated verbatim herein.

15.

On August 11, 2019, Jennifer Thomas was driving a 2016 Acura MDX southbound on I-75 in Peach County, Georgia.

16.

Jennifer's mother Plaintiff Denise Partee was riding in the passenger seat of Jennifer's vehicle.

17.

Jennifer's father Plaintiff Darrell Partee and minor son Payne were riding in the back seat of the vehicle.

18.

On the same date and at the same time, Defendant Chavez was operating a commercial tractor-trailer northbound on I-75 in Peach County, Georgia.

19.

The tractor-trailer at issue was owned by Defendant US Xpress Transport.

20.

At all times material to this case, Defendant Chavez was an employee or agent of Defendant US Xpress Transport acting within the course and scope of his employment or agency.

21.

As Defendant Chavez drove the tractor-trailer northbound, two of the wheels or tires on the left side of the trailer came off the trailer.

22.

One of the wheels or tires from the trailer crossed the median and struck the front hood and windshield of Jennifer Thomas' vehicle.

23.

After the impact from the wheel or tire, Jennifer Thomas' vehicle struck the vehicle to her right.

24.

After hitting the vehicle to her right, Jennifer Thomas' vehicle crossed back to the left, exiting the roadway off the shoulder before striking the concrete median.

25.

Jennifer Thomas was fatally wounded when the wheel or tire from the trailer hit her vehicle.

26.

The injury to and death of Jennifer Thomas was witnessed by her father, Plaintiff Darrell Partee.

27.

Plaintiffs Darrell and Denise Partee and Payne Thomas each suffered physical injuries in the incident that killed Jennifer Thomas.

28.

Plaintiffs Darrell and Denise Partee and Payne Thomas have also suffered mental and emotional pain resulting from the incident and will incur these damages into the future.

COUNT I – NEGLIGENCE OF DEFENDANT CHAVEZ

29.

Plaintiffs re-allege and incorporate paragraphs 1-28 above as if they were fully restated verbatim herein.

30.

Defendant Chavez, as the driver of a commercial motor vehicle, owed a duty to operate his tractor-trailer in a safe and reasonable manner, and to properly inspect and maintain the trailer to ensure it could be operated safely.

31.

Defendant Chavez breached the above-referenced duties and was therefore negligent.

32.

Defendant Chavez violated state and federal statutes and regulations, including, but not limited to, O.C.G.A. § 40-8-7 and 49 C.F.R. §§ 393 and 396, which violations constitute negligence per se under Georgia law.

33.

Defendant Chavez was otherwise negligent.

34.

Defendant Chavez's negligence was a direct and proximate cause of the injuries sustained by Jennifer Thomas which resulted in her suffering and death.

35.

Defendant Chavez's negligence was a direct and proximate cause of the injuries sustained by Plaintiffs Darrell and Denise Partee and Payne Thomas.

36.

By virtue of his negligence, Defendant Chavez is liable to Plaintiff Thomas for the full value of the life of Jennifer Thomas and for all damages recoverable by Payne Thomas, to Plaintiffs Darrell Partee and Denise Partee for all recoverable damages, to Plaintiff Partee for negligent infliction of emotional distress, and to Plaintiff Partee as Administrator of the Estate of Jennifer Partee Thomas for all damages recoverable by the Estate and for all other damages recoverable by law.

COUNT II – VICARIOUS LIABILITY OF US XPRESS TRANSPORT CORP.

37.

Plaintiffs re-allege and incorporate paragraphs 1-36 above as if they were fully restated verbatim herein.

38.

At all times relevant to this action, Defendant Chavez was an employee and/or agent of Defendant US Xpress Transport.

39.

At all times relevant to this action Defendant Chavez was acting within the course and scope of his employment or agency with Defendant US Xpress Transport.

40.

Defendant US Xpress Transport is vicariously liable for the negligent acts and omissions of Defendant Chavez and for the damages proximately caused thereby.

41.

Defendant US Xpress Transport is liable to Plaintiff Thomas for the full value of the life of Jennifer Thomas and for all damages recoverable by Payne Thomas, to Plaintiffs Darrell Partee and Denise Partee for all recoverable damages, to Plaintiff Partee for negligent infliction of emotional distress, and to Plaintiff Partee as Administrator of the Estate of Jennifer Partee Thomas for all damages recoverable by the Estate and for all other damages recoverable by law.

COUNT III – NEGLIGENCE OF US XPRESS TRANSPORT CORP.

NEGLIGENT HIRING AND RETENTION

42.

Plaintiffs re-allege and incorporate paragraphs 1-41 above as if they were fully restated verbatim herein.

43.

Defendant US Xpress Transport owed a duty of care not to hire employees it knew or should have known posed a risk of harm to others.

44.

Defendant US Xpress Transport breached its duty of care not to hire employees it knew or should have known posed a risk of harm to others.

45.

Defendant US Xpress Transport breached its duty of care not to retain employees it knew or should have known posed a risk of harm to others.

46.

Defendant US Xpress Transport was negligent in its hiring and retention of Defendant Chavez, which negligence caused or contributed to the injuries, damages, and death of Jennifer Thomas.

47.

Defendant US Xpress Transport was negligent in its hiring and retention of Defendant Chavez, which negligence caused or contributed to the injuries and damages of Plaintiffs Darrell and Denise Partee and Payne Thomas.

48.

By virtue of its negligence, Defendant US Xpress Transport is liable to Plaintiff Thomas for the full value of the life of Jennifer Thomas and for all damages recoverable by Payne Thomas, to Plaintiffs Darrell Partee and Denise Partee for all recoverable damages, to Plaintiff Partee for negligent infliction of emotional distress, and to Plaintiff Partee as Administrator of the Estate of Jennifer Partee Thomas for all damages recoverable by the Estate and for all other damages recoverable by law.

COUNT IV – NEGLIGENCE OF DEFENDANT US XPRESS TRANSPORT

NEGLIGENT TRAINING

49.

Plaintiffs re-allege and incorporate paragraphs 1-48 above as if they were fully restated verbatim herein.

50.

Defendant US Xpress Transport owed a duty of care to train its employees in the proper operation, maintenance, and inspection of its vehicles.

51.

Defendant US Xpress Transport breached its duty of care by failing to train its employees in the proper operation, maintenance, and inspection of its vehicles.

52.

Defendant US Xpress Transport was negligent in its training of Defendant Chavez, which negligence caused or contributed to the injuries, damages, and death of Jennifer Thomas.

53.

Defendant US Xpress Transport was negligent in its training of Defendant Chavez, which negligence caused or contributed to the injuries and damages of Plaintiffs Darrell and Denise Partee and Payne Thomas.

54.

By virtue of its negligence, Defendant US Xpress Transport is liable to Plaintiff Thomas for the full value of the life of Jennifer Thomas and for all damages recoverable by Payne Thomas, to Plaintiffs Darrell Partee and Denise Partee for all recoverable damages, to Plaintiff Partee for negligent infliction of emotional distress, and to Plaintiff Partee as Administrator of the Estate of Jennifer Partee Thomas for all damages recoverable by the Estate and for all other damages recoverable by law.

COUNT V – NEGLIGENCE PER SE

NEGLIGENT FAILURE TO INSPECT, REPAIR, AND MAINTAIN

55.

Plaintiffs re-allege and incorporate paragraphs 1-54 above as if they were fully restated verbatim herein.

56.

Defendant US Xpress Transport was required by law to conduct periodic inspections on all of its commercial motor vehicles, including the tractor-trailer involved in the incident that forms the basis of Plaintiffs' Complaint. 49 C.F.R. § 396.17; Ga. R&R 515-16--01.

57.

Defendant US Xpress Transport was required by law to systematically inspect, repair, and maintain all of its motor vehicles, including the tractor-trailer involved in the incident that forms the basis of Plaintiffs' Complaint. 49 C.F.R. § 396.3; Ga. R&R 515-16-.01.

58.

Defendant US Xpress Transport failed to conduct the legally required inspections, repairs, and maintenance on the tractor-trailer involved in the incident that forms the basis of Plaintiffs' Complaint, which constitutes negligence per se.

59.

Defendant US Xpress Transport's negligence caused or contributed to the injuries, damages, and death of Jennifer Thomas.

60.

Defendant US Xpress Transport's negligence caused or contributed to the injuries and damages of Plaintiffs Darrell and Denise Partee and Payne Thomas.

61.

By virtue of its negligence, Defendant US Xpress Transport is liable to Plaintiff Thomas for the full value of the life of Jennifer Thomas and for all damages recoverable by Payne Thomas, to Plaintiffs Darrell Partee and Denise Partee for all recoverable damages, to Plaintiff Partee for negligent infliction of emotional distress, and to Plaintiff Partee as Administrator of the Estate of Jennifer Partee Thomas for all damages recoverable by the Estate and for all other damages recoverable by law.

COUNT VI – NEGLIGENCE OF US XPRESS TRANSPORT CORP.

NEGLIGENT FAILURE TO INSPECT, REPAIR, AND MAINTAIN

62.

Plaintiffs re-allege and incorporate paragraphs 1-61 above as if they were fully restated verbatim herein.

63.

Defendant US Xpress Transport had a legal duty to inspect, repair, and maintain its commercial motor vehicles to ensure they were safe for operation on public roads, including the tractor-trailer involved in the incident that forms the basis of Plaintiffs' Complaint.

64.

Defendant US Xpress Transport breached its duty of care by failing to inspect, repair, and maintain its commercial motor vehicles to ensure they were safe for operation on public

roads, including the tractor-trailer involved in the incident that forms the basis of Plaintiffs' Complaint.

65.

Defendant US Xpress Transport was negligent in its inspection, repair, and maintenance of its commercial motor vehicles, which negligence caused or contributed to the injuries, damages, and death of Jennifer Thomas.

66.

Defendant US Xpress Transport was negligent in its inspection, repair, and maintenance of its commercial motor vehicles, which negligence caused or contributed to the injuries and damages of Plaintiffs Darrell and Denise Partee and Payne Thomas.

67.

By virtue of its negligence, Defendant US Xpress Transport is liable to Plaintiff Thomas for the full value of the life of Jennifer Thomas and for all damages recoverable by Payne Thomas, to Plaintiffs Darrell Partee and Denise Partee for all recoverable damages, to Plaintiff Partee for negligent infliction of emotional distress, and to Plaintiff Partee as Administrator of the Estate of Jennifer Partee Thomas for all damages recoverable by the Estate and for all other damages recoverable by law.

COUNT VII – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

68.

Plaintiffs re-allege and incorporate paragraphs 1-67 above as if they were fully restated verbatim herein.

69.

Plaintiff Partee was the father of decedent Jennifer Thomas.

70.

Plaintiff Partee was in close proximity to Jennifer when she was injured and killed as a result of Defendant Chavez's and Defendant US Xpress Transport's individual and collective negligence.

71.

Plaintiff Partee suffered a physical impact in the incident that injured and killed Jennifer Thomas.

72.

As a direct and proximate result of the negligence of Defendant Chavez and Defendant US Xpress Transport, Plaintiff Partee has suffered mental and emotional pain, trauma, and distress from witnessing his daughter's injuries and death, and will incur these damages into the future.

73.

By virtue of their negligence, Defendants Chavez and US Xpress Transport are liable to Plaintiff Partee for negligent infliction of emotional distress as determined by the jury at the trial of this case.

COUNT VIII – PUNITIVE DAMAGES AGAINST DEFENDANT CHAVEZ AND DEFENDANT US XPRESS TRANSPORT CORP.

74.

Plaintiffs re-allege and incorporate paragraphs 1-73 above as if they were fully restated verbatim herein.

75.

The acts of Defendant Chavez and Defendant US Xpress Transport show a reckless disregard for the safety of others, malice, or that entire want of care that would raise the

presumption of conscious indifference to consequences which warrants the imposition of punitive damages under Georgia law.

76.

Accordingly, Defendants Chavez and Defendant US Xpress Transport are liable to Plaintiffs for punitive damages to punish, penalize, and deter those Defendants from similar conduct in the future.

**COUNT IX - DIRECT ACTION AGAINST DEFENDANT
PROGRESSIVE EXPRESS**

77.

Plaintiffs re-allege and incorporate paragraphs 1-76 above as if they were fully restated verbatim herein.

78.

Defendant Progressive Express is subject to a direct action as the insurer for Defendant US Xpress Transport pursuant to Georgia law.

79.

Defendant Progressive Express was the liability insurer of Defendant US Xpress Transport at the time of the subject incident.

80.

Defendant Progressive Express has a contractual obligation to pay for the negligence of Defendant US Xpress Transport and its agents, employees, drivers, and servants, including Defendant Chavez.

81.

Defendant Progressive Express is responsible for any judgment rendered against Defendant US Xpress Transport and Defendant Chavez.

COUNT X – INJUNCTIVE RELIEF AND RESTRAINING ORDER

82.

Plaintiffs re-allege and incorporate paragraphs 1-81 above as if they were fully restated verbatim herein.

83.

On August 16, 2019, counsel for Plaintiffs sent a letter to each Defendant requesting that the tractor, a 2003 Freightliner TR, vehicle identification number 1FUJBBBGX3PG99116, and trailer involved in the incident at issue, among other things, be preserved.

84.

On October 18, 2019, Samuel W. Hughes and Fred M. Valz, III, counsel for Defendants, sent a letter to counsel for Plaintiffs acknowledging receipt of the preservation letter.

85.

The October 18, 2019 letter from counsel for Defendants also stated that the tractor and trailer would be made available for inspection/ECM download on October 30, 2019 and that on October 30, 2019 the tractor and trailer would be located at 12200 NW South River Drive, Medley, Florida 33178.

86.

Due to a conflict with Plaintiffs' accident reconstruction expert, retained by the undersigned, the parties agreed to reschedule the inspection of the tractor and trailer for November 20, 2019.

87.

On November 11, 2019, counsel for Defendants informed Plaintiffs' counsel that the inspection would have to be rescheduled because defense counsel had trial depositions that conflicted with November 11 date.

88.

In the same November 11, 2019 correspondence, counsel for Defendants stated that he would provide three future inspection dates that same day.

89.

Defense counsel made the same representation about providing inspection dates again on November 13, 2019.

90.

Notwithstanding these representations and Plaintiffs' counsel's request for the new dates, no inspection dates have been provided.

91.

No Defendant has granted Plaintiffs' counsel or Plaintiffs' retained accident investigators access to the 2003 Freightliner or the trailer.

92.

Plaintiffs seek a temporary restraining order and permanent injunction pursuant to and in accordance with Federal Rule of Civil Procedure 65 to prevent any Defendant from moving, selling, conveying, assigning, transporting, altering, or destroying the tractor and/or trailer, including the wheels or tires involved in the incident, without affording Plaintiffs an opportunity to inspect the same.

93.

Plaintiffs do not currently know where the tractor or trailer are located. Based on defense counsel's prior representations, the tractor and trailer may be located in Medley, Florida.

94.

Plaintiffs also do not currently know where the wheels or tires that came off the trailer are located. They may be located in Medley, Florida as well.

95.

As required by Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1225-1226 (11th Cir. 2005) and other case law, Plaintiffs show that there is a substantial likelihood of success on the merits of this matter, that they will suffer irreparable injury if the relief is not granted, that the threatened injury outweighs the harm the relief would inflict on the non-movants, and entry of the relief requested will serve the public interest.

95.

There is a substantial risk that Plaintiffs will suffer irreparable injury if a temporary restraining order preventing the Defendants from moving, selling, conveying, assigning, transporting, altering, or destroying the tractor, trailer, and wheels or tires is not entered, as evidence related to the incident would be lost.

96.

The threatened injury to Plaintiffs outweighs any conceivable harm to Defendants that may occur upon entry of a temporary restraining order.

97.

The grant of a temporary restraining order will not disserve the public interest.

98.

Plaintiffs respectfully request and pray for the entry of a temporary restraining order and permanent injunction preventing Defendants from moving, selling, conveying, assigning, transporting, altering, or destroying the tractor, trailer, and wheels or tires identified above prior to Plaintiffs having a reasonable opportunity to inspect the same.

WHEREFORE, Plaintiffs pray as follows:

- a) That summons and service of process be issued in term of law;
- b) That this Complaint be served on all Defendants;
- c) That they have a trial by jury;
- d) That judgment be entered against Defendants for the full value of Jennifer Thomas' life;
- e) That they recover damages sufficient to compensate them fully, fairly, and completely for all of losses compensable under Georgia law;
- f) That they be awarded punitive damages pursuant to O.C.G.A. § 51-12-5.1;
- g) That they recover reasonable attorney's fees and expenses of litigation;
- h) That this Court enter a temporary restraining order and permanent injunction preventing Defendants from moving, selling, conveying, assigning, transporting, altering, or destroying the tractor, trailer, and wheels or tires identified above prior to Plaintiffs having a reasonable opportunity to inspect the same; and

- i) That they be granted such other and further relief as this Court may deem just and proper.

Respectfully submitted this 9th day of January, 2020.

/s/ Brian P. Adams

BRIAN P. ADAMS
Georgia Bar No. 142474
MARY BETH HAND
Georgia Bar No. 322836

ADAMS LAW FIRM
598 D.T. Walton Sr. Way
Post Office Box 142
Macon, Georgia 31202
Phone: (478) 238-0231
Fax: (478) 216-9188
brian@brianadamslaw.com
mbhand@brianadamslaw.com

/s/ Virgil L. Adams

VIRGIL L. ADAMS
Georgia Bar No. 004625
CAROLINE W. HERRINGTON
Georgia Bar No. 13008
(with express permission by Brian P. Adams)

ADAMS, JORDAN & HERRINGTON, P.C.
Fickling & Co. Building
577 Mulberry St., Suite 1250
Macon, GA 31202-0928
Phone: (478) 743-2159
Fax: (478) 743-4938
vadams@adamsjordan.com
cherrington@adamsjordan.com