

Feb 21 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2024-000742

Jerry Cozby, Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction Group, Inc., Curtis Ouellette, and Quality Haulers, Inc., Defendants,

of which Kent Hunley Oliver and Thompson Construction Group, Inc. are Respondents.

AND

Dean Alan Arender and Tamala Arender, Appellants,

vs.

Kent Huntley Oliver, Thompson Construction Group, Inc., Curtis Kent Ouellette, and DMX Transportation Services, Inc., Defendants,

of which Kent Hunley Oliver and Thompson Construction Group, Inc. are Respondents.

AND

Kent Huntley Oliver, Respondent,

vs.

Curtis Kent Ouellette, Quality Haulers, Inc., Dean Alan Arender, US XPRESS Leasing, Inc., and US XPRESS, Inc., Defendants,

of which Dean Alan Arender, US XPRESS Leasing, Inc., and US XPRESS, Inc. are Appellants.

RECORD ON APPEAL

James David George, Jr., SC Bar No. 103634

Jacob D. Born, Bar No. 100026

Smith, Born, Leventis, Taylor & Vega, LLC

2801 Devine Street, Suite 300

Columbia, SC 29205

(803) 929-3600

Attorneys for Appellants Dean Alan Arender and Tamala Arender

Mark S. Barrow, SC Bar No. 7821

Marshall C. Crane, SC Bar No. 102679

Madison K. Kea, SC Bar No. 105791

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

Attorneys For Appellants Dean Alan Arender, U.S. Xpress Leasing, Inc., and U.S. Xpress, Inc.

G. Murrell Smith, Jr., SC Bar No. 66263

Frederick N. Hanna, Jr., SC Bar No. 104659

Smith Robinson Holler Dubose and Morgan, LLC

Post Office Box 580

Sumter, SC 29151

(803) 778-2471

3200 Devine Street

Columbia, SC 29205

(803) 254-5445

Attorneys for Respondents Kent Huntley Oliver and Thompson Construction Group, Inc.

Justin Joaquin Arenas, SC Bar No. 100536

The Derrick Law Firm, PA

901 Main Street

Conway, SC 29528

(843) 488-2413

Attorney for Respondent Kent Huntley Oliver

Joseph V. Camerlengo (*pro hac vice*)
Jessica L. Lanifero (*pro hac vice*)
The Truck Accident Law Firm
1200 Riverplace Boulevard
Jacksonville, FL 32207
(904) 306-9220
**Attorneys for Respondent Kent Huntley
Oliver**

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT
C/A NO.: 2022-CP-43-01006

Jerry Cozby,

Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Ouellette, and Quality
Haulers, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Dean Alan Arender and Tamala Arender,

Plaintiffs,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Kent Ouellette, and DMX
Transportation Services, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Kent Huntley Oliver,

Plaintiff,

vs.

Curtis Kent Ouellette, Quality Haulers, Inc.,
Dean Alan Arender, US XPRESS Leasing,
Inc., and US XPRESS, Inc.,

Defendants.

ORDER

The matter before the Court is a motion for permissive joinder and consolidation filed by Defendants Kent Huntley Oliver and Thompson Construction Group, Inc. (hereinafter and collectively, “Thompson”). In the motion, Thompson requests the Court to join and consolidate two lawsuits pending in the Newberry County Court of Common Pleas with this lawsuit filed by Plaintiff Jerry Cozby (“Cozby”). Thompson seeks to join and consolidate the three cases for discovery and trial in the Sumter County Court of Common Pleas under the case number assigned to the Cozby action.

A hearing on Thompson’s motion was held on October 9, 2023, with adequate notice provided to all parties in the affected cases. The Court heard argument from counsel for all interested parties, as set forth in more detail below. The Court has carefully considered Thompson’s motion, all memoranda submitted by the interested parties, the arguments offered during the hearing, and the relevant law. For the reasons set forth below, the Court grants Thompson’s motion.

BACKGROUND

All lawsuits referenced in this Order arise from a multi-vehicle accident that occurred on Interstate 26 near Jalapa, South Carolina on November 12, 2020. Four individuals were involved in the accident: (1) Jerry Cozby; (2) Curtis Ouellette, driving for Quality Haulers, Inc.; (3) Kent Huntley Oliver, driving for Thompson Construction Group, Inc.; and (4) Dean Arender, driving for U.S. Xpress, Inc. and/or U.S. Xpress Leasing, Inc. Since the accident, the following lawsuits have been filed:¹

¹ Great West Casualty Company, as subrogee of U.S. Xpress, Inc., filed a claim for property damages before the Newberry County Arbitration Panel. *See Great West Casualty Company v. Thompson Construction Group, Inc., et al.* C/A No. 2023-CP-36-00125. Thompson did not seek to join and consolidate that action in its motion. Accordingly, the Court does not address that action in this Order.

- *Cozby v. Oliver, et al.* (“Cozby Action”)
 - C/A No. 2022-CP-43-01006
 - Plaintiff: Jerry Cozby
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; and Quality Haulers, Inc.
 - Venue: Sumter County Court of Common Pleas
- *Arender v. Oliver, et al.* (“Arender Action”)
 - C/A No. 2023-CP-36-00276
 - Plaintiffs: Dean Arender and Tamala Arender
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; Quality Haulers, Inc.; and DMX Transportation Services Inc.
 - Venue: Newberry County Court of Common Pleas
- *Oliver v. Ouellette, et al.* (“Oliver Action”)
 - C/A No. 2023-CP-36-00300
 - Plaintiff: Kent Huntley Oliver
 - Defendants: Curtis Kent Ouellette; Quality Haulers, Inc.; Dean Arender; U.S. XPRESS Leasing, Inc.; and U.S. XPRESS, Inc.
 - Venue: Newberry County Court of Common Pleas

On August 18, 2023, Thompson moved to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial under Case No. 2022-CP-43-01006, the number assigned to the Cozby Action.

As noted above, the hearing on Thompson’s motion was held on October 9, 2023. G. Murrell Smith, Jr. and Frederick N. Hanna, Jr. appeared on behalf of Thompson Construction Group, Inc. and Kent Oliver. E. Hood Dawson, III appeared on behalf of Defendants Curtis Ouellette and Quality Haulers, Inc. Ivey B. Franklin appeared on behalf of Plaintiff.

Counsel for additional parties in the Arender Action and the Oliver Action also attended the hearing and presented argument. Justin J. Arenas appeared on behalf of Kent Huntley Oliver. Jacob D. Born and James D. George, Jr. appeared on behalf of Dean Arender and Tamala Arender (hereinafter and collectively, “Arender”). Marshall C. Crane and Madison C. Killen appeared on behalf of U.S. Xpress Leasing, Inc. and U.S. Xpress, Inc. (hereinafter and collectively, “U.S. Xpress”).

ARGUMENT

In its motion, Thompson asks the Court to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial in the Sumter County Court of Common Pleas. Thompson advances three primary arguments in support of its motion. First, Thompson contends it would be proper for the Court to join and consolidate the cases because the requirements of Rules 20(a) and 42(a), SCRCP, are satisfied. Next, Thompson asserts that upon joining and consolidating the cases, venue would be proper in Sumter County. Finally, Thompson argues joinder and consolidation are in the best interest of the parties and the Court.

The primary opponents to Thompson's motion are Arender and U.S. Xpress. Although Arender and U.S. Xpress indicate they would be willing to consent to consolidation for discovery purposes only in Newberry County,² they oppose Thompson's request for joinder and consolidation for discovery and trial in Sumter County. U.S. Xpress contends it is improper for Thompson to seek both joinder and consolidation. Both Arender and U.S. Xpress argue joinder would be improper under the circumstances presented in the collective cases and that venue would be improper in Sumter County. Finally, Arender and U.S. Xpress argue joining and consolidating the cases for trial would be undesirable.

Before addressing these arguments, for sake of completeness, the Court notes the parties' respective positions on joinder and consolidation. Thompson, Oliver, Ouellette, and Quality Haulers, Inc. support Thompson's motion for joinder and consolidation for trial and discovery in Sumter County. Cozby, Arender, and U.S. Xpress oppose Thompson's motion, but would be

² On October 6, 2023, U.S. Xpress filed a motion to consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery in the Newberry County Court of Common Pleas.

agreeable to consolidation for discovery in Newberry County. The Court now addresses the substantive arguments of the parties.

I. Thompson's request for joinder and consolidation

In its motion, Thompson requested that the Court grant permissive joinder and consolidation of the cases under Rules 20(a) and 42(a), SCRCF. In response, U.S. Xpress contends Thompson's request for both permissive joinder and consolidation is improper. U.S. Xpress relies primarily on *Ellis v. Oliver*, in which the South Carolina Supreme Court discussed the differences between permissive joinder and consolidation. 307 S.C. 365, 367-68, 415 S.E.2d 400, 401-02 (1992) (explaining that pleadings are merged into one action under permissive joinder, but separate actions retain their own identity under consolidation).

During the hearing, counsel for Thompson clarified that Thompson only sought permissive joinder of the cases. In light of Thompson's decision to pursue permissive joinder only—not permissive joinder and consolidation—it is unnecessary for the Court to rule upon U.S. Xpress' argument. The Court only considers Thompson's request for permissive joinder in the remainder of this Order.

II. The requirements for permissive joinder are satisfied

Thompson requests permissive joinder of the Cozby Action, the Arender Action, and the Oliver Action under Rule 20(a), SCRCF. Thompson contends that because the threshold requirements of Rule 20(a) are satisfied, the Court should exercise its authority and join the cases. Thompson contends it is desirable for the Court to do so for several reasons, which the Court will address below in Section IV of this Order.

Both Arender and U.S. Xpress contend it would be improper for the Court to join the cases under Rule 20(a). Arender and U.S. Xpress contend that because joinder under Rule 20 is

permissive rather than mandatory, Thompson cannot compel the Court to order joinder in this instance. Arender claims that because Thompson requests mandatory joinder, its arguments should be analyzed under Rule 19(a), SCRCPP, which Arender contends is not applicable. U.S. Xpress further argues the requirements of Rule 20(a) are not satisfied because “the question of any negligence of Arender or [U.S. Xpress] is not ‘common’ to any party other than Oliver.”

Arender and U.S. Xpress’ arguments with respect to “mandatory” joinder rest on a mischaracterization of Thompson’s argument. Thompson plainly moved for “permissive joinder” under Rule 20(a) and never argued that joinder was mandatory. Indeed, Thompson never suggested that either the parties or the Court were required to join the claims in one action. Nor did Thompson assert any arguments based on Rule 19, SCRCPP. Instead, Thompson simply requests that the Court exercise its discretion and join the cases because they arise from the same series of occurrences and share common questions of law and fact. Accordingly, the Court rejects Arender and U.S. Xpress’ suggestion that Thompson seeks “mandatory” joinder.

Although South Carolina’s courts have not frequently discussed Rule 20(a), the Court has broad discretion under that Rule to decide the scope of civil actions. *See Hedberg v. Darlington Cnty. Disabilities & Special Needs Bd.*, 133 F.3d 915 (4th Cir. 1997) (discussing district court’s discretion under Fed. R. Civ. P. 20(a), which is substantially similar to Rule 20(a), SCRCPP). The Rule explains when parties may be permissively joined into one action:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to

their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 20(a), SCRCP.

The Court agrees with Thompson that permissive joinder of the Cozby Action, the Arender Action, and the Oliver Action is permitted under the applicable framework. First, there is no question that each of these actions arises from the same “occurrence” or “series of . . . occurrences”—the November 12, 2020 multi-vehicle accident. Additionally, there is at least one question of law or fact common to each of the plaintiffs and defendants in the three cases. Each of the actions involves common questions of fact about the details of the accident (including the weather conditions surrounding the accident) and the extent of the parties’ damages. These actions also share questions of law relating to the parties’ respective negligence and causation.

U.S. Xpress’ argument that there is no shared question as to Arender and U.S. Xpress’ negligence is incorrect. First, even assuming that only Oliver had an interest in determining Arender and U.S. Xpress’ negligence, this argument misapplies Rule 20(a). Rule 20(a) does not require that *all* questions of fact or law be common to each of the parties; instead, it is sufficient if there is “*any* question of law or fact common” to the parties. Rule 20(a), SCRCP (emphasis added). In any event, Oliver is not the only plaintiff with an interest in determining Arender and U.S. Xpress’ negligence. Arender and U.S. Xpress’ negligence is also at issue in the Cozby Action, where defendants have asserted that Cozby’s injuries were caused by the fault of others, and in the Arender Action, where defendants have asserted comparative negligence defenses.

Therefore, the Court agrees with Thompson that the requirements of Rule 20(a) are satisfied, and the Court may exercise its discretion to join these cases.

III. Venue in Sumter County is proper

Thompson next contends that venue would be proper if the Court joins these cases for discovery and trial in Sumter County. According to Thompson, because the pleadings are merged after an order of permissive joinder, *see Ellis*, 307 S.C. at 367, 415 S.E.2d at 401, venue is proper in the county of residence of any defendant in the Cozby Action, the Arender Action, or the Oliver Action. *See* S.C. Code Ann. § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”). In further support of its request to join the cases in Sumter County, as opposed to a proposed consolidation in Newberry County, Thompson relies on the fact that it is the only Defendant that has been sued in its county of residence. Thompson contends it should not be deprived of its “substantial right” to a trial in its county of residence. *See, e.g., Carroll v. Guess*, 302 S.C. 175, 177, 394 S.E.2d 707, 708 (1990).

Arender and U.S. Xpress offer different arguments for why Thompson’s position as to venue is incorrect. Arender perceives Thompson’s argument for venue in Sumter County as an attempt to change venue under section 15-7-100(A). Arender asks the Court to deny Thompson’s request for a change in venue because Thompson cannot demonstrate “the convenience of witnesses and the ends of justice would be promoted by the change.” *See* S.C. Code Ann. § 15-7-100(A)(3).

U.S. Xpress, on the other hand, contends venue would be improper in Sumter County because the Oliver Action could not have been brought in Sumter County. U.S. Xpress further argues that after the 2005 amendments to the venue statute, a plaintiff has a right to bring suit either in the venue where a defendant resides or where the most substantial part of the act or omission occurred. *See* S.C. Code Ann. § 15-7-30.

The Court agrees with Thompson that venue for the joined cases is proper in Sumter County. As Thompson notes, an order of permissive joinder merges previously separate actions into one. *See* Rule 20(a), SCRCP; *see also Ellis*, 307 S.C. at 367, 415 S.E.2d at 401 (discussing the difference between an order of consolidation and an order of permissive joinder). Therefore, for venue purposes, the residency of each defendant in each of the merged actions is considered. *See* S.C. Code Ann. § 15-7-30(B); *see also Ellis*, 307 S.C. at 367 n.2, 415 S.E.2d at 402 n.2. Because Thompson is a resident of Sumter County, venue for these joined actions is proper in Sumter County. *See* S.C. Code Ann. § 15-7-30(E) (stating an action tried against a domestic corporation must be brought and tried in the county in which the corporation has its principal place of business or where the most substantial part of the alleged act or omission occurred); § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”).

Contrary to U.S. Xpress’ position, the fact that the Oliver Action could not have been brought in Sumter County does not change the analysis. This argument overlooks the impact of an order of permissive joinder, which merges the previously independent actions into one. Accordingly, the relevant task is not to determine where venue would properly lie for each of the independent actions; the proper question is where venue properly lies for the merged actions. As the foregoing discussion demonstrates, venue for the merged actions is proper in Sumter County.

The Court also rejects Arender’s arguments under section 15-7-100. Although the Court’s Order effectively changes the venue of the Arender Action and the Oliver from Newberry County to Sumter County, the Court’s Order is not based on section 15-7-100. Indeed, Thompson does not seek a change in venue based on the convenience of witnesses and the ends of justice. Thompson simply seeks to join the cases into one in Sumter County, which it contends is a proper

venue under section 15-7-30. Because the Court is not faced with a motion under section 15-7-100, the Court need not consider Arender's argument respecting the most "convenient" forum for these cases to be heard.

Finally, the Court finds that Cozby's decision to sue Thompson in its county of residence is significant to the venue analysis. Because these actions were filed in different counties, Thompson's request for joinder necessarily requires a change of venue for either the Cozby Action or the Arender Action and the Oliver Action. Although Arender and U.S. Xpress desire for these cases to be consolidated in Newberry County, the Court agrees that Thompson has a substantial right to be tried in its county of residence. Contrary to U.S. Xpress' argument, the 2005 amendments to the venue statute did not impact that right, as recognized by the South Carolina Supreme Court in a decision shortly after the amendment. *See Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 442, 633 S.E.2d 143, 147 (2006) ("The defendant has a substantial right to be tried in the county of his residence pursuant to S.C. Code Ann. § 15-7-30 (2005)."). Thompson's substantial right to be tried in Sumter County vested when Cozby elected to bring suit there. Importantly, no other defendants in any of these cases were sued in their county of residence. Accordingly, Thompson's right to defend the Cozby case in Sumter County further supports the Court's decision to join these cases in Sumter County.

IV. Joinder is desirable for the parties and the court

Lastly, Thompson asks the Court to join these cases for discovery and trial because it has demonstrated that doing so would be desirable. Thompson contends joining the cases would prevent duplicative litigation, save the parties from incurring unnecessary costs, and conserve judicial resources. Thompson also contends joining the cases would eliminate the risk of a judgment in one case having preclusive effect in all other cases. *See, e.g., Sims v. Amisub of S.C.*,

Inc., 408 S.C. 202, 209, 758 S.E.2d 187, 191 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E.2d 379 (2015) (noting the doctrine of collateral estoppel “prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same”).

In response, Arender and U.S. Xpress contend the cases should not be joined for trial. Relying on the Restatement (Second) of Judgments § 29, Arender contends offensive collateral estoppel is not a realistic concern in these cases. U.S. Xpress argues these actions are not appropriate for joinder because a single trial would involve numerous claims and parties and would be difficult for jurors to understand. U.S. Xpress also claims it would be improper to join these actions under the case number assigned to the Cozby Action because it is the oldest case and will be subject to trial before the parties can adequately prepare.

The Court agrees with Thompson that joinder for both discovery and trial is justified under the circumstances presented in these cases. Plainly, it will be less burdensome for all parties and the Court to join these proceedings. Joinder will reduce cost to the parties, conserve judicial resources, eliminate the need for repetitive discovery, reduce the burden on witnesses, and prevent inconsistent judgments. To put it simply, it would be incredibly inefficient to litigate these claims separately.

Additionally, as Thompson argues in its motion, joinder will eliminate the risk of collateral estoppel applying to prevent adjudication on the merits. The South Carolina Supreme Court has recognized that the offensive use of nonmutual collateral estoppel may be appropriate in certain circumstances. *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). Arender contends this concern is not legitimate, as the Restatement provides that a person seeking to invoke favorable preclusion may not do so if he could have

effected joinder in this first action. *See* Restatement (Second) of Judgments § 29(3). Regardless of whether that exception would apply to prevent offensive collateral estoppel, the safest course at this stage is to join the actions and thereby eliminate the risk of judgments having preclusive effect.

Furthermore, the Court is not persuaded by U.S. Xpress' arguments about a single trial being confusing for jurors to follow. Lawyers and judges in this State frequently try cases involving numerous claims and parties. The Court finds the benefits of joinder outweigh any concerns associated with a single trial. In any event, should U.S. Xpress' concerns prove legitimate as trial approaches, Rule 20(b) provides the Court with flexibility to ensure an efficient trial process. Rule 20(b), SCRCP ("The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.").

Finally, U.S. Xpress' argument respecting the age of the Cozby Action is without merit. As noted above, U.S. Xpress opposes joining these cases around the Cozby Action because it is the oldest case and may be called for trial before the parties have time to conduct necessary discovery. This dilemma can easily be resolved by the parties entering into a scheduling order. The parties will not be forced to a trial before they have had time to perform adequate discovery.

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CONCLUSION

For the foregoing reasons, the Court grants Thompson's motion and joins the Cozby Action, the Arender Action, and the Oliver Action around Case Number 2022-CP-43-01006, the number assigned to the Cozby Action.

IT IS SO ORDERED.

The Honorable R. Kirk Griffin
Circuit Court Judge

February __, 2024
Sumter, South Carolina



Sumter Common Pleas

Case Caption: Jerry Cozby VS Kent Huntley Oliver , defendant, et al

Case Number: 2022CP4301006

Type: Order/Consolidate

So Ordered

s/ R. Kirk Griffin 2768

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STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Jerry Cozby,)
Plaintiff,)
vs.)
Kent Huntley Oliver, Thompson Construction)
Group, Inc., Curtis Ouellette, and Quality)
Haulers, Inc.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A NO.: 2022-CP-43-01006

ORDER

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)
Dean Alan Arender and Tamala Arender,)
Plaintiffs,)
vs.)
Kent Huntley Oliver, Thompson Construction)
Group, Inc., Curtis Kent Ouellette, and DMX)
Transportation Services, Inc.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)
Kent Huntley Oliver,)
Plaintiff,)
vs.)
Curtis Kent Ouellette, Quality Haulers, Inc.,)
Dean Alan Arender, US XPRESS Leasing,)
Inc., and US XPRESS, Inc.,)
Defendants.)

This matter is before the Court pursuant to Rule 59 (e) SCRCP. Defendants U.S. XPRESS Inc., U.S. XPRESS LEASING, Inc., and Dean Alan Arender seek an Order of this Court amending or altering its Order of February 13, 2024.

Pursuant to Rule 59 (f) SCRCP, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of Defendants U.S. XPRESS Inc., U.S. XPRESS LEASING, Inc., and Dean Alan Arender, this Court has determined that its original Order dated February 13, 2024, is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Sumter, South Carolina

Dated: _____

R. Kirk Griffin
Judge, Third Judicial Circuit



Sumter Common Pleas

Case Caption: Jerry Cozby , plaintiff, et al VS Kent Huntley Oliver , defendant, et al

Case Number: 2022CP4301006

Type: Order/Other

So Ordered

s/ R. Kirk Griffin 2768

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2022-CP-____-____

JERRY COZBY,
Plaintiff,

vs.

KENT HUNTLEY OLIVER, THOMPSON
CONSTRUCTION GROUP, INC,
CURTIS OULLETTE
and DMX TRANSPORTATION, INC.

Defendant(s).

COMPLAINT
(JURY TRIAL REQUESTED)

The Plaintiff would respectfully show unto the Court that:

1. Plaintiff is Jerry Cozby (hereinafter referred to as “Plaintiff”), a citizen and resident of Lancaster County, South Carolina.
2. Upon information and belief, Kent Oliver, (hereinafter referred to as “Defendant Oliver”), is a resident and citizen of Spartanburg County, South Carolina and an employee of the Thompson Construction Group, Inc.
3. Upon information and belief, Defendant Thompson Construction Group, (hereinafter referred to as “Defendant Thompson, Inc.”), is a business entity with its principal place of business located in Sumter County, South Carolina.
4. Upon information and belief, Defendant Curtis Oullette, (hereinafter referred to as “Defendant Oullette”), is a resident and citizen of Greenville County, South Carolina and an employee of DMX Transportation, Inc.
5. Upon information and belief, DMX Transportation, Inc. (hereinafter referred to as “Defendant DMX Inc.”) is a business entity with its principal place of business located in Spartanburg County, South Carolina.

6. All acts and omissions complained of herein occurred in Newberry, County, South Carolina.

7. This Court has jurisdiction over the persons and subject matter of this action and venue is proper in Sumter County, South Carolina, pursuant of *S.C Code Ann.* §15-7-30.

FACTUAL BACKGROUND

8. All prior paragraphs are reiterated as if fully restated verbatim herein.

9. On or about the early morning of November 12, 2020, Plaintiff was lawfully traveling east on South Carolina Interstate 26 (“SC 26”).

10. That on or about the same date and time, Defendant Oliver was operating a vehicle in the same direction on SC 26.

11. That on or about the same date and time, the vehicle being operated by Defendant Oliver was owned by Defendant Thompson, Inc., employer of Defendant Oliver, and Defendant Oliver was acting within the scope of his employment while driving.

12. That on or about the same date and time, Defendant Oullette was operating a vehicle in the same direction on SC 26 but was driving on the right shoulder of the road.

13. That on or about the same date and time, the vehicle being operated by Defendant Oullette was owned by Defendant DMX Inc., employer of Defendant Oullette, and Defendant Oullette was acting within the scope of his employment while driving.

14. That on or about said time and date, Defendant Kent Oliver was traveling too fast for conditions and was distracted and/or inattentive, ran off of the road to the right, striking the vehicle driven by Defendant Oulette travelling on the shoulder of the road, causing debris from the collision to litter the roadway.

15. That on or about said time and date, Defendant Oliver, upon rear-ending Defendant Oullette while in the right shoulder of SC 26, was pushed back into the roadway, where he collided with a third vehicle ("Third Vehicle"), creating additional debris that littered the roadway.

16. That on or about said time and date, Defendant Oliver upon, his re-entry to the roadway and collision with the Third Vehicle, forced the Third Vehicle to collide with the median, creating additional debris that littered the roadway.

17. That on or about said time and date, the Plaintiff's vehicle impacted with debris and/or one of the vehicles that was travelling in or ricocheted back into the roadway, caused by one or both collisions caused by Defendant Oliver and/or Defendant Oullette, causing severe damage to his vehicle.

18. At all times relevant to this complaint, Defendant Oliver was operating a vehicle owned by Defendant Thompson, Inc., acting as an agent of his employer.

19. At all times relevant to this complaint, Defendant Oullette was operating a vehicle owned by Defendant DMX Inc., acting as an agent of his employer.

20. That at all times relevant hereto, Defendant Oliver, Defendant Thompson, Inc., Defendant Oullette and Defendant DMX Inc. had duties to operate his and/or their vehicles in safe and prudent manners and to avoid injuring other motorists.

21. At all times relevant to this Complaint, Plaintiff did not contribute to the collision(s) or the creation of debris in the roadway as a result of the initial collision(s).

FOR A FIRST CAUSE OF ACTION AS TO DEFENDANT OLIVER
(NEGLIGENCE)

22. All prior paragraphs are incorporated by reference as if fully restated verbatim herein.

23. Defendant Oliver owed duties of care to Plaintiff, and Defendant Oliver breached these duties of care to Plaintiff in one or more of the following particulars:

- a) in failing to travel at an appropriate speed for the conditions;
- b) in failing to keep a proper lookout while operating the vehicle;
- c) in failing to keep a safe distance from other vehicles involved;
- d) in failing to properly observe the road and traffic conditions;
- e) in failing to obey the traffic laws of the State of South Carolina in violation of S.C Code Ann. §56-5-730, thereby constituting negligence per se;
- f) in failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- g) in negligently and carelessly operating their vehicle causing at least two (2) separate collisions, creating debris that littered the roadway that then caused Plaintiff personal injuries; and
- h) in other such ways that will become evident through discovery.

24. As a direct and proximate result of the collision and the acts and omissions of Defendant Oliver set forth above, Plaintiff suffered the following injuries and damages:

- a) medical bills, costs, and expenses for treatment of his injuries;
- b) extensive pain, mental anguish, suffering and discomfort;

c) emotional trauma and distress; and

d) such other and further damages as shall be proven through discovery and at the trial of this matter.

25. Defendant Oliver's negligent acts were the direct and proximate cause of the collision and resulting injuries and damages to the Plaintiff.

26. Defendant Oliver's violations of the above-cited traffic statutes constitute negligence *per se*.

27. Plaintiff is informed and believes that he is entitled to a judgment against Defendant Oliver in an amount to be determined by the jury.

(RESPONDEAT SUPERIOR)

28. The preceding paragraphs are incorporated by reference as if fully restated verbatim herein.

29. That on or about the early morning of November 12, 2020, and at all times relevant to this complaint Defendant Oliver was an agent/servant of Defendant Thompson, Inc.

30. At all times relevant to this complaint, Defendant Oliver was driving a vehicle owned by Defendant Thompson, Inc.

31. As a product of the agent/servant role of Defendant Oliver, Defendant Thompson, Inc., is vicariously liable for the negligent actions and omissions of Defendant Oliver.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANT OULLETTE
(NEGLIGENCE)

32. All prior paragraphs are incorporated by reference as if fully restated verbatim herein.

33. Defendant Oullette owed duties of care to Plaintiff, and Defendant Oullette breached these duties of care to Plaintiff in one or more of the following particulars:

- i) in failing to travel at an appropriate speed for the conditions;
- j) in failing to keep a proper lookout while operating the vehicle;
- k) in failing to keep a safe distance from other vehicles involved;
- l) in failing to properly observe the road and traffic conditions;
- m) in failing to obey the traffic laws of the State of South Carolina in violation of S.C Code Ann. §56-5-730, thereby constituting negligence per se;
- n) in failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- o) in negligently and carelessly operating their vehicle causing at least two (2) separate collisions, creating debris that littered the roadway that then caused Plaintiff personal injuries; and
- p) in other such ways that will become evident through discovery.

34. As a direct and proximate result of the collision and the acts and omissions of Defendant Oullette set forth above, Plaintiff suffered the following injuries and damages:

- e) medical bills, costs, and expenses for treatment of his injuries;

- f) extensive pain, mental anguish, suffering and discomfort;
- g) emotional trauma and distress; and
- h) such other and further damages as shall be proven through discovery and at the trial of this matter.

35. Defendant Oullette's negligent acts were the direct and proximate cause of the collision and resulting injuries and damages to the Plaintiff.

36. Defendant Oullette's violations of the above-cited traffic statutes constitute negligence *per se*.

37. Plaintiff is informed and believes that he is entitled to a judgment against Defendant Oullette in an amount to be determined by the jury.

(RESPONDEAT SUPERIOR)

38. The preceding paragraphs are incorporated by reference as if fully restated verbatim herein.

39. That on or about the early morning of November 12, 2020, and at all times relevant to this complaint Defendant Oullette was an agent/servant of Defendant DMX Inc.

40. At all times relevant to this complaint, Defendant Oullette was driving a vehicle owned by DMX Inc.

41. As a product of the agent/servant role of Defendant Oullette, Defendant DMX Inc. is vicariously liable for the negligent actions and omissions of Defendant Oliver.

42. The Plaintiff is informed and believes that he is entitled to judgment against Defendant Oullette and Defendant DMX Inc. for actual and punitive damages, in an amount to be determined by a jury.

WHEREFORE; Plaintiff prays for judgment against the Defendants for actual and punitive damages, the costs of this action, and for such other and further relief as the Court may deem just and proper. **Furthermore, Plaintiff demands a trial by jury.**

BY: s/ Raia Jane Hirsch
Raia Jane Hirsch, SC Bar # 80035
Post Office Box 5048
Spartanburg, SC 29304
Telephone Number: (864) 574-8801
Fax Number: (864) 574-8810
Raia.hirsch@hawklawfirm.com
Attorney for the Plaintiff

DATE: June 23, 2022
Charleston, SC

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2022-CP-43-01006

JERRY COZBY,
Plaintiff,

vs.

KENT HUNTLEY OLIVER, THOMPSON
CONSTRUCTION GROUP, INC,
CURTIS OULLETTE
and QUALITY HAULERS, INC.

Defendant(s).

FIRST AMENDED COMPLAINT
(JURY TRIAL REQUESTED)

The Plaintiffs would respectfully show unto the Court that:

1. Plaintiff is Jerry Cozby (hereinafter referred to as “Plaintiff”), a citizen and resident of Lancaster County, South Carolina.
2. Upon information and belief, Kent Oliver, (hereinafter referred to as “Defendant Oliver”), is a resident and citizen of Spartanburg County, South Carolina and an employee of the Thompson Construction Group, Inc.
3. Upon information and belief, Defendant Thompson Construction Group, (hereinafter referred to as “Defendant Thompson, Inc.”), is a business entity with its principal place of business located in Sumter County, South Carolina.
4. Upon information and belief, Defendant Curtis Oullette, (hereinafter referred to as “Defendant Oullette”), is a resident and citizen of Greenville County, South Carolina and an employee of Quality Haulers, Inc.
5. Upon information and belief, Quality Haulers, Inc. (hereinafter referred to as “Defendant Haulers Inc.”) is a business entity with its principal place of business located in Spartanburg County, South Carolina.

6. All acts and omissions complained of herein occurred in Newberry, County, South Carolina.

7. This Court has jurisdiction over the persons and subject matter of this action and venue is proper in Sumter County, South Carolina, pursuant of *S.C Code Ann.* §15-7-30.

FACTUAL BACKGROUND

8. All prior paragraphs are reiterated as if fully restated verbatim herein.

9. On or about the early morning of November 12, 2020, Plaintiff was lawfully traveling east on South Carolina Interstate 26 (“SC 26”).

10. That on or about the same date and time, Defendant Oliver was operating a vehicle in the same direction on SC 26.

11. That on or about the same date and time, the vehicle being operated by Defendant Oliver was owned by Defendant Thompson, Inc., employer of Defendant Oliver, and Defendant Oliver was acting within the scope of his employment while driving.

12. That on or about the same date and time, Defendant Oullette was operating a vehicle in the same direction on SC 26 but was driving on the right shoulder of the road.

13. That on or about the same date and time, the vehicle being operated by Defendant Oullette was owned by Defendant Haulers Inc., employer of Defendant Oullette, and Defendant Oullette was acting within the scope of his employment while driving.

14. That on or about said time and date, Defendant Kent Oliver was traveling too fast for conditions and was distracted and/or inattentive, ran off of the road to the right, striking the vehicle driven by Defendant Oulette travelling on the shoulder of the road, causing debris from the collision to litter the roadway.

15. That on or about said time and date, Defendant Oliver, upon rear-ending Defendant Oullette while in the right shoulder of SC 26, was pushed back into the roadway, where he collided with a third vehicle ("Third Vehicle"), creating additional debris that littered the roadway.

16. That on or about said time and date, Defendant Oliver upon, his re-entry to the roadway and collision with the Third Vehicle, forced the Third Vehicle to collide with the median, creating additional debris that littered the roadway.

17. That on or about said time and date, the Plaintiff's vehicle impacted with debris and/or one of the vehicles that was travelling in or ricocheted back into the roadway, caused by one or both collisions caused by Defendant Oliver and/or Defendant Oullette, causing severe damage to his vehicle.

18. At all times relevant to this complaint, Defendant Oliver was operating a vehicle owned by Defendant Thompson, Inc., acting as an agent of his employer.

19. At all times relevant to this complaint, Defendant Oullette was operating a vehicle owned by Defendant Haulers Inc., acting as an agent of his employer.

20. That at all times relevant hereto, Defendant Oliver, Defendant Thompson, Inc., Defendant Oullette and Defendant Haulers Inc. had duties to operate his and/or their vehicles in safe and prudent manners and to avoid injuring other motorists.

21. At all times relevant to this Complaint, Plaintiff did not contribute to the collision(s) or the creation of debris in the roadway as a result of the initial collision(s).

FOR A FIRST CAUSE OF ACTION AS TO DEFENDANT OLIVER
(NEGLIGENCE)

22. All prior paragraphs are incorporated by reference as if fully restated verbatim herein.

23. Defendant Oliver owed duties of care to Plaintiff, and Defendant Oliver breached these duties of care to Plaintiff in one or more of the following particulars:

- a) in failing to travel at an appropriate speed for the conditions;
- b) in failing to keep a proper lookout while operating the vehicle;
- c) in failing to keep a safe distance from other vehicles involved;
- d) in failing to properly observe the road and traffic conditions;
- e) in failing to obey the traffic laws of the State of South Carolina in violation of S.C Code Ann. §56-5-730, thereby constituting negligence per se;
- f) in failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- g) in negligently and carelessly operating their vehicle causing at least two (2) separate collisions, creating debris that littered the roadway that then caused Plaintiff personal injuries; and
- h) in other such ways that will become evident through discovery.

24. As a direct and proximate result of the collision and the acts and omissions of Defendant Oliver set forth above, Plaintiff suffered the following injuries and damages:

- a) medical bills, costs, and expenses for treatment of his injuries;
- b) extensive pain, mental anguish, suffering and discomfort;

- c) emotional trauma and distress; and
- d) such other and further damages as shall be proven through discovery and at the trial of this matter.

25. Defendant Oliver's negligent acts were the direct and proximate cause of the collision and resulting injuries and damages to the Plaintiff.

26. Defendant Oliver's violations of the above-cited traffic statutes constitute negligence *per se*.

27. Plaintiff is informed and believes that he is entitled to a judgment against Defendant Oliver in an amount to be determined by the jury.

(RESPONDEAT SUPERIOR)

28. The preceding paragraphs are incorporated by reference as if fully restated verbatim herein.

29. That on or about the early morning of November 12, 2020, and at all times relevant to this complaint Defendant Oliver was an agent/servant of Defendant Thompson, Inc.

30. At all times relevant to this complaint, Defendant Oliver was driving a vehicle owned by Defendant Thompson, Inc.

31. As a product of the agent/servant role of Defendant Oliver, Defendant Thompson, Inc., is vicariously liable for the negligent actions and omissions of Defendant Oliver.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANT OULLETTE
(NEGLIGENCE)

32. All prior paragraphs are incorporated by reference as if fully restated verbatim herein.

33. Defendant Oullette owed duties of care to Plaintiff, and Defendant Oullette breached these duties of care to Plaintiff in one or more of the following particulars:

- i) in failing to travel at an appropriate speed for the conditions;
- j) in failing to keep a proper lookout while operating the vehicle;
- k) in failing to keep a safe distance from other vehicles involved;
- l) in failing to properly observe the road and traffic conditions;
- m) in failing to obey the traffic laws of the State of South Carolina in violation of S.C Code Ann. §56-5-730, thereby constituting negligence per se;
- n) in failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- o) in negligently and carelessly operating their vehicle causing at least two (2) separate collisions, creating debris that littered the roadway that then caused Plaintiff personal injuries; and
- p) in other such ways that will become evident through discovery.

34. As a direct and proximate result of the collision and the acts and omissions of Defendant Oullette set forth above, Plaintiff suffered the following injuries and damages:

- e) medical bills, costs, and expenses for treatment of his injuries;
- f) extensive pain, mental anguish, suffering and discomfort;
- g) emotional trauma and distress; and
- h) such other and further damages as shall be proven through discovery and at the trial of this matter.

35. Defendant Oullette's negligent acts were the direct and proximate cause of the collision and resulting injuries and damages to the Plaintiff.

36. Defendant Oullette's violations of the above-cited traffic statutes constitute negligence *per se*.

37. Plaintiff is informed and believes that he is entitled to a judgment against Defendant Oullette in an amount to be determined by the jury.

(RESPONDEAT SUPERIOR)

38. The preceding paragraphs are incorporated by reference as if fully restated verbatim herein.

39. That on or about the early morning of November 12, 2020, and at all times relevant to this complaint Defendant Oullette was an agent/servant of Defendant Haulers Inc.

40. At all times relevant to this complaint, Defendant Oullette was driving a vehicle owned by DMX Inc.

41. As a product of the agent/servant role of Defendant Oullette, Defendant Haulers Inc.
is vicariously liable for the negligent actions and omissions of Defendant Oliver.

42. The Plaintiff is informed and believes that he is entitled to judgment against Defendant Oullette and Defendant Haulers Inc. for actual and punitive damages, in an amount to be determined by a jury.

WHEREFORE; Plaintiff prays for judgment against the Defendants for actual and punitive damages, the costs of this action, and for such other and further relief as the Court may deem just and proper. **Furthermore, Plaintiff demand a trial by jury.**

BY: s/ Raia Jane Hirsch
Raia Jane Hirsch, SC Bar # 80035
Post Office Box 5048
Spartanburg, SC 29304
Telephone Number: (864) 574-8801
Fax Number: (864) 574-8810
Raia.hirsch@hawklawfirm.com
Attorney for the Plaintiffs

DATE: July 26, 2022
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	CASE NO. 2022-CP-43-01006
	)	
JERRY COZBY,	)	
	)	
Plaintiff,	)	
	)	
-verses-	)	ANSWER OF DEFENDANTS KENT
	)	HUNTLEY OLIVER AND THOMPSON
KENT HUNTLEY OLIVER, THOMPSON	)	CONSTRUCTION GROUP, INC. TO
CONSTRUCTION GROUP, INC., CURTIS	)	PLAINTIFF'S AMENDED COMPLAINT
OULLETTE, and QUALITY HAULERS,	)	(JURY TRIAL DEMANDED)
INC.,	)	
	)	
Defendants.	)	
	)	

TO: RAIJA JANE HIRSCH, COUNSEL FOR PLAINTIFF:

Defendants, Kent Huntley Oliver and Thompson Construction Group, Inc., ("Defendants"), by and through their undersigned counsel, answering the Amended Complaint, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE, BY WAY OF ANSWER

1. Each and every allegation of the Plaintiff's Amended Complaint not hereinafter expressly admitted, qualified and/or explained is denied.
2. The Defendants admit, upon information and belief, the residency allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint.
3. The Defendants admit the residency allegations contained in Paragraphs 2 and 3 of the Plaintiff's Amended Complaint.
4. Paragraphs 4 and 5 of the Plaintiff's Amended Complaint are not directed to these Defendants; accordingly, no response is required. By way of further response, to the extent that Paragraphs 4 and 5 of the Plaintiff's Amended Complaint attempt to allege or do allege any

cause of action, claim, act, error or omission as to these Defendants, those allegations are denied, and strict proof thereof is demanded.

5. In response to Paragraph 6 of the Plaintiff's Amended Complaint, the Defendants admit only that Plaintiff and Defendant Oliver were, upon information and belief, involved in a motor vehicle accident involving multiple vehicles in or around Newberry County on November 12, 2020. By way of further response, to the extent that Paragraph 6 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

6. Paragraph 7 of the Plaintiff's Amended Complaint is a statement and/or conclusion of law, and the Defendants are not required to admit or deny the same. By way of further response, to the extent that Paragraph 7 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

7. In response to Paragraph 8 of the Plaintiff's Amended Complaint, the Defendants reiterate each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

8. In response to Paragraph 9 of the Plaintiff's Amended Complaint, the Defendants admit only that Plaintiff was, upon information and belief, travelling on I-26 East on November 12, 2020. Defendants deny the remaining allegations of Paragraph 9 of the Plaintiff's Amended Complaint, and strict proof thereof is demanded. By way of further response, to the extent that Paragraph 9 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

9. In response to Paragraph 10 of the Plaintiff's Amended Complaint, the Defendants admit only that Defendant Oliver was, upon information and belief, travelling on I-26 East around the same time as Plaintiff on November 12, 2020. By way of further response, to the extent that Paragraph 10 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

10. In response to Paragraph 11 of the Plaintiff's Amended Complaint, the Defendants admit only that Defendant Oliver was operating a vehicle owned by Defendant Thompson Construction Group, Inc., and was an employee of Defendant Thompson Construction Group, Inc. with permissive use of the vehicle. The remainder of Paragraph 11 of the Plaintiff's Amended Complaint is a statement and/or conclusion of law, and the Defendants are not required to admit or deny the same. By way of further response, to the extent that Paragraph 11 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

11. In response to Paragraph 12 of the Plaintiff's Amended Complaint, the Defendants admit only that Defendant Oullette was, upon information and belief, travelling on I-26 East around the same time as Plaintiff and Defendant Oliver on November 12, 2020. By way of further response, to the extent that Paragraph 12 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

12. Paragraph 13 of the Plaintiff's Amended Complaint is not directed to these Defendants; accordingly, no response is required. By way of further response, to the extent that Paragraph 13 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause

of action, claim, act, error or omission as to these Defendants, those allegations are denied, and strict proof thereof is demanded.

13. The Defendants deny the allegations contained in Paragraphs 14, 15, 16, and 17 of the Plaintiff's Amended Complaint, as alleged therein, and strict proof thereof is demanded.

14. In response to Paragraph 18 of the Plaintiff's Amended Complaint, the Defendants admit only that Defendant Oliver was operating a vehicle owned by Defendant Thompson Construction Group, Inc., and was an employee of Defendant Thompson Construction Group, Inc. with permissive use of the vehicle. The remainder of Paragraph 18 of the Plaintiff's Amended Complaint is a statement and/or conclusion of law, and the Defendants are not required to admit or deny the same. By way of further response, to the extent that Paragraph 18 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

15. Paragraph 19 of the Plaintiff's Amended Complaint is not directed to these Defendants; accordingly, no response is required. By way of further response, to the extent that Paragraph 19 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to these Defendants, those allegations are denied, and strict proof thereof is demanded.

16. Paragraph 20 of the Plaintiff's Amended Complaint is a statement and/or conclusion of law, and the Defendants are not required to admit or deny the same. By way of further response, to the extent that Paragraph 20 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

17. The Defendants deny the allegations contained in Paragraphs 21 of the Plaintiff's Amended Complaint, and strict proof thereof is demanded.

18. In response to Paragraph 22 of the Plaintiff's Amended Complaint, the Defendants reiterate each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

19. The Defendants deny the allegations contained in Paragraphs 23 (including subparts), 24 (including subparts), 25, 26, and 27 of the Plaintiff's Amended Complaint, and strict proof thereof is demanded.

20. In response to Paragraph 28 of the Plaintiff's Amended Complaint, the Defendants reiterate each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

21. In response to Paragraphs 29, 30, and 31 of the Plaintiff's Amended Complaint, the Defendants admit only that on November 12, 2020, Defendant Oliver was operating a vehicle owned by Defendant Thompson Construction Group, Inc., and was an employee of Defendant Thompson Construction Group, Inc. with permissive use of the vehicle. The remainder of Paragraphs 29, 30, and 31 of the Plaintiff's Amended Complaint are statements and/or conclusions of law, and the Defendants are not required to admit or deny the same. By way of further response, to the extent that Paragraphs 29, 30, and 31 of the Plaintiff's Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

22. In response to Paragraph 32 of the Plaintiff's Amended Complaint, the Defendants reiterate each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

23. Paragraphs 33 (including subparts), 34 (including subparts), 35, 36, and 37 of the Plaintiff's Amended Complaint are not directed to these Defendants; accordingly, no response is required. By way of further response, to the extent that Paragraphs 33 (including subparts), 34 (including subparts), 35, 36, and 37 of the Plaintiff's Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to these Defendants, those allegations are denied, and strict proof thereof is demanded.

24. In response to Paragraph 38 of the Plaintiff's Amended Complaint, the Defendants reiterate each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

25. Paragraphs 39, 40, 41, and 42 of the Plaintiff's Amended Complaint are not directed to these Defendants; accordingly, no response is required. By way of further response, to the extent that Paragraphs 39, 40, 41, and 42 of the Plaintiff's Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to these Defendants, those allegations are denied, and strict proof thereof is demanded.

26. The Defendants also deny the allegations contained in the "Wherefore" Paragraph of the Plaintiff's Amended Complaint, which is the remainder of the Plaintiff's Amended Complaint, and strict proof thereof is demanded.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Comparative Negligence)

27. The Defendants, on information and belief, would allege and show that any injuries and damages sustained by the Plaintiff as alleged in the Complaint, which are denied, were due to and were caused and occasioned by the Plaintiff's own acts of comparative negligence, which acts on the part of the Plaintiff combined and contributed and concurred with any negligence on the part of the Defendants, which is denied, without which the alleged

incident and resulting alleged damages would not have occurred or have been sustained, and the Defendants do plead such comparative negligence as the direct and proximate cause of the injuries and damages sustained by the Plaintiff as alleged in the Complaint. Accordingly, the Defendants are entitled to a determination as to the percentage with which the Plaintiff's own comparative negligence contributed to this incident and the Plaintiff's alleged injuries and damages and to the reduction of any sum awarded to the Plaintiff by an amount equal to the percentage of the Plaintiff's own comparatively negligent conduct.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Improper Claim for Punitive Damages)

28. Punitive damages are inappropriate in this case since the Defendants did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. 15-32-510 et. seq.)

29. The Defendants do plead the limitations on damage awards found in S.C. Code Ann. 15-32-510 et. seq., and request bifurcation in accordance with these code sections.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Failure to State a Claim)

30. The Plaintiff's Amended Complaint fails to state any claims upon which relief can be granted as to the Defendants, and the Plaintiff's Amended Complaint should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP*.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Intervening and Superseding Negligence)

31. The Defendants would allege and show that any injuries and damages sustained by the Plaintiff as alleged in the Complaint, which are denied, were due to and were caused and occasioned by the intervening and superseding negligence of some other party or parties over whom the Defendants had no supervision or control, and the Defendants do plead such intervening and superseding negligence as the direct and proximate cause of the injuries and damages sustained by the Plaintiff as alleged in the Complaint.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Set-Off)

32. The Defendants claim their right to set off, settlement or judgment credits, to the extent applicable and allowed pursuant to South Carolina law.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Sudden Emergency/Unavoidable Accident)

33. The Defendants would allege and show that the Plaintiff's accident was not the result of any negligence on the part of the Defendants and hereby give notice that the evidence may support that Plaintiff's accident was the result of a sudden emergency and/or unavoidable accident, and that, accordingly, the Plaintiff is barred from recovery and these Defendants.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Waiver, Estoppel, Laches)

34. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel and/or laches.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Payment and Release)

35. Plaintiff's Amended Complaint is barred by payment and/or release.

**FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE**
(Non-Economic Damages)

36. To the extent applicable, Defendants plead S.C. Code Ann. §§ 15-32-520 and -
530.

**FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE**
(Failure to Mitigate)

37. Defendants would show that the injuries and/or damages alleged in this lawsuit, which are hereby denied, were due to and caused by the Plaintiff's failure to mitigate.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE**
(Reliance on Other Defenses, Reservation, Counterclaims, Cross-Claims, and Non-Waiver)

38. The Defendants hereby give notice that they intend to rely upon such other defenses and affirmative defenses, or Counterclaims and Cross-Claims, as may become available or apparent during the course of discovery and thus reserve the right to amend their Answer to assert any such defenses.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, the Defendants pray that the same be dismissed, together with the costs and disbursements of this action, and for such other and further relief as this Court deems proper. The Defendants also request a trial by jury.

Respectfully submitted,

PIERCE SLOAN KENNEDY & EARLY, LLC

321 East Bay Street
Post Office Box 22437
Charleston, SC 29401
P: (843) 722-7733
F: (843) 722-7732

s/William O. Sweeny IV

Carl E. Pierce, II (S.C. Bar No. 7946)
William O. Sweeny IV (S.C. Bar No. 78668)
*Attorneys for Defendants Kent Huntley Oliver and
Thompson Construction Group, Inc.*

August 16, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Jerry Cozby

Plaintiff,

vs.

Kent Huntley Oliver, Thompson
Construction Group, Inc., Curtis Ouellette
and Quality Haulers, Inc,

Defendants.

IN THE COURT OF COMMON PLEAS

C. A. No. 2022-CP-43-01006

**DEFENDANTS CURTIS OUELLETTE
AND QUALITY HAULERS, INC.'S
ANSWER TO AMENDED
COMPLAINT**

(Jury Trial Demanded)

The defendants, Curtis Ouellette and Quality Haulers, Inc., answering the amended complaint, would respectfully allege and show unto the court as follows:

FOR A FIRST DEFENSE
AS TO ALL CAUSES OF ACTION

1. The defendants, Curtis Ouellette (hereinafter referred to as "Mr. Ouellette"), and Quality Haulers, Inc. (hereinafter referred to as "Quality Haulers"), lack sufficient information to form a belief as to the truth of the allegations of paragraph 1 of the amended complaint and, therefore, deny same and demand strict proof thereof.

2. Mr. Ouellette and Quality Haulers lack sufficient information to form a belief as to the truth of the allegations of paragraph 2 of the amended complaint and, therefore, deny same and demand strict proof thereof.

3. Mr. Ouellette and Quality Haulers lack sufficient information to form a belief as to the truth of the allegations of paragraph 3 of the amended complaint and, therefore, deny same and demand strict proof thereof.

4. Mr. Ouellette and Quality Haulers admit the allegations of paragraph 4 of the amended complaint.

5. Mr. Ouellette and Quality Haulers admit the allegations of paragraph 5 of the amended complaint.

6. Mr. Ouellette and Quality Haulers admit so much of the allegations of paragraph 6 of the amended complaint as allege that the accident at issue in this case occurred in Newberry County, South Carolina. However, they deny the remaining allegations of paragraph 6 of the amended complaint and demand strict proof thereof.

7. Mr. Ouellette and Quality Haulers allege that the allegations of paragraph 7 of the amended complaint state legal conclusions to which no response is necessary from them. Insofar as a response is deemed necessary, Mr. Ouellette and Quality Haulers deny the allegations of paragraph 7 of the amended complaint and demand strict proof thereof.

8. Insofar as the allegations of paragraph 8 of the amended complaint require a response from them, Mr. Ouellette, and Quality Haulers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1-7, above.

9. Mr. Ouellette and Quality Haulers admit, upon information and belief, so much of the allegations of paragraph 9 of the amended complaint as allege that the plaintiff was traveling east on SC Interstate 26 on the morning of November 12, 2020. However, they lack sufficient information to form a belief as to the truth of the remaining allegations of paragraph 9 of the amended complaint and, therefore, deny same and demand strict proof thereof.

10. Mr. Ouellette and Quality Haulers admit, upon information and belief, the truth of the allegations of paragraph 10 of the amended complaint.

11. Mr. Ouellette and Quality Haulers lack sufficient information to form a belief as to the truth of allegations of paragraph 11 of the amended complaint and, therefore, deny same and demand strict proof thereof.

12. Mr. Ouellette and Quality Haulers deny the allegations of paragraph 12 of the amended complaint and demand strict proof thereof.

13. Mr. Ouellette and Quality Haulers admit so much of the allegations of paragraph 13 of the amended complaint as allege that Mr. Ouellette was an employee of Quality Haulers on November 12, 2020. However, they deny the remaining allegations of paragraph 13 of the amended complaint and demand strict proof thereof.

14. Mr. Ouellette and Quality Haulers deny so much of the allegations of paragraph 14 of the amended complaint as allege that the vehicle being driven by Mr. Ouellette was traveling on the shoulder of the road at the time his vehicle was struck from the rear and demand strict proof thereof. However, they admit so much of the allegations of paragraph 14 of the amended complaint as allege that the vehicle being driven by Mr. Oliver hit the vehicle being driven by Mr. Ouellette and also admit that Mr. Oliver was traveling too fast for conditions and caused debris to be on the road as a result of his striking the rear end of the vehicle being driven by Mr. Ouellette. They lack sufficient information to form a belief as to the truth of the remaining allegations of paragraph 14 of the amended complaint and, therefore, deny same and demand strict proof thereof.

15. Mr. Ouellette and Quality Haulers admit so much of the allegations of paragraph 15 of the amended complaint as allege that Mr. Oliver's vehicle rear-ended the vehicle being driven by Mr. Ouellette. However, they lack sufficient information to form a belief as to the truth of the remaining allegations of paragraph 15 of the amended complaint and, therefore, deny same and demand strict proof thereof.

16. Mr. Ouellette and Quality Haulers lack sufficient information to form a belief as to the truth of allegations of paragraph 16 of the amended complaint and, therefore, deny same and demand strict proof thereof.

17. Mr. Ouellette and Quality Haulers lack sufficient information to form a belief as to the truth of the allegations of paragraph 17 of the amended complaint and, therefore, deny same and demand strict proof thereof.

18. Mr. Ouellette and Quality Haulers lack sufficient information to form a belief as to the truth of the allegations of paragraph 18 of the amended complaint and, therefore, deny same and demand strict proof thereof.

19. Mr. Ouellette and Quality Haulers admit so much of the allegations of paragraph 19 of the amended complaint as allege that Mr. Ouellette was an employee of Quality Haulers at the time of the accident. However, they deny the remaining allegations of paragraph 19 of the amended complaint and demand strict proof thereof.

20. Mr. Ouellette and Quality Haulers allege that the allegations of paragraph 20 of the amended complaint state legal conclusions to which no response is necessary from them. To the extent that a response is deemed necessary, and to the extent that the allegations of paragraph 20 of the amended complaint allege that Mr. Ouellette and Quality Haulers violated any duties in connection with their handling of the Quality Haulers vehicle, Mr. Ouellette and Quality Haulers deny those allegations and demand strict proof. They lack sufficient information to form a belief as to the truth of the remaining allegations of paragraph 20 of the amended complaint and, therefore, deny same and demand strict proof thereof.

21. Mr. Ouellette and Quality Haulers deny the allegations of paragraph 21 of the amended complaint and demand strict proof thereof.

22. Insofar as the allegations of paragraph 22 of the amended complaint require a response from them, Mr. Ouellette, and Quality Haulers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1-21, above.

23. Mr. Ouellette and Quality Haulers allege that the allegations of paragraphs 23-27 of the amended complaint are not directed towards them, and no response is necessary from them to those allegations. To the extent that a response is deemed necessary, Mr. Ouellette and Quality Haulers lack sufficient information to form a belief as to the truth of the remaining allegations of paragraphs 23-27 of the amended complaint and, therefore, deny same and demand strict proof thereof.

24. Insofar as the allegations of paragraph 28 of the amended complaint require a response from them, Mr. Ouellette and Quality Haulers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1-27, above.

25. Mr. Ouellette and Quality Haulers allege that the allegations of paragraphs 29-31 of the amended complaint are not directed towards them, and no response is necessary from them to those allegations. They further allege that the allegations of paragraph 31 of the amended complaint state legal conclusions to which no response is necessary from them. Insofar as a response is deemed necessary from them for the allegations of paragraphs 29-31 of the amended complaint, Mr. Ouellette and Quality Haulers admit, upon information and belief, the truth of those allegations.

26. Insofar as the allegations of paragraph 32 of the amended complaint require a response from them, Mr. Ouellette and Quality Haulers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1-31, above.

27. Mr. Ouellette and Quality Haulers allege that the allegations of paragraph 33 of the amended complaint state legal conclusions to which no response is deemed necessary from them. To the extent that a response is deemed necessary, Mr. Ouellette and Quality Haulers deny the allegations of paragraph 33 of the amended complaint and demand strict proof thereof.

28. Mr. Ouellette and Quality Haulers deny the allegations of paragraph 34 of the amended complaint and demand strict proof thereof.

29. Mr. Ouellette and Quality Haulers deny the allegations of paragraph 35 of the amended complaint and demand strict proof thereof.

30. Mr. Ouellette and Quality Haulers deny the allegations of paragraph 36 of the amended complaint and demand strict proof thereof.

31. Mr. Ouellette and Quality Haulers deny the allegations of paragraph 37 of the amended complaint and demand strict proof thereof.

32. Insofar as the allegations of paragraph 38 of the amended complaint require a response from them, Mr. Ouellette and Quality Haulers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1-37, above.

33. Mr. Ouellette and Quality Haulers admit so much of the allegations of paragraph 39 of the amended complaint as allege that Mr. Ouellette was an employee of Quality Haulers on November 12, 2020. However, they lack sufficient information to form a belief as to the truth of the remaining allegations of paragraph 39 of the amended complaint and, therefore, deny same and demand strict proof thereof.

34. Mr. Ouellette and Quality Haulers deny the allegations of paragraph 40 of the amended complaint and demand strict proof thereof.

35. Mr. Ouellette and Quality Haulers allege that the allegations of paragraph 41 of the amended complaint state legal conclusions to which no response is necessary from them. To the extent that a response is deemed necessary, they deny the allegations of paragraph 41 of the amended complaint and demand strict proof thereof.

36. Mr. Ouellette and Quality Haulers deny the allegations of paragraph 42 of the complaint and demand strict proof thereof.

37. Mr. Ouellette and Quality Haulers deny each and every allegation of the amended complaint not hereinabove specifically admitted, explained or modified.

FOR A SECOND DEFENSE
AS TO ALL CAUSES OF ACTION

38. Mr. Ouellette and Quality Haulers incorporate herein the allegations of their first defense not inconsistent herewith.

39. Mr. Ouellette and Quality Haulers allege that the plaintiff's complaint fails to state facts sufficient to constitute causes of action upon which relief can be granted as against them and is, accordingly, barred as to them.

FOR A THIRD DEFENSE
AS TO ALL CAUSES OF ACTION

40. Mr. Ouellette and Quality Haulers incorporate herein the allegations of their first defense not inconsistent herewith.

41. Mr. Ouellette and Quality Haulers allege that to the extent the plaintiff has failed to mitigate his damages in the manner provided for by law, such failure to mitigate is pled as a complete defense and bar to the plaintiff's claims.

FOR A FOURTH DEFENSE
AS TO ALL CAUSES OF ACTION

42. Mr. Ouellette and Quality Haulers incorporate herein the allegations of their first defense not inconsistent herewith.

43. In recognition of the legal requirement that all affirmative defenses which may be applicable be pled in the answer to the amended complaint and because no discovery has been undertaken in this matter as of the current time, Mr. Ouellette and Quality Haulers allege that this accident and the plaintiff's resulting injuries and damages, if any, were caused solely by the negligent, grossly negligent, careless, reckless, willful and wanton conduct on the part of the plaintiff in one or more of the following particulars to-wit:

- a. In failing to take any precautions for his own safety;
- b. In failing to move his vehicle out of the area of the roadway where the debris was;
- c. In, by his conduct, assuming the risk of sustaining the injuries and damages for which he is now complaining; and
- d. In failing to use that degree of care and caution which a reasonable person would have used under the circumstances then and there existing.

All of which are contrary to the common and statutory law of the State of South Carolina and the rules and regulations of the South Carolina Department of Public Safety.

44. Mr. Ouellette and Quality Haulers allege that this negligent, grossly negligent, careless, reckless, willful and wanton conduct on the part of the plaintiff, in the particulars set forth above, operated as the sole proximate cause of the accident and the plaintiff's alleged injuries and damages. As such, his causes of action are barred.

45. Mr. Ouellette and Quality Haulers reserve the right to withdraw this or any other defense in advance of trial should discovery reveal Mr. Cozby was not negligent and/or that any negligent acts or omissions by him were not a proximate cause of this accident.

FOR A FIFTH DEFENSE
AS TO ALL CAUSES OF ACTION

46. Mr. Ouellette and Quality Haulers incorporate herein the allegations of their first defense not inconsistent herewith.

47. For the same reasons as set forth in paragraph number 43 above, and subject to the same reservations set forth in paragraph number 45 above, and even assuming they were negligent, grossly negligent, careless, reckless, willful or wanton in any respect whatsoever and that any such conduct operated as a proximate cause of the accident and the plaintiff's resulting injuries and damages, if any, all of which are expressly denied and admitted solely for the purpose of this defense and no other, Mr. Ouellette and Quality Haulers allege that Mr. Cozby's negligent, grossly negligent, careless, reckless, willful and wanton conduct in the particulars set forth hereinabove contributed more than fifty percent (50%) to cause the accident and the plaintiff's resulting injuries and damages. As such, the plaintiff's causes of action are barred.

48. Except as admitted in their first defense and in the preceding paragraph for the purpose of this defense and no other, Mr. Ouellette and Quality Haulers deny each and every allegation of the amended complaint.

FOR A SIXTH DEFENSE
AS TO ALL CAUSES OF ACTION

49. Mr. Ouellette and Quality Haulers incorporate herein the allegations of their first defense not inconsistent herewith.

50. For the same reasons as set forth in paragraph number 43 above, and subject to the same reservations set forth in paragraph number 45 above, Mr. Ouellette and Quality Haulers allege that even if they were negligent, grossly negligent, careless, reckless, willful or wanton in any respect, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on their part operated as a fifty percent (50%) or greater cause of the accident and the plaintiff's resulting injuries and damages, which is also expressly denied and admitted solely for the purpose of this defense and no other, they are entitled to a determination as to the percentage which Mr. Cozby's negligent, grossly negligent, careless, reckless, willful and wanton conduct contributed to this accident and to a reduction of any amount awarded to the plaintiff by an amount equal to the percentage of Mr. Cozby's negligent, grossly negligent, careless, reckless, willful and wanton conduct.

51. Except as admitted in their first defense and in the preceding paragraph for the purpose of this defense and no other, Mr. Ouellette and Quality Haulers deny each and every allegation of the amended complaint.

FOR A SEVENTH DEFENSE
AS TO ALL CAUSES OF ACTIONS

52 Mr. Ouellette and Quality Haulers incorporate herein the allegations of their first defense not inconsistent herewith.

53. They allege that this accident and the plaintiff's alleged resulting injuries and damages, if any, were caused by conduct on the part of persons or entities over whom they have no control and for whom they have no responsibility. They further allege that such conduct intervened and acted as the sole proximate cause of the accident and the plaintiff's alleged injuries and damages. As such, the plaintiff's claims against them are barred.

FOR AN EIGHTH DEFENSE
AS TO ALL CAUSES OF ACTIONS

54. Mr. Ouellette and Quality Haulers incorporate herein the allegations of their first defense not inconsistent herewith.

55. Mr. Ouellette and Quality Haulers allege that insofar as the plaintiff's amended complaint seeks punitive damages, such punitive damages are violative of both the United States and South Carolina Constitutions. As such, the plaintiff's claim for punitive damages is barred and should be stricken from the amended complaint. Additionally, Mr. Ouellette and Quality Haulers allege that any claim for punitive damages must be made in accord with South Carolina Code §§ 15-32-510 – 540. Further, any award returned by the jury in this case for punitive damages must be capped in accordance with the provisions of South Carolina Code § 15-32-530 (A) and (B).

WHEREFORE, having fully answered the amended complaint, Mr. Ouellette and Quality Haulers pray that it be dismissed as against them with costs and for any such other and further relief as this Court shall deem just and proper.

s/ Phillip E. Reeves

Phillip E. Reeves (S.C. Bar No. 4672)
 Gallivan, White & Boyd, P.A.
 Post Office Box 10589, F.S.
 Greenville, South Carolina 29603
 (864) 271-9580

Attorney for Defendants, Curtis Ouellette and
 Quality Haulers, Inc.

Greenville, South Carolina

September 20, 2022

The defendants, Curtis Ouellette and Quality Haulers, Inc., hereby request a trial by jury.

s/ Phillip E. Reeves

Phillip E. Reeves (S.C. Bar No. 4672)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.:
COUNTY OF NEWBERRY	)	
	)	
Dean Alan Arender and Tamala	)	
Arender	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>COMPLAINT</u>
	)	(JURY TRIAL REQUESTED)
	)	
Oliver Kent Huntley, Thompson	)	
Construction Group Inc, Curtis Kent	)	
Ovellette, and DMX Transportation	)	
Services Inc.,	)	
	)	
Defendants.	)	

The Plaintiffs would respectfully show unto the Court that:

JURISDICTION AND VENUE

1. The Plaintiffs are citizens and residents of Rutherford County, North Carolina.
2. Upon information and belief, the Defendant Oliver Kent Huntley (hereinafter "Huntley") is a citizen and resident of Spartanburg County, South Carolina. At all times relevant to this Complaint, Defendant Huntley was working within the course and scope of his employment and on behalf of Defendant Thompson Construction Group, Inc. Defendant Thompson Construction Group, Inc. is vicariously liable for Defendant Huntley's acts and/or omissions under theories of respondeat superior and master/servant, agent/principal, and employer/employee.
3. Upon information and belief, Defendant Thompson Construction Group Inc. (hereinafter "Thompson Construction") is a corporation organized under the laws of the State of South Carolina with its principal place of business in the State of South Carolina. Defendant Thompson Construction is a registered commercial motor carrier bearing USDOT number 481988.

Defendant Thompson Construction maintains a registered agent for the service of process in Greg A. Thompson, who is located at 100 N. Main Street, Sumter, South Carolina 29150.

4. Upon information and belief, Defendant Curtis Kent Ovellette (hereinafter “Ovellette”) is a citizen and resident of Greenville County, South Carolina. At all times relevant to this Complaint, Defendant Ovellette was working within the course and scope of his employment on behalf of Defendant DMX Transportation Services, Inc. Defendant DMX Transportation Services, Inc. is vicariously liable for Defendant Ovellette’s acts and/or omissions under theories of respondeat superior and master/servant, agent/principal, and employer/employee.

5. Upon information and belief, Defendant DMX Transportation Services Inc. (hereinafter “DMX Transportation”) is a corporation organized under the laws of the State of South Carolina with its principal place of business in the State of South Carolina. Defendant DMX Transportation is a registered commercial motor carrier bearing USDOT number 563416 and MC Number 275383. Defendant DMX Transportation maintains a registered agent for the service of process in Frank Wayne Merritt, who is located at 2118 Airport Road, Greer, South Carolina 29651.

6. Venue is proper in the Court of Common Pleas for Newberry because the acts and/or omissions giving rise to this litigation occurred in Newberry County, State of South Carolina.

FACTUAL BACKGROUND

7. On or about November 12, 2020, Defendant Ovellette was operating a commercial vehicle under Defendant DMX Transportation’s operating authority as he traveled east on Interstate 26 near the town of Jalapa, South Carolina when Defendant Ovellette pulled the commercial vehicle onto the right shoulder of Interstate 26. At all times relevant to this Complaint,

Defendant Ovellette's commercial vehicle was at a complete stop and/or traveling below a prudent speed on the right shoulder of the eastbound lane of Interstate 26.

8. Following Defendant Ovellette's commercial vehicle entering the right shoulder of the eastbound lane of Interstate 26, Defendant Huntley was operating a commercial vehicle under Thompson Construction's operating authority as he was travelling east in the right hand lane of Interstate 26 near Jalapa, South Carolina.

9. At all times relevant to this Complaint, Plaintiff was traveling behind Defendant Ovellette and Defendant Huntley in the right-hand lane of Interstate 26 near Jalapa, South Carolina.

10. As Defendant Huntley approached Defendant Ovellette's commercial vehicle from the rear, Defendant Huntley's vehicle left the right-hand lane of travel, veered onto the right shoulder, and collided with the rear end of Defendant Ovellette's commercial vehicle at a high rate of speed while it was located on the right shoulder of Interstate 26.

11. The rear end collision between Defendant Huntley and Defendant Ovellette propelled Defendant Huntley's commercial vehicle from the right shoulder of Interstate 26 into the right-hand lane and directly into the Plaintiff's path of travel on Interstate 26, which resulted in a significant multi-vehicle collision.

12. At all times relevant to this Complaint, Defendant Ovellette did not activate or turn on the commercial vehicle's emergency signals and/or hazard warning signal flashers once he pulled the commercial vehicle onto the shoulder of Interstate 26 or as he was continuing to travel as required by 49 C.F.R. § 392.22(a).

13. The Plaintiff did not contribute to this collision.

14. As a direct and proximate result of the collision, Plaintiff suffered the following injuries and damages:

- a. extensive pain, mental anguish, suffering and discomfort;
- b. permanent injuries and total disability;
- c. money spent for medical care and treatment, past, present and future;
- d. inability to carry on normal activities;
- e. emotional trauma and distress;
- f. loss of enjoyment of life;
- g. permanent inability to perform job duties resulting in lost wages and loss of earning capacity; and,
- h. damage to his property.

15. Further, as a result of the injuries and damages suffered by Plaintiff Janet Kincaid, the Plaintiff Barry Kincaid did suffer as follows:

- a. Loss of consortium;
- b. Loss of revenue;
- c. Loss of relationships; and,
- d. Loss of enjoyment.

16. At all times relevant to this Complaint, the gross motor vehicle weight of Defendant Huntley's and Defendant Ovellette's commercial vehicles exceeded 26,0001 pounds.

FOR A FIRST CAUSE OF ACTION
Against Defendant Oliver Kent Huntley
(Negligence)

17. Plaintiffs hereby repeat and reallege as if verbatim paragraphs 1-16.

18. At all times relevant to this Complaint, Defendant Huntley was operating a commercial motor vehicle in interstate commerce.

19. In order to undertake such actions, Defendant Huntley must have the knowledge and skills necessary for the safe operation of the commercial motor vehicle.

20. The safe operation of commercial motor vehicles requires specialized knowledge and additional training, not necessary for the safe operation of passenger vehicles because:

- a. commercial motor vehicles are heavier than passenger vehicles and take longer to stop, as compared to a passenger car operating at the same pre-braking speed;
- b. commercial motor vehicles are heavier and longer than passenger vehicles and take longer to execute turning and lane change maneuvers, as compared to passenger vehicles operating at the same pre-turn or lane change speed;
- c. commercial motor vehicles are heavier than passenger vehicles and cause more significant property damage and/or personal injury or death in collisions, as compared to passenger cars operating at the same pre-collision speed and trajectory;
- d. commercial motor vehicles pose more of a risk of causing personal injury, death, or property damage in a collision, as compared to a collision involving a passenger vehicle operating at the same pre-collision speed and trajectory; and,
- e. commercial motor vehicles pose a greater risk of increased injury to passenger vehicle occupants in a head on collision because of the large difference in mass between a commercial vehicle and a passenger vehicle.

21. In order to undertake the safe operation of a commercial motor vehicle, drivers such as Defendant Huntley must have knowledge and skills in many areas, including the following:

- a. the procedures for safe vehicle operations;
- b. the proper procedures for performing basic maneuvers such controlling the speed of the commercial vehicle and keeping a proper look out for the condition of traffic ahead;
- c. the importance of conducting a proper visual search;
- d. the importance of proper visual search methods, including seeing ahead and to the sides;
- e. the principles and procedures for proper communications and the hazards of failing to signal properly, including signaling intent and communicating presence;
- f. the importance of understanding the effects of speed, including speed and visibility and speed and traffic flow; and,
- g. the procedures and techniques for controlling the space around the vehicle, including the importance of space management, space cushions, space to the sides, and space for traffic gaps.

22. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to look 12 to 15 seconds ahead to avoid having to stop too quickly or make quick lane changes.

23. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to shift their attention back and forth, near and far.

24. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to look for brake lights from slowing vehicles because seeing these things far enough ahead allows commercial motor vehicle drivers the opportunity to change speed or lanes if necessary to avoid a problem.

25. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to adjust their speed depending on driving conditions, including traction, curves, visibility, and traffic.

26. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to have knowledge of and understand the total stopping distance of their commercial motor vehicle, including perception distance, reaction distance, and brake distance at the relevant speeds of travel.

27. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to understand the effects of speed and vehicle weight on stopping distance.

28. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the need for a space cushion ahead because the vehicle that commercial trucks or buses most frequently run into is the one in front of them.

29. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the need for a space cushion to the sides, front, and back.

30. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers keep at least one second for each 10

feet of vehicle length plus one second at speeds above 40 mph between their vehicle and the vehicle in front of them.

31. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand that drivers signaling a turn may slow more than expected or stop.

32. In addition to the basic knowledge and skills required of commercial vehicle drivers, prudent commercial vehicle drivers understand they are responsible for recognizing potential hazards before they become emergencies, always have a plan, and a way out.

33. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant Huntley's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

- a. in failing to apply the brakes of the vehicle and/or maintain them in proper working condition;
- b. in failing to steer or take other evasive action so as to avoid the collision;
- c. in failing to keep a proper lookout;
- d. in failing to yield as required by law;
- e. in operating the vehicle too fast for existing conditions;
- f. in failing to observe the condition of traffic;
- g. in operating a commercial motor vehicle when he was not qualified to do so;
- h. in failing to follow the proper procedures for safe commercial vehicle operations;
- i. in failing to conduct a proper visual search;
- j. in failing to account for his vehicle's speed and its effect of visibility and traffic flow;

- k. in failing to properly control the space around his vehicle, including failing to maintain a proper space cushion, proper space to the front, sides, and rear, or proper space to allow for other vehicles on the highway;
- l. in failing to understand and/or account for his vehicle's total stopping distance at the Defendant's particular speed;
- m. in failing to look 12 to 15 seconds ahead such that Defendant Huntley should have seen the traffic in time to avoid a sudden stop or lane change maneuver;
- n. in failing to shift his attention back and forth, near and far, so as to see the vehicle turning ahead and avoid a sudden braking or lane change maneuver;
- o. in failing to spot a potential hazard before it became an emergency;
- p. in failing to utilize the commercial vehicle's mirror's appropriately;
- q. in failing to maintain his lane of travel when surrounding traffic was visible in and around the roadway;
- r. in driving while distracted;
- s. in driving in excess of the posted speed limit;
- t. in failing to maintain his lane of travel;
- u. in veering onto the shoulder of the road;
- v. in traveling too fast for conditions; and,
- w. in colliding with a vehicle on the interstate.

34. Defendant Huntley's careless, negligent, willful, wanton, reckless and unlawful acts were a direct and proximate cause of the collision and resulting injuries and damages to the Plaintiffs.

35. Plaintiffs are informed and believe that they are entitled to judgment against Defendant Huntley for actual and punitive damages in an appropriate amount.

FOR A SECOND CAUSE OF ACTION
Against Defendant Thompson Construction Group
(Direct Negligence)

36. Plaintiffs repeat and reallege as if verbatim paragraphs 1-35.

37. Upon Information and belief, Defendant Thompson Construction operates as a commercial motor carrier.

38. In return for the privilege of operating commercial motor vehicles on public roadways, prospective motor carriers must make certain safety related certifications and verifications.

39. Motor carriers such as Defendant Thompson Construction are required to submit a Form MCS-150 to the Federal Motor Carrier Administration and obtain a USDOT number.

40. Each Form MCS-150 Defendant Thompson Construction is required to submit contains a Certification Statement whereby Defendant declares under the penalty of perjury that it is familiar with the Federal Motor Carrier Safety Regulations.

41. Motor carriers such as Defendant is also required to submit a Form OP-1 to the Federal Motor Carrier Administration to gain operating authority.

42. The Form OP-1 that Defendant Thompson Construction was required to submit contains a "Safety Certification," which require Defendant Thompson Construction to certify to the following:

- a. Defendant is subject to the pertinent portions of the US DOT's Federal Motor Carrier Safety Regulations ("FMCSR") at 49 CFR, Chapter 3, Subchapter B (Parts 350-399);

- b. Defendant has access to and is familiar with all applicable US DOT regulations relating to the safe operation of commercial vehicles;
- c. Defendant will comply with the US DOT regulations;
- d. Defendant has in place a system and individual responsible for ensuring overall compliance with the FMCSR;
- e. Defendant can produce a copy of the FMCSR;
- f. Defendant has in place a driver safety training/orientation program;
- g. Defendant is familiar with DOT regulations governing driver qualifications and has in place a system for overseeing driver qualification requirements;
- h. Defendant has in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles;

43. To be qualified to operate a commercial motor vehicle, a driver must have experience and/or training to safely operate the type of vehicle, be physically qualified, have a currently valid CDL, and furnish to the motor carrier a list of current driving violations.

44. To be qualified to operate a commercial motor vehicle, a driver is also required to complete a written application containing the following information:

- a. The nature and extent of the driver's experience;
- b. A list of all accidents in the previous 3 years;
- c. A list of all violations of motor vehicle laws in the previous 3 years;
- d. A detailed description of any denial, revocation, or suspension of any drivers licenses or permits

45. Before a motor carrier may allow or permit a driver to operate a commercial motor vehicle, the motor carrier must:

- a. Obtain the driver's motor vehicle record from the applicable state agency for the previous 3 years; and
- b. Investigate the driver's safety performance history with all DOT regulated employers for the previous 3 years.

46. Once motor carriers such as Defendant Thompson Construction hires a commercial driver, every twelve months thereafter, the driver must submit a written list of all traffic violations the driver received over a twelve month period.

47. Once a motor carrier such as the Defendant Thompson Construction hires a commercial driver, every twelve months thereafter, the motor carrier must obtain from the relevant state agency a list of traffic violations for the previous year and maintain a copy of the record in the driver's qualification file.

48. In addition, drivers employed by, or operating under the direction of, motor carriers such as Defendant Thompson Construction is required to complete and turn in to their employer trip envelopes at least every 13 days. Such trip envelopes include, but are not limited to, the driver's daily logs and pre-trip and post-trip vehicle inspection reports.

49. Drivers' daily logs record how much time each driver spends on duty, on duty not driving, off duty, and in a sleeper berth. Driver logs also require drivers to indicate how many miles they drove during each 24 hour period and their locations at each change of duty status.

50. In addition to the required daily logs and vehicle inspection reports, prudent motor carriers also collect information from their drivers, such as fuel receipts, entry and departure records, and other supporting documentation that verifies the times that their drivers were at specific locations.

51. Prudent motor carriers use the information contained in the required daily driver logs, vehicle inspection reports, and other supporting documents to audit the performance of their drivers.

52. Prudent motor carriers use the information contained in the required daily driver logs, vehicle inspection reports, and other supporting documentation to audit the performance of their drivers to ensure that their drivers are not violating hour of service rules, to ensure that their drivers do not average speeds in excess of what is safe, and otherwise verify that the information contained in the driver's logs is accurate and truthful.

53. Auditing drivers' daily logs, vehicle inspection report, and supporting documents increases the likelihood that a motor carrier's drivers are operating their commercial vehicles safely and decreases the risk of a preventable crash.

54. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if the driver is not qualified to do so.

55. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, and supporting documents indicates that the driver has a higher than safe average speed.

56. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, and supporting documents indicates that the driver operates his vehicle in violation of the hours of service rules.

57. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, and supporting documents indicates that the driver is not accurate and truthful in the completion of his logs.

58. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if the driver does not have the required knowledge or skill to safely operate the vehicle.

59. The injuries and damages incurred by Plaintiff were directly and proximately caused by Defendant Thompson Construction's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

- a. Hiring, training, supervision, and retention of its drivers, employees, and/or agents, specifically, Defendant Huntley;
- b. Entrustment of a tractor trailer to its drivers, employees, and/or agents, specifically, Defendant Huntley;
- c. Failing to comply with federal and/or state regulations and industry standards, as referenced in this Complaint and as developed during the discovery in this case;
- d. Improperly auditing the logs of its drivers, employees, and/or agents, specifically Defendant Huntley; and,
- e. Failing to utilize available information to properly monitor its drivers, employees, and/or agents, specifically Defendant Huntley, for compliance with company policies and/or state and federal regulations.

60. Defendant Thompson Construction's careless, negligent, willful, wanton, reckless and unlawful acts were a direct and proximate cause of the collision and resulting injuries and damages to the Plaintiffs.

61. Plaintiffs are informed and believe that they are entitled to judgment against Defendant Thompson Construction for actual and punitive damages in an appropriate amount.

FOR A THIRD CAUSE OF ACTION
Against Defendant Thompson Construction Group, Inc.

(Respondeat Superior)

62. Plaintiffs repeat and reallege as if verbatim paragraphs 1-61.

63. At all times relevant to the allegations contained in this Complaint, Defendant Huntley was working in the course and scope of his employment for Defendant Thompson Construction, or was otherwise acting as an agent or servant of the Defendant Thompson Construction.

64. Defendant Thompson Construction is liable for the acts and omissions of the Defendant Huntley under the doctrines of respondeat superior, master/servant, and/or agent/principal.

65. The Plaintiffs are informed and believe that they are entitled to judgment against the Defendants for actual and punitive damages in an appropriate amount.

FOR A FOURTH CAUSE OF ACTION
Against Defendant Curtis Kent Ovellette
(Negligence)

66. Plaintiffs hereby repeat and reallege as if verbatim paragraphs 1-65.

67. At all times relevant to this Complaint, Defendant Ovellette was operating a commercial motor vehicle in interstate commerce.

68. In order to undertake such actions, Defendant Ovellette must have the knowledge and skills necessary for the safe operation of the commercial motor vehicle.

69. The safe operation of commercial motor vehicles requires specialized knowledge and additional training, not necessary for the safe operation of passenger vehicles because:

- a. commercial motor vehicles are heavier than passenger vehicles and take longer to stop, as compared to a passenger car operating at the same pre-braking speed;

- b. commercial motor vehicles are heavier and longer than passenger vehicles and take longer to execute turning and lane change maneuvers, as compared to passenger vehicles operating at the same pre-turn or lane change speed;
- c. commercial motor vehicles are heavier than passenger vehicles and cause more significant property damage and/or personal injury or death in collisions, as compared to passenger cars operating at the same pre-collision speed and trajectory;
- d. commercial motor vehicles pose more of a risk of causing personal injury, death, or property damage in a collision, as compared to a collision involving a passenger vehicle operating at the same pre-collision speed and trajectory; and,
- e. commercial motor vehicles pose a greater risk of increased injury to passenger vehicle occupants in a head on collision because of the large difference in mass between a commercial vehicle and a passenger vehicle.

70. In order to undertake the safe operation of a commercial motor vehicle, drivers such as Defendant Ovellette must have knowledge and skills in many areas, including the following:

- a. the procedures for safe vehicle operations;
- b. the proper procedures for performing basic maneuvers such as controlling the speed of the commercial vehicle and keeping a proper look out for the condition of traffic ahead;
- c. the importance of conducting a proper visual search;
- d. the importance of proper visual search methods, including seeing ahead and to the sides;

- e. the principles and procedures for proper communications and the hazards of failing to signal properly, including signaling intent and communicating presence;
- f. the importance of understanding the effects of speed, including speed and visibility and speed and traffic flow; and,
- g. the procedures and techniques for controlling the space around the vehicle, including the importance of space management, space cushions, space to the sides, and space for traffic gaps.

71. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to look 12 to 15 seconds ahead to avoid having to stop too quickly or make quick lane changes.

72. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to shift their attention back and forth, near and far.

73. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to look for brake lights from slowing vehicles because seeing these things far enough ahead allows commercial motor vehicle drivers the opportunity to change speed or lanes if necessary to avoid a problem.

74. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to adjust their speed depending on driving conditions, including traction, curves, visibility, and traffic.

75. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to have knowledge of and understand the total stopping distance of their commercial motor vehicle, including perception distance, reaction distance, and brake distance at the relevant speeds of travel.

76. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to understand the effects of speed and vehicle weight on stopping distance.

77. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the need for a space cushion ahead because the vehicle that commercial trucks or buses most frequently run into is the one in front of them.

78. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the need for a space cushion to the sides, front, and back.

79. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers keep at least one second for each 10 feet of vehicle length plus one second at speeds above 40 mph between their vehicle and the vehicle in front of them.

80. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand that drivers signaling a turn may slow more than expected or stop.

81. In addition to the basic knowledge and skills required of commercial vehicle drivers, prudent commercial vehicle drivers understand they are responsible for recognizing potential hazards before they become emergencies, always have a plan, and a way out.

82. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the dangers of parking or stopping a commercial motor vehicle on a roadway.

83. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the dangers of parking a commercial motor vehicle on a roadway without flashers and warning signs.

84. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant Ovellette's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

- a. in failing to apply the brakes of the vehicle and/or maintain them in proper working condition;
- b. in failing to steer or take other evasive action so as to avoid the collision;
- c. in failing to keep a proper lookout;
- d. in failing to yield as required by law;
- e. in operating the vehicle too fast for existing conditions;
- f. in failing to observe the condition of traffic;
- g. in operating a commercial motor vehicle when he was not qualified to do so;
- h. in failing to follow the proper procedures for safe commercial vehicle operations;
- i. in failing to conduct a proper visual search;
- j. in failing to account for his vehicle's speed and its effect of visibility and traffic flow;
- k. in failing to properly control the space around his vehicle, including failing to maintain a proper space cushion, proper space to the front, sides, and rear, or proper space to allow for other vehicles on the highway;
- l. in failing to understand and/or account for his vehicle's total stopping distance at the Defendant's particular speed;

- m. in failing to look 12 to 15 seconds ahead such that Defendant Ovellette should have seen the traffic in time to avoid a sudden stop or lane change maneuver;
- n. in failing to shift his attention back and forth, near and far, so as to see the vehicle turning ahead and avoid a sudden braking or lane change maneuver;
- o. in failing to spot a potential hazard before it became an emergency;
- p. in failing to utilize the commercial vehicle's mirror's appropriately;
- q. in failing to maintain his lane of travel when surrounding traffic was visible in and around the roadway;
- r. in failing to maintain his lane of travel;
- s. in veering onto the shoulder of the road;
- t. in stopping his commercial vehicle on the shoulder of the road;
- u. in travelling on the shoulder in a non-emergent situation;
- v. failing to activate or turn on the commercial vehicle's emergency signals and/or hazard warning signal flashers;
- w. in otherwise failing to signal to the general motoring public that he was traveling or stopped on the shoulder of a business interstate;
- x. in creating a potentially deadly hazard by parking and/or traveling on the shoulder of Interstate 26; and,
- y. in parking and/or traveling on the right shoulder of an Interstate highway in a known highway in known high traffic area where Defendants and their driver knew or should have known traffic would pass the commercial vehicle at a high rate of speed.

85. Defendant Ovellette's careless, negligent, willful, wanton, reckless and unlawful acts were a direct and proximate cause of the collision and resulting injuries and damages to the Plaintiffs.

86. Plaintiffs are informed and believe that they are entitled to judgment against Defendant Ovellette for actual and punitive damages in an appropriate amount.

FOR A FIFTH CAUSE OF ACTION
Against Defendant DMX Transportation Services Inc.
(Negligence)

87. Plaintiffs hereby repeat and reallege as if verbatim paragraphs 1-86.

88. Defendant DMX Transportation operates as a commercial motor carrier.

89. In return for the privilege to operate commercial motor vehicles on public roadways, prospective motor carriers must make certain safety related certifications and verifications.

90. Motor carriers such as Defendant DMX Transportation are required to submit a Form MCS-150 to the Federal Motor Carrier Administration and obtain an USDOT number.

91. Each Form MCS-150 Defendant DMX Transportation submitted or will submit contains a Certification Statement whereby Defendant DMX Transportation declares under the penalty of perjury that it is familiar with Federal Motor Carrier Safety Regulations and/or Federal Hazardous Materials Regulations.

92. Motor carriers such as Defendant DMX Transportation are required to submit a Form OP-1 to the Federal Motor Carrier Administration to gain operating authority.

93. The Form OP-1 submitted by Defendant DMX Transportation contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that they are subject

to the pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations ("FMCSR") at 49 CFR, Chapter 3, Subchapter B (Parts 350-399).

94. The Form OP-1 submitted by Defendant DMX Transportation contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that they have access to and are familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and that they will comply with the regulations.

95. The Form OP-1 submitted by Defendant DMX Transportation contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that, at a minimum, they:

- a. have in place a system and an individual responsible for ensuring overall compliance with the FMCSR;
- b. Can produce a copy of the FMCSR;
- c. have in place a driver safety training/orientation program;
- d. are familiar with DOT regulations governing driver qualifications and have in place a system for overseeing driver qualification requirements (49 CFR Parts 391);
- e. have in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles;
- f. obtain the driver's motor vehicle record from the applicable state agency for the previous 3 years; and,
- g. investigate the driver's safety performance history with all DOT regulated employers for the previous 3 years; and,
- h. investigate and obtain an original or copy of the medical examiner's certificate issued in accordance with 49 C.F.R. § 391.43, and any medical variance on which

the certification is based, and place the records in the driver qualification file, before allowing the driver to operate a commercial motor vehicle.

96. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant DMX Transportation's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars by failing to use reasonable care in the:

- a. Hiring of the driver involved in the collision that is the subject of this litigation;
- b. Retention of the driver involved in the collision that is the subject of this litigation;
- c. Training of the driver involved in the collision that is the subject of this litigation;
- d. In training its drivers to and/or permitting its drivers to park commercial vehicles on the shoulders of interstate highways in non-emergency situations; specifically Curtis Kent Ovellette;
- e. In training its drivers to and/or permitting its drivers to park commercial vehicles on the shoulders of interstate highways in situations that do not constitute a necessary traffic stop; specifically, Curtis Kent Ovellette;
- f. in failing to train its drivers to activate or turn on the commercial vehicle's emergency signals and/or hazard warning signal flashers once he pulled the commercial vehicle off of and onto the shoulder of Interstate 26 as required by 49 C.F.R. § 392.22(a);
- g. in failing to train its drivers that it is never safe to park commercial vehicles on the shoulder of interstate highways;

- h. Supervision of its business operations in failing to properly monitor the driving habits and records of its drivers, employees, and/or agents, specifically, Curtis Kent Ovellette;
- i. in failing to supervise and monitor its driver's driving habits for parking commercial vehicles on the shoulders of interstate highways in non-emergency situations and in situations that are not necessary traffic stops;
- j. Supervision of its drivers, employees, and/or agents, specifically, Curtis Kent Ovellette;
- k. Instruction of its drivers, employees, and/or agents, specifically, Curtis Kent Ovellette;
- l. Entrustment of a tractor trailer to its drivers, employees, and/or agents, specifically, Curtis Kent Ovellette;
- m. Compliance with federal and/or state regulations and industry standards, as referenced in this Complaint and as developed during the discovery in this case;
- n. in failing to audit its driver's driving habits, routes, and logs for frequent stops while its drivers are operating commercial vehicles on interstate highways;
- o. Failing to utilize available information to properly monitor its drivers, employees, and/or agents, specifically the driver involved in the collision that is the subject of this litigation for compliance with company policies and/or state and federal regulations; and,
- p. in allowing the driver involved in the collision that is the subject of this litigation to operate a commercial motor vehicle despite knowledge of his inability to do so safely.

97. The Defendant DMX Transportation's careless, negligent, willful, wanton, reckless and unlawful acts were a direct and proximate cause of the collision and resulting injuries and damages to the Plaintiffs.

98. Plaintiffs are informed and believe they are entitled to judgment against the Defendant DMX Transportation Services, Inc. for actual and punitive damages in an appropriate amount.

FOR A SIXTH CAUSE OF ACTION
Against Defendant DMX Transportation Services, Inc.
(Respondeat Superior)

99. Plaintiff repeats and realleges as if verbatim paragraphs 1-98.

100. At all times relevant to the allegations contained in this Complaint, Defendant Ovelette was working in the course and scope of his employment for Defendant DMX Transportation, or was otherwise acting as an agent or servant of the Defendant DMX Transportation.

101. Defendant DMX Transportation is liable for the acts and omissions of the Defendant Ovellette under the doctrines of respondeat superior, master/servant, and/or agent/principal.

102. The Plaintiffs are informed and believe that they are entitled to judgment against the Defendant DMX Transportation for actual and punitive damages in an appropriate amount.

103. The Defendants' negligent, reckless, unlawful, willful, and wanton acts and omissions combined and concurred to proximately cause the damages to the Plaintiffs.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for actual and punitive damages in an appropriate amount to be determined at trial, the costs of this action, and for such other and further relief as the Court may deem just and proper.

Smith, Born, Leventis, Taylor, & Vega LLC

s/ Jacob D. Born

Jacob D. Born (S.C. Bar No.: 100026)
James C Sproat (S.C. Bar No.: 100292)
2801 Devine Street, Suite 300
Columbia, South Carolina 29206
(803)929-3600
Attorneys for the Plaintiff
jborn@sbltv.law
jsproat@sbltv.law

May 17, 2023

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-36-00276

Dean Alan Arender and Tamala Arender,

Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction
Group Inc, the Estate of Curtis Kent
Ouellette, Quality Haulers, Inc., and DMX
Transportation Services Inc.,

Defendants.

THIRD AMENDED SUMMONS
(JURY TRIAL REQUESTED)

TO: KENT HUNTLEY OLIVER, THOMPSON CONSTRUCTION GROUP INC., THE
ESTATE OF CURTIS KENT OUELLETTE, QUALITY HAULERS INC., AND DMX
TRANSPORTATION SERVICES INC., THE ABOVE- NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy
of which is herewith served upon you, and to serve a copy of your answer to said complaint upon
the subscriber, at his office at 2801 Devine Street Suite 300, Columbia, South Carolina 29205,
within thirty (30) days after the service thereof, exclusive of the day of such service, and if you
fail to answer the complaint within the time aforesaid, judgment by default will be rendered against
you for the relief demanded in the complaint.

Smith, Born, Leventis, Taylor, & Vega LLC

s/ Jacob D. Born

Jacob D. Born (S.C. Bar No.: 100026)
James C Sproat (S.C. Bar No.: 100292)
2801 Devine Street, Suite 300
Columbia, South Carolina 29206
(803)929-3600
Attorneys for the Plaintiffs
jborn@sbltv.law
jsproat@sbltv.law

November 9, 2023

000081

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-36-00276

Dean Alan Arender and Tamala Arender,

Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction
Group Inc, the Estate of Curtis Kent
Ouellette, Quality Haulers, Inc., and DMX
Transportation Services Inc.,

Defendants.

THIRD AMENDED COMPLAINT
(JURY TRIAL REQUESTED)

The Plaintiffs would respectfully show unto the Court that:

JURISDICTION AND VENUE

1. The Plaintiffs are citizens and residents of Rutherford County, North Carolina.
2. Upon information and belief, Defendant Kent Huntley Oliver (hereinafter “Oliver”) is a citizen and resident of Spartanburg County, South Carolina. At all times relevant to this Complaint, Defendant Oliver was working within the course and scope of his employment and on behalf of Defendant Thompson Construction Group, Inc. Defendant Thompson Construction Group, Inc. is vicariously liable for Defendant Oliver’s acts and/or omissions under theories of respondeat superior and master/servant, agent/principal, and employer/employee.
3. Upon information and belief, Defendant Thompson Construction Group Inc. (hereinafter “Thompson Construction”) is a corporation organized under the laws of the State of South Carolina with its principal place of business in the State of South Carolina. Defendant Thompson Construction is a registered commercial motor carrier bearing USDOT number 481988. Defendant Thompson Construction maintains a registered agent for the service of process in Greg A. Thompson, who is located at 100 N. Main Street, Sumter, South Carolina 29150.

4. Upon information and belief, Curtis Kent Ouellette was a citizen and resident of Greenville County, South Carolina. Defendant the Estate of Curtis Kent Ouellette (hereinafter “Ouellette”) is the decedent’s estate, and no person has been duly appointed the Personal Representative of the Estate of Curtis Kent Ouellette in the Probate Court of Greenville County, South Carolina. At all times relevant to this Complaint, Curtis Kent Ouellette was working within the course and scope of his employment on behalf of Defendants Quality Haulers Inc. and/or DMX Transportation Services, Inc. Defendants Quality Haulers Inc. and/or DMX Transportation Services, Inc. are vicariously liable for decedent Curtis Kent Ouellette’s acts and/or omissions under theories of respondeat superior and master/servant, agent/principal, and employer/employee.

5. Upon information and belief, Defendant Quality Haulers, Inc. (hereinafter “Quality Haulers”) is a corporation organized under the laws of the State of South Carolina with its principal place of business in the State of South Carolina. Defendant Quality Haulers is a registered commercial motor carrier bearing USDOT number 296031. Defendant Quality Haulers maintains a registered agent for the service of process in N. Ray Brown Sr., who is located at 13101 US Hwy 221, Woodruff, South Carolina 29388.

6. Upon information and belief, Defendant DMX Transportation Services Inc. (hereinafter “DMX Transportation”) is a corporation organized under the laws of the State of South Carolina with its principal place of business in the State of South Carolina. Defendant DMX Transportation is a registered commercial motor carrier bearing USDOT number 563416 and MC Number 275383. Defendant DMX Transportation maintains a registered agent for the service of process in Frank Wayne Merritt, who is located at 2118 Airport Road, Greer, South Carolina 29651.

7. Venue is proper in the Court of Common Pleas for Newberry because the acts and/or omissions giving rise to this litigation occurred in Newberry County, State of South Carolina.

FACTUAL BACKGROUND

8. On or about November 12, 2020, Curtis Kent Ouellette was operating a commercial vehicle under Defendants Quality Haulers and/or DMX Transportation's operating authority as he traveled east on Interstate 26 near the town of Jalapa, South Carolina when Curtis Kent Ouellette pulled the commercial vehicle onto the right shoulder of Interstate 26. At all times relevant to this Complaint, Curtis Kent Ouellette's commercial vehicle was at a complete stop and/or traveling below a prudent speed on the right shoulder of the eastbound lane of Interstate 26.

9. Following Curtis Kent Ouellette's commercial vehicle entering the right shoulder of the eastbound lane of Interstate 26, Defendant Oliver was operating a commercial vehicle under Thompson Construction's operating authority as he was travelling east in the right hand lane of Interstate 26 near Jalapa, South Carolina.

10. At all times relevant to this Complaint, Plaintiff was traveling behind Curtis Kent Ouellette and Defendant Oliver in the right-hand lane of Interstate 26 near Jalapa, South Carolina.

11. As Defendant Oliver approached Curtis Kent Ouellette's commercial vehicle from the rear, Defendant Oliver's vehicle left the right-hand lane of travel, veered onto the right shoulder, and collided with the rear end of Curtis Kent Ouellette's commercial vehicle at a high rate of speed while it was located on the right shoulder of Interstate 26.

12. The rear end collision between Defendant Oliver and Curtis Kent Ouellette propelled Defendant Oliver's commercial vehicle from the right shoulder of Interstate 26 into the

right-hand lane and directly into the Plaintiff's path of travel on Interstate 26, which resulted in a significant multi-vehicle collision.

13. At all times relevant to this Complaint, Curtis Kent Ouellette did not activate or turn on the commercial vehicle's emergency signals and/or hazard warning signal flashers once he pulled the commercial vehicle onto the shoulder of Interstate 26 or as he was continuing to travel as required by 49 C.F.R. § 392.22(a).

14. Plaintiff Dean Arender did not contribute to this collision.

15. As a direct and proximate result of the collision, Plaintiff Dean Arender suffered the following injuries and damages:

- a. extensive pain, mental anguish, suffering and discomfort;
- b. permanent injuries and total disability;
- c. money spent for medical care and treatment, past, present and future;
- d. inability to carry on normal activities;
- e. emotional trauma and distress;
- f. loss of enjoyment of life;
- g. permanent inability to perform job duties resulting in lost wages and loss of earning capacity; and,
- h. damage to his property.

16. Further, as a result of the injuries and damages suffered by Plaintiff Dean Arender, the Plaintiff Tamala Arender did suffer as follows:

- a. Loss of consortium;
- b. Loss of revenue;
- c. Loss of relationships; and,

d. Loss of enjoyment.

17. At all times relevant to this Complaint, the gross motor vehicle weight of Defendant Oliver's and Curtis Kent Ouellette's commercial vehicles exceeded 26,000 pounds.

FOR A FIRST CAUSE OF ACTION
Against Defendant Kent Huntley Oliver
(Negligence)

18. Plaintiffs hereby repeat and reallege as if verbatim paragraphs 1-17.

19. At all times relevant to this Complaint, Defendant Oliver was operating a commercial motor vehicle in interstate commerce.

20. In order to undertake such actions, Defendant Oliver must have the knowledge and skills necessary for the safe operation of the commercial motor vehicle.

21. The safe operation of commercial motor vehicles requires specialized knowledge and additional training, not necessary for the safe operation of passenger vehicles because:

- a. commercial motor vehicles are heavier than passenger vehicles and take longer to stop, as compared to a passenger car operating at the same pre-braking speed;
- b. commercial motor vehicles are heavier and longer than passenger vehicles and take longer to execute turning and lane change maneuvers, as compared to passenger vehicles operating at the same pre-turn or lane change speed;
- c. commercial motor vehicles are heavier than passenger vehicles and cause more significant property damage and/or personal injury or death in collisions, as compared to passenger cars operating at the same pre-collision speed and trajectory;

- d. commercial motor vehicles pose more of a risk of causing personal injury, death, or property damage in a collision, as compared to a collision involving a passenger vehicle operating at the same-pre collision speed and trajectory; and,
- e. commercial motor vehicles pose a greater risk of increased injury to passenger vehicle occupants in a head on collision because of the large difference in mass between a commercial vehicle and a passenger vehicle.

22. In order to undertake the safe operation of a commercial motor vehicle, drivers such as Defendant Oliver must have knowledge and skills in many areas, including the following:

- a. the procedures for safe vehicle operations;
- b. the proper procedures for performing basic maneuvers such controlling the speed of the commercial vehicle and keeping a proper look out for the condition of traffic ahead;
- c. the importance of conducting a proper visual search;
- d. the importance of proper visual search methods, including seeing ahead and to the sides;
- e. the principles and procedures for proper communications and the hazards of failing to signal properly, including signaling intent and communicating presence;
- f. the importance of understanding the effects of speed, including speed and visibility and speed and traffic flow; and,
- g. the procedures and techniques for controlling the space around the vehicle, including the importance of space management, space cushions, space to the sides, and space for traffic gaps.

23. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to look 12 to 15 seconds ahead to avoid having to stop too quickly or make quick lane changes.

24. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to shift their attention back and forth, near and far.

25. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to look for brake lights from slowing vehicles because seeing these things far enough ahead allows commercial motor vehicle drivers the opportunity to change speed or lanes if necessary to avoid a problem.

26. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to adjust their speed depending on driving conditions, including traction, curves, visibility, and traffic.

27. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to have knowledge of and understand the total stopping distance of their commercial motor vehicle, including perception distance, reaction distance, and brake distance at the relevant speeds of travel.

28. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to understand the effects of speed and vehicle weight on stopping distance.

29. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the need for a space cushion ahead because the vehicle that commercial trucks or buses most frequently run into is the one in front of them.

30. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the need for a space cushion to the sides, front, and back.

31. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers keep at least one second for each 10 feet of vehicle length plus one second at speeds above 40 mph between their vehicle and the vehicle in front of them.

32. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand that drivers signaling a turn may slow more than expected or stop.

33. In addition to the basic knowledge and skills required of commercial vehicle drivers, prudent commercial vehicle drivers understand they are responsible for recognizing potential hazards before they become emergencies, always have a plan, and a way out.

34. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant Oliver's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

- a. in failing to apply the brakes of the vehicle and/or maintain them in proper working condition;
- b. in failing to steer or take other evasive action so as to avoid the collision;
- c. in failing to keep a proper lookout;
- d. in failing to yield as required by law;
- e. in operating the vehicle too fast for existing conditions;
- f. in failing to observe the condition of traffic;

- g. in operating a commercial motor vehicle when he was not qualified to do so;
- h. in failing to follow the proper procedures for safe commercial vehicle operations;
- i. in failing to conduct a proper visual search;
- j. in failing to account for his vehicle's speed and its effect of visibility and traffic flow;
- k. in failing to properly control the space around his vehicle, including failing to maintain a proper space cushion, proper space to the front, sides, and rear, or proper space to allow for other vehicles on the highway;
- l. in failing to understand and/or account for his vehicle's total stopping distance at the Defendant's particular speed;
- m. in failing to look 12 to 15 seconds ahead such that Defendant Oliver should have seen the traffic in time to avoid a sudden stop or lane change maneuver;
- n. in failing to shift his attention back and forth, near and far, so as to see the vehicle turning ahead and avoid a sudden braking or lane change maneuver;
- o. in failing to spot a potential hazard before it became an emergency;
- p. in failing to utilize the commercial vehicle's mirror's appropriately;
- q. in failing to maintain his lane of travel when surrounding traffic was visible in and around the roadway;
- r. in driving while distracted;
- s. in driving in excess of the posted speed limit;
- t. in failing to maintain his lane of travel;
- u. in veering onto the shoulder of the road;
- v. in traveling too fast for conditions; and,

w. in colliding with a vehicle on the interstate.

35. Defendant Oliver's careless, negligent, willful, wanton, reckless and unlawful acts were a direct and proximate cause of the collision and resulting injuries and damages to the Plaintiffs.

36. Plaintiffs are informed and believe that they are entitled to judgment against Defendant Oliver for actual and punitive damages in an appropriate amount.

FOR A SECOND CAUSE OF ACTION
Against Defendant Thompson Construction Group
(Direct Negligence)

37. Plaintiffs repeat and reallege as if verbatim paragraphs 1-36.

38. Upon Information and belief, Defendant Thompson Construction operates as a commercial motor carrier.

39. In return for the privilege of operating commercial motor vehicles on public roadways, prospective motor carriers must make certain safety related certifications and verifications.

40. Motor carriers such as Defendant Thompson Construction are required to submit a Form MCS-150 to the Federal Motor Carrier Administration and obtain a USDOT number.

41. Each Form MCS-150 Defendant Thompson Construction is required to submit contains a Certification Statement whereby Defendant declares under the penalty of perjury that it is familiar with the Federal Motor Carrier Safety Regulations.

42. Motor carriers such as Defendant is also required to submit a Form OP-1 to the Federal Motor Carrier Administration to gain operating authority.

43. The Form OP-1 that Defendant Thompson Construction was required to submit contains a “Safety Certification,” which require Defendant Thompson Construction to certify to the following:

- a. Defendant is subject to the pertinent portions of the US DOT’s Federal Motor Carrier Safety Regulations (“FMCSR”) at 49 CFR, Chapter 3, Subchapter B (Parts 350-399);
- b. Defendant has access to and is familiar with all applicable US DOT regulations relating to the safe operation of commercial vehicles;
- c. Defendant will comply with the US DOT regulations;
- d. Defendant has in place a system and individual responsible for ensuring overall compliance with the FMCSR;
- e. Defendant can produce a copy of the FMCSR;
- f. Defendant has in place a driver safety training/orientation program;
- g. Defendant is familiar with DOT regulations governing driver qualifications and has in place a system for overseeing driver qualification requirements;
- h. Defendant has in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles;

44. To be qualified to operate a commercial motor vehicle, a driver must have experience and/or training to safely operate the type of vehicle, be physically qualified, have a currently valid CDL, and furnish to the motor carrier a list of current driving violations.

45. To be qualified to operate a commercial motor vehicle, a driver is also required to complete a written application containing the following information:

- a. The nature and extent of the driver’s experience;

- b. A list of all accidents in the previous 3 years;
- c. A list of all violations of motor vehicle laws in the previous 3 years;
- d. A detailed description of any denial, revocation, or suspension of any drivers licenses or permits

46. Before a motor carrier may allow or permit a driver to operate a commercial motor vehicle, the motor carrier must:

- a. Obtain the driver's motor vehicle record from the applicable state agency for the previous 3 years; and
- b. Investigate the driver's safety performance history with all DOT regulated employers for the previous 3 years.

47. Once motor carriers such as Defendant Thompson Construction hires a commercial driver, every twelve months thereafter, the driver must submit a written list of all traffic violations the driver received over a twelve month period.

48. Once a motor carrier such as the Defendant Thompson Construction hires a commercial driver, every twelve months thereafter, the motor carrier must obtain from the relevant state agency a list of traffic violations for the previous year and maintain a copy of the record in the driver's qualification file.

49. In addition, drivers employed by, or operating under the direction of, motor carriers such as Defendant Thompson Construction is required to complete and turn in to their employer trip envelopes at least every 13 days. Such trip envelopes include, but are not limited to, the driver's daily logs and pre-trip and post-trip vehicle inspection reports.

50. Drivers' daily logs record how much time each driver spends on duty, on duty not driving, off duty, and in a sleeper berth. Driver logs also require drivers to indicate how many miles they drove during each 24 hour period and their locations at each change of duty status.

51. In addition to the required daily logs and vehicle inspection reports, prudent motor carriers also collect information from their drivers, such as fuel receipts, entry and departure records, and other supporting documentation that verifies the times that their drivers were at specific locations.

52. Prudent motor carriers use the information contained in the required daily driver logs, vehicle inspection reports, and other supporting documents to audit the performance of their drivers.

53. Prudent motor carriers use the information contained in the required daily driver logs, vehicle inspection reports, and other supporting documentation to audit the performance of their drivers to ensure that their drivers are not violating hour of service rules, to ensure that their drivers do not average speeds in excess of what is safe, and otherwise verify that the information contained in the driver's logs is accurate and truthful.

54. Auditing drivers' daily logs, vehicle inspection report, and supporting documents increases the likelihood that a motor carrier's drivers are operating their commercial vehicles safely and decreases the risk of a preventable crash.

55. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if the driver is not qualified to do so.

56. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, and supporting documents indicates that the driver has a higher than safe average speed.

57. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, and supporting documents indicates that the driver operates his vehicle in violation of the hours of service rules.

58. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, and supporting documents indicates that the driver is not accurate and truthful in the completion of his logs.

59. Prudent motor carriers do not allow or permit a driver to operate their commercial motor vehicles if the driver does not have the required knowledge or skill to safely operate the vehicle.

60. The injuries and damages incurred by Plaintiff were directly and proximately caused by Defendant Thompson Construction's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

- a. Hiring, training, supervision, and retention of its drivers, employees, and/or agents, specifically, Defendant Oliver;
- b. Entrustment of a tractor trailer to its drivers, employees, and/or agents, specifically, Defendant Oliver;
- c. Failing to comply with federal and/or state regulations and industry standards, as referenced in this Complaint and as developed during the discovery in this case;
- d. Improperly auditing the logs of its drivers, employees, and/or agents, specifically Defendant Oliver; and,
- e. Failing to utilize available information to properly monitor its drivers, employees, and/or agents, specifically Defendant Oliver, for compliance with company policies and/or state and federal regulations.

61. Defendant Thompson Construction's careless, negligent, willful, wanton, reckless and unlawful acts were a direct and proximate cause of the collision and resulting injuries and damages to the Plaintiffs.

62. Plaintiffs are informed and believe that they are entitled to judgment against Defendant Thompson Construction for actual and punitive damages in an appropriate amount.

FOR A THIRD CAUSE OF ACTION
Against Defendant Thompson Construction Group, Inc.
(Respondeat Superior)

63. Plaintiffs repeat and reallege as if verbatim paragraphs 1-62.

64. At all times relevant to the allegations contained in this Complaint, Defendant Oliver was working in the course and scope of his employment for Defendant Thompson Construction, or was otherwise acting as an agent or servant of the Defendant Thompson Construction.

65. Defendant Thompson Construction is liable for the acts and omissions of the Defendant Oliver under the doctrines of respondeat superior, master/servant, and/or agent/principal.

66. The Plaintiffs are informed and believe that they are entitled to judgment against the Defendants for actual and punitive damages in an appropriate amount.

FOR A FOURTH CAUSE OF ACTION
Against Defendant the Estate of Curtis Kent Ouellette
(Negligence)

67. Plaintiffs hereby repeat and reallege as if verbatim paragraphs 1-66.

68. At all times relevant to this Complaint, Curtis Kent Ouellette was operating a commercial motor vehicle in interstate commerce.

69. In order to undertake such actions, Curtis Kent Ouellette must have the knowledge and skills necessary for the safe operation of the commercial motor vehicle.

70. The safe operation of commercial motor vehicles requires specialized knowledge and additional training, not necessary for the safe operation of passenger vehicles because:

- a. commercial motor vehicles are heavier than passenger vehicles and take longer to stop, as compared to a passenger car operating at the same pre-braking speed;
- b. commercial motor vehicles are heavier and longer than passenger vehicles and take longer to execute turning and lane change maneuvers, as compared to passenger vehicles operating at the same pre-turn or lane change speed;
- c. commercial motor vehicles are heavier than passenger vehicles and cause more significant property damage and/or personal injury or death in collisions, as compared to passenger cars operating at the same pre-collision speed and trajectory;
- d. commercial motor vehicles pose more of a risk of causing personal injury, death, or property damage in a collision, as compared to a collision involving a passenger vehicle operating at the same pre-collision speed and trajectory; and,
- e. commercial motor vehicles pose a greater risk of increased injury to passenger vehicle occupants in a head on collision because of the large difference in mass between a commercial vehicle and a passenger vehicle.

71. In order to undertake the safe operation of a commercial motor vehicle, drivers such as Curtis Kent Ouellette must have knowledge and skills in many areas, including the following:

- a. the procedures for safe vehicle operations;

- b. the proper procedures for performing basic maneuvers such controlling the speed of the commercial vehicle and keeping a proper look out for the condition of traffic ahead;
 - c. the importance of conducting a proper visual search;
 - d. the importance of proper visual search methods, including seeing ahead and to the sides;
 - e. the principles and procedures for proper communications and the hazards of failing to signal properly, including signaling intent and communicating presence;
 - f. the importance of understanding the effects of speed, including speed and visibility and speed and traffic flow; and,
 - g. the procedures and techniques for controlling the space around the vehicle, including the importance of space management, space cushions, space to the sides, and space for traffic gaps.
72. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to look 12 to 15 seconds ahead to avoid having to stop too quickly or make quick lane changes.
73. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to shift their attention back and forth, near and far.
74. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to look for brake lights from slowing vehicles because seeing these things far enough ahead allows commercial motor vehicle drivers the opportunity to change speed or lanes if necessary to avoid a problem.

75. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to adjust their speed depending on driving conditions, including traction, curves, visibility, and traffic.

76. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to have knowledge of and understand the total stopping distance of their commercial motor vehicle, including perception distance, reaction distance, and brake distance at the relevant speeds of travel.

77. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to understand the effects of speed and vehicle weight on stopping distance.

78. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the need for a space cushion ahead because the vehicle that commercial trucks or buses most frequently run into is the one in front of them.

79. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the need for a space cushion to the sides, front, and back.

80. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers keep at least one second for each 10 feet of vehicle length plus one second at speeds above 40 mph between their vehicle and the vehicle in front of them.

81. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand that drivers signaling a turn may slow more than expected or stop.

82. In addition to the basic knowledge and skills required of commercial vehicle drivers, prudent commercial vehicle drivers understand they are responsible for recognizing potential hazards before they become emergencies, always have a plan, and a way out.

83. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the dangers of parking or stopping a commercial motor vehicle on a roadway.

84. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, prudent commercial motor vehicle drivers understand the dangers of parking a commercial motor vehicle on a roadway without flashers and warning signs.

85. The injuries and damages incurred by the Plaintiff were directly and proximately caused by Curtis Kent Ouellette's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

- a. in failing to apply the brakes of the vehicle and/or maintain them in proper working condition;
- b. in failing to steer or take other evasive action so as to avoid the collision;
- c. in failing to keep a proper lookout;
- d. in failing to yield as required by law;
- e. in operating the vehicle too fast for existing conditions;
- f. in failing to observe the condition of traffic;
- g. in operating a commercial motor vehicle when he was not qualified to do so;

- h. in failing to follow the proper procedures for safe commercial vehicle operations;
- i. in failing to conduct a proper visual search;
- j. in failing to account for his vehicle's speed and its effect of visibility and traffic flow;
- k. in failing to properly control the space around his vehicle, including failing to maintain a proper space cushion, proper space to the front, sides, and rear, or proper space to allow for other vehicles on the highway;
- l. in failing to understand and/or account for his vehicle's total stopping distance at the Defendant's particular speed;
- m. in failing to look 12 to 15 seconds ahead such that Curtis Kent Ouellette should have seen the traffic in time to avoid a sudden stop or lane change maneuver;
- n. in failing to shift his attention back and forth, near and far, so as to see the vehicle turning ahead and avoid a sudden braking or lane change maneuver;
- o. in failing to spot a potential hazard before it became an emergency;
- p. in failing to utilize the commercial vehicle's mirror's appropriately;
- q. in failing to maintain his lane of travel when surrounding traffic was visible in and around the roadway;
- r. in failing to maintain his lane of travel;
- s. in veering onto the shoulder of the road;
- t. in stopping his commercial vehicle on the shoulder of the road;
- u. in travelling on the shoulder in a non-emergent situation;
- v. failing to activate or turn on the commercial vehicle's emergency signals and/or hazard warning signal flashers;

- w. in otherwise failing to signal to the general motoring public that he was traveling or stopped on the shoulder of a business interstate;
 - x. in creating a potentially deadly hazard by parking and/or traveling on the shoulder of Interstate 26; and,
 - y. in parking and/or traveling on the right shoulder of an Interstate highway in a known highway in known high traffic area where Defendants and their driver knew or should have known traffic would pass the commercial vehicle at a high rate of speed.
86. Curtis Kent Ouellette's careless, negligent, willful, wanton, reckless and unlawful acts were a direct and proximate cause of the collision and resulting injuries and damages to the Plaintiffs.
87. Plaintiffs are informed and believe that they are entitled to judgment against the Estate of Curtis Kent Ouellette for actual and punitive damages in an appropriate amount.

FOR A FIFTH CAUSE OF ACTION
Against Defendants DMX Transportation Services Inc.
and Quality Haulers Inc.
(Negligence)

88. Plaintiffs hereby repeat and reallege as if verbatim paragraphs 1-87.
89. Defendants Quality Haulers and DMX Transportation operate as commercial motor carriers.
90. In return for the privilege to operate commercial motor vehicles on public roadways, prospective motor carriers must make certain safety related certifications and verifications.

91. Motor carriers such as Defendants Quality Haulers and DMX Transportation are required to submit a Form MCS-150 to the Federal Motor Carrier Administration and obtain an USDOT number.

92. Each Form MCS-150 Defendants Quality Haulers and DMX Transportation submitted or will submit contains a Certification Statement whereby Defendants Quality Haulers and DMX Transportation declares under the penalty of perjury that it is familiar with Federal Motor Carrier Safety Regulations and/or Federal Hazardous Materials Regulations.

93. Motor carriers such as Defendants Quality Haulers and DMX Transportation are required to submit a Form OP-1 to the Federal Motor Carrier Administration to gain operating authority.

94. The Form OP-1 submitted by Defendants Quality Haulers and DMX Transportation contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that they are subject to the pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations ("FMCSR") at 49 CFR, Chapter 3, Subchapter B (Parts 350-399).

95. The Form OP-1 submitted by Defendants Quality Haulers and DMX Transportation contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that they have access to and are familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and that they will comply with the regulations.

96. The Form OP-1 submitted by Defendants Quality Haulers and DMX Transportation contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that, at a minimum, they:

- a. have in place a system and an individual responsible for ensuring overall compliance with the FMCSR;

- b. Can produce a copy of the FMCSR;
- c. have in place a driver safety training/orientation program;
- d. are familiar with DOT regulations governing driver qualifications and have in place a system for overseeing driver qualification requirements (49 CFR Parts 391);
- e. have in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles;
- f. obtain the driver's motor vehicle record from the applicable state agency for the previous 3 years; and,
- g. investigate the driver's safety performance history with all DOT regulated employers for the previous 3 years; and,
- h. investigate and obtain an original or copy of the medical examiner's certificate issued in accordance with 49 C.F.R. § 391.43, and any medical variance on which the certification is based, and place the records in the driver qualification file, before allowing the driver to operate a commercial motor vehicle.

97. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendants Quality Haulers and/or DMX Transportation's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars by failing to use reasonable care in the:

- a. Hiring of the driver involved in the collision that is the subject of this litigation;
- b. Retention of the driver involved in the collision that is the subject of this litigation;
- c. Training of the driver involved in the collision that is the subject of this litigation;

- d. In training its drivers to and/or permitting its drivers to park commercial vehicles on the shoulders of interstate highways in non-emergency situations; specifically Curtis Kent Ouellette;
- e. In training its drivers to and/or permitting its drivers to park commercial vehicles on the shoulders of interstate highways in situations that do not constitute a necessary traffic stop; specifically, Curtis Kent Ouellette;
- f. in failing to train its drivers to activate or turn on the commercial vehicle's emergency signals and/or hazard warning signal flashers once he pulled the commercial vehicle off of and onto the shoulder of Interstate 26 as required by 49 C.F.R. § 392.22(a);
- g. in failing to train its drivers that it is never safe to park commercial vehicles on the shoulder of interstate highways;
- h. Supervision of its business operations in failing to properly monitor the driving habits and records of its drivers, employees, and/or agents, specifically, Curtis Kent Ouellette;
- i. in failing to supervise and monitor its driver's driving habits for parking commercial vehicles on the shoulders of interstate highways in non-emergency situations and in situations that are not necessary traffic stops;
- j. Supervision of its drivers, employees, and/or agents, specifically, Curtis Kent Ouellette;
- k. Instruction of its drivers, employees, and/or agents, specifically, Curtis Kent Ouellette;

- l. Entrustment of a tractor trailer to its drivers, employees, and/or agents, specifically, Curtis Kent Ouellette;
 - m. Compliance with federal and/or state regulations and industry standards, as referenced in this Complaint and as developed during the discovery in this case;
 - n. in failing to audit its driver's driving habits, routes, and logs for frequent stops while its drivers are operating commercial vehicles on interstate highways;
 - o. Failing to utilize available information to properly monitor its drivers, employees, and/or agents, specifically the driver involved in the collision that is the subject of this litigation for compliance with company policies and/or state and federal regulations; and,
 - p. in allowing the driver involved in the collision that is the subject of this litigation to operate a commercial motor vehicle despite knowledge of his inability to do so safely.
98. The Defendants Quality Haulers and/or DMX Transportation's careless, negligent, willful, wanton, reckless and unlawful acts were a direct and proximate cause of the collision and resulting injuries and damages to the Plaintiffs.
99. Plaintiffs are informed and believe they are entitled to judgment against the Defendants Quality Haulers, Inc. and/or DMX Transportation Services, Inc. for actual and punitive damages in an appropriate amount.

FOR A SIXTH CAUSE OF ACTION
Against Defendants DMX Transportation Services, Inc.
and Quality Haulers Inc.
(Respondeat Superior)

100. Plaintiff repeats and realleges as if verbatim paragraphs 1-99.

101. At all times relevant to the allegations contained in this Complaint, Curtis Kent Ouellette was working in the course and scope of his employment for Defendants Quality Haulers and/or DMX Transportation, or was otherwise acting as an agent or servant of the Defendants Quality Haulers and/or DMX Transportation.

102. Defendants Quality Haulers and/or DMX Transportation is liable for the acts and omissions of Curtis Kent Ouellette under the doctrines of respondeat superior, master/servant, and/or agent/principal.

103. The Plaintiffs are informed and believe that they are entitled to judgment against the Defendants Quality Haulers and/or DMX Transportation for actual and punitive damages in an appropriate amount.

104. The Defendants' negligent, reckless, unlawful, willful, and wanton acts and omissions combined and concurred to proximately cause the damages to the Plaintiffs.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for actual and punitive damages in an appropriate amount to be determined at trial, the costs of this action, and for such other and further relief as the Court may deem just and proper.

Smith, Born, Leventis, Taylor, & Vega LLC

s/ Jacob D. Born

Jacob D. Born (S.C. Bar No.: 100026)
James C Sproat (S.C. Bar No.: 100292)
2801 Devine Street, Suite 300
Columbia, South Carolina 29206
(803)929-3600
Attorneys for the Plaintiffs
jborn@sbltv.law
jsproat@sbltv.law

November 9, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	C/A NO.: 2023-CP-36-00276
	)	
Dean Alan Arender and Tamala Arender,	)	
	)	ANSWER OF DEFENDANTS KENT
Plaintiffs,	)	HUNTLEY OLIVER AND THOMPSON
	)	CONSTRUCTION GROUP, INC. TO
vs.	)	PLAINTIFFS' THIRD AMENDED
	)	COMPLAINT; COUNTERCLAIM OF
Kent Huntley Oliver, Thompson	)	DEFENDANT KENT HUNTLEY
Construction Group, Inc., Curtis Kent	)	OLIVER¹
Ouellette, Quality Haulers, Inc., and DMX	)	
Transportation Services, Inc.,	)	<i>(Jury Trial Demanded)</i>
	)	
Defendants.	)	
	)	

Defendants Kent Huntley Oliver (“Mr. Oliver”) and Thompson Construction Group, Inc. (“Thompson Construction”) (collectively, “Defendants”), by and through the undersigned counsel, hereby Answer the Third Amended Complaint of Plaintiffs Dean Alan Arender and Tamala Arender (collectively, “Plaintiffs”). Additionally, Mr. Oliver hereby asserts a Counterclaim against Dean Alan Arender and states as follows:

ANSWER

GENERAL RESPONSE

Each and every allegation of Plaintiffs’ Third Amended Complaint that is not hereinafter specifically admitted, modified, or explained is denied. Defendants are compelled to make a blanket denial of any wrongdoing on their behalf regarding the complained allegations asserted by Plaintiffs in this matter and make a blanket denial that Plaintiffs are entitled to the relief requested.

¹ Mr. Oliver has filed a separate lawsuit against Dean Arender and other defendants to recover damages he incurred as a result of the accident that is the subject of this action. *See Oliver v. Ouellette, et al.*, C/A No. 2023-CP-36-00300 (“the Oliver Action”). Mr. Oliver reserves the right to withdraw his counterclaim and pursue his claim against Mr. Arender in the Oliver Action after the Court rules upon the motion to dismiss Mr. Arender filed in the Oliver Action.

FOR A FIRST DEFENSE

1. Plaintiffs' Third Amended Complaint fails to state a claim for which relief can be granted pursuant to Rule 12 of the South Carolina Rules of Civil Procedure and, therefore, must be dismissed as a matter of law.

FOR A SECOND DEFENSE

2. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

3. As to the allegations set forth in Paragraph 1, Defendants lack sufficient information upon which to form a belief as to the veracity of those allegations, and therefore deny the same as stated and demand strict proof thereof.

4. As to the allegations set forth in Paragraph 2, Defendants admit that Mr. Oliver is a citizen and resident of Spartanburg County, South Carolina. Defendants further admit that on November 12, 2020, Mr. Oliver was operating a passenger vehicle owned by Thompson Construction and was an employee of Thompson Construction with permissive use of the vehicle. As to the remaining allegations, Defendants assert said allegations attempt to establish legal conclusions to which no response is required. Further answering, to the extent those allegations are construed to attempt to establish liability on the part of Defendants, those allegations are denied and strict proof is demanded thereof.

5. As to the allegations set forth in Paragraph 3, Defendants admit that Thompson Construction is organized under the laws of South Carolina with its principal place of business in South Carolina. Defendants further admit that Greg Thompson is Thompson Construction's registered agent for service of process. As to the remaining allegations, Defendants admit only that Thompson Construction's USDOT number is 481988. Defendants deny that Thompson

Construction operates exclusively and/or primarily as a commercial motor carrier, and Defendants deny that Mr. Oliver was operating a commercial motor vehicle on November 12, 2020.

6. As to the allegations set forth in Paragraphs 4, 5, and 6, Defendants assert said allegations are not directed to them; accordingly, no response is required. Further responding, to the extent that said allegations attempt to establish any liability on the part of Defendants, those allegations are denied and strict proof is demanded thereof.

7. As to the allegations set forth in Paragraph 7, Defendants admit only that the November 12, 2020 accident occurred in Newberry County. As to the remaining allegations, Defendants assert said allegations attempt to establish legal conclusions to which no response is required. Further answering, to the extent those allegations are construed to attempt to establish liability on the part of Defendants, those allegations are denied and strict proof is demanded thereof.

8. As to the allegations set forth in Paragraph 8, Defendants admit that Defendant Ouellette was operating a commercial vehicle eastbound on Interstate 26 on November 12, 2020. Further responding, Defendants admit, upon information and belief, that Defendant Ouellette's commercial vehicle was at a complete stop and/or traveling below a prudent speed. As to the remaining allegations, Defendants lack sufficient information upon which to form a belief as to the veracity of those allegations, and therefore deny the same as stated and demand strict proof thereof. Further responding, to the extent Paragraph 8 alleges Defendant Ouellette's vehicle was situated entirely on the right shoulder of Interstate 26, Defendants deny said allegation and demand strict proof thereof.

9. As to the allegations set forth in Paragraph 9, Defendants admit only that Mr. Oliver was operating a passenger vehicle owned by Thompson Construction eastbound on Interstate 26

on November 12, 2020. As to the remaining allegations, Defendants lack sufficient information upon which to form a belief as to the veracity of those allegations, and therefore deny the same as stated and demand strict proof thereof.

10. As to the allegations set forth in Paragraph 10, Defendants admit only that Plaintiff Dean Arender was traveling eastbound on Interstate 26 on November 12, 2020. As to the remaining allegations, Defendants lack sufficient information upon which to form a belief as to the veracity of those allegations, and therefore deny the same as stated and demand strict proof thereof.

11. As to the allegations set forth in Paragraph 11, Defendants admit only that Mr. Oliver's vehicle collided with the rear end of Defendant Ouellette's commercial vehicle. Defendants deny the remaining allegations and demand strict proof thereof.

12. As to the allegations set forth in Paragraph 12, Defendants admit only that Plaintiff Dean Arender's vehicle impacted Mr. Oliver's vehicle after the first collision between Mr. Oliver's vehicle and Defendant Ouellette's vehicle. Defendants deny the remaining allegations and demand strict proof thereof.

13. As to the allegations set forth in Paragraph 13, Defendants assert said allegations are not directed to them; accordingly, no response is required. Further responding, to the extent that said allegations attempt to establish any liability on the part of Defendants, those allegations are denied and strict proof is demanded thereof.

14. As to the allegations set forth in Paragraphs 14, 15, and 16, Defendants deny the allegations and demand strict proof thereof.

15. As to the allegations set forth in Paragraph 17, Defendants deny that the gross weight of Mr. Oliver's vehicle exceeded 26,001 pounds. As to the remaining allegations,

Defendants assert said allegations are not directed to them; accordingly, no response is required. Further responding, to the extent that said allegations attempt to establish any liability on the part of Defendants, those allegations are denied and strict proof is demanded thereof.

16. As to the allegations set forth in Paragraph 18, Defendants admit Paragraph 18 incorporates by reference all the foregoing Paragraphs of Plaintiffs' Third Amended Complaint. Defendants similarly incorporate by reference their above responses.

17. As to the allegations set forth in Paragraph 19, Defendants deny the allegations and demand strict proof thereof. Further responding, Defendants assert Mr. Oliver was operating a passenger vehicle on November 12, 2020; specifically, he was operating a 2020 GMC Canyon pickup truck.

18. As to the allegations set forth in Paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, including all subparts, Defendants deny the allegations and demand strict proof thereof. Further responding, Defendants assert all allegations related to the operation of a commercial motor vehicle are inapplicable to Mr. Oliver, who was driving a passenger vehicle on November 12, 2020.

19. As to the allegations set forth in Paragraphs 34, 35, and 36, including all subparts, Defendants deny the allegations and demand strict proof thereof.

20. As to the allegations set forth in Paragraph 37, Defendants admit Paragraph 37 incorporates by reference all the foregoing Paragraphs of Plaintiffs' Third Amended Complaint. Defendants similarly incorporate by reference their above responses.

21. As to the allegations set forth in Paragraph 38, Defendants deny the allegations to the extent they suggest Thompson Construction operates exclusively or primarily as a commercial motor carrier. Further responding, Defendants assert Thompson Construction operates as a

construction company. Although some of Thompson Construction's activities involve the use of commercial motor vehicles, Defendants assert that the Thompson Construction vehicle involved in the November 12, 2020 accident was a passenger vehicle.

22. As to the allegations set forth in Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, and 59, including all subparts, Defendants deny the allegations and demand strict proof thereof. Further responding, Defendants assert all allegations relating to the responsibilities of motor carriers are inapplicable to Thompson Construction with respect to the vehicle involved in the November 12, 2020 accident and Mr. Oliver's operation thereof.

23. As to the allegations set forth in Paragraphs 60, 61, and 62, including all subparts, Defendants deny the allegations and demand strict proof thereof.

24. As to the allegations set forth in Paragraph 63, Defendants admit Paragraph 63 incorporates by reference all the foregoing Paragraphs of Plaintiffs' Third Amended Complaint. Defendants similarly incorporate by reference their above responses.

25. As to the allegations set forth in Paragraphs 64 and 65, Defendants admit only that on November 12, 2020, Mr. Oliver was operating a passenger vehicle owned by Thompson Construction and was an employee of Thompson Construction with permissive use of the vehicle. As to the remaining allegations, Defendants assert said allegations attempt to establish legal conclusions to which no response is required. Further answering, to the extent those allegations are construed to attempt to establish liability on the part of Defendants, those allegations are denied and strict proof is demanded thereof.

26. As to the allegations set forth in Paragraph 66, Defendants deny the allegations and demand strict proof thereof.

27. As to the allegations set forth in Paragraph 67, Defendants admit Paragraph 67

incorporates by reference all the foregoing Paragraphs of Plaintiffs' Third Amended Complaint. Defendants similarly incorporate by reference their above responses.

28. As to the allegations set forth in Paragraphs 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, and 87, including all subparts, Defendants assert said allegations are not directed to them; accordingly, no response is required. Further responding, to the extent that said allegations attempt to establish any liability on the part of Defendants, those allegations are denied and strict proof is demanded thereof.

29. As to the allegations set forth in Paragraph 88, Defendants admit Paragraph 88 incorporates by reference all the foregoing Paragraphs of Plaintiffs' Third Amended Complaint. Defendants similarly incorporate by reference their above responses.

30. As to the allegations set forth in Paragraphs 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, and 99, including all subparts, Defendants assert said allegations are not directed to them; accordingly, no response is required. Further responding, to the extent that said allegations attempt to establish any liability on the part of Defendants, those allegations are denied and strict proof is demanded thereof.

31. As to the allegations set forth in Paragraph 100, Defendants admit Paragraph 100 incorporates by reference all the foregoing Paragraphs of Plaintiffs' Third Amended Complaint. Defendants similarly incorporate by reference their above responses.

32. As to the allegations set forth in Paragraphs 101, 102, and 103, Defendants assert said allegations are not directed to them; accordingly, no response is required. Further responding, to the extent that said allegations attempt to establish any liability on the part of Defendants, those allegations are denied and strict proof is demanded thereof.

33. As to the allegations set forth in Paragraph 104, Defendants deny the allegations

and demand strict proof thereof.

34. As to Plaintiffs' requested relief in the "WHEREFORE" clause, Defendants deny the requests and demand strict proof thereof.

35. Defendants deny that Plaintiffs are entitled to any relief.

FOR A THIRD DEFENSE
(Comparative Negligence)

36. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

37. Defendants allege, upon information and belief, that this accident and Plaintiffs' resulting injuries, if any, were caused solely by the negligent, grossly negligent, careless, reckless, willful, and wanton conduct of Plaintiff Dean Arender in one or more of the following particulars:

- a. In failing to adequately apply the brakes of the vehicle and/or maintain them in proper working condition;
- b. In failing to keep a proper lookout;
- c. In failing to observe the condition of traffic;
- d. In operating the vehicle too fast for conditions;
- e. In failing to exercise due care in responding to weather conditions; and
- f. In failing to exercise due care in avoiding hazards on the roadway.

38. Defendants allege that this negligent conduct on the part of Plaintiff Dean Arender, in the particulars set forth above, operated as the sole proximate cause of the accident and the Plaintiffs' alleged injuries and damages, which are denied. As such, Plaintiffs' causes of action are barred.

39. To the extent Plaintiff Dean Arender's negligence was not the sole proximate cause of the accident, such negligence contributed more than fifty percent (50%) to cause the accident

and the Plaintiffs' alleged injuries and damages, which are denied. As such, Plaintiffs' causes of action are barred.

40. To the extent Plaintiff Dean Arender's negligence did not operate as more than a fifty percent (50%) cause of the accident and the Plaintiffs' alleged injuries and damages, which are denied, Defendants are entitled to a determination as to the percentage which Plaintiff Dean Arender's negligence contributed to this accident and to a reduction of any amount awarded to the Plaintiffs by an amount equal to the percentage of Plaintiff Dean Arender's negligence.

FOR A FOURTH DEFENSE
(Intervening and Superseding Negligence)

41. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

42. Defendants allege that Plaintiffs' alleged injuries and damages, which are denied, were caused by conduct on the part of persons and/or entities over whom Defendants have no control or responsibility. Defendants further allege that such conduct on the part of other persons and/or entities acted as the sole proximate cause of the accident. As such, Plaintiffs' claims against Defendants are barred.

FOR A FIFTH DEFENSE
(Sudden Emergency/Unavoidable Accident)

43. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

44. Defendants allege that the accident was not the result of any negligence on the part of Defendants, but rather was the result of a sudden emergency and/or unavoidable accident. As such, Plaintiffs' claims against Defendants are barred.

FOR A SIXTH DEFENSE
(Due Care)

45. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

46. Defendants allege that Mr. Oliver operated his vehicle in accordance with the applicable standard of care. As such, Plaintiffs' claims against Defendants are barred.

FOR A SEVENTH DEFENSE
(Improper Claim for Punitive Damages)

47. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

48. Punitive damages are inappropriate in this case because Defendants did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages could be based.

FOR AN EIGHTH DEFENSE
(Constitutional and Statutory Punitive Damages Limitations)

49. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

50. An award of punitive damages in this case would violate the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution.

51. Defendants plead all applicable statutory caps on punitive damages, including but not limited to the caps described in S.C. Code Ann. §§ 15-32-510 through -540.

FOR A NINTH DEFENSE
(Failure to Mitigate)

52. All admissions, denials, and allegations set forth above are incorporated herein as

if repeated verbatim.

53. Defendants allege that Plaintiffs' alleged injuries and damages, which are denied, were caused by Plaintiffs' failure to mitigate.

FOR A TENTH DEFENSE
(Statute of Limitations)

54. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

55. Plaintiffs' lawsuit is barred by the applicable statute of limitations.

FOR AN ELEVENTH DEFENSE
(Waiver, Estoppel, Laches)

56. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

57. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel, and/or laches.

FOR A TWELTH DEFENSE
(Set Off)

58. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

59. Defendants claim their right to set off, settlement or judgment credits, to the extent applicable and allowed under South Carolina law, including but not limited to S.C. Code Ann. § 15-38-15.

FOR A THIRTEENTH DEFENSE
(Apportionment)

60. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

61. Defendants would allege that any damages alleged to have been caused by Defendants, which are specifically denied, must contain a monetary apportionment between Defendants and all co-Defendants pursuant to South Carolina law, including but not limited to S.C. Code Ann. § 15-38-15.

FOR A FOURTEENTH DEFENSE
(Reservation of Additional Defenses)

62. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

63. Defendants' investigation into the facts of this case has not been completed, and Defendants reserve any additional and further defenses that may be revealed by additional information during the course of any discovery and/or investigation.

WHEREFORE, having fully answered Plaintiffs' Amended Complaint, Defendants pray the Amended Complaint be dismissed with prejudice and for such other and further relief as the Court may deem just and proper under the circumstances.

MR. OLIVER'S COUNTERCLAIM
(Negligence)

KENT HUNTLEY OLIVER (hereinafter referred to as "MR. OLIVER"), by and through the undersigned attorneys, hereby files this COUNTERCLAIM against DEAN ALAN ARENDER (hereinafter referred to as "MR. ARENDER") and states as follows:

OVERVIEW

On November 12, 2020, MR. OLIVER was driving a 2020 GMC truck bearing VIN# 1GTG5DEN7L1137771 eastbound on Interstate 26 in Newberry County, South Carolina. Around the same time, MR. OUELLETTE parked the 2015 Kenworth tractor bearing VIN # 1XKZDP0X3FJ450086 and trailer (collectively, the "QUALITY HAULERS' SEMI") owned by

QUALITY HAULERS, partially in the right travel lane. The Semi was improperly parked during dark and rainy conditions partially in the right travel lane, with no triangles or other warnings for approaching traffic. MR. OLIVER was unable to avoid the QUALITY HAULERS' SEMI, struck the improperly parked Semi and was then struck by the XPRESS LEASING and/or US XPRESS, INC.'S 2019 Freightliner tractor, VIN # 3AKJHHDR7KSKC2243 and trailer (collectively, the "US XPRESS'S SEMI"), being operated by MR. ARENDER who was driving carelessly, aggressively, too close and fast given the conditions (hereinafter "the Crash").

DAMAGES

As a result of the crashes, MR. OLIVER suffered permanent and severe bodily injuries resulting in pain and suffering, disability, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition, and loss of ability to lead and enjoy a normal life. The losses are either permanent or continuing and MR. OLIVER will suffer these losses in the future ("MR. OLIVER'S Damages").

FACTS REGARDING MR. ARENDER'S ROLE IN INTERSTATE COMMERCE

1. The transportation of goods in interstate commerce constitutes an ultra-hazardous and inherently dangerous activity that presents substantial dangers to the driving public when not done safely, properly and with due caution. Accordingly, there are a number of federal regulations, state statutes, industry standards and local ordinances that govern the qualification, training and retention of professional tractor trailer drivers, the proper maintenance and equipment for commercial motor vehicles, and the safe equipment, maintenance, inspection, and operation of motor carriers, commercial motor vehicles and professional truck drivers.

2. At all times material hereto, XPRESS LEASING and/or US XPRESS, INC.² were an interstate motor carrier authorized to transport goods in interstate commerce and in the State of South Carolina for profit pursuant to one or more permits issued by the United States Department of Transportation ("USDOT"). Accordingly, XPRESS LEASING and/or US XPRESS, INC. were subject to all state and federal laws, statutes, regulations, and industry standards governing the hiring of safe and qualified commercial drivers, the safe maintenance, inspection, and operation of commercial motor vehicles, and the safe brokering of goods in interstate commerce, including without limitation to South Carolina laws governing state uniform traffic control and the Federal Motor Carrier Safety Regulations ("FMCSRs") set forth in 49 C.F.R. parts 371-397.

3. XPRESS LEASING and US XPRESS, INC. regularly engage in a commercial enterprise that involves the use of motor carriers, commercial motor vehicles and licensed commercial motor vehicle drivers as an integral part of its business. As a result, XPRESS LEASING and US XPRESS, INC. had a duty and obligation to the driving public to exercise reasonable care to utilize safe, competent, and conscientious motor carriers, commercial motor vehicles and professional drivers.

4. At all times material hereto, XPRESS LEASING and/or US XPRESS, INC. owned or had exclusive use, control and possession of the US XPRESS'S SEMI.

5. XPRESS LEASING and/or US XPRESS, INC. selected and hired MR. ARENDER to operate commercial motor vehicles in interstate commerce as approved by the USDOT and to deliver goods to customers in South Carolina.

6. In return for the privilege to operate commercial motor vehicles on the public highways transporting goods in interstate commerce, motor carriers like XPRESS LEASING

² XPRESS LEASING and US XPRESS, INC. are defendants in a separate action concerning this wreck. References to XPRESS LEASING and US XPRESS, INC. are to clarify MR. OLIVER's counterclaim against ARENDER.

and/or US XPRESS, INC. must make certain safety related certifications and verifications to the USDOT. To obtain operating authority and get a USDOT Number, XPRESS LEASING and/or US XPRESS, INC. had to submit a Form OP-I Application for Motor Property Carrier and Broker Authority.

7. Each Form OP-I submitted contained a "Safety Certification," certifying to the Federal Motor Carrier Safety Administration ("FMCSA") that XPRESS LEASING and/or US XPRESS, INC. has access to and is familiar with all applicable USDOT regulations relating to the safe operation of commercial motor vehicles and that XPRESS LEASING and/or US XPRESS, INC. will comply with the FMCSRs at all times while operating a commercial motor vehicle in the United States.

8. More specifically, each Form OP-I submitted contained a "Safety Certification," certifying to the Federal Motor Carrier Safety Administration that, at a minimum, XPRESS LEASING and/or US XPRESS, INC.:

- a. had and will have in place a system and an individual responsible for ensuring overall compliance with the FMCSRs; can produce a copy of the FMCSRs;
- b. had and will have in place a driver safety training/orientation program;
- c. had and will have prepared and maintain an accident register;
- d. is familiar with USDOT regulations governing driver qualifications and had and will have in place a system for overseeing driver qualification requirements;
- e. had and will have in place policies and procedures consistent with USDOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair and maintenance;

- f. is familiar with, and had and will have in place a system for complying with all USDOT regulations governing alcohol and controlled substances testing requirements;
 - g. and must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States.
9. An authorized representative of XPRESS LEASING and/or US XPRESS, INC. swore under penalty of perjury to comply with the above "Safety Certifications".
10. At the time of the Crash, MR. ARENDER was a licensed commercial vehicle operator assigned to and responsible for the US XPRESS'S SEMI.
11. Accordingly, MR. ARENDER was subject to all state and federal laws, statutes, regulations and industry standards governing the safe maintenance, operation of commercial motor vehicles including, without limitation, to South Carolina laws governing state uniform traffic control and the FMCSRs set forth in 49 C.F.R. parts 371-397.
12. At all relevant times, MR. ARENDER was an employee, agent, apparent agent and/or servant contracted to perform services for XPRESS LEASING and/or US XPRESS, INC.'S USDOT interstate motor carrier operating authority and was the driver of the US XPRESS'S SEMI.
13. At all relevant times, MR. ARENDER was acting within the course and scope of said employment, agency, apparent agency, and/or service and subject to XPRESS LEASING and/or US XPRESS, INC.'S control or right to control, such that of XPRESS LEASING and/or US XPRESS, INC. should be considered his actual and statutory employer.
14. At the time of the Crash, MR. ARENDER was operating a US XPRESS'S SEMI, owned by XPRESS LEASING and/or US XPRESS, INC., and traveling eastbound on Interstate

26 in Newberry County, South Carolina.

15. At the time of the Crash, MR. OLIVER was unable to avoid the QUALITY HAULERS' SEMI and struck the negligently and improperly parked Semi.

16. Further, at the time of the Crash, MR. OLIVER'S truck was struck by the US XPRESS'S SEMI being operated by MR. ARENDER who was driving carelessly, aggressively driving, too close and fast given the conditions.

17. At the time of the Crash, MR. ARENDER had a non-delegable duty to operate the US XPRESS'S SEMI in a reasonable and safe manner and to know of and abide by all federal and state laws, statutes, regulations, and industry standards governing the safe operation of commercial motor vehicles, including without limitation, South Carolina Code of Laws, Title 56 governing state uniform traffic control and the FMCSRs.

18. At the time of the Crash, MR. ARENDER breached those duties in one or more of, but not limited to, the following ways:

- a. driving too fast for conditions;
- b. failing to decrease speed as necessary when special hazards exist;
- c. driving carelessly;
- d. failing to keep a proper lookout;
- e. failing to keep a safe following distance;
- f. failing to operate the vehicle in conformity with the policies, procedures, training, defensive driving techniques, and applicable safe driving requirements by XPRESS LEASING and/or US XPRESS, INC.;
- g. failing to operate the vehicle in conformity with all applicable State of South Carolina commercial trucking statutes, traffic statutes, rules and regulations;

- h. failing to operate the vehicle in conformity with all applicable industry standards governing commercial truck driving and cement truck driving;
- i. failing to repair said vehicle for safe travel on all local and state roads;
- j. failing to inspect said vehicle to ensure it was safe for travel on all local, and state roads;
- k. failing to operate said vehicle in a safe and professional manner, paying attention to all applicable hazards and other vehicles;
- l. failing to operate the vehicle in a safe and responsible manner as required by the conditions of the road, traffic ahead, and other road users;
- m. failing to maintain a sure clear distance in front of his vehicle;
- n. driving the US XPRESS'S SEMI while distracted;
- o. driving the US XPRESS'S SEMI while fatigued;
- p. failing to maintain control of the US XPRESS'S SEMI;
- q. failing to take appropriate evasive action;
- r. failing to exercise reasonable and prudent care while operating the US XPRESS'S SEMI;
- s. failing to pay proper attention to the road and the vehicles around him;
- t. failing to drive defensively;
- u. causing the vehicle to collide with MR. OLIVER's vehicle;
- v. failing to operate the US XPRESS'S SEMI in accordance with generally accepted industry standards, principles, and practices;
- w. failing to operate the US XPRESS'S SEMI in a safe and prudent manner in view of the conditions that existed at the time of the Crash; and,

- x. otherwise failing to act reasonably and prudently under the circumstances.
- 19. MR. ARENDER's negligent conduct also violated laws intended to protect and prevent crashes with the motoring public, including Plaintiff.
- 20. MR. ARENDER's negligence and recklessness contributed to proximately cause the Crash, the serious and permanent injuries to Plaintiff, and MR. OLIVER's Damages.
- 21. Due to both impacts, MR. OLIVER suffered numerous permanent and severe injuries.

WHEREFORE, pursuant to Rule 13(a), MR. OLIVER demands judgment for damages against MR. ARENDER for actual and punitive damages in an appropriate amount, and for the costs of this action and for such other and further relief as this Honorable Court deems just, in an amount to exceed One Hundred Thousand Dollars to be determined by a jury.

[Signature Page to Follow]

SMITH | ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC

s/ G. Murrell Smith, Jr.

G. Murrell Smith, Jr. SC Bar #66263

Frederick N. Hanna, Jr. SC Bar #104659

Post Office Box 580

Sumter, SC 29151

(803) 778-2471

murrell@smithrobinsonlaw.com

fred.hanna@smithrobinsonlaw.com

*Attorneys for Defendants Kent Huntley Oliver and
Thompson Construction Group, Inc.*

THE DERRICK LAW FIRM, PA

s/ Justin J. Arenas

Justin J. Arenas, Esquire SC Bar #100536

Post Office Box 28

Conway, SC 29528

(843) 248-7486

justin.arenas@derricklawfirm.com

-and-

THE TRUCK ACCIDENT LAW FIRM

s/ Jessica L. Lanifero

Joseph V. Camerlengo, B.C.S.* FL Bar #008192

Jessica L. Lanifero, Esquire* FL Bar #021062

1200 Riverplace Blvd., Suite 902

Jacksonville, FL 32207

(904) 306-9220

jvc@truckcrashlaw.com

jll@truckcrashlaw.com

*Attorneys for Counterclaim Plaintiff Kent Huntley
Oliver*

**Pro hac vice application forthcoming*

Sumter, South Carolina

November 21, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	CIVIL ACTION NO. 2023-CP-36-00276
	)	
Dean Alan Arender and Tamala Arender,	)	
	)	
	)	DEFENDANTS' ANSWER TO
Plaintiffs,	)	PLAINTIFF'S THIRD
	)	AMENDED SUMMONS AND
v.	)	COMPLAINT
	)	
Kent Huntley Oliver, Thompson	)	(Jury Trial Requested)
Construction Group, Inc., the Estate of	)	
Kent Ouellete, Quality Haulers, Inc., and	)	
DMX Transportation Services, Inc.	)	
	)	
	)	
Defendants.	)	

Defendants Curtis Kent Ouellette and Quality Haulers, Inc. (hereinafter "Defendants"), answering the Third Amended Complaint (hereinafter "Amended Complaint") of Plaintiffs Dean Alan Arender and Tamala Arender (hereinafter "Plaintiffs"), respectfully allege and will show unto the Court that:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Defendants would respectfully show that each and every cause of action set forth in the Amended Complaint fails to state a claim upon which relief can be granted and, therefore, the Amended Complaint should be dismissed.

FOR A THIRD DEFENSE

3. At the time of the preparation of this Answer, Defendants are unaware of all of the facts and circumstances involved in the incident referenced in the Amended Complaint. To the

extent that facts are developed that reflect that any of the affirmative defenses asserted in the Answer are not applicable, they will be withdrawn. To the extent that facts are developed to reflect that additional affirmative defenses may apply, Defendants reserve the right to supplement their Answer accordingly.

FOR A FOURTH DEFENSE

4. Upon information and belief, Defendants admit the allegations contained within Paragraph 1 of Plaintiffs' Amended Complaint.

5. Defendants lack sufficient knowledge to admit or deny the allegations contained within Paragraphs 2 and 3 of Plaintiffs' Amended Complaint and, on that basis, deny the same and demand strict proof thereof.

6. Defendants admit only so much of the allegations contained within Paragraph 4 of Plaintiffs' Amended Complaint as that allege Curtis Kent Ouellete was a citizen of Greenville County and an Estate has been opened in his name in the Probate Court of Greenville County. Defendants object to the remaining allegations in Paragraph 4 to the extent that they assert legal conclusions regarding the course and scope of employment and vicarious liability.

7. Defendants admit the allegations contained within Paragraph 5 of Plaintiffs' Amended Complaint.

8. Defendants lack sufficient knowledge to admit or deny the allegations contained within Paragraph 6 of Plaintiffs' Amended Complaint and, on that basis, deny the same and demand strict proof thereof.

9. Defendants object to the allegations contained within Paragraph 7 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding venue. Subject to and notwithstanding said objection, Defendants are not currently challenging venue.

10. Defendants admit only so much of the allegations contained within Paragraph 8 of Plaintiffs' Amended Complaint as that allege Curtis Kent Ouellette was operating a commercial vehicle for Quality Haulers on Interstate 26 and pulled the vehicle onto the right shoulder of Interstate 26. Defendants deny the remaining allegations and demand strict proof thereof.

11. Defendants lack sufficient knowledge to admit or deny the allegations contained within Paragraph 9 of Plaintiffs' Amended Complaint and, on that basis, deny the same and demand strict proof thereof.

12. Defendants lack sufficient knowledge to admit or deny the allegations contained within Paragraph 10 of Plaintiffs' Amended Complaint and, on that basis, deny the same and demand strict proof thereof.

13. Defendants lack sufficient knowledge to admit or deny the allegations contained within Paragraph 11 of Plaintiffs' Amended Complaint and, on that basis, deny the same and demand strict proof thereof.

14. Defendants lack sufficient knowledge to admit or deny the allegations contained within Paragraph 12 of Plaintiff's Amended Complaint and, on that basis, deny the same and demand strict proof thereof.

15. Defendants deny the allegations contained within Paragraph 13 of Plaintiffs' Amended Complaint and demand strict proof thereof.

16. Defendants object to the allegations contained within Paragraph 14 of Plaintiffs' Amended Complaint to the extent they assert legal conclusions regarding causation. Subject to and notwithstanding said objection, Defendants deny the allegations and demand strict proof thereof.

17. Defendants lack sufficient knowledge to admit or deny the allegations contained within Paragraph 15 of Plaintiffs' Amended Complaint, including all subparts, and, on that basis, deny the same and demand strict proof thereof.

18. Defendants lack sufficient knowledge to admit or deny the allegations contained within Paragraph 16 of Plaintiffs' Amended Complaint, including all subparts, and, on that basis, deny the same and demand strict proof thereof.

19. Defendants lack sufficient knowledge to admit or deny the allegations contained within Paragraph 17 of Plaintiffs' Amended Complaint and, on that basis, deny the same and demand strict proof thereof.

20. Responding to Paragraph 18 of Plaintiffs' Amended Complaint, Defendants reallege and incorporate the above paragraphs as if fully restated herein verbatim.

21. The allegations contained within Paragraphs 19 through 36 of Plaintiffs' Amended Complaint, including all subparts, are not directed at Defendants and no response is required. To the extent a response is deemed required, Defendants lack sufficient knowledge to admit or deny the allegations and, on that basis, deny the same and demand strict proof thereof.

22. Responding to Paragraph 37 of Plaintiffs' Amended Complaint, Defendants reallege and incorporate the above paragraphs as if fully restated herein verbatim.

23. The allegations contained within Paragraphs 38 through 62 of Plaintiffs' Amended Complaint, including all subparts, are not directed at Defendants and no response is required. To the extent a response is deemed required, Defendants lack sufficient knowledge to admit or deny the allegations and, on that basis, deny the same and demand strict proof thereof.

24. Responding to Paragraph 63 of Plaintiffs' Amended Complaint, Defendants reallege and incorporate the above paragraphs as if fully restated herein verbatim.

25. The allegations contained within Paragraphs 64 through 66 of Plaintiffs' Amended Complaint are not directed at Defendants and no response is required. To the extent a response is required, Defendants lack sufficient knowledge to admit or deny the allegations and, on that basis, deny the same and demand strict proof thereof.

26. Responding to Paragraph 67 of Plaintiffs' Amended Complaint, Defendants reallege and incorporate the above paragraphs as if fully restated herein verbatim.

27. Defendants admit the allegations contained within Paragraph 68 of Plaintiffs' Amended Complaint.

28. Defendants admit the allegations contained within Paragraph 69 of Plaintiffs' Amended Complaint.

29. Defendants admit only so much of the allegations contained within Paragraph 70 of Plaintiffs' Amended Complaint, including all subparts, as that allege the operation of commercial motor vehicles requires additional training from that of operating a passenger vehicle. Defendants object to the remaining allegations to the extent that they assert legal conclusions regarding the safe operation of commercial motor vehicles or risks involved with operating commercial motor vehicles.

30. Defendants admit only so much of the allegations contained with Paragraph 71 of Plaintiffs' Amended Complaint, including all subparts, as that allege Curtis Kent Ouellette must have knowledge as skills to operate a commercial motor vehicle. Defendants object to the remaining allegations to the extent that they assert legal conclusions regarding knowledge and/or requirements needed to safely operate a commercial motor vehicle.

31. Defendants object to the allegations contained within Paragraph 72 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding industry standards.

32. Defendants object to the allegations contained within Paragraph 73 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding industry standards.

33. Defendants object to the allegations contained within Paragraph 74 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding industry standards.

34. Defendants object to the allegations contained within Paragraph 75 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding industry standards.

35. Defendants object to the allegations contained within Paragraph 76 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding industry standards.

36. Defendants object to the allegations contained within Paragraph 77 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding industry standards.

37. Defendants object to the allegations contained within Paragraph 78 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding the knowledge or understanding of "prudent" commercial motor vehicle drivers.

38. Defendants object to the allegations contained within Paragraph 79 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding the knowledge or understanding of "prudent" commercial motor vehicle drivers.

39. Defendants object to the allegations contained within Paragraph 80 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding the knowledge or understanding of "prudent" commercial motor vehicle drivers.

40. Defendants object to the allegations contained within Paragraph 81 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding the knowledge or understanding of "prudent" commercial motor vehicle drivers.

41. Defendants object to the allegations contained within Paragraph 82 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding the knowledge or understanding of "prudent" commercial motor vehicle drivers.

42. Defendants object to the allegations contained within Paragraph 83 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding the knowledge or understanding of "prudent" commercial motor vehicle drivers.

43. Defendants object to the allegations contained within Paragraph 84 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding the knowledge or understanding of "prudent" commercial motor vehicle drivers.

44. Defendants deny the allegations contained within Paragraph 85 of Plaintiffs' Amended Complaint, including all subparts, and demand strict proof thereof.

45. Defendants deny the allegations contained within Paragraph 86 of Plaintiffs' Amended Complaint and demand strict proof thereof.

46. Defendants deny the allegations contained within Paragraph 87 of Plaintiffs' Amended Complaint and demand strict proof thereof.

47. Responding to Paragraph 88 of Plaintiffs' Amended Complaint, Defendants reallege and incorporate the above paragraphs as if fully restated herein verbatim.

48. Defendants admit the allegations contained within Paragraph 89 of Plaintiffs' Amended Complaint.

49. Defendants admit the allegations contained within Paragraph 90 of Plaintiffs' Amended Complaint.

50. Defendants admit the allegations contained within Paragraph 91 of Plaintiffs' Amended Complaint.

51. Defendants admit the allegations contained within Paragraph 92 of Plaintiffs' Amended Complaint.

52. Defendants admit the allegations contained within Paragraph 93 of Plaintiffs' Amended Complaint.

53. Defendants admit the allegations contained within Paragraph 94 of Plaintiffs' Amended Complaint.

54. Defendants admit the allegations contained within Paragraph 95 of Plaintiffs' Amended Complaint.

55. Defendants admit the allegations contained within Paragraph 96 of Plaintiffs' Amended Complaint, including all subparts.

56. Defendants deny the allegations contained within Paragraph 97 of Plaintiffs' Amended Complaint, including all subparts, and demand strict proof thereof.

57. Defendants deny the allegations contained within Paragraph 98 of Plaintiffs' Amended Complaint and demand strict proof thereof.

58. Defendants deny the allegations contained within Paragraph 99 of Plaintiffs' Amended Complaint and demand strict proof thereof.

59. Responding to Paragraph 100 of Plaintiffs' Amended Complaint, Defendants reallege and incorporate the above paragraphs as if fully restated herein verbatim.

60. Defendants object to the allegations contained within Paragraph 101 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding the status of Curtis Kent Ouellete or the course and scope of his employment.

61. Defendants object to the allegations contained within Paragraph 102 of Plaintiffs' Amended Complaint to the extent that they assert legal conclusions regarding liability under the doctrines of respondeat superior, master/servant, and/or agent/principal.

62. Defendants deny the allegations contained within Paragraph 103 of Plaintiffs' Amended Complaint and demand strict proof thereof.

63. Defendants deny the allegations contained within Paragraph 104 of Plaintiffs' Amended Complaint and demand strict proof thereof.

64. Defendants deny the allegations contained in the WHEREFORE Paragraph of Plaintiffs' Amended Complaint and demand strict proof thereof.

FOR A FIFTH DEFENSE
(Comparative Negligence—Complete Bar)

65. Defendants plead the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiffs was greater than the negligence, if any (which is denied), which might be established against Defendants, and Plaintiffs are barred from recovery in this action.

FOR A SIXTH DEFENSE
(Comparative Negligence—Reduction in Recovery)

66. Defendants allege that any injury and/or damages sustained by Plaintiffs was due to and caused by the negligence and/or willfulness of Plaintiffs combining, concurring, and contributing with the negligence and/or willfulness of Defendants, if any (which is denied), and, any amount of recovery awarded to Plaintiffs for the injury and/or damages alleged in Plaintiffs' Amended Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiffs.

FOR A SEVENTH DEFENSE
(Failure to Mitigate Damages)

67. Plaintiffs may have failed to mitigate their damages and have incurred damages that were unnecessary or unreasonable in amount. Therefore, Plaintiffs are barred in whole or in part from recovery in this case.

FOR AN EIGHTH DEFENSE
(Sole Negligence of Plaintiff)

68. Defendants allege any injury and/or damage sustained by Plaintiffs was due to and caused by the sole negligence and/or willfulness of Plaintiffs and, therefore, Defendants are not liable to Plaintiffs for any sum whatsoever.

FOR A NINTH DEFENSE
(Third Party Negligence)

69. Defendants allege, upon information and belief, that any injury and/or damage sustained by Plaintiffs was due to and caused by the sole and negligent acts of omissions of some other person or persons other than Defendants over whom Defendants neither had nor exercised any authority or control, and therefore, Defendants are not liable to Plaintiffs for any sum whatsoever.

FOR A TENTH DEFENSE
(Punitive Damages—Unconstitutional)

70. The claim by Plaintiffs for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of this action has been found will violate Defendants' due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

71. An award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate Defendants' due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

72. The claim by Plaintiffs for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- a. Provided with sufficient clear standards for determining the appropriateness of a punitive damage aware of the size or the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;

- c. Instructed that awarding punitive damages on individually discriminatory characteristics of Defendants is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of Defendant upon which an award of punitive damages may be based; and,
- e. Subjected to judicial review at both the trial and appellate court level under objective standards for determining the appropriateness and reasonableness;

would violate Defendants' equal protection and due process rights as guaranteed by the Constitution of the United States and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

73. Additionally, it is plead that some or all of Plaintiffs' claims may be barred, limited, and/or bifurcated pursuant to S.C. Code Ann. § 15-32-510 et seq., including, but not limited to, §§ 15-32-520 and 15-32-530, which are incorporated in their entirety by reference and plead as an affirmative defense to all of Plaintiffs' claims.

WHEREFORE, having fully answered the Complaint, Defendants demand that:

- a. Plaintiffs' Complaint be dismissed;
- b. for costs associated with this action; and
- c. for any further relief as this honorable Court deems just and proper.

GALLIVAN, WHITE & BOYD, P.A.

By: s/E. Hood Dawson

Curtis L. Ott, SC Bar #66145

E. Hood Dawson SC Bar #102225

GALLIVAN, WHITE & BOYD, P.A.

55 Beattie Place, Suite 1200

P. O. Box 10589 (29603)

Greenville, South Carolina 29601

Tel: (864) 271-9580

Fax: (864) 271-7502

hdawson@gwblawfirm.com

*Attorneys for Defendants Curtis Kent Ouellette
and Quality Haulers, Inc.*

Defendants request a trial by jury of those issues so triable

s/E. Hood Dawson

E. Hood Dawson

February 21, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.:
	)	
Kent Huntley Oliver,	)	
	)	
Plaintiff,	)	COMPLAINT
	)	
vs.	)	(Jury Trial Requested)
	)	
Curtis Kent Ouellette; Quality Haulers, Inc.;	)	
Dean Alan Arender; US XPRESS Leasing,	)	
Inc.; and US XPRESS, Inc.	)	
	)	
Defendants.	)	

COMES NOW, Plaintiff, KENT HUNTLEY OLIVER (hereinafter referred to as "Plaintiff" or "MR. OLIVER"), by and through the undersigned attorneys, files this Complaint against the Defendants, CURTIS KENT OUELLETTE (hereinafter referred to as "MR. OUELLETTE"), QUALITY HAULERS, INC. (hereinafter referred to as "QUALITY HAULERS"), DEAN ALAN ARENDER (hereinafter referred to as "MR. ARENDER"), US XPRESS, INC., (hereinafter referred to as "US XPRESS, INC."), and US XPRESS LEASING, INC. (hereinafter referred to as "XPRESS LEASING"), and states as follows:

OVERVIEW

On November 12, 2020, Plaintiff was driving a 2020 GMC truck bearing VIN# 1GTG5DEN7L1137771 eastbound on Interstate 26 in Newberry County, South Carolina. Around the same time, MR. OUELLETTE parked the 2015 Kenworth tractor bearing VIN # 1XKZDP0X3FJ450086 and trailer (collectively, the "QUALITY HAULERS' SEMI") owned by QUALITY HAULERS, partially in the right travel lane. The Semi was improperly parked during

dark and rainy conditions partially in the right travel lane, with no triangles or other warnings for approaching traffic. MR. OLIVER was unable to avoid the QUALITY HAULERS' SEMI, struck the improperly parked Semi and was then struck by the XPRESS LEASING and/or US XPRESS, INC.'S 2019 Freightliner tractor, VIN # 3AKJHHDR7KSKC2243 and trailer (collectively, the "US XPRESS'S SEMI"), being operated by MR. ARENDER who was driving carelessly, aggressively, too close and fast given the conditions (hereinafter "the Crash"). As a result of the foregoing, MR. OLIVER suffered numerous permanent and severe injuries.

JURISDICTION, VENUE AND PARTIES

1. This lawsuit arises out of a crash that occurred on November 12, 2020, in Newberry County, South Carolina that caused serious and permanent injuries to Plaintiff.
2. At all relevant times, the Plaintiff, MR. OLIVER, was a resident of Spartanburg, Spartanburg County, South Carolina.
3. At all relevant times, MR. OUELLETTE was a resident of Fountain Inn, Greenville, South Carolina.
4. At all relevant times, QUALITY HAULERS was a corporation with its principal address located at 12725 Highway 221, Woodruff, Spartanburg County, South Carolina.
5. At all relevant times, MR. ARENDER was a resident of Forest City, North Carolina.
6. At all relevant times, the Defendant XPRESS LEASING was a corporation with its principal address located at 4080 Jenkins Road, Chattanooga, Tennessee, and its registered agent located at 508 Meeting Street, West Columbia, Lexington County, South Carolina 29169, and was authorized and licensed to do business in Newberry County, South Carolina.

7. General personal jurisdiction over XPRESS LEASING is proper under the South Carolina Long Arm Statute and constitutional minimum contacts so that XPRESS LEASING could be hauled into court in South Carolina for any litigated dispute since XPRESS LEASING engaged in substantial and not isolated activity in South Carolina, including without limitation regularly conducting substantial business and other activities in South Carolina by having employees and operating locations in South Carolina; providing transportation services, products, and delivery of same to persons and entities in this state on a daily basis; entering into contracts and business dealings in the state of South Carolina and with South Carolina citizens and businesses; by regularly engaging in the ultra-hazardous activity of transporting goods in interstate and intrastate commerce over South Carolina roads to and for South Carolina residents and businesses; by qualifying, training and retaining professional commercial vehicle drivers that XPRESS LEASING knew would be used to operate commercial motor vehicles in South Carolina in the ordinary course of its business; by providing services to its customers using commercial transportation services in South Carolina that included transporting the goods in commerce at the time of the crash; and maintaining an agent for service of process in South Carolina for any litigation arising out of its business in South Carolina.

8. Specific personal jurisdiction over XPRESS LEASING to be subject to South Carolina courts for this case is proper under the South Carolina Long Arm Statute and constitutional minimum requirements, as XPRESS LEASING committed tortious acts and omissions within the State of South Carolina and/or directly impacting the safety of all motorists on South Carolina roadways, including without limitation by improperly qualifying, hiring supervising, training and training MR. ARENDER when XPRESS LEASING knew or should have

known of his dangerous activities while driving commercial vehicles; and retaining MR. ARENDER despite that knowledge, which directly resulted and contributed to cause the Crash.

9. At all relevant times, the Defendant US XPRESS, INC. was a corporation with its principal address located at 112 North Curry Street, Carson City, Nevada, and its registered agent located at 508 Meeting Street, West Columbia, Lexington County, South Carolina 29169, and was authorized and licensed to do business in Newberry County, South Carolina.

10. General personal jurisdiction over US XPRESS, INC. is proper under the South Carolina Long Arm Statute and constitutional minimum requirements, as US XPRESS, INC. could be hauled into court in South Carolina for any litigated dispute since US XPRESS, INC. engaged in substantial and not isolated activity in South Carolina, including without limitation regularly conducting substantial business and other activities in South Carolina by having employees and operating locations in South Carolina; providing transportation services, products, and delivery of same to persons and entities in this state on a daily basis; entering into contracts and business dealings in the state of South Carolina and with South Carolina citizens and businesses; by regularly engaging in the ultra-hazardous activity of transporting goods in interstate and intrastate commerce over South Carolina roads to and for South Carolina residents and businesses; by qualifying, training and retaining professional commercial vehicle drivers that US XPRESS, INC knew would be used to operate commercial motor vehicles in South Carolina in the ordinary course of its business; by providing services to its customers using commercial transportation services in South Carolina that included transporting the goods in commerce at the time of the crash; and maintaining an agent for service of process in South Carolina for any litigation arising out of its business in South Carolina.

11. Specific personal jurisdiction over US XPRESS, INC. to be subject to South Carolina courts for this case is proper under the South Carolina Long Arm Statute and constitutional minimum requirements, as US XPRESS, INC. committed tortious acts and omissions within the State of South Carolina and/or directly impacting the safety of all motorists on South Carolina roadways, including without limitation by improperly qualifying, hiring supervising, training and training MR. ARENDER when US XPRESS, INC. knew or should have known of his dangerous activities while driving commercial vehicles; and retaining MR. ARENDER despite that knowledge, which directly resulted and contributed to cause the Crash.

12. Venue is proper in this Court as the incident giving rise to this litigation occurred in Newberry County, South Carolina.

FACTS REGARDING DEFENDANTS' ROLE IN INTERSTATE COMMERCE

13. The transportation of goods in interstate commerce constitutes an ultra-hazardous and inherently dangerous activity that presents substantial dangers to the driving public when not done safely, properly and with due caution. Accordingly, there are a number of federal regulations, state statutes, industry standards and local ordinances that govern the qualification, training and retention of professional tractor trailer drivers, the proper maintenance and equipment for commercial motor vehicles, and the safe equipment, maintenance, inspection, and operation of motor carriers, commercial motor vehicles and professional truck drivers.

14. At all times material hereto, QUALITY HAULERS was an interstate motor carrier authorized to transport goods in interstate commerce and in the State of South Carolina for profit pursuant to one or more permits issued by the United States Department of Transportation ("USDOT"). Accordingly, QUALITY HAULERS was subject to all state and federal laws, statutes, regulations, and industry standards governing the hiring of safe and qualified commercial

drivers, the safe maintenance, inspection, and operation of commercial motor vehicles, and the safe brokering of goods in interstate commerce, including without limitation South Carolina laws governing state uniform traffic control and the Federal Motor Carrier Safety Regulations ("FMCSRs") set forth in 49 C.F.R. parts 371-397.

15. QUALITY HAULERS regularly engages in a commercial enterprise that involves the use of motor carriers, commercial motor vehicles and licensed commercial motor vehicle drivers as an integral part of its business. As a result, QUALITY HAULERS had a duty and obligation to the driving public to exercise reasonable care to utilize safe, competent, and conscientious motor carriers, commercial motor vehicles and professional drivers.

16. At all times material hereto, QUALITY HAULERS owned or had exclusive use, control and possession of the QUALITY HAULERS' SEMI.

17. QUALITY HAULERS selected and hired MR. OUELLETTE to operate commercial motor vehicles in interstate commerce as approved by the USDOT and to deliver goods to customers in South Carolina.

18. In return for the privilege to operate commercial motor vehicles on the public highways transporting goods in interstate commerce, motor carriers like QUALITY HAULERS must make certain safety related certifications and verifications to the USDOT. In order to obtain operating authority and get a USDOT Number, QUALITY HAULERS had to submit a Form OP-I Application for Motor Property Carrier and Broker Authority.

19. Each Form OP-I submitted contained a "Safety Certification," certifying to the Federal Motor Carrier Safety Administration ("FMCSA") that QUALITY HAULERS has access to and is familiar with all applicable USDOT regulations relating to the safe operation of

commercial motor vehicles and that QUALITY HAULERS will comply with the FMCSRs at all times while operating a commercial motor vehicle in the United States.

20. More specifically, each Form OP-I submitted contained a "Safety Certification," certifying to the Federal Motor Carrier Safety Administration that, at a minimum, QUALITY HAULERS:

- a. had and will have in place a system and an individual responsible for ensuring overall compliance with the FMCSRs;
- b. can produce a copy of the FMCSRs; had and will have in place a driver safety training/orientation program;
- c. had and will have prepared and maintain an accident register;
- d. is familiar with USDOT regulations governing driver qualifications and had and will have in place a system for overseeing driver qualification requirements;
- e. had and will have in place policies and procedures consistent with USDOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair and maintenance;
- f. are familiar with, and had and will have in place a system for complying with all USDOT regulations governing alcohol and controlled substances testing requirements; and
- g. must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States.

21. An authorized representative of QUALITY HAULERS swore under penalty of perjury to comply with the above "Safety Certifications."

22. At the time of the Crash, MR. OUELLETTE was a class A licensed commercial vehicle operator assigned to and responsible for the QUALITY HAULERS' SEMI.

23. Accordingly, MR. OUELLETTE was subject to all state and federal laws, statutes, regulations and industry standards governing the safe maintenance, operation and parking of commercial motor vehicles including, without limitation, to South Carolina law governing state uniform traffic control and the FMCSRs set forth in 49 C.F.R. parts 371-397.

24. At all relevant times, MR. OUELLETTE was an employee, agent, apparent agent and/or servant contracted to perform services for QUALITY HAULERS under their USDOT interstate motor carrier operating authority and was the driver of the QUALITY HAULERS' SEMI.

25. At all relevant times, MR. OUELLETTE was acting within the course and scope of said employment, agency, apparent agency, and/or service and subject to QUALITY HAULERS' control or right to control, such that QUALITY HAULERS should be considered his actual and statutory employer.

26. At the time of the Crash, the Plaintiff, MR. OLIVER, was driving a 2020 GMC truck eastbound on Interstate 26 in Newberry County, South Carolina.

27. At the time of the Crash, Defendant, MR. OUELLETTE, was operating the QUALITY HAULERS' SEMI, owned by the Defendant, QUALITY HAULERS, in Newberry County, South Carolina. MR. OUELLETTE parked the QUALITY HAULERS' SEMI partially in the right travel lane.

28. The QUALITY HAULERS' SEMI was improperly parked during dark and rainy conditions partially in the right travel lane, with no triangles or other warnings for approaching traffic.

29. At all times material hereto, XPRESS LEASING and/or US XPRESS, INC. were an interstate motor carrier authorized to transport goods in interstate commerce and in the State of South Carolina for profit pursuant to one or more permits issued by the United States Department of Transportation ("USDOT"). Accordingly, XPRESS LEASING and/or US XPRESS, INC. were subject to all state and federal laws, statutes, regulations, and industry standards governing the hiring of safe and qualified commercial drivers, the safe maintenance, inspection, and operation of commercial motor vehicles, and the safe brokering of goods in interstate commerce, including without limitation to South Carolina laws governing state uniform traffic control and the Federal Motor Carrier Safety Regulations ("FMCSRs") set forth in 49 C.F.R. parts 371-397.

30. XPRESS LEASING and US XPRESS, INC. regularly engage in a commercial enterprise that involves the use of motor carriers, commercial motor vehicles and licensed commercial motor vehicle drivers as an integral part of its business. As a result, XPRESS LEASING and US XPRESS, INC. had a duty and obligation to the driving public to exercise reasonable care to utilize safe, competent, and conscientious motor carriers, commercial motor vehicles and professional drivers.

31. At all times material hereto, XPRESS LEASING and/or US XPRESS, INC. owned or had exclusive use, control and possession of the US XPRESS'S SEMI.

32. XPRESS LEASING and/or US XPRESS, INC. selected and hired MR. ARENDER to operate commercial motor vehicles in interstate commerce as approved by the USDOT and to deliver goods to customers in South Carolina.

33. In return for the privilege to operate commercial motor vehicles on the public highways transporting goods in interstate commerce, motor carriers like XPRESS LEASING and/or US XPRESS, INC. must make certain safety related certifications and verifications to the

USDOT. To obtain operating authority and get a USDOT Number, XPRESS LEASING and/or US XPRESS, INC. had to submit a Form OP-I Application for Motor Property Carrier and Broker Authority.

34. Each Form OP-I submitted contained a "Safety Certification," certifying to the Federal Motor Carrier Safety Administration ("FMCSA") that XPRESS LEASING and/or US XPRESS, INC. has access to and is familiar with all applicable USDOT regulations relating to the safe operation of commercial motor vehicles and that XPRESS LEASING and/or US XPRESS, INC. will comply with the FMCSRs at all times while operating a commercial motor vehicle in the United States.

35. More specifically, each Form OP-I submitted contained a "Safety Certification," certifying to the Federal Motor Carrier Safety Administration that, at a minimum, XPRESS LEASING and/or US XPRESS, INC.:

- a. had and will have in place a system and an individual responsible for ensuring overall compliance with the FMCSRs; can produce a copy of the FMCSRs;
- b. had and will have in place a driver safety training/orientation program;
- c. had and will have prepared and maintain an accident register;
- d. is familiar with USDOT regulations governing driver qualifications and had and will have in place a system for overseeing driver qualification requirements;
- e. had and will have in place policies and procedures consistent with USDOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair and maintenance;

- f. is familiar with, and had and will have in place a system for complying with all USDOT regulations governing alcohol and controlled substances testing requirements;
- g. and must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States.

36. An authorized representative of XPRESS LEASING and/or US XPRESS, INC. swore under penalty of perjury to comply with the above "Safety Certifications".

37. At the time of the Crash, MR. ARENDER was a licensed commercial vehicle operator assigned to and responsible for the US XPRESS'S SEMI.

38. Accordingly, MR. ARENDER was subject to all state and federal laws, statutes, regulations and industry standards governing the safe maintenance, operation of commercial motor vehicles including, without limitation, to South Carolina laws governing state uniform traffic control and the FMCSRs set forth in 49 C.F.R. parts 371-397.

39. At all relevant times, MR. ARENDER was an employee, agent, apparent agent and/or servant contracted to perform services for XPRESS LEASING and/or US XPRESS, INC.'S USDOT interstate motor carrier operating authority and was the driver of the US XPRESS'S SEMI.

40. At all relevant times, MR. ARENDER was acting within the course and scope of said employment, agency, apparent agency, and/or service and subject to XPRESS LEASING and/or US XPRESS, INC.'S control or right to control, such that of XPRESS LEASING and/or US XPRESS, INC. should be considered his actual and statutory employer.

41. At the time of the Crash, MR. ARENDER was operating a US XPRESS'S SEMI, owned by XPRESS LEASING and/or US XPRESS, INC., and traveling eastbound on Interstate

26 in Newberry County, South Carolina.

42. At the time of the Crash, MR. OLIVER was unable to avoid the QUALITY HAULERS' SEMI and struck the negligently and improperly parked Semi.

43. Further, at the time of the Crash, MR. OLIVER'S truck was struck by the US XPRESS'S SEMI being operated by MR. ARENDER who was driving carelessly, aggressively driving, too close and fast given the conditions.

44. Due to both impacts, MR. OLIVER suffered numerous permanent and severe injuries.

45. At all times material, each of the US XPRESS Defendants was the subsidiary, sister company, agent, servant, representative, employee, partner, joint venturer, and/or controlling person of the other US XPRESS Defendant named herein, and in doing the acts herein alleged were acting as the agents or alter ego for each other.

46. At the time of the Crash, MR. ARENDER was acting within the course and scope of said employment, agency, apparent agency, and/or service and subject to US XPRESS LEASING and/or US XPRESS, INC.'s control or right to control, such that Defendants should be considered his actual and statutory employer, agent, apparent agent and/or servant, and therefore, vicariously liable for MR. ARENDERS's negligence.

47. Accordingly, US XPRESS LEASING and/or US XPRESS, INC. are liable, jointly, and severally, in partnership, joint venture or sole proprietorship, for the crash described hereinafter and resulting damages claimed herein.

48. Each Defendant acted in a manner that either alone or combined with the other

Defendants' acts of recklessness and negligence, directly and proximately caused the Crash and the resulting injuries to Plaintiff, MR. OLIVER.

DAMAGES

49. As a result of the crashes, MR. OLIVER suffered severe bodily injuries resulting in pain and suffering, disability, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition, and loss of ability to lead and enjoy a normal life. The losses are either permanent or continuing and Plaintiff will suffer these losses in the future ("MR. OLIVER'S Damages").

COUNT I: **NEGLIGENCE AGAINST CURTIS KENT OUELLETTE**

Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-49 as if fully restated herein.

50. At the time of the Crash, MR. OUELLETTE had non-delegable duties to operate the QUALITY HAULERS' SEMI in a reasonable and safe manner and to know of and abide by all federal and state laws, statutes, regulations, and industry standards governing the safe operation of commercial motor vehicles, including without limitation, South Carolina Code of Laws, Title 56 governing state uniform traffic control and the FMCSRs.

51. At the time of the Crash, MR. OUELLETTE breached said duties in one or more of, but not limited to, the following ways:

- a. failing to display warning lights and devices when vehicle is stopped;
- b. parking upon a highway in violation of SC Code Sec. 56-5-2530;
- c. parking on the roadway in violation of SC Code Sec. 56-5-2530;

- d. failing to properly give warning when stopped upon the traveled portion of a highway or a shoulder of a highway in violation of 49 CFR 392.22;
- e. failing to conduct proper route planning before beginning the transport of goods in interstate commerce;
- f. failing to maintain and use proper emergency equipment in violation of 49CFR 392.8;
- g. failing to maintain and use proper warning devices for stopped commercial vehicles;
- h. performing a non-emergent stop of a commercial vehicle in the travel lanes of a U.S. Highway;
- i. failing to appreciate approaching traffic;
- j. failing to operate the QUALITY HAULERS' SEMI in accordance with generally accepted safety principles and practices of the trucking industry; and
- k. failing to operate the QUALITY HAULERS' SEMI in accordance with the minimum safety guidelines set forth in the FMCSRs, company safety policies, generally accepted safety principles and practices of the trucking industry in that he negligently and carelessly operated or maintained the QUALITY HAULERS' SEMI resulting in a collision with the QUALITY HAULERS' SEMI, which began a sequence of events that contributed to causing another Semi to strike MR. OLIVER's vehicle.

52. MR. OUELLETTE negligently and carelessly breached the duties he owed to the driving public who were exposed to his actions, including MR. OLIVER, and violated laws that were intended to protect motorists like MR. OLIVER.

53. MR. OUELLETTE'S negligence directly and proximately caused the physical, mental and economic damages to MR. OLIVER.

WHEREFORE, Plaintiff, MR. OLIVER, demands judgment for damages against MR. OUELLETTE for actual and punitive damages in an appropriate amount, and for the costs of this action and for such other and further relief as this Honorable Court deems just, in an amount to exceed One Hundred Thousand Dollars to be determined by a jury.

COUNT II:
NEGLIGENT SUPERVISION AGAINST DEFENDANT, QUALITY HAULERS, INC.

Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-53 as if fully restated herein.

54. QUALITY HAULERS had a non-delegable duty to ensure that its drivers and vehicles were reasonably safe and complied with all laws and industry standards concerning the safe operation and maintenance of commercial motor vehicles in interstate commerce.

55. Upon information and belief, QUALITY HAULERS breached the above-mentioned duties and was therefore negligent in one or more of, but not limited to, the following ways:

- a. prior to hiring, selecting, or otherwise contracting with MR. OUELLETTE, failing to conduct reasonable due diligence, or to retain a competent third party to conduct due diligence, into the safety record, driving history, training, experience and licensure of MR. OUELLETTE;
- b. failing to properly supervise, train, and instruct its driver, MR. OUELLETTE in safely and properly parking the QUALITY HAULERS' SEMI during deliveries;
- c. failing to verify that MR. OUELLETTE operated the QUALITY HAULERS' SEMI in a reasonably safe manner and abided by all laws governing the safe

- operation of commercial motor vehicles;
- d. negligently entrusting the Semi, a dangerous instrumentality, to MR. OUELLETTE;
- e. negligently supervising MR. OUELLETTE;
- f. negligently retaining MR. OUELLETTE;
- g. hiring and/or continuing to employ MR. OUELLETTE despite the fact that it knew or should have known he was unfit to safely operate a commercial vehicle;
- h. failing to have an appropriate disciplinary policy within the company;
- i. failing to adopt appropriate employee manuals and/or training procedures;
- j. failing to enforce both the written and unwritten policies of QUALITY HAULERS;
- k. failing to ensure that its employees, drivers and/or agents were aware of and complied with the written and unwritten policies of QUALITY HAULERS;
- l. failing to implement and/or enforce an effective safety system;
- m. failing to ensure that its management personnel and drivers were aware of the requirements and dictates of the FMCSRs;
- n. failing to ensure that its employees, drivers and/or agents complied with the provisions of the FMCSRs;
- o. failing to ensure that its employees, drivers and/or agents were aware of and complied with the rules, laws and regulations pertaining to and governing the safe operation of commercial motor vehicles;
- p. violating the applicable rules, laws and regulations pertaining to and governing the safe operation of commercial motor vehicles;
- q. failing to monitor and/or regulate its drivers' actions;

- r. placing more emphasis on profits than on the safety of its drivers and the motoring public;
- s. knowingly violating federal and state laws regarding the responsibilities of motor carriers and the safe operation of commercial vehicles;
- t. failing to act upon and remedy known violations of FMCSRs;
- u. failing to act upon and remedy known violations of industry standards;
- v. acting in conscious disregard for the rights and safety of the motoring public, including MR. OLIVER;
- w. failing to have appropriate policies and procedures with regard to the hiring of its drivers;
- x. failing to follow the written and/or unwritten policies and procedures with regard to the hiring of its drivers;
- y. failing to have appropriate policies and procedures with regard to the monitoring of its drivers;
- z. failing to follow the written and/or unwritten policies and procedures with regard to the monitoring of its drivers;
- aa. habitually and recklessly disregarding state and federal laws and regulations and industry standards governing the safe hiring, training and retention of tractor trailer drivers, the safe operation of a motor carrier transporting goods in interstate commerce, and the safe operation of commercial motor vehicles, which created a zone and culture of danger that constituted a dangerous mode of operation that was reasonably anticipated to cause injury to the traveling public and created a danger to all motorists exposed to its unsafe commercial motor vehicle drivers like MR.

OUELLETTE; and

- bb. having a negligent mode of operation and poor safety culture that created danger to all motorists exposed to its commercial vehicle drivers, including MR. OLIVER.

56. QUALITY HAULER's negligence directly and proximately caused the physical, mental and economic damages to MR. OLIVER.

WHEREFORE, MR. OLIVER demands judgment against QUALITY HAULERS for actual and punitive damages in an appropriate amount, and for the costs of this action and for such other and further relief as this Honorable Court deems just, in an amount to exceed One Hundred Thousand Dollars to be determined by a jury.

COUNT III:
STRICT VICARIOUS LIABILITY AGAINST QUALITY HAULERS, INC.

Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-56 as if fully restated herein.

57. At the time of the Crash, QUALITY HAULERS owned the QUALITY HAULERS' SEMI, a dangerous instrumentality, being operated by MR. OUELLETTE with the knowledge and consent of QUALITY HAULERS.

58. At the time of the Crash, MR. OUELLETTE negligently and carelessly operated and parked the QUALITY HAULERS' SEMI so that it collided with Plaintiff's vehicle and contributed to cause the Crash, the serious and permanent injuries to Plaintiff.

59. QUALITY HAULERS, as the legal owner of the subject vehicle, and by consenting and permitting to its use, is strictly and vicariously liable for the negligent actions and inactions of MR. OUELLETTE, the serious and permanent injuries to Plaintiff, and MR. OLIVER'S Damages

WHEREFORE, Plaintiff demands judgment for damages against QUALITY HAULERS, for actual and punitive damages in an appropriate amount, and for the costs of this action and for

such other and further relief as this Honorable Court deems just, in an amount to exceed One Hundred Thousand Dollars to be determined by a jury.

COUNT IV:
NEGLIGENCE AGAINST MR. ARENDER

Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-59 as if fully restated herein.

60. At the time of the Crash, MR. ARENDER had a non-delegable duty to operate the US XPRESS'S SEMI in a reasonable and safe manner and to know of and abide by all federal and state laws, statutes, regulations, and industry standards governing the safe operation of commercial motor vehicles, including without limitation, South Carolina Code of Laws, Title 56 governing state uniform traffic control and the FMCSRs.

61. At the time of the Crash, MR. ARENDER breached those duties in one or more of, but not limited to, the following ways:

- a. driving too fast for conditions;
- b. failing to decrease speed as necessary when special hazards exist;
- c. driving carelessly;
- d. failing to keep a proper lookout;
- e. failing to keep a safe following distance;
- f. failing to operate the vehicle in conformity with the policies, procedures, training, defensive driving techniques, and applicable safe driving requirements by XPRESS LEASING and/or US XPRESS, INC.;
- g. failing to operate the vehicle in conformity with all applicable State of South Carolina commercial trucking statutes, traffic statutes, rules and regulations;

- h. failing to operate the vehicle in conformity with all applicable industry standards governing commercial truck driving and cement truck driving;
- i. failing to repair said vehicle for safe travel on all local and state roads;
- j. failing to inspect said vehicle to ensure it was safe for travel on all local, and state roads;
- k. failing to operate said vehicle in a safe and professional manner, paying attention to all applicable hazards and other vehicles;
- l. failing to operate the vehicle in a safe and responsible manner as required by the conditions of the road, traffic ahead, and other road users;
- m. failing to maintain a sure clear distance in front of his vehicle;
- n. driving the US XPRESS'S SEMI while distracted;
- o. driving the US XPRESS'S SEMI while fatigued;
- p. failing to maintain control of the US XPRESS'S SEMI;
- q. failing to take appropriate evasive action;
- r. failing to exercise reasonable and prudent care while operating the US XPRESS'S SEMI;
- s. failing to pay proper attention to the road and the vehicles around him;
- t. failing to drive defensively;
- u. causing the vehicle to collide with MR. OLIVER's vehicle;
- v. failing to operate the US XPRESS'S SEMI in accordance with generally accepted industry standards, principles, and practices;
- w. failing to operate the US XPRESS'S SEMI in a safe and prudent manner in view of the conditions that existed at the time of the Crash; and,

x. otherwise failing to act reasonably and prudently under the circumstances.

62. MR. ARENDER's negligent conduct also violated laws intended to protect and prevent crashes with the motoring public, including Plaintiff.

63. MR. ARENDER's negligence and recklessness contributed to proximately cause the Crash, the serious and permanent injuries to Plaintiff, and MR. OLIVER's Damages.

WHEREFORE, Plaintiff demands judgment for damages against MR. ARENDER, for actual and punitive damages in an appropriate amount, and for the costs of this action and for such other and further relief as this Honorable Court deems just, in an amount to exceed One Hundred Thousand Dollars to be determined by a jury.

COUNT V:
NEGLIGENT SUPERVISION AGAINST US XPRESS LEASING

Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-63 as if fully restated herein.

64. XPRESS LEASING had a non-delegable duty to ensure that its drivers and vehicles were reasonably safe and complied with all laws and industry standards concerning the safe maintenance, inspection, repair and operation of motor vehicles on the public highways.

65. Upon information and belief, US XPRESS LEASING breached the above-mentioned duties and was therefore negligent in one or more of, but not limited to, the following ways:

- a. prior to hiring, selecting, or otherwise contracting with MR. ARENDER, failing to conduct reasonable due diligence, or to retain a competent third party to conduct due diligence, into the safety record, driving history, training, experience and licensure of MR. ARENDER;
- b. failing to properly supervise, monitor, train, and instruct its driver, MR. ARENDER

in safely operating the US XPRESS'S SEMI, defensive driving techniques, dealing with aggressive drivers, visual search, emergency maneuvers, hazard perception and avoidance, maintaining a safe sure clear distance, speed management, space management, distracted driving, fatigue and awareness, and the relationship of cargo to vehicle control;

- c. failing to verify that MR. ARENDER operated the US XPRESS'S SEMI in a reasonably safe and defensive manner, and abided by all laws governing the safe operation of motor vehicles;
- d. failing to make sure that MR. ARENDER had the knowledge and on road driving skills required by the FMCSRs;
- e. negligently entrusting the US XPRESS'S SEMI, a dangerous instrumentality, to MR. ARENDER;
- f. negligently supervising MR. ARENDER;
- g. negligently retaining MR. ARENDER;
- h. negligently maintaining the US XPRESS'S SEMI;
- i. hiring and/or continuing to employ MR. ARENDER even though it knew or should have known he was unfit to safely operate a commercial motor vehicle;
- j. failing to have an appropriate disciplinary policy within the company;
- k. failing to adopt appropriate employee manuals and/or training procedures for the safe transportation of tractor trailers;
- l. failing to enforce both the written and unwritten policies of XPRESS LEASING;
- m. failing to ensure that its employees, drivers and/or agents were aware of and complied with the written and unwritten policies of XPRESS LEASING;

- n. failing to implement and/or enforce an effective safety system;
- o. failing to ensure that its employees, drivers and/or agents were aware of and complied with the rules, laws and regulations pertaining to and governing the safe operation of commercial motor vehicles;
- p. violating the applicable rules, laws and regulations pertaining to and governing the safe operation of commercial motor vehicles;
- q. failing to monitor and/or regulate its drivers' actions;
- r. placing more emphasis on profits than on the safety of its drivers and the motoring public;
- s. acting in conscious disregard for the rights and safety of the public;
- t. failing to have appropriate policies and procedures with regard to the hiring of its drivers;
- u. failing to follow the written and/or unwritten policies and procedures with regard to the hiring of its drivers;
- v. failing to have appropriate policies and procedures regarding the monitoring of its drivers;
- w. failing to follow the written and/or unwritten policies and procedures regarding the monitoring of its drivers;
- x. having a negligent mode of operation and poor safety culture that created a danger to all motorists exposed to its drivers; and
- y. allowing MR. ARENDER to operate the US XPRESS'S SEMI without the mandatory cab facing dash cameras and telematics utilized to monitor driver behaviors.

66. Defendant XPRESS LEASING's negligence and recklessness contributed to proximately cause the Crash, serious and permanent personal injuries to Plaintiff and MR. OLIVER's damages.

WHEREFORE, MR. OLIVER demands judgment against US XPRESS LEASING for actual and punitive damages in an appropriate amount, and for the costs of this action and for such other and further relief as this Honorable Court deems just, in an amount to exceed One Hundred Thousand Dollars to be determined by a jury.

COUNT VI:
STRICT VICARIOUS LIABILITY AGAINST US XPRESS LEASING

Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-66 as if fully restated herein.

67. At the time of the Crash, XPRESS LEASING owned the US XPRESS'S SEMI, a dangerous instrumentality, being operated by MR. ARENDER with the knowledge and consent of XPRESS LEASING.

68. At the time of the Crash, MR. ARENDER negligently and carelessly operated the US XPRESS'S SEMI so that it collided with Plaintiff's vehicle and contributed to cause the Crash, the serious and permanent injuries to Plaintiff.

69. XPRESS LEASING, as the legal owner of the subject vehicle, and by consenting and permitting to its use, is strictly and vicariously liable for the negligent actions and inactions of MR. ARENDER, the serious and permanent injuries to Plaintiff, and MR. OLIVER'S Damages.

WHEREFORE, Plaintiff demands judgment for damages against US XPRESS LEASING, for actual and punitive damages in an appropriate amount, and for the costs of this action and for such other and further relief as this Honorable Court deems just, in an amount to exceed One Hundred Thousand Dollars to be determined by a jury.

COUNT VII:
NEGLIGENCE AGAINST US XPRESS, INC.

Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-69 as if fully restated herein.

70. US EXPRESS, INC. had non-delegable duties to ensure that its drivers and vehicles were reasonably safe and complied with all laws and industry standards concerning the safe maintenance, inspection, repair and operation of commercial motor vehicles on public highways.

71. Upon information and belief, US XPRESS, INC. breached the above-mentioned duties and was therefore negligent in one or more of, but not limited to, the following ways:

- a. prior to hiring, selecting, or otherwise contracting with MR. ARENDER, failing to conduct reasonable due diligence, or to retain a competent third party to conduct due diligence, into the safety record, driving history, training, experience and licensure of MR. ARENDER;
- b. failing to properly supervise, monitor, train, and instruct its driver, MR. ARENDER in safely operating the US XPRESS'S SEMI, defensive driving techniques, dealing with aggressive drivers, visual search, emergency maneuvers, hazard perception and avoidance, maintaining a safe sure clear distance, speed management, space management, distracted driving, fatigue and awareness, and the relationship of cargo to vehicle control;
- c. failing to verify that MR. ARENDER operated the US XPRESS'S SEMI in a reasonably safe and defensive manner, and abided by all laws governing the safe operation of motor vehicles;
- d. failing to make sure that MR. ARENDER had the knowledge and on road driving skills required by the FMCSRs;

- e. negligently entrusting the US XPRESS'S SEMI, a dangerous instrumentality, to MR. ARENDER;
- f. negligently supervising MR. ARENDER;
- g. negligently retaining MR. ARENDER;
- h. negligently maintaining the US XPRESS'S SEMI;
- i. hiring and/or continuing to employ MR. ARENDER even though it knew or should have known he was unfit to safely operate a commercial motor vehicle;
- j. failing to have an appropriate disciplinary policy within the company;
- k. failing to adopt appropriate employee manuals and/or training procedures for the safe transportation of tractor trailers;
- l. failing to enforce both the written and unwritten policies of US XPRESS, INC.;
- m. failing to ensure that its employees, drivers and/or agents were aware of and complied with the written and unwritten policies of US XPRESS, INC.;
- n. failing to implement and/or enforce an effective safety system;
- o. failing to ensure that its employees, drivers and/or agents were aware of and complied with the rules, laws and regulations pertaining to and governing the safe operation of commercial motor vehicles;
- p. violating the applicable rules, laws and regulations pertaining to and governing the safe operation of commercial motor vehicles and cement trucks;
- q. failing to monitor and/or regulate its drivers' actions;
- r. placing more emphasis on profits than on the safety of its drivers and the motoring public;
- s. acting in conscious disregard for the rights and safety of the public;

- t. failing to have appropriate policies and procedures with regard to the hiring of its drivers;
 - u. failing to follow the written and/or unwritten policies and procedures with regard to the hiring of its drivers;
 - v. failing to have appropriate policies and procedures regarding the monitoring of its drivers;
 - w. failing to follow the written and/or unwritten policies and procedures regarding the monitoring of its drivers;
 - x. having a negligent mode of operation and poor safety culture that created a danger to all motorists exposed to its drivers; and
 - y. allowing MR. ARENDER to operate the US XPRESS'S SEMI without the mandatory cab facing dash cameras and telematics utilized to monitor driver behaviors.
72. Defendant US XPRESS, INC.'s negligence and recklessness contributed to proximately cause the Crash, serious and permanent personal injuries to Plaintiff and MR. OLIVER's damages.

WHEREFORE, MR. OLIVER demands judgment against US XPRESS, INC. for actual and punitive damages in an appropriate amount, and for the costs of this action and for such other and further relief as this Honorable Court deems just, in an amount to exceed One Hundred Thousand Dollars to be determined by a jury.

COUNT VIII:
STRICT VICARIOUS LIABILITY AGAINST US XPRESS, INC.

Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-72 as if fully restated herein.

73. At the time of the Crash, US XPRESS, INC. owned the US XPRESS'S SEMI, a dangerous instrumentality, operated by MR. ARENDER with the knowledge and consent of US XPRESS, INC.

74. At the time of the Crash, MR. ARENDER negligently and carelessly operated the US XPRESS'S SEMI so that it collided with Plaintiff's vehicle and contributed to cause the Crash, the serious and permanent injuries to Plaintiff.

75. US XPRESS, INC., as the legal owner of the subject vehicle, and by consenting and permitting to its use, is strictly and vicariously liable for the negligent actions and inactions of MR. ARENDER, the serious and permanent injuries to Plaintiff, and MR. OLIVER'S Damages

WHEREFORE, Plaintiff demands judgment for damages against US XPRESS, INC., for actual and punitive damages in an appropriate amount, and for the costs of this action and for such other and further relief as this Honorable Court deems just, in an amount to exceed One Hundred Thousand Dollars to be determined by a jury.

THE DERRICK LAW FIRM, PA

s/Justin J. Arenas

Justin J. Arenas, Esquire

South Carolina Bar Number: 100536

PO Box 28

Conway, SC 29528

843-248-7486

843-248-7510

justin.arenas@derricklawfirm.com

Attorneys for Plaintiff

-and-

THE TRUCK ACCIDENT LAW FIRM

s/ Joseph V. Camerlengo

Joseph V. Camerlengo, B.C.S.*

Florida Bar Number: 008192

Jessica L. Lanifero, Esquire*

Florida Bar Number: 021062

1200 Riverplace Blvd, Suite 902

Jacksonville, Florida 32207

(904) 306-9220 telephone

(904) 306-9221 facsimile

jvc@truckcrashlaw.com

jll@truckcrashlaw.com

team@truckcrashlaw.com

Attorneys for Plaintiff

June 1, 2023
Conway, South Carolina

**Pro hac vice* application forthcoming

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	THE EIGHTH JUDICIAL CIRCUIT
	)	
Kent Huntley Oliver	)	Civil Action No.: 2023CP3600300
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	ANSWER ON BEHALF OF
Curtis Kent Ouellette, Quality	)	DEAN ALAN ARENDER
Haulers, Inc., Dean Alan Arender, US	)	
Xpress Leasing, Inc., and US Xpress,	)	(Jury Trial Demanded)
Inc.	)	
	)	
	)	
Defendants.	)	

COMES NOW, the Defendant Dean Alan Arender, (hereinafter "Defendant") by and through its undersigned attorneys, answering the Complaint of the Plaintiff, would allege and show unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.
2. To the extent the COMES NOW, Plaintiff, paragraph contains allegations against these Defendant.
3. To the extent the OVERVIEW paragraph contains allegations against these Defendant, those allegations are denied.
4. Upon information and belief, Defendant admits paragraphs 1 - 3.
5. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraph 4 and therefore those allegations are denied as pled.

6. As to Paragraphs 5, Defendant admits.
7. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraphs 6 - 11 as pled and therefore denies same.
8. Upon information and belief, Defendant admits Paragraph 12.
9. Defendant denies Paragraph 13 to the extent it is an inaccurate statement of the applicable law to be charged by the Judge at the trial of this matter.
10. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraph 14 – 22 as pled, and thereby deny the same.
11. Upon information and belief, Defendant admits Paragraph 23.
12. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraphs 24 through 25, as pled, and thereby deny the same.
13. Paragraph 26 is admitted upon information and belief.
14. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraphs 27 – 37, as pled, and thereby deny the same.
15. Defendant denies Paragraph 38 to the extent it is an inaccurate statement of the applicable law to be charged by the Judge at the trial of this matter.
16. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraphs 39 – 41, as pled, and thereby deny the same.
17. Defendant denies the allegations of Paragraphs 42 and 43 and demand strict proof thereof.
18. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraph 41, as pled, and thereby deny the same.

19. Defendant denies the allegations of Paragraphs 42 and 43 and demand strict proof thereof.

20. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraphs 44 – 46, as pled, and thereby deny the same.

21. Defendant denies the allegations of Paragraphs 47 and 48 and demands strict proof thereof

22. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraphs 49 through 50, as pled, and thereby deny the same.

23. Upon information and belief, Defendant admits Paragraphs 51 and 52.

24. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraphs 53 through 59 and all subparts (including the WHEREFORE paragraph “Plaintiff realleges”), as pled, and thereby deny the same.

25. Defendant denies Paragraph 60, to the extent it is an inaccurate statement of applicable law to be charged by the Judge at the trial of this matter.

26. Defendant denies the allegations of Paragraphs 61 through 63 and all subparts, (including WHEREFORE paragraph) and demand strict proof thereof.

27. Defendant lacks sufficient knowledge and information to form a belief as to the allegations in the “Plaintiff realleges” paragraph under COUNT V and thereby deny the same.

28. Defendant denies the allegations of Paragraphs 64 through 66 (including the “WHEREFORE, MR. OLIVER” paragraph, and all subparts and demand strict proof thereof.

29. Defendant lacks sufficient knowledge and information to form a belief as to the allegations in the “Plaintiff realleges” paragraph under COUNT VI and thereby deny the same.

30. Defendant lacks sufficient knowledge and information to form a belief as to the allegations of Paragraph 67- 69 (including the WHEREFORE paragraphs which follow) as pled, and thereby deny the same.

31. Defendant lacks sufficient knowledge and information to form a belief as to the “Plaintiff realleges” paragraph under COUNT VII, and thereby denies the same.

32. Defendant denies Paragraph 70 to the extent it is an inaccurate statement of the applicable law to be charged by the Judge at the trial of this matter.

33. Defendant denies the allegations of Paragraphs 71 and 72, and all subparts, including the WHEREFORE MR OLIVER paragraph and demand strict proof thereof.

34. Defendant lacks sufficient knowledge and information to form a belief as to the allegations in the “Plaintiff realleges” paragraph under COUNT VIII, and thereby deny the same.

35. Defendant denies the allegations of Paragraphs 73 through 75, including the WHEREFORE paragraph following, and demand strict proof thereof.

FOR A SECOND DEFENSE
(Assumption of the Risk)

36. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

37. Defendant would show that Plaintiff impliedly assumed the risks inherent in the activity in which he was engaged and thereby abrogated any duty that the Defendant would have to Plaintiff.

FOR A THIRD DEFENSE
(Comparative Negligence)

38. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

39. Defendant would show that such injuries or losses sustained by Plaintiff, if any, were due to and caused by his or her negligence, willfulness, wantonness, or recklessness, which exceeded that of Defendant, so Plaintiff's recovery is barred by the doctrine of comparative negligence.

FOR A FOURTH DEFENSE
(Failure to Mitigate Damages)

40. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

41. Defendant would show, upon information and belief, that the Plaintiff failed to mitigate damages, if any, as required by law.

FOR A FIFTH DEFENSE
(Failure to State a Claim)

42. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

43. Defendant would show that the Plaintiff's Complaint fails to state any claim upon which relief can be granted. Therefore, it should be dismissed pursuant to Rule 12 of the SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

FOR A SIXTH DEFENSE
(Intervening and Superseding Negligence)

44. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

45. Defendant would show that such injuries or losses that Plaintiff sustained, if any, were not caused by any negligence on the part of Defendant but were rather due to and caused by the intervening and superseding fault, breach of warranty or act or omission of a third party, over which Defendant had no control.

FOR A SEVENTH DEFENSE
(Joint and Several)

46. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

47. The Defendant reserves and assert all rights under South Carolina Code Annotated § 15-38-15.

FOR AN EIGHTH DEFENSE
(Act of God)

48. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

49. The allegations are barred by the Act of God Doctrine.

FOR A NINTH DEFENSE
(Punitive Damages)

50. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

51. Defendant alleges that Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the UNITED STATES CONSTITUTION and Article I, Section 3 of the SOUTH CAROLINA CONSTITUTION in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

52. Defendant alleges that Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the UNITED STATES CONSTITUTION and Article I, Section 3 of the SOUTH CAROLINA CONSTITUTION because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

53. Defendant alleges that Plaintiffs claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the UNITED STATES CONSTITUTION and Article I, Section 3 of the SOUTH CAROLINA CONSTITUTION in that the amount of punitive damages is based upon the wealth of Defendant.

54. Defendant alleges that Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the SOUTH CAROLINA CONSTITUTION because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

55. Defendant would show, upon information and belief, that Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the CONSTITUTION OF THE UNITED STATES OF AMERICA in that it violates the double jeopardy clause in that Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is violated because Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; violates Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills Defendant's exercise of that right; violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; and violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards.

56. Defendant pleads the applicable statutory caps on punitive damages, including but not limited to the caps described in S.C. Code Ann. 15-32-530, et seq., as amended.

57. Defendant demands bifurcation of the actual and punitive damages phases of the trial.

FOR A TENTH DEFENSE
(Sole Negligence)

58. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

59. Such injury or loss as Plaintiff sustained, if any, as alleged in his Complaint, was proximately caused and occasioned by the sole negligence, gross negligence, willfulness, wantonness, and recklessness of the Plaintiff, in failing to exercise due care, and reasonable care, which was the direct and proximate result of injuries or losses suffered by Plaintiff, as alleged, without which the same would not have occurred. Therefore, Defendant pleads the sole negligence, willfulness, wantonness, recklessness, and gross negligence of the Plaintiff as a complete bar to this action against them.

FOR AN ELEVENTH DEFENSE
(Spoliation)

60. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

61. Defendant would show that Plaintiff's Complaint is barred by the doctrine of spoliation.

FOR A TWELFTH DEFENSE
(Venue)

62. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby alleged as if set forth here verbatim.

63. Defendant pleads the defense of improper venue to the extent it becomes appropriate with discovery.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs, for attorney's fees and such other and further relief this Court deems just and proper.

The Defendant demands a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/Marshall C. Crane
Mark S. Barrow, S.C. Bar No. 7821
Marshall C. Crane, S.C. Bar No. 102679
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANT
DEAN ALAN ARENDER**

Columbia, South Carolina

July 17, 2023

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

Kent Huntley Oliver,)

Plaintiff,)

v.)

Curtis Kent Ouellette; Quality Haulers,
Inc., Dean Alan Arender, US Xpress
Leasing, Inc., and US Xpress, Inc.)

Defendant(s).)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2023-CP-36-00300**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT****(Jury Trial Requested)**

Defendants Curtis Kent Ouellette and Quality Haulers, Inc. (hereinafter "Defendants"), answering the Complaint of Plaintiff Kent Huntley Oliver (hereinafter "Plaintiff"), respectfully allege and will show unto the Court that:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Defendants would respectfully show that each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A THIRD DEFENSE

3. At the time of the preparation of this Answer, Defendants are unaware of all of the facts and circumstances involved in the incident referenced in the Complaint. To the extent that facts are developed that reflect that any of the affirmative defenses asserted in the Answer are not

applicable, they will be withdrawn. To the extent that facts are developed to reflect that additional affirmative defenses may apply, Defendants reserve the right to supplement their Answer accordingly.

FOR A FOURTH DEFENSE

4. In response to the “OVERVIEW” Paragraph in Plaintiff’s Complaint, Defendants admit only so much of the allegations as that allege that a collision occurred on November 12, 2020. Defendants lack sufficient information to admit or deny the remaining allegations and, on that basis, deny the same and demand strict proof thereof.

5. Defendants admit only so much of the allegations contained in Paragraph 1 of Plaintiff’s Complaint as that allege that a crash occurred on November 12, 2020, in Newberry County, South Carolina. Defendants lack sufficient information to admit or deny the remaining allegations and, on that basis, deny the same and demand strict proof thereof.

6. Upon information and belief, Defendants admit the allegations contained in Paragraph 2 of Plaintiff’s Complaint.

7. Defendants admit the allegations contained in Paragraphs 3-4 of Plaintiff’s Complaint.

8. Defendants lack sufficient information to admit or deny the allegations contained within Paragraphs 5-11 of Plaintiff’s Complaint and, on that basis, deny the same and demand strict proof thereof.

9. Defendants object to the allegations contained within Paragraph 12 of Plaintiff’s Complaint to the extent they assert legal conclusions regarding jurisdiction and venue. Subject to and notwithstanding said objections, Defendants are not challenging venue and jurisdiction at this time.

10. Defendants admit the allegations contained in Paragraph 13 of Plaintiff's Complaint.

11. Defendants object to the allegations contained in Paragraphs 14-15 of Plaintiff's Complaint to the extent that they assert legal conclusions and no response is required.

12. Defendants admit to the allegations contained within Paragraphs 16-17 of Plaintiff's Complaint.

13. Upon information and belief, Defendants admit the allegations contained within Paragraphs 18-21, including all subparts.

14. Defendants admit the allegations contained within Paragraph 22 of Plaintiff's Complaint.

15. Defendants object to the allegations contained within Paragraphs 23-25 of Plaintiff's Complaint to the extent that they assert legal conclusions and no response is required.

16. Defendants admit the allegations contained in Paragraph 26 of Plaintiff's Complaint.

17. Defendants admit only so much of the allegations contained in Paragraph 27 of Plaintiff's Complaint as that allege Mr. Ouellette was operating a Quality Haulers Semi. Defendants deny the remaining allegations and demand strict proof thereof.

18. Defendants deny the allegations contained in Paragraph 28 of Plaintiff's Complaint and demand strict proof thereof.

19. Defendants lack sufficient information to admit or deny the allegations contained within Paragraphs 29-49 of Plaintiff's Complaint and, on that basis, deny the same and demand strict proof thereof.

20. Defendants reallege and incorporate the above paragraphs as if fully restated verbatim.

21. Defendants deny the allegations contained in Paragraphs 50 to the WHEREFORE Paragraph under Count I, including all subparts, and demand strict proof thereof.

22. Defendants reallege and incorporate the above paragraphs as if fully restated verbatim.

23. Defendants deny the allegations contained in Paragraphs 54 to the WHEREFORE Paragraph under Count II, including all subparts, and demand strict proof thereof.

24. Defendants reallege and incorporate the above paragraphs as if fully restated verbatim.

25. Defendants deny the allegations contained in Paragraphs 57 to the WHEREFORE Paragraph under Count III, including all subparts, and demand strict proof thereof.

26. Defendants reallege and incorporate the above paragraphs as if fully restated verbatim.

27. The allegations contained in Paragraphs 60 to the WHEREFORE Paragraph under Count IV are not directed at Defendants and thus, no response is required. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations and, on that basis, deny the same and demand strict proof thereof.

28. Defendants reallege and incorporate the above paragraphs as if fully restated verbatim.

29. The allegations contained in Paragraphs 64 to the WHEREFORE Paragraph under Count V, including all subparts, are not directed at Defendants and thus, no response is required. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations and, on that basis, deny the same and demand strict proof thereof.

30. Defendants reallege and incorporate the above paragraphs as if fully restated verbatim.

31. The allegations contained in Paragraphs 67 to the WHEREFORE Paragraph under Count VI are not directed at Defendants and thus, no response is required. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations and, on that basis, deny the same and demand strict proof thereof.

32. Defendants reallege and incorporate the above paragraphs as if fully restated verbatim.

33. The allegations contained in Paragraphs 70 to the WHEREFORE Paragraph under Count VII, including all subparts, are not directed at Defendants and thus, no response is required. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations and, on that basis, deny the same and demand strict proof thereof.

34. Defendants reallege and incorporate the above paragraphs as if fully restated verbatim.

35. The allegations contained in Paragraphs 73 to the WHEREFORE Paragraph under Count VIII are not directed at Defendants and thus, no response is required. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations and, on that basis, deny the same and demand strict proof thereof.

36. Defendants reallege and incorporate the above paragraphs as if fully restated verbatim.

FOR A FIFTH DEFENSE

(Comparative Negligence—Complete Bar)

37. Defendants plead the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff was greater than the negligence, if any (which is denied), which might be established against Defendants, and Plaintiff is barred from recovery in this action.

FOR A SIXTH DEFENSE
(Comparative Negligence—Reduction in Recovery)

38. Defendants allege that any injury and/or damages sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness of Defendants, if any (which is denied), and, any amount of recovery awarded to Plaintiff for the injury and/or damages alleged in Plaintiff's Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR A SEVENTH DEFENSE
(Failure to Mitigate Damages)

39. Plaintiff may have failed to mitigate his damages and has incurred damages that were unnecessary or unreasonable in amount. Therefore, Plaintiff is barred in whole or in part from recovery in this case.

FOR AN EIGHTH DEFENSE
(Sole Negligence of Plaintiff)

40. Defendants allege any injury and/or damage sustained by Plaintiff was due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever.

FOR A NINTH DEFENSE
(Third Party Negligence)

41. Defendants allege, upon information and belief, that any injury and/or damage sustained by Plaintiff was due to and caused by the sole and negligent acts of omissions of some other person or persons other than Defendants over whom Defendants neither had nor exercised any authority or control, and therefore, Defendants are not liable to Plaintiff for any sum whatsoever.

FOR A TENTH DEFENSE
(Punitive Damages—Unconstitutional)

42. The claim by Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of this action has been found will violate Defendants' due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

43. An award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate Defendants' due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

44. The claim by Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- a. Provided with sufficient clear standards for determining the appropriateness of a punitive damage aware of the size or the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- c. Instructed that awarding punitive damages on individually discriminatory characteristics of Defendants is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of Defendant upon which an award of punitive damages may be based; and,
- e. Subjected to judicial review at both the trial and appellate court level under objective standards for determining the appropriateness and reasonableness;

would violate Defendants' equal protection and due process rights as guaranteed by the Constitution of the United States and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

45. Additionally, it is plead that some or all of Plaintiff's claims may be barred, limited, and/or bifurcated pursuant to S.C. Code Ann. § 15-32-510 et seq., including, but not limited to, §§ 15-32-520 and 15-32-530, which are incorporated in their entirety by reference and plead as an affirmative defense to all of Plaintiff's claims.

WHEREFORE, having fully answered the Complaint, Defendants demand that:

- a. Plaintiff's Complaint be dismissed;
- b. for costs associated with this action; and
- c. for any further relief as this honorable Court deems just and proper.

GALLIVAN, WHITE & BOYD, P.A.

By: s/E. Hood Dawson

E. Hood Dawson SC Bar #102225

GALLIVAN, WHITE & BOYD, P.A.

55 Beattie Place, Suite 1200

P. O. Box 10589 (29603)

Greenville, South Carolina 29601

Tel: (864) 271-9580

Fax: (864) 271-7502

hdawson@gwblawfirm.com

***Attorneys for Defendants Curtis Kent Ouellette
and Quality Haulers, Inc.***

Defendants request a trial by jury of those issues so triable

s/E. Hood Dawson

E. Hood Dawson

December 15, 2023

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Jerry Cozby,

Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Ouellette, and Quality
Haulers, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Dean Alan Arender and Tamala Arender,

Plaintiffs,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Kent Ouellette, and DMX
Transportation Services, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Kent Huntley Oliver,

Plaintiff,

vs.

Curtis Kent Ouellette, Quality Haulers, Inc.,
Dean Alan Arender, US XPRESS Leasing,
Inc., and US XPRESS, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

C/A NO.: 2022-CP-43-01006

**MOTION FOR PERMISSIVE JOINDER
AND CONSOLIDATION**

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

C/A NO.: 2023-CP-36-00276

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

C/A NO.: 2023-CP-36-00300

TO: IVEY B. FRANKLIN, ESQUIRE, ATTORNEY FOR PLAINTIFF; PLAINTIFF; PHILLIP E. REEVES, ESQUIRE, ATTORNEY FOR CURTIS OUELLETTE AND QUALITY HAULERS, INC.; CURTIS OUELLETTE; AND QUALITY HAULERS, INC.:

YOU WILL PLEASE TAKE NOTICE that Defendants Kent Huntley Oliver and Thompson Construction Group, Inc. (collectively, “Defendants”), by and through the undersigned counsel, hereby move and request this Honorable Court for Sumter County to enter an Order Granting Permissive Joinder and Consolidation of the above-referenced cases under one (1) case number. This Motion is made pursuant to Rules 20(a) and 42(a) of the South Carolina Rules of Civil Procedure, applicable South Carolina statutes and case law, and the following:

1. All cases referenced in this Motion arise out of a multi-vehicle accident that occurred on Interstate 26 near Jalapa, South Carolina on November 12, 2020.

2. Plaintiff Jerry Cozby filed a Summons and Complaint in the Sumter County Court of Common Pleas against Kent Huntley Oliver, Thompson Construction Group, Inc., Curtis Ouellette, and Quality Haulers, Inc. bearing Case No. 2022-CP-43-01006 (“Cozby Action”). The Cozby Action was the first action commenced.

3. Subsequently, Plaintiffs Dean Alan Arender and Tamala Arender filed a Summons and Complaint in the Newberry County Court of Common Pleas against Kent Huntley Oliver, Thompson Construction Group, Inc., Curtis Kent Ouellette, and DMX Transportation Services, Inc. bearing Case No. 2023-CP-36-00276 (“Arender Action”), and Plaintiff Kent Huntley Oliver filed a Summons and Complaint in the Newberry County Court of Common Pleas against Curtis Kent Ouellette, Quality Haulers, Inc., Dean Alan Arender, US XPRESS Leasing, Inc., and US XPRESS, Inc. (“Oliver Action”).

4. Additionally, Plaintiff Great West Casualty Company, as subrogee of U.S. Xpress, Inc., filed a Summons for Arbitration and Claim for Property damage in the Newberry County

Arbitration Panel against Kent Huntley Oliver and Thompson Construction Group, Inc. bearing Case No. 2023-CP-36-00125 (“Great West Action”).

5. These actions all arise out of the same series of occurrences and involve common questions of law and fact.

6. Joining and consolidating these actions for discovery and trial would promote judicial economy, avoid unnecessary cost and delay, and prevent potential inconsistent verdicts.

7. Defendants respectfully request that the Court issue an Order Granting Permissive Joinder and Consolidation of the Cozby Action, the Arender Action, and the Oliver Action under Case No. 2022-CP-43-01006, the number assigned to the Cozby Action, for the purposes of discovery and trial.

8. Defendants reserve the right to join and consolidate the Great West Action with these other matters when it is appropriate to do so, including but not limited to after any appeal of the arbitrator’s decision pursuant to S.C. Code Ann. § 38-77-770.

The undersigned counsel for Defendants hereby affirms that, upon information and belief, consultation pursuant to Rule 11, SCRCP, would serve no useful purpose.

This Motion is supported by the pleadings, applicable law, the arguments of counsel for Defendants, and any accompanying documents that may be submitted to the Court prior to or during the hearing on this Motion.

[Signature Page to Follow]

SMITH | ROBINSON
Smith Robinson Holler DuBose and Morgan, LLC

s/ G. Murrell Smith, Jr.

G. Murrell Smith, Jr. SC Bar #66263

Frederick N. Hanna, Jr. SC Bar #104659

Post Office Box 580

Sumter, SC 29151

(803) 778-2471

murrell@smithrobinsonlaw.com

fred.hanna@smithrobinsonlaw.com

*Attorneys for Defendants Kent Huntley Oliver and
Thompson Construction Group, Inc.*

Sumter, South Carolina

August 18, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	C/A NO.: 2022-CP-43-01006
	)	
Jerry Cozby,	)	
	)	
Plaintiff,	)	MEMORANDUM OF LAW IN
	)	SUPPORT OF THOMPSON
vs.	)	CONSTRUCTION GROUP, INC. AND
	)	KENT HUNTLEY OLIVER'S MOTION
Kent Huntley Oliver, Thompson	)	FOR PERMISSIVE JOINDER AND
Construction Group, Inc., Curtis Ouellette,	)	CONSOLIDATION
and Quality Haulers, Inc.,	)	
	)	
Defendants.	)	
	)	
	)	

Defendants Thompson Construction Group, Inc. and Kent Huntley Oliver (collectively, “Defendants”), by and through the undersigned counsel, respectfully submit this memorandum of law in support of their motion for permissive joinder and consolidation. This is one of several lawsuits stemming from a multi-vehicle accident that occurred on November 12, 2020, all of which arise out of the same series of occurrences and involve common questions of law and fact. Pursuant to Rules 20(a) and 42(a) of the South Carolina Rules of Civil Procedure, the Court should join and consolidate these actions for discovery and trial under Case No. 2022-CP-43-01006, the number assigned to this action brought by Plaintiff Jerry Cozby.

BACKGROUND

All lawsuits referenced in this memorandum arise from a multi-vehicle accident that occurred on Interstate 26 near Jalapa, South Carolina on November 12, 2020. Four individuals were involved in the accident: (1) Jerry Cozby; (2) Curtis Ouellette, driving for Quality Haulers, Inc.; (3) Kent Huntley Oliver, driving for Thompson Construction Group, Inc.; and (4) Dean

Arender, driving for U.S. Xpress, Inc. and/or U.S. Xpress Leasing, Inc. Since the accident, the following lawsuits have been filed:

- *Cozby v. Oliver, et al.* (“Cozby Action”)
 - C/A No. 2022-CP-43-01006
 - Plaintiff: Jerry Cozby
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; and Quality Haulers, Inc.
 - Venue: Sumter County Court of Common Pleas
- *Arender v. Oliver, et al.* (“Arender Action”)
 - C/A No. 2023-CP-36-00276
 - Plaintiffs: Dean Arender and Tamala Arender
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; Quality Haulers, Inc.; and DMX Transportation Services Inc.
 - Venue: Newberry County Court of Common Pleas
 - **Exhibit 1** – Second Amended Complaint of Arender
- *Oliver v. Ouellette, et al.* (“Oliver Action”)
 - C/A No. 2023-CP-36-00300
 - Plaintiff: Kent Huntley Oliver
 - Defendants: Curtis Kent Ouellette; Quality Haulers, Inc.; Dean Arender; U.S. XPRESS Leasing, Inc.; and U.S. XPRESS, Inc.
 - Venue: Newberry County Court of Common Pleas
 - **Exhibit 2** – Complaint of Oliver
- *Great West Casualty Company v. Thompson Construction Group, Inc., et al.* (“Great West Action”)
 - C/A No. 2023-CP-36-00125
 - Plaintiff: Great West Casualty Company a/s/o U.S. Xpress, Inc.
 - Defendants: Thompson Construction Group, Inc. and Kent Huntley Oliver
 - Venue: Newberry County Arbitration Panel
 - **Exhibit 3** – Complaint of Great West

On August 18, 2023, Defendants moved to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action under Case No. 2022-CP-43-01006, the number assigned

to the Cozby Action. Because the Great West Action is currently pending before an arbitration panel, Defendants reserved the right to join and consolidate that action at a later time.¹

LEGAL STANDARD

“Consolidation is within the broad discretion of the trial court.” *Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993). “The moving party has the burden of persuading the court that consolidation is desirable.” *Id.* Consolidation may be ordered over a party’s objection. *Creel v. King*, 336 S.E.2d 480, 481 n.1 (S.C. 1985).

ARGUMENT

I. The Threshold Requirements for Joinder and Consolidation Are Satisfied

Rule 20 explains when parties may be permissively joined into one action:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 20(a), SCRCP.

Rule 42 governs the consolidation of various actions:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

¹ “Defendants reserve the right to join and consolidate the Great West Action with these other matters when it is appropriate to do so, including but not limited to after any appeal of the arbitrator’s decision pursuant to S.C. Code Ann. § 38-77-770.” Motion at 3.

Rule 42(a), SCRCP.

Thus, as the Supreme Court of South Carolina has explained, “consolidation may be ordered whenever actions involving a common question of law or fact are pending before the court.” *Ellis by Ellis v. Oliver*, 307 S.C. 365, 367, 415 S.E.2d 400, 401 (1992). Joinder, however, “requires the additional requirement that the claims must arise out of the same transaction or occurrence.” *Id.*

Here, Defendants satisfy the requirements for both joinder and consolidation. First, the Cozby Action, the Arender Action, and the Oliver Action all arise out of the same “occurrence” or “series of . . . occurrences”—the November 12, 2020 multi-vehicle accident. *See* Rule 20(a), SCRCP. Second, the Cozby Action, the Arender Action, and the Oliver Action all involve common questions of fact and law. *See id.*; Rule 42(a), SCRCP. To name a few, each of these actions share questions of fact and law about the details of the accident, the parties’ negligence (or lack thereof), causation, and damages. Accordingly, the threshold requirements for joinder and consolidation are satisfied.

II. Venue is Proper in Sumter County

Defendants expect others to challenge their motion on the grounds that venue would be improper if these cases are joined and consolidated around the Cozby Action (Case No. 2022-CP-43-01006), which is pending in Sumter County. Because Defendants seek both consolidation *and* joinder of the Cozby Action, the Arender Action, and the Oliver Action, this argument fails.

“Under a consolidation order, the parties and the pleadings are not merged and each action retains its own identity.” *Ellis*, 307 S.C. at 367, 415 S.E.2d at 401. Under an order of joinder, on the other hand, the claims are merged. *See id.*; Rule 20(a), SCRCP. Regarding venue, this distinction is significant.

In *Ellis*, the plaintiff brought an action in Richland County against a single defendant who was a Lexington County resident. 307 S.C. at 366, 415 S.E.2d at 401. The trial court later consolidated the case with two others pending in Richland County and denied the defendant's motion to change venue to Lexington County. *Id.* at 366-67, 415 S.E.2d at 401; S.C. Code Ann. § 15-7-30(B) ("If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.").

The Supreme Court reversed, explaining that because the pleadings are not merged under a consolidation order, "consolidation should not be deemed to create multiple defendants under the venue statutes" *Id.* at 367, 415 S.E.2d at 401-02. Thus, because the action against the Lexington defendant retained its own identity and was not merged with the other actions, the Court held the trial court erred in denying the defendant's motion to transfer venue to Lexington County. Importantly, the Court suggested the venue determination would have been different if the plaintiff had pursued joinder as opposed to only consolidation. *See id.* at 367 n.2, 415 S.E.2d at 402 n.2 ("Although we are aware joinder may have been appropriate in this case, that avenue was not chosen by the plaintiff.").

Here, Defendants have moved for both consolidation and joinder of the Cozby Action, the Arender Action, and the Oliver Action. Because Defendants' motion requests the merger of these actions, the rule from *Ellis* that consolidation does not create "multiple defendants" for venue purposes is inapplicable. Instead, the residency of all defendants in the Cozby Action, the Arender Action, and the Oliver Action must be considered in determining where venue is proper. Because Defendant Thompson Construction is a resident of Sumter County, venue in each of these actions is proper in Sumter County. Amended Compl. ¶ 3; Ex. 1 ¶ 3; Ex. 3 ¶ 2; **Exhibit 4** – Thompson Construction Secretary of State Information; *see also* S.C. Code Ann. § 15-7-30(E) (stating an

action tried against a domestic corporation must be brought and tried in the county in which the corporation has its principal place of business); § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”).

The Court should join and consolidate these actions in Sumter County rather than depriving Thompson Construction of its right to a trial in its county of residence. “The right of a defendant in a civil action to a trial in the county of his residence is a substantial one.” *See, e.g., Carroll v. Guess*, 302 S.C. 175, 177, 394 S.E.2d 707, 708 (1990); *Chestnut v. Reid*, 299 S.C. 305, 306, 384 S.E.2d 713, 714 (1989); *Royster Co. v. E. Distribution, Inc.*, 301 S.C. 18, 20, 389 S.E.2d 863, 864 (1990). Plaintiff Cozby elected to sue Thompson Construction in its county of residence. Thompson Construction’s right to defend this claim in Sumter County supersedes any other party’s interest in transferring venue to Newberry County, where none of the defendants in these cases reside.

III. Joinder and Consolidation is in the Best Interest of the Parties and the Court

Defendants have satisfied the threshold requirements for joinder and consolidation and have shown that venue in Sumter County is proper. Defendants will now show that joinder and consolidation are desirable and appropriate in this situation. *See Keels*, 315 S.C. at 342, 433 S.E.2d at 904 (“The moving party has the burden of persuading the court that consolidation is desirable.”).

“The purpose of consolidation is to prevent the multiplicity of litigation, to save the parties unnecessary costs, to conserve court time and space and to clear congested court dockets.” *Alcorn v. Ford Motor Co.*, 276 S.C. 180, 182, 276 S.E.2d 925, 926 (1981); *see also Allfirst Bank v. Progress Rail Servs. Corp.*, 178 F. Supp. 2d 513, 520 (D. Md. 2001) (noting

consolidation is proper where it “will foster clarity, efficiency and the avoidance of confusion and prejudice”).

Joining and consolidating the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial would serve these interests. These cases involve the same parties, claims, and defenses. The benefits of joining and consolidating these actions clearly outweigh any risk of prejudice or confusion. Joinder and consolidation would reduce cost to the parties, conserve judicial resources, eliminate the need for repetitive discovery, reduce the burden on witnesses, and prevent inconsistent judgments. To put it simply, it would be incredibly inefficient to litigate these claims separately.

Additionally, an order of joinder and consolidation for discovery purposes only would be insufficient; these cases should be joined and consolidated for both discovery and trial. If these cases are tried separately, a judgment in any one case would have preclusive effect in all other cases. *See, e.g., Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 209, 758 S.E.2d 187, 191 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E.2d 379 (2015) (noting the doctrine of collateral estoppel “prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same”). To ensure a full and fair opportunity for all parties to be heard and all claims decided on the merits, the Court should grant Defendants’ motion and order joinder and consolidation for discovery and trial in Sumter County.

CONCLUSION

For the foregoing reasons, the Court should grant Defendants’ motion and join and consolidate the Cozby Action, the Arender Action, and the Oliver action around the Cozby Action (Case No. 2022-CP-43-01006) for discovery and trial.

Respectfully submitted,

SMITH | ROBINSON
Smith Robinson Holler DuBose and Morgan, LLC

s/ G. Murrell Smith, Jr.

G. Murrell Smith, Jr. SC Bar #66263
Frederick N. Hanna, Jr. SC Bar #104659
Post Office Box 580
Sumter, SC 29151
(803) 778-2471
murrell@smithrobinsonlaw.com
fred.hanna@smithrobinsonlaw.com

*Attorneys for Defendants Thompson Construction
Group, Inc. and Kent Huntley Oliver*

Sumter, South Carolina

October 5, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

Dean Alan Arender and Tamala
Arender)

Plaintiffs,)

vs.)

Kent Oliver Huntley, Thompson)
Construction Group Inc, Curtis Kent)
Ovellette, and DMX Transportation)
Services Inc., and Quality Carriers,)
Inc.,)

Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

Kent Huntley Oliver,)

Plaintiff,)

vs.)

Curtis Kent Ouellette, Quality)
Haulers, Inc., Dean Alan Arender,)
US XPRESS Leasing, Inc., and)
US XPRESS Inc.,)

Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

Jerry Cozby)

Plaintiff,)

vs.)

Kent Huntley Oliver, Thompson)
Construction Group Inc, Curtis)
Ovellette, and Quality Haulers, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
EIGHT JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2023-CP-36-00276

**MEMORANDUM IN OPPOSITION TO
DEFENDANTS KENT OLIVER HUNTLEY
AND THOMPSON CONSTRUCTION GROUP,
INC'S MOTION FOR PERMISSIVE
JOINTER AND CONSOLIDATION**

IN THE COURT OF COMMON PLEAS
EIGHT JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2022-CP-36-00300

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2022-CP-43-01006

INTRODUCTION

Plaintiffs Dean Alan Arender and Tamala Arender (hereinafter collectively “Plaintiffs”), submit this Memorandum of law in opposition to Defendants Thompson Construction Group, Inc. and Kent Oliver Huntley’s (hereinafter collectively “Thompson Defendants”) Motion for Consolidation and Joinder of Cases in the Sumter County Court of Common Pleas.¹ For the reasons stated below, the Thompson Defendants’ motion for joinder and consolidation in Sumter County should be denied.

FACTUAL BACKGROUND

On November 12, 2020, Defendant Curtis Ouellette was operating a commercial motor vehicle under Defendants Quality Haulers and/or DMX Transportation’s operating authority. Defendant Ouellette was traveling east on Interstate 26 near Newberry, South Carolina when he pulled the commercial vehicle over onto the right shoulder of Interstate 26.

Following Defendant Ouellette was Defendant Kent Huntley Oliver who was operating a commercial motor vehicle under Thompson Construction’s operating authority. Defendant Oliver was traveling east in the righthand lane of Interstate 26 near Newberry, South Carolina. Traveling behind Defendants Oliver and Ouellette in the righthand lane of Interstate 26 was Plaintiff Dean Alan Arender. Subsequently, Defendant Oliver then veered onto the right shoulder of Interstate 26 and collided with the rear end of Defendant Ouellette’s commercial motor vehicle at a high rate of speed. As a result of the rear end collision between Defendants Oliver and Ouellette, Defendant

¹ While not included within the caption of their motion, the Thompson Defendants’ motion implicitly includes a motion to change the venue of the cases they wish to join. Plaintiffs do not inherently object to consolidation for purposes of discovery and or mediation, but oppose any motion as to joinder and consolidation for purposes of trial or change of venue.

Oliver's commercial vehicle was propelled into the righthand lane of Interstate 26 directly in Plaintiff Dean Arender's path of travel resulting in a significant multi-vehicle collision.

As a result of the multi-vehicle collision on November 12, 2020, the following suits were filed:

1. *Arender v. Oliver, et al.* ("Arender Action")
 - C/A No. 2023-CP-36-00276
 - Plaintiffs: Dean Arender and Tamala Arender – 395 Rambling Rd. Forest City, North Carolina 29043
 - Defendants:
 1. Kent Huntley Oliver – 104 Williamsburg Dr., Spartanburg, South Carolina 29302;
 2. Thompson Construction Group, Inc. – 100 N. Main St., Sumter, South Carolina 29150;
 3. Curtis Kent Ovellette – 301 Sweetwater Rd., Fountain Inn, South Carolina 29644;
 4. Quality Haulers, Inc. – 13101 US Hwy 221, Woodruff, South Carolina 29388; and
 5. DMX Transportation Services Inc. – 2118 Airport Road, Greer, South Carolina 29651
 - Venue: Newberry County Court of Common Pleas
2. *Cozby v. Oliver, et al.* ("Cozby Action")
 - C/A No. 2022-CP-43-01006
 - Plaintiff: Jerry Cozby – 225 Dellwood Dr. Spartanburg, South Carolina 103 miles
 - Defendants:
 1. Kent Huntley Oliver – 104 Williamsburg Dr., Spartanburg, South Carolina 29302;
 2. Thompson Construction Group, Inc. – 100 N. Main St., Sumter, South Carolina 29150;
 3. Curtis Kent Ouellette – 301 Sweetwater Rd., Fountain Inn, South Carolina 29644; and
 4. Quality Haulers, Inc. – 13101 US Hwy 221, Woodruff, South Carolina 29388
 - Venue: Sumter County Court of Common Pleas
3. *Oliver v. Ovellette, et al.* ("Oliver Action")
 - C/A No. 2023-CP-36-00300
 - Plaintiff: Kent Huntley Oliver – 104 Williamsburg Dr., Spartanburg, South Carolina 29302
 - Defendants:

1. Curtis Kent Ovellette – 301 Sweetwater Rd., Fountain Inn, South Carolina 29644 ;
 2. Quality Haulers, Inc. – 13101 US Hwy 221, Woodruff, South Carolina 29388;
 3. Dean Arender – 395 Rambling Rd. Forest City, North Carolina 29043;
 4. U.S. XPRESS Leasing, Inc. – 4080 Jenkins Rd. Chattanooga, Tennessee 37421; and
 5. U.S. XPRESS, Inc. – 4080 Jenkins Rd. Chattanooga, Tennessee 37421
- Venue: Newberry County Court of Common Pleas
4. *Great West Casualty Company v. Thompson Construction Group, Inc., et al.* (“Great West Action”)
- C/A No. 2023-CP-36-00125
 - Plaintiff: Great West Casualty Company a/s/o U.S. Xpress, Inc. – 3421 Shagbark Circle Mount Pleasant, South Carolina 29466
 - Defendants:
 1. Thompson Construction Group, Inc. – 100 N. Main St., Sumter, South Carolina 29150 and
 2. Kent Huntley Oliver – 104 Williamsburg Dr., Spartanburg, South Carolina 29302
 - Venue: Newberry County Arbitration Panel

On August 18, 2023, Defendants Kent Huntley Oliver and Thompson Construction Group, Inc. filed a motion for permissive joinder and consolidation for the purposes of discovery and trial in the Sumter County Court of Common Pleas.

Plaintiff Jeff Cozby, through his counsel, has agreed and consented to Plaintiffs Arender’s proposal to consolidate the cases in the Newberry County Court of Common Pleas for the purposes of discovery only. However, to date, Thompson Defendants have not consented and subsequently filed a memorandum arguing for permissive joinder and consolidation for the purposes of discovery and trial in Sumter County Court of Common Pleas.

ARGUMENT

The Thompson Defendants (1) manufacture arguments in favor of compulsory joinder based on permissive joinder rules provided in Rule 20, SCRCP, (2) rely upon outdated versions of the South Carolina venue statutes and the cases interpreting such outdated statutes, and (3) create

an issue of collateral estoppel where one does not exist. Even under an appropriate consideration of compulsory joinder pursuant to Rule 19, SCRCP, the Court cannot compel joinder of these cases.

A. Defendants Failed To Prove Joinder And Consolidation Of All Cases Is Mandatory In Sumter County.

Plaintiffs agree with the Thompson Defendants that consolidation is allowed. Plaintiffs also agree with Thompson Defendants that consolidation and joinder are different. Plaintiffs agree joinder would have been permissive on these facts. However, the Thompson Defendants incorrectly conclude joinder and consolidation are compulsory without citing relevant caselaw stating such.

South Carolina Rules of Civil Procedure Rule 20 states:

All persons *may* join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons *may* be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 20, SCRCP. (emphasis added). A party is not required, under Rule 20, SCRCP, to join all parties in one action; rather, plaintiffs have the choice to join in one or litigate separately. *See Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 212 (Ct. App. 2014). As no other party has consented to joinder of these actions, the court cannot be compelled to mandate joinder under the Thompson Defendants' flawed argument premised upon the permissive joinder statute. *See* Rule 20, SCRCP. In an attempt to persuade the court to compel joinder by combining joinder and consolidation, the

Thompson Defendants rely heavily on *Ellis v. Oliver*. 307 S.C. 365, 415 S.E.2d 400 (1992). However, as the Thompson Defendants point out in their own brief, the *Ellis* court was aware “joinder **may** be appropriate in this case” but as the court mentioned, “that avenue was not **chosen by the plaintiff**.” *See Id.* at 368, 415 S.E.2d at 401 (emphasis added). As the permissive joinder avenue was not pursued and consented to by the plaintiff in *Ellis*, the Thompson Defendants’ reliance on the case is flawed, and no such premise can be deduced from the opinion. This is merely a flawed argument that is an attempt to force a change of venue through improper use of joinder rules. James F. Flanagan, *South Carolina Civil Procedure* 168 (3d ed. 2010) (“Rule 20 is permissive and does not require the joinder of all parties who might conceivably be interested in the matter. Joinder is compelled only if the strict requirements of Rule 19 are met.”).

Under Rule 42(a), SCRCP, the Court is not compelled to combine all the cases into one action. Rather, it is a discretionary matter for the court to decide only after the moving party has met their burden. *See Keels v. Pierce*, 315 S.C. 339, 343, 433 S.E.2d 902, 904 (1993). In a motion for consolidation of cases, “the moving party has the burden of persuading the court that consolidation is desirable.” *See Keels v. Pierce*, 315 S.C. 339, 342 (Ct. App. 1993) (citing *Prudential Insurance Co. v. Marine National Exchange Bank*, 55 F.R.D. 436 (E.D. Wis. 1972)). South Carolina Rules of Civil Procedure Rule 42 (a) states:

When actions involving a common question of law or fact are pending before the court, it **may** order a joint hearing or trial of any or all matters in issue in the action; it **may** order all the actions consolidated; and it **may** make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

SCRCP 42(a) (emphasis added). While Plaintiffs agree consolidation is possible in this action, the Thompson Defendants misinterpret the plain meaning of the statute and case law to require consolidation and joinder in Sumter County. *See Keels* at 342; Rule 42(a), SCRCP. The Thompson Defendants’ argument lacks sufficient reasoning to meet and prove their burden that consolidation

in Sumter County is desirable. Given all parties have not consented to consolidation and the Court's broad discretion to deny consolidation, the Thompson Defendants' consolidation motion must fail. Likewise, the Thompson Defendants have advanced a blurred argument for joinder and consolidation, which they use to mask their ultimate venue transfer motion and it must inherently also fail.

B. Defendants Failed To Satisfy Their Burden To Establish Venue Is Appropriate In Sumter County For The Convenience Of Witnesses And The Interest Of Justice.

The Thompson Defendants' motion is an attempt to convolute what is a very simple venue analysis by clouding it with arguments of joinder and consolidation. The Thompson Defendants' argument for a change of venue relies heavily on outdated versions of South Carolina's venue statutes and the cases analyzing the previous versions of the code.

South Carolina's current venue statutes assert venue is appropriate where the defendant resides at the time the cause of action arose or where the most substantial part of the alleged act or omission giving rise to the action occurred. S.C. Code Ann. §15-7-30. The statute also provides when there is more than one defendant in the action, venue is appropriate in "any county where the action properly may be maintained against one of the defendants." *Id.* While a defendant has a right to be tried in the county of their residence, the plaintiff has the right to elect to bring suit either in the venue where the defendant resides or where a substantial party of the act or omission occurred. *Jeter v. S.C. DOT*, 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2006). Either option is appropriate; neither is preferred. *See Id.* The Plaintiff alone makes the determination. *Id.*

When the plaintiff's choice of venue results in "an action [that] is properly commenced [and properly brought] in any one of two or more venues, it is removeable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue." *Id.* The statutory grounds for removal are provided at S.C. Code Ann. § 15-7-100,

and provide for transfer only when the case is not brought in a proper county, when a fair and impartial trial cannot be had in the present venue, or when “the convenience of witnesses and the ends of justice would be promoted by the change.” S.C. Code Ann. § 15-7-100. Only the final ground is relevant to this matter, as these actions were properly brought in Newberry County and no arguments have been put forth that a fair trial cannot be had in Newberry. The Thompson Defendants as the moving parties, therefore, have the burden of proving that *both* the ends of justice and the convenience of witnesses would be promoted by a venue transfer. *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 477, 609 S.E.2d 286, 297 (2005). The moving party must prove this burden with a showing of “competent evidence” rather than mere conclusory statements, beliefs, or subjective opinions. *Id.* After this burden is met, the burden shifts to the opposing party to overcome the convenience and interest of justice. *Id.*

Thompson Defendants have failed to even articulate an argument that demonstrates venue in Sumter County is in the interest of justice and the convenience of the witnesses. The burden thus *never* shifts to the Plaintiffs to rebut the convenience and interest of justice arguments. *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 477, 609 S.E.2d 286, 297 (2005). Even so, the Plaintiffs can still overcome this burden, as Sumter County is not more convenient to the parties and witnesses or in the interest of justice.

As for the Arender Action, Oliver Action, and Cozby Action, the *only party* that can argue convenience is Defendant Thompson Construction Group Inc. All other parties reside in either Spartanburg County; Greenville County; Rutherford County, North Carolina; or Hamilton County, Tennessee. Analyzing the parties’ distance from the Sumter County Court of Common Pleas versus the Newberry County Court of Common Pleas plainly shows the Thompson Defendants cannot argue Sumter is a more convenient venue. (See Ex. A, Mapping of Parties and Witnesses

to Courthouses). The subject multi-vehicle collision occurred in Newberry County. Presumably the first responders who responded to the Newberry collision live and/or work in the Newberry area would find Newberry more convenient than Sumter. Lastly, Plaintiff Dean Arender's treating physicians' practices are located out of Rutherford County, North Carolina, and Mecklenburg, North Carolina. Those physicians are likely witnesses, they do not reside in Sumter County, and the Newberry County Courthouse is the closest courthouse to their practices. (Ex. A).

The vast majority of parties, witnesses, and counsel employed by the parties reside closer to Newberry County. The Thompson Defendants cannot prove transfer serves the convenience of the witnesses. *See Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 477, 609 S.E.2d 286, 297 (2005). Therefore, as the Thompson Defendants cannot prove both convenience and interest of justice are promoted by a transfer of venue, Plaintiffs respectfully requests this Court deny Defendants' motion for transfer of venue in Sumter County and deny the related joinder motion.

C. Defendant Thompson Fails To Provide Justification For Compulsory Joinder And Venue Transfer

The Thompson Defendants fail to provide justification for compulsory joinder and venue transfer. While concluding "Joinder and Consolidation is in the Best Interest of the Parties and Court," the Thompson Defendants fail to provide viable support for that position. Instead, the Thompson Defendants rely upon cases regarding consolidation that have no relevance to joinder or venue alterations. *See e.g.*, Thompson Memo in Support pp. 6-7. The Thompson Defendants make bald assertions that "joinder and consolidation are desirable and appropriate" but never provide factual support or citations to relevant case law to justify their position. The only nonconclusory position asserted by the Thompson Defendants is a strained argument that the doctrine of collateral estoppel necessitates joinder, consolidation, and venue transfer. Such

argument grossly misapplies the doctrine of collateral estoppel and fabricates potential issues where none exist.

As a sub-form of res judicata, collateral estoppel historically required mutuality, which would not be present between the various cases at issue here. While the modern trend, including within South Carolina, is removal of a mutuality requirement for collateral estoppel, the Thompson Defendants still suffer no prejudice from the doctrine. Presumably, the Thompson Defendants are not objecting to their right to defensively apply collateral estoppel for their own benefit. Therefore, their concern that a judgment in one case would “have a preclusive effect in all other cases” is unfounded, miscites South Carolina case law, and fails to acknowledge the South Carolina exceptions to the doctrine under relaxed mutuality rules.

In support of their position, the Thompson Defendants rely upon *Sims vs. Amisub of S.C., Inc.* to show the preclusive effect of collateral estoppel. 408 S.C. 202, 758 S.E.2d 187 (Ct. App. 2014). The Thompson Defendants, however, failed to note that the *Sims* case discussed defensive collateral estoppel, making it inapplicable to this matter, and failed to note that the appellate courts in *Sims* reversed the trial court’s application of collateral estoppel, finding the issue in dispute was different than the issue decided in previous litigation.²

The Thompson Defendants’ argument appears to express concern over offensive collateral estoppel, but those concerns are unfounded. South Carolina first approved the offensive use of

² Defensive collateral estoppel permits a defendant who was not a party to a prior action, to utilize and bind the Plaintiff to the findings of that first suit while defending the second suit. *Graham v. State Farm Fire & Cas. Ins. Co.*, 277 S.C. 389, 287 S.E.2d 495 (1982). Offensive collateral estoppel permits a plaintiff to bind a common defendant on an issue adversely decided against that defendant in a previous suit in which that Plaintiff was not a party. *S.C. Prop. & Cas. Ins. Guar. Ass’n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991). Because offensive use of the doctrine can bind a defendant based on findings in a case where it had no control of the claim or forum, it is subject to many restrictions. *See id.*; *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984); Restatement (Second) of Judgments, §§ 27, 28, & 29 (1982).

collateral estoppel in the absence of mutuality in *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). There, two plaintiffs independently sued the same defendant for damages flowing from an automobile collision. The Defendant defended the first case arguing he was not the driver but lost. *Id.* In the second case, the court estopped the defendant from again arguing he was not the driver. *Id.* In reaching its conclusion affirming the trial court, the court of appeals adopted Restatement (Second) of Judgments sections 27, 28, and 29. *Id.* at 370-71, 315 S.E.2d 190-91. The supreme court later expressed its approval of the same. *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991).

Section 29 of the Restatement (Second) of Judgments, as adopted by South Carolina, obviates the concerns the Thompson Defendants manufacture. Section 29 provides, in relevant part:

A party precluded from relitigating an issue with an opposing party, in accordance with [sections] 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue. The circumstances to which considerations should be given include those enumerated in [section] 28 and also whether:

- (1) Treating the issue as conclusively determined would be incompatible with an applicable scheme of administering the remedies in the actions involved; . . .
- (3) The person seeking to invoke favorable preclusion, or to avoid unfavorable preclusion, could have effected joinder in the first action between himself and his present adversary; . . .
- (5) The prior determination may have been affected by relationships among the parties to the first action that are not present in the subsequent action, or apparently was based on a compromise verdict or finding;
- (6) Treating the issue as conclusively determined may complicate determination of issues in the subsequent action or prejudice the interests of another party thereto; . . .
- (8) Other compelling circumstances make it appropriate that the party be permitted to relitigate the issue.

Restatement (Second) Judgments § 29. Defendant Thompson may have multiple arguments to support the relitigation of an issue in a subsequent trial, but most obviously forestalling its contrived fears is subsection three. Defendant Thompson has shown, and the Plaintiffs do not dispute, joinder of the plaintiffs in these cases *could* be proper under Rule 20, SCRCP. Doing so is not compulsory, and Defendant Thompson may not compel joinder pursuant to that rule, but the decision by the Plaintiffs not to join protects Defendant Thompson from the preclusive effects of rulings in the various cases. Restatement (Second) Judgments § 29 cmt. e (“A person in such a position that he might ordinarily have been expected to join as plaintiff in the first action, but who did not do so, may be refused the benefits of ‘offensive’ issue preclusion where the circumstances suggest that he wished avail himself of the benefits of a favorable outcome without incurring the risk of an unfavorable one.”).

Plaintiffs respectfully request the Court deny the Thompson Defendants’ motion. The Thompson Defendants failed to provide any viable justification for compulsory joinder. They misapply the doctrine of collateral estoppel and rely solely upon consolidation opinions in support of their joinder arguments. Therefore, their motion is unsupported, misleading, and they have failed to meet their burden to force compulsory joinder.

D. Compulsory Joinder Is Controlled By Rule 19, SCRCP, Not Rule 20, But The Defendants’ Arguments Fail In Either Case.

The Thompson Defendants argue joinder of the above referenced actions is controlled by Rule 20, SCRCP. As previously stated, their argument joinder is compulsory under Rule 20, SCRCP, is flawed; Rule 20, SCRCP provides for permissive joinder, at the discretion of the Plaintiffs. An appropriate analysis of compulsory joinder must take place within Rule 19, SCRCP, but the outcome is not affected. “The Rule 19(a) tests for compulsory joinder are more strict than those

under Rule 20, Permissive Joinder of Parties.” Flanagan, *Supra*, at 160. South Carolina Rules of Civil Procedure 19 states:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

SCRCP 19. The threshold question for joinder under Rule 19, SCRCP is whether the parties are necessary to afford complete relief among those already named as parties. *Smith v. Tiffany*, 419 S.C. 548, 561 (2017). “General considerations of efficiency or convenience of the parties do not require joinder under Rule 19.” Flanagan, *supra*, at 160. “Rule 20 is permissive and does not require joinder of all parties who might conceivably be interested in the matter. Joinder is compelled only if the strict requirements of Rule 19 are met.” *Id.* at 168.

While the Thompson Defendants did not move for joinder under Rule 19, SCRCP, such a motion pursuant to Rule 19, SCRCP, would still fail. Joint tortfeasors are permissive parties to an action. *Chester v. SC Dept. of Pub. Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010). Rule 19, SCRCP does not permit the compulsory joinder of Plaintiff in a wreck case. The presence of multiple plaintiffs complaining of the same tortious conduct of those joint tortfeasors does not mandate joinder, it does not make the other plaintiff necessary parties, and it does not satisfy the tests provided by Rule 19, SCRCP. Again, this demonstrates the Thompson Defendants’ flawed and misleading arguments.

CONCLUSION

The Thompson Defendants have failed to prove joinder and consolidation is compulsory and not at the discretion of the Plaintiffs. Defendants have failed to articulate a credible argument to prove transfer of venue under S.C. Code Ann. sections 15-7-30 and 15-7-100 is necessary for the convenience of witnesses and in the interest of justice. Finally, any offensive collateral estoppel concerns by the Thompson Defendants are unfounded. Therefore, the Plaintiffs respectfully request the Court deny The Thompson Defendants' motion to join and consolidate the cases in Sumter County Court of Common Pleas.

Smith, Born, Leventis, Taylor, & Vega LLC

s/ Jacob D. Born

Jacob D. Born (S.C. Bar No.: 100026)

James C Sproat (S.C. Bar No.: 100292)

2801 Devine Street, Suite 300

Columbia, South Carolina 29206

(803)929-3600

Attorneys for the Plaintiffs Dean and Tamala Arender

jborn@sbltv.law

jsproat@sbltv.law

October 6, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Jerry Cozby,)
Plaintiff,)
vs.)
Kent Huntley Oliver, Thompson)
Construction Group, Inc., Curtis Ouellette,)
and Quality Haulers, Inc.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A NO.: 2022-CP-43-01006

**MEMORANDUM IN OPPOSITION TO
DEFENDANTS KENT HUNTLEY
OLIVER AND THOMPSON
CONSTRUCTION GROUP, INC.'S
MOTION FOR PERMISSIVE
JOINDER AND CONSOLIDATION**

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)
Dean Alan Arender and Tamala Arender,)
Plaintiffs,)
vs.)
Kent Huntley Oliver, Thompson)
Construction Group, Inc., Curtis Kent)
Ouellette, and DMX Transportation)
Services, Inc.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
C/A NO.: 2023-CP-36-00276

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)
Kent Huntley Oliver,)
Plaintiff,)
vs.)
Curtis Kent Ouellete, Quality Haulers, Inc.,)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
C/A NO.: 2023-CP-36-00300

Dean Alan Arender, US XPRESS Leasing,)
 Inc., and US XPRESS, Inc.,)
)
 Defendants.)
 _____)

Defendants US XPRESS Leasing, Inc. and US XPRESS, Inc. (hereinafter collectively as “USX”) and Dean Alan Arender (“Arender”), by and through their undersigned counsel, and hereby submit this Memorandum in Opposition of Defendants Kent Huntley Oliver (“Oliver”) and Thompson Construction Group, Inc.’s (“Thompson Construction”) Motion for Permissive Joinder and Consolidation.

ARGUMENT

I. A Party Cannot Seek Both Consolidation and Joinder.

“Under the South Carolina Rules of Civil Procedure there is a *distinction* between joinder under Rule 20 and consolidation under Rule 42.” *Ellis by Ellis v. Oliver*, 307 S.C. 365, 367, 415 S.E.2d 400, 401 (1992) (emphasis added). “Under a consolidation order, the parties and the pleadings are not merged, and each action retains its own identity.” *Id.* On the other hand, in an order for joinder, the parties *are merged*, and “all persons are joined in *one action*.” Rule 20(a), SCRCF (emphasis added). Therefore, it is impossible to consolidate the action *and* join the actions—the parties and pleadings are either merged or they are not; it cannot be both.

II. Permissive Joinder Is Not Appropriate.

Permissive joinder is not the appropriate procedural mechanism. South Carolina Rule of Civil Procedure 20(a) provides:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences

and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(emphasis added). This is not a situation where persons are simply joining as plaintiffs or defendants. Oliver and Thompson Construction's Memorandum in Support fails to address how the parties would be aligned if joinder was granted. If joinder was granted, it would result in numerous crossclaims and counterclaims, and it would subject parties to be included in lawsuits they previously were not named in. The verdict form, which would be required to be one single form under joinder would be burdensome and convoluted for any jurors to interpret and follow. Joinder would unnecessarily complicate these actions.

As indicated by the plain language of the Rule, cases that address permissive joinder are situations where persons are simply joining as plaintiffs or defendants—unlike the situation at issue here. *See Ellis by Ellis v. Oliver*, 307 S.C. 365, 368, 415 S.E.2d 400, 402, n. 2 (1992) (referencing that joinder of defendants may have been appropriate when there was one plaintiff and three separate lawsuits with one defendant doctor named in each). “The mere fact that the plaintiffs may be entitled to different amounts of damages does not prevent them from banding together and asserting their rights jointly in one action.” *McGann v. Mungo*, 287 S.C. 561, 569, 340 S.E.2d 154, 158 (Ct. App. 1986) (citing 7 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1656 at 281–82 (1972)).

Here, the proposed joined parties (Oliver and Arender) could not “band together” when they have direct claims against each other as well as the other's employer. Further, the question of any negligence of Arender or USX is not “common” to any party other than Oliver. Accordingly, the requirements of the permissive joinder are not met.

Further, “Pursuant to Rule 20(a), SCRCP, a party may choose to join multiple parties as defendants **but joinder is not required.**” *Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 212, 758 S.E.2d 187, 192 (Ct. App. 2014), aff’d, 414 S.C. 109, 777 S.E.2d 379 (2015)(emphasis added).

Additionally, “general considerations of efficiency or convenience of the parties are not sufficient to require joinder...” *S.C. Dep’t of Health & Env’t Control v. Fed-Serv Indus., Inc.*, 294 S.C. 33, 38, 362 S.E.2d 311, 314 (Ct. App. 1987). Here, the general considerations of efficiency and convenience can be satisfied with an order to consolidate for purposes of discovery without creating venue and procedural issues that joinder entails.

SCRCP 20(b) specifically provides for situations where under joinder separate trials would be required:

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Separate trials would be appropriate here even if joinder was required as the only claims against USX and Arender are from Oliver. This shows the futility and lack of efficiency in the sought joinder. Further, USX and Arender would be prejudiced by having to prepare, participate, attend and defend related to Cozby’s case when Cozby is not making any allegations against Arender or USX. For all of the reasons stated above, permissive joinder is not appropriate in this matter.

Oliver and Thompson Construction make no Motion, offer no support, or make any argument for compulsory or required joinder under SCRCP 19. Therefore, these Defendants are not addressing those issues in depth, but they would also fail here.

III. Venue For USX and Arender as Defendants Is Improper in Sumter County.

a. Joinder Is Improper in Sumter County.

Even if permissive joinder was proper, which these Defendants explicitly reject, venue would not be proper in Sumter County under Rule 20(a), SCRCF and S.C. Code Ann. § 15-7-30. Movants argue that they have a substantial right to a trial in its county of residence. However, Movants fail to recognize that the venue statute changed in July of 2005. *See* S.C. Code Ann. § 15-7-30.

Prior to 2005, the venue statute stated that an action “shall be tried in the county in which the defendant resides at the time of the commencement of the action.” S.C. Code Ann. § 15-7-30 (1976). In *Jeter v. S.C. Dep't of Transp.*, relying on the new venue statute, the South Carolina Supreme Court addressed whether a defendant has a right to request a change of venue to the county of his or her residence:

Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue. The general rule is that where an action is properly instituted in a county other than that of the defendant's residence, **a defendant has no right** to request a change of venue to the county of his or her residence on the ground that the action was not brought in a proper county, even if the action could also have been commenced in the county where the defendant resides.

369 S.C. 433, 442–43, 633 S.E.2d 143, 148 (2006) (internal citations omitted) (emphasis added). Moreover, the Plaintiff has the right to elect to bring suit either in the venue where a defendant resides or where a substantial part of the act or omission occurred. *Jeter v. S.C. DOT*, 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2006).

Additionally, the only action that is pending against USX was filed by Oliver in and is pending in Newberry County. Sumter County is not a proper venue for that action as none of the defendants to that suit are residents of Sumter County and the accident happened in Newberry County. Of the four sets of drivers and vehicles/corporate owners involved in this collision, only Oliver/Thompson Construction have any connection to Sumter County. The only Plaintiff who

has chosen to bring suit in Sumter County, Cozby, has since indicated consent to consolidate these matters for discovery under one of the Newberry County cases civil action numbers. Therefore, joinder is also improper in Sumter County.

b. Consolidation Is Improper in Sumter County.¹

Consolidation is improper in Sumter County because Sumter County is not a proper venue for the *Oliver* case, 2023-CP-36-00300. As stated above, (1) permissive joinder and consolidation are mutually exclusive and (2) permissive joinder is not proper; therefore, any arguments related to venue being proper in Sumter County because Movants request both joinder and consolidation hold no value.

In *Ellis by Ellis*, the South Carolina Supreme Court addresses the question of when several actions are consolidated, are they considered multiple defendants under the general venue statute. S.C. Code Ann. § 15-7-30(B) states: “If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.” The Court held that “consolidation should not be deemed to create multiple defendants under the venue statutes so that the county of any defendant ... is proper.” *Ellis* at 368, 415 S.E.2d at 402.

If Movants request an order of consolidation, venue is not proper solely because it is the county of residence of Defendant Thompson Construction. As mentioned above, Sumter is not a proper venue for the *Oliver* suit. As that suit would keep it’s own identity under consolidation, that action cannot be pending in n Sumter County as no defendant is domiciled there and no substantial act or occurrence happened there.

¹ Defendants US Xpress and Arender are not opposed to consolidation, only to consolidation for the purposes of trial (at this time) and consolidation in Sumter County. Defendants have filed a Motion to Consolidate for the purposes of discovery and informed all parties of their willingness to consent to same.

Newberry County is where the collision took place and is a proper venue for all four actions filed related to this collision. The same cannot be said for Sumter County. Defendant Oliver, one of the Movants here, filed his own lawsuit in Newberry. Additionally, his employer, Defendant Thompson Construction, failed to raise a defense of improper venue in both its Answer and Amended Answer in the Arender Action, thereby waiving any defense of improper venue in Newberry County under Rule 12(h)(1), SCRCF.

As: consolidation requires the separate actions retain their own identity; Sumter County is not a proper venue for the only claims pending against USX; all Plaintiffs have consented to venue in Newberry (Oliver, Arender, and Great West by filing, and Cozby through consenting to consolidate in Newberry for purposes of discovery); and Newberry County is where the subject accident occurred and a proper venue for all litigation from this accident, Defendants request this Court deny Movant's request for consolidation for trial and in Sumter County.

IV. Consolidation for Trial is Not Appropriate at this Point.

At this stage, there is no need to determine whether the parties need to consolidate for trial. SCRCF 42 provides for consolidation for purposes of trial and for discovery, hearings and keeping separate trials. As mentioned above, USX and Arender are agreeable, have notified all parties, and have filed a Motion to consolidate for the purpose of discovery in Newberry County.

These Defendants are unaware of what discovery, if any, has been conducted in the *Cozby* case, which has been pending since 2022. However, the *Oliver and Arender* actions were filed within the past few months and no substantial discovery has been exchanged or depositions taken. Consolidating under the oldest case number would prejudice these Defendants as that matter would already be over a year old and subject to trial. A determination of the need to consolidate for trial does not need to be made at this early juncture, prior to significant discovery

for all parties and the opportunity to comply with the Court's ordered Alternative Dispute Resolution conference.

CONCLUSION

Therefore, Defendants US Xpress and Dean Arender asks this Court to (1) deny Movant's motion for permissive joinder and (2) deny the Movants' motion to consolidate for trial in Sumter County.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/Marshall C. Crane

Mark S. Barrow

Marshall C. Crane, S.C. Bar No. 102679

Sweeney, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

**ATTORNEYS FOR DEFENDANTS U.S.
XPRESS, INC., U.S. XPRESS LEASING, INC.,
AND DEAN ALAN ARENDER**

Columbia, South Carolina
October 8, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)
Dean Alan Arender and Tamala)
Arender)
Plaintiff,)
vs.)
Kent Oliver Huntley, Thompson)
Construction Group Inc, Curtis Kent)
Ovellette, and DMX Transportation)
Services Inc.,)
Defendants.)
STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)
Kent Huntley Oliver,)
Plaintiffs,)
vs.)
Curtis Kent Ouellette, Quality)
Haulers, Inc., Dean Alan Arender,)
US XPRESS Leasing, Inc., and)
US XPRESS Inc.,)
Defendants.)
STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Jerry Cozby)
Plaintiff,)
vs.)
Kent Huntley Oliver, Thompson)
Construction Group Inc, Curtis)
Ovellette, and Quality Haulers, Inc.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2023-CP-36-00276
&
2022-CP-43-01006

**Plaintiffs Dean Alan Arender and Tamala
Arender's Motion to Reconsider Pursuant to
Rule 59(e), SCRCP**

INTRODUCTION

Plaintiffs Dean Alan Arender and Tamala Arender (hereinafter collectively “Plaintiffs” or “the Arender Plaintiffs”), submit this Motion to Reconsider the Court’s February 13, 2024, Order granting Defendant Thompson Construction Group, Inc. and Defendant Kent Huntley Oliver’s (hereinafter “the Thompson Defendants” or “Thompson”) motion to join the above captioned *Cozby* Action, *Arender* Action, and *Oliver* Action around Case Number 2022-CP-43-01006 pursuant to Rule 59(e), SCRCP.¹ For the reasons stated below, those reasons laid out in their Memorandum in opposition to the Thompson Defendants’ motion for permissive joinder and consolidation, and the reasons stated within the US EXPRESS, Inc., US EXPRESS Leasing Inc. and Dean Alan Arender’s Memorandum in opposition to the same motion, the Arender Plaintiffs respectfully request the Court reconsider its Order and deny the Thompson Defendants’ motion for permissive joinder and consolidation.

FACTUAL BACKGROUND

On November 12, 2020, Defendant Curtis Ouellette was operating a commercial motor vehicle under Defendants Quality Haulers and/or DMX Transportation’s operating authority. Defendant Ouellette was traveling east on Interstate 26 near Newberry, South Carolina when he pulled the commercial vehicle over onto the right shoulder of Interstate 26.

Following Defendant Ouellette was Defendant Kent Huntley Oliver who was operating a commercial motor vehicle under Thompson Construction’s operating authority. Defendant Oliver was traveling east in the righthand lane of Interstate 26 near Newberry, South Carolina. Traveling

¹ The order of the Court is dated as signed February 13, 2024. The Order, according to the banner for case number 2022-CP-43-01006, was filed in that matter on February 13, 2024. The Arender Plaintiffs and the undersigned were not provided notice of the Order until February 21, 2024, as indicated on the banner for case number 2023-CP-36-00376.

behind Defendants Oliver and Ouellette in the righthand lane of Interstate 26 was Plaintiff Dean Alan Arender. Subsequently, Defendant Oliver veered onto the right shoulder of Interstate 26 and collided with the rear end of Defendant Ouellette's commercial motor vehicle at a high rate of speed. As a result of the rear end collision between Defendants Oliver and Ouellette, Defendant Oliver's commercial vehicle was propelled into the righthand lane of Interstate 26 directly in the Plaintiff Dean Arender's path of travel, resulting in a significant multi-vehicle collision.

PROCEDURAL HISTORY

As a result of the multi-vehicle collision on November 12, 2020, the following suits were filed:

1. *Arender v. Oliver, et al.* ("Arender Action")
 - C/A No. 2023-CP-36-00276
 - Plaintiffs: Dean Arender and Tamala Arender – 395 Rambling Rd. Forest City, North Carolina 29043
 - Defendants:
 1. Kent Huntley Oliver – 104 Williamsburg Dr., Spartanburg, South Carolina 29302;
 2. Thompson Construction Group, Inc. – 100 N. Main St., Sumter, South Carolina 29150;
 3. Curtis Kent Ouellette – 301 Sweetwater Rd., Fountain Inn, South Carolina 29644;
 4. Quality Haulers, Inc. – 13101 US Hwy 221, Woodruff, South Carolina 29388; and
 5. DMX Transportation Services Inc. – 2118 Airport Road, Greer, South Carolina 29651
 - Venue: Newberry County Court of Common Pleas
2. *Cozby v. Oliver, et al.* ("Cozby Action")
 - C/ANo.2022-CP-43-01006
 - Plaintiff: Jerry Cozby – 225 Dellwood Dr. Spartanburg, South Carolina
 - Defendants:
 1. Kent Huntley Oliver – 104 Williamsburg Dr., Spartanburg, South Carolina 29302;
 2. Thompson Construction Group, Inc. – 100 N. Main St., Sumter, South Carolina 29150;
 3. Curtis Kent Ouellette – 301 Sweetwater Rd., Fountain Inn, South Carolina 29644; and

4. Quality Haulers, Inc. – 13101 US Hwy 221, Woodruff, South Carolina 29388
 - Venue: Sumter County Court of Common Pleas
3. *Oliver v. Ovellette, et al.* (“Oliver Action”)
 - C/A No. 2023-CP-36-00300
 - Plaintiff: Kent Huntley Oliver – 104 Williamsburg Dr., Spartanburg, South Carolina 29302
 - Defendants:
 1. Curtis Kent Ovellette – 301 Sweetwater Rd., Fountain Inn, South Carolina 29644 ;
 2. Quality Haulers, Inc. – 13101 US Hwy 221, Woodruff, South Carolina 29388;
 3. Dean Arender – 395 Rambling Rd. Forest City, North Carolina 29043;
 4. U.S. XPRESS Leasing, Inc. – 4080 Jenkins Rd. Chattanooga, Tennessee 37421; and
 5. U.S. XPRESS, Inc. – 4080 Jenkins Rd. Chattanooga, Tennessee 37421
 - Venue: Newberry County Court of Common Pleas
4. *Great West Casualty Company v. Thompson Construction Group, Inc., et al.* (“Great West Action”)
 - C/A No. 2023-CP-36-00125
 - Plaintiff: Great West Casualty Company a/s/o U.S. Xpress, Inc. – 3421 Shagbark Circle Mount Pleasant, South Carolina 29466
 - Defendants:
 1. Thompson Construction Group, Inc. – 100 N. Main St., Sumter, South Carolina 29150 and
 2. Kent Huntley Oliver – 104 Williamsburg Dr., Spartanburg, South Carolina 29302
 - Venue: Newberry County Arbitration Panel

On August 18, 2023, Defendants Kent Huntley Oliver and Thompson Construction Group, Inc. filed a motion for permissive joinder and consolidation for the purposes of discovery and trial in the Sumter County Court of Common Pleas.

On October 9, 2023, this matter came before the Court on the Thompson Defendants’ motion for permissive joinder and consolidation. On February 13, 2024, the Court issued an Order granting the motion for permissive joinder and consolidation.

LEGAL STANDARD

Rule 59(e), SCRCP, provides “[a] party may wish to file a [Rule 59(e)] motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 771, 780 (2004).

ARGUMENT

The Order fails to address or consider the Thompson Defendants manufacturing arguments in favor of compulsory joinder based on permissive joinder rules provided in Rule 20, SCRCP; it accepts the Thompson Defendants’ reliance upon outdated versions of the South Carolina venue statutes and the cases interpreting such outdated versions; it creates an issue of collateral estoppel where one does not exist; it fails to address if the parties are joined as Plaintiff or as Defendants as required by Rule 20(a), SCRCP; it fails to fully consider the verdict form and allocation issues that arise when there is one joined action, the order disregards the Plaintiffs’ right of election, it fails to give appropriate consideration to the effect permissive joinder has on venue, it fails to consider the effect joinder has on the convenience of witnesses and parties, and it compels joinder when it may not do so. Even under an appropriate consideration of compulsory joinder pursuant to Rule 19, SCRCP, the Court cannot compel joinder of these cases.

A. The Order Erroneously Finds The Court May Compel Joinder Under Rule 20.

Plaintiffs agree joinder would have been permissive on these facts. However, the Order incorrectly concluded joinder may be compelled and cites no relevant caselaw in support of its doing so.

South Carolina Rules of Civil Procedure Rule 20 states:

All persons *may* join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same

transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons *may* be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 20, SCRCP (emphasis added). A party is not required, under Rule 20, SCRCP, to join all parties in one action; rather plaintiffs have the choice to join in one or litigate separately. *See Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 212 (Ct. App. 2014). As all Plaintiffs have not consented to joinder of these actions, the Court may not compel joinder under the Thompson Defendants' flawed argument premised upon the permissive joinder and consolidation rules. *See* Rule 20, SCRCP. In compelling joinder, the Court mistakenly relied on *Ellis v. Oliver*. 307 S.C. 365, 415 S.E.2d 400 (1992). The *Ellis* court, however, held only that, "joinder *may* be appropriate in [that] case" but as the specifically noted, "that avenue was not *chosen by the plaintiff*." *See Id.* at 368, 415 S.E.2d at 401 (emphasis added). As the permissive joinder avenue was not pursued and consented to by the plaintiff in *Ellis*, the Order's reliance on the case to mandate joinder is flawed, as no such premise can be deduced from the opinion. This results in a forced change of venue through improper use of joinder rules. James F. Flanagan, *South Carolina Civil Procedure* 168 (3d ed. 2010) ("Rule 20 is permissive and does not require the joinder of all parties who might conceivable be interested in the matter. Joinder is compelled only if the strict requirements of Rule 19 are met.").

Moreover, the Order conflates, at the direction of the Thompson Defendants, the requirements for joinder and the requirements for consolidation and Under Rule 42(a), SCRCP. In so doing, the Order relies upon consolidation factors to support its compulsion of Joinder under

Rule 20, SCRCP. Consolidation is a discretionary matter for the court to decide only after the moving party has met their burden. *See Keels v. Pierce*, 315 S.C. 339, 343, 433 S.E.2d 902, 904 (1993). The same is not true for compelling joinder. The Order concludes that joinder “would prevent duplicative litigation, save the parties from incurring unnecessary costs, and conserve judicial resources.” (Order p. 10). However, “general considerations of efficiency or convenience of parties or witnesses do not required joinder under rule 19.” Flanagan, *supra*, at 160.

In a motion for consolidation of cases, “the moving party has the burden of persuading the court that consolidation is desirable.” *See Keels v. Pierce*, 315 S.C. 339, 342 (Ct. App. 1993) (citing *Prudential Insurance Co. v. Marine National Exchange Bank*, 55 F.R.D. 436 (E.D. Wis. 1972)). South Carolina Rules of Civil Procedure Rule 42 (a) states:

When actions involving a common question of law or fact are pending before the court, it *may* order a joint hearing or trial of any or all matters in issue in the action; it *may* order all the actions consolidated; and it *may* make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

SCRCP 42(a) (emphasis added). While Plaintiffs agree consolidation is possible in this action, the Order misinterprets the statute and case law to require joinder in Sumter County. *See Keels* at 342; Rule 42(a), SCRCP. Plaintiffs respectfully request the Court reconsider its order.

B. The Order Erroneously Relies Upon Outdated Versions Of South Carolina’s Venue statutes And The Outdated Cases Interpreting The Same.

The Order fails to recognize that the Thompson Defendants’ motion is an attempt to convolute what is a very simple venue analysis by clouding it with arguments of joinder and consolidation. The Order accepting the Thompson Defendants’ arguments relies on outdated versions of South Carolina’s venue statutes and the cases analyzing the previous versions of the code.

South Carolina's current venue statutes assert venue is appropriate where the defendant resides at the time the cause of action arose or where the most substantial part of the alleged act or omission giving rise to the action occurred. S.C. Code Ann. §15-7-30. The statute also provides when there is more than one defendant in the action, venue is appropriate in "any county where the action properly may be maintained against one of the defendants." *Id.* While a defendant has a right to be tried in the county of their residence, the plaintiff has the right to elect to bring suit either in the venue where the defendant resides or where a substantial part of the act or omission occurred. *Jeter v. S.C. DOT*, 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2006). Either option is appropriate; neither is preferred. *See Id.* The Plaintiff alone makes the determination. *Id.*

When the plaintiff's choice of venue results in "an action [that] is properly commenced [and properly brought] in any one of two or more venues, it is removeable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue." *Id.* The statutory grounds for removal are provided at S.C. Code Ann. § 15-7-100, and provide for transfer only when the case is not brought in a proper county, when a fair and impartial trial cannot be had in the present venue, or when "the convenience of witnesses and the ends of justice would be promoted by the change." S.C. Code Ann. § 15-7-100. Only the final ground is relevant to this matter, as these actions were properly brought in Newberry County and no arguments have been put forth that a fair trial cannot be had in Newberry. The Thompson Defendants as the moving parties, therefore, had the burden of proving that *both* the ends of justice and the convenience of witnesses would be promoted by a venue transfer. *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 477, 609 S.E.2d 286, 297 (2005). The moving party must prove this burden with a showing of "competent evidence" rather than mere conclusory statements, beliefs, or subjective opinions. *Id.* After this burden is met, the burden shifts to the opposing party to

overcome the convenience and interest of justice. *Id.* The Order functionally results in a venue transfer when the Thompson Defendants failed to meet their burden. The Order acknowledges it did not consider convenience of witnesses and the ends of justice. (Order p. 9).

For the *Arender* Action, *Oliver* Action, and *Cozby* Action, Sumter County is only more convenient for the Thompson Defendants. All other parties reside in either Spartanburg County; Greenville County; Rutherford County, North Carolina; or Hamilton County, Tennessee. Analyzing the parties' distance from the Sumter County Court of Common Pleas versus the Newberry County Court of Common Pleas plainly shows the Thompson Defendants cannot argue Sumter is a more convenient venue. (See Ex. A, Mapping of Parties and Witnesses to Courthouses). The subject multi-vehicle collision occurred in Newberry County. Presumably the first responders who responded to the Newberry collision live and or work in the Newberry area would find Newberry more convenient than Sumter. Lastly, Plaintiff Dean Arender's treating physicians' practices are located out of Rutherford County, North Carolina, and Mecklenburg County, North Carolina. Those physicians are likely witnesses, they do not reside in Sumter County, and the Newberry County Courthouse is the closest courthouse to their practices. (Ex. A).

Defendant's "substantial right to be tried in the county of his residence" does not outweigh the Plaintiff's "right of election as to the county in which an action will be brought." *See Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 442, 633 S.E.2d 143, 147-48 (2006). As previously relied upon:

Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue. The general rule is that where an action is properly instituted in a county other than that of the defendant's residence, **a defendant has no right** to request a change of venue to the county of his or her residence on the

ground that the action was not brought in a proper county, even if the action could also have been commenced in the county where the defendant resides.

Id. at 442–43, 633 S.E.2d at 148 (internal citations omitted) (emphasis added).

Moreover, the Order fails to acknowledge that while Thompson Construction was sued in its county of residence in the Cozby Action, it was also sued in Newberry County in the Arender Action. If Thompson Construction had this “substantial right,” it should have raised a defense of improper venue in both its Answer and Amended Answer in the Arender Action and moved to transfer venue.

Prior to joinder, Newberry County was the only proper venue for each action. The Order, in effect, allows Defendant Thompson to elect the venue it prefers, disregarding that there is only one venue that would be proper for every action as they were filed—Newberry County.

Most parties, witnesses, and counsel employed by the parties reside closer to Newberry County. The Order functionally forces a venue change without consideration of the convenience of witnesses. *See Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 477, 609 S.E.2d 286, 297 (2005). Plaintiffs, therefore, respectfully request the Court reconsider its Order.

C. The Order permits Thompson’s employee litigate his case as a plaintiff in a venue in which he could not have filed his claims.

The Order permits Thompson’s employee, Kent Huntley Oliver, to litigate this matter in a venue in which he could have filed his action. Pursuant to S.C. Code Ann. section 15-7-30, Oliver could file his action in Newberry, where the wreck occurred, or in any county where a defendant resides. Thompson is the only party that resides in Sumter County. As Oliver’s employer, Thompson could not be made a defendant in the Oliver action. Thus, Oliver could not properly bring his claim in Sumter.

The Order, however, joins the *Oliver* action with the *Cozby* action in Sumter County, even though that venue is not appropriate for the *Oliver* action and no basis exists for Oliver to file his claims in Sumter. The Order claims that Sumter is a proper venue because Thompson is a defendant in the joined action, but fails to address arguments that Thompson is not, and cannot be, a defendant in that action and Oliver has no claims against Thompson. Therefore, the Arender Plaintiffs respectfully request the Court reconsider its Order.

D. The Order Fails To Provide Justification For Compulsory Joinder And Venue Transfer.

The Order fails to provide justification for compulsory joinder and venue transfer. While concluding compulsory joinder and a functional venue transfer “will be less burdensome for all parties and the Court,” the Order fails to provide viable support for that position. The order similarly adopts the Thompson Defendants’ strained argument that the doctrine of collateral estoppel necessitates joinder, consolidation, and venue transfer. Such argument grossly misapplies the doctrine of collateral estoppel and fabricates potential issues where none exist. In adopting the Thompson Defendants’ position, the Order fails to adequately consider the Plaintiffs’ arguments as to why collateral estoppel is not a legitimate concern, deciding instead “the safest course at this state is to join the actions and thereby eliminate the risk of judgments having preclusive effect,” even though such risk is nonexistent. (Order p. 12).

As a sub-form of res judicata, collateral estoppel historically required mutuality, which would not be present between the various cases at issue here. While the modern trend, including within South Carolina, is removal of a mutuality requirement for collateral estoppel, the Thompson Defendants still suffer no prejudice from the doctrine. Presumably, the Thompson Defendants are not objecting to their right to defensively apply collateral estoppel for their own benefit. Therefore, the Thompson Defendants’ concern that a judgment in one case would “have a preclusive effect

in all other cases” is unfounded and the order fails to acknowledge the South Carolina exceptions to the doctrine under relaxed mutuality rules. The Order is erroneous in adopting that position.

In support of their position, the Thompson Defendants relied upon *Sims vs. Amisub of S.C., Inc.* to show the preclusive effect of collateral estoppel. 408 S.C. 202, 758 S.E.2d 187 (Ct. App. 2014). The Thompson Defendants, however, failed to note that the *Sims* case discussed defensive collateral estoppel, making it inapplicable to this matter, and failed to note that the appellate courts in *Sims* reversed the trial court’s application of collateral estoppel, finding the issue in dispute was different than the issue decided in previous litigation.² The Order adopts their position, nonetheless.

The concerns raised in the order are unfounded. South Carolina first approved the offensive use of collateral estoppel in the absence of mutuality in *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). There, two plaintiffs independently sued the same defendant for damages flowing from an automobile collision. The Defendant defended the first case arguing he was not the driver but lost. *Id.* In the second case, the court estopped the defendant from again arguing he was not the driver. *Id.* In reaching its conclusion affirming the trial court, the court of appeals adopted Restatement (Second) of Judgments sections 27, 28, and 29. *Id.* at 370-71, 315 S.E.2d 190-91. The supreme court later expressed its approval of the same. *S.C. Prop. & Cas. Ins. Guar. Ass’n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991).

² Defensive collateral estoppel permits a defendant who was not a party to a prior action, to utilize and bind the Plaintiff to the findings of that first suit while defending the second suit. *Graham v. State Farm Fire & Cas. Ins. Co.*, 277 S.C. 389, 287 S.E.2d 495 (1982). Offensive collateral estoppel permits a plaintiff to bind a common defendant on an issue adversely decided against that defendant in a previous suit in which that Plaintiff was not a party. *S.C. Prop. & Cas. Ins. Guar. Ass’n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991). Because offensive use of the doctrine can bind a defendant based on findings in a case where it had no control of the claim or forum, it is subject to many restrictions. *See id.*; *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984); Restatement (Second) of Judgments, §§ 27, 28, & 29 (1982).

Section 29 of the Restatement (Second) of Judgments, as adopted by South Carolina, obviates the concerns the Thompson Defendants manufacture. Section 29 provides, in relevant part:

A party precluded from relitigating an issue with an opposing party, in accordance with [sections] 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue. The circumstances to which considerations should be given include those enumerated in [section] 28 and also whether:

- (1) Treating the issue as conclusively determined would be incompatible with an applicable scheme of administering the remedies in the actions involved; . . .
- (3) The person seeking to invoke favorable preclusion, or to avoid unfavorable preclusion, could have effected joinder in the first action between himself and his present adversary; . . .
- (5) The prior determination may have been affected by relationships among the parties to the first action that are not present in the subsequent action, or apparently was based on a compromise verdict or finding;
- (6) Treating the issue as conclusively determined may complicate determination of issues in the subsequent action or prejudice the interests of another party thereto; . . .
- (8) Other compelling circumstances make it appropriate that the party be permitted to relitigate the issue.

Restatement (Second) Judgments § 29. Defendant Thompson may have multiple arguments to support the relitigation of an issue in a subsequent trial, but most obviously forestalling its contrived fears is subsection three. Defendant Thompson has shown, and the Plaintiffs do not dispute, joinder of the plaintiffs in these cases *could* be proper under Rule 20, SCRPC. Doing so is not compulsory, and Defendant Thompson may not compel joinder pursuant to that rule, but the decision by the Plaintiffs not to join protects Defendant Thompson from the preclusive effects of rulings in the various cases. Restatement (Second) Judgments § 29 cmt. e (“A person in such a position that he might ordinarily have been expected to join as plaintiff in the first action, but who

did not do so, may be refused the benefits of ‘offensive’ issue preclusion where the circumstances suggest that he wished avail himself of the benefits of a favorable outcome without incurring the risk of an unfavorable one.”).

Plaintiffs respectfully request the Court reconsider its Order. The Order fails to provide any viable justification for compulsory joinder.

E. Compulsory Joinder Is Controlled By Rule 19, SCRPC, Not Rule 20, SCRPC.

The Order joins these actions pursuant to Rule 20. As previously stated, joinder is not compulsory under Rule 20, SCRPC; that rule provides for permissive joinder, at the discretion of the Plaintiffs. An appropriate analysis of compulsory joinder must take place within Rule 19, SCRPC, but the outcome is not affected. “The Rule 19(a) tests for compulsory joinder are more strict than those under Rule 20, Permissive Joinder of Parties.” Flanagan, *Supra*, at 160. South Carolina Rules of Civil Procedure 19 states:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

SCRPC 19. The threshold question for joinder under Rule 19, SCRPC, is whether the parties are necessary to afford complete relief among those already named as parties. *Smith v. Tiffany*, 419 S.C. 548, 561 (2017). “General considerations of efficiency or convenience of the parties do not require joinder under Rule 19.” Flanagan, *supra*, at 160. “Rule 20 is permissive and does not

require joinder of all parties who might conceivably be interested in the matter. Joinder is compelled only if the strict requirements of Rule 19 are met.” *Id.* at 168.

While the Thompson Defendants did not move for joinder under Rule 19, SCRCP, and the Order does not rely upon Rule 19, SCRCP, such a motion pursuant to Rule 19, SCRCP, would still fail. Joint tortfeasors are permissive parties to an action. *Chester v. SC Dept. of Pub. Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010). Rule 19, SCRCP does not permit the compulsory joinder of Plaintiffs in a wreck case. The presence of multiple plaintiffs complaining of the same tortious conduct of those joint tortfeasors does not mandate joinder, it does not make the other plaintiff necessary parties, and it does not satisfy the tests provided by Rule 19, SCRCP. The Order errs in compelling joinder pursuant to Rule 20, SCRCP.

F. The Order Fails To Address If The Parties Are Joined As Plaintiffs Or As Defendants As Required By Rule 20(a), SCRCP.

When the Court orders joinder, the parties and pleadings are merged, and “all persons are joined in *one action*.” Rule 20(a), SCRCP (emphasis added). South Carolina Rule of Civil Procedure 20(a) provides:

All persons may **join in one action as plaintiffs** if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be **joined in one action as defendants** if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(emphasis added). However, this is not a situation where persons are simply joining as plaintiffs or defendants; this is evidenced by the case caption. The caption shows there are three separate

actions as if they were consolidated; the only difference now is that there is only one case number. At this time, it is difficult to ascertain how the various claims work together in one action. Without a clear understanding of how persons were joined as plaintiffs or defendants, the parties lack an understanding of how their claims are proceeding.

The Order, including the caption, fails to address how the parties are aligned. Therefore, the Arender Plaintiffs respectfully request the Court to reconsider its decision compelling joinder because the Order does not address if the parties are joined as plaintiffs or defendants.

G. The Order Fails To Consider The Verdict Form And Allocation Issues That Arise When There Is One Joined Action.

The Order compelled joinder but failed to consider the practical implications of doing so. The caption of the Order itself foreshadows the daunting task of drafting a jury verdict form. Joined actions no longer retain their separate identities, resulting in only one verdict form. See *Sarvghad v. Sitton Buick Co.*, 312 S.C. 429, 430, 440 S.E.2d 894, 895 (Ct. App. 1994). If there is only one verdict form, the factfinder must “apportion one-hundred percent of the fault between the plaintiff and each defendant whose actions are the proximate cause of the indivisible injury.” *Smith v. Tiffany*, 419 S.C. 548, 553, 799 S.E.2d 479, 481 (2017) (citing S.C. Code Ann. § 15-38-15(C)(3)). “[A] plain reading of the words ‘defendant’ and ‘defendants’ in section 15-38-15(C) reveals the legislature's intent to allow only a ‘defendant’ or ‘defendants’ to be listed on the jury form and included in the allocation of fault.” *Id.* at 559–60, 799 S.E.2d at 485.

As one joined action, there will be one verdict form. The convoluted nature of this form, the questions, and the various parties will be difficult to draft and understand as there is not a clear understanding of how the claims operate under one joined case. For example, Plaintiff Cozby has not alleged any causes of action against Defendant Dean Arender. Including Dean Arender as a

Defendant on the verdict form with Plaintiff Cozby, when there are no claims pending against him, would be improper.

The Arender Plaintiffs respectfully ask the Court to reconsider its decision in granting compelling joinder because the Order fails to address the effects joinder has on the verdict form and the allocation of fault.

H. The Order Disregards Plaintiffs' Right Of Election.

The Order creates causes of actions against Dean Arender that did not exist prior to joinder. The Order states that Dean Arender's negligence is at issue in the Cozby Action—even though Dean Arender was never named as a Defendant in that action.

South Carolina law “offer[s] various reasons for refusing to allow defendants to bring in alleged joint tortfeasors a plaintiff has opted not to sue.” *Smith*, 419 S.C. at 562, 799 S.E.2d at 487. “The plaintiff has the choice of designating the party who [he] claims committed the tort alleged in the complaint.” *Id.* at 563, 799 S.E.2d at 487 (citing *Simon v. Strock*, 209 S.C. 134, 138, 139 S.E.2d 209, 211 (1946)). A Plaintiff “should not be required to sue someone against whom [he] makes no claim.” *Id.* This “right of the plaintiff to choose [his] defendant[s] has been recognized in South Carolina jurisprudence for almost two hundred years.” *Id.* (citing *Little v. Robert G. Lassiter & Co.*, 156 S.C. 286, 287, 153 S.E. 128, 128 (1930)).

Here, the Order forces a plaintiff to sue someone against whom he makes no claim. Therefore, the Arender Plaintiffs ask the Court to reconsider its decision in granting permissive joinder because it is forcing Arender and USX to face claims from an additional Plaintiff through a remedy not sought by that Plaintiff.

CONCLUSION

For the reasons stated above and the reasons stated within their memorandum opposing the Thompson Defendants' Motion, the Arender Plaintiff's respectfully request the Court reconsider it Order and deny the Thompson Defendants motion for joinder and consolidation.

Smith, Born, Leventis, Taylor, & Vega LLC

s/Jacob D. Born

Jacob D. Born (S.C. Bar No.: 100026)

James D. George, Jr. (S.C. Bar No.: 103634)

2801 Devine Street, Suite 300

Columbia, South Carolina 29206

(803)929-3600

Attorneys for the Plaintiffs Dean and Tamala Arender

jborn@sbltv.law

jgeorge@sbltv.law

February 23, 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
)
Jerry Cozby,)
)
Plaintiff,)
)
vs.)
)
Kent Huntley Oliver, Thompson)
Construction Group, Inc., Curtis Ouellette,)
and Quality Haulers, Inc.,)
)
Defendants.)
)

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
Dean Alan Arender and Tamala Arender,)
)
Plaintiffs,)
)
vs.)
)
Kent Huntley Oliver, Thompson)
Construction Group, Inc., Curtis Kent)
Ouellette, and DMX Transportation)
Services, Inc.,)
)
Defendants.)
)

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
Kent Huntley Oliver,)
)
Plaintiff,)
)
vs.)
)
Curtis Kent Ouellete, Quality Haulers, Inc.,)
)

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

C/A NO.: 2022-CP-43-01006

**DEFENDANTS U.S. XPRESS, INC.,
U.S. XPRESS LEASING, INC., AND
DEAN ALAN ARENDER'S MOTION
TO RECONSIDER PURUSANT TO
RULE 59(e), SCRCP**

Dean Alan Arender, US XPRESS Leasing,)
 Inc., and US XPRESS, Inc.,)
)
 Defendants.)
 _____)

Pursuant to Rule 59(e), SCRCP, Defendants US XPRESS Leasing, Inc. and US XPRESS, Inc. (hereinafter collectively as “USX”) and Dean Alan Arender (“Arender”) respectfully request the Court’s reconsideration of the Court’s February 13, 2024 Order. USX and Arender also rely on and incorporate their prior Memorandums in Opposition to Defendants Thompson Construction Group, Inc. (“Thompson Construction”) and Kent Huntley Oliver’s (“Oliver”)’s Motion for Permissive Joinder and Consolidation, filed October 8, 2023.

PROCEDURAL HISTORY

On October 9, 2023, this matter came before the Court on Defendant Thompson Construction and Oliver’s Motion for Permissive Joinder and Consolidation. On February 13, 2024, the Court issued an Order granting the Motion for Permissive Joinder.

LEGAL STANDARD

Rule 59(e), SCRCP, provides, “[a] party may wish to file [a Rule 59(e)] motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

ARGUMENT

I. Permissive Joinder is Not Proper.

a. The Order Fails to Address if the Parties are Joined as Plaintiffs or as Defendants as required by Rule 20(a), SCRCP.

When the Court orders joinder, the parties and pleadings are merged, and “all persons are joined in *one action*.” Rule 20(a), SCRCP (emphasis added). South Carolina Rule of Civil Procedure 20(a) provides:

All persons may **join in one action as plaintiffs** if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be **joined in one action as defendants** if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(emphasis added). However, this is not a situation where persons are simply joining as plaintiffs or defendants; this is evidenced by the case caption. The case caption continues to show that there are three separate actions as if they were consolidated; the only difference now is that there is only one case number. At this time, it is difficult to ascertain how the various claims work together in one action. Without a clear understanding of how persons were joined as plaintiffs or defendants, the parties lack an understanding of how their claims are proceeding.

The Order, including the caption, fails to address how the parties are aligned. Therefore, USX and Arender asks the Court to reconsider its decision in granting permissive joinder because the Order does not address if the parties are joined as plaintiffs or defendants.

b. The Order Disregards Plaintiff’s Right of Election.

The Order creates causes of actions against Arender and USX that did not exist prior to joinder. The Order states that Arender and USX’s negligence is at issue in the Cozby Action—even though Arender and USX were never named as Defendants in that action.

South Carolina courts have “offered various reasons for refusing to allow defendants to bring in alleged joint tortfeasors a plaintiff has opted not to sue.” *Smith*, 419 S.C. at 562, 799 S.E.2d at 487. “The plaintiff has the choice of designating the party who [he] claims committed the tort alleged in the complaint.” *Id.* at 563, 799 S.E.2d at 487 (citing *Simon v. Strock*, 209 S.C. 134, 138, 139 S.E.2d 209, 211 (1946)). A Plaintiff “should not be required to sue someone against whom [he] makes no claim.” *Id.* This “right of the plaintiff to choose [his] defendant[s] has been recognized in South Carolina jurisprudence for almost two hundred years.” *Id.* (citing *Little v. Robert G. Lassiter & Co.*, 156 S.C. 286, 287, 153 S.E. 128, 128 (1930)).

Here, the Order forces a Plaintiff to sue someone against whom he makes no claim. First, if Cozby had an interest in determining Arender and USX’s negligence, then he should have alleged claims against Arender and USX directly. Second, if Cozby wanted to make a motion to amend his pleadings to add claims against Arender and USX, then he should have. However, Cozby took neither of these actions.

Therefore, USX and Arender ask the Court to reconsider its decision in granting permissive joinder because it is forcing Arender and USX to face claims from an additional Plaintiff through a remedy not sought by that Plaintiff.

c. The Order Creates Issues with the Workers’ Compensation Exclusivity Doctrine.

At the time of the incident, Arender was driving for USX, Oliver was driving for Thompson Construction, and Curtis Oullette was driving for Quality Haulers, Inc. Prior to joinder, neither Oliver nor Arender maintained tort actions against their employers due to the Workers’ Compensation Exclusivity Doctrine. Under South Carolina law, “[t]he exclusivity provision of the [Workers’ Compensation] Act precludes an employee from maintaining a tort

action against an employer where the employee sustains a work-related injury.” Posey v. Proper Mold & Eng'g, Inc., 378 S.C. 210, 224, 661 S.E.2d 395, 403 (Ct. App. 2008).

Now that the parties are joined into one action, Arender is a Plaintiff and USX is a Defendant, running afoul to the Workers’ Compensation Exclusivity Doctrine. Moreover, the same issue arises between Oliver and Thompson Construction. Therefore, USX and Arender ask this Court to reconsider its Order because Arender cannot pursue a tort claim against USX.

d. The Order Fails to Consider Verdict Form and Allocation Issues that Arise When There is One Joined Action.

The Order granted permissive joinder but failed to apply the practical implications of it to the caption of this case, foreshadowing the daunting task of drafting a jury verdict form. Joined actions no longer retain their separate identities, resulting in only one verdict form. See *Sarvghad v. Sitton Buick Co.*, 312 S.C. 429, 430, 440 S.E.2d 894, 895 (Ct. App. 1994). If there is only one verdict form, the factfinder must “apportion one-hundred percent of the fault between the plaintiff and each defendant whose actions are the proximate cause of the indivisible injury.” *Smith v. Tiffany*, 419 S.C. 548, 553, 799 S.E.2d 479, 481 (2017) (citing S.C. Code Ann. § 15-38-15(C)(3)). “[A] plain reading of the words ‘defendant’ and ‘defendants’ in section 15-38-15(C) reveals the legislature’s intent to allow only a ‘defendant’ or ‘defendants’ to be listed on the jury form and included in the allocation of fault.” *Id.* at 559–60, 799 S.E.2d at 485.

First, as one joined action, there will be one verdict form. The convoluted nature of this form, the questions, and the various parties will be difficult to draft and understand as there is not a clear understanding of how the claims operate under one joined case. Second, Plaintiff Cozby has not alleged any causes of action against Defendant Arender or USX. Therefore, it would be improper under South Carolina statutory law to include these Defendants on the verdict form with Plaintiff Cozby as there are no claims pending against them. Lastly, as referenced above,

Arender cannot pursue a tort claim against USX and, therefore, cannot be on the same verdict form as Plaintiff Arender and Defendant USX.

USX and Arender ask the Court to reconsider its decision in granting permissive joinder because the Order fails to address the effects joinder has on the verdict form and allocation of fault.

II. Venue Should Not be in Sumter County.

a. The Order Fails to Give Any Consideration to the Effect Permissive Joinder Has on Venue.

While venue can be technically proper in Sumter County as one joined case, the Order fails to address the extreme effect of forcing a change of venue in the Arender and Oliver Actions. Of the four sets of drivers and vehicles/corporate owners involved in this collision, only Thompson Construction—not even its driver, Oliver—has any connection to Sumter County. And even though Oliver moved along side Thompson Construction for joinder, Oliver failed to file his lawsuit in Sumter because it was not a proper venue. Now, as a result of the Order, parties who expected to try their case in Newberry County are forced to try their case in Sumter County. The Order fails to give any weight to the decisions of Oliver and Arender bringing their cases in Newberry County. Therefore, Arender and USX ask this Court to reconsider its grant of permissive joinder due to the extreme effects it has on venue.

b. Thompson Construction Does Not Have a Substantial Right to be Tried in its County of Residence.

Defendant's "substantial right to be tried in the county of his residence" does not outweigh the Plaintiff's "right of election as to the county in which an action will be brought." See *Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 442, 633 S.E.2d 143, 147-48 (2006). As previously relied upon:

Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue. The general rule is that where an action is properly instituted in a county other than that of the defendant's residence, **a defendant has no right** to request a change of venue to the county of his or her residence on the ground that the action was not brought in a proper county, even if the action could also have been commenced in the county where the defendant resides.

Id. at 442–43, 633 S.E.2d at 148 (internal citations omitted) (emphasis added).

Moreover, the Order fails to acknowledge that while Thompson Construction was sued in its county of residence in the Cozby Action, it was also sued in Newberry County in the Arender Action. If Thompson Construction had this “substantial right,” it should have raised a defense of improper venue in both its Answer and Amended Answer in the Arender Action and moved to transfer venue.

Prior to joinder, Newberry County was the only proper venue for each action. The Order, in effect, allows Defendant Thompson to elect the venue it prefers, disregarding that there is only one venue that would be proper for every action—Newberry County.

c. The Order Fails to Address the Effect Joinder Has on the Convenience of Witnesses and Parties.

The vast majority of parties, witnesses, and counsel employed by the parties reside closer to Newberry County. As stated above, Thompson Construction is the only party who resides in Sumter County. All other parties reside in either Spartanburg County; Greenville County; Rutherford County, North Carolina; or Hamilton County, Tennessee. The subject multi-vehicle collision occurred in Newberry County. Presumably the first responders who responded to the Newberry collision live and/or work in the Newberry area would find Newberry more convenient than Sumter. Lastly, Arender’s treating physicians’ practices are located out of Rutherford County, North Carolina, and Mecklenburg, North Carolina. Those physicians are likely

witnesses, they do not reside in Sumter County, and the Newberry County Courthouse is the closest courthouse to their practices. Therefore, Arender and USX ask this Court to reconsider its Order for joinder due to the effect joinder in Sumter County has on the convenience of witnesses and parties.

d. The Order Fails to Address the Effect Joinder Has on the Jury Pool.

This incident arises out of a multi-vehicle collision when at least one vehicle encountered a heavy fog on Interstate 26. Granting joinder and having venue be in Sumter County, prevents the parties from picking from a jury pool who are likely to have encountered similar meteorological conditions and have an understanding of what this fog may have looked like. There are geographical and meteorological differences between Sumter and Newberry that may not be given weight at trial if venue remains in Sumter County. Therefore, Arender and USX ask this Court to reconsider its Order for joinder due to the effect joinder in Sumter County has on the potential jury pool.

III. Joinder is Not Required or Necessary at this Time.

“Pursuant to Rule 20(a), SCRCP, a party may choose to join multiple parties as defendants[,] **but joinder is not required.**” *Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 212, 758 S.E.2d 187, 192 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E.2d 379 (2015) (emphasis added). Moreover, even if there are “general considerations of efficiency or convenience of the parties,” this is “not sufficient to require joinder...” *S.C. Dep't of Health & Env't Control v. Fed-Serv Indus., Inc.*, 294 S.C. 33, 38, 362 S.E.2d 311, 314 (Ct. App. 1987). Here, the general considerations of efficiency and convenience can be satisfied with an order to consolidate for purposes of discovery without creating venue and procedural issues that joinder entails. Therefore, USX and Arender asks the Court to reconsider its decision in granting permissive

joinder because consolidation for the purpose of discovery provides similar benefits without creating additional issues.

CONCLUSION

For the reasons stated above, Defendants USX and Arender request that the Court reconsider its prior Order and deny Defendants Thompson and Oliver's Motion for Permissive Joinder and Consolidation.¹

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/Marshall C. Crane

Mark S. Barrow, SC Bar No. 7821

Marshall C. Crane, SC Bar No. 102679

Madison C. Killen, SC Bar No. 105791

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

**ATTORNEYS FOR DEFENDANTS U.S.
XPRESS, INC., U.S. XPRESS LEASING, INC.,
AND DEAN ALAN ARENDER**

Columbia, South Carolina

February 23, 2024

¹ We hereby incorporate by reference all Motions to Reconsider filed by any other party in response to the February 13, 2024 Order, including but not limited to Plaintiff Dean Arender and Tamala Arender.

STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT 3
COUNTY OF SUMTER) DOCKET NO. 2022-CP-43-01006

JERRY COZBY,
Plaintiff,
versus
THOMPSON CONSTRUCTION,
Defendant.

H E A R I N G
BEFORE THE HONORABLE R. KIRK GRIFFIN

DATE: October 9, 2023
TIME: 9:45 a.m.
LOCATION: South Carolina Circuit Court 3

TRANSCRIBED BY: Natasha Barrientos

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2

3 JACOB BORN, ESQUIRE

4 Smith Born Leventis Taylor & Vega

5 PO Box 5070

6 Columbia, South Carolina 29250

7 Attorney for the Plaintiff,

8

9 G. MURRELL SMITH, JR., ESQUIRE

10 Smith Robinson

11 PO Box 580

12 Sumter, South Carolina 29151

13 Attorney for the Defendant.

14

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EXHIBITS

(None marked)

24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1

2 THE COURT: All right. The next matter, Mr. Smith, is
3 that, the Cozby matter.

4 MR. SMITH: We got a lot of attorneys here.

5 THE COURT: Yes, sir.

6 MR. SMITH: (Inaudible) get settled. We draw party to
7 this motion.

8 THE COURT: All right. This is Cozby versus Oliver, et
9 al. Case number 2022-CP-43-01006. And this is defendant
10 Thompson? That's correct, Mr. Smith? Defendant Thompson
11 Construction Group's motion to consolidate?

12 MR. SMITH: Yes, sir.

13 THE COURT: All right.

14 MR. SMITH: And, Judge, just to consolidate and
15 joinder, and I'll talk through why we think joinder's a more
16 appropriate action. But just for -- for purpose of this
17 right now, Judge, I represent Kent Oliver and Thompson
18 Construction Group, which is sued by Mr. Cozby.

19 And that's one of -- of three other suits that are
20 currently pending. One's an arbitration panel, and I'll talk
21 about that in a second. But there's a number of other
22 actions. Those actions have been filed in Newberry County.
23 This is -- this accident happened on November 12, 2020 at
24 I-26 in Newberry County. There was a horrific wreck. Don't
25 want to get into the whole lot of the facts of it. Not --

1 not really relevant to the case, but there was heavy fog that
2 morning. There's a lot of concern.

3 Mr. Oliver was traveling from Spartanburg, where he
4 lived on the way to work here in Sumter, got in this wreck.
5 Obviously, he takes the position, and he -- and that he was
6 not at fault this accident, that the other defendants were at
7 fault.

8 Mr. Cozby here is just someone who was driving through
9 that -- through the interstate and claims something hit his
10 car and caused him to have a wreck, and he became injured as
11 a result. So Mr. Cozby really has -- is not one of the
12 defendants, not one of a defendant named in any other suit.
13 Rest of them are all defendants that are named in a lawsuit.

14 Judge, we're asking that you join and consolidate these
15 cases around Mr. Cozby's action. We are the first one that
16 got sued. This is the oldest case. This case has been
17 pending here in Sumter County. And so that's one reason that
18 we're here today.

19 Judge, as I told you; you have Jerry Cozby, who is the
20 plaintiff in this case, also in this is Curtis Eluate(ph),
21 and then there is Kent Oliver(ph), who is -- who is my client
22 in this case, as well as Thompson Construction and Dean
23 Orinda(ph), who is -- who was driving another truck.

24 Just for the court's awareness, Mr. Eluate was driving
25 for Quality Haulers and there's some other -- some other

1 company that's named in one of these lawsuits with him. Mr.
2 Oliver was driving for Thompson Construction within the
3 course and scope of his employment. Mr. Orinda was driving
4 for US Xpress. And so that gave rise to these four lawsuits,
5 Judge.

6 And -- and, you know, I -- I told you about the Cozby
7 lawsuit Orinda -- Mr. Orinda has sued Mr. Oliver and Thompson
8 Construction Group, Mr. Eluate Quality Haulers and DMX
9 Transportation, and that's pending in -- in Newberry County.
10 Mr. Oliver is represented by Justin Arenas, and he -- and he
11 filed an action in this case his own personal injury action
12 against Mr. Eluate, Quality Haulers and Mr. Orinda, US Xpress
13 in Newberry County. And then there's also a subrogation, as
14 I mentioned, where the -- where Great West Casualty is as a
15 subrogee of -- of US Xpress has filed a property damage
16 claim.

17 That's really not a purpose of this, Judge. We have --
18 we're before our arbitration panel. There's a de novo appeal
19 obviously from that and which will be taken, I presume
20 anyway. And then I think that would honestly get subsumed up
21 under one of these other actions for that. But we have to
22 deal with that.

23 So, Judge, what we're asking you to do is basically
24 join and consolidate these cases around the one Cozby's here.
25 And as I told you, we're the only party that has filed a

1 motion to consolidate. My understanding is Judge is a lot of
2 back and forth and -- and I, you know, I don't know where
3 everyone is here today. I'm sure we'll hear from them on
4 that. But in regards to this case, I -- I think there was
5 some consensus by the other parties that they were to
6 consolidate, but they want to consolidate Newberry County.

7 And then we've had these flurry of -- of memorandums
8 that occurred in the -- in the wee hours last night and then
9 on Friday. So we will obviously talk about that. But I
10 would say that there is a -- a genuine disagreement on the
11 law in the state of South Carolina and the law about venue
12 and the law about -- law about consolidation and joinder.

13 Quickly, Judge, a standard in this, just so you know,
14 Your Honor has broad discretion to order consolidation. And
15 I respectfully submit, you have broad discretion to join the
16 parties. You're also you know, I'm going, I -- I understand
17 I have the burden of showing that joinder and consolidation
18 are appropriate here, and I submit, Judge. We'll -- we'll
19 meet that burden. Joinder is -- is by Rule 20, and
20 consolidation is by Rule 42, I think here for today's
21 purposes, Judge, it's about Rule 20.

22 We got into a -- I see the memorandums that were filed
23 over the weekend. Say, raise the issue that Rule 20 is not
24 appropriate and it has to be filed under Rule 19. Judge,
25 there's not a lot of case law out here on either one of

1 those. But I can tell you the way I rule -- read Rule 19 is
2 Rule 19 is an indispensable party, and that is when someone
3 is not a active party to a lawsuit, but joinder is when you
4 bring others into there as a plaintiff or a defendant.

5 So I -- I know they say we mixing up the -- the rules
6 and not appropriately for them on 19. I respectfully submit
7 that's not true. I respectfully submit that I think they're
8 the ones that are -- are confused on in that regard as it
9 relates to that. And we'll talk about that here in a little
10 bit.

11 Judge, in order to join for a joinder, there are two
12 requirements that we must meet. We must meet claims arise
13 out of the same transaction or occurrence, and that claims
14 involve a common fact of law. Rule 42 just states, if you
15 meet one of them, the common question of law and fact. And
16 so, Judge, as you know, this action, all three of these
17 actions arise out of the wreck on I-26 from -- that was here.

18 And all of these have a common question of law or fact,
19 and that's whose negligence? Whose fault is it -- is the
20 negligence in this case, and out -- rising out of that same
21 occurrence. And that's the wreck. I go -- I read with
22 interest some of their arguments, Judge, the attorneys from
23 Mr. Orinda and US Xpress have prepared briefs and filed those
24 there.

25 Notably, they argue that we don't satisfy the rules.

1 And again, like I said, I believe that they -- they conflate
2 Rule 19 and say that Rule 19 is a mandatory joinder. And
3 they say that Rule 20 is not a mandatory joinder. And,
4 Judge, in fact, when I read this, I presume I -- I keep
5 seeing this word permissive joinder. And so I -- I think
6 they're conflating the idea of a permissive and joinder --
7 joinder as that everybody has to consent.

8 And, Judge, I respectfully say that's not the -- that's
9 not the law as I see it. Again, the law is not -- there's
10 not a wealth of law in regards to this -- this issue. But
11 when I look at, there's one case, and it's Chen versus
12 Thompson, I believe it was cited by Mr. Orinda in his brief.
13 And in that, Judge, it looked like the master joined parties
14 under Rule 20, and the Court of Appeals said that he could do
15 that and upheld that requirement.

16 So it doesn't look like they came to the party
17 voluntarily. It looked like they were joined, and the court
18 ruled that way. So we acknowledge the plaintiff has a right
19 to choose whether to join -- join the claims. But, you know,
20 and -- and they also, another thing that we get real deep in
21 the weeds in on -- on this, Judge, is they argue that -- that
22 we should not be able to add co-defendants and things to that
23 effect.

24 And what they talk about, and they cite some law,
25 Judge, which basically comes down to the Tiffany -- Smith

1 versus Tiffany Case that we all know about; about third party
2 liability. And they argue that just because someone could be
3 joined, that the plaintiff doesn't have to join it.

4 I agree, Judge. The plaintiff, the law is clear,
5 plaintiffs can pick their defendants, but we're not talking
6 about a plaintiff suing somebody. We're talking about
7 actions already filed. Everything's there before the court,
8 and we're not adding new parties. All we're doing is trying
9 to consolidate all the parties around one another and not do
10 that.

11 So when they cite Smith versus Tiffany, when they cite
12 that they get to pick who they want to choose or try to
13 conflate the issues of the -- of the doctrine of plaintiff
14 chooses their defendant and say that that stands for a
15 proposition that you can't add additional parties to the
16 case. That's just not true, and that's not the law in South
17 Carolina.

18 So, Judge, it seems that really the problem gets to the
19 -- to the thing about, you know, I -- I guess everybody would
20 be in agreement for consolidation, although Mr. Orinda says
21 he only wants to stop consolidation for discovery, not for --
22 not for trial. But -- but the real issue, I guess it boils
23 down to venue.

24 And so, Judge, in consolidation and joinder, I think
25 this Ellis by Ellis versus Oliver, which is cited by

1 everybody in their briefs, really gives some clarity as to
2 where -- where venue is under those situations. So in venue
3 Ellis by Ellis was where a -- where the cases were
4 consolidated, and then the plaintiff wanted -- the defendants
5 wanted to be tried in Lexington County when it was pending in
6 Richmond County. He was a doctor, lived in Richmond County,
7 and Lexington County Hospital was in Richmond County.

8 Mind you, Judge, they chided me about saying that, I'm
9 saying the substantial right, and -- and that that doctrine
10 was overturned with the -- with the passage of the venue
11 statute. But -- but that case right there was decided before
12 the venue statute anyway. So I, you know, you can't -- you
13 can't have it both ways in there. But nonetheless, the
14 Supreme Court said in there that they denied the -- the court
15 -- trial court denied the motion to change venue because the
16 action was properly before the court in Richmond County.

17 And when they cited the -- where one defendant got
18 defendants in different counties, either one would be
19 appropriate, Supreme Court reversed and said the pleads are
20 not merged under consolidation. And that he had a right to
21 go over there to have his case tried separately in Lexington
22 County in -- in that regard. But that was because there was
23 -- he was entitled to be tried in the county of his
24 residence, which they say is no longer law in South Carolina,
25 but they want to use that in this case.

1 But -- but here, the one thing that was appropriate and
2 what caught my eye when you looked at this case was the
3 Supreme Court then talked about joinder, and how joinder was
4 not before them and -- and goes on to state, basically an
5 order of joinder was significantly changed. The venue
6 analysis, again, saying the consolidation should be deemed to
7 create multiple defendants and the -- under the venue so that
8 county of any defendant is proper.

9 And they had a footnote in there says, "Although we are
10 aware, joinder may have been appropriate in this case, that
11 avenue was not chosen by the plaintiff." So that's why we're
12 here before the court on -- on joinder. And so what's --
13 what the court is clearly saying in that regard is that the
14 venue analysis is much different and the venue is proper in
15 the county where any of the defendants are joined in the
16 case. And so the joinder in this situation, Your Honor,
17 would say that Sumter is appropriate because that's where --
18 where Thompson is headquartered.

19 15-7-30(e) says a domestic corporation like Thompson
20 may be tried in the county where the corporation has the
21 principle place of business. We've submitted secretary of
22 state filings, Judge, and as well as several complaints
23 alleged that Thompson is -- is a resident in -- in Sumter
24 County.

25 So the complaints that are before the court, even in Newberry

1 County, are recognizing that Thompson is in Sumter County.
2 So again, I think there is proper venue here in Sumter
3 County, obviously on Cozby case. And if you use analysis of
4 any venue, some county could be that if -- if Thompson is
5 sued, because that is one of the -- that is one of the areas
6 where that -- that's one of the options that make it that
7 way.

8 So this is where we differ on this issue. So venue,
9 Judge, I -- nobody's disagreeing venue is not appropriate in
10 Newberry County. We're not contending that, but we are --
11 but they're contending it's not appropriate in Sumter County.
12 And the way I look at it, Judge, this was the first action
13 that was filed. We were brought here to Sumter County in our
14 county of residence. And so when I talk about a substantial
15 right, I certainly recognize that the -- that the General
16 Assembly in 2005 mended the venue statute, but it was to help
17 aid in that doctrine of a substantial right.

18 I mean, you think about this, Judge, you were
19 practicing law back then. I was practicing law back then.
20 I'm not so sure they were. But -- but one thing that I know
21 is at that point, the case law, what the concern was in truck
22 and venue statute, the railroad venue statute, is that people
23 who were headquarters, especially corporations were getting
24 dragged to all corners of the state.

25 And so the General Assembly came in and -- and

1 reiterated the substantial right for a defendant to be tried
2 in where he's headquartered or the county of his residence,
3 but it also gave other options. And so that was, you know,
4 where the accident occurred is one of the options. And then
5 if the plaintiff is from out of, I mean, if the defendants
6 from out of state, then where the plaintiff resides.

7 So there are options in other areas to which you can be
8 -- can be sued. And we're not disputing that we can be sued
9 in -- in Newberry County. In fact, I think one of them
10 raised the fact that we -- that we didn't file a motion under
11 12(h) (2) or something like that about venue that we now waive
12 the action. There is no -- there's no -- there's no dispute
13 that we are in. That Newberry County is -- is appropriate.
14 It's just that we want to be here in Sumter County and we
15 have substantial right.

16 We were sued here, and my client's the only defendant
17 that is in this case that actually lives in one of those
18 counties. So again, they have that substantial right, and I
19 don't think it was abrogated by the passage of the venue
20 statute. So I certainly believe that -- that it's
21 appropriate for it to be here. Is it appropriate for it be
22 in Newberry? Yes. But we're asking the Court to join these
23 cases here.

24 In response to that, Judge, I also saw they spent a lot
25 of time on this 15-7-100, the motion to change venue. That's

1 certainly an appropriate motion, but that's not an
2 appropriate analysis right here today. The law is that you
3 -- that the court doesn't have to determine convenience of
4 witnesses. We've got attachments of miles from everywhere
5 and things of that effect to one of the briefs, Your Honor.

6 And so that is an appropriate analysis, but not today.
7 That's an analysis. If they want -- if the Court says we're
8 going to join these cases here in Sumter County and Sumter
9 County's going to have -- have venue and it's going to move
10 forward, then they can make that motion as -- as pure, as
11 perfectly appropriate for that to happen in front of, I mean,
12 to ask motion change on convenience of witnesses later at the
13 time. But it's not -- doesn't have to be right now. And
14 that's not an analysis respectfully what the court should be
15 engaging in at this point.

16 Judge, the benefits of consolidation and joinder are
17 obviously we -- we have the burden and -- and says purpose of
18 consolidation. Also, I would submit joinder as to prevent
19 multiplicity of litigation to save the party's unnecessary
20 costs to conserve court time and in space and the clear
21 congested documents, I mean, dockets. All these are
22 interests that would be served by joining this case. And we
23 don't need to make the witnesses, the parties, the lawyers do
24 the same thing four times over.

25 So in essence, Judge, I know not all the parties are

1 involved, all similar parties involved in the same case, but
2 in these cases, judge, all parties that were involved in the
3 accident would have an opportunity to present a case in one
4 form.

5 And I think that is very -- very important. Because
6 what we have now is we've got, Cozby has sued us here in
7 Sumter County and has not added Orinda or US Xpress or -- or
8 Quality Haulers. So what we are going to do is have a case
9 over here. We're first up, Judge. I mean this case is
10 probably about ready to hit the docket. And it is -- this is
11 a relatively simple case from the -- from that perspective.

12 And so what happens if there's a verdict rendered in
13 here. Let's say it's rendered against Mr. -- Mr. Oliver in
14 this case. Does that preclude Mr. Oliver and his own
15 personal injury action? There is issue preclusion no matter
16 what they want to say, and they -- and they state
17 restatements of torts and everything else.

18 Judge, I read cases this morning that -- that clearly
19 stand for the supposition that there is arguments that could
20 make this issue preclusion. And -- and the problem is -- is
21 it 100 percent clear? No, sir. But is it worth messing it
22 up as a result of -- of having somebody come and have a
23 preclusive effect because they tried one case and others lay
24 in the way -- in the wings and then, you know, you come in
25 here. So let's say, look at this case, if Mr. Oliver comes

1 in here and Mr. Oliver is found to be negligent in this case,
2 that is going to have to have some type of preclusive effect
3 on him when he comes at his case.

4 And so that's the whole point that we're saying, Judge.
5 Not that it's a slam dunk, it's arguable. But at that point
6 we need to err on the side of caution and make sure that we
7 don't preclude him from being able to pursue his claims or
8 any other defendant or any other plaintiff over here.

9 And that by joining the -- the claims, Your Honor,
10 would preclude any issue preclusion. And that is the most
11 important part of it. And -- and, Judge, you know, and
12 respectfully, I mean, I -- I hope that that's not the -- the
13 part of the defense of this case. I mean, I -- Mr. Oliver is
14 clearly does not believe he's negligence. I think we've got
15 plenty of evidence to show he's not negligent. But we don't
16 want to risk precluding his claim because that worst case
17 scenario, Judge, if -- if he has it over here, he -- I think
18 he would have to admit he would be bound by some negligence.

19 The comparative would have to be determined. Maybe he
20 can say, well, I was negligent, yes, but they didn't tell me.
21 They didn't -- they didn't try the case against Orinda or
22 Eluate. And so, you know, but I don't think you can come in
23 there and deny negligence when a jury found you to be
24 negligent. And so that -- that is a real issue here, Judge,
25 and that's what we are concerned with as we look through

1 this.

2 Another issue, Judge, is we -- we have these they
3 argued joinder will create confusion claims, and
4 counterclaims, and all that, and action. Maybe, maybe not.
5 Maybe we can figure it all out. I mean, you -- you got
6 people filing cross claims and cases all the time and
7 counterclaims and things of that effect. I don't think it
8 would do that. But to the extent it does, Judge, the court
9 has an escape valve under 20(b).

10 It says, "The court may make such orders as will
11 prevent a party from being embarrassed, delayed, or to put
12 expense by inclusion of a party against whom he asserts no
13 claim, and who asserts no claim against him, may have
14 separate trials or make other orders to prevent delay of
15 prejudice." So there's a backstop to this at some point.

16 So, Judge, you know, as it turns out, if they need to
17 be tried separately, then the court can issue that. And I
18 trust that the courts over here can and make the appropriate
19 termination that everybody's going to have a full and fair
20 opportunity to be heard.

21 So, Judge, at the end of the day, this is a complicated
22 issue, but it is not really that complicated. It's the fact
23 is that we've got a bunch of people trying to seek
24 compensation or deny liability in one accident. And I think
25 it's most appropriate that we all be joined together for us

1 to have our day in court without having any potential of
2 issue preclusion and having the court handle that.

3 And, Judge, I, you know, I respect -- I mean, I
4 respectfully submit, we're in Sumter. We filed this one
5 consolidation action and joinder action. Nobody else has
6 filed one, and we asked it be consolidated over here in -- in
7 Sumter. Nobody's asked for it to be in Newberry or anyone
8 else. Nobody else has filed a motion. And I filed a motion
9 with, there's motions in Newberry pending here, but, Judge,
10 you were the first -- this court was the first to schedule.
11 So I submit this is going to be the binding order.

12 So we respectfully ask that you join these claims under
13 Rule 20. I'd be happy to answer any questions.

14 THE COURT: Thank you, Mr. Smith. Let me hear from the
15 other interested parties and if I've got any questions, I'll
16 save them for the end.

17 MR. SMITH: Thank you, Your Honor.

18 THE COURT: All right. And folks just for the record,
19 just state your name before you begin your presentation.

20 MR. BORN: Yes, thank you, Judge. My name is Jamie
21 George Jacob Born, and I represent the Orinda's in one of the
22 actions pending in Newberry. We oppose the Thompson
23 Construction motion for consolidation in Sumter and believe
24 the motion is futile. I'll try to address briefly the
25 reasons why that is the case.

1 With the Court's permission, though, I'd first like to
2 address the permissive joinder, compulsory joinder argument
3 under Rule 19 and Rule 20. And if the Court would allow me
4 to read briefly. This is from Professor Flanagan's book on
5 South Carolina Civil Procedure. This is on page 168 of the
6 third edition. Rule 20 is permissive and does not require
7 the joinder of parties who might conceivably be interested in
8 the matter. Joinder is compelled only if the restrict
9 requirements of Rule 19 are met.

10 So that's the basis judge of this permissive versus
11 compulsory argument there. Those are not words or -- or
12 things that we made up or -- or conflated ourselves. They're
13 two distinctly different rules. Joinder may be permissive
14 under Rule 20 without being compelled under Rule 19. The
15 plain language of Rule 20 does not allow for compulsory
16 joinder. We don't need a case to tell us that. The language
17 itself does not permit compulsory joinder under Rule 20.
18 Only the strict requirements of Rule 19 allow for joinder,
19 compulsory joinder.

20 So that makes a -- a motion under Rule 20, the wrong
21 procedure. You know, they -- they -- the Thompson folks
22 essentially reached this conclusion, which is at least
23 partially correct that joinder of most of the plaintiffs in -
24 - and the defendants in the various actions could be
25 permitted, but it's only that permissive. Thompson

1 Construction though then goes on to conclude that because it
2 is permissive, it must be compelled and that's not the case.

3 Here's a quote, Judge from Sims versus Amisub of South
4 Carolina, Inc. It's 408 South Carolina 2002. It's a 2014
5 Court of Appeals opinion. "Pursuant to Rule 28, a party may
6 choose to join multiple parties as defendants, but joinder is
7 not required." Beyond that, I -- I -- I'm not even confident
8 that joinder even under Rule 19 would work.

9 The -- his client, Mr. Oliver, other than the Thompson
10 Construction, would not have been able to bring his suit in
11 Sumter County because the only basis for any of these cases
12 being brought here is Thompson Construction. He's employed
13 by Thompson Construction. As Mr. Smith indicated, he would
14 not be able to have brought his case here. Newberry was the
15 only venue, well, not only venue. Newberry was an
16 appropriate venue for him. Sumter was not an appropriate
17 venue for him to file his case.

18 Moreover, you know, permissive joinder under Rule 20 is
19 described as the banding together and asserting the rights of
20 plaintiffs jointly in one action. The plaintiffs here are
21 not able to join together because they have claims against
22 one another. Moreover, there's certainly claims here that
23 have no common questions with the other suits as suit
24 particular defendants.

25 Joinder's just -- it -- it's not compelled under Rule

1 20, and it's not required here under Rule 19. Joint
2 tortfeasors are permissive parties. They are not necessary
3 parties under Rule 19. General considerations of efficiency
4 and convenience of the parties or witnesses is not an
5 appropriate consideration under Rule 19. Again, that comes
6 from Professor Flanagan. And other plaintiffs and possible
7 plaintiffs are not necessary parties, and it must be a
8 necessary party under Rule 19, and that's the only avenue for
9 compulsory joinder.

10 Thompson Construction essentially argues for joinder
11 using the rules that apply to consolidation and then say,
12 okay, because joinder was allowed, and because consolidation
13 seems appropriate here, joinder must be compelled. But there
14 is no basis for compelling joinder. So we would submit,
15 Judge, that the joinder argument must fail. And without
16 joinder, there cannot be a compelled change in venue to
17 Sumter here for the Newberry actions.

18 You know, Thompson Construction correctly points out in
19 their brief that consolidation does not change the parties
20 for venue analysis. So the joinder aspect of this is really
21 the only way that they can try to bring everyone to Sumter.
22 Each case is maintaining its own identity if we're
23 consolidated, and -- and they cannot all be brought in
24 Sumter.

25 I did want to address briefly the venue rules. I -- I

1 recognize the arguments that Mr. Smith is making, but -- but
2 in the absence of joinder, which cannot be compelled on these
3 facts, then this is a simple venue analysis under Title 15.
4 And while it may have been a -- a complicated and convoluted
5 analysis many years ago, it's not anymore.

6 Rule 15-7-30(e) provides plainly that the suit against
7 a resident corporation can be brought where the tortious
8 conduct occurred, or where the defendant has its principle
9 place of business. There is no preference in the code or the
10 case law for one over the other. They are both equally
11 permissive and neither is preferred.

12 Then to change venue requires an analysis under
13 15-7-100, and that allows the change of venue for only three
14 reasons. The first that the case was brought in the wrong
15 county to begin with, and Mr. Smith has already acknowledged
16 that Newberry is an appropriate venue for every action. The
17 second is if an -- if a fair and impartial trial cannot be
18 had in the county, there's been no allegations of that here.
19 And the third is the convenience of witnesses in the ends of
20 justice.

21 That's the basis, Judge, for the map in the chart that
22 was submitted with our memorandum. And if you would like,
23 Judge, and if I may approach, I can hand you a copy of those
24 now if you would like.

25 THE COURT: That'd be fine.

1 MR. BORN: Judge, what we have here plotted out is just
2 the locations of various parties and witnesses in the Orinda
3 action. As you can see under an analysis of 15-7-100, Sumter
4 County is not more convenient. The first responders in
5 Newberry presumably live in Newberry. The individual
6 defendants all live in the upstate or North Carolina is where
7 the Orinda's are. Their medical providers, at least for Mr.
8 Orinda, are in that area. Presumably the medical providers
9 for the other individual plaintiffs are in the upstate where
10 they live.

11 Sumter's only closer for two parties to the suit. So
12 under an analysis there, which I think would be where we
13 would have to go next, assuming joinder fails, there's no
14 basis there to transfer venue of these Newberry cases.

15 Additionally, collateral estoppels not a basis for
16 ordering joinder here. There's a concern raised of a
17 possibility of preclusive effect. So we want to err on the
18 side of caution. The -- the appellate courts here have
19 already addressed those for us in their adoption of the
20 restatement second of judgment's position on collateral
21 estoppel, when you do not have mutuality between the parties.

22 Mr. Smith seems to express a concern over the offensive
23 use of collateral estoppel, and its possible preclusive
24 effects. But Section 29 of the restatement second of
25 judgments provides limitations to the offensive use of

1 collateral estoppel. There are several in there, including
2 sort of a catchall, you know, this doesn't seem fair
3 provision. But most approximately or most related to these
4 issues, and particularly related to the Orinda action itself
5 is that you don't get the benefit of offensive collateral
6 estoppel if the claims could have been joined.

7 That's our position, is these could have been joined,
8 they cannot be compelled to join, but they could have been
9 joined. Therefore, we would not be afforded the benefit of
10 any offensive collateral estoppel.

11 Again, joinder would not be beneficial here either.
12 You -- we -- we want to err on the side of caution with
13 regard to collateral estoppel, but for possible confusion of
14 jury issues, we're just going to wait and see how that goes.
15 I -- I don't think that's the appropriate analysis here. You
16 know, if all of these cases are tried together, it will be an
17 absolute nightmare.

18 Even just from jury stripes of who -- who's on the --
19 we're going to get 20 jurors and each side's going to get
20 four. But who -- who's on each side? Whose counsel's
21 controlling what? Is it the two plaintiffs that are not
22 defendants, which would be Mrs. Orinda and Cozby. Are they
23 the only two on the plaintiff's side and everyone else on the
24 defendant's sides having to split their four strikes? You
25 know, the verdict form would be nightmarish.

1 It -- keeping the cases separate is more efficient here
2 except for consolidation for discovery purposes. I don't
3 think anyone is opposing consolidation for discovery
4 purposes. And I believe we filed a motion for consolidation
5 in Newberry to consolidate the cases for purposes of
6 discovery and mediation. Any sort of consideration of
7 consolidation for trial at this point is certainly premature.

8 Again, we're not opposed to consolidation. There --
9 there can be some benefits there, but it has to be
10 consolidated in Newberry. And that is because one of the
11 claims that was filed could not be filed here. The venue is
12 not proper for the Oliver action here, because the only tie
13 to Sumter County is Thompson and Oliver cannot sue Thompson.

14 You know, Judge, I'm happy to answer any questions you
15 would have. But just briefly in conclusion it -- it's --
16 joinder can't be compelled. Joinder's the only way that
17 they're able to force a venue transfer because Sumter is not
18 a more convenient venue. Collateral estoppel is not an issue
19 in this case. Joining these claims for trial would be
20 incredibly convoluted and the more appropriate action in our
21 opinion would be consolidation for discovery purposes in
22 Newberry County where three of the four claims are currently
23 pending. Thank you, Judge.

24 THE COURT: All right. Thank you very much.

25 MR. CRANE: May I please the court, Your Honor.

1 THE COURT: Yes, sir.

2 MR. CRANE: Marshall Crane. I represent US Xpress
3 Incorporated, US Xpress Leasing Incorporated, and Dean
4 Orinda, and the claims brought by Mr. Kent Oliver, Mr.
5 Smith's individual client. But those were brought in
6 Newberry County and the civil action number that ends in 300.

7 I'll be brief and try and bounce around a little bit.
8 So I apologize if I'm a little scatterbrained. But Mr.
9 George has covered a good majority of the points in the
10 positions certainly based on our mutual client, Mr. Orinda.
11 There are a few nuances I'd like to point out and then a few
12 things specific to US Xpress. If I may approach, Your Honor,
13 I do have a copy of the memorandum we filed yesterday in the
14 Newberry cases. We're not a party to the Sumter case.

15 THE COURT: All right. Yes, sir.

16 MR. CRANE: And again, Your Honor, as initial matter as
17 well, we appreciate you allowing us to be heard in this case.
18 Obviously, being privy solely to the Newberry County case.
19 We -- we appreciate the court's time today. As an initial
20 matter substantively, we would point out that the Ellis by
21 Ellis versus Oliver case has been cited by both Mr. Smith and
22 Mr. George. Specifically talks about the fact that joinder
23 and consolidation are mutually exclusive. You can't have
24 both of them. So we're talking about one or the other when
25 it comes to an adjudication as to what's appropriate.

1 And the case law really gets into the differences of
2 those being joinder. It is all one action. It's
3 consolidated as one. It would be one verdict form. It would
4 be as Mr. Smith would prefer joined as the oldest case that's
5 already eligible for the trial roster with minimal discovery
6 having been done and also short circuiting the fact that the
7 Newberry County cases were just filed within a couple months,
8 I believe May and June respectively for Orinda and Oliver
9 suits. So it's kind of short circuiting that, but it would
10 -- it would join them all as one. And then for
11 consolidation, the case law is clear. They keep their
12 separate identities.

13 Again, not to belabor the specific points of
14 consolidation that I believe Mr. George covered very
15 effectively. But I do want to reiterate a couple points on
16 the law of Rule 20. One being the provision for question of
17 law or fact common to all claims.

18 Again, the only person who's asserting any cause of --
19 or any causes of action or allegations against US Xpress the
20 corporate entities that I represent that Mr. Orinda was
21 driving for is Mr. Oliver.

22 Mr. Cozby has not chose to bring those claims.
23 Obviously, my corporate client's subrogee and there are
24 arbitration case for the property damage are not bringing
25 those claims. So those are not met as it -- as it pertains

1 to US Xpress and US Xpress Leasing.

2 Even in the -- the counterclaim filed by Mr. Orinda, we
3 -- Mr. Orinda's suit, excuse me, Mr. Oliver's suit that named
4 US Xpress and Mr. Orinda, we filed a motion on 12(b)(8) for
5 failure or for failure to bring that claim in another action.
6 They have since amended that their answer to Mr. Orinda's
7 claims against Mr. Oliver asserting a counterclaim against
8 Mr. Oliver. But there are no -- that does not include third
9 party claims against US Xpress. Those are kept completely
10 separate in that action, followed by Mr. Oliver, where again,
11 Sumter would not be a proper venue.

12 None of the defendants are domiciled there. And the
13 action didn't happen there. So we think that that aspect of
14 20, again, under the permissive joinder, because that's the
15 title of the rule as it sits there for South Carolina Rule
16 Civil Procedure 20, isn't met.

17 And then we also would just bring the court's attention
18 to the SED Heck versus Fed Serve case. It's a Court of
19 Appeals case from 1987, which talks about if efficiency or
20 convenience are met. That's -- even that is not enough to
21 require joinder. Again, Mr. George has cited the Amisub
22 case, which states that it's not required permissive joiner
23 is not required again, but that SED Heck and Feds Serve give
24 even more reasons where even would it -- where it would make
25 functional sense in that case, it wouldn't be.

1 But we would submit to the court, Your Honor, that it
2 would not make functional sense here. The efficiency and
3 convenience would not make sense because again, it would be
4 bringing my corporate clients US Xpress into a lawsuit and
5 into a lawsuit pending in the county that otherwise would not
6 be appropriate.

7 They would be put to the expense of having to try a
8 case with a party that is not making claims against them.
9 And that's the exact language that South the -- the Rule
10 20(b) provides for -- for separate trials. So if we're
11 already looking at the provision in separate trials, it go --
12 brings -- goes back to the question, why would we even be
13 doing joinder, which isn't mandatory or compulsive in the
14 first place?

15 And again, that separate trials goes back to the motion
16 for consolidation. As Mr. George has represented, he's filed
17 the motion in the Newberry case initiated by Mr. Orinda. We
18 have similarly filed a motion for consolidation for discovery
19 and the case brought by Mr. Oliver in Newberry.

20 It's my understanding that Mr. Cozby who brought the
21 suit in Sumter County has consented to those motions and is
22 agreeable to consolidating for discovery under the Newberry
23 cases. And again, the consolidation for discovery only
24 allows Thompson, to have their right on the Cozby case to
25 have the case tried here, subject to any motions that Mr.

1 Cozby may make later or that Mr. Thompson may make later. It
2 allows the individual parties to try the claims brought
3 against them and that they're bringing on their behalf. And
4 it takes away a lot of the concerns that Mr. George talks
5 about with jury strikes and more importantly, the verdict
6 form.

7 Your Honor, if this was joined as to one case, the
8 amount of legal gymnastics required in that verdict form for
9 being first Mr. Cozby's case and cause of action, which don't
10 include Mr. Orinda, which don't include US Xpress informing
11 the jury that if you find negligence and you find an
12 apportionment to Mr. Oliver or Mr. Eluate, who Mr. Eluate and
13 Quality Transport are defendants in the Sumter case. So if
14 you find that their negligence equals 100 percent, then that
15 would preclude any finding as to Mr. Orinda and Mr. Eluate
16 and US Xpress, yet we would still be put through the burden
17 of having to try that case, present that case.

18 And then we're already talking about things that I've
19 candidly, Your Honor, spent many hours this week, and Madison
20 Killen in our office has helped me as well. Just trying to
21 figure out how it even works to present it to you. We just
22 envision when we're presenting that to a verdict form, trying
23 to get some unanimous decision there and then your
24 instruction to the jury on how to interpret that. I think
25 that's the exact reason that 20(b) exists, even under

1 permissive joinder, which isn't required. We don't have to
2 try them together.

3 So then it brings us to the consolidation, which again,
4 I -- I think the only people we haven't heard from are Mr.
5 Eluate and Quality on their position as to discovery for the
6 purposes of -- of, or consolidation for the purposes of
7 discovery. I would assume if Mr. Smith, on behalf of Mr.
8 Oliver and Mr. -- I mean, Thompson would consent to discovery
9 or consolidation for trial, they would naturally consent to
10 consolidation for discovery as well. Then we're just arguing
11 about whether Sumter is the proper venue.

12 Again, this motion to consolidate and join, which
13 again, can't be done together, has to be one or the other in
14 Sumter County is brought by one of the defendants that has no
15 claims aggressively. Thompson is not a plaintiff in any form
16 or fashion in any of these cases. They're the only defendant
17 that's domiciled in Sumter, even their employee is -- is
18 domiciled and -- and the upstate.

19 And again, they're not a privy to the only case brought
20 against US Xpress. And so, Your Honor, again, just one --
21 one last point on the case law is that the Ellis by Ellis
22 versus Oliver Case specifically talks about consolidation not
23 being a vessel to create venue. I -- I've -- I've briefly
24 mentioned that to, Your Honor, the court, the big difference
25 being consolidation. They retained their separate identities

1 again, on behalf of US Xpress and Mr. Orinda, we believe
2 that's the appropriate action for this court.

3 And so what's before the court today with Thompson's
4 motion to consolidate for -- for trial and joinder. We would
5 submit, as we've just discussed, and as we've briefed, it's
6 not appropriate to do both, and it wouldn't be appropriate to
7 join these cases. It's not required to join these cases.
8 And that certainly consolidation for trial. There's no need
9 to make that determination now.

10 The rule provides under 42 for the ability to do that
11 in the future and consolidation broadly for just discovery
12 for specific hearings or for the whole thing. And there's no
13 need to make that determination now. And if -- even if there
14 were, there's no proper venue for Sumter County with the
15 claims against US Xpress, so they would be unfairly
16 prejudiced to be haled into court here to have to defend
17 this.

18 Thank you, Your Honor.

19 THE COURT: Thank you, sir.

20 MS. FRANKLIN: Your Honor, I'm here on behalf of Mr.
21 Cozby and we agree to consolidation. So I don't have much to
22 add and agree with Mr. George and Mr. Crane. I will say my
23 client lives in Korea, so for the purposes of discovery, it's
24 not going to make a difference if he has to come back to
25 South Carolina to Newberry or Sumter. Our case would've been

1 proper in Newberry either way. So we are okay to consolidate
2 for the purposes of discovery in Newberry and come time for
3 trial, which won't be anytime soon because depositions
4 haven't been done, then we would revisit that argument at a
5 later date.

6 THE COURT: All right. Ma'am, give me your name just
7 for the record.

8 MS. FRANKLIN: Ivey Franklin. Thank you, Your Honor.

9 THE COURT: All right.

10 MR. DAWSON: And, Your Honor, Hood Dawson here on
11 behalf of Mr. Eluate and Quality Haulers. Again, we don't
12 have much to add to this. We are in support of Mr. Smith's
13 motion. We have no objection to it, and no objection to
14 consolidating in Sumter at all.

15 THE COURT: All right. Thank you, sir.

16 MR. SMITH: Judge, just briefly respond back.

17 THE COURT: Yes, sir.

18 MR. SMITH: A couple of these issues, and I'll conclude
19 here. Judge, and -- and I guess what I heard on the end is I
20 -- I think I'm asking the court we filed for consolidation
21 and joinder. I'm asking the Court for joinder. Because that
22 takes care of any venue issues here, and I think that's the
23 most appropriate thing to do.

24 I'll -- I'll go through these one by one. I, you know,
25 I -- I'm a little concerned. I -- I think Mr. Crane spoke

1 for me and said that I would probably consent to
2 consolidation for discovery purposes. I want these cases
3 tried together. I don't want to get, if -- if I've got to
4 have this one case that I'm defending over here and have that
5 -- and have that wait forever. If they're going to say, you
6 know, you don't need to worry about collateral estoppel,
7 then, you know, I think my best case I got is right here.

8 And if I get -- if I get a defense verdict, which I
9 very well may, then that may just solve all my issues. And
10 so, you know, I -- but, you know, we'll -- we'll see and let
11 them figure that out. But I -- I submit, Judge, the whole
12 problem we got here is that -- that we are playing in the
13 land of unknown. And I read cases this morning that were
14 cited by them that -- that stood for the proposition, or they
15 were in some of their opinions, stood for the proposition
16 that there can be some offensive collateral estoppel.

17 And -- and, you know, and -- and the question they have
18 is they -- they make proclamations and say, this is no
19 problem. It's -- it's not it, but what if they're wrong? As
20 my law professor told -- used to tell me it was back when
21 cokes were 50 cents, but 50 cents and your opinion and 50
22 cents is still just going -- it's still going buy you a
23 Coca-Cola.

24 So, Judge, you know, I -- I think that's an issue.
25 Permissive joinder, they say cannot be compelled. Two cases,

1 and they were cited by them. I -- I read these, I can't
2 remember which one it was in. Says, "We affirm the decision
3 of the master." That means the master. This is Chan versus
4 Thompson, 302 S.C. 285. We affirmed the decision of the
5 master to add the other companies owned by the chance of the
6 litigation on the breach of contract claim.

7 So that right there showed that they did that. And
8 obviously it was appealed by the -- by the plaintiffs and the
9 court upheld that. Says, you know, they find that there is
10 some evidence. These companies were set up by the Chans and
11 utilized channel sales away from Lisa Floral in such a way,
12 deprive the Thompsons of sales commissions. Permissive
13 joinder of these companies was proper under 20 SCRCF.

14 So there's a judge that ordered it. Then the other
15 case is Gann versus Mongo. Again, they -- this is a
16 potential class action where they join a number of different
17 parties who don't all have the exact same type of claims
18 here. And it says, "We attach, you know no merit to the
19 defendant's contention concerning a joinder or the parties
20 plaintiff, the permissive joinder Rule 20(a) has determined
21 who may joinder action.

22 Says the rule allows several persons to join in
23 plaintiff and assert in single action if they assert the
24 right to relief jointly or severally, or in the alternative
25 respect are arising out of the same transaction occurrence of

1 sent or -- or occurrences, if any of the law of -- or fact
2 are common to all these persons will rise in that action.
3 And so what they want to say is there are different causes of
4 action or different questions in different lawsuits.

5 So, Judge, if you read Rule 20, it says that it's
6 arising out of the same transaction occurrence or series of
7 transactions or occurrences, if any -- any, not all, if any
8 question of law of fact to these purposes will rise in that
9 action. So there are -- every one of them has one common --
10 one common law, question of law or fact in there.

11 Judge, the consolidation doesn't change. I -- I've
12 heard their arguments about Amisub and obviously that's a
13 1992 case. Current law wasn't in effect at that point. They
14 still arguing 15-7-100. Again, that can be held later at a
15 different time. And that the convenience of witnesses is not
16 really appropriate to be determined. Now the question is; is
17 there -- is there appropriate venue here in Sumter? And
18 there is, if the court consolidates it here, I still don't
19 understand why they don't want the case here in Sumter.

20 But, you know, nonetheless, I -- I don't think it's an
21 inappropriate venue if it's -- if the cases are joined
22 because they're there. This -- about jury strikes. Judge, I
23 -- that's the bad thing about being a defendant.
24 Unfortunately, I'm there often, but when I have
25 co-defendants, all of us have to figure out, the court

1 doesn't give me any extra strikes. It's not a criminal case.
2 I don't get 10 or get more with multiple defendants. We get
3 our requisite amount of strikes and that's the way it is and
4 we have to work it out together. And that isn't a tough
5 concept, but that happens in courtrooms all over the state
6 every week.

7 They also ask about the complaint. They say this is
8 the oldest case. They may be dragged in here. Judge, I'm
9 willing to enter into scheduling order. I don't think if we
10 have all these parties, I think if -- I don't think you're --
11 I think your chief admin judge over here, but I don't think
12 you're going to force anyone to trial when the case just
13 started. Never seen you do that before. I don't think
14 you'll start here. And I think you would put it -- the case
15 on scheduling order. And that's a simple resolution to that
16 issue.

17 The collateral estoppel issue, again, Judge, you know,
18 that -- that is where -- where we -- where we hang our hat on
19 this issue. This -- this has really got some concerns. And,
20 you know, if we're -- if we're not careful, we're going end
21 up with inconsistent verdicts and people are going to have --
22 have collateral estoppel, and then we're going to have
23 issues.

24 I think I've done what I needed to do. I've made a
25 motion to join, I've raised those issues. And so at that

1 point, you know, Judge, I -- I think that's probably what we
2 need to be most concerned about because there's no absolute
3 certainty that this is not collateral estoppel, and it could
4 be under a number of different scenarios. And out of an
5 abundance of caution, I would ask you to join these claims
6 under Rule 20, which is appropriately -- which is absolutely
7 appropriate under the case law in this state that judge can
8 -- can join the claims and -- and leave venue here in Sumter.

9 THE COURT: Thank you, Mr. Smith.

10 MR. SMITH: Thank you, Your Honor.

11 THE COURT: All right. Folks, obviously there's a -- a
12 lot of information that's been submitted to the court some
13 relatively recently. And I'm not finding fault with anybody.
14 I understand that -- that things get done at the last minute
15 all the time. I -- the things that were submitted over the
16 weekend, I frankly haven't had the opportunity to -- to read
17 and study any -- any great detail.

18 So I'm going to take this matter under advisement and
19 ordinarily I like to -- to give people a date that I'm going
20 to have a decision made. But in this case given my schedule
21 over the next few weeks, I don't want to promise you anything
22 that I -- I don't want to set myself up for failure. So I --
23 I will promise that I'll make a decision in a reasonable
24 amount of time. I will notify the parties by email and
25 direct the -- if -- direct the prevailing party to prepare

1 the appropriate order.

2 So if anything needs to be -- I don't mind if -- if
3 anybody has anything they want to supplement or anything that
4 needs to be brought to my attention while this matter is
5 under advisement, just submit it via email is the best way.

6 MR. SMITH: Sometimes I -- I fail when you supplement,
7 then we've got the (inaudible) everyone starts going back
8 forth --

9 THE COURT: Yeah.

10 MR. SMITH: -- circular in that -- in this type case.
11 But hopefully we'll avoid that.

12 THE COURT: And -- and I -- I don't -- I hope there's
13 nothing else. I think what's been submitted is probably
14 detailed enough. I think it's probably going to put the ball
15 in my court to -- to read and digest all of these matters.
16 But if anything comes up that's out of the ordinary that
17 needs to be brought to my attention I know I'm in court the
18 next three, four weeks in a row, so you all email is the best
19 way. If I'm on the road, I -- you know, so. And email my
20 law clerk's the best way to get -- to get it to me. So if
21 you all will do that, but I will make the decision in a -- in
22 an appropriate amount of time. Thank you all very much. I
23 appreciate everybody being here.

24 MR. SMITH: Thank you, Your Honor. (Crosstalk).

25 THE COURT: All right?

1 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
2 10:40 A.M.)
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CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in South Carolina Circuit Court 3 of Sumter County, South Carolina, on the 9th Day of October, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 22, 2024

Natasha Barrientos

Transcriber

THOMPSON CONSTRUCTION GROUP, INC.

Corporate Information

Important Dates

Entity Id: 00167593

Effective Date: 12/31/1986

Entity Type: Corporation

Expiration Date: N/A

Status: Good Standing

Term End Date: N/A

Domestic/Foreign: Domestic

Dissolved Date: N/A

Incorporated State: South Carolina

Registered Agent

Agent: GREG A THOMPSON

Address: 100 N. MAIN STREET
SUMTER, South Carolina 29150

Official Documents On File

Filing Type	Filing Date
Change of Agent or Office	11/25/2008
Amendment	03/13/2006
Amendment	06/05/1997
Incorporation	12/31/1986

Former Names

Name	Filing Date
THOMPSON INDUSTRIAL SERVICES, INC.	N/A

Locations (<https://www.thompsonconstructiongroup.com/locations>)

News (<https://www.thompsonconstructiongroup.com/news>) |

☎ (803) 773-8005 (tel:8037738005)



(<https://www.thompsonconstructiongroup.com/?hsLang=en>)

Offices in Columbia

Locations



FIND A LOCATION



Thompson Headquarters

Our corporate headquarters showcases our design and construction capabilities and contributes to the downtown Sumter revitalization.

OUR LOCATIONS

Located Near You

Thompson Construction is headquartered in South Carolina serving a wide variety of industries and markets throughout the United States.

Thompson Construction Group

Sumter, SC Main Office	100 N Main St. Sumter, SC 29150 (http://maps.google.com/maps?daddr=100+N.+Main%2c+Sumter%2c+SC+29150)
Charleston, SC	(803) 773-8005
Greenville, SC	(800) 849-8040
York, PA	879 S. Guignard Drive Sumter, SC 29150 (http://maps.google.com/maps?daddr=879+Guignard+Drive%2c+Sumter%2c+SC+29150)
Hayden, ID	
Clarksville, AR	

Thompson Turner Construction



Sumter, SC | Main
Office

Charleston, SC

Columbia, SC

Greenville, SC

Shem Creek, SC

100 N Main St.

Sumter, SC 29150

(<http://maps.google.com/maps?>

daddr=100+N.+Main%2c+Sumter%2c+SC+29150)

☎ (803) 773-8005

☎ (800) 849-8040

TAKE THE NEXT STEP

Put our expertise
and experience to work for you.
Reach out to one of our experts today.

Contact Us (https://www.thompsonconstructiongroup.com/cs_zlwUqgfwQgKvg&pageId=90409501107&placement=eb4642a19cfa&hsutk=447fe90a8d2baba17a608d0c17b7b132&canonical=https%3A%2F%2Fwww.13oTL9sB6TGLzBb5NOYglj83Cb7GbsoQIRbym407uCVtPJIA&__hstc=61067315.447fe90a8d2baba17a608d0c17b7b132.1696523500558.169)

Headquarters:
100 North Main Street
Sumter, SC 29150

(803) 773-8005

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POWER	US/THOMPSON-
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igshid=NTc4MTIwNjQ2YQ%3D%3D)

(<https://www.linkedin.com/company/thompson-construction-group-inc/>)

ELECTRONICALLY FILED - 2023 Oct 05 2:31 PM - SUMTER - COMMON PLEAS - CASE#2022CP4301206

Oct 05 2023

REFERENCE ID: 1450772


SECRETARY OF STATE OF SOUTH CAROLINA

**STATE OF SOUTH CAROLINA
SECRETARY OF STATE
NOTICE OF CHANGE OF REGISTERED OFFICE
OR REGISTERED AGENT OR BOTH
OF A SOUTH CAROLINA
OR FOREIGN CORPORATION**

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Sections 33-5-102 and 33-15-108 of the 1976 South Carolina Code of Laws as amended, the undersigned corporation submits the following information

- 1 The name of the corporation is Thompson Construction Group, Inc
- 2 The corporation is (complete either a or b whichever is applicable)
a a domestic corporation incorporated in South Carolina on 12/31/86 - Amended 03/13/06, or
b a foreign corporation incorporated in _____ on _____, and
State Date
authorized to do business in South Carolina on _____
Date
- 3 The street address of the present registered office in South Carolina is 115 Broad Street
Street & Number
in the city of Sumter, South Carolina 29150
Zip Code
- 4 If the current registered office is to be changed, the street address to which its registered office is
to be changed is 100 N Main Street in the city of Sumter South
Street Address
Carolina 29150
Zip Code
- 5 The name of the present registered agent is Gregory A Thompson
- 6 If the current registered agent is to be changed the name of the successor registered agent is
N/A

* I hereby consent to the appointment as registered agent of the corporation

N/A

Signature of New Registered Agent

- 7 The address of the registered office and the address of the business office of the registered agent, as changed will be identical
- 8 Unless a delayed date is specified, this will be effective upon acceptance for filing by the Secretary of State (See Section 33-1-230(b) of the 1976 South Carolina Code of Laws, as amended _____)

*Pursuant to Sections 33-5-102(5) and 33-5-108(5) of the 1976 South Carolina Code of Laws, as amended the written consent of the registered agent may be attached to this form

081125-0148 FILED 11/25/2008
THOMPSON CONSTRUCTION GROUP INC
Filing Fee \$10.00 ORIG



Mark Hammond

South Carolina Secretary of State

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Oct 05 2023

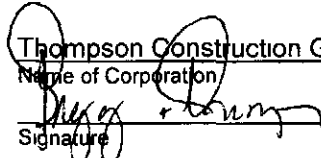
REFERENCE ID: 1450772



SECRETARY OF STATE OF SOUTH CAROLINA

Date 11/17/09

Thompson Construction Group, Inc
Name of Corporation



Thompson Construction Group, Inc
Name of Corporation
Signature

Gregory A. Thompson, President
Type or Print Name and Title

FILING INSTRUCTIONS

- 1 Two copies of this form the original and either a duplicate original or a conformed copy must be filed
- 2 Filing Fee (payable to the Secretary of State at the time of filing this document) - \$10 00
- 3 Pursuant to Section 33-5-102(b) of the 1976 South Carolina Code of Laws as amended the registered agent can file this when the only change is the street address of the registered office In this situation the following statement should be typed on the form above the registered agent's signature The corporation has been notified of this change In this case the filing fee is \$2 00

Return to Secretary of State
P O Box 11350
Columbia SC 29211



State of South Carolina
The Circuit Court of the Third Judicial Circuit

R. Kirk Griffin
Judge

215 North Harvin Street, Suite 226
Sumter, SC 29150
Phone: (803) 436-2150
Fax: (803) 436-2403
rgriffin@sccourts.org

January 9, 2024

TO: G. Murrell Smith Jr, Esq.
Frederick N. Hanna, Jr. Esq.
Marshall C. Crane, Esq.
Jacob D. Born, Esq,
James C. Sproat, Esq.

FROM. R. KIRK GRIFFIN

RE: Jerry Cozby v. Kent Huntley Oliver, Thompson Construction Group, Inc. Curtis Oulette, Quality Haulers, Inc.

Case Number 2022-CP-43-01006

A hearing was held on Defendant Thompson Construction Group, Inc. and Defendant Kent Huntley Oliver's Motion for Permissive Joinder and Consolidation on October 9, 2023. All interested parties were present at the hearing, and allowed to present arguments and memoranda of law. At the conclusion of the hearing, the Court took the matter under advisement. After reviewing the issue under advisement, the arguments of counsel, and all memoranda submitted, I respectfully grant Thompson Construction Group, Inc. and Kent Huntley Oliver's Motion for Permissive Joinder and Consolidation. The Court hereby joins the Cozby Action, the Arender Acton, and the Oliver action around the Cozby Action, Case Number 2022-CP-43-01006 for

000299

discovery and trial. Mr., Smith and Mr. Hanna, please prepare an order consistent with your written submissions and oral argument within 30 days. Please allow all interested parties an opportunity to review it. Upon review, please submit the order via efile and I will accept if proper.

If you have any questions, please feel free to contact my office.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Jerry Cozby,

Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Ouellette, and Quality
Haulers, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Dean Alan Arender and Tamala Arender,

Plaintiffs,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Kent Ouellette, and DMX
Transportation Services, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Kent Huntley Oliver,

Plaintiff,

vs.

Curtis Kent Ouellette, Quality Haulers, Inc.,
Dean Alan Arender, US XPRESS Leasing,
Inc., and US XPRESS, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

C/A NO.: 2022-CP-43-01006

ORDER

The matter before the Court is a motion for permissive joinder and consolidation filed by Defendants Kent Huntley Oliver and Thompson Construction Group, Inc. (hereinafter and collectively, “Thompson”). In the motion, Thompson requests the Court to join and consolidate two lawsuits pending in the Newberry County Court of Common Pleas with this lawsuit filed by Plaintiff Jerry Cozby (“Cozby”). Thompson seeks to join and consolidate the three cases for discovery and trial in the Sumter County Court of Common Pleas under the case number assigned to the Cozby action.

A hearing on Thompson’s motion was held on October 9, 2023, with adequate notice provided to all parties in the affected cases. The Court heard argument from counsel for all interested parties, as set forth in more detail below. The Court has carefully considered Thompson’s motion, all memoranda submitted by the interested parties, the arguments offered during the hearing, and the relevant law. For the reasons set forth below, the Court grants Thompson’s motion.

BACKGROUND

All lawsuits referenced in this Order arise from a multi-vehicle accident that occurred on Interstate 26 near Jalapa, South Carolina on November 12, 2020. Four individuals were involved in the accident: (1) Jerry Cozby; (2) Curtis Ouellette, driving for Quality Haulers, Inc.; (3) Kent Huntley Oliver, driving for Thompson Construction Group, Inc.; and (4) Dean Arender, driving for U.S. Xpress, Inc. and/or U.S. Xpress Leasing, Inc. Since the accident, the following lawsuits have been filed:¹

¹ Great West Casualty Company, as subrogee of U.S. Xpress, Inc., filed a claim for property damages before the Newberry County Arbitration Panel. *See Great West Casualty Company v. Thompson Construction Group, Inc., et al.* C/A No. 2023-CP-36-00125. Thompson did not seek to join and consolidate that action in its motion. Accordingly, the Court does not address that action in this Order.

- *Cozby v. Oliver, et al.* (“Cozby Action”)
 - C/A No. 2022-CP-43-01006
 - Plaintiff: Jerry Cozby
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; and Quality Haulers, Inc.
 - Venue: Sumter County Court of Common Pleas
- *Arender v. Oliver, et al.* (“Arender Action”)
 - C/A No. 2023-CP-36-00276
 - Plaintiffs: Dean Arender and Tamala Arender
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; Quality Haulers, Inc.; and DMX Transportation Services Inc.
 - Venue: Newberry County Court of Common Pleas
- *Oliver v. Ouellette, et al.* (“Oliver Action”)
 - C/A No. 2023-CP-36-00300
 - Plaintiff: Kent Huntley Oliver
 - Defendants: Curtis Kent Ouellette; Quality Haulers, Inc.; Dean Arender; U.S. XPRESS Leasing, Inc.; and U.S. XPRESS, Inc.
 - Venue: Newberry County Court of Common Pleas

On August 18, 2023, Thompson moved to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial under Case No. 2022-CP-43-01006, the number assigned to the Cozby Action.

As noted above, the hearing on Thompson’s motion was held on October 9, 2023. G. Murrell Smith, Jr. and Frederick N. Hanna, Jr. appeared on behalf of Thompson Construction Group, Inc. and Kent Oliver. E. Hood Dawson, III appeared on behalf of Defendants Curtis Ouellette and Quality Haulers, Inc. Ivey B. Franklin appeared on behalf of Plaintiff.

Counsel for additional parties in the Arender Action and the Oliver Action also attended the hearing and presented argument. Justin J. Arenas appeared on behalf of Kent Huntley Oliver. Jacob D. Born and James D. George, Jr. appeared on behalf of Dean Arender and Tamala Arender (hereinafter and collectively, “Arender”). Marshall C. Crane and Madison C. Killen appeared on behalf of U.S. Xpress Leasing, Inc. and U.S. Xpress, Inc. (hereinafter and collectively, “U.S. Xpress”).

ARGUMENT

In its motion, Thompson asks the Court to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial in the Sumter County Court of Common Pleas. Thompson advances three primary arguments in support of its motion. First, Thompson contends it would be proper for the Court to join and consolidate the cases because the requirements of Rules 20(a) and 42(a), SCRCP, are satisfied. Next, Thompson asserts that upon joining and consolidating the cases, venue would be proper in Sumter County. Finally, Thompson argues joinder and consolidation are in the best interest of the parties and the Court.

The primary opponents to Thompson's motion are Arender and U.S. Xpress. Although Arender and U.S. Xpress indicate they would be willing to consent to consolidation for discovery purposes only in Newberry County,² they oppose Thompson's request for joinder and consolidation for discovery and trial in Sumter County. U.S. Xpress contends it is improper for Thompson to seek both joinder and consolidation. Both Arender and U.S. Xpress argue joinder would be improper under the circumstances presented in the collective cases and that venue would be improper in Sumter County. Finally, Arender and U.S. Xpress argue joining and consolidating the cases for trial would be undesirable.

Before addressing these arguments, for sake of completeness, the Court notes the parties' respective positions on joinder and consolidation. Thompson, Oliver, Ouellette, and Quality Haulers, Inc. support Thompson's motion for joinder and consolidation for trial and discovery in Sumter County. Cozby, Arender, and U.S. Xpress oppose Thompson's motion, but would be

² On October 6, 2023, U.S. Xpress filed a motion to consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery in the Newberry County Court of Common Pleas.

agreeable to consolidation for discovery in Newberry County. The Court now addresses the substantive arguments of the parties.

I. Thompson's request for joinder and consolidation

In its motion, Thompson requested that the Court grant permissive joinder and consolidation of the cases under Rules 20(a) and 42(a), SCRCP. In response, U.S. Xpress contends Thompson's request for both permissive joinder and consolidation is improper. U.S. Xpress relies primarily on *Ellis v. Oliver*, in which the South Carolina Supreme Court discussed the differences between permissive joinder and consolidation. 307 S.C. 365, 367-68, 415 S.E.2d 400, 401-02 (1992) (explaining that pleadings are merged into one action under permissive joinder, but separate actions retain their own identity under consolidation).

During the hearing, counsel for Thompson clarified that Thompson only sought permissive joinder of the cases. In light of Thompson's decision to pursue permissive joinder only—not permissive joinder and consolidation—it is unnecessary for the Court to rule upon U.S. Xpress' argument. The Court only considers Thompson's request for permissive joinder in the remainder of this Order.

II. The requirements for permissive joinder are satisfied

Thompson requests permissive joinder of the Cozby Action, the Arender Action, and the Oliver Action under Rule 20(a), SCRCP. Thompson contends that because the threshold requirements of Rule 20(a) are satisfied, the Court should exercise its authority and join the cases. Thompson contends it is desirable for the Court to do so for several reasons, which the Court will address below in Section IV of this Order.

Both Arender and U.S. Xpress contend it would be improper for the Court to join the cases under Rule 20(a). Arender and U.S. Xpress contend that because joinder under Rule 20 is

permissive rather than mandatory, Thompson cannot compel the Court to order joinder in this instance. Arender claims that because Thompson requests mandatory joinder, its arguments should be analyzed under Rule 19(a), SCRCP, which Arender contends is not applicable. U.S. Xpress further argues the requirements of Rule 20(a) are not satisfied because “the question of any negligence of Arender or [U.S. Xpress] is not ‘common’ to any party other than Oliver.”

Arender and U.S. Xpress’ arguments with respect to “mandatory” joinder rest on a mischaracterization of Thompson’s argument. Thompson plainly moved for “permissive joinder” under Rule 20(a) and never argued that joinder was mandatory. Indeed, Thompson never suggested that either the parties or the Court were required to join the claims in one action. Nor did Thompson assert any arguments based on Rule 19, SCRCP. Instead, Thompson simply requests that the Court exercise its discretion and join the cases because they arise from the same series of occurrences and share common questions of law and fact. Accordingly, the Court rejects Arender and U.S. Xpress’ suggestion that Thompson seeks “mandatory” joinder.

Although South Carolina’s courts have not frequently discussed Rule 20(a), the Court has broad discretion under that Rule to decide the scope of civil actions. *See Hedberg v. Darlington Cnty. Disabilities & Special Needs Bd.*, 133 F.3d 915 (4th Cir. 1997) (discussing district court’s discretion under Fed. R. Civ. P. 20(a), which is substantially similar to Rule 20(a), SCRCP). The Rule explains when parties may be permissively joined into one action:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to

their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 20(a), SCRCP.

The Court agrees with Thompson that permissive joinder of the Cozby Action, the Arender Action, and the Oliver Action is permitted under the applicable framework. First, there is no question that each of these actions arises from the same “occurrence” or “series of . . . occurrences”—the November 12, 2020 multi-vehicle accident. Additionally, there is at least one question of law or fact common to each of the plaintiffs and defendants in the three cases. Each of the actions involves common questions of fact about the details of the accident (including the weather conditions surrounding the accident) and the extent of the parties’ damages. These actions also share questions of law relating to the parties’ respective negligence and causation.

U.S. Xpress’ argument that there is no shared question as to Arender and U.S. Xpress’ negligence is incorrect. First, even assuming that only Oliver had an interest in determining Arender and U.S. Xpress’ negligence, this argument misapplies Rule 20(a). Rule 20(a) does not require that *all* questions of fact or law be common to each of the parties; instead, it is sufficient if there is “*any* question of law or fact common” to the parties. Rule 20(a), SCRCP (emphasis added). In any event, Oliver is not the only plaintiff with an interest in determining Arender and U.S. Xpress’ negligence. Arender and U.S. Xpress’ negligence is also at issue in the Cozby Action, where defendants have asserted that Cozby’s injuries were caused by the fault of others, and in the Arender Action, where defendants have asserted comparative negligence defenses.

Therefore, the Court agrees with Thompson that the requirements of Rule 20(a) are satisfied, and the Court may exercise its discretion to join these cases.

III. Venue in Sumter County is proper

Thompson next contends that venue would be proper if the Court joins these cases for discovery and trial in Sumter County. According to Thompson, because the pleadings are merged after an order of permissive joinder, *see Ellis*, 307 S.C. at 367, 415 S.E.2d at 401, venue is proper in the county of residence of any defendant in the Cozby Action, the Arender Action, or the Oliver Action. *See* S.C. Code Ann. § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”). In further support of its request to join the cases in Sumter County, as opposed to a proposed consolidation in Newberry County, Thompson relies on the fact that it is the only Defendant that has been sued in its county of residence. Thompson contends it should not be deprived of its “substantial right” to a trial in its county of residence. *See, e.g., Carroll v. Guess*, 302 S.C. 175, 177, 394 S.E.2d 707, 708 (1990).

Arender and U.S. Xpress offer different arguments for why Thompson’s position as to venue is incorrect. Arender perceives Thompson’s argument for venue in Sumter County as an attempt to change venue under section 15-7-100(A). Arender asks the Court to deny Thompson’s request for a change in venue because Thompson cannot demonstrate “the convenience of witnesses and the ends of justice would be promoted by the change.” *See* S.C. Code Ann. § 15-7-100(A)(3).

U.S. Xpress, on the other hand, contends venue would be improper in Sumter County because the Oliver Action could not have been brought in Sumter County. U.S. Xpress further argues that after the 2005 amendments to the venue statute, a plaintiff has a right to bring suit either in the venue where a defendant resides or where the most substantial part of the act or omission occurred. *See* S.C. Code Ann. § 15-7-30.

The Court agrees with Thompson that venue for the joined cases is proper in Sumter County. As Thompson notes, an order of permissive joinder merges previously separate actions into one. *See* Rule 20(a), SCRCPP; *see also Ellis*, 307 S.C. at 367, 415 S.E.2d at 401 (discussing the difference between an order of consolidation and an order of permissive joinder). Therefore, for venue purposes, the residency of each defendant in each of the merged actions is considered. *See* S.C. Code Ann. § 15-7-30(B); *see also Ellis*, 307 S.C. at 367 n.2, 415 S.E.2d at 402 n.2. Because Thompson is a resident of Sumter County, venue for these joined actions is proper in Sumter County. *See* S.C. Code Ann. § 15-7-30(E) (stating an action tried against a domestic corporation must be brought and tried in the county in which the corporation has its principal place of business or where the most substantial part of the alleged act or omission occurred); § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”).

Contrary to U.S. Xpress’ position, the fact that the Oliver Action could not have been brought in Sumter County does not change the analysis. This argument overlooks the impact of an order of permissive joinder, which merges the previously independent actions into one. Accordingly, the relevant task is not to determine where venue would properly lie for each of the independent actions; the proper question is where venue properly lies for the merged actions. As the foregoing discussion demonstrates, venue for the merged actions is proper in Sumter County.

The Court also rejects Arender’s arguments under section 15-7-100. Although the Court’s Order effectively changes the venue of the Arender Action and the Oliver from Newberry County to Sumter County, the Court’s Order is not based on section 15-7-100. Indeed, Thompson does not seek a change in venue based on the convenience of witnesses and the ends of justice. Thompson simply seeks to join the cases into one in Sumter County, which it contends is a proper

venue under section 15-7-30. Because the Court is not faced with a motion under section 15-7-100, the Court need not consider Arender's argument respecting the most "convenient" forum for these cases to be heard.

Finally, the Court finds that Cozby's decision to sue Thompson in its county of residence is significant to the venue analysis. Because these actions were filed in different counties, Thompson's request for joinder necessarily requires a change of venue for either the Cozby Action or the Arender Action and the Oliver Action. Although Arender and U.S. Xpress desire for these cases to be consolidated in Newberry County, the Court agrees that Thompson has a substantial right to be tried in its county of residence. Contrary to U.S. Xpress' argument, the 2005 amendments to the venue statute did not impact that right, as recognized by the South Carolina Supreme Court in a decision shortly after the amendment. *See Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 442, 633 S.E.2d 143, 147 (2006) ("The defendant has a substantial right to be tried in the county of his residence pursuant to S.C. Code Ann. § 15-7-30 (2005)."). Thompson's substantial right to be tried in Sumter County vested when Cozby elected to bring suit there. Importantly, no other defendants in any of these cases were sued in their county of residence. Accordingly, Thompson's right to defend the Cozby case in Sumter County further supports the Court's decision to join these cases in Sumter County.

IV. Joinder is desirable for the parties and the court

Lastly, Thompson asks the Court to join these cases for discovery and trial because it has demonstrated that doing so would be desirable. Thompson contends joining the cases would prevent duplicative litigation, save the parties from incurring unnecessary costs, and conserve judicial resources. Thompson also contends joining the cases would eliminate the risk of a judgment in one case having preclusive effect in all other cases. *See, e.g., Sims v. Amisub of S.C.*,

Inc., 408 S.C. 202, 209, 758 S.E.2d 187, 191 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E.2d 379 (2015) (noting the doctrine of collateral estoppel “prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same”).

In response, Arender and U.S. Xpress contend the cases should not be joined for trial. Relying on the Restatement (Second) of Judgments § 29, Arender contends offensive collateral estoppel is not a realistic concern in these cases. U.S. Xpress argues these actions are not appropriate for joinder because a single trial would involve numerous claims and parties and would be difficult for jurors to understand. U.S. Xpress also claims it would be improper to join these actions under the case number assigned to the Cozby Action because it is the oldest case and will be subject to trial before the parties can adequately prepare.

The Court agrees with Thompson that joinder for both discovery and trial is justified under the circumstances presented in these cases. Plainly, it will be less burdensome for all parties and the Court to join these proceedings. Joinder will reduce cost to the parties, conserve judicial resources, eliminate the need for repetitive discovery, reduce the burden on witnesses, and prevent inconsistent judgments. To put it simply, it would be incredibly inefficient to litigate these claims separately.

Additionally, as Thompson argues in its motion, joinder will eliminate the risk of collateral estoppel applying to prevent adjudication on the merits. The South Carolina Supreme Court has recognized that the offensive use of nonmutual collateral estoppel may be appropriate in certain circumstances. *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). Arender contends this concern is not legitimate, as the Restatement provides that a person seeking to invoke favorable preclusion may not do so if he could have

effected joinder in this first action. *See* Restatement (Second) of Judgments § 29(3). Regardless of whether that exception would apply to prevent offensive collateral estoppel, the safest course at this stage is to join the actions and thereby eliminate the risk of judgments having preclusive effect.

Furthermore, the Court is not persuaded by U.S. Xpress' arguments about a single trial being confusing for jurors to follow. Lawyers and judges in this State frequently try cases involving numerous claims and parties. The Court finds the benefits of joinder outweigh any concerns associated with a single trial. In any event, should U.S. Xpress' concerns prove legitimate as trial approaches, Rule 20(b) provides the Court with flexibility to ensure an efficient trial process. Rule 20(b), SCRCP ("The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.").

Finally, U.S. Xpress' argument respecting the age of the Cozby Action is without merit. As noted above, U.S. Xpress opposes joining these cases around the Cozby Action because it is the oldest case and may be called for trial before the parties have time to conduct necessary discovery. This dilemma can easily be resolved by the parties entering into a scheduling order. The parties will not be forced to a trial before they have had time to perform adequate discovery.

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CONCLUSION

For the foregoing reasons, the Court grants Thompson's motion and joins the Cozby Action, the Arender Action, and the Oliver Action around Case Number 2022-CP-43-01006, the number assigned to the Cozby Action.

IT IS SO ORDERED.

The Honorable R. Kirk Griffin
Circuit Court Judge

February __, 2024
Sumter, South Carolina



Sumter Common Pleas

Case Caption: Jerry Cozby VS Kent Huntley Oliver , defendant, et al
Case Number: 2022CP4301006
Type: Order/Consolidate

So Ordered

s/ R. Kirk Griffin 2768

Electronically signed on 2024-02-13 11:30:17 page 14 of 14

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Jerry Cozby,

Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Ouellette, and Quality
Haulers, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Dean Alan Arender and Tamala Arender,

Plaintiffs,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Kent Ouellette, and DMX
Transportation Services, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Kent Huntley Oliver,

Plaintiff,

vs.

Curtis Kent Ouellette, Quality Haulers, Inc.,
Dean Alan Arender, US XPRESS Leasing,
Inc., and US XPRESS, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

C/A NO.: 2022-CP-43-01006

ORDER

The matter before the Court is a motion for permissive joinder and consolidation filed by Defendants Kent Huntley Oliver and Thompson Construction Group, Inc. (hereinafter and collectively, “Thompson”). In the motion, Thompson requests the Court to join and consolidate two lawsuits pending in the Newberry County Court of Common Pleas with this lawsuit filed by Plaintiff Jerry Cozby (“Cozby”). Thompson seeks to join and consolidate the three cases for discovery and trial in the Sumter County Court of Common Pleas under the case number assigned to the Cozby action.

A hearing on Thompson’s motion was held on October 9, 2023, with adequate notice provided to all parties in the affected cases. The Court heard argument from counsel for all interested parties, as set forth in more detail below. The Court has carefully considered Thompson’s motion, all memoranda submitted by the interested parties, the arguments offered during the hearing, and the relevant law. For the reasons set forth below, the Court grants Thompson’s motion.

BACKGROUND

All lawsuits referenced in this Order arise from a multi-vehicle accident that occurred on Interstate 26 near Jalapa, South Carolina on November 12, 2020. Four individuals were involved in the accident: (1) Jerry Cozby; (2) Curtis Ouellette, driving for Quality Haulers, Inc.; (3) Kent Huntley Oliver, driving for Thompson Construction Group, Inc.; and (4) Dean Arender, driving for U.S. Xpress, Inc. and/or U.S. Xpress Leasing, Inc. Since the accident, the following lawsuits have been filed:¹

¹ Great West Casualty Company, as subrogee of U.S. Xpress, Inc., filed a claim for property damages before the Newberry County Arbitration Panel. *See Great West Casualty Company v. Thompson Construction Group, Inc., et al.* C/A No. 2023-CP-36-00125. Thompson did not seek to join and consolidate that action in its motion. Accordingly, the Court does not address that action in this Order.

- *Cozby v. Oliver, et al.* (“Cozby Action”)
 - C/A No. 2022-CP-43-01006
 - Plaintiff: Jerry Cozby
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; and Quality Haulers, Inc.
 - Venue: Sumter County Court of Common Pleas
- *Arender v. Oliver, et al.* (“Arender Action”)
 - C/A No. 2023-CP-36-00276
 - Plaintiffs: Dean Arender and Tamala Arender
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; Quality Haulers, Inc.; and DMX Transportation Services Inc.
 - Venue: Newberry County Court of Common Pleas
- *Oliver v. Ouellette, et al.* (“Oliver Action”)
 - C/A No. 2023-CP-36-00300
 - Plaintiff: Kent Huntley Oliver
 - Defendants: Curtis Kent Ouellette; Quality Haulers, Inc.; Dean Arender; U.S. XPRESS Leasing, Inc.; and U.S. XPRESS, Inc.
 - Venue: Newberry County Court of Common Pleas

On August 18, 2023, Thompson moved to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial under Case No. 2022-CP-43-01006, the number assigned to the Cozby Action.

As noted above, the hearing on Thompson’s motion was held on October 9, 2023. G. Murrell Smith, Jr. and Frederick N. Hanna, Jr. appeared on behalf of Thompson Construction Group, Inc. and Kent Oliver. E. Hood Dawson, III appeared on behalf of Defendants Curtis Ouellette and Quality Haulers, Inc. Ivey B. Franklin appeared on behalf of Plaintiff.

Counsel for additional parties in the Arender Action and the Oliver Action also attended the hearing and presented argument. Justin J. Arenas appeared on behalf of Kent Huntley Oliver. Jacob D. Born and James D. George, Jr. appeared on behalf of Dean Arender and Tamala Arender (hereinafter and collectively, “Arender”). Marshall C. Crane and Madison C. Killen appeared on behalf of U.S. Xpress Leasing, Inc. and U.S. Xpress, Inc. (hereinafter and collectively, “U.S. Xpress”).

ARGUMENT

In its motion, Thompson asks the Court to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial in the Sumter County Court of Common Pleas. Thompson advances three primary arguments in support of its motion. First, Thompson contends it would be proper for the Court to join and consolidate the cases because the requirements of Rules 20(a) and 42(a), SCRCP, are satisfied. Next, Thompson asserts that upon joining and consolidating the cases, venue would be proper in Sumter County. Finally, Thompson argues joinder and consolidation are in the best interest of the parties and the Court.

The primary opponents to Thompson's motion are Arender and U.S. Xpress. Although Arender and U.S. Xpress indicate they would be willing to consent to consolidation for discovery purposes only in Newberry County,² they oppose Thompson's request for joinder and consolidation for discovery and trial in Sumter County. U.S. Xpress contends it is improper for Thompson to seek both joinder and consolidation. Both Arender and U.S. Xpress argue joinder would be improper under the circumstances presented in the collective cases and that venue would be improper in Sumter County. Finally, Arender and U.S. Xpress argue joining and consolidating the cases for trial would be undesirable.

Before addressing these arguments, for sake of completeness, the Court notes the parties' respective positions on joinder and consolidation. Thompson, Oliver, Ouellette, and Quality Haulers, Inc. support Thompson's motion for joinder and consolidation for trial and discovery in Sumter County. Cozby, Arender, and U.S. Xpress oppose Thompson's motion, but would be

² On October 6, 2023, U.S. Xpress filed a motion to consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery in the Newberry County Court of Common Pleas.

agreeable to consolidation for discovery in Newberry County. The Court now addresses the substantive arguments of the parties.

I. Thompson's request for joinder and consolidation

In its motion, Thompson requested that the Court grant permissive joinder and consolidation of the cases under Rules 20(a) and 42(a), SCRCP. In response, U.S. Xpress contends Thompson's request for both permissive joinder and consolidation is improper. U.S. Xpress relies primarily on *Ellis v. Oliver*, in which the South Carolina Supreme Court discussed the differences between permissive joinder and consolidation. 307 S.C. 365, 367-68, 415 S.E.2d 400, 401-02 (1992) (explaining that pleadings are merged into one action under permissive joinder, but separate actions retain their own identity under consolidation).

During the hearing, counsel for Thompson clarified that Thompson only sought permissive joinder of the cases. In light of Thompson's decision to pursue permissive joinder only—not permissive joinder and consolidation—it is unnecessary for the Court to rule upon U.S. Xpress' argument. The Court only considers Thompson's request for permissive joinder in the remainder of this Order.

II. The requirements for permissive joinder are satisfied

Thompson requests permissive joinder of the Cozby Action, the Arender Action, and the Oliver Action under Rule 20(a), SCRCP. Thompson contends that because the threshold requirements of Rule 20(a) are satisfied, the Court should exercise its authority and join the cases. Thompson contends it is desirable for the Court to do so for several reasons, which the Court will address below in Section IV of this Order.

Both Arender and U.S. Xpress contend it would be improper for the Court to join the cases under Rule 20(a). Arender and U.S. Xpress contend that because joinder under Rule 20 is

permissive rather than mandatory, Thompson cannot compel the Court to order joinder in this instance. Arender claims that because Thompson requests mandatory joinder, its arguments should be analyzed under Rule 19(a), SCRCP, which Arender contends is not applicable. U.S. Xpress further argues the requirements of Rule 20(a) are not satisfied because “the question of any negligence of Arender or [U.S. Xpress] is not ‘common’ to any party other than Oliver.”

Arender and U.S. Xpress’ arguments with respect to “mandatory” joinder rest on a mischaracterization of Thompson’s argument. Thompson plainly moved for “permissive joinder” under Rule 20(a) and never argued that joinder was mandatory. Indeed, Thompson never suggested that either the parties or the Court were required to join the claims in one action. Nor did Thompson assert any arguments based on Rule 19, SCRCP. Instead, Thompson simply requests that the Court exercise its discretion and join the cases because they arise from the same series of occurrences and share common questions of law and fact. Accordingly, the Court rejects Arender and U.S. Xpress’ suggestion that Thompson seeks “mandatory” joinder.

Although South Carolina’s courts have not frequently discussed Rule 20(a), the Court has broad discretion under that Rule to decide the scope of civil actions. *See Hedberg v. Darlington Cnty. Disabilities & Special Needs Bd.*, 133 F.3d 915 (4th Cir. 1997) (discussing district court’s discretion under Fed. R. Civ. P. 20(a), which is substantially similar to Rule 20(a), SCRCP). The Rule explains when parties may be permissively joined into one action:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to

their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 20(a), SCRCP.

The Court agrees with Thompson that permissive joinder of the Cozby Action, the Arender Action, and the Oliver Action is permitted under the applicable framework. First, there is no question that each of these actions arises from the same “occurrence” or “series of . . . occurrences”—the November 12, 2020 multi-vehicle accident. Additionally, there is at least one question of law or fact common to each of the plaintiffs and defendants in the three cases. Each of the actions involves common questions of fact about the details of the accident (including the weather conditions surrounding the accident) and the extent of the parties’ damages. These actions also share questions of law relating to the parties’ respective negligence and causation.

U.S. Xpress’ argument that there is no shared question as to Arender and U.S. Xpress’ negligence is incorrect. First, even assuming that only Oliver had an interest in determining Arender and U.S. Xpress’ negligence, this argument misapplies Rule 20(a). Rule 20(a) does not require that *all* questions of fact or law be common to each of the parties; instead, it is sufficient if there is “*any* question of law or fact common” to the parties. Rule 20(a), SCRCP (emphasis added). In any event, Oliver is not the only plaintiff with an interest in determining Arender and U.S. Xpress’ negligence. Arender and U.S. Xpress’ negligence is also at issue in the Cozby Action, where defendants have asserted that Cozby’s injuries were caused by the fault of others, and in the Arender Action, where defendants have asserted comparative negligence defenses.

Therefore, the Court agrees with Thompson that the requirements of Rule 20(a) are satisfied, and the Court may exercise its discretion to join these cases.

III. Venue in Sumter County is proper

Thompson next contends that venue would be proper if the Court joins these cases for discovery and trial in Sumter County. According to Thompson, because the pleadings are merged after an order of permissive joinder, *see Ellis*, 307 S.C. at 367, 415 S.E.2d at 401, venue is proper in the county of residence of any defendant in the Cozby Action, the Arender Action, or the Oliver Action. *See* S.C. Code Ann. § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”). In further support of its request to join the cases in Sumter County, as opposed to a proposed consolidation in Newberry County, Thompson relies on the fact that it is the only Defendant that has been sued in its county of residence. Thompson contends it should not be deprived of its “substantial right” to a trial in its county of residence. *See, e.g., Carroll v. Guess*, 302 S.C. 175, 177, 394 S.E.2d 707, 708 (1990).

Arender and U.S. Xpress offer different arguments for why Thompson’s position as to venue is incorrect. Arender perceives Thompson’s argument for venue in Sumter County as an attempt to change venue under section 15-7-100(A). Arender asks the Court to deny Thompson’s request for a change in venue because Thompson cannot demonstrate “the convenience of witnesses and the ends of justice would be promoted by the change.” *See* S.C. Code Ann. § 15-7-100(A)(3).

U.S. Xpress, on the other hand, contends venue would be improper in Sumter County because the Oliver Action could not have been brought in Sumter County. U.S. Xpress further argues that after the 2005 amendments to the venue statute, a plaintiff has a right to bring suit either in the venue where a defendant resides or where the most substantial part of the act or omission occurred. *See* S.C. Code Ann. § 15-7-30.

The Court agrees with Thompson that venue for the joined cases is proper in Sumter County. As Thompson notes, an order of permissive joinder merges previously separate actions into one. *See* Rule 20(a), SCRCF; *see also Ellis*, 307 S.C. at 367, 415 S.E.2d at 401 (discussing the difference between an order of consolidation and an order of permissive joinder). Therefore, for venue purposes, the residency of each defendant in each of the merged actions is considered. *See* S.C. Code Ann. § 15-7-30(B); *see also Ellis*, 307 S.C. at 367 n.2, 415 S.E.2d at 402 n.2. Because Thompson is a resident of Sumter County, venue for these joined actions is proper in Sumter County. *See* S.C. Code Ann. § 15-7-30(E) (stating an action tried against a domestic corporation must be brought and tried in the county in which the corporation has its principal place of business or where the most substantial part of the alleged act or omission occurred); § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”).

Contrary to U.S. Xpress’ position, the fact that the Oliver Action could not have been brought in Sumter County does not change the analysis. This argument overlooks the impact of an order of permissive joinder, which merges the previously independent actions into one. Accordingly, the relevant task is not to determine where venue would properly lie for each of the independent actions; the proper question is where venue properly lies for the merged actions. As the foregoing discussion demonstrates, venue for the merged actions is proper in Sumter County.

The Court also rejects Arender’s arguments under section 15-7-100. Although the Court’s Order effectively changes the venue of the Arender Action and the Oliver from Newberry County to Sumter County, the Court’s Order is not based on section 15-7-100. Indeed, Thompson does not seek a change in venue based on the convenience of witnesses and the ends of justice. Thompson simply seeks to join the cases into one in Sumter County, which it contends is a proper

venue under section 15-7-30. Because the Court is not faced with a motion under section 15-7-100, the Court need not consider Arender's argument respecting the most "convenient" forum for these cases to be heard.

Finally, the Court finds that Cozby's decision to sue Thompson in its county of residence is significant to the venue analysis. Because these actions were filed in different counties, Thompson's request for joinder necessarily requires a change of venue for either the Cozby Action or the Arender Action and the Oliver Action. Although Arender and U.S. Xpress desire for these cases to be consolidated in Newberry County, the Court agrees that Thompson has a substantial right to be tried in its county of residence. Contrary to U.S. Xpress' argument, the 2005 amendments to the venue statute did not impact that right, as recognized by the South Carolina Supreme Court in a decision shortly after the amendment. *See Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 442, 633 S.E.2d 143, 147 (2006) ("The defendant has a substantial right to be tried in the county of his residence pursuant to S.C. Code Ann. § 15-7-30 (2005)."). Thompson's substantial right to be tried in Sumter County vested when Cozby elected to bring suit there. Importantly, no other defendants in any of these cases were sued in their county of residence. Accordingly, Thompson's right to defend the Cozby case in Sumter County further supports the Court's decision to join these cases in Sumter County.

IV. Joinder is desirable for the parties and the court

Lastly, Thompson asks the Court to join these cases for discovery and trial because it has demonstrated that doing so would be desirable. Thompson contends joining the cases would prevent duplicative litigation, save the parties from incurring unnecessary costs, and conserve judicial resources. Thompson also contends joining the cases would eliminate the risk of a judgment in one case having preclusive effect in all other cases. *See, e.g., Sims v. Amisub of S.C.*,

Inc., 408 S.C. 202, 209, 758 S.E.2d 187, 191 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E.2d 379 (2015) (noting the doctrine of collateral estoppel “prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same”).

In response, Arender and U.S. Xpress contend the cases should not be joined for trial. Relying on the Restatement (Second) of Judgments § 29, Arender contends offensive collateral estoppel is not a realistic concern in these cases. U.S. Xpress argues these actions are not appropriate for joinder because a single trial would involve numerous claims and parties and would be difficult for jurors to understand. U.S. Xpress also claims it would be improper to join these actions under the case number assigned to the Cozby Action because it is the oldest case and will be subject to trial before the parties can adequately prepare.

The Court agrees with Thompson that joinder for both discovery and trial is justified under the circumstances presented in these cases. Plainly, it will be less burdensome for all parties and the Court to join these proceedings. Joinder will reduce cost to the parties, conserve judicial resources, eliminate the need for repetitive discovery, reduce the burden on witnesses, and prevent inconsistent judgments. To put it simply, it would be incredibly inefficient to litigate these claims separately.

Additionally, as Thompson argues in its motion, joinder will eliminate the risk of collateral estoppel applying to prevent adjudication on the merits. The South Carolina Supreme Court has recognized that the offensive use of nonmutual collateral estoppel may be appropriate in certain circumstances. *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). Arender contends this concern is not legitimate, as the Restatement provides that a person seeking to invoke favorable preclusion may not do so if he could have

effected joinder in this first action. *See* Restatement (Second) of Judgments § 29(3). Regardless of whether that exception would apply to prevent offensive collateral estoppel, the safest course at this stage is to join the actions and thereby eliminate the risk of judgments having preclusive effect.

Furthermore, the Court is not persuaded by U.S. Xpress' arguments about a single trial being confusing for jurors to follow. Lawyers and judges in this State frequently try cases involving numerous claims and parties. The Court finds the benefits of joinder outweigh any concerns associated with a single trial. In any event, should U.S. Xpress' concerns prove legitimate as trial approaches, Rule 20(b) provides the Court with flexibility to ensure an efficient trial process. Rule 20(b), SCRCP ("The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.").

Finally, U.S. Xpress' argument respecting the age of the Cozby Action is without merit. As noted above, U.S. Xpress opposes joining these cases around the Cozby Action because it is the oldest case and may be called for trial before the parties have time to conduct necessary discovery. This dilemma can easily be resolved by the parties entering into a scheduling order. The parties will not be forced to a trial before they have had time to perform adequate discovery.

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CONCLUSION

For the foregoing reasons, the Court grants Thompson's motion and joins the Cozby Action, the Arender Action, and the Oliver Action around Case Number 2022-CP-43-01006, the number assigned to the Cozby Action.

IT IS SO ORDERED.

The Honorable R. Kirk Griffin
Circuit Court Judge

February __, 2024
Sumter, South Carolina



Sumter Common Pleas

Case Caption: Jerry Cozby VS Kent Huntley Oliver , defendant, et al
Case Number: 2022CP4301006
Type: Order/Consolidate

So Ordered

s/ R. Kirk Griffin 2768

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