

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENWOOD DIVISION**

PERNANZA HILL,	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	FILE NO.: 8:06-1010-GRA
USA TRUCK , INC.,	)	
Defendant.	)	

**AMENDED COMPLAINT FOR DAMAGES**  
**(TRIAL BY JURY REQUESTED)**

**TO: THE DEFENDANT ABOVE-NAMED:**

USA Truck, Inc.  
c/o Attorney Scott McMickle  
**(insert address here)**

**NOW COMES PERNANZA HILL**, Plaintiff herein, through counsel and shows unto this Honorable Court the following:

**PARTIES AND JURISDICTION**

1. That the Plaintiff is a citizen and resident of the State of South Carolina, County of Edgefield, City of North Augusta residing at 610 Castilian Drive.
2. The Defendant is a nonresident motorist carrier operating its equipment through an agent or employee on the public highways of this State in the County of Edgefield.

3. Pursuant to S. C. Code of Law § 15-9-360 Defendant is subject to the jurisdiction of this Court and venue is proper in Edgefield County.
4. Service may be perfected upon Defendant by serving its registered agent, CT Corporation Systems, at 425 West Capitol Avenue, Suite 1700, Little Rock, AR 72201 or by serving its Attorney-in-fact as provided in said statute, to-wit: Director of the S. C. Department of Motor Vehicles, Office of General Counsel, Attn: Violet Ringo at P. O. Box 1498, Blythewood, S. C. 29106 or at 10311 Wilson Blvd, Building C, Blythewood, S. C. 29016. A certified copy of this Summons and Complaint has been put into the hands of the Director of the S. C. Department of Motor Vehicles.

#### FACTS

5. On the 16<sup>th</sup> day of February 2006, at approximately 7:45 a.m., the Plaintiff was riding a bicycle traveling south, off the roadway and on the shoulder of U. S. Highway 25.
6. As said time and place, an eighteen wheel tractor trailer truck owned and operated by Defendant and being driven by Serafin Oliveras and/or Dominic Alcantar, agents or employees of the Defendant working within the course and scope of their employment with Defendant, was traveling south, behind and to the rear of Plaintiff.
7. At said place and time, the road was dry, the weather was clear, and the driving conditions were good, with sun and daylight.

8. At said time, Defendant's agent or employee, Serafin Oliveras and/or Dominic Alcantar, working within the course and scope of employment with Defendant, veered off the right side of the roadway and onto the grassy shoulder of the road, violently striking the Plaintiff, who did not see Defendant and had no time to avoid the collision.
9. The tremendous impact between Defendant's tractor trailer caused the Plaintiff to be violently ejected and thrown from his bicycle across a ditch and seriously damaged his health and his bicycle.

#### LIABILITY

10. Plaintiff contends that Defendant is entirely at fault or more at fault for causing this collision and his damages.
11. Plaintiff contends Defendant is vicariously liable, *respondeat superior*, for the negligence of its tractor trailer driver(s), Serafin Oliveras and/or Dominic Alcantar, who were working within the course and scope of their employment with Defendant at the time they wrecked into Plaintiff. South Carolina Ins. Co. v. James Greene & Co., 290 S. C. 171 (1986).
12. At said time and place, the Defendant, through its agents or employees, Serafin Oliveras and/or Dominic Alcantar, working within the course and scope of their employment with Defendant, was negligent and/or *negligent per se* toward the Plaintiff as follows:
  - (a) In failing to maintain a proper look-out;
  - (b) In failing to keep the tractor-trailer under proper control;
  - (c) In driving too fast for conditions in violation of S. C. Code of

Laws § 56-5-1520;

(d) In failing to apply brakes;

(e) In following too closely in violation of S. C. Code of Laws § 56-5-1930;

(f) In failing to exercise due care after running off of the roadway in violation of Bunton v. South Carolina State Highway Department, 186 S.C. 463 (1938);

(g) In driving inattentively and/or while being distracted;

(h) In failing to maintain the proper degree of rest in order to operate a tractor trailer safely and in an alert condition in violation of S. C. Dept. Public Safety, State Transport Police Regulation 38-392.3 and 49 CFR 392.2, 392.3, and/or 395.0 et seq;

(i) In failing to exercise due care to avoid colliding with Plaintiff, a person propelling a human-powered vehicle, in violation of S. C. Code of Laws § 56-5-3230;

(j) In failing to stay within Defendant's lane of traffic in violation of S. C. Code of Laws § 56-5-1900 and/or 56-5-2150;

(k) In traveling off the edge of the roadway in violation of S. C. Code of Laws § 56-5-1900;

(l) In failing to yield the right of way to Plaintiff in violation of S. C. Code of Laws § 56-5-580;

(m) In driving while fatigued, ill or with impaired ability or alertness, in violation of S. C. Dept. Public Safety, State Transport Police

Regulation 38-392.3 and 49 CFR 392.2, 392.3;

(n) In committing an improper and/or dangerous movement on the roadway in violation of S. C. Code of Laws § 56-5-1840, 56-5-1850, 56-5-2150, and/or 56-5-1900;

(o) In failing to immediately stop at the scene of the collision and render aid to the severely injured Plaintiff, in violation of S. C. Code of Laws § 56-5-1210, 56-5-1230;

(p) For falsifying Defendant's driver's log book(s);

(q) In improperly passing Plaintiff in violation of S. C. Code of Laws § 56-5-1840 or 56-5-1850;

(r) In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing.

## **DAMAGES**

13. As a result of the collision referenced herein, the Plaintiff suffered serious and permanent injury to his brain, a broken lower left leg, and injury to his lower back, left hip, and body.
14. As a result of the Defendant's negligence, the Plaintiff has incurred the following damages, which are recoverable from the Defendant as allowed by the laws and the statutes of the State of South Carolina:

## **PROPERTY DAMAGE**

The wreck destroyed Plaintiff's Huffy bicycle and rendered it a total loss, bending the metal frame, wheels and seat. Plaintiff seeks recovery of the full market value of his bicycle as of the date of the wreck.

## **SPECIAL DAMAGES**

- (a) Presently incurred medical expenses including hospital charges, physician charges, and medication charges;
- (b) Medical expenses that will more likely than not be incurred in the future because the Plaintiff's injuries will accelerate the degenerative processes of the Plaintiff's body as he ages;
- (c) Expense of travel for medical treatment;
- (d) Present loss of earnings from the time of injury as a result of being disabled;

(e) Loss of earnings which the Plaintiff more likely than not would have earned since the injury but for his injuries caused by the Defendant; and,

(f) Diminution of the ability of earn higher income in the future as a consequence of the impairment to his body.

### **GENERAL DAMAGES**

(g) Present bodily pain from the date of injury to the time of trial;

(h) Future bodily pain because the injury to his brain and his body is permanent;

(i) Past and future mental suffering and anguish due to his permanent physical injuries, monetary loss, loss of present and future earnings, and diminution in the ability to earn a higher income in the future;

(j) Loss of capacity to work because of the disability of his body due to his physical injuries;

(k) Loss of enjoyment of life and recreation due to the fact that the Plaintiff does not enjoy the same physical and emotional health as he did prior to be injured.

**PUNITIVE DAMAGES**

(l) Plaintiff is entitled to additional damages to punish and deter Defendant for driving recklessly, for driving with a conscious disregard of the safety of others on or around the highway, for falsifying its log book, and/or for negligent hiring, training, retaining and or supervising its drivers in violation of Doe v. ATC, Inc. [2005 S.C. \(2005-366\)](#) and/or 49 CFR 382, 383, 385, 390-393.

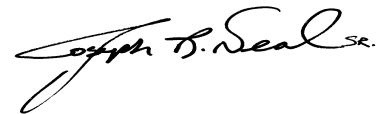
15. Plaintiff was 45 years old at the time of injury.

**WHEREFORE, Plaintiff respectfully prays:**

- a. Process issue directing the Defendant to answer this Complaint as required by law;
- b. The Defendant be served with a copy of this Complaint and process in the manner as required by law;
- c. The liability of the Defendant, in fair and just compensation for the injuries that the Plaintiff incurred, to be tried by judge or jury;

- d. Plaintiff recover judgment and damages against Defendant, in an amount to be determined by the enlightened conscience of a fair and impartial judge or jury, for special, general, and punitive damages, and for attorney's fees, court costs, and all other expenses of litigation allowed by S.C. Code of Laws § 15-37-10, et seq., 15-37-40, and interest;
- e. Such other and further relief as this Court may deem just and proper.

This 30th day of May, 2006.



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