

**IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA**

CLIFTON DEJOURNETT,

*Plaintiff,*

v.

STAPLES, INC., SANDERS BAUGH,  
and ACE AMERICAN INSURANCE  
COMPANY,

*Defendants.*

Civil Action No.: 15EV001004E

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**PLAINTIFF’S REPLY TO DEFENDANT STAPLES’S RESPONSE TO  
PLAINTIFF’S MOTION TO ADD ACE AMERICAN INSURANCE COMPANY  
AS A DEFENDANT**

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Defendant Staples’s objection is spurious. Governing law establishes that Staples was a “motor carrier,” and Staples’s own internal documents underscore the point. Because Staples was a “motor carrier,” a direct action against ACE American Insurance Company (“ACE Insurance”) is proper and ACE Insurance is a proper party defendant.

A. Governing Law

As Plaintiff’s Second Amended Complaint states, this direct action is authorized by Georgia law in two places. O.C.G.A. § 40-2-140(d)(4) permits a plaintiff to “join in the same cause of action the motor carrier and its insurance carrier.” O.C.G.A. § 40-1-112(c) uses almost the same language—it permits a plaintiff “to join in the same action the motor carrier and the insurance carrier.” Because both of these direct-action statutes apply, a direct action is proper and ACE Insurance is a proper party defendant.

Staples’s claim that it is not a “motor carrier” is spurious. **Staples fails to direct the Court to the definition of “motor carrier.”** Instead Staples makes no reference to any definition at all. However, both of the foregoing direct-action statutes use the same statutory definition, which establishes that any entity that “operates or controls *commercial motor vehicles* as defined in 49 C.F.R. Section 390.5 . . . whether operated in interstate or intrastate commerce, or both” constitutes a “motor carrier.” O.C.G.A. § 40-2-1(6)(B) (emphasis added). In other words, for purposes of Georgia’s direct-action statutes, an operator of a “commercial motor vehicle” constitutes a “motor carrier.” *Id.* It makes no difference whether the operator of commercial motor vehicles hauls “its own goods” (as Staples claims to do) or hauls someone else’s goods.<sup>1</sup> Similarly unavailing is Staples’s citation to *National Union Fire Ins. Co. v. Bright*, a 1992 case that relies a definitions statute that was amended in 2012 and now has nothing to do with this case. 202 Ga. App. 517, 518 (1992) (citing O.C.G.A. § 46-1-1). *What matters under the applicable definition of “motor carrier” is whether Staples operates “commercial motor vehicles.” Id.*

Staples indisputably operates commercial motor vehicles. If a truck has a GVWR of 10,001 pounds or more, it is a “commercial motor vehicle.” 49 U.S.C. § 390.5 at “commercial motor vehicle” (1).<sup>2</sup> Staples has **admitted** that the truck that collided with Plaintiff had a GVWR of 10,001 pounds or more. Staples Resp. to RFA 20 (Set 1) (Ex. 1). It is therefore

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<sup>1</sup> Staples’s alleged distinction would make no difference under the federal definition of “motor carrier” either. That is because the federal definition of “motor carrier” includes both “for-hire motor carrier[s],” who generally haul goods belonging to someone else, and “private motor carrier[s],” who generally haul their own goods. 49 U.S.C. § 390.5. Because Staples is a “private motor carrier,” it is also a “motor carrier” under the federal definitions. *Id.*

<sup>2</sup> The Federal Motor Vehicle Safety Regulations (“FMCSR”) are available online in an easy-to-use format at <https://www.fmcsa.dot.gov/regulations/title49/b/5/3>. For the Court’s convenience, a copy of the relevant FMCSR—49 C.F.R. § 390.5—is attached as Exhibit 2.

beyond any question that Staples operated commercial motor vehicles.

Because Staples operated “commercial motor vehicles,” Staples was a “motor carrier.” O.C.G.A. § 40-2-1(6)(B); *see* 49 C.F.R. § 390.5. Because Staples was a “motor carrier,” a direct action against ACE Insurance is proper. O.C.G.A. § 40-2-140(d)(4); O.C.G.A. § 40-1-112(c).

B. Staples’s Internal Documents

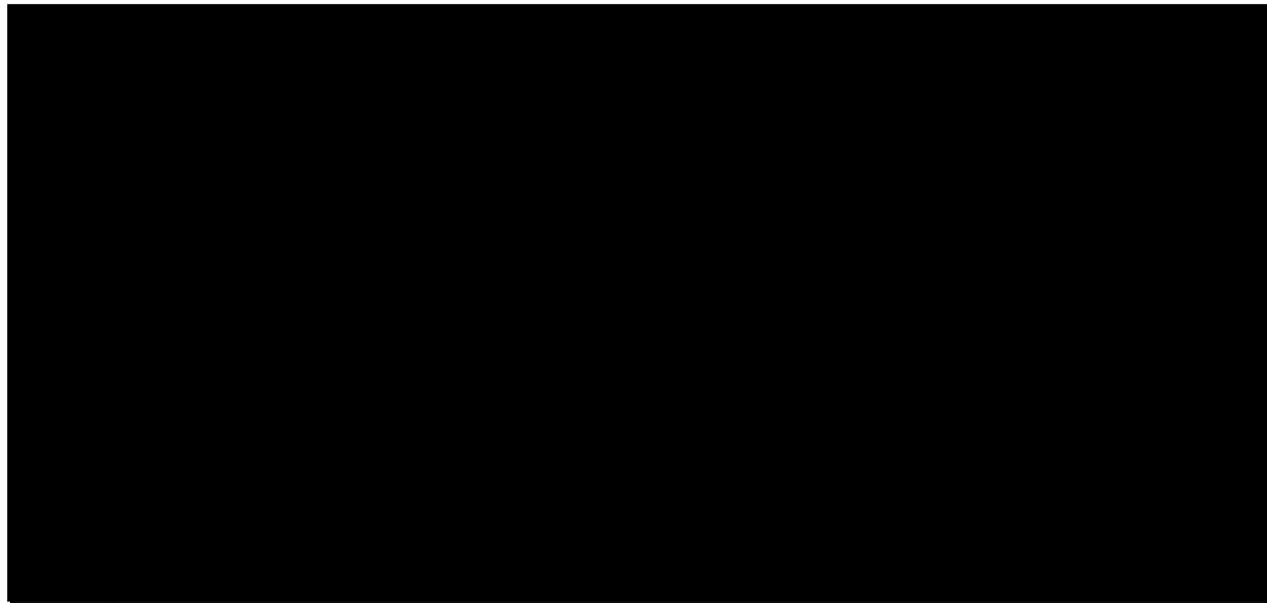
The brief that Staples filed with this Court omits not only the governing definition, but also omits facts contained in Staples’s own internal documents. Staples **knows** that (1) it operates commercial motor vehicles, (2) it constitutes a motor carrier, and (3) it is subject to the Federal Motor Vehicle Safety Regulations (“FMSCR”). Relevant excerpts from Staples’s internal documents follow.

(1) *Staples tells all of its drivers that they are operating commercial motor vehicles:*



Staples Drivers Manual at 3.

(2) *The forms that Staples has its employees fill out show that Staples knows it is a motor carrier:*



04/29/09 Driver Certification for Sanders Baugh.

(3) *Staples’s “Driver Safety Rules” instruct all Staples drivers to comply with the FMCSR, telling drivers that they:*



Staples Drivers Manual at 26.

### **CONCLUSION**

Staples tells this Court that it is not a “motor carrier”—and in so doing, Staples omits any reference to the governing definition and omits facts contained in its own internal documents.

Because Staples operated “commercial motor vehicles,” Staples was a “motor carrier.” O.C.G.A. § 40-2-1(6)(B); *see* 49 C.F.R. § 390.5. Because Staples was a “motor carrier,” a direct action against ACE Insurance is proper. O.C.G.A. § 40-2-140(d)(4); O.C.G.A. § 40-1-112(c).

Plaintiff respectfully requests that the Court permit the addition of ACE Insurance as a party defendant.

This 19<sup>th</sup> day of February, 2016.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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I hereby certify I electronically filed the foregoing document with the State Court of Fulton County by using the EFileGA system. I certify that the following parties or their counsel of record are registered as EFileGA Filers and that they will be served by the EFileGA system:

Alisa Ellenburg, Esq.  
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Suite 300  
Atlanta, GA 30328

This 19<sup>th</sup> day of February, 2016.

Respectfully submitted,

BUTLER TOBIN LLC

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