

**IN THE UNITED STATES DISTRICT COURT  
OF THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

JEAN ROCKER, personally, as the  
claimant under O.C.G.A. § 51-4-2, and  
as the Administrator of the Estate of  
Oliver Jordan,

*Plaintiff,*

v.

EVANS DELIVERY COMPANY, INC., ENC  
HOLDING CORP., AND ACE AMERICAN  
INSURANCE COMPANY,

*Defendants.*

Civil Action File  
No.: 3:20-CV-00060-TCB

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**FIRST AMENDED COMPLAINT**

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Plaintiff in the above-styled action respectfully files this Amended  
Complaint and demand for jury trial, showing the Court the following.

**SUMMARY**

1.

On October 1, 2019, a tractor-trailer was illegally backing across Temple  
Avenue at night.

2.

The tractor-trailer was operated by Defendants Evans Delivery Company, Inc. (“EDC”) and ENC Holding Corp. (collectively, “the Evans Defendants”), insured by Defendant ACE American Insurance Company (“ACE”), and driven by Paul Reed.

3.

Oliver Dalton Jordan was driving straight on Temple Avenue.

4.

Mr. Jordan could not see the tractor-trailer in time to stop. He collided with it, sustaining serious injuries.

5.

After a long struggle, Mr. Jordan died as a result of those injuries on August 24, 2020.

### **PARTIES, JURISDICTION, AND VENUE**

6.

On or about August 24, 2020, Oliver Jordan died intestate. At the time of his death, Mr. Jordan was not married. Mr. Jordan is survived by his daughter,

Jean Rocker. Mr. Jordan has no other children. Plaintiff Jean Rocker resides in Georgia.

7.

Plaintiff Jean Rocker is the lawful administrator of the estate of Oliver Jordan by virtue of an order of the of the Probate Court of Coweta County, Georgia. A copy of the probate court order appointing Jean Rocker is attached hereto as Exhibit A.

8.

Defendant ENC Holding Corporation (“ENC”):

- a) is so named because “ENC” refers to “Evans Network of Companies;”
- b) is a motor carrier (*see* 49 C.F.R. § 390.5);
- c) is a foreign profit corporation incorporated and existing under Delaware law;
- d) is not registered to conduct business in Georgia;
- e) has its principal office and principal address at 100-110 West Columbia Street, Schuylkill Haven, PA 17972;
- f) is a citizen of Pennsylvania and Delaware;
- g) is not a citizen of Georgia;
- h) can be served with process at its registered agent in Delaware, The

Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

9.

Defendant Evans Delivery Company, Inc. (“EDC”):

- a) is a motor carrier (*see* 49 C.F.R. § 390.5);
- b) is a foreign profit corporation incorporated and existing under Pennsylvania law;
- c) has registered to conduct business in Georgia;
- d) has its principal office and principal address at 100-110 West Columbia Street, Schuylkill Haven, PA 17972;
- e) is a citizen of Pennsylvania;
- f) is not a citizen of Georgia; and
- g) can be served with process at its registered agent in Georgia, David Lee Cates, 2300 Henderson Mill Road, Suite 112, Atlanta, GA 30345.

10.

ENC and EDC are hereinafter referred to collectively as “the Evans Defendants.”

11.

Defendant ACE American Insurance Company (“ACE”):

- a) is a foreign nonprofit corporation incorporated and existing under Pennsylvania law;
- b) has registered to conduct business in Georgia;
- c) has its principal office and principal address at 436 Walnut Street, Philadelphia, PA 19106;
- d) is a citizen of Pennsylvania;
- e) is not a citizen of Georgia; and
- f) can be served with process at its registered agent in Georgia, C T Corporation System, 289 S Culver Street, Lawrenceville, GA 30046.

12.

This Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1332 because Plaintiff is a citizen of Georgia, Defendant ENC is a citizen of Delaware and Pennsylvania, Defendant EDC is a citizen of Pennsylvania, Defendant ACE is a citizen of Pennsylvania, and the amount in controversy exceeds \$75,000.

13.

This Court has personal jurisdiction over the Evans Defendants because this cause of action arose from their purposeful contacts with the state of Georgia.

14.

This Court has personal jurisdiction over ACE because this cause of action arose from ACE's purposeful contacts with the state of Georgia.

15.

Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) and Local Rule 3.1(B)(3) because the events giving rise to this cause of action occurred in Coweta County, Georgia which is located in the Newnan Division.

### **FACTS**

16.

At approximately 9:25pm on October 1, 2019, Paul Reed stopped the tractor-trailer that he was driving in the roadway of Temple Avenue (Georgia Highway 16) and began to back up.

17.

It was dark where Reed had stopped the tractor-trailer.

18.

The area where Reed had stopped the tractor-trailer was not well lit.

19.

Reed intended to back his tractor-trailer into a driveway located at or near 331 Temple Avenue, Newnan, GA 30263.

20.

As Reed backed up, the tractor-trailer blocked the northbound and center lanes of Temple Avenue.

21.

The tractor-trailer that Reed was driving was not well lit along its side.

22.

Reed knew that backing his tractor-trailer across multiple traffic lanes was unsafe, especially at night.

23.

Reed knew that backing his tractor-trailer across multiple traffic lanes was illegal.

24.

Reed nonetheless regularly backed his tractor-trailer across Temple Avenue to park his truck in or near 331 Temple Avenue.

25.

Each time that Reed backed his tractor-trailer across Temple Avenue to park his truck in or near 331 Temple Avenue, the tractor-trailer blocked multiple lanes.

26.

At approximately 9:25pm on October 1, 2019, Oliver Jordan (“Mr. Jordan”)

was driving north on Temple Avenue in his pickup truck.

27.

Mr. Jordan was exercising due care and driving safely.

28.

Mr. Jordan had a valid Georgia driver's license.

29.

Because the tractor-trailer had stopped and was backing illegally across Temple Avenue, Mr. Jordan was unable to see the tractor-trailer in time to avoid it.

30.

When he saw the tractor-trailer, Mr. Jordan slammed on the brakes.

31.

Mr. Jordan's pickup truck struck the tractor-trailer.

32.

Mr. Jordan sustained serious, permanent injuries, which directly and proximately caused his death.

### **RELATIONSHIPS AMONG DEFENDANTS**

33.

As to ENC and EDC, at all relevant times:

- a) ENC owned EDC;
- b) ENC controlled EDC;
- c) ENC and EDC were engaged upon a joint venture;
- d) ENC and EDC were acting in concert;
- e) EDC was an alter ego for ENC.

34.

Reed was an employee or agent of the Evans Defendants at the time of the collision.

35.

At the time of the wreck, Reed was acting within the course and scope of his employment with the Evans Defendants.

36.

At the time of the wreck, the Evans Defendants controlled the time, manner, and method of Reed's actions.

37.

The truck that Reed was driving was owned by the Evans Defendants at the time of this collision.

38.

The truck that Reed was driving was under lease to the Evans Defendants at

the time of this collision.

39.

As the lessee, the Evans Defendants had “complete responsibility” for the operation of the truck at the time of this collision. *See* 49 C.F.R. § 376.12(c)(1).

40.

ACE issued a policy of liability insurance to the Evans Defendants that was in full force and effect at the time of the collision.

### **LIABILITY**

41.

Reed is liable because:

- a) he was negligent;
- b) he consciously disregarded known and obvious risks to the safety of others;
- c) he showed that entire want of care that reveals conscious indifference to the consequences of his actions (*see* O.C.G.A. § 51-12-5.1);
- d) he stopped the tractor-trailer illegally (*see* O.C.G.A. § 40-6-203);
- e) he backed the tractor-trailer illegally (*see* O.C.G.A. § 40-6-240);
- f) he violated Georgia’s Rules of the Road;

- g) he violated the rules, standards, guidelines, requirements, and industry norms that drivers of commercial motor vehicles must obey; and
- h) he violated the Federal Motor Carrier Safety Regulations.<sup>1</sup>

42.

The Evans Defendants are liable because:

- a) they are vicariously liable for Reed's misconduct;
- b) they are liable for Reed's misconduct under a theory of *respondeat superior*;
- c) Reed was their statutory employee (*see* 49 C.F.R. § 390.5; *PN Exp., Inc. v. Zegel*, 304 Ga. App. 672, 675-79 (2010));
- d) they negligently or recklessly hired, trained, supervised, and/or retained Reed;
- e) they directly violated the Federal Motor Carrier Safety Regulations; and
- f) they had "complete responsibility" for the tractor-trailer (*see* 49 C.F.R. § 376.12(c)(1); *PN Exp., Inc. v. Zegel*, 304 Ga. App. 672, 675-76 (2010)).

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<sup>1</sup> *See, e.g.*, 49 C.F.R. §§ 383.111(a)(6)(i)-(ii), 383.111(a)(7)(i)-(ii), 383.111(a)(8)(i)-(ii), 383.113(b)(4), 383.113(c)(4), 383.113(c)(8), 392.22(a), 392.2.

43.

ACE:

- a) is liable because it insured the Evans Defendants, and
- b) is a proper party to this case under Georgia's direct action laws (*see* O.C.G.A. §§ 40-2-140(d)(2), 40-1-112(c)).

44.

All Defendants are liable for punitive damages.

45.

All Defendants are liable for Plaintiff's attorneys' fees and costs because Defendants showed bad faith, were stubbornly litigious, and have caused unnecessary trouble and expense. *See* O.C.G.A. § 13-6-11.

### **CAUSATION**

46.

The misconduct of the Evans Defendants and Reed proximately caused the wreck.

47.

The wreck proximately caused Mr. Jordan's injuries and death.

48.

But for the misconduct of the Evans Defendants and Reed, Mr. Jordan would not have died when he did.

49.

The misconduct of the Evans Defendants and Reed was the proximate cause of Mr. Jordan's death.

### **DAMAGES**

50.

Mr. Jordan sustained serious personal injuries resulting in his death.

51.

Mr. Jordan's injuries included, but were not limited to, injuries to his throat, neck, and feet.

52.

Plaintiff brings this case on behalf of herself and on behalf of the Estate of Oliver Jordan. Plaintiff states her intention to bring each and every claim permissible under Georgia law, including all individual and estate claims, and seek all special damages, economic losses, medical expenses, funeral and burial expenses, necessary expenses, pain and suffering, and all compensatory, special, actual, economic, general, punitive, and all other damages permissible under

Georgia law, including, but not limited to:

- a) wrongful death;
- b) interference with daily living;
- c) loss of capacity for the enjoyment of life;
- d) diminished quality of life;
- e) physical pain and suffering;
- f) mental pain and suffering;
- g) medical expenses;
- h) funeral and burial expenses;
- i) fright, shock, and terror;
- j) compensatory damages;
- k) punitive damages; and
- l) personal injuries.

53.

Plaintiff Jean Rocker, as the surviving daughter and heir of Oliver Jordan, is entitled to recover the full value of the life of Oliver Jordan and all other damages permissible under Georgia law. Plaintiff seeks damages in an amount to be determined by the enlightened conscience of a fair and impartial jury.

54.

Plaintiff Jean Rocker, as the Administrator of the Estate of Oliver Jordan, is entitled to recover on behalf of the estate for the injuries and conscious pain and suffering sustained by Oliver Jordan prior to his death, and any emergency medical expenses, funeral expenses, and burial expenses, incurred by the Estate of Oliver Jordan. Plaintiff seeks damages in an amount to be determined by the enlightened conscience of a fair and impartial jury.

**PRAYER FOR RELIEF**

55.

Plaintiff respectfully requests that:

- a) process issue as provided by law,
- b) Plaintiff have trial by jury,
- c) judgment be awarded to Plaintiff and against Defendants,
- d) Plaintiff be awarded damages in an amount to be shown at trial, and
- e) Plaintiff have such other relief as this Court deems just and appropriate.

Respectfully submitted, this 23rd day of November, 2020.

BUTLER LAW FIRM

BY: /s/ Morgan E. Lyndall

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**ATTORNEYS FOR PLAINTIFF**

# Exhibit “A”

IN THE PROBATE COURT  
COUNTY OF COWETA  
STATE OF GEORGIA

IN RE: ESTATE OF )  
 )  
OLIVER DALTON JORDAN, ) ESTATE NO. 2020-507  
DECEASED )

LETTERS OF ADMINISTRATION  
(Bond Waived and Certain Powers Granted at Time of Appointment)

At a regular term of Probate Court, this Court granted an order allowing **SHELBY JEAN JORDAN ROCKER** to qualify as Administrator of the above-named Decedent, who was domiciled in this County at the time of his death or was domiciled in another state but owned property in this County at the time of his death, and that upon so doing, Letters of Administration be issued to such Personal Representative.

THEREFORE, the said Administrator, having taken the oath of office and complied with all necessary prerequisites of the law, is legally authorized to discharge all the duties and exercise all powers of Personal Representative, according to Georgia law. In addition this Court:

[Initial all that apply]

CPM

(a) **POWERS GRANTED:** Grants to the Administrator all of the powers contained in O.C.G.A. § 53-12-261.

CPM

(b) **REPORTS WAIVED:** Grants to the Administrator the specific power to serve without making and filing inventory, and without filing any annual or other returns or reports to any court; but the fiduciary shall furnish to the heirs, at least annually, a statement of receipts and disbursements.

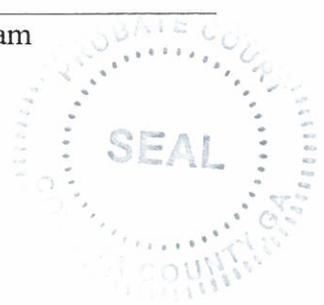
CPM

(c) **BOND WAIVED:** Waives the specific requirement to post bond.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature as Judge of the Probate Court of said County and the seal of this office this 20th day of October, 2020.

Carrie B. Markham

Honorable Carrie B. Markham  
Judge of the Probate Court



COWETA COUNTY  
PROBATE COURT  
OCT 20 2020  
FILED

3:50pm RA

IN THE PROBATE COURT  
COUNTY OF COWETA  
STATE OF GEORGIA

IN RE: ESTATE OF )  
 )  
OLIVER DALTON JORDAN, ) ESTATE NO. 2020-507  
DECEASED )

ORDER APPOINTING ADMINISTRATOR

A Petition for Letters of Administration for the above named Decedent was filed.

**SHELBY JEAN JORDAN ROCKER** was nominated Administrator in the Petition and is/are hereby found to be legally qualified for said office. The Court finds that the Decedent died domiciled within, or domiciled outside the State of Georgia but owning property within, the above County. The Court finds that the Decedent died intestate. The Court further finds that all of the heirs at law were served or acknowledged service. The Court further finds that no objection has been filed, and all requirements of law have been fulfilled.

ACCORDINGLY, IT IS ORDERED that the person named above is found to be qualified for such office and is/are hereby appointed Administrator of the estate of the Decedent, and that appropriate Letters be issued upon said Administrator taking the oath as provided by law. The Administrator shall not make any distribution to a person for the benefit of a minor unless that person is qualified to receive such funds according to law.

IT IS FURTHER ORDERED that upon unanimous consent and publication of notice as necessary, the Court hereby: *[Initial all that apply.]*

CRM (a) **POWERS GRANTED:** Grants to the Administrator all of the powers contained in O.C.G.A. § 53-12-261.

CRM (b) **REPORTS WAIVED:** Grants to the Administrator the specific power to serve without making and filing inventory, and without filing any annual or other returns or reports to any court; but the fiduciary shall furnish to the heirs, at least annually, a statement of receipts and disbursements.

CRM (c) **BOND WAIVED:** Waives the specific requirement to post bond.

SO ORDERED this 20th day of October, 2020.

Carrie B. Markham  
Honorable Carrie B. Markham  
Judge of the Probate Court

