

07-1404-CD
Yule Transport vs Nestle Transport

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

YULE TRANSPORT, INC.
2957 N.W. 75th Street
Medford, Minnesota 55049

NO. 07-1404-CD

Type of Case: Civil Action

Plaintiff
vs.

Type of Pleading: Complaint

NESTLE TRANSPORTATION COMPANY
806 Nestle Court
DeKalb, Illinois 60015

Filed on Behalf of:

Yule Transport, Inc.

Plaintiff

TRAIAN FOIAS
142 North Canfield Niles Road
Youngstown, Ohio 44514

Defendant

S. Graham Simmons, III, Esquire
Wendy R.S. O'Connor, Esquire
(Filed by)

1611 Pond Road, Suite 300
Allentown, PA 18104-2258
(Address)

(610) 391-1800
(Phone)

Wendy O'Connor
(Signature)

FILED 2cc-44y
M 12/31/07 J
AUG 30 2007 Atty pd 85.00
JM
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

YULE TRANSPORT, INC. : NO.

Plaintiff :
:

vs.
:

NESTLE TRANSPORTATION
COMPANY and TRAIAN FOIAS
:

Defendants :
:

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**David S. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982**

TALLMAN, HUDDERS & SORRENTINO, P.C.

By: 

S. GRAHAM SIMMONS, III, Esquire
WENDY R.S. O'CONNOR, Esquire
ATTORNEYS FOR PLAINTIFF

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

YULE TRANSPORT, INC. : NO.
: :
Plaintiff : JURY TRIAL DEMANDED
: :
vs. : :
: :
NESTLE TRANSPORTATION : :
COMPANY and TRAIAN FOIAS : :
: :
Defendant : :

COMPLAINT

AND NOW, comes the Plaintiff, Yule Transport, Inc. by and through its attorneys, Tallman, Hudders & Sorrentino, P.C., and files the following Complaint against the Defendants, Traian Foias (“Defendant Foias”), and Nestle Transportation Company (“Defendant Nestle”) (the immediately foregoing parties shall hereinafter be referred to collectively as the “Defendants”).

1. Plaintiff, Yule Transport Company, Inc. (“Plaintiff”) is a corporation duly organized and existing in good standing under the laws of the State of Minnesota with its registered address at 2957 N.W. 76th Street, Medford, Minnesota, 55049.

2. Defendant Foias is an adult individual currently residing at 142 North Canfield Niles Road, Youngstown, Ohio, 44515.

3. Defendant Nestle is a corporation duly organized and existing in good standing under the laws of the State of Delaware, with its principal place of business located at 806 Nestle Court, Dekalb, Illinois, 60015.

4. On or about February 27, 2006, at approximately 2:35 p.m., Defendant Foias was the operator of a tractor trailer traveling westbound in the right lane of I-80 in Sandy Township, Clearfield County, Pennsylvania.

5. At the time, date and place aforesaid, Defendant Foias was operating a vehicle owned and registered to Defendant Nestle.

6. Upon information and belief, Defendant Foias, at all times relevant and/or material hereto, was an employee of Defendant Nestle acting within the scope of his employment.

7. At the time, date and place aforesaid, Mike Domarus ("Domarus"), was operating a tractor trailer owned and registered to Plaintiff traveling westbound in the right lane of I-80 directly behind Defendant Foias.

8. At the time, date and place aforesaid, Defendant Foias, while attempting to slow, slid on ice and snow on the roadway, clipping the guardrail.

9. At the time, date and place aforesaid, in an attempt to avoid striking Defendant Foias, Domarus proceeded into the passing lane.

10. At the time, date and place aforesaid, Defendant Foias suddenly and without warning struck Plaintiff's vehicle in the middle of the passenger side of the trailer.

11. The aforesaid accident resulted in property damages to Plaintiff's vehicle and caused Plaintiff to incur expenses with respect thereto, as more fully described herein.

COUNT I
NEGLIGENCE
PLAINTIFF v. DEFENDANT FOIAS

12. Plaintiff hereby incorporates by reference, Paragraphs 1 through 11 as though the same were more fully set forth herein at length.

13. At the time, date and place described above, the careless, reckless and negligent acts of Defendant Foias consisted of the following:

- (a) operating a vehicle at an excessive rate of speed under the circumstances;
- (b) failing to have the vehicle under proper and adequate control;
- (c) failing to apply the breaks in time to avoid a collision;
- (d) failing to observe Plaintiff's vehicle on the roadway;
- (e) failing to operate the vehicle in accordance with existing traffic conditions and traffic controls;
- (f) permitting or allowing the vehicle to strike and collide with Plaintiff's vehicle;
- (g) failing to exercise the high degree of care required when changing lanes;
- (h) failing to yield the right-of-way to Plaintiff's vehicle;
- (i) failing to drive at a speed and in a manner that would allow Defendant Foias to avoid colliding with Plaintiff's vehicle and/or any other vehicles within proximity to Defendant Foias's vehicle at the time;
- (j) failing to keep a reasonable lookout for other vehicles lawfully on the roadway;
- (k) operating a vehicle in a manner not consistent with the road and weather conditions prevailing at the time;
- (l) operating a vehicle in such a manner as to endanger other vehicles on the roadway;
- (m) violating applicable law with respect to the operation of a tractor trailer; and

(n) failing to follow the dictates of applicable state and/or local laws and ordinances.

14. Solely as the result of the negligence, carelessness and recklessness of Defendant Foias, Plaintiff suffered serious damage and injury to its property in the amount of \$15,621.95.

15. By reason of the above-described occurrences, Plaintiff incurred towing and other incidental expenses in the amount of \$1,956.77 to secure and later transfer cargo from its demolished tractor-trailer onto another vehicle for transport to its intended destination.

WHEREFORE, Plaintiff, Yule Transport Company, Inc., demands judgment against Defendant, Nestle Transportation Company in an amount not in excess of \$25,000.00, together with post-judgment interest at the legal rate, costs and delay damages pursuant to Pa.R.C.P. No. 238.

COUNT II
PLAINTIFF v. DEFENDANT NESTLE

16. Plaintiff hereby incorporates by reference, Paragraphs 1 through 15 as though the same were more fully set forth herein at length.

17. At the time, date and place described above, Defendant Foias was the agent, servant and/or employee of Defendant Nestle and was acting within the scope of his employment in furtherance of the business activities of Defendant Nestle.

18. By reason of the above described occurrence, Plaintiff has suffered all of the damages previously set forth above and claim is made therefore against Defendant Nestle.

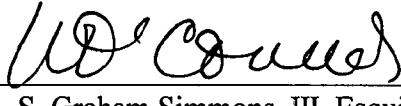
19. Solely as the result of the negligence, carelessness and recklessness of Defendant Foias, Plaintiff suffered serious damage and injury to its property in the amount of \$15,621.95.

20. By reason of the above-described occurrences, Plaintiff incurred towing and other incidental expenses in the amount of \$1,956.77 to secure and later transfer cargo from its demolished tractor-trailer onto another vehicle for transport to its intended destination.

WHEREFORE, Plaintiff, Yule Transport Company, Inc., demands judgment against Defendant, Nestle Transportation Company in an amount not in excess of \$25,000.00, together with post judgment interest at the legal rate, costs and delay damages pursuant to Pa.R.C.P. No. 238.

Respectfully Submitted,

TALLMAN, HUDDERS & SORRENTINO, P.C.

By: 

S. Graham Simmons, III, Esquire
Attorney I.D. No. 93028
Wendy R.S. O'Connor, Esquire
Attorney I.D. No. 56537
1611 Pond Road, Suite 300
Allentown, PA 18104-2258
(610) 391-1800
Attorneys for Plaintiff
Yule Transport Company, Inc

VERIFICATION

I hereby verify that I am authorized to take this verification on behalf of Plaintiff YULE TRANSPORT, INC., and that the statements made in this Complaint are true and correct to the best of my knowledge, information and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

YULE TRANSPORT, INC.

BY: Terence A. Yule
TERENCE YULE, President

DATE: 8/15/2007

FILED

AUG 30 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

YULE TRANSPORT, INC. : NO. 07-1404-CD
Plaintiff : JURY TRIAL DEMANDED
vs. :
NESTLE TRANSPORTATION :
COMPANY and TRAIAN FOIAS :
Defendant :
:

FILED NO
12 37 2007 cc
OCT 11 2007 (60)

William A. Shaw
Prothonotary/Clerk of Courts

RETURN OF SERVICE

I, WENDY R.S. O'CONNOR, Attorney for Plaintiff, do hereby certify that the Civil Action Complaint in this matter was served upon Defendant NESTLE TRANSPORTATION COMPANY on October 3, 2007 at 2:10 P.M. by the DeKalb County Sheriff's Office as follows:

By leaving a copy of the Summons/Complaint with the registered agent or responsible person of the Defendant. Person served: Jeff Reighter, Process Specialist.

A copy of the Out of State Affidavit of Service is attached hereto indicating the date, time and method of service and the signature of the deputy sheriff effectuating service.

TALLMAN, HUDDERS & SORRENTINO, P.C.

BY: 
WENDY R.S. O'CONNOR, Esquire
I. D. No. 56537
1611 Pond Road, Suite 300
Allentown, PA 18104-2221
(610) 391-1800
ATTORNEY FOR PLAINTIFF

DATE: October 9, 2007

DEKALB COUNTY SHERIFF'S OFFICE
150 N. MAIN ST. SYCAMORE, IL 60178
(815) 895-7259

OUT OF STATE AFFIDAVIT OF SERVICE

I CERTIFY THAT I SERVED THE ENCLOSED PAPER (S) ON THE DEFENDANT(S) AS FOLLOWS:

1). PERSONAL SERVICE: BY LEAVING A TRUE COPY OF THE _____ SUMMONS/COMPLAINT, _____ CITATION, _____ RULE, _____ ORDER, _____ SUBPOENA, _____ BODY ATTACHMENT, _____ OTHER.

DEFENDANT (S)

ADDRESS SERVED

DATE & TIME SERVED

2). SUBSTITUTE SERVICE: BY LEAVING A TRUE COPY AT THE DEFENDANT(S) USUAL PLACE OF ABODE WITH SOME PERSON OF THE FAMILY, OF THE AGE OF 13 YEARS OR UPWARDS, AND INFORMING THAT PERSON THE CONTENTS THEREOF OF THE _____ SUMMONS/COMPLAINT, _____ CITATION, _____ OTHER. ALSO, A TRUE COPY OF THE SUMMONS / CITATION / OTHER, WAS MAILED TO THE DEFENDANT(S) AT HIS/HER USUAL PLACE OF ABODE ON _____. SUBJECT SERVED REFUSED NAME OR RELATIONSHIP TO THE OFFENDER(S) _____.

DEFENDANT(S)

PERSON SERVED FOR DEFENDANT(S)

DATE & TIME SERVED

3). SERVICE ON CORPORATION, COMPANY, BUSINESS PARTNERSHIP: BY LEAVING A COPY OF THE SUMMONS / COMPLAINT (OR INTERROGATORIES) WITH THE REGISTERED AGENT OR RESPONSIBLE PERSON OR PARTNER OF THE DEFENDANT.

NAME OF CORPORATION

PERSON SERVED/TITLE

DATE & TIME SERVED

Nestle Transportation Co.

Jeff Reighter

10/3/07

800 Nestle Ct

Process Specialist

2:10pm

DeKalb, IL

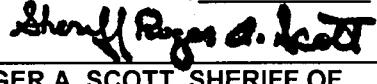
m/w/49 DOB-10/19/1957

4). OTHER SERVICE: _____

SERVED BY:


DEPUTY SHERIFF

SHERIFF'S FEES: \$ 44.00


ROGER A. SCOTT, SHERIFF OF
DEKALB COUNTY, ILLINOIS

SUBSCRIBED AND SWORN TO BEFORE ME THIS
DAY OF _____, 20____

(NOTARY SEAL)

NOTARY PUBLIC

TO DEFENDANTS:

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN
RESPONSE TO THE ENCLOSED
COMPLAINT
WITHIN TWENTY (20) DAYS OF SERVICE HEREOF
OR A JUDGEMENT MAY BE ENTERED AGAINST YOU

BY *Wendy R.S. Connor*
ATTORNEY

**TALLMAN
HUDDERS &
SORRENTINO**

LAW OFFICES

Paragon Centre
Suite 300
1611 Pond Road
Allentown, PA 18104
610-391-1800

I DO HEREBY CERTIFY THAT THE WITHIN IS A
TRUE AND CORRECT COPY OF THE ORIGINAL
FILED IN THIS ACTION

BY *Wendy R.S. Connor*

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA
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NO. 07-1404-CD

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David S. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, ext. 5982

I hereby certify this to be a true
and accurate copy of the original
statement filed in this case.

AUG 30 2007

TALLMAN, HUDDERS & SORRENTINO, P.C.

By:

Wendy O'Connor

S. GRAHAM SIMMONS, III, Esquire
WENDY R.S. O'CONNOR, Esquire
ATTORNEYS FOR PLAINTIFF

Attest.

William L. Penn
Prothonotary/
Clerk of Courts

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:

FILED

MAR 10 2008
3/12/2008
William A. Shaw
Prothonotary/Clerk of Courts
2 WENT TO MARY

PRAECIPE AND POWER OF ATTORNEY FOR SATISFACTION AND/OR TERMINATION

TO THE CLERK OF SAID COURT:

 The within suit is Settled, Discontinued, Ended and costs paid.

XXX The within suit is Settled, Discontinued, Ended WITH Prejudice and costs paid.

 The within suit is Settled, Discontinued, Ended WITHOUT Prejudice and costs paid.

 Satisfaction of the Award in the within suit is acknowledged.

 Satisfaction of Judgment, with interest and costs, in the within matter is acknowledged.

 Other:

DATE: 3-6-08

Wendy R.S. O'Connor
WENDY R.S. O'CONNOR, ESQUIRE
I. D. No. 56537
ATTORNEY FOR PLAINTIFF

COST PAYMENT VERIFICATION

I UNDERSTAND THAT THE ABOVE ACTION CANNOT BE FILED AND DOCKETED UNTIL ALL COSTS HAVE BEEN PAID, INCLUDING SHERIFF'S COSTS; AND HEREBY VERIFY THAT ALL COSTS HAVE BEEN PAID. I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE MADE SUBJECT TO THE PENALTIES OF 18 PA. C.S. §4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

Wendy R.S. O'Connor
Signature