IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ERIN ALTMAN, *Plaintiff*, v. ARCH INSURANCE COMPANY, VETERANS EMPOWERMENT ORGANIZATION OF GEORGIA, INC., and EDWARD DAVIS, *Defendants.*	Civil Action No.: 21-C-02854-S1

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT ARCH INSURANCE COMPANY'S MOTION TO DISMISS

1. Introduction

This case arises from a serious wreck caused by a commercial truck owned by Veterans Empowerment Organization of Georgia, Inc. ("VEO"). As a result of the wreck, Plaintiff filed this personal injury lawsuit against VEO, the truck driver, and VEO's insurer, Arch Insurance Company ("Arch"). Plaintiff has standing to bring a direct action against Arch because VEO is a "motor carrier" under Georgia's two direct-action statutes. *See* Pl.'s Compl., ¶¶ 3(a), 29, 30; O.C.G.A. §§ 40-2-140, 40-1-112(c) (authorizing direct actions). Those two direct-action statutes appear in different Chapters of the code, and they draw upon different definitions sections for the definition of "motor carrier." *See* O.C.G.A. §§ 40-2-1 (definitions section for Title 40, Chapter 2), 40-1-100 (definitions section for Title 40, Chapter 1).

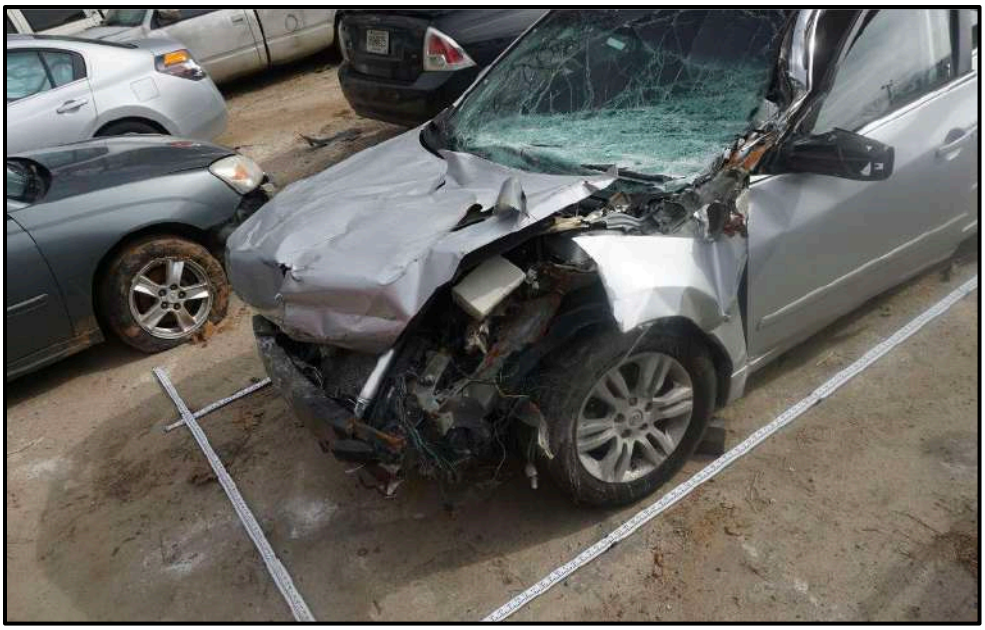
Arch's motion to dismiss fails for three reasons. First, as to the direct-action statute at Code Section 40-2-140, Arch fails to direct the Court to the appropriate definitions section where

"motor carrier" is defined. *See* O.C.G.A. § 40-2-1 (applicable definitions section). Second, as to the direct-action statute at Code Section 40-1-112, Arch misreads the applicable definitions section. *See* O.C.G.A. § 40-1-100 (applicable definitions section). Third, Arch's motion to dismiss is predicated upon the erroneous *factual* contention that VEO is not a "motor carrier" which is, in turn, predicated upon the conclusory, self-serving affidavit of VEO's CFO. At this stage of the proceedings, the Court should not ignore Plaintiff's well-pleaded allegations and accept VEO's purported evidence before Plaintiff has had an opportunity to cross-examine the affiant and conduct discovery.

2. Statement of Facts

2.1. The subject wreck.

On January 5, 2021, Plaintiff Erin Altman was driving east on Brooks Road in Gwinnett County. Pl.'s Compl. ¶ 6. A VEO truck was stopped at Brooks Pointe Court at its intersection with Brooks Road. *Id.* at ¶ 8. The VEO truck suddenly and without warning pulled into the roadway. *Id.* at ¶ 9. Ms. Altman had no ability to stop. *Id.* at ¶ 17. She collided with VEO's truck. *Id.* at ¶ 10. The damage to Ms. Altman's car was severe, as shown below:



VEO's truck driver admitted fault at the scene of the collision. *Id.* at 14. The investigating officer issued a citation to VEO's driver for failing to yield. *Id.* at ¶ 16. Although liability is clear, VEO denies responsibility in this case. *See* VEO's Answer.

The collision resulted in catastrophic injuries. *Id.* at ¶ 19. The force from the collision broke Ms. Altman's leg, which required an emergency surgery, fractured her lumbar spine, and broke multiple ribs. *See id.* Ms. Altman will need a total knee replacement surgery once she recovers from her first emergency surgery.

2.2. VEO is a "motor carrier."

VEO uses commercial motor vehicles in the operation of its not-for-profit business. Arch insures VEO's commercial trucks under a commercial automobile liability policy:

Commercial Auto Liability (Other Than Auto Dealers Liability) ARCH INSURANCE COMPANY AAAUT0046602 07/01/2020 - 07/01/2021	Combined Single Limit – Each Accident $1,000,000 OR Bodily Injury - Each Person Bodily Injury - Each Accident Property Damage - Each Accident

VEO is a "motor carrier" under two different Georgia statutes. VEO is a "motor carrier" under O.C.G.A. § 40- 2-1(6)(B) because it "'operates or controls commercial motor vehicles as defined in 49 C.F.R. Section 390.5 or this chapter whether operated in interstate or intrastate commerce, or both.'" *Id.* at ¶ 29. VEO's commercial motor vehicle at issue can be seen below:

VEO is also "motor carrier" under O.C.G.A. § 40-1- 100(12)(A) because it "'own[s], control[s], operat[es], or manag[es] . . . motor vehicle[s] . . . used in the business of transporting for hire . . . household goods . . . or property . . ." Pl.'s Compl., ¶ 30.

3. <u>Plaintiff has standing.</u>

Plaintiff has standing to bring a direct action against Arch under O.C.G.A. §§ 40-1-112(c) and 40-2-140. A challenge to standing raises the question of the Court's subject matter jurisdiction. *Douglas Cty. v. Hamilton State Bank*, 340 Ga. App. 801, 801 (2017). Subject matter jurisdiction is the Court's authority to hear a type of claim. *Mosley v. Lancaster*, 296 Ga. 862, 866 (2015). Stated differently, it is the Court's "power to deal with the general abstract question, to hear the particular facts in any case relating to this question." *Id.* (citation omitted).

The Court has subject matter jurisdiction over Plaintiff's direct action claims. Under the common law, a plaintiff did not have standing to bring a direct action against a defendant's insurance company where the plaintiff was not a party to the contract. *Hammonds v. Gray Transportation, Inc.*, 371 F. Supp. 3d 1340, 1347–48 (M.D. Ga. 2019). However, the General Assembly can confer standing to a class of individuals by statute. *E.g. Leanhart v. Knox*, 351 Ga. App. 268, 271 (2019) (wrongful death statute "confers exclusive standing upon the surviving spouse . . ."). Here, the Georgia General Assembly explicitly conferred standing on plaintiffs to bring claims against a motor carrier's insurer by passing O.C.G.A. §§ 40-1-112(c) and 40-2-140. *Id.* Plaintiff has standing to bring her direct action claims against Arch.

The issue of whether VEO is, in fact, a "motor carrier" is a factual question relating to the merits of the claim, not an issue with standing or subject matter jurisdiction. *E.g.*, *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 684 (2011) ("When actionable injury is *alleged* in a suit on the policy, *the terms of the statute are complied with* . . .") (citation omitted) (emphasis added); *see also Stubbs Oil Co., Inc. v. Price*, 357 Ga. App. 606, 616 (2020), *reconsideration denied* (Nov. 3, 2020) (weighing evidence on summary judgment to consider whether defendant was a "motor carrier"); *accord Smith v. S. Gen. Ins. Co.*, 222 Ga. App. 582, 583 (1996) (same); *Cordle v. Koch Foods, LLC*, 2014 WL 12576635, at *4 (N.D. Ga. Aug. 7, 2014) (same). In fact, the undersigned did not find a single reported case in Georgia in which the Court dismissed an insurance company from a direct action based on lack of standing.

4. <u>Arch Insurance Company's Motion to Dismiss Should Be Denied.</u>

Plaintiff clearly has standing to bring a direct action under Georgia's direct action statutes. *See* O.C.G.A. §§ 40-1-112(c), 40-2-140. Therefore, Arch's challenge under O.C.G.A.

§ 9-11-12(b)(1) fails as a matter of law. Because Plaintiff properly pleaded that VEO is a "motor carrier" under both Georgia direct action statutes, the Court should deny Arch's Motion to Dismiss under O.C.G.A. § 9-11-12(b)(6).

4.1. Legal standard on a motion to dismiss.

A motion to dismiss for the failure to state a claim should *not* be granted unless the movant shows:

> (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.

Austin v. Clark, 294 Ga. 773, 774–75 (2014). Stated differently, a motion to dismiss should only be granted if "it would be impossible for [Plaintiff] to come forward with evidence within the framework of the [Complaint] that would support" her claims. *TMX Fin., LLC v. Goldsmith*, 352 Ga. App. 190, 214 (2019).

4.2. This direct action is authorized by O.C.G.A. § 40-2-140.

Code Section 40-2-140 expressly authorizes direct actions against a motor carrier "and its insurance carrier." O.C.G.A. § 40-2-140(d)(4). That direct-action statute appears in Title 40, Chapter 2 of the Code. Title 40, Chapter 2 has its own definitions section that governs the words and phrases "[a]s used in th[at] chapter." O.C.G.A. § 40-2-1. That definitions section defines "motor carrier." O.C.G.A. § 40-2-1(6). The definition of "motor carrier" in Chapter 2 does *not* contain the words "for hire." *Id.* Instead, the definition of "motor carrier" encompasses any entity that "operates or controls commercial motor vehicles as defined in 49 C.F.R. Section 390.5." O.C.G.A. § 40-2-1(6)(B). In turn, "commercial motor vehicles" as defined in § 390.5 include vehicles with a gross vehicle weight rating ("GVWR") of 10,001 pounds or more. To

summarize, if a company operates a truck with a GVWR above 10,001 pounds, then the company is a motor carrier and its insurer is subject to a direct action under Title 40, Chapter 2.

VEO's truck had a GVWR of 10,001 pounds or more. Compl., ¶¶ 29-30. Therefore, it constituted a "commercial motor vehicle." 49 C.F.R. § 390.5. Therefore, VEO was a "motor carrier." O.C.G.A. § 40-2-1(6)(B). Therefore, VEO's insurer, Arch, is subject to a direct action. O.C.G.A. § 40-2-140(d)(4). *See* Order Denying Insurer's Motion to Dismiss Direct Action, *DeJournett v. Staples, Inc., et al*, State Court of DeKalb County, Judge Lopez (Ex. A) (finding that Staples was a motor carrier because it operated trucks that had a GVWR greater than 10,000lbs).

That concludes the issue. Even if Defendants were correct that VEO did not transport anything "for hire," it would not matter because "for hire" is not a part of the definition of "motor carrier" upon which Code Section 40-2-140 relies. Instead, Defendants mistakenly attempt to suggest that the definitions section in Title 40, *Chapter 1* applies to the direct-action statute in *Chapter 2*. That is incorrect. As the first five words of the statute establish, the definitions section in Chapter 1 only applies to words and phrases "[a]s used in th[at] part" – *i.e.*, in Title 40, *Chapter 1, Article 3, Part 2*. O.C.G.A. § 40-1-100. When considering whether a company is a "motor carrier" within the meaning of the direct-action statute in *Chapter 2*, whether the subject truck was operated "for hire" is irrelevant. *See* O.C.G.A. § 40-2-1(6) (correct, applicable definition).

Plaintiff properly alleged that VEO was a motor carrier under the definition in Chapter 2. *See* Compl. ¶ 29. At this stage of the proceedings, that well-pleaded allegation controls. Because VEO is a motor carrier, a direct action against Arch is proper. O.C.G.A. § 40-2-140(d)(4).

4.3. This direct action is also authorized by O.C.G.A. § 40-1-112.

Code Section 40-1-112 also authorizes direct actions against "the motor carrier and the insurance carrier." § 40-1-112(c). This second direct-action statue appears in Title 40, Chapter 1, Article 3, Part 2. This second direct-action statute draws from a different definitions section. Specifically, it draws from Code Section 40-1-100, which by its express terms defines words and phrases as they are used in Title 40, Chapter 1, Article 3, Part 2. This second definitions section also defines "motor carrier," but unlike the definition in Code Section 40-2-1, the words "for hire" do appear in the definition. O.C.G.A. § 40-1-100(12)(A).

However, the words "for hire" do not exclude all nonprofits, as Defendants erroneously argue. Instead, the definition of "motor carrier" in Code Section 40-1-100(12) only excludes *certain* categories of nonprofits, *and VEO is not among those categories*. Specifically, the definition excludes "[m]otor vehicles operated not for profit with a capacity of 15 persons or less when they are used exclusively to transport elderly and disabled passengers or employees under a corporate sponsored vanpool program." O.C.G.A. § 40-1-100(12)(B)(v). If nonprofits could never be motor carriers, as Defendant now suggests, then every word in that exception other than "not for profit" would be surplusage. In other words, if nonprofits could *not* be motor carriers, then the legislature would not have needed to say anything about passenger capacity, elderly or disabled passengers, or vanpools. Non-profit status alone would have been sufficient to exclude those vehicles from the definition of "motor carrier." But the legislature specified that only *certain* non-profits were excluded from the definition (*i.e.*, non-profits operating vehicles that carried fewer than 15 passengers, carried elderly or disabled passengers, and participated in vanpools). Because VEO's truck was not "used exclusively to transport elderly and disabled

passengers" and was not involved in a "corporate sponsored vanpool program," VEO is not excluded from the definition of "motor carrier" at § 40-1-100(12).

Plaintiff properly alleged that VEO was a motor carrier under the definition in Chapter 1 (as well as Chapter 2). *See* Compl. ¶ 30. At this stage of the proceedings, that well-pleaded allegation controls. Because VEO is a motor carrier, a direct action against Arch is proper. § 40-1-112(c).

4.4. Arch fails to provide any applicable authority to support dismissal.

The single case Arch relies on to argue that it is not subject to a direct action applies the wrong legal standard. *E.g.*, *Nat'l Union Fire Ins. Co. v. Sorrow*, 202 Ga. App. 517 (1992). *Sorrow* is an appeal from the denial of a *motion for summary judgment*, meaning, unlike here, the parties were given the opportunity to conduct discovery on the claims and defenses. That is the wrong legal standard. *Sorrow* is inapposite.

In *Sorrow*, the plaintiff was injured in a collision involving a Frito Lay van. *Id.* at 517. The plaintiff sued the company, the driver, and the insurance carrier under Georgia's direct action statute. *Id.* Unlike Arch in this case, the insurer in *Sorrow* waited until after discovery and moved for summary judgment, arguing that the *evidence* showed that it did not transport goods "for hire." *Id.* at 518. Based on the *evidence* collected, the Court found that "Frito Lay's step van was used exclusively by Frito Lay to transport its own products; it was never held out for hire to the public and was not used or hired by the public for the transportation of either goods or people." *Id.* The question in *Sorrow* was whether the evidence collected through discovery was sufficient to support the plaintiff's claim that the defendant was a "motor carrier." The question was *not* whether the plaintiff had standing to bring the claim – he clearly did.

Sorrow is also factually distinguishable. Unlike the trucking company in *Sorrow*, VEO does not use its trucks "to transport its own products," rather, it transports third-parties' household goods to and from various locations. Further, VEO provides a service that is used by the public for the transportation of household goods. VEO makes the conclusory allegation that it is not "hired" by anyone, but VEO provides no corporate records, such as contracts or delivery receipts, to verify that averment – the kind of information that would come out during factual discovery. VEO's affidavit also fails to consider payment it receives for its services through corporate sponsorships and donations.[1] That is, VEO is paid for the transportation of household goods, it is just not paid by the people it serves. Regardless of the source of VEO's compensation, the purpose of the direct action statutes remains served by keeping Arch in the case. *Sapp*, 288 Ga. at 682 (direct action statutes designed "*to protect members of the general public* . . .") (emphasis added).

Even assuming that VEO is not a "motor carrier" under O.C.G.A. § 40-1-100 – which it is – VEO is clearly a motor carrier under O.C.G.A. § 40-2-1 because it operates commercial motor vehicles.

4.5. Plaintiff is entitled to discovery.

If a motion to dismiss raises matters outside of the pleadings, the motion shall be treated as one for summary judgment. O.C.G.A. § 9-11-12(b); *see also Cox Enterprises, Inc. v. Nix*, 273 Ga. 152, 153 (2000). "A premature decision on summary judgment impermissibly 'deprive[s] the plaintiffs[ ] of their right to utilize the discovery process to discover the facts necessary to justify their opposition to the motion.'" *Vining v. Runyon*, 99 F.3d 1056, 1058 (11th Cir. 1996)

[1] *See* VEO webpage, https://veohero.org/ (identifying corporate sponsors, such as, The Home Depot, Delta, the Atlanta Falcons, Truist, Coldwell Banker Realty, and Rollins).

(quoting *Snook v. Trust Co. of Georgia Bank of Savannah, N.A.*, 859 F.2d 865, 871 (11th Cir. 1988)); *see also Atlanta Women's Specialists, LLC v. Trabue*, 310 Ga. 331, 333 (2020) ("[T]he discovery process bears the burden of filling in details.").

Arch's Motion to Dismiss is, in essence, a premature motion for summary judgment, which should be denied under O.C.G.A. § 9-11-56(f) since Defendant raises substantive matters outside the pleadings (unrelated to its purported jurisdictional challenge). Specifically, Defendants ask this Court to ignore Plaintiff's well-pleaded allegations and, instead, hold that VEO is not a "motor carrier" as a matter of law based on its own self-serving evidence before Plaintiff has had any opportunity to conduct discovery or depose the affiant. That is not proper.

5. Conclusion

Plaintiff has standing to bring a direct action against Arch under Georgia's two direct action statutes. *See* O.C.G.A. §§ 40-1-112(c), 40-2-140. Therefore, Arch's challenge based on a purported lack of subject matter under O.C.G.A. § 9-11-12(b)(1) fails.

Plaintiff's well-pleaded allegations show that VEO is a "motor carrier" under § 40-2-1 and § 40-1-100. Pl.'s Compl., ¶ 29-30. Therefore, Arch's challenge to Plaintiff's Complaint under O.C.G.A. § 9-11-12(b)(6) fails.

Third, to the extent the Court considers Defendant's evidence (which is not related the issue of subject matter jurisdiction), the Court must convert Arch's motion to a motion for summary judgment, deny the motion under O.C.G.A. § 9-11-56(f), and Plaintiff to cross-examine the affiant and conduct discovery.

Plaintiff respectfully requests that the Court deny Defendants' motion.

Respectfully submitted this 15th day of June 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this date, I have served the foregoing ***PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT ARCH INSURANCE COMPANY'S MOTION TO DISMISS*** upon all parties to this matter by filing with Odyssey eFileGA which will automatically send notification to the following attorneys of record:

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This 15th day of June 2021.

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EXHIBIT A

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

CLIFTON DEJOURNETT,	*	
	*	
Plaintiff,	*	
	*	
v.	*	**Case No. 17A67325-6**
	*	
STAPLES, INC. and ACE AMERICAN INSURANCE COMPANY,	*	
	*	
	*	
Defendants.		

ORDER

This case came before the Court on Defendant Ace American Insurance Company's Motion to Dismiss. Defendant Ace American Insurance Company ("Ace American") contends that it is an improper party because Georgia law does not permit direct actions against liability insurers except in certain circumstances and none of those circumstances apply in this case. After considering the pleadings of the parties and the applicable case law, as well as the arguments presented at the hearing on the matter, the Court finds, as follows:

This is a personal injury claim arising from a motor vehicle collision between Plaintiff and a vehicle owned by Defendant Staples, Inc. ("Staples"). The lawsuit was originally filed against Staples in Fulton State Court. The Plaintiff then moved to add Defendant Ace American pursuant to O.C.G.A. § 40-2-140, contending that Defendant Staples's delivery truck was a commercial motor vehicle, which made Defendant Staples a motor carrier under Georgia law. The Fulton County Court granted the motion and added Ace American as a Defendant. The case was then transferred to this Court. Defendant Ace American now moves to be dismissed on the grounds that Defendant Staples is not a motor carrier and, as such, a direct claim against its insurance carrier is improper. It argues that Defendant Staples is not a "motor carrier" because, by the Plaintiff's own Complaint, Defendant Staples was operating its truck for its own business purposes rather than in course of transporting for hire persons, household goods, or property at the time of the incident. See Plaintiff's Complaint, ¶¶ 10-18. The question before the Court, therefore, is whether Staples qualifies as a "motor carrier" under Georgia law.

In interpreting statutes, the Court will first look at the plain language of the statute. "In

construing a legislative act, a court must first look to the literal meaning of the act. If the language is plain and does not lead to any absurd or impracticable consequences, the court simply construes it according to its terms and conducts no further inquiry." Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 540, 774 S.E.2d 114 (2015), citing Savannah Cemetery Group v. DePue-Wilbert Vault Co., 307 Ga. App. 206, 207, 704 S.E.2d 858 (2010) (Punctuation and footnote omitted.) Furthermore, "in construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole." Doctors Hosp. of Augusta, LLC, 332 Ga. App. at 540, citing Walker County v. Tri-State Crematory, 292 Ga. App. 411, 414-415, 664 S.E.2d 788 (2008) (Citation and punctuation omitted.) Different subsections of a statute should be read in *pari materia*, and the Court must strive to "reconcile them, if possible, so that they may be read as consistent and harmonious with one another." Doctors Hosp. of Augusta, LLC, 332 Ga. App. at 540, citing City of LaGrange v. Ga. Public Svc. Comm., 296 Ga. App. 615, 621, 675 S.E.2d 525 (2009) (Punctuation and footnote omitted.)

Under Title 40, Chapter 2 of the Official Code of Georgia, "[a]ny person having a cause of action, whether arising in tort or contract, under this Code section may join in the same cause of action **the motor carrier** and its insurance carrier." O.C.G.A. § 40-2-140(d)(1)(4) (emphasis added). At the outset, in interpreting the statute, the Court must first determine the applicable definition for "motor carrier." In support of its motion, Defendant Ace American relies on the definition of a "motor carrier" found in O.C.G.A. § 40-1-100. As used therein, a "motor carrier" is defined as every person owning, controlling or managing any motor vehicle used in the business of transporting for hire, persons, household goods, or property." O.C.G.A. § 40-1-100(12). The term "carrier" is defined as "a person who undertakes the transporting of goods or passengers for compensation." O.C.G.A. § 40-1-100(1). Finally, "for compensation" or "for hire" is defined as an activity relating to a person engaged in the transportation of goods or passengers for compensation. O.C.G.A. § 404-100(8). None of the definitions cited by Defendant, however, are found in Chapter 2 of title 40, the chapter where the direct action statute is located.

For his part, Plaintiff argues that O.C.G.A. § 40-2-1(6)(B) provides the applicable "motor carrier" definition. O.C.G.A. § 40-2-1(6)(B) provides that a "motor carrier" includes "[a]ny entity defined by the commissioner or commissioner of public safety **who operates or controls**

commercial motor vehicles as defined in 49 C.F.R. Section 390.5 or this chapter whether operated in interstate or intrastate commerce, or both." (Emphasis added.) That federal regulatory definition establishes that any truck with a GVWR over 10,000 pounds constitutes a "commercial motor vehicle." Notably, before setting forth the definitions in the statute, the first seven words of the text of O.C.G.A. § 40-2-1 are: **"[a]s used in this chapter** [i.e., Title 40, Chapter 2], the term..." (Emphasis added.) Ultimately, the Court agrees with Plaintiff and finds that the plain language of O.C.G.A. § 40-2-1 establishes that the operative terms for Title 40, Chapter 2 are found within that statute and, therefore, the appropriate definition of "motor carrier" to be used in this case is the one found in O.C.G.A. § 40-2-1.

Next in the analysis to determine whether Plaintiff's O.C.G.A. § 40-2-140(d)(1)(4) direct action is appropriate in the present case, the Court must decide whether Defendant Staples falls within the "motor carrier" definition of O.C.G.A. § 40-2-1. The record in this case shows that Defendant Staples' vehicle at issue in this case was a truck with a GVWR at or above 10,001 pounds. See Staples Resp. to RFA 20 (Set 1). Saunders Baugh was the Staple's employee driving the Defendant's vehicle at the time of the incident. Baugh expressly testified that the truck's gross vehicle weight rating ("GVWR") was 19,500 pounds. See Baugh Dep. 18:04-10. Both him and his supervisor, Antwon Swain, testified that the subject truck was a commercial motor vehicle. See Baugh Dep. 9:25-10:02; Swain Dep. 47:24-48:02. Moreover, Defendant Staples 30(b)(6) representative also testified that the vehicle involved in the collision was a commercial motor vehicle. See Staples Depo. 33:3-19. In addition, Staples's internal documents further reflect that the subject truck was a "commercial motor vehicle." For example, the Staples Driver Manual instructs all of its drivers that "the truck you drive every day is considered a commercial motor vehicle under the Federal Motor Carrier Safety Regulations," and the forms that Staples instructed its drivers to fill out identify Staples as a "motor carrier." See Drivers Manual at p. 3. Finally, the instructions of the "Driver Certification for Other Compensated Work" filled out by Baugh as part of his work as a Staples driver expressly provides in relevant part: "[w]hen employed by a motor carrier, the driver must report to the carrier all on-duty time working for other employers." See 4/29/09 Driver Certification for Sanders Baugh.

Under this governing definition, an entity that owns or operates "commercial motor vehicles" is a "motor carrier" and is therefore subject to a direct action. As such, Defendant Staples is a motor carrier for purposes of O.C.G.A. § 40-2-140(d)(1)(4) and the direct action

against Defendant Ace American is proper.

Based on the foregoing, Defendant Ace American Insurance Company's Motion to Dismiss **is hereby DENIED.**

SO ORDERED, this 24 day of May, 2018.

Hon. Dax E. López
Judge, State Court of DeKalb County

CC: All parties

STATE COURT OF
DEKALB COUNTY, GA.
5/29/2018 11:09 AM
E-FILED
BY: Monique Roberts