

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KEVIN BROCK

Plaintiff(s)

vs.

THE SOUTH CAROLINA STATE PORTS
AUTHORITY

Defendant(s)

Submitted By: E. PAUL GIBSON, ESQUIRE

Address: E. PAUL GIBSON, PC

P.O. BOX 40997

CHARLESTON, SC 29423-0997

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019-CP - 10- 0944

2019 FEB 25 PM 12:14
JULIE J. AMES
CLERK OF COURT
BY _____

SC Bar #: 2465

Telephone #: 843.225.3852

Fax #: 843.329.8580

Other: _____

E-mail: OFFICE@EPGIBSON.NET

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Fraud/Bad Faith (150)
<input type="checkbox"/> Failure to Deliver/
Warranty (160)
<input type="checkbox"/> Employment Discrim (170)
<input type="checkbox"/> Employment (180)
<input type="checkbox"/> Other (199) _____ | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NI-_____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) _____ | Torts - Personal Injury
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input checked="" type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Assault/Battery (370)
<input type="checkbox"/> Slander/Libel (380)
<input type="checkbox"/> Other (399) _____ | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) _____ |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) _____ | Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture—Consent Order (850)
<input type="checkbox"/> Other (899) _____ | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured
Settlement Payment Rights
Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers
Compensation Settlement
Approval (780)
<input type="checkbox"/> Other (799) _____ | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) _____ |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699) _____
<input type="checkbox"/> Sexual Predator (510)
<input type="checkbox"/> Permanent Restraining Order (680) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in
an Out-of-County Action (660)
<input type="checkbox"/> Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: 2.18.19

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a “Proof of ADR” form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the “Notice of Intent to File Suit” or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. ~~19-CP-10-~~

2019-CP-10-0944

KEVIN BROCK,)
Plaintiff,)

vs.)

THE SOUTH CAROLINA)
STATE PORTS AUTHORITY,)
Defendant.)

SUMMONS

(Breach of Implied Warranty of Workmanlike
Performance; Negligence: S.C. Tort Claims Act)

JURY TRIAL DEMANDED

BY _____

JULIE J. ROSTRONG
CLERK OF COURT

2019 FEB 25 PM 12:45

FILED

TO: THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or his attorney, E. Paul Gibson, E. Paul Gibson, PC, 5010 Lawyers Lane, North Charleston, South Carolina 29418 within thirty (30) days from the date of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

E. PAUL GIBSON, P.C.,

BY: 
E. PAUL GIBSON

Attorneys for the Plaintiffs
P.O. Box 40997
N. Charleston, SC 29423-0997
(843) 225-3852
(843) 329-8580 (fax)
Paul@NorthCharlestonLaw.com

N. Charleston, SC
February 18, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. ~~19-CP-10-~~

2019-CP-10-0944

KEVIN BROCK,)
)

Plaintiff,)
)

vs.)
)

THE SOUTH CAROLINA)
STATE PORTS AUTHORITY,)
)

Defendant.)
)

COMPLAINT

(Breach of Implied Warranty of Workmanlike
Performance; Negligence: S.C. Tort Claims Act)

JURY TRIAL DEMANDED

FILED
2019 FEB 25 PM 12:45
JULIE J. PROCTOR
CLERK OF COURT
BY

TO: THE ABOVE NAMED DEFENDANT:

NOW COMES the Plaintiff, above named, complaining of the Defendant, above named, and would respectfully allege and show unto this Honorable Court as follows:

1. That the Plaintiff, Kevin Brock, is a citizen and resident of the County of Charleston, State of South Carolina.

2. That the Defendant, The South Carolina State Ports Authority ["SCSPA"], upon information and belief, is a political subdivision of the State of South Carolina and, as such, is subject to this action under the provisions of the South Carolina Tort Claims Act.

3. That this Honorable Court has jurisdiction of the parties and subject matter herein set forth.

4. That included among the activities of the Defendant SCSPA is the operation and maintenance of a public port facility known as the "Wando Welch Terminal" on the Cooper River in the County of Charleston, State of South Carolina.

5. That among the equipment owned, maintained and operated by the Defendant SCSPA

at the aforesaid terminal on October 12, 2017, at approximately 2111 hours was a crane used for the loading and unloading of containers aboard vessels over which the Defendant SCSPA, its agents, employees, representatives and servants had exclusive maintenance and operational responsibility.

6. That said crane was used by the Defendant SCSPA to load and unload cargo containers to and from ocean-going containerhips transporting containerized cargo in interstate and foreign commerce.

7. That at the time and place aforesaid, the Plaintiff was employed as a stevedore by SSA Cooper, LLC, a stevedoring company, to work in the loading of export containers on to the MSC KLEVEN at the Wando Welch Terminal.

8. That Plaintiff instructed a longshorewoman to put twistlocks on a container prior to it being lifted for loading. That after she did this, the longshoreman working as paperman gave the signal to Defendant's crane operator to lift the container. That Defendant's crane operator proceeded to lift the container and began to load it on the ship. That, suddenly and without warning, without radioing any of the workers on the dock, the Defendant's crane operator lowered the container back on to the flatbed from where he had originally hoisted it. That, as a result, the Plaintiff's right hand was crushed in between the container and the inside edge of the flatbed.

9. That as a direct and proximate result, the Plaintiff suffered serious bodily and personal injuries as set forth more fully herein.

**FOR A FIRST CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF WORKMANLIKE PERFORMANCE**

10. That Paragraphs One through Nine are realleged as fully as if repeated verbatim herein.

11. That at all times material hereto, the Defendant warranted to all those persons using the cargo container facility at the Wando Welch Terminal and equipment therein, that it would provide adequate equipment and a qualified equipment operator for conducting container handling activities at said facility. Pursuant thereto, the Defendant impliedly warranted that its equipment, including the container crane in question, would be safe and fit for its intended purpose of discharging container cargo on and off container vessels.

12. That the Defendant's implied warranty of workmanlike performance extended to the stevedores, such as the Plaintiff lawfully working at the Wando Welch Terminal for the purpose of loading and discharging containerized cargo and utilizing equipment provided by the Defendant for that purpose.

13. That the Defendant SCSPA charged and was paid certain fees, pursuant to its Terminal Tariff, for the use of the container handling equipment in question, and in consideration for said fees, warranted that its equipment would be safe and fit for its intended purposes.

14. That the Defendant breached its implied warranty of workmanlike performance owed to the Plaintiff by failing to operate its crane in a workmanlike manner.

15. That as a result of said accident, the Plaintiff suffered grievous bodily and personal injuries, all of which has and may in the future cause him to undergo much physical pain and suffering; has and may in the future cause him to have to spend money for medical services; has and may in the future cause him to lose money in the nature of wages, earnings, profits, and earning capacity; has and will in the future cause him trauma, anxiety, annoyance, mental anguish, loss of enjoyment of life, permanent impairment, inconvenience, and travel expenses related to medical care--all to his general damage and detriment.

16. That as a result of the actions and/or inactions of the Defendant SCSPA, the Plaintiff, is informed and believes that he is entitled to judgment against the Defendant, along with an appropriate amount of actual damages and punitive damages, the costs of this action, all applicable interest, and such other and further relief as this Court deems just and proper.

**FOR A SECOND CAUSE OF ACTION
NEGLIGENCE**

17. That the allegations of Paragraphs One through Sixteen are realleged as if fully repeated verbatim herein.

18. That pursuant to S.C. Code Ann. §15-78-40 (the S.C. Tort Claims Act), as an agency of the State of South Carolina, Defendant SCSPA has consented to be sued for its negligent and tortious conduct, as if a private individual, and is liable to the Plaintiff for his injuries resulting from the aforesaid negligent and tortious conduct.

19. That the Defendants, individually and/or jointly, were negligent, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned, in one or more of the following particulars:

- a. In failing to properly maintain the aforesaid crane;
- b. In failing to properly inspect the aforesaid crane to make certain that it was safe for use;
- c. In failing to determine that the crane was in a dangerous condition when performing the preventative maintenance that it did perform;
- d. In failing to undertake the necessary to make the crane safe for use when SCSPA knew or should have known that it constituted an immediate hazard to those persons

working below it;

e. In negligently assigning and entrusting equipment to one who is not competent to operate it;

f. In assigning an incompetent operator who had previous incidents of bad work;

g. In failing to wait for the proper signal to be given by the flagman;

h. In failing to be attentive at all times during a lift;

i. In terminating the lift of the box and then lowering it before knowing that it was safe to do so and when, in fact, it was not safe to do so;

j. In failing to keep a proper lookout;

k. In starting a lowering of the container at a high rate of acceleration in violation of Paragraph 3 (page 24) of the Operating Procedure set forth in the Operating Instructions for a Container Crane in the SCSA's Crane Operator Training Manual;

l. In failing to maintain the proper degree of mental alertness required when operating a crane so that the operator is alert for signals as required by the Crane Operator Qualifications on page 5 of the SCSA's Crane Operator Training Manual;

m. In requiring an unrealistic and unsafe rate of production;

n. In encouraging and mandating work to be performed at unsafe speeds to increase productivity;

o. In failing to radio the workers on the dock to inform them that he was aborting the lift and returning the container to its original flatbed;

p. In other manners to be proved at trial; and

q. In generally failing to use the degree of care and caution that a reasonable and

prudent person would have used under the circumstances then and there prevailing, all of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein said acts being in violation of the statutory and common laws of the State of South Carolina.

20. That as a result of said accident, the Plaintiff suffered serious bodily and personal injuries, all of which has and may in the future cause him to undergo much physical pain and suffering; has and may in the future cause him to have to spend money for medical services; has and may in the future cause him to lose money in the nature of wages, earnings, profits, and earning capacity; has and will in the future cause him trauma, anxiety, annoyance, mental anguish, loss of enjoyment of life, permanent impairment, inconvenience, and travel expenses related to medical care--all to his general damage and detriment.

21. That as a direct and proximate result of the Defendant's actions and/or inactions the Plaintiff is informed and believes that he is entitled to judgment against the Defendant in an appropriate amount of actual damages, the costs of this action and such other and further relief as this Court deems just and proper.

WHEREFORE the Plaintiff pray unto this Honorable Court for judgment against the Defendant in an appropriate amount of actual damages, for the costs of this action, and such other and further relief as this Court might deem just and proper.

E. PAUL GIBSON, P.C.,

BY: 
E. PAUL GIBSON

Attorneys for the Plaintiff
P.O. Box 40997
N. Charleston, SC 29423-0997
(843) 225-3852

N. Charleston, SC

February 18, 2019



E. PAUL GIBSON, P.C.
ATTORNEYS AT LAW

E. PAUL GIBSON, LLM *+
(SC, FL, MD)
office@epgibson.net

ALLISON STOVER LEARD
aleard@epgibson.net

PHONE: (843) 225-3852

+ S.C. Certified Mediator

* Certified by the National Board
of Legal Specialty Certification
in Civil Trial Advocacy

FACSIMILE: (843) 329-8580

February 18, 2019

The Honorable Julie Armstrong
Clerk of Court
Charleston County Court of Common Pleas
100 Broad Street, Suite 106
Charleston, SC 29401

Re: KEVIN BROCK vs. THE SOUTH CAROLINA STATE PORTS AUTHORITY

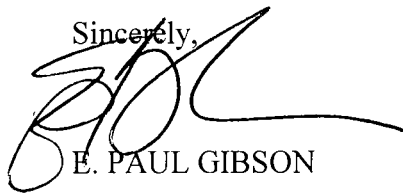
Dear Julie:

Enclosed please find the original and three (3) copies of my Civil Cover Sheet, Summons and Complaint in regard to the above-referenced matter. I would appreciate it if you could file the original and return the certified copies to me by means of the self-addressed stamped envelope enclosed for your convenience. My check in the amount of \$150.00 is also enclosed.

If you have any questions or require anything further, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



E. PAUL GIBSON

EPG/amw

Enclosures

cc: Kevin S. Brock (w/encls.)
Ken Kromer, S.C. State Ports Authority (w/encls.)