

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

HERBERT WILLOUGHBY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: _____
	)	
JASON CRIBBS;	)	
SWIFT TRANSPORTATION CO. OF	)	
ARIZONA, LLC; and THE HOME	)	
DEPOT U.S.A., INC.,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFFS’ ORIGINAL COMPLAINT**

COME NOW HERBERT WILLOUGHBY, Plaintiff, and alleges as follows:

**I. PARTIES**

1.1 Plaintiff HERBERT WILLOUGHBY is a resident and citizen of Virginia. He brings this negligence action on behalf of himself.

1.2 Defendant JASON CRIBBS is a resident and citizen of North Carolina and can be served with process at his residence: 6721 Sasafras Court, Sims, North Carolina 27880.

1.3 Defendant SWIFT TRANSPORTATION CO. OF ARIZONA, LLC, (hereinafter referred to as “SWIFT TRANSPORTATION”) is a Delaware corporation with its principal offices located in Phoenix, Arizona, and at all times material hereto was authorized and was doing business in the state of Texas. Defendant may be served with process by serving its Registered Agent for service of process, National Registered Agents, Inc., 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

1.4 Defendant THE HOME DEPOT U.S.A., INC., (hereinafter referred to as “HOME DEPOT”) is a Delaware corporation with its principal offices located in Atlanta, Georgia, and at all times material hereto was authorized and was doing business in the state of Texas. Defendant may be served with process by serving its Registered Agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

## **II. JURISDICTION & VENUE**

2.1 The district court has original jurisdiction of this civil action pursuant to 28 U.S.C. § 1332(a). The amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs. Plaintiff HERBERT WILLOUGHBY is a citizen of Virginia. Defendant JASON CRIBBS is a citizen of North Carolina. Defendant SWIFT TRANSPORTATION is a corporation incorporated under the laws of Delaware and is authorized and doing business throughout the state of Texas. Defendant HOME DEPOT is corporation incorporated under the laws of Delaware and is authorized and doing business throughout the state of Texas.

2.2 Venue is properly before this Court under 28 USC § 1391(a) (2), because a substantial part of the events giving rise to this claim occurred in Harris County, Texas.

## **III. BACKGROUND**

3.1 On or about June 5, 2012, Defendant JASON CRIBBS was negligent in the operation of an 18-wheeler. While operating the vehicle, JASON CRIBBS ran over Plaintiff HERBERT WILLOUGHBY’s foot. Defendant JASON CRIBBS was an employee of Defendant SWIFT TRANSPORTATION and was conducting business at one of the warehouses owned by Defendant HOME DEPOT in Harris County, Texas. The Defendants’ negligence proximately

caused Plaintiff's personal injuries and damages as more thoroughly described herein. Therefore, Plaintiff brings suit on the following grounds.

**IV. CAUSES OF ACTION : DEFENDANT, JASON CRIBBS AND SWIFT  
TRANSPORTATION**

4.1 Defendant JASON CRIBBS was negligent in his actions and/or omissions in operating a motor vehicle. Specifically, Defendant was negligent in, but not limited to, the following manner:

- a) Failing to stop before running over the Plaintiff;
- b) Failing to take proper evasive action;
- c) Failing to apply the appropriate brakes to the vehicle he was driving;
- d) Failing to avoid the accident;
- e) Failing to maintain a proper lookout; and
- f) Failing to operate the vehicle in a reasonably attentive manner;

4.2 Defendant's acts and/or omissions constitute a failure to use due care as described above. Defendant's failure to use care was a proximate and producing cause of Plaintiff's injuries and damages as described more thoroughly herein. Defendant is therefore liable to Plaintiff for his personal injuries and damages sustained as a direct result of Defendant's negligence.

4.3 Defendant SWIFT TRANSPORTATION is legally responsibly to Plaintiff for the negligent conduct of Defendant JASON CRIBBS under the legal doctrine or *respondeat superior* because Defendant JASON CRIBBS was at all times material hereto an employee of SWIFT TRANSPORTATION and was acting within the course and scope of such employment at all times relevant to this matter. As a result thereof, Defendant SWIFT TRANSPORTATION is liable for all negligence of Defendant JASON CRIBBS.

**V. CAUSE OF ACTION: DEFENDANT, SWIFT TRANSPORTATION**

5.1 Defendant SWIFT TRANSPORTATION was negligent in its errors and/or omissions in maintaining the trailers operated by its employees including by not limited to the following:

- a) Defendant has a legal duty to maintain its trailers for use by its employees.
- b) Defendant failed to adequately maintain the trailer operated by Plaintiff HERBERT WILLOUGHBY and Defendant JASON CRIBBS.
- c) Defendant had actual knowledge of the problems with the above-mentioned trailer and subsequently failed to adequately repair the trailer.
- d) Defendant owed a legal duty of care to Plaintiff and its employees concerning the maintenance of the trailer. SWIFT breached its duty of care in that the trailer's condition contributed to Plaintiff's injuries and the Defendant knew, or should have known, of the foreseeable consequences of failing to adequately maintain the trailers.
- e) As a direct and proximate result of these known problems and failure to maintain and repair, SWIFT breached their legal duty of care owed to Plaintiff and its employees in failing to maintain its trailer. Said breach of duty and negligence was the direct and proximate cause of the serious injuries and damages the Plaintiff sustained.

**VI. CAUSE OF ACTION: DEFENDANT  
THE HOME DEPOT U.S.A., INC.**

6.1 Defendant HOME DEPOT was negligent in maintaining safe working conditions. Specifically, Defendant was negligent in supervising the loading docks at its Distribution Center

and keeping pedestrians out of the main lane of travel for vehicles and trucks entering the property.

6.2 Defendant owed a legal duty of care to Plaintiff regarding the safety and procedure of its docks. Such duty included, but was not limited to ensuring the safety of those entering the facility in furtherance of Home Depot's business.

6.3 The Defendant knew, or should have known, that failing to adequately maintain a safe and secure entrance to the facility could have resulted in the Plaintiff's injuries.

6.4 The Defendant HOME DEPOT's breach of duty and negligence was the direct and proximate cause of the serious injuries sustained by Plaintiff HERBERT WILLOUGHBY, and Plaintiff's resulting damages.

## **VII. GENERAL DAMAGES**

7.1 As a direct and proximate result of the Defendants' negligence, Plaintiff suffered damages allowed by law for personal injuries in an amount in excess of \$75,000.

7.2 As a further result of Defendants' negligence, Plaintiff HERBERT WILLOUGHBY has suffered serious and permanent personal injuries. Plaintiff HERBERT WILLOUGHBY suffered the following damages:

- a) Medical expenses incurred in the past.
- b) Medical expenses which in all probability will be incurred in the future.
- c) Loss of past earning capacity.
- d) Loss of earning capacity which in all probability will be sustained in the future.
- e) Physical impairment in the past.

- f) Physical impairment which in all probability will be sustained in the future.
- g) Physical pain and mental anguish in the past.
- h) Physical pain and mental anguish will in all probability be sustained in the future.

### **VIII. PUNITIVE DAMAGES**

8.1 Plaintiff incorporates herein by reference Paragraphs 1 through 8.2, inclusive, of this Complaint.

8.2 Defendants' acts and/or omissions are of such a character to rise to the level of gross negligence. Furthermore, Plaintiff would show that the acts and/or omissions of Defendants were carried out with a conscious disregard for an extreme danger of risk and the rights of others and with actual awareness on the part of Defendants that their acts would, in reasonable probability, result in serious personal injury or death. Defendants caused substantial personal injury to Plaintiff and engaged in acts or omissions that, when viewed objectively from the standpoint of Defendant at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Further, Defendants, personally or through its employees and management, had actual, subjective awareness of the risk involved in their acts and omissions, but nevertheless, proceeded with conscious indifference to the rights, safety, or welfare of others, including the Plaintiff.

8.3 Plaintiff seeks exemplary damages pursuant to Plaintiff seeks the imposition of punitive or exemplary damages from Defendants without limitation as imposed by § 41.008 of the Texas Civil Practices and Remedies Code.

**IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests this Court issue citation to Defendants to answer, and upon a trial by jury of this matter, enter judgment against the above-named Defendants for compensatory damages in an amount in excess of \$75,000, together with pre- and post- judgment interest, attorneys' fees, costs and such other and further relief as the Court deems just and equitable.

Respectfully submitted,

FARRAR & BALL, LLP

/s/ Kyle W. Farrar

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*Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
HERBERT WILLOUGHBY
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Kyle W. Farrar, Wesley Ball, Jennifer O'Brien-Stogner, Farrar & Ball, LLP, Houston, TX 77002, 713-221-8300

DEFENDANTS
JASON CRIBBS; SWIFT TRANSPORTATION CO. OF ARIZONA, LLC; and THE HOME DEPOT U.S.A., INC.,
County of Residence of First Listed Defendant Wilson, N.C.
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332 (a),
Brief description of cause:
Personal injury arising from an accident involving a motor vehicle.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 75,000.00
CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 04/17/2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Kyle Farrar

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.