

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

Robert Brooks and Diana Brooks,)	
)	
Plaintiffs,)	
)	
v.)	No. 04 L 301
)	
Gully Transportation, Inc., Larry L. Roundy,))	
Interstate Carrier Xpress, Inc., a/k/a ICX,))	Judge Patrick Kelley
United Contractors Midwest, Inc., a/k/a))	
UCM, and Illinois Valley Paving, Inc.,))	
)	
Defendants.)	

COMPLAINT AT LAW

Plaintiffs, Robert Brooks and Diana Brooks, by and through their attorneys, Kupets & DeCaro, P.C., states the following in support of their Complaint at Law against Gully Transportation, Inc., Larry L. Roundy, Interstate Carrier Xpress, Inc., a/k/a ICX, United Contractors Midwest, Inc., a/k/a UCM, and Illinois Valley Paving, Inc.

GENERAL ALLEGATIONS

THE PARTIES:

1. At all relevant times herein, Plaintiffs, Robert Brooks and Diana Brooks were and are lawfully wedded husband and wife. They reside in Bushnell, Illinois.
2. At all relevant times herein, Defendant, Gully Transportation, Inc., (“Gully”), was a foreign corporation with its principal place of business in Quincy, Illinois.
3. At all relevant times herein, Defendant, Interstate Carrier Xpress, Inc., a/k/a ICX (“ICX”), was a foreign corporation with its principal place of business in Quincy, Illinois.
4. At all relevant times herein, Defendant, Larry Roundy, was a resident of Gailen, Michigan.

5. At all relevant times herein, Defendant, Larry Roundy, was an employee, agent or servant of Defendant, Gully.

6. At all relevant times herein, Defendant, Larry Roundy, was an agent or servant of Defendant, ICX.

7. At all relevant times herein, Defendant, United Contractors Midwest, Inc. (hereafter referred to as “UCM”), was a foreign corporation with its principle place of business in Springfield, Illinois. UCM was formed, in whole or in part, to perform highway construction work for the State of Illinois and others.

8. At all relevant times herein, Defendant, Illinois Valley Paving (hereafter referred to as “IVP”), was an Illinois corporation doing business throughout the state as a highway construction company.

THE CONSTRUCTION PROJECT:

9. On and before March 6, 2003, Defendant IVP bid on and was awarded a State of Illinois, Department of Transportation highway construction contract No. 72350 FAI Route 72, Pike County, Section D6 Resurfacing (hereafter referred to as “I-72 Construction Project.”).

10. At all relevant times herein, Defendants, UCM and IVP were the general contractors on the I-72 Construction Project.

11. At all relevant times herein, Plaintiff, Robert Brooks, was an employee of Hillyer, Inc. (“Hillyer”), which is an Illinois corporation with its principal place of business in Macomb, Illinois.

12. At all relevant times herein, Hillyer was an approved subcontractor on the aforementioned I-72 Construction Project.

13. On the early morning of August 25, 2003, and at all relevant times herein, Plaintiff Robert Brooks was a construction worker performing work within a marked construction work zone for the I-72 Construction Project (the work area will hereafter be referred to as the “Construction Work Zone”).

THE TRACTOR/TRAILER:

14. On August 25, 2003, at approximately 7:12 a.m., and for some time before, Defendant, Larry Roundy, was operating a white 2001 Freightliner truck tractor, Registration No. P384328 IL (hereafter referred to as the “Tractor”).

15. At the aforementioned date and time, Defendant, Larry Roundy, was transporting a 53 foot, 1992 Freuhauf trailer, Registration No. 24875ST (hereafter referred to as the “Trailer”).

16. At the aforementioned date and time, Defendant, Larry Roundy, was transporting freight in the aforementioned trailer which included 12-500 pound drums of an oxidizing solid containing sodium nitrate and sodium hydroxide (hereafter referred to as the “chemicals”). Both of the aforementioned chemicals are known hazardous materials.

17. At approximately 11:30 p.m. on August 24, 2003, Defendant Roundy had left Gailen, Michigan, with the loaded tractor and trailer en route to Quincy, Illinois,

18. At approximately 1:00 a.m., on August 25, 2003, on Highway I-57 near Kankakee, Illinois, Defendant Roundy was stopped by an Illinois State Trooper for having a headlamp out. During the aforementioned traffic stop, it was also determined by the State Police trooper that Defendant Roundy was operating the tractor and trailer without his logbook.

THE SCENE OF THE CRASH:

19. At all relevant times herein, the construction/work zone was an area of I-72 which was being repaired and included the westbound lanes of the Twin Eagle Bridge over the Illinois River. The aforementioned bridge on which the construction/work zone was located only accommodates westbound traffic.

20. At approximately 7:12 a.m., on August 25, 2003, Plaintiff, Robert Brooks, and other employees of Hillyer were engaged in construction activities at the I-72 Construction Project. The Hillyer employees were approximately .10 miles west of mile post 42 in the construction/work zone. 21. At the aforementioned date and time, Plaintiff, Robert Brooks, was a pedestrian who was located on the north shoulder of the I-72 westbound bridge.

22. At the aforementioned date and time, a 1996 Chevrolet Silverado pickup truck (“Greer pickup”) operated by Lisa Greer, an employee of Hillyer, was towing a trailer (“Greer trailer”) and was on the north shoulder of I-72 westbound bridge. The vehicle was stopped entirely on the shoulder with its emergency flashers engaged.

23. At the aforementioned date and time, a 2000 Chevrolet Silverado pickup truck (“Rowland pickup”) operated by Tom Rowland, an employee of Hillyer, was pulling a Wells Cargo enclosed trailer (“Rowland trailer”). The pickup was traveling westbound in the right lane of westbound I-72. The emergency flashers for the pickup and the trailer were activated. It was traveling at a reduced speed because of the construction activities it was being used to perform.

24. The two Hillyer vehicles were being used by the plaintiff and his co-employees to place construction warning signs and cones on I-72 leading up to and within the construction zone at the time of

the crash. There were road construction signs placed at various locations along I-72 warning of the construction/work zone from at least three miles before the scene of the crash.

THE CRASH:

25. At the aforementioned date and time, as plaintiff was walking on the shoulder of the bridge, the tractor and trailer operated by Defendant Roundy, at an excessive rate of speed for a construction zone, collided into the rear of the trailer being towed by the Rowland pickup.

26. The impact of the Roundy tractor and trailer into the Rowland trailer pushed the trailer with great force into the Greer pickup and caused the Rowland pickup to roll onto its side. The Rowland trailer then struck plaintiff Robert Brooks, who was in front of the Greer pickup performing construction activities. The Rowland trailer struck plaintiff with great force causing him serious injuries as will be more specifically set forth hereafter.

27. The Roundy tractor and trailer then continued in a westbound direction and jack-knifed blocking both westbound lanes of I-72 where it came to rest.

28. The Rowland pickup came to rest on its passenger side; the Rowland trailer, after striking the Greer pickup and Plaintiff Brooks, impacted into the north retaining wall of the bridge partially hanging over the side of the bridge.

29. As a result of the crash, the Roundy tractor trailer caught fire, including its load of 6624 lbs. of hazardous materials.

30. There were no other known vehicles in the roadway in the construction/work zone at the time of the crash.

31. Following the crash, a toxicology test was performed on Defendant Roundy. The results of the toxicology test determined that Defendant Roundy was positive for the presence of Cocaine.

COUNT I
(Violations - Road Worker Safety Act - Roundy)

32. Plaintiffs adopt and reallege the general allegations of their Complaint as their paragraph 32 as if set forth herein in full.

33. At all relevant times herein, there was an Illinois Compiled Statute in full force and effect referred to as Road Workers Safety Act, 430 ILCS 105/1 *et seq.* (“the Act”), which provided for the safety and welfare of construction workers working upon bridges or highways within the State of Illinois.

34. At all relevant times herein, Defendant Roundy had a duty to avoid willful violations of the Act for the safety of all persons engaged in construction activities, including Robert Brooks.

35. Notwithstanding said duty, Defendant Roundy was guilty of one or more of the following acts or omissions:

- (a) Operated said commercial motor vehicle at an excessive rate of speed for the then prevailing conditions, contrary to and in violation of 625 ILCS 5/11-601(a);
- (b) Operated said commercial motor vehicle in excess of the then posted speed limit, contrary to and in violation of 625 ILCS 5/11-601(b);
- (c) Operated said commercial motor vehicle while under the influence of a controlled drug or substance, contrary to and in violation of 625 ILCS 5/11-501;

- (d) Followed another vehicle more closely than was reasonable and prudent having due regard for the speed of such vehicles and the condition of the highway, contrary to and in violation of 625 ILCS 5/12-601(a);
- (e) Failed to operate said commercial motor vehicle pursuant to the rules and regulations set forth in and required by the Illinois Hazardous Materials Transportation Act, contrary to and in violation of 430 ILCS 30/1 *et. seq.*;
- (f) Negligently and carelessly failed to slow or reduce his speed and yield the right of way to authorized vehicles in the construction zone in violation of 625 ILCS 5/11-908;
- (g) Negligently and carelessly failed to slow or reduce speed of said commercial motor vehicle when approaching other vehicles upon the roadway when he knew, or in the exercise of ordinary care should have known, that it would be reasonable to do so in light of the size, weight and stopping distance required for the commercial motor vehicle they were then and there operating;
- (h) Failed to keep a proper and sufficient lookout for other vehicles upon the highway; and
- (i) Negligently and carelessly failed to keep a proper and sufficient lookout for lane reduction.

36. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant Roundy, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost wages, and lost earning capacity. These losses have been incurred in the past and will be incurred in the future. Some or all of these losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs, Robert Brooks and Diana Brooks, and against Defendant, Larry Roundy, in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT II
(Reckless Conduct - Roundy)

37. Plaintiffs adopt and reallege the general allegations of their Complaint as their paragraph 37 as if set forth herein in full.

38. At all relevant times herein, it was the duty of Defendant Roundy to exercise ordinary care in the operation of his vehicle for the safety of all persons traveling on or near the roadway, including Robert Brooks.

39. Notwithstanding said duty, Defendant Roundy was guilty of one or more of the following willful and wanton acts or omissions in that he:

- (a) With utter indifference or conscious disregard for the safety of others operated said commercial motor vehicle at an excessive rate of speed for the then prevailing conditions;
- (b) With utter indifference or conscious disregard for the safety of others operated said commercial motor vehicle in excess of the then posted speed limit;
- (c) With utter indifference or conscious disregard for the safety of others operated said commercial motor vehicle while under the influence of a controlled drug or substance;
- (d) With utter indifference or conscious disregard for the safety of others followed another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicles, the traffic upon and the conditions of the highway;

- (e) With utter indifference or conscious disregard for the safety of others failed to operate said commercial motor vehicle pursuant to the rules and regulations set forth in and required by the Illinois Hazardous Materials Transportation Act, contrary to and in violation of 430 ILCS 30/1 *et. seq.*;
- (f) With utter indifference or conscious disregard for the safety of others failed to slow or reduce speed of said commercial motor vehicle in order to avoid a collision with an authorized vehicle when he knew, or in the exercise of ordinary care, should have known, that such a collision was imminent;
- (g) With utter indifference or conscious disregard for the safety of others failed to slow or reduce speed of said commercial motor vehicle when approaching other vehicles upon the roadway when he knew, or in the exercise of ordinary care should have known, that it would be reasonable to do so in light of the size, weight and stopping distance required for the commercial motor vehicle he was then and there operating;
- (h) With utter indifference or conscious disregard for the safety of others failed to keep a proper and sufficient lookout for other vehicles upon the highway; and
- (i) With utter indifference or conscious disregard for the safety of others failed to keep a proper and sufficient lookout for lane reduction.

40. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant Roundy, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost wages, and lost earning capacity. These losses have been incurred in the past and will be incurred in the future. Some or all of these losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs Robert Brooks and Diana Brooks and against Defendant Larry Roundy in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT III
(Violation Roadway Safety Act - *Respondeat Superior* - Gulley)

41. Plaintiffs adopt and reallege the general allegations and paragraphs 32-35 of their complaint as their paragraph 41 as if set forth herein in full.

42. As a direct and proximate result of one or more of the aforementioned acts or omissions by the Defendant Gulley, by and through its employee, agent or servant Roundy, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost wages, and lost earning capacity. These losses have been incurred in the past and will be incurred in the future. Some or all of the losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs Robert Brooks and Diana Brooks and against Defendant Gulley Transportation Inc. in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT IV
(Reckless Conduct - *Respondeat Superior* - Gully)

43. Plaintiffs adopt and reallege the general allegations and paragraphs 37-39 of their Complaint as their paragraph 43 as if set forth herein in full.

44. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant Gully, by and through its employee, agent, or servant Roundy, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost wages, and lost earning capacity. These losses have been incurred in the past and will be incurred in the future. Some or all of these losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs Robert Brooks and Diana Brooks and against Defendant Gully Transportation Inc. in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT V
(Violation Road Safety Act - *Respondeat Superior* -ICX)

45. Plaintiffs adopt and reallege the general allegations and paragraphs 32-35 of their complaint as their paragraph 45 as if set forth herein in full.

46. As a direct and proximate result of one or more of the aforementioned acts or omissions by the Defendant ICX, by and through its employee, agent or servant Roundy, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost wages, and lost earning capacity. These losses have been incurred in the past and will be incurred in the future. Some or all of the losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs Robert Brooks and Diana Brooks and against Defendant Interstate Carrier Xpress, Inc. in an amount necessary to

fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT VI
(Reckless Conduct - *Respondeat Superior* -ICX)

47. Plaintiffs adopt and reallege the general allegations and paragraphs 37-39 of their Complaint as their paragraph 47 as if set forth herein in full.

48. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant ICX, by and through its employee, agent, or servant Roundy, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost wages, and lost earning capacity. These losses have been incurred in the past and will be incurred in the future. Some or all of these losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs Robert Brooks and Diana Brooks and against Defendant Interstate Carrier Xpress, Inc. in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT VII
(Violation Roadway Construction Safety Act - IVP)

49. Plaintiffs adopt and reallege the general allegations and paragraphs 32-35 of their Complaint as their paragraph 49 as if set forth herein in full.

50. At all relevant times herein, Defendant IVP, through its agents, servants or employees, had a duty to avoid willful violations of the Act for the safety of all persons engaged in construction activities, including Robert Brooks.

51. At all relevant times herein, it was the duty of Defendant IVP, through its agents, servants, and employees to avoid willful violation of the Act and apply the proper knowledge and skill to provide a safe construction zone for the plaintiff and others to work within.

52. Notwithstanding said duty, through their agents, servants, or employees, Defendant IVP was guilty of one or more of the following acts or omissions:

- (a) Failed to properly barricade the construction/work zone;
- (b) Failed to properly place and inspect for work zone safety devices and safety personnel; and
- (c) Failed to provide an impact vehicle for slower moving construction traffic.

53. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant IVP, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost earnings, and lost earning capacity.

These losses have been incurred in the past and will be incurred in the future. Some or all of these losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs Robert Brooks and Diana Brooks and against Defendant Illinois Valley Paving in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT VIII
(Negligence - *Respondeat Superior* - IVP)

54. Plaintiffs adopt and reallege the general allegations of their Complaint as their paragraph 54 as if set forth herein in full.

55. At all relevant times herein, it was the duty of Defendant IVP, through its agents, servants or employees, to exercise ordinary care and apply the proper knowledge and skill to provide a safe construction zone for the plaintiff and others to work within.

56. Notwithstanding said duty, through their agents, servants, or employees, Defendant IVP was guilty of one or more of the following acts or omissions:

- (a) Failed to properly barricade the construction/work zone;
- (b) Failed to properly place and inspect for work zone safety devices and safety personnel; and
- (c) Failed to provide an impact vehicle for slower moving construction traffic.

57. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant IVP, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost earnings, and lost earning capacity.

These losses have been incurred in the past and will be incurred in the future. Some or all of these losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs Robert Brooks and Diana Brooks and against Defendant Illinois Valley Paving in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT IX
(Violation Roadway Construction Safety Act - UCM)

58. Plaintiffs adopt and reallege the general allegations of their Complaint as their paragraph 58 as if set forth herein in full.

59. At all relevant times herein, Defendant UCM, through its agents, servants or employees, had a duty to avoid willful violations of the Act for the safety of all persons engaged in construction activities, including Robert Brooks.

60. At all relevant times herein, it was the duty of Defendant UCM, through its agents, servants, or employees to avoid willful violation of the Act and apply the proper knowledge and skill to provide a safe construction zone for the plaintiff and others to work within.

61. Notwithstanding said duty, through their agents, servants, or employees, Defendant UCM was guilty of one or more of the following acts or omissions:

- (a) Failed to properly barricade the construction/work zone;
- (b) Failed to properly place and inspect for work zone safety devices and safety personnel; and

- (c) Failed to provide an impact vehicle for slower moving construction traffic.

62. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant UCM, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost earnings, and lost earning capacity. These losses have been incurred in the past and will be incurred in the future. Some or all of these losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs Robert Brooks and Diana Brooks and against Defendant UCM in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT X
(Negligence - *Respondeat Superior* - UCM)

63. Plaintiffs adopt and reallege the general allegations of their Complaint as their paragraph 63 as if set forth herein in full.

64. At all relevant times herein, it was the duty of Defendant UCM, through its agents, servants or employees, to exercise ordinary care and apply the proper knowledge and skill to provide a safe construction zone for the plaintiff and others to work within.

65. Notwithstanding said duty, through their agents, servants, or employees, Defendant UCM was guilty of one or more of the following acts or omissions:

- (a) Failed to properly barricade the construction/work zone;

- (b) Failed to properly place and inspect for work zone safety devices and safety personnel; and
- (c) Failed to provide an impact vehicle for slower moving construction traffic.

66. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant UCM, Plaintiff Robert Brooks did suffer serious injuries of a personal and pecuniary nature including medical expenses, pain, suffering, disability, disfigurement, lost earnings, and lost earning capacity. These losses have been incurred in the past and will be incurred in the future. Some or all of these losses are permanent.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs Robert Brooks and Diana Brooks and against Defendant United Contractors Midwest, Inc. in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

COUNT XI
(Loss of Consortium - All Defendants)

67. Plaintiffs adopt and reallege the general allegations and paragraphs 32 through 66 of their Complaint as their paragraph 67 as if set forth herein in full.

68. As a direct and proximate result of the injuries sustained by Robert Brooks as set forth herein, Plaintiff Diana Brooks sustained damages of a personal and pecuniary nature, including but not limited to loss of society, loss of love and affection, and loss of those tasks to and about the household formally done by her husband.

WHEREFORE, it is respectfully requested that judgment be entered in favor of Plaintiffs, Robert Brooks and Diana Brooks, and against Defendants, Gully Transportation, Inc., Larry L. Roundy, Interstate Carrier Xpress, Inc., a/k/a ICX, United Contractors Midwest, Inc., a/k/a UCM, and Illinois Valley Paving, Inc., in an amount necessary to fully and fairly compensate them for all of their losses, which substantially exceed the minimum jurisdictional amount in the Law Division of the Seventh Judicial Court of Sangamon County.

Respectfully submitted,

David J. Kupets

Law Offices of Kupets & DeCaro, P.C.
30 N. La Salle Street, Suite 4020
Chicago, IL 60602
(312) 372-4444
(312) 726-7347 (FAX)