

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:09-CV-443-H

RANDALL LEE WILLIAMS

PLAINTIFF

V.

ROGER DANIEL BROWN &
K&K TRUCKING, INC.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This diversity action involves a truck stop collision between a tractor-trailer owned by K&K Trucking, Inc. (“K&K”), and operator by K&K’s employee, Roger Brown (collectively “Defendants”), and Plaintiff’s legally parked tractor-trailer. Pending before the Court are three motions: (1) Plaintiff’s motion for default judgment against Brown; (2) Plaintiff’s motion for partial summary judgment on liability; and (3) K&K’s motion to amend its answer.

For his motion for default judgment, Plaintiff states that he served process on the Kentucky Secretary of State pursuant to KRS §§ 454.210 & 188.020 and that Brown never responded. Prior to the filing of the motion, Brown could not be located and had not received actual service of process. Now, Brown has secured counsel and filed an answer. Because there will be no prejudice to Plaintiff by allowing Brown to proceed, the Court will deny Plaintiff’s motion for default judgment.

Next, Plaintiff moves for partial summary judgment on the issue of liability. Defendants admit that Brown was negligent, that his negligence was a substantial factor in causing the accident, and that K&K is vicariously liable. To that end, they agree summary judgment is proper. Because discovery is pending, however, Defendants ask to reserve any judgment on

comparative fault. Although it is unclear what evidence of comparative fault Defendants may find, the Court agrees that it would be premature to grant summary judgment on that issue prior to completion of discovery.

Finally, K&K has moved to amend its answer to reflect an admission of liability. Of course, Plaintiff does not object and the Court will permit the amendment.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiff's Motion for Default Judgment is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Partial Summary Judgment is SUSTAINED IN PART. Plaintiff is entitled to judgment on the issue of Defendants' liability. However, Defendants may still contest Plaintiff's comparative fault and damages.

IT IS FURTHER ORDERED that K&K Trucking, Inc.'s Motion to Amend its Answer is SUSTAINED. An amended answer shall be filed within thirty (30) days of this Memorandum Opinion and Order.

cc: Counsel of Record