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SUPERIOR COURT  
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CIVIL DIVISION

BRIAN SMITH,

Plaintiff,

v.

S. VITALE PYROTECHNIC INDUSTRIES,  
INC. d/b/a PYROTECNICO, FOX  
BROADCASTING COMPANY, DEF  
CORPORATION, a fictitious corporation,  
and XYZ COMPANY, a fictitious entity,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L- 3026-10

*Civil Action*

**COMPLAINT  
AND JURY DEMAND**

Plaintiff, Brian Smith, by his undersigned attorneys, as and for his Complaint against defendants S. Vitale Pyrotechnic Industries, Inc. d/b/a Pyrotecnico, Fox Broadcasting Company, DEF Corporation and XYZ Company, alleges as follows:

**THE PARTIES**

1. Plaintiff, Brian Smith, is an assistant football coach employed by the New York Jets of the National Football League. He maintains a residence at 50 Cook Avenue, Apartment 3B, Madison, New Jersey.

2. Upon information and belief, defendant S. Vitale Pyrotechnic Industries, Inc. is a corporation of the Commonwealth of Pennsylvania with a principal place of business located in New Castle, Pennsylvania. It does business under the trade name "Pyrotecnico," and will be referred to as such throughout this Complaint.

3. Upon information and belief, defendant Fox Broadcasting Company ("FOX") is a corporation of the State of Delaware with a principal place of business located at 10201 West Pico Boulevard, Los Angeles, California.

4. Defendants DEF Corporation and XYZ Company are fictitious names for unknown additional entities involved in the events giving rise to this action, and are named in this Complaint pursuant to the fictitious party practice of Rule 4:26-4.

#### **FACTUAL BACKGROUND**

5. On September 28, 2008, the New York Jets played a regular season NFL game against the Arizona Cardinals at Giants Stadium in East Rutherford, New Jersey. The game was broadcast on television by FOX.

6. In connection with the pre-game festivities for the Jets-Cardinals game, Pyrotecnico had been hired to set off various pyrotechnic devices and fireworks on the field at Giants Stadium during the pre-game introductions of Jets players.

7. On the day of the game, Pyrotecnico set up a number of pyrotechnic devices on the field at Giants Stadium in two parallel rows that formed the outline of a corridor through which the Jets players would run during their pre-game introductions. The devices were supposed to shoot straight up into the air as the Jets players ran between the two rows of pyrotechnic devices. The devices were wired for remote activation, with the wires crossing over the artificial turf at Giants Stadium.

8. During the pre-game introductions of the Jets players on September 28, 2008, plaintiff, Brian Smith, was standing along the Jets sideline in his capacity as an assistant football coach for the Jets.

9. At the same time, a cameraman employed by FOX was on the field at Giants Stadium capturing video of the pre-game festivities.

10. At some time prior to or during the introduction of the Jets players, the FOX cameraman on the field at Giants Stadium tripped over a wire running across the artificial turf to which one of Pyrotecnico's devices was attached.

11. As a consequence of the FOX cameraman tripping over the wire, the pyrotechnic device to which the wire was attached misfired in the direction of the sidelines rather than shooting straight up into the air.

12. Plaintiff, Brian Smith, was struck in the legs by the fireworks from the pyrotechnic device that had misfired toward the sidelines, causing his clothing to catch on fire.

13. Plaintiff, Brian Smith, sustained severe burns to both of his legs as a result of this incident, experienced pain and suffering, required medical attention and treatment, and has been left with permanent scarring on both of his legs.

#### FIRST COUNT

14. Plaintiff repeats each and every allegation of Paragraphs 1-13 of the Complaint and incorporates the same herein as if set forth at length.

15. Pyrotecnico was negligent in connection with its use of the pyrotechnic devices on the field at Giants Stadium, which negligence included but was not limited to its failure to properly secure the wires controlling the operation of the devices on the field, its failure to properly secure the pyrotechnic device that misfired toward the sideline, and its failure to properly control the operation of the pyrotechnic device in question.

16. By virtue of the nature of the pyrotechnic devices and fireworks employed by Pyrotecnico in its business, and more particularly by virtue of the nature of the pyrotechnic



devices and fireworks used by Pyrotecnico at Giants Stadium during the pre-game introductions of Jets players on September 28, 2008, Pyrotecnico was engaged in an ultra-hazardous activity at the time of the incident in question and thus had a heightened duty of care toward those like plaintiff who were within range of the fireworks set off by its devices.

17. Pyrotecnico breached both its ordinary duty of care and its heightened duty of care in connection with the incident in question.

18. As a result of Pyrotecnico's breaches of its duties of care, plaintiff Brian Smith sustained severe burns to both of his legs, experienced pain and suffering, required medical attention and treatment, and has been left with permanent scarring on both of his legs.

WHEREFORE, plaintiff demands judgment against Pyrotecnico for consequential damages, interest, costs and attorneys' fees, and such other relief as the Court may deem just and equitable.

#### SECOND COUNT

19. Plaintiff repeats each and every allegation of Paragraphs 1-18 of the Complaint and incorporates the same herein as if set forth at length.

20. The cameraman employed by FOX to capture video of the pre-game festivities at Giants Stadium on September 28, 2008, was negligent in connection with the performance of his duties in that, *inter alia*, he failed to make proper observations of the conditions on the field, failed to exercise proper care to avoid tripping on the wires running across the artificial turf, and caused one of the pyrotechnic devices to become dislodged and misfire in the direction of the sidelines.

21. FOX is liable for the negligence of its cameraman under the principal of *respondeat superior*.

22. As a result of the negligence of FOX's cameraman, plaintiff Brian Smith sustained severe burns to both of his legs, experienced pain and suffering, required medical attention and treatment, and has been left with permanent scarring on both of his legs.

WHEREFORE, plaintiff demands judgment against FOX for consequential damages, interest, costs and attorneys' fees, and such other relief as the Court may deem just and equitable.

### THIRD COUNT

23. Plaintiff repeats each and every allegation of Paragraphs 1-22 of the Complaint and incorporates the same herein as if set forth at length.

24. Defendants DEF Corporation and XYZ Company are named in this Complaint as additional responsible parties whose identities are currently unknown to plaintiff and for whom the cameraman who tripped on the wire was working or by whom he was employed.

25. Defendants DEF Corporation and/or XYZ Company are liable for the negligence of the cameraman under the principal of *respondeat superior*.

WHEREFORE, plaintiff demands judgment against fictitious defendants DEF Corporation and XYZ Company for consequential damages, interest, costs and attorneys' fees, and such other relief as the Court may deem just and equitable.

### JURY DEMAND

Plaintiff hereby demands a jury trial of all issues so triable in this matter.

### CERTIFICATION PURSUANT TO RULE 4:5-1

Plaintiff, by his undersigned counsel, hereby certifies in accordance with the requirements of Rule 4:5-1 that the matters in controversy in the within litigation are not, to the best of his knowledge and belief, the subject of any other action pending in any other court or of

any pending arbitration proceeding, nor is any such action or arbitration proceeding contemplated to the knowledge of plaintiff.

Plaintiff further certifies that he presently has no knowledge of the names of other parties who should be but have not been joined in the within action.

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By:

  
GEORGE C. JONES

Dated: September 21, 2010