

**IN THE STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

AVNISH DALAL,

Plaintiff,

vs.

BROWN TRUCKING COMPANY,

Defendant.

CIVIL ACTION  
FILE NO. 21A04356

**CONSOLIDATED PRE-TRIAL ORDER**

1.

The name, address and phone number of the attorneys who will conduct the trial are as follows:

**Attorney for Plaintiff:**

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**Attorney for Defendant:**

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2.

The estimated time required for trial is 5 days.

3.

There are no motions or other matters pending for consideration by the Court except as follows: The parties will file Motions in Limine prior to trial.

4.

The jury will be qualified as to relationship with the following:

- (1) Officers, directors, shareholders or employees of Brown Trucking Company;
- (2) Officers, directors, shareholders or employees of Untied States Fire Insurance Company, Gemini Insurance Company, Liberty Surplus Insurance Corporation, National Fire and Marine Insurance Company, Crum & Forster Specialty Insurance Company;
- (3) Michael L. Goldberg, Esq. and the law firm of Fried Goldberg LLC;
- (4) Eric J. D. Rogers, Esq. and the law firm of Fried Goldberg LLC;
- (5) Romi K. Jayswal, Esq. and the law firm of Deochand & Jayswal Law Group, LLC;
- (6) Evans Tshongwe;
- (7) Avnish Dalal.

5.

(a) All discovery has been completed, except as otherwise noted, and the Court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

(b) Unless otherwise noted, the names of the parties as shown in the caption of this Order are correct and complete, and there is no question by any party as to the misjoinder or nonjoinder of any parties.

6.

The following is the Plaintiff's brief and succinct outline of the case and contentions:

On or about August 12, 2021, Evans Tshongwe was driving a tractor-trailer for Defendant Brown Trucking on I-285 in DeKalb County when a white van driven by John Doe pulled into his lane of travel and slowed down to take the exit onto Bouldercrest Road. Tshongwe engaged his brakes to slow down. After the white van left his lane of travel, either Tshongwe continued to brake when it was no longer necessary or the collision avoidance system continued to activate the brakes and Tshongwe did not override the system by pressing the accelerator appropriately. The Brown Trucking tractor-trailer came to a stop on I-285 even though the white van had already exited onto Bouldercrest Road.

A tractor-trailer travelling behind the Brown Trucking tractor-trailer slammed on brakes and swerved to the left to avoid the stopped tractor-trailer. Plaintiff Avnish Dalal was driving his vehicle behind the second tractor-trailer and braked and attempted to swerve to the right to go around the Brown Trucking stopped tractor-trailer but clipped the far right side of the trailer causing him to bounce into a third tractor trailer and go under the Brown Trucking trailer. Plaintiff alleges that Tshongwe was negligent in failing to react appropriately to the slowing white van in that he had multiple safe alternatives available to him including changing lanes to the left and slowing down his vehicle without stopping and then continuing forward and instead chose the most dangerous course of action which was to come to a complete stop on the interstate with traffic traveling around him. If the Brown Trucking tractor-trailer had not come to a complete stop on the interstate, the collision

with Plaintiff's vehicle would not have occurred. Defendant Brown Trucking is responsible for the negligence of Tshongwe as his employer.

As a result of the collision, Plaintiff suffered a traumatic brain injury with permanent cognitive deficits, fractures to his left arm requiring surgery, permanent limitations to the use of his left arm and permanent scarring.

7.

The following is Defendant's brief and succinct outline of the case and contentions:

Evans Tshongwe was driving on I-285. A white van in the lane to his left changed lanes into Mr. Tshongwe's lane. Mr. Tshongwe applied his brakes. The white van did not continue driving straight in Mr. Tshongwe's lane with the flow of traffic but continued to slow down attempting to improperly exit the interstate. As Mr. Tshongwe's truck got closer to the white van, Mr. Tshongwe continued to apply the brakes and the truck's automatic braking system began to brake as well. During this time, in addition to braking, Mr. Tshongwe continued to check his mirrors left and right side mirrors. There was traffic in lane to his left and right. There were also multiple vehicles behind him, including a tractor-trailer. The traffic behind Mr. Tshongwe slowed as Mr. Tshongwe slowed due to the actions of the white van. The Plaintiff was further back and behind these slowing vehicles. The tractor-trailer behind Mr. Tshongwe applied his brakes, and the white car behind that tractor-trailer applied its brakes and changed lanes to the left. The tractor-trailer behind Mr. Tshongwe continued to apply its brakes and changed lanes to the left as well. Neither made contact with Mr. Tshongwe's truck. Ultimately, Mr. Tshongwe's truck came to a stop and less than one second later Plaintiff struck the right rear of Mr. Tshongwe's trailer. Mr. Tshongwe acted reasonably under the circumstances and did not have sufficient time to ensure additional actions would be safe to avoid an accident with other traffic.

Despite two vehicles in front of him not being involved, and Plaintiff seeing them brake and move to the left lane to go around Mr. Tshongwe, the data from Plaintiff's vehicle shows he was still going 68 and 69 MPH and did not brake until less than one second before impact.

8.

The issues for determination by the jury are as follows:

**PLAINTIFF:**

- (1) Negligence;
- (2) Proximate cause;
- (3) Compensatory damages; and
- (4) Apportionment of fault to John Doe.

**DEFENDANT:**

Negligence, comparative negligence, avoidance doctrine, assumption of risk, sudden emergency and compensatory damages.

Defendant objects to any apportionment of fault to a John Doe on the verdict form. See Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC, 312 Ga. 350, 358 (“The General Assembly chose to exclude single-defendant cases from apportionment among non-parties.”) In addition, requesting apportionment to a non-party on the verdict form is for the benefit of a defendant. Therefore, even if available in a single-defendant case, to the extent Defendant remains the only defendant in the case, it does not seek to have the jury apportion fault to a non-party on the verdict form and withdraws its prior notice. Defendant reserves its right to present the facts of the case which include the actions of the white van and application of these facts to the issue of causation.

9.

Specifications of negligence including applicable code sections are as follows:

**PLAINTIFF:**

- (1) O.C.G.A. § 40-6-203 Stopping in Roadway.

**DEFENDANT:**

(1) O.C.G.A. § 40-6-49 Following too closely; O.C.G.A. § 40-6-180 Basic rules; O.C.G.A. § 40-6-181 Maximum limits; Kelly v. Fann, 343 Ga. App. 351, 352 (2017)(“Every driver is under a duty to keep a proper lookout for potential hazards. A driver has no right to assume that the road ahead of him is clear of traffic, and it is his duty to maintain a diligent lookout ahead.”); O.C.G.A. § 51-11-7 Avoidance of consequences and Comparative negligence; assumption of risk. Sones v. Real Estate Dev. Grp., Inc., 270 Ga. App. 507, 508 (2004)(“Assumption of the risk is a defense to any theory of negligence . . .”).

10.

If the case is based on a contract, either oral or written, the terms of the contract are as follow:

Not applicable.

11.

The types of damages and the applicable measure of those damages are stated as follows:

**PLAINTIFF:**

- (1) Past medical expenses: \$900,000; and
- (2) Past and future pain and suffering in an amount to be determined by the enlightened conscience of the jury.

12.

If the case involves divorce, each party shall present to the court at the pre-trial conference the affidavits required by Rule 24.2.

Not applicable.

13.

The following facts are stipulated: None at this time.

14.

The following is a list of all documentary and physical evidence that may be tendered at the trial by the parties. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

(a) **By the Plaintiff:**

1. Motor Vehicle Accident Report;
2. Photographs of Accident Scene & Vehicles;
3. Brown Trucking Dash Cam Video;
4. Alfa Trucking Dash Cam Video;
5. Screenshots taken from Dash Cam Videos and Animations;
6. Plaintiff's Cellphone Records;
7. 911 Tapes & CAD Report;
8. Sean Alexander's File Material;
9. Photos and Diagrams of Scene and Vehicles;
10. Sean Alexander Analysis and Report;
11. Tshongwe's Training Records with Brown Trucking;
12. Hal Ralston's File Material;
13. Ralston Animation of the Collision;
14. Justin Morgan's File Material

15. Manufacturer Guidelines and Literature Regarding Collision Avoidance System;
16. Owner's Manual Regarding Collision Avoidance System;
17. Brown Trucking Policies and Procedures;
18. Download of Automatic Braking System;
19. Download of Plaintiff's Vehicle;
20. Download of ECM on Tractor;
21. Photographs and Videos of Plaintiff Before Accident;
22. Photographs of Injuries & Scars;
23. CT Scan, MRI and X-ray Films;
24. Medical Diagrams;
25. Plaintiff's Medical Bills;
26. Plaintiff's Medical Records;
27. Plaintiff's Tax Returns;
28. Plaintiff's School Records;
29. Day in Life Video;
30. Annuity Mortality Table;
31. Surveillance Videos of Plaintiff;
32. Report of John Sass;
33. Any document produced or identified in discovery; and
34. Any document listed or identified by another party.

**(b) By the Defendant:**

1. Motor vehicle accident report
2. Video of Plaintiff taken by Andrew Brady



3. Employment records from Delta
4. Education records from Georgia Tech
5. Download of the ACM/EDR from Plaintiff's car
6. Download of ECM from Brown truck
7. Video and screen shots from Brown Truck
8. Video and screen shots from the Alpha truck driven by Aleksei Ivanov
9. Camera match video/animation and screen shots from Hal Ralston
10. Hal Ralston's file
11. Download from VRDU module on Brown truck
12. New Cascadia Driver's and Maintenance Manual
13. Scene photos
14. Justin Morgan, Ph.D.'s file
15. Negative post-accident drug test results
16. Tshongwe's medical examiners certificate
17. Report from FMSCA Drug/Alcohol Clearinghouse
18. Negative drug test at Red Classic
19. Any document properly identified by Plaintiff.

Defendant hereby gives notice pursuant to O.C.G.A. § 24-9-902(11) regarding the documents identified above.

15.

Special authorities relied upon by the plaintiff relating to peculiar evidentiary or other legal questions are as follows: None.

16.

Special authorities relied upon by the defendants relating to peculiar evidentiary or other legal questions are as follows: None at this time.

17.

All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18.

The testimony of the following person(s) may be introduced by depositions:

**(A) By the Plaintiff:**

Paramedic Jackson Mullins

Dr. Clifton Meals

Dr. Thomas Moore

Dr. David Burke

Dr. Sabrina Na

Dr. Kima Kokabi

Dr. Stewart Hurst

Dr. Ali Alawieh

Dr. John Sass

Corporate Representative of Brown Trucking

Any person deposed in the case.

**(B) By Defendant:**

Evans Tshongwe

Andrew Brady

Paramedic Jackson Mullins

Dr. Clifton Meals

Dr. Thomas Moore

Dr. David Burke

Dr. Sabrina Na/Hickle

Justin Morgan, Ph.D.

Hal Ralston, PE

Any witness whose deposition is taken for preservation of evidence and use at trial.

19.

The following are lists of witnesses who will or may be called to testify at trial:

(a) Plaintiff will have present at trial:

1. Avnish Dalal

(b) Plaintiff may have present at trial:

1. Officer Jonah Amos;

2. Evans Tshongwe;

3. Aleksei Ivanov;

4. Aundrey Kunko;

5. Kristene Turner;

6. Dr. Clifton Meals

7. Dr. Thomas Moore

8. Dr. David Burke

9. Dr. Sabrina Na

10. Dr. Kima Kokabi

11. Dr. Stewart Hurst
12. Dr. Ali Alawieh
13. Dr. John Sass
14. Victoria Haycock
15. Curtis Jackson
16. Jay David;
17. Dishant Dalal;
18. Sara Dalal;
19. Vipul Dalal;
20. Mother Dalal;
21. Dhaval Dalal;
22. Sean Alexander;
23. Lew Grill;
24. Hal Ralston;
25. Andrew Brady;
26. Corporate Representative of Brown Trucking;
27. Corporate Representative of Alfa Trucking;
28. Person who took surveillance of Plaintiff;
29. Any before and after witnesses;
30. Any medical provider of Plaintiff;
31. Any custodian of records;
32. Any witness identified in discovery or who has been deposed; and
33. Any witness identified by another party;

(c) Defendants will have present at trial:

1. None.

(d) Defendants may have present at trial:

1. Evans Tshongwe

2. Hal Ralston, PE

3. Justin Morgan, Ph.D.

4. Aleksei Ivanov

5. Officer Jonah Amos

6. Andrey Kunko

7. Kristene Turner

8. Andrew Brady

9. Sabrina Na/Hickle

10. Dr. Clifton Meals

11. Dr. David Burke

12. Jackson Mullins.

13. Any witness listed by Plaintiff

Opposing counsel may rely on representation by the other party that he or she will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

20.

The form of all possible verdicts to be considered by the jury are as follows:

The parties will submit a verdict form at trial.

21.

- (a) The possibilities of settling the case are poor.
- (b) The parties do want the case reported.
- (c) The cost of takedown will be shared equally.
- (d) Other matters:

Defendants have requested a trial by a jury of twelve (12) persons.

This 20<sup>th</sup> day of June, 2023.

Respectfully submitted,

**FRIED GOLDBERG LLC**

*Michael L. Goldberg*

**MICHAEL L. GOLDBERG**

Georgia Bar No. 299472

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STATE COURT OF  
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\* \* \* \* \*

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the Pre-Trial Order in the above case and supercedes the pleadings which may not be further amended except by order of the Court to prevent manifest injustice or as otherwise provided herein.

This \_\_\_\_ day of \_\_\_\_\_, 2023.

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Mike Jacobs, Judge  
State Court of Dekalb County

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