

12/16/2  
DUPLICATE

IN THE SUPERIOR COURT OF LAURENS COUNTY  
STATE OF GEORGIA

JOHN DAVID McDADE and )  
JESSICA ANN McDADE, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JEROME CLIFFORD OLIVER, )  
CRIDER TRANSPORTATION, LLC, )  
and TRAVELERS PROPERTY )  
CASUALTY COMPANY OF )  
AMERICA, )  
 )  
Defendants. )

Civil Action No.: 2011-CG-0359

**DEFENDANTS' FIRST CONSOLIDATED MOTIONS IN LIMINE**

COME NOW Defendants in the above-styled action, and hereby file their First Consolidated Motions in Limine, showing the Court as follows:

**I. STATEMENT OF FACTS.**

This civil action arises out an accident that occurred on October 24, 2010. Defendant Jerome Clifford Oliver ("Mr. Oliver") was driving a tractor-trailer at the time of the accident. He was an employee of Defendant Crider Transportation, LLC ("Crider") and was insured by Defendant Travelers Property Casualty Insurance Company of America ("Travelers"). Plaintiff John David McDade ("Mr. McDade") was a front seat passenger in a car being driven by his friend Matt Wood ("Mr. Wood"). Plaintiffs allege that Mr. Oliver's tractor-trailer crossed into an emergency lane, instantly killing Mr. Wood. Plaintiffs also allege that Mr. McDade sustained physical and emotional injuries from this accident.

## II. MOTION IN LIMINE STANDARD.

The purpose of a Motion in Limine is to obtain a ruling on the admissibility of certain evidence in advance of trial. Milich, *COURTROOM HANDBOOK ON GEORGIA EVIDENCE, Relevance* (2002). In *General Motors Corp v. Moseley*, 213 Ga. App. 875 (1994), the Court of Appeals of Georgia approved Motions in Limine designed to prevent improper statements by counsel in the presence of the jury:

The purpose in filing a motion in limine to suppress evidence or to instruct opposing counsel not to offer it is to prevent the asking of prejudicial questions and the making of prejudicial statements in the presence of the jury with respect to matters which have no proper bearing on the issues in the case or on the rights of the parties to the suit. It is the prejudicial effect of the questions asked or statements made in connection with the offer of the evidence, not the prejudicial effect of the evidence itself, which the motion in limine is intended to reach.

*Id.* at 877-78 (quoting *Reno v. Reno*, 249 Ga. 855, 856 (1982)) (*overruled on other grounds by Webster v. Boyett*, 269 Ga. 191, 496 S.E.2d 459 (1998)). Defendants hereby move the Court in limine requesting that the Court instruct Plaintiffs and Plaintiffs' counsel not to refer, introduce, use, or elicit by themselves or by any witness, any testimony or evidence during the course of the trial (including during the *voir dire* examination of the jury panel) regarding the following topics:

### A. Injuries in the Accident to Anyone other than Mr. McDade.

Any injuries suffered in this accident other than injuries to Mr. McDade are irrelevant. Evidence must be relevant to be admissible. O.C.G.A. § 24-4-402 (“[e]vidence which is not relevant shall not be admissible”); see e.g., *Williams v. Runion*, 173 Ga. App. 54, 58 (1984). “Evidence must relate to the questions being tried... and bear upon them either directly or indirectly.” *Atlando Holdings, LLC v. BDO Seidman, LLP*, 290 Ga. App. 665, 667-68 (2008). When evidence fails to relate directly or indirectly to the issues before the jury, such evidence

should be excluded. Smith v. Saulsbury, 286 Ga. App. 322, 325 (2007); H.D. McCondie Prop. v. Georgia Dep't of Transp., 280 Ga. App. 197, 198 (2006).

“No precise and universal test has been established” to determine the relevancy of evidence. Johnson v. Jackson, 140 Ga. App. 252, 255 (1976). Evidence, however, is only relevant when it “serve[s] to elucidate or throw light upon a material issue.” Atlando Holdings, LLC, 290 Ga. App. at 668. Evidence can only be deemed relevant when “it relates to the questions being tried by the jury..., tends to illustrate or explain the issue, or aids the jury in arriving at the truth.” Bituminous Cas. Corp. v. Mowery, 145 Ga. App. 45, 48 (1978). Evidence that is not germane to the questions before the jury should be excluded. Shadowood Assoc. v. Kirk, 170 Ga. App. 209, 211 (1984). Even evidence of collateral matters that remotely relate to the questions at issue should be excluded when they are not considered material and relevant to the case. Hornsby v. State, 139 Ga. App. 254, 258 (1976) (“Although evidence of collateral matters may shed some remote light on the main issues, it is nevertheless necessary that the trial judge restrict such evidence to that which is material and relevant.”).

Here, any injuries suffered during the accident by persons other than Mr. McDade are not relevant to this case and should be declared off-limits for purposes of trial. Plaintiffs can only recover damages arising out of their own injuries. Thus, any testimony regarding any other person’s injuries has absolutely nothing to do with Defendants’ liability to Plaintiffs and is clearly not relevant. Plaintiffs cannot show a relationship or link between this evidence and the issues at hand because such evidence is too attenuated in circumstance to have any relation whatsoever to this case. Accordingly, this Court should exclude from admission into evidence any testimony relating to injuries to any person other than Mr. McDade because the matter is wholly irrelevant and immaterial to the claims before the jury.

Even when the Court determines that evidence is relevant, the Court must still examine it to ensure that it does not cause undue prejudice or confuse the issues before the jury. O.C.G.A. § 24-4-403; First Bancorp Mortgage Corp. v. Giddens, 251 Ga. App. 676, 678 (2001). When the probative value of evidence is outweighed by its prejudicial effect, it must be excluded from admission into evidence or the Court abuses its discretion. Brock v. Wedincamp, 253 Ga. App. 275, 283 (2002) (holding that unless the “probative value of the evidence exceeds its prejudicial impact,” the trial court’s admission of the evidence “would be an abuse of discretion”). Further, evidence should not confuse the issues before the jury, mislead the jury, or cause unfair surprise. First Bancorp Mortgage Corp. v. Giddens, 251 Ga. App. 676, 678 (2001). “Testimony totally irrelevant or immaterial, but which is calculated to arouse prejudice or passion against the accused, should not be admitted into evidence.” Thomas v. State, 95 Ga. App. 699, 707 (1957). Accordingly, when proposed evidence would be unduly prejudicial to a party, it should be excluded by the Court.

Defendants believe that Plaintiffs will seek to introduce evidence regarding injuries to persons other than Mr. McDade. Even if this evidence had even a hint of remote relevancy to the issues before the jury — which it clearly does not — the risk of the prejudicial effect far outweighs any probative value they arguably may have. At the very least, introduction of such evidence will confuse the issues before the jury. Accordingly, this Court should exclude such evidence from admission to the jury.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**B. Facts and Circumstances Surrounding the Death of Mr. Wood and the Resulting Emotional Distress Suffered by Mr. McDade.**

As noted above, evidence must be relevant to be admissible and when evidence fails to relate directly or indirectly to the issues before the jury, such evidence should be excluded. Here, any injuries suffered during the accident by Mr. Wood are not relevant to this case because Mr. McDade cannot collect emotional distress damages arising from these events under Georgia law. On July, 19, 2012, the Court entered an Order in which it ruled that Mr. McDade's claim for emotional distress from witnessing the death of Matt Wood failed as a matter of law. The Order provides, in pertinent part:

**Findings of Fact**

The Court finds that John David McDade was not physically injured by the spray of glass, blood, and guts and received no cuts from that impact.

**Conclusions of Law**

The Court finds that the spray of glass, blood, and guts that made contact with the plaintiff did not result in a physical injury and any emotional distress resulting from such contact is not recoverable. The Court also finds that the plaintiff's damages for emotional distress arising out of seeing Matt Wood's body are not recoverable under Georgia law. Although the plaintiff was physically injured from the collision, his emotional distress arising out of witnessing Matt Wood's body was not caused by the physical injuries that he sustained in that collision. For the foregoing reasons, Defendants' Motion for Partial Summary Judgment as to claim (1) is GRANTED.

Thus, this Court should exclude from admission into evidence any testimony relating to Mr. Wood's injuries or the emotional distress they caused Mr. McDade because this matter is wholly irrelevant and immaterial to the claims before the jury.

Additionally, Plaintiffs' purpose in introducing the details of Mr. Wood's death is to appeal to the passion and prejudice of the jurors. Simply put, Plaintiffs believe it is advantageous to make this case something it is not – a trial about the graphic details of Mr.

Wood's death. Because these are not damages that can be recovered by Mr. McDade under Georgia law, this "evidence" is unduly prejudicial and would undoubtedly confuse and mislead the jury. Accordingly, this Court should exclude such evidence from admission to the jury.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**C. Questioning Jurors during *Voir Dire* about Whether They Would be Willing to Award Specific Levels of Damages.**

It is anticipated that during *voir dire*, Plaintiffs' counsel may attempt to ask potential jurors whether they would be willing to make specific damages awards to Plaintiffs in this case if the evidence warrants such a finding. Any such questioning is highly prejudicial to the Defendants as it will precondition the jury to think about awarding the verdict amount mentioned by Plaintiffs' counsel. Because such questioning will unfairly bias the jury toward awarding an excessive verdict against the Defendants, Defendants request that any and all such questioning be prohibited by the Court.

While it is permissible under Georgia law to examine prospective jurors with regard to prejudice as to the size of verdicts, such questions should be phrased in *general* terms. This Court should not permit any questions from Plaintiffs' counsel framed as to require a response from a juror which might amount to a prejudgment of this case. Atlanta Joint Terminals vs. Knight, 98 Ga. App. 482, 489 (1958). As such, Plaintiffs' counsel should be prohibited from asking in *voir dire* whether any juror would have a problem awarding some specific figure. Asking the panel a question such as "would you have any problem awarding a sum of \$10,000,000 in this case" is, in practice, asking the jurors to prejudge the case. The Court will certainly charge the Jury on the elements of damages, including that it is Plaintiffs' burden to prove said damages. Accordingly, it is not proper for a lawyer to ask the panel generally or a prospective juror specifically, "if the evidence supports it, would you have a problem awarding a

huge some of money such as \$10,000,000?” Jurors are sworn to follow the law as charged by the Court; therefore, such questions are improper, unnecessary, argumentative, and impermissibly require jurors to prejudge the case.

“Voir dire should allow both parties an opportunity to ascertain the ability of the prospective jurors to decide the case on its merits, with objectivity and freedom from bias and prior inclination.” Waters v. State, 248 Ga. 355, 363 (1981). “However, no question should require a response from a juror which might amount to a prejudgment of the case.” Id.; see also Jones v. Parrott, 111 Ga. App. 750 (1965) (holding it was improper for counsel to ask a juror “[w]ould you have any hesitancy in this case in bringing in a verdict of \$102,250.00 if you believe when the evidence is submitted that this plaintiff, Rebecca Sue Parrott, has been damaged that much under the evidence that you have heard?”). “While it is permissible... for counsel to examine prospective jurors with respect to prejudice as to size of verdicts, such questions should be phrased in general terms and no question should be so framed as to require a response from the juror which might amount to a prejudgment of the case.” Id.

Defendants submit that this type of *voir dire* questioning will lead to jurors prejudging the value of the case and will unfairly bias the jury toward awarding an excessive verdict. For these reasons, Defendants seek an order prohibiting any and all such questioning by Plaintiffs’ counsel.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**D. Mr. Oliver's Prior DUI.**

Mr. Oliver testified that he was charged with driving under the influence ("DUI") in 1984. See Oliver depo. at p. 80. Defendants anticipate that Plaintiffs will refer to, or introduce evidence of this violation to impugn Mr. Oliver's character and inflame the jury; however, this "prior act" is not substantially similar to the subject accident, and the probative value of such evidence, if any, is far outweighed by its prejudicial effect. Accordingly, this Court should prohibit Plaintiffs from referring to, eliciting testimony about, or otherwise introducing evidence of this roughly thirty (30) year-old DUI.

It is well established in Georgia that driving records are inadmissible character evidence. Mayer v. Wylie, 244 Ga. App. 481 (2000); Holt v. Grinnell, 212 Ga. App. 520 (1994); Smith v. Tommy Roberts Trucking Co., 209 Ga. App. 826 (1993). "A party's negligence or lack of negligence on any particular occasion must be proved only by the facts of that event, and not by any evidence of his prior driving record or of his general character or reputation for carelessness or recklessness in driving." Mayer, 244 Ga. App. at 483. As such, Georgia courts have consistently been weary of admitting evidence of prior and/or subsequent DUIs. Webster v. Boyett, 269 Ga. 191 (2001), (reversing the Court of Appeals and affirming the trial court's decision to exclude evidence of defendant's prior DUI while noting that "evidence of prior convictions is highly prejudicial to the issue of liability in the underlying negligence action.").

Here, Plaintiffs cannot show that this DUI is similar to the subject accident so it is irrelevant. *Mr. Oliver was not intoxicated (nor had he been drinking) at the time of the subject accident.* Therefore, this DUI is not admissible to prove Mr. Oliver's negligence or Plaintiffs' punitive damages claims against the Defendants.

Further, the prejudicial effect of this evidence certainly outweighs any probative value (there is none). There can be no question that evidence regarding Mr. Oliver's past DUI arrest will inflame the passions of the jury. Webster, supra. The jurors in this case most certainly have heard horrific stories of automobile accidents caused by drunk drivers. ***Again, this case does not involve alcohol consumption by Mr. Oliver.*** The introduction of this approximately thirty (30) year-old DUI will only serve to improperly prejudice the jury against the Defendants. Under the requisite balancing test, the Court must exclude the evidence of Mr. Oliver's prior DUI.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**E. Cellphone Use by Mr. Oliver or Truck Drivers in General.**

Evidence which is not relevant to issues before the jury should be excluded. ***There is absolutely no evidence of cellphone use by Mr. Oliver in this case; indeed, cellphone use did not contribute to the subject accident in any way.*** As such, assertions or conjecture about Mr. Oliver using a cellphone on other occasions while driving, or truck driver's in general using cell phones while driving is completely irrelevant and should be excluded.

Further, allowing Plaintiffs to talk about prior cellphone use or cellphone use in general should also be excluded because its probative value is substantially outweighed by the risk that its admission would create unfair prejudice or confusion. See generally, Karoly v. Kawasaki Motors Corp., 259 Ga. App. 225 (2003). So-called "distracted driving" is currently a cause of great concern to the citizens of Georgia, as evinced by the State's recent legislation regarding text messaging while driving. Jurors have likely heard horrific stories about accidents caused by distracted driving and this is common commentary by plaintiffs' lawyers in trucking cases. Thus, there is a significant risk that commentary regarding cellphone use will inflame the jury and this should be excluded from trial.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**F. Maintenance Issues.**

*There is no evidence whatsoever that any maintenance issues with Mr. Oliver's tractor trailer truck contributed to the accident in any way.* Nevertheless, Defendants anticipate that Plaintiffs will introduce evidence related to alleged maintenance shortcomings on other occasions even though such evidence is wholly irrelevant to the issues at bar, confusing to the jury, and far more prejudicial than probative. Indeed, the Georgia SCRT team investigated this accident and determined that maintenance issues did not contribute to the accident. Moreover, Plaintiffs in this matter have identified no expert to address any maintenance issues or contradict the SCRT team's findings relating to no maintenance issues.

Accordingly, the evidence at issue must be excluded. It has no relevance to Plaintiffs' claims, as there is no evidence that it caused or contributed to the accident. And, even if it were slightly probative, it is overly prejudicial and confusing.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**G. Post-Accident Conduct: Evidence that after the Accident Crider Did Not Allow Mr. Oliver to Continue Driving a Truck for Them and Eventually Terminated His Employment.**

During depositions in this case, Plaintiffs have discussed the fact that Crider did not allow Mr. Oliver to continue driving a truck for them after this accident and that he was eventually terminated. Defendants anticipate that Plaintiffs may attempt at trial to present evidence regarding the facts and circumstances of Mr. Oliver's termination from his employment or his restricted work scope after the accident. Plaintiffs should be precluded from setting forth this evidence as it is irrelevant and is unduly prejudicial.

The key issues for the jury are whether Mr. Oliver was negligent in operating the tractor-trailer on the day of the accident, whether this alleged negligence caused Mr. McDade's claimed

injuries, and the amount of damages to award. The fact that Mr. Oliver was not permitted to drive a truck after the accident and was subsequently terminated is neither material nor relevant to these issues.

Furthermore, any evidence of such matters would only confuse the issues and mislead the jury. Defendants foresee that Plaintiffs might attempt to introduce evidence of the events surrounding Mr. Oliver's termination in an effort to paint Mr. Oliver and/or the other Defendants in a negative light. This has the tendency to unfairly prejudice the jury against the Defendants without regard to whether Defendants caused Plaintiffs' injuries. Accordingly, the Court should prohibit all such evidence and argument.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**H. Post-Accident Conduct: Testimony That No One from Crider Investigated the Accident Within 24-48 Hours After the Accident Because It Was Turned Over To the Insurance Company.**

Dale Griffin Surrency testified in his deposition that no one from Crider investigated the accident within 24-48 hours because it was turned over to the insurance company. See Surrency depo. at p. 24. This testimony must be excluded because evidence which is not relevant to issues before the jury should be excluded (in addition to the fact that it improperly interjects insurance information). Here, the fact that Crider did not do an independent investigation after the accident because it was turned over to the insurance company has absolutely no relevance to whether Mr. Oliver's negligence caused or contributed to the subject accident in any way. As such, any discussion of Crider's post-accident investigation is wholly irrelevant and should be excluded.

Further, allowing testimony about the post-accident investigation should also be excluded because its probative value is substantially outweighed by the risk that its admission would create unfair prejudice or confusion. See generally, Karoly v. Kawasaki Motors Corp., 259 Ga. App. 225 (2003). Indeed, the only reason Plaintiffs would want to introduce this testimony is to

inflame the jury by suggesting that Crider is a “bad” company since it did not do its own investigation after the accident. Thus, the Court should exclude this testimony.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**I. Evidence of Mr. Oliver’s Alleged Violation of Hours of Service Regulations on Other Occasions.**

*There was no hours of service violation at issue in this accident as Mr. Oliver had only just begun his shift when the accident occurred.* Nonetheless, Defendants anticipate that Plaintiffs will attempt to present at trial evidence of Mr. Oliver’s alleged violation of hours of service rules under the Federal Motor Carrier Safety Regulations (hereinafter “FMCSR”). For example, in the deposition of Dale Griffin Surrency, he was asked about an alleged hours of service violation on October 17, 2011, whereby Mr. Oliver was allegedly fifteen (15) minutes over his hours of service from doing his post-trip inspection. See Surrency depo. at pp. 29-30. Obviously, this alleged violation has nothing to do with the accident at issue. Again, there was no hours of service violation at issue in this accident. Indeed, any prior alleged hours of service violations are wholly irrelevant because they did not cause or contribute to this accident. This is confirmed by the Georgia SCRT team and the fact that Plaintiffs’ own reconstruction expert, Sean Alexander, has no opinions relating to hours of service issues. Therefore, such evidence is not relevant to the issues before the jury and would only serve the purpose of inflaming the jury.

While exceeding the maximum number of hours of service allowed under the FMCSR is a regulatory violation, Mr. Oliver’s alleged breach of these regulations at another time was clearly not the cause of any of Mr. McDade’s alleged injuries. The issue to be decided here is not whether there was a violation of federal regulations at some other time, but whether Mr. Oliver caused or contributed to the accident at issue. Therefore, evidence of such a violation is irrelevant to any issue to be decided in this case.

The Georgia Court of Appeals has held that the violation of a regulation is irrelevant unless it was the proximate cause of an accident. Parker v. R&L Carriers, Inc., 253 Ga. App. 628 (2002). In Parker, the plaintiff sued a motor carrier and others after his wife was killed in a car accident involving his pickup truck and a tractor trailer owned by the motor carrier and driven by the motor carrier's employee. The accident took place when either the defendant driver or the plaintiff ran a red light at an intersection. Id. at 628-29. On appeal from a defense verdict, the plaintiff contended that the trial court erred in not charging the jury on FMCSR 392.3 (concerning driver fatigue) and that the driver's violations of several other FMCSRs raised the inference that the driver may have been fatigued at the time of the accident and that the violation of 392.3 constituted negligence *per se*. Id. at 629.

The Court of Appeals of Georgia disagreed with the plaintiff, holding that his argument "ignore[d] proximate cause." Id. The court reasoned that the dispositive causal issue was not whether the driver was negligent in violating the FMCSRs, but whether the driver was negligent in running the red light. Id. The court further explained:

[t]he proximate cause of the accident was the failure to yield the right of way, not the failure to follow federal regulations. . . . If the light was green at the time that [the driver] approached and went through it, his relative fatigue or lack thereof (and whether such violated federal regulations) would be *irrelevant*, as he would have had the right of way to proceed through the intersection whether fatigued or not. If the light had been red, the violation of the federal regulation would similarly be *irrelevant*, as he would have been obligated to stop at the intersection regardless of whether he was also in violation of a federal regulation.

Id. at 629-30 (emphasis added).

Parker is on point and should guide this Court's decision on this Motion in Limine. In fact, the connection between Mr. Oliver's alleged log violations are more attenuated than those in Parker. In Parker, the logs at issue are regarding the trip during which the collision occurred,

whereas here, it is undisputed that Mr. Oliver was not in violation of the FMCSR's service hour requirements at the time of the collision.

Plaintiffs hope that in presenting such evidence, it will taint the jury's opinion regarding Mr. Oliver's qualifications as a driver. Plaintiffs would like the jury to speculate that Mr. Oliver was a bad driver because of alleged prior hours of service issues. In doing so, Plaintiffs would have the jury leap to the conclusion that Mr. Oliver was liable for this accident due to such violations on other days. This tactic should not be allowed.

Additionally, this would result in a significant waste of the Court's time and resources. If Plaintiffs are allowed to present evidence of irrelevant/prejudicial FMCSR log book violations, Defendants will be forced to have a mini-trial on these issues to prove that they truly are irrelevant. There is simply no evidence that an hours of service violation cause or contributed to this accident; therefore, any evidence regarding Mr. Oliver's logs is irrelevant and inadmissible.

Frey v. Gainey Transportation Services, Inc. also provides guidance regarding the inadmissibility of FMCSR evidence that is not relevant to the proximate cause of the collision. 2006 WL 3734157 (N.D. Ga. Dec. 14, 2006). There, the plaintiff argued that because the driver exceeded Georgia Department of Transportation hours of service rules that he was likely fatigued and that the fatigue more than likely contributed to the wreck. See id. at \*4. The court rejected this argument because the plaintiff set forth no evidence showing that fatigue actually contributed to the accident. See id. The court would not "assume" that because the driver violated the hours of service regulations that he was fatigued at the time of the accident, and that, in turn, his fatigue caused the accident. See id. ("The court may not 'infer' from no evidence that Plaintiff can satisfy the element of causation"). Again, this case is much stronger than Frey because Mr. Oliver was not in violation of the hours of service rules at the time of this accident.

Like both Frey and Parker, there is no evidence suggesting that an hours of service violation caused or contributed to this accident. In fact, all of the relevant evidence proves otherwise. “Unless violation of the statute ha[s] some proximate causal connection between the violation and the injury complained of, it is *irrelevant* and cannot be relied upon as actionable negligence.” Southeast Transport Corp. v. Hogan Livestock Co., Inc., 133 Ga. App. 825, 830 (1975) (emphasis supplied). In this case, the key issue for proximate cause of the accident is whether Mr. Oliver was negligent in his operation of the tractor trailer on the day of the accident such that his tractor-trailer crossed the emergency lane line and injured Mr. McDade. Put simply, whether or not Mr. Oliver violated hours of service regulations on previous occasions is wholly irrelevant.

The tenuous chain of assumptions that Plaintiffs want the jury to make with respect to Mr. Oliver’s past errors are clearly irrelevant and inadmissible as they cannot be the proximate cause of the underlying accident, and admitting the same would confuse and mislead the jury and severely prejudice Defendants’ case. Further, the forced extrapolation required by this “bait and switch” by Plaintiffs can only be intended to improperly excite and inflame the jury. Therefore, Plaintiffs should be prohibited from presenting any evidence or making any reference to any alleged violation of hours of service regulations by Mr. Oliver.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**J. Evidence that Defendants Violated any Federal Regulations.**

It is also possible that Plaintiffs may attempt at trial to introduce evidence or elicit testimony regarding other alleged violations of federal regulations by the Defendants even though the SCRT team and Plaintiffs’ own experts have found no evidence that a violation of the FMCSRs caused or contributed to this accident. Because this type of evidence is irrelevant and

unduly prejudicial and would serve only to confuse and mislead the jury, Plaintiffs should be prohibited from introducing the same at trial.

It is well-settled under Georgia law that alleged regulatory infractions that have no causal relationship to the accident are irrelevant and inadmissible. “Unless violation of the statute ha[s] some proximate causal connection between the violation and the injury complained of, it is *irrelevant* and cannot be relied upon as actionable negligence.” Southeast Transport Corp. v. Hogan Livestock Co., Inc., supra (fact that speedometer was broken held to be irrelevant because it had nothing to do with the accident, which occurred during truck driver’s attempt to pass the plaintiff’s car) (emphasis supplied); see also, Xpress Cargo Sys. v. McMath, 225 Ga. App. 32, 32 (1997) (holding that absence of a driver’s license is irrelevant and inadmissible unless there is a proximate causal connection with the collision).

The same holds true when a plaintiff attempts to introduce evidence that a party was in violation of federal regulations at the time of the accident. Where such violations have no causal relationship to the accident, they are irrelevant as a matter of law. See Parker v. R&L Carriers, supra; Frey, supra. In the instant case, the material issue for the jury to decide is whether Mr. Oliver negligently operated his vehicle at the time of the collision causing Mr. McDade’s alleged injuries. Whether or not the Defendants were in violation of any federal regulation at the time of the collision, or at some other time, is irrelevant to this determination because Plaintiffs cannot establish that any such alleged regulatory infraction was a proximate cause of the accident. See e.g., Parker, supra; Southeast Transport Corp., supra. Alleged federal regulatory violations that have no proximate connection to the accident are irrelevant. Further, their admission into evidence would be unduly prejudicial to Defendants and would confuse the issues and mislead the jury because the material issues would be obscured. By shifting the focus to the alleged

FMCSR violations, the jury would lose sight of the decisions they actually need to make.

Indeed, evidence concerning alleged FMCSR violations having no causal relationship to the accident is akin to inadmissible character evidence. It has the tendency to unfairly prejudice the jury against the Defendants without regard to whether Defendants caused Plaintiffs' injuries. Accordingly, the Court should prohibit all such evidence and argument unless and until Plaintiffs can make a showing of some causal relationship to the accident.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**K. Evidence of Alleged Logbook Charting Errors.**

Defendants anticipate that Plaintiffs may present testimony or argue that the Mr. Oliver had errors in his logbook on the day of the accident. For example, in the deposition of Dale Griffin Surrency, there was some testimony that if the accident occurred at 1:25 in the morning there should have been a log book page for the hour that Mr. Oliver was on the road prior to the accident and that it was probably oversight to not have Mr. Oliver do a logbook page where his status changed and the accident occurred. See Surrency depo. at pp. 29-32. Again, this type of testimony or argument is inadmissible because there is no evidence that these alleged errors are causally connected to the accident or Plaintiffs' alleged injuries.

Here, it is not alleged that record keeping or charting errors caused or contributed to the accident; Plaintiffs' claims are based upon Mr. Oliver's alleged negligent driving at the time of the accident. There is simply no causal link between any alleged errors in Mr. Oliver's logbook charting and the accident. Allowing such evidence to be admitted at trial would only confuse the jury with irrelevant issues and unfairly prejudice the Defendants. Thus, the Court should exclude any evidence of alleged logbook/charting errors.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**L. Testimony that Sleep Apnea Can Lead to Drivers “Nodding Off” Unexpectedly.**

Dale Griffin Surrency testified in his deposition that sleep apnea can lead to drivers “nodding off” unexpectedly. See Surrency depo. at p. 18. *This testimony is irrelevant because there is no evidence whatsoever that sleep apnea caused or contributed to this accident.* Additionally, the prejudicial effect is enormous because this testimony does not bear any relation to the facts of this case. Further, this testimony would confuse the jury for these exact same reasons. Finally, there has been no foundation laid that establishes that Mr. Surrency is qualified to even give this opinion. Accordingly, this testimony must be excluded.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**M. Hearsay Testimony That the Vehicles At Issue Were Parked 18 Inches Off the White Line at the Time of the Accident.**

Dale Griffin Surrency testified in his deposition that he heard from his insurance company that the vehicles in the accident were parked eighteen (18) inches off the white line at the time of the accident. See Surrency depo. at p. 46-47. This is classic hearsay testimony that should not be allowed. See O.C.G.A. § 24-8-801(a)(c) (“Hearsay means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted”). Indeed, this testimony is wholly unreliable. Further, this type of hearsay testimony is not necessary since Plaintiffs’ have an accident reconstruction expert who will presumably testify about these types of issues. Accordingly, this testimony must be excluded.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**N. Plaintiffs' "Golden Rule" Arguments.**

Any argument by Plaintiffs' counsel to encourage jurors to place themselves in the position of the Plaintiffs or consider what outcome they would want if the Plaintiffs were their relatives is improper. See Braithwaite v. State, 275 Ga. 884, 885-886 (2002); Naimat v. Shelbyville Bottling Co., 240 Ga. App. 693, 697-698 (1999); and Myrick v. Stephanos, 220 Ga. App. 520, 522 (1996). To do so, is to ask the jurors to view the case "from the biased, subjective standpoint of a litigant" rather than viewing it objectively as fair and impartial jurors. Myrick, 220 Ga. App. at 522. The Georgia Court of Appeals has generally held that the invocation of the so-called "Golden Rule" is reversible error. Id. Moreover, it is anticipated that Plaintiffs' counsel may further try to circumvent the "Golden Rule" by asking jurors to place a close relative or family member in the position of Plaintiffs. Such argument completely violates the spirit of the law and should be prohibited. Braithwaite, *supra*. Accordingly, this Court should not allow these arguments to be made to the jury.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**O. Plaintiffs' "Send a Message" Arguments.**

This Court should prohibit Plaintiffs from eliciting testimony, presenting evidence, and/or making an argument or other colloquy asking the jury to "send a message" with their verdict in the compensatory damages phase of this trial. The purpose of awarding compensatory damages in Georgia is not to deter or punish particular conduct, but to "place an injured party in the same position it would have been in had there been no injury or breach of duty, *that is to compensate for the injury actually sustained.*" MCI Communications Services v. CMES, Inc., 291 Ga. 461, 462 (2012) (emphasis added). The Georgia Court of Appeals decision in Locklear v. Morgan is illustrative. 129 Ga. App. 763 (1973). There, the Court of Appeals reversed a plaintiff's verdict

because plaintiff's counsel argued that the jury should "[r]ender such a verdict that will speak out loud, will speak out clearly, and it will be not only for the benefit of the [plaintiff], but be an inestimable benefit for everyone in this county and everyone throughout the state." See id.

Additionally, "send a message" arguments pitting the local jurors against a corporation have routinely been held inappropriate by the Georgia courts. Alexander Underwriters General Agency, Inc. v. Lovett, 182 Ga. App. 769, 775 (1987); see also Shaw v. Brannon, 253 Ga. App. 673, 674 (2002) (court rebuked plaintiff's counsel for asking jury to send a message to the defendant with award); Neal v. Toyota Motor Corp., 823 F. Supp. 939, 943 (N.D. Ga. 1993) (court noted that plaintiff's counsel "barely skirt[ed] the line for professional and acceptable conduct" in asking the jury to send a message to Toyota with its verdict and in attempting to present plaintiff as the oppressed "little guy" fighting against a Japanese corporation).

In Lovett, during closing argument plaintiff's attorney made reference to the "big" or "wealthy" insurer and said that the jury should send an appropriate message to the insurer concerning refusal to settle or defend. 182 Ga. App. 769. In response, the trial court rebuked the attorney and directed the jury to "erase the comment from their minds and informed the jury that the case should be decided on its own merits without regard to the size, influence or affluence of either party." Id.

Further, courts across the country have held that "send-a-message" arguments "distract the jury from its 'sworn duty to reach a fair, honest and just verdict according to the facts and evidence presented at trial.'" Whitehead v. Food Max, 163 F.3d 265, 277 (5th Cir. 1998) (quoting Westbrook v. General Tire & Rubber Co., 754 F.2d 1233, 1238 (5th Cir. 1985)) (holding that an "us-against-them plea can have no appeal other than to prejudice by pitting 'the community' against a nonresident corporation. Such argument is an improper distraction from

the jury's sworn duty to reach a fair, honest and just verdict according to the facts and evidence presented at trial."); United States v. Solivan, 937 F.2d 1146, 1153-54 (6th Cir. 1991 ) (reversing conviction based on prosecutor's closing argument urging jurors to "send a message," finding such appeals "extremely prejudicial and harmful"); Pierce v. Platte-Clay Electric Cooperative, 769 S.W.2d 769, 779 (Mo. 1989) (finding "send a message" arguments are inappropriate). Based on the foregoing authority, Defendants request that the Court issue an order prohibiting Plaintiffs' counsel from making any such "send a message" arguments during the trial of this case.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**P. Arguments Modeled After the "Reptile Strategy."**

Similarly, Defendants anticipate that Plaintiffs' counsel may attempt to inflame the passions of the jury through the use of improper argument techniques outlined in the book "REPTILE. THE 2009 MANUAL OF THE PLAINTIFF'S REVOLUTION" written by Don Keenan, and jury consultant David Ball. Because such arguments urge the jury to punish Defendants, Defendants' insurers, the corporate community, and the trucking industry through the rendering of an improper compensatory damages award, Plaintiffs' counsel should be prohibited from making such arguments.

The Reptile Strategy advocates fear-mongering to frighten the jury into "sending a message" to the defendants and the defendants' industry through an improper *compensatory damages* award. The basis of the Reptile Strategy is to appeal to the "reptilian" or "survivalist" instincts of each juror. According to Keenan, a juror's "reptilian" nature will force the juror to "protect him[self] and the community" when the juror senses he or she is in danger as a result of the defendants' or defendants' industry's conduct.

In the book, Keenan writes that a plaintiff's attorney must convince each juror that he or she, along with the community as a whole, is in danger as a result of the *type of conduct* in which the defendants allegedly engaged. Keenan writes that "[t]his gives us our primary goal in trial: To show the immediate danger of the *kind of thing* the defendant did – and how fair compensation can diminish that danger within the community." Id. at 30. (emphasis in original).

Keenan further writes:

Once you have established the community danger of the defendant's act or omission, you are most of the way to waking up the Reptile . . . *You must convey to the jurors that they are in charge of the level of required safety in this community, and that by means of their verdict they have great power . . .* You are guardians of the community.

Id. at 38-39 (emphasis added).

The reptilian trial strategy violates two (2) basic tenants of the civil justice system. First, the strategy asks the jury to protect the jury's community by punishing the defendants and the defendants' industry instead of compensating the injured party. Second, the strategy violates Georgia's "Golden Rule" law.

Here, Plaintiffs' counsel may argue or insinuate that the harm allegedly caused by Defendants endanger the jury's "community" and that the jury can "protect" their community by rendering a compensatory damages award. *This should not be allowed.* Defendants are entitled to a true verdict rendered by an impartial jury. To allow Plaintiffs' counsel to use the Reptile Strategy will only taint the trial and deprive the Defendants of their right to a fair trial. Accordingly, Plaintiffs' counsel should be prohibited from making these arguments at trial.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**Q. Argument by Plaintiffs' Counsel That the Jury Should Draw a Negative Inference From Mr. Oliver's Invocation of His Fifth Amendment Rights or Argument that Mr. Oliver Could Have Waived These Rights and Defended Himself at Trial.**

Defendants have made a Motion for Continuance wherein they explain that that the ends of justice call for a continuance of trial and a stay of trial pending resolution of the criminal proceedings against Mr. Oliver. Should the Court grant that Motion, then this Motion in Limine becomes a moot issue.

However, if that Motion is not Granted, Defendants fear that the Plaintiffs will argue to the jury that they should draw a negative inference from the invocation of this constitutional right and that Mr. Oliver could have just decided to waive these rights and testify. These types of arguments are unfairly prejudicial to the worst degree. Until his second degree vehicular homicide charge is resolved, Mr. Oliver will necessarily invoke his Fifth Amendment right against self-incrimination; he should not be punished for doing so. Plaintiffs should not be allowed to circumvent these protected due process rights. These types of arguments by Plaintiffs' counsel will undoubtedly unfairly taint the jury's perception of Mr. Oliver and the other Defendants.

Thus, Defendants ask the Court to prohibit these types of arguments on the grounds that they are unfairly and unduly prejudicial.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**R. Evidence Regarding the Financial Status, Size, or Wealth of the Defendants in the Compensatory Phase of Trial.**

Georgia courts have consistently recognized that to avoid unfair prejudice to a defendant and to prevent improper argument regarding the comparative wealth of parties, evidence of a defendant's financial condition and comments contrasting the wealth or assets of one party with

the wealth or assets of another must be excluded. See American Casualty Co. v. Seckinger, 108 Ga. App. 262, 263 (1963) (“The fact that there may be differences between the parties respecting their financial ability and that one party is better able to respond in damages or to pay the expenses of litigation than the other are not proper matters to be argued to the jury. Such argument presents no issue for the jury’s consideration and is calculated to inject irrelevant and prejudicial matters into the case and to influence the jury to base its verdict on them”); accord, McCluskey v. American Oil Co., 225 Ga. 63 (1969) (it was improper to allow any reference to the defendant’s financial worth); Moore v. Moore, 240 Ga. 588, 589 (1978) (court reversed alimony award because attorney “used language which the jury could infer that they may consider the wealth of appellant’s father”).

Simply put, any reference to the wealth or poverty of a party, or contrasting the financial status of one party with that of another is “universally condemned” under Georgia law. See Continental Casualty Co. v. Wilson-Avery, Inc., 115 Ga. App. 793, 796 (1967). In fact, any such reference to a party’s “worldly circumstances or financial standing . . . is generally irrelevant and harmful.” Camp v. T.E. Cline, Inc., 141 Ga. App. 328, 331 (1977). Plainly, the Defendants’ overall financial status does not tend to prove or disprove anything about how the subject accident occurred, liability therefor, or Plaintiffs’ claimed damages. Accordingly, this Court should preclude Plaintiffs from referring in any way to the overall wealth, size, or financial condition of Defendants unless the punitive damages phase of trial is reached.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**S. Testimony from Plaintiffs' Accident Reconstruction Expert, Sean Alexander, Regarding Organic Brain Matter.**

Sean Alexander testified at his deposition that he believes organic material found near where Mr. McDade was sitting at the time of the accident was brain matter. See Alexander depo. at pp. 89-92. Plaintiffs will undoubtedly try to use this testimony to bolster Mr. McDade's claim for emotional distress damages. Preliminarily, it should be noted that this testimony should be excluded pursuant to the Motion in Limine concerning the facts and circumstances surrounding the death of Mr. Wood and the resulting emotional distress suffered by Mr. McDade, set forth above. However, even if that Motion is denied, Mr. Alexander should not be allowed to opine that there was organic matter in Mr. McDade's area and that this matter was brain matter. Importantly, Mr. Alexander is not qualified to give this opinion and he does not even base his opinion on any scientific testing of the alleged organic matter – it is based only on his experience in working accident sites. Id.

Among the requirements of the newly-effective O.C.G.A. § 24-7-702, applicable to the admission of expert opinion evidence, is that only “a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise[.]” This language is identical to that formerly appearing in the just-repealed expert witness statute, O.C.G.A. § 24-9-67.1(b), and thus, it is not a new element of law in Georgia. And under Georgia case law, a party that proffers an expert witness must show that the witness, in fact, has expertise in the field on which he is offered. Johnson v. Knebel, 267 Ga. 853, 857-58 (1997) (“[B]efore being qualified to render an opinion, the expert witness must be *qualified as to the relevant area of expertise*: While expert witnesses may give their opinions as to facts, principles and rules involved in the science in which they are learned, they are not, as to questions lying outside the domain of the science, art, or trade in which they are experts, exempt

from the restriction of the rule which requires witnesses to state facts and not opinions.”) (emphasis added; internal indentation omitted); Georgia Dept. of Transp. v. Baldwin, 292 Ga. App. 816, 818 (2008) (“The possession of *special knowledge* in a field derived from experience, study, or both makes one an expert.”) (emphasis added).

As to the expert at issue here, Plaintiffs have the burden, by a preponderance of the evidence, to demonstrate that he is qualified to opine regarding whether something is organic matter/brain matter. Butler v. Union Carbide Corp., 310 Ga. App. 21, 37 (2011) (“The burden of laying the proper foundation for the admission of the expert testimony is on the party offering the expert, and admissibility must be shown by a preponderance of the evidence.”) (internal quotation marks omitted). Plaintiffs have not – and cannot – make this showing.

As referred to by the Georgia Supreme Court in Knebel, the field of accident reconstruction involves expertise in establishing “the course and rate of travel, and points of impact of the cars involved in the collisions.” Knebel, 267 Ga. at 858. This field, however, does *not* encompass within its scope the diagnosis of perceived organic material as brain matter – *this is especially true where the alleged organic matter at issue was not even tested but was just identified as “brain matter” based on Mr. Alexander’s observations*. Importantly, Plaintiffs have made no showing that Mr. Alexander possesses any expertise on identifying organic matter or that organic material can be identified as brain matter absent scientific testing.

The basis for Mr. Alexander’s opinion that there was organic brain matter in the area of Mr. McDade is simply mere deduction arising from his own life experiences. See Alexander depo. at p. 91-92 (“Q: How do you know that’s human debris? A: I have worked hundreds and hundreds of car crashes to see that we have human debris. Q: Based on what do you determine that it’s organic material? A: Based on my training and my experience that I have worked

hundreds of car crashes in which we have brain matter, organic material, and that is, you know, skin, hair, whatever....”). Lacking any expertise in this particular area (identification of organic matter), Mr. Alexander should not be permitted to claim that certain debris is “organic brain matter” without doing any scientific testing. Indeed, Mr. Alexander only offers only what he believes to be a commonsense basis for his conclusion that there is organic brain matter next to McDade.

In sum, the fact that Mr. Alexander has reconstructed traffic accidents does not make him a qualified expert to diagnosis organic matter as brain matter (particularly where there was no scientific testing done) in order to support Mr. McDade’s emotional distress claim (particularly where this claim is not even allowed under Georgia law). For these reasons, Defendants request the Court enter an Order excluding from evidence in this case testimony by Mr. Alexander relating to organic brain matter.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**T. Testimony Regarding Defendants’ Liability Insurance.**

Defendants anticipate that Plaintiff may attempt to present *voir dire* questions or otherwise allude to the fact, or infer, that Defendants have certain liability insurance coverage applicable to the subject action. It is well-settled under Georgia law that in ordinary negligence cases, not only is the liability insurance policy of the defendants inadmissible in evidence, but disclosure to the jury of its mere existence is grounds for a mistrial. See City Counsel of Augusta v. Lee, 153 Ga. App. 94, 98 (1980); see also Gonzalez v. Wells, 213 Ga. App. 494, 495 (1994); Green, GEORGIA LAW OF EVIDENCE (4<sup>th</sup> Ed.) §63; Agnor, GEORGIA EVIDENCE (3<sup>rd</sup> Ed.), §10-19. Further, “evidence of the limit of insurance liability coverage should be kept from a jury since it might prejudice the jurors against a defendant and improperly motivate them to

recklessly award damages to claimants.” Ashley v. Goss Bros. Trucking, 269 Ga. 449, 450 (1998). The rationale for the exclusion is that “[s]uch evidence is highly prejudicial and it can influence the entire case, no matter which side attempts to introduce it.” Denton v. Con-Way So. Express, 261 Ga. 41, 42 (1991), *disapproved of in part, on other grounds*. Based on the foregoing, Defendants move this Court to exclude any statement, utterance, or inference offered during *voir dire* or otherwise, that the Defendants have liability insurance coverage.

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**U. Argument by Plaintiffs’ Counsel That Insinuates or Implies That Any Punitive Damages Award Will Be Capped at \$250,000 Unless There is a Finding by the Jury of Specific Intent to Harm.**

Should Plaintiffs’ punitive damages claim somehow survive a directed verdict motion at trial (which it should not), it is expected that Plaintiffs’ counsel may attempt to suggest to the jury that a statutory cap on the damages recoverable by Plaintiffs will apply unless the jury finds that the Defendants acted with “specific intent to cause harm” in causing the subject accident. This type of argument is highly improper, as Georgia law clearly prohibits the jury from knowing the legal implications of its punitive damages finding. See Uniroyal Goodrich Tire Co. v. Ford, 218 Ga. App. 248 (1995), *aff’d in part and rev’d in part by* 267 Ga. 226 (1996) (instructing jury that 75% of any punitive damages award would go to the state treasury was *reversible error* as it created substantial risk that the jury was improperly influenced by this consideration to adjust its award of punitive damages in a manner which would prejudice the defendants). As a result, Plaintiffs’ counsel should be prohibited from making any argument that directly or indirectly indicates to the jury that damages will be capped absent a finding of “specific intent to cause harm.”

Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**V. Any Evidence in Support of a Claim for Punitive Damages Which Does Not Relate to the Alleged Conduct Which Forms the Basis for the Punitive Damages Claim.**

To the extent the Court allows a claim for punitive damages to go to the jury, which Defendants maintain would be contrary to Georgia law, and Plaintiffs are allowed to present evidence to support such a claim, such evidence must be carefully tested against constitutional guidelines. Only evidence that can constitutionally support an award of punitive damages, if any exists, should be considered by the Court.

In State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513 (2003) - perhaps the clearest decision on the constitutional restrictions on punitive damages awards to date - the United States Supreme Court explained the prohibition on considering unrelated conduct to support a claim for punitive damages. Although the “reprehensibility” of a defendant’s conduct is a factor in determining the constitutionality of a punitive damages award, this factor does not allow a plaintiff to introduce any and all evidence tending to show misconduct by a defendant. Rather, evidence used to support an award of punitive damages must relate to the harm allegedly suffered by the plaintiff. The majority in Campbell took great care to explain this requirement:

A defendant’s dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages. A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business. Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties’ hypothetical claims against a defendant under the guise of the reprehensibility analysis . . . Punishment on these bases creates the possibility of multiple punitive damages awards for the same conduct; for in the usual case nonparties are not bound by the judgment some other plaintiff obtains.

\* \* \*

Although our holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more reprehensible than an individual instance of malfeasance . . . in the context of civil actions courts must ensure the conduct in question replicates the prior transgressions.

Campbell, 123 S. Ct. at 1523 (internal citations and omitted). The Court noted that its “concerns are heightened when the decision maker is presented . . . with evidence that has little bearing as to the amount of punitive damages that should be awarded.” Id. at 1520.

In Campbell, the plaintiffs offered “scant evidence of repeated misconduct of the sort that injured them.” Id. at 1542. Recognizing that “evidence of other acts need not be identical to have relevance in the calculation of punitive damages,” the Supreme Court found the consideration of evidence that had nothing to do with the harm at issue was improper. Justice Kennedy explained that “[t]he reprehensibility guidepost does not permit courts to expand the scope of the case so that a defendant may be punished for any malfeasance . . .” Id. Since the plaintiffs did not show conduct by State Farm similar to that which harmed them, evidence of other malfeasance was improperly considered in determining punitive damages. Thus, under the “reprehensibility” analysis from Campbell, evidence may only be used to support a punitive damages award if there is sufficient similarity between the acts leading to the harm and the conduct relied upon to form the basis of the punitive damages award.

Due to the Supreme Court’s careful analysis in Campbell, and the clear statement that conduct unrelated to the actual harm complained of may not be used as a basis to support a punitive damages award, courts must now proceed cautiously when admitting evidence on a claim for punitive damages. Any evidence of conduct unrelated to the harm allegedly suffered by Mr. McDade here cannot, therefore, serve as a justification for punitive damages.

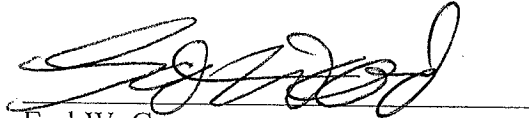
Granted: \_\_\_\_\_ or Denied: \_\_\_\_\_.

**III. CONCLUSION.**

For the foregoing reasons, this Court should bar any such evidence/testimony/arguments.

Respectfully submitted this 17<sup>th</sup> day of May, 2013.

**WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC**



Earl W. Gunn

Georgia Bar No. 315262

John K. Train IV

Georgia Bar No. 715267

Joshua S. Wood

Georgia Bar No. 881696

*Attorneys for Defendants Jerome Clifford  
Oliver and Crider Transportation, LLC*

3344 Peachtree Road, N.E.  
Suite 2400  
Atlanta, GA 30326  
404-876-2700

**CERTIFICATE OF SERVICE**

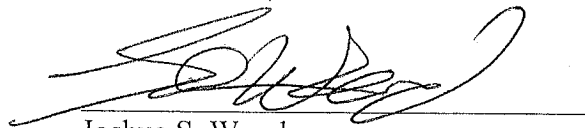
I hereby certify that a true and accurate copy of the foregoing pleading was served by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to the following counsel of record:

Katherine L. McArthur  
KATHERINE L. MCARTHUR, LLC  
6055 Lakeside Commons Drive, Ste. 400  
Macon, GA 31201-0816  
*Attorney for Plaintiff*

Scott McMickle  
MCMICKLE, KUREY AND BRANCH, LLP  
200 South Main Street  
Alpharetta, GA 30009  
*Attorney for Defendant Travelers Property Casualty Company of America*

On this 17<sup>th</sup> day of May, 2013

**WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC**



Joshua S. Wood  
*Attorneys for Defendants Jerome Clifford  
Oliver and Crider Transportation, LLC*

3344 Peachtree Road, N.E.  
Suite 2400  
Atlanta, GA 30326  
404-876-2700