

**IN THE SUPERIOR COURT OF WALTON COUNTY
STATE OF GEORGIA**

DUSTAN BEALL,

Plaintiff,

v.

**WALTON ELECTRIC
MEMBERSHIP CORPORATION,**

Defendant

CIVIL ACTION FILE NO.

15-0048-1

PRE-TRIAL ORDER

The following constitutes a Pre-Trial Order entered in the above-styled case after conference with counsel for the parties:

1. The name, address and phone number of the attorneys who will conduct the trial are as follows (All counsel for all parties shall be present at pre-trial conference unless released by the Court and all counsel present or not shall be bound by the pre-trial entered in the case):

Plaintiff: Ryan A. Johnson
Ryan Johnson P.C.
3340 Peachtree Road
Suite 950
Atlanta, Georgia 30326
(678) 879-4028

Jennifer A. Kurle
KurleLaw, LLC
150 E. Ponce de Leon Ave., Suite 225
Decatur, GA 30030
(404) 458-4080

Defendant Walton EMC: Hugh B. McNatt
Hugh Peterson III
Balch & Bingham LLP
P. O. Box 1168
Vidalia GA 30474
(912) 537-9343

2. The estimated time required for trial: Three days.
3. There are no motions or other matters pending for consideration by the court except as follows (Please note if a bankruptcy concerns either party or any other matters are pending which will delay the trial of the case):

Plaintiff: Plaintiff reserves the right to file Motions in Limine or responses to any motions filed in this case, prior to trial.

Defendant Walton EMC: Defendant Walton EMC intends to file a Motion in Limine to prohibit Plaintiff from presenting any photographs taken after the accident as representative of the position of Walton EMC trucks at the time of the accident. Defendant Walton EMC reserves the right to file motions in limine prior to trial. Defendant Walton EMC reserves the right to file additional motions concerning jury qualification, or any other pretrial motion(s) as necessary and/or required.

4. The jury will be qualified as to relationship with the following:
 - a. Members, partners and employees of Ryan A. Johnson P.C.;
 - b. Members, partners and employees of KurleLaw, LLC;
 - c. Members, partners, and employees of Balch & Bingham, LLP;
 - d. Dustan Beall;
 - e. Partners, employees, and agents of Walton EMC;
 - f. Federated Rural Electric Mutual Exchange Company.

5. Discovery and Caption:

a. Discovery:

All discovery has been completed. The parties reserve the right to take the evidentiary deposition of any person(s) for the preservation of evidence at trial.

b. Caption:

The names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or non-joinder of any parties.

6. The following is the Plaintiff's brief and succinct outline of the case and contentions (This outline shall not be longer than one [1] page and shall not be argumentative):

This case involves a motor vehicle collision that occurred due to an obstruction in the roadway. On the night of April 7, 2014, Plaintiff was traveling northbound on Michael Etichson Road when, without any advanced warning or notice, Plaintiff came upon very bright light facing in his direction that appeared to be coming from a vehicle in the opposite lane. Moments later, as Plaintiff got closer to the bright light, Plaintiff suddenly came upon a barricade that was in the middle of Michael Etichson road where Walton Electrical Membership Corporation (hereinafter "Walton EMC") workers were working on down power lines. The road was completely obstructed by the barricade. Shortly after Plaintiff stopped, Colby Massey, also coming northbound and without any notice of the obstruction, and also facing very bright lights coming off the work truck in the west shoulder of the roadway, approached the obstruction and rear-ended the Plaintiff. Plaintiff sustained multiple injuries, required two (2) neck surgeries, and continues to experience neck pain, headaches, and reduced range of motion. Plaintiff alleges that Defendant Walton EMC, by and through its employees and/or agents, negligently failed to provide advance warning to drivers on the roadway, creating a dangerous condition that they

could reasonably anticipate would result in harm to both drivers and its own employees.

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

(This outline shall not be longer than one [1] page and shall not be argumentative):

Around 4:30 p.m. on April 7, 2014, a thunder storm blew down several Walton EMC utility poles on Michael Etchison Road in Walton County, Georgia. Law enforcement from Walton County responded and closed a portion of Michael Etchison Road North and South of the storm damage. Walton County 9-1-1 contacted Walton EMC to repair and/or replace these utility poles and restore power to the affected residents.

When Walton EMC crews arrived, they noticed patrol cars parked in the middle of Michael Etchison Road blocking traffic into the closed portion of the road. Walton EMC crews also noticed a small truck entangled in power lines in the road. The driver of this truck had apparently attempted to traverse this section of road before law enforcement closed it. The truck left the scene and Walton EMC crews began working to restore power.

Thereafter, the Walton County Sheriff's office requested Walton County Roads and Bridges ("Walton County") deliver "Road Closed" signs to mark the closed area of Michael Etchison Road. Walton County employee, John Allman, and another employee delivered the signs and installed them in the roadway in the immediate vicinity of the patrol cars. After installing these signs, John Allman and law enforcement, including the patrol cars, left the scene. The road closed signs remained in place.

Around 8:00 p.m., Walton EMC crews finished repairing and replacing the utility poles. Josh Wolaver ("Wolaver") and Ryan Mitchell ("Mitchell"), two members of the Walton EMC crew, drove their bucket truck to the South end of the closed area. They pulled the bucket truck into a drive way about ten to fifteen feet off of the west shoulder of Michael Etchison Road,

about twenty feet inside of the area closed by law enforcement. Wolaver and Mitchell were disconnecting grounds to restore power. There were no other Walton EMC employees or trucks at the South end of the closed area.

At this same time, Plaintiff Dustan Beall (“Plaintiff Beall”) was traveling north on Michael Etchison Road. He approached the road closed sign, stopped, put his vehicle in park, and asked Mitchell how much longer the road would be closed. Mitchell and Plaintiff Beall engaged in brief conversation. Then, Wolaver noticed a vehicle approaching without its headlights on. He could tell the driver was not looking at the road in front of him and appeared to be distracted. Wolaver yelled at Mitchell and Plaintiff Beall to watch out.

The truck collided with the rear of Plaintiff Beall’s car. The driver of the truck, Colby Massey, was charged with following too closely in violation of O.C.G.A. § 40-6-49. Colby Massey took no action to contest this citation. Plaintiff Beall alleges injuries and damages as a result of this collision.

8. The issues for determination by the jury are as follows:

- Plaintiff:**
- a) Whether Defendant Walton EMC was negligent;
 - b) Whether Defendant Walton EMC’s negligence caused and/or contributed to Dustan Beall’s injuries and damages;
 - c) Damages.

Defendant Walton EMC:

- a. Whether Plaintiff was negligent and if so, the percentage attributed to Plaintiff’s negligence.
- b. Whether Colby Massey was negligent and if so, the percentage attributed to Colby Massey’s negligence.

- c. Whether Walton County Sheriff's Office was negligent and if so, the percentage of negligence attributed to Walton County Sheriff's Office.
 - d. Whether Walton County Roads and Bridges was negligent and if so, the percentage of negligence attributed to Walton County Roads and Bridges.
 - e. Whether Defendant Walton EMC was negligent and if so, the percentage attributed to Defendant Walton EMC.
 - f. The nature, extent and amount of Plaintiff's alleged damages.
9. Specifications of negligence including applicable code sections are as follows:

- Plaintiff:**
- a. O.C.G.A. § 51-1-2;
 - b. O.C.G.A. § 40-6-49;
 - c. Schuessler v. Bennett, 287 Ga. App. 880, 886 (2007); quoting Collins v. Altamaha Elec. Membership Corp., 151 Ga. App. 491, 491-92 (1979);
 - d. Little Ocmulgee Elec. Membership Corp. v. Lockhart, 212 Ga. App. 282, 283 (1994), citing Huggins v. Aetna Cas., etc, Co., 245 Ga. 248, 249 (1980);
 - e. Rust Intern. Corp. v. Greystone Power Corp., 133 F.3rd 1378 (1998).

Plaintiff disputes the applicability to the facts of this matter of the following code sections cited by the Defendant Walton EMC: O.C.G.A. §§ 40-6-40 (vehicles to drive on right side of roadway); 40-6-240 (backing); 40-6-25 (display of unauthorized signs); 40-6-2 (obedience to authorized persons directing traffic).

Defendant Walton EMC:

- a. Ordinary Diligence and Ordinary Negligence as defined by O.C.G.A. § 51-1-2.
- b. Plaintiff's duty to avoid consequences of defendant's negligence: O.C.G.A. § 51-

11-7.

- c. Apportionment of damages O.C.G.A. § 51-12-33
- d. Obedience to traffic control O.C.G.A. § 40-6-2
- e. Georgia statutes and case law governing motor vehicles on the road including without limitation:
 - i. O.C.G.A. § 40-6-49;
 - ii. O.C.G.A. § 40-6-240;
 - iii. O.C.G.A. § 40-6-25;
- f. Georgia statutes and case law governing erection and maintenance of traffic control devices including without limitation:
 - iv. O.C.G.A. § 32-6-50;
 - v. O.C.G.A. § 32-6-51;
 - vi. *Reed v. Taylor Const. Co.* 198 Ga. App. 595, 597 n. 2 (1991).

Defendant Walton EMC objects to the applicability of the Georgia cases cited by Plaintiff in this section.

10. If the case is based on a contract, either oral or written, the terms of the contract are as follows (or, the contract is attached as an Exhibit to this order): Not Applicable.

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

Plaintiff:

- a. All elements of Plaintiff's past, present and future pain and suffering, both mental and physical; and
- b. Plaintiff's medical expenses, past, present and future, summarized as follows:

PROVIDER	DATES OF SERVICE	CHARGES
Athens Regional Medical Center	4/7/14; 9/3/14; 10/14/14; 10/23/14-10/26/14	\$14,787.11 \$5,105.00 \$2,839.40 \$59,164.03
Georgia Emergency Medicine Specialists	4/7/14	\$831.00
Athens Radiology Associates	4/7/14-4/8/14	\$1,023.00
Eastern Health Center	4/18/14	\$417.50
Ellis Pain Center (Hughes)	2010-present	Not claiming bills
Georgia Neurological Surgery	10/24/14-present	\$21,575.00
Vero Orthopaedics and Vero Neurology (Atwater)	7/10/15-present	\$1,135.87 \$17,438.00
Orthopedic Center of Vero Beach	4/14/15-9/29/15	\$2,549.00
Indian River Radiology – Homer Hatten, JR, MD	9/17/15	\$1,149.68
Indian River Medical Center	2/10/16-2/15/16 2/16/16-2/22/16	\$52,673.82 \$19,883.36
Nurse On Call	2/16/16-3/22/16	\$1,485.01
Michael C. Eves	2/10/16	\$3,138.03
Biomet bone stimulator	5/6/16	\$5,890.00
	Total (to-date)	\$211,084.81

Defendant Walton EMC: Defendant Walton EMC disputes Plaintiff's damages claims.

Any damages awarded to Plaintiff must be reduced by the amount of fault of the Plaintiff and must be apportioned among the parties and non-parties based on their respective percentages of fault. Specifically, pursuant to O.C.G.A. § 51-12-33(d), Defendant Walton EMC filed Notice of Non-Party Fault alleging, Colby Massey, Walton County Sheriff's Office and Walton County Roads and Bridges were wholly or partially at fault for the claims asserted by Plaintiff. Defendant Walton EMC objects to the presentation of any evidence showing healthcare expenses in excess of those produced during discovery and listed in Plaintiff's Complaint. Defendant Walton EMC objects to any evidence showing Plaintiff incurred lost wages due to Plaintiff's failure to provide any lost wage documentation during discovery.

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:
1. Venue and jurisdiction.
 2. The accident occurred on April 7, 2014;
 3. The accident occurred on Michael Etchison Road in Walton County, Georgia.
14. The following is a list of all documentary and physical evidence that will be tendered at the trial by the plaintiff or defendants. 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. **Plaintiff:**

1. Medical records and Medical bills to include the following:

Athens Regional Medical Center

Georgia Emergency Medicine Specialists

Athens Radiology Associates

Eastern Health Center

Ellis Pain Center (Dr. Hughes

St. Mary's Health Care

Georgia Neurological Surgery

Vero Orthopedics and Vero Neurology (Dr. Atwater)

Orthopedic Center of Vero Beach

Indian River Radiology – Homer Hatten, JR, MD

Indian River Medical Center

Nurse On Call

Michael C. Eves, Anesthesiology

Biomet bone stimulator

2. Walton EMC's Engineering and Operations Bulletin.
3. Wreck report;
4. CV of Herman Hill;
5. CV of defense expert;
6. CV of Daren Marceau;
7. Photographs of the scene;
8. Photographs of Plaintiff's vehicle;
9. Photographs of Defendant Massey's vehicle;
10. Demonstrative evidence, to include charts, diagrams, timelines and any other illustrative materials necessary to present this case to the jury;
11. All deposition exhibits or documents, including the MUTCD (Manual on Uniform Traffic Control Devices);
12. Any pleading, discovery document, or other document identified or produced during this litigation;
13. Documents to be used for purposes of impeachment or rebuttal;
14. Redacted Dash Camera and Body Cameras created during law enforcement during the investigation of this incident;
15. Annuity and Mortality Table, 1949;

16. CDC Life Tables for Males, 2011;

17. A summary of the medical bills and expenses with all accompanying bills (redacted);

18. Any item listed by the Defendants.

You are hereby notified pursuant to O.C.G.A. §§ 24-8-803(6) and 24-9-902(11) of the Undersigned's intent to use the documents identified in this Paragraph, or any portions thereof, at trial and of your opportunity to review these records.

b. **Defendant Walton EMC:** Counsel for all parties will meet to prepare and mark exhibits prior to trial. On information and belief exhibits will contain the following items:

1. Police report of accident;
2. Photographs of accident scene
 - a. 7 photographs taken after the accident
 - b. Photographs taken by Daren Marceau
3. Google image map of Michael Etchison Road
4. Exhibit 11 of Walton EMC's Engineering and Operations Bulletin.
5. Body camera video of Trooper Cory Seymour.
6. Any exhibit or document used at or in the deposition of any party or witness.
7. Billing records, notes, and correspondence related to all expert witnesses.
8. CV of all expert witnesses
9. Any document contained within any expert's file.
10. Any document or other item used for impeachment of any witness
11. Prior depositions or trial testimony from Plaintiff's experts for purposes of

impeachment.

12. Any document listed by any party in this Pre-Trial Order.

15. Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows: None at this time other than those that may be set forth in Plaintiff's Motions in Limine or to support evidentiary issues as they arise at trial.

16. Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows: Georgia statutes and case law governing the authority to erect and maintain traffic control devices within the right-of-way of a public road or street including without limitation:

i. O.C.G.A. § 32-6-50;

ii. O.C.G.A. § 32-6-51;

iii. *Reed v. Taylor Const. Co.* 198 Ga. App. 595, 597 n. 2 (1991).

17. All requests to charge shall be filed at or before trial. Additional requests may be submitted after this date to cover unanticipated points.

The Parties will file Requests to Charge November 20, 2017.

18. The testimony of the following persons may be introduced by depositions including those who may be unavailable and those whose depositions may be used for impeachment (List each deposition):

Plaintiff: John G. Atwater, M.D.; Terrance L. Hughes, M.D.; Trooper Cory Seymour;

Subject to the requisite proof, any witness who is legally unavailable to testify at trial.

Defendant Walton EMC: Any witness who is unavailable to testify at trial.

19. The Following are lists of witnesses:

Plaintiff:

Plaintiff will have present at trial: Dustan Beall;

Plaintiff may have present at trial: Herman Hill;

Ryan Mitchell;

Josh Wolaver;

Bradley McAlister;

John Allman;

Deputy Kevin Lee;

State Trooper Cory Seymour;

Daren Marceau;

Colby Massey;

John Atwater;

Ashley Cason;

Any witness identified in discovery;

Any witness listed by Defendants;

Any witness required for impeachment;

Any witness required for rebuttal;

Kevin Clopton, Plaintiff's dad;

Anna Clopton, Plaintiff's mom;

Andrew Clopton, Plaintiff's brother;

Jennifer Beall, Plaintiff's wife.

Additionally, Plaintiff adopts the list of witnesses tendered by Defendants.

Plaintiff objects to any witness who has not been identified by name or during discovery.

Opposing counsel may rely on representations by the designated party that such party will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other parties to subpoena the witness or obtain the witness's testimony by other means

Defendant Walton EMC:

Defendant Walton EMC will have present at trial:

Defendant Walton EMC may have present at trial:

Ryan Mitchell

Josh Wolaver

Bradley McAlister

John Allman

Walton County Sheriff's deputy Kevin Lee

State Trooper Cory Seymour

Daren Marceau

Herman Hill

Dustan Beall

Colby Massey

John Atwater

Ashley Cason

Any witness listed in discovery

Any witness listed by Plaintiff

Any witness needed for impeachment

Any witness needed for rebuttal

Defendant Walton EMC adopts herein the list of witnesses tendered by Plaintiff.

Defendant Walton EMC objects to any witness who has not been identified by name or during discovery. Walton EMC reserves the right to call additional witnesses and will provide names of said witnesses to Plaintiff with sufficient notice prior to trial.

Opposing counsel may rely on representations by the designated party that such party will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other parties to subpoena the witness or obtain the witness's testimony by other means.

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

The Parties will work together to develop a proposed verdict form, which will be submitted November 20, 2017.

21. The possibilities of settling the case are:

Plaintiff: poor.

Defendant Walton EMC: Unlikely

22. Indicate whether or not the parties do or do not want the case reported. If the case is reported state whether or not it is reported under the rule. If the entire case is not to be reported but only a portion thereof, please state which portions shall be reported (i.e. jury selection, opening statements, closing arguments).

The parties want the case reported, under the rule, beginning with voir dire through rendition of the verdict.

23. Other matters:

Plaintiff: None at this time.

Defendant Walton EMC: At the Court's direction, Defendant will present Motions in

Limine. Twelve (12) jurors and two (2) alternates will be needed for this trial.

All other matters which have not previously been addressed specifically in this Pre-Trial but which could delay the case either in being set for trial or which could delay the progress of the actual trial itself shall be addressed in this Pre-Trial Order and brought to the Courts attention at the Pre-Trial Conference.

Submitted by:

Attorneys for Plaintiff:

s/ Ryan A. Johnson
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s/ Jennifer A. Kurle
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Attorneys for Defendant Walton EMC:

s/ Hugh B. McNatt
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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 supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice.

This ___ day of _____ 2017.

The Honorable Eugene M. Benton
Judge Walton County Superior Court

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing **CONSOLIDATED PRETRIAL ORDER** upon all counsel of record by electronic service of same addressed as follows:

Hugh B. McNatt
Hugh Peterson III
Balch & Bingham LLP
P. O. Box 1168
Vidalia GA 30474

This 6TH day of NOVEMBER, 2017.

s/ Jennifer A. Kurle _____
Jennifer A. Kurle
Georgia Bar No. 140812

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