

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CIVIL ACTION NO. 2:20-CV-00063-DLB-EBA**

TIMOTHY S. SUDEITH

PLAINTIFF,

-VS-

**E & J TRAILER SALES AND SERVICE,
INC.; AMPLE TRAILER LEASING &
SALES, INC.; and RYAN M. SALTER**

DEFENDANTS.

**DEFENDANTS, E & J TRAILER SALES AND SERVICE, INC., AND RYAN M.
SALTER'S AMENDED PRETRIAL MEMORANDUM**

Defendants, E & J Trailer Sales and Service, Inc., and Ryan M. Salter, by counsel, pursuant to this Court's April 12, 2023 Order (Doc. #: 87), for their Pretrial Memorandum, state the following:

A. Defendants' Statement of Facts

This case arises out of an April 26, 2019, motor vehicle accident on I-75 North in Ft. Mitchell, Kenton County, Kentucky. Ryan Salter, while in the course and scope of his employment with E & J Trailer Sales and Service, Inc., was driving a semi-trailer (sans trailer). It was raining, and traffic ahead suddenly slowed. Plaintiff, Timothy Sudeith, a Minnesota resident, was on a business trip for Playcore, Inc., driving a rented Jeep Grand Cherokee in the lane adjacent to Salter. Salter tried to brake to avoid the slowdown ahead, but the semi slid to the right. He corrected the slide back to the center lane, but Plaintiff also swerved to avoid impact; Salter was unable to avoid a sideswipe impact with the driver side of Plaintiff's Jeep. The parties drove off to the side of the road. Police responded, and Plaintiff declined an ambulance. Ryan Salter has stipulated to negligence.

As a result of this accident, Plaintiff, now age 55, claims he suffered a traumatic brain injury; post-concussive syndrome; neck injuries; and lower back injuries. Plaintiff's chief complaint is that the concussion triggered extensive neurocognitive maladies and symptoms that have become permanent; that impair his ability to work effectively; and that threaten his ability to earn money in the future.

Plaintiff was in the course and scope of his employment at the time of the accident, and, therefore, filed a worker's compensation claim. Travelers Indemnity Co. of America paid Plaintiff's medical expenses and are expected to participate in trial to assert their claim in subrogation (\$33,877.94).

Liability for the accident is not disputed; Defendant, Ryan Salter, has stipulated to negligence. The issues remaining relate to proximate cause of Plaintiff's injuries, permanency, and alleged impairment to future earnings. Defendants, through their experts, Rick Davis, M.D. and Susan McPherson, Ph.D., ABPP/CN, LP, and other evidence, will challenge Plaintiff's allegations about the source and scope of his injuries, as well as the actual impact of those claimed injuries on Plaintiff's work and ability to earn in the future.

B. Questions of Law

This Court granted Defendants' motion for partial summary judgment as to Plaintiff's claim for past wage loss. The Court also granted Defendants' motion for partial summary on Plaintiff's claims of lost future income related to Pilsen Enterprises. A *Daubert* motion related to Plaintiff's expert Justin M. King, Psy.D. was fully briefed; King was barred from testifying as to lost future earnings as to Pilsen, but may testify as to Plaintiff's lost future earnings claim related to his employment at PlayCore. Defendant reserves the right to revisit this issue following the trial testimony of Dr. King and any other witnesses on this issue.

Defendants have filed a Motion to Limit Plaintiff's Claim for Past Medical Expenses to the amount of the worker's compensation carrier's claim, pursuant to KRS 342.035. Under *Krahwinkel v. Comm. Aluminum Corp.*, 183 S.W.3d 154, 158 (Ky. 2005), evidence of workers' compensation payments will not be excluded pursuant to the collateral source rule. Further, evidence related to Plaintiff's past medical expenses beyond the amount already paid by Travelers is not admissible based on the limitations of KRS 342.035. Plaintiff's claim for past medical expenses, by law, is limited to the amounts already paid by Travelers on his behalf pursuant to the worker's compensation statutory scheme.

C. Expected Evidentiary Objections

Defendants do not anticipate any significant evidentiary objections. The parties have stipulated to authenticity of medical and employment records and do not anticipate further issues with stipulating to authenticity.

D. Pending Motions

Pending motions include Defendants' Motion to Limit Plaintiff's Claim for Past Medical Expenses and Defendant's Motion to Separate Witnesses. Defendants anticipate filing Motions *in Limine* by January 22, 2024, pursuant to this Court's April 12, 2023 Order. Of note, due to scheduling issues, Defendants will take the trial deposition of its orthopedic expert, Dr. Davis, on January 22, 2024; Plaintiff has four trial depositions of treating providers scheduled January 25, 2024, and January 26, 2024. Accordingly, Defendants respectfully request they be permitted to supplement motions in limine as to any testimony and/or issues that might arise with respect to those scheduled depositions.

E. Settlement

The parties have mediated this case twice: first with Pete Palmer in January 2022, and again with Hon. Ann Shake in October 2023. The parties reached an impasse in both sessions. As of the date of this filing, the parties have informally continued to discuss settlement. While the Defendants are willing to participate in a settlement conference, Defendants do not anticipate the matter will settle based on the Plaintiff's final demand from the October 2023 mediation session and further discussions.

Respectfully submitted,

GARVEY | SHEARER | NORDSTROM, PSC

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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the above document was served by the email on this 16th day of January, 2024, upon the following:

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/s/Michelle L. Burden

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