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CIVIL ACTION NO. 22-CI-000443

JEFFERSON CIRCUIT COURT  
DIVISION TWELVE (12)  
JUDGE SUSAN GIBSON

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BRYAN THOMPSON

PLAINTIFF

v.

FED EX GROUND PACKAGE SYSTEM, INC.  
FRANCO TRUCKING, INC.  
and  
DUSTIN HESTER

DEFENDANTS

**DEFENDANTS' TRIAL MEMORANDUM**

Pursuant to paragraph 14 of the Court's Civil Jury Trial Order of October 9, 2023, Defendants, by counsel, submit the following memorandum of law and fact:

**THE EVIDENCE**

**1. Liability**

Defendants expect the evidence introduced at trial to establish that, at about 5:50 a.m. on January 31, 2020, Bryan Thompson was driving his GMC pickup truck northbound on Blankenbaker Parkway approaching the intersection of Plantside Drive. Three FedEx-branded tractor trailers were travelling in the opposite direction on Blankenbaker and moved into the left turn lane to turn left from Blankenbaker Parkway onto Plantside Drive. Dustin Hester operated the third tractor trailer to enter the turning lane, and was operating a "double", or a tractor with two trailers hooked together. The intersection was controlled by red/yellow/green traffic signals with dedicated left turn lanes and directional arrow lights controlling the turning lanes. It was dark and the roads were wet. The front of Mr. Thompson's vehicle struck the right (passenger side) rearmost corner of the rear trailer of the tractor trailer operated by Dustin Hester. No independent witnesses are known.

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Mr. Thompson will testify that the traffic signal facing him was green when it first came into his view more than the length of a football field away, and remained green until he entered the intersection. He saw two FedEx tractor-trailers in the intersection, but did not make an effort to slow his truck until just before the impact. He was not wearing his prescription eyeglasses.

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Dustin Hester will testify that he came to a stop in the left turn lane of Blankenbaker Parkway behind two other FedEx-branded tractor trailers and waited for the light to change to a green left turn arrow. When it did, he followed the other trucks and turned left onto Plantside Drive. The arrow was still green as he went under it. His tractor and the first trailer had cleared the intersection when he felt a bump. He stopped, then saw Mr. Thompson's vehicle in middle of the intersection.

## 2. Damages

Plaintiff Bryan Thompson was wearing a seat belt and shoulder harness. His vehicle's safety airbags did not deploy during the collision.

Mr. Thompson denied injury at the scene of the accident. His first medical attention was three days later, when he went to an immediate care center and complained of low back pain. After seeing several medical providers, he underwent a two-level lumbar laminectomy on June 30, 2020.

Before the subject accident, in 2016 and 2017, Mr. Thompson had been treated for low back pain, mid back pain, pain between his shoulders, neck pain, leg problems, sore muscles, spasms, numbness, dizziness, and headaches. X-rays conducted before the accident revealed hypolordosis of cervical and lumbar spine, and encroachment of neuroforamina between L4/5 and L5/S1. He was treated for those conditions by a chiropractor and now claims all of his cervical and lumbar conditions were caused by the accident.

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Before the accident, Mr. Thompson had undergone surgery for eye trauma and to remove a foreign object in his left eye. Two years before the motor vehicle accident, he indicated he was seeing “floating objects in [his] eyes.” In April 2018, less than two years before the accident, his vision acuity (uncorrected) in his left eye was determined to be 20/200.

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Eighteen months after the accident, Mr. Thompson noticed that he was having vision problems and was diagnosed with a detached retina of his left eye. He told the ophthalmologist he had hit his head in an auto accident a year earlier, but the initial doctor that examined him determined that it was caused by “the natural aging process.” He had a retinal surgery on August 20, 2021, and several additional procedures afterward. He now claims all of his vision problems were caused by the accident.

Plaintiff now claims \$71,876.78 in past medical expenses. He also claims pain and suffering damages. He is not claiming any lost wages but will call a “vocational economic analyst” who will opine that, although Plaintiff is not medically disabled, he will lose more than eleven years of work life as a result of the accident, thereby reducing his total lifetime earnings by \$1,282,485.00.

## ISSUES OF FACT

### 1. Liability

The jury in this action will be asked to decide whether the accident was a result of either or both drivers acting negligently and, if so, to apportion fault between Mr. Thompson and Mr. Hester.

### 2. Damages

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The jury in this action will be asked to determine whether Bryan Thomson incurred a permanent injury or necessary medical expenses of \$1,000.00 or more as a direct result of the accident and, if so, the extent of any injuries caused by the accident.

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The jury will be asked to distinguish the medical conditions that were caused by the aging process or other factors unrelated to the accident, as well as Bryan Thompson's unrelated medical conditions from any medical conditions that were directly caused by the subject accident.

Finally, the jury will determine the amount of damages, if any, that would reasonably compensate Bryan Thompson as a direct result of the subject accident.

### QUESTIONS OF LAW

There will probably be no dispute that a motor vehicle driver has a legal duty to keep a proper lookout and avoid collisions with other vehicles. Drivers also have a legal duty to avoid entering an intersection under a red light. In addition, Kentucky law provides that a driver has a legal duty to avoid entering an intersection that is occupied by other traffic which had already entered the intersection but had not yet cleared through it.

Plaintiff may recover from Defendants only those damages that he is able to prove are a direct result of the subject accident. “[I]n order to establish liability, plaintiffs also must demonstrate that the injury was proximately caused by the negligence.” *Vaughn v. United States*, 933 F.Supp. 660, 662 (E.D.Ky. 1996), (citing *Ferguson v. United States Army*, 938 F.2d 55 (6th Cir. 1991) and *Deutsch v. Shein*, 597 S.W.2d 141, 143 (Ky. 1980)). Plaintiff may assert that he is entitled to damages for any injuries for which the subject accident was a “substantial factor.” However, the “substantial factor” test applies to determine whether a defendant’s negligence caused the accident, while the “direct result” test applies to determine whether a plaintiff’s injury is related to the accident. *Deutsch v. Shein*, 597 S.W.2d 141 (Ky. 1980).

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**EXPECTED EVIDENTIARY OBJECTIONS**

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Defendants will object to any evidence of indemnity or joint and several liability. A motion *in limine* on that issue has been granted by the Court.

Defendants will object to any medical opinions as to the ultimate issue of whether Plaintiff's conditions were caused by the accident. A motion *in limine* on that issue has been filed, and granted by the Court.

Defendants will object to any "golden rule" arguments or inferences to the jury. A motion *in limine* on that issue has been granted by the Court.

Defendants will object to any "reptile theory" arguments or inferences to the jury, specifically, any misstatement of the standard of care, or implication that a truck driver has a high standard of care than any other driver. A motion *in limine* has been heard on that issue, and granted by the Court.

Defendants will object to evidence of the amount of medical expenses absent proof they were actually incurred, reasonable, and necessary as a direct result of the subject accident. A motion *in limine* on that issue has been filed.

Defendants will object to the use of any exhibits or summaries that were not timely disclosed and made available for inspection as ordered by the Court.

Defendants will object to reference to any collision report, as well as opinion testimony from any police officer. A motion *in limine* has been filed on that issue.

Defendants will object to solicitation of testimony and/or reference to documents regarding subsequent remedial measures. A motion *in limine* has been filed on that issue as well.

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Defendants will object to any testimony, live or pre-recorded, in violation of any of the Court's rulings on motions *in limine*. Defendants will also object to the playing of any trial depositions that are not edited to conform with the Court's orders.

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Defendants respectfully reserve the right to supplement, withdraw, or amend portions of this memorandum to conform to any changes in circumstances or accommodate issues that arise before or during the trial of this action.

Respectfully submitted,

/s/ Aletha N. Thomas

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Counsel for Defendants FedEx Ground Package System, Inc., Franco Trucking, Inc., and Dustin Hester

### CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2024, the foregoing is being electronically filed with the KCOJ e-Filing system, which will send notice of filing to all counsel of record who have registered as eFilers.

/s/ Aletha N. Thomas

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