

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

PEYTON FREEMAN, a minor and the *
Surviving Child of TALIAH FREEMAN. *
Deceased, by and through his Guardians. *
SANDRA AND PATRICK GALLO and *
SANDRA GALLO, as the Administratrix of *
the Estate of TALIAH FREEMAN, *
Deceased, and STEVEN HAYNES *

Plaintiffs, *

CIVIL ACTION NO.: 17A62825

v. *

ACE AMERICAN INSURANCE *
COMPANY, C & T DURHAM *
TRUCKING COMPANY, RANDELL *
TRICE, and JOAQUIN CARRANZA *
NOMURA, *

Defendants. *

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes a Pre-Trial Order entered in the above-styled case pursuant to
Uniform State Court Rule 7.2:

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

Plaintiffs: **FREEMAN:**

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Defendants:

Defendants Ace American Insurance Company, C & T Durham Trucking Company, Randell Trice:
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Defendants C & T Durham Trucking Company and Randell Trice:
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Defendant Joaquin Nomura
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Phone: 770-693-8202

(2) **The estimated time required for trial:**

The parties estimate 4-5 days.

(3) **There are no motions or other matters pending for consideration by the court except as follows:**

For Plaintiffs Freeman: The parties have filed motions in limine.

For Plaintiff Haynes: The parties have filed motions in limine.

For Defendant Nomura: Defendant Nomura's *Motions in Limine*

For Defendants Ace American Insurance Company, C & T Durham Trucking Company,

Randell Trice: All parties' Motions in *Limine*. The parties also reserve the right to file any additional Motions in *Limine* before or during trial as evidentiary issues arise. The parties further reserve the right to file motions to compel non-parties to produce documents which were requested pursuant to O.C.G.A. § 9-11-34.

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

For Plaintiffs Freeman:

- a) Parties;
- b) Plaintiffs' counsel;
- c) Defense counsel:

Andrew Eaton
Scott Huray
Adi Allushi
Marc Bardack
Henrietta Brown
Lewis Brisbois Bisgaard & Smith LLP
Freeman Mathis & Gary LLP
Gardner Trial Attorneys
- d) Any employee, owner, officer or shareholder of Defendant C&T Durham Trucking Company or any employee of any contractor with Defendant;
and
- e) Officers, employees, policy holders, or shareholders of the following insurers: Ace American Insurance Company; United Automobile Insurance Company; USAA General Indemnity Company; Gemini Insurance Company; Hallmark.

For Plaintiff Haynes:

- a) Parties:
- b) Plaintiff Haynes' counsel:
- c) Defense counsel:
 - Andrew Eaton
 - Scott Huray
 - Adi Allushi
 - Marc Bardack
 - Henrietta Brown
 - Lewis Brisbois Bisgaard & Smith LLP
 - Freeman Mathis & Gary LLP
 - Gardner Trial Attorneys
- d) Any employee, owner, officer or shareholder of Defendant C&T Durham Trucking Company or any employee of any contractor with Defendant; and
- e) Officers, employees, policy holders, or shareholders of the following insurers: Ace American Insurance Company; United Automobile Insurance Company; USAA General Indemnity Company; Gemini Insurance Company; Hallmark

For Defendant Nomura: The jury will be qualified as to relationship with the following: Peyton Freeman, Taliah Freeman, Sandra Gallo, Patrick Gallo, Steven Haynes, Kate Cook, Esq., Matthew Cook, Esq., the members of Cook Law Group, LLC, R. Shane Lazenby, Esq., the members of Lazenby Law Group, LLC, Walter Rucker, Esq., Admir Allushi, Esq., Andrew Eaton, Esq., the members of Lewis Brisbois Bisgaard & Smith, LLP, Marc H. Bardack, Esq., Jacob Loken, Esq., Freeman Mathis & Gary, LLP, Timothy J. Gardner, Esq., Henrietta G. Brown, Esq., the members of Gardner Trial Attorneys, LLC, ACE American Insurance Company, C & T Durham Trucking Company and any other individual or entity with a financial interest in the outcome of the case.

Defendant objects to the qualification of United Automobile Insurance Company as it is a privately held company for which no potential juror has a financial interest.

By Defendants Ace American Insurance Company, C & T Durham Trucking Company, Randell Trice:

- a) Plaintiffs;
- b) Taliah Freeman;
- c) All counsel of record; and
- d) Ace American Insurance Company, C & T Durham Trucking Company, and Randell Trice;
- e) USAA

Defendants object to any jury qualifications for any individual or entity that does not have a financial interest in the outcome of the case.

(5)

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

By Plaintiffs Freeman: Plaintiffs Freeman reserve the right to file an Emergency Motion to Compel for certain items that have been requested of Defendants but not yet produced. Plaintiffs reserve the right to depose any person needed to authenticate any evidence or to take depositions that may be necessary to preserve evidence for trial. Plaintiffs reserve the right to depose any "will call" or "may call" witness listed by Defendants.

By Plaintiff Haynes: Plaintiffs reserve the right to file an Emergency Motion to Compel for certain items that have been requested of Defendant but not yet produced. Plaintiffs reserve the right to depose any person needed to authenticate any evidence or to take depositions that may be necessary to preserve evidence for trial. Plaintiffs reserve the right to depose any "will call" or "may call" witness listed by Defendants.

By Defendant Nomura: Defendant reserve the right to take depositions of any witnesses not previously identified and allowed to testify by the Court. In the event any witnesses, known or unknown, are unavailable for the trial, Defendant would proceed to take those depositions as well. Defendants reserve the right to depose any "will call" or "may call" witness listed by Plaintiffs

By Defendants Ace American Insurance Company, C & T Durham Trucking Company, Randell Trice: Defendants reserve the right to take depositions of any witnesses not previously identified and allowed to testify by the Court. In the event any witnesses, known or unknown, are unavailable for the trial, Defendants

would proceed to take those depositions as well. Defendants reserve the right to depose any “will call” or “may call” witness listed by Plaintiffs.

- b. Unless otherwise noted, 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.**

By Plaintiffs Freeman: There is no question as to the names of the parties, misjoinder or non-joinder of any parties.

By Plaintiff Haynes: There is no question as to the names of the parties, misjoinder or non-joinder of any parties.

By Defendant Nomura: There is no question as to the names of the parties, misjoinder or non-joinder of any parties.

(6) The following is Plaintiff’s brief and succinct outline of the case and contentions:

FREEMAN

On April 22, 2016, at approximately 4:40 a.m., Taliah Freeman was a passenger in a vehicle driven by Plaintiff Steven Haynes, northbound on I-85. At the same time, Mr. Randell Trice was also driving northbound in a tractor-trailer within the scope of his employment with Defendant C&T Durham Trucking Company. As these two vehicles were traveling northbound in close proximity, Mr. Trice made a left-hand lane change without looking to his left to ensure that no vehicle was next to him. The physical evidence shows that when Mr. Trice made his left-hand lane change, he made contact with the rear of the Haynes vehicle causing it to violently spin out of control. The Haynes vehicle eventually came to rest sitting broadside in the northbound lanes, disabled and with no headlights on. Shortly thereafter, the Haynes vehicle was struck by a minivan driven by Mr. Nomura who failed to see the Haynes vehicle in time to stop. The force of the impact caused grave injuries to Ms. Freeman and she died at the scene.

The Freeman Plaintiffs seek compensatory damages from all Defendants for the Wrongful Death and Estate claims of Taliah Freeman as provided by Georgia law in an amount to be determined by a fair and impartial jury.

HAYNES

This case arises from a series of automobile collisions that occurred at April 22, 2016, at approximately 4:40am, on the Northbound lanes of Interstate 85. Plaintiff Steven Haynes was driving his Ford Expedition to Gainesville with his cousin, Ms. Taliah Freeman, as a passenger. Defendant Randell Trice was contemporaneously driving a tractor-trailer, on the northbound lanes of Interstate 85, while within the scope of his employment with Defendant C & T Trucking. Plaintiff Haynes and Defendant Trice were traveling in close proximity with one another when Defendant Trice maneuvered his tractor-trailer left into the next lane, without first checking to ensure that no other vehicle occupied the lane. The physical evidence shows that Defendant Trice's tractor-trailer made contact with Plaintiff Haynes' vehicle on the rear and passenger area(s) of the Expedition. The collision caused Plaintiff Haynes' to lose control of his vehicle, and spin towards the median, which separated the northbound and southbound lanes. Plaintiff Haynes' vehicle came to rest in a position perpendicular to the lanes of travel, in a completely disabled state. A second collision occurred within moments of the first, as Defendant Joaquin Nomura struck Plaintiff Haynes' disabled vehicle with his Pontiac Montana. As a result, Ms. Freeman lost her life after the second collision. Plaintiff Haynes was thrust into the median wall, causing him to suffer extensive and severe physical injuries, as well as, mental anguish and emotional distress, from witnessing Ms. Freeman's death. Plaintiff Haynes seeks compensatory and general damages, as provided by Georgia law from all Defendants for the physical, mental,

and emotional harm that he endured as a result of the tort claims in the aforementioned collisions in an amount to be determined by a fair and impartial jury.

(7) The following is Defendants' brief and succinct outline of the case and contentions:

Defendant Nomura: On April 23, 2016 Defendant Nomura was leaving home and traveling to work. Defendant was traveling northbound on Interstate 85 when without warning and suddenly he noticed a disabled vehicle in the highway. He attempted to swerve left to avoid Plaintiff Haynes' vehicle, but it was too late. Defendant Nomura disputes that he is responsible for causing the collision. Defendant Nomura disputes the nature and extent of Plaintiffs alleged injuries and damages against Defendant Nomura. Defendant contends that Plaintiffs are not entitled to recover the damages as set forth in Plaintiffs' Complaint.

Defendants Ace American Insurance Company, C & T Durham Trucking Company, Randell Trice: This case arises from a series of auto accidents (collectively, the "Accident") which occurred in the early morning hours of April 23, 2016. Plaintiff Peyton Freeman is the minor surviving son of Taliah Freeman and asserts a wrongful death claim through his guardians, Sandra and Patrick Gallo. Sandra Gallo is Taliah Freeman's mother brings an Estate claim as the duly appointed Administratrix Taliah's Estate. Co-Plaintiff Steven Haynes was related to Taliah Freeman.

Just before midnight on April 22, 2016, Haynes and Freeman drove roughly 50 miles in a Ford Expedition owned by Steven Haynes (the "Haynes Vehicle") to a late-night establishment and dance club called Club 426 in Stone Mountain. They stayed at the club for several hours, leaving around 4 AM. Haynes took the wheel and Taliah Freeman sat on the front passenger seat as they headed back to Gainesville.

At the same time, C&T Durham driver Randell Trice was headed north on I-85 in a C&T Durham-owned tanker trailer (the "C&T Durham Vehicle"). Somewhere before mile marker 105, a collision occurred between the Haynes Vehicle and the C&T Durham Vehicle (the "First Collision"). Defendants contend Trice was maintaining his lane at approximately 65 miles per hour when his trailer was struck by the Haynes Vehicle. The C&T Vehicle began to fish-tail as Trice struggled to regain control, but he was eventually able to gain control of the C&T Vehicle and come to a stop on the right-hand shoulder of the interstate.

The Haynes Vehicle was immobilized after the First Collision and came to rest facing the center median with its front in the HOV lane. Haynes exited and walked around to the passenger side to help Freeman out of the vehicle. Haynes and Freeman declined to exit the roadway, despite recognizing it was dangerous to remain in the travel lanes of I-85. Freeman told Haynes that she needed her purse, and then walked around the front of the Haynes Vehicle in the direction of oncoming traffic to retrieve her purse from the back seat. Haynes likewise remained in the roadway to inspect the damage to his vehicle and to dial 9-1-1.

Meanwhile, Defendant Joaquin Carranza Nomura was proceeding north on I-85. He drove north in the same lane occupied by the immobilized Haynes Vehicle. Defendant Nomura drove directly into the Haynes Vehicle. The weather was clear and there were no other vehicles around to impede Defendant Nomura's view of the roadway. The Haynes Vehicle was visible to other motorists, and a nearby driver attempted to alert Defendant Nomura as he drove directly at the Haynes Vehicle without slowing down or changing lanes.

Nomura applied his brakes just one second before impact but it was too late. He ran headlong into the Haynes Vehicle near the driver's side door where Freeman and Haynes remained standing (the "Second Collision"). The impact caused the Haynes Vehicle to spin and threw both

Freeman and Haynes a considerable distance. Freeman was killed on impact, while Haynes suffered a broken ankle.

Plaintiffs contend Defendants Ace American Insurance Company, C & T Durham Trucking Company, Randell Trice (the "C&T Defendants") are liable because Defendant Trice negligently changed lanes to strike the Haynes Vehicle which, in turn, left the Haynes Vehicle disabled in the roadway. The C&T Defendants counter that there is no evidence of their negligence and that the First Collision was the result of the conduct of Haynes and/or other persons. The C&T Defendants also contend Defendant Nomura's negligence caused and/or contributed to Plaintiffs' asserted injuries. Finally, the C&T Defendants contend Plaintiffs' own unreasonable conduct caused or contributed to the First and Second Collisions. The C&T Defendants contend, even assuming any negligent act on the part of C&T Defendants, Plaintiffs' own conduct constitutes comparative fault and/or bars recovery under the doctrines of avoidance and assumption of risk.

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

Plaintiff's List of Issues:

Plaintiff's Freeman:

- (a) Whether Defendants Trice and/or Nomura were negligent in the operation of the vehicles they were driving at the time of the wreck;
- (b) Proximate Cause;
- (c) Amount of Compensatory Damages for the Estate and Wrongful Death claims

Plaintiff Haynes:

- (a) Whether Defendants Trice and/or Nomura were negligent in the operation of the vehicles they were driving at the time of the incident;
- (b) Proximate Cause;

- (c) Amount of Compensatory and General Damages for Plaintiff Haynes' tort injury claims.

Defendants' List of Issues:

Nomura:

- (a) Negligence
- (b) Causation:
- (c) and Damages

Defendants Ace American Insurance Company, C & T Durham Trucking Company, Randell

Trice:

- a) Liability – Whether Defendant Trice changed lanes to strike the Haynes Vehicle;
- b) Proximate cause of Plaintiffs' alleged injuries;
- c) Cause in fact of Plaintiffs' alleged injuries;
- d) Assumption of risk by Plaintiff Haynes and Taliah Freeman;
- e) Avoidance of the consequences by Plaintiff Haynes and Taliah Freeman;
- f) Comparative Negligence;
- g) Apportionment of negligence amongst the parties;
- h) Apportionment Non-Party Fault to John Doe driver; and

Damages.

(9) Specifications of negligence including applicable code sections as follows:

Plaintiff's Specifications:

Plaintiffs Freeman

Defendant Trice negligently caused the subject collision. Defendant C&T Durham Trucking Company is liable both for the negligent acts and omissions of Trice. Defendant Ace American Insurance Company is liable as Defendant C&T Durham Trucking's insurer. *See* O.C.G.A. §§ 40-1-50, et seq., 40-1-112, et seq., and 40-2-140. Defendant Nomura negligently caused the subject collision. Defendants are liable for compensatory damages.

Applicable code sections include, but are not limited to the following: negligence and damages (O.C.G.A. §§ 40-6-123, 40-6-180, 51-1-1, 51-1-2, 51-1-3, 51-1-4, 51-1-6, 51-1-9, 51-1-13, 51-1-14, 51-2-4, 51-12-1, 51-12-2, 51-12-3, 51-12-4, 51-12-6, 51-12-7, 51-12-13, 51-4-1, 51-4-2); direct action as to Ace American Insurance Company (O.C.G.A. §§ 40-1-50, et seq., 40-1-112, et seq., and 40-2-140); and any other negligent acts and omissions as may be shown by the evidence and proven at trial including Mr. Trice's failure to keep a proper lookout for traffic.

Plaintiff Haynes:

Defendant Trice negligently caused the subject collision. Defendant C&T Durham Trucking Company is liable both for the negligent acts and omissions of Trice. Defendant Ace American Insurance Company is liable as Defendant C&T Durham Trucking's insurer. *See* O.C.G.A. §§ 40-1-50, et seq., 40-1-112, et seq., and 40-2-140. Defendant Nomura negligently caused the subject collision. Defendants are liable for compensatory damages.

Applicable code sections include, but are not limited to the following: negligence and damages (O.C.G.A. §§ 40-6-123, 40-6-180, 51-1-1, 51-1-2, 51-1-3, 51-1-4, 51-1-6, 51-1-9, 51-1-13, 51-1-14, 51-2-4, 51-12-1, 51-12-2, 51-12-3, 51-12-4, 51-12-6, 51-12-7, 51-12-13; direct action as to Ace American Insurance Company (O.C.G.A. §§ 40-1-50, et seq., 40-1-112, et seq.,

and 40-2-140); and any other negligent acts and omissions as may be shown by the evidence and proven at trial including Mr. Trice's failure to keep a proper lookout for traffic.

Defendants' Specifications:

Defendant Nomura: Plaintiffs' assumption of risk; Defendant Randall Trice: failure to maintain lane, failure to keep a proper lookout and improper lane change; and Plaintiff Steven Haynes: Improper lane change.

Defendants Ace American Insurance Company, C & T Durham Trucking Company, Randell Trice:

- a) O.C.G.A. § 51-1-2;
- b) O.C.G.A. § 51-11-7 (Avoidance);
- c) O.C.G.A. § 51-12-33;
- d) Assumption of Risk by Steven Haynes and Taliah Freeman;
- e) Defendant Nomura's Intervening negligence;
- f) General principles of Georgia negligence law.

(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).

Plaintiffs Freeman: Plaintiffs' claims against Ace American Insurance Company, as the insurer for Defendant C&T Durham Trucking Company, are based on contract. *See* O.C.G.A. §§ 40-1-112 and 40-2-140.

Plaintiff Haynes: Plaintiffs' claims against Ace American Insurance Company, as the insurer for Defendant C&T Durham Trucking Company, are based on contract. *See* O.C.G.A. §§ 40-1-112 and 40-2-140.

Defendant Nomura: Not Applicable

Defendants Ace American Insurance Company, C & T Durham Trucking Company,

Randell Trice: Not applicable

(11) The types of damages and the applicable measure of the damages are stated as follows:

Plaintiff's Statement:

Plaintiffs Freeman

Plaintiff Freeman seeks all compensatory damages as provided for by Georgia law for the injuries and death of Taliah Freeman including damages for her wrongful death both economic and non-economic. Plaintiff Freeman's Estate seeks damages for Taliah Freeman's mental and physical pain and suffering including pre-impact shock, fright and terror she experienced up until the time of her death as well as all medical, funeral and burial expenses in such amounts to be determined by the proof at trial and the enlightened conscience of a fair and impartial jury. *See* O.C.G.A. §§ 51-4-1, 51-4-2. The funeral and burial expenses are \$10,659.15.

Plaintiff Haynes:

Plaintiff Haynes seeks all general and compensatory damages as provided for by Georgia law for the pre-impact shock and fright, the physical injuries incurred as a result of the collision(s), as well as the mental anguish and emotional distress from which he has suffered since the collision(s), as a result of the injuries sustained and the death of Ms. Freeman. *See* O.C.G.A. §§ 51-12-4, 51-12-2. The measure of actual damages for personal injury to Steven Haynes include the payment of money for:

- (a) Past and future medical expenses;
- (b) Past and future physical pain and suffering;
- (c) Past and future mental pain and suffering;
- (d) Lost wages and diminished earning capacity; and

(e) Loss of enjoyment of life.

Plaintiff Haynes's past medical expenses are currently valued at \$65,711.90, although additional bills are still being forwarded to counsel. Plaintiff's estimate for past lost wages is approximately \$101,000.00. Plaintiff Haynes seeks damages for past and future pain and suffering and future lost wages in an amount to be determined at trial.

Defendant Nomura's Statement:

Defendant objects to Plaintiffs presenting any evidence of damages that were not specifically pled as set forth in O.C.G.A. § 9-11-9(g). Further, Defendant objects to Plaintiffs presenting any evidence of damages that were not disclosed during discovery.

Defendants Ace American Insurance Company, C & T Durham Trucking Company,
Randell Trice:

C & T Defendants are not claiming damages. The C&T Defendants, however, reserve the right to seek any and all attorney's fees and expenses for abuse of litigation based on Plaintiffs failure to discover or develop any evidence against the C&T Defendants; and Plaintiffs' lack of any evidence C&T Defendants breached any duty of care. C & T Defendants object to Plaintiffs presenting evidence of damages that were not specifically pled as set forth in O.C.G.A. § 9-11-9(g). C & T Defendants finally object to the extent Plaintiffs have not "explicitly stated . . . the type and amount of each type of damage sought" as required under Paragraph 10 of the Court's Standing Order.

(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.

This case does not involve divorce.

(13) The following facts are stipulated:

By Plaintiffs and Defendants:

1. Defendant Trice was an employee of Defendant C&T Durham Trucking Company and was acting within the course and scope of his employment at the time of the collisions.

2. Defendant C&T Durham Trucking Company is a motor carrier as set forth in the direct action statutes. *See* O.C.G.A. §§ 40-1-50, et seq., 40-1-112, et seq., and 40-2-140.

(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. By Plaintiffs Freeman:

See Plaintiff Freeman's Exhibit List attached hereto as Exhibit "A".

Plaintiffs Freeman object to Defendants using any exhibit not listed on their exhibit list which is presently available to Defendants or to using any exhibit previously requested by Plaintiffs and not produced by Defendants. For any exhibit not presently available to Defendants, Plaintiffs object to the use of any exhibit not provided to Plaintiffs for review at least 5 days before trial. Plaintiffs also reserve the right to amend their Exhibit List upon 5 days' notice to opposing counsel. Plaintiffs reserve objections as to the authenticity and admissibility of Defendants' exhibits until the same are tendered at trial. Plaintiffs reserve the right to object to any documents and exhibits tendered by the Defendants until Plaintiffs have an opportunity to review and examine such documents and exhibits. Plaintiffs reserve the right to introduce

documentary evidence in rebuttal. By listing exhibits, Plaintiffs do not waive any right to object to the admissibility of such items.

b. By Plaintiff Haynes:

See Plaintiff Haynes' Exhibit List attached hereto as Haynes Exhibit "C". Plaintiff Haynes objects to Defendants using any exhibit not listed on their exhibit list which is presently available to Defendants or to using any exhibit previously requested by Plaintiffs and not produced by Defendants. For any exhibit not presently available to Defendants, Plaintiffs object to the use of any exhibit not provided to Plaintiffs for review at least 5 days before trial. Plaintiffs also reserve the right to amend their Exhibit List upon 5 days' notice to opposing counsel. Plaintiffs reserve objections as to the authenticity and admissibility of Defendants' exhibits until the same are tendered at trial. Plaintiffs reserve the right to object to any documents and exhibits tendered by the Defendants until Plaintiffs have an opportunity to review and examine such documents and exhibits. Plaintiffs reserve the right to introduce documentary evidence in rebuttal. By listing exhibits, Plaintiffs do not waive any right to object to the admissibility of such items. Plaintiffs further object to the use of any documents or evidence absent the laying of a proper foundation and otherwise properly admitted pursuant to the Rules of Evidence. Finally, Plaintiffs reserve the right to object to the admission of Defendants' proposed evidence at the time of trial on any basis.

c. By Defendant Norrera:

1. Medical records from Plaintiff Haynes' healthcare providers, including but not limited to Gwinnett Hospital System, Southern Bone and Joint Specialists, Forrest General Hospital, Southern Neurologic & Spinal Institute;
2. All depositions and any exhibits to any depositions in this case or prior case in

which Plaintiff or any witnesses have testified:

3. Motor Vehicle Accident Report:
4. Plaintiff Steven Haynes' military records:
5. Any documents necessary for impeachment or rebuttal of any party or witness:
6. All pleadings of record:
7. Any surveillance photographs or videos of Plaintiffs:
8. Plaintiff's discovery responses in any case in which Plaintiff was a party:
9. Any and all documents referenced and identified in the discovery process and in any deposition of any party or witness:
10. Any and all documents received through Non-Party Request for Production of Documents and
11. Any documents listed by Plaintiffs and Defendants.

Defendant objects to the tender of any medical bills, medical records or documents that have not been produced during the discovery period by Plaintiffs.

Defendant does not stipulate to the authenticity of any exhibit listed by the opposing party. Defendant reserves the right to amend his listed exhibits prior to trial and introduced evidence in rebuttal. Defendant further reserves the right to raise any and all other objections authorized by law to any documentary or physical evidence listed by Plaintiffs upon the same being properly marked and tendered into evidence.

Defendant reserves the right to supplement this response five (5) days prior to the date of trial. Defendant has not been afforded the opportunity to review any documentary or physical evidence listed by Plaintiffs, and accordingly, cannot stipulate as to the authenticity or admissibility of same.

d. By Defendants Ace American Insurance Company, C & T Durham Trucking

Company, Randell Trice:

- a) Steven Haynes' recorded statement to Ace American Insurance Company:
- b) Steven Haynes' recorded statement to USAA Insurance Company:
- c) Steven Haynes' phone records produced by AT&T:
- d) Steven Haynes' medical records produced by Gwinnett Medical Center:
- e) Steven Haynes' medical records produced by Forrest General Hospital:
- f) Steven Haynes' medical records produced by Southern Bone and Joint Specialists:
- g) Steven Haynes' medical records produced by Dr. Theodore Jordan, III:
- h) Steven Haynes' medical records produced by Southwest Medical Regional Center:
- i) Steven Haynes' medical records produced by Southwest Center for Orthopedic and Sports Medicine:
- j) Steven Haynes' medical records produced by Neurologic and Spinal Institute:
- k) Randell Trice's driver logs:
- l) Photographs of vehicles, accident scene and roadway:
- m) Documents produced by MMC Materials, Inc.:
- n) Documents produced by Gwinnett Medical Examiner:
- o) Information related to the accident from the Event Data Recorder in the Haynes Vehicle:
- p) Information related to the accident from the Event Data Recorder in the

Nomura Vehicle:

- q) Any exhibits attached to any deposition taken in the case;
- r) Any pleading of record;
- s) Any documents filed by Plaintiffs or Defendants;
- t) Plaintiffs' discovery responses;
- u) Any documents necessary for impeachment;
- v) Visual representations of the subject incident(s) by graphs, charts, computer simulations and/or other forms of animation;
- w) Plats, sketches and/or drawings of the scene;
- x) Medical narratives pursuant to O.C.G.A. § 24-3-18, if any; and
- y) Any other statement or deposition given by Plaintiffs or any witness.

Plaintiffs are hereby notified pursuant to O.C.G.A. §§ 24-8-803(6) and 24-9-902(11) of the C&T Defendants' intent to use the documents identified in this Paragraph, or any portions thereof, at trial and of Plaintiffs' counsels opportunity to review these records. C&T Defendants reserve the right to object to any evidence produced by the Plaintiffs unless Plaintiffs make said evidence available to the C&T Defendants at least one week prior to trial. C&T Defendants also reserve the right to amend this list by giving opposing counsel at least five (5) days' notice prior to trial.

C&T Defendants reserve the right to object to the admission of Plaintiffs' proposed evidence at the time of trial on any basis.

(15) Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows:

At this time, the Freeman Plaintiffs do not anticipate any peculiar evidentiary or other legal questions other than those that have been or may be raised in pre-trial motions. Plaintiffs do request the opportunity to submit trial memoranda to address any such issues which may arise at trial.

At this time, Plaintiff Haynes do not anticipate any peculiar evidentiary or other legal questions other than those that have been or may be raised in pre-trial motions. Plaintiffs do request the opportunity to submit trial memoranda to address any such issues which may arise at trial.

(16) Special authorities relied upon by the Defendants relating to peculiar evidentiary or other legal questions are as follows:

Defendant Nomura: Plaintiffs are barred from claiming special damages which were not specifically pled. O.C.G.A. § 9-11-9(g). Plaintiffs have a duty to mitigate his damages. Findlay v. Griffin, 225 Ga. App. 475, 485 S.E.2d 80 (1997).

Defendants Ace American Insurance Company, C & T Durham Trucking Company, Randell Trice:

- a) *Lowry v. Cochran*, 305 Ga. App. 240, 246 (2010);
- b) *Powell v. Harsco Corp.*, 209 Ga. App. 348, 350 (1993);
- c) *Wolfe v. Carter*, 314 Ga. App. 854, 859 (2012);
- d) *Beasley v. Elder*, 88 Ga. App. 419, 419 (1953);
- e) *Muldovan v. McEachern*, 271 Ga. 805, 808 (1999);
- f) *Andrews v. Yellow Freight Sys., Inc.*, 262 Ga. 476 (1992);
- g) Charles R. Adams, III, Georgia Law of Torts § 16:3, at 409-410 (Thomson Reuters) (ed. 2015-2016);
- h) Any other authority cited in C&T Defendants Briefs in Support of Summary

Judgment: and

Any other authority cited in C&T Defendants Motions *in Limine* and/or jury charges.

- (17) **All requests to charge anticipated at the time of trial will be filed on the first day of trial or as directed by the Court in accordance with Rule 10.3.**
- (18) **The testimony of the following persons may be introduced by depositions:**

Provided by Plaintiffs Freeman: Any person previously deposed or to be deposed in this case, any person necessary to authenticate any documents or evidence offered at trial, any person who is outside the subpoena power of the Court or otherwise unavailable to appear in person, any party, and any O.C.G.A. § 9-11-30(b)(6) representative and portion of any deposition used for impeachment. Plaintiffs Freeman object to the use of any non-party depositions at trial except for impeachment unless the witness is shown to be unavailable. Further, the C&T Defendants have not designated any specific portion of depositions to be presented at trial. Plaintiffs, therefore are unable to make specific objections until such designations are made. Until such portions are specifically designated, Plaintiffs stand on the objections made at the deposition asserted in their Motions in Limine and asserted in a separate pleading filed contemporaneously herewith. Plaintiffs reserve the right to assert additional objections when designations are actually made.

Provided by Plaintiff Haynes: Any person previously deposed or to be deposed in this case, any person necessary to authenticate any documents or evidence offered at trial, any person who is outside the subpoena power of the Court or otherwise unavailable to appear in person, any party, and any O.C.G.A. § 9-11-30(b)(6) representative and portion of any deposition used for impeachment. Further, the C&T Defendants have not designated any specific portion of depositions to be presented at trial. Plaintiffs,

therefore are unable to make specific objections until such designations are made. Until such portions are specifically designated, Plaintiffs stand on the objections made at the deposition and asserted in their Motions in Limine.

Provided by Defendant Nomura: None except to the extent any witness is unavailable due to the reasons set forth in O.C.G.A. § 9-11-32. Defendant objects to the use of any non-party depositions at trial except for impeachment unless the witness is shown to be unavailable.

Provided by Defendants Ace American Insurance Company, C & T Durham Trucking Company, Randell Trice:

- a) Willie Wilson;
- b) Kelly White;
- c) Doug Gibson.

Any person required necessary to authenticate documents or evidence to be offered at trial.

C&T Defendants reserve the right to take the evidentiary *trial* deposition of the opposing party's "will call" or "may call" witnesses. Plaintiffs have not designated any specific portion of depositions to be presented at trial. C & T Defendants are therefore unable to make specific objections until such designations are made. Until such portions are specifically designated, C & T Defendants stand on the objections made at the deposition and asserted in their Motions in Limine.

Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the Court prior to use of the deposition.

(19) The following are lists of witnesses the:

- a. Plaintiffs Freeman will have present at trial: Sandra Gallo.

- b. Plaintiff's Freeman may have present at trial: *See* Exhibit B.
- c. Plaintiff Haynes will have present at trial: Steven Haynes.
- d. Plaintiff Haynes may have present at trial: *See* Exhibit D.
- e. Defendant Nomura will have present at trial: None

Defendant Nomura may have present at trial: Defendant, Randell Trice, Peyton Freeman, Sandra Gallo, Patrick Gallo, any witnesses listed by Plaintiffs or Defendants Ace American Insurance Company, C&T Trucking and Randell Trice and any witness needed for impeachment or rebuttal testimony. Defendant object to any expert witness testifying that has not been identified in discovery. Opposing counsel may rely on representation by the designated party that he will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

- f. C&T Defendants will have present at trial: None;
- g. C&T Defendants object to the testimony of any Insurance Adjusters on the basis of work product, attorney client privilege, and the failure to properly identify the individuals in this pretrial order.
- h. C&T Defendants may have present at trial:
 - a. Randell Trice;
 - b. Todd Durham
 - c. Doug Gibson;
 - d. Mark Cundari;
 - e. Darren Marceau;
 - f. Willie Wilson;

- g. Officer Michael Niziurski;
- h. Representative of C & T Durham Trucking Company;
- i. Representative of Ace American Insurance Company;
- j. May Brewer;
- k. Kelly White;
- l. Joaquin Carranza Nomura.

In addition to the above list, C&T Defendants may have present at trial: any person needed to authenticate business records, medical records, photographs, or diagrams; and, any witness listed by Plaintiffs. C&T Defendants respectfully reserve the right to amend and supplement this list of may call witnesses upon timely notice to the opposing parties within five (5) days of trial and so as not to delay the trial of this case. C&T Defendants object to any expert witness testifying that has not been identified in discovery. Opposing counsel may rely on representation by the designated party that he will have a witness present at trial unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his or her testimony by other means.

The parties shall be permitted to amend their witness lists upon notice to opposing counsel within five (5) days prior to trial.

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

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

In accordance with Paragraph 12 of the Standing Order, the parties will submit their respective, proposed verdict forms five (5) business days before the first day of trial.

(21) a. The possibilities of settling the case are:

For Plaintiff Freeman: Poor

For Plaintiff Haynes: Poor

For Defendant Nomura: Unknown

For C&T Defendants: Poor

b. The parties DO want the case to be reported.

c. The cost of take-down will be paid by:

The cost of take-down will be shared by the parties equally.

d. Other matters:

For Plaintiffs Freeman: None at this time.

For Plaintiff Haynes: None at this time.

For Defendant Nomura: None at this time

For C&T Defendants: None.

Dated this 29th day of January 2020.

STATE COURT OF
DEKALB COUNTY, GA.
1/29/2020 4:33 PM
E-FILED
BY: Kelly Flack

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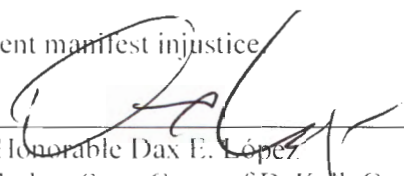
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*Attorneys for Defendants Ace American
Insurance Company, C&T Durham
Trucking, and Randell Trice*

ORDER

It is hereby ORDERED that the forgoing, 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.



Honorable Dax E. Lopez
Judge, State Court of DeKalb County

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Exhibit A

Freeman Plaintiffs' Exhibit List¹

1. Wreck Report with witness statements
2. Gwinnett County Police Department File
3. Gwinnett County 911 File
4. United States Department of Transportation File
5. Photos of and/or the Subject Vehicles/Component Parts
6. Photos of the scene
7. Injury Photos
8. Photos of Taliah Freeman and Peyton Freeman
9. Jeffrey Kidd file, deposition, and exhibits to deposition
10. Daren Marceau file, deposition, and exhibits to deposition
11. Fee contract
12. Officer Michael Niziurski deposition and exhibits
13. Mark Cundari deposition
14. Randell Trice deposition
15. Kenesha Underwood deposition and exhibits (Exh. 1)
16. Sana Freeman deposition
17. Douglas Gibson deposition
18. William Todd Durham deposition and exhibits (Exh. 1-2)
19. Willie Wilson deposition and exhibits (Exh. 1-4)
20. Steven Haynes deposition and exhibits (Exh. P1-P2 and D20-D28)

¹ Plaintiffs will make all exhibits available for review and inspection prior to trial upon request.

21. Sandra Gallo deposition and exhibits (Exh. 1-4)
22. Joaquin Nomura deposition and exhibits (Exh. P1-P2 and D1)
23. Kelly White deposition and exhibit (Exh. 1)
24. Photos taken or produced by Defendants
25. Death Certificate of Taliah Freeman
26. Funeral bills of Taliah Freeman
27. Letters of Administration, Order Appointing Sandra Gallo as Personal Representative, and Petition for Letters of Administration
28. Discovery Responses of Defendants
- 28.1 2017-03-06 Freeman Dfdt ACE's Resp to Pltfs' 1st RFAs
- 28.2 2017-03-06 Freeman Dfdt ACE's Resp to Pltfs' 1st ROGs
- 28.3 2017-03-06 Freeman Dfdt ACE's Resp to Pltfs' 1st RPDs
- 28.4 2017-03-07 Freeman Dfdt ACE & Trice's Rule 5.2 COS
- 28.5 2017-02-27 Freeman Dfdt C & T's Rule 5.2 COS
- 28.6 2017-02-28 Freeman Dfdt C & T's Resp to Pltfs' 1st RFAs
- 28.7 2017-02-28 Freeman Dfdt C & T's Resp to Pltfs' 1st ROGs
- 28.8 2017-02-28 Freeman Dfdt C & T's Resp to Pltfs' 1st RPDs
- 28.9 2018-04-27 Freeman Dfdt C & T's Resp to Pltfs' 2nd ROGs
- 28.10 2018-04-27 Freeman Dfdt C & T's Resp to Pltfs' 2nd RPDs
- 28.11 2018-04-27 Freeman Dfdt C & T's Rule 5.2 COS
- 28.12 2018-06-01 Freeman Dfdt C&T's Rule 5.2 COS
- 28.13 2018-06-01 Freeman Dfdt C&T's Supp Resp to Pltfs' 1st ROGs
- 28.14 2018-06-01 Freeman Dfdt C&T's Supp Resp to Pltfs' 1st RPDs

- 28.15 2017-03-06 Freeman Dfdt Trice's Resp to Pltfs' 1st RFAs
- 28.16 2017-03-06 Freeman Dfdt Trice's Resp to Pltfs' 1st ROGs
- 28.17 2017-03-06 Freeman Dfdt Trice's Resp to Pltfs' 1st RPDs
- 28.18 2017-03-07 Freeman Dfdt ACE & Trice's Rule 5.2 COS
- 28.19 2018-07-13 Freeman Dfdt Nomura's Resp to Pltf's 1st RFAs
- 28.20 2018-07-13 Freeman Dfdt Nomura's Resp to Pltf's 1st ROGs
- 28.21 2018-07-13 Freeman Dfdt Nomura's Resp to Pltf's 1st RPDs
- 28.22 2018-07-13 Freeman Dfdt Nomura's Rule 5.2 COS
- 28.23 2018-07-13 Freeman Dfdt Nomura's Verification
- 28.24 2019-01-08 Freeman Dfdt ACE's Resp to Pltf Haynes' 1st RFAs
- 28.25 2019-01-08 Freeman Dfdt ACE's Resp to Pltf Haynes' 1st ROGs & RPDs
- 28.26 2019-01-08 Freeman Dfdt ACE's Rule 5.2 COS
- 28.27 2019-01-08 Freeman Dfdt C&T's Resp to Pltf Haynes' 1st RFAs
- 28.28 2019-01-08 Freeman Dfdt C&T's Resp to Pltf Haynes' 1st ROGs & RPDs
- 28.29 2019-01-08 Freeman Dfdt C&T's Rule 5.2 COS
- 28.30 2019-01-08 Freeman Dfdt Trice's Resp to Pltf Haynes' 1st RFAs
- 28.31 2019-01-08 Freeman Dfdt Trice's Resp to Pltf Haynes' 1st ROGs & RPDs
- 28.32 2019-01-08 Freeman Dfdt Trice's Rule 5.2 COS
- 28.33 2018-12-13 Freeman Dfdt Nomura's Resp to Pltf Haynes' 1st RFAs
- 28.34 2018-12-13 Freeman Dfdt Nomura's Resp to Pltf Haynes' 1st ROGs & RPDs
- 28.35 2018-12-13 Freeman Dfdt Nomura's Rule 5.2 COS
- 28.36 2018-11-29 Freeman Dfdt Trice's Resp to Dfdt Nomura's ROGs
- 28.37 2018-11-29 Freeman Dfdt Trice's Resp to Dfdt Nomura's RPDs

- 28.38 2018-11-29 Freeman Dfdt Trice's Rule 5.2 Cert
- 29. 1949 Annuity Mortality Table
- 30. Maps/Photos/Drawings/Diagrams of the relevant area
- 31. Declaration page/policy for Ace American Insurance Company
- 32. Declaration page/policy for Gemini Insurance Company
- 33. Documents produced by C&T Durham Trucking
- 34. Documents produced by Joaquin Nomura in discovery
- 35. Documents produced by Steven Haynes in discovery
- 36. Documents produced by Plaintiffs Freeman
- 37. Any document produced by Defendants
- 38. Plaintiffs' Discovery Responses
- 38.1 2017-04-20 Freeman Pltfs' Resp to Dfdt C & T's 1st ROGs
- 38.2 2017-04-20 Freeman Pltfs' Resp to Dfdt C & T's 1st RPDs
- 38.3 2017-04-20 Freeman Pltfs' Rule 5.2 COS
- 38.4 2017-12-21 Freeman Pltfs' Resp to Dfdt C & T's 1st RPDs
- 38.5 2017-12-21 Freeman Pltfs' Rule 5.2 COS
- 38.6 2018-12-04 Freeman Pltfs' Resp to Dfdt Nomura's 1st ROGs
- 38.7 2018-12-04 Freeman Pltfs' Resp to Dfdt Nomura's 1st RPDs
- 38.8 2018-12-04 Freeman Pltfs' Rule 5.2 COS
- 38.9 2018-11-28 Freeman Pltf Haynes' Resp to Dfdts' 1st ROGs & RPDs
- 38.10 2018-11-28 Freeman Pltf Haynes' Resp to Dfdt Nomura's 1st ROGs & RPDs
- 38.11 2018-11-28 Freeman Pltf Haynes' Rule 5.2 COS
- 39. Documents produced by United Automobile Insurance Company

40. Notice of Non-Party Fault to John Doe:
41. Notice of Non-Party Fault to Georgia Department of Transportation; and
42. ECM download reports:

Plaintiffs reserve the right to use any of the following items as exhibits:

Any documents necessary for purposes of impeachment, cross examination or rebuttal including any learned/authoritative treatise used to cross examine an expert:

Any exhibits, diagrams or other documents referenced or created by any expert or witness:

Any document or exhibit used at any deposition:

Any pleadings, briefs, hearing transcripts, motions, request for admission, discovery requests and any responses or supplements thereto exchanged:

All documents, emails, correspondence or other communications exchanged between Plaintiffs' counsel and Defense counsel;

Any depositions taken in this case and exhibits used at such depositions:

Demonstrative exhibits, including but not limited to any of the above identified exhibits which may be used as a demonstrative exhibit:

Any document produced in response to any third-party request:

Any redaction, privilege log, or document index provided by Defendants or Plaintiffs:

Any affidavit given:

and

Any exhibits listed by Defendants.

Exhibit B

Freeman Plaintiffs' May Call Witness List

1. Eric Bardales
2. Officer Wesley Barnhart
3. Robert Bumgardner
4. Officer Tyler (T.L.) Burgamy
5. Cynthia Collins
6. Mark Cundari
7. Todd Durham
8. Peyton Freeman
9. Sana Freeman
10. Patrick Gallo
11. Douglas Gibson
12. Seth Goldstein
13. Steven Haynes
14. Officer Dennis Hornes
15. Martha Sue Hunter
16. Myra Hyman
17. Veronica Jackson
18. Victor Lamar Johnson
19. Jeffrey Kidd
20. Quinten Leonard
21. Investigator Mark Malcom
22. Daren Marceau

23. Maya Angeline McIntosh
24. Officer Michael Murphy
25. Joaquin Nomura
26. Officer Michael Niziurski
27. James Pulliam
28. Nonia Gail Pulliam
29. Anne Rucker
30. Tewanna Stokes
31. Carol A. Terry, M.D. M.E.
32. Randell Trice
33. Amy Trimm
34. Kenesha Underwood
35. Kelly White
36. Willie Wilson
37. Officer David Wood
38. Any of the law enforcement personnel who came to the scene of the wreck or any other first responders who came to the scene of the wreck;
39. Any person identified in discovery or the documents exchanged in discovery by the parties;
40. Any current or former employee of C&T Durham Trucking Company
41. Representative of Ace American Insurance Company;
42. Any person necessary for impeachment;
43. Any person deposed or to be deposed in this case;
44. Any person necessary to authenticate any documents or evidence;

45. Any person identified or listed by Defendants:

46. Any witnesses to the incident that is the subject of this lawsuit: and

47. Any person necessary for purposes of rebuttal.

Plaintiffs respectfully reserve the right to amend this list of witnesses by giving at least five (5) days written notice prior to trial of any such additional witnesses to opposing counsel.

Plaintiff Haynes' Exhibit C

Evidence List

- (a) Incident Report
- (b) Photographs of all vehicles involved in this collision- pre and post collision:
- (c) Photographs of Steven Haynes- individual and family:
- (d) Photographs of Steven Haynes' injuries:
- (e) Accident scene investigation video:
- (f) Steven Haynes certified medical records from any and all treatment facilities:
- (g) Steven Haynes ambulance bill and trip report from Gwinnett County Fire and Rescue services:
- (h) Steven Haynes' medical bills from Gwinnett Medical Center and/or a summary thereof:
- (i) Steven Haynes' medical bills from Forrest General Hospital and/or a summary thereof:
- (j) Steven Haynes' medical bills from Southwest Regional Mississippi Hospital and/or a summary thereof:
- (k) Steven Haynes' medical bills from Merit Health Wesley and/or a summary thereof:
- (l) Steven Haynes' medical bills from Southern Bone & Joint Specialists and/or a summary thereof:
- (m) Steven Haynes' military employment records:
- (n) Steven Haynes' MMC Materials, Inc. employment and salary/wage records:
- (o) Bosch Crash Data Retrieval Reports for all vehicles:
- (p) Steven Haynes' checking and savings account statements for 2016, 2017, 2018, and 2019:
- (q) Recorded statement transcripts and audio of Steven Haynes:
- (r) Uniform Mortality Table:
- (s) X-rays, positives and/or medical illustrations reflecting Steven Haynes' fractures and injuries of the toes, foot, ankles, knees, and repair of said fractures:
- (t) Medical Narratives from Steven Haynes treating physicians and staff:
- (u) Deposition transcripts of any person/company/company representative taken and exhibits to depositions taken in this action:
- (v) Defendants Responses to Plaintiffs' Interrogatories:

(w) Defendants' Responses to Plaintiffs' Request for Production of Documents and any and all documents provided or identified in Defendants' Responses to Plaintiffs' Request for Production of Documents; and

(x) Any and all documentary and physical evidence listed by Defendants and Plaintiffs.

Plaintiff Haynes' Exhibit D

Plaintiff Steven Haynes may have present at trial:

- a) Brenda Haynes:
- b) Delane Haynes:
- c) Steve Shumaker:
- d) Marquis Haynes:
- e) Shelby Bunkheli;
- f) Dr. Kosko
- g) Dr. Blackwell
- h) Dr. Smithers
- i) Dr. Worrel
- j) Dr. Ward
- k) Dr. Bodor
- l) Dr. Robertson
- m) Dr. Antinnes
- n) Dr. Patrick McDougal
- o) Blake Hall
- p) Trinity Smith
- q) Dr. Rita Gedgaudus-Mcelees
- r) Sgt. Barnhardt
- s) Officer Michael Niziurski
- t) Investigator Malcolm
- u) Officer Burgamy