

IN THE STATE COURT OF GLYNN COUNTY  
STATE OF GEORGIA

TRACY PINKNEY,

Plaintiff,

v.

DOROTHY THAXTON,

Defendant.

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CIVIL ACTION FILE NO.:

CV20080790

**PLAINTIFF'S FIRST MOTION IN LIMINE**

Plaintiff files the following Motion and states:

1.

Plaintiff moves that this Court enter an Order *in Limine* that prohibits the introduction for our purpose of any photographs of the vehicles, or repair records of such vehicles for illustration involved in this matter. *The evidence of the extent or amount of property damage is irrelevant.* Because the fact of the collision and the damage to the vehicles involved are not at issue in this case, photographs of the vehicles, property damage invoices, or other evidence regarding the extent or amount of property damage is not relevant. Georgia Rule of Evidence O.C.G.A. §24-2-1 defines relevant evidence as "evidence that relates to the questions being tried by the jury and bear upon them either directly or indirectly. Evidence that fails to meet that definition is irrelevant and is inadmissible. O.C.G.A. §24-2-1.

2.

The Defendant admitted causing the collision. Additionally, neither party has made a claim for property damage in this suit. Because neither the fact of the collision

nor the amount of damage to the vehicles is at issue in this case, evidence discussing such issues does not make any fact of consequence more or less probable.

3.

Because the collision and the damage to the vehicles are not issues in this case, the only conceivable purpose for evidence of the extent or amount of property damage is to invite the jury to speculate on the issue of causation (or absence thereof). To prove or disprove causation, however, the party must present competent evidence through competent witnesses after a proper foundation has been laid for the witnesses' testimony.

4.

The Defendant has not designated any expert witnesses to testify as to causation or lack thereof. Instead, Defendant may refer to the photographs or repair invoices for the vehicles and argue that the jury should use their "common sense" and find that Plaintiff's injuries could not have been caused in this collision. Georgia courts require testimony, not argument, to prove or disprove causation and damages.

5.

Use of evidence of property damage in this manner requires a proper foundation be laid through an expert witness. Interpreting the force of an impact from vehicle photographs and then assessing the likelihood of injury from such impact are tasks that can only be attempted by experts. Such matters are not within jurors' realm of common sense.

6.

Discovery has closed, and there has not been a designation of an expert on issues of biomechanics. Evidence is not admissible when it is not accompanied by supporting

expert testimony to establish an adequate foundation.

WHEREFORE, Plaintiff asks that this Court grant this Motion.

Dated this \_\_\_ day of \_\_\_\_\_, 2010.

Respectfully submitted,

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MARK ZAMORA  
Attorney for Plaintiff  
State Bar Number 784239

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O. Mark Zamora  
P.O. Box 660216  
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Telephone: (404) 451-7781  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing **Plaintiff's First Motion in Limine** upon counsel for all parties by sending a copy of same via facsimile and via USPS in an envelope with sufficient postage thereon addressed as follows:

Stephen Sims, Esq.  
LAW OFFICE OF STEPHEN SIMS  
1202 South Laurel Street  
Springfield, GA 31329

Dated this \_\_\_\_ day of \_\_\_\_\_, 2010.

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MARK ZAMORA  
Attorney for Plaintiff  
State Bar Number 784239

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STATE OF GEORGIA

TRACY PINKNEY,

Plaintiff,

v.

CIVIL ACTION FILE NO:  
CV20080790

BOROTHY THAXTON,

Defendant.

ORDER GRANTING PLAINTIFF'S FIRST MOTION IN LIMINE

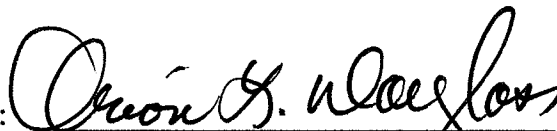
This cause came to be considered on Plaintiff's First Motion in Limine. After a review of the Motion and upon consideration of argument of counsel, it is hereby

ORDERED AND ADJUDGED as follows: Defendant shall not refer to, introduce, or use as demonstrative evidence any photographs, repair estimates, or other document of any nature that shows in any way the vehicles involved in the wreck which is the subject of the instant lawsuit, in that liability has been admitted.

None of the parties, witnesses, or counsel shall refer to the impact in this action being minor, moderate, or any other type. Counsel is directed to inform the parties and any witnesses who will take the stand in this action of such ruling.

DONE and ORDERED this 22<sup>nd</sup> day of February, 2010.

By:

  
JUDGE ORION L. DOUGLASS

ORIGINAL  
FILED IN COURT

THIS 22<sup>nd</sup> DAY OF Feb, 2010

  
Deputy Clerk, State Court of Glynn County

COPY TO COUNSEL