

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

| | | |
|-------------------|---|-------------------------------|
| WENDY NICHOLS and |) | |
| JAMES NICHOLS, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. |
| |) | 3:18-CV-00629 |
| |) | |
| KOFI MANU |) | JURY DEMAND |
| |) | JUDGE CAMPBELL |
| |) | MAGISTRATE JUDGE BROWN |
| Defendant. |) | |

**PLAINTIFFS' MOTION IN LIMINE # 3 TO EXCLUDE TESTIMONY OF
DEFENSE EXPERT WITNESS TODD HUTCHISON
AND TO EXCLUDE COLLISION ANIMATIONS**

Plaintiffs move the Court to exclude certain testimony of Todd Hutchison, who has been identified as an expert witness by Defendant. A copy of Mr. Hutchison's expert report is attached here as Exhibit A. As shown below, Mr. Hutchison's proffered opinions are not reliable, are not based on any scientific or engineering principles, and present impermissible legal conclusions. In addition, Plaintiffs move to exclude the video animations prepared by Mr. Hutchison because they are not reliable and unfairly prejudicial.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises from a motor vehicle collision that occurred on September 20, 2017 near the merge of Interstates I-40 and I-24 near downtown Nashville. At that time, Plaintiffs Wendy Nichols and James Nichols were in the back seat of a Nissan Versa driven by an Uber driver, Defendant Kofi Manu. Following the merge of I-40 and I-24, Mr. Manu's vehicle collided with a semi truck driven by James Kovac. The collision caused Mr. Manu's Nissan Versa to spin out

at highway speeds across several lanes of traffic and crash into the median between the eastbound and westbound lanes. Mrs. Nichols sustained serious injuries to her back in the collision, eventually requiring surgery and leaving her with permanent injuries and disability.

In their original Complaint, Plaintiffs alleged that **both** Defendant Kovac (and, vicariously, his employer Gateway Transportation) and Defendant Kofi Manu were responsible for the collision. Mr. Kovac and Gateway Transportation have since been dropped from this case. At trial, Plaintiffs will contend that Mr. Manu is responsible for the collision and Plaintiffs will bear the burden of proof to establish his liability for the collision and Plaintiff Wendy Nichols' resulting injuries. Mr. Manu, conversely, contends that Mr. Kovac was at fault and bears the burden of proving any fault that the jury might allocate to Mr. Kovac.

In his videotaped deposition, which Plaintiffs will present at trial, Mr. Kovac testifies as follows:

Q. Can you just tell the jury in your own words what -- what happened that led up to this collision we're here about.

A. I'm not 100 percent certain. I just know it was about eleven o'clock at night. I was wanting to merge over and I signalled my blinker for at least ten seconds prior. I did not see a car. I checked all my mirrors properly; did not see a vehicle anywhere in the vicinity. I did not merge over yet.

I was starting to merge, so I was probably right over the line between the lanes. And then the next thing I see is a vehicle sitting in front of my car and, I mean -- you know, for a brief second, and then the vehicle kind of went off to the other side of the truck.

Q. When you say, just as a point of clarification, you were over the line, meaning you were across the line or on top of the line?

A. I was certain on top of the line.

Q. Okay. So you had not crossed, in fact. You had begun to merge but had not crossed, in fact, into the other lane?

A. That is correct.

...

Q. Okay. Do you believe that this other car, then, had come towards your lane at the moment of impact?

A. He had to be on top of the line as well, yes.

(Deposition of James Kovac, at 10-11, attached as Exhibit B).

Q. Mr. Kovac, I have just a few follow-up questions for you.

A. Okay.

Q. You had indicated on examination from Ms. Webb that prior to beginning to move over at all into the adjacent lane you checked your three mirrors?

A. Yes.

Q. Okay. What are the three mirrors in a tractor-trailer?

A. Well, you got your front spot mirror on the hood and then you got your two -- then you got your side mirror with another spot mirror on the side mirror, too.

Q. Okay. That was my point of confusion. So the side mirror actually has two mirrors on it?

A. That's correct.

Q. Okay. Now, in addition to checking your mirrors, you also turned your turn signal on, correct?

A. Yes.

Q. Okay. And the reason for turning the turn signal on is to alert anybody else that you have an intention to move over?

A. That's correct.

Q. And, again, just to clarify, you began -- your intention was to merge into the other lane, but at no point did your truck move across that dotted lane line in the adjacent lane?

MS. WEBB: Object to the form.

THE WITNESS: No, sir.

Q. (By Mr. Hagy) It did not move into the adjacent lane?

A. I don't -- I don't believe it did, no.

(Kovac Depo., at 61-63). While Mr. Kovac has testified that he did not cross into the adjacent lane, Mr. Manu, not surprisingly, is expected to testify that Mr. Kovac's truck did in fact cross into his lane and hit him there. There is simply a conflict in the two witnesses' recollection and/or perception of the events. Plaintiffs, for their part, were back seat passengers and do not know whether Mr. Kovac, Mr. Manu, or both, moved out of their respective lanes of travel.¹

This said, and importantly, where the collision between Mr. Manu and Mr. Kovac occurred is **not conclusive** in assessing liability for the collision. Plaintiffs contend that Mr. Manu is responsible for the collision **even if** the jury were to conclude that Mr. Kovac's truck had moved into Mr. Manu's lane of travel. In particular, Plaintiffs allege that Mr. Manu was not paying attention, failed to notice the truck or its blinker, and failed to keep a proper lookout and use due care to avoid an accident and injury to his passengers. The jury will determine the facts and the extent of liability of Mr. Manu based on this Court's instructions regarding the law.

EXPERT REPORT OF TODD HUTCHISON

Defendant's counsel has disclosed the expert report of Todd Hutchison, an "accident reconstructionist" who they plan to call as an expert witness at trial. The report contains several purported opinions which are at issue in this Motion and are copied below:

1) The crash occurred in the 3rd lane from the left on I-40 when the front of the right side of the Kovac Semi crossed over the dashed center line and impacted into the left side of the Manu Nissan. This was determined by the contact damage

¹ Mr. Hutchison claims in his report that Plaintiffs will testify that the impact occurred in Mr. Manu's lane of travel. This is not correct. Plaintiff Wendy Nichols was texting on her phone at the time and has no idea what happened to cause the collision. While Plaintiff James Nichols did see the Kovac truck with its blinker on prior to the impact, he did not see the impact and therefore does not know and cannot testify as to whether Mr. Kovac's truck came into their lane or whether Mr. Manu moved left and hit the Kovac truck.

on each vehicle and by the depositions testimony of plaintiff's (*sic*) James and Wendy Nichols and the declaration of defendant Kofi Manu. Mr. Kovac said that he didn't see the Manu vehicle before the crash and said that he had his right tires on the line (the dash lines to his right) when he felt the collision.

...

7) Based on plaintiff's testimony that the Manu Nissan was in the 3rd lane from the left and was not exceeding the speed limit before or when the crash occurred and only went out of control when the Kovac Semi turned into its lane it is my opinion that Mr. Manu was not at fault in the cause of this accident.

8) Since neither Mr. Manu nor Mr. Kovac saw the other vehicle before the collision Mr. Manu had to be located either in the blind spot location of the Kovac Semi until the impact occurred or was paying attention to the roadway in front of him and not looking out his vehicle to the left and not seeing the Kovac Semi with the turn signal on was not responsible for having to move over but the responsibility was with Mr. Kovac in making sure that it was clear before changing lanes to his right. Even if Mr. Manu did see the turn signal to his left Mr. Manu also indicated that there was a vehicle to his right and with this the case, he would have had to make sure he could safely change lanes before leaving his lane.

In summary, based on the above it is my opinion that the crash occurred because the Kovac Semi changed lanes into the left side of the Manu Nissan without making sure that it was clear before doing so. It is my opinion that Kofi Manu was not at fault in the cause of the accident.

(Hutchison Report, Exhibit A, at 2-3).

ARGUMENT AND CITATION OF AUTHORITIES

I. DEFENDANT'S EXPERT WITNESS TODD HUTCHISON MAY NOT TESTIFY THAT DEFENDANT KOFI MANU WAS "NOT AT FAULT", "NOT RESPONSIBLE FOR HAVING TO MOVE OVER", OR ANY SIMILAR OPINION REGARDING "NEGLIGENCE" OR "REASONABLENESS"

In his expert report, Todd Hutchison specifically offers the opinion that "it is my opinion that Mr. Manu was not at fault in the cause of this accident." (Report, ¶ 7). He similarly testifies that Mr. Manu "was not responsible for having to move over but the responsibility was with Mr. Kovac in making sure that it was clear before changing lanes to his right." (Report, ¶ 8).

Plaintiffs expect that at trial Mr. Hutchison may attempt to offer such opinions or similar

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