

## \$5.5M Settlement: Insurer Resolves After Spoliation Sanctions Sought

Litigators allege spoliated evidence and file a sanctions motion to secure \$5.5 million settlement after a head-on trucking collision.

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By [Cedra Mayfield](#)



From top left (clockwise): Matthew E. Cook & Joshua L. Bearden of Cook Law Group, Bill Stemberger of Stemberger Law, and Nathan R. Nicholson of Cook Law Group. Courtesy photos

## **What You Need to Know**

- Collaborating litigators with Cook Law Group and Stemberger Law secured a \$5.5 million settlement for a client injured in a commercial trucking collision.
- Plaintiff counsel sought sanctions motion for spoliation after uncovering trucking defendant's evidence preservation failures.
- Defendants DG Logistics and ACE American Insurance Co. represented by Lewis Brisbois Bisgaard & Smith attorneys.

Collaborating litigators with Cook Law Group in Gainesville and Stemberger Law in Newnan have secured a \$5.5 million settlement for a client injured in a commercial trucking collision.

Now the quartet is breaking down how its discovery of evidence spoliation and a subsequent motion for sanctions helped clinch the seven-figure resolution.

"Despite knowledge of the significant wreck, DG Logistics failed to preserve the truck, sold the truck, and allowed it to be parted out such that we never had an opportunity to inspect it," Cook Law Group associate attorney Nathan Nicholson claimed in an interview with the Daily Report.

### **'Driver Was Predictably Dangerous'**

Cook Law Group partner Matthew E. Cook and associate attorneys Josh Bearden and Nathan Nicholson joined forces with Stemberger Law sole practitioner Bill Stemberger to represent Henry Eskew.

According to plaintiff counsel, a Dollar General tractor-trailer operated by DG Logistics driver Lester Patron struck Eskew's vehicle as the motorists traveled in opposite directions along a Spalding County stretch of State Route 16 in August 2023.

"Defendant Patron left his lane of travel and struck our client's head-on," Nicholson said.

As a result of the wreck, plaintiff counsel alleged Eskew "sustained injuries that caused and continue to cause him mental and physical pain and suffering."

Seeking damages for past, present and future mental and physical pain and suffering, lost wages and income and medical expenses, plaintiff counsel named ACE American Insurance Co., DG Logistics and Parton as defendants in a complaint filed in November 2023.



(l-r) Wm. Daniel Floyd, Kristi Bankston, and Jacob 'Jack' Norton of Lewis Brisbois Bisgaard & Smith LLP.  
Courtesy photos

According to plaintiff counsel, Lewis Brisbois Bisgaard & Smith attorneys W. Daniel Floyd, Kristi Bankston and Jacob Norton served as defense counsel. As of Monday morning, a Daily Report request for comment remained unanswered by each defense attorney.

Plaintiff counsel filed the complaint in Gwinnett County State Court, but it's what they uncovered during discovery that helped fast-track the dispute toward resolution.

In addition to learning DG Logistics sold the truck 10 days after plaintiff counsel first attempted to inspect it at the corporate defendant's facility, Nicholson said the plaintiff team discovered additional preservation issues with on-board video and vehicle operation recordings.

"DG failed to preserve any video which would have captured any driving infractions for Defendant Patron prior to this wreck, despite having the opportunity to preserve it," Nicholson claimed. "DG also failed to preserve the ECM [engine control module commonly referred to as 'black box'] for the subject truck despite our request that it be preserved."

However, Nicholson said that didn't stop plaintiff counsel from being able to still gather significant summary data about the defendant driver's behavior patterns behind the wheel. Based on the data, plaintiff counsel determined that in the six months leading up to the collision with Eskew, Patron had triggered his lane departure warning 3,828 times—an average of every six miles.

"The company ignored numerous warning signs prior to this wreck that its driver was predictably dangerous," Nicholson said. "Once we were finally able to force critical answers by Defendants in discovery as to the extent of the disappearance of the truck ... we filed a detailed motion for sanctions."

### **'As Early as Possible'**

As the motion sat pending before Gwinnett County State Court Judge Erica Dove, Nicholson said plaintiff counsel opted to remain "aggressive ... to keep the case moving towards trial." In preparation, Bearden said plaintiff counsel shifted focus toward "the dearth of physical evidence" they would present to jurors.

But, their momentum didn't last long.

Before time ran out for the defendants to respond to the sanctions motion, plaintiff counsel said opposing counsel opted to settle the matter. Following an August 26 mediation and weeks of negotiations, the parties agreed to resolve the matter for \$5.5 million.

Bearden noted the difficulty defense counsel would have likely encountered had the matter not resolved.

"Defendants' failure to preserve critical evidence in this case would have been tough for them to explain to the jury at trial," Bearden claimed.

Meanwhile, lead counsel Cook applauded the outcome as being "a phenomenal result driven primarily by the employer's disregard for the public's safety." In agreement, Nicholson deemed the outcome "a great result."

"This was a case of a company that apparently did not take the process seriously and allowed critical evidence to get away without giving us an opportunity to inspect. This case underscores the importance of sending out preservation letters as early as possible," Nicholson claimed. "Be diligent in sending out preservation letters as soon as possible and do not leave a stone unturned during litigation to ensure that the evidence was properly preserved."