

88STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

SHERMAN SPENCER,

Plaintiff,

v.

ROTO-ROOTER SERVICES COMPANY,

and DANIEL JAMES, and

Defendants.

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CIVIL ACTION

FILE NO. 14A52248-2

**PLAINTIFF'S MOTION FOR SANCTIONS AGAINST
DEFENDANT ROTO-ROOTER SERVICES COMPANY**

COMES NOW Plaintiff and files this Motion for Sanctions Against Defendant Roto-Rooter Services Company ("Roto-Rooter"), because Roto-Rooter spoliated evidence, and shows this Court as follows:

INTRODUCTION

This case arises from a motor vehicle collision. Plaintiff collided with a Roto-Rooter van that Defendant James left parked and unattended in the right-hand travel lane on Interstate 20 westbound. The Roto-Rooter van was equipped with a GPS system that tracked when the van moved and where it moved to. Roto-Rooter had a duty to preserve the data created by the GPS system, but failed to do so. The GPS data was significant and material evidence in the case, and Roto-Rooter spoliated it. As a result, Roto-Rooter should be sanctioned for such conduct, and the appropriate sanction is issue preclusion regarding the amount of time the Roto-Rooter van was parked on I-20 before the collision.

FACTS

A. **TIMELINE**

The following timeline outlines the relevant events, which are further detailed below:

- **May 27, 2011:** Defendant James' driver's license was suspended.
- **February 2012:** Roto-Rooter hired Defendant James (and he worked full-time for Roto-Rooter until August 23, 2012).
- **May 2012:** Roto-Rooter offered Defendant James financial assistance so he could buy a Roto-Rooter van.
- **May 25, 2012:** Defendant James bought a Roto-Rooter-approved van.
- **June 12, 2012:** Defendant James' driver's license was reinstated.
- **July 4, 2012:** The temporary registration expired on the Roto-Rooter van, but Roto-Rooter continued to dispatch Defendant James to job sites.
- **August 15 (approximately)-August 23, 2012:** The gas gauge in the Roto-Rooter van was malfunctioning, but Roto-Rooter continued to dispatch Defendant James to jobs.
- **August 22, 2012:** Roto-Rooter dispatched Defendant James to a job in Conyers in the unregistered Roto-Rooter van with a malfunctioning gas gauge.
- **August 23, 2012 at approximately 12:45 a.m.:** Defendant James ran out of gas on I-20 while returning from the job in Conyers, causing the collision with Plaintiff.

B. **ROTO-ROOTER NEGLIGENTLY HIRED AND RETAINED DEFENDANT JAMES BECAUSE HE DID NOT HAVE A VALID DRIVER'S LICENSE.**

On May 27, 2011, Defendant James' driver's license was suspended. In February 2012, Roto-Rooter hired Defendant James as a mobile plumber. His primary duty was to drive to residential and commercial properties to perform plumbing work. At the time Roto-Rooter hired Defendant James, he did not have a valid driver's license. For months, Roto-Rooter dispatched Defendant James to drive to various locations on behalf of Roto-Rooter and in Roto-Rooter-labeled vans, even though he was unlicensed.

In May 2012, Roto-Rooter offered financial assistance to Defendant James so that he could purchase a van. On May 25, 2012, with Roto-Rooter's financial assistance, Defendant did so. Prior to purchase, Roto-Rooter's safety coordinator examined the van for Defendant James to ensure that it met Roto-Rooter's mechanical, appearance, and other requirements. (Boland dep. at 153-154, 240-241). Roto-Rooter did all this despite the fact that Defendant James still did not have a valid driver's license. It was not until June 12, 2012, after months of driving for Roto-Rooter and purchasing a Roto-Rooter van, that Defendant James' driver's license was reinstated.

C. ROTO-ROOTER NEGLIGENTLY FAILED TO MAINTAIN THE ROTO-ROOTER VAN AND DISPATCHED DEFENDANT JAMES TO DRIVE THE VAN, EVEN THOUGH IT HAD A MALFUNCTIONING GAS GAUGE AND EXPIRED REGISTRATION.

In the late evening hours of August 22, 2012, Roto-Rooter directed Defendant James to drive the Roto-Rooter van to a job in Conyers, Georgia. A short time later, at approximately 12:45 a.m. on August 23, 2012, the collision that injured Plaintiff occurred while Defendant James was returning from the job in Conyers. Roto-Rooter should not have dispatched Defendant James to that job. For up to a week prior to August 22, 2012, the Roto-Rooter van's gas gauge had been malfunctioning—the gas gauge was not providing an accurate reading as to how much gas was in the van's fuel tank. (James dep. at 97). Notwithstanding the danger this posed to the general motoring public, Roto-Rooter dispatch Defendant James to drive the van to jobs.

In addition to the faulty gas gauge, on the night of the collision, the Roto-Rooter van's registration was expired. In fact, for the 50 days prior to the collision, Roto-Rooter dispatched Defendant James to drive the Roto-Rooter van, even though the van's registration was expired.

D. DEFENDANT JAMES LEFT THE ROTO-ROOTER VAN UNATTENDED IN A TRAVEL LANE OF I-20.

After Defendant James completed the job in Conyers he proceeded westbound on I-20 towards Atlanta. Approximately one exit prior to going “inside the perimeter,” the Roto-Rooter van ran out of gas and came to rest in the right-hand travel lane on I-20. (James dep. at 50, 103). Defendant James waited for a short time inside of the van, but quickly decided it was dangerous to wait inside a vehicle stopped in a travel lane on a major highway. (James dep. at 110, 123). Defendant James *claims* he took three cones out of the Roto-Rooter van and placed them behind the van to warn oncoming traffic, and he *claims* he put on the van’s flashers. (James dep. at 114-16). Officer Gary Livingston, of the Lilburn Police Department, who responded to and investigated the collision, unequivocally testified that Defendant James *did not* put cones out:

Q: But you didn’t see any orange cones anywhere on the floor or laying on the highway?

A: There were no cones anywhere.

Q: You are positive on that?

A: I am absolutely sure.

(Livingston dep. at 33:12-16; *see also* 32-33). Plaintiff testified similarly—no cones were behind the Roto-Rooter vehicle.¹ Officer Livingston also testified that he did not recall the Roto-Rooter vehicle having flashers on (Livingston dep. at 45), and Plaintiff testified the same. It is undisputed that Defendant James left the Roto-Rooter van parked and unattended in the right-hand travel lane of I-20 westbound and walked to get gas from the nearest gas station.

E. THE COLLISION.

At about the same time that Defendant James ran out of gas, Plaintiff was traveling in a Cadillac Escalade westbound on I-20 in the right-hand lane behind a smaller SUV-crossover-type vehicle. All of a sudden, the vehicle in front of Plaintiff swerved to the left. Plaintiff was

¹ Plaintiff’s deposition is not yet available.

then first able to see the Roto-Rooter van, and he also swerved left. Plaintiff was unable to completely avoid the parked Roto-Rooter van and struck it. The force of the collision whipped Plaintiff's vehicle clockwise approximately 180°.

Police and first-responders arrived at the scene and took Plaintiff to Grady Hospital. By the time Defendant James returned to the Roto-Rooter van, the collision had already occurred, police and paramedics had arrived, and Plaintiff had been transported from the scene. After learning there had been a collision, Defendant James called Roto-Rooter's safety coordinator, Joel Boland, from the scene and reported the collision. (Boland dep. at 195). As a result of the collision, Roto-Rooter ordered Defendant James to submit to drug and alcohol testing.²

Police cited Defendant James for impeding the flow of traffic, parking prohibited, and expired registration. Police did not issue any tickets or citations to Plaintiff.

F. PLAINTIFF SUSTAINED SERIOUS INJURIES.

Plaintiff suffered serious injuries as a result of the collision. At the scene, Plaintiff complained of significant pain in his left arm, right elbow, and right thigh. Upon arrival at Grady Hospital, the nursing staff documented significant pain with palpation in Plaintiff's right elbow, swelling and a deformity in his left elbow, and abrasions in various areas of his body. Plaintiff underwent x-rays of his chest, pelvis, right elbow, and right arm.

After an MRI, Plaintiff was diagnosed with a full thickness left rotator cuff tear and tears in his left biceps tendon. These injuries required surgery. Plaintiff underwent an arthroscopic left rotator cuff repair, subacromial decompression (cutting the ligament and shaving away the bone spur on the acromion bone), splitting of the biceps tendon, and extensive glenohumeral

² Roto-Rooter denies that Defendant James was in the course and scope of his employment at the time of the collision.

debridement (tissue removal). To date, Plaintiff has not regained full range of motion in his left shoulder. Plaintiff has incurred over \$75,000.00 in medical expenses for treatment of injuries sustained in the collision.

G. ROTO-ROOTER FAILED TO PRESERVE SIGNIFICANT AND MATERIAL EVIDENCE—DATA CREATED BY THE GPS SYSTEM IN THE ROTO-ROOTER VAN.

Roto-Rooter failed to preserve data and information created by the GPS system that was installed by Roto-Rooter in the van. Roto-Rooter's safety coordinator admitted that Defendant James was being tracked by the GPS system while he was returning from the job in Conyers. (Boland dep. at 251). Keith Austin, Roto-Rooter's Atlanta General Manger, testified as follows regarding the GPS system and how it tracked Defendant James on the night/morning of the collision:

Q: But that GPS data, assuming it was on, assuming he had it activated would have told us when he got to the job in Conyers?

A: Yes.

Q: Would have told us how long he was there?

A: Yes.

Q: Because it could tell from the GPS data when he left?

A: Yes.

Q: We would be able to tell exactly where his vehicle stopped on I20, right?

A: As long as he didn't --

Q: Assuming it's on?

A: Yes.

Q: GPS data would tell us where the accident occurred exactly?

A: Yes.

Q: And it would show how long his vehicle sat there in the roadway before the collision?

A: I don't remember how much real time, is it one minutes, did it every two minutes, is it one that -- you know, I don't remember like you can push a button and you can see a vehicle moving.

Q: But even if it gives us periodic updates --

A: I would think so.

Q: -- you would be able to get some idea how long his vehicle was in the roadway before the collision?

A: I would agree with that. Not that I have the GPS program and knowledge of it.

Q: I understand. I am asking for your knowledge of the GPS system that is on your employees' vehicles?

A: Yes.

(Austin dep. at 119:2-120:10) (emphasis added).

Roto-Rooter first anticipated litigation on September 13, 2012, when Plaintiff's former counsel provided Roto-Rooter and its insurer with notice of a potential claim. (*See* Roto-Rooter's 2nd Supplemental Responses to Plf.'s First ROGs, No. 37, attached as Exhibit "A"; Letter from The Brown Firm, LLC dated September 13, 2012 and stamped "RECEIVED" on the same day, attached as Exhibit "B"). According to a number of Roto-Rooter's discovery responses, FleetTraks, the company that collects and maintains Roto-Rooter's GPS data, purges the data after one year. (*See, e.g.*, Roto-Rooter's Responses to Plf.'s First ROGs, No. 11). Roto-Rooter had over 11 months from the time when it first anticipated litigation to when the data was to be purged (i.e. destroyed). Despite this knowledge, Roto-Rooter failed to do anything to preserve the data. As a result, relevant GPS data was destroyed.

ARGUMENT AND CITATION TO AUTHORITY

A. Roto-Rooter Spoliated Material Evidence—The Van's GPS Data.

"Spoliation refers to the destruction, failure to preserve, or significant alteration of evidence that is necessary to pending or contemplated litigation." *Bridgestone/Firestone N. Am. Tire, LLC v. Campbell Nissan N. Am.*, 258 Ga. App. 767, 769, 574 S.E.2d 923, 926 (2002). The party bringing forth a spoliation allegation has the initial burden to produce evidence of spoliation. *See Flores v. Exprezit! Stores 98-Georgia LLC*, 314 Ga. App. 570, 574, 724 S.E.2d 870, 873 (2012). Proof of spoliation raises a rebuttable presumption against the spoliator that the

evidence favored the spoliator's opponent. *R & R Insulation Servs., Inc. v. Royal Indemnity Co.*, 307 Ga. App. 419, 436, 705 S.E.2d 223, 239 (2010).

There is no doubt that Roto-Rooter spoliated the GPS evidence. The collision occurred on August 23, 2012. Roto-Rooter admits it anticipated litigation on September 13, 2012. Roto-Rooter admits its GPS data is destroyed a year after the data is created, thus the relevant GPS evidence was scheduled to be destroyed on August 23, 2013. Roto-Rooter had over 11 months to preserve the evidence.

Plaintiff requested the GPS data during discovery. Roto-Rooter was unable to produce the GPS data. While Roto-Rooter will not admit the GPS data was destroyed (*see* Section B, 4, below, regarding how Roto-Rooter has acted in bad faith regarding the GPS evidence), the only logical conclusion is that the evidence was destroyed as scheduled in August 2013.

B. Defendants Should Be Sanctioned For Spoliation Of Evidence.

When a trial court finds a party spoliated evidence, it may “(1) charge the jury that spoliation of evidence creates the rebuttable presumption that the evidence would have been harmful to the spoliator; (2) dismiss the case; or (3) exclude testimony about the evidence.” *Wal-Mart Stores, Inc. v. Lee*, 290 Ga. App. 541, 545, 659 S.E.2d 905, 909 (2008) (*citing R.A. Siegel Co. v. Bowen*, 246 Ga. App. 177, 180, 539 S.E.2d 873, 877 (2000)) (internal citations omitted). However, this list of remedies is not exhaustive, and “the trial court has wide latitude to fashion sanctions on a case-by-case basis, considering what is appropriate and fair under the circumstances.” *Bouve & Mohr, LLC*, 274 Ga. App. 758, 764, 618 S.E.2d 650, 655-56 (2005) (internal citations omitted). Notably, one purpose of sanctions is to punish a party for disregarding the law. *See Brunswick Mfg. Co. v. Sizemore*, 176 Ga. App. 838, 841-42, 338 S.E.2d 288, 292 (1985).

Importantly, a finding of bad faith or malice is not required before a trial court may sanction a party for spoliation. *See id*; *Wal-Mart Stores, Inc.*, 290 Ga. App. at 546, 659 S.E.2d at 909. The trial court has wide discretion in resolving spoliation issues, and the trial court's ruling will not be overturned absent an abuse of discretion. *Kitchens v. Brusman*, 303 Ga. App. 703, 705, 694 S.E.2d 667, 669 (2010) ; *Bouve & Mohr, LLC*, 274 Ga. App. at 762, 618 Ga. App. at 654; *Riches to Rags, Inc. v. McAlexander & Assoc.*, 249 Ga. App. 649, 652, 549 S.E.2d 474, 476 (2001). Factors that Georgia courts consider when fashioning an appropriate spoliation remedy, include, but are not limited to the following:

- (1) whether the [party seeking sanctions] was prejudiced as a result of the destruction of evidence;
- (2) whether the prejudice could be cured;
- (3) the practical importance of the evidence;
- (4) whether the [party who destroyed the evidence] acted in good or bad faith; and
- (5) potential for abuse.

R.A. Siegel Co., 246 Ga. App. at 180, 539 S.E.2d at 877 (*quoting Chapman v. Auto Owners Ins. Co.*, 220 Ga. App. 539, 542, 469 S.E.2d 783, 785 (1996)) (brackets in original) (internal citations omitted). An analysis of each of these factors leads to the conclusion that sanctions are necessary to lessen the undue prejudice suffered by Plaintiff, punish Defendants, and deter other trucking companies from similar conduct.

1. Plaintiff is prejudiced as a result of Roto-Rooter's spoliation.

Plaintiff is prejudiced by Roto-Rooter's failure to preserve the GPS evidence, because Plaintiff cannot use the evidence to prove his case or disprove Defendants' counterarguments. Plaintiff expects Roto-Rooter to argue to the jury that the Roto-Rooter van was parked in the travel lane of I-20 for an extended period, and that during that time, other vehicles safely avoided the van. Thus, the potential argument goes, Plaintiff was negligent because he was unable to

fully avoid the van. *The only reason Roto-Rooter is able to make this argument is because it spoliated the GPS evidence.*

Plaintiff will be unable to fully defend against this argument without the GPS evidence. Plaintiff cannot claim he somehow knows when the Roto-Rooter van was first parked, since he was traveling somewhere on I-20 at that time. Without the GPS evidence Roto-Rooter stands to gain by making arguments possible by the absence of the GPS evidence, and Plaintiff stands to be prejudiced.

2. The prejudice caused by Roto-Rooter's spoliation cannot be cured.

None of the Parties know how long the vehicle was parked on I-20 before the collision. Plaintiff does not know because he was driving westbound on I-20 and had yet to come upon the stopped Roto-Rooter van. Defendant James does not know because he did not see the collision. Defendant James only knows that by the time he returned to the van, the collision had already occurred, police and paramedics had arrived, and Plaintiff had been transported from the scene.³ Of course, because it failed to preserve the relevant evidence, Roto-Rooter cannot know how long the van was parked before the collision.

3. The evidence Roto-Rooter failed to preserve was material and significant.

The data collected by Roto-Rooter's GPS system would have provided material and significant evidence. Most importantly, the GPS data would show how long the van was parked on I-20 prior to the collision—Roto-Rooter's Atlanta General Manager, Keith Austin, testified that he believed as much:

³ All of the events (and the corresponding amount of time associated with them) between the collision and when Defendant James returned to the scene supports Plaintiff's position that the van was only parked on I-20 for a short amount of time before the collision. If the van had it been parked for long before the collision, then Defendant James would have had more time to get gas and return to the van, thereby avoiding the collision entirely, or would have at least seen more of the aftermath to the collision.

Q: And it would show how long his vehicle sat there in the roadway before the collision?

A: I don't remember how much real time, is it one minutes, did it every two minutes, is it one that -- you know, I don't remember like you can push a button and you can see a vehicle moving.

Q: But even if it gives us periodic updates –

A: I would think so.

Q: -- you would be able to get some idea how long his vehicle was in the roadway before the collision?

A: I would agree with that. Not that I have the GPS program and knowledge of it.

Q: I understand. I am asking for your knowledge of the GPS system that is on your employees' vehicles?

A: Yes.

(Austin dep. at 119:2-120:10).

Moreover, the GPS data would also provide other evidence: (1) where exactly Defendant James was coming from in Conyers prior to the collision—Defendant James does not remember and Roto-Rooter has not produced any document showing the location of the job; (2) what time Defendant James left the job the Conyers—Defendant James does not remember; (3) where exactly the Roto-Rooter van was parked on I-20; and (4) when exactly the collision occurred. The most valuable evidence regarding these issue would have been the GPS data, which Roto-Rooter failed to preserve.

4. Roto-Rooter acted in bad faith by failing to preserve the GPS evidence.

Although a finding of bad faith is unnecessary before a Court may sanction a party for spoliation, (*Sizemore*, 176 Ga. App. at 841-42, 338 S.E.2d at 292; *Wal-Mart Stores, Inc.*, 290 Ga. App. at 546, 659 S.E.2d at 909), here, Roto-Rooter's actions constitute bad faith. Roto-Rooter has offered no excuse as to why it failed to preserve the GPS evidence.

Additionally, Roto-Rooter has repeatedly refused to provide meaningful discovery responses regarding the GPS evidence. The most egregious conduct by Roto-Rooter to date has been its responses to Plaintiff's 3rd Requests for Admission. Plaintiff served 15 requests for

admission that specifically targeted the GPS evidence. Roto-Rooter, however, refused to admit or deny 13 out of 15 GPS-related requests for admission, including whether data was destroyed (*See* Plf.'s 3rd Requests for Admission to Roto-Rooter, attached as Exhibit "C," and Roto-Rooter's Responses, attached as Exhibit "D.").

For example, Plaintiff asked Roto-Rooter to admit that: "Data created by the GPS tracking system showing the van's location on [August 22, 2012/August 23, 2012] was destroyed." (Plf.'s 3rd Request for Admissions, nos. 45-46). In response to those requests, and all 13 of the 15 GPS-related requests for admission that it refused to answer, Roto-Rooter stated:

Upon information and belief, and after reasonable inquiry, the information known or readily obtainable by Defendant RRSC is insufficient to enable Defendant RRSC to admit or deny the averments contained in paragraph 46 of Plaintiff's Third Request for Admissions. Subject to the above, Defendant RRSC states as follows: The vehicle at issue was equipped with a GPS tracking system. This system was provided by a company called FleetTraks. RRSC did not create or maintain the GPS tracking system, but is aware, generally speaking, that the system periodically recorded information on vehicles related to the following: miles driven, the physical location of the vehicle, the speed of the vehicle, and the current odometer reading on the vehicle. Further, RRSC understands that the FleetTraks system does not provide a continuous stream of information, just periodic updates as mentioned above. The periodic updates on vehicles are accessible by RRSC. However, RRSC understands that FleetTraks does not maintain the periodic updates after one year from the recorded date. Finally, RRSC assumes that the FleetTraks system was operating in regard to the vehicle at issue on August 23, 2012, but cannot verify this position because FleetTraks does not maintain the updates, as stated above.

As best as Plaintiff can understand, Roto-Rooter will not admit the data was destroyed because it cannot verify that the data was destroyed... since data was destroyed. Plaintiff has sought clarification from Roto-Rooter on 3 occasions, but attempts have been futile. (See Email Chain from Rafi to Harrison, last dated April 13, 2015, attached as Exhibit "E."). Such a position and such conduct from Roto-Rooter epitomizes how it has acted in bad faith regarding the GPS evidence.

5. There is a likelihood for potential future abuse.

The motive for a company, like Roto-Rooter, whose employees continually drive on our roads, to spoliage GPS data showing its employees movements (or lack thereof, in this case) is obvious. The Court should not tolerate a party disregarding its duty to preserve material and significant evidence. If allowed to side-step its duty to preserve, then Roto-Rooter and other companies throughout Georgia, will be incentivized to spoliage such evidence. Absent sanctions for such misconduct, spoliation of evidence is implicitly condoned and encouraged.

C. Issue Preclusion On The Limited Topic Of How Long The Van Was Parked On I-20 Is The Appropriate Sanction.

The issue before the Court is not *whether* Defendants spoliaged evidence—the law and the evidence undoubtedly make clear that they did—the real issue is *what the Court should do* about Defendants' spoliation of evidence. Each factor the Court should use when considering the severity of a spoliation sanction shows that a severe sanction is warranted.

Plaintiff proposes the appropriate sanction to remedy Roto-Rooter's misconduct is an order disallowing the Defendants from arguing that (1) the Roto-Rooter van was parked for a time, such that other vehicles successfully avoided the van; and (2) Plaintiff was negligent in failing to avoid the van, as other vehicles may have previously done.

The proposed sanction is by no means extreme or drastic, rather is tailored to directly address Defendants' failure to comply with its duty to preserve and to cure the specific prejudice

that such failure has caused Plaintiff. *See R. A. Siegel Co.*, 246 Ga. App. at 180. The sanction is expressly recognized as appropriate by the Georgia appellate courts, which have held that “sanctions for spoliation may include the removal of certain evidence and issues from the jury’s consideration.” *Bouve & Mohr*, 274 Ga. App. at 762 (affirming a trial court order instructing the jury “that Banks had been raped and that [spoliating party] would be precluded from arguing otherwise” as a result of spoliation of a rape kit). Plaintiff’s proposed sanction is reasonable and certainly much less severe than other sanctions available to the court, such as striking Roto-Rooter’s Answer, precluding its defense on liability, or imposing monetary sanctions.

The Court should enter the proposed sanction in order to ensure Plaintiff is not prejudiced by Roto-Rooter’s willful misconduct, to punish Roto-Rooter, and deter future spoliation of this kind. Roto-Rooter’s spoliation cannot be cured, and Plaintiff—who is now unable to use the GPS evidence to further his case or disprove Roto-Rooter’s arguments—should not be unfairly harmed. Our State’s civil justice system is predicated upon citizens and litigants acting honestly, by both preserving evidence and voluntarily producing such evidence to their opponents—even if that evidence is contrary to their own interests. When a party spoliates evidence, the law also recognizes that the party should suffer a consequence for its misconduct, otherwise the punitive and deterrent goals of the spoliation sanction are rendered meaningless. *See Johnson*, 249 Ga. App. at 154 (noting that “one of the rationales for the presumption is that it deter[s] parties from pretrial spoliation of evidence and serves as a penalty, placing the risk of an erroneous judgment on the party that wrongfully created the risk.” (internal quotations and footnote omitted) (alterations in original)). Permitting Roto-Rooter to evade responsibility in this case will reward its misconduct and incentivize other companies and drivers that use GPS systems to ignore their duty to preserve evidence, especially when such evidence could be harmful to them.

CONCLUSION

Plaintiff respectfully asks this Court to enter an Order disallowing Defendants from arguing to the jury that (1) the Roto-Rooter van was parked for a time, such that other vehicles successfully avoided the van; and (2) Plaintiff was negligent in failing to avoid the van, as other vehicles may have previously done.

Further, Plaintiff has exhausted considerable time and resources on issues related to the GPS evidence. Plaintiff has spent time and resources trying to confirm Roto-Rooter failed to preserve the GPS evidence and determining what the GPS evidence would have shown. Plaintiff asked for this information in initial discovery requests; Plaintiff sent additional discovery requests targeting the GPS evidence (*see* Exhibits “C” and “D”); Plaintiff sent a 6.4(B) letter (*see* Exhibit “E”); and now Plaintiff files this Motion. Yet, Roto-Rooter has still not given straight answers regarding the GPS evidence, and still will not admit that the GPS evidence was destroyed.

Accordingly, Plaintiff respectfully requests this Court to assess, against Roto-Rooter, reasonable fees and expenses associated with Plaintiff’s counsel’s efforts related to the GPS evidence, including filing this Motion. Roto-Rooter’s conduct justifies relief under O.C.G.A. §§ 9-11-37 and 9-15-14(b). Plaintiff also requests any other remedy this Court deems just and proper under the circumstances.