

**IN THE STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

██████████  
*Plaintiff,*

v.

JOSEPH ELETTO TRANSFER, INC.,  
VANLINER INSURANCE COMPANY, and  
ANTWONE BILLINGS,

*Defendants.*

Civil Action No.: 16A60531

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**PLAINTIFF’S REPLY REGARDING  
PLAINTIFF’S MOTION TO COMPEL LEGIBLE COPY OF CONTRACT**

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This continues to be an unnecessary dispute fueled by Defendants’ unreasonable conduct. After withholding the sought-after information for months with no basis to do so, ignoring repeated requests, and ignoring Plaintiff’s warning about this motion to compel, Defendants now represent to the Court that *Defendants* are entitled to attorneys’ fees for having to respond to Plaintiff’s motion. That is an odd position. Below is a timeline.

- 11/27/16: Plaintiff asks Defendants for a more legible copy of the contract. *See* Emails re Legibility (Ex. A).<sup>1</sup>
- 12/12/16: Because Defendants did not respond to the above, Plaintiff makes the request again. *Id.*
- 12/23/16:
  - Defendants produce a darkened copy of the contract, but the part of the contract that necessitated this motion is still illegible. *Id.*

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<sup>1</sup> This exhibit is the same collection of emails attached to Plaintiff’s initial motion as “Exhibit C” to that motion.

- On the same day, Plaintiff thanked Defendants for the darkened copy, but requested a copy in which all the text was legible. *Id.*
- 01/09/17: Because Defendants did not respond, Plaintiff asked again. *Id.*
- 01/10/17: Defense counsel wrote that he was “seeing if I can get” a more legible copy. *Id.*
- 02/03/17: Because Defendants had not produced anything, Plaintiff wrote that “if Plaintiff has not received a legible copy, or at least been told what the words are, by February 8, 2017, Plaintiff will move to compel. By that date, it will have been 73 days since we first made this request and involving the Court will be Plaintiff’s only apparent option.” *Id.*
- 02/08/17: Defendant did not respond.
- 02/10/17: After allowing a ‘grace period,’ Plaintiff moved to compel.

Plaintiff’s motion sought both information about what the contract said *and* a sanction of attorneys’ fees. Five days after Plaintiff filed the motion, Defendants finally revealed what the illegible language said. That does not make Plaintiff’s motion moot, for two reasons. First, “once a motion for sanctions has been *filed*, their imposition cannot be precluded by a belated response made by the opposite party.” *Rogers v. Sharpe*, 206 Ga. App. 353, 353 (1992) (emphasis in original); *accord Am. Radiosurgery, Inc. v. Rakes*, 325 Ga. App. 161, 167 (2013). Second, the motion is not moot because Plaintiff sought, and still seeks, reasonable attorneys’ fees for having to conduct this months-long meet-and-confer and having to file a motion to compel on this simple, basic, obvious issue. Because that issue remains unresolved, the motion is not moot.

The appropriateness of fees is straightforward: Georgia law entitles Plaintiff to fees because “the party . . . whose conduct necessitated the motion” must pay fees unless “opposition to the motion was substantially justified.” O.C.G.A. § 9-11-37(a)(4)(A). Here, no opposition was justified, so fees are appropriate.

Below, Plaintiff responds to some of the assertions in Defendants’ Response.

- Defendants’ assertion that Plaintiff “has not responded” to Defendants’ request that Plaintiff withdraw this motion is **false**. Opp. at 2-3. On March 1, before the filing of Defendants’ brief, Plaintiff responded to Defendants as follows:

As to Plaintiff’s motion to compel and for fees (att’d), do Defendants agree that the payment of attorneys’ fees is appropriate under Rule 37 in light of the extensive delay in producing that information? If not, why not?

03/01/17 Email (Ex. B). Defendants ignored the question. Defendants did not have a good answer then, and do not have one now.

- Defendants engage in some creative phraseology to make it appear that Plaintiff is being unreasonable by requesting a legible copy of the contract, using phrases such as “merely dissatisfied with its photographic quality,” “apparently dissatisfied with the quality of the second copy,” “even this copy was found by Plaintiff’s counsel to be unacceptable,” “perceived dispute,” and “contends it was illegible.” Opp. at 2, 4. That is a bunch of baloney. The illegibility of the language at issue was not a contention—it was a fact. Defense counsel could not read it either.
- Defendants falsely assert that “Defendant is not sure of the specific request for

Production is [sic] at issue in Plaintiff's motion . . ." Opp. at 2 n.1. That statement is inaccurate—immediately upon raising this issue on November 27, 2016, Plaintiff specifically identified Request for Production No. 9 for Defendant:

**Eletto's Discovery Responses**

1. RPD 9: Please produce all responsive information to the RPD as written.

That includes but is not limited to "Schedule A" and any other attachments to the "Master Agreement" that Joseph Eletto signed as VP on 01/29/2009 and Richard Cibos signed on behalf of Ryder in February of 2009 (exact date is hard to read). As noted before, a full response should also include but not be limited to the documents that satisfy FMCSR 376.12\* with regard to the subject truck.

As to the "Lease Agreement" that Antwone Billings signed, I assume that it relates to the subject truck since it lists the subject truck's VIN. Please produce a more legible copy and identify the signatory on the bottom right—as it is now, Plaintiff can't tell who signed or in what capacity he or she was signing (excerpt from document below).

(Ex. A); *see also* RPD 9 (Ex. C).

### **CONCLUSION**

Plaintiff notifies the Court that the urgency for ruling on this issue is gone—Defendant has now delayed the deposition of the Safety Director, which was originally scheduled for March 16, by asserting that conflicts have arisen. Although Plaintiff first asked for dates for this Safety Director's deposition on *December 13, 2016*, Defendants are now asking Plaintiff to accept dates in April 2017. (Plaintiff has consented to April dates, but if there are further delays, Plaintiff may again request the Court's assistance.) At any rate, there is no need for an immediate ruling on this motion, both because Defendants have delayed the deposition and because the only remaining issue is the imposition of fees.

Plaintiff asks the Court to hold that Defendant Eletto must compensate Plaintiff for reasonable attorneys' fees related to the filing of this motion and the months of conferring about

this illegible contract. If the Court grants Plaintiff's motion, the parties will attempt to agree upon what amount of fees is appropriate so that the Court does not have to hear that issue.

This 2<sup>nd</sup> day of March, 2017.

Respectfully submitted,

BUTLER TOBIN LLC


BY: /s/ James E. Butler III  
JAMES E. BUTLER III  
Georgia Bar No. 116955  
DARREN M. TOBIN  
Georgia Bar No. 200383

1932 N. Druid Hills Rd. NE  
Suite 250  
Atlanta, Georgia 30319  
jeb@butlertobin.com  
darren@butlertobin.com  
(t) 404 587 8423  
(f) 404 581 5877

**ATTORNEYS FOR PLAINTIFF**

STATE COURT OF  
DEKALB COUNTY, GA.  
3/2/2017 5:10:51 PM  
E-FILED  
BY: Monique Roberts

**IN THE STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

  
*Plaintiff,*

v.

JOSEPH ELETTO TRANSFER, INC.,  
VANLINER INSURANCE COMPANY,  
and ANTWONE BILLINGS,

*Defendants.*

Civil Action File No.: 16A60531

---

**CERTIFICATE OF SERVICE**

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I hereby certify the **PLAINTIFF'S REPLY REGARDING PLAINTIFF'S MOTION TO COMPEL LEGIBLE COPY OF CONTRACT** was served upon all parties by e-filing same using the Odyssey eFileGA System which will automatically send email notification of said filing to the following attorneys of record:

Russell B. Davis, Esq.  
M. Bradford Patterson, Esq.  
Downey & Cleveland, LLP  
288 Washington Avenue  
Marietta, Georgia 30060

Grant B. Smith, Esq.  
Keith M. Hayasaka, Esq.  
Dennis, Corry, Porter & Smith, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, GA 30305

This 2<sup>nd</sup> day of March, 2017.

BUTLER TOBIN LLC

BY: /s/ James E. Butler III  
JAMES E. BUTLER III  
Georgia Bar No. 116955

## Jeb Butler

**From:** Jeb Butler  
**Sent:** Friday, February 03, 2017 6:25 PM  
**To:** 'Keith M. Hayasaka'  
**Cc:** 'Kara S. Pierre'; Alexis Bischoff; 'Vanessa L. Weiss'  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings [REDACTED] v Eletto et al

Keith,

Plaintiff is still waiting for a legible copy of the "Lease Agreement" between Billings & Eletto (ELETTO 0019). As you know from our correspondence below, parts of that document are illegible. For instance, Plaintiff is interested in the parts shown in the excerpt below, which I still can't read even if I zoom in. Please provide a legible copy.

NO DEFECTS		SIGNATURE OF INSPECTOR	
I HEREBY CERTIFY THAT ON THE DATE STATED ABOVE THE PERSON WHO MADE THE INSPECTION COVERED BY THIS REPORT WAS COMPETENT AND QUALIFIED TO MAKE SUCH INSPECTION AND WAS FULLY AUTHORIZED TO MAKE SUCH AN INSPECTION AS A REPRESENTATIVE OF THIS COMPANY			
DATE	19	SIGNATURE	OFFICIAL TITLE
SPECIAL DRIVER INSTRUCTIONS			
Lessee authorizes the driver to stop at any time and rest stops as all duty conditions with lines shown under separate contract or when stated in 1 hour by each driver but not at duty or first. Driver is required to safeguard the vehicle and cargo before going off duty			

As you know, Plaintiff first requested a more legible copy on November 27, 2016. If Defendant cannot locate a more legible copy of this exact document, please tell us what the words are (perhaps by checking a similar form) and we can consider a stipulation as to that language. If Plaintiff has not received a legible copy, or at least been told what the words are, by February 8, 2017, Plaintiff will move to compel. By that date, it will have been 73 days since we first made this request and involving the Court will be Plaintiff's only apparent option.

Regards,  
Jeb

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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for you, please immediately notify us by phone or reply email and delete this message. Unless you have signed a written fee agreement with our firm, we do not represent you as your attorney.

---

**From:** Jeb Butler

**Sent:** Tuesday, January 10, 2017 12:23 PM

**To:** 'Keith M. Hayasaka' <kHayasaka@dcplaw.com>

**Cc:** Kara S. Pierre <KPierre@dcplaw.com>; Alexis Treadwell <alexis@butlertobin.com>; Vanessa L. Weiss <VWeiss@dcplaw.com>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Compan: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al

Keith, the consent motion looks good & you may sign my name. I'll have to get back with you later on the other stuff.

Jeb Butler

**Butler Tobin LLC**

1932 North Druid Hills Rd.

Suite 250

Atlanta, GA 30319

Telephone: 404-587-8423

Facsimile: 404-581-5877

[jeb@butlertobin.com](mailto:jeb@butlertobin.com)

[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]

**Sent:** Tuesday, January 10, 2017 12:04 PM

**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>

**Cc:** Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Vanessa L. Weiss <[VWeiss@dcplaw.com](mailto:VWeiss@dcplaw.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Compan: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al

Jeb,

Please see attached. I'm seeing if I can get you a more legible copy of the lease, if one is available. I've also attached a draft of a consent motion to extend discovery 45 days. Please let me know if OK to sign on your behalf and file. Finally, my client has expressed an interest in exploring early mediation after plaintiff has been deposed. Would you and your client be interested in trying to schedule mediation in February? Thanks,

**Keith M. Hayasaka**

DENNIS, CORRY, PORTER & SMITH, LLP

14 Piedmont Center, Suite 900

3535 Piedmont Road, NE

Atlanta, Georgia 30305

Tel: (404) 365-0102

Fax: (404) 365-0134



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**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]

**Sent:** Monday, January 09, 2017 5:18 PM

**To:** Keith M. Hayasaka

**Cc:** L. Sheree Davis; Kara S. Pierre; Alexis Treadwell

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company; Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings; [REDACTED] v Eletto et al

Keith, I do not believe we heard back from you regarding Plaintiff's 12/23/2016 email below. I look forward to your response.

Also, it appears Ds filed a 5.2 Certificate on Jan. 6 regarding the RFAs, but the mail has not brought the document to us yet. Would someone in your office mind emailing the document(s)?

Thank you.

Jeb Butler

**Butler Tobin LLC**

1932 North Druid Hills Rd.

Suite 250

Atlanta, GA 30319

Telephone: 404-587-8423

Facsimile: 404-581-5877

[jeb@butlertobin.com](mailto:jeb@butlertobin.com)

[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Jeb Butler

**Sent:** Thursday, December 29, 2016 8:52 AM

**To:** Keith M. Hayasaka <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>

**Cc:** L. Sheree Davis <[SDavis@dcplaw.com](mailto:SDavis@dcplaw.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company; Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings; [REDACTED] v Eletto et al

Keith, I'm sorry to hear about your loss. January 6 will be fine for the RFAs and Plaintiff's email below.

---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]

**Sent:** Thursday, December 29, 2016 8:15 AM

**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>

**Cc:** L. Sheree Davis <[SDavis@dcplaw.com](mailto:SDavis@dcplaw.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>

**Subject:** Re: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company; Claim

No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings:  
[REDACTED] v Eletto et al

Jeb,

I'm out of the office due to the death in my family and will try to respond to the below next week. Also, I believe there are responses to requests to admit due today from Eletto and Vanliner. Under the circumstances, would you allow an extension through next Friday 1/6 to get you those responses? If so, I'll have my office prepare a stipulation. Thanks, - Keith

Sent from my iPhone

On Dec 23, 2016, at 1:30 PM, Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)> wrote:

Keith,

Thank you for your email and the darker copy of the "Lease Agreement" between Billings & Eletto (ELETTO 0019). However, parts of that document are still illegible. For instance, Plaintiff is interested in the parts shown in the excerpt below, which I still can't read even if I zoom in. Please provide a legible copy.

<image002.png>

Plaintiff agrees that we need to extend discovery, although 90 days seems long. Plaintiff would consent to 45.

Please do let me know about Mr. Vaughan.

Happy holidays,  
Jeb

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]

**Sent:** Friday, December 23, 2016 11:59 AM

**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>

**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; L. Sheree Davis <[SDavis@dcplaw.com](mailto:SDavis@dcplaw.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance

Compan: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al

Jeb,

See attached darker copy of the lease agreement. Formal supplemental responses sent out yesterday, also attached. See also below responses in red.

As you know, I am working on deposition dates for Mr. Vaughan. It appears we will need to extend discovery—please let me know if 90 days will work and I will be happy to prepare a consent order. Thanks and hope you have a Merry Christmas if I don't speak to you before then.

**Keith M. Hayasaka**  
DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler  
**Sent:** Monday, December 12, 2016 7:40 PM  
**To:** 'Keith M. Hayasaka' <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>  
**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; 'Candice V. Bulter' <[CBulter@dcplaw.com](mailto:CBulter@dcplaw.com)>; 'Kara S. Pierre' <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Mr. Hayasaka,

Thank you for your letter about these issues dated today, Dec. 12, 2016. Please allow this email to respond to that letter.

Will a formal discovery supplement be forthcoming? **See attached.**

Your letter narrowed the issues a good bit, so this email will address only a few things.

1. RPD 9: This request inquired into the relationship of various parties. Thank you for your clarification. Because Eletto has represented that its response is complete, this RPD is about wrapped up. **However, please do send a more legible copy of the Lease Agreement (ELETTO 000019) as Plaintiff requested on 11/27/16. See attached.**
2. RPDs 12-14, 16, 17; ROGs 9, 10: These requests inquire into policies, procedures, and training material. In its 12/12/16 letter, Eletto said that the responsive documents were produced at ELETTO 000017-000053. I've concluded that, as stated in Defendants' letter of 11/02/16, all requested documents & evidence have been produced and nothing has been withheld. If that conclusion is incorrect, please let me know ASAP.
3. RPDs 37, 38; ROG 29: These requests inquired into various internal documents and evidence. Defendants supplemented with ELETTO 000076-000082. Please confirm that that all responsive documents have now been produced and nothing is being withheld. **Confirmed.**

4. RPD 53; ROG 34: These requests inquired into insurance. Thank you for producing the Vanliner policy no. UMV 539240100 in addition to the previously-produced policy no. TRV 539240302. I conclude that those are the only two policies that do or may provide coverage. If there is (or may be) more insurance coverage, please let me know ASAP.

Does Defendant Eletto still contend that it is *not* vicariously liable for the negligence of Antwone Billings, if any? If Eletto does deny that, please let me know why. (This was the subject of some of P's 1<sup>st</sup> RFAs, e.g. numbers 10-15.) **Yes, see answers to discovery.**

Just FYI, we will probably send some RFAs based on your letter for the purposes of making certain facts "official."

Regards,  
Jeb

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
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---

**From:** Jeb Butler  
**Sent:** Sunday, November 27, 2016 6:53 PM  
**To:** 'Keith M. Hayasaka' <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>  
**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; 'Candice V. Bulter' <[CBulter@dcplaw.com](mailto:CBulter@dcplaw.com)>; 'Kara S. Pierre' <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

In addition, as to RPD 9, please produce the other four pages of the "Owner Operator Data Sheet" at ELETTO 000017.

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Jeb Butler

**Sent:** Sunday, November 27, 2016 6:28 PM

**To:** 'Keith M. Hayasaka' <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>

**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Candice V. Bulter <[CBulter@dcplaw.com](mailto:CBulter@dcplaw.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Mr. Hayasaka,

I hope you and your family had a happy Thanksgiving. I sat down at my desk thinking that I would be drafting a motion to compel, but it looks like we are fairly close and that may not be necessary. So, here is another attempt under Rule 6.4. Please accept this email as a response to your letter dated Nov. 2, 2016 and Defendants' supplemental discovery responses dated Nov. 11, 2016.

Please respond within two weeks—i.e., by December 12, 2016.

#### **Eletto's Discovery Responses**

1. RPD 9: Please produce all responsive information to the RPD as written.

That includes but is not limited to "Schedule A" and any other attachments to the "Master Agreement" that Joseph Eletto signed as VP on 01/29/2009 and Richard Cibos signed on behalf of Ryder in February of 2009 (exact date is hard to read). As noted before, a full response should also include but not be limited to the documents that satisfy FMCSR 376.12\* with regard to the subject truck.

As to the "Lease Agreement" that Antwone Billings signed, I assume that it relates to the subject truck since it lists the subject truck's VIN. Please produce a more legible copy and identify the signatory on the bottom right—as it is now, Plaintiff can't tell who signed or in what capacity he or she was signing (excerpt from document below).

<image005.png>

2. RPDs 12-14, 16, 17; ROGs 9, 10: These requests inquire into policies, procedures, and training material. Defendant Eletto has represented that has responded completely, and Plaintiff must accept that response—but the documents produced seem very thin. Please identify the Bates range of documents that is responsive to these requests.
3. RPDs 23, 24: In response to RFA 24, Defendant Billings attested that he "would have noted any issues concerning the subject truck in writing pursuant to his pre-trip inspection." Did Defendant Billings create a pre-inspection report, post-inspection report, or any other document relating to the condition of the subject truck? If so, will Defendants produce it?

4. RPDs 37, 38; ROG 29: Plaintiff agrees that Defendants may withhold, without logging, any “emails or other correspondence” (to quote from Defendants’ 11/02/16 letter) with outside counsel (i.e., Dennis, Corry, Porter & Smith, L.L.P.). Other than that, have Defendants produced all requested evidence and information?

If not, please identify the withheld evidence or information in a privilege log that lists (1) the date of the communication, (2) the sender, (3) all recipients (including cc’s and bcc’s), (4) which senders or recipients are lawyers, (5) the subject matter, and (6) a burden-carrying explanation of why the evidence or information is privileged. *See* USCR 5.5; *GM v. Conkle* (Ga. App. 1997) (general assertion of privilege does not meet withholding party’s burden of showing that the privilege applies).

5. RPD 45: I understand that Defendant Billings was not tested for alcohol or drugs after the collision. If I’m mistaken about that, please let me know.
6. RPD 53; ROG 34: Defendants have said that they will produce an additional policy. Please let me know by when Defendants will produce it. Other than the liability and umbrella policies that Defendants have already identified, are there any other responsive policies?
7. ROG 13: This ROG asks into maintenance. Who maintained the subject truck, and how long had Eletto (or Billings) possessed it as of the date of the collision?
8. ROG 16(g): Under what MC number, and whose certificate, was the subject truck operating on the date of the collision?

#### **Billings’s Discovery Responses**

9. RPDs 19, 20: In response to RFA 24, Defendant Billings attested that he “would have noted any issues concerning the subject truck in writing pursuant to his pre-trip inspection.” Did Defendant Billings create a pre-inspection report, post-inspection report, or any other document relating to the condition of the subject truck? If so, will Defendants produce it?

#### **Vanliner’s Discovery Responses**

10. RPD 3; ROG 9: Defendants have said that they will produce an additional policy. Please let me know by when Defendants will produce it. Besides the liability and umbrella policies that Defendants have already identified, are there any other responsive policies?
11. ROG 3: When did Vanliner anticipate litigation? Defendant has said that it would supplement this response, but Defendant has not done so.

Regards,  
Jeb Butler

\* “The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.” [http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.376#se49.5.376\\_112](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.376#se49.5.376_112)

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]  
**Sent:** Tuesday, November 08, 2016 5:30 PM  
**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>  
**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Candice V. Bulter <[CBulter@dcplaw.com](mailto:CBulter@dcplaw.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Jeb – yes, I expect to have them to you by end of week. Email is fine, although old habits die hard and we will probably continue to send hard copies in addition to the email. Please include Candice Bulter and Kara Pierre (copied here) on future exchanges. Thanks,

**Keith M. Hayasaka**  
DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]  
**Sent:** Tuesday, November 08, 2016 5:25 PM  
**To:** Keith M. Hayasaka  
**Cc:** Alexis Treadwell  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Thanks, Keith. May I expect to receive the supplemental responses by the end of the week? Service by email will be fine.

In fact if you're amenable to it, Plaintiff will agree that for all documents exchanged in this case, service by email to me and Alexis Treadwell (cc'ed) will be sufficient. If that agreement works for you, please let us know what email addresses we should include.

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]  
**Sent:** Tuesday, November 08, 2016 5:03 PM  
**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>  
**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Jeb,

See my responses in red below, thanks.

**Keith M. Hayasaka**  
DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]  
**Sent:** Thursday, November 03, 2016 11:57 AM  
**To:** Keith M. Hayasaka  
**Cc:** Alexis Treadwell  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Mr. Hayasaka,

I've received your letter dated yesterday, 11/02/16, regarding Defendants' discovery responses. A couple questions:

1. In the section labeled "general," Defendants wrote in *apparent* response to Plaintiff's concerns about the production of medical records received from third parties that "I will agree to produce documents in electronic form, when available, without copying charges to the extent you agree to the same." (To address your implicit question, Plaintiff will agree to produce documents without copying charges.) However I'm not sure from your response whether the above-quoted



sentence from your letter relates to records received from third parties—that appears to be what it's about, but I wanted to make sure.

**SO to be clear**—do we agree to produce medical records acquired from third parties to each other, without charging copying costs? Plaintiff will agree to do that. **Yes.**

2. Before deciding how to respond to Defendants' letter, Plaintiff would like to know if anything else is forthcoming. On this point the letter says, "Please see below explanations to clarify specific responses and a formal supplementation of responses, if applicable, will follow."

Are Defendants formal supplements in the mail, or not? If so, please email copies of them over. If not, then Plaintiffs know that Defendants' response is complete and can respond as appropriate. **Yes, I am working on formal supplemental responses basically mirroring the responses in my letter that will be sent out shortly.**

Thank you,  
Jeb Butler

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Jeb Butler  
**Sent:** Thursday, October 27, 2016 9:34 AM  
**To:** 'Keith M. Hayasaka' <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>  
**Cc:** Sarah Hedrick <[sarah@butlertobin.com](mailto:sarah@butlertobin.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Wednesday, 11/2 it is.

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.

Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]  
**Sent:** Thursday, October 27, 2016 8:19 AM  
**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>  
**Cc:** Sarah Hedrick <[sarah@butlertobin.com](mailto:sarah@butlertobin.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Hi Jeb,

I'm working on our response to your 6.4(b) request. If you don't mind, I'd like to have a few more days to respond. Do you have any problem with giving me through next Wednesday, 11/2? Many thanks,

**Keith M. Hayasaka**  
DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]  
**Sent:** Friday, October 07, 2016 11:50 AM  
**To:** Grant B. Smith; Keith M. Hayasaka  
**Cc:** Sarah Hedrick  
**Subject:** [REDACTED] v Eletto et al: Written Discovery

Mr. Grant & Mr. Hayasaka,

I hope this email finds you well. This email addresses certain issues in discovery. Plaintiff hopes that we can resolve these issues without Court intervention, as Rule 6.4 envisions.

Plaintiff requests response by October 28, three weeks from today.

#### GENERAL

1. Third-party requests: RPD 3 to Eletto, RPD 2 to Billings, and RPD 2 to Vanliner all seek documents acquired via third-party requests. Mainly this is about medical records, which

are discoverable whether they're in Plaintiff's possession or Defendants' possession. Plaintiff has produced the medical records in Plaintiff's control to Defendants without charging any copying costs, and will continue to do so as we acquire more records. We would ask that Defendants do the same—that is, produce the evidence without charging copying costs.

If Defendants were to insist on charging copying costs to Plaintiff, then Plaintiff would have to insist that Defendants repay Plaintiffs, at the same rate, for documents already produced and pay for documents that Plaintiff produces in the future. But charging copying costs to each other will be an administrative mess. The process will probably flow better if all parties produce evidence without charging copying costs. Sending electronic copies (which are free) will be sufficient.

2. Bates numbering: Plaintiff Bates-numbered the documents that Plaintiff produced to Defendants, and asks that Defendant Bates-number the documents that it produces to Plaintiff. That way, the parties and Court can keep track of what was produced and when. Otherwise, if a dispute arises as to whether a document is produced, it is very difficult for the Court or parties to know whether the document has in fact been produced, and when, and in response to what.

Plaintiff would prefer that Defendant *re-produce* the documents that it has produced, this time with Bates numbers. If Defendant declines to do so, Plaintiff can Bates number the documents that Defendant has produced *for* Defendant, then produce them back to Defendant along with an RFA confirming that the Bates-numbered documents constitute the documents that Defendant produced.

In the future, please Bates number all documents that Defendants produce.

3. Repeated work product objection: In response to an overwhelming number of Plaintiff's requests, Defendants made a work product objection—the objection appeared almost every time Plaintiff used the phrase “related to.” I suspect that's because outside counsel could have created a memorandum or some other work product “related to” the subject of the request, which would be privileged and which prompted Defendants' objection.

To address this concern, Plaintiff will clarify ‘on the record’ here: *none of Plaintiff's discovery requests seek any documents created by Defendants' outside counsel, and Defendants may withhold such documents without listing them on a privilege log.* If Defendant seeks to withhold *other* documents or evidence, please identify what is being withheld sufficiently for Plaintiff to assess Defendant's claim of privilege as required by U.S.C.R. 5.5 and *General Motors Corp. v. Conkle*, 226 Ga. App. 34, 47 (1997) (“An unsupported claim of privilege does not meet the proponent's burden of showing the privilege applies.”).

4. Finality: With regard to many of the discovery requests discussed below, what Plaintiff seeks is finality—that is, knowing whether Defendants have produced all responsive evidence and information. Where Defendant has responded “subject to” an objection, Plaintiff often cannot tell whether Defendant's response is complete or whether documents or information is being withheld. *See Ford Motor Co. v. Conley*, 294 Ga. 530, 542-45 (2014) (discussing responses coupled with objections). Plaintiff generally either (1) Defendant's representation that all responsive documents have been produced, (2) complete production of all responsive evidence and information, *or* (3) incomplete production supplemented with a log indicating what documents have been withheld.

## ELETTO'S DISCOVERY RESPONSES

5. RFA 10: In this RFA response, Eletto denied that Billings was an "employee." In light of the definition of employee at FMCSR § 390.5 Plaintiff invites Defendants to reconsider this position.

(The definition of "employee" includes expressly "a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) . . . .")

6. RFAs 13, 15: Here, Eletto denied that Billings was its statutory employee or that it was vicariously liable for Billings's misconduct. Plaintiff invites Defendants to reconsider that position in light of *PN Exp., Inc. v. Zegel*, 304 Ga. App. 672, 675-78 (2010), which held that "[t]he language of 49 CFR § 376.12(c)(1) and earlier regulations to the same effect have been interpreted to impose vicarious liability on the motor carrier, regardless of agency relationships, for the negligent operation of vehicles leased and operated under its certificate."
7. RPD 4: Has Eletto produced all responsive information, or are documents or evidence being withheld? (As noted above, neither this discovery request nor any other seeks documents created by outside counsel.) If Eletto has not produced all responsive evidence, please produce it. If Eletto is withholding evidence, please identify it.
8. RPDs 5, 7: These RPDs inquire into Billings's work schedule and relationship with Eletto. That information is relevant to hours-of-service as well as whether Eletto is vicariously liable for Billings's misconduct, which Eletto apparently intends to make an issue. Please produce the responsive evidence.
9. RPD 8: This request inquires into witness statements taken *in the regular course of business*, and the language of the request itself specifically excludes attorney work product. Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.
10. RPD 9: This RPD addresses the relationship of Defendants and Ryder, the owner of the truck. Eletto produced some evidence, but it is not clear whether Eletto produced everything requested. For instance, the copy of the "Ryder Truck Lease and Service Agreement" that Plaintiff received is missing "Schedule A," an attachment to which the contract refers. Please produce that and the documents containing the language mandated by FMCSR § 376.12.
- Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.
11. RPDs 12, 13; ROGs 9, 10: These RPDs and ROGs inquire into policies, procedures, and training materials, which are relevant to liability (which Defendants dispute). Because Eletto did not make any objection, Eletto's response *appears* complete from a procedural standpoint, but it seems likely to the undersigned that Eletto has other responsive documents that it has not produced.

Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

12. RPD 14, 16, 17: This RPD asks into the screening and training of Billings, which is relevant to liability on Plaintiff's negligent hiring claim. Because Eletto did not make any objection, Eletto's response *appears* complete from a procedural standpoint, but it seems likely to the undersigned that Eletto has other responsive documents that it has not produced.

Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

13. RPDs 23, 24: These RPDs ask after inspection reports (pre- and post-trip) for the subject truck. Plainly, Defendants should have these. They are relevant given Billings's allegation that the brake pedal in the subject truck was not properly maintained, and Defendant Billings has affirmed that he created such a report (see Billings RFA 24). Where are they?

RPD 28; ROG 19: This RPD and ROG inquire after what Billings was supposed to do in the event of a collision. Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

14. RPD 33: This RPD asks after logbooks, which Defendants should have. Where are they?

15. RPD 35; ROG 20: This RPD and ROG ask after audits of Billings's driving. Because Eletto made no objection, the response appears complete from a procedural perspective, but Plaintiff seeks to confirm—has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

16. RPDs 37, 38; ROG 29: These RPDs and ROG ask after internal documents about the collision. Because Eletto did not make any objection, Eletto's response *appears* complete from a procedural standpoint, but it seems likely to the undersigned that Eletto has other responsive documents that it has not produced.

Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

17. RPD 45: Please produce the drug and alcohol test taken by Billings after the subject collision. I don't think the cited authorities prohibit that. It seems unnecessary to trouble the Court with an in-camera inspection of this simple document, particularly if the tests came back clean.

18. RPD 53; ROG 34: This RPD and ROG inquire into insurance. Is the Vanliner policy listed in Defendant's response the only one that does or may provide coverage for the collision?

19. ROG 3: This ROG asks after when Defendant anticipated litigation, and the response says that it was "when this Defendant was first notified of the incident in suit." I can't tell

whether that means that Defendant anticipated litigation upon hearing about the wreck or when Defendant was served with the Complaint. On what *date* did Defendant anticipate litigation?

20. ROGs 11, 12: These ROGs inquire into training, and Defendant referred to “another contractor’s truck” involved in the training. Whose truck, who was driving, and what kind of truck was it? (Additionally, the related documents should be produced in response to RPD 14.)
21. ROG 13: This ROG inquires into maintenance. Who serviced the subject truck, and for how long had the truck been in Eletto’s possession as of the date of the collision?
22. ROG 16(g): This ROG subpart asks into the “company identification number,” which in fairness was probably a vague question. To clarify—what DOT and MC number was the subject truck operating under (i.e., what numbers were affixed to its exterior) at the time of the collision?
23. ROG 26: This ROG asks after evidence relating to the collision. (As noted above, neither this discovery request nor any other seeks documents created by outside counsel.) The response refers to four photographs being produced, but Plaintiff has not received them. Please produce them.

Has Eletto otherwise produced or identified all evidence that is responsive to this ROG?

24. ROG 28: This ROG asks after communications between Eletto and Billings. Defendant indicated that it would supplement the response. Please do so.

#### **BILLINGS’S DISCOVERY RESPONSES**

25. RFA 19: This RFA asks after who drove the subject truck last before it departed on the trip during which this collision occurred. That is not ambiguous. Please answer.
26. RFA 27: This RFA asks whether Billings was under dispatch for Eletto at the time of the collision—i.e., whether he was making a trip on behalf of and as instructed by Billings. The current response is nonresponsive. Please answer.
27. RPD 5: This RPD into Billings’s work schedule and relationship with Eletto. That information is relevant to hours-of-service as well as whether Eletto is vicariously liable for Billings’s misconduct, which Eletto apparently intends to make into an issue. (As noted above, neither this discovery request nor any other seeks documents created by outside counsel.)

Has Billings produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Billings is withholding.

28. RPDs 19, 20: These RPDs ask after inspection reports (pre- and post-trip) for the subject truck. Plainly, Defendants should have these. They are relevant given Billings’s allegation that the brake pedal in the subject truck was not properly maintained. Further, Defendant Billings has affirmed that he created such a report (see Billings RFA 24). Where are these reports?

29. RPD 29: This RPD asks after logbooks, which Defendants should have. Where are they?
30. RPD 43: Please produce the drug and alcohol test taken by Billings after the subject collision. I don't think the cited authorities prohibit that. It seems unnecessary to trouble the Court with an in-camera inspection of this simple document, particularly if the tests came back clean.
31. RPD 49: This request inquires into witness statements taken *in the regular course of business*, and the request itself specifically excludes attorney work product. Have Defendants produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Defendants are withholding.
32. RPD 54; ROG 24: These requests inquire into insurance. It does not appear that the responses include policies of insurance applicable to Mr. Billings. Please provide all responsive evidence and information.
33. ROG 2: This ROG asks after when Defendant anticipated litigation, but the response is ambiguous. On what date did Defendant anticipate litigation?
34. ROGs 7, 8: These ROGs inquire into training and training materials, which are relevant to liability. Please respond completely. If you cross-reference documents produced, please confirm that the documentary production to which your response refers is complete.
35. ROG 12: This ROG asks into what Billings was supposed to do in the event of a collision. Please respond completely. Although this response appears complete from a procedural standpoint, the undersigned seeks to confirm that all responsive information and evidence has been produced.
36. ROG 22, 23: These ROGs ask into previous collisions and FMCSR violations, which are relevant to the negligent hiring claim. Please respond completely.
37. ROG 24, 26: These very basic ROGs ask how the collision occurred and what kind of trip Billings was on when it happened. Please answer.
38. ROG 32: This ROG asks into statements given by Billings. (As noted above, Plaintiff does not seek any document or recording created by Defendants' outside counsel.) Please respond fully.

#### **VANLINER'S DISCOVERY RESPONSES**

39. RPD 3; ROG 9: This RPD and ROG inquire into insurance. Is the Vanliner policy listed in Defendant's response the only one that does or may provide coverage for the collision?
40. ROG 3: This ROG asks after when Defendant anticipated litigation, and the response says that it was "when this Defendant was first notified of the incident in suit." I can't tell whether that means that Defendant anticipated litigation upon hearing about the wreck or when Defendant was served with the Complaint. On what *date* did Defendant anticipate litigation?

Regards,

Jeb Butler

"It is a privilege to have a job worth doing well."

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

<image006.png>

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## Jeb Butler

---

**From:** Jeb Butler  
**Sent:** Wednesday, March 01, 2017 3:26 PM  
**To:** 'Keith M. Hayasaka'  
**Cc:** Kara S. Pierre; Alexis Bischoff; Vanessa L. Weiss; Darren M. Tobin  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Compan: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings [REDACTED] v Eletto et al

As to Mr. Vaughan's deposition, I am really reluctant to do this in light of the lengthy delay in getting the deposition scheduled, but since Mr. Hayasaka has been handling this case and is leaving defense counsel's firm, Plaintiff will agree to reschedule. April 10 works. (April 11 and 13 won't work bc I have a hearing on the 12<sup>th</sup> and we'll need a day for travel). Plaintiff send an NOD for the morning of April 10, unless I hear otherwise from you. Will the deposition take place at 600 W John St # 200, Hicksville, NY 11801?

As to Plaintiff's motion to compel and for fees (att'd), do Defendants agree that the payment of attorneys' fees is appropriate under Rule 37 in light of the extensive delay in producing that information? If not, why not?

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [mailto:kHayasaka@dcplaw.com]  
**Sent:** Monday, February 20, 2017 4:44 PM  
**To:** Jeb Butler <jeb@butlertobin.com>  
**Cc:** Kara S. Pierre <KPierre@dcplaw.com>; Alexis Bischoff <alexis@butlertobin.com>; Vanessa L. Weiss <VWeiss@dcplaw.com>; Darren M. Tobin <darren@butlertobin.com>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Compan: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al

Hello Jeb,

On trial calendar week of 3/13:

Stephen Brannon v. Wood Truck Lines, LLC, et al., Muscogee County Superior Court, Judge Mullins  
Shaquita Fitzpatick v. Linsey McCleskey et al., DeKalb County Superior Court, Judge Seeliger



Jim Vaughan has indicated April 10, 11, or 13 as dates he is available to reschedule his deposition in New York. Are you fine with extending discovery another 45 days? Finally, please let me know if you plan to withdraw the motion to compel you filed on the lease document. Thanks,

**Keith M. Hayasaka**

DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]

**Sent:** Thursday, February 16, 2017 6:17 PM

**To:** Keith M. Hayasaka

**Cc:** Kara S. Pierre; Alexis Bischoff; Vanessa L. Weiss; Darren M. Tobin

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Compan:  
Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D.  
Billings: [REDACTED] v Eletto et al

Keith,

As to the Lease Agreement, we agree on what the language says. We'll send an RFA on that.

As to the Vaughan deposition, let's keep that on the calendar unless you actually get called in to trial. It has now been 65 days since Plaintiff requested this deposition date. What is the name of the case in which you're on a trial calendar, in what court is it pending, and what judge is presiding?

Jeb Butler

**Butler Tobin LLC**

1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]

**Sent:** Wednesday, February 15, 2017 2:50 PM

**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>

**Cc:** Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; Alexis Bischoff <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Vanessa L. Weiss  
<[VWeiss@dcplaw.com](mailto:VWeiss@dcplaw.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Compan: Claim  
No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings:  
[REDACTED] v Eletto et al

Jeb,

Hopefully we can finally resolve the issue re: the lease—please see the attached blank form provided by Eletto and let me know if you agree that the “Special Driver Instructions” state:

“Lessee authorizes the driver supplied to log enroute, meal and rest stops as off-duty consistent with times shown under separate contract or when not so stated to 1 hour for each 4 hour tour of duty or part thereof. Driver is required to safeguard the vehicle and cargo before going off duty.”

Also, unfortunately, it appears we are now on a trial calendar in at least one another case the week of 3/13, so we will need to look at different dates for mediation and Mr. Vaughan’s deposition. I have requested additional dates from Mr. Vaughan and will get those to you as soon as possible. We are also trying to get dates from Billings. Thanks,

**Keith M. Hayasaka**  
DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]  
**Sent:** Monday, February 13, 2017 4:57 PM  
**To:** Keith M. Hayasaka  
**Cc:** Kara S. Pierre; Alexis Bischoff; Vanessa L. Weiss  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company; Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings; [REDACTED] v Eletto et al

Keith, thank you for your email earlier today regarding a legible copy of the lease agreement. I’m replying on this “thread” so that we’ll have a single email about the lease agreement. For the record, you sent the document att’d here (pertinent part pasted below) and wrote:

DATE	SIGNATURE	OFF
SPECIAL DRIVER INSTRUCTIONS		
Lessee authorizes the driver supplied to log enroute, meal and rest stops as off-duty consistent with times shown under separate contract or when not so stated to 1 hour for each 4 hour tour of duty or part thereof. Driver is required to safeguard the vehicle and cargo before going off duty.		
RECORD OF LEASE		

*“Also, I’ve attached what I hope is a clearer version of the lease agreement—it’s the best Eletto was able to get me based on what I understand is a poor original (I suspect it might be one of those yellow or pink carbon copies). If you still contend it is illegible, I’m not sure what else I can do but see if Eletto can make the original available for you to examine when you go to NY.”*

This copy is better than any that have been produced so far, but it still is not totally clear. (By the way this is not about something Plaintiff “contends”—previous versions were objectively NOT legible.) Let’s see if we can agree on what it says and work out a stipulation as to that. As noted below, Eletto may be able to figure out what the words are by reviewing a substantially identical form contract.

To me the portion under “SPECIAL DRIVER INSTRUCTIONS” appears to say:

"Lessee authorizes the driver supplied to log enroute, meal and rest stops as off-duty consistent with [illegible] shown under separate contract or when not so stated to to 1 hour for each 4 hour [illegible] of duty or part thereof. Driver is required to safeguard the vehicle and cargo before going off duty."

Do you agree? Also, what are the illegible words?

---

**From:** Jeb Butler

**Sent:** Friday, February 3, 2017 6:25 PM

**To:** Keith M. Hayasaka <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>

**Cc:** Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; Alexis Bischoff <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Vanessa L. Weiss <[VWeiss@dcplaw.com](mailto:VWeiss@dcplaw.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company; Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al

Keith,

Plaintiff is still waiting for a legible copy of the "Lease Agreement" between Billings & Eletto (ELETTO 0019). As you know from our correspondence below, parts of that document are illegible. For instance, Plaintiff is interested in the parts shown in the excerpt below, which I still can't read even if I zoom in. Please provide a legible copy.

As you know, Plaintiff first requested a more legible copy on November 27, 2016. If Defendant cannot locate a more legible copy of this exact document, please tell us what the words are (perhaps by checking a similar form) and we can consider a stipulation as to that language. If Plaintiff has not received a legible copy, or at least been told what the words are, by February 8, 2017, Plaintiff will move to compel. By that date, it will have been 73 days since we first made this request and involving the Court will be Plaintiff's only apparent option.

Regards,  
Jeb

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877

[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Jeb Butler  
**Sent:** Tuesday, January 10, 2017 12:23 PM  
**To:** 'Keith M. Hayasaka' <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>  
**Cc:** Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Vanessa L. Weiss <[VWeiss@dcplaw.com](mailto:VWeiss@dcplaw.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Compan: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al

Keith, the consent motion looks good & you may sign my name. I'll have to get back with you later on the other stuff.

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]  
**Sent:** Tuesday, January 10, 2017 12:04 PM  
**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>  
**Cc:** Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Vanessa L. Weiss <[VWeiss@dcplaw.com](mailto:VWeiss@dcplaw.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Compan: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al

Jeb,

Please see attached. I'm seeing if I can get you a more legible copy of the lease, if one is available. I've also attached a draft of a consent motion to extend discovery 45 days. Please let me know if OK to sign on your behalf and file. Finally, my client has expressed an interest in exploring early mediation after plaintiff has been deposed. Would you and your client be interested in trying to schedule mediation in February? Thanks,

**Keith M. Hayasaka**  
DENNIS, CORRY, PORTER & SMITH, LLP

14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]  
**Sent:** Monday, January 09, 2017 5:18 PM  
**To:** Keith M. Hayasaka  
**Cc:** L. Sheree Davis; Kara S. Pierre; Alexis Treadwell  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v. Eletto et al

Keith, I do not believe we heard back from you regarding Plaintiff's 12/23/2016 email below. I look forward to your response.

Also, it appears Ds filed a 5.2 Certificate on Jan. 6 regarding the RFAs, but the mail has not brought the document to us yet. Would someone in your office mind emailing the document(s)?

Thank you.

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Jeb Butler  
**Sent:** Thursday, December 29, 2016 8:52 AM  
**To:** Keith M. Hayasaka <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>  
**Cc:** L. Sheree Davis <[SDavis@dcplaw.com](mailto:SDavis@dcplaw.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v. Eletto et al

Keith, I'm sorry to hear about your loss. January 6 will be fine for the RFAs and Plaintiff's email below.

---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]  
**Sent:** Thursday, December 29, 2016 8:15 AM  
**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>

Cc: L. Sheree Davis <[SDavis@dcplaw.com](mailto:SDavis@dcplaw.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>

**Subject:** Re: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al

Jeb,

I'm out of the office due to the death in my family and will try to respond to the below next week. Also, I believe there are responses to requests to admit due today from Eletto and Vanliner. Under the circumstances, would you allow an extension through next Friday 1/6 to get you those responses? If so, I'll have my office prepare a stipulation. Thanks, - Keith

Sent from my iPhone

On Dec 23, 2016, at 1:30 PM, Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)> wrote:

Keith,

Thank you for your email and the darker copy of the "Lease Agreement" between Billings & Eletto (ELETTO 0019). However, parts of that document are still illegible. For instance, Plaintiff is interested in the parts shown in the excerpt below, which I still can't read even if I zoom in. Please provide a legible copy.

<image002.png>

Plaintiff agrees that we need to extend discovery, although 90 days seems long. Plaintiff would consent to 45.

Please do let me know about Mr. Vaughan.

Happy holidays,  
Jeb

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]  
**Sent:** Friday, December 23, 2016 11:59 AM  
**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>



**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>; L. Sheree Davis <[SDavis@dcplaw.com](mailto:SDavis@dcplaw.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al

Jeb,

See attached darker copy of the lease agreement. Formal supplemental responses sent out yesterday, also attached. See also below responses in red.

As you know, I am working on deposition dates for Mr. Vaughan. It appears we will need to extend discovery—please let me know if 90 days will work and I will be happy to prepare a consent order. Thanks and hope you have a Merry Christmas if I don't speak to you before then.

**Keith M. Hayasaka**

DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler

**Sent:** Monday, December 12, 2016 7:40 PM

**To:** 'Keith M. Hayasaka' <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>

**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; 'Candice V. Bulter' <[CBulter@dcplaw.com](mailto:CBulter@dcplaw.com)>; 'Kara S. Pierre' <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Mr. Hayasaka,

Thank you for your letter about these issues dated today, Dec. 12, 2016. Please allow this email to respond to that letter.

Will a formal discovery supplement be forthcoming? **See attached.**

Your letter narrowed the issues a good bit, so this email will address only a few things.

1. RPD 9: This request inquired into the relationship of various parties. Thank you for your clarification. Because Eletto has represented that its response is complete, this RPD is about wrapped up. However, please do send a more legible copy of the Lease Agreement (ELETTO 000019) as Plaintiff requested on 11/27/16. **See attached.**
2. RPDs 12-14, 16, 17; ROGs 9, 10: These requests inquire into policies, procedures, and training material. In its 12/12/16 letter, Eletto said that the responsive documents were produced at ELETTO 000017-000053. I've concluded that, as stated in Defendants' letter of 11/02/16, all requested documents & evidence have been produced and nothing has been withheld. If that conclusion is incorrect, please let me know ASAP.



3. RPDs 37, 38; ROG 29: These requests inquired into various internal documents and evidence. Defendants supplemented with ELETTO 000076-000082. Please confirm that that all responsive documents have now been produced and nothing is being withheld. **Confirmed.**
4. RPD 53; ROG 34: These requests inquired into insurance. Thank you for producing the Vanliner policy no. UMV 539240100 in addition to the previously-produced policy no. TRV 539240302. I conclude that those are the only two policies that do or may provide coverage. If there is (or may be) more insurance coverage, please let me know ASAP.

Does Defendant Eletto still contend that it is *not* vicariously liable for the negligence of Antwone Billings, if any? If Eletto does deny that, please let me know why. (This was the subject of some of P's 1<sup>st</sup> RFAs, e.g. numbers 10-15.) **Yes, see answers to discovery.**

Just FYI, we will probably send some RFAs based on your letter for the purposes of making certain facts "official."

Regards,  
Jeb

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Jeb Butler  
**Sent:** Sunday, November 27, 2016 6:53 PM  
**To:** 'Keith M. Hayasaka' <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>  
**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; 'Candice V. Bulter' <[CBulter@dcplaw.com](mailto:CBulter@dcplaw.com)>; 'Kara S. Pierre' <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Vanliner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

In addition, as to RPD 9, please produce the other four pages of the "Owner Operator Data Sheet" at ELETTO 000017.

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877

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---

**From:** Jeb Butler

**Sent:** Sunday, November 27, 2016 6:28 PM

**To:** 'Keith M. Hayasaka' <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>

**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Candice V. Bulter <[CBulter@dcplaw.com](mailto:CBulter@dcplaw.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Mr. Hayasaka,

I hope you and your family had a happy Thanksgiving. I sat down at my desk thinking that I would be drafting a motion to compel, but it looks like we are fairly close and that may not be necessary. So, here is another attempt under Rule 6.4. Please accept this email as a response to your letter dated Nov. 2, 2016 and Defendants' supplemental discovery responses dated Nov. 11, 2016.

Please respond within two weeks—i.e., by December 12, 2016.

#### **Eletto's Discovery Responses**

1. RPD 9: Please produce all responsive information to the RPD as written.

That includes but is not limited to "Schedule A" and any other attachments to the "Master Agreement" that Joseph Eletto signed as VP on 01/29/2009 and Richard Cibos signed on behalf of Ryder in February of 2009 (exact date is hard to read). As noted before, a full response should also include but not be limited to the documents that satisfy FMCSR 376.12\* with regard to the subject truck.

As to the "Lease Agreement" that Antwone Billings signed, I assume that it relates to the subject truck since it lists the subject truck's VIN. Please produce a more legible copy and identify the signatory on the bottom right—as it is now, Plaintiff can't tell who signed or in what capacity he or she was signing (excerpt from document below).

<image005.png>

2. RPDs 12-14, 16, 17; ROGs 9, 10: These requests inquire into policies, procedures, and training material. Defendant Eletto has represented that has responded completely, and Plaintiff must accept that response—but the documents produced seem very thin. Please identify the Bates range of documents that is responsive to these requests.
3. RPDs 23, 24: In response to RFA 24, Defendant Billings attested that he "would have noted any issues concerning the subject truck in writing pursuant to his pre-trip inspection." Did

Defendant Billings create a pre-inspection report, post-inspection report, or any other document relating to the condition of the subject truck? If so, will Defendants produce it?

4. RPDs 37, 38; ROG 29: Plaintiff agrees that Defendants may withhold, without logging, any “emails or other correspondence” (to quote from Defendants’ 11/02/16 letter) with outside counsel (i.e., Dennis, Corry, Porter & Smith, L.L.P.). Other than that, have Defendants produced all requested evidence and information?

If not, please identify the withheld evidence or information in a privilege log that lists (1) the date of the communication, (2) the sender, (3) all recipients (including cc’s and bcc’s), (4) which senders or recipients are lawyers, (5) the subject matter, and (6) a burden-carrying explanation of why the evidence or information is privileged. *See* USCR 5.5; *GM v. Conkle* (Ga. App. 1997) (general assertion of privilege does not meet withholding party’s burden of showing that the privilege applies).

5. RPD 45: I understand that Defendant Billings was not tested for alcohol or drugs after the collision. If I’m mistaken about that, please let me know.
6. RPD 53; ROG 34: Defendants have said that they will produce an additional policy. Please let me know by when Defendants will produce it. Other than the liability and umbrella policies that Defendants have already identified, are there any other responsive policies?
7. ROG 13: This ROG asks into maintenance. Who maintained the subject truck, and how long had Eletto (or Billings) possessed it as of the date of the collision?
8. ROG 16(g): Under what MC number, and whose certificate, was the subject truck operating on the date of the collision?

#### **Billings’s Discovery Responses**

9. RPDs 19, 20: In response to RFA 24, Defendant Billings attested that he “would have noted any issues concerning the subject truck in writing pursuant to his pre-trip inspection.” Did Defendant Billings create a pre-inspection report, post-inspection report, or any other document relating to the condition of the subject truck? If so, will Defendants produce it?

#### **Vanliner’s Discovery Responses**

10. RPD 3; ROG 9: Defendants have said that they will produce an additional policy. Please let me know by when Defendants will produce it. Besides the liability and umbrella policies that Defendants have already identified, are there any other responsive policies?
11. ROG 3: When did Vanliner anticipate litigation? Defendant has said that it would supplement this response, but Defendant has not done so.

Regards,  
Jeb Butler

\* “The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of

the lease.” [http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.376#se49.5.376\\_112](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.376#se49.5.376_112)

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]  
**Sent:** Tuesday, November 08, 2016 5:30 PM  
**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>  
**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>; Candice V. Bulter <[CBulter@dcplaw.com](mailto:CBulter@dcplaw.com)>; Kara S. Pierre <[KPierre@dcplaw.com](mailto:KPierre@dcplaw.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Jeb – yes, I expect to have them to you by end of week. Email is fine, although old habits die hard and we will probably continue to send hard copies in addition to the email. Please include Candice Bulter and Kara Pierre (copied here) on future exchanges. Thanks,

**Keith M. Hayasaka**  
DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]  
**Sent:** Tuesday, November 08, 2016 5:25 PM  
**To:** Keith M. Hayasaka  
**Cc:** Alexis Treadwell  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Thanks, Keith. May I expect to receive the supplemental responses by the end of the week? Service by email will be fine.

In fact if you're amenable to it, Plaintiff will agree that for all documents exchanged in this case, service by email to me and Alexis Treadwell (cc'ed) will be sufficient. If that agreement works for you, please let us know what email addresses we should include.

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]  
**Sent:** Tuesday, November 08, 2016 5:03 PM  
**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>  
**Cc:** Alexis Treadwell <[alexis@butlertobin.com](mailto:alexis@butlertobin.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Jeb,

See my responses in red below, thanks.

**Keith M. Hayasaka**  
DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]  
**Sent:** Thursday, November 03, 2016 11:57 AM  
**To:** Keith M. Hayasaka  
**Cc:** Alexis Treadwell  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Mr. Hayasaka,

I've received your letter dated yesterday, 11/02/16, regarding Defendants' discovery responses. A couple questions:

1. In the section labeled "general," Defendants wrote in *apparent* response to Plaintiff's concerns about the production of medical records received from third parties that "I will agree to produce documents in electronic form, when available, without copying charges to the extent you agree

to the same.” (To address your implicit question, Plaintiff will agree to produce documents without copying charges.) However I’m not sure from your response whether the above-quoted sentence from your letter relates to records received from third parties—that appears to be what it’s about, but I wanted to make sure.

**SO to be clear**—do we agree to produce medical records acquired from third parties to each other, without charging copying costs? Plaintiff will agree to do that. **Yes.**

2. Before deciding how to respond to Defendants’ letter, Plaintiff would like to know if anything else is forthcoming. On this point the letter says, “Please see below explanations to clarify specific responses and a formal supplementation of responses, if applicable, will follow.”

Are Defendants formal supplements in the mail, or not? If so, please email copies of them over. If not, then Plaintiffs know that Defendants’ response is complete and can respond as appropriate. **Yes, I am working on formal supplemental responses basically mirroring the responses in my letter that will be sent out shortly.**

Thank you,  
Jeb Butler

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Jeb Butler  
**Sent:** Thursday, October 27, 2016 9:34 AM  
**To:** 'Keith M. Hayasaka' <[kHayasaka@dcplaw.com](mailto:kHayasaka@dcplaw.com)>  
**Cc:** Sarah Hedrick <[sarah@butlertobin.com](mailto:sarah@butlertobin.com)>  
**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Wednesday, 11/2 it is.

Jeb Butler

**Butler Tobin LLC**

1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)

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---

**From:** Keith M. Hayasaka [<mailto:kHayasaka@dcplaw.com>]

**Sent:** Thursday, October 27, 2016 8:19 AM

**To:** Jeb Butler <[jeb@butlertobin.com](mailto:jeb@butlertobin.com)>

**Cc:** Sarah Hedrick <[sarah@butlertobin.com](mailto:sarah@butlertobin.com)>

**Subject:** RE: Claim No 146338 265-12778 [REDACTED] v. Joseph Eletto Transfer, Inc., Van;iner Insurance Company and Antwone D. Billings: [REDACTED] v Eletto et al: Written Discovery

Hi Jeb,

I'm working on our response to your 6.4(b) request. If you don't mind, I'd like to have a few more days to respond. Do you have any problem with giving me through next Wednesday, 11/2? Many thanks,

**Keith M. Hayasaka**

DENNIS, CORRY, PORTER & SMITH, LLP  
14 Piedmont Center, Suite 900  
3535 Piedmont Road, NE  
Atlanta, Georgia 30305  
Tel: (404) 365-0102  
Fax: (404) 365-0134

---

**From:** Jeb Butler [<mailto:jeb@butlertobin.com>]

**Sent:** Friday, October 07, 2016 11:50 AM

**To:** Grant B. Smith; Keith M. Hayasaka

**Cc:** Sarah Hedrick

**Subject:** [REDACTED] v Eletto et al: Written Discovery

Mr. Grant & Mr. Hayasaka,

I hope this email finds you well. This email addresses certain issues in discovery. Plaintiff hopes that we can resolve these issues without Court intervention, as Rule 6.4 envisions.

Plaintiff requests response by October 28, three weeks from today.

**GENERAL**

1. Third-party requests: RPD 3 to Eletto, RPD 2 to Billings, and RPD 2 to Vanliner all seek documents acquired via third-party requests. Mainly this is about medical records, which are discoverable whether they're in Plaintiff's possession or Defendants' possession. Plaintiff has produced the medical records in Plaintiff's control to Defendants without charging any copying costs, and will continue to do so as we acquire more records. We would ask that Defendants do the same—that is, produce the evidence without charging copying costs.

If Defendants were to insist on charging copying costs to Plaintiff, then Plaintiff would have to insist that Defendants repay Plaintiffs, at the same rate, for documents already produced and pay for documents that Plaintiff produces in the future. But charging copying costs to each other will be an administrative mess. The process will probably flow better if all parties produce evidence without charging copying costs. Sending electronic copies (which are free) will be sufficient.

2. Bates numbering: Plaintiff Bates-numbered the documents that Plaintiff produced to Defendants, and asks that Defendant Bates-number the documents that it produces to Plaintiff. That way, the parties and Court can keep track of what was produced and when. Otherwise, if a dispute arises as to whether a document is produced, it is very difficult for the Court or parties to know whether the document has in fact been produced, and when, and in response to what.

Plaintiff would prefer that Defendant *re-produce* the documents that it has produced, this time with Bates numbers. If Defendant declines to do so, Plaintiff can Bates number the documents that Defendant has produced *for* Defendant, then produce them back to Defendant along with an RFA confirming that the Bates-numbered documents constitute the documents that Defendant produced.

In the future, please Bates number all documents that Defendants produce.

3. Repeated work product objection: In response to an overwhelming number of Plaintiff's requests, Defendants made a work product objection—the objection appeared almost every time Plaintiff used the phrase “related to.” I suspect that's because outside counsel could have created a memorandum or some other work product “related to” the subject of the request, which would be privileged and which prompted Defendants' objection.

To address this concern, Plaintiff will clarify ‘on the record’ here: *none of Plaintiff's discovery requests seek any documents created by Defendants' outside counsel, and Defendants may withhold such documents without listing them on a privilege log.* If Defendant seeks to withhold *other* documents or evidence, please identify what is being withheld sufficiently for Plaintiff to assess Defendant's claim of privilege as required by U.S.C.R. 5.5 and *General Motors Corp. v. Conkle*, 226 Ga. App. 34, 47 (1997) (“An unsupported claim of privilege does not meet the proponent's burden of showing the privilege applies.”).

4. Finality: With regard to many of the discovery requests discussed below, what Plaintiff seeks is finality—that is, knowing whether Defendants have produced all responsive evidence and information. Where Defendant has responded “subject to” an objection, Plaintiff often cannot tell whether Defendant's response is complete or whether documents or information is being withheld. See *Ford Motor Co. v. Conley*, 294 Ga. 530, 542-45 (2014) (discussing responses coupled with objections). Plaintiff generally either (1) Defendant's representation that all responsive documents have been produced, (2) complete production



of all responsive evidence and information, *or* (3) incomplete production supplemented with a log indicating what documents have been withheld.

### ELETTO'S DISCOVERY RESPONSES

5. RFA 10: In this RFA response, Eletto denied that Billings was an "employee." In light of the definition of employee at FMCSR § 390.5 Plaintiff invites Defendants to reconsider this position.

(The definition of "employee" includes expressly "a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) . . . .")

6. RFAs 13, 15: Here, Eletto denied that Billings was its statutory employee or that it was vicariously liable for Billings's misconduct. Plaintiff invites Defendants to reconsider that position in light of *PN Exp., Inc. v. Zegel*, 304 Ga. App. 672, 675-78 (2010), which held that "[t]he language of 49 CFR § 376.12(c)(1) and earlier regulations to the same effect have been interpreted to impose vicarious liability on the motor carrier, regardless of agency relationships, for the negligent operation of vehicles leased and operated under its certificate."
7. RPD 4: Has Eletto produced all responsive information, or are documents or evidence being withheld? (As noted above, neither this discovery request nor any other seeks documents created by outside counsel.) If Eletto has not produced all responsive evidence, please produce it. If Eletto is withholding evidence, please identify it.
8. RPDs 5, 7: These RPDs inquire into Billings's work schedule and relationship with Eletto. That information is relevant to hours-of-service as well as whether Eletto is vicariously liable for Billings's misconduct, which Eletto apparently intends to make an issue. Please produce the responsive evidence.
9. RPD 8: This request inquires into witness statements taken *in the regular course of business*, and the language of the request itself specifically excludes attorney work product. Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.
10. RPD 9: This RPD addresses the relationship of Defendants and Ryder, the owner of the truck. Eletto produced some evidence, but it is not clear whether Eletto produced everything requested. For instance, the copy of the "Ryder Truck Lease and Service Agreement" that Plaintiff received is missing "Schedule A," an attachment to which the contract refers. Please produce that and the documents containing the language mandated by FMCSR § 376.12.
- Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.
11. RPDs 12, 13; ROGs 9, 10: These RPDs and ROGs inquire into policies, procedures, and training materials, which are relevant to liability (which Defendants dispute). Because Eletto did not make any objection, Eletto's response *appears* complete from a procedural

standpoint, but it seems likely to the undersigned that Eletto has other responsive documents that it has not produced.

Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

12. RPD 14, 16, 17: This RPD asks into the screening and training of Billings, which is relevant to liability on Plaintiff's negligent hiring claim. Because Eletto did not make any objection, Eletto's response *appears* complete from a procedural standpoint, but it seems likely to the undersigned that Eletto has other responsive documents that it has not produced.

Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

13. RPDs 23, 24: These RPDs ask after inspection reports (pre- and post-trip) for the subject truck. Plainly, Defendants should have these. They are relevant given Billings's allegation that the brake pedal in the subject truck was not properly maintained, and Defendant Billings has affirmed that he created such a report (see Billings RFA 24). Where are they?

RPD 28; ROG 19: This RPD and ROG inquire after what Billings was supposed to do in the event of a collision. Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

14. RPD 33: This RPD asks after logbooks, which Defendants should have. Where are they?

15. RPD 35; ROG 20: This RPD and ROG ask after audits of Billings's driving. Because Eletto made no objection, the response appears complete from a procedural perspective, but Plaintiff seeks to confirm—has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

16. RPDs 37, 38; ROG 29: These RPDs and ROG ask after internal documents about the collision. Because Eletto did not make any objection, Eletto's response *appears* complete from a procedural standpoint, but it seems likely to the undersigned that Eletto has other responsive documents that it has not produced.

Has Eletto produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Eletto is withholding.

17. RPD 45: Please produce the drug and alcohol test taken by Billings after the subject collision. I don't think the cited authorities prohibit that. It seems unnecessary to trouble the Court with an in-camera inspection of this simple document, particularly if the tests came back clean.

18. RPD 53; ROG 34: This RPD and ROG inquire into insurance. Is the Vanliner policy listed in Defendant's response the only one that does or may provide coverage for the collision?

19. ROG 3: This ROG asks after when Defendant anticipated litigation, and the response says that it was “when this Defendant was first notified of the incident in suit.” I can’t tell whether that means that Defendant anticipated litigation upon hearing about the wreck or when Defendant was served with the Complaint. On what *date* did Defendant anticipate litigation?
20. ROGs 11, 12: These ROGs inquire into training, and Defendant referred to “another contractor’s truck” involved in the training. Whose truck, who was driving, and what kind of truck was it? (Additionally, the related documents should be produced in response to RPD 14.)
21. ROG 13: This ROG inquires into maintenance. Who serviced the subject truck, and for how long had the truck been in Eletto’s possession as of the date of the collision?
22. ROG 16(g): This ROG subpart asks into the “company identification number,” which in fairness was probably a vague question. To clarify—what DOT and MC number was the subject truck operating under (i.e., what numbers were affixed to its exterior) at the time of the collision?
23. ROG 26: This ROG asks after evidence relating to the collision. (As noted above, neither this discovery request nor any other seeks documents created by outside counsel.) The response refers to four photographs being produced, but Plaintiff has not received them. Please produce them.

Has Eletto otherwise produced or identified all evidence that is responsive to this ROG?

24. ROG 28: This ROG asks after communications between Eletto and Billings. Defendant indicated that it would supplement the response. Please do so.

### **BILLINGS’S DISCOVERY RESPONSES**

25. RFA 19: This RFA asks after who drove the subject truck last before it departed on the trip during which this collision occurred. That is not ambiguous. Please answer.
26. RFA 27: This RFA asks whether Billings was under dispatch for Eletto at the time of the collision—i.e., whether he was making a trip on behalf of and as instructed by Billings. The current response is nonresponsive. Please answer.
27. RPD 5: This RPD into Billings’s work schedule and relationship with Eletto. That information is relevant to hours-of-service as well as whether Eletto is vicariously liable for Billings’s misconduct, which Eletto apparently intends to make into an issue. (As noted above, neither this discovery request nor any other seeks documents created by outside counsel.)

Has Billings produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Billings is withholding.

28. RPDs 19, 20: These RPDs ask after inspection reports (pre- and post-trip) for the subject truck. Plainly, Defendants should have these. They are relevant given Billings’s allegation that the brake pedal in the subject truck was not properly maintained. Further, Defendant

Billings has affirmed that he created such a report (see Billings RFA 24). Where are these reports?

29. RPD 29: This RPD asks after logbooks, which Defendants should have. Where are they?
30. RPD 43: Please produce the drug and alcohol test taken by Billings after the subject collision. I don't think the cited authorities prohibit that. It seems unnecessary to trouble the Court with an in-camera inspection of this simple document, particularly if the tests came back clean.
31. RPD 49: This request inquires into witness statements taken *in the regular course of business*, and the request itself specifically excludes attorney work product. Have Defendants produced all responsive information, or is evidence being withheld? If all responsive evidence has been produced, please say so. If all responsive evidence has *not* been produced, please either produce the evidence or identify what Defendants are withholding.
32. RPD 54; ROG 24: These requests inquire into insurance. It does not appear that the responses include policies of insurance applicable to Mr. Billings. Please provide all responsive evidence and information.
33. ROG 2: This ROG asks after when Defendant anticipated litigation, but the response is ambiguous. On what date did Defendant anticipate litigation?
34. ROGs 7, 8: These ROGs inquire into training and training materials, which are relevant to liability. Please respond completely. If you cross-reference documents produced, please confirm that the documentary production to which your response refers is complete.
35. ROG 12: This ROG asks into what Billings was supposed to do in the event of a collision. Please respond completely. Although this response appears complete from a procedural standpoint, the undersigned seeks to confirm that all responsive information and evidence has been produced.
36. ROG 22, 23: These ROGs ask into previous collisions and FMCSR violations, which are relevant to the negligent hiring claim. Please respond completely.
37. ROG 24, 26: These very basic ROGs ask how the collision occurred and what kind of trip Billings was on when it happened. Please answer.
38. ROG 32: This ROG asks into statements given by Billings. (As noted above, Plaintiff does not seek any document or recording created by Defendants' outside counsel.) Please respond fully.

#### **VANLINER'S DISCOVERY RESPONSES**

39. RPD 3; ROG 9: This RPD and ROG inquire into insurance. Is the Vanliner policy listed in Defendant's response the only one that does or may provide coverage for the collision?
40. ROG 3: This ROG asks after when Defendant anticipated litigation, and the response says that it was "when this Defendant was first notified of the incident in suit." I can't tell whether that means that Defendant anticipated litigation upon hearing about the wreck or

when Defendant was served with the Complaint. On what *date* did Defendant anticipate litigation?

Regards,

Jeb Butler

"It is a privilege to have a job worth doing well."

Jeb Butler  
**Butler Tobin LLC**  
1932 North Druid Hills Rd.  
Suite 250  
Atlanta, GA 30319  
Telephone: 404-587-8423  
Facsimile: 404-581-5877  
[jeb@butlertobin.com](mailto:jeb@butlertobin.com)  
[www.butlertobin.com](http://www.butlertobin.com)  
<image006.png>

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IN THE STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA

██████████,  
Plaintiff,

v.

CIVIL ACTION

FILE NO.: 16A60531

JOSEPH ELETTO TRANSFER, INC.,  
VANLINER INSURANCE COMPANY, AND  
ANTWONE BILLINGS,

Defendants.

**JOSEPH ELETTO TRANSFER, INC.'S RESPONSES TO  
PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS**

**Procedural**

1.

If your response to the contemporaneously-served Requests for Admission numbers 1-9 is anything other than an unqualified admission, produce all documents supporting that contention.

This Defendant objects this paragraph seeks documents protected by the attorney-client privilege, work-product doctrine, or otherwise prepared in anticipation of litigation. This Defendant further objects to the extent this paragraph improperly invades counsel's trial preparation by specifically seeking documents supporting its defense of this suit.

2.

If you contend that you are *not* vicariously liable for the misconduct (if any) of Antwone Billings with regard to the collision described in the Complaint, produce all documents supporting that response.

This Defendant objects this paragraph seeks documents protected by the attorney-client privilege, work-product doctrine, or otherwise prepared in anticipation of litigation.



correspondence, emails, checks, or direct deposit slips not produced in response to the foregoing request.<sup>2</sup>

**This Defendant objects this paragraph seeks documents “describing” or “relating to” information protected by the attorney-client privilege, work-product doctrine, or otherwise prepared in anticipation of litigation. Subject to and without waiving this objection, see non-privileged documents contained within Billings’ driver qualification and personnel files responsive to this paragraph being produced.**

8.

Produce witness statements obtained from any person relevant to this lawsuit. (This request specifically *excludes* attorney work product, but *includes* statements taken during the ordinary course of business or by non-attorneys.)

**This Defendant objects this paragraph seeks documents protected by the attorney-client privilege, work-product doctrine, or otherwise prepared in anticipation of litigation. Subject to and without waiving this objection, see Billings’ written statement and the Georgia Uniform Motor Vehicle Accident Report reflecting “statements” taken by the investigating police officer being produced.**

9.

Produce copies of all contracts, leases, or other documents describing the relationship between the parties involved in this wreck, including Joseph Eletto Transfer, Inc., Antwone Billings, the owner of the subject truck, and the owner of the trailer being towed by the subject truck at the time of the collision.

**This Defendant objects this paragraph seeks documents “describing” information**

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<sup>2</sup> If Joseph Eletto Transfer, Inc. admits that Mr. Billings was an employee of Eletto, *and* was operating within the course and scope of his employment at the time of the collision, you may disregard this request.

**protected by the attorney-client privilege, work-product doctrine, or otherwise prepared in anticipation of litigation. Subject to and without waiving this objection, see non-privileged documents contained within Billings' driver qualification and personnel files being produced responsive to this paragraph, including "Ryder Truck Lease and Service Agreement," "Owner-Operator Data Sheet," and "Lease Agreement."**

---

10.

Please produce any suggestions, requirements, guidelines, manuals, rulebooks, policies, procedures, drafts, criteria, or other documents that Vanliner Insurance Company provided to Eletto regarding the following:

- (a) screening of drivers,
- (b) hiring of drivers,
- (c) training of drivers,
- (d) collision investigation,
- (e) what the company should do in the event of a collision,
- (f) what drivers should do in the event of a collision, or
- (g) compliance with the Federal Motor Carrier Safety Regulations ("FMCSR").

**This Defendant is not in possession of documents responsive to this paragraph.**

**Background**

11.

Produce two organizational charts for Joseph Eletto Transfer, Inc. —one version that was in effect on September 3, 2015, and the version in effect today.

**This Defendant is not in possession of documents responsive to this paragraph.**

12.

Produce policies, procedures, manuals, or handbooks (by whatever name called) that