

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION

OLIVER JORDAN,	*	
	*	
Plaintiff,	*	
	*	CIVIL ACTION
v.	*	NO. 3:20-CV-00060-TCB
	*	
EVANS DELIVERY COMPANY,	*	
INC., ENC HOLDING CORP., and	*	
ACE AMERICAN INSURANCE	*	
COMPANY	*	
	*	
Defendants.	*	

**DEFENDANTS’ SUGGESTION OF DEATH OF OLIVER JORDAN  
AND MOTION TO STAY, OR, IN THE ALTERNATIVE,  
MOTION TO LIMIT THE SCOPE OF DISCOVERY**

Come now defendants Evans Delivery Company, Inc., ENC Holding Corp., and Ace American Insurance Company and pursuant to Fed. R. Civ. P. 25 (a)(1) suggest upon the record the death of Oliver Jordan, the named plaintiff, on or about August 24, 2020. Defendants also respectfully move for a stay of this action or, in the alternative, an order limiting the scope of discovery until a motion to substitute the proper parties has been granted.

**I. Procedural Background**

This is a personal injury action arising from an automobile accident which occurred on October 1, 2019 when a vehicle operated by (then) 83-year-old Oliver

Dalton Jordan collided with a shipping container being hauled by a driver named Paul Reed, while Reed was backing the vehicle into his personal driveway. Plaintiff contends Reed should not have been where he was, and defendants contend that Mr. Jordan should have seen Reed's container and not collided with it. The parties have engaged in written discovery and plaintiff has deposed a Rule 30(b)(6) representative of Evans Delivery Company. The deposition of Mr. Reed, which was postponed once at defendants' request to accommodate Mr. Reed, is scheduled to take place on September 30, 2020. Unfortunately, Mr. Jordan passed away on August 24, 2020.

## **II. Argument and Citation to Authority.**

The Court is authorized, of course, to stay discovery in its entirety pending a motion to substitute the proper party. Fed. R. Civ. P. 17 provides that an action must be "prosecuted in the name of a real party in interest," and there is technically nothing to "prosecute" until the substitution occurs. Defendants acknowledge that it is possible, indeed likely, that the decedent's daughter Ms. Jean Rucker will become a proper party: Mr. Jordan's counsel at the Butler Firm have indicated that they represent Ms. Rucker, that she is an only child, and that she is the only heir of the estate. Until the substitution occurs, however, there is some chance that a person other than Ms. Rucker could control the estate claim. Defendants' employees should

not be forced to sit for deposition until that issue is resolved, particularly Mr. Reed, the driver involved in the subject collision, who could still theoretically be named as a defendant in this action or a wrongful death claim. A stay of discovery in its entirety is authorized on these facts.

Defendants suggest in the alternative that rather than staying the case in its entirety, a more appropriate solution would be to allow both sides to continue discovery on a limited scope. As it appears that the case will likely move forward at some point, Defendants have no objection to moving forward with discovery to non-party medical providers, to deposing law enforcement officers, medical providers, or other witnesses to the motor vehicle accident giving rise to this case, or to otherwise engaging in discovery of non-parties. That would, in fact, facilitate gathering the records that will be necessary for both sides to evaluate medical causation issues between the accident in 2019 and Mr. Jordan's death many months later. Defendants oppose, however, conducting any further discovery of the parties or prospective parties themselves (including Mr. Reed and Ms. Rocker) until the proper parties are joined in this action.

### III. Conclusion.

WHEREFORE Defendants respectfully request an order either (1) staying the case in its entirety or (2) permitting discovery to proceed as to non-parties, but not

as to the parties and putative parties (including Ms. Rocker and Mr. Reed), until the proper parties are joined.

This 25th day of September, 2020.

**FREEMAN MATHIS & GARY, LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically submitted the foregoing **DEFENDANTS' SUGGESTION OF DEATH OF OLIVER JORDAN AND MOTION TO STAY, OR, IN THE ALTERNATIVE, MOTION TO LIMIT THE SCOPE OF DISCOVERY** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

James E. Butler, III, Esq.  
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This 25th day of September, 2020.

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