

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

Johnny Nguyen,)
)
Plaintiff,)
)
v.) CIVIL ACTION
) FILE NO. 16A60875
Audria Leverett,)
)
Defendant.)

PRE-TRIAL ORDER

The following constitutes the Pre-Trial Order entered in the above styled case:

1.

The name, address and phone number of the attorneys who will conduct the trial are as follows:

Plaintiff James A. Rice
Georgia Bar No.602811
Kimberly T. McGowan
Georgia Bar No. 785506
James A. Rice, Jr., P.C.
3863 Postal Drive
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Duluth, GA 30096
678-710-6910 (cell: 386-848-3313)

Defendant Sheetal M. Brahmhatt
Georgia Bar No. 142065
Lynn Leonard & Associates
2400 Century Parkway
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Atlanta, GA 30345
(404) 728-5400

John C. Patton
Georgia Bar No.567232
Stephanie F. Capezzuto
Georgia Bar No. 283324
Taylor English Duma LLP
1600 Parkwood Circle
Suite 400
Atlanta, GA 30339

2.

The estimated time required for trial is 2-3 days.

3.

There are no motions or other matters pending for consideration by the Court except as follows: All Parties reserve the right to file any Motions in Limine before or during trial as evidentiary issues arise which should not in any way delay the trial of this case. Defendant reserves the right to file any motions to compel warranted by a failure of a party or non-party to respond to discovery requests issued within 6 months of the last answer filed in this case.

4.

The jury will be qualified as to relationship with the following:

(a) Plaintiff: Plaintiff, Defendant, James A. Rice Jr. P.C., policyholders, officers, directors, shareholders and anyone with a financial interest in State Farm Mutual Automobile Insurance Company. Plaintiff requests that the jury be qualified as to State Farm in Plaintiff's presence given the multiple experiences in which Plaintiff's Counsel has seen prospective jurors who were pre-qualified and then later disclosed relationships with the insurer when qualified in Plaintiff's Counsel's presence.

(b) Defendant: Plaintiff, Defendant, Plaintiff's counsel/firm and Defendant's counsel/firm. Defendant OBJECTS to the jury being qualified as to State Farm inside the courtroom and respectfully requests that the jury be pre-qualified as to State Farm Mutual Automobile Insurance Company outside the courtroom prior to trial.

5.

(A) All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence

for use at trial.

By Plaintiff: Plaintiff's Counsel is available during the week of July 24-28, July 31st, August 1-11th to schedule the Deposition of Jamal Miles.

By Defendant: Defendant's intend to depose for the purposes of discovery, and potential use at trial, witness Jamal Miles. Based on information and belief, Mr. Miles was the operator of a vehicle that was stopped on I-285 in front of the vehicle driven by Plaintiff prior to the accident. Mr. Miles is currently a resident in a treatment facility in South Georgia. The deposition of Mr. Miles was previously scheduled for July 11th, but was cancelled because of a trial commitment for Plaintiff's counsel. That deposition is in the process of being rescheduled. Counsel for the Defendant further notes that there are non-party requests for records that have not been responded to and which may require an order from this Court to compel production of. Additionally, counsel for Defendant notes that Plaintiff has identified 4 witnesses on their witness list below that were not previously disclosed in their discovery responses. Defendant intends to depose those witnesses and requests that she be allowed to avail herself to a motion to compel should the witnesses not comply with any subpoena issued for their depositions.

(B). Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or nonjoinder of any parties.

6.

The following is the Plaintiff's brief and succinct outline of the case and contentions:

On January 30, 2016, Plaintiff Johnny Nguyen's vehicle was struck in the rear by Defendant Audria Leverett. The collision with Plaintiff's vehicle was the sole result of Defendant's negligence. As a result of the Defendants' negligence, Johnny was immediately injured including but not limited to a traumatic brain injury and hip fracture. Johnny required

emergency transport from the scene and was admitted to Atlanta Medical Center trauma unit due to his brain hemorrhaging and fracture. After discharge several days later, his ongoing injuries required withdraw from school, medication, treatment with a neurologist, orthopedic treatment and physical therapy. Such injuries and treatment were all a direct result of the collision.

7.

The following is the Defendant brief and succinct outline of the case and contentions:

The subject three car accident occurred in the evening, around 10 pm, on January 30, 2016. Defendant was driving a White 1998 Honda Civic on the I-285 Expressway Northbound. Plaintiff was also travelling on the I-285 Expressway Northbound when near LaVista Road, he came to a stop in the left travel lane behind a third vehicle being driven by Jamal Miles that was stalled on the Expressway. When Plaintiff stopped in the travel lanes behind Mr. Miles it does not appear that he activated his hazard lights to alert other drivers on the roadway that he was stopped in the roadway. As Defendant approached LaVista Road on the I-285 Expressway, she was negligent in the operation of her vehicle and was unable to stop her vehicle before striking the rear of the vehicle Plaintiff was driving. Plaintiff was injured in the accident, and was transferred to Grady Hospital where he was hospitalized for a number of days before being discharged. The issues to be resolved by the jury relate to possible negligence on the part of Plaintiff, apportionment, possible proximate cause as to injuries sustained by Plaintiff, resolution of Plaintiff's injuries, and damages, if any, to be awarded to compensate Plaintiff.

8.

The issues for determination by the jury are as follows:

- (a) By Plaintiff: Negligence, proximate cause and Damages.
- (b) By Defendant: Negligence/Negligence per se on the part of Plaintiff;

apportionment; proximate causation of injuries; and damages.

9.

Specifications of negligence including applicable code sections are as follows:

- (a) By Plaintiff: Plaintiff relies upon Georgia's rules of the road as well as all applicable statutes covering Defendant's negligence including but not limited to: negligence per se; failure to exercise due care (O.C.G.A. § 40-6-241), following too closely (O.C.G.A. § 40-6-49); failure to maintain a proper lookout, too fast for conditions (O.C.G.A. § 40-6-180), duty to avoid distractions (O.C.G.A. § 40-6-241), prohibition on driving vehicle when view obstructed or interfered with driver's control of vehicle (O.C.G.A. § 40-6-242), writing, sending or reading text based communications while operating motor vehicle (O.C.G.A. § 40-6-241.2) and other acts of negligence including common law negligence.
- (b) By Defendant: Defendant relies upon Georgia's rules of the road as well as applicable statutes and case law regarding the duty to exercise care for ones own safety while driving including, but not limited to, O.C.G.A. § 51-1-1 (Tort defined); O.C.G.A. § 51-1-2 (Ordinary diligence and ordinary negligence defined); O.C.G.A. § 51-12-33 (Reduction and apportionment of award or bar of recovery according to percentage of fault of parties and nonparties); O.C.G.A. § 40-6-241 (Driver to exercise due care); O.C.G.A. § 40-6-202 (Stopping, standing, or parking outside of business or residential districts); O.C.G.A. § 40-6-275 (Duty to removal vehicle from public roads; removal of incapacitated vehicle from state highway).

10.

If the case is based on a contract, either oral or written, the terms of the contract are as

follows (or, the contract is attached as an Exhibit to this order);

By Plaintiff: Plaintiff has six policies of insurance with State Farm providing \$200,000.00 in difference in limits Underinsured Motorist Coverage. Those contracts and the applicable terms will be relevant if State Farm does not agree to the stipulation contained within section 13.

By Defendant: **Defendant OBJECTS to the inclusion of the reference to State Farm's insurance policies and the availability of Underinsured Motorist Coverage in this Pretrial Order. State Farm has withdrawn its answer in this case, and has elected to defend this matter in the name of Defendant Audria Leverett. Inclusion of the above language by Plaintiff is not provided for at law, is inappropriate and not warranted for the pretrial order issued in a personal injury case, and is a violation of O.C.G.A. § 33-7-11 and the case law interpreting same. Defendant respectfully requests, therefore, that Plaintiff's statement immediately above be STRICKEN from this Pre-Trial Order prior to execution by the Court and REPLACED with the statement that this matter is not based on contract.**

11.

The types of damages and the applicable measure of those damages are stated as follows:

- a) By the Plaintiff: Plaintiff seeks all damages permitted under Georgia law, including special damages, intangible damages and compensatory damages. To date, Plaintiff has the following special damages:

American Medical Response	\$	1,201.50
Atlanta Medical Center	\$	67,616.49
Atlanta Medical Emergency Physicians	\$	1,258.00
Atlanta Medical Center Radiology Dept.	\$	1,320.00

Stanston Spence, M.D.	\$	2,026.00
Carecentrix	\$	65.09
Walker	\$	189.00
Resurgens Orthopedics/Dr. McMahan	\$	1,075.12
Resurgens Physical Therapy	\$	1,158.00
Midtown Neurology/Dr. Mishu & Dr. Sakib	\$	642.83
<u>Lost Wages</u>	<u>\$</u>	<u>6,050.00</u>
TOTAL	\$	82,602.03

Plaintiff may supplement this list prior to trial.

- b) By Defendant: Medical expenses, the measure of which is the reasonable value thereof to be proved by Plaintiff at trial; lost wages, the measure of which is the value thereof to be proved by Plaintiff at trial; and, pain and suffering, the measure of which is the enlightened conscience of fair and impartial jurors based on various factors detailed under Georgia law at trial.

12.

If the case involves divorce, each party shall present to the Court at the pre-trial conference the affidavits required by Rule 24.2. Not Applicable.

13.

The following facts are stipulated: **None; however, see below comment by Plaintiff, along with objection and request to STRIKE by Defendant.**

By Plaintiff: Plaintiff has requested the following stipulation given State Farm has not denied coverage in this matter: The Parties have stipulated that at the time of the January 30, 2016 incident, Plaintiff had 6 motor vehicle policies of insurance in full force and effect with State Farm Mutual Automobile Insurance which provided \$200,000.00 in difference-in-limits

(reduced) underinsured motorist coverage. The Parties stipulate that Plaintiff is not required to prove the existence of the policies and that they were in effect at the time of the collision for the amount and type of underinsured motorist coverage given this stipulation set forth within the Pre-Trial Order. State Farm will be entitled to an offset from any verdict of \$1,000.00 in liability coverage previously paid along with a credit for the \$50,000.00 in medical payments previously paid. As such, State Farm agrees the policies would provide up to \$199,000.00 in Underinsured Motorist coverage. This coverage would apply for any verdict between \$51,001.00 and \$250,000.00.

By Defendant: Defendant objects to the inclusion of the reference to State Farm’s insurance policies and the availability of Underinsured Motorist Coverage in this Pretrial Order. State Farm has withdrawn its answer in this case, and has elected to defend this matter in the name of Defendant Audria Leverett. Inclusion of the above language by Plaintiff is not provided for at law, is inappropriate and not warranted for the pretrial order issued in a personal injury case, and is a violation of O.C.G.A. § 33-7-11 and the case law interpreting same. Defendant respectfully requests, therefore, that said reference above be STRICKEN from this Pre-Trial Order prior to execution by the Court.

14.

The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiff, or Defendant. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

NOTE: Defendant OBJECTS to the inclusion of a reference to “documents provided by ...State Farm” (Plaintiff’s Underinsured Motorist Carrier) and “All State Farm Policies...” on Plaintiff’s Exhibit list. State Farm has withdrawn its answer in this

case, and has elected to defend this case in the name of the Defendant Leverett. Reference to these documents in the witness list is inappropriate and not warranted for the pretrial order issued in a personal injury case, and is a violation of O.C.G.A. § 33-7-11 and the case law interpreting same. Defendant respectfully requests, therefore, that said references in items 3 and 4 below be STRICKEN from this Pre-Trial Order prior to execution by the Court.

a. By the Plaintiff:

1. Any document referenced by Defendant;
2. All pleadings served or filed in this matter;
3. All documents provided by Defendant or State Farm;
4. All State Farm Policies and corresponding declarations pages providing coverage to Plaintiff;
5. The Georgia Uniform Motor Vehicle Accident Report;
6. Copies of the 911 calls, all CAD reports, all photographs and/or video obtained from an ORR request to the 911 call center and investigating police department;
7. Photographs, repair bills or total loss evaluations of the vehicles involved and Photographs of the area where the incident occurred;
8. Photographs of the interior and exterior of Plaintiff's place of work, King's Seafood;
9. Photographs and/or diagrams mapping the route from where Plaintiff worked to the location of the motor vehicle accidents;
10. Photographs of the Plaintiff before and after the collision during his hospitalization and recovery;

11. All depositions and attachments thereto;
12. Plaintiff's certified medical records from all providers including American Medical Response (ambulance); Atlanta Medical Center; Atlanta Medical Center Emergency Physicians; Atlanta Medical Center Radiology Department; Stanston Spence, M.D.; Resurgens Orthopedics and Resurgens Orthopedics Physical Therapy; Midtown Neurology; Accident Recovery Center (previous 2014 treatment); and Gwinnett Medical Clinic (prior family doctor).
13. Any and all documents necessary for impeachment, cross-examination, rebuttal or rehabilitation;
14. The 1949 Mortality Table;
15. Plaintiff's radiological studies;
16. Any blow-ups, diagrams or illustrations of Plaintiff's injuries and resulting health care treatment;
17. Any statement by Defendant and any other person involved in the collision as a driver or passenger;
18. Any records of Jamal Miles including but not limited to medical, treatment and confinement/commitment records;
19. All claims and settlement documents involving Jamal Miles;
20. Certified criminal convictions of Jamal Miles or any witness put forward by the Defendant;
21. Certified disposition of Defendant's traffic citation from this incident;

22. Itemized statements and bills from any of Plaintiff's treating healthcare providers, including but not limited to those itemized in response to number 11 above; and
23. Paystubs, Lost Wage Documentation, time sheets and records from King Seafood Market LLC.

Plaintiff objects to the introduction of any documents which were not produced during discovery by the Defendant including but not limited to any records from Aetna Health and Life Insurance Company, AT&T Subpoena Center, Cigna Health and Life Insurance Company, Guide One Mutual Insurance Company, Gwinnett Technical College, King's Seafood or Safeco Insurance Company of America or any documents regarding any subsequent accidents or injuries.

The Plaintiff has not been afforded the opportunity to review all documentary or physical evidence listed by the opposing party and accordingly does not stipulate to the authenticity of the same at this time. The Plaintiff reserves the right to raise any objections to the opposing party's documentary and/or physical evidence upon the same being tendered into evidence. The Plaintiff agrees that the parties may amend their lists up until five (5) days prior to trial.

b. By the Defendant:

- 1) Motor Vehicle Accident Report for 1/30/2016 Accident;
- 2) Certified Copies of Records from Guide One Mutual Insurance;
- 3) Motor Vehicle Accident Report for 5/9/2014 Accident;
- 4) Certified Copies of Records from Accident Recovery Center of Greater Atlanta;
- 5) Release of All Claims, signed by Plaintiff on April 6, 2015;

- 6) Certified Records from Midtown Neurology;
- 7) Certified Records of Resurgens Orthopedics;
- 8) Certified Records from Gwinnett Clinic-Duluth/Breckinridge;
- 9) Any exhibits listed by Plaintiff;
- 10) Plaintiff's Verified Responses to Plaintiff's First Interrogatories and First Requests for Production of Documents;
- 11) Exhibits to any depositions taken in this case;
- 12) Records from the following entities which have not yet been produced in response to Non-Party Requests for Production:

Aetna Health and Life Insurance Company; American Medical Response
AT&T; CIGNA Health and Life Insurance Company; Gwinnett Technical
College; King's Seafood; Safeco Insurance Company of America.
- 13) Google Earth Images of the Location where the 1/30/2016 accident occurred;
- 14) Google Maps Images of the location where the 1/30/2016 accident occurred.
- 15) Documents or other evidence to be used for purposes of impeachment or rebuttal; and,
- 16) Demonstrative Exhibits.

Plaintiff is hereby notified pursuant to O.C.G.A. §§ 24-8-803(6) and 24-9-902(11) of the Undersigned's intent to use the documents identified in this Paragraph, or any portions thereof, at trial and of Plaintiff's opportunity to review these records prior to trial upon reasonable notice, and request. Additionally, Defendant reserves the right to supplement this response five (5) days prior to the date of trial and reserves the right to introduce documentary evidence in rebuttal. Defendant objects to the introduction of any document into evidence which was requested from Plaintiff in discovery but which was not produced (if any) such as criminal records or other

information regarding Jamal Miles, or any other witness in this case. Further, Defendant does not yet stipulate to the authenticity or admissibility of any documentary evidence identified by Plaintiff until an opportunity to inspect has been provided. In addition, Defendant reserves the right to object to any documentary evidence of Plaintiff on grounds outside of authenticity, and insists on a proper foundation being laid.

15.

Special authorities relied upon the Plaintiff relating to peculiar evidentiary or other legal questions are as follows: None at this time.

16.

Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows:

- a. The failure to specifically state items of special damages sought in this action bars recovery in this action as set forth in O.C.G.A. § 9-11-9(g).
- b. Defendant reserves the right to file Motions in Limine or other motions regarding evidentiary issues if they arise during trial.
- c. Defendant reserves the right to amend this portion of the Pre-Trial Order.

17.

All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3

18.

The testimony of the following persons may be introduced by depositions:

By Plaintiff: Any and all lay or expert witnesses listed by the parties in paragraph 19 below, whose testimony must be preserved for trial, provided that the witness is unavailable for trial, or beyond the subpoena power of this court, within the meaning of

the Ga. Civil Practice Act. Plaintiff objects to any “rebuttal” experts as Defendant has never identified any experts and Defendant has a duty under Georgia Civil Practice Act to timely notify and identify any experts and provide the basis for their opinions.

By Defendant: Any of Plaintiff’s medical treatment providers, rebuttal experts and witnesses, and any witness whose deposition was taken who is unavailable for trial pursuant to O.C.G.A. §9-11-32. Defendant objects to any deposition testimony, other than medical experts, unless a proper showing of unavailability to testify at trial is made and the deposition was taken for use as evidence. Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the Court prior to trial.

19.

The following are lists of witnesses:

As a preliminary note, Defendant OBJECTS to the listing of “Any Representative of State Farm necessary to authenticate or bring into evidence the policies, declarations page and coverage available to Plaintiff” on Plaintiff’s may call witness list. State Farm has withdrawn its answer in this case, and has elected to defend this case in the name of the Defendant Leverett. Reference to these documents in the witness list is inappropriate and not warranted for the pretrial order issued in a personal injury case, and is a violation of O.C.G.A. § 33-7-11 and the case law interpreting same. Defendant respectfully requests, therefore, that witness 12 below be STRICKEN from this Pre-Trial Order prior to execution by the Court.

(a) Plaintiff will have present at trial: None.

(b) Plaintiff may have present at trial:

1. Plaintiff;

2. Defendant;
3. Steven Thai;
4. Jamal Miles;
5. Sheateal Brooks;
6. Shakira Jones;
7. Officer Yimer or any other responding investigator or officer;
8. Plaintiff's Employer, Alen Nguyen;
9. Plaintiff's Sister, Hong Nguyen;
10. Plaintiff's Mother, Dan Dang;
11. Steven Thai's Sister, Kathy Thai;
12. Any Representative of State Farm necessary to authenticate or bring into evidence the policies, declarations pages and coverage available to Plaintiff;
13. Any of Plaintiff's treating medical providers identified during discovery, including providers at Atlanta American Medical Response of Georgia; Atlanta Medical Center; Stanston Spence, M.D.; Resurgens Orthopedics and Resurgens Orthopedics Physical Therapy; Midtown Neurology; Accident Recovery Center (previous 2014 treatment); and Gwinnett Medical Clinic (prior family doctor);
14. Any person listed by Defendant or UM carrier; and
15. Any person necessary to authenticate any document or item to lay the foundation for entry into evidence for which Plaintiff tenders into evidence at the trial of this matter.

(c) Defendant will have present at trial: None.

(d) Defendant may have present at trial:

- 1) Defendant, Audria Leverett;
- 2) Plaintiff, Johnny Nguyen;
- 3) Steven Thai;
- 4) Jamal Miles;
- 5) Officer N. Yimer, Badge # 3199;
- 6) Shantae Brooks;
- 7) Shakira Jones;
- 8) Any person listed by Plaintiff who was previously identified during discovery as required by Georgia law;
- 9) Any of Plaintiff's medical care providers identified in Plaintiff's medical records, including providers from Resurgens Orthopedics and Resurgens Orthopedics Physical Therapy; Midtown Neurology;
- 10) Any person necessary to authenticate any document or item to lay the foundation for entry into evidence for which Defendant tenders into evidence at the trial of this matter.

Defendant reserves the right to call witnesses for rebuttal and/or impeachment of Plaintiff's witnesses. Defendant objects to Plaintiff calling any witness at trial who was not identified by name, address and phone number in discovery. Opposing counsel may rely on representation by the designated party that he/she will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means. The parties may add a new witness if the interest of justice so require, but only with either leave of Court or consent of the opposing party, if done at least five (5) days prior to beginning of trial.

20.

The form of all possible verdicts to be considered by the jury are as follows:

Proposed by Plaintiff:

(a) "We, the jury, find in favor of the Plaintiff in the amount of \$_____."

Or

(b) "We, the jury, find in favor of the Defendant."

Proposed by Defendant:

(a) We, the jury, find for the Defendant Audria Leverett.

OR

(b) We, the jury, find for Plaintiff Johnny Nguyen in the amount of \$_____.

AND

We, the jury, apportion fault as follows:

_____% - Defendant Audria Leverett

_____% - Plaintiff Johnny Nguyen

(MUST ADD UP TO 100%)

21.

- a. The possibilities of settling the case are: poor.
- b. The parties do want the case reported.
- c. The cost of take-down will be shared equally by all parties.
- d. Other matters: None at this time.

This 14th day of July, 2017.

JAMES A. RICE, JR., P.C.
Attorneys for Plaintiff

/s/ Kimberly T. McGowan

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LYNN LEONARD & ASSOCIATES
Attorney for Defendant

/s/ Sheetal M. Brahmbhatt [signed with
permission by Kimberly McGowan]
Sheetal M. Brahmbhatt
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STATE COURT OF
DEKALB COUNTY, GA.
7/14/2017 4:45:01 PM
E-FILED
BY: Jewel Hendrix

TAYLOR ENGLISH DUMA LLP
Attorney for State Farm

/s/ John C. Patton [signed with permission by
Kimberly McGowan]
John C. Patton
Georgia State Bar No. 567232
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1600 Parkwood Circle, Suite 400
Atlanta, GA 30339

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the PRE-TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the Court to prevent manifest injustice.

This _____ day of _____, 2017.

Judge Johnny Panos, State Court Of DeKalb
County

CERTIFICATE OF SERVICE

This is to certify that I have this day served all counsel to this action with a copy of the foregoing Consolidated Pre-Trial Order in the above-styled case by electronically filing and emailing through Odyssey eFileGA.

John C. Patton
Stephanie Ford Capezuto
Taylor English Duma LLP
1600 Parkwood Circle
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Sheetal Brahmhatt
Lynn Leonard & Associates
2400 Century Parkway
Suite 200
Atlanta, GA 30345

This 14th day of July, 2017.

/s/ Kimberly T. McGowan

Kimberly T. McGowan