

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

ALICE WARD and)	
MICHAEL WARD)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE NO.
v.)	
)	16CV6820
NORIEN ABONEAAJ)	
DORA SOSA-AGUILAR, jointly)	
Severally, and/or individually,)	
)	
Defendants.)	

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes a Consolidated Pre-Trial Order entered in the above-styled case after conference with counsel for the parties:

(1) The name, address and phone numbers who will conduct the trial are as follows:

For Plaintiffs Alice Ward and Michael Ward:

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For Defendant Aboneaaj:

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Conoscienti & Ledbetter, LLC
315 West Ponce de Leon Avenue
Suite 400
Decatur, GA 30030

For Defendant Sosa-Aguilar:

R. Christopher Harrison, Esq.
Downey & Cleveland
288 Washington Avenue
Marietta, GA 30060

(2) The estimated time for trial is:

Three to four days.

(3) There are no motions or other matters pending for consideration by the court except as follows:

Plaintiffs Alice Ward and Michael Ward:

Plaintiffs anticipate filing a Motion for Protective Order regarding 18 Non-Party Requests for Production of Documents served by Defendant Aboneaaj on March 14, 2019. Furthermore, Plaintiffs reserve the right to file motions in *limine* before the trial of this case

Defendant Aboneaaj:

None pending for Defendant. However, Defendant reserves the right to file motions in *limine* before the trial of this case.

Defendant Sosa-Aguilar:

None pending for Defendant. However, Defendant reserves the right to file motions in *limine* before the trial of this case.

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

Plaintiffs Alice Ward and Michael Ward:

- (a) Alice Ward
- (b) Michael Ward
- (c) Buckley Beal, LLP
- (d) Norien Aboneaaj
- (e) Dora Sosa-Aguilar

Defendant Aboneaaj:

- (a) Alice Ward;
- (b) Michael Ward;
- (c) Andrew Beal, Esq.;
- (d) Employees or members of Buckley Beal, LLP
- (e) Dora Sosa-Aguilar;
- (f) R. Christopher Harrison, Esq.;
- (g) Employees or members of Downey & Cleveland;
- (h) The Emory Clinic

Defendant Sosa-Aguilar:

- (a) The parties;
- (b) All others with a contingent interest in the outcome of this case.

(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 experts and any person(s) for the preservation of evidence for use at trial. The parties reserve the right to take depositions up to the time of trial. Plaintiffs are filing an objection to late served third party Requests to Non Parties by Defendant Aboneaaj. Plaintiff reserves the right to supplement discovery responses;

(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.

Plaintiffs Alice Ward and Michael Ward: N/A

Defendant Aboneaaj: Defendant Aboneaaj is currently named under the misnomer “Noreen Aboneaaj.” Defendant Aboneaaj’s correct legal name is Norien Aboneaaj.

Defendant Sosa-Aguilar: N/A.

(6) The following is the Plaintiffs' brief and succinct outline of the case and contentions:

This case arises out of a horrible automobile accident which occurred on the morning of Tuesday, May 17, 2016 in which the automobile owned by Defendant Norien Aboneaaj (hereinafter "Aboneaaj") and driven by Defendant Dora Sosa-Aguilar (hereinafter "Sosa-Aguilar") smashed head-on into Plaintiff's vehicle, causing catastrophic injuries that required Alice Ward to spend eleven days in the Intensive Care Unit of Grady Hospital and eith days in the Emory Rehabilitation Hospital, followed by months of rehabilitation at home and in physical therapy.

At some point early that morning, Aboneaaj negligently lent her vehicle to Defendant Sosa-Aguilar, after the two had spent the evening drinking, smoking marijuana and taking other drugs. Aboneaaj was fully aware that Sosa-Aguilar could not drive because of the drugs and alcohol she had taken in her presence. Further, she knew that Defendant Sosa-Aguilar was an unfit driver because of her numerous accidents and traffic citations, which the two had discussed. Nevertheless, knowing her impaired condition, Aboneaaj lent her Mercedes to Sosa-Aguilar so that she could purchase rolling papers and so that Aboneaaj could be alone with her lover. After driving around town from the early morning hours, Sosa- Aguilar finally lost control of her car around 9 am and crashed headlong into Plaintiff Alice Ward's car while it remained at a stop light. The violent impact of the crash pushed the front end of Plaintiff Alice Ward's Mini Cooper into her lap shattering the bones in her legs from her knees down.

Plaintiff Alice Ward also injuries included but were not limited to:

- Displaced fracture of her left tibia;
- Multiple fractures of her ribs;
- Fracture of her right fibula;
- Fracture of her first lumbar vertebra;
- Fracture of her third lumbar;
- Fracture of her fourth lumbar;
- Displaced fracture of her right fibula;
- Displaced pilon fracture of her right tibia;
- Fracture of her lower leg;
- Fracture of her fifth metacarpal bone, right hand;
- Fracture and lacerations of her right shoulder;
- Fracture of her right ankle;
- Bruising and abrasions of her left ankle
- Laceration of abdomen;
- Lacerations to her face;
- Laceration of her right hip;
- Right Shoulder Full Thickness Rotator Cuff Tear;
- Biceps labral complex injury; and
- Post-traumatic stress disorder with anxiety.

These injuries were proximately caused by Defendant Sosa Aguilar's reckless conduct and by Defendant Aboneaaj's breach of her duty of care to Plaintiffs in negligently lending her automobile to Defendant Sosa-Aguilar, knowing full well that Sosa-Aguilar was not a good driver on the best of days, much less when she was heavily intoxicated with drugs and alcohol as was the case after Defendants Aboneaaj and Sosa-Aguilar had spent the evening drinking and doing drugs. Defendant Aboneaaj's negligent entrustment was also the direct and proximate cause of severe injury to Plaintiffs Alice and Michael Ward resulting in continuing medical expenses, hospitalization and extensive rehabilitation treatment.

Clearly, Defendant Sosa-Aguilar was negligent and reckless in her driving and failed to exercise even ordinary and reasonable care and caution to avoid injury or damage, constituting negligence and negligence per se. Defendant Sosa-Aguilar's negligence and negligence per se were the direct and proximate cause of severe injuries to Plaintiff Alice Ward resulting in continuing medical expenses, hospitalization and extensive rehabilitation treatment

Plaintiff contends that pursuant to Georgia law, Defendant Aboneaaj was acting as a social host to Defendant Sosa-Aguilar on the night of May 16, 2016 and the morning of May 17, 2016. Defendant Aboneaaj was subject to certain duties to both her co-defendant and Plaintiffs, pursuant to Georgia law. While hosting Defendant Sosa-Aguilar in her home, Defendant Aboneaaj provided alcohol and other intoxicating substances to Defendant Sosa-Aguilar and continued to provide alcohol and other intoxicating substances even after Defendant Sosa-Aguilar reached a point of obvious impairment. Not only did Defendant Aboneaaj fail to prevent, or even attempt to prevent, Defendant Sosa-Aguilar from operating a motor vehicle, Defendant Aboneaaj actually provided her own motor vehicle to the visibly impaired Defendant Sosa-Aguilar who then, with Defendant Aboneaaj's permission, drove this automobile violently into Plaintiff Alice Ward. Defendant Aboneaaj's failure to observe her legal duties as a social host resulted in, and was the proximate cause of, the collision which seriously injured Plaintiff Alice Ward.

Plaintiff contends that as a result of the collision caused by Defendants, Plaintiff Michael Ward, spouse of Plaintiff Alice Ward, initially took paid-time-off ("PTO") from his position at Emory University until his PTO was exhausted. Thereafter, he took unpaid leave from his position, pursuant to the Family and Medical Leave Act. He eventually returned to his position at Emory University part-time and then briefly full-time. However, due to the stress and burden imposed upon him by Plaintiff Alice Ward's post-injury care needs, he elected to take an early retirement from his well-paid position at Emory University to provide full time care to his spouse.

As a result of the collision caused by the Defendants, Plaintiff Alice Ward has been unable to participate in the keeping of the home and in the intimacies of marriage as she had before the collision. Prior to the collision, Plaintiff Alice Ward was a fully consorting spouse to Plaintiff Michael Ward, sharing the obligations of family, home and marital intimacy. Plaintiff Alice Ward has been unable to fully share in the obligations of family, home and marital intimacy as a result of the collision caused by the Defendants. Plaintiff Michael Ward is entitled to

re-cover the damages he has suffered as a result of the loss of consortium of his spouse including the value of these services to Plaintiff Michael Ward, and Defendants are fully liable for this loss of consortium.

Further, Michael Ward provided weeks of ‘around the clock’ care to his wife while she was recovering from her injuries, providing her with injections, monitoring her medicines, helping her in and out of bed, on and off the bed pan, and bathing and cleaning her. Plaintiff Michael Ward is entitled to damages in an amount equal to value of these services that he had to render to his wife for her care and treatment following the collision caused by the Defendants.

Finally, Defendants Aboneaaj and Sosa-Aguilar were so reckless and showed such a complete lack of care for the consequences of their action, Plaintiffs are entitled to an award of punitive damages in an amount determined by the enlightened conscience of the jury sufficient to deter such acts in the future and attorney’s fees from their intentional misconduct

(7) The following is Defendants’ brief and succinct outline of the case and contentions:

Defendant Aboneaaj:

This Defendant contends Defendant Sosa-Aguilar is solely at fault for causing the May 17, 2016 incident forming the basis of Plaintiffs’ Complaint. This Defendant denies she negligently entrusted her vehicle to Defendant Sosa-Aguilar before the subject incident. Further, this Defendant denies she is otherwise responsible for the subject incident under Plaintiffs’ “social host liability” theories of recovery. Rather, this Defendant contends Defendant Sosa-Aguilar stole her vehicle before the subject incident, and was operating her vehicle without her expressed or implied permission at the time Defendant Sosa-Aguilar caused the incident forming the basis of the Complaint. This Defendant further denies she provided Defendant Sosa-Aguilar with alcohol with actual knowledge that Defendant Sosa-Aguilar would soon drive a motor vehicle.

On May 16, 2016, Defendant Sosa-Aguilar was a guest at this Defendant’s home, located at 3077 Colonial Way, Chamblee, Georgia 30341. After a social evening that admittedly resulted in intoxication, this Defendant allowed Defendant Sosa-Aguilar to sleep on her couch. However, sometime during the early-morning hours of May 17, 2016, Defendant Sosa-Aguilar took the keys to this Defendant’s 2014 Mercedes-Benz C250, without this Defendant’s expressed or implied permission, and used the keys to steal this Defendant’s vehicle. Thereafter, Defendant Sosa-Aguilar negligently operated this Defendant’s vehicle and proximately caused the incident forming the basis of Plaintiffs’ Complaint. Upon learning of the subject incident, this Defendant contacted the DeKalb County Police Department and reported her vehicle stolen. This Defendant identified Defendant Sosa-Aguilar as the likely suspect of the theft, and the DeKalb County Police Department prepared an incident report, case number 16-047498, which identifies Defendant Sosa-Aguilar as the likely suspect of the crime.

This Defendant contends she never provided Defendant Sosa-Aguilar with expressed or implied permission to use her vehicle before the incident forming the basis of Plaintiffs' Complaint. Further, this Defendant contends she did not provide intoxicating substances to Defendant Sosa-Aguilar with knowledge that she would drive a motor vehicle, as Defendant Sosa-Aguilar did not have independent access to a vehicle, nor the authority to drive this Defendant's vehicle. Therefore, Plaintiffs cannot establish the factual basis to support their claims against this Defendant, as a matter of law.

This Defendant further contests the nature, duration and extent of Plaintiffs' alleged injuries and damages, and denies Plaintiff is entitled to recovery punitive damages against this Defendant, as a matter of Georgia law.

Defendant Sosa-Aguilar:

The Defendant admits duty and breach of duty and further admits that her negligence caused the accident at issue. The Defendant admits that Co-Defendant Noreen Aboneaaj gave permission to operate the vehicle at issue. The Defendant contests all remaining issues and allegations, including but not limited to: proximate causation, claimed medical damages, and punitive damages.

(8) The issues for determination by the fact finder are as follows:

Plaintiffs Alice Ward and Michael Ward:

Whether Defendant Sosa-Aguilar negligently caused the automobile collision that injured Plaintiff Alice Ward and the amount of the award of damages for same.

Whether Defendant Norien Aboneaaj negligently entrusted her automobile, a dangerous instrumentality, to Defendant Sosa-Aguilar and the amount of damages arising from this action.

Whether Defendant Aboneaaj failed in her duties at law as a social host by providing alcohol and other intoxicating substances to Defendant Sosa Aguilar to the point of obvious impairment and then not only permitted her to drive, but provided her an automobile to drive and the amount of the award of damages for same.

Whether Plaintiff Michael Ward suffered a loss of consortium, in the form of a loss of companionship, services and intimacy of his wife as a result of the automobile collision and the amount of the award of damages for same against each defendant

Whether Plaintiff Michael Ward rendered valuable services to his wife in caring for her after the accident, and the value of any such services

Whether Plaintiffs are entitled to an award of special Damages, and the value of such special damages.

Whether Plaintiffs are entitled to an award of general damages to for Plaintiffs for pain and suffering and interruption to life and loss of value or enjoyment of life proximately caused by the accident, and if so, the amount of such an award.

Whether Plaintiffs should be awarded a reimbursement of their attorney's fees and costs of litigation and punitive damages and the amount of same.

Whether Plaintiffs should be awarded punitive damages and the amount of such an award.

Defendant Aboneaaj:

- (a) Negligence of Defendant Aboneaaj;
- (b) Negligence of Defendant Sosa-Aguilar;
- (c) Apportionment of Fault;
- (d) Injuries;
- (e) Proximate Causation;
- (f) Damages;
- (g) Mitigation of Damages.

Defendant Sosa-Aguilar:

- (a) Negligence of Defendant Noreen Aboneaaj;
- (b) Apportionment of fault;
- (c) Proximate cause; and
- (d) Damages.

(9) Specifications of negligence including applicable code sections are as follows:

Plaintiffs Alice Ward and Michael Ward:

Negligence on the part of Defendant Dora Sosa-Aguilar as contemplated by O.C.G.A. § 51-1-4, and Negligence Per Se due to her failure to maintain lane pursuant to O.C.G.A. 40-6-48.

Negligence in the form of negligent entrustment on the part of Defendant Norien Aboneaaj as defined under the doctrine of negligent entrustment, i.e. "a party is liable if he entrusts someone with an instrumentality, with actual knowledge that the person to whom he has entrusted the instrumentality is incompetent by reason of his age or inexperience, or his physical or mental condition, or his known habit of recklessness." *Thomason v. Harper*, supra, 162 Ga.App. at 444-445, 289 S.E.2d 773(2); *Ballew v. Riggs*, 244 Ga. 232, 235, 259 S.E.2d 482 (1979); *Gill Plumbing Co. v. Macon*, 187 Ga.App. 481,

482-484(2), 370 S.E.2d 657, 659 (1988), *Gunn v. Booker*, 259 Ga. 343, 346, 381 S.E.2d 286, 290 (1989).

Defendant Aboneaaj is liable as a social host as set forth in O.C.G.A. § 51-1-40.

Defendant Aboneaaj:

O.C.G.A. § 51-1-2:

“In general, ordinary diligence is that degree of care which is exercised by ordinarily prudent persons under the same or similar circumstances. As applied to the preservation of property, the term “ordinary diligence” means that care which every prudent man takes of his own property of a similar nature. The absence of such diligence is termed ordinary negligence.”

“Under the doctrine of negligent entrustment, a party is liable if he entrusts someone with an instrumentality, with actual knowledge that the person to whom he has entrusted the instrumentality is incompetent by reason of his age or inexperience, or his physical or mental condition, or his known habit of recklessness.” *Parker v. Silviano*, 284 Ga. App. 278, 280 (2007). (citing *Danforth v. Bulman*, 276 Ga. App. 531, 535 (2005)).

1 Ga. Jury Instructions - Civil § 60.410:

“One who knowingly entrusts or gives a dangerous instrumentality to another person who is not competent to use it is legally responsible for injuries to third persons that result from its negligent use by the person. This rule applies to a person who lends an automobile to someone who is under the influence of intoxicating liquor or drugs.”

O.C.G.A. § 51-1-40 (a) – (b):

- (a) The General Assembly finds and declares that the consumption of alcoholic beverages, rather than the sale or furnishing or serving of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person, except as otherwise provided in subsection (b) of this Code section.
- (b) A person who sells, furnishes, or serves alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury, death, or damage caused by or resulting from the intoxication of such person, including injury or death to other persons; provided, however, a person who willfully, knowingly, and unlawfully sells, furnishes, or serves alcoholic beverages to a person who is not of lawful drinking age, knowing that such person will soon be driving a motor vehicle, or who knowingly sells, furnishes, or serves alcoholic beverages to a person who is in a state of noticeable intoxication, knowing that such person will soon be driving a motor vehicle, may become liable for injury or damage caused by or resulting from the intoxication of such minor or person when the sale, furnishing, or serving is the proximate cause of such injury or damage. Nothing contained in this Code section shall authorize the consumer of any alcoholic beverage to recover from the provider of such alcoholic beverage for injuries or damages suffered by the consumer.

O.C.G.A. §§ 51-12-33 (b)-(d):

“Where an action is brought against more than one person for injury to person or property, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code section, if any, apportion its award of damages among the persons who are liable according to the percentage of fault of each person. Damages apportioned by the trier of fact as provided in this Code section shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution.” “In assessing percentages of fault, the trier of fact shall consider the fault of all persons or entities who contributed to the alleged injury or damages, regardless of whether the person or entity was, or could have been, named as a party to the suit.” “Negligence or fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or partially at fault. The notice shall be given by filing a pleading in the action designating the nonparty and setting forth the nonparty's name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing the nonparty to be at fault.”

Defendant Sosa-Aguilar:

(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):

Not Applicable.

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

Plaintiff Alice Ward:

Special damages: Plaintiff Alice Ward’s medical bills total \$311,959.10. Plaintiff Alice Ward’s medical bills summary is attached hereto as Exhibit “A”.

General damages: Pain and suffering to Plaintiff Alice Ward caused by her injuries and loss of enjoyment of life suffered by Plaintiff Alice Ward for the incapacitation caused by the injuries, both amounts to be determined by the jury.

Plaintiffs request that the jury be given Pattern Jury Instruction 66.501 Tort Damages; Pain and Suffering; Generally:

Pain and suffering is a legal item of damages. The measure is the enlightened conscience of fair and impartial jurors. Questions of whether, how much, and how long the plaintiff has suffered or will suffer are for you to decide. Western, etc.,

Railroad Co. v. Young, 83 Ga. 512, 515 (1889) Redd v. Peters, 100 Ga. App. 316 (1959)

Punitive damages in an amount to be determined by the jury.

Attorney's fees to be submitted after trial.

Plaintiff Michael Ward:

Special damages include the value of the care services he provided to Plaintiff Alice Ward during her recovery, totaling \$40,000.00 at the customary hourly rate for that work of \$20.00 per hour for post-operative care by nurse practitioners .

General damages: Include loss of companionship, services, and intimacy of his spouse in an amount to be determined by the jury.

Plaintiffs request that the jury be given Pattern Jury Instruction 66.400 Tort Damages; Consortium:

A married person has a right to recover for the loss of consortium, sometimes called loss of services, of the spouse. You should be careful to remember that services the law refers to are not only household labor but also society, companionship, affection, and all matters of value arising from marriage. There does not have to be any direct evidence of their value, but the measure of damages is their reasonable value, as determined by the enlightened conscience of impartial jurors taking into consideration the nature of the services and all the circumstances of the case. Brown v. Georgia-Tennessee Coaches Inc., 88 Ga. App. 519 (1953); married woman has action for loss of consortium. Nunnally v. Shockley, 97 Ga. App. 300 (1958) Hobbs v. Holliman, 74 Ga. App. 735, 739 (1947) Shepherd Construction Co. Inc. v. Vaughn, 88 Ga. App. 285 (1953)

Defendant Aboneaaj:

Defendant contests the nature, duration and extent of Plaintiffs' alleged injuries and damages, and demand strict proof thereof.

O.C.G.A. § 51-12-8:

“If the damage incurred by the plaintiff is only the imaginary or possible result of a tortious act or if other and contingent circumstances preponderate in causing the injury, such damage is too remote to be the basis of recovery against the wrongdoer.”

O.C.G.A. § 51-12-9:

“Damages which are the legal and natural result of the act done, though contingent to some extent, are not too remote to be recovered. However, damages traceable to the act, but

which are not its legal and natural consequence, are too remote and contingent to be recovered.”

O.C.G.A § 51-12-11:

“When a person is injured by the negligence of another, he must mitigate his damages as far as is practicable by the use of ordinary care and diligence. However, this duty to mitigate does not apply in cases of positive and continuous torts.”

Georgia Suggested Pattern Jury Instructions – Civil, Vol. I § 66.504:

“No plaintiff may recover for injuries or disabilities that are not connected with the act or omissions of the defendant in this case. There can be no recovery for a particular plaintiff for any injury or disability that was not proximately caused by the incident in question.”

O.C.G.A § 51-12-5.1(b):

“Punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.”

O.C.G.A § 51-12-5.1(f):

“In a tort case in which the cause of action does not arise from product liability, if it is found [...]that the defendant acted or failed to act while under the influence of alcohol [...]there shall be no limitation regarding the amount which may be awarded as punitive damages against an active tort-feasor but such damages shall not be the liability of any defendant other than an active tort-feasor.”

“[O.C.G.A. § 51-12-5.1(f)] makes clear, that ‘[punitive damages] shall not be the liability of any defendant other than an active tort-feasor,’ that is the defendant acting under the influence of alcohol.” *Capp v. Carlito’s Mexican Bar & Grill #1, Inc.*, 288 Ga. App. 779, 784 (2007) (See also *Corrugated Replacements, Inc. v. Johnson*, 340 Ga. App. 364 (2017); *Am. Material Servs. v. Giddens*, 296 Ga. App. 643 (2009)).

O.C.G.A § 51-12-5.1(g):

“For any tort action not provided for by subsection (e) or (f) of this Code section in which the trier of fact has determined that punitive damages are to be awarded, the amount which may be awarded in the case shall be limited to a maximum of \$250,000.00.”

Defendant shows that the Plaintiffs are barred from recovery of any special damages not specifically pleaded in accordance with O.C.G.A. 9-11-9(g). Defendant further shows that the Plaintiffs’ recovery, if any, for medical expenses, lost wages, and loss of consortium would be limited to those medical expenses, lost wages, and loss of consortium incurred as a proximate cause of the accident, and further limited to those damages and expenses which were reasonable and necessary.

Defendant Sosa objects to the introduction of any evidence or testimony concerning the dollar amount or economic value of home health care services rendered by Mr. Ward to Mrs. Ward. The economic value of such services, when provided by a spouse, do not constitute a recoverable item of damages.

Defendant Sosa-Aguilar:

Defendant shows that the Plaintiffs are barred from recovery of any special damages not specifically pleaded in accordance with O.C.G.A. 9-11-9(g). Defendant further shows that the Plaintiffs' recovery, if any, for medical expenses, lost wages, and loss of consortium would be limited to those medical expenses, lost wages, and loss of consortium incurred as a proximate cause of the accident, and further limited to those damages and expenses which were reasonable and necessary. Defendant Sosa objects to the introduction of any evidence or testimony concerning the dollar amount or economic value of home health care services rendered by Mr. Ward to Mrs. Ward. The economic value of such services, when provided by a spouse, do not constitute a recoverable item of damages.

(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.

(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.

a. The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiffs Alice Ward and Michael Ward:

- (1) Plaintiff Alice Ward's medical records and medical bills pertaining to the injuries she suffered as a result of the collision at issue in this case.
- (2) Defendant Sosa-Aguilar's medical records pertaining to treatment she received after the collision at issue in this case.
- (3) Photographs of scene of the collision.

- (4) Photographs of Plaintiff Alice Ward
- (5) Photographs of Plaintiff's vehicle after the collision.
- (6) Photographs of the Plaintiffs' home after the collision showing modifications including installation of a wheelchair ramp.
- (7) Police reports of the collision.
- (8) Telephone records of Defendant Aboneaaj.
- (9) Title of Mercedes Benz automobile involved in the collision at issue in this case and owned by Defendant Aboneaaj.
- (10) Text messages between Defendant Aboneaaj and Defendant Sosa-Aguilar.
- (11) Social media postings of Defendant Aboneaaj and Defendant Sosa-Aguilar.
- (12) Call logs for the DeKalb Auto Theft Unit
- (13) Plaintiffs' attorneys fees invoices

All documents produced by Plaintiffs and Defendants in this case, and all documents listed below by Defendants. Plaintiffs' object to the introduction of any document not produced in discovery or properly identified herein. Plaintiffs do not stipulate to the authenticity of any of Defendants' documents until afforded the opportunity to inspect such document.

b. The following is a list of all documentary and physical evidence that will be tendered at the trial by the Defendants:

Defendant Aboneaaj:

- (1) Georgia Uniform Police Report, Accident Number 16-047280;
- (2) DeKalb County Police Department Incident Report, report number GA0440200;
- (3) DeKalb County Police Department Incident Detail Report;
- (4) Affidavit of Defendant Dora Sosa-Aguilar, dated March 10, 2017;
- (5) Google Maps showing 3077 Colonial Way, Chamblee, GA 30341;
- (6) Google Maps showing intersection of I-85 Frontage Road Northbound and Chamblee Tucker Road in Chamblee, Georgia;
- (7) Google Maps showing driving directions from 3077 Colonial Way, Chamblee, GA 30341 to intersection of I-85 Frontage Road Northbound and Chamblee Tucker Road in Chamblee, Georgia;

- (8) Google Maps street-view images showing intersection of I-85 Frontage Road Northbound and Chamblee Tucker Road in Chamblee, Georgia;
- (9) Google Maps street-view images showing QT gas station located at or near intersection of I-85 Frontage Road Southbound and Chamblee Tucker Road in Chamblee, Georgia;
- (10) Google Maps showing driving directions from 3077 Colonial Way, Chamblee, GA 30341 to QT gas station located at or near intersection of I-85 Frontage Road Northbound and Chamblee Tucker Road in Chamblee, Georgia;
- (11) Google Maps showing intersection of Lawrenceville Highway and White Boulevard in DeKalb County, Georgia;
- (12) Google Maps showing driving directions from 3077 Colonial Way, Chamblee, GA 30341 to intersection of Lawrenceville Highway and White Boulevard in DeKalb County, Georgia;
- (13) Copies of text messages between Defendant Aboneaaj and Defendant Sosa-Aguilar, previously attached as Plaintiffs' Exhibits to Defendant Aboneaaj's deposition;
- (14) Copies of text messages between Defendant Aboneaaj and Defendant Sosa-Aguilar, previously attached as Exhibit to Defendant Aboneaaj's Response in Opposition to Plaintiffs' Motion for Spoliation Sanctions;
- (15) Plaintiff Alice Ward's medical records from Grady Hospital;
- (16) Plaintiff Alice Ward's medical records from Grady Clinic;
- (17) Plaintiff Alice Ward's Orthopedic Consult Record from Grady Hospital, dated May 17, 2016;
- (18) Plaintiff Alice Ward's Orthopedic Clinic Note from Grady Hospital, dated June 9, 2016;
- (19) Plaintiff Alice Ward's Orthopedic Clinic Note from Grady Hospital, dated July 21, 2016;
- (20) Plaintiff Alice Ward's Orthopedic Clinic Note from Grady Hospital, dated August 25, 2016;
- (21) Plaintiff Alice Ward's medical records from the Emory Healthcare / Emory Clinic;
- (22) Plaintiff Alice Ward's medical records from the Emory University Hospital;
- (23) Plaintiff Alice Ward's pharmacy records from Publix Pharmacy;
- (24) Plaintiff Alice Ward's medical records from Atlanta American Medical Response;
- (25) Plaintiff Alice Ward's medical records from CareCentrix;
- (26) Defendant Sosa-Aguilar's medical records from Grady Hospital;
- (27) Defendant Aboneaaj's telephone records from Sprint;
- (28) Photographs of Plaintiff Alice Ward's vehicle;
- (29) Certified Final Disposition of State of Georgia v. Dora Nelly Sosa-Aguilar, Superior Court of Gwinnett County, State of Georgia, Criminal Action No. 17-B-0882-7;

- (30) Certified Final Disposition of State of Georgia v. Dora Nelly Sosa-Aguilar, Superior Court of Gwinnett County, State of Georgia, Criminal Action No. 17-B-1917-7;
- (31) Certified Transcript of Plea Hearing for State of Georgia v. Dora Nelly Sosa-Aguilar, Superior Court of Gwinnett County, State of Georgia, Criminal Action Nos. 17-B-0882-7 and 17-B-1917-7 (combined hearing);
- (32) Any medical or billing record of the Plaintiff;
- (33) Any photographs or diagrams of the accident scene or location of the subject incident;
- (34) Photographs of any injuries involved in the subject incident;
- (35) Any pleadings and discovery of record;
- (36) Any document produced and/or requested during discovery;
- (37) Any exhibits to depositions in this case;
- (39) Any documents identified at any deposition in this case;
- (40) Any document or record identified in Plaintiff's list of all documentary and physical evidence; and
- (41) Any document necessary for impeachment, rebuttal, or cross-examination.

Defendant hereby give notice that Defendant may offer some or all of the foregoing records as records of regularly conducted business activity pursuant to O.C.G.A §24-9-901, O.C.G.A. §24-9-902 and O.C.G.A. §24-8-803.

Defendant reserves the right to tender additional documentary and physical evidence at trial so long as the same is made known to opposing counsel sufficiently in advance as to allow Plaintiffs and Defendant Sosa-Aguilar the fair opportunity to inspect and challenge such document.

Defendant has not seen/reviewed the specific documents that Plaintiffs and Defendant Sosa-Aguilar intend to introduce; therefore, Defendant cannot stipulate to the foundation or authenticity of Plaintiffs' and Defendant Sosa-Aguilar's documents, and objects as to the foundation, authenticity, relevancy or admissibility of any of the documents listed by Plaintiffs and Defendant Sosa-Aguilar.

Defendant objects to the introduction of evidence of attorneys' fees during Plaintiffs' case-in-chief, and contends such evidence is only proper following the jury's determination that attorneys' fees are warranted.

Defendant Sosa-Aguilar

- (1) Photographs of the scene;
- (2) Photographs of the involved vehicles;
- (3) Selected portions of Plaintiff Alice Ward's medical records and bills from her treating physicians, past and present;

- (4) Selected portions of Plaintiff Alice Ward's employment records, past and present;
- (5) Any x-ray films, MRI films, or other diagnostic studies concerning Plaintiff Alice Ward;
- (6) Deposition of Plaintiffs and any exhibits thereto;
- (7) Any document provided by any party in discovery;
- (8) Any document listed by the Plaintiffs; and
- (9) Any document listed by Co-Defendant Noreen Aboneaaj.

Defendant has not been afforded the opportunity to review all documentary or physical evidence listed by the Plaintiffs and accordingly does not stipulate to the authenticity of the same. Defendant reserves the right to raise any objections to the Plaintiffs' documentary and/or physical evidence upon the same being tendered into evidence.

Defendant provides notice that she may tender some or all of the above medical records of Plaintiff Alice Ward, pursuant to O.C.G.A. §24-9-901, §24-9-902, and §24-8-803.

(15) Special authorities relied upon by Plaintiffs related to peculiar evidentiary or other legal questions are as follows:

There is a certain payment on behalf of one or more Defendants that needs to be apportioned post-judgment. A hearing may be necessary on this issue.

O.C.G.A. § 24-8-803(6) and O.C.G.A. § 24-9-902(11) as pertain to the authentication of medical records kept in the ordinary course of business.

O.C.G.A. § 51-1-40 (b) A person who sells, furnishes, or serves alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury, death, or damage caused by or resulting from the intoxication of such person, including injury or death to other persons; provided, however, a person who willfully, knowingly, and unlawfully sells, furnishes, or serves alcoholic beverages to a person who is not of lawful drinking age, knowing that such person will soon be driving a motor vehicle, or who knowingly sells, furnishes, or serves alcoholic beverages to a person who is in a state of noticeable intoxication, knowing that such person will soon be driving a motor vehicle, may become liable for injury or damage caused by or resulting from the intoxication of such minor or person when the sale, furnishing, or serving is the proximate cause of such injury or damage. Nothing contained in this Code section shall authorize the consumer of any alcoholic beverage to recover from the provider of such alcoholic beverage for injuries or damages suffered by the consumer.

Proof of the essential elements of negligent entrustment—including actual knowledge of the incompetence or recklessness of the person to whom the instrumentality in question is entrusted—necessarily proves that the negligence of the person entrusted was foreseeable to the one who entrusted that person. *Zaldivar v. Prickett*, 297 Ga. 589, 602, 774 S.E.2d 688, 698 (2015) .

O.C.G.A. § 51-12-5.1(b) Punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.

O.C.G.A. § 13-6-11. The expenses of litigation generally shall not be allowed as a part of the damages; but where the plaintiff has specially pleaded and has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them.

Plaintiffs show that there is a certain payment on behalf of one or more Defendants that needs to be apportioned post-judgment. A hearing may be necessary on this issue.

Plaintiffs show that this case involves allegations of intentional torts which, by their nature, evidence that degree of bad faith which subjects the Defendants to attorneys fees.

(16) Special authorities relied upon by Defendants relating to peculiar evidentiary or other legal questions are as follows:

Defendant Aboneaaj:

“[O.C.G.A. § 51-12-5.1(f)] makes clear, that ‘[punitive damages] shall not be the liability of any defendant other than an active tort-feasor,’ that is the defendant acting under the influence of alcohol.” Capp v. Carlito’s Mexican Bar & Grill #1, Inc., 288 Ga. App. 779, 784 (2007) (See also Corrugated Replacements, Inc. v. Johnson, 340 Ga. App. 364 (2017); Am. Material Servs. v. Giddens, 296 Ga. App. 643 (2009)).

Defendant Sosa-Aguilar:

Defendant does not anticipate any peculiar evidentiary or other legal questions to arise upon the trial of the case, but the Defendant reserves the right to submit legal authority to the Court upon any such issue in the event the same arises.

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

The parties reserve the right to file additional requests to charge at the conclusion of evidence.

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

Plaintiffs Alice Ward and Michael Ward:

- (1) Dora Sosa-Aguilar;
- (2) Dr. Spero Karas;
- (3) Dr. Thomas Moore;
- (4) Lisa Resutek; and
- (5) Cindy Shao, R.N.

Defendant Aboneaaj:

Defendant reserves the right to introduce testimony by deposition of any necessary witness and in compliance with the requirements of O.C.G.A. §§ 9-11-32 and 24-13-135. Defendant objects to Plaintiffs' or Defendant Sosa-Aguilar's use of any deposition to the extent the proposed use fails to comply with the requirements of O.C.G.A. §§ 9-11-32 and 24-13-135.

Defendant Sosa-Aguilar:

Any person listed in paragraph 19, below, for whom there exists a sufficient legal excuse for not calling to testify live at trial.

(19) The following are lists of witnesses:

a) Plaintiffs will have present at trial:

- (1) Plaintiff Michael Ward;
- (2) Plaintiff Alice Ward

b) Plaintiffs may have present at trial:

- (1) Dora Sosa-Aguilar;
- (2) Norien Aboneaaj;
- (3) Edward Hicks;
- (4) Veronica Clark;
- (5) Michael Ward, Plaintiff's son;
- (6) Christopher Rust, Plaintiff's son;
- (7) Ahmed Aboneaaj;
- (8) Thomas Moore, M.D.
- (9) Spero Karas, M.D.
- (10) Lisa Resutek
- (11) Donna Hayes;
- (12) Odelle Williams;
- (13) Officer G. Wilson;
- (14) Officer H. Traylor; and
- (15) Debbie Evans, P.A., who assisted Alice during the recovery period.

All witnesses listed on the Defendants' witness lists below, as well as any other witnesses necessary to authenticate documents, or refute and impeach Defendants. Plaintiffs reserve the right to call additional witnesses in rebuttal with sufficient notice to Defendants.

c) **Defendants will have present at trial:**

d) **Defendants may have present at trial:**

Defendant Aboneaaj:

- (1) Alice Ward;
- (2) Michael Ward;
- (3) Norien Aboneaaj;
- (4) Dora Sosa-Aguilar;
- (5) Edward Hicks;
- (6) Wafa Aboneaaj;
- (7) Thomas Moore, M.D.;
- (8) Lisa Resutek, PT;
- (9) Spero Karas, M.D.;
- (10) Odelle Williams;
- (11) Donna Hayes;
- (12) DeKalb County Police Officer G. Willison (Badge No. 3030);
- (13) Any witness necessary to authenticate documents or other exhibits;
- (14) Any witness identified in Plaintiff's portion of the pretrial order as a will call or may call witness;
- (15) Any witness identified during discovery;
- (16) Any witness needed for purposes of impeachment;
- (17) Any witness who provided medical treatment to the Plaintiff.

Defendant reserves the right to call additional witnesses, provided their names and addresses are provided to the parties with sufficient notice or upon leave of Court.

Opposing counsel may rely on representation by the designated party that he 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.

Defendant Sosa-Aguilar:

- (1) Dora Sosa-Aguilar;
- (2) Officer G. Wilson, Dekalb County Police Department;
- (3) H.G. Traylor, Dekalb County Police Department;
- (4) Odelle Williams, Witness;

- (5) Donna Hayes, Witness;
- (6) Edward Hicks;
- (7) Physicians and/or health care providers who have treated Plaintiff Alice Ward prior to or subsequent to the incident;
- (8) A rebuttal medical expert or experts;
- (9) Medical records custodian of any facility which rendered care or treatment to Plaintiff Alice Ward;
- (10) Billing records custodian of any facility which rendered care or treatment to Plaintiff Alice Ward;
- (11) The custodian of any employment records and/or income tax returns of Plaintiffs;
- (12) The custodian of any documents concerning any prior or subsequent claims or losses involving Plaintiff Alice Ward;
- (13) Any witness listed by the Plaintiffs; and
- (14) Any witness listed by Co-Defendant Noreen Aboneaaj.

Opposing counsel may rely upon the representation by the designated party that he 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.

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

Plaintiffs Alice Ward and Michael Ward:

We, the jury, find for Plaintiff Alice Ward and against Defendants and award damages in the amount of _____;

We, the jury, find for the Plaintiff Michael Ward and against the Defendants and award damages in the amount of _____;

We, the jury, hereby award punitive damages in favor of Plaintiffs Alice and Michael Ward and against Defendants in the amount of \$ _____.

We, the jury, hereby award attorney's fees in favor of Plaintiffs Alice and Michael Ward and against Defendants in the amount of \$ _____.

Defendant Aboneaaj:

(a) _____ We, the jury, find Plaintiffs have proven, by the preponderance of the evidence, Defendant Dora Sosa-Aguilar's negligence proximately caused Plaintiffs' injuries.

(b) _____ We, the jury, find Plaintiffs have proven, by the preponderance of the evidence, Defendant Aboneaaj entrusted Defendant Sosa-Aguilar with a vehicle.

(c) _____ We, the jury, find Plaintiffs have proven, by the preponderance of the evidence, Defendant Aboneaaj's negligence proximately caused Plaintiffs' injuries.

(d) If you find Plaintiffs have proven both Defendant Sosa-Aguilar and Defendant Norien Aboneaaj's negligence proximately caused Plaintiffs' injuries (section (a), (b) and (c), above), the law requires you to apportion fault among the responsible party or parties. Please apportion the fault you determine each party or parties are responsible for by identifying the percentage below. If you find a party bears no responsibility you would indicate this by leaving the space next to that party's name blank. [please note: the assigned percentages must total 100%]

Plaintiffs _____%

Defendant Dora Sosa-Aguilar _____%

Defendant Norien Aboneaaj _____%

(e) _____ We, the jury, find for Plaintiffs in the amount of \$_____.

Jury Foreperson

Defendant Sosa-Aguilar:

The Defendant will submit a general Verdict form.

(21) a. The possibilities of settling the case are **FAIR**.

b. The parties do want the case reported.

c. The cost of take-down will be split between the parties.

d. Other matters:

Plaintiff: A jury of twelve has been demanded.

Defendant Aboneaaj: A jury of twelve has been demanded.

Defendant Sosa-Aguilar: A jury of twelve has been demanded.

Submitted by:

Andrew M. Beal, Esq.
Nicholas P. Smith, Esq.
Attorneys for Plaintiffs Alice Ward and Michael Ward

Brantley Rowlen, Esq.
Michael Denny, Esq.

Attorneys for Defendant Norien Aboneaaj

Christopher Harrison, Esq.
Attorney for Defendant Sosa-Aguilar

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 the order of the court to prevent manifest injustice.

This day of , 2019.

THE HONORABLE COURTNEY L. JOHNSON
Judge, Dekalb County Superior Court

EXHIBIT “A”

MEDICAL SUMMARY – MEDICAL PROVIDERS

Grady Memorial Hospital	\$208,104.48
Emory Hospital (Rehab)	\$31,358.73
Emory Clinic	\$19,365.00
Emory Physical Therapy	\$6,426.00
GA CareCentrix	\$3,689.14
Currie Medical	\$2,835.00
Soft Touch Medical	\$1,267.00
Metro Ambulance	\$2,063.63
Pro Path Services	\$196.00
Bio Reference Lab	\$128.50
Emory Foundation	\$122.00
Dr. David Roberts	\$1,399.00
Dr. John Roback	\$628.00
Dr. Yazan Duwayri	\$613.00
Dr. Lynley Durrett	\$189.00
Dr. Spero Karas	\$9,042.60
Dr. Heather Samady	\$2,154.00
Dr. Thomas Moore	\$8,496.00
Dr. Aparna Kakarala	\$76.00
Dr. Adam Singer	\$238.00
Dr. Travis Arnold-Lloyd	\$593.00
Dr. Walter Carpenter	\$127.00
Dr. Robert Fang	\$217.00
Dr. Samuel Milton	\$1,690.00
Dr. Andrew Geller	\$19.00
Dr. Naseem Shakir	\$1,275.00
Dr. Joanna Schindler	\$146.00
Dr. Paul Evans	\$1,924.00
Dr. Charlie Bai	\$1,639.00
Dr. Ryan Peterson	\$585.00
Dr. Kiran Maddu	\$167.00
Dr. Menelaos Demestihis	\$353.00
Dr. Matthew Dellaquila	\$991.00
Dr. Elizabeth Edge	\$1,050.00
Dr. Robert Morris	\$230.00
Dr. Clarence Head	\$702.00
Dr. Aaron Schwartz	\$222.00
Dr. Mora Obiamaka	\$954.00
Dr. Ann Van Wie	\$495.00

Dr. Marvin Winter	\$189.00
	\$311,959.10