

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

JOAO JUNIOR, §  
§  
Plaintiff, §  
§  
v. § CIVIL ACTION  
§ FILE NO. 13EV017893G  
§  
SHARON GRAHAM, §  
§  
Defendant. §  
§  
§

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**PROPOSED CONSOLIDATED PRE -TRIAL ORDER**

The following constitutes the parties' proposed Consolidated Pre-Trial Order:

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

Plaintiff: Ben C. Brodhead, Esq.  
Ashley B. Fournet, Esq.  
John Nichols, Esq.  
Brodhead Law, LLC  
3350 Riverwood Parkway, Suite 2230  
Atlanta, GA 30339  
(404) 846-0100

Defendant: J. Robb Cruser, Esq.  
R. Russell Grant II, Esq.  
Cruser & Mitchell, LLP  
Meridian II, Suite 2000  
275 Scientific Drive  
Norcross, GA 30092  
(404) 881-2622  
(404) 881-2630 -- fax

2. The estimated time required for trial is 4-5 days.  
3. There are no motions or other matters pending for consideration by the court

except as follows:

By the Plaintiff:

Plaintiff has filed the following motions which are pending before the Court: the parties' Joint Motion to Appoint Niura Schewartz as Interpreter; Plaintiff's Motion to Bifurcate Trial; Plaintiff's Objections and Designations in relation to Dr. D'Auria, Dr. Mariwalla, Dr. Bendiks, Dr. Barnett, Dr. Thomas, Dr. Smith, and Dr. Hogan; Plaintiff's Objection to Defendant's Notice of Intent to Use Certified Records at Trial filed on June 25, 2018; and Plaintiff's Trial Brief: Voir Dire - Striking Jurors for Cause which requests a jury pool of 60. Plaintiff will file Motions in Limine which should not in any way delay the trial of this case. Plaintiff reserves the right to file any Motions in Limine before or during trial as evidentiary issues arise.

By the Defendant:

Defendant reserves the right to file motions in limine or other pretrial motions, the presentation and hearing of which should not in any way delay the trial of the case. In addition, Defendant reserves the right to file motions to compel non-parties to produce documents that have not been produced pursuant to a properly served Request for Production of Documents.

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

The parties; Ben C. Brodhead; Ashley B. Fournet; Lloyd H. Thomas; Mark Harper; USAA, a mutual company.

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 shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial. The parties reserve the right to take a discovery deposition of any witness identified in supplemental responses to discovery as either a fact or expert witness and to view any evidence identified by supplemental discovery responses. The parties also reserve the right to

take the deposition of the opposing party's "will call" or "may call" witnesses, said depositions not to delay the trial of the case.

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 March 27, 2010, Defendant became less safe and intoxicated through the misuse of prescription and non-prescription drugs. After becoming impaired by her misuse of drugs, Defendant chose to drive on the public roads of Georgia. Around 10:30 a.m., Defendant made contact with the rear of a stopped vehicle. Defendant left the scene of that incident and began driving her vehicle west on Georgia State Road 120 (hereinafter "GA 120") inside the City of Alpharetta, Fulton County. Just before approximately 10:39 a.m., Plaintiff had been driving his vehicle west on GA 120 inside the City of Alpharetta, Fulton County. East of GA 120's intersection with Brookside Parkway, Plaintiff brought his vehicle to a controlled stop behind John M. Grady (hereinafter "Grady") who had brought his Nissan Frontier to a stop in the inside through lane. Plaintiff was exercising due care and caution for himself and other drivers.

Following behind Plaintiff was Dangad K. Korir (hereinafter "Korir") driving his Pontiac Grand Am. Following the flow of traffic, Korir brought his vehicle to a stop behind Plaintiff. Behind Korir was the Defendant, traveling westbound and swerving in and out of the lanes in her Honda Accord EX (hereinafter "Accord"). At or about 10:39 a.m., Defendant, failing to bring her vehicle to a stop, rear-ended Korir's vehicle with her Accord with a great deal of force,

crashing Korir's stopped vehicle into the rear of Plaintiff's vehicle, which was then crashed into Grady's vehicle. The impact of the collision caused serious injuries to Plaintiff.

As a result of the collision, Plaintiff's vehicle was towed from the scene. Officer Baldwin of the Alpharetta Police Department responded and investigated the incident. Officer Baldwin found the Defendant incoherent at the scene without recollection of the accident. Upon further investigation, Officer Baldwin discovered that she had been in another motor vehicle collision shortly before this collision. Based on Defendant's admissions and later blood tests, Defendant had taken and/or was under the influence of multiple sleep and/or psychotropic drugs, including at least Ambien, Diphenhydramine, Xanax, and Paxil.

Defendant was given a ticket for following too closely in violation of O.C.G.A. § 40-6-49. Defendant pleaded guilty to this offense on May 5, 2010. By driving under the influence, failing to keep a proper lookout, and following too closely, Defendant recklessly and negligently caused her vehicle to collide with and propel Korir's vehicle into the Plaintiff's vehicle. Defendant's recklessness and negligence proximately caused Plaintiff to suffer bodily injury. Defendant is negligent per se because (1) she violated Georgia's laws regarding the operation of motor vehicles, (2) the laws were designed to prevent the type of collision involved in the subject litigation, (3) Plaintiff was a member of the class intended to be protected by said laws, and (4) the violation of said laws proximately caused Plaintiff's injuries.

As a direct and proximate result of Defendant's negligence, negligence per se, and recklessness, Plaintiff sustained special and general damages for which he is entitled to be compensated by Defendant. As a direct and proximate result of Defendant's negligence, negligence per se, and recklessness, Plaintiff has suffered permanent impairment and permanent disability. As a direct and proximate result of Defendant's negligence, negligence per se, and

recklessness, Plaintiff has incurred medical expenses in excess of \$173,463.49, and Plaintiff will continue to suffer both general and special damages in the future, including expenses for future medical treatment.

Defendant's conduct, specifically, driving while under the influence of sleep and/or psychotropic drugs, constitutes and indicates a conscious, willful, and wanton disregard for the safety of others, evincing such an entire want of care as to raise the presumption of a conscious indifference to the consequences, and is so aggravating as to warrant, justify, and demand the imposition of punitive damages pursuant to O.C.G.A. § 51-12-5.1 to penalize and punish Defendant for her misconduct and to deter her from engaging in such aggravating conduct in the future. Defendant has acted in bad faith, has been stubbornly litigious, and has caused Plaintiff unnecessary trouble and expense by forcing Plaintiff to resort to the use of the court system in order to resolve his claim when there is no bona fide controversy. Accordingly, Plaintiff seeks attorney's fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11.

7. The following is the Defendant's brief and succinct outline of the case and contentions:

This lawsuit involves a motor vehicle accident which occurred on March 27, 2010. Defendant disputes that any negligence on her part was the proximate cause of Plaintiff's alleged damages. Defendant further disputes the nature and extent of Plaintiff's alleged damages.

8. The issues for determination by the jury are as follows:

Proximate cause of Plaintiff's injuries, damages, attorney's fees and costs of litigation against Defendant for bad faith, stubborn litigiousness, and causing Plaintiff unnecessary trouble and expense, and punitive damages.

9. Specifications of negligence including applicable Code Sections are as follows

- A. Driver's duty to exercise due care, O.C.G.A. § 40-6-93;
- B. Exercising due care in operating a motor vehicle, O.C.G.A. § 40-6-241;
- C. Following too Closely, O.C.G.A. § 40-6-49;
- D. Failure to exercise ordinary diligence, O.C.G.A. §§ 51-1-1, 51-1-2;
- E. Driving While Under the Influence, O.C.G.A. § 40-6-391.

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):

This case is not based on a contract.

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

Plaintiff is entitled to general and special damages, including past medical expenses based on reasonable and customary charges of \$177,126.01 and future medical expenses based on the jury's determination of the facts relating to future medical expenses, including expert testimony, lay testimony, and the jury's determination of the life expectancy of Plaintiff. (Plaintiff may revise this amount up to three (3) business days prior to trial without further Order of the Court). The measure of general damages is the enlightened conscience of a fair and impartial jury. Additionally, Plaintiff is entitled to attorney's fees and costs of litigation pursuant to O.C.G.A. § 13-6-11. Attorney's fees will be 40% of the verdict amount plus actual costs incurred to advance Plaintiff's case. Plaintiff is also entitled to punitive damages pursuant to O.C.G.A. 51-12-5.1.

Defendant disputes the nature and extent of damages as alleged by the Plaintiff.

12. The following facts are stipulated:

Defendant admits that she was 100% at fault for causing the collision.

13. 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.

a. By the Plaintiff:

1. Pleadings of the Parties;
2. Depositions taken during discovery in this matter;
3. Medical scans, x-rays, images, and films relating to Plaintiff's injuries;
4. All deposition exhibits;
5. Records of Plaintiff's medical providers, including, but not limited to, medical records and records of medical billing;
6. Photographs of the vehicles involved in the collision;
7. Photographs of the scene of the collision;
8. Defendant's Traffic Citation/Disposition;
9. Audio of 911 calls for the subject collision;
10. Documents from any and all experts identified in this case;
11. Medical Narrative of Sanjay Gupta, M.D.;
12. Any documents listed by Defendant;
13. Demonstrative aids, whether in physical or electronic form, including but not limited to, photographs, charts, drawings,

- diagrams, time lines, video recordings, animations, audio recordings, exhibits, props, and/or models;
14. Medical illustrations, models, diagrams, videos, tables, charts, etc., as demonstrative evidence;
  15. Blow-ups and other demonstrative evidence of medical records and documents;
  16. Photographs and other memorabilia of Plaintiff to demonstrate damages;
  17. Documents from Rite Aid relating to Defendant's drugs;
  18. Georgia Bureau of Investigation Toxicology report relating to Defendant's post-collision blood test;
  19. Any documents produced by Plaintiff or Defendant during discovery;
  20. Plaintiff's Contingent Fee Contract and expenses of litigation for Phase 2 of trial; and
  21. Any documents necessary for purposes of impeachment, cross-examination and/or rebuttal.

Plaintiff reserves his objections as to authenticity of documents and exhibits tendered by Defendant until after his counsel has had a chance to review and examine such documents and exhibits. In addition, Plaintiff reserves his objections to the admissibility of any documents listed by Defendant until they are tendered into evidence. Plaintiff may supplement and/or amend this list up to three (3) days prior to trial without further Order of the Court. Plaintiff



objects to documents listed by the Defendant to the extent that they will improperly interject collateral source evidence.

Plaintiff objects to any and all medical records listed by Defendant that have not been introduced during a use-in-evidence deposition of a treating physician or which have not been admitted through properly filed Notices of Intent to Use Certified Records. Specifically, Plaintiff filed an Objection to Defendant's Notice of Intent to Use Certified Records on June 25, 2018, due to the inadequacy of the only such Notice filed by Defendant to date. Plaintiff incorporates herein by reference as if fully restated, his Objection to Defendant's Notice of Intent to Use Certified Records at Trial. Additionally, with reference to Dr. Soren Thomas' records, Plaintiff objects to the introduction of these records for the reasons provided in his Objection and due to relevance. If, however, if the Court admits Dr. Thomas' records designated by Defendant over Plaintiff's objection, pursuant to the rule of completeness, Plaintiff should be permitted to admit the remainder of Dr. Thomas' records that have not been designated by the defense.

- b. The Defendant may in her discretion tender the following:
  1. December 11, 2004, treatment note from Dr. Soren Thomas;
  2. December 28, 2005, treatment note from Dr. Soren Thomas;
  3. February 20, 2008, treatment note from Dr. Soren Thomas;
  4. January 26, 2010, hospital note from Emory Johns Creek Hospital;
  5. March 27, 2010, hospital note from Emory Johns Creek Hospital;
  6. April 29, 2010, treatment note from Rehab Orthopaedic Medicine;
  7. May 5, 2010, radiology report from MRI and Imaging of Georgia;
  8. May 19, 2010, treatment note from Johns Creek Neurosurgery;
  9. July 28, 2010, treatment note from Southern Orthopaedic Specialists;

10. August 11, 2011, treatment note from Grady Health System;
11. December 15, 2011, treatment note from Grady Health System;
12. April 12-13, 2012, treatment note from Grady Hospital;
13. Surgical cost estimate from Dr. Florence Barnett;
14. Plaintiff's Complaint;
15. Healthcare records, X-rays and other diagnostic studies from any of the Plaintiff's treating or examining healthcare providers, both before and after the accident that is the subject of Plaintiff's Complaint;
16. Records of any of Plaintiff's employers;
17. Any documents necessary for purposes of impeachment, cross-examination or rebuttal;
18. Any documents listed by Plaintiff in discovery, depositions or in this Order;
19. Any documents identified at any medical or healthcare depositions;
20. Any records or photographs of damages to any vehicle involved in the accident;
21. Any motor vehicle accident report involving this incident;
22. Any income tax records of the Plaintiff or other documents showing Plaintiff has or is entitled to receive income;
23. Any documents concerning any accidents or claims/suits in which the Plaintiff has been involved either before or after the accident that is the subject of Plaintiff's Complaint;
24. Any statements by Plaintiff, including depositions;
25. Any exhibit to any deposition taken in connection with this lawsuit; and
26. Any photographs or video taken of Plaintiff after the date of the occurrence.

Defendant reserves the right to amend this list of documentary and other physical evidence upon giving 5 days advance notice prior to trial of such additional evidence to opposing counsel. Furthermore, Defendant reserves the right to object to the authenticity and admissibility of Plaintiff's documents.

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

Not applicable.

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

None at this time.

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

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

a. By Plaintiff: Sharon Graham; Erik T. Bendiks, M.D.; Ralph D'Auria, M.D.; Nitin Mariwalla, M.D.; Florence Barnett, M.D; and any other medical care providers seen by Plaintiff and the deposition of any other individuals who are unavailable at trial.

Plaintiff reserves the right to take depositions for the purpose of preservation of evidence for use at trial. Plaintiff reserves the right to object to the use of deposition testimony by Defendant.

b. By Defendant: Plaintiff. Defendant. Dr. Michael Smith. Dr. Mark Hogan. Dr. Soren Thomas. Any witness listed by Plaintiff in this section. Any witness who is unavailable for trial or any witness whose evidentiary deposition has been taken in preparation for trial. Any witness identified in paragraph 18 of this document.

18. The following is a list of witnesses the

a. Plaintiff will have present at trial:

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b. Plaintiff may have present at trial:

Sharon Graham; Dangid Korir; Florence Cheruiyot; John Grady; Mike Morrison; Claudia Peterson; Pat Baldwin; Olimpia Junior; Camila Junior; Paulo Junior; Frank Serafino; Barbara Serafino; Walter Dias; Jussamar Rezende; Sanjay Gupta, M.D.; Erik Bendiks, M.D.; Nitin Mariwalla, M.D.; Florence Barnett, M.D.; Ralph D'Auria, M.D.; any other healthcare providers of Plaintiff; any custodian of records necessary to establish the authenticity of any document tendered into evidence; any witness for rebuttal, cross-examination, or impeachment, including, but not limited to, all persons listed in the Defendant's portion of the Pre-Trial Order. Plaintiff reserves the right to call or cross-examine anyone identified as a "may call" witness by Defendant.

Plaintiff reserves the right to supplement this list provided that opposing counsel is notified of the supplementation prior to trial.

c. Defendant will have present at trial:

1. None;

d. Defendant may have present at trial:

1. Plaintiff;

2. Defendant;

3. Eric Epstein;

4. Officer Pat Baldwin;

5. Dr. Mark Hogan;
6. Dr. Michael Smith;
7. Dr. Arthur Fountain;
8. Dr. Ralph D'Auria;
9. Dr. Erik Bendiks;
10. Dr. Nitin Mariwalla;
11. Dr. Florence Barnett;
12. Dr. Sanjay Gupta;
13. Dr. Soren Thomas;
14. Myra Sargent;
15. Missy Heath;
16. Michael Morrison;
17. Any member of the police department who investigated this matter;
18. Any witnesses to the incident that is the subject of this lawsuit;
19. Any representative of any of Plaintiff's medical providers, including but not limited to those whose records are identified by either party in paragraph 13 of this Order;
20. Any healthcare provider who has treated Plaintiff's before or after the accident that is the subject of Plaintiff's Complaint, including but not limited to those whose records are identified by any party in paragraph 13 of this Order;
21. Any other law enforcement officer who investigated any aspect of the accident that is the subject of this lawsuit;

22. Any representative of any of Plaintiff's employers;
23. Any person for purposes of impeachment, cross-examination or rebuttal;
24. Any persons identified by Plaintiff's in discovery, depositions or in this Order;
25. Any estimator of property damage;
26. Any custodian of any record listed in paragraph 13 of this Order.

Defendant reserves the right to call additional witnesses provided their names and addresses are provided to Plaintiff's with sufficient notice prior to trial.

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.

19. The form of all possible verdicts to be considered by the jury is as follows: The parties will submit an agreed-upon verdict form at trial.

20.
  - a. The possibilities of settling this case are: poor.
  - b. The parties do want the case reported.
  - c. The cost of take-down will be shared equally by the parties.
  - d. Other matters: Plaintiff will be using movers to deliver the equipment that this Court approved in the Rule 22. As such, Plaintiff needs as much advance notice as possible as to the trial date so that Plaintiff can schedule the movers accordingly. Defense counsel has a leave of absence filed for July 22, 2019, through July 31, 2019.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted this 27<sup>th</sup> day of June, 2019.

**CRUSER, MITCHELL, NOVITZ,  
SANCHEZ, GASTON & ZIMET, LLP**



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**R. RUSSELL GRANT, II**  
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**BRODHEAD LAW, LLC**

/s/ Ben C. Brodhead

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**ORDER**

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the **CONSOLIDATED 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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
The Honorable John R. Mather  
Judge, State Court of Fulton County