

IN THE STATE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

Tiki Brown
Clerk of State Court
Clayton County, Georgia
Cheryl Dixon
e-Filed 8/12/2019 11:10 AM

MARIA ROSAS,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION FILE
)	NO. 2017CV00603C
)	
JOEL NELSON, KING TREE EXPERTS,)	
INC., and ANDREW KING,)	
)	
Defendants.)	


Tiki Brown
Clerk of State Court
Clayton County, Georgia
Rachel Jeffers

CONSOLIDATED PRE-TRIAL ORDER

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

(1)

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

Plaintiffs:	A. Joel Williams Georgia Bar No. 365853 B. Chase Elleby Georgia Bar No. 185666 Joel Williams Law, LLC 3900 Frey Road Suite 104 Kennesaw, Ga. 30144 Phone: (404) 389-1035 Fax: (770) 693-4415 Email: joel@gatriallattorney.com Email: chase@gatriallattorney.com
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Defendant Nelson and/or State Farm Fire & Casualty Company ("State Farm")	Jason B. Green Georgia Bar No. 306858 Lynn Leonard & Associates 2400 Century Parkway Suite 200
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Atlanta, GA 30345
(404) 728-5400

State Farm Fire & Casualty Company reserves the right to elect to try this case in the name of the Defendant pursuant to O.C.G. A. § 33-7-11 (d) if it so chooses.

(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:

By Plaintiffs:

Plaintiffs reserve the right to file any motion under any legal issue which may arise before and during trial, including motions in limine. Additionally, Plaintiff has reached a confidential settlement with Defendants King Tree Experts, Inc. and Andrew King and filed a consent motion to dismiss fewer than all parties. Plaintiff also has pending a Motion for Sanctions for Defendant Nelson's failure to appear at his properly noticed deposition.

By Defendant/State Farm:

Defendant/State Farm Fire and Casualty reserves the right to file any Motions in Limine before or during trial as evidentiary issues arise.

(4)

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

By Plaintiffs:

Plaintiff,
Defendant,
Joel Williams, Law, LLC,

Reis Law, LLC
Joel Williams,
Chase Elleby, and
Members, policyholders, officers, directors and shareholders of State Farm Fire and
Casualty Company.

By Defendant:

Plaintiff, Defendant Joel Nelson, Defendant Andrew King, Defendant King Tree Experts,
Inc., Chase Elleby, members of the law firm of Joel Williams Law, LLC, and State Farm Fire and
Casualty Company (hereinafter "State Farm").

(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 a trial. The parties shall have the right to take the discovery depositions of any opposing
experts who are expected to testify at trial. Each party shall notify the opposing party of the intent
to introduce "live" testimony at trial within a reasonable time prior to trial, so that the opposing
party will have ample time to secure the discovery deposition of that expert and to obtain their own
rebuttal experts.

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 August 21, 2015, Defendant Joel Nelson was driving his vehicle and attempting to merge onto I-285. At or about the same time, Plaintiff was driving her van on I-285 traveling in the same direction. Defendant Nelson failed to yield right of way while entering the highway making an improper lane change, striking a truck being driven by Andrew King of King Tree Experts, Inc. which then struck Plaintiff's van, along with Defendant Nelson's vehicle also striking Plaintiff's van, causing her van to then strike the median wall resulting in serious injuries and damages. Plaintiff underwent significant treatment for her injuries and has incurred no less than \$75,000.00 in medical expenses as a result of Defendant Nelson's negligence.

(7)

The following is the Defendant/State Farm's brief and succinct outline of the case and contentions:

The motor vehicle accident giving rise to this litigation occurred on 8/21/2015 in Atlanta, GA on I-285 at GA-Hwy 166. Plaintiff's vehicle was impacted by a vehicle driven by Co-Defendant Andrew King of King Tree Experts, Inc. Defendant Nelson did not contribute to this accident and denies negligence. Plaintiff may be exaggerating the extent, reasonableness, and/or necessity of her medical expenses. Additionally, Plaintiff's injuries, special damages, and/or general damages may be attributable to some incident, condition, or other reason other than the subject accident.

This is additionally a contractual claim wherein Plaintiff is claiming damages under an uninsured motorist policy/policies pursuant to O.C.G.A. § 33-7-11. State Farm denies that the statutory and contractual conditions of said statute have been met and demands strict compliance therewith and proof by Plaintiff. State Farm is entitled to an offset from any verdict in favor of

Plaintiff for any liability insurance and/or medical payments coverage, if any.

(8)

The issues for determination by the jury are as follows:

Plaintiff:

(a) Duty, Breach, Causation and Damages if State Farm pursues the matter in its own name.¹

Defendant/State Farm:

- (a) Negligence;
- (b) Contributory/Comparative Negligence;
- (c) Causation;
- (d) and Damages.

(9)

Specifications of negligence including applicable code sections are as follows:

Plaintiff relies on Georgia's rules of the road as it relates to Defendant Nelson's actions, including, but not limited to, failure to yield right of way (O.C.G.A. § 40-6-73), improper lane change (O.C.G.A. § 40-6-123(A)), reckless driving (O.C.G.A. § 40-6-390), and all other acts of negligent to be proven at trial as it relates to Defendant.

(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): Plaintiff has State Farm Fire and

¹ If State Farm elects to Defendant in the name of Joel Nelson, and the Court strikes Defendant Nelson's Answer and sanctions him for his failure to appear for his deposition, then State Farm would be bound by that ruling. However, if State Farm elects to defend in its own name then it would not be bound by the Court's ruling as to Defendant Nelson.

Casualty Company which provided uninsured/underinsured bodily injury coverage pursuant to her contract with State Farm. Attached hereto as Exhibit A are true and accurate copies of the declarations pages for policies 780842111, 780842211, 780842311, 780842411A, 780957011, and 814724211 which provide coverage to Plaintiff related to the subject wreck. The parties stipulate that no other proof is necessary to authenticate and admit the policies into evidence if necessary. The issues to be tried will be determined by 1) whether the Court grants Plaintiff's Motion for Sanctions, and 2) whether State Farm elects to defend in the name of Defendant Joel Nelson.

(11)

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

By Plaintiffs:

Plaintiff seeks all damages permitted under Georgia law, including general and compensatory damages. Plaintiff's special damages are no less than the following:

Allspine:	\$8,000.00
American Health Imaging:	\$4,595.00
Grady Memorial Hospital:	\$8,210.71
Emory:	\$353.00
Grady EMS:	\$1,912.75
Physiotherapy Associates:	\$2,591.00
South Atlanta Neurosurgery:	\$11,933.00
Minimally Invasive Neurosine and Pain Institute:	\$25,000.00
Allspine Surgery Center:	\$693.00
Reginal Medical Group:	\$10,958.50
Georgia Spine and Orthopaedics:	\$1,698.56
TOTAL:	\$75,945.52

By Defendant/State Farm:

Defendant/State Farm objects to any items of special damages that have not been specifically pled as set forth in O.C.G.A. § 9-11-9(g).

(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:

By Plaintiff:

- (a) Venue and Jurisdiction is proper in this court in Clayton County, Georgia.
- (b) The wreck that is the subject of this litigation occurred on August 21, 2015.
- (c) Defendant Nelson is liable for causing the subject wreck and the only issue remaining for jury determination is causation and damages (subject to Court's ruling on Plaintiff's pending motion).
- (d) At the time of the subject incident, State Farm Fire and Casualty Company (State Farm) provided six policies of uninsured/underinsured motorist bodily injury insurance on behalf of Plaintiff with total UM limits of \$150,000.00 pursuant to policies 780842111 (25/50 difference in limits), 780842211 (25/50 difference in limits), 780842311 (25/50 difference in limits), 780842411A (25/50 difference in limits), 780957011 (25/50 difference in limits), and 814724211 (difference in limits). State Farm gets a reduction of \$25,000 pursuant to Defendant Nelson's policy tendering its limits (25/50), and a reduction of \$40,000, which has already been paid to Plaintiff out of the \$125,000 in available UM coverage, leaving \$85,000.00 available to Plaintiff for recovery.
- (e) Attached hereto as Exhibit A are true and accurate copies of the declarations pages for policies 780842111, 780842211, 780842311, 780842411A, 780957011, and 814724211 which provide coverage to Plaintiff related to the subject wreck.

By Defendant/State Farm: Defendant/State Farm only stipulates to the following:

At the time of the subject incident, State Farm Fire and Casualty Company (State Farm) provided six policies of uninsured/underinsured motorist bodily injury insurance on behalf of Plaintiff with total UM limits of \$150,000.00 pursuant to policies 780842111 (25/50 difference in limits), 780842211 (25/50 difference in limits), 780842311 (25/50 difference in limits), 780842411A (25/50 difference in limits), 780957011 (25/50 difference in limits), and 814724211 (difference in limits). State Farm gets a reduction of \$25,000 pursuant to Defendant Nelson's policy tendering its limits (25/50), and a reduction of \$40,000, which advance payment has already been paid to Plaintiff by State Farm. No further proof of these policies is needed.

(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 may stipulate 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 Plaintiffs:

1. A one-page summary of the medical bills redacted to remove insurance and collateral source information
2. 1949 Mortality Table;
3. 911 Call;
4. All photographs of the scene, vehicles, and/or parties in this matter;
5. All documents provided by Plaintiff in discovery;

6. All documents provided by any Party in discovery;
7. All investigative documents regarding this matter;
8. All documents received in response to any Open Records Requests;
9. All depositions and attachments/exhibits thereto;
10. All of Plaintiff's medical records before and after the collision at issue pursuant to O.C.G.A. § 24-8-803(6);
11. Medical Records from Grady Memorial Hospital;
12. Medical Records from Physiotherapy Associates;
13. Medical Records from American Health Imaging;
14. Medical Records from Regional Medical Group;
15. Medical Records from Georgia Spine and Orthopaedics;
16. Medical Records from Allspine Laser and Surgery Center;
17. Medical Records from South Atlanta Neurosurgery;
18. Medical Records from Minimally Invasive Neurospine-Pain Institute;
19. Medical Records from Grady EMS;
20. Plaintiff's radiological studies;
21. Any blow-ups, diagrams or illustrations of Plaintiff's injuries and resulting past or future healthcare treatment;
22. Any blow-ups, diagrams or illustrations of the area where the wreck occurred and surrounding areas (for demonstrative purposes);
23. All of Plaintiff's medical, pharmaceutical and healthcare expenses;
24. Property damage estimates for the vehicles involved;

25. State Farm Fire and Casualty Company declarations pages to the extent necessary;
26. Any document attached as an exhibit to any deposition in this case; and
27. Any document or item referenced by Defendant in his portion of this Pretrial Order

Plaintiff may amend her list of exhibits prior to trial without leave of court provided Defendant is given sufficient notice and opportunity to review any documents supplemented. Plaintiff shall have the right to enlarge or create “blow-ups” or digital or video reproduction of any exhibits.

Defendant/State Farm objects to any documents, including demonstrative aids, which have not been produced during discovery.

(b) By Defendant/State Farm:

- (1) Motor Vehicle Accident Report;
- (2) Photographs of the involved vehicles;
- (3) Property damage estimates, repair bills, and related documents;
- (4) Any pleading of record in any case in which Plaintiff was a party;
- (5) Any document listed by Plaintiff;
- (6) Any document produced or identified in discovery;
- (7) Any documents necessary for impeachment;
- (8) Plaintiff's discovery responses in any case in which Plaintiff was a party;
- (9) Plaintiff's x-rays, MRI's, CT scans, and other diagnostic tests and results thereof;
- (10) Photographs of the accident scene, if any;
- (11) Any and all records regarding the subject motor vehicle accident, or any other motor vehicle accident in which Plaintiff was involved, in the possession of any insurance carrier;
- (12) Medical narratives pursuant to O.C.G.A. § 24-3-18, if any;
- (13) Any statement or deposition by Plaintiff or any Defendant;
- (14) Exhibits to any depositions taken in this case;
- (15) Records from the following entities:
 1. Grady Memorial Hospital;

2. Physiotherapy Associates;
3. American Health Imaging;
4. Regional Medical Group;
5. Georgia Spine and Orthopaedics;
6. Allspine Laser and Surgery Center;
7. South Atlanta Neurosurgery;
8. Minimally Invasive Neurospine-Pain Institute;
9. Grady EMS;
10. Trinity Pain Relief Center;
11. Southern Regional Medical Center;
12. Southern Crescent Women's Health Center;
13. Medicaid of Georgia;
14. McDonald's Corporation;
15. Las Tortas Locas;
16. Dr. Erik Bendiks;
17. Amkaj Solutions

You are 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 your opportunity to review these records.

Defendant/State Farm reserves the right to introduce documentary evidence in rebuttal. In addition, Defendant/State Farm reserves the right to object to any documentary evidence of Plaintiff and insists on a proper foundation provides being laid. Finally, Defendant/State Farm

reserves the right to amend this order should the interest of justice so require.

Plaintiff objects to any document or item listed by Defendant State Farm which is not noted with any specificity as well as any document requested by Plaintiff but not produced by Defendant, including all documents received by Defendant in response to non-party requests for production of documents. Moreover, Plaintiff objects to any medical records being used at trial that have not been properly admitted into evidence and certified pursuant to O.C.G.A. §§ 24-8-803 and 24-9-902. Plaintiff further objects to the use or discussion, during trial, of any document or item from Defendant not previously produced during discovery.

(15)

Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows: Plaintiff will file any motion and brief regarding any legal issue which may arise both before and during the course of trial as necessary.

(16)

Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows: Plaintiff is barred from claiming special damages, which were not specifically pled pursuant to O.C.G.A. § 9-11-9(g). In addition, Defendant/State Farm and may file Motions in Limine to support evidentiary issues if they arise during trial. State Farm relies upon O.C.G.A. § 33-7-11.

(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 Plaintiffs:

- Plaintiff;
- Defendant;
- Andrew King;
- Rosa Rosas;
- Jesus Rosas Almanza;
- Armando Rosas;
- Armando Rosas, Jr.;
- David Rodriguez;
- Officer Jacob Bullock;
- German Garcia;
- Armando Hipolito;
- Joseph Brownlee;
- Terry Beasley;
- Nicholas Smith;
- Dr. Shahram Rezaimiri, MD;
- Dr. Eric Bendiks, MD;
- Dr. Jay Bender, MD;
- Dr. Thomas Fuller, MD;
- Brad Troxler, DO;
- Dr. Tamrea Ellison, MD;

- Brandon Adams, EMT;
- Amy Elkins, EMT;
- Abdulrahman Alahmari, MD;
- Jose Rosa, Jr., MD;
- Jeremy Ackerman, MD;
- Natalie Chan, D.C.;
- Venilla Barnes, PT;
- Thomas Fuller, MD;
- Any person necessary to authenticate any document or other item tendered by Plaintiffs in this matter as to its admissibility;
- Any person identified by Defendant;
- An employee or representative from State Farm Fire and Casualty Company to the extent necessary to authenticate uninsured/underinsured coverage; and
- Any person listed by any party as a will or may call witness.

Additionally, Plaintiff may submit any person listed by any party, any witness identified in Section 19, or any other witness whose deposition is necessary for the preservation of evidence, any party listed as a “may” or “will” call witness, and any witness whose deposition was taken who is unavailable for trial pursuant to O.C.G.A. § 9-11-32. Plaintiff reserves the right to supplement this list prior to trial without leave of court provided Defendant is given sufficient notice and opportunity to review and depose and additional witnesses.

By Defendant/State Farm: Any past or present treating physicians or health care providers of the Plaintiff provided that the deposition was attended by an attorney for State Farm.

Also, deposition testimony of any party or witness may be introduced for the limited purpose of impeachment when appropriate. Finally, Defendant/State Farm reserves the right to present deposition testimony of any person identified in paragraph 19 of this Order who is unavailable to testify at trial for a legally sufficient reason. State Farm objects to any deposition testimony unless a proper showing of unavailability to testify at trial is made and the deposition was taken for use as evidence.

(19)

The following are lists of witnesses the:

(a) Plaintiffs will have present at trial: Plaintiff

(b) Plaintiffs may have present at trial:

- Defendant;
- Andrew King;
- Rosa Rosas;
- Jesus Rosas Almanza;
- Armando Rosas;
- Armando Rosas, Jr.;
- David Rodriguez;
- Officer Jacob Bullock;
- German Garcia;
- Armando Hipolito;
- Joseph Brownlee;

- Terry Beasley;
- Nicholas Smith;
- Dr. Shahram Rezaimiri, MD;
- Dr. Eric Bendiks, MD;
- Dr. Jay Bender, MD;
- Dr. Thomas Fuller, MD;
- Brad Troxler, DO;
- Dr. Tamrea Ellison, MD;
- Brandon Adams, EMT;
- Amy Elkins, EMT;
- Abdulrahman Alahmari, MD;
- Jose Rosa, Jr., MD;
- Jeremy Ackerman, MD;
- Natalie Chan, D.C.;
- Venilla Barnes, PT;
- Thomas Fuller, MD;
- Any person necessary to authenticate any document or other item tendered by Plaintiffs in this matter as to its admissibility;
- Any person identified by Defendant;
- An employee or representative from State Farm Fire and Casualty Company to the extent necessary to authenticate uninsured/underinsured coverage; and
- Any person listed by any party as a will or may call witness.

Additionally, Plaintiff may submit any person listed by any party, any witness identified in Section 18, or any other witness whose deposition is necessary for the preservation of evidence, any party listed as a “may” or “will” call witness, and any witness whose deposition was taken who is unavailable for trial pursuant to O.C.G.A. § 9-11-32. Plaintiff reserves the right to supplement this list prior to trial without leave of court provided Defendant is given sufficient notice and opportunity to review and depose and additional witnesses.

(c) Defendant Nelson/State Farm will have present at trial: None at this time.

(d) Defendant Nelson/State Farm may have present at trial:

Plaintiff

Defendant Nelson

Defendant King

Defendant King Tree Experts, Inc.

Plaintiff’s medical providers listed in paragraph 14(c)

Records Custodians for Plaintiff’s medical providers listed in paragraph 14(c)

Investigating Police Officer

Any State Farm Mutual Automobile Insurance Company Claim Representative or
Team Manager

Any witness listed by the Plaintiff

Any witness necessary for purposes of impeachment or rebuttal, including any expert
witness necessary for rebuttal of any expert witness called by Plaintiff

Defendant Nelson/State Farm reserves the right to call witnesses for rebuttal of Plaintiff’s
witnesses. Defendant Nelson/State Farm objects to Plaintiff calling any witness who has not been

properly identified in discovery in this case.

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.

Plaintiff objects to any witness not specifically identified by any party within the Pre-Trial Order and objects to the use of any expert not properly and previously disclosed by any party including any medical doctor. Plaintiff objects to any witness listed by any party not previously disclosed during discovery. Plaintiff objects to any person or entity not specifically listed in which Plaintiff has not had sufficient time to investigate and depose, including Defendant's reference to "Plaintiff's medical providers."

(20)

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

By Plaintiff:

_____ We the jury find in favor of Plaintiff and award damages in the amount of _____

OR

_____ We the jury find in favor of Defendant

By Defendant Nelson/State Farm: The parties will submit a verdict form at trial which conforms to the evidence.

(21)

- 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 paid by: Equally shared by all parties.

d. Other matters: Plaintiff filed a Motion for Sanctions against Defendant which has yet to be ruled upon. Additionally, Plaintiff and Defendants King Tree Experts, Inc. and Andrew King filed a Motion to Dismiss Fewer than all Parties due to settlement at mediation which has yet to be ruled upon.

Respectfully submitted this 20th day of March, 2019.

/s/Chase Elleby
A. Joel Williams
Georgia Bar No. 365853
B. Chase Elleby
Georgia Bar No. 185666
Attorneys for Plaintiff


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/s/ Jason Green
Jason B. Green (*with express permission*)
Georgia Bar Number: 306858
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It is hereby ordered that the foregoing, including the attachments thereto, constitutes the following CONSOLIDATED PRETRIAL 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 the 12 day of Aug, 2019.



JUDGE MARGARET L. SPENCER
STATE COURT OF CLAYTON COUNTY