

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

BRYAN CANADY,)	
)	
Plaintiff,)	Civil Action File
)	No. 18A67579
v.)	
)	
SHAUN L. TRAUB, M.D., and)	
RESURGENS, P.C., d/b/a)	
RESURGENS ORTHOPAEDICS,)	
)	
Defendants.)	
_____)	

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes the parties' Consolidated Pre-Trial Order submitted in the above-styled matter:

1.

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

Plaintiff:

Ryan W. Babcock
The Babcock Law Firm, P.C.
706 G Street, Suite 101
Brunswick, Georgia 31520
(912) 574-7575 (telephone)
(912) 662-5407 (fax)
ryan@babcocklegal.com

Defendants:

Paul Weathington
Heather McGrotty
Weathington
191 Peachtree St, NE, Suite 3900
Atlanta, Georgia 30303
(404) 524-1600 (telephone)

(404) 524-1610 (fax)
pweathington@weathington.com
hmcgrotty@weathington.com

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:

Plaintiff:

Plaintiff may file trial and pretrial motions to address any evidentiary or legal questions that may arise during the pendency of this case.

Defendants:

Defendants have filed Motions in Limine and may file a Motion to Dismiss. Defendants have prepared a motion for partial summary judgment on Plaintiff's punitive damages claim. However, Plaintiff's counsel has indicated the claim will be withdrawn. Defendants reserve the right to file a Rule 22 Order and Early Entry Order, trial motions and other motions necessary to address evidentiary issues at trial.

4.

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

Bryan Canady;
Ryan Babcock;
The Babcock Law Firm;
Shaun Traub, M.D.;
Officers, directors & shareholders of Resurgens, PC d/b/a Resurgens Orthopaedics; and
Officers, directors & shareholders of The Doctors 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, however, 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 engage in further discovery relating to those witnesses and documents that any party discloses in the Pretrial Order if such witnesses and documents were not previously disclosed in the discovery process.

(a) The parties reserve the right to depose any individual identified by any party for the first time in the “may call” portion of this order.

(b) The parties reserve the right to depose any physician or medical provider for the preservation of evidence for use at trial.

6.

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

On February 19th of 2014, Dr. Shaun Traub, following up on his prior Achilles tendon surgery on his patient, Bryan Canady, removed sutures from the incision of the operation site too soon, nine days after the initial procedure. On February 28, 2014, knowing that the incision at the Achilles repair site had become infected which necessitated a follow up surgery, Defendant Traub failed to remove the foreign material in Mr. Canady’s body, that is, the suture connecting the tendon to the metal anchors (screws) in the heel bone; the metal anchor hardware; and the Swivel lock anchor that had been inserted into the calcaneus, so that the infection could be cleared and Mr. Canady’s surgical wound could heal. On April 2, 2014, knowing that internal suture was visible in the wound, and that this contaminated foreign body that was exposed to the environment, Defendant Traub failed to remove the foreign material in Mr. Canady’s body, so that the infection could be cleared and Mr. Canady’s surgical wound could heal. By the time Defendant Traub

referred Plaintiff Bryan Canady to Dr. John Gleason, a Resurgens foot and ankle specialist, so that the problem could be corrected, by another follow up surgery on July 10, 2014, it was too late to save Mr. Canady's heel bone, which had become infected due to the delay in treatment. As a result, Mr. Canady has lost the ability to continue in his chosen profession as an interstate truck driver, he struggles to walk, and is in severe pain every day, affecting his quality of life and his enjoyment of life.

NOTE: Defendants object to Plaintiff's outline of the case being read to the jury. Defendants object to Plaintiff's outline to the extent it is not brief or succinct, is argumentative and contains irrelevant and immaterial information, information not supported by the evidence, and information that may be subject to exclusion pursuant to Defendants' Motions in Limine.

7.

The following is **Defendants'** brief and succinct outline of the case and contentions:

Shaun Traub, MD met the standard of care applicable to physicians generally under similar circumstances and like surrounding conditions at all times while providing care and treatment to Bryan Canady. No act or omission on his part caused or contributed to plaintiff's alleged injuries or damages. As a result, Dr. Traub, and his employer, Resurgens Orthopaedics, are entitled to a verdict in their favor.

In February 2014, Bryan Canady suffered a right Achilles tendon rupture while on the job as a truck driver, avulsing the entire tendon away from the calcaneus. Mr. Canady was referred to Resurgens Orthopaedics and on February 10, 2014, Dr. Traub performed a surgical repair of Mr. Canady's Achilles tendon utilizing an anchor and swivel lock device. On the 9th post-operative day, February 19, 2014, the sutures were removed, steri-strips were placed over the incision and Mr. Canady was placed in a CAM boot. At the time, the surgical wound was clean and dry with

no signs of infection. Mr. Canady returned on February 28, with the wound dehisced and appearing infected. Mr. Canady had mostly been wearing his surgical boot without a sock. A wound infection is a known risk and complication associated with any orthopaedic surgery. Despite aggressive efforts to save the Achilles tendon repair and clear the infection with antibiotics, irrigation and debridement procedure and wound care, including use of a wound vacuum, Mr. Canady ultimately required surgical removal of the hardware and a flexor hallucis longus graft. Mr. Canady's failure to follow post-operative and wound care instructions may have caused or contributed to his on-going infection and ultimate outcome.

NOTE: Defendants' outline of the case is being written for the benefit of the Court. Defendants object to this outline of the case and contentions being read to the jury as facts other than those contained herein may become important during the trial of the case, depending upon the evidence presented during Plaintiff's case in chief. Should the Court wish to read an outline of the case to the jury, Defendants would like the opportunity to draft a more thorough outline for the jury that is tailored to the evidence presented at trial.

Defendants disagree with the outline of contentions provided by Plaintiff and specifically object to the presentation of the outline of contentions to the jury.

8.

The issues for determination by the jury are as follows:

Plaintiff:

1. Did Dr. Traub fail to exercise the degree of care and skill normally exercised by such medical professionals generally under the same or similar circumstances in his treatment of Bryan Canady?
2. If so, did Dr. Traub's professional negligence or omissions proximately cause any injury

to Bryan Canady?

3. If the jury finds that Dr. Traub's professional negligence was a proximate cause of injury to Bryan Canady, what award is needed to compensate for the full value of Bryan Canady's injuries, physical and emotional pain and suffering, and medical and other necessary expenses?

Defendants:

- a) Whether Plaintiff has proven by a preponderance of the evidence Dr. Traub violated the standard of care applicable to physicians generally under similar circumstances and like surrounding conditions at all times while providing care and treatment to Mr. Canady;
- b) If Dr. Traub violated the standard of care, whether it was the proximate cause of Bryan Canady's injuries;
- c) Damages, if any;
- d) Whether Mr. Canady was contributorily negligent; and
- e) If Mr. Canady was contributorily negligent, the percentage of his negligence.

Plaintiff objects to Defendants' reference to contributory negligence as inapplicable under the law and facts of this case.

9.

Specifications of negligence, including applicable code sections, are as follows:

Plaintiff:

O.C.G.A. § 51-1-27. Malpractice of surgery and medicine

Defendants violated the standard of care in at least the following ways:

- a) On or about February 19th of 2014, Defendant Traub prematurely removed sutures from the incision of the operation site to the Achilles tendon of Plaintiff Bryan Canady, nine days after the initial procedure.
- b) On or about February 28, 2014, knowing that the incision at the Achilles repair site had become infected and that a follow up surgery would be required, Defendant Traub, during this second surgery, failed to remove the foreign material, namely: the suture connecting the tendon to the metal anchors (screws) in the calcaneus (heel bone); the metal anchor hardware; and, the Swivel lock anchor that had been inserted into the calcaneus, so that the infection could be cleared and Mr. Canady's surgical wound could heal.
- c) On April 2, 2014, knowing that internal suture was visible in the wound, and that this contaminated foreign body that was exposed to the environment, Defendant Traub failed to remove the foreign material in Mr. Canady's body, so that the infection could be cleared and Mr. Canady's surgical wound could heal.

10.

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

This case does not involve a contract.

11.

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

Plaintiff:

- a) Bryan Canady's physical and emotional pain and suffering, as determined by the jury;

and

- b) Medical and other necessary expenses.

Defendants:

Defendants deny that Plaintiff is entitled to any damages whatsoever. Defendants object to the admissibility of any medical bills/expenses not actually incurred by the Plaintiff.

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.

This case does not involve divorce.

13.

The following facts are stipulated:

Dr. Traub was an employee of Resurgens, PC d/b/a Resurgens Orthopaedics at all times while providing care and treatment to Bryan Canady.

Dr. Traub was working within the course and scope of his employment with Resurgens, PC d/b/a Resurgens Orthopaedics at all times while providing care and treatment to Bryan Canady.

14.

The following is a list of all documentary and physical evidence that will be tendered at the trial by Plaintiff or Defendants. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

Plaintiff:

1. Medical records, bills & imaging of Bryan Canady from:
 - (a) Resurgens, PC d/b/a Resurgens Orthopaedics;
 - (b) St. Joseph's Hospital;

- (c) Infectious Disease Consultants/Karuna Kusan, MD;
- (d) Emory Eastside Medical Center;
- (e) Zenux Healthcare Services;
- (f) Rehabilitation Physicians of Georgia;
- (g) Georgia Infectious Disease/Mitchell Blass, MD;
- (h) American Anesthesiology Associates of Georgia;
- (i) J Michael Calhoun, MD;
- (j) Gwinnett Clinic;
- (k) Axela Care;
- (l) Sovereign Rehabilitation;
- (m) Eastside Spine and Pain Management/David Stewart, MD;
- (n) Keith O. Schulterman, MD;
- (o) Conway Orthopaedic & Sports Medicine Center;
- (p) Conway Regional Pain Management;
- (q) Advance Spine and Pain Clinic;
- (r) BrightStar Care
- (s) Paul Allen, MD;
- (t) Dimitri Golfinopoulos, MD;
- (u) Amit Patel, MD; and
- (v) James Sigler, MD.

2. Pharmacy records of Bryan Canady from:

- (a) Express Scripts;
- (b) CVS;

- (c) OptumRx; and
 - (d) Walgreens.
- 3. Bryan Canady's 1099s and federal and state tax returns
- 4. Bryan Canady's narrative of accident
- 5. Great West Casualty Company Occupational Accident Claim File
- 6. Bryan Canady's Paralegal Certificate
- 7. Bryan Canady's Information Technology Certificate
- 8. Email Correspondence Between Heather McGrotty and Ryan Babcock regarding Dr. Traub's Treatment Calendar and Plaintiffs' Request for Production No. 14.
- 9. Bryan Canady's handwritten list of medical providers
- 10. Additional bills incurred by Plaintiff up to time of trial
- 11. Pleadings filed in the case
- 12. Any evidence necessary for impeachment or rebuttal
- 13. Standard Annuity Mortality Table
- 14. Photographs and videos of the Plaintiff and Plaintiff's family or friends
- 15. Films, X-rays and positives of X-rays of Plaintiff's injured leg and foot
- 16. Plaintiff's Diversity Placement Services Client Job Log
- 17. Employment records of Bryan Canady from:
 - (a) U.S. Xpress, Inc.;
 - (b) Uber; and
 - (c) Lyft.
- 18. *Curriculum vitae* of Abhay Patel, M.D.
- 19. Any document listed by Defendants herein

20. Any document for purposes of impeachment of any witness
21. Medical literature
22. Demonstrative exhibits
23. Anatomical models and any diagrams, videotapes, or other demonstrative aids to be used by a witness to explain their testimony; and

~~Plaintiff reserves the right to amend his list of exhibits prior to the time of trial and in accordance with Georgia law.~~ The parties reserve all objections, including those to authenticity and admissibility, until the time the parties can inspect the opposing parties' documentary and physical evidence.

Demonstrative exhibits not to be tendered into evidence may be used as allowed by law regardless of whether they are listed in this Pre-Trial Order. Exhibits may be re-numbered prior to trial. Portions of exhibits, redacted versions and enlargements may be used as allowed by law. Learned treatises and medical articles may be used as allowed by law without being listed in this pre-trial order. Transcripts or other documents used to impeach witnesses need not be listed in this pre-trial order.

Defendants:

1. Medical records, bills & imaging of Bryan Canady from:
 - (a) Resurgens, PC d/b/a Resurgens Orthopaedics
 - (b) St. Joseph's Hospital;
 - (c) Infectious Disease Consultants/Karuna Kusan, MD;
 - (d) Emory Eastside Medical Center;
 - (e) Zenux Healthcare Services;
 - (f) Rehabilitation Physicians of Georgia;

- (g) Georgia Infectious Disease/Mitchell Blass, MD;
 - (h) American Anesthesiology Associates of Georgia;
 - (i) J Michael Calhoun, MD;
 - (j) Gwinnett Clinic;
 - (k) Axela Care;
 - (l) Sovereign Rehabilitation;
 - (m) Eastside Spine and Pain Management/David Stewart, MD;
 - (n) Keith O. Schulterman, MD;
 - (o) Conway Orthopaedic & Sports Medicine Center;
 - (p) Conway Regional Pain Management;
 - (q) Advance Spine and Pain Clinic; and
 - (r) BrightStar Care.
 - (s) Paul Allen, MD;
 - (t) Dimitri Golfinopoulos, MD;
 - (u) Amit Patel, MD; and
 - (v) James Sigler, MD.
2. Pharmacy records of Bryan Canady from:
- (a) Express Scripts;
 - (b) CVS;
 - (c) OptumRx; and
 - (d) Walgreens.
3. Bryan Canady's journal;
4. Bryan Canady's 1099s and federal and state tax returns;

5. Bryan Canady's narrative of accident;
6. Great West Casualty Company Worker's Compensation Claim File;
7. Photographs of Bryan Canady;
8. Paralegal Certificate;
9. Bryan Canady's handwritten list of medical providers;
10. Employment records of Bryan Canady from:
 - (a) U.S. Xpress, Inc.
 - (b) Uber; and
 - (c) Lyft.
11. *Curriculum vitae* of Shaun Traub, M.D.;
12. *Curriculum vitae* of John Gleason, MD;
13. *Curriculum vitae* of Scott Kimmerly, MD;
14. *Curriculum vitae* of George Holmes, Jr, MD;
15. Any document listed by Plaintiff herein;
16. Plaintiff's discovery responses;
17. Any document for purposes of impeachment of any witness;
18. Medical literature;
19. Demonstrative exhibits;
20. Anatomical models and any diagrams, videotapes, or other demonstrative aids to be used by a witness to explain their testimony; and
21. Pleadings, including, but not limited to, the following:
 - a. Plaintiff's Refiled Complaint.

~~Defendants reserve the right to amend their list of exhibits prior to the time of trial and in accordance with Georgia law.~~ The parties reserve all objections, including those to authenticity and admissibility, until the time the parties can inspect the opposing parties' documentary and physical evidence.

Demonstrative exhibits not to be tendered into evidence may be used as allowed by law regardless of whether they are listed in this Pre-Trial Order. Exhibits may be re-numbered prior to trial. Portions of exhibits, redacted versions and enlargements may be used as allowed by law. Learned treatises and medical articles may be used as allowed by law without being listed in this pre-trial order. Transcripts or other documents used to impeach witnesses need not be listed in this pre-trial order.

15.

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

Plaintiff:

Plaintiff is aware of no such questions at this time.

16.

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

Defendants:

Any authorities for evidentiary and legal questions will be set forth in Defendants' Motions in Limine, proposed jury charges, pre-trial motions, and trial briefs. Defendants reserve the right to file additional briefs on special authorities pertaining to evidentiary or legal questions should the need arise at trial.

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 propose additional requests to charge after the commencement of trial in the event that issues arise at trial for which additional charges are needed.

18.

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

Plaintiff:

None. Plaintiff reserves the right to take any evidentiary depositions prior to trial and these may be introduced at the time of trial. Any objections to the depositions or questions or arguments in the deposition shall be called to the attention of the Court prior to trial.

Defendants:

Defendants reserve the right to take any evidentiary depositions prior to trial and these may be introduced at the time of trial. Any objections to the depositions or questions or arguments in the deposition shall be called to the attention of the Court prior to trial.

Defendants reserve the right to use previous deposition testimony for the purposes of impeachment and all other purposes allowed by law.

19.

The following are lists of witnesses:

I. Plaintiff:

- a. Plaintiff will have present at trial:
 1. Bryan Canady

2. Abhay Patel, M.D.

b. Plaintiff may have present at trial:

1. Sabrina Anderson

2. Mitchell Blass, M.D.

3. Duane Burel

4. Luther Canady

5. Tyrone Canady

6. Travis Canady

7. Christi Cline

8. Gilbert Davis

9. Kenny Daniel

10. Ronald Donald

11. Mark Edge

12. Kristen Empfield

13. Mark Feeman, M.D.

14. Connie Germundsen

15. Cynthia Givens

16. John Gleason, M.D.

17. Dimitri Golfinopolous, D.O.

18. Soheil Hanna, M.D.

19. Judy Hanson

20. Donald Jones

21. Karuna Kusan, M.D.

22. Kevin Lee
23. Brad Lindsey, M.D.
24. Marie Napoli
25. Keith Osborn M.D.
26. Amit Patel, M.D.
27. Anisha Perry
28. Naomi Simpson
29. Earl Stephenson, M.D.
30. David Stewart, M.D.
31. David Touchstone
32. Wanda Torebush
33. Any individual listed by Defendants as a will or may call witness;
34. Any witness necessary for rebuttal or impeachment; and
35. Any witness necessary for purposes of record authentication and/or foundational requirements.

II. Defendants:

c. Defendants will have present at trial:

Shaun Traub, M.D.

d. Defendants may have present at trial:

1. John Gleason, MD;
2. Scott Kimmerly, MD;
3. George Holmes, Jr, MD;
4. Karuna Kusan, MD;

5. Mitchell Blass, MD;
6. David Stewart, MD;
7. Any individual listed by Plaintiff as a will or may call witness;
8. Any witness necessary for rebuttal or impeachment; and
9. Any witness necessary for purposes of record authentication and/or foundational requirements.

~~The parties reserve the right to amend their lists of witnesses prior to or during trial in accordance with Georgia law.~~

Opposing counsel may rely on representation that the designated party 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:

The parties will work together to submit a mutually agreeable verdict form at the trial of this matter.

21.

- (a) The possibilities of settling the case are:

Plaintiff:

Plaintiff is open to resolving the case on a fair and reasonable basis short of trial and is willing to discuss settlement, but it appears that the case is unlikely to settle at this time.

Defendants: Poor.

- (b) The parties do want the case reported.

The cost of take-down will be shared equally among the parties.

- (c) Other matters: None

This 29th day of July, 2021.

Respectfully submitted,

/s/ Heather C. McGrotty
Paul Weathington
Georgia Bar No. 743120
Heather C. McGrotty
Georgia Bar No. 127020

191 Peachtree St., NE
Suite 3900
Atlanta, Georgia 30303

Attorneys for Defendants

Consented to by:

s/Ryan W. Babcock

Ryan W. Babcock
Georgia Bar No. 030039
The Babcock Law Firm, P.C.
706 G Street, Suite 101
Brunswick, Georgia 31520

STATE COURT OF
DEKALB COUNTY, GA.
8/18/2021 11:57 AM
E-FILED
BY: Kelly Flack

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing CONSOLIDATED PROPOSED PRE-TRIAL ORDER upon the following counsel via Odyssey E-File & Serve as follows:

Ryan W. Babcock
The Babcock Law Firm, PC
706 G Street, Suite 101
Brunswick, Georgia 31520

This 29th day of July, 2021.

WEATHINGTON

/s/ Heather C. McGrotty
Heather C. McGrotty
Georgia Bar No. 127020

ORDER

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

This 17th day of August, 2021.



The Honorable Dax E. Lopez
Judge, State Court DeKalb County