

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

SEAN MCGAHA,

Plaintiff,

v.

Civil Action No.: 22EV005185

ROBERT PEEK,

Defendant.

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes Plaintiff's and Defendant's proposed Consolidated Pre-Trial Order submitted in the above-styled case:

1.

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

Plaintiff:

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Atlanta, Georgia 30324
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Defendant:

Karl P. Broder
Georgia State Bar No. 185273
Beck, Owen & Murray
One Griffin Center, Suite 600

100 South Hill St.
Griffin, GA 30223
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kbroder@beckowen.com

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:

Plaintiff: Plaintiff's Motions in Limine.

Defendant: Defendant's Motions in Limine.

4.

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

Plaintiff: Robert Peek, policyholders shareholders, and employees of State Farm Insurance Company, The Law Firm of Beck, Owen and Murray, Defendant, Karl Broder.¹

Defendant: Plaintiff, and Plaintiff's law firm.

5.

Plaintiff & Defendant:

- 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. Defendant is still awaiting the return of a non-party request for a provider that was disclosed to Defendant on September 5, 2023. Plaintiff has represented this provider reflects treatment not related to this accident. Based on this

¹ Plaintiff acknowledges that the rules do not ordinarily require the Court to qualify the jurors as to defense counsel. However, the Court has the discretion to do so, and Plaintiff suggests that doing so is conducive to a fair trial.

representation, Defendant does not expect the need for a motion to compel or further discovery on this issue. Any such discovery matters are not expected to delay a trial of this case.

- b. The parties however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial;
- c. Unless otherwise noted, the names of the parties shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or non-joinder of any parties.

6.

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

On March 29, 2021, the defendant, Defendant Robert Peek was riding his bicycle in Midtown Atlanta near Piedmont Park on the road. Defendant Peek was riding his bicycle in the car lane, not the bicycle lane. Suddenly, and without any warning, Defendant Peek swerved from the car lane into the bicycle lane where the plaintiff, Plaintiff Sean McGaha was already riding his bicycle in the opposite direction. Defendant Peek collided with Mr. McGaha head on causing Mr. McGaha to fly off his bicycle. Mr. McGaha suffered severe injuries to his hands and wrists that required multiple surgeries. Defendant Peek admits that he is responsible for causing the bicycle accident in which Plaintiff was injured. Defendant Peek admits that his negligence proximately caused injuries to Plaintiff McGaha's hands and wrists.

Plaintiff may also rely on Defendant's responses to Plaintiff's requests for admission, interrogatories, and requests for production. *See Vis v. Harris*, 329 GA. App. 129, 134-36 (2014).

7.

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

Defendant Peek admits that he is responsible for causing the bicycle accident in which Plaintiff was injured. Defendant does not dispute that his negligence proximately caused injuries to Plaintiff's hand and wrist. Defendant reserves the right to contest other alleged injuries claimed by Plaintiff and also disputes the amount of any award for pain suffering.

Summary of the case agreed to by all counsel and emailed to Ms. Gifford on January 11, 2024: This is a personal injury case arising from an accident on March 29, 2021. Defendant Robert Peek admits that he caused an accident with Plaintiff Sean McGaha, while both men were riding their bicycles near Piedmont Park. The impact between the two bicycles caused Plaintiff Sean McGaha to fall off his bicycle, injuring his hands and wrists. These injuries required medical treatment, including several surgeries. Defendant Peek admits that his negligence proximately caused the injuries to Plaintiff McGaha's hands and wrists. The question for you to decide is the amount of damages to be awarded.

8.

The issues for determination by the jury are as follows:

Plaintiff: Damages.

Defendant: Causation as to any injuries aside from those to Plaintiff's hand and wrist;
damages

9.

Specifications of negligence including applicable code sections are as follows:

Plaintiff: Failure to travel in the same direction as traffic on the roadway as required by O.C.G.A. § 40-6-294.

Defendant: Not applicable.

10.

Medical Provider	Billing Total
Bioventus	\$4,950.00
CVS Pharmacy	\$36.54
Emory University Hospital Midtown	\$6,693.22
Georgia Hand, Shoulder & Elbow, P.C.	\$830.00
MAK Anesthesia Holdings, LLC	\$2,760.00
Northside Anesthesiology Consultants, LLC	\$5,478.00
Northside Hospital	\$80,402.00
Northside Radiology Associates	\$2,384.00
Northside Radiology Department	\$3,074.00
Piedmont Urgent Care by Wellstreet Buckhead South	\$272.00
Piedmont Orthopedics	\$1,181.00
Sports Rehab Center at Georgia Tech	\$4,795.62
The Hand and Upper Extremity Center of Georgia (Dr. Gillespie, M.D.)	\$2,433.35
The Hand and Upper Extremity Center of Georgia (Treatment Facility)	\$16,127.73
The Hand and Upper Extremity Surgery Center (Surgery Facility)	\$33,048.53
	Past Medical Bills Total: \$164,465.99

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: Past, present, and future interference with daily living; past, present, and future pain and suffering; medical expenses; fright, shock, and terror; diminished quality of life; and loss of enjoyment of life. The applicable measures of damages are the medical bills and the enlightened conscience of the jury. Plaintiff has also submitted an offer of settlement pursuant to O.C.G.A. § 9-11-68, which was rejected.

Plaintiff has produced an itemized list of medical costs to Defendant. The list is below:

Plaintiff is not claiming lost wages.

Defendant: Defendant submitted an offer of settlement pursuant to O.C.G.A. § 9-11-68, which was rejected.

12.

The following facts are stipulated:

Plaintiff:

1. Defendant Peek was negligent.
2. Plaintiff injured his hands and wrists as a result of Defendant's negligence.

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 not stipulated as to the authenticity of the documents listed and the exhibits listed may not 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.

Plaintiff:

- a. All documents produced or identified in discovery or marked as exhibits to depositions or medical reports/narratives in this case;
- b. Photographs relevant to damages;
- c. Photographs related to the collision (e.g., photos of bicycles or of the scene);
- d. Diagram of the scene;
- e. Records of medical providers who have provided treatment to the Plaintiff since the subject collision;
- f. Bills of medical providers who have provided treatment to the Plaintiff since the

- subject collision;
- g. Medical Bill List identifying the total charges in summary form;
 - h. Medical Report (pursuant to O.C.G.A. § 24-8-826) of Tyler Randolph, PT, DPT;
 - i. Plaintiff's bicycle from the subject collision;
 - j. Medical timeline boards;
 - k. Any and all of Defendant's pleadings in this case;
 - l. All Discovery Pleadings and responses thereto, including Interrogatories and Requests for Production;
 - m. Plaintiff's Requests for Admission and Defendant's Responses thereto;
 - n. Annuity Mortality Table;
 - o. National Center for Health Statistics National Vital Statistics Reports, 2020; and,
 - p. Any document listed by Defendant.

Plaintiff may supplement this list if additional evidence becomes available, and reserves, as Defendant has, the right to object to other parties' evidence on grounds of authenticity (except as otherwise agreed).

Defendant:

- a. All documents produced or identified in discovery or marked as exhibits to depositions or medical reports/narratives in this case;
- b. Photographs related to the collision (e.g., photos of bicycles or of the scene);
- c. Diagram of the scene;
- d. Records of medical providers, including, but not limited:
 - 1. Emory University Hospital Midtown
 - 2. The Emory Clinic

3. The Hand & Upper Extremity Center
 4. Georgia Hand, Shoulder & Elbow
 5. Northside Hospital
 6. Piedmont Internal Medicine (Dr. Kelly)
 7. Sports Rehabilitation Center at Georgia
 8. The Hand and Upper Extremity Surgery Center of Georgia, LLC
 9. Blue Cross Blue Shield
 10. CVS
 11. Piedmont Orthopedics/OrthoAtlanta
 12. Piedmont Atlanta Hospital
 13. Northeast Georgia Physicians Group
 14. Outpatient Imaging
 15. Northside Hospital
 16. Wellstreet Urgent Care
 17. Northside Johnson Ferry Imaging
 18. Northside Midtown
 19. Piedmont Atlanta Spine Center
 20. Sports Rehabilitation Center at Georgia Tech
- e. Records from Plaintiff's cell phone provider
 - f. All Discovery Pleadings and responses thereto, including Interrogatories and Requests for Production;
 - g. Any document listed by Plaintiff.
 - h. Any evidence identified by Plaintiff

- i. Any evidence or responses produced in discovery
- j. Any documents necessary for purposes of impeachment or rebuttal
- k. 911 audio/video
- l. Deposition transcripts and exhibits taken in this case.

Defendant reserves the right to introduce documentary evidence in rebuttal. In addition, Defendant reserves the right to object to any document evidence of Plaintiff. Finally, Defendant reserves the right to amend this order should the interest of justice so require.

14.

Plaintiff: Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows: None, except as cited in briefs that are already filed. Plaintiff may file bench briefs regarding voir dire, or such other issues as may arise.

Defendant: None at this time, except for matters raised in Defendant's Motions in Limine.

15.

Plaintiff & Defendant: All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3 and the Court's instructions regarding same. Each party reserves the right to submit jury charges to cover unanticipated points discovered during trial.

16.

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

Plaintiff: Dr. Bryce Gillespie, Tyler Randolph, PT, DPT, and any other for-trial deposition taken in the case.

Any objection to the depositions or questions or arguments in the depositions shall be

called to the attention of the Court prior to trial.

Defendant: None at this time.

18.

The following are lists of witnesses the:

Plaintiff:

a. Plaintiff will have present at trial: Sean McGaha

b. Plaintiff may have present at trial:

- Jerry McGaha;
- Lisa McGaha;
- Laura McGaha;
- Chris Asta;
- Corbin Gleason;
- David Jackson;
- Jake Underwood;
- Jamel Grooms;
- Steven Tyler;
- Any police officer named in the incident report or materials produced by either side in discovery, such as Officer Matthew Coffin with the Atlanta Police Department;
- Any medical professional named in the medical records produced by Plaintiff or Defendant;
- Any witness disclosed in Plaintiff's responses to Defendant's interrogatories or requests for production; and
- Any witnesses listed by either Defendant.

Defendant:

- d. Defendant will have present at trial: No one.
- e. Defendant may have present at trial:
 - 1. Defendant.
 - 2. The investigating officer
 - 3. Any witness listed by Plaintiff.
 - 4. Any medical professional identified within Plaintiff's medical records
 - 5. Records custodian from any doctor, chiropractor, or other practitioner of the healing arts who has treated and/or examined the Plaintiff.
 - 6. Any past or present employer of Plaintiff.
 - 7. Any records custodian needed for authentication of any records pertaining to Plaintiff.
 - 5. any witness for purposes of impeachment and rebuttal.

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 the trial to allow the other parties to subpoena the witness or obtain his testimony by other means.

The parties reserve the right to amend this list provided that opposing counsel is notified of the supplementation prior to trial. Notice will be given to opposing counsel of any additional witnesses at least five (5) days prior to trial.

19.

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

Plaintiff: Plaintiff will submit a proposed verdict form before trial. For present purposes, please see below:

_____ We, the jury, find in favor of Plaintiff in the amount of \$ _____.

Defendant: Defendant will submit a proposed verdict form before 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 paid by the parties equally.
- d. Other matters: None.

Respectfully submitted this 27th day of September, 2023.

TOBIN INJURY LAW

BY: /s/ Darren Tobin

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