

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

XXXXXXXXXX,

Plaintiff,

vs.,

DANIEL ORLANDO XXXX,

Defendant.

CIVIL ACTION
FILE NO.:

JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT FOR DAMAGES AND OTHER RELIEF

COME NOW Plaintiff **XXXXXXXXXX** who hereby makes her Complaint for Damages and Other Relief against Defendant Daniel Orlando XXXX as follows:

JURISDICTIONAL ALLEGATIONS

1.

XXXXXXXXXX is a citizen and resident of Georgia. **XXXXXXXXXX** submits herself to the jurisdiction of the Superior Court of Jasper County with respect to this lawsuit.

2.

Defendant Daniel XXXX is believed to be a Georgia resident as he resides at 22019 GA Highway 83 N, Jasper County, Shady Dale, Georgia 31085. Defendant Daniel XXXX may be personally served at 22019 GA Highway 83 N, Jasper County, Shady Dale, Georgia 31085.

3.

Venue is proper in Jasper County.

FACTUAL ALLEGATIONS

4.

On November 4, 2013, **XXXXXXXXXX** was driving a 2003 Honda Civic north on Georgia State Route 142 near Pennington Road in Jasper County, Georgia.

5.

At the same time, on the very same road and in the very same direction Daniel XXXX was driving a two ton 1996 Ford truck.

6.

The two ton 1996 truck was also towing a trailer.

7.

While driving, Daniel XXXX was using his iPhone and/or iPod, became distracted and failed to keep a lookout ahead.

8.

While Daniel XXXX was distracted he drove the two ton 1996 truck and trailer directly into the rear bumper of **XXXXXXXXXX**'s Honda Civic.

9.

Prior to impact Defendant driver Daniel XXXX skidded 54 feet.

10.

After impact Daniel Villanueva's two ton 1996 truck pushed **XXXXXXXXXX**'s Honda Civic 146 feet.

11.

Following the collision, **XXXXXXXX** was in significant pain and her condition was considered critical and life threatening.

12.

As a result of the collision **XXXXXXXX** was admitted to the Medical Center of Central Georgia.

13.

The collision caused the following injuries listed below:

- i. a rotational fracture dislocation of C2 on C3, with perched facet on the left, with the bone fragment displaced;
- ii. fracture through the right transverse foramen at C3;
- iii. extensive prevertebral soft tissue swelling anterior to C2, C3 and C4, and to C5;
- iv. posterior ligamentous injury C2, C3 and C4; and
- v. other injuries as may be proved at trial.

14.

The spinal fracture observed by surgeon **XXXXX** is commonly referred to as a “hangman’s fracture”, due to the resulting damage being consistent with the hanging of a human by rope.

15.

A hangman’s fracture is the result of traction from the anterior longitudinal ligament on its insertion at the anteroinferior portion of the C2 body during a sudden, violent extension.

16.

As a result of the collision **XXXXXX** underwent a painful medical procedure using Gardner- Wells tongs to stretch her spine.

17.

On November 7, 2013, **XXXXXXXXXX** underwent surgery and the following medical procedures were performed:

- i. C2- C3 open reduction internal fixation;
- ii. C2-C3 stabilization with pedicle screws, lateral mass screws and rods;
- iii. C2-C3 fusion.
- iv. During the surgery the surgeon confirmed that **XXXXXXXXXX** suffered significant edema and contusion of the muscles.

18.

XXXXXXXXXX also suffered a fracture dislocation with three-column injury.

19.

Following **XXXXXXXXXX** 's discharge from the hospital, she remained in a Halo brace until January 7, 2014.

20.

At the request of **XXXXXXXXXX**, she was allowed to return to work on a limited basis with the restriction that she was not to do any lifting greater than 20 pounds.

21.

On February 11, 2014, it was observed that **XXXXXXXXXX** had a new kyphotic curvature and 3 mm anterolisthesis of C3 on C4, which is not unexpected given the severe trauma which **XXXXXXXXXX** suffered as a result of the motor vehicle collision on November 4, 2013.

22.

On April 11, 2014, XXXXXXXX had an exacerbation of her pain in her neck, along with numbness in her right hand.

23.

XXXXXXXXXX will require physical therapy for the foreseeable future.

24.

Given the fact that a C2-C3 subluxation fractures typically result in death or the patient suffering quadriplegia; considering XXXXXXXX 's recovery thus far and considering the above-referenced kyphotic curvature and 3 mm anterolisthesis of C3 on C4, XXXXXXXX is restricted from activities which could place her at an increased risk for a fall or injury, which would include avoiding horseback riding.

25.

Adjacent segment disease (ASD) has been associated with cervical spine fusion.

26.

ASD can be caused by undue stress placed on neighboring segments of the fused spine.

27.

Fusing the spine places additional stress on neighboring segments and XXXXXXXX will require future surgery and medical expense.

28.

Based upon the extent and type of injuries which XXXXXXXX suffered as a result of the motor vehicle collision on November 4, 2013; given her current health condition and given the fact that she is only 44 years of age, with a life expectancy of approximately 36 years, it is

probable that **XXXXXX** will need one or more future surgeries during her lifetime involving her spine.

29.

XXXXXXXX's injuries are credible and there is no evidence that would indicate that Wyatt is a malingerer.

30.

As a result of the above-described collision, **XXXXXXXX** suffered and continues to suffer physical and mental pain and suffering; has sustained permanent injuries; has incurred medical expenses and will incur future medical expenses for medical care and attention in the future; and has suffered and will continue to suffer a diminution in the quality of her physical health and quality of life as a direct result thereof. Said damages should be measured by the enlightened conscience of a fair and impartial jury.

31.

XXXXXXXX claims all general and special damages allowed by Georgia Law, which may be proved at trial.

COUNT I

(Simple Negligence)

32.

XXXXXXXX incorporates by reference paragraphs "1" through "31" of her *Complaint* into Count I as if fully set forth herein.

33.

As a result of the collision **XXXXXXXX** has incurred \$175,257.28 in medical bills.

34.

Defendant's actions were negligent, causing personal injuries to **XXXXXXXXXX**.

XXXXXXXXXX is entitled to compensatory, general, special and actual damages in an amount to be determined by the enlightened conscience of the jury.

COUNT II

(Negligence Per Se)

35.

XXXXXXXXXX incorporates by reference paragraphs “1” through “34” of her *Complaint* into Count II as if fully set forth herein.

36.

Defendant was following too close, not maintaining a proper lookout and by reaching for his iPhone and/or iPod while driving and rear-ended **XXXXXXXXXX**'s vehicle.

37.

Defendant operated his car in violation of O.C.G.A. §40-6-49 (Following too closely), improper lookout, and distracted by electric communication device; therefore, his actions were negligent per se in causing injuries to **XXXXXXXXXX**, thus entitling her to damages.

38.

On May 12, 2014, Defendant Driver, Daniel XXXX admitted his guilt and accepted responsibility for all fault and liability in this case.

39.

Plaintiff **XXXXXXXXXX** is entitled to compensatory, general, and special damages, in an amount to be determined by the enlightened conscience of the jury.

COUNT III

(Attorney's Fees and Expenses of Litigation)

40.

There is no bona fide controversy as to the liability of the Defendant for the collision and for the resulting injuries and damages suffered by **XXXXXXXXXX** as stated herein. In the event Defendant denies responsibility for any part of the collision or its consequences, **XXXXXXXXXX** is entitled to recover their costs of litigation, including reasonable attorney's fees, pursuant to the provisions of O.C.G.A. § 13-6-11.

WHEREFORE, **XXXXXXXXXX** prays for the following relief under the enumerated Complaint as follows:

- (a) that process and summons issue, as required by law, requiring Defendant to appear and answer **XXXXXXXXXX** Complaint for Damages and Other Relief;
- (b) that **XXXXXXXXXX** have a trial by jury;
- (c) that **XXXXXXXXXX** have and recover damages sufficient to compensate her fully, fairly and completely for all their losses compensable under Georgia law;
- (d) that **XXXXXXXXXX** have and recover her costs of litigation, including reasonable attorney's fees; and
- (e) that **XXXXXXXXXX** have such other and further relief as this Court deems appropriate.

(SIGNATURE OF COUNSEL ON FOLLOWING PAGE)

This 4th day of June, 2014.

MCDONALD & CODY, LLC

By: _____
GUS MCDONALD
Georgia Bar No. 488795
P. GERALD CODY, JR.
Georgia Bar No. 172765
Attorneys for Plaintiffs

P. O. Box 396
Cornelia, Ga. 30531
(706) 778-7178
gus@mcdonaldcody.com
gerald@mcdonaldcody.com

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