IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

[redacted] as administrator of the estate of [redacted] and as guardian of [redacted] and [redacted],	
Plaintiffs,	Civil Action No.: [redacted]
v.	
MARTIN-ROBBINS FENCE COMPANY; ARCADIS U.S., INC.; and GEORGIA DEPARTMENT OF TRANSPORTATION,	
Defendants.	

PLAINTIFFS' OMNIBUS MOTION IN LIMINE

Plaintiffs hereby submit the following Omnibus Motions in Limine. Additionally, Plaintiffs join and incorporate the [redacted] Plaintiffs' Motions in Limine.

1. **Repairs or Contractors Not Identified or Produced in Discovery**

Plaintiffs respectfully seek an order precluding evidence, argument, or reference to (a) guardrail repairs that were not identified or produced during the discovery period, or (b) contractors whom Martin Robbins Fence Company purportedly contacted to assist with its duties under the GDOT contract who were not identified during the discovery period.

Trial courts are equipped with broad authority to exclude evidence not produced or identified during discovery. *E.g. Johnson v. Watson*, 228 Ga. App. 351, 353 (1997) (affirming trial court's decision to exclude medical records not produced during discovery); *see also Sweetheart Products, Inc. v. Cohen*, 198 Ga. App. 684 (1991) (affirming trial court's decision to

exclude invoice not produced during discovery). Absent an abuse of discretion, the Court of Appeals will not interfere with a trial court's ruling regarding the admissibility of evidence. *Id.*

The trial court's broad authority is justified by long-standing principles concerning discovery under the Civil Practice Act:

> The rules of discovery, under our Civil Practice Act, are designed to narrow and clarify the issues and to remove the potential for secrecy and hiding of material that existed under our previous system. In particular, the rules of discovery are designed to provide parties with the opportunity to obtain material knowledge of all relevant facts, thereby reducing the element of surprise at trial.

Hanna Creative Enterprises, Inc. v. Alterman Foods, Inc., 156 Ga. App. 376, 378 (1980) (citing *Travis Meat, etc., Co., v. Ashworth*, 127 Ga. App. 284 (1972)). Under these principles, a trial court is authorized to exclude evidence that was not produced prior to trial because it is a "surprise" to the opposing party. *See Johnson*, 228 Ga. App. at 353 (citing *Hanna Creative Enterprises*, 156 Ga. App. at 378-79); *see also Cohen*, 198 Ga. App. at 684.

2. <u>Settlement with Arcadis</u>

Plaintiffs respectfully request that the Court prohibit evidence or argument about Plaintiffs' settlement with Arcadis U.S., Inc. and its insurers (collectively "Arcadis"). Specifically, Plaintiffs ask the Court to exclude the fact that a settlement occurred, the amount of the settlement, the fact that Arcadis was a defendant for three reasons. First, such evidence is irrelevant. Second, evidence of settlement is prohibited by the collateral source rule. Third, under the apportionment statute, the remaining defendants are not entitled to a set-off. *Ford v. R.J. Haynie et al*., Order, No. 2014CV02055 at No. 1, 2 (State Ct. of Clayton Cnty. Aug. 25, 2016) (Carbo, J.) (Ex. A). Plaintiffs address each argument in turn.

Georgia law is clear that "evidence of . . . [a]ccepting . . . a valuable consideration in compromising . . . a claim which was disputed as to either validity or amount shall not be

admissible to prove liability for or invalidity of any claim or its amount." O.C.G.A. § 24-4-408(a)(2). Settlements are categorically inadmissible because the fact of and amount of a settlement are not relevant to liability or damages. *Allison v. Patel*, 211 Ga. App. 376, 382-83 (1993) (reversing trial court for admitting fact of and amount of settlement because such evidence was "not relevant to the issue" of negligence or "the amount of damages[.]"); *see also Browning v. Stocks*, 265 Ga. App. 803, 807 (2004); *Bryant v. Haynie*, 216 Ga. App. 430, 432 (1995). Accordingly, the fact that a settlement occurred, the amount of the settlement, and the fact that Arcadis was a defendant should all be excluded. O.C.G.A. § 24-4-401.

Evidence of settlement should be excluded under the collateral source rule, which "refuses credit to the benefit of a tortfeasor of money or services received by the plaintiff in reparation of the injury or damage caused which emanate from sources other than the tortfeasor." *Polito v. Holland*, 258 Ga. 54, 55 (1988) (explaining collateral source rule).

Because this case will be tried pursuant to Georgia's apportionment scheme, the settlement with Arcadis does not entitle Martin Robbins or GDOT to a setoff. *See McReynolds v. Krebs*, 307 Ga. App. 330, 332-34 (2010); *aff'd* 290 Ga. 850, 852-53 (2012) ("We also see no basis for set-off given that the statute requires each liable party to pay its own percentage share of fault . . ."). Further, the applicability of a setoff is based upon a judicial determination that a settling defendant is liable in whole or in part. *Broda v. Dziwura*, 286 Ga. 507, 509 (2010). A settlement does not constitute a determination of liability. Therefore, there is no setoff. *Ford v. R.J. Haynie* Order at No. 2 ("John Doe's Motion for Set-Off").

Neither the fact that a settlement with Arcadis was reached nor the amount of that settlement are relevant. Even if the settlement did have some tangential relevance, that relevance would be substantially outweighed by unfair prejudice. *See* O.C.G.A. § 24-4-403.

3. **Speculative or Unsupported Theories about Cause of Death**

Plaintiffs respectfully seek an order precluding evidence, argument, or reference to speculative or unsupported theories about the cause of [redacted] death. The undisputed medical evidence comes from Dr. Karen Sullivan of the Fulton County Medical Examiner's Office. Dr. Sullivan concluded that "the cause of death was blunt force trauma when the Kia Sorrento hit the fixed utility pole off the shoulder of the highway."[1] Any contrary theory or speculation (such as that Ms. [redacted] died when the Sorrento and taxi made contact or when the Sorrento first touched the nonfunctional guardrail or that Ms. [redacted] would have been killed by a collision into a functional guardrail) would require the supporting opinion of a medical or biomechanical expert to be admissible.[2] The record contains no medical or biomechanical opinion that contradicts Dr. Sullivan's conclusion. Therefore, any evidence, argument, or reference to an alternative theory of Ms. [redacted] cause of death would be inadmissible.

4. **Criminal or Arrest History**

Plaintiffs respectfully seek an order precluding evidence, argument, or reference to [redacted] criminal history. In 2012, [redacted] pleaded guilty to aggravated assault. [redacted] criminal history is irrelevant and does not meet the requirements of O.C.G.A. §§ 24-4-404 or 24-6-608. Even if such an argument had any relevance, it should be excluded as unduly prejudicial under O.C.G.A. § 24-4-403.

[1] Sullivan Medical Report at 2 (Ex. B).

[2] Injury causation requires expert medical testimony unless the cause of injury is so obvious as to be clear to a layperson. *Eberhart v. Morris Brown College*, 181 Ga. App. 516, 518 (1987) (citing *Cherokee County Hosp. Auth. v. Beaver*, 179 Ga. App. 200, 204 (1986)). *See also Gahring v. Barron*, 108 Ga. App. 530, 533 (1963) ("The usual manner of offering testimony concerning the physical condition of a claimant is by producing expert testimony of a physician who treated him.").

5. **Collateral Source Information.**

Plaintiffs respectfully seek an order precluding evidence, argument, or reference to any collateral source benefits (whether private or through a governmental source). Collateral source information is prohibited by law. *See generally Hoeflick v. Bradley*, 282 Ga. App. 123, 124 (2006) (collateral source rule); *Warren v. Ballard*, 266 Ga. 408 (1996); *Luke v. Suber*, 217 Ga. App. 84, 85 (1995). "Georgia does not permit a tortfeasor to derive any benefit from a reduction in damages for medical expenses paid by others, whether insurance companies or beneficent boss or helpful relatives." *Olariu v. Marrero*, 248 Ga. App. 824, 826 (2001) (quoting *Bennett v. Haley,* 132 Ga. App. 512, 522 (1974)); *see also Candler Hospital, Inc. v. Dent*, 228 Ga. App. 421 (1997) (applying collateral source rule to amount written off by hospital after partial payment by Medicare).

6. **Improper apportionment of fault to any non-party.**

Plaintiffs respectfully seek an order precluding evidence, argument, or reference to the fault of non-parties (other than those properly identified). In a separately-filed motion, Plaintiffs addressed apportionment to non-party Agnuma Leta,[3] which should not be permitted for the reasons identified therein. However, Plaintiffs concede that Martin-Robbins could seek to apportion fault to Arcadis.

Code Section 51-12-33 provides that "[n]egligence or fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or

[3] *See* [redacted] Plaintiffs' Objection and Motion in Limine Regarding Apportionment to Non-Party Agnuma Leta.

partially at fault." Defendants have not filed any apportionment notice (except as to Agnuma Leta and [redacted]) and are therefore precluded from blaming or assigning fault to any other non-party, directly or indirectly, at the trial of this case (except Arcadis).

7. <u>Plaintiffs' use of award or that money will not undo damage is irrelevant.</u>

Plaintiffs respectfully seek an order precluding evidence, argument, or reference to what Plaintiffs will or might do with any award of damages she might receive or that money will not undo the [redacted] death. Any such suggestion is an improper appeal for jury sympathy toward the Defense and invites the jury to disregard its duty to apply the legal measure of damages. Relevant evidence is that which relates to the questions being tried by the jury and irrelevant evidence must be excluded. *See* O.C.G.A. § 24-4-401; § 24-4-402; *Gusky v. Candler General Hospital*, 192 Ga. App. 521 (1989). Therefore, any statements regarding what Plaintiffs will or might do with any award of damages he might receive or that money will not undo the damage the Plaintiffs have suffered should be prohibited.

8. <u>Frivolous lawsuits, tort reform, litigation lottery, jackpot justice, and similar phrases or arguments (except during voir dire).</u>

Plaintiffs respectfully request that the Court exclude any defense evidence, argument, or suggestion regarding frivolous lawsuits, tort reform, a litigation lottery, jackpot justice, and similar phrases or arguments (except during *voir dire*, when reference to those topics would be permissible). In addition to being irrelevant, attacks on the civil justice system, attacks on Plaintiffs' lawyers, suggestions that civil plaintiffs are greedy, or use of phrases like those listed above have no probative value and could only be prejudicial. Therefore, they should be prohibited, except during *voir dire*. O.C.G.A. § 24-4-402 (irrelevance); § 24-4-403 (prejudicial).

Respectfully submitted this 14th day of August 2023.

BUTLER | KAHN

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned has this day electronically filed the within and foregoing ***PLAINTIFFS' OMNIBUS MOTION IN LIMINE*** with the Clerk of Court using the Odyssey e-filing system which will send e-mail notification of such filing to the following counsel of record:

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This 14th day of August 2023.

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