

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
DIVISION

_____,)
)
Plaintiff,)
)
v.) CASE NO. _____
)
_____,)
)
Defendant(s).)

PRETRIAL ORDER

A pretrial conference was held in the above case on _____, wherein the following proceedings were held and action taken:

1. Appearances. (Note: Counsel appearing at the conference may be required to proceed at trial notwithstanding the naming of others as designated trial counsel.) Appearing at the conference were:

[LEAVE SPACE FOR COMPLETION BY THE COURT]

2. Jurisdiction and Venue. The parties agree that subject matter jurisdiction exists under 28 U.S.C. § 1332 by reason of the amounts in controversy and the admitted diversity of citizenship. Personal jurisdiction and venue are not contested.

3. Consolidation. These actions (CV 01-BE-1998-S and CV 01-BE-1999-S) involve common questions of law and fact and hereby **ORDERED CONSOLIDATED** under Fed. R. Civ. P. 42 for further proceedings and trial.

4. Parties and trial counsel. The parties before the court are correctly named as set out below and the designated trial counsel for the parties are as set out below:

Note: Counsel appearing at the conference may be required to proceed at trial notwithstanding the naming of others as designated trial counsel.

Parties: Trial Counsel:
Plaintiffs: THOMAS S. SMITH Robert Stephens (Brown,

Brownlee & Stephens) and
Gene Baird (Baird & Jones)

ELIZABETH D. SMITH

Same Counsel

Defendants: COLLINS CONSTRUCTION
CO., INC.

James Johnson and Robert
Donovan (Phillips & Randall)

JAMES K. ADAMS

Same Counsel

5. Pleadings. The following pleadings, with modifications contained in this Order, have been allowed: Complaint (as amended June 5, 2001) on behalf of each Plaintiff; Answer on behalf of Defendants to each complaint. The answers filed to the original complaints suffice as answers to the amended complaints, without refileing.

6. Statement of the Case.

(a) Agreed Summary. [The agreed summary should be concise and appropriate for the court to use in advising the jury during voir dire regarding the basic nature of the case.] This case arises out of a collision between two vehicles which occurred August 5, 1999, at the intersection of 21st Street and 5th Avenue South in the city limits of Birmingham, Alabama. An automobile owned and then being operated by Plaintiff Thomas S. Smith (and in which his wife, Plaintiff Elizabeth D. Smith, was a passenger) was proceeding northward on 21st Street (a one-way street for northbound traffic). A truck owned by Defendant Collins Construction Co., Inc., and being operated by Defendant, James K. Adams, was proceeding eastward on 5th Avenue South (two-way traffic). A standard traffic control device (green/yellow/red lights) governed traffic entering the intersection and was functioning on this occasion. Both drivers claim to have had the green light. The Corporate Defendant admits that Defendant Adams was its employee and was acting within the line and scope of such employment at the time of the accident.

(b) Stipulated Facts. [List as many relevant facts on which the parties agree and on which no proof is required.

- 1.
- 2.
- 3.

(c) Contested Issues of Fact. [List all factual issues in controversy that are necessary for a final determination of the case.]

- 1.
- 2.

3.

(d) Agreed Applicable Propositions of Law.¹ [List the basic principles of law that the parties agree are essential to a determination of the case; e.g., the elements of plaintiff's claim and defendant's defenses. **These statements of law should be suitable for use by the court in preliminary instructions to the jury.**]

- 1.
- 2.
- 3.

(e) Plaintiffs' Positions. Plaintiff Thomas S. Smith seeks \$75,000 in compensatory damages for his own personal injuries, medical expenses and lost wages; for property damage to his automobile; and for his wife's medical expenses (past and future) and the loss of her services and consortium (past and future). Plaintiff Elizabeth D. Smith seeks \$125,000 in compensatory damages for her personal injuries and disfigurement (past and future). Plaintiffs claim that these damages were proximately caused by the negligence of Defendants, asserting that Defendant Adams was negligent in (1) violating Ala. Code § 32-5A-31 (running yellow or red light) and/or (2) failing to exercise ordinary care under the circumstances. Plaintiffs withdraw any contention of wanton misconduct on the part of Defendants. Plaintiff Thomas S. Smith denies he was contributorily negligent in causing the accident.

(f) Defendants' Positions. Defendants deny any negligence on the part of Defendant Adams and contest the amount of damages claimed by Plaintiffs. As to the claims made by Plaintiff Thomas S. Smith, Defendants assert that Thomas Smith was himself contributorily negligent by (1) violating Ala. Code § 32-5A-31 and/or (2) failing to exercise ordinary care under the circumstances. Defendants withdraw any contention of contributory negligence on the part of Plaintiff Elizabeth D. Smith.

7. Discovery and other pretrial procedures.

(a) All discovery in this case was completed by _____, _____. No further discovery is required.

(b) Pending motions:

[LIST PENDING MOTIONS HERE; LEAVE SPACE FOR COURT RULING]

¹ In agreeing to these propositions of law in the pretrial order, both parties agree that they do not waive arguments made in their summary judgment briefing, and both parties preserve all objections and arguments on related legal issues, including proposed jury instructions to be submitted subsequently.

(c) Motions in limine shall be filed at least 30 days in advance of the scheduled trial date and shall be accompanied by supporting memoranda. Objections to motions in limine, fully briefed, must be filed at least 21 days in advance of the scheduled trial date.

(d) The _____, _____ deadline for filing any dispositive motions has passed and all motions have been ruled upon.

(e) The parties must follow all instructions and deadlines in the court’s Scheduling Order, (Doc. ____), regarding trial witness lists, deposition deadlines, and trial exhibits.

The trial witness lists are due on or before _____; objections to the witness lists are due on or before _____; reply to the objections are due on or before _____.

The deposition designations are due _____; objections are due on or before _____.

The trial exhibit lists are due on or before _____; objections are due on or before _____; replies to the objections are due on or before _____.

The parties’ PDF file of all anticipated trial exhibits shall be emailed to chambers at lewischambers@almd.uscourts.gov on or before _____.

8. Advisory for Limiting Personal Information in Transcripts and Exhibits.

The judiciary’s privacy policy restricts the publication of certain personal data in documents filed with the court. The policy requires limiting Social Security and financial account numbers to the last four digits, using only initials for the names of minor children, and limiting dates of birth to the year. However, if such information is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is for you to avoid introducing this information into the record in the first place. Please take this into account when questioning witnesses, presenting documents, or making other statements in court. If a restricted item is mentioned in court, you may ask to have it stricken from the record or partially redacted to conform to the privacy policy, or the court may do so on its own motion.

9. **Trial Briefs.** Parties may, if they desire, file trial briefs. Any such briefs must be filed at least **ten days** prior to trial. Opposing parties may respond to such trial briefs at least **five business days** prior to trial. The briefs, if any, should not exceed ten typed pages

and must otherwise comply with this court's scheduling order, and must be submitted in MS Word format by email to chambers (lewischambers@almd.uscourts.gov).

10. Verdict Forms and Special Interrogatories. Proposed verdict forms and special interrogatories shall be filed not later than _____.

11. All other deadlines not otherwise affected by this order will remain as set forth by prior orders of this court. All understandings, agreements, deadlines, and stipulations contained in this order shall be binding on all parties unless this order is hereafter modified by an order of the court.

12. This case is set for jury trial in _____ on _____, _____. Counsel reasonably anticipate the case should take _____ days to try.

DONE and **ORDERED** this _____ day of _____, _____.

BILL LEWIS
UNITED STATES DISTRICT JUDGE