**IN THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL
CIRCUIT IN AND FOR
SEMINOLE COUNTY, FLORIDA**

CASE NO: 2012-CA-2181-10-G

CARLOS DIEZ-ARGUELLES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MANUEL BRINGAS-MEJIA, AND RAFAEL JAIMES-MEJIA,

Plaintiffs,

vs.

CHEMWAPUWA AKILAH JACKSON AND REDLANDS CHRISTIAN MIGRANT ASSOCIATION, INC.,

Defendants.
_____/

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT, REDLANDS CHRISTIAN MIGRANT ASSOCIATION, INC.'S MOTION TO BIFURCATE

Plaintiffs, **CARLOS DIEZ-ARGUELLES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MANUEL BRINGAS-MEJIA, AND RAFAEL JAIMES-MEJIA**, oppose Defendant, **REDLANDS CHRISTIAN MIGRANT ASSOCIATION, INC.'S**, Motion to Bifurcate and submit the following:

I. Introduction

Defendant employed the driver of the vehicle that rear-ended the vehicle occupied by Plaintiffs. These are personal injury and wrongful death actions arising from an automobile accident. Defendants are denying liability and legal causation while also

contending that the maker of one vehicle was negligent in the design and/or manufacture of the vehicle. The Defendant seeks bifurcation of the issues of liability and damages as initially described in its motion; yet, the substance of the Defendant's motion seems to contemplate that only the issue of vicarious liability of that Defendant, i.e *respondeat superior*, will be tried first. Defendant then seems to contemplate that a *different* jury try the remaining issues separately on some future date or docket.

II. Bifurcation Generally – Bifurcation should be the exception.

Rule 1.270(b), Fla. R. Civ. P. permits a trial court "in furtherance of convenience or to avoid prejudice" to "order a separate trial of any claim, crossclaim, counterclaim, or third-party claim or of any separate issue of any number of claims, crossclaims, counterclaims, third-party claims, or issues." The Author's Comments to this Rule state as follows:

> "Generally, justice requires that an action should not be handled piecemeal when it reasonably can be avoided, and it should be administered with the least expense and vexation to the parties."

The defense bar is increasingly using this rule to bifurcate trials in ways that are prejudicial to plaintiffs.[1] Defendants often argue that liability and damages should be bifurcated because the plaintiff's injuries are so severe that the jury hearing evidence of damages will prejudice their liability defense. Apparently, that is the primary argument and motive of Defendant's Motion to Bifurcate in this case.

[1] Occasionally, plaintiffs also try to bifurcate a trial against different defendants, apparently to increase their chances of recovery. Due to the overlap of facts and/or the risk of inconsistent verdicts, such attempts are typically unsuccessful. *See e.g. ACT Servs., Inc. v Sch. Bd. Of Miami Cty*, 29 So.3d 450 (Fla. 3d DCA 2010); *Bethany Evangelical Covenant Church of Miami, Fla., Inc. v. Calandra*, 994 So.2d 478 (Fla. 3 DCA 2008).

A single trial generally tends to lessen the delay, expense and inconvenience to all concerned, and the courts have emphasized that separate trials should not be ordered unless such disposition is *clearly necessary, and then only in the furtherance of justice. Vander Car v. Pitts,* 166 So.2d 837 (Fla. 2d DCA 1964) citing *Bowen v. Manuel,* 144 So.2d 341 (Fla. 2nd DCA 1962). When the proper administration of justice *makes it imperative*, trial courts may, in their discretion, order separate trial of several issues in a cause, but that should be the exception, rather than the usual practice. *Bowen v. Manuel, Id.* [Emphasis Supplied]. Bifurcation is generally impermissible in ordinary negligence cases. See *Bowen v. Manuel*, *Id.* (bifurcation should be the exception, not the rule; piecemeal litigation is generally not allowed in an ordinary negligence action); *see also Travelers Express, Inc. v. Acosta*, 397 So. 2d 733, 737 (Fla. 3d DCA 1981) ("severance under Florida Rule of Civil Procedure 1.270(b), while residing in the sound discretion of the trial court upon an appropriate showing, should remain the exception."); *Yost v. American Nat'l Bank*, 570 So. 2d 350, 352 (Fla. 1st DCA 1990) ("[t]he law does not look with favor upon a multiplicity of suits when plaintiffs' right to full and complete relief can be afforded in one action."); *Williams v. Williams*, 659 So. 2d 1306, 1307 (Fla. 4th DCA 1995) (severance "should be employed with caution and should be the exception rather than the rule."); *Manes v. Rowley*, 218 So. 2d 487, 489 (Fla. 4th DCA 1969) ("severance is generally not allowed in the ordinary negligence action.").

III. Summary Of Argument

Bifurcation is disfavored and should be the exception, not the rule. Indeed, the circumstances when a court should allow bifurcation under the Rule are very limited, i.e. *"in furtherance of convenience or to avoid prejudice."* This necessarily means that neither party should be prejudiced by bifurcation. If either party would be prejudiced by bifurcation, then only "convenience" as contemplated by the Rule is a permissible basis for bifurcation. Bifurcation of the single issue of "vicarious liability" here would result in prejudice, not avoid any prejudice. Moreover, bifurcation would not provide any significant "convenience" such as saving expenses of trial.[2] Rather, bifurcation would serve to inconvenience the jurors and the Court.

Defendant proposes to bifurcate liability from comparative fault, legal cause and damages, or the single issue of *respondeat superior*. Bifurcation of either liability from comparative fault, causation and damages or the single issue of *respondeat superior* from comparative fault, causation and damages would prejudice Plaintiffs in a variety of ways including, but not limited to: creating a "charade" or "deception" of the jury as to the true nature of the case and extent of damages, providing incentive for the jury to return a quick defense verdict to shorten their own jury duty, requiring Plaintiffs to win two trials, and causing unnecessary delay.

The trial of the *respondeat superior* issues, followed by the prompt trial by the same jury of the remaining issues of comparative negligence, legal causation and

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[2] It is important to note that the inconvenience and expense of litigation are not the kind of material harm or irreparable injury required to invoke certiorari review of an order denying a motion to bifurcate a trial. *See Mariner Health Care v. Griffith*, 898 So.2d 982 (Fla. 5th DCA 2005); *Zabawa v. Penna*, 868 So.2d 1292 (Fla. 5th DCA 2004); *Beverly Enterprises-Florida, Inc. v. Lane*, 855 So.2d 1172, 1172-1173 (Fla. 5th DCA 2003); *Royal Caribbean Cruises, Ltd. v. Sinclair*, 808 So.2d 231, 232 (Fla. 3d DCA 2001), *rev. denied*, 823 So.2d 125 (Fla.2002).

damages would not save significant costs or serve as any significant convenience for the Court, the jurors or the parties. An order requiring trial of the issues by two separate juries would be legally improper, an abuse of discretion and a departure from the essential requirements of the law. Having the same jury come back months later to try the remaining issues would be inconvenient to the Court, and most importantly, to the jurors, and would also implicate all sorts of trial and jury management issues such as jury sequestration.

Bifurcation of the issues in the trial of this matter as contemplated by Defendant would be prejudicial to Plaintiffs and result in vexation to Plaintiffs. Moreover, bifurcation of the issues in the trial of this matter would not avoid prejudice to *both* parties, would not be in furtherance of justice, would not result in any significant convenience to the parties, would result in inconvenience to the Court and jurors, and is not clearly necessary. Defendant's Motion to Bifurcate should be denied.

IV. Defendant cannot demonstrate that prejudice exists in the absence of bifurcation.

Bifurcation and separate trials are generally not appropriate in negligence cases. Defendant cannot demonstrate any specific prejudice that will be eliminated by bifurcation, and bifurcation will be prejudicial to Plaintiffs.

The Florida Standard Jury Instructions adequately address the duty of the jury in this regard. Defendant alleges primarily a fear of prejudice arising from the severity of the accident and injuries resulting from a fiery explosion caused by this high speed rear end collision accident. This assertion alone should is not enough to support an order

bifurcating the issue of liability from damages, much less the issue of *respondeat superior* from all other issues in the case, i.e. comparative fault, causation and damages.

Section 700 of the Florida Standard Jury Instructions for Civil Cases on the website of the Supreme Court of Florida instructs the jury, *inter alia*, as follows:

> "In reaching your verdict, do not let bias, sympathy, prejudice, public opinion, or any other sentiment for or against any party to influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you."

For example, the former *Florida Standard Jury Instruction 7.1* covered the defense concern that significant injuries will prejudice a defense on liability, instructing jurors "not to be swayed from the performance of your duty by prejudice, sympathy or any other sentiment for or against a party." The Third District Court of Appeal in *Hardee Mfg. v. Josey,* 535 So. 2d 655 (Fla. 3d DCA 1988) rejected a defense argument that an ordinary trial should be bifurcated because the jury would be "influenced by sympathy owing to the nature of the injury." There is no reason to believe that a jury would be improperly influenced by excessive sympathy before the jury is selected and sworn. Voir dire examination, jury selection, jury instructions, and any number of other safeguards in the law and trial practice alleviate any such concerns.

V. Bifurcation will result in prejudice to Plaintiffs in a variety of ways.

Having a jury remain completely ignorant of the severity and nature of the damages and injuries claimed certainly results in prejudice to Plaintiffs. Jurors are

often already biased against personal injury claims and resent jury service for personal injury cases. This is particularly true where they suspect the cases are "frivolous" or "minor" injury claims that unnecessarily take their time away from family and work. "[M]any jurors verbally express in jury selection that they are not interested in cases where the damages are small or not obvious… [W]hy should jurors be interested in a case where there is no visible injury and the injuries have not been explained to the jury?" Dan Cytryn, *Bifurcation in Personal Injury Cases: Should Judges be Allowed to Use the "B" Word?*, 26 Nova L. Rev. 249, 264 (2001) (citing *Goldenberg v. Regional Import & Export Trucking Co.*, 674 So. 2d 761, 763 (Fla. 4th DCA 1996)). If jurors hear nothing about plaintiff's injuries and damages, they may think this is a frivolous lawsuit and/or have no appreciation for the seriousness of the questions they're being called upon to decide. This potential for prejudice and bias against personal injury claimants is elevated even more here where Plaintiffs are of minority Hispanic descent and where Defendant's corporate name contains "Christian".

"Empirical research suggests that an advantage is accorded to defendants when civil trials are bifurcated. According to a University of Chicago Law School study, while civil defendants win forty-two percent of cases tried in the traditional, unified manner, they win seventy-nine percent of the cases in which the liability issue is submitted alone. Bifurcation thus appears to tilt the scales of justice in favor of defendants." Jennifer M. Granholm & William J. Richards, *Bifurcated Justice: How Trial-Splitting Devices Defeat the Jury's Role*, 26 U. Tol. L. Rev. 505, 513 (1995). Similarly, a Nova Law Review article from 2001 concluded that Plaintiffs won 59.5%

of personal injury cases that were not bifurcated, whereas plaintiffs prevailed only 23.5% of the time when their cases were bifurcated. Dan Cytryn, *Bifurcation in Personal Injury Cases: Should Judges be Allowed to Use the "B" Word?*, 26 Nova L. Rev. 249, 264 (2001).

Bifurcation would also be highly prejudicial to Plaintiffs because it would provide the jury an incentive to return a defense verdict on liability in order to cut its jury duty short so that the jurors would not have to return for a second trial on comparative fault, legal cause and damages. This is likely the most harmful aspect of bifurcation under these circumstances where the answer to a single question can be used as an excuse to shorten the time required to do one's duty as a juror.

Here, it is the stated goal of the moving Defendant for the jury to be uninformed and ignorant of the nature and extent of damages caused and the severity of the injuries, leaving the jury to speculate that the case is a nominal or frivolous matter. The jury is left to let their imagination run wild as to the true nature of the case. This is extremely prejudicial to Plaintiffs in an era and in a community of lawyers engaged in saturation television marketing, advertising on billboards depicting smiling "injured" clients boasting of huge monetary settlements, and a polarized political environment in which millions of dollars of lobbying and public relations efforts are expended by big business, health and insurance industries intended to convince the public a litigation crisis exists, that their own insurance rates are adversely affected by litigation, and that the cause of increased insurance and living expenses includes the trial of personal injury cases.

The Author's Comments to Rule 1.270 state as follows:

> "Generally, justice requires that an action should not be handled piecemeal when it reasonably can be avoided, and it should be administered with the least expense and *vexation* to the parties."

Blacks' Law Dictionary, 9th Edition defines "vexation" as the "damage that results from trickery or malice". Florida courts have increasingly abhorred trials conducted as "charades" or "shams" that deceive and/or mislead juries. *See Dosdourian v. Carsten,* 624 So.2d 241 (Fla. 1993); *Government Employees Insurance Company v. Krawzak,* 675 So.2d 114 (Fla. 1996); *Lamz v. GEICO General Insurance Company,* 803 So.2d 593 (Fla. 2001). Leaving the jury in this case to speculate as to the true nature of the claims and extent of the injuries and damages is just such a "charade" or "sham" and creates "vexation" to Plaintiffs.

The risk of prejudice to Plaintiffs by bifurcation of the sole issue of *respondeat superior* from other issues in this case exceeds any potential of prejudice to Defendant of a trial of all issues at once. There are no standard jury instructions informing the jury that Plaintiffs are not "frivolous" claimants or "billboard" plaintiffs, and the instinct of jurors in this community and in this day and time is to be immediately suspicious of any personal injury case presented to them. The only way Plaintiffs and their counsel are capable of neutralizing this type of prejudice is by jury selection. The undersigned, and certainly this Court, has conducted enough trials to know this.

VI. Bifurcation causes unnecessary delay and prejudice To Plaintiffs

Defendant seeks to bifurcate the trial of this matter in a way that significantly delays a final verdict and resolution, resulting in additional prejudice to Plaintiffs. "A

single trial generally tends to lessen the delay, expense and inconvenience to all concerned . . . .” *Vander Car v. Pitts,* 166 So. 2d 837, 839 (Fla. 2d DCA 1964). “The main benefactor of the bifurcation is the defendant and his/her insurance carrier, whose money is earning interest while the plaintiff waits additional time for the damages phase of the trial to be concluded.” Dan Cytryn, *Bifurcation in Personal Injury Cases: Should Judges be Allowed to Use the “B” Word?*, 26 Nova L. Rev. 249, 262 (2001); *see also* Fla. R. Civ. P. 1.010 (stating that the purpose of the rules of civil procedures is to “secure the just, speedy, and inexpensive determination of every action”).

VII. Bifurcation requires Plaintiffs to win two trials.

Defendants apparently propose a trial of only one issue, the issue of vicarious liability, and then a second trial on comparative fault, causation, and damages. This manner of conducting the trial requires Plaintiffs to *win two trials on liability*. This is further prejudice to Plaintiffs. In addition to “keeping the jury in the dark” on the real nature of the case, injuries and damages claimed, this is also presumably another unstated and impermissible strategic motive of Defendant in seeking bifurcation.

VIII. Conservation of judicial resources.

Bifurcation of the issues with the *same jury* deciding all issues would save little in the nature of costs and expenses since discovery and trial preparation for all issues would be required anyway so that the same jury sworn to decide the vicarious liability issue could promptly hear the remaining issues in a second phase of the bifurcated

trial. Bifurcation of issues in a personal injury case with issues being tried by *two separate juries* is improper as a matter of law, departs from the essential requirements of the law and would be an abuse of discretion.

Having one trial typically conserves judicial resources. Judicial time is often increased by multiple trials, as the court and jurors reconvene for a second trial or a second set of jurors has to be impanelled. Dan Cytryn, *Bifurcation in Personal Injury Cases: Should Judges be Allowed to Use the "B" Word?*, 26 Nova L. Rev. 249, 261-62 (2001). *But see Roseman v. Town Square Ass'n*, 810 So.2d 516, (Fla. 4th DCA 2001) (upholding bifurcation to preserve judicial economy because plaintiff intended to call twice as many experts on damages as it did on liability.) In this case, not only is the proposed bifurcation a burden and stress upon the court and the jurors, but also it is prejudicial to Plaintiffs.

Bifurcation is normally only of liability from damages so that the second trial is only on damages. Here, it is the apparent desire of Defendant to try only one issue, vicarious liability, and then have yet another trial on comparative fault, causation, and damages. This is prejudicial to Plaintiff. Conducting the trial in this manner requires Plaintiffs to *win two separate trials on liability issues.*

This proposed manner of bifurcation will require two separate trials and either two separate juries or keeping the same jury on duty for months for the trial of the second phase of the case. In this manner, Defendant has two, three or four "bites at the apple" on liability and causation issues. Having a completely separate jury determine comparative fault and damages is prejudicial to Plaintiffs who then must *win liability and causation issues twice* and even with two separate juries, unless the Court keeps

the same jury sworn for months while discovery is conducted on the comparative fault and damages issues for the second trial. Keeping the same jury "on duty" for weeks or months while the parties and the Court prepare to try the remaining issues of comparative fault, legal causation and damages would create a case management nightmare potentially even requiring juror sequestration to prevent the same jurors from engaging in some conduct that would result in a mistrial. Indeed, another downside to bifurcation of the case is the risk of mistrial in multiple trial situations.

Finally, there is legal authority that it is departure from the essential requirements of the law to submit issues in a bifurcated case to two separate juries. For example, irreparable injury warranted certiorari relief in a wrongful death action where an order bifurcated the issue of liability and damages and presumable contemplated two separate juries to do so, with the damages issue being tried first. *See Stanley v. Delta Connection Academy, Inc.,* 12 So.3d 781 (Fla. 5th DCA 2009)("That order bifurcates the issues of liability and damages and actually orders that the damages issues be tried first. Although it is not specifically stated in the order, it appears that separate trials will be conducted before different juries); *See also Woltin v. Richter,* 761 So.2d 459 (Fla. 4th DCA 2000)(Certiorari would be granted to review and quash an order bifurcating trial such that liability would be tried before one jury and damages would be tried before another jury, as there was no remedy on final appeal that could repair the harm of having to try the case before two different juries).

Conclusion

An order bifurcating the issues of liability and damages, or the single issue of

respondeat superior would depart from the essential requirements of the law or constitute an abuse of discretion for the following reasons:

1. Defendant is unable to demonstrate that prejudice cannot be eliminated except by bifurcation and that bifurcation is clearly necessary;
2. Bifurcation of the issues of liability and damages would result in prejudice to Plaintiffs in a variety of ways discussed above;
3. Bifurcation of the single issue of *respondeat superior* would result in prejudice to Plaintiffs in a variety of ways discussed above;
4. Bifurcation of the single issue of *respondeat superior* would result in unnecessary delay and prejudice to Plaintiffs;
5. Bifurcation would require Plaintiff to win two trials on liability issues resulting in prejudice to Plaintiffs;
6. Bifurcation of liability and damages would burden the Court and the jurors by requiring two trials and without providing any convenience or significant savings to the parties;
7. Bifurcation of the single issue of *respondeat superior* would burden the Court and the jurors by providing any convenience or significant savings to the parties unless the Court required two separate juries, a departure from the essential requirements of the law and/or a manner of conducting the trial which is severely prejudicial to Plaintiffs;
8. Bifurcation in a manner that hides the true nature of the case and extent of Plaintiffs' damages misleads and deceives the jury resulting in vexation to Plaintiffs;

9. Bifurcation in the manner sought by Defendant provides incentive to any jury hearing the evidence to return a defense verdict in the first phase in order to shorten jury duty on the case rather than spend days or weeks hearing evidence in the second phase of the trial, whether that be evidence of comparative fault/defective automobile or of damages, or both.

For the foregoing reasons, the Court should exercise its discretion to deny Defendant's Motion to Bifurcate and thereby avoid prejudice to either party.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed this 5th day of June, 2015, using the Electronic Court Filing system, which will furnished an electronic copy to all counsel of record, including: KENDALL B. RIGDON, ESQ., Rigdon Alexander, 125 Tangerine Avenue, Merritt Island, FL 32953, at eservice@rigdonalexander.com, and PAUL S. JONES, ESQ., Luks, Santaniello, Petrillo & Jones, 255 South Orange Avenue, Suite 750, Orlando, FL 32801, at LUKSOrl-Pleadings@ls-law.com.

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