

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

_____))
_____))
_____))
Plaintiffs,) Civil Action File Number
) _____
v.)
_____))
Defendant.)

**PLAINTIFFS RESPONSE TO DEFENDANT’S MOTION IN LIMINE RELATING TO
PUNITIVE DAMAGES EVIDENCE AND MOTION TO BIFURCATE/TRIFURCATE
COMPENSATORY DAMAGES PHASE OF TRIAL FROM
PUNITIVE DAMAGES PHASE(S) OF TRIAL**

I. FACTS

The facts of this case are simple. Defendant _____ was driving under the influence of alcohol when she rearended the vehicle occupied by Plaintiff _____ and her minor daughter, Valerie Uballe. The collision caused injuries to the _____ Plaintiffs seek compensatory and punitive damages. Defendant has now filed a “motion in limine” seeking to have the trial “bifurcated/trifurcated.”

II. TRADITIONAL BIFURCATION UNDER *WEBSTER V. BOYETT* IS APPROPRIATE.

This question is controlled by *Webster v. Boyett*. 269 Ga. 191, 196 (1998). Pursuant to *Webster*, this simple road-wreck trial should be divided into the traditional two bifurcated phases: in the first phase, the jury should consider compensatory issues and the propriety of punitive damages; in the second phase, the jury should decide what amount of punitive damages

to impose (if the jury has determined that punitive damages are appropriate). *Id.* at 196.

In *Webster*, the Georgia Supreme Court held that in a “routine personal injury case” like this one, the trial should be bifurcated as set forth above. *Id.* at 196. That is because “O.C.G.A. § 51-12-5.1[(d)] expressly requires a bifurcation of the punitive damages issues: the trier of fact first decides whether to award punitive damages and then reconvenes to decide the amount to be awarded.” *Id.* at 192-93. Only in a “rare case” where there is unusual “complexity” should courts use the trifurcated procedure that Defendant ██████ appears to request. *Id.* at 196.

The Supreme Court in *Webster* gave guidance as to what **does not** constitute a “rare case” with unusual “complexity,” as would necessitate trifurcation. Specifically, the Supreme Court held that *Webster v. Boyett*—which involved “two individuals in an automobile accident” in which one party “pleaded guilty to driving under the influence”—was **not** a “rare case” requiring trifurcation. *Id.* at 191, 196. Instead, the Supreme Court held that in such a two-car, DUI wreck case, “the trial court did not abuse its discretion in refusing to separate the issues of liability and damages for the underlying tort from the issue of liability for punitive damages. This action was a routine personal injury case involving two individuals in an automobile accident.” *Id.* at 196 (emphasis added).

Webster controls. As in *Webster*, this case involves a two-car wreck case in which one driver was DUI—it is a “routine personal injury case.” As in *Webster*, traditional bifurcation is appropriate because this is not a “rare case” with unusual “complexity”.

Traditional bifurcation—rather than the trifurcation that Defendant appears to request—also makes common sense here. If this trial were trifurcated, the same witnesses would have to testify and return for multiple phases of the trial. For instance, the responding officer and other scene witnesses would have to testify in the compensatory liability phase (to testify that Plaintiffs

complained of injuries on the scene of the wreck) and then return to testify again in the punitive liability phase (to testify that Defendant showed signs of intoxication on the scene of the wreck). There is no need to unduly impose on the uninvolved witnesses by forcing them to make multiple trips to the courthouse. In the words of the Supreme Court, because “the liability issues, witnesses, and evidence on both compensatory and punitive damages often may not differ substantially,” there is no need to “expend[] limited judicial resources by requiring the judge and jury to hear evidence and render a verdict in three separate proceedings.” *Id.* Traditional bifurcation is appropriate here.

III. DEFENDANT’S ARGUMENTS LACK MERIT.

It is not perfectly clear what Defendant requests because it is not clear exactly what “bifurcated/trifurcated”—the phrase Defendant uses—means. However it appears to Plaintiffs that Defendant seeks a trifurcated trial with the following three phases: (1) compensatory issues, (2) propriety of punitive damages, (3) amount of punitive damages. That procedure would contravene *Webster* because that procedure is only appropriate in a “rare case”—and *Webster* expressly specifies that a two-car, DUI collision like this one is not a “rare case.” *Id.* at 196. *Webster* establishes that in cases like this, traditional bifurcation is appropriate.

The other case Defendant cites, *Dees v. Logan*, is inapposite. *Dees* was a UM case in which punitive damages were not at issue, and for that reason evidence of DUI was not admissible. The Court of Appeals in *Dees* **expressly noted** that if punitive damages had been at issue in *Dees*—as they are in this case—the evidence of DUI would have been relevant. 281 Ga. App. 837, 838 (2006), *rev'd on other grounds by* 282 Ga. 815.

IV. CONCLUSION

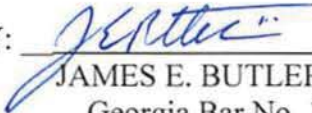
Plaintiffs respectfully request that Defendant's motion be denied. This trial should be bifurcated into the traditional two phases: (1) compensatory issues and propriety of punitive damages, and (2) amount of punitive damages.

Attached as Exhibit A please find Plaintiffs' Proposed Order.



Respectfully submitted,

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