CAUSE NO. DC-22-01998

GLORIA MYERS *Plaintiff*	§ §	IN THE DISTRICT COURT
v.	§	DALLAS COUNTY, TEXAS
JOHN ANDREW VILLARREAL and GALEN WADE HUDSON *Defendants*	§ § §	134TH DISTRICT COURT

DEFENDANT GALEN WADE HUDSON'S
MOTION TO SET ASIDE ADVERSE JURY FINDING AND
SECOND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

Defendant Galen Wade Hudson ("Hudson") files this Motion to Disregard Adverse Jury Finding and Second Motion for Judgment Notwithstanding the Verdict, requesting that this Court disregard the adverse liability finding in Question 2, render judgment that Plaintiff take nothing against Hudson, and modify the Final Judgment accordingly.[1] In support of this Motion, Hudson respectfully shows this Court as follows.

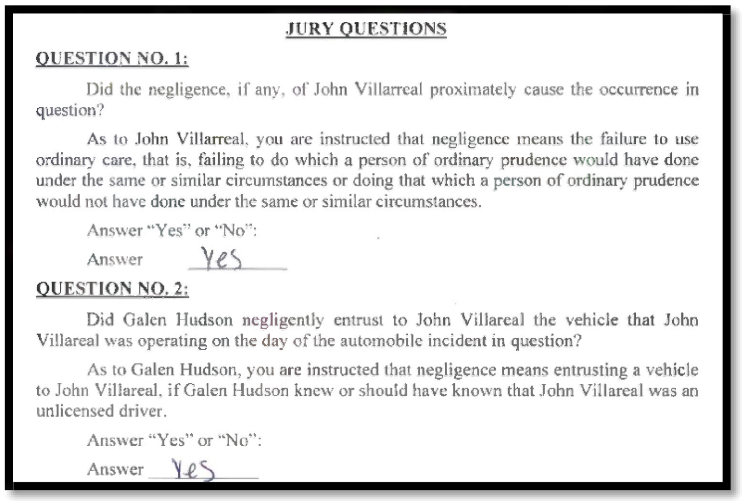
INTRODUCTION

This personal injury lawsuit arises from an automobile collision involving Plaintiff Gloria Myers and Defendant John Andrew Villarreal. Plaintiff sued three defendants: (*i*) Villarreal, who was intoxicated at the time of the collision and struck Plaintiff's vehicle, for negligence; (*ii*) Hudson, the owner of the vehicle that Villarreal was driving at the time of the collision, for negligently entrusting the vehicle to a

[1] Contemporaneously with the filing of this Motion, Hudson is filing a Motion for New Trial. By filing this Motion, Hudson is in no way waiving any of the points previously made in other motions or objections or withdrawing any other motion or objection. By pleading that the Final Judgment should be set aside, in whole or in part, Hudson does not waive his other challenges or request for a new trial or remittitur.

reckless or incompetent driver; and (*iii*) Texas Farm Bureau Insurance, the insurer of Plaintiff's underinsured motorist insurance policy, for breach of the insurance policy.

Prior to trial, Plaintiff resolved her claims against Texas Farm Bureau Insurance. On November 6, 2024, the matter was called for trial. Plaintiff presented a claim against Villarreal for negligence and a claim against Hudson for negligent entrustment solely based on entrusting a vehicle to an unlicensed driver (an entrustment theory never pleaded by Plaintiff). On November 8, 2024, the jury returned its verdict and on a vote of 10-2 found the following:



JURY QUESTIONS

QUESTION NO. 1:

Did the negligence, if any, of John Villarreal proximately cause the occurrence in question?

As to John Villarreal, you are instructed that negligence means the failure to use ordinary care, that is, failing to do which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Answer "Yes" or "No":

Answer Yes

QUESTION NO. 2:

Did Galen Hudson negligently entrust to John Villareal the vehicle that John Villareal was operating on the day of the automobile incident in question?

As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villareal, if Galen Hudson knew or should have known that John Villareal was an unlicensed driver.

Answer "Yes" or "No":

Answer Yes

See Jury Verdict at p. 4, attached as Exhibit A.

No comparative fault question was submitted, although Hudson requested a comparative fault question be included in the Charge of the Court. The jury awarded compensatory damages totaling $1,651,270.91. *Id.* at p. 5. This Court accepted the verdict and subsequently signed a Final Judgment on January 17, 2025. *See* Final Judgment, attached as Exhibit B.

Hudson now asks this Court to set aside the jury's adverse liability finding, enter a take-nothing judgment on the negligent entrustment claim, and modify the January 17, 2025 Final Judgment accordingly for the following reasons:

- ***No proximate cause finding obtained as to Hudson's conduct***. Plaintiff had the burden of securing a predicate finding on proximate cause to support her negligent entrustment claim against Hudson. She failed to do so. Because Plaintiff failed to obtain the necessary jury finding against Hudson in Question 2, this jury finding should be set aside and a take-nothing judgment rendered on this claim.

- ***Error in the Final Judgment requires it to be set aside***. Texas law requires a jury to determine percentage of fault when a tort case has more than one defendant. Texas law also requires trial courts to submit comparative fault to the jury when required by statute, as was the case here. This Court's (*i*) failure to submit comparative fault to the jury and (*ii*) decision to insert its own unsupported finding of joint and several liability in the Final Judgment constitute fundamental errors requiring the Final Judgment to be set aside.

- ***Legally insufficient evidence to support the jury's adverse liability finding in Question 2***. The evidence is legally insufficient to support Hudson's liability for negligent entrustment because (*i*) Hudson did not know Villarreal did not have a license, (*ii*) Hudson's entrustment was not a proximate cause of the collision, and (*iii*) a new an independent cause broke any causal connection between Hudson's entrustment and collision.

- ***Legally insufficient evidence to support the jury's damages awards in Question 3***. The compensatory damages awarded are not supported by legally sufficient evidence, requiring that the awards be set aside.

ARGUMENT AND AUTHORITIES

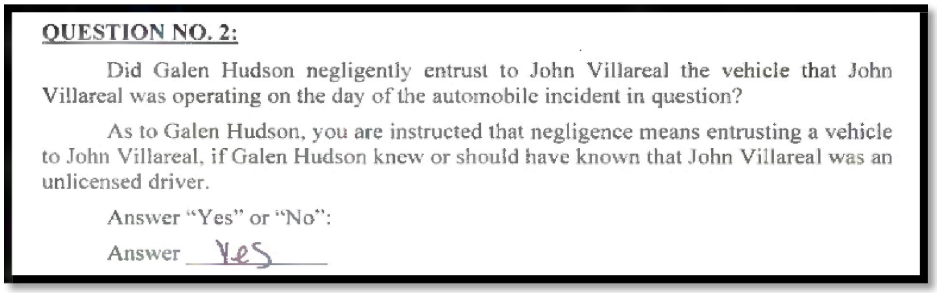
The Court may grant a motion for judgment notwithstanding the verdict if a directed verdict would have been proper. TEX. R. CIV. P. 301; *Fort Bend Cnty. Drainage Dist. v. Sbrusch*, 818 S.W.2d 392, 394 (Tex. 1991). A trial court may disregard any jury finding that has no support in the evidence. *See* TEX. R. CIV. P. 301; *Spencer v. Eagle Star Ins. Co. of Am.*, 876 S.W.2d 154, 157 (Tex. 1994); *Fazio v.*

Cypress/GR Hous. I, L.P., 403 S.W.3d 390, 394 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) ("[A] trial court should disregard a jury finding if the evidence is legally insufficient to support it[.]"); *John Masek Corp. v. Davis*, 848 S.W.2d 170, 173 (Tex. App.—Houston [1st Dist.] 1992, writ denied) (holding that a motion to disregard jury findings is appropriate if there is "no evidence to support an issue, or the converse, that the evidence established an issue as a matter of law, and the jury was not free to make a contrary finding[]").

I. Plaintiff failed to secure the necessary causation finding on her negligent-entrustment claim against Hudson, requiring the adverse finding in Question 2 to be set aside.

Fatal to the entrustment question that was ***specially*** requested by Plaintiff and submitted by the Court in its Charge is that Question 2 did not ask the jury to find whether Hudson's alleged negligence was a proximate cause of the collision. Straying from the PJC, the Court submitted the entrustee's liability and entrustor's liability in two separate questions—rather than one question as prescribed in PJC 10.12—and did not seek a finding on causation in the entrustment question. *See* State Bar of Texas, Texas Pattern Jury Charges—General Negligence, Intentional Personal Torts & Workers' Compensation, PJC 10.12 & cmt. (2022), attached as Ex. C.

More specifically, the Court submitted negligent entrustment in Question 2 as follows:



QUESTION NO. 2:

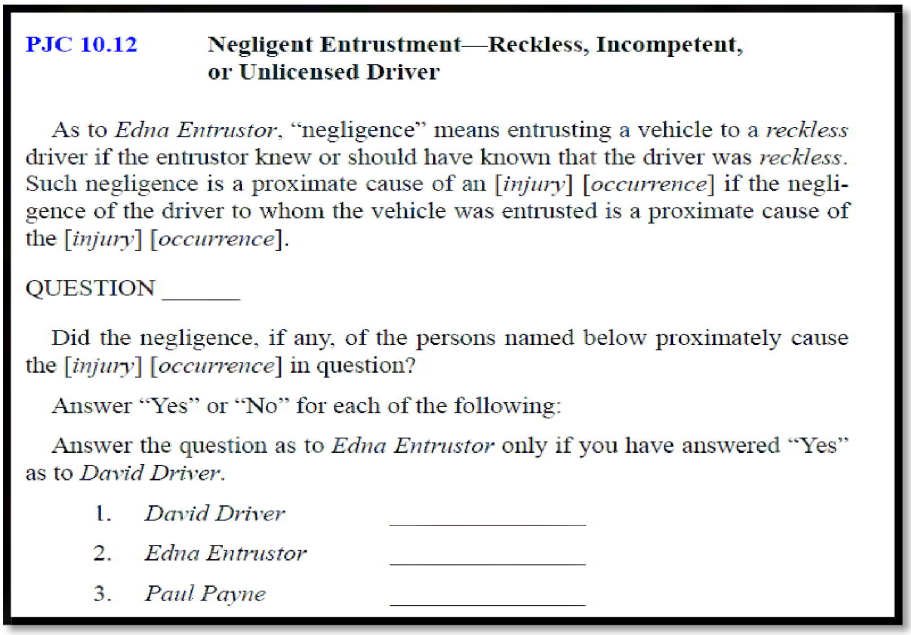
Did Galen Hudson negligently entrust to John Villareal the vehicle that John Villareal was operating on the day of the automobile incident in question?

As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villareal, if Galen Hudson knew or should have known that John Villareal was an unlicensed driver.

Answer "Yes" or "No":

Answer Yes

Hudson objected to the above question and instead requested instructions and questions that tracked PJC 10.12:



PJC 10.12 **Negligent Entrustment—Reckless, Incompetent, or Unlicensed Driver**

As to *Edna Entrustor*, "negligence" means entrusting a vehicle to a *reckless* driver if the entrustor knew or should have known that the driver was *reckless*. Such negligence is a proximate cause of an [*injury*] [*occurrence*] if the negligence of the driver to whom the vehicle was entrusted is a proximate cause of the [*injury*] [*occurrence*].

QUESTION _____

Did the negligence, if any, of the persons named below proximately cause the [*injury*] [*occurrence*] in question?

Answer "Yes" or "No" for each of the following:

Answer the question as to *Edna Entrustor* only if you have answered "Yes" as to *David Driver*.

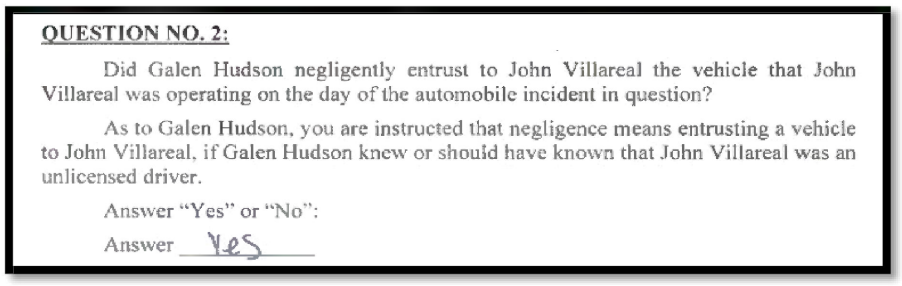
1. *David Driver* _____
2. *Edna Entrustor* _____
3. *Paul Payne* _____

For Plaintiff to have established her negligent entrustment claim against Hudson, she was required to prove "(1) entrustment of a vehicle by the owner; (2) to an unlicensed, incompetent, or reckless driver; (3) that the owner knew or should have known to be unlicensed, (4) that the driver was negligent on the occasion in question and (5) that the driver's negligence proximately caused the accident."

Schneider v. Esperanza Transmission Co., 744 S.W.2d 595, 596 (Tex. 1987); *Robson v. Gilbreath*, 267 S.W.3d 401, 405 (Tex. App.—Austin 2008, pet. denied).

Importantly, Plaintiff's negligent entrustment claim against Hudson "require[d] separate negligent acts by two parties: [Hudson's] negligence in entrusting property to another, ***and*** the entrustee's negligence in using that property." *Endeavor Energy Res., L.P. v. Cuevas*, 593 S.W.3d 307, 311 (Tex. 2019) (emphasis added). "For entrustment to be a proximate cause, the defendant entrustor should be shown to be reasonably able to anticipate that an injury would result as a natural and probable consequence of the entrustment." *Schneider*, 744 S.W.2d at 596. In simpler terms, Plaintiff was required to prove "that the risk that caused the entrustment to be negligent caused the accident at issue." *Oney v. Crist*, 517 S.W.3d 882, 891 (Tex. App.—Tyler 2017), *pet. granted, judgm't vacated w.r.m.*, No. 17-0317, 2018 WL 11483411 (Tex. Apr. 27, 2018) (rendering judgment on negligent-entrustment claims).

But here, Question 2 neglected to ask the jury whether Hudson's entrustment was a proximate cause of the occurrence:



QUESTION NO. 2:

Did Galen Hudson negligently entrust to John Villareal the vehicle that John Villareal was operating on the day of the automobile incident in question?

As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villareal, if Galen Hudson knew or should have known that John Villareal was an unlicensed driver.

Answer "Yes" or "No":

Answer Yes

Hudson objected at the charge conference that Question 2 omitted an essential element of Plaintiff's negligent entrustment claim: that the entrustment proximately

caused Plaintiff's injury. Plaintiff did not request the submission of this requisite element and did not object to the charge's failure to submit this essential element.

It was Plaintiff's burden to request submission of this element and secure a jury finding on proximate cause to support the negligent entrustment claim and her failure to do so requires that the adverse finding in Question 2 be set aside. *See* TEX. R. CIV. P. 279; *see also State Dept. of Highways & Public Transp. v. Payne*, 838 S.W.2d 235, 241(Tex. 1992).

II. Error in the Final Judgment requires that it be set aside.

Over Hudson's objection, the Court refused to submit a comparative fault question. However, Chapter 33 required the jury to apportion fault among Villarreal and Hudson in the Court's Charge. Comparative fault is governed by Chapter 33 of the Texas Civil Practice & Remedies Code. Section 33.003 provides in relevant part:

> (a) The ***trier of fact*** . . . ***shall*** ***determine the percentage of responsibility***, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission . . . :
>
> ...
>
> (2) each defendant....

TEX. CIV. PRAC. & REM. CODE § 33.003(a) (emphasis added). The plain language of the statute makes clear that the trier of fact must determine comparative fault. The statute, by using "shall," mandates apportionment of fault. *See* TEX. GOV'T CODE §311.016(2) (stating "shall" imposes a duty); *Crosstex Energy Servs., LP v. Pro Plus, Inc.*, 430 S.W.3d 384, 392 (Tex. 2014) ("The Code Construction Act makes clear that the use of 'shall' normally imposes a mandatory requirement."); *In re Braden*, No. 14-17-01014-CV, 2018 WL

1004903, at *2 (Tex. App.—Houston [14th Dist.] Feb. 22, 2018, orig. proceeding) (per curiam) ("The Legislature's use of the word 'shall,' as opposed to 'may,' means . . . a mandatory, not a discretionary, duty . . . .").

Under Texas law, the task of apportioning responsibility—notably a requisite for imposing joint and several liability—is indisputably reserved for the factfinder. Therefore, in this case, where more than one defendant was submitted in the charge, the jury was required to apportion responsibility under 33.003.

Furthermore, Rule 277 requires the trial court to submit comparative fault when required by statute. Texas Rule of Civil Procedure 277 provides in relevant part:

> In any cause in which the jury is required to apportion the loss among the parties ***the court shall submit a question*** or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable.

TEX. R. CIV. P. 277 (emphasis added). Rule 277 is a noteworthy procedural rule because it specifically addresses the issue of fault apportionment and requires the trial court to submit the issue to the jury when required by statute. *See id.* The rule is clear on its face, and there is nothing in the rule or procedural rules that relieves the trial court of this requirement.

In this case, the jury was required to apportion fault pursuant to Chapter 33. In turn, under Rule 277, this Court was required to submit a question to the jury so that it could make its requisite apportionment of fault. This did not happen.

But to compound the issue, this Court found Hudson and Villarreal jointly and severally liable in the Final Judgment without the required jury findings. In other words, there was no legal or factual basis for imposing joint and several liability in the Final Judgment.

There is no finding in the jury verdict that supports imposing joint and several liability against Hudson. For instance, no jury finding satisfies 33.013(b)(1). *See* TEX. CIV. PRAC. & REM. CODE §33.013(b)(1) (defendant is jointly and severally liable for damages if the percentage of individual responsibility is greater than 50%). Likewise, there is no finding of joint venture or enterprise, alter ego, or conspiracy supporting joint and several liability. *See id.* § 33.013(b)(2) (defendant is jointly and severally liable for damages if the defendant, with specific intent to harm others, acts in concert to commit certain crimes); *Greenberg Traurig, P.C. v. Moody*, 161 S.W.3d 56, 90 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Carroll v. Timmers Chevrolet, Inc.*, 592 S.W.2d 922, 926 (Tex.1979)) (conspiracy can support joint and several liability); *see also Hart v. Moore*, 952 S.W.2d 90, 99 (Tex. App.—Amarillo 1997, pet. denied) (alter ego can support joint and several liability).

There are no findings that allowed this Court to hold Hudson jointly and severally liable for all damages. Moreover, this Court had no legal basis to weigh the evidence and determine whether Hudson is jointly and severally liable. In light of this fundamental error that resulted in a joint and several liability finding against Hudson despite the lack of any factual or legal basis, the Final Judgment should be set aside.

III. There is no evidence, and no legally sufficient evidence, to support the adverse liability finding against Hudson in Question 2.

Again, to have established her negligent entrustment claim against Hudson, Plaintiff was required to establish "(1) entrustment of a vehicle by the owner; (2) to an unlicensed, incompetent, or reckless driver; (3) that the owner knew or should have known to be unlicensed, (4) that the driver was negligent on the occasion in question [,] (5) that the driver's negligence proximately caused the accident[,]" and (6) that the entrustor was "reasonably able to anticipate that an injury would result as a natural and probable consequence of the entrustment." *Schneider*, 744 S.W.2d at 596. There is no, or legally insufficient, evidence to support causation in Plaintiff's negligent entrustment claim.

First, there is legally insufficient evidence that Hudson knew or should have known that Defendant Villareal had an expired license at the time of entrustment. The evidence presented by Plaintiff suggested that the extent of the relationship between Hudson and Defendant Villareal was that they were friends, and that Hudson had helped Villareal find work in the past. The evidence also showed that Hudson knew that Villareal owned a vehicle which required mechanical repairs, prompting Villareal's need to borrow a vehicle. These facts do not support a finding that Hudson had or should have had any knowledge that Villareal's license had expired at the time of entrustment, nor did any other evidence presented at trial.

Second, there is legally insufficient evidence to support proximate cause. In fact, there is no proximate cause finding by the jury as to Hudson. This alone requires a take-nothing judgment in favor of Hudson. And even had the jury been asked to

determine proximate cause as to Hudson, there is legally insufficient evidence of causation. The evidence at trial established that Villareal's licensure status did not cause Plaintiff's injuries but rather Villareal's actions of later becoming intoxicated and attempting to drive is what proximately caused Plaintiff's injuries. As such, the evidence showed that the risk which allegedly caused Hudson's entrustment to Villareal to be negligent did not cause the collision.

Regarding the foreseeability element of proximate cause, the Supreme Court in *Allways* relied on the rule in *Schneider* that for "entrustment to be a proximate cause, the defendant entrustor should be shown to be reasonably able to anticipate that an injury would result as a natural and probable consequence of the entrustment." *Allways Auto Group, Ltd. v. Walters*. 530 S.W.3d 147 (Tex. 2017); 744 S.W.2d at 596. In reliance on that rule, the Court found that where the entrustor's conduct does "no more than furnish the condition that makes the plaintiff's injury possible," … "the connection between the defendant and the plaintiff's injuries [is] too attenuated to constitute legal cause." *Id.*

At most, the evidence at trial suggested that Hudson did no more than "furnish the condition that made the Plaintiff's injury possible." *Id.* The evidence at trial showed that Villareal was not visibly intoxicated at the time of the entrustment and that Hudson had no reason to believe that Villareal would later drive while intoxicated. So, because Hudson could not have reasonably anticipated that "an injury would result as a natural and probable consequence of the entrustment," Hudson's entrustment of the vehicle was not shown to be a proximate cause of the

Plaintiff's injuries. *Schneider*, at 596. Because the foreseeability element was not met, Plaintiff failed to show that Hudson proximately caused the Plaintiff's injuries.

Third, while intoxication is a risk associated with a driver being reckless or incompetent, intoxication is not a risk involved with the license requirement. The conduct complained of—Villarreal driving while intoxicated—is not a risk associated with obtaining a license—ability to pass a basic driver's test based on knowledge of the rules of the road and an eye exam. Hudson cannot be liable for entrustment based on the license requirement where the underlying conduct of the driver is driving while intoxicated unbeknownst to Hudson.

In sum, the evidence is legally insufficient to support to show any of these elements, much less satisfy all of them. Specifically, there is legally insufficient evidence that:

- Villarreal was an unlicensed driver;
- Hudson knew or should have known Villarreal was an unlicensed driver;
- The risk that allegedly caused the entrustment to be negligent proximately caused the "occurrence," as that term is defined in the jury charge, or proximately caused any injuries to Plaintiff;
- Villarreal was negligent; and
- Villarreal's negligence proximately caused the "occurrence," as that term is defined in the jury charge, or proximately caused any injuries to Plaintiff.

See Goodyear Tire & Rubber Co. v. Mayes, 236 S.W.3d 754, 758 (Tex. 2007) (articulating elements of negligent entrustment claim).

Therefore, the jury's finding in Question 2 should be set aside and a take-nothing judgment rendered on this cause of action.

IV. There is no evidence, or legally insufficient evidence, to support the jury's damage findings in Question 3.

The Court should disregard the jury's damage findings in Question 3 because there is no evidence, or legally insufficient evidence, to justify the jury's answers in Question 3. Texas law requires that there must be evidence to support both the ***existence*** of damages and the ***amount*** of the award. *See Gregory v. Chohan*, 670 S.w.3d 546, 551 (Tex. 2023) (requiring the plaintiff to "demonstrate a rational connection grounded in the evidence, between the injuries suffered and the dollar amount awarded"); *see also Waste Mgmt. of Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 161 (Tex. 2014); *Saenz v. Fidelity & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996).

Additionally, the damages findings in Question 3 are based on lay testimony and evidence that lacked probative value, was speculative, unreliable, unfounded, and conclusory, and thus constitutes no evidence. Further, the amounts awarded by the jury are untethered from and have no rational connection to the evidence. Because the jury's answers to Question 3 are immaterial and not supported by legally sufficient evidence (detailed further below)—either in the decision to award damages or the amounts awarded—the Court should render a take-nothing judgment in favor of Defendant Hudson.

A. Legally insufficient evidence of $50,000.00 for physical pain sustained in the past (Question 3(a)).

There is no, or legally insufficient, evidence to support the jury's finding in Question 3(a) that Plaintiff sustained $50,000.00 in past physical pain. "A party may establish the existence of conscious pain and suffering by circumstantial evidence.

Pain and suffering may be inferred or presumed as a consequence of *severe* injuries. The duration of the pain and mental anguish is an important consideration." *HCRA of Tex., Inc. v. Johnston*, 178 S.W.3d 861, 871 (Tex. App.—Fort Worth 2005, no pet.) (internal citations omitted) (emphasis added). Although the jury has broad discretion in awarding physical pain damages, "there must 'be some evidence to justify the amount awarded,' as a jury 'cannot simply pick a number and put it in the blank.'" *Id.* (quoting *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996)).

Here, the jury's past physical pain award is not supported by legally sufficient evidence. Accordingly, because the evidence is legally insufficient to support the jury's finding in Question 3(a), the finding must be set aside and judgment rendered accordingly.

B. Legally insufficient evidence of $50,000.00 for physical pain that, in reasonable probability, Plaintiff will sustain in the future (Question 3(b)).

There is no, or legally insufficient, evidence to support the jury's finding in Question 3(b) that Plaintiff will sustain $50,000.00 in future physical pain. Plaintiff offered no evidence of future physical pain or that such physical pain will continue to substantially disrupt her daily routine in the future. *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995). Because the evidence is legally insufficient to support the jury's finding in Question 3(b), that finding must be set aside and judgment rendered accordingly.

C. Legally insufficient evidence of the $50,000.00 for mental anguish sustained in the past (Question 3(c)).

There is no, or legally insufficient, evidence to support the jury's finding in Question 3(c) that Plaintiff sustained $50,000.00 in past mental anguish. Mental anguish is a "high degree of mental pain and distress" that is "more than mere worry, anxiety, vexation, embarrassment, or anger." *Parkway*, 901 S.W.2d at 444; *Lefton v. Griffith*, 136 S.W.3d 271, 279 (Tex. App.—San Antonio 2004, no pet.). The plaintiff's evidence must describe "the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in the plaintiffs' daily routine." *Parkway*, 901 S.W.2d at 444.

In this case, there is legally insufficient evidence that Plaintiff's daily routine was substantially disrupted. Also, there is legally insufficient evidence of past duration of mental anguish. *Griffith*, 136 S.W.3d at 279 (reversing jury mental anguish award where plaintiff failed to prove "the duration of her anguish"; it was "not clear how long she 'was unable to sleep, was depressed, and suffered from anxiety'"). No legally sufficient evidence supports the jury's finding in Question 3(c) for Plaintiff's past mental anguish thus the jury's findings in Question 3(c) cannot be sustained and the finding must be set aside and judgment rendered accordingly.

D. Legally insufficient evidence of $50,000.00 for mental anguish that, in reasonable probability, Plaintiff will sustain in the future (Question 3(d)).

There is no, or legally insufficient, evidence to support the jury's finding in Question 3(d) that Plaintiff will sustain $50,000.00 in future mental anguish. Plaintiff offered no evidence that she would suffer, in reasonable probability, a "high

degree of mental pain and distress" that is "more than mere worry, anxiety, vexation, embarrassment, or anger" in the future. *Woodruff*, 901 S.W.2d at 444; *Griffith*, 136 S.W.3d at 279. Plaintiff offered no evidence that her daily routine will continue to be substantially disrupted in the future, either. Because the evidence is legally insufficient to support the jury's finding in Question 3(d), that finding must be set aside and judgment rendered accordingly.

E. Legally insufficient evidence of the $50,000.00 for physical impairment sustained in the past (Question 3(e)).

There is no, or legally insufficient, evidence to support the jury's finding in Question 3(e) that Plaintiff sustained $50,000.00 in past physical impairment. Damages for physical impairment (in either the past or future) are available only if the plaintiff has suffered a loss that is distinct from any pain and suffering they may have suffered. *See Blankenship v. Mirick*, 984 S.W.2d 771, 777 (Tex. App.—Waco 1999, pet. denied). Rather, to recover damages for physical impairment, the plaintiff must prove that effect of their physical impairment produces a "distinct loss that is substantial and for which he should be compensated." *Katy Springs & Mfg., Inc. v. Favalora*, 476 S.W.3d 579, 599 (Tex. App.—Houston [14th Dist.] 2015, pet. denied).

No legally sufficient evidence supports the jury's finding in Question 3(e), that Plaintiff sustained past physical impairment or that $50,000.00 would fairly and reasonably compensate Plaintiff for any past physical impairment. Nor did Plaintiff prove she suffered a "distinct loss that is substantial and for which she should be compensated." *Id.* Therefore, the jury's finding in Question 3(e) cannot stand, must be set aside, and judgment rendered accordingly.

F. Legally insufficient evidence of the $50,000.00 for physical impairment that, in reasonable probability, Plaintiff will sustain in the future (Question 3(f)).

There is no, or legally insufficient, evidence to support the jury's finding in Question 3(f) that Plaintiff will sustain $50,000.00 in future physical impairment. Similarly, there is legally insufficient evidence that Plaintiff would suffer, in reasonable probability, future physical impairment distinct from any pain and suffering she may have suffered. *See Blankenship*, 984 S.W.2d at 777. Because the evidence is legally insufficient to support the jury's finding in Question 3(f), that finding must be set aside and judgment rendered accordingly.

G. Legally insufficient evidence of $381,270.90 for past medical expenses (Question 3(g)).

There is no, or legally insufficient, evidence to support the jury's finding in Question 3(g), or that of $381,270.90 would fairly and reasonably compensate Plaintiff for any past medical care expenses. Therefore, the jury's award in Question 3(g) must be set aside and judgment rendered accordingly.

H. Legally insufficient evidence of $450,000.00 for expenses of necessary medical care that, in reasonable probability, Plaintiff will sustain in the future (Question 3(h)).

There is no, or legally insufficient, evidence to support the jury's finding in Question 3(f) of $450,000.00 that Plaintiff, in reasonable probability, will sustain in the future. To support an award of future medical expenses, a plaintiff must show a reasonable probability that expenses resulting from the injury will be required in the future. *Rosenboom Mach. & Tool, Inc. v. Machala*, 995 S.W.2d 817, 828 (Tex. App.—Houston [1st Dist.] 1999, pet. denied); *see Ibrahim v. Young*, 253 S.W.3d 790, 808

(Tex. App.—Eastland 2008) (orig. proceeding). To make such a showing, a claimant must prove a reasonable probability both that they will incur future medical expenses ***and*** the reasonably probable amount of those expenses. *Ibrahim*, 253 S.W.3d at 808.

"[T]he jury can make its determination of the amount of future medical expenses and care based on the injuries suffered by the plaintiff, the medical care rendered before trial, the progress toward recovery under the treatment received, and the condition of the injured party at the time of trial." *LMMM Hous. #41, Ltd. v. Santibanez*, No. 01-16-00724-CV, 2018 WL 4137971, at *10 (Tex. App.—Houston [1st Dist.] Aug. 30, 2018, no pet.); *see also Whole Foods Mkt. Sw., LP v. Tijerina*, 979 S.W.2d 768, 781 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) ("The reasonable value of future medical care may be established by evidence of the reasonable value of past medical treatment.").

Where evidence at trial supporting a claim for future medical costs includes a doctor's or lay witness's speculation, not based on a reasonable medical probability, and where a party has not established with reasonable medical probability that they will incur future medical expenses, those damages are **not *recoverable as a matter of law***. *Whole Foods*, 979 S.W.2d at 782 (holding trial court erred in entering judgment and award must be reduced because "[t]his court will not uphold an award of future medical costs based on speculation"). That is what occurred here—pure speculation and conclusory statements asserted by Plaintiff as to her future medicals. Plaintiff only offered pure speculation and conclusory assertions as to Plaintiff's future medicals, including as to what additional treatment she would actually obtain.

Lastly, the law and the question submitted in the Court's Charge required the jury to award—in ***present value***—future medical expenses. However, Plaintiff did not present any evidence of the present value amount for these damages. Nor did Plaintiff give the jury any information how to calculate present value. Thus, the evidence is insufficient to support the future medical expenses award.

The evidence offered by Plaintiff is legally insufficient to support an award of future medical expenses. Because the evidence is legally insufficient to support the jury's award in Question 3(h), that finding must be set aside and judgment rendered accordingly.

I. Legally insufficient evidence of $140,000.00 of past loss earning capacity (Question 3(i)).

There is no, or legally insufficient, evidence to support the jury's finding in Question 3(i), that Plaintiff sustained $140,000.000 of past loss earning capacity. Plaintiff's "calculations" of Plaintiff's past loss earning capacity are speculative and unfounded. Earning capacity is an assessment of what the plaintiff's capacity to earn a livelihood actually was and the extent to which that capacity has been impaired. *See Hospadales v. McCoy*, 513 S.W.3d 724, 743 (Tex. App.—Houston [1st Dist.] 2017, no pet.). The focus is on the plaintiff's "capacity to earn, *see id.*, but the jury must not "journey into the realm of conjecture." *See Koko Motel, Inc. v. Mayo*, 91 S.W.3d 41, 52 (Tex. App.—Amarillo 2002, pet. denied). The jury must determine the loss of earning capacity based on the facts available in the particular case. *See id.* Because the evidence is legally insufficient to support the jury's award in Question 3(i), that finding must be set aside and judgment rendered accordingly.

J. Legally insufficient evidence of $380,000 for loss of earning capacity that, in reasonable probability, Plaintiff will sustain in the future (Question 3(j)).

For the same reasons, there is no, or legally insufficient, evidence to support the jury's finding in Question 3(j), that Plaintiff, in reasonable probability, will sustain $140,000.000 in future loss earning capacity. Loss of future earning capacity is the plaintiff's diminished capacity to earn a living after the trial. *Tagle v. Galvan*, 155 S.W.3d 510, 519 (Tex. App.—San Antonio 2004, no pet.). The jury has discretion in determining the amount of damages for loss of future earning capacity. *See id.* But, to support an award for such damages, the plaintiff must introduce evidence sufficient to allow the jury to reasonably measure loss of future earning capacity in monetary terms. *See id.* There must be some evidence that the plaintiff had the capacity to work prior to the injury, and that her capacity was impaired as a result of the injury. *Id.* at 520. Plaintiff failed to meet her burden thus, because the evidence is legally insufficient to support the jury's award in Question 3(j), that finding must be set aside and judgment rendered accordingly.

CONCLUSION AND PRAYER

For the reasons stated herein, Defendant Galen Wade Hudson prays that the Court grant all of the relief requested in this Motion, including setting aside the adverse finding in Question 2, rendering a take-nothing judgment on Plaintiff's negligent entrustment claim, and modify the Final Judgment accordingly. Hudson further requests all other relief to which he is justly entitled.

Respectfully submitted,

/s/ E. Marie Jamison

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Attorneys for Defendant,
Galen Wade Hudson

CERTIFICATE OF SERVICE

I certify that on February 14, 2025, a true and correct copy of the foregoing was served upon all counsel of record in accordance with the requirements set forth in Rule 21a of the Texas Rules of Civil Procedure.

/s/ E. Marie Jamison
E. Marie Jamison

Exhibit A

ORIGINAL

FILED

CAUSE NO. DC-22-01998

24 NOV -8 PM 4:25

FELICIA PITRE
DISTRICT CLERK
DALLAS CO. TEXAS
DEPUTY

GLORIA MYERS, VS. JOHN ANDREW VILLAREAL; GALEN WADE HUDSON,	IN THE DISTRICT COURT 134TH JUDICIAL DISTRICT DALLAS COUNTY, TEXAS

JURY CHARGE

LADIES AND GENTLEMEN OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are included in this Jury Charge, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I have previously given you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in Court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS AND INSTRUCTIONS

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Physical impairment" means a loss or diminution of the injured party's ability to engage in tasks or activities for one's own benefit or enjoyment. In assessing damages for physical impairment, you may consider the loss of enjoyment of life. The effect of the physical impairment must be substantial and extend beyond any pain, suffering, mental anguish or lost wages, or diminished earning capacity.

"Proximate cause" means a cause that was a substantial factor in bringing about an occurrence and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"Occurrence" means the incident that occurred on or about February 23, 2021.

JURY QUESTIONS

QUESTION NO. 1:

Did the negligence, if any, of John Villarreal proximately cause the occurrence in question?

As to John Villarreal, you are instructed that negligence means the failure to use ordinary care, that is, failing to do which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Answer "Yes" or "No":

Answer Yes

QUESTION NO. 2:

Did Galen Hudson negligently entrust to John Villareal the vehicle that John Villareal was operating on the day of the automobile incident in question?

As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villareal, if Galen Hudson knew or should have known that John Villareal was an unlicensed driver.

Answer "Yes" or "No":

Answer Yes

If you answered "yes" to Question No. 1 or Question No. 2, then answer Question No. 3. Otherwise, do not answer Question 3.

QUESTION NO. 3:

What sum of money, if paid now in cash, would fairly and reasonably compensate Gloria ~~Meyers~~ Myers for injuries sustained, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Answer separately, in dollars and cents for damages, if any.

a. Physical pain sustained in the past.

Answer: $ 50,000

b. Physical pain that, in reasonable probability, Gloria Myers will sustain in the future.

Answer: $ 50,000

c. Mental anguish sustained in the past.

Answer: $ 50,000

d. Mental anguish that, in reasonable probability, Gloria Myers will sustain in the future.

Answer: $ 50,000

e. Physical impairment sustained in the past.

Answer: $ 50,000

f. Physical impairment that, in reasonable probability, Gloria Myers will sustain in the future.

Answer: $ 50,000

g. Reasonable expenses of necessary medical care incurred in the past.

Answer: $ 381,270.91

h. Reasonable expenses of necessary medical care that, in reasonable probability, Gloria Myers will incur in the future.

Answer: $ 450,000

i. Loss of earning capacity sustained in the past.

Answer: $ 140,000

j. Loss of earning capacity that, in reasonable probability, Gloria Myers will sustain in the future.

Answer: $ 380,000

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:
   a. have the complete charge read aloud if it will be helpful to your deliberations;
   b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
   c. give written questions or comments to the bailiff who will give them to the judge;
   d. write down the answers you agree on;
   e. get the signatures for the verdict certificate; and
   f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.

2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.

   If 11 jurors agree on every answer, those 11 jurors sign the verdict.

   If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

JUDGE PRESIDING

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

_____ _____

Signature of Presiding Juror **Printed Name of Presiding Juror**

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

X Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

	SIGNATURE	NAME PRINTED
1.	Steffine Tovar	Steffine Tovar.
2.	Whittaker Mims	Whittaker Mims
3.	John M. Sullivan	John M. Sullivan
4.	Lydia Martinez Guzman	Lydia Martinez Guzman
5.	Ayson Lambrecht	Ayson Lambrecht
6.	Kristi Etheredge	Kristi Etheredge
7.	Christian Bacon	Christian Bacon
8.	Crystal Garland	Crystal Garland
9.	Chikitia Benjamin	Chikitia Benjamin
10.	Robert Alent	Robert Alent
11.		

Exhibit B

CAUSE NO. DC-22-01998

GLORIA MYERS *Plaintiff,* vs. JOHN ANDREW VILLARREAL and GALEN WADE HUDSON and TEXAS FARM BUREAU INSURANCE *Defendants.*	§ § § § § § § § § §	IN THE DISTRICT COURT 134th JUDICIAL DISTRICT DALLAS COUNTY, TEXAS

FINAL JUDGMENT

This Court called this case to a jury trial on November 4, 2024. The parties appeared personally and through their counsel of record and announced ready for trial.

After voir dire, the Court duly empaneled a jury of twelve jurors. The jury heard the testimony, evidence, and arguments of counsel, and the Court submitted the case to the jury on November 8, 2024. On that same date, in response to the Charge of the Court, the jury made findings that the Court received, filed, and entered of record. The Charge of the Court, including the jury's answers, is attached as Exhibit "A" and incorporated herein by reference.

It appears to the Court that the jury returned its 10-2 verdict in favor of Plaintiff and against Defendants John Andrew Villareal and Galen Wade Hudson. The jury found both John Villareal and Galen Wade Hudson negligent.

IT IS ORDERED, ADJUDGED AND DECREEED that the Court hereby renders judgment for Plaintiff Gloria Myers against Defendants John Villareal and Galen Wade Hudson, who are jointly and severally liable, for past damages of $671,270.91 and future damages of $980,000.00; it is further

ORDERED, ADJUDGED, and DECREED that Plaintiff Gloria Myers shall recover from Defendants John Villareal and Galen Wade Hudson, jointly and severally, prejudgment

interest on past damages of $671,270.91 awarded in this Judgment, at the rate of 7.75% simple interest, commencing on the date of suit against Defendants John Villareal and Galen Wade Hudson, February 18, 2022, through an estimated Judgment date of January 17, 2025 (thus ending accrual on January 17, 2025), in the sum of $151,388.37 ([$671,270.91 x .0775] x 2.91 years), and $142.51 per day after January 17, 2025, until the day before the Court signs this final judgment; it is further

ORDERED, ADJUDGED, AND DECREED that Plaintiff shall recover from Defendants John Villareal and Galen Wade Hudson, jointly and severally, post-judgment interest on the amounts awarded in this Judgment (including prejudgment and court costs) at a rate of 7.75% per annum, compounded annually, beginning on the date the Court signs this Judgment and ending on the date the Judgment is satisfied; it is further

ORDERED, ADJUGED AND DECREED that Plaintiff shall recover her taxable costs of court from Defendants John Villareal and Galen Wade Hudson; it is further

ORDERED, ADJUDGED, AND DECREED that all writs and processes for the enforcement and collection of this judgment may issue as necessary.

This is a Final Judgment and that disposes of all claims and all parties and is appealable.

SIGNED this _____ day of _____, 2025.

Dale B. Tillery

Digitally signed by Dale B. Tillery
DN: cn=Dale B. Tillery, o=134th Judicial District Court, ou=Judge, email=dtillery@dallascourts.org, c=US
Date: 2025.01.17 12:26:41 -06'00'

HON. DALE TILLERY
PRESIDING JUDGE

APPROVED AS TO FORM, ONLY:

/s/ Carlos B. Balido

Carlos A. Balido
Texas Bar No. 01631230
Walters Balido & Crain
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/s/ Mark Teague

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EXHIBIT A

ORIGINAL

FILED

CAUSE NO. DC-22-01998

24 NOV -8 PM 4:25

FELICIA PITRE
DISTRICT CLERK
DALLAS CO. TEXAS
DEPUTY

GLORIA MYERS, VS. JOHN ANDREW VILLAREAL; GALEN WADE HUDSON,	IN THE DISTRICT COURT 134TH JUDICIAL DISTRICT DALLAS COUNTY, TEXAS

JURY CHARGE

LADIES AND GENTLEMEN OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are included in this Jury Charge, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I have previously given you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in Court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS AND INSTRUCTIONS

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Physical impairment" means a loss or diminution of the injured party's ability to engage in tasks or activities for one's own benefit or enjoyment. In assessing damages for physical impairment, you may consider the loss of enjoyment of life. The effect of the physical impairment must be substantial and extend beyond any pain, suffering, mental anguish or lost wages, or diminished earning capacity.

"Proximate cause" means a cause that was a substantial factor in bringing about an occurrence and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"Occurrence" means the incident that occurred on or about February 23, 2021.

JURY QUESTIONS

QUESTION NO. 1:

Did the negligence, if any, of John Villarreal proximately cause the occurrence in question?

As to John Villarreal, you are instructed that negligence means the failure to use ordinary care, that is, failing to do which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Answer "Yes" or "No":

Answer Yes

QUESTION NO. 2:

Did Galen Hudson negligently entrust to John Villareal the vehicle that John Villareal was operating on the day of the automobile incident in question?

As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villareal, if Galen Hudson knew or should have known that John Villareal was an unlicensed driver.

Answer "Yes" or "No":

Answer Yes

If you answered "yes" to Question No. 1 or Question No. 2, then answer Question No. 3. Otherwise, do not answer Question 3.

QUESTION NO. 3:

What sum of money, if paid now in cash, would fairly and reasonably compensate Gloria ~~Meyers~~ Myers for injuries sustained, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Answer separately, in dollars and cents for damages, if any.

a. Physical pain sustained in the past.

Answer: $ 50,000

b. Physical pain that, in reasonable probability, Gloria Myers will sustain in the future.

Answer: $ 50,000

c. Mental anguish sustained in the past.

Answer: $ 50,000

d. Mental anguish that, in reasonable probability, Gloria Myers will sustain in the future.

Answer: $ 50,000

e. Physical impairment sustained in the past.

Answer: $ 50,000

f. Physical impairment that, in reasonable probability, Gloria Myers will sustain in the future.

Answer: $ 50,000

g. Reasonable expenses of necessary medical care incurred in the past.

Answer: $ 381,270.91

h. Reasonable expenses of necessary medical care that, in reasonable probability, Gloria Myers will incur in the future.

Answer: $ 450,000

i. Loss of earning capacity sustained in the past.

Answer: $ 140,000

j. Loss of earning capacity that, in reasonable probability, Gloria Myers will sustain in the future.

Answer: $ 380,000

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:
   a. have the complete charge read aloud if it will be helpful to your deliberations;
   b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
   c. give written questions or comments to the bailiff who will give them to the judge;
   d. write down the answers you agree on;
   e. get the signatures for the verdict certificate; and
   f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.

2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.

   If 11 jurors agree on every answer, those 11 jurors sign the verdict.

   If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

JUDGE PRESIDING

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

_____	_____
Signature of Presiding Juror	**Printed Name of Presiding Juror**

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

X Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

	SIGNATURE	NAME PRINTED
1.	Steffine Tovar	Steffine Tovar.
2.	Whittaker Mims	Whittaker Mims
3.	John M. Sullivan	John M. Sullivan
4.	Lydia Martinez Guzman	Lydia Martinez Guzman
5.	Ayson Lambrecht	Ayson Lambrecht
6.	Kristi Etheredge	Kristi Etheredge
7.	Christain Bacon	Christain Bacon
8.	Crystal Garland	Crystal Garland
9.	Chikitia Benjamin	Chikitia Benjamin
10.	Robert Alent	Robert Alent
11.		

Exhibit C

PJC 10.12 Negligent Entrustment—Reckless, Incompetent, or Unlicensed Driver

As to *Edna Entrustor*, "negligence" means entrusting a vehicle to a *reckless* driver if the entrustor knew or should have known that the driver was *reckless*. Such negligence is a proximate cause of an [*injury*] [*occurrence*] if the negligence of the driver to whom the vehicle was entrusted is a proximate cause of the [*injury*] [*occurrence*].

QUESTION _____

Did the negligence, if any, of the persons named below proximately cause the [*injury*] [*occurrence*] in question?

Answer "Yes" or "No" for each of the following:

Answer the question as to *Edna Entrustor* only if you have answered "Yes" as to *David Driver*.

1. *David Driver* _____
2. *Edna Entrustor* _____
3. *Paul Payne* _____

COMMENT

When to use. PJC 10.12 submits the common-law doctrine of negligent entrustment to a reckless driver. In an appropriate case, the words *incompetent*, *reckless or incompetent*, or *unlicensed* should be substituted for *reckless*. Negligent entrustment requires (1) entrustment of a vehicle by the owner (2) to an unlicensed, incompetent, or reckless driver (3) that at the time of the entrustment the owner knew or should have known to be unlicensed, incompetent, or reckless; and (4) the driver's negligence on the occasion in question (5) proximately caused the accident. *4Front Engineered Solutions, Inc. v. Rosales*, 505 S.W.3d 905, 909 (Tex. 2016); *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 758 (Tex. 2007); *Williams v. Steves Industries, Inc.*, 699 S.W.2d 570 (Tex. 1985), *superseded by statute on other grounds as stated in Transportation Insurance Co. v. Moriel*, 879 S.W.2d 10, 20 n.11 (Tex. 1994), *superseded by statute on other grounds by U-Haul International, Inc. v. Waldrip*, 380 S.W.3d 118 (Tex. 2012). The doctrine of negligent entrustment may be applied to tangible property other than motor vehicles. *4Front Engineered Solutions, Inc.*, 505 S.W.3d at 909 n.5 (addressing entrustment of forklift and listing other examples of tangible personal property subject to entrustment including, e.g., firearms).

Note that PJC 10.12 consists of two parts—an instruction, to be given immediately after the definition of "negligence," and a broad-form question.

Statutory standard for unlicensed drivers. "A person may not authorize or knowingly permit a motor vehicle owned by or under the control of the person to be operated on a highway by any person in violation of this chapter." Tex. Transp. Code § 521.458(b). "This chapter" prohibits, among other things, a person, unless expressly exempted under chapter 521, from "operat[ing] a motor vehicle on a highway in this state unless the person holds a driver's license issued under this chapter." Tex. Transp. Code § 521.021. Where a statute requires a driver to be legally licensed to operate a vehicle, then permitting the driver to operate it without a license would constitute negligence per se. *4Front Engineered Solutions, Inc.*, 505 S.W.3d at 911 (citing *Mundy v. Pirie-Slaughter Motor Co.*, 206 S.W.2d 587, 589–90 (Tex. 1947)). See PJC 5.1 comment, "Two types of negligence per se standards."

Beware, however, that "[t]he reference to an unlicensed driver arises from cases alleging negligent entrustment of an automobile, and is based on the fact that Texas statutes require all drivers to be licensed and prohibit an owner from knowingly permitting an unlicensed driver to operate the owner's vehicle." *4Front Engineered Solutions, Inc.*, 505 S.W.3d at 909 n.6 (citing *Mundy*, 206 S.W.2d at 589–90)). If Texas law does not require a license to operate a particular piece of equipment (e.g., a forklift) or prohibit an owner from permitting an unlicensed person from operating a particular piece of equipment, the lack of a license would be inapplicable to the negligent entrustment issue. *See 4Front Engineered Solutions, Inc.*, 505 S.W.3d at 909 n.6 (citing *Mundy*, 206 S.W.2d at 589–90)).

Proximate cause of entrustor. "For entrustment to be a proximate cause, the defendant entrustor should be shown to be reasonably able to anticipate that an injury would result from a natural and probable consequence of the entrustment." *Schneider v. Esperanza Transmission Co.*, 744 S.W.2d 595 (Tex. 1987) (not foreseeable that employee would become intoxicated and allow others to drive company vehicle, where employee's only record was of speeding tickets); *see also Always Auto Group, Ltd. v. Walters*, 530 S.W.3d 147, 148 (Tex. 2017) (not foreseeable that driver, who was visibly intoxicated when he was provided loaner vehicle, would get drunk eighteen days later and cause a collision); *Hanson v. Green*, 339 S.W.2d 381, 383 (Tex. App.—Texarkana 1960, writ ref'd) (finding negligence, if any, of father in entrusting car to unlicensed, minor daughter was not a proximate cause of plaintiff's injuries and damages, where—unbeknownst to father—daughter entrusted car to unlicensed, minor friend).

Thus, negligent entrustment is considered a proximate cause of the collision if the risk that caused the entrustment to be negligent caused the accident at issue. *TXI Transportation Co. v. Hughes*, 306 S.W.3d 230, 240–41 (Tex. 2010) (neither driver's status as illegal alien nor fact that he had used fake Social Security number to obtain his commercial driver's license was proximate cause of accident); *see also Endeavor*

Energy Resources, L.P. v. Cuevas, 593 S.W.3d 307, 311 (Tex. 2019). Concerning whether the presumption of proximate cause set out in the second sentence of this instruction should apply in a double-entrustment case, see *Schneider*, 744 S.W.2d 595 (where risk that caused entrustment to be negligent did not cause collision, entrustment was not proximate cause of collision).

If only entrustor is sued. If only the entrustor is sued, the driver's conduct would not be inquired about, and the predicating instruction, "Answer the question as to *Edna Entrustor* only if you have answered 'Yes' as to *David Driver*," should be omitted. It is sufficient that the instruction state that if the driver's negligence proximately caused the collision, the entrustor's negligence is considered the proximate cause of the collision.

Caveat when both entrustor and entrustee are joined. Whether the entrustor should be submitted in the comparative causation question is uncertain. *See Bedford v. Moore*, 166 S.W.3d 454 (Tex. App.—Fort Worth 2005, no pet.); *Rosell v. Central West Motor Stages, Inc.*, 89 S.W.3d 643 (Tex. App.—Dallas 2002, pet. denied); *Loom Craft Carpet Mills, Inc. v. Gorrell*, 823 S.W.2d 431 (Tex. App.—Texarkana 1992, no writ). Also see Justice Jefferson's dissent in *F.F.P. Operating Partners, L.P. v. Duenez*, 237 S.W.3d 680, 694 (Tex. 2007).

Modify "negligence" definition to refer only to parties other than entrustor. The basic definition of "negligence," PJC 2.1, which precedes this instruction, should be modified by adding the phrase "when used with respect to the conduct of [*include names of parties other than the entrustor's*]" after the first word, "negligence," to inform the jury that the more specific definition of negligence in PJC 10.12 applies only to the entrustor. See PJC 2.1 comment, "Modify if 'ordinary care' not applicable to all."

Duty to investigate. Under the common law, an employer owes a duty to the general public to ascertain the qualifications and competence of the employees and independent contractors it hires, "especially when the employees are engaged in occupations that require skill or experience and that could be hazardous to the safety of others." *Morris v. JTM Materials, Inc.*, 78 S.W.3d 28, 49 (Tex. App.—Fort Worth 2002, no pet.); *see also Martinez v. Hays Construction, Inc.*, 355 S.W.3d 170, 180 (Tex. App.—Houston [1st Dist.] 2011, pet. denied) (negligent hiring case), *disapproved of on other grounds by Gonzalez v. Ramirez*, 463 S.W.3d 499 (Tex. 2015) (to the extent *Martinez* holds that employer was liable as a motor carrier under federal regulations). If employment requires driving a vehicle, the employer has an affirmative duty to investigate the employee or independent contractor's competency to drive. *Martinez*, 355 S.W.3d at 180 (citing *Mireles v. Ashley*, 201 S.W.3d 779, 782–83 (Tex. App.—Amarillo 2006, no pet.), and *Morris*, 78 S.W.3d at 49)).

An employer is also required by state statute to investigate a driver's driving record with the Department of Public Safety and to verify that he has a valid license before

entrusting a vehicle to him to transport persons or property. Tex. Transp. Code § 521.459(a); *see North Houston Pole Line Corp. v. McAllister*, 667 S.W.2d 829, 835 (Tex. App.—Houston [14th Dist.] 1983, no writ) (former article 6687b, section 37, imposed "duty to know"). In the context of a commercial motor vehicle, the Federal Motor Carrier Safety Regulations require an employer to, among many other things and subject to certain limited exemptions, investigate each employed driver's motor vehicle record and Department of Transportation–regulated employment history during the preceding three years. *See* 49 C.F.R. pt. 391, subpt. C ("Background and Character"); 49 C.F.R. pt. 391, subpt. G ("Limited Exemptions").

Use of "injury" or "occurrence." See discussion at PJC 4.1 Comment.

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