

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**KONSTANTINOS VAREISIS,**

**Plaintiff,**

vs.

**MICHAEL JOSEPH LANDRY,**

**Defendant.**

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**Civil Action No.: 1:21-cv-00084-KD-M**

**JOINT PRETRIAL DOCUMENT**

**A.**

**JURISDICTION AND PARTIES**

This diversity matter is one over which this Court has jurisdiction pursuant to 28 U.S.C. § 1332. The parties are Konstantinos Varesis and Michael Joseph Landry. The parties are correctly named. A Guardian Ad Litem or other presentative is not necessary in this matter as the parties are both over the age of majority and of sound mind.

**B.**

**STATEMENT OF THE CASE**

**I. Plaintiff's Statement of the Case**

Plaintiff, KONSTANTINOS VAREISIS, was a freshman student and soccer player at Springhill College. Varesis lives in and is from Athens, Greece. At the same time, Defendant, MICHAEL JOSEPH LANDRY, was a freshman student and on the golf team of Springhill College. Landry lives in and is from Metairie, Louisiana. Around 11:45 p.m. on the night of February 23, 2019, in the parking lot of dorms at Springhill College, Landry struck Varesis in the head with his fist. Varesis fell to the pavement, striking his head on the pavement. Varesis was treated at Springhill Medical Center and then transferred to University Hospital (f/k/a USA Medical Center). Varesis filed suit against Landry for negligence and wantonness. Landry claims it was self-defense and that Varesis was contributorily negligent.

**II. Defendant's Statement of the Case**

On the night of February 23, 2019, Mr. Landry and his friends attended a fraternity/sorority party at Springhill College. Shortly after arriving at the party, there was a verbal altercation between Mr. Landry's friend, Glorioso, and a member of the soccer team, George Brown. During the argument, Mr. Brown sent a "snap chat" to the other members of the soccer team who came to the area. The argument continued between the members of the soccer team, Mr. Landry and his friends. Mr. Landry and his friends attempted to walk away from the scene. While they were walking away, the soccer team members followed them into the parking lot, including Mr. Varesis. Mr. Landry felt as if Mr. Varesis was approaching to attack him and was concerned about his safety and well-being. In order to defend himself, he struck Mr. Varesis.

C.

**TRIABLE CLAIMS AND AFFIRMATIVE DEFENSES**

**I. Plaintiff's Claim for Negligence.**

**a. LEGAL ELEMENTS**

**1. Plaintiff says that he was harmed by Defendant's negligent conduct. To recover damages, Plaintiff must prove all of the following:**

- a) that Michael Landry was negligent;
- b) that Konstantinos Varesis was harmed; and
- c) that Michael Landry's negligence was the cause of Konstantinos Varesis' harm.

APJI 28.00

**b. AGREED FACTS**

1. On the night of February 23, 2019, Konstantinos Varesis and Michael Landry were both students at Springhill College in Mobile, Alabama.
2. A party was being held inside and outside of apartments located on the campus of Springhill College at the time of the subject incident.
3. Michael Landry went to the party with two of his friends and golf team mates, Grayson Glorioso and Zachary Doppell.
4. Grayson Glorioso had an argument with George Brown, a member of the

Springhill College soccer team.

5. Glorioso and Brown were arguing over a girl.
6. During the argument between Glorioso and Brown, Brown sent a message to the soccer team members, who came to the scene, including Varesis.
7. Landry and Varesis did not know each other and had not met before that night.
8. Varesis did not touch Landry.
9. Landry punched Varesis.
10. Varesis was knocked unconscious.
11. Varesis fell to the pavement.

c. **DISPUTED FACTS**

1. Whether or not Landry and his team mates were invited to the party.
2. Whether Landry was intoxicated when he struck Varesis.
3. Whether Varesis was intoxicated at the time of the incident.
4. Whether Varesis was acting in a threatening manner as Landry was leaving the Fairway apartments.
5. Whether Landry ran away from Resident Advisor Dionte Rudolph as she was escorting him away the Fairway apartments and ran back to strike Varesis. Or, whether Varesis was two steps away from Landry immediately before Landry struck Varesis.
6. Whether the party being held was a fraternity/sorority party held on campus each year.
7. Whether Landry, Glorioso and Doppell left the party.
8. Whether Landry, Glorioso and Doppell were followed into the parking lot by the soccer team members, including Varesis.
9. Whether the incident occurred in the parking lot area, away from the apartment where the party was taking place.

**II. Plaintiff's Claim for Wantonness:**

**a. LEGAL ELEMENTS:**

Plaintiff says that Michaels Landry's conduct was wanton. To recover damages, Plaintiff must prove:

Michael Landry consciously acted or failed to act with a reckless or conscious disregard of the rights or safety of Konstantinos Varesis, and Michael Landry was aware that harm would likely or probably result.

APJI 29.00

**b. AGREED FACTS**

Same as Negligence.

**c. DISPUTED FACTS**

Same as Negligence.

**III. Defendant's Affirmative Defense of Contributory Negligence**

**d. LEGAL ELEMENTS:**

1. That Plaintiff Varesis was negligent; and,
2. That Plaintiff Varesis' negligence was a cause of his harm.

APJI 27.01

**e. AGREED FACTS**

1. On the night of February 23, 2019, Konstantinos Varesis and Michael Landry were both students at Springhill College in Mobile, Alabama.
2. A party was being held inside and outside of apartments located on the campus of Springhill College at the time of the subject incident.
3. Michael Landry went to the party with two of his friends and golf teammates, Grayson Glorioso and Zachary Doppell.
4. Grayson Glorioso had an argument with George Brown, a member of the Springhill College soccer team.

5. Glorioso and Brown were arguing over a girl.
6. During the argument between Glorioso and Brown, Brown sent a message to the soccer team members, who came to the scene, including Varesis.

**f. DISPUTED FACTS**

1. Whether members of the soccer team, including Varesis, were yelling obscenities or acting in an otherwise threatening manner to Landry as he was leaving the area.
2. Whether Varesis pursued Landry in a threatening manner as Landry was leaving the area.
3. Whether Varesis' actions caused Landry to reasonably believe he was in jeopardy of harm.
4. Whether the verbal argument continued between the members of the soccer team and golf team.
5. Whether Mr. Landry and his friends left the party and were followed by the soccer team into the parking lot.

**IV. Defendant's Affirmative Defense of Self Defense**

**a. LEGAL ELEMENTS:**

A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose.

Ala. Code § 13A-3-23 (1975).

**b. AGREED FACTS:**

1. On the night of February 23, 2019, Konstantinos Varesis and Michael Landry were both students at Springhill College in Mobile, Alabama.
2. A party was being held inside and outside of apartments located on the campus of Springhill College at the time of the subject incident.

3. Michael Landry went to the party with two of his friends and golf team mates, Grayson Glorioso and Zachary Doppell.
4. Grayson Glorioso had an argument with George Brown, a member of the Springhill College soccer team.
5. Glorioso and Brown were arguing over a girl.
6. During the argument between Glorioso and Brown, Brown sent a message to the soccer team members, who came to the scene, including Varesis.
7. The incident occurred in the parking lot.

**c. DISPUTED FACTS**

1. Whether Landry felt threatened by the soccer team members, including Varesis, as he and his friends were leaving.
2. Whether the verbal argument continued between the members of the soccer team and golf team.
3. Whether Varesis was yelling obscenities or acting in a threatening manner to Landry as he attempted to leave the area.
4. Whether Mr. Landry and his friends left the party and were followed by the soccer team into the parking lot.
5. Whether Landry reasonably believed that Varesis was going to use physical force against him.

**D.**

**TRIAL TIME**

It is estimated that this action will take three days to try, exclusive of jury selection time. The Plaintiff expects to call seven (7) witnesses, and the defendant expects to call one (1) live witness and one (1) witness by deposition. The parties reserve the right to call any witness necessary for the purpose of impeachment or rebuttal.

**E.**

**TYPE OF TRIAL**

**JURY**

This is a jury action. The Plaintiff requests a jury of **six (6)**; Defendant requests a jury of **twelve (12) and one (1) alternate**.

A jury trial is applicable to all aspects of the dispute, except Intervenor State Farm's issues of coverage between State Farm and Defendant Michael Landry. This Court has ordered that State Farm will not participate in this action until and unless the jury enters a verdict in favor of the Plaintiff. [Doc. 34].

**I. Plaintiff's Proposed Vire Dire**

See attached Exhibit A.

**II. Defendant's Proposed Vire Dire**

See attached Exhibit B.

**F.**

**MOTIONS**

**I. PENDING MOTIONS:**

- A. Defendant's Motion to Strike Plaintiff's Supplemental Expert Disclosure [Doc. 36].
- B. Defendant's Motion to Strike Testimony of Dr. Sidney Brevard [Doc. 47].

**II. MOTIONS TO BE FILED:**

- A. **The Plaintiff anticipates he will file motions *in limine* on the following issues:**
  - 1. Testimony, reference, or argument regarding payment of Plaintiff's medical expenses and/or health insurance;
  - 2. Testimony, reference, or argument regarding hearsay testimony alleging Plaintiff and/or members of the Spring Hill College soccer team were "... selling drugs, selling weeds, selling whatever," and "the whole soccer team

was on a drug, was on Molly or was on something. They were on a drug. That's what the Spring Hill cops told me";

3. Testimony, reference, or argument regarding any events and/or incidents that occurred after the subject incident;
4. Testimony, reference, or argument regarding the wealth or poverty of either party and/or the effect of a verdict on the Defendant;
5. Testimony, reference, or argument regarding lawyer advertising, "television/ radio lawyers," or references to Plaintiff's lawyers; and
6. Testimony, reference, or argument that this case is "only about money," "all about money," or "all Plaintiffs want is money."
7. Testimony, evidence, reference, or argument offered to prove contributory negligence.

**B. The Defendant anticipates he will file motions *in limine* on the following issues:**

1. Testimony, reference, or argument that the Plaintiff has a permanent injury;
2. Testimony, reference, or argument that the Plaintiff was going to be a professional soccer player or physician, and/or that damages should be awarded to compensate him for the loss of the ability to participate in either profession or mental anguish for his inability to be a doctor or professional soccer player;
3. Exclude the use of photo of brain (Exhibit 8 to Dr. Brevard's Deposition) as the same does not accurately reflect the Plaintiff's injuries and is therefore misleading and the prejudicial effect outweighs the probative value;
4. Golden Rule Arguments;
5. Unit of Time or Per Diem Arguments and use of Mortality Tables;
6. The fact the Defendant is insured;
7. That settlement discussions have taken place;
8. Any reference to the fact that Plaintiff will have to pay his attorney or pay litigation expenses from any recovery in this case;

9. Financial status or position of any party;
10. Any mention, reference to, or suggestion that by returning a verdict in favor of the Plaintiff, the jury can “send a message” or any appeal to jurors to act as the “conscious of the community,” or word to like effect; and
11. Any reference to medical expenses or billing is due to be excluded as it is not relevant to damages. Plaintiff is only seeking damages for mental anguish and pain and suffering,
12. Use of Mortality Tables

**G.**

**DEPOSITIONS**

**I. Plaintiff’s deposition designations**

See attached Exhibit C.

**II. Defendant’s deposition designations**

See attached Exhibit D.

**H.**

**WITNESSES**

**I. The following witnesses will be called to testify at the trial of this matter:**

**a. Plaintiff’s Witness List**

1. Konstantinos Varesis
2. Michael Landry
3. Steve Wiczorek *Via Video Deposition*
4. Dr. Sideney Brevard *Via Video Deposition*
5. Eldi Seiti *Via Video Deposition*
6. Dionte Rudolph *Via Video Deposition*
7. Grayson Glorioso *Via Video Deposition*

- b. Defendant has previously objected to the testimony of Dr. Sydney Brevard as an expert witness and has a filed a Motion to Strike Plaintiff’s Supplemental Expert Disclosure [Doc. 36] and Motion to Strike Testimony of Dr. Sidney Brevard (Daubert) [Doc. 47] which are currently pending.**

**c. Defendant's Witness List**

1. Michael Landry
2. Grayson Glorioso *Via Video Deposition*

**II. The following witnesses may be called to testify at the trial of this matter:**

**a. Plaintiff's Witness List**

1. Dr. James Toldi
2. Any witnesses necessary for the purposes of impeachment or rebuttal

**b. Defendant objects to Dr. James Toldi being called as a live witness at trial. To date, as reflected above, the contact information for Dr. Toldi has not been provided as required in disclosures. He has not been presented for deposition at any time.**

**c. Defendant's Witness List**

1. Any witnesses necessary for the purposes of impeachment or rebuttal

**I.**

**DAMAGES**

The Plaintiff believes if he prevails as to liability, he is entitled to an award for physical injury, pain, suffering and mental anguish in the amount of \$500,000 and punitive damages in the amount of \$300,000; however, Defendant disputes that plaintiff is entitled to this type and amount of damages even if plaintiff prevails as to liability.

**J.**

**EXHIBITS**

**I. Plaintiff's Exhibit List**

See attached Exhibit E.

**II. Defendant's Exhibit List**

See attached Exhibit F.

**III. Defendant's objections to Plaintiff's exhibits:**

1. Defendant objects to any and all medical records other than those of USA Hospital. There has been no expert testimony to show that the treatment was reasonable and necessary. Moreover, there has been no testimony to authenticate the records. (Exhibits 4-5, 8-12)
2. Defendant objects to the medical illustration of the brain used by Dr. Sydney Brevard. The illustration is not sufficiently similar to the Plaintiff's injuries as the hematoma shown is double the size of the actual injury and includes herniation of the brain which was not present in the Plaintiff.
3. Defendant objects to the records from Springhill College Police including, but not limited to, statements of witnesses and reports as the same contain inadmissible hearsay, double hearsay and are not properly authenticated. (Exhibit 2).
4. Defendant objects to the written statement of Dionte Rudolph as inadmissible hearsay. (Exhibit 3).
5. Plaintiff included records from Springhill College that had not yet been received at the time of the close of discovery. Defendant objects to the use of the same as they were not timely produced during the discovery period. Moreover, the same contains inadmissible hearsay and are not properly authenticated. (Exhibit 3).

**K.**

**ATTORNEYS**

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Respectfully submitted,

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*/s/ Eaton G. Barnard*

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