To commence the 30 day statutory time period for appeals as of right (CPLR 5512[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

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BRANDY MILLER and NOAH MILLER,

Plaintiffs,

-against-

O'MARA FAMILY FARMS, INC. and PATRICK LOUIS O'MARA,

Defendants.

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DECISION & ORDER

Index No. 500533/2017

Sequence No. 8
Motion Date: 04/28/2021

GROSSMAN, J.S.C

The following papers, numbered 1 to 67, were considered in connection with Defendants' Notice of Motion, dated November 30, 2020, for an Order, granting summary judgement as to the issue of damages and dismissing the Complaint in its entirety; or alternatively, granting summary judgement to Defendants and dismissing the negligent entrustment cause of action.

PAPERS	**NUMBERED**
Notice of Motion/Affirmation in Support/Exhs. A-FF/Memorandum of Law	1-35
Affirmation in Opposition/Affidavit in Opposition/ Exhs. 1-24/ Memorandum of Law in Opposition	26-62
Affirmation in Reply/Memorandum of Law in Reply/Exhs. GG-II	63-67

This action is for personal injuries sustained on May 9, 2017, when Plaintiff Brandy Miller was in an automobile accident at the intersection of Routes 22 and 312 in the Town of Southeast, New York with a vehicle owned by Defendant O'Mara Family Farms, Inc. ("O'Mara

Family Farms"), and operated by Defendant Patrick Louis O'Mara, Jr. ("O'Mara Jr."). Plaintiff Noah Miller is seeking loss of consortium.

On July 21, 2017, Plaintiffs commenced this action. Plaintiffs filed a Second Amended Verified Complaint on September 14, 2017, alleging injuries as result of the accident (Exh. B, Complaint at ¶26). Defendants served a Verified Answer on November 17, 2017 (NYSCEF Doc. No. 11).

It is alleged that on May 9, 2017, Mrs. Miller was driving eastbound on Route 312, and while making a left turn to proceed onto Route 22 North, Mrs. Miller's vehicle was struck by O'Mara Family Farms' vehicle, operated by O'Mara, Jr. (Exh. B, Complaint at ¶¶21-25). It is further alleged that Plaintiff sustained severe and permanent personal injuries (Exh. B, Complaint at ¶26) and that O'Mara Family Farms negligently entrusted their vehicle to O'Mara, Jr., despite him being unfit to operate a motor vehicle in the State of New York (Exh. B, Complaint at ¶¶44-47).

In Plaintiffs' Verified Bill of Particulars, dated September 13, 2018, Mrs. Miller alleges that she sustained the following injuries all of which began on or about May 9, 2017 (Exh. D, Verified Bill of Particulars at ¶9):

(i) central herniated disc at C3/C4;
(ii) herniated disc at C4/C5;
(iii) herniated disc at C5/C6;
(iv) bilateral TMJ;
(v) inability to open mouth due to TMJ;
(vi) pain due to TMJ;
(vii) clicking due to TMJ;
(viii) tinnitus;
(ix) abnormal cognitive function;
(x) impairment of memory;
(xi) concussion;
(xii) dizziness;
(xiii) vertigo;
(xiv) headaches;

(xv) head trauma;
(xvi) decreased range of motion and pain at left shoulder;
(xvii) decreased range of motion and pain at left neck;
(xviii) radiating pain and numbness of left arm;
(xix) nausea; and
(xx) injury to the surrounding muscles, ligaments, tendons, vessels and tissue.

Plaintiffs admit that Mrs. Miller was not confined to bed or to her home; however, they do assert that Mrs. Miller was confined to a hospital during her treatment at the emergency room at Putnam Hospital Center following the accident (Exh. D, Verified Bill of Particulars at ¶¶15-17). Plaintiffs assert that Mrs. Miller was disabled and "incapable of performing her usual functions and responsibilities from the date of the accident to the present day and continuing" (Exh. D, Verified Bill of Particulars at ¶11). Additionally, Plaintiffs assert that O'Mara Family Farms "failed to take into consideration O'Mara [Jr.]'s prior history and experience and/or lack thereof as an operator of a motor vehicle . . . [and] failed to properly evaluate O'Mara [Jr.]'s suitability, skills, confidence and experience prior to the time that the operation of the Farms Vehicle was entrusted to him" (Exh. D, Verified Bill of Particulars at ¶21).

On June 5, 2018, Mrs. Miller was deposed. She stated that no part of her body hit any part of the interior car when the accident occurred (Exh. E at 14:7-10). However, Plaintiff also stated that her vehicle was "pushed up a hill" off the road, "and then rolled back down off a curb into the intersection" (Exh. E at 24:11-21). Plaintiff asserted that she could not physically move out of the vehicle and that she was feeling pain in her left arm and neck immediately following the accident (Exh. E at 26:5-16). An ambulance arrived at the accident scene and Mrs. Miller was assisted out of her vehicle with a neck brace and back board (Exh. E at 29:12-25). Mrs. Miller was taken to the emergency room where she complained of neck, shoulder, and jaw pain, along with lightheadedness (Exh. E at 31:6-23). Plaintiff was not admitted to the hospital that

day (Exh. E at 31:9-11) and was later discharged with no recommendations, prescriptions, or bandages (Exh. E at 32:16-33:7).

In the days following the accident, Mrs. Miller sought medical attention from a chiropractor, Ann Brandon, DC, whom she had seen in 2010 for a previous back injury (Exh. E at 36:24-37:25). Mrs. Miller also sought attention from Rennie Statler, DC, another chiropractor, who admittedly treated her consistently for running-related lower back and knee pain up until a few months before this accident (Exh. E at 38:23-39:25). In connection with Dr. Statler's office, during the summer of 2017, Mrs. Miller also received acupuncture from Inhwa Ahn, L.Ac. twice a week for her shoulder (Exh. E at 52:4-53:9). At the time of her deposition, Mrs. Miller was still being treated once a week by Dr. Statler (Exh. E at 43:5-10).

Shortly after her initial visit with Dr. Brandon, Mrs. Miller consulted her internist, Nilo Herrera, MD, complaining of neck pain, arm pain, and "very, very bad headaches" (Exh. E at 43:18-44:23). Dr. Herrera prescribed physical therapy (Exh. E at 45:17-20). Mrs. Miller then received physical therapy in Katonah, New York twice a week during the summer of 2017. (Exh. E at 51:8-19). It was Dr. Herrera's opinion to a reasonable degree of medical certainty that Mrs. Miller was unable to work from the date of the accident until September 11, 2017 (Exh. 17, Herrera Affirmation at ¶4).

In subsequent visits to Dr. Herrera's office, Mrs. Miller was referred to a dentist for jaw pain and clicking (Exh. E at 46:21-47:4) and a neurologist for the headaches and nausea she was experiencing (Exh. E at 56:5-17). Through her various dental visits, Mrs. Miller was put on a liquid and soft food diet for about a month, used heat packs to heat her jaw multiple times a day for a month, and was given a night guard (Exh. E at 47:8-50:22). One dentist recommended a surgical procedure for Mrs. Miller's jaw pain; however, she declined to pursue this option

because she "didn't trust his opinion" (Exh. E at 54:7-18). Subsequently, Mrs. Miller acted upon Dr. Herrera's referral to see a neurologist and saw Paul Magda, DO, where she complained of headaches and nausea, but "mostly really, really bad headaches" (Exh. E at 57:9-14). An MRI of Mrs. Miller's brain was taken, and no known abnormalities were found (Exh. E at 57:22-58:4). However, Dr. Magda did "prescribe vestibular therapy for a concussion" (Exh. E at 58:10, Correction of Record at 80:15).

After the accident, Mrs. Miller asserted that she could not participate in those physical activities that she did before the accident occurred - specifically running, kayaking, and hiking (Exh. E at 62:22-63:4). At the time of her deposition, Mrs. Miller had resumed running, but not at the same distance as she previously did because of her neck pain (Exh. E at 63:5-8). Mrs. Miller claimed that she can only run three to eight miles, as opposed to her usual thirteen (Exh. E at 63:14-64:7). Additionally, at the time of her deposition, Mrs. Miller had not attempted to go hiking, and a physical therapist suggested that she not kayak (Exh. E at 65:11-20).

In her recent affidavit dated March 2, 2021, in response to this motion, Mrs. Miller further explained some of her injuries and the timeline of her treatment for the accident over the last four years. Mrs. Miller claims she returned to work on September 5, 2017, nearly four months after the accident (Miller Affidavit at ¶2). She had stopped physical therapy and vestibular therapy at that time, however she continued to have problems with her neck and jaw and experienced vertigo, dizziness, and nausea (Miller Affidavit at ¶3). Mrs. Miller asserts that her memory "improved somewhat, and then plateaued" (Miller Affidavit at ¶4). This led her to consult with another neurologist, Lindsey Neimand, MD.

In November 2018, Dr. Neimand ordered another MRI of Mrs. Miller's brain and prescribed vestibular therapy after Plaintiff developed a severe migraine with nausea and

vomiting immediately after a chiropractic visit (Miller Affidavit at ¶¶3-4). Mrs. Miller discontinued her chiropractic treatment (Miller Affidavit at ¶3). At the time of this affidavit, Mrs. Miller claims that she still experiences TMJ, jaw pain, neck pain, has a decrease of motion in her neck, suffers from vertigo, and has memory issues (Miller Affidavit at ¶9).

The Court record reflects that Mrs. Miller saw other doctors and received other treatment in addition to the aforementioned. However, because the number of medical professionals involved in this case is astonishing, the Court will not discuss each of these medical visits at length.

On July 2, 2018, René Elkin, MD conducted a neurological independent examination of Mrs. Miller. Dr. Elkin concluded that "[t]here are no objective findings for neurological injury resulting from this accident [,]" and that "[t]here is no objective evidence for any neurological injury resulting from this accident that would prevent her from performing all her usual activities of daily life, including her occupation, without restrictions" (Exh. H at 4).

On July 31, 2018, Paul Geller, DDS conducted an independent dental examination. Dr. Geller concluded that Mrs. Miller's muscle spasms "appear causally related to the accident" (Exh. I at 2). However, Dr. Geller also concluded that Mrs. Miller's "symptoms have improved, and should continue to improve with time and use [of] the nightguard[,]" and that the "dental injuries do not affect activities of daily living or ability to return to work" (Exh. I at 2).

Rimma Danov, Ph.D. conducted an independent neuropsychological evaluation of Mrs. Miller on September 18, 2019, and a further evaluation on June 25, 2020 (Exh. J at ¶4). After the September 18, 2019 evaluation, Dr. Danov concluded that there is "[n]o evidence of casually related cognitive or neuropsychological disorder or impairment, post-concussion syndrome, or a concussion" (Exh. J at Exh. 1 at 33). Dr. Danov concluded that Mrs. Miller's "current cognitive

test performance is highly atypical of the nature of her accident and reflects effortful underperformance . . . " (Exh. J at Exh. 1 at 33). Dr. Danov's June 25, 2020 evaluation supported these conclusions, and Dr. Danov reiterated that "there's no evidence of causally related cognitive or neuropsychological disorder or impairment, post-concussion syndrome, or a concussion" (Exh. J at Exh. 2 at 6).

Defendants move for summary judgement, asserting that Mrs. Miller has not suffered a serious physical injury as defined by New York State Insurance Law § 5102. In response, Plaintiffs assert that Mrs. Miller did suffer a serious physical injury and that Defendants failed to meet their burden of proof to establish an entitlement to summary judgement.

It is axiomatic that summary judgement is a drastic remedy and should not be granted where triable issues of facts are raised and cannot be resolved on conflicting affidavits (*see Millerton Agway Coop. v Briarcliff Farms*, 17 NY2d 57, 61 [1966]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). Initially, "the proponent... must make *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact." However, once a movant makes a sufficient showing, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

According to Insurance Law § 5102(d), "serious injury" is defined as:

> a personal injury which results in . . . permanent loss of a body organ, member, function or system; permanent consequential limitation of use of a body organ, member, function or system; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities

> for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

"A 'permanent consequential limitation' requires a greater degree of proof than a 'significant limitation,' as only the former requires proof of permanency" (*Altman v Gassman*, 202 AD2d 265 [1st Dept 1994], quoting *Partlow v Meehan*, 155 AD2d 647 [2d Dept 1989]). "The statute requires a showing that the limitation is 'significant' or 'consequential' in the sense that it is not minor or trivial" (*Altman v Gassman*, 202 AD2d at 265, quoting *Kordana v Pomellito*, 121 AD2d 783 [3d Dept 1986]).

"However, while such a 'significant limitation' need not be permanent in order to constitute a 'serious injury,' the Court of Appeals has cautioned that 'a minor, mild or slight limitation of use should be classified as insignificant within the meaning of the statute'" (*Partlow v Meehan*, 155 AD2d at 647-648, quoting *Licari v Elliott*, 57 NY2d 230, 236 [1982]). "[A]ny assessment of the 'significance' of a bodily limitation necessarily requires consideration not only of the extent or degree of the limitation, but of its duration as well" (*Partlow v Meehan*, 155 AD2d at 648). "Although Insurance Law 5102(d) does not expressly set forth any temporal requirement for a 'significant limitation,' there can be no doubt that if a bodily limitation is substantial in degree yet only fleeting in duration, it should not qualify as a 'serious injury' under the stat[ut]e" (*Partlow v Meehan*, 155 AD2d at 648).

"[A] defendant can establish that the plaintiff's injuries are not serious within the meaning of Insurance Law §5102(d) by submitting the affidavits or affirmations of medical experts who examined the plaintiff and conclude that no objective medical findings support the plaintiff's claim" (*Grossman v Wright*, 268 AD2d 79, 83-84 [2d Dept 2000]). These findings "must be in admissible form, i.e., affidavits or affirmations, and not unsworn reports, in order to make a 'prima facie showing of entitlement to judgment as a matter of law'" (*Pagano v*

Kingsbury, 182 AD2d 268, 270 [2d Dept 1992], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

"With this established, the burden shifts to the plaintiff to come forward with evidence to overcome the defendant's submissions by demonstrating a triable issue of fact that a serious injury was sustained within the meaning of the Insurance Law" (*Grossman v Wright*, 268 AD2d at 84). "Similarly, a plaintiff's opposition, to the extent that it relies solely on the findings of plaintiff's own medical witnesses, must be in the form of affidavits or affirmations, unless an acceptable excuse for failure to comply with this requirement is furnished" (*Pagano v Kingsbury*, 182 AD2d at 270). "Unsworn reports of plaintiff's examining doctor or chiropractor will not be sufficient to defeat a motion for summary judgment" (*Mobley v J. Foster Phillips Funeral Home, Inc.*, 47 Misc3d 1205[A], *1 [Sup Ct, Queens County 2015], citing *Grasso v Angerami*, 79 NY2d 813 [1991]). And, "[u]nsworn MRI reports are not competent evidence unless both sides rely upon those reports" (*Mobley v J. Foster Phillips Funeral Home*, 47 Misc3d 1205[A],*1, citing *Azyen v Melendez*, 299 AD2d 381 [2d Dept 2002]). However, once the movant relies upon unsworn medical reports in support of a motion for summary judgment, the door is open for the opposing party to rely on the same (*see Kearse v New York City Tr. Auth.*, 16 AD3d 45 n 1 (2d Dept 2005]). Finally, the serious injury threshold is a threshold imposed exclusively on the plaintiff (*Pagano v Kingsbury*, 182 AD2d at 270; *see also Licari v Elliott*, 57 NY2d 230). Subjective complaints of pain, absent other proof, are insufficient to establish a "serious injury" (*Cody v Parker*, 263 AD2d, 866 at 867 [3d Dept 1999][internal quotations and citations omitted]).

To support their position that Mrs. Miller did not suffer a serious physical injury, Defendants primarily rely upon the independent medical examinations and evaluations of Drs.

Elkin, Geller, and Danov. Both Drs. Elkin and Danov conclude that there is **no** evidence that Mrs. Miller's neurological complaints and experiences are casually related to the May 9, 2017 accident. Although Dr. Geller does conclude that Mrs. Miller's jaw pain and muscle spasms are causally related to the accident, he also asserts that these issues will improve overtime and do not affect Mrs. Miller's activities of daily living. Accordingly, their reports establish *prima facie* that Mrs. Miller's complaints are of a non-permanent nature or are not causally related to this accident.

As Defendants established a *prima facie* case that Mrs. Miller's alleged injuries do not constitute a serious injury under either the permanent consequential limitation or significant limitation categories of use (*see Cortes v Donaldson*, 148 AD3d 771 [2d Dept 2017]), the burden shifts to Plaintiffs. In opposition, Plaintiffs rely on the sworn affidavits and affirmations of Mrs. Miller's own medical witnesses.

Between May 11, 2017 and November 18, 2018, Dr. Statler treated Mrs. Miller and provided chiropractic care for her complaints regarding the pain in her neck and the injuries to her cervical spine (Exh. 13, Statler Affidavit at ¶5). Dr. Statler ordered an MRI, which was performed on May 23, 2017 and which "revealed a central herniation with impingement at C3-4, a mild herniation without impingement at C4-5, and a small herniation with impingement at C5-6" (Exh. 13 at ¶6). Dr. Statler concluded "with a reasonable degree of certainty as a Doctor of Chiropractic, that these herniations were caused by Brandy Miller's motor vehicle accident of May 9, 2017" (Exh. 13 at ¶6). Furthermore, it is Dr. Statler's opinion that these herniations are also "permanent injuries to Brandy Miller's cervical spine" (Exh. 13 at ¶6), where the "activities of daily living resulted in pain, discomfort, and decreased range of motion . . ." (Exh. 13 at ¶9). Dr. Statler also made a point to mention that he was informed of Dr. Elkin's physical

examination and agreed with Dr. Elkin's finding that Mrs. Miller had a 50% loss in her cervical range of motion at retroflexion (Exh. 13 at ¶11). However, Dr. Statler opined, to a reasonable degree of medical certainty, that the 50% loss to range of motion was "caused by the injuries sustained by Brandy Miller as a result of the motor vehicle accident of May 9, 2017" (Exh. 13 at ¶11). According to Dr. Statler, Mrs. Miller's "neck pain and decreased range of motion were still present at the time of her last visit to [him] on November 15, 2018" (Exh. 13 at ¶8).

Additionally, Plaintiffs also rely on the affidavit of Mark S. Herceg, Ph.D., Clinical Neuropsychologist. Dr. Herceg, conducted a clinical neurophysiological evaluation of Brandy Miller on January 27, 2021 (Exh. 16 at ¶3). Dr. Herceg explains that "[d]espite the fact that Mrs. Miller does not report hitting her head, or medical evidence to indicate that, it does not mean a concussion cannot happen when the head is shaken in a violent manner" (Exh. 16 at Exh. B at 8). Dr. Herceg asserts that the evidence showing Mrs. Miller "required vestibular therapy [,] confirms that a concussive evident [sic] occurred." (Exh. 16 at 8 of Exh. B). Following this conclusion, Dr. Herceg rebukes the conclusions made by Drs. Elkin and Danov regarding Mrs. Miller's injuries and claims that both do **not** have "an understanding or grasp of the mechanisms of concussion and the research associated with understanding concussions and their outcomes" (Exh. 16 at Exh. B at 9). Regarding Mrs. Miller's memory, at the time of his evaluation, Dr. Herceg found that "[Mrs. Miller] shows deficiencies in recalling information . . . [i]n other words, as more items are present to her, even with learning trials (repetition) she is unable to encode, store and retrieve the latest set of items on her own" (Exh. 16 at Exh. B at 10). It is with reasonable and medical certainty that Dr. Herceg found that Mrs. Miller's impairments are permanent, injury related, and that they will "continue to adversely impact her ability to perform

some responsibilities in the manner she was accustomed to prior to her injury" (Exh. 16 at Exh. B at 11).

Given the findings and conclusions of Plaintiffs' medical witnesses, the Court finds that Plaintiffs have established a triable issue of fact as to whether Mrs. Miller suffered a serious physical injury under New York State Insurance Law § 5102. As such, the first cause of action in this case is a classic "battle of the experts" where the credibility of each is properly left for the factfinder to resolve (*Vasiu v Berg*, 192 AD3d 1060,1061 [2d Dept 2021]; *see Leto v Feld*, 131 AD3d 590, 592 [2d Dept 2015]; *Stoves v City of New York*, 293 AD2d 666, 667 [2d Dept 2002]).

As indicated in their motion, Defendants, in the alternative, also move for an order granting summary judgement and dismissing the negligent entrustment cause of action against O'Mara Family Farms.

A negligent entrustment claim requires the defendant to have control over a chattel (*Camillone v Popham*, 157 AD2d 816, 817 [2d Dept 1990]) and a special knowledge that the party entrusted with such chattel will use it in a way that creates a foreseeable risk resulting in harm (*Cook v Schapiro*, 58 AD3d 664, 666 [2d Dept 2009]; *see Zara v Perzan*, 185 AD2d 236, 237 [2d Dept 1992]). Specifically, in motor vehicle incidents, a claim for negligent entrustment can be made against a vehicle owner when they were aware the party they entrusted their vehicle to, had a "propensity to drive recklessly" (*Weinstein v Cohen*, 179 AD2d 806, 807 [2d Dept 1992]).

Although when the vehicle owner is an employer, "'where an employee is acting within the scope of his or her employment, the employer is liable for the employee's negligence under a theory of respondeat superior and no claim may proceed against the employer for negligent hiring, retention, supervision or training'" (*Quiroz v Zottola*, 96 AD3d 1035, 1037 [2d Dept

2012]; quoting *Talavera v Arbit*, 18 AD3d 738, 738 [2d Dept 2005]). However, an exception exists to this general principle, and "such a claim is permitted when punitive damages are sought based upon facts evincing gross negligence in the hiring or retention of an employee" (*Quiroz v Zottola,* 96 AD3d at 1037 [internal quotation marks omitted]). As such, evidence provided by a plaintiff that suggests, *inter alia*, that the employer received complaints regarding the employee's reckless driving or was aware of violations on the employee's license prior to an accident, may be enough to survive a motion for summary judgement (*Id.* at 1038).

In this case, Defendants assert that there is no evidence whatsoever to support a claim for negligent entrustment. In response, Plaintiffs allege that O'Mara Family Farms should have been aware of several incidents in O'Mara Jr.'s driving history and should not have allowed him to drive the Farm's pickup truck without a complete investigation into that driving history and mandating educational driving classes.

At the time of the accident and the years preceding, O'Mara Family Farms was owned by Patrick O'Mara Sr. ("O'Mara Sr."), O'Mara Jr.'s father (Exh. G [O'Mara Sr.] at 9:8-10:11). O'Mara Jr. had been driving the companies' vehicles as part of his employment since he received his driving license, at age sixteen, approximately four years prior to the accident (Exh. G at 27:12-28:10). Admittedly, O'Mara Sr. was aware of several driving incidents that occurred before the May 9, 2017 accident. O'Mara Sr. knew that his son had some suspension of his driving privileges in Connecticut for a period of time (Exh. G at 29:9-20), had received a ticket for texting (Exh. G at 30:15-17), had hit a deer with a motorcycle (Exh. G at 30:17-20), and had received a speeding ticket (Exh. G at 44:10-19). Following O'Mara Jr.'s speeding ticket, O'Mara Sr. stopped him from driving for a certain amount of time (Exh. F [O'Mara Jr.] at 54:12-55:5).

Additionally, O'Mara Jr. appears to have been involved in another car accident in 2012 (NYSCEF Doc No. 154 at 372-407; Exh. 9, Response to Subpoena Selections at 29-36).

Although individually these incidents would not constitute a propensity to drive recklessly, or provide the basis for punitive damages, when considered together, the Court finds that Plaintiffs do raise a triable issue of fact regarding O'Mara Jr.'s driving history and what O'Mara Sr. and O'Mara Family Farms knew of that history. The aggregate weight of O'Mara Jr.'s driving incidents and the time period which elapsed between them and this accident on May 9, 2017 is properly left to the factfinder to resolve.

Accordingly, it is hereby

ORDERED that Defendants' motion for summary judgement as to the issue of damages and dismissing the Complaint in its entirety is denied; and it is further

ORDERED that Defendant's motion for summary judgement as to the issue of negligent entrustment is denied; and it is further

ORDERED that the parties are to appear before the undersigned for a pre-trial conference via Microsoft Teams on Wednesday, August 18, 2021 at 10:00 a.m.[1] The Court will send out invitations for the Teams conference.

The foregoing constitutes the Decision and Order of the Court.

Dated: Carmel, New York
July 16, 2021

HON. VICTOR G. GROSSMAN, J.S.C

[1] At that conference, the parties should be prepared to discuss settlement and to set a trial date. The Court is contemplating setting that date for the beginning of October 2021.

To: Michele D. Newsome, Esq.
Milber Makris Plousadis & Seiden, LLP
Attorneys for Defendants
709 Westchester Avenue, Suite 300
White Plains, New York 10604

Jon Kolbrener, Esq.
Braverman Greenspun, P.C.
Attorneys for Plaintiffs
110 East 42nd Street, 17th Floor
New York, New York 10017