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| DISTRICT COURT, ADAMS COUNTY, COLORADO  1100 Judicial Center Drive, Brighton, CO 80601 | DATE FILED: March 13, 2017 4 FILING ID: 99A4930736662 CASE NUMBER: 2015CV31808   COURT USE ONLY  |
| **PLAINTIFF: KATHRYN WINDT V.**  **DEFENDANTS: IVONNE BECERRIL, AURELIO MEZA-CUEVAS, AND AL’S TILING, LLC** |
| Name: **THE LAW FIRM OF STEPHEN COOK, P.C.**  Address: 2590 Trailridge Drive East, Suite 202 Lafayette, CO 80026  Telephone: 303-543-1000  Facsimile: 303-543-8582  Atty. Reg#: Stephen H. Cook: 6692 | Case No. 2015CV31808  Ctrm: |
| **AMENDED COMPLAINT** | |

Kathryn Windt, through counsel, alleges as follows against the Defendants:

**GENERAL ALLEGATIONS**

1. On October 3, 2014, Kathryn Windt was driving her vehicle northbound on Fox Run Road in Thornton, CO entering the intersection at 104th Avenue.
2. At that time and place, the Defendant Ivonne Becerril was driving a vehicle on 104th Avenue, headed eastbound, entering the intersection at Fox Run Road.
3. The intersection is controlled by a traffic light. At the time she entered the intersection, Mrs. Windt had a green light. Mrs. Becerril, traveling at an angle of 90 degrees to Mrs. Windt, ran a red light, and her vehicle collided with Mrs. Windt’s vehicle.
4. Mrs. Windt was injured in the collision.
5. For a significant period of time prior to entering the intersection, while driving Mrs. Becerril was also talking on a hand-held cell phone.
6. At the time of the collision, Mrs. Becerril was and is married to Aurelio Meza-Cuevas.
7. On January 25, 2017, Mr. Meza Cuevas testified under oath in a deposition in this matter. In that deposition, Mr. Meza-Cuevas testified that at the time of the collision, his wife was talking on a cell phone with him. Mr. Meza-Cuevas was located at a worksite

where he was doing tile work. There were work papers for that job in the car which Mrs. Becerril was driving. Mr. Meza-Cuevas was communicating with his wife via her cell phone and his. He instructed her to drive the vehicle to the work site and bring him papers he needed for the job. Mr. Meza-Cuevas also testified that he instructed Mrs. Becerril to stop at a restaurant called Mi Pueblo and get breakfast food for him and bring it to the jobsite.

On the cell phone, he was giving her directions on how to get to the jobsite which involved turning on to different streets, using a route with which Mrs. Becerril was unfamiliar. See, Deposition of Aurelio Meza-Cuevas, pp. 9-16, Exhibit 1.

1. Mr. Meza-Cuevas testified that he was on the phone with Mrs. Becerril when the collision occurred. He testified that they had been on the phone before the collision for 10- 15 minutes. Exhibit 1, p. 16.
2. At the time of the collision, Ms. Becerril was an unlicensed driver. This was known to Mr. Meza-Cuevas.
3. At the time of the collision, Mr. Meza-Cuevas was an owner of Al’s Tiling, LLC, a Colorado corporation. He was also a shareholder. He was also an agent and/or employee of that company.
4. At the time of the collision, and while talking on the phone with Mrs. Becerril, Mr. Meza-Cuevas was acting in the scope of his employment and/or agency with Al’s Tiling, LLC.

**FIRST CLAIM FOR RELIEF (NEGLIGENCE – DEFENDANT BECERRIL)**

1. Plaintiff incorporates by reference her previous allegations in this Complaint.
2. At the time and place in question, Mrs. Becerril was negligent in causing the collision. Her negligence included but was not limited to driving while talking on a cellphone; careless driving; failure to obey traffic controls; reckless driving’; and such other acts and failures which may be discovered at or before trial, which may have violated ordinances of the City of Thornton, or laws of the State of Colorado.
3. Mrs. Windt is a member of the class of persons intended to be protected by any such ordinances or statutes.
4. Defendant Becerril was also negligent *per se.*

**SECOND CLAIM FOR RELIEF (NEGLIGENT ENTRUSTMENT – DEFENDANT MEZA-CUEVAS)**

1. The vehicle that was being driven by Mrs. Becerril was owned by Mr. Meza-Cuevas.
2. Ms. Becerril was driving Mr. Meza-Cuevas’s vehicle with his consent and permission.
3. Mr. Meza-Cueva knew or should have known of Mrs. Becerril’s lack of driver’s license; poor or inattentive driving skills and habits; and inexperience operating motor vehicles.
4. Mr. Meza-Cuevas knew that Mrs. Becerril was talking on her cell phone at the time of the collision, and he facilitated and allowed such behavior to occur as described above.
5. Such conduct was a cause of Mrs. Windt’s injuries sustained in the collision.

**THIRD CLAIM FOR RELIEF (NEGLIGENCE – DEFENDANT MEZA-CUAVES AND AL’S TILING, LLC)**

1. At the time of the collision, Mrs. Becerril was acting as an agent or employee of Al’s Tiling, LLC. She was in the process of bringing work-related paperwork, and food for an employee, to the Al’s Tiling jobsite.
2. At all times relevant hereto Mr. Meza-Cuevas was acting in the scope and course of his employment or agency with Al’s Tiling, LLC.
3. While acting on behalf of Al’s Tiling, LLC, Mr. Meza-Cuevas negligently called Mrs. Becerril and engaged her in a phone conversation lasting some 10-15 minutes leading up to, and during the collision. Such conduct was grossly negligent.
4. Such conduct was a cause of Mrs. Windt’s injuries sustained in the collision.

**FOURTH CLAIM FOR RELIEF (VICARIOUS LIABILITY)**

1. Plaintiff incorporates by reference all previous allegations in this Complaint.
2. The Defendants Becerril and Meza-Cuevas were acting in the scope and course of their employment or agency with Al’s Tiling, LLC leading up to the collision, and when it occurred.
3. Al’s Tiling, LLC is also vicariously liable for the conduct of Mrs. Becerril and Mr. Meza-Cuaves as alleged above.

**DAMAGES**

1. As a proximate result of the negligence of the Defendants, Mrs. Windt sustained injuries, endured pain and suffering, and suffered loss of enjoyment of life. Mrs. Windt incurred expenses for the services of doctors and other health care providers and medical supplies; impairment of earning capacity; loss of income; loss of time; permanent physical impairment; and other such losses.
2. As a proximate result of her injuries, Mrs. Windt will be prevented from engaging in certain economic, social, and recreational activities normal to her lifestyle prior to this crash and will otherwise be prevented from participating in and enjoying the benefits of a full and complete life.
3. Mrs. Windt’s date of birth is December 15, 1963. At the time of the collision she was 50 years-old and had a minimum life expectancy, pursuant to CRS § 13-25-103 of 29.8 years. She is entitled to compensation for her injuries, damages and losses for the remainder of her life.

*Reservation:* Plaintiff believes that the conduct of the Defendants entitles her to an award of exemplary damages against the defendants, and pursuant to Colorado Statute, notifies Defendants of her intent to later seek such relief pursuant to the provisions of Colorado law.

WHEREFORE, Mrs. Windt requests that judgment be entered in favor of her and against Defendants, in an amount to fairly and reasonably compensate her for her injuries; for court costs; for expert witness fees; for statutory interest from the date this cause of action accrued or as otherwise permitted under Colorado law; for exemplary damages; and for other and further relief as this Court deems just and proper.

DATED: March 13, 2017.

**THE LAW FIRM OF STEPHEN COOK, P.C.**

*Original Signature on file*

By: */s/ Stephen H. Cook*

Stephen H. Cook Attorney for Plaintiff