

STATE OF MAINE
ANDROSCOGGIN, SS

SUPERIOR COURT
CIVIL ACTION
Docket No. _____

XIOMARA Y. ALARCON

Plaintiff,

v.

W.B. MASON CO., INC., and
RYAN MELLOR,

Defendants.

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**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

NOW COMES Plaintiff Xiomara Y. Alarcon and complains against Defendants W.B. Mason Co., Inc. and Ryan Mellor as follows:

PARTIES AND JURISDICTION

1. Xiomara Y. Alarcon is a resident of Los Angeles, California.
2. Ryan Mellor is a resident of Bath, Maine.
3. W.B. Mason Co., Inc. ("W.B. Mason") is a corporation that is licensed to conduct business in the State of Maine, with a principal place of business in Brockton, Massachusetts.
4. At all times relevant to this action, Mellor was an employee and/or agent of W.B. Mason, acting within the scope of his duties. Accordingly, W.B. Mason is vicariously liable for Mellor's actions.
5. This Court has jurisdiction pursuant to 4 M.R.S. § 105.
6. Venue in Androscoggin County is proper pursuant to 14 M.R.S. § 501.

BACKGROUND

About Xiomara

7. On September 8, 2022, Plaintiff Xiomara Alarcon was walking on Alumni Walk, a pedestrian walkway on Bates College, when she was struck from behind by a W.B. Mason truck that was backing onto campus.

8. At the time, Xiomara was twenty-one years old and beginning her junior year at Bates.



9. At age thirteen, Xiomara came to the United States as an unaccompanied minor, seeking asylum from the gang violence that plagued her at home.

10. In 2022, Xiomara was granted asylum and is now a fully naturalized U.S. Citizen.

11. When Xiomara first arrived in the United States, she spoke little English and improved her English in middle school.

12. Xiomara attended a highly competitive high school. Yet, despite the competition and her recent adoption of English, Xiomara graduated valedictorian of her high school class.

13. In addition to being a stellar high school student, Xiomara played softball and served in multiple leadership roles, including the student government.

14. During high school, Xiomara applied to many colleges.

15. Ultimately, she decided to attend Bates College because she wanted a small liberal arts school and was excited to experience life in the northeastern United States, an area she had never visited.

16. Xiomara is the first member of her family to attend college. She began attending Bates in the Fall of 2020.

17. Although Xiomara did not know anyone at Bates before she traveled to Maine to begin her freshman year, that did not stop her from finding a place within the Bates community.

18. She received a full academic scholarship for her first two years and had plans to major in sociology with a minor in educational studies.

19. Her goal was to become a teacher, obtain a master's degree, and ultimately become a social worker.

20. To that end, during her time at Bates, Xiomara spent time teaching fifth and sixth grades at a school in Lewiston as part of her education curriculum.

***A W.B. Mason Truck Runs Xiomara
Over While She Walks on the College Campus***

21. Thursday, September 8, 2022, was the second day of classes of the Fall Semester of Xiomara's junior year.

22. Her first class was scheduled for early afternoon, so she awoke late in the morning.

23. Xiomara spoke via social media with two of her friends and the three made plans to meet for lunch in the Commons.

24. Xiomara was living in a dorm located near College Street, across the main Bates campus.

25. After speaking with her friends, Xiomara left her dorm to walk to the Commons. She was wearing blue jeans, a dark-colored sweater, a black t-shirt, and white sneakers.

26. After leaving her dorm, Xiomara crossed College Street, located in Lewiston, Androscoggin County, Maine, to the sidewalk on the opposite side.

27. She walked along the sidewalk and then turned right onto Alumni Walk, a pedestrian walkway that runs across campus from College Street to the Commons.

28. Xiomara was walking toward the right side of Alumni Walk, holding an iPhone and an AirPods case in one hand, and listening to her AirPods in at least one ear.

29. She was in the process of composing a text message to her friends when a Freightliner truck, operated by W.B. Mason employee, Ryan Mellor, struck her from behind.

30. When it struck her, the W.B. Mason truck was backing along Alumni Walk onto the college campus and into an area specifically intended as a pedestrian walkway.

31. Mellor backed onto the Bates campus to park close to buildings where he was delivering office supplies.

32. There was no need to back the W.B. Mason truck onto a pedestrian walkway on the Bates campus to make this delivery. The same deliveries could have been made without backing the truck onto campus, and, in fact, W.B. Mason drivers had delivered to these same buildings in the past without backing their trucks onto campus.

33. The W.B. Mason truck was equipped with a backup camera and side mirrors.

34. Had Mellor gotten out of the truck to look behind it before backing the truck onto Alumni Walk, or looked carefully in the backup camera or driver's-side mirror as he backed along Alumni Walk, he would have seen Xiomara.

35. However, despite his decision to back onto a pedestrian walkway on the Bates campus, Mellor did not take any reasonable steps to ensure that the area was clear of pedestrians.

36. As it was backing, the W.B. truck struck Xiomara and knocked her to the ground.

37. The W.B. Mason truck ran over Xiomara.

38. The W.B. Mason truck dragged Xiomara approximately 18 feet across the hard surface of the walkway, ripping away her pants and underwear. and tearing and degloving the flesh of her buttocks and perineal region.

39. Eyewitnesses described seeing the W.B. Mason truck come to a stop and then pull forward, running over Xiomara a second time.

Xiomara's Medical Injuries and Treatment

40. Xiomara was screaming in pain (her screams were audible on body cam video taken by the police when they arrived on scene). She was unable to move her legs.

41. Bystanders assisted her in moving onto her back and covering her exposed buttocks and genital area. She was bleeding from her abdomen.

42. EMS personnel for Bates College documented that Xiomara reported being struck from behind, knocked to the ground, and striking her head. Her right leg was disfigured and bent inwards.

43. There was fatty tissue outside her body from the upper thigh and groin area. EMS noted the large trail of flesh and bodily fluid on the pavement.

44. Xiomara's left pupil was blown and her right eye was dilated.

45. United Ambulance Service arrived on the scene. Ambulance personnel documented reports of pain in Xiomara's head and pelvis, as well as an abrasion on her right cheek. They placed her on a stretcher and transported her to Central Maine Medical Center ("CMMC").

Xiomara's 36 Days at Central Maine Medical Center

46. Xiomara remained admitted to CMMC for thirty-six (36) days.

47. Initially, she required emergency surgery for her extensive injuries, including prolonged resuscitation in and out of the trauma bay.

48. She was diagnosed with an extensive degloving injury to the right gluteus, causing avulsion, right labial laceration, multiple pelvic fractures, left femur fracture, bilateral ankle fractures, shock due to trauma, acute hypoxic respiratory failure, possible right ACL injury, and acute blood loss with anemia. Her ankles were placed in boots to help with immobilization due to pelvic fracture.

49. CMMC also reported that Xiomara was experiencing blurry vision, dizziness, shortness of breath, flashbacks of the incident, headaches, difficulty with memory, stress, anxiety, and severe pain.

50. She underwent numerous imaging scans and procedures, including a Foley catheter placement, percutaneous cannulated screw fixation of her right and left SI joints, wound closure of her left buttock, numerous washouts of wounds with debridement, placement of an Inferior Vena Cava ("IVC") Filter (there was concern for clotting, and Xiomara's injuries prevented use of anticoagulation medication), an open reduction internal fixation with retrograde intramedullary nail left distal third femoral shaft fracture, an open reduction internal fixation of the anterior pelvic ring with plate and screws, and a laparoscopic sigmoid loop colostomy.

51. On October 13, 2022, CMMC discharged Xiomara from the hospital.

52. She was transported to the Brunswick airport via ambulance, where she was medically air-flighted to California.

***Xiomara's 37 Days at University
of California Irvine Medical Center***

53. When she arrived in California later that day, Xiomara was admitted to the University of California Irvine Medical Center ("UCI"). She remained at UCI for thirty-seven (37) days until November 18, 2022.

54. While at UCI, Xiomara's diagnosis and treatment included: multiple closed fractures of her pelvis with unstable disruption of the pelvic ring; closed fracture of the left femur shaft; anemia; numerous infections, acute embolism; thrombosis of superficial veins of the right upper extremity; vascular implants and grafts; displaced bicondylar closed fracture of the right tibia; nondisplaced open fracture of medial malleolus of right tibia; open wound right thigh/degloving injury; nondisplaced closed fracture of medial malleolus of left tibia; open wounds of external genital organs and bilateral buttocks; right knee meniscus tear; colostomy; anxiety; pain; contracture of bilateral knees; indwelling urinary catheter and urinary incontinence; and muscle spasms.

55. Doctors placed Xiomara in a right knee brace and recommended the continued use of bilateral walker boots.

56. She participated in occupational therapy, physical therapy, hydrotherapy, developed a bowel regimen, and required acupuncture.

57. She underwent numerous imaging scans, including weekly sonograms due to being high risk for deep vein thrombosis.

58. She also received regular counseling for her worsening anxiety.

59. The numerous pain medications caused her to feel dizzy and nauseous, and she underwent daily wound care and dressing changes, which required frequent turning.

60. This often kept her awake during the night and she had difficulty sleeping.

61. Xiomara required numerous procedures and surgeries, including complex tissue arrangements and multiple skin grafts.

62. On November 18, 2022, Xiomara was discharged from the hospital and admitted to UCI Health Rehabilitation, where she stayed through December 7, 2022.

63. During this time, she was trained in how to manage her colostomy bag. She required physical therapy, occupational therapy, acupuncture, counseling, numerous imaging scans, and other treatments. Simple things—like using the bathroom—were difficult due to her bilateral leg braces and wound dressings.

Xiomara's Post-Rehab Medical Care

64. Following her acute hospitalization and rehabilitation, Xiomara has continued to follow up with orthopedic and wound care physicians for her orthopedic and wound injuries.

65. On February 28, 2023, Xiomara underwent surgery to remove an IVC filter that was initially placed in September 2022.

66. On March 7, 2023, during a physical therapy appointment, Xiomara reported new pain from hardware protruding from a bone in her left knee. She noticed that her pain in that area increased as she bent her left knee, and described a crunchy sensation as if she could feel the screw.

67. Because the pain has increased, she scheduled a follow-up in mid-June to remove the screw. During that appointment, it was determined that surgery was required to relieve the pain and avoid future complications. Surgery was performed on July 22, 2023.

68. On April 5, 2023, Xiomara underwent surgery to repair a tear in the meniscus of her right knee.

69. The sites on her skin grafts remained itchy and Xiomara constantly feels uncomfortable. Her skin is also changing color and she can see the new skin coming in.

70. To assist in addressing scarring and itching, Xiomara must wear a pressure garment every day for 23 hours a day. The garment needs to be washed after each use and she is scheduled to be fit for new garments.

71. To address her temporomandibular joint dysfunction (“TMJ”), Xiomara was fitted with a mouth guard.

72. Xiomara has continued ringing in her right ear, which is intermittent throughout the day. She has a referral to an ear, nose, and throat (“ENT”) doctor.

73. Xiomara continues to struggle with her colostomy bag. She is hoping her colostomy can be surgically reversed once her doctors have determined it is safe to do so.

74. Additionally, Xiomara is experiencing pain in her right ankle. She has been referred to a doctor and is waiting for an appointment.

Traumatic Brain and Psychological Injury

75. During the incident, Xiomara was thrown to the ground and struck her head on the walkway. Since then, she has suffered headaches and changes in her cognitive function.

76. She has also suffered from severe anxiety and post-traumatic stress. She has gone from being an outgoing, ambitious, and positive person with many close friends and relationships, to living with severe anxiety and self-doubt, and largely withdrawing from the outside world.

77. She is hoping that with the passage of time and therapy, she will improve to the point where she can resume her former life, return to college, and obtain her degree. Right now, however, that does not seem possible.

78. On February 6, 2023, Xiomara was seen by a neurologist who documented ongoing headaches and cognitive symptoms, including memory impairment, poor concentration, and slow thought processes.

79. Xiomara reported that before being struck by the truck, she had quick recall. Now, she has poor recall and has to write things down to remember them.

80. The neurologist also documented depression, tearfulness, irritability, anger, frustration, impatience, restlessness, and mood changes. He documented difficulty sleeping, intrusive thoughts, fatigue, anxiety, hormonal changes, pain in bilateral hips, bilateral knees, bilateral ankles, lumbar spine, mid back, and right side of back, which radiates to the buttocks.

81. The neurologist noted Xiomara's initial symptoms as dizziness, confusion, problems thinking clearly, anxiety, mood symptoms, headaches, and pain. The neurologist diagnosed Xiomara with a traumatic brain injury—post-concussive syndrome—with headaches and dizziness, frontal lobe syndrome, anxiety, PTSD, lumbar radiculopathy, and lumbar and cervical spine pain. He ordered brain and lumbar spine MRIs, an EEG, a VNG, cognitive testing, and physical therapy for neck and low back pain. The neurologist also recommended a nutritional approach for headache prevention, massages, and additional medications.

82. The same day, Xiomara saw a neuropsychologist. The neuropsychologist documented PTSD, depression, low energy, difficulty sleeping, ruminating thoughts, pain, nightmares, and feelings of low self-esteem, worthlessness, hopelessness, helplessness, and loss of control.

83. The neuropsychologist also noted that Xiomara had withdrawn socially, and often wants to be alone, but will feel lonely. She no longer reaches out to friends like she did before and is no longer interested in reading.

84. Xiomara reported sleeping 3-5 hours a night and napping during the day.

85. Prior to the incident, she used to love to dance, but due to her injuries, she is not able to do so.

86. Xiomara reported ongoing pain in the back of her head, neck, and backside of her upper arm, down the left side of her body starting at her waist, aching pain in both arms, down the back of her left thigh, both calves, stabbing pain on the front upper thigh, and numbness in bilateral knees and right foot.

87. Xiomara expressed wanting to be comfortable in her own body, but she is now self-conscious of her buttocks and hips that are now deformed from the degloving injury and subsequent scarring. She wears baggy clothes to hide her figure.

88. Xiomara is also fearful of vehicles, especially delivery trucks, and will often look under them. She wishes to return to school but does not think she could bring herself to walk down Alumni Walk, where the incident happened.

89. Xiomara experiences panic attacks 1-2 times per month. She also suffers short-term memory issues and is not able to focus as she could before. She has difficulty walking, including balancing, and has weakness in her lower extremity.

Current and Ongoing Issues

90. Xiomara's physical injuries have reduced her ability to walk, stand, and go up or down stairs.

91. She has had to relearn how to do basic activities of daily living, such as taking a shower, going to the bathroom, walking, and getting dressed. Now, she walks with a limp.

92. After the incident, she could get around only on crutches, a walker, or a wheelchair.

93. Although Xiomara's walking has improved with therapy, it remains difficult for her.

94. She has significant instability in both knees, which makes her worried that she will fall and reinjure herself. Her knees often buckle, and she is nervous that she does not have complete control over her legs.

95. When walking longer distances, Xiomara experiences pain and swelling in her back and both knees. Recently, her pain medication has increased due to the increased nerve pain and the pain in her knees and back. She must take breaks to sit down and rest, and will sometimes bring her wheelchair with her on walks so she will have somewhere to sit and rest when she cannot walk anymore.

96. Xiomara continues to be withdrawn and does not often leave the house. Although she is very close to her family, while attending her nephew's graduation, she experienced a significant panic attack. She started sweating and shaking and felt claustrophobic with so many people close to her. People kept asking her if she was okay, which was upsetting.

97. When she is outside, Xiomara feels like something bad will happen and tends to stay inside where she feels safe.

98. When she is around strangers, Xiomara feels panicked and stressed and her hands or feet will start to shake, causing her to feel self-conscious that they can see her shaking. Her heart will also race, and she will get goosebumps.

99. Xiomara is working with a therapist on finding ways to cope with her anxiety and panic attacks.

100. Xiomara hopes to have a colostomy reversal, and prior to any surgery to do so, will need a colonoscopy. In the next 1-2 years—when her skin has had more time to heal—she hopes to undergo plastic surgery and have laser therapy on her skin, which will help with the itching and correct deformities.

101. Xiomara also faces financial stressors. She worries about whether she will be able to continue her education and career plans, and also worries—given the nature of the injuries to her reproductive region—whether she will be able to have children in the future. She plans to see an obstetrician to further assess these concerns.

COUNT I – NEGLIGENCE
(as to W.B. Mason and Mellor)

102. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth fully herein.

103. At all times material to this Complaint, W.B. Mason, by and through its employees and agents, including Ryan Mellor, owed a duty to operate its trucks in a reasonable manner.

104. W.B. Mason and Mellor breached their duties of care by, among other things:

- (a) Failing to follow appropriate policies, systems and safety practices, resulting in permitting its truck drivers to back its truck onto the pedestrian walkway of a college campus, thereby creating dangers that were unnecessary and avoidable when there were other safer alternatives available;
- (b) failing to properly hire, retain, supervise, and train drivers in the safe operation of its delivery trucks, resulting in the dangerous backing onto a pedestrian walkway without checking carefully to make sure that it was clear of pedestrians; and
- (c) failing to operate the truck in a safe and reasonable manner resulting in backing the truck into Xiomara Alarcon.

105. As a direct and proximate result of W.B. Mason's and Mellor's negligence, Plaintiff has suffered from painful and permanent injuries, emotional distress, loss of enjoyment of life, lost earnings and earning capacity and medical expenses.

COUNT II – IMPUTED LIABILITY
(as to W.B. Mason)

106. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth fully herein.

107. At the time of the subject collision, Mellor was under dispatch for W.B. Mason.

108. At the time of the subject collision, Mellor was operating the truck on behalf of W.B. Mason.

109. W.B. Mason is responsible for the actions of Mellor with respect to the collision described in this Complaint under the doctrines of respondeat superior, agency and/or apparent agency.

COUNT III – NEGLIGENT HIRING, TRAINING, AND SUPERVISION
(as to W.B. Mason)

110. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth fully herein.

111. W.B. Mason was negligent in hiring Mellor and entrusting him to drive a truck.

112. W.B. Mason was negligent in failing to properly supervise Mellor.

113. As a direct and proximate result of W.B. Mason's negligence in hiring Mellor and entrusting him with driving a truck and failing to train and supervise him properly, Plaintiff has suffered from painful and permanent injuries, emotional distress, loss of enjoyment of life, lost earnings and earning capacity and medical expenses.

COUNT IV – PUNITIVE DAMAGES
(as to W.B. Mason)

114. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth fully herein.

115. W.B. Mason's conduct was motivated by actual ill will, or was so outrageous that malice can be implied, entitling Plaintiff to an award of punitive damages.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that her claims be tried by a jury.

WHEREFORE, Plaintiff requests judgment against Defendants and damages in an amount to be determined by a jury, including compensatory damages, punitive damages, past and future medical expenses, emotional distress, lost earnings and earning capacity, lost enjoyment of life, together with attorney fees, costs, and such other and further relief as this Court deems just and appropriate.

DATED this ____ day of October, 2023

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