

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PISSARRO WRIGHT, Individually, and)
CHRISTINA HICKS, as Administrator of)
the Estate of CARLOS HICKS, Deceased,)
) Civil Action No: 2014 CV 242268
Plaintiffs,)
v.)
)
METROPOLITAN ATLANTA RAPID)
TRANSIT AUTHORITY, INC., (a.k.a.)
MARTA),)
)
Defendant.)

FIRST REVISED CONSOLIDATED PRE-TRIAL ORDER

The following constitutes the Parties' Consolidated Pre-Trial Order in the above-styled case:

1.

The name, address and phone number of the attorney who will conduct the trial are as follows:

Plaintiffs: Charles L. Clay, Jr.
Christopher B. Newbern
Brian Mickelsen
Chuck Clay & Associates, LLC
4401 Northside Parkway, Suite 520
Atlanta, GA 30327
404-949-8118
chuck@chuckclay.com
chris@chuckclay.com

Rogers L. Hicks
Attorney at Law
P.O. Box 55577
Atlanta, GA 30308
404-245-0115
rogershiccis@att.net

Defendant MARTA: Thomas G. Sampson, II
Jeffrey E. Tompkins
Gerond J. Lawrence
Thomas Kennedy Sampson & Tompkins LLP
3355 Main Street
Atlanta, Georgia 30337
(404) 688-4503

2.

The estimated time required for trial is: 4-5 days.

3.

Motions pending are other matters pending for consideration by the court:

Plaintiffs: Plaintiffs reserve the right to file additional Motions in Limine. Plaintiffs reserve the right to object to any of Defendant's exhibits. Plaintiffs further reserve the right to file deposition designations, counter designations, and objections in advance of trial. Plaintiffs also reserve the right to file *Daubert* motion(s) in advance of trial.

Defendant: Defendant reserves the right to file Motions in Limine prior to trial. Defendant MARTA objects to the filing of any *Daubert* motion not in conformity with Georgia law. Defendant MARTA's Motion to Strike the Affidavit of Tony Garrison is currently pending before the court. Defendant MARTA reserves the right and intends to file any appropriate motions in limine, including *Daubert* motions, by the deadline set forth in the Court's Case Management Order.

4.

The jury will be qualified as to the relationship of the following:

Plaintiffs:

1. Carlos Hicks;
2. Pissarro Wright;

3. Christina Hicks;
4. Chuck Clay & Associates, LLC;
5. Roger Hicks, Esq.;
6. Metropolitan Atlanta Rapid Transit Authority Inc., (a.k.a. MARTA), its officers, directors, and shareholders;
7. Zurich American Insurance Company, its officers, directors and shareholders;
8. Sompo Canopus, its officers, directors and shareholders;
9. XL Dublin Company, its officers, directors and shareholders;
10. Argo Re Ltd, its officers, directors and shareholders;
11. Ironshore, Inc., its officers, directors and shareholders;
12. Any other applicable insurance company for Defendant, its officers, directors, and shareholders.

Defendant: Pissarro Wright; Christina Hicks; Mazie Hicks; Otis Hicks; Carlos Hicks; Rogers L. Hicks, Esq.; Chuck Clay, Esq.; Christopher Newbern, Esq.; Chuck Clay & Associates and any officers and employees thereof. Defendant objects to the qualification of the aforementioned insurance companies listed by Plaintiff in lines 7 through 13.

5.

(a) All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any persons for the preservation of evidence for use at trial. Moreover, the parties will be allowed to take depositions to authenticate records, lay a foundation for the introduction of records, or to explain business records.

Plaintiffs: Plaintiffs reserve the right to take any use-in-evidence depositions necessary prior to trial.

Defendant: Defendant MARTA reserves the right to compel the production of and/or move for sanctions regarding the outstanding Liberty Mutual records and discovery responses previously addressed in the July 12, 2017, Orders. Defendant further reserves the right to take any use-in-evidence depositions necessary prior to trial.

(b) Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete.

Plaintiffs: Any reference to TCW Land Fund 1 Holding Company, Novare Centennial Park, LLC, Portal Holdings, LLC, and Brasfield & Gorrie, LLC should be removed from the style of the case. Plaintiffs' prior pleadings and claims against these entities are necessarily withdrawn by virtue of the Court's dismissal of these entities on substantive grounds.

Defendant: Defendant MARTA maintains that Novare Centennial Park, LLC, Portal Holdings, LLC, and Brasfield & Gorrie, LLC were improperly dismissed as defendants in this lawsuit. Moreover, Defendants have filed a notice of apportionment and contend the verdict form should contain the dismissed defendants.

6.

The following is Plaintiffs' brief and succinct outline of the case and contention:

On February 9, 2013, a 42-year-old father named Carlos Hicks died after he fell through a hole in a guardrail at the bus stop of the Civic Center MARTA station. MARTA owned and controlled the bus stop, including the guardrail protecting its patrons from a twenty-foot-plus drop. Carlos was a patron of MARTA. He was waiting for a MARTA bus with his ticket, ready

to board. Because he had been drinking, MARTA was his “designated driver” to get him home safely.

MARTA, the owner of the bus stop and guardrail, had a non-delegable legal duty to keep the guardrail safe. Yet, for months and years, MARTA negligently inspected and failed to maintain the guardrail. By June 26, 2012 – over 7 months before the incident – the top piece of the guardrail had fallen off, making it too short to comply with mandatory building codes. By August 20, 2012 – more than 5 months before our incident – more of the guardrail had fallen off, leaving an deadly, twenty-five-inch-wide hole in the guardrail. The night of February 9, 2013, Carlos fell through that hole and died. His death was the result of MARTA’s neglect and failure to use ordinary care.

MARTA’s failure to maintain a safe barrier at its bus stop violated building codes, including many provisions of the International Building Code, which Georgia follows. Therefore, MARTA must be deemed negligent *per se* and its knowledge of the hazard is presumed by law.

MARTA was the only entity that owned and controlled the bus stop and guardrail on February 9, 2013. MARTA never, ever complained to anyone else about the defective guardrail, either before or after Carlos Hicks fell. After Carlos’ death, without blaming or notifying anyone else, MARTA finally repaired the defective guardrail itself. Then, more than a year later once the lawsuit was filed, MARTA started trying to excuse its own mistakes by blaming others – namely two other companies who had not even been on the property in over 6 years before the incident.

Plaintiffs are entitled to recover for Carlos Hicks' pain and suffering, medical and funeral expenses, and for wrongful death – which Georgia measures as the full value of Carlos Hicks' life.

7.

The following is Defendant MARTA's brief and succinct outline of the case and contentions:

This wrongful death action stems from an accident that occurred at the Civic Center MARTA station on February 9, 2013. Plaintiffs allege that Carlos Hicks, while standing on the street level at the Civic Center MARTA station, made contact with a wooden guardrail and fell some twenty feet to the lower ground level of the Civic Center station. Carlos Hicks sustained a cervical spine fracture as a result of the fall and died as the result of his injuries. Plaintiffs have filed the present action seeking to recover for the full value of Carlos Hicks' life. On February 9, 2013, Carlos Hicks exited the Civic Center station at 6:35 p.m. He made his way from the lower rail level of the station up to the street level and at some point before 7:00 p.m. leaned along the high concrete portion of the parapet wall, directly to the left of the open hole in the railing. At 7:00 p.m., Hicks was captured on the surveillance video with his upper body leaning along the high concrete parapet wall, directly next to the opening. Hicks leaned there for several minutes, and could be seen nodding his head as if dozing off. At 7:07:32 p.m., Hicks stepped off of the wall and turned his body so that the parapet wall and opening were directly on his left. At 7:07:54 p.m., Hicks stepped backwards in what appeared to be an attempt to again lean his upper body along the same concrete portion of the parapet where he had previously been leaning. Hicks, however, did not make it to the high concrete section where he had previously rested and instead fell through the open hole that he had been standing next to for at least the preceding

seven minutes (and possibly up to thirty-two minutes). Hicks fell some twenty feet to the lower level behind the Civic Center station and died.

Testing by the Georgia Bureau of Investigation (GBI) confirmed that Hicks had a blood alcohol level of .311 grams per 100 ml at the time that he fell. Hicks also had an unopened bottle of vodka on his person.

The Easement Agreements and Construction Project

The open railing through which Hicks fell is located in an area that was the subject of an easement agreement entered into between MARTA and two of the co-defendants, Novare Centennial Park, LLC, (“Novare”) and Portal Holdings, LLC (“Portal”). Novare and Portal entered into the easement agreements as a part of the construction of the Twelve Centennial Park Hotel and Condo (the “Twelve”), which was to be built in two phases directly adjacent to the Civic Center MARTA station. In the Amended and Restated Reciprocal Easement Agreement, MARTA granted Novare a license for the demolition, repair, replacement, and/or removal of an existing concrete parapet wall and the construction of a new parapet wall, as a part of the construction of Phase I of the Twelve. The Amended and Restated Reciprocal Easement Agreement was entered into on October 6, 2005. After the concrete parapet had been demolished and reconstructed in the Phase I construction area, MARTA entered into a Second Amended and Restated Reciprocal Easement Agreement with Novare and Portal. In the Second Amended and Restated Reciprocal Easement Agreement, entered into on July 19, 2007, MARTA restated the terms of the license granted to Novare and Portal for the demolition, repair, replacement, and/or removal of an existing concrete parapet wall and the construction of a new parapet wall, as a part of the construction of Phase II of the Twelve. The Second Amended and Restated Reciprocal Easement Agreement specified that the interests Novare and Portal had in

the License Area would revert to MARTA upon satisfactory completion of the demolition, repair, replacement, and/or removal of the parapet wall. Phase II of the construction project, however, was not completed. Defendant Brasfield and Gorrie (“Brasfield”), the contractor hired by Novare and Portal, constructed Phase I of the Twelve and made preparations to construct Phase II of the Twelve. Construction of Phase II was cancelled in 2007 in light of the then-impending economic recession. Neither Novare nor Portal notified MARTA that the construction project was being cancelled. Brasfield left the Phase II construction site on October 31, 2007.

The Parapet Wall and Wooden Railing

The subject parapet wall, as originally constructed, had a steel pipe rail cap measuring eight inches in diameter that served as a railing. This original railing still exists in other areas of the station. During construction of Phase I of the Twelve, Brasfield removed the original steel railing on the portion of the parapet wall that was to remain in place until Phase II. After the contract for Phase II was executed, the original metal tube railing was discarded. Phase II construction plans called for the parapet wall to be completely demolished. Following the cancellation of Phase II, either Novare and Portal or Brasfield installed or caused to be installed a wooden railing on top of the concrete parapet. That wooden railing was installed and in place on or before October 16, 2007. Brasfield left the construction site on October 31, 2007. The parapet wall was not restored to its original condition (the metal tube railing), and it was not demolished as called for by the Phase II plans. MARTA was never notified that the construction project was cancelled. As a result, MARTA was without knowledge that Novare and Portal seemingly abandoned the interests granted to them in the Second Amended and Restated Reciprocal Easement Agreement. The wooden railing, which never should have been erected or

left in place at the conclusion of the construction project, was not maintained by MARTA or any other entity. By June 26, 2012, the top two-by-four handrail on top of the railing had fallen off in spots along the railing. And by August 20, 2012, the board that covered the area through which Hicks fell had become completely dislodged, leaving an open, approximate twenty-five-inch gap in the railing. On February 9, 2013, Hicks fell through that open hole in the railing.

MARTA contends that it is not liable for Hicks' death as the hole was open an obvious hazard. Moreover, Hicks had successfully traversed the hazard prior to his fall.

8.

The issues to be determined by the jury are as follows:

Plaintiffs: Negligence (i.e., duty, breach, causation) and Damages.

Defendant:

- 1) Whether MARTA had actual or constructive knowledge of a dangerous condition;
- 2) Whether Plaintiff knew or should have known of a dangerous condition;
- 3) Whether Plaintiff's negligence was greater than the negligence of Defendant, if any;
- 4) Whether Plaintiff traversed the subject area prior to his fall;
- 5) Whether the hazard was an open and obvious condition;
- 6) Proximate cause
- 7) Damages (if any)
- 8) The amount of fault that should be apportioned to Novare Centennial, LLC, Portal Holdings, LLC, and Brasfield & Gorrie, LLC.

9.

Specifications of negligence, including applicable code sections, are as follows:

Plaintiffs:

On February 9, 2013, a 42-year-old father named Carlos Hicks died after he fell through a hole in the guardrail at the bus stop of the Civic Center MARTA station. MARTA owned and controlled the bus stop, including the guardrail that protected its patrons from a twenty-foot drop. Carlos was a patron of MARTA. He was waiting for a MARTA bus with his ticket, ready to board the bus. Because he had been drinking, MARTA was his “designated driver” to get him home safely.

MARTA, as the owner of the bus stop and guardrail, had a non-delegable legal duty to keep the guardrail in a safe condition. Yet, for months and years, including on February 9, 2013, MARTA negligently inspected and maintained the bus stop and its guardrail. By June 26, 2012 – over 7 months before the incident – the top piece of the guardrail had fallen off, making it too short to comply with mandatory building codes or to safely protect patrons. By August 20, 2012 – over 5 months before the incident – more of the guardrail had fallen off, leaving a dangerous, twenty-five-inch-wide hole. The night of February 9, 2013, Carlos fell through that hole in the guardrail and died. His death was the result of MARTA’s failure to exercise ordinary and reasonable care.

MARTA’s failure to provide a proper barrier at its bus stop violated Georgia laws and building codes, including many provisions of the International Building Code. Therefore, MARTA is deemed negligent *per se* and its knowledge of the hazard is presumed.

MARTA was the only entity that owned and controlled the bus stop and guardrail on February 9, 2013. Finally, after Carlos’ death, MARTA repaired and replaced the guardrail. MARTA never notified any other company about the defective guardrail. It was only upon being sued that MARTA first blamed two developers, Novare and Portal. However, these companies had not been on the property in over 6 years and any easement with them had long expired.

Plaintiffs are entitled to recover for Carlos Hicks' pain and suffering, medical and funeral expenses, and for his wrongful death which Georgia measures as the full value of Carlos' life.

Applicable code sections include:

- O.C.G.A. § 51-1-2 – Ordinary Negligence
- O.C.G.A. § 51-3-1 – Premises Liability
- O.C.G.A. § 8-2-20 – Georgia State Minimum Standard Codes
- Georgia State Amendments to the International Building Code, 2005
- O.C.G.A. §§ 41-1-1, 41-1-2 – Nuisance
- International Building Code, 2000 Ed., Preface
- International Building Code, 2000 Ed., Section 101.3, Intent
- International Building Code, 2000 Ed., Section 3401.2, Maintenance
- International Building Code, 2000 Ed., Section 1002.1, Definitions, Guard
- International Building Code 2000 Ed., Section 1003.2.12, Guards
- International Building Code 2000 Ed., Section 1003.2.12.1, Height
- International Building Code 2000 Ed., Section 1003.2.12.2, Opening Limitations
- International Building Code 2000 Ed., Section 1607.7.1.1, Concentrated Load
- International Property Maintenance Code, 2000 Ed., Section 304.12

Defendant:

- a. Failure to exercise ordinary care for your own safety
- b. O.C.G.A. § 51-12-33 - Reduction and Appointment of Award
- c. O.C.G.A. § 51-11-7 - Effect of failure to avoid consequences of defendant's negligence
- d. O.C.G.A. § 40-6-253
- e. O.C.G.A. § 16-12-120

- f. Contributory negligence
- g. Traverse doctrine
- h. Avoidance doctrine
- i. Assumption of risk
- j. Comparative negligence

Defendant also objects to Plaintiffs' claims of negligent supervision, hiring, training, and retention as they would amount to a double recovery. Defendant MARTA states that it would be vicariously liable for the actions of its employees. Moreover, Defendant MARTA objects to Plaintiffs seeking attorney's fees. Plaintiff has added the claims of neglect supervision, hiring, retention, and attorney's fees for the first time in the Pre-trial Order.

10.

If the case is based on a contract, either oral or written, the terms of the contract are as follows (or, the contract is attached as an Exhibit to this order):

Not applicable.

11.

The types of damages and the applicable measures of damages are stated as follows:

Plaintiffs:

- a. EMS Expenses - \$1,600.00
- b. Hospital / Emergency Room Expenses - \$11,086.00
- c. Funeral Related Expenses - \$2,600.00
- d. Wrongful Death Damages (intangible value of life) - to be determined by the jury;
- e. Conscious Physical Pain and Suffering - to be determined by the jury;
- f. Conscious Mental Pain and Suffering - to be determined by jury;

g. Reasonable Attorney's Fees.

Defendant Marta:

Defendant objects to the listing of special damages by Plaintiffs. Plaintiffs have not provided any documentation for same. Plaintiffs have listed the amount of damages for the first times in the Pre-trial Order. Moreover, Defendant objects to the inclusion of attorney's fees as no claim for attorney's fees has been made.

12.

This is not a divorce case and Rule 24.2 affidavits are not required.

13.

The following facts are stipulated:

Plaintiffs:

Plaintiffs propose the following stipulations:

1. "On February 9, 2013, Carlos Hicks ("Hicks" or the "decedent") fell some twenty feet through an open hole in a wooden railing on the street level of the Civic Center MARTA station." (Defendant Marta's Statement of Material Facts to Which There is No Genuine Issue for Trial, at p. 1-2)
2. "It cannot be disputed that the erection of the guardrail at the parapet wall was necessary for the protection of third persons." (Defendant Marta's Supplemental Brief in Support of its Motion for Summary Judgment, at 3-4.)
3. "There was a clear need for a barrier along the elevated section of the sidewalk." (Defendant Marta's Supplemental Brief in Support of its Motion for Summary Judgment, at p. 4.)
4. The absence of a guardrail constituted a "hazardous condition." (*Id.* at p. 4.)

5. "The wooden railing ... was not maintained by MARTA or any other entity."
(Defendant Marta's Brief in Support of its Motion for Summary Judgment, at p. 5)
6. "By June 26, 2012, the top two-by-four handrail on top of the railing had fallen off in spots along the railing." (*Id.*)
7. "And by August 20, 2012, the board that covered the area through which Hicks fell had become completely dislodged, leaving an open, approximate twenty-five-inch gap in the railing." (*Id.*)
8. "The certified photographs clearly establish that the wooden railing that Hicks allegedly came into contact with was missing for at least five months prior to his fall." (*Id.* at p. 11)
9. "On February 9, 2013, Hicks fell through that open hole in the railing." (*Id.*)
10. "The open hole through which [Carlos Hicks] fell was [a] hazard." (*Id.*)
11. Defendant MARTA owned and controlled the bus stop and wooden guardrail on February 9, 2013 and at all applicable times prior thereto.
12. Defendant MARTA was required to comply with the International Building Code with regards to the guardrail.
13. The wooden guardrail was defective and unsafe on February 9, 2013.
14. The wooden guardrail violated applicable International Building Codes.
15. Defendant MARTA did not perform any inspections or repairs from at least 2007 through February 9, 2013 to the wooden guardrail.
16. The hole in the wooden guardrail was located 16 feet from the street at Defendant MARTA's #32 Bouldercrest Bus Stop or Bus Bay;

17. Defendant MARTA's policy only allowed busses to pick up passengers at designated bus stops, including #32 Bouldercrest Bus Stop or Bus Bay.

18. The guardrail was part of Defendant MARTA's bus stop passenger waiting area on February 9, 2013.

Defendant:

Defendant proposes the following stipulations:

- A. That Novare was a developer that was engaged in a development project adjacent to the MARTA Civic Center.
- B. That Novare entered into three easement agreements with MARTA that gave them property rights to the location of the subject incident in order to complete their development.
- C. That Brasfield & GORRIE, Novare's contractor, removed the metal guard rail.
- D. That Novare and Brasfield & GORRIE abandoned the project in October 2017.

14.

The following is a list of all documentary and physical evidence that will be tendered at the trial by Plaintiffs and Defendant. Unless noted, the parties have stipulated as to the authenticity of the documents listed and all exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury:

By Plaintiffs:

- 1. 1949 Mortality Table;
- 2. Scene Photos before and after the incident;
- 3. Photographs of the MARTA bus stop and train station;
- 4. Photographs of Carlos Hicks;
- 5. Photographs shared between the parties;
- 6. Robert Jay inspections photographs;

7. Photographs attached to pleadings as exhibits;
8. Photographs regarding MARTA's designated driver program;
9. Any other admissible photographs applicable to the case;
10. The loose piece of wood taken into evidence by MARTA police;
11. Family Photographs;
12. Funeral Brochure;
13. MARTA Ticket;
14. EMS Report;
15. MARTA's pleadings;
16. MARTA's discovery responses;
17. MARTA's judicial admissions;
18. MARTA responses to Requests for Admissions;
19. Depositions;
20. Exhibits to Depositions;
21. Document productions from Defendant MARTA as well as Plaintiffs;
22. International Building Code 2000 Edition;
23. Admissible documents produced by the Fulton County Medical Examiner;
24. Fulton County Medical Examiner Medical and Investigative Reports;
25. Admissible documents produced by MARTA Police Department;
26. Admissible portions of MARTA Police Incident Summary Log bates stamped MARTA 0107 through 0113;
27. Admissible portions of MARTA Police Incident Report and Supplemental Incident Report bates stamped MARTA 0001 through 0005;
28. MARTA Video of Incident;
29. Surveillance Videos;
30. October, 2007 Google StreetView Photograph;
31. June, 2012 Google StreetView Photograph;
32. August, 2012 Google StreetView Photograph;
33. Other Google StreetView Photographs;
34. Satellite imagery of the subject bus station;
35. MARTA Inspection Memorandum and drawings bates stamped MARTA 0927 through 0979;
36. MARTA Inspection Report completed by P. Thomas bates stamped MARTA 0927;
37. 2012 IBC Building Codes;
38. MARTA Civic Center as-built drawings bates stamped MARTA 0992;
39. Bridge Inspection Reference Manual ("BIRM");
40. Iron Works Estimate bates stamped MARTA 0114 – 0115;
41. Iron Works Invoice;
42. Correspondence between Iron Works and MARTA;
43. MARTA Civic Center Work Order detail bates stamped MARTA 0162 through 0164;
44. Carlos Hicks MARTA Card Xls Spreadsheet bates stamped MARTA 0165;
45. MARTA As Built Drawings bates stamped MARTA 0170 through 0743;
46. Admissible Grady Hospital Medical Records;
47. Admissible Grady EMS Records;
48. MARTA Inspection Checklist bates stamped MARTA 0826 through 0832;

49. MARTA Photographs bates stamped MARTA 0796 through 0822, 0850 through 0877;
50. Marta Inspection Form or Record for October, 2012 or any other time;
51. MARTA Emails bates stamped MARTA 0838 through 0849;
52. Carlos Hicks Death Certificate;
53. Brasfield & Gorrie Photographs bates stamped B&G 000022 through 000079, B&G 001577 through 001634;
54. Novare/Portal Photographs bates stamped Portal 000057 through 000139;
55. MARTA invoice from IronWorks to replace metal guardrail;
56. MARTA job descriptions;
57. All MARTA Position Description's produced;
58. MARTA bus schedules;
59. MARTA work rules;
60. Civic Center Incident Summary Log;
61. MARTA Police North Precinct Work Schedules;
62. FCME Investigative Report and Notes;
63. Civic Center Work Orders;
64. No. 32 Bus Route Time Schedule and Route Map
65. Rail Station Cleaning Schedule; Procedures; Job Description
66. Video of MARTA Civic Center Station
67. MARTA website pages and advertisement materials from relevant dates
68. Relevant news articles
69. Michael Johnson Bus Driver Schedule (August, 2012 – December, 2012)
70. Custodian Affidavits of any record requiring authentication under the Georgia Rules of Evidence;
71. Any admissible pleadings of Defendant MARTA;
72. Responses to FOIA and Open Records requests;
73. Any admissible documents and things produced by any party in discovery;
74. Admissible medical records from any applicable physician or health care facility;
75. Admissible photographs and/or video of Carlos Hicks;
76. The master exhibits to depositions used by Plaintiff and Defendants;
77. Blow-ups of any exhibit;
78. Any and all records produced or reasonably expected to be in the possession of any witness identified by any party in this litigation;
79. Any document needed for impeachment or rebuttal;
80. Any documents reflecting medical, ambulance, funeral, and burial expenses;
81. Demonstrative timeline(s);
82. General graphics and demonstratives aids;
83. All admissible documents provided and/or listed by Defendant MARTA;
84. Any exhibits to trial depositions taken after submission of the Consolidated Pre-Trial Order.

These are all of the documents known to Plaintiffs at the present time, but Plaintiffs reserve the right to supplement the document list. Opposing counsel will be given notice of any additional documents as soon as any become known. Plaintiffs reserve the right to introduce or

object to any documentary evidence listed by Defendants. Plaintiffs further reserve the right to amend their list of exhibits prior to the time of trial.

By Defendant Marta:

1. Civic Center station as-built drawings
2. GBI Report
3. MARTA Police Incident Reports
4. MARTA Police Supplemental Incident Reports
5. Special Warranty Deed and Reservation of Easements
6. Amended and Restated Reciprocal Easement Agreement
7. Second Amended and Restated Reciprocal Easement Agreement
8. Fulton County Medical Examiner Report
9. MARTA Position Description (Station Agent)
10. MARTA Position Description (Construction Safety Engineer)
11. MARTA Position Description (Environmental Safety Inspector I)
12. MARTA Position Description (General Foreman-Buildings & Grounds)
13. MARTA Position Description (Chief Engineer-Civil, Structural and Inspection)
14. MARTA Position Description (Director of Architecture & Design Standards)
15. Surveillance Video
16. Civic Center Incident Summary Log
17. Iron Works Quote for Replacement Railing
18. MARTA Police North Precinct Work Schedules
19. FCME Investigative Report
20. FCME Investigation Notes
21. Civic Center Work Orders
22. Breezecard History of Carlos Hicks
23. No. 32 Bus Route Time Schedule and Route Map
24. Grady EMS records
25. Grady records
26. Photos of Incident Site
27. Photos of Civic Center Station
28. Photos of Construction Project
29. Rail Station Cleaning Schedule; Procedures; Job Description
30. Breezecard sales data of Tony Garrison
31. 2/3/11 – Inspection CN 145 Civic Center Station
32. North Line Civic Center Station Floor Plan
33. 10/16/12 – Inspection CN 145 Civic Center Station
34. North Line Civic Center Station Floor Plan
35. MARTA Notice of Public Hearings: June 7 & 8, 2010
36. MARTA Bus Service Changes Effective Date: 12/17/2011
37. MARTA Bus & Rail Service Changes Effective Date: 4/21/2012
38. MARTA Bus Service Changes Effective Date: 12/15/2012
39. MARTA Bus Service Changes Effective Date: 04/20/2013
40. MARTA Bus & Rail Service Changes Effective Date: 12/14/2013

41. MARTA Bus Service Changes Effective Date: 4/23/2011
42. MARTA Structural Inspection Manual July 2009
43. MARTA Notice of Public Hearing: Sept. 19, 2013
44. Google Streetview Photographs
45. Death Certificate
46. AIA Development Contract
47. Any document attached to a deposition
48. Plaintiffs' Complaint and any and all amendments thereto
49. Any and all pleadings and discovery in this case
50. Any document identified and/or produced in discovery
51. Plaintiff responses to discovery
52. Certified copies of convictions for any witness
53. Any document needed for impeachment or rebuttal
54. Demonstrative exhibits
55. All documents listed by Plaintiffs in their portion of the Pre-Trial Order.

These are the documents known to Defendant at the present time. Opposing counsel will be given notice of any additional documents as soon as they are identified. Defendant reserves the right to object to any documents in which a proper foundation has not been laid for their introduction into evidence, which may be deemed to be inadmissible based on the rules of evidence. Defendant reserves the right to introduce any documentary evidence listed by Plaintiffs. Defendant further reserves the right to amend its list of Exhibits prior to or at the time of trial in accordance with Georgia law.

15.

Special authorities relied upon by Plaintiffs relating to peculiar evidentiary or other legal questions are as follows:

O.C.G.A. § 51-1-2 – Ordinary Negligence

O.C.G.A. § 51-3-1 – Premises Liability

O.C.G.A. § 8-2-20 – Georgia State Minimum Standard Codes

International Building Code, 2000 Ed., Preface

International Building Code, 2000 Ed., Section 101.3, Scope

International Building Code, 2000 Ed., Section 3401.2, Maintenance

International Building Code, 2000 Ed., Section 1002.1, Definitions, Guard

International Building Code 2000 Ed., Section 1003.2.12, Guards

International Building Code 2000 Ed., Section 1003.2.12.1, Height

International Building Code 2000 Ed., Section 1003.2.12.2, Opening Limitations

International Building Code 2000 Ed., Section 1607.7.1.1, Concentrated Load

International Property Maintenance Code, 2000 Ed., Section 304.12

Plaintiffs reserve the right to identify additional applicable codes and regulations.

Plaintiffs will submit jury charges and trial memorandums regarding applicable codes and regulations. Plaintiffs hereby expressly state their intention to rely on all authorities cited in Plaintiffs' Motions in Limine and all authorities cited in Plaintiffs' response(s) to Defendants' Motions in Limine. Plaintiffs further state their intention to rely on the authorities cited in Plaintiffs' Requests to Charge, to be submitted in advance of trial. Plaintiffs also reserve the right to submit trial memorandum(s) on peculiar evidentiary issues as they arise during the trial.

16.

Special authorities relied on by Defendant relating to the peculiar evidentiary or other legal questions are as follows:

Defendant MARTA shall submit appropriate trial memorandum on peculiar evidentiary issues as they arise during trial.

17.

All Requests to Charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18.

Testimony of the following persons may be introduced by depositions:

By Plaintiffs:

1. Mazie Hicks
2. Rev. Dr. Christina Hicks;
3. Pissarro Wright;
4. Lana Hicks;
5. Tywanda Wright;
6. Berneita Treadwell;
7. Tawana Mullner;
8. Michael Johnson;
9. Charles Boone;
10. Willie Walker;
11. Remy Santial;
12. Chris Sandoval;
13. Terry Moore;
14. Philippe Thomas;
15. Tony Garrison;
16. Scott Laye;
17. Charles Boone;
18. Mike Holcombe;
19. Robert Jay;
20. All applicable records custodians, including records custodians;

Plaintiffs do not currently intend to present testimony by deposition to the jury at this time, other than for impeachment purposes. Plaintiffs have not been notified by Defendant that Defendant intends to present any testimony by way of depositions. Plaintiffs object to the presentation of any deposition testimony to the jury other than for purposes of impeachment or upon a finding by the Court that the witness is unavailable.

By Defendant MARTA:

Defendant MARTA may introduce the deposition of any individual who has given a deposition in the case and is deemed unavailable pursuant to the law and after a finding is made that the witness is unavailable by the Court. Said depositions are as follows:

1. Charles Boone
2. Jim Borders
3. Peter Combs
4. Jolando Crane
5. Tony Garrison
6. Herbert Gunn

7. Michael Head
8. Mazie Hicks
9. Christina Hicks
10. Lada Hicks
11. Michael Holcombe
12. Robert Jay
13. Scott Laye
14. Terry Moore
15. David Moss
16. Tawana Mullner
17. Andrew Nieto
18. Remy Saintill
19. Chris Sandoval
20. Kanuji Parmer
21. DeWayne Strickland
22. Phillipe Thomas
23. Berneita Treadwell
24. Willie Walker
25. Pissarro Wright
26. Tywanda Wright

Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of any Court prior to the introduction of the deposition. Moreover, Defendant objects to deposition listed by Plaintiffs that have not been had or scheduled at the time of the Pre-trial Order.

19.

The following are lists of witnesses the Plaintiff will have present at trial:

1. Pissarro Wright;
2. Rev. Dr. Christina Hicks.

The following are lists of witnesses the Plaintiff may have present at trial:

1. Mazie Hicks
2. Lada Hicks;
3. Tywanda Wright;
4. Berneita Treadwell;
5. Tawana Mullner;
6. Michael Johnson;
7. Tony Garrison
8. Charles Boone;

9. Willie Walker;
10. Remy Santial;
11. Chris Sandoval;
12. Terry Moore;
13. Philippe Thomas;
14. Tony Garrison;
15. Mike Holcombe;
16. Sonya Matthews;
17. Derrion Lowe;
18. Jim Borders;
19. Randy Hanzlick;
20. Keith Parker;
21. Mike Alsip;
22. Robert Jay;
23. Dr. Robert Gunn;
24. All persons identified by Plaintiffs or Marta as possible deposition witnesses;
25. Former employees of MARTA;
26. MARTA 30(b)(6) witnesses;
27. Representative(s) of Iron Works;
28. Any records custodian needed for authentication, any person for purposes of rebuttal, any person for purposes of impeachment;
29. Any and all witnesses named by Defendants;
30. Any witness listed on Defendants' will-call or may-call witness list; and
31. Any witness listed in the Exhibits needed to discuss or authenticate same.

This represents a list of witnesses the Plaintiffs may call. Plaintiffs reserve the right to amend this witness list and will give opposing counsel notice in the event additional witnesses are identified. Plaintiffs note that by listing "catch-all" witness categories, as MARTA has done, Plaintiffs are not acquiescing or agreeing that all listed witnesses would be appropriate for trial. By way of example, Plaintiffs point out that it would be inappropriate for MARTA to call any of Plaintiffs' experts that have been withdrawn. Similarly, it would be inappropriate for MARTA to call any experts of parties dismissed from the case as a matter of law, or to call witnesses only relevant to claims that have been dismissed as a matter of law.

Plaintiff has not listed every person identified in the medical records or the records produced by the parties that may be needed to authenticate or introduce any records into evidence. However, Plaintiffs anticipates the cooperation of Defendant MARTA so that Plaintiffs need not bring

unnecessary witnesses. Opposing counsel may rely on representations by the designated party that he will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

The following are lists of witnesses Defendant MARTA will have present at trial:

None.

The following are lists of witnesses Defendant MARTA may have present at trial:

1. Remy Saintil
2. Philippe Thomas
3. Ira Pogue
4. Neuran Knights
5. Reginald Kimbell
6. Robert Smith
7. Glenda Simpson
8. Willie Walker
9. Chris Sandoval
10. Paul Long, Jr.
11. Dana Requa
12. Nicole Clarke
13. Jessica Ramirez
14. Michael Cannon
15. Jennifer Talley
16. Giselle Jacob
17. Michael Johnson
18. Dorothy Sullivan
19. Aston Greene
20. Quincy Weaver
21. Officer J. Cook
22. Jolando Crane
23. Mike Holcombe
24. Sonya Matthews
25. Berneita Treadwell
26. Derrion Lowe
27. Charles Boone
28. Terry Moore
29. Tracie Moore
30. Guillermo Labenita
31. James Hale
32. Tamara Hunte
33. Jacinda Barnes
34. Eddie Griffin

35. Joshua McDowell
36. Danny Woodall
37. Officer Fields
38. LJ Coates
39. James Sibert
40. Melissa Irwin, RN
41. William Manson, M.D.
42. Kasey Wilson
43. Mike Alsip
44. Mindi Cody, RN
45. Katie Dean, M.D.
46. Allen Robert, M.D.
47. Christopher Dente, M.D.
48. Paul Long, Jr. EMT
49. Sarah Urfer
50. Richard Clark, M.D.
51. Andrew Beldecos
52. Fred Graham
53. Peter Combs
54. Herbert Gunn
55. Michael Head
56. Robert Jay
57. Andrew Nieto
58. Bruce Seaman
59. Scott Laye
60. David Moss
61. Dewayne Strickland
62. Jim Borders
63. Pissarro Wright
64. Mazie Hicks
65. Christina Hicks
66. Lada Hicks
67. Don Hicks
68. Tywanda Wright
69. Tony Garrison
70. Any witness identified during discovery
71. Any person who has been deposed in this case
72. Any person who investigated the occurrence
73. Any person needed for purposes of impeachment or rebuttal
74. Any person required to lay a foundation for any record or to authenticate any record
75. Any person listed as a "will" or "may" call witness by Plaintiff

Defendant has made a good faith effort to properly list all witnesses necessary in this case and reserve the right to amend this list prior to or during trial in accordance with Georgia law.

All counsel may rely on the representation by the designated party that he will have a witness present unless notice to the contrary is given in sufficient time prior to the trial to allow the other party to subpoena the witness or obtain his testimony by other means. Defendant objects to Plaintiff's contention that it is improper to call witnesses from parties dismissed from the case as that contention has no basis in the law.

20.

The form of all possible verdicts to be considered by the jury is as follows:

By the Plaintiff:

JURY VERDICT FORM

1. _____ We, the jury, find for the Plaintiffs.

(Proceed to A and B, below)

A. We award Plaintiffs the sum of \$ _____ in damages, to be apportioned amongst all responsible persons or entities according to their allocated percentages of fault, if any, as found in B below.

B. With regard to the allocation of fault, we the jury find:

_____ % - Defendant MARTA

_____ % - Novare and Portal

_____ % - Carlos Hicks

If you find for the Plaintiffs, stop here.

OR

2. _____ We, the jury, find for the Defendant, MARTA.

If you find for the Defendant, stop here.

Date

Foreperson

By Defendant MARTA:

Defendant will provide a proposed verdict form at the conclusion of the evidence unless instructed otherwise by the Court.

21.

- A. The possibilities of settling the case are poor.
- B. The parties do want the case reported.
- C. The cost of take-down will be shared equally by the parties.
- D. Other matters: None at present.

This 24th day of July, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the within and forgoing *First Revised Consolidated Pre-Trial Order* upon counsel for all parties electronically by means of Odyssey E-File and electronic mail as follows:

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Respectfully submitted this 24th day of July, 2017

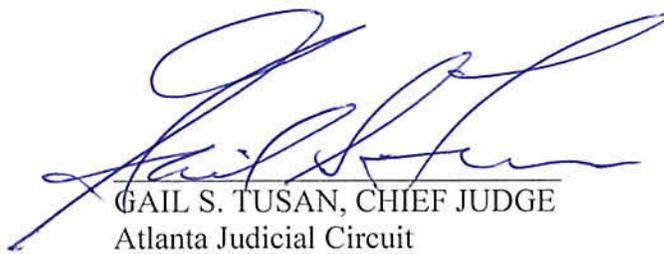
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SO ORDERED, ADJUDGED AND DECREED THIS 7th DAY OF AUGUST, 2017.



GAIL S. TUSAN, CHIEF JUDGE
Atlanta Judicial Circuit