

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

LAURA HALLISY,)
)
 Plaintiff,)
) CIVIL ACTION NO. . 16EV001279
 vs.)
)
 OTB ACQUISITION, LLC d/b/a ON THE)
 BORDER and KEN WARDLE,)
)
 Defendants.)

CONSOLIDATED PROPOSED PRE-TRIAL ORDER

The following constitutes the proposed Consolidated Proposed Pre-Trial Order in the above-styled action:

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

For Plaintiffs:

Adam P. Taylor, Esq.
Scott M. Zahler
2300 Windy Ridge Pkwy, Ste 375 S
Atlanta, GA 30339
(770) 694-6556

For Defendant:

Paul Buschman
Hinshaw & Culbertson LLP
One East Broward Blvd, Suite 1010
Ft. Lauderdale, FL, 33301
Tel: 954-375-1134 | Fax: 954-467-1024

2. The estimated time required for trial is 4 to 5 days.

3. There are no motions or other matters pending for consideration by the Court except as follows:

a. Defendants' Motion to Dismiss Count Two of Plaintiff's Amended Complaint or in the alternative Motion for More Definate Statement;

b. Plaintiff and Defendant reserve the right to file Motions In Limine.

4. The jury will be qualified as to relationship with the following:

For Plaintiff:

Persons related by blood or marriage to:

Laura Hallisy;

Ken Wardell;

Adam P. Taylor and Scott Zahler

Paul Buschmann

Any other attorney employed by Law Office of Hinshaw & Culbertson

Any officer, director, shareholder or employee of OTB Acquisition, LLC or On The Border Restaurant

For Defendant:

See above

5.

a. All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery except for a good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

b. Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties.

6. The following is the Plaintiff's brief and succinct outline of the case and contentions:

On March 8, 2015, Plaintiff, Laura Hallisy went upon the premises and approaches of Defendant, On The Border located at 790 Cobb Place Boulevard, Kennesaw, Georgia 30144 as an invitee. Defendant, On The Border was the owner, occupier and/or manager of the aforementioned premises and approaches, and by express or implied invitation, induced or led others, including Plaintiff, Laura Hallisy, to come upon said premises and approaches. On and

before March 8, 2015, Defendants, On The Border and Ken Wardle, had a duty to inspect and maintain the premises with regard to the walking surface of the premises located at 790 Cobb Place Boulevard, Kennesaw, Georgia 30144.

While exiting On the Border on March 8, 2015, Ms. Hallisy fell due to a camouflaged single-step riser which did not have a hand rail or any visual cues as to its existence.

Each Defendant knew and/or should have known that the single-step riser leading from the restaurant to the parking lot at the time Laura Hallisy was present, was a camouflaged hazard and constituted a hazard to invitees, such as Laura Hallisy. A reasonable safety inspection would reveal the camouflaged single-step riser presented a hazard to pedestrian traffic on the exterior of the premises.

As a direct and proximate result of the negligence of one or more Defendants, Plaintiff, Laura Hallisy incurred significant medical and related expenses, suffered great pain and suffering, lost income, and will suffer and incur personal injury damages in the future.

7. The following is Defendants' brief and succinct outline of the case and contentions:

On March 8th, 2015, the Plaintiff was an invitee on the premises of the Defendants, who after parking in the parking lot, entered the front entrance of the restaurant, had dinner, and exited the restaurant using the To Go entrance intending to return to her vehicle in the parking lot. The Plaintiff walked down several steps, and as a result of her failure to exercise reasonable care by not watching where she was walking, she tripped as she stepped from the stair landing at the bottom of the steps and was injured.

Defendants deny any liability to the Plaintiff, that they were negligent, and further deny that plaintiff's injuries were causally related to any alleged negligence on their part.

In the three-year period prior to this incident, the Defendants were aware of no falls or other incidents of customers tripping or falling in this area.

8. The issues for determination by the jury are as follows:

- (a) Negligence
- (b) Proximate cause; and

- (c) Damages;
- (d) Punitive Damages

By the Defendants:

- (a) Negligence
- (b) Comparative Negligence of Plaintiff
- (c) Proximate Cause; and
- (d) Damages

9. Specifications of negligence including applicable code sections are as follows:

On behalf of the Plaintiff:

Duty to Invitees. O.C.G.A. § 51-3-1

Knowledge of Owner's Employee. O.C.G.A. § 10-6-58

Negligent inspection and maintenance

Failure to exercise ordinary care in keeping the subject premises and approaches safe

Failure to warn invitees of a dangerous condition

Failure to remedy a hazardous condition

Negligence Per Se for failure to comply with the International Building Code

Negligence Per Se for failure to comply with Life Safety Code Section A.7.1.7.2

Negligent Construction

On behalf of the Defendants:

- (1) O.C.G.A. § 51-1-2
- (2) O.C.G.A. § 51-3-1
- (3) O.C.G.A. § 51-11-7
- (4) O.C.G.A. § 51-12-33
- (5) *Ridgeway v. Wiseman*, 210 Ga. App. 169,170 (1993); *Whatley v. Henry*, 65 Ga. App. 668,674 (1941)
- (6) *Robinson v. Kroger*, 268 Ga. 735 (1997); *Nosiri v. Helm*, 301 Ga. App. 380 (2009)
- (7) *Lee v. Food Lion*, 243 Ga. App. 819,821 (2000)
- (8) *Ginn v. Grothere*, 220 Ga. App. 661 (1996)
- (9) Defendants Ken Wardle and OTC deny any negligence.

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 those damages are stated as follows:

- (a) For past pain and suffering proximately caused by defendants' negligence;
- (b) For future pain and suffering proximately caused by defendants' negligence;
- (c) For past medical expenses;
- (d) For future medical expenses;
- (c) For punitive damages; and
- (d) For other further relief as this Court deems appropriate.

On behalf of the Defendants:

- (a) Plaintiff is not entitled to recover any amount of damages from Defendants, Ken Wardle and OTC.
- (b) Plaintiff has made no showing which would warrant an award of punitive damages.
O.C.G.A. § 51-12-5.1; *Colonial Pipeline Company v. Brown*, 258 Ga. App. 115 (1988).

12. The case does not involve divorce.

13. The following facts are stipulated:

For the Plaintiff: none

For the Defendant: none

14. The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiff or Defendants. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the 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.

a. By the Plaintiff:

- (1) Plaintiffs' medical records noticed pursuant to O.C.G.A § 24-9-902;

- (2) Plaintiffs' Medical bills;
- (3) Incident Report;
- (4) Photographs and elevation drawings of the Defendants' premises;
- (5) Annuity Mortality Table for 1949, Ultimate;
- (6) Any and all documents or other tangible items listed by the Defendant as exhibits;
- (7) Business records produced by Brinker International;
- (8) Any and all documents not listed herein which were produced during discovery;
- (9) Any and all pleadings and discovery in this case;
- (10) Any and all documents produced by Defendants in response to Plaintiff's Interrogatories and Request for Production of Documents;
- (11) Any and all documents or items listed by any other party; and
- (12) Any and all documents which may be used for impeachment purposes.

b. By Defendant:

1. Any and all exhibits listed by the Plaintiff.
2. Any and all photographs and drawings of the incident scene.
3. Any and all deposition transcripts taken in this case together with any and all attachments and/or exhibits thereto.
4. Any and all medical records, billing records, pharmacy records and diagnostic studies of the Plaintiff from every medical provider mentioned on any party's answers to interrogatories, responses to request for production, records voluntarily produced by any party, depositions, including, but not limited to, the records from:
 - a. Atlas Orthopaedics/Duncan Wells, M.D.
 - b. BenchMark Physical Therapy/Jennifer DeYoung, OT/Paige Hanson, PT/Rose Heacock, OT/Nicole Hutchinson, PT/Elana Larrier, PT/Timothy Lonergan, PT/Scott Lowe, PT/Heather Vanstory, PT

- c. Eye Consultants of Atlanta/Benjamin Baumrind, M.D./Margaret Gribble, M.D./Robert Halpern, M.D.
 - d. Georgia Kidney Associates/Akin Ogundipe, M.D.
 - e. Georgia Pain Management, P.C./James Ellner, M.D.
 - f. Georgia Physical Therapy & Sports Medicine Center/Joy Adams, PT/Chad Luth, MPT/Bonny Spears, PTA
 - g. Marietta Eye Clinic/Lakshmana Kooragayala, M.D.
 - h. Northside ENT/Keith Jackson, M.D.
 - i. Northside Hospital – Cherokee/Glenn Bloom, M.D./Jennifer Case, D.O./Andrew Grucza, M.D./Sandra McCord, PA/Christina Tran, M.D./Josh Uptigrove, M.D./Kimberly Walker, PA
 - j. Northside/Holly Springs Imaging/Heather Whitney, M.D.
 - k. Northside/Woodstock Imaging/Patricia Davis, M.D./Jeremy Royal, M.D./Michael Smith, M.D.
 - l. Northwest Neurology, PC/Robert Bashuk, M.D.
 - m. Northwest Radiology Consultants, P.C./Jerry Domescik, M.D.
 - n. Peachtree Orthopedics/Ashok Satty Reddy, M.D.
 - o. Piedmont Atlanta Hospital
 - p. Pinnacle Orthopaedics/Orrin Swayze, M.D.
 - q. Ridgewalk Chiro & Massage
 - r. Samson Pain Center/James Ellner, M.D.
 - s. SET Comprehensive Care
 - t. Visionworks
5. Any and all medical records and billing records from any medical provider that has examined and/or rendered an opinion, diagnosis, and/or treatment with respect to the Plaintiff.
 6. All discovery responses from the Plaintiff, and the Defendants including answers to interrogatories, responses to requests for production, responses to requests for copies, and responses to requests for admissions.

7. Any and all diagnostic studies, radiology films, radiological studies and/or reports taken of the Plaintiff.
8. Incident report and Plaintiff's statements to Defendants' representatives.
9. Impeachment or rebuttal exhibits as may be necessary.
10. All exhibits listed by the Plaintiff in this matter.
11. Construction documents, site elevations and plat drawings produced during discovery in this matter.
12. Cobb County tax records re the restaurant in question.

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

Plaintiff will submit special authority and/or trial briefs to the court as issues arise.

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

Defendants will submit special authority and/or trial briefs to the court as issues arise.

17. All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18. The testimony of the following persons may be introduced by depositions:

By the Plaintiff:

- (1) Defendant, Ken Wardle
- (2) Jim DiPietro
- (3) Dr. Duncan Wells, M.D.
- (4) Jerry Hopkins
- (4) Any other witness who's deposition has been taken for use at trial and preservation of evidence

By the Defendant:

- (1) Laura Hallisy
- (2) Duncan Wells, M.D.
- (3) Jeffrey H. Gross
- (4) Jerry Hopkins, P.E.

(5) Any other witness who's deposition has been taken for use at trial and preservation of evidence

Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the court prior to trial.

19. The following are lists of witnesses the

a. Plaintiff will have at trial: Laura Hallisy.

b. Plaintiff may have present at trial:

- (a) Peggy Jane Shores
- (b) Jeffrey H. Gross
- (c) George Pearl
- (d) Trenton Egan
- (e) Marty Gable
- (f) James Freeland
- (g) Vernon C. Friesenhahn
- (h) Stacie Parkes
- (i) Patrick Hallisy
- (j) Lynette D'Amico
- (k) Cindy Dvorak
- (l) Tammy Hallisy
- (m) Stephen Hallisy

c. Defendant will have at trial: Ken Wardle and Corporate Representative of Defendant On The Border.

d. Defendant may have present at trial:

- (a) Jerry Hopkins, P.E.
- (b) Barry Jeffries, M.D.
- (c) Jim DiPietro
- (d) Kendra Schropp

20. The form of all possible verdicts to be considered by the jury are as follows:

- (1) We, the jury, find in favor of the Plaintiff and against Defendants in the amount of
or
- (2) We, the jury, find in favor of the Defendants.

By the Defendants: To be submitted at trial.

21.

- a. The possibilities of settling the case are: unknown
- b. The parties do want the case reported.
- c. The cost of take-down will be shared equally by those who choose to participate.
- d. Other matters: None.

Respectfully submitted this _____ day of _____, 2017.

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LAURA HALLISY,)	
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PLAINTIFF,)	
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VS.)	CIVIL ACTION FILE
)	NO. 16EV001279
)	
OTB ACQUISITION, LLC)	
d/b/a ON THE BORDER,)	
and KEN WARDLE)	
)	
DEFENDANTS.)	

ORDER

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the PRE-TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice.

Respectfully submitted this _____ day of _____, 2017.

The Honorable Eric A. Richardson
Judge, State Court of Fulton County