

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

)	
MAX LAGUERRE,)	
)	
Plaintiff,)	CIVIL ACTION FILE
)	NO.: 17A64087
)	
v.)	
)	
PEACHTREE PROPERTY SUB, LLC,)	
d/b/a CROWNE PLAZA HOTEL)	
ATLANTA-MIDTOWN; FO)	
PEACHTREE PROPERTY, LLC, d/b/a)	
CROWNE PLAZA HOTEL ATLANTA-)	
MIDTOWN; AWH PARTNERS, LLC,)	
d/b/a CROWNE PLAZA HOTEL)	
ATLANTA-MIDTOWN; CAJUN)	
CONTRACTORS, INC.,)	
)	
Defendants.)	

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes the Consolidated Pre-Trial Order to be entered in the above-styled case:

1.

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

<u>Plaintiff:</u>	Bethany L. Schneider SCHNEIDER LAW, P.C. 10 Lenox Pointe NE Atlanta, GA 30324 (404) 800-3060 bschneider@schneiderlawpc.com
	Quynh-Huong Nguyen Davis

DAVIS INJURY LAW
1447 Peachtree St. NE
Suite 540
Atlanta, Georgia 30309
(404) 593-2620
betty@bettydavislaw.com

Defendant Cajun:

Tony C. Jones
Todd M. LaDouceur
Casey L. Smartt
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH, PLC
990 Hammond Drive, Suite 210
Atlanta, GA 30328
Telephone: (678) 951-1500
Facsimile: (678) 951-1510
Email: tmlgaservice@gallowayjohnson.com

Defendants Peachtree Property Sub, LLC and AWH Partners, LLC d/b/a Crowne Plaza Hotel Atlanta-Midtown (Hereinafter "Hotel Defendants")

R. David Ware
Pearson Cunningham
HALL BOOTH SMITH, P.C.
191 Peachtree Street, N.E.
Suite 2900
Atlanta, GA 30303-1775
(404) 954-5000

2.

The estimated time required for trial is:

Plaintiff: 5 days.

Defendant Cajun: 2-3 days.

Hotel Defendants: The Hotel Defendants estimate the time required for trial is no more than 3 days.

3.

There are no motions or other matters pending for consideration by the Court except as

follows:

By Plaintiff: Plaintiff files his motions *in limine* herewith and anticipates responding to any motions *in limine* filed by Defendants. Plaintiff also has a pending Motion for Fees against the Defendant Cajun and a pending Motion for Sanctions for Spoliation against the hotel Defendants. Plaintiff will file jury charges per the Court's order. Plaintiff will make deposition designations of the 30(b)(6) depositions and the depositions of witnesses who do not reside within Dekalb County. If agreement cannot be reached regarding the deposition designations, Court involvement will be required.

Defendant Cajun: Defendant Cajun Contractor's Inc. ("Defendant Cajun") anticipates filing, or already have pending:

- Defendant Cajun's Motions *in Limine*
- Defendant Cajun's Brief in Opposition to Plaintiff's Motion for Fees
- Defendant Cajun's Motion to Exclude any Arguments Regarding the Effect of Apportionment on Plaintiffs' Potential Award
- Defendant Cajun's Proposed Jury Charges

Defendant Cajun specifically reserve the right to file additional motions and to do so in a manner as to not further delay trial.

Hotel Defendants:

The Hotel Defendants intend to oppose Plaintiff's motion for spoliation and cross-move against Plaintiff for fees and expenses Plaintiff pursuant to O.C.G.A. § 9-15-14 and on the additional ground that the Motion is untimely pursuant to the Case Management Order and the Standing Order. Defendants have filed and expect to file additional Motions in Limine prior to the Pre-Trial conference. Hotel Defendants object to the jury considering any evidence of punitive

damages. However, in the event such damages are considered, Defendants request that this Court partition the trial of this matter into three (3) distinct phases as follows: liability and compensatory damages; liability for punitive damages; and assessment of punitive damages.

4.

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

Plaintiff:

Max Laguerre

Bethany L. Schneider

Schneider Law, P.C.

Quynh-Huong “Betty” Nguyen Davis

Davis Injury Law

R. David Ware

Russell A. Britt

Hall Booth Smith, P.C.

Todd M. Ladouceur

Tony C. Jones

Casey L. Smartt

Galloway Johnson Tompkins Burr & Smith, PLC

Chubb Group of Insurance Companies

Federal Insurance Company

TBG, LLC

Crowne Plaza Hotel Atlanta-Midtown

Peachtree Property Sub, LLC

FO Peachtree Property, LLC

AWH Partners, LLC

State National Insurance Company

Lucas Commercial Insurance Inc.

Cajun Contractors, Inc.

Hotel Defendants: The Hotel Defendants object to the jury being qualified as to their counsel or their counsel's firm as neither has a financial interest in the outcome. In addition to those set forth above, the jury will be qualified as to relationship with:

Jose Munoz

Rafael Munoz

Former or current employees and/or officers, directors or agents of RYR Construction, LLC

Former or current employees and/or officers, directors or agents of Cajun Contractors, Inc.

Former or current employees and/or officers, directors or agents of Cajun Development, LLC

Former or current employees and/or officers, directors or agents of Cajun Builders, Inc.

Defendants reserve the right to supplement this list of relationships to qualify the jury. Defendants request the right to conduct group and individual *voir dire*.

While the trial court is required, upon request, to qualify potential jurors as to the relationship with any and all insurance companies which have an interest in the outcome of any particular case, no question may be done which will “prejudicially impress upon the jurors the fact that the defendant has liability insurance”. Corley v. Harris, 171 Ga. App 688 (1984). Defendants object to any qualification as to any specific members, policy holders, officers, directors and shareholders of any insurer. Defendants object to any qualification as to any owner or director of Defendants.

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.

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.

By Plaintiff: Plaintiff hereby moves to dismiss without prejudice Cajun Builders, Inc., and Cajun Development, LLC, as he understands that these are now defunct. Plaintiff also moves to dismiss John Does 1-5.

6.

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

In March of 2015, Cajun Contractors – a general contractor – was hired by FO Peachtree Property, LLC on behalf of AWH Partners, LLC, to do some interior remodeling work at the Crowne Plaza Atlanta – Midtown Hotel. Cajun Contractors – based out of Florida – hired subcontractor RYR Construction to perform the manual labor on the job. A few months later, Cajun Contractors won the contract to renovate the pool deck on the 4th floor rooftop pool. Cajun was to demolish the fence and cabanas along the edge of the roof and install a new glass fence. Cajun subcontracted the pool deck renovation work to RYR Construction as well. As part of the contract with the hotel, Cajun agreed to supervise the work to be done on the project and to be liable and responsible for acts of its subcontractors.

Before beginning the work on the pool deck, neither the hotel nor Cajun implemented any safety precautions to protect employees, guests or visitors from hazards from the pool deck project. Neither the hotel nor Cajun had any site-specific safety plans for the renovation of the pool deck

or a public hazard control plan. The hotel and Cajun never had any communications regarding safety on the project and did not have any safety meetings concerning the project. Neither the hotel nor Cajun put up any signs outside of the building warning that there was construction overhead and never investigated to ensure that there were such. Neither the hotel nor Cajun tried to move the taxi stand because of the construction, recognizing the danger of it being located underneath the elevated construction site. Neither the hotel nor Cajun put up netting to protect from falling objects from the construction site, claiming it is the subcontractor's job to provide that. The hotel and Cajun admit that there were no barriers, catch platforms, enclosures or perimeter debris netting to protect the public from hazards from the job site. Prior to commencing the pool deck project, Cajun did not perform any inspection of the work site and never looked on top of the cabana roofs. It would only have taken several minutes and a ladder for Cajun to inspect on top of the pool cabana roofs.

When Cajun hired RYR for the pool deck project, RYR did not have a construction license, but was allowed to do construction work operating under Cajun's license. Cajun never provided any training to RYR.

RYR began its work on the pool deck project at the beginning of June 2015. RYR considered Troy Bossier, the owner of Cajun, to be their boss on the job. Cajun controlled the demolition aspect of the project, and directed RYR in the demolition of the existing pool cabanas. There were never any decisions made by RYR about the pool deck project without talking to Cajun about it.

On July 20, 2015, RYR was working on demolishing the fence along the side of the roof. RYR was loosening the slates of the fence with a bar and hammer, which would cause the fence

to shake. At no time before performing this work on July 20, 2015, did RYR ever inspect the top of the pool cabana roofs, and Cajun never directed RYR to do so.

On that date, at approximately 10:00 A.M., Max Laguerre, a taxi cab driver, was waiting outside of his taxi cab at the taxi stand in front of the hotel. At that moment, an eight-foot metal pipe fell from the pool deck work site and struck Mr. Laguerre in the head. The pipe fell because the demolition work shook the structure and caused the pipe to fall. As a result of the impact, Plaintiff suffered a traumatic brain injury that causes him to have severe headaches multiple times per week, visual disturbance, cognitive impairment, including memory problems, anxiety and depression, all of which significantly on a daily basis in his job, with his family, and carrying out normal activities of daily living.

After filing suit, neuroradiology expert Dr. David Owens conducted a special type of brain scan that detected abnormalities in Mr. Laguerre's brain consistent with trauma to the brain and a traumatic brain injury.

Several years after the incident, safety and health expert and former OSHA compliance safety and health officer Gary Vernon examined the scene and reviewed the materials in the case and concluded that Crowne Plaza and Cajun were guilty of numerous violations of OSHA construction standards, the 2012 International Building Code, and the American National Standards Institute standards, including:

- 29 CFR § 1926.20(b)(1): Failure to initiate or maintain an accident prevention program for the construction worksite or work activities.
- 29 CFR § 1926.20(b)(2): Failure to ensure that there were frequent and regular inspections of the job site, materials and equipment made by a competent person.

- 29 CFR § 1926.21(a): Failure to establish or supervise any programs for the education and training of their employees for the recognition, avoidance and prevention of unsafe conditions.
- 29 CFR § 1926.21(b)(2): Failure to instruct their employees in the recognition and avoidance of unsafe conditions and the regulations applicable to the work environment to control or eliminate any hazards or other exposure to injury or illness.
- 29 CFR § 1926.200: Failure to install danger, instructional or directional signs to identify the potential hazard of falling objects from the pool deck work site.
- 29 CFR § 1926.202: Failure to install and maintain barricades to prevent employees from entering the danger zones and to prevent objects falling from the elevated pool deck work site.
- 29 CFR § 1926.759(a): Failure to provide for falling object protection and failed to secure all construction materials, equipment and tools.
- 29 CFR § 1926.759(b): Failure to protect employees and others below the construction site from falling objects by providing overhead protection.

From Chapter 33, Safeguards from the International Building Code:

- Section 3301.2: Failure to store or place materials so as not to endanger the public, the workers or adjoining property during the construction project.
- Sections 3303.2 and 3306.1: Failure to install pedestrian overhead protection prior to commencing the demolition activities on the elevated pool deck work site.
- Section 3306.1: Failure to put up signs to direct pedestrian traffic away from the area at risk for falling objects below the overhead pool deck work site.

- Section 3306.2: Failure to erect a barrier and covered walkway to protect pedestrians during the demolition activities on the elevated pool deck work site.
- Section 3306.8: Failure to provide pedestrian protection for the entire length of time pedestrians were subject to being endangered.

The 2012 International Building Code is mandatory per the State of Georgia's minimum Standard Construction Codes Effective January 1, 2015, and the City of Atlanta building codes, O.C.G.A. §8-2-20(9)(B), and violation of a statute, ordinance, or mandatory regulation constitutes negligence *per se*. *Combs v. Atlanta Auto Auction, Inc.*, 287 Ga. App. 9, 12 (2007).

From the ANSI standards:

- A10.34-2001 Section 3.1.1: Failure to develop a public hazard control plan to address the hazards that may affect the public.
- A10.34-2001 Section 3.1.2: Failure to coordinate their efforts and actions to protect the public.
- A10.34-2001 Section 3.1.2.1: Failure to ensure that the subcontractor took appropriate actions to protect the public.
- A10.34-2001 Section 3.1.2.2: Failure to ensure that the subcontractor took actions to communicate and train its employees with regards to their safety responsibilities regarding public hazards.
- A10.34-2001 Section 3.1.2.3: Failure to maintain documentation of any efforts to implement a public hazard control plan or to train employees on their safety responsibilities regarding public hazards.
- A10.34-2001 Section 3.2.8: Failure to employ barriers, catch platforms, enclosures, perimeter debris netting, vertical debris netting or other administrative or engineering

controls to prevent construction objects or debris from reaching or creating a hazard to the public.

- A10.34-2001 Section 3.2.8.1: Failure to protect public areas adjacent to the jobsite by sheds, overhangs, perimeter netting systems, platforms, scaffolding or similar structures with sufficient structural strength to reduce hazards to pedestrians from falling objects.
- A10.34-2001 Section 3.2.8.2: Failure to make an effort to prevent construction material, tools, debris, waste, equipment or other items from being propelled or otherwise entering public areas (such as by wind, water or contact with other operations) by ensuring that they are contained, secured, tied-off, removed, braced, enclosed, restrained, etc. in such a way as to prevent such objects from falling or being picked up by the wind.

In short, Defendants knew that the pool deck renovation project posed a threat of harm to employees, hotel guests and members of the public on the sidewalk and street beneath and around the hotel, and were required to put safety precautions in place. Despite this, Defendants warned no one, enacted no safety precautions, and conducted no inspections of the area – essentially, did *nothing* to prevent harm to people like Max Laguerre. Yet, they refuse to accept responsibility for Mr. Laguerre’s injuries and compensate him fairly.

Hotel Defendants:

The Hotel Defendants object to Plaintiff’s “brief and succinct outline of the case and contentions” being read to the jury at any time during the trial of the case. Defendants object to Plaintiff’s “brief and succinct outline of the case and contentions” to the extent same contains reference to purported legal principles which should be provided to the jury by the court at the conclusion of the evidence and not by the Plaintiff.

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

On March 23, 2015, the Peachtree Defendants contracted with the Cajun Contractors, Inc. to perform renovations to the entrance ceiling of the Crowne Plaza Atlanta - Midtown. The project was later expanded to include renovations to the fitness center area and the second-floor pool deck. Cajun Contractor's Inc. subcontracted RYR Construction, LLC to perform the work. As part of the pool deck renovations, RYR demolished the existing pool cabanas that surrounded the pool area. In order to demolish the cabanas, the sub-contractors had to take the cabana roofs down one panel at a time. RYR was responsible for keeping the premises safe while they performed work on the pool deck area.

On July 20, 2015, at approximately 3:30PM, Plaintiff, who is a taxi cab driver, was waiting outside of his taxi cab at a taxi stand in front of the hotel when a metal pipe fell from the roof of the hotel. Cajun Contractors, however, did not have any employees working on the Project at the time of the incident. Instead, it was RYR Construction, LLC, a subcontractor of the Cajun Contractor's, who performed work coinciding with the time and location of the incident. Neither Cajun Contractor's or its employees caused the pipe at issue to fall from the roof and strike Plaintiff.

Hotel Defendants:

On the morning of July 20, 2015, Plaintiff drove his taxi to the Crowne Plaza Hotel in Atlanta and parked it at the taxi stand in front of the hotel. As Plaintiff stood by his vehicle, talking with his friend, he suddenly heard something coming from the top of the hotel, looked up, and got hit by a falling pipe. The area from which this pipe fell was the hotel's pool deck, which was under renovation at the time of the incident. Defendants dispute the characterizations and severity of

Plaintiff's alleged injuries.

Back on March 23, 2015, FO Peachtree and Cajun Contractors entered into a Trade Contract for construction and renovation work at the Crowne Plaza Hotel. FO Peachtree originally hired Cajun Contractors to perform renovations to the 2nd floor ballroom of the hotel. Troy Bossier, as President of Cajun Contractors, signed the Trade Contract. Mr. Bossier had the opportunity to review the Trade Contract and voice concerns about anything therein prior to signing it. The Trade Contract provides, in pertinent part, that:

To the fullest extent permitted by law, Contractor shall defend, indemnify and hold Owner harmless from and against any and all claims, damages losses, liabilities and expenses, including without limitation attorney's fees, arising out of or resulting from the performance of the Work or Contractor's failure to comply with the terms and provisions of the Contract, to the extent caused in whole or in part by any intentional, negligent or otherwise wrongful acts or omissions of Contractor or anyone for whose acts it may be liable including employees, subcontractors and consultants. . . . Contractor shall take all necessary precautions to properly protect the Work and the property and work of Owner or any other persons on the Project Site, from damages caused by the actions of Contractor or any of its Subcontractors. Contractor shall be liable for any loss, or damage to, any such property or any injuries to any persons that are caused by the action or neglect of Contractor or any of its employees, subcontractors, or consultants.

There was a change order to the Trade Contract, which expanded Cajun Contractors' scope of work to include renovations to the hotel's pool deck. The terms and the conditions of the Trade Contract applied to work that was performed pursuant to the change order, including the work on the pool deck. The change order required Cajun Contractors to demolish the cabana areas of the pool deck, build a perimeter knee wall around the outside of the roof line, and install glass panels for a railing. Cajun Contractors did not perform any of this work, but rather subcontracted the work to RYR.

On July 20, 2015, approximately 4 RYR employees were performing work on the pool deck of the hotel. RYR was demolishing “shades,” or what have elsewhere been described as cabanas. It is undisputed that the pipe was caused to fall from the pool deck and onto the Plaintiff below due to the demolition work being performed by RYR on the date of the incident. RYR’s corporate representatives admit as much, testifying that during the course of RYR’s demolition work, the subject pipe fell off of the pool deck and fell “to the earth.” The shaking caused by RYR’s demolition work on one side of the pool deck, caused the pipe to fall from the other side of the pool deck, since the “shades” that were being demolished were all connected.

It is similarly undisputed that the demolition of the cabanas – or “shades” – was being performed by RYR at the time of the accident pursuant to the change order and Trade Contract between Cajun Contractors and FO Peachtree.

Finally, this Court has already found in ruling on the Hotel Defendants’ and Cajun Defendants’ motions for summary judgment that “there is no dispute that the cause-in-fact of Plaintiff’s injuries was the eight-foot metal pipe that fell from the pool deck . . . [and that] there is no dispute that the pipe fell because of RYR’s demolition work shook the structure where the pipe was laying.” (Order at p. 6).

8.

The issues for determination by the jury are as follows:

By Plaintiff:

The negligence of Defendants, the amount of damages to be awarded to Plaintiff, attorneys’ fees, and punitive damages.

Plaintiff objects to the jury considering apportionment to any non-party. The Hotel Defendants and Defendant Cajun are jointly and severally liable. The Hotel Defendants have a

non-delegable duty, which is an exception to apportionment. Further, under a premises liability theory, Defendant Cajun would also have a non-delegable duty as an operator of the premises. Plaintiff also objects Defendant Cajun apportioning to RYR under respondeat superior/vicarious liability, as well as under the joint enterprise/common plan exception to apportionment. Plaintiff will file additional briefing on this issue prior to trial.

By Defendant Cajun:

Defendant Cajun demands a trial by jury on all issues so triable. The jury will decide all issues of fact. Defendant Cajun requests that the charge to the jury be written. Defendant Cajun will prepare proposed charges for consideration by the Court. Defendant Cajun contends that the issues for determination by a jury include:

- Whether Defendant Cajun owed a legal duty to Plaintiff.
- Whether Defendant Cajun breached any duty to Plaintiff.
- Whether Defendant Cajun possessed superior knowledge of an alleged hazard.
- Whether Plaintiff's alleged damages were the fault of non-party RYR Construction.
- Whether Plaintiff has proven the essential elements of his negligence claim.
- Whether Plaintiff's damages are reasonable.
- Whether Defendant Cajun is liable for any of Plaintiff's damages.
- Whether Defendant Cajun is liable to Plaintiff for any interest.
- Whether Plaintiff is entitled to recover punitive damages.
- Whether Plaintiff is entitled to recover attorneys' fees.
- Whether Defendant Cajun is entitled to recover attorneys' fees.
- Whether the following entities are liable for Plaintiff's general and special damages:
Peachtree Property Sub, LLC, d/b/a Crowne Plaza Hotel Atlanta-Midtown; FO Peachtree

Property, LLC, d/b/a Crowne Plaza Hotel Atlanta-Midtown; AWH Partners, LLC, d/b/a Crowne Plaza Hotel Atlanta-Midtown; Cajun Contractors, Inc., RYR Construction, LLC? If YES, what percentage of liability does each such entity have for Plaintiff's general and special damages?

By The Hotel Defendants:

The apportionment of negligence, if any, amongst the defendants and non-party RYR Construction in light of the Court's finding that RYR's actions were the cause in fact of Plaintiff's injuries and/or the Hotel Defendants Notice of Non Party Fault as to RYR; the amount of damages to be awarded to Plaintiff; attorneys' fees owed to the Hotel Defendants from Cajun the Cajun Defendants under the Trade Contract. The Hotel Defendants contend Plaintiff has failed to illicit any evidence as to punitive damages and such damages may not be sought. Additionally, negligence (duty, breach, proximate cause, and damages) and whether to award attorneys' fees.

The Hotel Defendants reserve their right to supplement this statement of the issues up to the date of trial.

9.

Specifications of negligence including applicable code sections are as follows:

By Plaintiff: Defendants were negligent for their failure to keep the premises safe as is required by O.C.G.A. § 51-3-1. Defendants were also negligent in failing to enact any safety precautions to warn of or protect invitees and licensees from a known hazardous condition existing on their premises, thereby creating an unreasonable risk of injury. Defendants were negligent and said negligence proximately caused Plaintiff's injuries in the following ways:

(a) Violation of O.C.G.A. § 51-3-1 by failing to use ordinary care to keep the premises and approaches safe;

(b) Violations of O.C.G.A. §8-2-20(9)(B), as incorporated by the State of Georgia's minimum Standard Construction Codes Effective January 1, 2015, and the City of Atlanta building codes;

(c) Violation of other state, county, municipal, and local building and safety codes, as set forth above;

(d) Failing to warn, post warning signs or warning markings regarding dangerous conditions, specifically overhead construction sites, on the premises;

(e) Failing to inspect, examine, monitor, maintain, repair, abate, and correct some or all of the defective conditions, specifically the overhead construction site, on the Premises;

(f) Failing to properly train and supervise their employees in regard to the maintaining the Premises in safe condition for its invitees and/or licensees;

(g) Negligently retaining, entrusting, hiring, training and supervising said employees, and agents regarding preventing harm to its licensees and invitees;

(h) Negligently failing to maintain a policy, procedure, or system of inspecting, investigating, reporting, and warning invitees and licensees about the negligently maintained property and its dangerous conditions;

(i) Negligently representing to its invitees and licensees that the property at issue was properly maintained;

(j) Under the theory of *res ipsa loquitor*;

(k) Negligently inflicting emotional distress upon Plaintiff;

(l) In violating industry standards of the construction industry;

(m) All negligence referenced in Plaintiff's 2nd Amended Complaint; and,

(n) Any claim permitted under Georgia law.

All Defendants are jointly and severally liable for the injuries and all damages recoverable under Georgia law as they were engaged in a joint enterprise. All Defendants are vicariously liable for any negligent conduct of their agents under the theories of *respondeat superior*, vicarious liability and agency principles and any other Defendant that caused injuries and damages to Plaintiff recoverable under Georgia law.

As Defendants have been stubbornly litigious, Plaintiff is entitled to reasonable attorneys' fees and expense of this litigation pursuant to O.C.G.A. § 13-6-11.

On July 20, 2015, Defendants showed willful misconduct, malice, wantonness, oppression, recklessness and an entire want of care, which would raise the presumption of conscious indifference to consequences. As a result, punitive damages should be assessed against Defendants in such sum as the jury determines to be sufficient to punish, penalize, or deter Defendants.

Lastly, and depending upon the conduct at trial, Plaintiff may bring a claim for litigation expenses under O.C.G.A. 9-11-68(e).

Plaintiff will file additional briefing prior to trial to address Defendants' objections and contentions below.

By Defendant Cajun:

As the Defendant Cajun neither owned or occupied the premises, it is not liable to Plaintiff for any damages as the owner and occupier Peachtree Defendants were responsible for keeping the premises safe under O.C.G.A. § 51-3-1. Further, Plaintiff cannot show any evidence that Defendant Cajun possessed superior knowledge of an alleged hazard as required by *Robinson v. Kroger Co.*, 268 Ga. 735, 740 (1997) and its progeny. Lastly, Plaintiff cannot show that Defendant Cajun proximately caused his injuries and damages.

By Hotel Defendants:

Objections: The Hotel Defendants object to the applicability of the doctrine of *res ipsa loquitor*. The Hotel Defendants object to the reliance upon or applicability of any code provision, industry regulation, statute, ordinance, etc. not previously identified by Plaintiff in his discovery responses. In Plaintiff's response to Interrogatory 9 from the Hotel Defendants, in which he was asked to identify all such statutes, ordinances, laws, rules, regulations, etc. Plaintiff referred the Hotel Defendants to his Complaint. Plaintiff's Second Amended Complaint cites to O.C.G.A. § 51-3-1 *alone*. Plaintiff failed to plead or allege the following:

(b) Violations of O.C.G.A. §8-2-20(9)(B), as incorporated by the State of Georgia's minimum Standard Construction Codes Effective January 1, 2015, and the City of Atlanta building codes;

(c) Violation of other state, county, municipal, and local building and safety codes, as set forth above;

To the extent that "OSHA construction standards, the 2012 International Building Code, and the American National Standards Institute standards" constitute those provisions "as set forth above" in Plaintiff's contentions of the case, none of those were alleged. Furthermore, OSHA's regulatory scheme does not apply to this action because this matter does not involve workplace safety.

The Hotel Defendants object to any specifications of negligence *per se*. Any claims premised on O.C.G.A. §51-3-1 cannot be the basis for claims of negligence *per se* as this code section does not require an owner or occupier to act or to refrain from acting in any specific way. Motes v. Six S Company, 186 Ga. App 67, 68 366, SE 2d 358, 360 (1988) "So long as these duties remain undefined or defined only in abstract general terms, a breach is not properly denominated negligence *per se*...". Moreover, O.C.G.A. §51-3-1 is a codification of the common law and the

violation of a statute that merely codifies a common law rule does not constitute negligence per se. *Burns v. Colonial Stores, Inc.*, 90 Ga. App 492, 494-195, 83 SE 2d 259, 262 (1954).

The Hotel Defendants object to any claims involving the alleged negligent performance of a voluntary duty as no duty was assumed under the facts of this case. Defendants filed a Notice to Seek Apportionment Against Non-Parties pursuant to O.C.G.A. §51-12-33 in which they identified RYR Construction, LLC as parties against whom they intend to apportion fault. Fault is to be apportioned in accordance with O.C.G.A. §51-12-33.

The Hotel Defendants object to any charge or application of joint and several liability or joint enterprise theory. Plaintiff has never pled such a theory and, in any event, it has been abolished in the State of Georgia absent the narrow circumstance of *concerted* action. See *FDIC v. R. Charles Loudermilk, Sr. et al.*, Case No. S1Q1233 (March 13, 2019) (Georgia Sup. Ct.). The actions of the defendants in this matter are in fact divisible, buttressed by this Court’s finding that RYR Construction’s actions were the cause in fact of Plaintiff’s injuries.

10.

If the case is based on contract, either oral or written, the terms of the contract are as follows:

Cajun Defendant:

The Peachtree Defendants – specifically FO Peachtree Property, LLC – contracted with Defendant Cajun to perform renovations on the entrance ceiling, fitness center, and pool deck as part of the contract signed on March 23, 2015. With regard to defense and indemnity, the contract provides that Defendant Cajun shall indemnify the Peachtree Defendants only from damages “arising out of or resulting from” the performance of the work or failure to comply with the terms of the contract. As it stands, there is no testimony or evidence in the record whatsoever attributing

the falling of the pipe to work being performed by Defendant Cajun.

The Hotel Defendants:

This is a tort case. However, Defendants contend that pursuant to the terms of the Trade Contract between the Hotel Defendants and Cajun Contractors, Cajun must indemnify and hold harmless the Hotel Defendants against any claims of negligence arising from the subject matter of the trade contract, including the negligence acts of its subcontractor(s).

11.

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

By Plaintiff:

Plaintiff is entitled to recover all damages allowed by law. This would include damages for past, present, and future conscious pain and suffering, as well as all past, present and future compensatory, special, general, economic, and consequential damages from Defendants in accordance with the enlightened conscience of an impartial jury, including, but not limited to personal injuries, disability, mental anguish, loss of the capacity for the enjoyment of life, a diminished capacity to labor, incidental expenses, past, present, and future medical expenses, and permanent injuries.

Punitive damages should be assessed against Defendants in such sum as the jury determines to be sufficient to punish, penalize, or deter Defendants.

As Defendants have been stubbornly litigious, Plaintiff is entitled to reasonable attorneys' fees and expense of this litigation pursuant to O.C.G.A. § 13-6-11.

Lastly, and depending upon the conduct at trial, Plaintiff may bring a claim for litigation expenses under O.C.G.A. 9-11-68(e).

By Defendant Cajun:

Plaintiff's Complaint requests damages for past, present, and future medical expenses, and pain and suffering to be determined by the enlightened conscience of a fair and impartial jury.

By The Hotel Defendants

The Hotel Defendants contend that Plaintiff is not entitled to any damages from these Defendants. Defendants object to the inclusion of any punitive damages or claim for attorney fees in this case as the circumstances of the case fail to meet the requirements for punitive damages under O.C.G.A. §51-12-5.1, or recovery of attorney fees pursuant to O.C.G.A. §13-6-11. In the event the court decides to permit evidence related to punitive damages, the Hotel Defendants request that this case be bifurcated.

12.

The following facts are stipulated: None at this time.

13.

The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiff or Defendant. 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 Plaintiff:

- 2015 NVS Life Table published by the National Center for Health Statistics;
- 1949 Life Table;
- 911 CAD Reports from Atlanta Police Department;
- 911 Audio Calls from Atlanta Police Department;

- Certified Incident Report from Atlanta Police Department;
- Crowne Plaza Witness Statements;
- Photographs of Plaintiff's Injuries at the Scene of the Incident;
- Photograph of the pipe that fell on Plaintiff;
- Google Maps Photographs of the Hotel and surrounding areas;
- Plaintiff's U.S. Taxicar Trip Sheets;
- Trade Contract between Defendants;
- American Health Imaging Medical Records;
- Plaintiff's medical bills (all insurance information, credits, adjustments, and balances to be redacted) along with a one-page medical bill summary;
- Medical exhibits blow-up boards and other demonstratives;
- Attorney employment contract and litigation expenses printout;
- Plaintiff's medical records, including but not limited to:
 - American Health Imaging Medical Records
 - Grady EMS Service Medical Records
 - Spivey Station Surgery Center Medical Records
 - Southern Regional Medical Center Medical Records
 - Atlanta Medical Center Medical Records
 - Kunkes Ear Nose & Throat Medical Records
 - Clayton Healthcare Medical Records
 - Restoration Neurology Medical Records
 - Riverdale Anesthesia Associates PC Medical Records
 - South Fulton Emergency Physicians Medical Records
- Photographs and videos of Plaintiff with family members and friends;
- OSHA standards, as specified herein and attached;
- 2012 International Building Code, as specified herein and attached;
- ANSI standards, as specified herein and attached;

- Each exhibit to any deposition taken in this matter;
- Any and all documents identified and/or exchanged by the parties in discovery whether in formal pleading or informal supplement;
- Any and all documents listed in Defendant's portion of the Pre-Trial Order;
- All discovery requests, responses, and supplements, including supplements by letter;
- Any and all pleadings, including blow-ups;
- Demonstrative aids, exhibits, and blow-ups;
- Any documents, reports or items generated by Gary Vernon;
- Any documents, reports, or items generated by David S. Owens, M.D.; and,
- Any evidence necessary for impeachment.

These are the documents known to Plaintiff. As Plaintiff's counsel finishes the trial exhibit list that will be used at trial, they will discuss the same with defense counsel. Plaintiff further states that all medical records and bills should be redacted by both parties to remove any references to insurance companies or collateral sources.

b. By Defendant:

The Hotel Defendants

- Those items listed by Plaintiff, and to the extent not included, the following:
- Trade Contract between the Hotel Defendants and Cajun Defendants
- Manager on Duty Manual
- Safety and Loss Prevention Management Program
- Construction Plans, Specifications and Drawings
- Construction Permits
- Plaintiff's Responses to the Hotel Defendants Interrogatories and all supplements thereto

- Plaintiff's Responses to the Hotel Defendants Requests for Production of Documents, inclusive of attached documents, and all supplements thereto.
- Plaintiff's Responses to the Cajun Defendants Interrogatories and all supplements thereto
- Plaintiff's Responses to the Cajun Defendants Requests for Production of Documents, inclusive of attached documents, and all supplements thereto.
- Affidavit of Gary Vernon, dated January 22, 2019
- Statement of attorneys' fees and costs incurred by the Hotel Defendants through the conclusion of trial.

Objections

The Hotel Defendants object to the introduction of photographs and videos of Plaintiff with family members and friends; OSHA standards, as specified herein and attached; 2012 International Building Code, as specified herein and attached; ANSI standards, as specified herein and attached. None of these documents were exchanged during the discovery period despite requests for same.

c. **By Defendant Cajun:** SEE ATTACHED EXHIBIT "CAJUN 1."

14.

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

OSHA, the 2012 International Building Code, and the ANSI standards. Otherwise, Plaintiff may file motions *in limine* and other motions/trial briefs prior to trial.

The Hotel Defendants' object to the introduction of any special authorities not disclosed during the discovery period.

15.

Special authorities relied upon by Defendant Cajun relating to peculiar evidentiary or other

legal questions are as follows:

None at this time; however, Defendant Cajun reserves the right to present special authorities to support any peculiar evidentiary or legal questions upon filing of any motion in *limine* or trial brief.

The Hotel Defendants will file motions *in limine* per the Court's Standing Order.

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

O.C.G.A. § 13-2-3

Caswell v. Anderson, 241 Ga. App. 703 (Ct. App. 2000)

JNJ Found. Specialists, Inc. v. D. R. Horton Inc., 311 Ga. App. 269, 270 (Ga. Ct. App. 2011)

BBL-McCarthy, LLC v. Baldwin Paving Co., 285 Ga. App. 494, 498 (2007).

Viad Corp v. U.S. Steel Corp., 343 Ga. App. 609, 615 (Ct. App. 2017).

ESI, Inc. of Tennessee v. West Point Stevens, Inc., 254 Ga. App. 332 (Ct. App. 2002)

Card v. Dublin Constr. Co., 337 Ga. App. 804, 852, 788 S.E.2d 845 (2016)

Norman v. Jones Lang LaSalle Americas, Inc., 277 Ga. App. 621, 623-24, 627 S.E.2d 382, 385 (2006).

Additionally, any authority cited by Defendants in (1) their motions in limine, (2) their responses to Plaintiffs' motions in limine, (3) any trial briefs, and (4) requested jury instructions. Defendants reserve the right to submit special authority should the evidence at trial render it necessary.

16.

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

The testimony of the following persons may be introduced by deposition:

By Plaintiff:

1. 30(b)(6) deposition of Cajun Contractor's, Inc. (Troy Bossier)
2. 30(b)(6) deposition of the Hotel Defendants (Patrick Palmer)
3. 30(b)(6) deposition of RYR Construction & Renovation (Jose Munoz & Rafael Munoz)
4. Rafael Munoz
5. Troy Bossier
6. Angela Ashley, M.D.

By Defendant Cajun:

1. 30(b)(6) deposition of Cajun Contractor's, Inc. (Troy Bossier)
2. 30(b)(6) deposition of the Hotel Defendants (Patrick Palmer)
3. 30(b)(6) deposition of RYR Construction & Renovation (Jose Munoz & Rafael Munoz)
4. Rafael Munoz
5. Troy Bossier
6. Angela Ashley, M.D.

By The Hotel Defendants:

- Troy Bossier;
- Patrick Palmer;
- Max Laguerre;
- Jose Munoz; and
- Rafael Munoz

The Hotel Defendants object to the introduction of deposition testimony by Dr. Ashely

insofar as the Hotel Defendants asked Plaintiff's counsel for her availability to take Dr. Ashley's deposition and she refused to provide any, citing the conclusion of the discovery period. Further, Dr. Ashley has not been deposed to date.

BY PLAINTIFF: Plaintiff refused to provide a date for Dr. Ashley's discovery deposition that was first requested last week because the discovery period had expired.

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

18.

The following are lists of witnesses the:

a. Plaintiff will have present at trial:

1. Max Laguerre

b. Plaintiff may have present at trial:

1. Angela Ashley, M.D.

2. David Owens, M.D.

3. Gary Vernon

4. Yarline Laguerre

5. Maxine Laguerre

6. Max Hardy Laguerre

7. Gardy Laguerre

8. Jean Benoit

9. Victor Diaz

10. Willie Crawford

11. Nasir Ahmed

12. Officer D. Somers

13. Bruno Edlin
14. Bernard Rosevelt
15. Parnel Noel
16. Frenel Castor
17. Natalie Laguerre
18. Any other person or treating physician disclosed during discovery in this case

c. Defendant Cajun will have present at trial:

1. None.

d. Defendant Cajun may have present at trial:

1. Troy Bossier
2. Max Laguerre
3. Rafael Munoz
4. Jose Munoz
5. Victor Diaz
6. Natalie Laguerre
7. Any witness listed by Plaintiff
8. Any witness listed by the Peachtree Defendants
9. Any witness needed to authenticate records
10. Any witness needed for impeachment purposes

The Hotel Defendants' Objection: Plaintiff failed to identify the individuals listed in Numbers 4-7 and 13-17 of his designations in any of his discovery responses or supplements thereto despite requests for witness information and the discovery period has ended. The Hotel

Defendants object to their being allowed to testify at trial.

e. **Defendant will have present at trial:**

The Hotel Defendants: None.

f. Defendant may have present at trial:

The Hotel Defendants

- Patrick Palmer
- The witnesses listed by Plaintiff in the Pre-Trial Order other than those objected to by the Hotel Defendants.
- The witnesses listed by the Cajun Defendants in the Pre-Trial Order; and
- Anyone identified in discovery or deposition.
- Rebuttal Witnesses

19.

The form of all possible verdicts to be considered by the jury will be submitted at the time of trial consistent with the Court's instructions.

BY PLAINTIFF: Plaintiff objects to the Hotel Defendants' verdict form.

The Hotel Defendants

Phase I

Question 1: We the jury find in favor of:

- a. _____ Plaintiff
- b. _____ Defendants Peachtree Property Sub, LLC and AWH Partners, LLC d/b/a Crowne Plaza Hotel Atlanta-Midtown

If you choose option a, CONTINUE

If you choose option b, STOP. Do not answer any other questions. Have your foreperson date and sign the verdict form and return it to the courtroom.

Question 2: We award damages to the Plaintiff Max Laguerre in the amount of \$_____.

Question 3: We find the percentages of fault as follows:

_____ % Peachtree Property Sub, LLC and AWH Partners, LLC d/b/a
Crowne Plaza Hotel Atlanta-Midtown

_____ % Cajun Contractors, Inc. and/or Cajun Builders, Inc. and/or
Cajun Development, LLC

_____ % RYR Construction, LLC

NOTE: Place a number between 0 % - 100 % to each of the above blanks. If you add the percentages together the total must equal 100%.

Phase II.

Question 4: If you find that Defendants Peachtree Property Sub, LLC and AWH Partners, LLC d/b/a Crowne Plaza Hotel Atlanta-Midtown liable, do you find by the preponderance of the evidence that these Defendants acted in bad faith, were stubbornly litigious, or caused the Plaintiff unnecessary trouble or expense, making an award of attorney fees appropriate?

_____ Yes

_____ No

Question 5: If you found these Defendants liable, do you find by clear and convincing evidence that these Defendants' conduct showed that entire want of care which raises the presumption of conscious indifference to consequences such that punitive damages should be imposed to punish or deter them from repeating such wrongful conduct?

_____ Yes

_____ No

Phase III:

Question 6: If you found these Defendants acted in bad faith, were stubbornly litigious, or caused the Plaintiff unnecessary trouble or expense, what amount, if any, do you find by a preponderance of the evidence to be the total and full amount of attorney fees to be awarded to Plaintiff against these Defendants?

\$ _____

Question 7: What amount, if any, do you find by clear and convincing evidence to be the

total amount of punitive damages that should be imposed upon these Defendants to defer future wrongful conduct?

\$ _____

This --- day of --- 2019.

FOREPERSON

20.

- 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 1/2 by Plaintiff and 1/2 by Defendants**
- D. Other matters: **None at this time.**

IT IS HEREBY ORDERED that the foregoing, including the attachments thereto, constitute the Pre-Trial Order in the above case and supersede the pleadings which may not be further amended except by order of the Court to prevent manifest injustice.

This 8th day of May, 2019.



THE HONORABLE DAX LOPEZ
Judge, State Court of Dekalb County
State of Georgia

STATE COURT OF
DEKALB COUNTY, GA.
5/8/2019 8:58 AM
E-FILED
BY: Kelly Flack

**EXHIBIT “CAJUN 1”
DEFENDANT CAJUN’S EXHIBIT LIST**

1. All pleadings of record in this current matter.
2. AWH Partners’ Responses to Plaintiff’s First Request for Admissions 06/08/17
3. Peachtree Property’s Responses to Plaintiff’s First Request for Admissions 06/08/17
4. Plaintiff’s Responses to Defendant Cajun’s First Interrogatories and Request for Production of Documents to Plaintiff 07/11/17
5. Crown Plaza’s Response to Plaintiff’s First Interrogatories 06/21/17
6. Crown Plaza’s Response to Plaintiff’s First Request for Production 06/21/17
7. Plaintiff’s Supplemental Responses to Peachtree Property’s Interrogatories and Request for Production of Documents 08/17/17
8. Plaintiff’s Supplemental Responses to Defendant Cajun’s Interrogatories and Request for Production 08/17/17
9. Defendant Cajun’s Responses to Plaintiff’s First Set of Interrogatories to Defendant 08/21/17
10. Defendant Cajun’s Responses to Plaintiff’s First Request for Production 08/21/17
11. Crown Plaza’s Response to Plaintiff’s Second Request for Admission, Interrogatories and Request for Production of Documents 09/14/17
12. Plaintiff’s Responses to Peachtree Property’s Second Set of Interrogatories to Plaintiff 12/27/17
13. Defendant Cajun’s Responses to Defendant Peachtree Property Request to Produce 03/02/18
14. Medical Records from American Health Imaging Grady EMS Service Medical Records
15. Medical Records from Spivey Station Surgery Center
16. Medical Records from Southern Regional Medical Center

17. Medical Records from Atlanta Medical Center
18. Medical Records from Kunkes Ear Nose & Throat
19. Medical Records from Clayton Healthcare
20. Medical Records from Restoration Neurology
21. Medical Records from Riverdale Anesthesia Associates PC
22. Medical Records from South Fulton Emergency Physicians
23. Trade Contract between FO Peachtree Property, LLC and Cajun Contractors, Inc. 03/23/15
24. Photos of the Crowne Plaza Atlanta – Midtown pool deck
25. Email exchanges between Troy Bossier and RYR Construction
26. Each exhibit to any deposition taken in this matter;
27. Any and all documents identified and/or exchanged by the parties in discovery whether in formal pleading or informal supplement;
28. Any and all documents listed in Plaintiff's portion of the Pre-Trial Order;
29. Demonstrative aids, exhibits, and blow-ups;
30. Any evidence necessary for impeachment.