

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

MERILYN J. MARTIN

PLAINTIFF

VS.

CIVIL ACTION NO. 25CI1:20-CV-00080-AHW

ST. DOMINIC-JACKSON MEMORIAL HOSPITAL

DEFENDANT

PRETRIAL ORDER

1. The Parties have conferred and agree upon the following terms of this Pretrial Order.
2. Counsel for the parties is as follows:
 - a. For the Plaintiff:

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Marcus Amir Williams, Esq.
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 - b. For the Defendant:

John E. Wade, Jr., Esq.
Alston F. Ludwig, Esq.
Brunini, Grantham, Grower & Hewes, PLLC
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3. The pleadings are amended to conform to this pretrial order.

4. The following claims (including claims stated in the complaint, counterclaims, crossclaims, third-party claims, etc.) have been filed:
 - A. By Plaintiff: Negligence, premises liability, and negligent training and supervision, as asserted in Plaintiff's Complaint [Doc #2]
 - B. Defendant contends that on October 24, 2018, Ms. Martin received treatment for a fractured rib at St. Dominic's emergency department as a result of a motor-vehicle accident she had been in earlier that day. Upon discharge from the emergency department, Ms. Martin was wheeled across the parking lot by Elizabeth Smith to a parked car driven by her son, Forrest Brooks Hall. While Ms. Martin was being wheeled to her son's car, Mr. Hall can be seen moving his car from a designated parking area where no unreasonably dangerous condition existed to an area that Plaintiff contends was unreasonably dangerous. Upon reaching her son's car, Ms. Martin stood-up from her wheel chair and opened the rear passenger-side door into herself causing her to have to step around the opened door in order to enter the vehicle. As she navigated the opened door, Ms. Martin fell landing next to a storm-water drain in the parking lot and fractured her femur and a lacerated her elbow.

At the time of her fall, three other witnesses were present in the parking lot: Forrest Brooks Hall, Ms. Martin's son; Elizabeth Smith, Mr. Hall's ex-girlfriend; and Percy Johnson, a security officer for St. Dominic. Neither Ms. Martin nor the three other witnesses present in emergency department parking lot saw what, if anything, caused her to fall. Ms. Martin speculates that a number of different conditions could have caused her to fall but offers no evidence that any one of those conditions actually caused her to fall.

During discovery, Ms. Martin produced several photographs of St. Dominic's parking lot. The photographs were taken by attorney Johnny Givens on October 30, 2018—approximately one week after Ms. Martin's fall. Forrest Brooks Hall, Ms. Martin's son, and Elizabeth Smith, Mr. Hall's ex-girlfriend, were both present when Ms. Martin fell and confirmed that the photographs accurately depict the area of the parking where Ms. Martin fell at the time of her fall. The photographs show the presence of a storm-water drain, with sloping to accommodate water drainage, along with a slight depression in the asphalt and some minor cracks. As reflected in the photographs, the area in the parking lot where Ms. Martin fell contained no unreasonably dangerous conditions but are instead conditions patients expect to encounter on a business premises.

Plaintiff contends that on October 24, 2018, she tripped and fell due to the presence of unreasonably dangerous conditions; a deep jagged pothole littered with broken asphalt and asphalt in debris in the St. Dominic emergency room parking lot. More specifically, her fall was caused by

Defendant's failure to repair a longstanding defective condition in its asphalt parking lot that developed due to the passage of time and water run-off into an adjacent flood drain grate.

The pothole that caused her fall was not readily discernible since it was unexpectedly encountered in dimly lit conditions at night and it blended into the surrounding pavement. It was further obscured by the parked vehicle that she attempted to enter. As Martin prepared to enter the front passenger side of the vehicle, she unknowingly stepped in the pothole while by her perception, she avoided stepping into a larger pothole. In sum, Martin found herself in a hazardous situation posed by what appeared to be two potholes between herself and the passenger door of the vehicle. In actuality, the hazardous condition was a large expansive depression adjacent to a drain grate covered by the parked vehicle. Based upon the fact that the pothole/depression was obscured by the effects of darkness and the vehicle, Martin had no way to assess the extent of the hazardous condition.

St. Dominic security officers did not act with reasonable care in identifying and reporting hazardous conditions before the incident due to inadequate training and supervision, nor did they execute their duties in the subject parking lot immediately before or post incident in accordance with Defendant's Security Officer Handbook.

No other persons' negligent conduct caused or contributed to Plaintiff's fall and injuries.

No other condition on the premises other than the subject pothole caused or contributed to Plaintiff's fall and injuries.

5. The following motions remain pending: None.

6. a. The following facts are established by the pleadings, by stipulation, or by admission:
 - i. Plaintiff, Marilyn Martin, was an invitee at St. Dominic-Jackson Memorial Hospital on October 24, 2018, at the time and place of the incident.
 - ii. The Defendant, St. Dominic-Jackson Memorial Hospital, owns, operates, and manages the premises where the subject incident occurred.
 - iii. Marilyn Martin sustained a fall on the Defendant's premises on October 24, 2018.

b. The contested issues of fact and/or law are as follows:

By Plaintiff:

- i. Whether the Defendant, negligently failed to exercise reasonable care to maintain its premises in a reasonably safe condition that caused or contributed to Plaintiff's fall
- ii. Whether the Defendant negligently failed to repair a hazardous condition on its premises that caused or contributed to Plaintiff's fall
- iii. Whether Defendant adequately warned Martin of a dangerous condition that caused her fall.
- iv. Whether the Defendant exercised reasonable care to inspect, identify and remediate a hazardous condition on the premises that caused Martin's fall.
- v. Whether dimly lit conditions on the premises caused the alleged defective condition to be concealed from Plaintiff's view resulting in a hazardous condition that caused her fall.
- vi. Whether Defendant was negligent in the training and/or supervision of its employees with respect to the exercise of reasonable care to maintain its premises in a reasonably safe condition.

By Defendant:

- i. Whether Plaintiff can prove that an unreasonably dangerous condition in St. Dominic's parking lot caused Plaintiff to fall;
- ii. Whether Plaintiff by her own acts or omissions caused or contributed to her fall in St. Dominic's parking lot;
- iii. Whether Forest Brooks Hall, by moving his car from a designated parking area where no unreasonably dangerous condition existed to an area that Plaintiff contends was unreasonably dangerous caused or contributed to Plaintiff's fall;
- iv. Whether and to what extent Plaintiff's alleged injuries are attributable to her fall in St. Dominic's parking lot;
- v. Whether the Plaintiff has met her burden of proof on the elements necessary to sustain a claim for negligence against Defendant; and
- vi. Whether the Plaintiff has satisfied her burden of proof by presenting sufficient evidence for an award of compensatory damages.

7. The following is a list and brief description of all exhibits (except exhibits to be used for impeachment purposes only) which may offered in evidence by the parties. **Each exhibit has been pre-marked for identification, redacted (as needed), and provided to counsel.**

a. To be offered by the Plaintiff:

- P-1 Photos of the subject pothole(s) as they existed at the time of the incident
- P-2 Photos of the subject pothole after repaving
- P-3 Photos of the pothole authenticated by Elizabeth Smith, Brooks Hall, and Johnny Givens
- P-4 Invoices from Alman Bros. Construction
- P-5 Invoices from Adcamp, Inc.
- P-6 Letter from Alman Bros Construction to Yancy B. Burns
- P-7 St. Dominic Investigative reports
- P-8 Video footage of the subject fall
- P-9 St. Dominic Hospital Records¹
- P-10 St. Dominic Hospital Bills
- P-11 Wisteria Gardens Records
- P-12 Wisteria Gardens Bills
- P-13 Merit Health Madison Records
- P-14 Merit Health Madison Bills
- P-15 Baptist Hospital Records
- P-16 Baptist Hospital Bills
- P-17 Woodland's Nursing Records and Bills

¹ Plaintiff intends to offer St. Dominic medical records dated 10/24/18 reflecting admission, treatment and discharge for injuries sustained in a motor vehicle collision and subsequent treatment for injuries after the fall.

- P-18 Adam Smitherman, M.D., Records
- P-19 Adam Smitherman, M.D., Records
- P-20 MEA Records
- P-21 MEA Bills
- P-22 Madison Kindred Home Health Records
- P-23 Madison Kindred Home Health Bills
- P-24 St. Dominic Security Officer's Handbook excerpts
- P-25 Curriculum Vitae of Mark Williams

b. To be offered by Defendant:

- D-1 Medical Records from October 24, 2018 treatment at St. Dominic-Jackson Memorial Hospital (PLF St. Dominic 000004-000115)
 - D-2 Medical Records from October 24-30, 2018 Admission to St. Dominic (MMartin 000005-000091)
 - D-3-6 Four Photos of the Emergency Department Parking Lot (Photograph000001-000004)
 - D-7 All Security Video Footage Produced by Defendant
- Certain Exhibits to Dr. Smitherman's Deposition:
- D-8 St. Dominic Discharge Summary (MMartin 000005)
 - D-9 St. Dominic History and Physical (MMartin 0000037)
 - D-10 Dr. Smitherman Note Dated 5/28/19
 - D-11 Dr. Smitherman Note Dated 12/13/21
 - D-12 MRI of the Lumbar Spine Dated 12/20/21
 - D-13 MRI of the Lumbar Spine Dated 1/31/22
 - D-14-15 Two Still shots of Parking Lot From Security Video
 - D-16 Photo of Sign in St. Dominic Parking Lot

D-17 Curriculum Vitae of John McKee

The authenticity and admissibility in the evidence of the preceding exhibits are stipulated. If the authenticity or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified evidentiary ground(s) for the objection(s):

Objections by Defendant:

P-2	PHOTO OF AFTER THE REPAIR	Objection - Relevance and subsequent remedial measure
P-4	INVOICES FROM ALMAN BROS. CONSTRUCTION	Object to invoices after 10/24/2018 -Relevance
P-5	INVOICES FROM ADCAMP	Objection - Relevance and subsequent remedial measure
P-7	ST. DOMINIC INVESTIGATIVE REPORTS	Objection - Hearsay and Relevance
P-10	ST. DOMINIC BILLS	Objection to bills after 10/31/2018 - Relevance
P-11	WISTERIA GARDENS RECORDS	No objection to the records bates stamped Wisteria Gardens (there were other records included)
P-14	MERIT HEALTH MADISON BILLS	Objection to bills after 11/01/2018 - Relevance
P-15	BAPTIST RECORDS	No objection if all Baptist records beginning with Baptist 00065 are included
P-16	BAPTIST BILLS	Objection to bills after 11/18/2018 - Relevance
P-21	MEA BILLS	Objection to bills from 2019-2020 - Relevance
P-23	MADISON KINDRED BILLS	Objection to bills from 2019-2020 - Relevance

The authenticity and admissibility in the evidence of the preceding exhibits are stipulated. If the authenticity or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified evidentiary ground(s) for the objection(s):

Objections by Plaintiff: None

- The following is a list and brief description of charts, graphs, models, schematics, diagrams and similar objects which will be used in opening statements or closing arguments, but which **will not** be offered in evidence:

For Plaintiff: Enlarged Photos of Subject Pothole Before and After Repaving. Medical Expense Itemization prepared after determination of admissibility of injury related medical expenses.

For Defendant: None

Objections, if any, to use of the preceding objects are as follows:

Defendant objects to photo of area after repaving on the grounds that it was the subject of a motion in limine which was granted by this Court.

If any other objects are to be used by any party, such objects will be submitted to opposing counsel at least three business days before trial. If there is then any objection to use of the objects, the dispute will be submitted to the Court at least one business day before trial.

9. The following is a witness list Plaintiff anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements have been made with the trial judge before commencement of trial. The listing of a **WILL CALL** witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to the contrary.

A. By Plaintiff:

NAME	FACT/EXPERT	MAY/WILL CALL
Marilyn Martin	F/L/D	Will Call
Forrest Brooks Hall	F/L/D	May Call
Elizabeth Smith	F/L/D	May Call
Mark Williams	L/E	Will Call
Shea Moody	L	May Call
Percy Johnson	F/L	May Call
Jerry Farr	F/L	May Call
Johnny Givens	F/L	May Call
David Edwards	F/L	May Call
Orange Young	F/L	May Call
Dr. James Smitherman	F/E	May Call
John McKee	Expert	May Call/Deposition

Adam Odom	F/L/D	May Call
Laura Biggs	F/L	May Call
James Kevin Glisson, MD	F/D	May Call
Gretchen Suzanne Montgomery, MD	D	May Call
Heather Martin	L	May Call
Maurice Kendrick	F/L	May Call
Barbara Holland	F/L/D	May Call
Joe Terry, M.D.	F/D	May Call
Jeff Wade	F/L	May Call
Carolyn Quarles	L	May Call

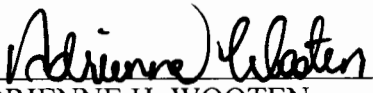
B. By Defendant:

NAME	FACT/EXPERT	MAY/WILL CALL
Marilyn Martin	Fact	May Call
Forrest Brooks Hall	Fact	May Call
Barbara Holland	Fact	May Call
David Edwards	Fact	May Call
Jeff Wade	Fact	May Call
Percy Johnson	Fact	May Call
Jerry Farr	Fact	May Call
Johnny Givens	Fact	May Call
Elizabeth Smith	Fact	May Call
Orange Young	Fact	May Call

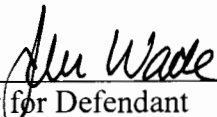
Dr. James Smitherman	Fact/Expert	May Call
John McKee	Expert	May Call
Any witness identified by Plaintiff in Pretrial Order		

11. Counsel estimates the length of the trial will be 3 days.

ORDERED, this 18th day of July, 2022.


ADRIENNE H. WOOTEN
CIRCUIT COURT JUDGE

s/Yancy B. Burns
Attorney for Plaintiff
YANCY B. BURNS, ESQ.


Attorney for Defendant
JOHN E. WADE, ESQ.
ALSTON LUDWIG, ESQ.