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IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

)	
[REDACTED] AS)	
CONSERVATOR FOR ADULT)	
WARD, [REDACTED])	
AND [REDACTED])	
)	
Plaintiffs,)	
)	
vs.)	
)	CIVIL ACTION FILE NO.
)	[REDACTED]
MARTIN-ROBBINS FENCE)	
COMPANY; ARCADIS U.S.,)	
INC.; AND GEORGIA)	
DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendants.)	

MOTIONS before the Honorable MYRA H. DIXON,
Judge, Fulton County State Court, Courtroom No.
2A, commencing at approximately 1:30 o'clock p.m.
on the 17th day of August 2023.

APPEARANCES OF COUNSEL:

FOR THE DEFENDANTS: Kevin Branch
Claire Williamson
Elenore Klingler
Attorneys At Law

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APPEARANCES

FOR [REDACTED] PLAINTIFFS:

Pete Law
Brian Kaplan
Nick Protentis
Matt Bottom
Attorneys At Law

FOR GDOT:

Kristine Hayter
David Cook
Ron Boyter

FOR [REDACTED] PLAINTIFFS:

James E. Butler
Matt Kahn
Attorneys At Law

ALSO PRESENT: Philip Sarvin
Sarah Christy

- - -

P R O C E E D I N G S

THE COURT: Good afternoon, everyone; is everyone ready?

MS. OTTRELL EDWARDS: It's 1:30 and we will start. This is Judge Dixon's motions calendar. In the [REDACTED] as conservator for Adult Ward [REDACTED] and [REDACTED], plaintiffs, versus Martin-Robbins Fence Company, and Georgia DOT, 19EV300587, there's been a settlement with

1 Arcadis, so I did not mention them.

2 The next case [REDACTED] as
3 administrator of the estate of [REDACTED] and
4 as guardian of [REDACTED] and [REDACTED], plaintiffs versus
5 Martin-Robbins Fence Company, Georgia Department
6 of DOT, and John Does 1-10, Civil Action
7 20EV001537. Will the parties please introduce
8 yourselves for the record.

9 MR. PETE LAW: Good morning, Your Honor.
10 Pete Law for the plaintiff [REDACTED] I've got
11 Brian Kaplan, Nick Protentis and Matt Bottom with
12 me as well on behalf of the plaintiffs.

13 THE COURT: All right. Thank you.

14 MR. JEBB BUTLER: On behalf of the [REDACTED]
15 plaintiffs I'm Jebb Butler. I see my law partner
16 Matt Kahn here and our paralegal, Sarah Christy
17 here as well.

18 THE COURT: All right. Thank you.

19 MS. KRISTINE HAYTER: All right. So, Your
20 Honor, Kristine Hayter for GDOT and also
21 Ron Boyter.

22 THE COURT: All right. Thank you.

23 MR. KEVIN BRANCH: And, Your Honor, and then
24 for Martin-Robbins Kevin Branch, hope you're doing
25 well today.

1 THE COURT: Very well, thank you.

2 MR. BRANCH: And Claire Williamson and

3 Elenore Klingler with me as well.

4 THE COURT: Thank you.

5 MS. JODENE EDWARDS: And good afternoon, Your

6 Honor, Jodene Edwards here on behalf of Arcadis.

7 THE COURT: All right, thank you. The way

8 we're going to do it I'll call out the motions in

9 the order that I have them here and then we're

10 going to argue them in that fashion, just so many

11 motions.

12 All right. So let's look at plaintiffs

13 motions in limine, you want to start there? And I

14 have a folder with all of them, they're not in any

15 sort of order. The first one is a proposed order

16 to take judicial notice of the google street

17 image. Any objection to that?

18 MS. ELENORE KLINGLER: Martin-Robbins

19 objects.

20 THE COURT: I'm sorry, what did you say?

21 MS. KLINGLER: Martin-Robbins objects.

22 THE COURT: Okay. Tell me what your

23 objection is.

24 MS. KLINGLER: All right. Yes, Your Honor,

25 I've got a power point that I can show if that's

1 helpful to you or I can without if you prefer.

2 MR. MATT KAHN: Your Honor, sorry, this is
3 Matt Kahn, this was our motion so request judicial
4 notice, so if it's pleases the Court I'll open and
5 then Ms. Klingler can respond.

6 THE COURT: Okay, that's fine.

7 MR. KAHN: Thank you. So, Your Honor, this
8 motion asks the Court to take judicial notice of
9 the google street view images that we've used
10 throughout this entire case. The Court has looked
11 at them in summary judgment. Every witness just
12 about has looked at them and identified them as
13 the subjected guardrail. So for this particular
14 motion I want to just kind of go through these
15 images with the Court, which I'm the Court has
16 already seen, but just for purposes of the record
17 go them. And then, second, just address some of
18 the recent cases showing a trend amount courts
19 taking judicial notice of these to streamline and
20 simplify the presentation of evidence at trial.

21 So if you'll give me just minute I'll re --
22 I've got my little new Elmo toy that I was excited
23 to use it for this hearing. But, Your Honor,
24 about 2007 google has hired drivers to go all over
25 the United States and the world taking photos of

1 streets, buildings, just basically every where
2 there's a road Google has cars taking of those
3 areas. And then it regularly puts those images on
4 the internet in a 3D easily, navigable way so we
5 can all go type in our neighbors address and see
6 if, what kind of car they have parked in their
7 driveway or looked at a damage guardrail in a case
8 like this.

9 So throughout this case we've used historical
10 Google street view images of this guardrail dating
11 back to August 2017, which has shown us that for
12 10 months before this collision, which was
13 June 3rd, 2018, this subject guardrail was
14 non-functional. And we've shown these images --
15 and these are the images that we are asking the
16 Court to take judicial notice of, but we've
17 showed these images to all of the witnesses with
18 Arcadis, with Martin-Robbins, with GDOT and
19 they've identified this whole area as the subject
20 guardrail. They've identified these dent posts
21 that are separated from the guardrail making it
22 non-functional according to Martin-Robbins
23 requirements.

24 Here we have September 2017 showing the
25 separated posts from the guardrail, again another

1 view from 2017, August, and then here is a
2 different view the January 18, 2018, which is
3 about 6 months before. But we see that this is
4 the subject guardrail, all of the witnesses have
5 said so. And honestly, Your Honor, this is a
6 matter that should have been resolved by consent
7 by the parties given that they've already been
8 authenticated by all of the witnesses in this
9 case. And if not, they can be authenticated at
10 trial like any other photograph in any other
11 cases.

12 So moving on to the second piece of this
13 motion, Your Honor, the law on judicial notice,
14 Courts, Appellate Courts, circuits courts of
15 Appeals, district courts, Georgia Courts, all have
16 looked at this issue in some form or another,
17 whether it's Google street view images, Google
18 maps, just the images created by Google and found
19 that they're so reliable that it's something that
20 everybody can just accept as true because of that
21 reliability.

22 In our brief, I'm not going to spend this
23 time going through all of the cases, but our brief
24 cites five recent district court opinions that
25 have actually looked at Google street view images

1 just like these and relied on them. And we have
2 other courts including Georgia courts that have
3 denied motions in limine on attempts to try to
4 exclude this evidence.

5 So, Your Honor, to streamline the trial and
6 simplify these issues, we would just ask that the
7 Court follow this recent trend of taking judicial
8 notice and just making it simple. And I'm
9 actually curious to hear what Martin-Robbins
10 response is because I don't think that anyone in
11 this case, Martin-Robbins included, has ever
12 challenged or disputed that these images show the
13 subject guardrail and they can't do that because
14 it clearly does. So we would ask the Court for
15 our motion and sign our proposed order.

16 In the alternative we have subpoenaed these
17 like original photos from Google that it's
18 everything is digital with Google so it's not like
19 it's an actual photograph, but we subpoenaed the
20 original underlying data that they used to publish
21 on their website so we could have a business
22 record that would -- yeah, we could just enter in
23 like any other business record, but Martin-Robbins
24 moved to quash that saying that it was untimely
25 because it done outside the discovery period, but

1 it's just a subpoena for evidence to be used at
2 trial which common place. It is so common that
3 there's -- I couldn't even find any law saying,
4 you know, this is what subpoenas can be used for,
5 it's just how everybody does it.

6 So we'd ask that the Court grant the motion,
7 if not deny the motion and quash and let us get
8 those business records. And since I have no idea
9 what Martin-Robbins is going to say I'd like to
10 request a minute or two to respond to whatever
11 they have to say.

12 THE COURT: All right. Thank you, Counselor.
13 Counsel on behalf of Martin-Robbins.

14 MS. KLINGLER: Thank you, Your Honor. This
15 is Elenore Klingler on behalf of Martin-Robbins.
16 And I've got our power point I'm going to attempt
17 to share. It's mostly just for background
18 purposes while I'm speaking. So what we've got
19 here is the standard for judicial notice. What
20 plaintiff is asking the Court is to do is to agree
21 that something they found on the internet that
22 they say is from Google is believable that is
23 supportable that is admissible pursuant to
24 judicial notice. and what they haven't done is
25 take any of the steps to actually make that

1 proper.

2 What they haven't done is done any of the
3 underlying work to make that proper. And in order
4 to do so for judicial notice the statute 24-2201
5 requires that the facts first of all not be
6 subject to reasonable dispute. And second that it
7 be capable of accurate and ready determination by
8 resources whose accuracy cannot reasonably be
9 questioned.

10 So what they have done here is printed off
11 some photos from Google maps and said, here they
12 are, believe us. This is what we say that they
13 are. And they want the Court to just adopt that
14 and allow that to be in on judicial notice. So
15 the plaintiffs have not provided the necessary
16 information for the Court to be able to make that
17 determination. They have not shown anything able
18 what the underlying ability to determine those
19 things is. They have not shown us how Google maps
20 makes those determinations. They have not shown
21 us what Google map does to ensure that it's
22 accurate.

23 For example, if you take a look at the
24 Exhibit 2 that Mr. Kahn put up there, if you'll
25 note down at the bottom of Exhibit 2 there's some

1 distortion where the line on the side of the road,
2 the median line, you can see where's a break in
3 it. And we don't have any basis to know what
4 kinds of camera distortions or other things exist
5 on Google maps because plaintiff done that work to
6 show that. We don't know how this data was
7 generated. We don't know how the locations were
8 matched.

9 And we also importantly don't have any kind
10 of certification or authentication of these
11 records. All we have is plaintiff printing
12 something off from the internet and claiming that
13 it's from Google and that's not the proper
14 procedure by which one can have judicial notice.
15 When the -- when Mr. Kahn said that all of these
16 had been authenticated by the witnesses, you know,
17 what he did was put a photo in front of the
18 witnesses and said, does this look like "X". And
19 these witnesses were not asked to authenticate the
20 photos in anyway that would allow the Court to
21 take judicial notice of them. They have no
22 ability to do that.

23 Plaintiff has not taken any evidentiary
24 depositions of Google to create the foundation
25 that's required in order to have these as part of

1 the record. Plaintiffs statement at the
2 beginning of this motion about how Google maps
3 does all work obviously is not part of the record
4 and is not anything that came from Google. They
5 say that they moved to subpoena these documents
6 and it's correct that we did move to quash because
7 it outside of discovery, but plaintiff also as
8 done nothing in order to pursue that. And
9 regardless Google is in San Francisco, so saying
10 that they had subpoenaed them for trial, for
11 production at trial, they are well outside the
12 jurisdiction, so I don't think that's wise.

13 As to Mr. Kahn's argument that Google maps is
14 just widely available now and that courts are just
15 routinely admitting these, that's just not
16 correct. Google maps has been used by courts and
17 to allow for distances to be calculated. In fact
18 the cases that Mr. Kahn cited in the 11th Circuit,
19 two of them have to do with distance, using Google
20 maps distance, not showing photos as existing for
21 the purpose of showing that a location is correct
22 or the location at a particular date is correct.

23 The other cases that he, cited one of them
24 concerned a GPS data from a truck, which is
25 obviously not on point. And then the case Wrangle

1 v. Anderson that they cited with regard to using
2 Goggle maps, it is absolutely correct that the
3 Court said that, sure, these can come in, but it
4 was subject to authentication, which we, of
5 course, don't have in this case. So Wrangle v.
6 Anderson actually underlines our point that the
7 courts require that these documents actually be
8 brought into the Court, not via judicial notice as
9 an excuse not to do the authentication process,
10 but rather to ensure the accuracy of any kind of
11 information or adjudicated fact that you would be
12 as judicial notice.

13 Defendants are entitled to cross-examination
14 of the sources of information, so what plaintiff
15 wants us to do is to forego that constitutional
16 right to ask those questions about how is this
17 data collected, how do we know that when you said
18 this picture was taken on January 2017, that it
19 actually was taken on January 17th. Plaintiff
20 finds that very compelling that these photos exist
21 over time as an important part of their argument,
22 but we have no way to know that when they throw up
23 a picture of Google maps that's dated January 2017
24 that it actually dated 2017. And we also have no
25 way to know that the picture that they're putting

1 up there is the actual Google doc, all we have is
2 a print-off from the internet.

3 So the requirement in order to establish an
4 adjudicated fact by judicial notice under the
5 statute have not been met by plaintiff. What they
6 want us all to do is just agree that anything they
7 find on the internet is admissible and that just
8 simply not the case and it's not something that
9 Martin-Robbins will agree with. And we don't
10 think the Court should agree with it either. And
11 that is the basis to our objection on that.

12 THE COURT: You want to respond, Mr. Kahn?

13 MR. KAHN: Thank you, Your Honor.

14 MS. HAYTER: Your Honor -- real quick, this
15 is Kristine Hayter, we just have one objection to
16 add to that so then Mr. Kahn can respond to all of
17 it.

18 THE COURT: All right.

19 MS. HAYTER: The pictures range from 2017 to
20 2018 and so GDOT objects to the pictures to the
21 pictures that are not close in time to the date of
22 the subject accident. So the subject accident is
23 June 3rd, 2018, so the picture Plaintiff Exhibit 5
24 and Plaintiff Exhibit 2 which are in the motion,
25 those are January 2018 and those appear to be the

1 closed in time to the date of the accident. But
2 GDOT objects to pictures that predate that which
3 is Exhibit 3 and Exhibit 4 in the motion.

4 And then the Exhibit 11 that's in the motion
5 doesn't have a date, but I believe that after the
6 accident, but I'm not quite sure. I can't read
7 the very fine print. Matt, do you know what date
8 that is, No. 11?

9 MR. KAHN: No. 11, I think, is after the
10 repair.

11 MS. HAYTER: Okay, after the repair. So,
12 Your Honor, we just -- on -- GDOT objects because
13 what's relevant is the condition the guardrail
14 closest to the time of the actual accident. So
15 that's our objection, Your Honor.

16 THE COURT: All right, thank you.

17 MR. KAHN: And, Your Honor, I believe that
18 Ms. Hayter has filed a separate motion in limine
19 like specific to that argument. So if it suits
20 the Court I'll just -- I'll respond to
21 Martin-Robbins argument and then we can address
22 GDOT's objection when we get to their motion if
23 that's all right with the Court.

24 THE COURT: Well, is it on the same issue?
25 Can we just do that now?

1 MR. KAHN: Sure, Sure, I can address both
2 right now, Your Honor.

3 THE COURT: All right.

4 MR. KAHN: So first there are a few things
5 that Ms. Klingler said. I think the biggest idea
6 is that we don't have the originals, but we tried
7 to get them and they were stopped our efforts to
8 do that, that's the reason we don't have them.
9 Yes, Google is based in San Francisco, but they
10 are a signatory to the Uniform Interstate
11 Deposition Discovery Act. I'm sure I've butchered
12 that long acronym, but it's their signatory, so
13 it's as simple as getting a Georgia subpoena and
14 then mailing it to the register agent in
15 California, which we did. And if they withdraw
16 their objection we're happy to go get the
17 originals, they just wouldn't let us do it.

18 To the second sort of over-arching idea that
19 we are somehow just pulling random thing from the
20 internet and asking the Court to believe us, I
21 mean, that's just not what we're doing. And
22 fortunately we are in zoom hearing and so I can
23 just show you exactly what we did. Here is a
24 Google -- well, you can see up the top -- I'm so
25 sorry. You can see that we are on Google website,

1 and then you just drop this little guy right here,
2 turn him around and here we are. And now you can
3 see that they since put up this jersey barrier
4 which will be the subject of some other motion I'm
5 sure. But we were not making stuff up, we're not
6 pulling stuff out of our hat, we're doing what the
7 Court can do.

8 And see if you go to the top of the screen
9 you can see more dates and it has all these
10 different dates dating back to 2007. And so the
11 reason that courts and, also, to Ms. Klingler's
12 point, yes, there are no 11 Circuit decisions that
13 have look at the actual images. They've relied on
14 Google as being, you know, a source that's not
15 subject to dispute and the accuracy can't be
16 questioned for this instance, but there are a
17 growing number of district courts throughout the
18 United States that are using Google maps images
19 just like these images that we're looking at and
20 that's on page 5 of our brief. And there's a long
21 string citation with all of those cases and they
22 all use these images.

23 So I would just suggest that none of those
24 arguments have merit. And really the reason that
25 we're asking for judicial notice instead of taking

1 a Rule 30-B6 rule evidentiary deposition of Google
2 which would cost all of the parties thousands of
3 dollars and convenience everyone, we're just
4 asking for the Court the take judicial notice.
5 And so I think that's what make sense that's the
6 fairest thing to do and we're not trying to get
7 something in that shouldn't be in, it's pictures
8 of the guardrail.

9 To Ms. Hayter's argument that we should be
10 limited to photos of the guardrail close in time
11 to the wreck, I mean, that's just, first of all,
12 entirely vague, what does close in time even mean,
13 that's not defined. But the crux of this case is
14 that this guardrail was damaged at least 10 months
15 back from the wreck. Those are the earliest
16 images that we have. It was probably damaged far
17 longer than that. The earliest repair date that
18 we have record of is February 2017, so we know
19 that sometime between February 2017 and August
20 2017 somebody or multiple ran into this guardrail
21 and destroyed it and all of that is relevant to
22 this case.

23 This case is a simple negligence case that
24 Martin-Robbins and GDOT and formerly Arcadis just
25 didn't do their jobs. They had a simple job and

1 that was to damaged guardrail and the repair it,
2 that's it. but they -- it just sat there flattened
3 for almost a year, and that is the essence of this
4 case. And what Ms. Hayter is asking the court to
5 do is take that away, that's the case. And it's
6 clearly relevant to plaintiffs' claims, to
7 punitive damages, it's just that is the case, Your
8 Honor.

9 MR. LAW: Your Honor, may [REDACTED] be heard
10 as well?

11 THE COURT: Yes, yes, go ahead.

12 MR. LAW: Thank you, Judge. Pete Law for the
13 [REDACTED] plaintiffs.

14 MS. KLINGLER: Excuse me, Your Honor, I don't
15 mean to interrupt Mr. Law, but this was a motion
16 filed by the [REDACTED] plaintiffs in the [REDACTED] case.
17 And therefore, I don't think it's appropriate for
18 the [REDACTED] Plaintiffs to be arguing. They did
19 not join in that motion.

20 MR. KAHN: We just addressed an argument that
21 GDOT made in their omnibus motion which was filed
22 in both cases.

23 MR. LAW: And we joined in their motions. We
24 didn't want to overburden the Court, our
25 understanding was that the discovery and rulings

1 in both cases applied equally, that's the way
2 we've operated throughout the entire case. We did
3 not do a separate motion on it, but we obviously
4 joined in it and would be a ruling applicable in
5 both cases. But I did want to comment --

6 MS. KLINGLER: Respectfully, Mr. Law, you did
7 not join in their motions generally and the
8 agreement that we had about these cases was for
9 discovery purposes, they were joined and say we
10 are no longer in discovery and it's not
11 appropriate for the [REDACTED] plaintiffs to be
12 arguing this motion.

13 MR. LAW: Well, I think it is appropriate
14 because it governs the evidence in our case and
15 the Court has already ruled that they are going to
16 hear both overlapping issues and rules in
17 evidence. And candidly it's not your position to
18 tell me whether I can argue. Judge Dixon gave me
19 an opportunity --

20 THE COURT: So that you-all will understand,
21 yeah, I'd like to hear from him because I'm not
22 going to go these motions again in both of the
23 plaintiffs, so you may proceed Mr. Law.

24 MR. LAW: Thank you Judge, and we do join in
25 the motion. And I just wanted to note, one, to

1 address Ms. Hayter's comment about her motion
2 that's filed. It goes to notice as Mr. Kahn
3 stated. It goes to notice that thing has sat
4 destroyed for a very long period of time. And I
5 just wanted to comment this is just a motion on
6 judicial notice. Obviously this case is heavily
7 expert loaded and the experts are entirely allowed
8 to also obtain this evidence, use it however they
9 obtain it, whether it's from Kahn or anywhere
10 else, from Google and rely on it as Mr. Kahn said
11 Google is recognized as a reliable source. And
12 it's not like there is somebody available at
13 Google to authenticate this, which the rules
14 provide for the Court allowing it to be judicially
15 noticed. So we just wanted to comment on those
16 three points as relates to the case and we do join
17 in all of their motions as well.

18 THE COURT: All right. So thank you-all for
19 your arguments on that. I will take judicial
20 notice of Google street view images in this case.
21 All right.

22 MR. LAW: Thank you, Judge.

23 MR. BRANCH: Thank you, Your Honor. Your
24 Honor -- this is Kevin Branch, just a point of
25 order then. As we go through this I'm struggling