

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

REBECCA HOLT, Individually, and
MICHAEL HOLT, Individually and as
the Administrator of the Estate of
CHARLES WOODY HOLT,

Plaintiffs,

v.

MARRIOTT INTERNATIONAL, INC.,
STARWOOD HOTELS & RESORTS
WORLDWIDE, LLC, *formerly known as*
STARWOOD HOTELS & RESORTS
WORLDWIDE, INC., SLC ATLANTA
LLC, *formerly known as* WESTIN
PORTMAN PEACHTREE II L.L.C.,
RONALD W. TARSON, R. GEORGE
REED, PAUL F. SLOBIG, COOPER
CARRY, INC., KEITH SIMMEL,
BALFOUR BEATTY CONSTRUCTION,
LLC, BLACKDOG STUDIO, LLC, and
CAROLYN AUGER JOINER, *formerly*
known as, CAROLYN AUGER,

Defendants.

Civil Action File No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

COME NOW REBECCA HOLT, Individually, and MICHAEL HOLT, Individually
and as the Administrator of the Estate of CHARLES WOODY HOLT, and file this
Complaint against MARRIOTT INTERNATIONAL, INC. (hereinafter "MARRIOTT"),
STARWOOD HOTELS & RESORTS WORLDWIDE, LLC, *formerly known as* STARWOOD
HOTELS & RESORTS WORLDWIDE, INC. (hereinafter "STARWOOD"), SLC

ATLANTA LLC, *formerly known as* WESTIN PORTMAN PEACHTREE II L.L.C. (hereinafter “SLC”), RONALD W. TARSON, R. GEORGE REED, PAUL F. SLOBIG, COOPER CARRY, INC. (hereinafter “COOPER CARRY”), KEITH SIMMEL, BALFOUR BEATTY CONSTRUCTION, LLC (hereinafter “BALFOUR BEATTY”), BLACKDOG STUDIO, LLC (hereinafter “BLACKDOG”), and CAROLYN AUGER JOINER, *formerly known as* CAROLYN AUGER (hereinafter “AUGER”), demanding a jury trial and showing this Honorable Court the following:

NATURE OF THIS ACTION

1.

On April 14, 2017, a longstanding safety hazard at the Sun Dial Restaurant turned fatal when five-year-old CHARLES WOODY HOLT (hereinafter “Charlie”) was crushed between a moving wooden booth and a stationary interior wall. The Sun Dial had no protections to stop children from getting close to the pinch point or to stop the rotation of the floor if a child became trapped in the pinch point.

Charlie and his parents, Michael and Rebecca Holt, and two-year-old sister, Ellie, had eaten lunch at the Sun Dial Restaurant atop the Peachtree Plaza Hotel. They were leaving the restaurant as a family. They followed the same path they had used earlier to enter the restaurant and to go back and forth to the restroom. On those earlier occasions, the path was wide open and there was no interior wall in sight. This time, however, the restaurant had rotated and an interior wall blocked the path. As Charlie walked around

a booth (following the path toward the exit), he was suddenly trapped in a pinch point between the wooden booth and the stationary interior wall that was blocking the path. Charlie's parents were only a few feet behind him and immediately went to help him. Rebecca grabbed his arm but could not move him. Michael could not free him. There was no safety device to stop the floor's rotation automatically. The restaurant continued to turn, wrenching Charlie deeper into the narrowing pinch point. There was no emergency stop button on the wall. The Holts screamed for help, for someone to stop the movement. It didn't stop. Michael and others tried to move the booth away from the wall, but the booth was bolted to the floor. Michael repeatedly threw his body weight against the booth, but it would not budge. Michael literally tore the booth apart with his hands, but he could not free Charlie. Charlie's head was pulled into an area only a couple of inches wide. After a restaurant employee finally went down the hall to a separate room and stopped the rotation, it still took several grown men what seemed like an eternity to get Charlie out. He was still alive when freed, but his skull had been crushed. Charlie died later that day despite the heroic efforts of his family, first responders, doctors, and even complete strangers.

THE PARTIES, JURISDICTION, AND VENUE

2.

Plaintiffs REBECCA HOLT and MICHAEL HOLT are the parents of the decedent, CHARLES WOODY HOLT. Plaintiffs are residents of the State of North Carolina, and by filing this lawsuit, they submit themselves to the jurisdiction of this Court.

3.

MICHAEL HOLT is the Administrator of the Estate of CHARLES WOODY HOLT and was so named by the Mecklenburg County Superior Court in North Carolina on May 22, 2017.

4.

Defendant MARRIOTT INTERNATIONAL, INC. (hereinafter "MARRIOTT") is a for-profit, foreign corporation organized and incorporated under the laws of the State of Delaware, with its principal place of business located at 10400 Fernwood Road, Dept. 924.13, Bethesda, Maryland, 20817. MARRIOTT may be served with process via its Georgia registered agent, Corporate Creations Network, Inc., located at 2985 Gordy Parkway, 1st Floor, Marietta, Georgia, 30066. Once served, jurisdiction and venue are proper as to MARRIOTT in this Court.

5.

Defendant STARWOOD HOTELS AND RESORTS WORLDWIDE, LLC (hereinafter "STARWOOD") is a foreign limited liability company organized under the

laws of the State of Maryland, with its principal place of business located at 10400 Fernwood Road, Dept. 955.23, Bethesda, Maryland, 20817. STARWOOD may be served with process via its Georgia registered agent, Corporate Creations Network, Inc., located at 2985 Gordy Parkway, 1st Floor, Marietta, Georgia, 30066. Once served, jurisdiction and venue are proper as to STARWOOD in this Court.

6.

Defendant SLC ATLANTA LLC (hereinafter "SLC") is a foreign limited liability company organized under the laws of the State of Delaware, with its principal place of business located at 10400 Fernwood Road, Dept. 955.23, Bethesda, Maryland, 20817. SLC may be served with process via its Georgia registered agent, CT Corporation System, 289 South Culver Street, Lawrenceville, GA 30046. Once served, jurisdiction and venue are proper as to SLC in this Court.

7.

Defendant RONALD W. TARSON (hereinafter TARSON) is an individual who resides at 4485 Highgrove Pointe, Atlanta, (Fulton County) Georgia, 30319, where he may be served with process. Once served, jurisdiction and venue are proper as to this Defendant in this Court.

8.

Defendant R. GEORGE REED (hereinafter REED) is an individual who resides 8185 Newport Bay Passage, Alpharetta, (Fulton County) Georgia, 30005, where he may

be served with process. Once served, jurisdiction and venue are proper as to this Defendant in this Court.

9.

Defendant PAUL F. SLOBIG (hereinafter SLOBIG) is an individual who resides at 3339 Hampton Green Way, Atlanta, (DeKalb County) Georgia 30340 where he may be served with process in this case. Once served, jurisdiction and venue are proper as to this Defendant in this Court.

10.

Defendant COOPER CARRY, INC. (hereinafter "COOPER CARRY") is a for-profit, domestic corporation and incorporated under the laws of the State of Georgia, with its principal place of business located at 191 Peachtree Street NE, Suite 2400, Atlanta, (Fulton County) GA 30305. COOPER CARRY may be served with process via its Georgia registered agent, Jerome Cooper, 191 Peachtree Street NE, Suite 2400, Atlanta, Georgia, 30305. Once served, jurisdiction and venue are proper as to this Defendant in this Court.

11.

Defendant KEITH SIMMEL (hereinafter SIMMEL) is an individual who resides at 571 Ridgewater Drive, Marietta, (Cobb County) GA 30068 where he may be served with process in this case. Once served, jurisdiction and venue are proper as to this Defendant in this Court.

12.

Defendant BALFOUR BEATTY CONSTRUCTION, LLC (hereinafter “BALFOUR BEATTY”) is a foreign limited liability company organized under the laws of the State of Delaware, with its principal place of business located at 3100 McKinnon Street, Dallas, Texas, 75201. BALFOUR BEATTY may be served with process via its Georgia registered agent, Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092. Once served, jurisdiction and venue are proper as to this Defendant in this Court.

13.

Defendant BLACKDOG STUDIO, LLC (hereinafter “BLACKDOG”) is a domestic limited liability company organized under the laws of the State of Georgia, with its principal place of business located at 887 West Marietta Street, Suite T-102, Atlanta, Georgia. BLACKDOG may be served with process via its Georgia registered agent, Carolyn Auger, 60 Maddox Drive, NE, Atlanta, Georgia 30309. Once served, jurisdiction and venue are proper as to this Defendant in this Court.

14.

Defendant CAROLYN AUGER JOINER (hereinafter AUGER) is an individual who resides at 60 Maddox Drive, NE, Atlanta, (Fulton County) Georgia 30309 where she may be served with process. Once served, jurisdiction and venue are proper as to this Defendant in this Court.

THE FACTS GIVING RISE TO THIS COMPLAINT

15.

At the time of the incident at issue, April 14, 2017, the Sun Dial Restaurant (hereinafter “Sun Dial”) was a revolving restaurant located atop the Westin Peachtree Plaza at 210 Peachtree Street, NW, Atlanta, Georgia 30303.

16.

At all times relevant to this Complaint, the Sun Dial held itself out as a family and kid-friendly restaurant.

17.

At all times relevant to this Complaint, the Sun Dial offered kid’s menus, crayons, and kid’s cups (with lids and straws) to families dining with children.

18.

The Sun Dial has a rotating platform with tables and booths. The tables and booths rotate around a core that is stationary.

19.

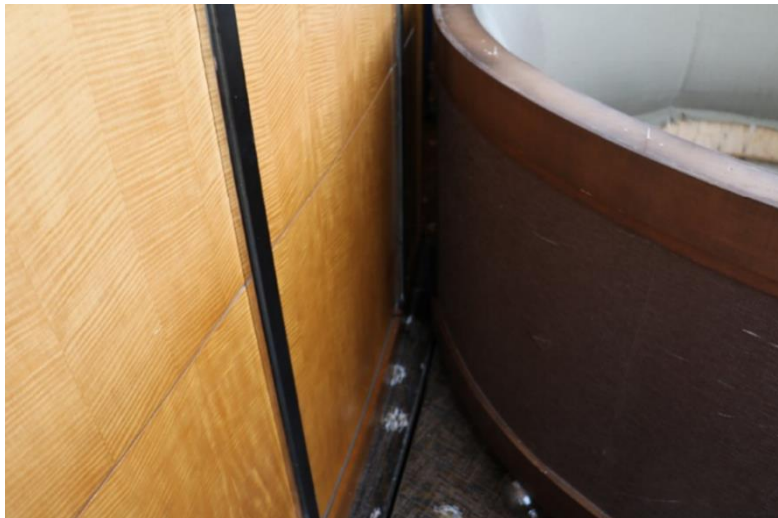
The rotating platform moves people, who are seated at tables and booths, around a fixed course for the purpose of giving these people the pleasure and excitement of a 360-degree view of the City of Atlanta.

20.

Adjacent to the rotating platform, there is a stationary interior wall behind which stairs to the upper level are located. As the rotating platform moves the back of dining booths on the platform pass within a few inches of the wall.

21.

This photograph fairly and accurately depicts the orientation of the booth as it moves close to the interior wall.



22.

A pinch point is a point at which it is possible for a part of a body to be caught between moving and stationary objects.

23.

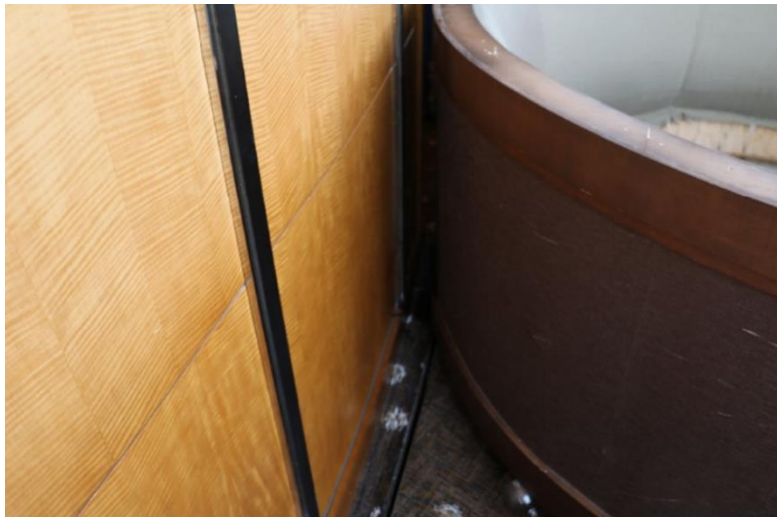
A pinch point is also sometimes referred to as a “caught-in” or “caught-in-between” hazard.

24.

A pinch point existed in the Sun Dial when and where a moving booth passed close to the stationary interior wall.

25.

This photograph illustrates the existence and location of the pinch point at issue in this case where Charlie Holt's head was crushed between the moving dining booth and the stationary interior wall. This area is referred to herein as "the pinch point."



26.

The pinch point existed on April 14, 2017.

27.

Each of the Defendants knew about hazards presented by pinch points before April 14, 2017.

28.

MARRIOTT was on actual notice of the existence of the pinch point before April 14, 2017.

29.

STARWOOD was on actual notice of the existence of the pinch point at the time MARRIOTT acquired STARWOOD.

30.

TARSON knew about the existence of the pinch point before April 14, 2017.

31.

REED knew about the existence of the pinch point before April 14, 2017.

32.

SLOBIG knew about the existence of the pinch point before April 14, 2017.

33.

The Sun Dial was not equipped with any safety mechanism or guard to prevent people from getting dangerously close to the pinch point or becoming trapped in the pinch point.

34.

The Sun Dial was not equipped with any safety mechanism or device that would automatically stop the rotation in the event that a person came dangerously close to the pinch point.

35.

On or before April 14, 2017, each of the Defendants knew that the Sun Dial was not equipped with any safety mechanism or device that would automatically stop the rotation in the event that a person came dangerously close to the pinch point.

36.

The Sun Dial was not equipped with any safety mechanism or device that would automatically stop the rotation in the event that a person became trapped in the pinch point.

37.

On or before April 14, 2017, each of the Defendants knew that the Sun Dial was not equipped with any safety mechanism or device that would automatically stop the rotation in the event that a person became trapped in the pinch point.

38.

The revolving platform moves with such torque and power that it has the capacity to crush a human being stuck in the pinch point without slowing down or stopping.

39.

On or before April 14, 2017, each of the Defendants knew that the rotating platform moves with such torque and power that it has the capacity to crush a human being stuck in the pinch point without slowing down or stopping.

40.

There were no signs posted anywhere in the Sun Dial to warn patrons of the existence or dangers of a pinch point in the Sun Dial.

41.

Patrons were not regularly warned by any employee of the Sun Dial about the existence or dangers of the pinch point.

42.

Nobody warned the Holts about the existence or dangers of the pinch point.

43.

The dining booths which rotated on the turntable were bolted to the floor and could not be readily moved if someone or something got caught in the pinch point.

44.

The dining booths were custom made out of heavy wood.

45.

There is no emergency stop or “e-stop” button located on the interior wall near the pinch point that someone could push to stop the rotation if someone or something got caught in the pinch point.

46.

None of the Defendants took any special precautions of any kind to prevent a child from being caught in the pinch point.

47.

The Sun Dial was not equipped with any safety device intended to prevent a child from being caught in the pinch point or shut down the rotation if a child became caught in the pinch point.

48.

The interior wall contained metal wall accents (called battens) which made it more difficult for a person who became trapped in the pinch point to escape.

49.

The control box that controlled the rotation of the platform was mounted against the ceiling in in a separate room away from the pinch point. The control box was not visible from the pinch point and the pinch point was not visible from the control box.

50.

The Sun Dial employees were not trained on what to do if someone or something became trapped in the pinch point.

51.

Management warned Sun Dial's employees working in the dining area to be careful around the pinch point.

52.

The Sun Dial employees were not trained to warn patrons with children about the dangers of the pinch point.

53.

The Sun Dial employees were warned not to try to squeeze through the area when booths were in close proximity to the wall.

54.

The Sun Dial employees were aware of the dangers presented by the pinch point.

(Marriott's Acquisition of the Sun Dial)

55.

MARRIOTT was the owner Westin Peachtree Plaza on April 14, 2017 when Charlie Holt was trapped and injured in the pinch point.

56.

MARRIOTT was the owner of the Sun Dial Restaurant on April 14, 2017 when Charlie Holt was trapped and injured in the pinch point.

57.

MARRIOTT acquired STARWOOD HOTELS & RESORTS WORLDWIDE, INC. on or about September 23, 2016.

58.

Effective September 23, 2016, STARWOOD HOTELS & RESORTS WORLDWIDE, INC. converted from a corporation into a limited liability company with the State of Maryland and became known as STARWOOD HOTELS & RESORTS WORLDWIDE, LLC. (STARWOOD).

59.

Prior to September 23, 2016, STARWOOD was the owner of the Westin Peachtree Plaza and the Sun Dial.

60.

On April 14, 2017, STARWOOD was a wholly owned subsidiary of MARRIOTT.

61.

On April 14, 2017, STARWOOD was the alter-ego of MARRIOTT.

62.

Prior to 2009, the leaseholder for Westin Peachtree Plaza was WESTIN PORTMAN PEACHTREE II L.L.C.

63.

On January 1, 2009, WESTIN PORTMAN PEACHTREE II L.L.C. filed an amendment with the Delaware Department of State changing its name to SLC ATLANTA LLC.

64.

At all times relevant, SLC was a wholly owned subsidiary of STARWOOD.

65.

At all times relevant, SLC was the alter-ego of STARWOOD.

66.

When MARRIOTT acquired STARWOOD, MARRIOTT became legally responsible for the conduct of STARWOOD employees who worked at the Sun Dial.

67.

For the remainder of this Complaint, Defendants MARRIOTT, STARWOOD and SLC are collectively sometimes referred to herein as “the MARRIOTT DEFENDANTS.”

68.

Defendant TARSON was a manager of the Westin Peachtree Plaza and had managerial duties and responsibilities that included the safety of invitees at the Sun Dial.

69.

Prior to MARRIOTT’s merger/acquisition of STARWOOD, TARSON was an employee of STARWOOD and at all relevant times was acting in the scope of his employment.

70.

Subsequent to MARRIOTT’s merger/acquisition of STARWOOD, Defendant TARSON was an employee of MARRIOTT and at all relevant times was acting in the scope of his employment.

71.

Defendant REED was a manager of the Westin Peachtree Plaza and had managerial duties and responsibilities that included the safety of invitees at the Sun Dial.

72.

Prior to MARRIOTT's merger/acquisition of STARWOOD, Defendant REED was an employee of STARWOOD and at all relevant times was acting in the scope of his employment.

73.

Subsequent to MARRIOTT's merger/acquisition of STARWOOD, Defendant REED was an employee of MARRIOTT and at all relevant times was acting in the scope of his employment.

74.

At the time of the subject incident, SLOBIG was the director of food and beverage at the Westin Peachtree Plaza and had managerial duties and responsibilities that included the safety of invitees at the Sun Dial.

75.

Prior to MARRIOTT's merger/acquisition of STARWOOD, Defendant SLOBIG was an employee of STARWOOD and at all relevant times was acting in the scope of his employment.

76.

Subsequent to MARRIOTT's merger/acquisition of STARWOOD, Defendant SLOBIG was an employee of MARRIOTT and at all relevant times was acting in the scope of his employment.

(2012-2013 Renovation)

77.

In or around 2012 and 2013, STARWOOD renovated the Sun Dial.

78.

COOPER CARRY served as the architects for the renovation, BLACKDOG served as the interior designer for the renovation, and BALFOUR BEATTY served as the general contractor for the renovation.

79.

KEITH SIMMEL of COOPER CARRY was the principal-in-charge of the project.

80.

CAROLYN AUGER JOINER of BLACKDOG provided the interior design services.

81.

COOPER CARRY, KEITH SIMMELL, BLACKDOG, CAROLYN AUGER JOINER, AND BALFOUR BEATTY, each either failed to identify the dangerous pinch point or failed to take appropriate action to eliminate or warn about the dangerous pinch point once they did identify it.

(The Events of April 14, 2017)

82.

On April 14, 2017, the Holt family (Rebecca, Michael, Charlie (age 5), and Ellie (age 2)) were visiting Atlanta from Charlotte, North Carolina.

83.

After visiting the Georgia Aquarium, they walked to the Peachtree Plaza for a lunch reservation at the Sun Dial.

84.

The Holt family was seated by a hostess at a four-person table near the windows.

85.

The Sun Dial staff provided the Holts with kid's menus, crayons, and kid's cups.

86.

This photograph is a fair and accurate depiction of the family and the table they were sitting at on April 14, 2017:



87.

The table where the Holts were seated was located on the rotating platform (or turntable) of the restaurant.

88.

Nobody ever warned the Holts about the pinch point.

89.

During the meal, Rebecca took Ellie and Charlie to the restroom. They followed the same path as when they were initially shown to their table by the hostess. They walked past the wooden booth to the interior core of the Sun Dial. The path was open. The interior wall was not in sight. They returned to the table following the same path.

90.

At the end of the meal, Michael paid the check and took Ellie to change her diaper in the restroom. They followed the same path as when they were initially shown to their table by the hostess and the same path that Rebecca, Ellie and Charlie had taken earlier to the restroom. They walked past the wooden booth to the interior core of the Sun Dial. The path was open. The interior wall was not in sight.

91.

Rebecca and Charlie stayed at the table (Charlie was finishing his ice cream) while Michael and Ellie went to the restroom.

92.

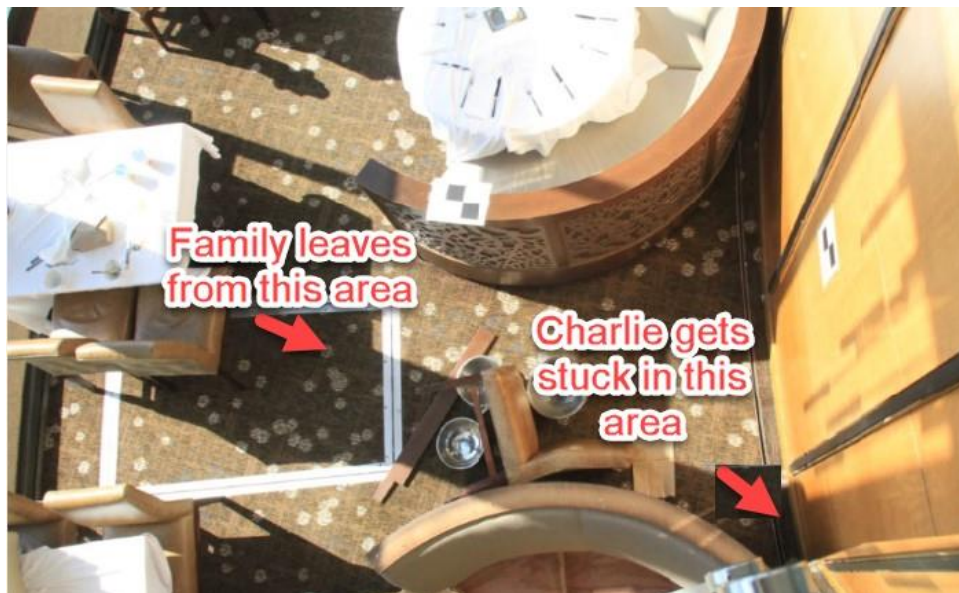
Michael and Ellie returned from the restroom, taking the same path again. The path was open. The interior wall was not in sight.

93.

The Holt family got up to leave. Charlie walked a few steps ahead of his family toward the exit, following the very same path outlined above. This time, the interior wall blocked the path. Charlie was too short to see past the booth and did not appreciate the danger until it was too late. He was trapped in the pinch point.

94.

The photograph below shows the path Charlie took, how close he was to the table where the family had eaten lunch, and where he became trapped in the Pinch point.



95.

A moment later, Michael and Rebecca saw Charlie trapped between the stationary interior wall and the back of a moving booth in the area previously described as the pinch point.

96.

At the time Charlie became trapped, both Michael and Rebecca Holt were standing on the same rotating platform that Charlie was standing on.

97.

To Michael's and Rebecca's horror, the rotation did not automatically stop when Charlie got trapped.

98.

To Michael's and Rebecca's horror, there was no emergency stop button on the wall to stop the rotation.

99.

Michael and Rebecca screamed for help and for someone to stop the rotation.

100.

When Rebecca went over to Charlie, she lifted Charlie's arm and pulled against him but could not free him. Rebecca could feel the force of the impact Charlie's body made with the platform, interior wall, and booth.

101.

Rebecca received a physical impact from the rotating platform, interior wall, and/or booth.

102.

Michael frantically tried to free Charlie. He repeatedly threw his body against the booth trying to move it and tried to leverage himself against the wall to push the booth, but the booth was bolted to the floor and would not give.

103.

With each second, Charlie's head was wedged deeper into the pinch point.

104.

Several bystanders came to try to help.

105.

A woman grabbed Rebecca, who was still holding Ellie, and pulled her away from the pinch point area. Rebecca was absolutely hysterical, and another woman took Ellie from Rebecca's arms into her care.

106.

The booth was bolted to the floor and would not budge.

107.

While Michael was trying to free Charlie, Charlie's head was pulled deeper into the pinch point. Michael heard Charlie's skull crack and saw a piece of his skull pop out followed by blood, fluid, and other tissue.

108.

When Michael saw and heard Charlie's skull crack, he was on the rotating platform and in physical contact with the interior wall and booth. Michael felt a physical reaction, like a hard punch, that took his breathe away.

109.

Michael received a physical impact from a combination of the rotating platform, interior wall, and/or booth.

110.

Meanwhile, Rebecca was nearby on the rotating platform. She was hysterical and at times had to be physically restrained.

111.

Someone finally stopped the rotation. Michael and Rebecca felt the floor stop moving.

112.

Charlie was still trapped.

113.

Michael and others continued frantically to try to get Charlie out of the pinch point.

114.

The picture below is a fair and accurate photograph of the restaurant as Michael Holt and several bystanders were attempting to free Charlie from the pinch point (Charlie is stuck between the wall and the back of the booth):



115.

Michael and others tried to disassemble the heavy wooden booth. They pushed, pulled, and threw their weight against the booth over and over again.

116.

Eventually, after several more minutes and with many people helping, the booth budged just enough to allow Charlie to be freed.

117.

Charlie fell into his father's arms, gasping for air. His head was obviously deformed, and Michael saw a lot of blood, fluid, and white tissue leaking from Charlie's head.

118.

Rebecca was praying and asking if Charlie was breathing. She watched as Michael carried Charlie from the pinch point.

119.

Michael sustained physical injuries and damage to his clothes in the process of trying to rescue Charlie.

120.

Michael and Rebecca Holt each sustained physical impact since they were both on the rotating platform from the time Charlie was first trapped until he was freed. They both were in contact with Charlie's body while he was trapped and while the platform was still rotating. They both felt the platform stop rotating.

121.

Michael and Rebecca Holt each manifested physical symptoms as a direct result of their observations, actions, and the physical impact they sustained while Charlie was trapped and thereafter.

122.

Michael and Rebecca Holt suffered physical injuries and damages because of the defendants' negligence.

123.

Michael and Rebecca Holt suffered pecuniary losses resulting from the Defendants' negligence, their son's injury, and the physical impact.

124.

Emergency medical personnel eventually arrived and began working on Charlie.

125.

They took Charlie to Grady Memorial Hospital via ambulance for further treatment.

126.

Michael stayed by Charlie's side in the ambulance until Charlie was taken away by the medical personnel at the hospital.

127.

Rebecca Holt was taken separately to the hospital.

128.

The doctors at Grady tried to save Charlie but were unable to do so.

129.

Charlie was pronounced dead later in the day on April 14, 2017.

130.

Michael and Rebecca Holt incurred medical bills for the treatment Charlie received following this incident.

131.

Charlie's fish book and clothing, Michael's clothing, and other belongings owned by the Holts were damaged or destroyed during this incident.

132.

The Holts were in no way responsible or at fault for the death of their son or any other injury or damages that they suffered.

133.

Even though they were in no way responsible for Charlie's death, news media reports have suggested that the Holts somehow failed to properly supervise Charlie.

134.

Defendants have done nothing to correct the false accounts.

135.

As a result, the Holts suffered an injury to their reputation as parents as well as severe emotional distress from observing their five-year-old son's suffering and death.

COUNT I

(MARRIOTT'S VIOLATION OF O.C.G.A. § 51-3-1)

136.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

137.

MARRIOTT, as the owner/occupier of the Sun Dial, had a legal duty, imposed by Georgia law (O.C.G.A. § 51-3-1) to exercise ordinary care in keeping the premises and approaches safe for invitees, like Charlie and his parents.

138.

Michael, Rebecca, Charlie and Ellie Holt were invitees under Georgia law at all times when they were present at the Sun Dial on April 14, 2017.

139.

MARRIOTT breached its duties under O.C.G.A. § 51-3-1 in at least the following ways:

- (a) Failing to timely and properly inspect the Sun Dial for hazardous conditions;
- (b) Failing to timely and properly inspect the Sun Dial for conditions that presented unreasonable dangers for children;

- (c) Failing to timely recognize the pinch point and/or the dangers associated with the pinch point;
- (d) Inviting families and children to dine in an environment that contained a dangerous pinch point;
- (e) Failing to recognize that the rotation of the Sun Dial platform created an unreasonably dangerous condition for invitees, including children;
- (f) Allowing the Sun Dial platform to rotate when it was unreasonably dangerous to do so;
- (g) Failing to take reasonable steps to eliminate the pinch point hazard;
- (h) Failing to take reasonable steps to minimize the pinch point hazard;
- (i) Failing to take reasonable steps to protect invitees, including children, from becoming trapped in the pinch point;
- (j) Failing to take reasonable steps to ensure that the rotation would stop automatically in the event that a child became trapped in the pinch point;
- (k) Failing to install an emergency stop button or “e-stop” button or other active safety technology near the pinch point so that someone could quickly stop the rotation if someone got caught in the pinch point;
- (l) Failing to recognize that having the booths bolted to the floor increases the danger of the pinch point by making it harder for someone who becomes trapped to escape or be rescued and failing to eliminate this hazard;
- (m) Failing to recognize that the decorative metal battens on the stationary interior wall, which serve no functional purpose, needlessly increase the danger of the pinch point;
- (n) Failing to properly train employees on what to do in the event of an emergency related to the restaurant’s rotation;
- (o) Failing to adequately warn its invitees regarding the existence of the pinch point and/or the dangers of the pinch point;
- (p) Marketing the premises as safe and appropriate for families with young children without first having taken proper steps to make sure the premises was in fact reasonably safe for children; and
- (q) Otherwise failing to take reasonable steps to make sure the premises were reasonably safe for adults and children.

140.

MARRIOTT was negligent as a matter of law in one or more of the respects described in the paragraph above.

141.

The duty imposed by O.C.G.A. § 51-3-1 is a non-delegable duty.

142.

At all times relevant to this case, MARRIOTT's duty to exercise ordinary care in keeping the Sun Dial safe for invitees was a non-delegable duty.

143.

To the degree that MARRIOTT maintains that it delegated any safety related duties regarding the Sun Dial to other persons or entities, MARRIOTT would still be liable for any negligence by those other persons or entities since the duty imposed by Georgia law is non-delegable.

144.

As a direct and proximate result of MARRIOTT's negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature and untimely death.

145.

As a direct and proximate result of MARRIOTT's negligence, Michael Holt suffered injuries and damages.

146.

As a direct and proximate result of MARRIOTT's negligence, Rebecca Holt suffered injuries and damages.

147.

By virtue of its negligence, MARRIOTT is liable to Michael and Rebecca Holt and the Estate of CHARLES WOODY HOLT for all damages allowed by law that were proximately caused by its negligence, as described in greater detail in the damages sections of the Complaint below.

COUNT II

(MARRIOTT'S COMMON LAW NEGLIGENCE)

148.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

149.

MARRIOTT, as the owner/occupier of the Sun Dial, had a legal duty, imposed by Georgia's common law to exercise ordinary care in keeping the premises and approaches safe for invitees, like Charlie and his parents.

150.

MARRIOTT owed the above referenced duty to the Holt Family who were invitees during the entire time that they were at the Sun Dial.

151.

At all relevant times, MARRIOTT breached its duty under Georgia's common law in the following ways:

- (a) Failing to timely and properly inspect the Sun Dial for hazardous conditions;
- (b) Failing to timely and properly inspect the Sun Dial for conditions that presented unreasonable dangers for children;
- (c) Failing to timely recognize the pinch point and/or the dangers associated with the pinch point;
- (d) Inviting families and children to dine in an environment that contained a dangerous pinch point;
- (e) Failing to recognize that the rotation of the Sun Dial platform created an unreasonably dangerous condition for invitees, including children;
- (f) Allowing the Sun Dial platform to rotate when it was unreasonably dangerous to do so;
- (g) Failing to take reasonable steps to eliminate the pinch point hazard;
- (h) Failing to take reasonable steps to minimize the pinch point hazard;
- (i) Failing to take reasonable steps to protect invitees, including children, from becoming trapped in the pinch point;
- (j) Failing to take reasonable steps to ensure that the rotation would stop automatically in the event that a child became trapped in the pinch point;
- (k) Failing to install an emergency stop button or "e-stop" button or other active safety technology near the pinch point so that someone could quickly stop the rotation if someone got caught in the pinch point;
- (l) Failing to recognize that having the booths bolted to the floor increases the danger of the pinch point by making it harder for someone who becomes trapped to escape or be rescued and failing to eliminate this hazard;
- (m) Failing to recognize that the decorative metal battens on the stationary interior wall, which serve no functional purpose, needlessly increase the danger of the pinch point;
- (n) Failing to properly train employees on what to do in the event of an

- emergency related to the restaurant's rotation;
- (o) Failing to adequately warn its invitees regarding the existence of the pinch point and/or the dangers of the pinch point;
 - (p) Marketing the premises as safe and appropriate for families with young children without first having taken proper steps to make sure the premises was in fact reasonably safe for children; and
 - (q) Otherwise failing to take reasonable steps to make sure the premises were reasonably safe for adults and children.

152.

MARRIOTT was negligent in at least one or more of the respects described in the paragraph above.

153.

As a direct and proximate result of the MARRIOTT's negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature and untimely death.

154.

As a direct and proximate result of MARRIOTT's negligence, Michael Holt suffered injuries and damages.

155.

As a direct and proximate result of MARRIOTT's negligence, Rebecca Holt suffered injuries and damages.

156.

By virtue of its negligence, MARRIOTT is liable to Michael and Rebecca Holt and the Estate of CHARLES WOODY HOLT for all damages allowed by law that were proximately caused by its negligence, as described in greater detail in the damages sections of the Complaint below.

COUNT III

(MARRIOTT'S *RESPONDEAT SUPERIOR*)

157.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

158.

After MARRIOTT's acquisition of the Sun Dial, RONALD W. TARSON, R. GEORGE REED, and PAUL F. SLOBIG were employees of MARRIOTT directly involved in the operation and management of the Sun Dial and at all times relevant to the Complaint, were acting within the scope of their employment.

159.

As their employer, MARRIOTT is liable under the doctrine of *respondeat superior* for the negligence of RONALD W. TARSON, R. GEORGE REED, and PAUL F. SLOBIG as discussed in greater detail in Counts XII, XIII, and XIV below, which are hereby adopted by reference as if fully set forth. MARRIOTT would likewise be liable for the

negligence of any other MARRIOTT employee who was negligent in failing to timely recognize, eliminate, minimize or warn of the dangerous pinch point.

COUNT IV

(MARRIOTT'S VICARIOUS LIABILITY)

160.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

161.

At all times since approximately September 23, 2016, SLC and STARWOOD have been wholly owned subsidiaries of MARRIOTT.

162.

To the degree that STARWOOD continued to be involved in the ownership, operation and/or management of the Sun Dial after September 23, 2016, STARWOOD did so as the alter ego and/or agent of MARRIOTT and MARRIOTT would be vicariously liable for any negligence by STARWOOD employees that caused or contributed to damages alleged and set forth in more detail later in this Complaint. To the degree appropriate, all negligence claims set forth against STARWOOD in the Complaint are alleged herein by reference.

163.

To the degree that SLC continued to be involved in the ownership, operation and/or management of the Sun Dial after September 23, 2016, SLC did so as the alter ego and/or agent of MARRIOTT and MARRIOTT would be vicariously liable for any negligence by SLC that caused or contributed to cause the damages alleged herein and set forth in more detail later in this Complaint. To the degree appropriate, all negligence claims set forth against SLC in the Complaint are alleged herein by reference.

164.

When MARRIOTT acquired STARWOOD, it acquired the assets and liabilities of both STARWOOD and SLC.

165.

MARRIOTT is vicariously liable for the negligence of STARWOOD and SLC that caused or contributed to cause the damages alleged herein and described in more detail later in this Complaint. All Counts against STARWOOD and SLC are incorporated herein by reference.

COUNT V

(STARWOOD'S VIOLATION OF O.C.G.A. § 51-3-1)

166.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

167.

During the time when STARWOOD was the owner/occupier of the Sun Dial, it had a legal duty, imposed by Georgia law (O.C.G.A. § 51-3-1) to exercise ordinary care in keeping the premises and approaches safe for invitees, like Charlie and his parents.

168.

Michael, Rebecca, Charlie and Ellie Holt were invitees under Georgia law at all times when they were present at the Sun Dial on April 14, 2017.

169.

STARWOOD breached its duties under O.C.G.A. § 51-3-1 in at least the following ways:

- (a) Failing to timely and properly inspect the Sun Dial for hazardous conditions;
- (b) Failing to timely and properly inspect the Sun Dial for conditions that presented unreasonable dangers for children;
- (c) Failing to timely recognize the pinch point and/or the dangers associated with the pinch point;
- (d) Inviting families and children to dine in an environment that contained a dangerous pinch point;
- (e) Failing to recognize that the rotation of the Sun Dial platform created an unreasonably dangerous condition for invitees, including children;
- (f) Allowing the Sun Dial platform to rotate when it was unreasonably dangerous to do so;
- (g) Failing to take reasonable steps to eliminate the pinch point hazard;
- (h) Failing to take reasonable steps to minimize the pinch point hazard;
- (i) Failing to take reasonable steps to protect invitees, including children, from becoming trapped in the pinch point;
- (j) Failing to take reasonable steps to ensure that the rotation would stop automatically in the event that a child became trapped in the pinch point;

- (k) Failing to install an emergency stop button or “e-stop” button or other active safety technology near the pinch point so that someone could quickly stop the rotation if someone got caught in the pinch point;
- (l) Failing to recognize that having the booths bolted to the floor increases the danger of the pinch point by making it harder for someone who becomes trapped to escape or be rescued and failing to eliminate this hazard;
- (m) Failing to recognize that the decorative metal battens on the stationary interior wall, which serve no functional purpose, needlessly increase the danger of the pinch point;
- (n) Failing to properly train employees on what to do in the event of an emergency related to the restaurant’s rotation;
- (o) Failing to adequately warn its invitees regarding the existence of the pinch point and/or the dangers of the pinch point;
- (p) Marketing the premises as safe and appropriate for families with young children without first having taken proper steps to make sure the premises was in fact reasonably safe for children; and
- (q) Otherwise failing to take reasonable steps to make sure the premises were reasonably safe for adults and children.

170.

STARWOOD was negligent as a matter of law in one or more of the respects described in the paragraph above.

171.

The duty imposed by O.C.G.A. § 51-3-1 is a non-delegable duty.

172.

At all times relevant to this case, STARWOOD’s duty to exercise ordinary care in keeping the Sun Dial safe for invitees was a non-delegable duty.

173.

To the degree that STARWOOD maintains that it delegated any safety related duties regarding the Sun Dial to other persons or entities, STARWOOD would still be liable for any negligence by those other persons or entities since the duty imposed by Georgia law is non-delegable.

174.

As a direct and proximate result of STARWOOD's negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature and untimely death.

175.

As a direct and proximate result of STARWOOD's negligence, Michael Holt suffered injuries and damages.

176.

As a direct and proximate result of STARWOOD's negligence, Rebecca Holt suffered injuries and damages.

177.

By virtue of its negligence, STARWOOD is liable to Michael and Rebecca Holt and the Estate of CHARLES WOODY HOLT for all damages allowed by law that were

proximately caused by its negligence, as described in greater detail in the damages sections of the Complaint below.

COUNT VI

(STARWOOD'S COMMON LAW NEGLIGENCE)

178.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

179.

STARWOOD, as the owner/occupier of the Sun Dial, had a legal duty, imposed by Georgia's common law to exercise ordinary care in keeping the premises and approaches safe for invitees, like Charlie and his parents.

180.

STARWOOD owed the above referenced duty to the Holt Family who were invitees during the entire time that they were at the Sun Dial.

181.

At all relevant times, STARWOOD breached its duty under Georgia's common law in the following ways:

- (a) Failing to timely and properly inspect the Sun Dial for hazardous conditions;
- (b) Failing to timely and properly inspect the Sun Dial for conditions that presented unreasonable dangers for children;
- (c) Failing to timely recognize the pinch point and/or the dangers associated with the pinch point;

- (d) Inviting families and children to dine in an environment that contained a dangerous pinch point;
- (e) Failing to recognize that the rotation of the Sun Dial platform created an unreasonably dangerous condition for invitees, including children;
- (f) Allowing the Sun Dial platform to rotate when it was unreasonably dangerous to do so;
- (g) Failing to take reasonable steps to eliminate the pinch point hazard;
- (h) Failing to take reasonable steps to minimize the pinch point hazard;
- (i) Failing to take reasonable steps to protect invitees, including children, from becoming trapped in the pinch point;
- (j) Failing to take reasonable steps to ensure that the rotation would stop automatically in the event that a child became trapped in the pinch point;
- (k) Failing to install an emergency stop button or “e-stop” button or other active safety technology near the pinch point so that someone could quickly stop the rotation if someone got caught in the pinch point;
- (l) Failing to recognize that having the booths bolted to the floor increases the danger of the pinch point by making it harder for someone who becomes trapped to escape or be rescued and failing to eliminate this hazard;
- (m) Failing to recognize that the decorative metal battens on the stationary interior wall, which serve no functional purpose, needlessly increase the danger of the pinch point;
- (n) Failing to properly train employees on what to do in the event of an emergency related to the restaurant’s rotation;
- (o) Failing to adequately warn its invitees regarding the existence of the pinch point and/or the dangers of the pinch point;
- (p) Marketing the premises as safe and appropriate for families with young children without first having taken proper steps to make sure the premises was in fact reasonably safe for children; and
- (q) Otherwise failing to take reasonable steps to make sure the premises were reasonably safe for adults and children.

182.

STARWOOD was negligent in at least one or more of the respects described in the paragraph above.

183.

As a direct and proximate result of the STARWOOD's negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature and untimely death.

184.

As a direct and proximate result of STARWOOD's negligence, Michael Holt suffered injuries and damages.

185.

As a direct and proximate result of STARWOOD's negligence, Rebecca Holt suffered injuries and damages.

186.

By virtue of its negligence, STARWOOD is liable to Michael and Rebecca Holt and the Estate of CHARLES WOODY HOLT for all damages allowed by law that were proximately caused by its negligence, as described in greater detail in the damages sections of the Complaint below.

COUNT VII

(STARWOOD'S *RESPONDEAT SUPERIOR*)

187.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

188.

Prior to MARRIOTT's acquisition of the Sun Dial, RONALD W. TARSON, R. GEORGE REED, and PAUL F. SLOBIG were employees of STARWOOD and directly involved in the operation and management of the Sun Dial and at all times relevant to the Complaint, were acting within the scope of their employment.

189.

To the extent that STARWOOD continued to be involved in the ownership, management, and/or operation of the Sun Dial after MARRIOTT's acquisition, STARWOOD is liable for any negligence by its employees, including but not limited to TARSON, REED, and SLOBIG.

190.

As their employer, STARWOOD is liable under the doctrine of *respondeat superior* for the negligence of RONALD W. TARSON, R. GEORGE REED, and PAUL F. SLOBIG as discussed in greater detail in Counts XII, XIII, and XIV below, which are hereby adopted by reference as if fully set forth. STARWOOD would likewise be liable for the negligence of any other STARWOOD employee who was negligent in failing to timely recognize, eliminate, minimize or warn of the dangerous pinch point.

COUNT VIII

(STARWOOD'S VICARIOUS LIABILITY)

191.

Plaintiffs incorporate herein by reference the allegations of the previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

192.

At all times prior to September 23, 2016, SLC was the wholly owned subsidiary of STARWOOD.

193.

To the degree that SLC continued to be involved in the ownership, operation and/or management of the Sun Dial prior to September 23, 2016, SLC did so as the alter ego and/or agent of STARWOOD and STARWOOD would be vicariously liable for any negligence by SLC that caused or contributed to the death of Charlie Holt and the damages resulting therefrom and set forth in more detail later in this Complaint. To the degree appropriate, all negligence claims set forth against SLC in the Complaint are adopted herein by reference.

194.

STARWOOD is vicariously liable for the negligence of SLC. All Counts against STARWOOD and SLC are incorporated herein by reference.

COUNT IX

(SLC'S VIOLATION OF O.C.G.A. § 51-3-1)

195.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

196.

During the time when SLC was the owner/occupier of the Sun Dial, it had a legal duty, imposed by Georgia law (O.C.G.A. § 51-3-1) to exercise ordinary care in keeping the premises and approaches safe for invitees, like Charlie and his parents.

197.

Michael, Rebecca, Charlie and Ellie Holt were invitees under Georgia law at all times when they were present at the Sun Dial on April 14, 2017.

198.

SLC breached its duties under O.C.G.A. § 51-3-1 in at least the following ways:

- (a) Failing to timely and properly inspect the Sun Dial for hazardous conditions;
- (b) Failing to timely and properly inspect the Sun Dial for conditions that presented unreasonable dangers for children;
- (c) Failing to timely recognize the pinch point and/or the dangers associated with the pinch point;
- (d) Inviting families and children to dine in an environment that contained a dangerous pinch point;
- (e) Failing to recognize that the rotation of the Sun Dial platform created an unreasonably dangerous condition for invitees, including children;
- (f) Allowing the Sun Dial platform to rotate when it was unreasonably dangerous to do so;

- (g) Failing to take reasonable steps to eliminate the pinch point hazard;
- (h) Failing to take reasonable steps to minimize the pinch point hazard;
- (i) Failing to take reasonable steps to protect invitees, including children, from becoming trapped in the pinch point;
- (j) Failing to take reasonable steps to ensure that the rotation would stop automatically in the event that a child became trapped in the pinch point;
- (k) Failing to install an emergency stop button or “e-stop” button or other active safety technology near the pinch point so that someone could quickly stop the rotation if someone got caught in the pinch point;
- (l) Failing to recognize that having the booths bolted to the floor increases the danger of the pinch point by making it harder for someone who becomes trapped to escape or be rescued and failing to eliminate this hazard;
- (m) Failing to recognize that the decorative metal battens on the stationary interior wall, which serve no functional purpose, needlessly increase the danger of the pinch point;
- (n) Failing to properly train employees on what to do in the event of an emergency related to the restaurant’s rotation;
- (o) Failing to adequately warn its invitees regarding the existence of the pinch point and/or the dangers of the pinch point;
- (p) Marketing the premises as safe and appropriate for families with young children without first having taken proper steps to make sure the premises was in fact reasonably safe for children; and
- (q) Otherwise failing to take reasonable steps to make sure the premises were reasonably safe for adults and children.

199.

SLC was negligent as a matter of law in one or more of the respects described in the paragraph above.

200.

The duty imposed by O.C.G.A. § 51-3-1 is a non-delegable duty.

201.

At all times relevant to this case, SLC's duty to exercise ordinary care in keeping the Sun Dial safe for invitees was a non-delegable duty.

202.

To the degree that SLC maintains that it delegated any safety related duties regarding the Sun Dial to other persons or entities, SLC would still be liable for any negligence by those other persons or entities since the duty imposed by Georgia law is non-delegable.

203.

As a direct and proximate result of SLC's negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature and untimely death.

204.

As a direct and proximate result of SLC's negligence, Michael Holt suffered injuries and damages.

205.

As a direct and proximate result of SLC's negligence, Rebecca Holt suffered injuries and damages.

206.

By virtue of its negligence, SLC is liable to Michael and Rebecca Holt and the Estate of CHARLES WOODY HOLT for all damages allowed by law that were proximately

caused by its negligence, as described in greater detail in the damages sections of the Complaint below.

COUNT X

(SLC'S COMMON LAW NEGLIGENCE)

207.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

208.

SLC, as the owner/occupier of the Sun Dial, had a legal duty, imposed by Georgia's common law to exercise ordinary care in keeping the premises and approaches safe for invitees, like Charlie and his parents.

209.

SLC owed the above referenced duty to the Holt Family who were invitees during the entire time that they were at the Sun Dial.

210.

At all relevant times, SLC breached its duty under Georgia's common law in the following ways:

- (a) Failing to timely and properly inspect the Sun Dial for hazardous conditions;
- (b) Failing to timely and properly inspect the Sun Dial for conditions that presented unreasonable dangers for children;
- (c) Failing to timely recognize the pinch point and/or the dangers associated with the pinch point;

- (d) Inviting families and children to dine in an environment that contained a dangerous pinch point;
- (e) Failing to recognize that the rotation of the Sun Dial platform created an unreasonably dangerous condition for invitees, including children;
- (f) Allowing the Sun Dial platform to rotate when it was unreasonably dangerous to do so;
- (g) Failing to take reasonable steps to eliminate the pinch point hazard;
- (h) Failing to take reasonable steps to minimize the pinch point hazard;
- (i) Failing to take reasonable steps to protect invitees, including children, from becoming trapped in the pinch point;
- (j) Failing to take reasonable steps to ensure that the rotation would stop automatically in the event that a child became trapped in the pinch point;
- (k) Failing to install an emergency stop button or “e-stop” button or other active safety technology near the pinch point so that someone could quickly stop the rotation if someone got caught in the pinch point;
- (l) Failing to recognize that having the booths bolted to the floor increases the danger of the pinch point by making it harder for someone who becomes trapped to escape or be rescued and failing to eliminate this hazard;
- (m) Failing to recognize that the decorative metal battens on the stationary interior wall, which serve no functional purpose, needlessly increase the danger of the pinch point;
- (n) Failing to properly train employees on what to do in the event of an emergency related to the restaurant’s rotation;
- (o) Failing to adequately warn its invitees regarding the existence of the pinch point and/or the dangers of the pinch point;
- (p) Marketing the premises as safe and appropriate for families with young children without first having taken proper steps to make sure the premises was in fact reasonably safe for children; and
- (q) Otherwise failing to take reasonable steps to make sure the premises were reasonably safe for adults and children.

211.

SLC was negligent in at least one or more of the respects described in the paragraph above.

212.

As a direct and proximate result of the SLC's negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature and untimely death.

213.

As a direct and proximate result of SLC's negligence, Michael Holt suffered injuries and damages.

214.

As a direct and proximate result of SLC's negligence, Rebecca Holt suffered injuries and damages.

215.

By virtue of its negligence, SLC is liable to Michael and Rebecca Holt and the Estate of CHARLES WOODY HOLT for all damages allowed by law that were proximately caused by its negligence, as described in greater detail in the damages sections of the Complaint below.

COUNT XI

(SLC'S *RESPONDEAT SUPERIOR*)

216.

Plaintiffs incorporate herein by reference and adopt all previous paragraphs as if each were fully set forth herein.

217.

Prior to MARRIOTT's acquisition of the Sun Dial, RONALD W. TARSON, R. GEORGE REED, and PAUL F. SLOBIG were employees of SLC directly involved in the operation and management of the Sun Dial and at all times relevant to the Complaint, were acting within the scope of their employment.

218.

To the extent that SLC continued to be involved in the ownership, management, and/or operation of the Sun Dial after MARRIOTT's acquisition, STARWOOD is liable for any negligence by its employees, including but not limited to TARSON, REED, and SLOBIG.

219.

As their employer, SLC is liable under the doctrine of *respondeat superior* for the negligence of RONALD W. TARSON, R. GEORGE REED, and PAUL F. SLOBIG as discussed in greater detail in Counts XII, XIII, and XIV below, which are hereby adopted by reference as if fully set forth. SLC would likewise be liable for the negligence of any other SLC employee who was negligent in failing to timely recognize, eliminate, minimize or warn of the dangerous pinch point.

COUNT XII

(RONALD W. TARSON'S NEGLIGENCE)

220.

Plaintiffs incorporate herein by reference the allegations of the previous paragraphs of this Complaint as if each were fully set forth herein in its entirety.

221.

At all times relevant to this Complaint, TARSON was the manager of the Westin Peachtree Plaza and had managerial authority over the Sun Dial.

222.

As an employee of MARRIOTT, TARSON owed a duty to the Sun Dial's customers, including their children and other such invitees, to protect them from unreasonable risks of harm.

223.

As an employee of STARWOOD, TARSON owed a duty to the Sun Dial's customers, including their children and other such invitees, to protect them from unreasonable risks of harm.

224.

At all relevant times, TARSON breached his duties in at least the following ways:

- (a) Failing to timely and properly inspect the Sun Dial for hazardous conditions;
- (b) Failing to timely and properly inspect the Sun Dial for conditions that presented unreasonable dangers for children;

- (c) Failing to timely recognize the pinch point and/or the dangers associated with the pinch point;
- (d) Inviting families and children to dine in an environment that contained a dangerous pinch point;
- (e) Failing to recognize that the rotation of the Sun Dial platform created an unreasonably dangerous condition for invitees, including children;
- (f) Allowing the Sun Dial platform to rotate when it was unreasonably dangerous to do so;
- (g) Failing to take reasonable steps to eliminate the pinch point hazard;
- (h) Failing to take reasonable steps to minimize the pinch point hazard;
- (i) Failing to take reasonable steps to protect invitees, including children, from becoming trapped in the pinch point;
- (j) Failing to take reasonable steps to ensure that the rotation would stop automatically in the event that a child became trapped in the pinch point;
- (k) Failing to install an emergency stop button or “e-stop” button or other active safety technology near the pinch point so that someone could quickly stop the rotation if someone got caught in the pinch point;
- (l) Failing to properly train employees on what to do in the event of an emergency related to the restaurant’s rotation;
- (m) Failing to adequately warn its invitees regarding the existence of the pinch point and/or the dangers of the pinch point;
- (n) Marketing the premises as safe and appropriate for families with young children without first having taken proper steps to make sure the premises was in fact reasonably safe for children; and
- (o) Otherwise failing to take reasonable steps to make sure the premises were reasonably safe for adults and children.

225.

TARSON was negligent in at least one or more of the respects described in the paragraph above.

226.

As a direct and proximate result of TARSON's negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature and untimely death.

227.

As a direct and proximate result of TARSON's negligence, Michael Holt suffered injuries and damages.

228.

As a direct and proximate result of TARSON's negligence, Rebecca Holt suffered injuries and damages.

229.

By virtue of his negligence, TARSON is liable to the Holts and the Estate of CHARLES WOODY HOLT for all damages allowed by law that were proximately caused by his negligence, as described in greater detail below.

COUNT XIII

(R. GEORGE REED'S NEGLIGENCE)

230.

Plaintiffs incorporate herein by reference the allegations of the previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

231.

At all times relevant to this Complaint, REED was the manager of the Westin Peachtree Plaza and had managerial authority over the Sun Dial.

232.

As an employee of MARRIOTT, REED owed a duty to the Sun Dial's customers, including their children and other such invitees, to protect them from unreasonable risks of harm.

233.

As an employee of STARWOOD, REED owed a duty to the Sun Dial's customers, including their children and other such invitees, to protect them from unreasonable risks of harm.

234.

At all relevant times, REED breached at least the following legal duties:

- (a) Failing to timely and properly inspect the Sun Dial for hazardous conditions;
- (b) Failing to timely and properly inspect the Sun Dial for conditions that presented unreasonable dangers for children;
- (c) Failing to timely recognize the pinch point and/or the dangers associated with the pinch point;
- (d) Inviting families and children to dine in an environment that contained a dangerous pinch point;
- (e) Failing to recognize that the rotation of the Sun Dial platform created an unreasonably dangerous condition for invitees, including children;
- (f) Allowing the Sun Dial platform to rotate when it was unreasonably dangerous to do so;
- (g) Failing to take reasonable steps to eliminate the pinch point hazard;
- (h) Failing to take reasonable steps to minimize the pinch point hazard;

- (i) Failing to take reasonable steps to protect invitees, including children, from becoming trapped in the pinch point;
- (j) Failing to take reasonable steps to ensure that the rotation would stop automatically in the event that a child became trapped in the pinch point;
- (k) Failing to install an emergency stop button or “e-stop” button or other active safety technology near the pinch point so that someone could quickly stop the rotation if someone got caught in the pinch point;
- (l) Failing to properly train employees on what to do in the event of an emergency related to the restaurant’s rotation;
- (m) Failing to adequately warn its invitees regarding the existence of the pinch point and/or the dangers of the pinch point;
- (n) Marketing the premises as safe and appropriate for families with young children without first having taken proper steps to make sure the premises was in fact reasonably safe for children; and
- (o) Otherwise failing to take reasonable steps to make sure the premises were reasonably safe for adults and children.

235.

REED was negligent in at least one or more of the respects described in the paragraph above.

236.

As a direct and proximate result of REED’s negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature and untimely death.

237.

As a direct and proximate result of REED’s negligence, Michael Holt suffered injuries and damages.

238.

As a direct and proximate result of REED's negligence, Rebecca Holt suffered injuries and damages.

239.

By virtue of its negligence, REED is liable to the Holts and the Estate of CHARLES WOODY HOLT for all damages allowed by law that were proximately caused by his negligence, as described in greater detail below.

COUNT XIV

(PAUL F. SLOBIG'S NEGLIGENCE)

240.

Plaintiffs incorporate herein by reference the allegations of the previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

241.

At all times relevant to this Complaint, SLOBIG was the Food and Beverage manager of the Westin Peachtree Plaza and had managerial authority over the Sun Dial.

242.

As an employee of MARRIOTT, SLOBIG owed a duty to the Sun Dial's customers, including their children and other such invitees, to protect them from unreasonable risks of harm.

243.

As an employee of STARWOOD, SLOBIG owed a duty to the Sun Dial's customers, including their children and other such invitees, to protect them from unreasonable risks of harm.

244.

At all relevant times, SLOBIG breached at least the following legal duties:

- (a) Failing to timely and properly inspect the Sun Dial for hazardous conditions;
- (b) Failing to timely and properly inspect the Sun Dial for conditions that presented unreasonable dangers for children;
- (c) Failing to timely recognize the pinch point and/or the dangers associated with the pinch point;
- (d) Inviting families and children to dine in an environment that contained a dangerous pinch point;
- (e) Failing to recognize that the rotation of the Sun Dial platform created an unreasonably dangerous condition for invitees, including children;
- (f) Allowing the Sun Dial platform to rotate when it was unreasonably dangerous to do so;
- (g) Failing to take reasonable steps to eliminate the pinch point hazard;
- (h) Failing to take reasonable steps to minimize the pinch point hazard;
- (i) Failing to take reasonable steps to protect invitees, including children, from becoming trapped in the pinch point;
- (j) Failing to take reasonable steps to ensure that the rotation would stop automatically in the event that a child became trapped in the pinch point;
- (k) Failing to install an emergency stop button or "e-stop" button or other active safety technology near the pinch point so that someone could quickly stop the rotation if someone got caught in the pinch point;
- (l) Failing to properly train employees on what to do in the event of an emergency related to the restaurant's rotation;
- (m) Failing to adequately warn its invitees regarding the existence of the pinch point and/or the dangers of the pinch point;
- (n) Marketing the premises as safe and appropriate for families with young children without first having taken proper steps to make sure the premises was in fact reasonably safe for children; and

- (o) Otherwise failing to take reasonable steps to make sure the premises were reasonably safe for adults and children.

245.

SLOBIG was negligent in at least one or more of the respects described in the paragraph above.

246.

As a direct and proximate result of SLOBIG'S negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature and untimely death.

247.

As a direct and proximate result of SLOBIG's negligence, Michael Holt suffered injuries and damages.

248.

As a direct and proximate result of SLOBIG's negligence, Rebecca Holt suffered injuries and damages.

249.

By virtue of its negligence, SLOBIG is liable to the Holts and the Estate of CHARLES WOODY HOLT for all damages allowed by law that were proximately caused by his negligence, as described in greater detail below.

COUNT XV

(COOPER CARRY'S AND KEITH SIMMEL'S PROFESSIONAL NEGLIGENCE)

250.

Plaintiffs incorporate all previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

251.

COOPER CARRY provided architectural services for the 2012-2013 renovation project.

252.

KEITH SIMMEL of COOPER CARRY was the principal architect on the 2012-2013 renovation project.

253.

At all relevant times, KEITH SIMMEL was an employee or agent of COOPER CARRY and was acting within the course and scope of his employment/agency.

254.

In the performance of their services as architects for 2012-2013 renovation project, COOPER CARRY and KEITH SIMMEL owed a duty to adhere to the professional standard of care for architects – that degree of care and skill expected of architects in general, under like or similar circumstances.

255.

Attached as Exhibit A to the Compliant is the Affidavit of James Rappoport, a licensed architect competent to testify as an expert in this case, that sets forth at least one negligent act or omission and the factual basis for such claim in compliance with O.C.G.A. 9-11-9.1.

256.

KEITH SIMMEL and COOPER CARRY had duties under the minimally acceptable professional standard of care for architects, including but not limited to:

- (a) A duty to recognize pinch points and caught-in hazards
- (b) A duty to look for pinch point and caught-in hazards whenever there are moving components in a design such as were present with the Sun Dial;
- (c) Once discovered, a duty to inform the person or entity who retained them of the hazard; and
- (d) A duty to make sure pinch point and caught-in hazards are eliminated before signing and stamping architectural drawings intended to be used to secure building permits and certificates of occupancy.

257.

KEITH SIMMEL and COOPER CARRY breached the professional standard of care that applied to architects under like and similar circumstances in one or more of the following ways:

- (a) failing to recognize the pinch point (caught-in hazard) at issue;
- (b) failing to bring the hazard to the attention of the person or entity who retained their architectural services;
- (c) signing and stamping plans that contain a dangerous pinch point (caught-in hazard); and

- (d) Otherwise failing to take reasonable steps to identify, inform and prevent the dangerous condition at issue.

258.

The above failures constitute professional negligence under Georgia law.

259.

The above failures may also constitute ordinary negligence under Georgia law.

260.

The above negligence contributed to cause the injuries and damages claimed herein and set forth in more detail later in this Complaint.

261.

COOPER CARRY is vicariously liable for the negligence of SIMMEL under a theory of *respondeat superior*.

COUNT XVI

(BLACKDOG AND CAROLYN AUGER JOINER'S NEGLIGENCE)

262.

Plaintiffs incorporate all previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

263.

CAROLYN AUGER JOINER was the interior designer for the 2012-2013 renovation.

264.

At all pertinent times, AUGER was and employee or agent of BLACKDOG acting within the course and scope of that relationship.

265.

BLACKDOG and AUGER owed a duty to use reasonable care in performing interior design services for the 2012-2013 renovation project.

266.

BLACKDOG and AUGER were experienced interior designers with significant experience designing interior spaces for commercial purposes.

267.

BLACKDOG and AUGER had a duty to:

- (a) not design spaces that contain dangerous pinch points (caught-in hazards);
- (b) recognize dangerous pinch points (caught-in hazards) in the areas they design;
- (c) inform the person or entity who retained their services about dangerous pinch points (caught-in hazards);
- (d) eliminate dangerous pinch points (caught-in hazards); and
- (e) warn about dangerous pinch points (caught-in hazards)

268.

BLACKDOG and AUGER breached one or more of the following duties regarding their work on the 2012-13 renovation:

- (a) designing spaces that contained dangerous pinch points (caught-in hazards);

- (b) failing to recognize dangerous pinch points (caught-in hazards) in the areas they designed;
- (c) failing to inform the person or entity who retained their services about dangerous pinch points (caught-in hazards);
- (d) failing to eliminate dangerous pinch points (caught-in hazards); and
- (e) failing to warn about dangerous pinch points (caught-in hazards).

269.

BLACKDOG and AUGER breached one or more the above referenced duties and were therefore negligent.

270.

The above negligence contributed to cause the injuries and damages claimed herein and set forth in more detail later in this Complaint.

271.

BLACKDOG is vicariously liable for the negligence of AUGER under a theory of *respondeat superior*.

COUNT XVII

(BALFOUR BEATTY'S NEGLIGENCE)

272.

Plaintiffs incorporate all previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

273.

BALFOUR BEATTY was retained as the general contractor for the 2012-2013 renovation project.

274.

BALFOUR BEATTY owed a duty to use reasonable care in performing construction/general contractor duties for the 2012-2013 renovation project.

275.

In performing their work, BALFOUR BEATTY had a duty to:

- (a) recognize dangerous pinch points (caught-in hazards);
- (b) inform the person or entity who retained their services about dangerous pinch points (caught-in hazards);
- (c) eliminate dangerous pinch points (caught-in hazards); and
- (d) warn about dangerous pinch points (caught-in hazards).

276.

BALFOUR BEATTY breached one or more of the following duties regarding their work on the 2012-13 renovation:

- (a) failing to recognize the pinch point (caught-in hazard) at issue;
- (b) failing to bring the hazard to the attention of the person or entity who retained their construction/contractor services;
- (c) recognizing the hazard at issue but failing to take reasonable steps to inform others about the danger; and/or
- (d) otherwise failing to take reasonable steps to identify, inform and prevent the dangerous condition at issue.

277.

BLACKDOG and AUGER breached one or more the above referenced duties and were therefore negligent.

278.

The above negligence contributed to cause the injuries and damages claimed herein and set forth in more detail later in this Complaint.

COUNT XVIII

(ESTATE CLAIMS)

279.

Plaintiffs incorporate all previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

280.

As a direct and proximate result of Defendants' negligence, individually and/or collectively, Michael and Rebecca Holt and the Estate of CHARLES HOLT incurred medical bills, funeral/burial expenses, and other special damages on behalf of Charlie Holt.

281.

MICHAEL HOLT, as Administrator of the Estate of CHARLES WOODY HOLT is entitled to bring this action to recover damages for the pre-death pain and suffering

endured by CHARLES WOODY HOLT as well as any medical, funeral, or incidental expenses and punitive damages pursuant to O.C.G.A. § 9-2-40 and other Georgia law.

282.

By virtue of their negligence, individually and/or collectively, Defendants are liable to the Estate of CHARLES WOODY HOLT for all economic and non-economic damages allowed by law that were proximately caused by their negligence, including but not limited to those for property damage, medical bills, funeral bills, pain and suffering, and punitive damages.

COUNT XXIX

(WRONGFUL DEATH)

283.

Plaintiffs incorporate all previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

284.

As a direct and proximate result of Defendants' negligence, Charlie Holt sustained severe and catastrophic personal injuries that resulted in his premature, untimely, and wrongful death.

285.

Pursuant to O.C.G.A. § 51-4-4, O.C.G.A. § 19-7-1, and other Georgia law, MICHAEL and REBECCA HOLT have the right to recover damages for the wrongful

death of their son, CHARLES WOODY HOLT, the measure of which is the full value of his life, both economic and intangible, as determined by the enlightened conscience of a fair and impartial jury.

286.

By virtue of their negligence, individually and/or collectively, Defendants are liable to MICHAEL and REBECCA HOLT for these damages.

COUNT XX

(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS FOR MICHAEL HOLT)

287.

Plaintiffs incorporate all previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

288.

As a direct and proximate result of the negligence of Defendants, individually and/or collectively, Plaintiff MICHAEL HOLT suffered impact, physical injury, and tremendous emotional distress as he tried to rescue his son and witnessed his son's fatal injuries. He also suffered pecuniary losses and reputational damages supporting a claim for negligent infliction of emotional distress.

289.

Defendants are individually and/or collectively liable to Plaintiff MICHAEL HOLT for negligent infliction of emotional distress and all damages allowed by law.

COUNT XXI

(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS FOR REBECCA HOLT)

290.

Plaintiffs incorporate all previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

291.

As a direct and proximate result of the negligence of Defendants, individually and/or collectively, Plaintiff REBECCA HOLT suffered impact, physical injury, and tremendous emotional distress as she tried to rescue her son and witnessed others trying to rescue her son, and ultimately saw her son's fatal injuries. She also suffered pecuniary losses and reputational damages supporting a claim for negligent infliction of emotional distress.

292.

Defendants, individually and/or collectively, are liable to Plaintiff REBECCA HOLT for negligent infliction of emotional distress and all damages allowed by law.

XXII

(ATTORNEY'S FEES AND EXPENSES)

293.

Plaintiffs incorporate all previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

294.

Plaintiffs hereby provide notice that they will seek their expenses of litigation including their reasonable attorneys' fees and costs pursuant to O.C.G.A. § 13-6-11 to the extent Defendants deny liability or otherwise act stubbornly litigious or cause Plaintiffs unnecessary trouble and expense.

COUNT XXIII

(Punitive Damages)

295.

Plaintiffs incorporate all previous paragraphs of this Complaint as if each were fully set forth herein in the entirety.

296.

Defendants' acts and omissions were willful, wanton, and demonstrated that entire want of care which raises the presumption of a conscious indifference to consequences.

297.

Accordingly, Defendants are liable to Plaintiffs for punitive damages to punish, penalize, and deter the Defendants from similar conduct in the future.

WHEREFORE, Plaintiffs pray that the following relief be granted:

- (a) A trial by jury;
- (b) Service on each Defendant as permitted by law;

- (c) Judgment against each Defendant in an amount to fully compensate Plaintiffs for all special and general damages allowed by law;
- (d) Judgment against each Defendant for the full value of the life of CHARLES WOODY HOLT;
- (e) Judgment against each Defendant in an amount to fully compensate the ESTATE OF CHARLES WOODY HOLT for all special and general damages allowed by law;
- (f) Judgment against each Defendant in an amount to fully compensate MICHAEL and REBECCA HOLT for negligent infliction of emotional distress;
- (g) Judgment against Defendants in an amount determined to be fair and reasonable in the minds of a fair and impartial jury;
- (h) Punitive damages be recovered in an amount the jury believes to be just, fair and equitable, given the facts and issues in this case;
- (i) Attorney's fees and litigation expenses;
- (j) Court costs, discretionary costs, and prejudgment interest; and
- (k) For all such further and general relief which this Court deems just and proper.

This 15th day of November, 2017.

FRIED ROGERS GOLDBERG LLC

/s/ Joseph A. Fried

JOSEPH A. FRIED

GEORGIA STATE BAR NUMBER 277251

BRIAN T. MOHS

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