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Civil Division

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

[redacted] [redacted] as administrator of the estate of [redacted] [redacted] and as guardian of J.H. and T.H., *Plaintiff*, v. MARTIN-ROBBINS FENCE COMPANY, GEORGIA DEPARTMENT OF TRANSPORTATION, ARCADIS U.S., INC. and JOHN DOES 1-10, *Defendants*.	Civil Action File No.: [redacted]
[redacted] [redacted] and [redacted] [redacted] *Plaintiffs*, v. GEORGIA DEPARTMENT OF TRANSPORTATION, MARTIN-ROBBINS FENCE COMPANY, and ARCADIS U.S., INC. *Defendants*.	Civil Action File No.: [redacted]

DEFENDANT MARTIN-ROBBINS FENCE COMPANY'S CONSOLIDATED REPLY BRIEF IN SUPPORT OF ITS MOTION TO EXCLUDE PLAINTIFFS' EXPERT HERMAN HILL

COMES NOW Defendant Martin-Robbins Fence Co. ("Martin Robbins") and files this Consolidated Reply Brief in Support of Its Motion of Its Motion to Exclude Plaintiffs [redacted] [redacted] as administrator of the estate of [redacted] [redacted] and as guardian of J.H. and T.H.'s, and

Plaintiffs ████ and ███ █████ (collectively, the "Plaintiffs") Expert Herman Hill,[1] showing the Court as follows:

ARGUMENT AND CITATION TO AUTHORITY

I. Plaintiffs Cannot Meet The Burden for Admission of Mr. Hill's Testimony

Plaintiffs' Oppositions to Martin Robbins' Motion to Exclude ask this Court to admit an unsupported opinion from an unqualified witness. Plaintiffs assert the shortcomings of their expert Herman Hill's ("Mr. Hill") qualifications and opinions should be addressed on cross-examination, not a motion to exclude. (████ Opp., p. 5; ██ Opp., p. 6.) This misstates Georgia law and is a clear attempt to avoid the burden of proof Plaintiffs bear to establish both qualification and reliability by a preponderance of the evidence. *Butler v. Union Carbide Corp.*, 310 Ga. App. 21, 37 (2011). Instead of putting forth specific evidence to meet their burden, Plaintiffs rely on generalities and conclusory statements which is insufficient to defeat a motion to exclude. *Cook ex rel. Estate of Tessier v. Sheriff of Monroe Cty., Fla.*, 402 F.3d 1092, 1113 (11th Cir. 2005) ("Presenting a summary of a proffered expert's testimony in the form of conclusory statements devoid of factual or analytical support is simply not enough.") Because expert testimony "can be both powerful and quite misleading," the trial court is required to act as a gatekeeper to ensure a jury is not improperly influenced by unqualified or unreliable testimony. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993). Plaintiffs cannot meet their burden to show Mr. Hill is qualified or that his opinions related to Martin Robbins is reliable, and accordingly, Martin Robbins respectfully requests he be excluded.

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[1] The ████ Plaintiff and █████ Plaintiffs filed separate Responses in Opposition to Martin Robbins' single Motion to Exclude. The Plaintiffs' Oppositions are nearly identical, advance the same arguments, and rely on the same authority. Thus, in the interest of judicial economy, Martin Robbins files this single reply and will cite to the ████ Plaintiff's Opposition Brief as "████ Opp." and the █████ Plaintiffs' Opposition Brief as "██ Opp."

II. <u>**Mr. Hill Admitted to Having No Experience Which Would Qualify Him to Testify on the Standard of Care for a Guardrail Contractor**</u>

Plaintiffs ask this Court to accept because Mr. Hill may be qualified to testify regarding *some* topics related to state highways, he is necessarily qualified to testify regarding *any and all* topics related in any way to state highways.[2] [3] More specifically, Plaintiffs argue because their expert has experience with design and engineering of state highways, he is qualified to testify as to industry standards for guardrail contractors performing open agency repair contracts along those highways. (Opp., p. 7-8; Opp., p. 6-7.) Plaintiffs do not cite any authority supporting their argument and it is simply not the law in Georgia.

As stated by the Georgia Supreme Court, an expert testifying to a standard of care must have "experience with the **<u>particular procedure or practice at issue</u>**." *HNTB Georgia, Inc. v. Hamilton-King*, 287 Ga. 641, 645 (2010) (emphasis added); *see also Clarke v. Schofield*, 632 F. Supp. 2d 1350, 1358 (M.D. Ga. 2009); *GOT I, LLC v. XRT, Inc.*, 2019 WL 12529020 at * (N.D. Ga. 2019) (though expert worked in toy industry, expert was excluded from testifying as to toy industry's meaning of contractual term where expert had no experience reviewing agreements containing that term). The reasoning behind this rule is evident. An industry standard is not a personal belief about how an industry professional should act or a guess based on anecdotal evidence. *Rentz v. Brown*, 219 Ga. App. 187, 188 (1995). Rather, an industry standard is an act

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[2] The Oppositions state the "Georgia Court of Appeals long ago gave its stamp of approval to Mr. Hill." (Opp., p. 8; Opp., p. 7.) Under Plaintiffs' interpretation, an expert could never be challenged on his qualifications after he was permitted to testify in a single case. Again, this is not the law in Georgia.

[3] Plaintiffs cite four trial court orders in which Mr. Hill was challenged, but permitted to testify as an expert. Mr. Hill did not offer an opinion on the standard of care for a guardrail contractor or the timing of guardrail repair in any of these cases. Indeed, none of the cases even mention the word "guardrail." (*See* Ex. C-E to Plaintiff's Opposition; *Haynes v. Lawrence Transp. Co.*, 2015 WL 5601942 (N.D. Ga. 2015)

widely practiced and followed by those actually working in that industry. *Mays v. Valley View Ranch, Inc.*, 317 Ga. App. 143, 148-149 (2012). To establish an industry practice, there must be evidence of a "universal custom or practice." *Rentz*, 219 Ga. App. at 188. Requiring an expert be experienced with a "particular procedure or practice" ensures the expert can speak to how professionals in the field actually perform their work as opposed to conjecture about how the work could be performed or personal judgments about how the work would best be performed. *Id.*

Accordingly, general experience in a field is insufficient to establish qualification for any opinion related to that field as illustrated by the case of *Butler v. First Acceptance Ins. Co., Inc.*. 652 F. Supp. 2d 1264 (N.D. Ga. 2009). In *Butler*, plaintiff brought suit against another driver's insurer alleging tortious failure to settle a claim. Plaintiff engaged an attorney as an expert who had represented parties in personal injury and insurance litigation for 30 years and who had written a treatise on Georgia Automobile Insurance Law. *Id*. at 1271. The court excluded the expert as unqualified finding even though he had worked around the insurance industry, he had never worked in that industry and could not provide insight onto the practices of that industry. *Id*.

Similarly, here, Mr. Hill may have worked around guardrails but he has never worked in the guardrail industry and has no experience with the "particular procedure or practice" at issue here: scheduling guardrail repair under an open agency contract. (Hill Dep. 110:2-5.[4]) As a reminder, Mr. Hill testified he has **never**:

- Worked for a guardrail contractor. (Hill Dep. 87:12-23.)
- Installed or repaired a guardrail. (Hill Dep. 87:21-25)
- Evaluated guardrail damage to determine the manpower, material, or equipment or machinery needed to repair it. (Hill Dep. 90:18-20; 92:2-4; 92:20-23.)

[4] Martin Robbins attached cited portions of Mr. Hill's deposition to its Motion as Ex. 3.

- Performed an analysis to determine when a guardrail repair could be performed considering available manpower, equipment, or materials; location of the repair; timing of approval of traffic control plans; the weather; and restrictions from the owner (i.e. no work on holiday weekends). (Hill Dep. 96:4-8; 97:5-98:15.)
- Administered an open agency contract with no maximum and no minimum requests. (Hill Dep. 120:4-6.)
- Scheduled requests for performance of services under an open agency contract. (Hill Dep. 110:2-5)
- Scheduled locations where multiple crews would operate for a single contractor on a given day or a in a given month. (Hill Dep. 104:17-21; 106:18-23.)
- Managed, maintained, or ordered an inventory of materials needed to install or repair guardrail. (Hill Dep. 90:11-17)
- Hired employees to oversee guardrail installation or maintenance. (Hill Dep. 101:8-16; 102:2-4.)

These are the central matters in this case, and Mr. Hill admitted to having no experience with them.

Plaintiffs cite generically to Mr. Hill's curriculum vitae, asking the Court to infer guardrail experience based on Mr. Hill's job titles and descriptions.[5] (█████ Opp., p. 7-8; ███ Opp. p. 6-8.) Notably, Mr. Hill's curriculum vitae does not contain any reference to "guardrails." (*See* Ex. 1 to █████ Opp.) The only specific allegation Plaintiffs make regarding Mr. Hill's guardrail experience is that he "administered contracts with guardrail contractors" as Floyd County's Public

[5] Mr. Hill's six-page curriculum vitae does not mention "guardrail" at all. (*See* Ex. 1 to █████ Opp.)

Works Director from 1983 and 1986.[6] (Opp., p. 7; Opp., p. 7; Hill Dep.[7] 99:3-6.) This allegation is misleading, however, as Mr. Hill testified Floyd County did not have "signed agreements" with contractors for guardrail repairs and further that Floyd County's day-to-day oversight of guardrail repairs were "handled" by others. (Hill Dep., p. 99:25-100:14.) Moreover, he testified Floyd County did not need guardrail repairs "very often," and therefore, did not work with contractors "that much." (Hill Dep., p. 99:7-12; p. 100:15-101:3.) Plaintiffs nor Mr. Hill offer any explanation as to how Mr. Hill's three years working around guardrails three decades ago provides a sufficient basis for him to opine on industry standards for the time to repair a guardrail under an open agency contract, which warrants his exclusion. *See D.H. Pace Co., Inc. v. Aaron Overhead Door Atlanta LLC*, 526 F. Supp. 3d 1360, 1372-1372 (N.D. Ga. 2021) ("[I]f the witness is relying solely or primarily on experience, then the witness must explain… why that experience is a sufficient basis for the opinion.").

Plaintiffs argue Mr. Hill's testimony "about guardrail" has previously been admitted by the Georgia Court of Appeals in two prior cases; however, neither of the cases cited relate to industry standards for guardrail repair or timing of the same.[8] Indeed, Mr. Hill testified he has never offered

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[6] Plaintiffs assert—without citation—Mr. Hill had experience "scheduling guardrail work and making sure the guardrail work was done properly." (Opp., p. 7; Opp. 8.) Again, unsupported conclusions will not defeat a motion to exclude. *Cook*, 402 F.3d at 1113. Moreover, Mr. Hill testified specifically he had no experience scheduling repairs under an open agency contract; had no experience scheduling multiple crews in multiple locations over a given day or month; and had no experience analyzing when a guardrail contractor repair could be performed considering available manpower, equipment, or materials; location of the repair; timing of approval of traffic control plans; the weather; and restrictions from the owner. (*See* Hill Dep. 96:4-8; 97:5-98:15; 104:17-21; 106:18-23; 110:2-5.)

[7] Attached hereto as **Exhibit A** are portions of Mr. Hill's deposition that were not previously cited in Martin Robbins' Motion.

[8] Plaintiffs cite *Ga. Dep't of Transp v. Miller*, and *Delson v. Ga. Dep't of Transp.* (Opp., p. 8; Opp., p. 7-8.) In *Miller*, Mr. Hill offered opinions related to GDOT's inspection of roadways and storm control policy. 300 Ga. App. 857, 861-862 (2009). Guardrails are not mentioned anywhere in the decision. In *Delson*, Mr. Hill offered testimony regarding the propriety

an opinion on such matters prior to this case. (Hill Dep. 114:1-18; 115:7-19; 116:14-20.) Plaintiffs failed to show Mr. Hill is qualified to opine on industry standards for a guardrail contractor, and thus, he should be excluded from offering opinions related to Martin Robbins in this matter.

III. Mr. Hill's Opinions Regarding Martin Robbins are Not Reliable

Mr. Hill opined during his deposition that Martin Robbins had a duty to repair the Subject Guardrail within 21 days. As noted in its Motion, a legal duty is created solely by statute or common law. (Motion, Section II.) Mr. Hill testified Martin Robbins had a duty to repair within 21 days but could not identify any statute or case authority showing the existence of such duty. Specifically, he testified:

> Q: Does any statute, code, regulation, rule, or industry-standard require a contractor to repair a non-functional guardrail within 21 days?
>
> A: **I'm not aware of it and it doesn't matter. Contract is the only thing that matters.**
>
> Q: Are you aware of any statute, code regulation, rule, or industry standard that sets out any specific timeframe in which a contactor must repair a non-functional guardrail?
>
> A: **As far as I'm concerned, it doesn't matter. The Contract here says that and that's the only thing that matters.**
>
> Q: But is there one that you're aware of?
>
> A: **I'm not aware of one**. (MR Fact,[9] ¶ 39.)(Emphasis added.)

Martin Robbins moved to exclude Mr. Hill, in part, because an expert cannot create a legal duty not recognized under Georgia law, which is exactly what Mr. Hill attempted to do. *Diamond v. Dep't of Transp.*, 326 Ga. App. 189, 195 (2014) (finding defendant had no duty despite Mr. Hill

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of GDOT's design of a highway, specifically where GDOT decided to place guardrails on a state highway. 295 Ga. App. 84, 85 (2008). Such design testimony dose not relate to any duty owed by the guardrail contractor or any standard related to when guardrail install/repair occurred.

[9] Martin Robbins previously filed its Statement of Undisputed Material Facts and Theories of Recovery in Support of Its Motion for Summary Judgment in accordance with Uniform Rule 6.5. Martin Robbins attached its Statement of Undisputed Material Facts to its Motion to Exclude as Exhibit 2 and will cite to the facts therein as "MR Fact, ¶ __."

testifying otherwise). Plaintiffs now try to avoid Mr. Hill's exclusion by submitting a supplemental affidavit stating the opposite of Mr. Hill's previously sworn testimony. [10]

Mr. Hill now asserts an industry standard does exist, stating: "As the governing authority on the maintenance of state-owned guardrail located within the state highway system, GDOT sets the industry standard for guardrail maintenance within the state of Georgia. Therefore, the industry standard is what GDOT says it is." (Supp. Hill Aff., ¶ 4-5.) He goes on to state: "The industry standard for repairing nonfunctional guardrail is to make the repair within 21-days of notice, as shown by the repair timeline in GDOT's contract" with Martin Robbins.[11] (Supp. Hill Aff., ¶ 5.) Whether couched as a "duty" or an "industry standard," Mr. Hill's opinion regarding Martin Robbins is unreliable and should be stricken for several reasons: (1) Mr. Hill failed to present evidence Georgia's guardrail industry adheres to a 21-day time to repair standard; (2) Mr. Hill deferred to GDOT regarding the industry standard and GDOT denies such industry standard exists; and (3) Mr. Hill's review of case materials have no relation to his opinion regarding Martin Robbins.

A. Mr. Hill Failed to Present Evidence Georgia's Guardrail Industry Adheres to a 21-Day Time to Repair Standard

Under Georgia law, an expert testifying as to the standard of care must show his conclusions are based on "readily ascertainable and verifiable standards recognized by practitioners in the field." *HNTB Georgia*, 287 Ga. at 645. Thus, establishing a practice as an

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[10] A copy of Mr. Hill's supplemental affidavit is attached to the [redacted] Plaintiff's Opposition as Exhibit G.

[11] The Contract specifically contemplates that it may require performance beyond industry standard. Art. 111(I) stated: "The Contract represents and expressly warrants that all aspects of the Services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in this Contract, which shall take precedence."

"industry standard" requires more than an expert's "say-so." *Mays*, 317 Ga. App. at 148-149. One way for an expert to establish a practice as "industry standard" is through citation to applicable codes, laws, rules, or regulations. *Id*. In this case, Plaintiffs have failed to identify any such code, law, rule, or regulations requiring Martin Robbins to repair damaged guardrails within 21 days. (MR Fact, ¶ 39.) Indeed, Mr. Hill admitted no such code, law, rule, or regulation existed. *Id.*

This alone does not establish Mr. Hill's opinion as unreliable. As explained above, an expert may also establish "industry standard" by presenting evidence an act is widely practiced or followed in the industry. *Mays*, 317 Ga. App. at 148-149; *MARTA v. Allen*, 188 Ga. App. 902, 908 (1988). It is Mr. Hill's failure to meet this burden—coupled with the lack of applicable codes, rules, or regulations—which shows his opinion is unreliable. Plaintiffs nor Mr. Hill have presented any evidence showing guardrail contractors in Georgia repair guardrails within 21 days as a matter of course. Indeed, they have not shown even one guardrail contractor follows such timeline. Plaintiffs do not explain why this Court should accept Mr. Hill's testimony that a 21-day repair window is "industry standard" when Plaintiffs cannot show anyone else in Georgia's guardrail industry adheres to such timeline.[12]

B. Mr. Hill's Deferred to GDOT on Industry Standard, and GDOT Denies an Industry Standard on the Time to Repair Guardrail Exists

[12] In addition to his opinion regarding the time to repair, Mr. Hill opined he "believe[d]" if a Martin Robbins employee noticed the damaged Subject Guardrail prior to April 20, 2018, "that employee had an obligation to say something to there [sic] supervisors about that." (MR Fact, ¶ 40.) Like his time to repair opinion, Mr. Hill has not identified any evidence (including any statute, code, rule, or regulation) showing such duty exists or that such practice is "industry standard" in Georgia. Again, neither Plaintiff nor Mr. Hill can show any guardrail contractor in Georgia "reports" damage to GDOT as a matter of course.

Mr. Hill deferred to GDOT on what the "industry standard" for the time to repair a guardrail is, stating "the industry standard is what GDOT says it is."[13] (Supp. Aff., ¶ 4.) GDOT testified no industry standard exists as to the time to repair a guardrail. (Doyle Dep.[14] 42:25-43:4.) GDOT's State Maintenance Engineer is responsible for administration and oversight of guardrail maintenance and specifically denied a 21-day time to repair was an industry "standard set by GDOT." (Doyle Dep. p. 44:7-11.) GDOT's engineer went on to testify he was not aware of any such industry standard:

> Q: Is it your opinion Martin Robbins should have repaired the subject guardrail… within 21 days?
> A: They were required to by the contract, yes.
> Q: And is that statement… based solely on the contract; correct?
> A: That's correct.
> Q: It's not based on any statute, code, regulation, rule, or industry standard requiring a guardrail contractor to repair a nonfunctional guardrail within 21 days, correct?
> A: That's correct.
> Q: Are you aware of any statute, code, regulation, rule, or industry standard that sets out a specific timeframe in which a guardrail contractor must repair a nonfunctional guardrail?
> A: I'm not. (Doyle Dep. p. 42:10-43:4.)

Likewise, GDOT's corporate representative testified nothing other than the Contract created an obligation for Martin Robbins to perform the work within 21 days. (MR Fact, ¶ 45.) Mr. Hill opined the industry standard "is what GDOT says it is" and GDOT says the industry standard does not exist. Martin Robbins cannot be liable for breaching a non-existent industry standard and

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[13] Martin Robbins denies GDOT could unilaterally establish an industry standard as it is undisputed guardrail installation and repair is performed for and by entities other than GDOT in Georgia. By way of example, Martin Robbins routinely contracts with county governments to perform guardrail installation and maintenance. (Dep. of Tommy Martin, p. 11:13-17; cited portions of Mr. Martin's deposition are attached hereto as **Exhibit B**.)

[14] Cited portions of the testimony of GDOT's State Maintenance Engineer and expert witness Andy Doyle is attached hereto as **Exhibit C**.)

Plaintiff's negligence claim under that theory fails. *See Butler v. First Acceptance Ins. Co., Inc.*, 652 F. Supp. 2d 1264, 1273 (N.D. Ga. 2009).

That GDOT did not set an industry standard is further evidenced by the fact that it routinely used timeframes other than 21 days in its guardrail maintenance contracts. (Doyle Dep. 66:4-19.) By way of example, GDOT has incorporated a 44-day time to repair and a 60-day time to repair into its contracts.[15] In one solicitation for guardrail repairs, GDOT set a time to repair of approximately 100 days.[16] [17] Mr. Hill offered no explanation for why Martin Robbins' Contract with GDOT sets the "industry standard" as opposed to GDOT's contracts setting 44-day, 60-day, or 100-day times to repair.

C. Mr. Hill's Review of Case Materials Does Not Establish His Standard of Care Opinion as Reliable

Plaintiffs try to obscure the lack of support for Mr. Hill's opinion by generically arguing his review of case materials establishes his opinion as reliable. (Opp., p. 10-11; Opp., p. 9-10.) It does not as nothing in the cited materials show an industry standard for the time to repair exists in Georgia. Plaintiffs first cite the accident reconstructionist' s file and the Uniform Motor Vehicle Report; however, those materials do not relate in any way to the guardrail industry or its standard practices. (Opp., p. 10; Opp. p. 9.) Plaintiffs next cite Mr. Hill's review

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[15] *See* GDOT Negotiated Contract No. 48400-173-RROD71800260, p. 4, attached hereto as **Exhibit D** (allowing from August 17, 2017 to September 30, 2017 to perform guardrail repairs); GDOT Invitation to Bid No. 48400-DOT0002467, p. 7, attached hereto as **Exhibit E** (requiring completion of guardrail repairs within 60 days); GDOT Invitation to Bid No. 48400-DOT0002468, p. 7, attached hereto as **Exhibit F** (requiring completion of guardrail repairs within 60 days).

[16] *See* Questions and Answers for Emergency Guardrail Quotes, p. 2, attached hereto as **Exhibit G.** The document stated guardrail work would "likely" begin around November 19 and the contractor was not expected to complete work until February 28 of the following year.

[17] Again, entities other than GDOT request and perform guardrail installation and repair. Attached hereto as **Exhibit H** is a contract with Hall County, Georgia, which required repair of guardrails occur within 60 days. (Ex. H, p. 2.)

of the deposition testimony of several witnesses. ([redacted] Opp., p. 10; [redacted] Opp. p. 10.) Plaintiffs refer to the whole depositions and do not identify any specific testimony therein supporting Mr. Hill's standard of care opinion.[18] In actuality, portions of the testimony contradict Mr. Hill's opinion. By way of example, Mr. Moore (GDOT's District 7 Maintenance Manager) testified the Contract alone required Martin Robbins to repair within 21 days. (MR Fact, ¶ 45.) Next, Plaintiffs cite GDOT's Standard Specifications and GDOT's Scope of Services. ([redacted] Opp., p. 11; [redacted] Opp., p. 10.) But nothing in those documents discusses the time to repair a damaged guardrail and Mr. Hill admitted he was not aware of Martin Robbins violating any provision in those documents. (Ex. A, Hill Dep. 146:14-18; 147:15-19.) Finally, Plaintiffs cite Mr. Hill's knowledge of GDOT's "inspection policies" as evidence of reliability. ([redacted] Opp., p. 11; [redacted] Opp., p. 10.) It is unclear what "policies" Plaintiffs are referring to, but regardless, guardrail inspection policies would not evidence the existence of an industry standard regarding the time to repair a guardrail.[19]

Plaintiffs argue Mr. Hill's review of case materials is an accepted methodology, citing to cases from other jurisdictions. ([redacted] Opp., p. 11-12; [redacted] Opp., p. 11-12.) These opinions are not binding on this Court. Even if they were, they do not support Plaintiffs' argument. Only one of the cases cited discussed an expert opinion on standards of care and the facts of that case are

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[18] Courts are not required to sift through "mountains" of evidence to "ferret out the facts and evidence an expert might have considered in reaching his conclusions. *Hill v. Konecranes, Inc.*, 2019 WL 3842072 at *5 (S.D. Ga. 2019) (excluding expert where expert and nonmovant failed to identify specific evidence supporting opinions).

[19] Under the Contract, "inspection" of guardrails was exclusively the responsibility of GDOT. (*See* Contract, Par. XII(A); attached as Ex. 2 to Martin Robbins' Motion.) To the extent Plaintiffs use the term "inspection" to mean identification and reporting of damaged guardrails, again, Martin Robbins had no responsibility for that under the Contract. (MR Fact, ¶ 44.) Even if it did, Plaintiffs do not articulate how that inspection policy relates to Mr. Hill's opinion regarding Martin Robbins.

easily distinguishable.[20] In *Lawes v. CSA Architects and Engineers, LLP*, the First Circuit reversed exclusion of a plaintiff's expert opinion regarding a defendant-designer's standard of care related to traffic control during an ongoing construction project. 963 F.3d 72 (1st Cir. 2020). Defendant-designer argued exclusion was appropriate because the expert failed to consider all potentially relevant data. *Id*. at 99-100. Reversing the lower court's exclusion, the First Circuit found the expert's opinions reliable based on the expert's citation to various standards, including the Manual on Uniform Control Devices ("MUTCD") which the Court described as "the Bible" for traffic designers. *Id*. at 78-79, 102.

Unlike the expert challenged in *Lawes*, Mr. Hill cannot point to <u>any</u> authoritative text or standard showing a 21-day time to repair is widely recognized and practiced in Georgia's guardrail industry. Mr. Hill's citation to purported "standards" from other jurisdictions is irrelevant to his opinion regarding Martin Robbins.[21] (Supp. Aff., ¶ 6-8.) The only relevant inquiry is whether an industry standard existed <u>in Georgia</u> where Martin Robbins performed its work. Mr. Hill nor Plaintiff can point to any "readily ascertainable and verifiable standard" regarding the time to repair recognized by Georgia's guardrail industry and thus his opinion is not reliable. *See HNTB Georgia*, 287 Ga. at 645.

<u>CONCLUSION</u>

The burden is on Plaintiffs to establish by a preponderance of the evidence that Mr. Hill is qualified to offer a standard of care opinion for Martin Robbins and that such opinion reliable.

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[20] Plaintiffs cite *St. Louis Condo Ass'n, Inc. v. Rockhill Ins. Co.*, 2019 WL 2013007 at *4 (S.D. Fla. 2019) and *Holman v. State Farm Fire and Cas. Co.*, 2015 WL 12803770 at *7 (N.D. Ala. 2015). In both these cases, expert opinions regarding causation were challenged.

[21] Martin Robbins denies these are "industry standards" in their respective states but will assume they are for purposes of this Motion.

Plaintiffs cannot meet either burden. Accordingly, Martin Robbins respectfully requests Mr. Hill be excluded from offering any testimony regarding the standard of care for Martin Robbins.

This 14th day of January 2022.

HUDSON LAMBERT PARROTT WALKER, LLC

/s/ Claire A. Williamson
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CERTIFICATE OF SERVICE

This is to certify that I have this day served the within and foregoing **DEFENDANT MARTIN-ROBBINS FENCE COMPANY'S CONSOLIDATED REPLY BRIEF IN SUPPORT OF ITS MOTION TO EXCLUDE PLAINTIFFS' EXPERT HERMAN HILL** via File & Serve Xpress which will automatically serve the following counsel of record:

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This 14th day of January 2022.

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