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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2022-000981

Ralph Hooker as Personal Representative of the Estate of Linda Hooker, Appellant,
v.

McDonald's Corporation, McDonald's Real Estate Company, JKS & K, Inc., Pam Hampton, and
Proline Striping Service, Inc, Defendants,

Of which McDonald's Corporation, McDonald's Real Estate Company, JKS & K, Inc., and Pam
Hampton are Respondents.

AMENDED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2020-CP-38-00428
LINDA HOOKER,	)	
	)	
Plaintiff,	)	ORDER GRANTING
	)	SUMMARY JUDGMENT TO
	)	ALL DEFENDANTS AND
v.	)	ENDING THE CASE
	)	
McDONALD'S CORPORATION,	)	
McDONALD'S REAL ESTATE	)	
COMPANY, JKS & K, INC.,	)	
PAM HAMPTON, and PROLINE	)	
STRIPING SERVICE, INC.	)	
	)	
Defendants.	)	
	)	

A hearing on the Defendants' respective Motions for Summary Judgment was held on February 2, 2022, in the Orangeburg County Courthouse in the subject case. After due and careful consideration of the parties' arguments, memoranda and supporting materials, the Court will grant summary judgment in favor of all Defendants, thereby ending this case in full.

Procedural History

This is a premises liability case. On July 28, 2018, Linda Hooker ("Plaintiff") allegedly slipped and fell on a painted striped line in the crosswalk of a parking lot of a McDonald's restaurant business located at 8940 Old Number Six Highway in Orangeburg County, South Carolina.¹ Plaintiff initiated this lawsuit against McDonald's Corporation, McDonald's Real Estate Company, JKS & K, Inc., and Pam Hampton on March 30, 2020. On October 23, 2020, Plaintiff amended her Complaint and added Defendant Proline Striping Service, Inc. ("Proline").

¹ Linda Hooker passed away due to complications from cancer in November 2020. Her husband Ralph Hooker was appointed personal representative of her estate by the Calhoun County Probate Court on January 4, 2021. A Motion to Substitute the Estate as the proper party in interest was filed March 12, 2021.

The parties exchanged written discovery and completed the depositions of Plaintiff's husband Ralph Hooker; Plaintiff's daughter Michelle Foxworth; Defendant Pam Hampton; JKS & K, Inc. employee and shift manager at the time of the accident Sherrie Washington; Defendant Proline's corporate representative Jared Marr; and Plaintiff's retained expert, Bryan Durig.

Motions for summary judgement were filed by all Defendants: Defendant McDonald's Corporation on January 11, 2022; Defendant McDonald's Real Estate Company on January 11, 2022; Defendant JKS & K, Inc on January 13, 2022; Defendant Pam Hampton on January 14, 2022; and Defendant Proline Striping Services, Inc. on January 21, 2022. Supporting memoranda and opposition memoranda were filed thereafter.

The Court held a hearing on all pending motions for summary judgment on February 2, 2022. Plaintiff was represented by William H Yarborough, Jr. of Cavanaugh & Thickens, LLC; Defendant Proline Striping Services, Inc. was represented by Peden Brown McLeod, Jr. of McLeod Fraser & Cone, LLC; and the remaining four (4) Defendants were represented by Joseph D. Thompson, III of Hall Booth Smith, PC.

Factual Background²

On July 28, 2018, Plaintiff, her husband Ralph Hooker, and their daughter Michelle Foxworth, stopped at the McDonald's restaurant business in Santee to grab a bite to eat. Mr. Hooker was quite familiar with the restaurant and the parking lot having been there on many prior occasions. It was raining and the parking lot was wet when they pulled into the parking lot. It continued to rain as Plaintiff and her family used the crosswalk to access the restaurant. None of

² The various Defendants advanced multiple arguments and defenses in support of their respective summary judgment motions. The various arguments and defenses would entail a larger discussion of the facts, witnesses and evidence. However, the Court's decision here is based on a simple commonality of facts regarding the accident occurrence and the lack of evidence to assess liability against any Defendant.

the family members experienced any trouble with traction as they walked in the rain across the wet parking lot in the crosswalk toward the restaurant.

During the 30 minutes or so that Plaintiff and her family were in the restaurant, it continued to rain "hard." Once the rain stopped³, the family members exited the restaurant and started back across the crosswalk. Neither Mr. Hooker nor Foxworth slipped or lost footing in the crosswalk. Notably, Plaintiff was the only one wearing flip-flop style shoes. Mr. Hooker and Foxworth made it to the other side of the crosswalk when they heard Plaintiff "holler" behind them. Neither Mr. Hooker nor Foxworth saw the initiation of the fall (*i.e.* what caused Plaintiff to fall). As a result, there are no witnesses who can offer direct testimony as to how or why Plaintiff went to the ground.⁴

Plaintiff argued that Linda Hooker slipped on a painted line and cited to her husband's deposition testimony for support. However, it is undisputed that Mr. Hooker did not see his wife fall to the ground. Importantly, Mr. Hooker conceded in his deposition that when he first asked his wife in the parking lot what had happened, she simply told him she "slipped." Sometime later in his deposition, Mr. Hooker related that his wife told him, sometime after the date of the accident, that she had slipped on a painted line.

Standard of Review

Rule 56, SCRCR, "mandates the entry of summary judgment, after adequate time for discovery . . . , against a party who fails to make a showing sufficient to establish the existence of

³ While both Ralph Hooker and Michele Foxworth testified under oath that it had stopped raining when the accident occurred, body cam video from a responding officer to the accident scene clearly, and unequivocally, caught Foxworth say "it was raining" when specifically asked how the accident occurred. Later in the same video, Foxworth stated a second time that "it was still raining" when the accident occurred.

⁴ While Plaintiff was alive at the time of the filing of the lawsuit and for seven or eight months thereafter, she did not write any statement, swear to any affidavit, or sit for a deposition to memorialize her testimony. Importantly, the body cam video of the responding officer also did not include any statements from Plaintiff as to how or why the accident occurred.

an element essential to the party's case, and on which that party will bear the burden of proof at trial." Baughman v. Am. Tel. & Tel. Co., 305 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). "In such a situation, there can be no 'genuine issue of material fact,'" because "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. (citing Celotex, 477 U.S. at 322–23).

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman, 305 S.C. at 115, 410 S.E.2d at 545 (citing Celotex, 477 U.S. 317; Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990)). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by showing—that is, point out to the trial court—that there is an absence of evidence to support the nonmoving party's case.'" Id. (quoting Celotex, 477 U.S. at 325). The movant "need not 'support its motion with affidavits or other similar materials negating the opponent's claim.'" Id. (quoting Celotex, 477 U.S. at 323).

Once the moving party carries this initial burden, it is incumbent on the party opposing summary judgment "to set forth specific facts showing there is a genuine issue for trial." Id. (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986)). These specific facts must be proffered "by affidavit or other proof." Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994) (citation omitted). Materials submitted to refute a motion for summary judgment must be "those which would be admissible in evidence." Hall v. Fedor, 349 S.C. 169, 174, 561 S.E.2d 654, 657 (Ct. App. 2002) (citing Baughman, 306 S.C. 101, 410 S.E.2d 537) (other citations omitted); see Rule 56(e), SCRPC. "Rule 56(e) specifically prohibits the nonmoving party from resting upon mere allegations or denials of its pleadings." Baughman, 305

S.C. at 115, 410 S.E.2d at 545 (citing SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990)); Rule 56(e), SCRCP. Furthermore, any “conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” Shupe, 315 S.C. at 516–17, 445 S.E.2d at 655 (citation omitted).

Argument

Simply stated, the Defendants are all entitled to summary judgment due to the absence of even a scintilla of competent evidence as to how or why Linda Hooker went to the ground on July 28, 2018.

This is a premises liability case. It is fundamental that an owner of land has a “general duty to warn others of latent hazardous conditions on his land” which “arises from the owner’s superior knowledge of conditions on the premises within his control.” Byerly v. Connor, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992). While a merchant is not an insurer of the safety of his customer, the merchant owes a duty to exercise ordinary care to keep the premises in a reasonably safe condition. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). As to an invitee like Plaintiff, the merchant “owes a duty of care to discover risks and to warn of or eliminate foreseeable unreasonable risks.” Landry v. Hilton Head Plantation Prop. Owners Ass’n, Inc., 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994).

To recover damages for injuries caused by a dangerous or defective condition on a merchant’s premises, a plaintiff must show either (1) that the injury was caused by a specific act of the merchant which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). At its core, a premises liability case requires proof of a dangerous or defective condition on the property.

The entirety of Plaintiff's case rests, in the first instance, on establishing some evidence or proof that Linda Hooker went to the ground as a result of some negligent act or omission on the part of any Defendant. While Plaintiff has argued that Linda Hooker slipped on a painted white line on the asphalt parking lot surface which was in an allegedly dangerous or defective condition, Plaintiff has not demonstrated even a scintilla of competent evidence that she, in fact, slipped on a painted white line.

A. The fact that Linda Hooker went to the ground in the crosswalk is not, in and of itself, evidence that she slipped on one of the painted lines in the crosswalk.

The simple fact that Plaintiff fell to the ground within the crosswalk is not evidence of any dangerous or defective condition or any negligence on the part of anyone. It is axiomatic that South Carolina does not recognize the doctrine of *res ipsa loquitur* and Plaintiff may not use the simple fact of the fall itself to establish actionable negligence of any Defendant here. Hunter v. Dixie Home Stores, 232 S.C. 139, 144, 101 S.E.2d 262, 265 (1957). Moreover, there is substantial evidence that others, including Plaintiff and her family members, experienced the wet painted lines in the crosswalk going into the restaurant in the rain without any difficulty and that both Mr. Hooker and Foxworth crossed over a second time upon departure, also without difficulty. Consequentially, the simple fact that Linda Hooker went to the ground in the crosswalk does not, in and of itself, constitute evidence of any dangerous or defective condition or any negligence on the part of any Defendant.

B. The only evidence that Linda Hooker slipped on a painted line is inadmissible hearsay.

Plaintiff argued that Linda Hooker slipped on a painted line and cited to her husband's deposition testimony for support. However, it is undisputed that Ralph Hooker did not see his wife

fall to the ground. Importantly, Ralph Hooker conceded that when he first asked his wife in the parking lot what had happened, she simply told him she “slipped.”

Q. What did she say – what did your wife say had happened?

A. She slipped.

(R. Hooker Dep. 29:13-15). Plaintiff’s Memorandum cites to a later section of the deposition transcript when Ralph Hooker explained what his wife told him sometime after the date of the accident. However, what Plaintiff allegedly told her husband about slipping on the painted lines will be inadmissible evidence at trial.

The Dead Man’s Statute “prohibits any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest.” Hanahan v. Simpson, 326 S.C. 140, 151, 485 S.E.2d 903, 909 (1997); S.C. Code Ann § 19-11-20. “The rule is founded on the principle that it is against public policy to allow a witness thus interested to testify as to such matters when such testimony, if untrue, cannot be contradicted.” Id. Here, Ralph Hooker is an heir/beneficiary of his wife’s Estate and any recovery made in the case will directly inure to his financial benefit. The Dead Man’s Statute is still viable to address this very issue – to prohibit a witness with a vested financial interest in the outcome of the litigation from offering testimony from the decedent that cannot be contradicted by Defendants. As a result, Ralph Hooker’s testimony cannot be considered admissible evidence competent to overcome summary judgment. Hall v Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (“Our appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion of summary judgment must be those which would be admissible in evidence.”).

Conclusion

How Linda Hooker went to the ground continues to be a question unanswered by any competent evidence in the record and, therefore, her fall cannot be attributed to these Defendants.

Based on the foregoing, all Defendants are entitled to entry of summary judgment and the dismissal of Plaintiff's lawsuit with prejudice.

AND IT IS SO ORDERED this _____ day of June, 2022.

The Honorable Edgar W. Dickson
First Judicial Circuit

Orangeburg, South Carolina



Orangeburg Common Pleas

Case Caption: Linda Hooker VS Mcdonald'S Corporation , defendant, et al

Case Number: 2020CP3800428

Type: Order/Summary Judgment

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2022-06-20 11:28:28 page 9 of 9

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP3800428

Linda Hooker
PLAINTIFF(S)

Mcdonald'S Corporation et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

On June 20, 2022, Plaintiff timely filed a Motion to Reconsider this Court's Order Granting Summary Judgment to all defendants. After careful consideration of Plaintiff's motion, this Court finds that the deposition excerpt Plaintiffs addressed does not present a mere scintilla of evidence warranting reconsideration of the Order Granting Summary Judgment. Accordingly, Plaintiff's Motion to Reconsider is hereby DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/24/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Orangeburg Common Pleas

Case Caption: Linda Hooker VS Mcdonald'S Corporation , defendant, et al

Case Number: 2020CP3800428

Type: Order/Electronic Form 4

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2022-06-24 12:38:11 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

Linda Hooker,

Civil Action No.:

Plaintiff,

v.

SUMMONS

**McDonald's Corporation, McDonald's
 Real Estate Company, J K S & K, Inc.,
 Pam Hampton,**

(Jury Trial Demanded)

Defendants.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 1324 Gadsden Street, Street, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

s/William H. Yarborough, Jr.

J. Eric Cavanaugh, S.C. Bar No. 100044
 Joseph O. Thickens, S.C. Bar No. 101398
 William H. Yarborough, Jr., S.C. Bar No. 102868
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Columbia, South Carolina
 March 30, 2020

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

Linda Hooker,

Civil Action No.:

Plaintiff,

v.

COMPLAINT

**McDonald's Corporation, McDonald's
 Real Estate Company, J K S & K, Inc.,
 Pam Hampton,**

(Jury Trial Demanded)

Defendants.

Now comes the Plaintiff, above-named, complaining of the Defendants, above-named, and does allege:

1. Plaintiff Linda Hooker (hereinafter referred to as "Plaintiff") is a citizen and resident of Orangeburg County, South Carolina.

2. Defendant McDonald's Corporation (hereinafter referred to as "McDonald's") is an entity organized and existing under the laws of the State of Delaware and who is authorized to do business in the State of South Carolina, and owns or operates restaurants in Orangeburg County, South Carolina.

3. Defendant McDonald's Real Estate Company (hereinafter referred to as "McDonald's Real Estate") is an entity organized and existing under the laws of the State of Delaware and who is authorized to do business in the State of South Carolina, and owns or operates restaurants in Orangeburg County, South Carolina.

4. Defendant J K S & K, Inc. is an entity organized and existing under the laws of the State of Florida and who is authorized to do business in the State of South Carolina, and owns or operates restaurants in Orangeburg County, South Carolina.

5. Defendant Pam Hampton (hereinafter referred to as "Hampton") is, upon information and belief, a citizen and resident of Orangeburg County, State of South Carolina.

6. Defendant McDonald's and/or Defendant McDonald's Real Estate is/are the owner(s) of the property and improvements located at 8940 Old Number Six Highway.

7. Defendant J K S & K, Inc., upon information and belief, occupies the property located at 8940 Old Number Six Highway and operates a McDonald's franchised restaurant on the premises.

8. Defendant Hampton was the manager of the restaurant on the date of the accident.

9. At all times relevant hereto, Defendant Hampton was acting as an agent, servant, or employee of Defendant J K S & K, Inc. and was acting within the course and scope of her agency, service or employment as restaurant manager so as to make the Defendant J K S & K, Inc. liable for her acts and omissions under the theory of *respondeat superior*.

10. Defendants McDonald's, McDonald's Real Estate and J K S & K, Inc., are subject to the jurisdiction of this County by and through their commission of a tortious act within the territorial limits of the State of South Carolina pursuant to S.C. Code Ann. § 36-2-803(A)(3).

11. The most substantial part of the acts and omissions giving rise to the cause of action alleged herein occurred in Orangeburg County, South Carolina.

12. On or about July 28, 2018, the Plaintiff, entered the restaurant located at 8940 Old Number Six Highway, Santee, South Carolina, which is owned, managed, and/or operated by the

Defendants, for a meal; that while the Plaintiff was on the premises she slipped and fell in the parking lot of the restaurant, resulting in serious bodily injury.

13. The area where the Plaintiff fell was an area where customers normally and customarily walk and frequent.

14. The area had no warnings posted warning the Plaintiff of the hazardous condition.

15. The Defendants knew or should have known that the condition of the parking lot and condition of the painted lines created a hazardous condition for the Plaintiff and other business invitees.

16. As a result of this accident the Plaintiff has incurred and will continue to incur substantial medical expenses, loss of enjoyment of life, pain and suffering, future impairment, property damage and lost wages.

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, and Recklessness)

17. Plaintiff re-alleges the allegations of the foregoing Paragraphs as if restated herein verbatim.

18. That the Defendants, individually and by and through the aforementioned actions or omissions of their agents and servants, employees, specifically Defendant Hampton, and/or subsidiaries, who were acting within the scope and employment of said agency, service and/or employment were negligent, reckless, careless, willful, wanton, and/or grossly negligent in the following particulars to wit:

- a. In permitting the premises to remain in its current un-kept and un-maintained condition, thus creating a hazardous condition that the Defendants knew or should have known that such created an unreasonable risk of injury to Plaintiff and other business invitees;

- b. In failing to keep their premises free from hazards;
- c. In failing to keep the premises free from any obvious and latent defects;
- d. In failing to properly and adequately warn the Plaintiffs or other business invitees of unreasonable risks or hazards which existed on the Defendants' premises;
- e. In failing to exercise that degree of care which a reasonably prudent restaurant would exercise under the same and similar circumstances;
- f. In failing to maintain a reasonably safe environment for its business invitees;
- g. In failing to exercise that degree of due care and caution that a reasonable prudent business would have used under same or similar circumstances;
- h. In failing to keep the entrance and surrounding areas in a reasonably safe condition;
- i. In failing to properly hire, train, and supervise its employees;
- j. In creating a condition or activity on the premises that would prevent a reasonable person to apprehend a defect which would potentially cause injuries to someone on its premises and did so;
- k. In failing to discover unsafe conditions upon the Defendant's premises;
- l. In failing to have policies and procedures in place for the sweeping or maintaining of the premises and thoroughfares or if such policies and procedures existed, in failing to follow the same;
- m. In failing to prevent the injury caused to the Plaintiff that the Defendant and/or its agents had actual and/or constructive knowledge of such dangerous condition and failed to remedy it;
- n. In failing to have warnings posted;

- o. In operating the business and maintaining its premises in utter disregard for the safety of its invitees;
- p. In failing to maintain and repair its premises; and
- q. In all other and further particulars that the evidence at trial may show.

All of which combined and concurred as a direct and proximate result the injuries that the Plaintiff alleged herein thus, in violations of the statutes and common law of the State of South Carolina.

19. That as a direct and proximate result of the aforementioned conduct of the Defendants, the Plaintiff suffered severe, permanent and debilitating injuries, including great pain and suffering in the past, present and future, causing him/her to incur past, present and future medical expenses, shock, embarrassment, mental distress, permanent injury and impairment, mental anguish, emotional distress, as well as loss of enjoyment of life.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants for all actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action, the costs and disbursements of this action and for such other and further relief as this court deems just and proper.

The Plaintiff demands a jury trial.

~Signature Page Follows~

Respectfully submitted,

s/William H. Yarborough, Jr.

J. Eric Cavanaugh, S.C. Bar No. 100044
Joseph O. Thickens, S.C. Bar No. 101398
William H. Yarborough, Jr., S.C. Bar No. 102868
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Tel: (803) 534-5091

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

March 30, 2020

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

Linda Hooker,

Civil Action No.: 2020-CP-38-00428

Plaintiff,

v.

AMENDED SUMMONS

**McDonald's Corporation, McDonald's
Real Estate Company, J K S & K, Inc.,
Pam Hampton, and Proline Striping
Service, Inc.**

(Jury Trial Demanded)

Defendants.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 1324 Gadsden Street, Street, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

s/William H. Yarborough, Jr.

J. Eric Cavanaugh, S.C. Bar No. 100044

Joseph O. Thickens, S.C. Bar No. 101398

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Columbia, South Carolina
October 23, 2020

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Linda Hooker,

Plaintiff,

v.

**McDonald's Corporation, McDonald's
Real Estate Company, J K S & K, Inc.,
Pam Hampton, and Proline Striping
Service, Inc.**

Defendants.

IN THE COURT OF COMMON PLEAS
THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-38-00428

AMENDED COMPLAINT

(Jury Trial Demanded)

Now comes the Plaintiff, above-named, complaining of the Defendants, above-named, and does allege:

1. Plaintiff Linda Hooker (hereinafter referred to as "Plaintiff") is a citizen and resident of Orangeburg County, South Carolina.

2. Defendant McDonald's Corporation (hereinafter referred to as "McDonald's") is an entity organized and existing under the laws of the State of Delaware and who is authorized to do business in the State of South Carolina, and owns or operates restaurants in Orangeburg County, South Carolina.

3. Defendant McDonald's Real Estate Company (hereinafter referred to as "McDonald's Real Estate") is an entity organized and existing under the laws of the State of Delaware and who is authorized to do business in the State of South Carolina, and owns or operates restaurants in Orangeburg County, South Carolina.

4. Defendant J K S & K, Inc. is an entity organized and existing under the laws of the State of Florida and who is authorized to do business in the State of South Carolina, and owns or operates restaurants in Orangeburg County, South Carolina.

5. Defendant Pam Hampton (hereinafter referred to as “Hampton”) is, upon information and belief, a citizen and resident of Orangeburg County, State of South Carolina.

6. Defendant Proline Striping Service, Inc. (hereinafter referred to as “Proline”) is an entity organized and existing under the laws of the State of Ohio that conducts business in the State of South Carolina.

7. Defendant McDonald’s and/or Defendant McDonald’s Real Estate is/are the owner(s) of the property and improvements located at 8940 Old Number Six Highway.

8. Defendant J K S & K, Inc., upon information and belief, occupies the property located at 8940 Old Number Six Highway and operates a McDonald’s franchised restaurant on the premises.

9. Defendant Hampton was the manager of the restaurant on the date of the accident.

10. At all times relevant hereto, Defendant Hampton was acting as an agent, servant, or employee of Defendant J K S & K, Inc. and was acting within the course and scope of her agency, service or employment as restaurant manager so as to make the Defendant J K S & K, Inc. liable for her acts and omissions under the theory of *respondeat superior*.

11. Defendants McDonald’s, McDonald’s Real Estate and J K S & K, Inc., are subject to the jurisdiction of this County by and through their commission of a tortious act within the territorial limits of the State of South Carolina pursuant to S.C. Code Ann. § 36-2-803(A)(3).

12. The most substantial part of the acts and omissions giving rise to the cause of action alleged herein occurred in Orangeburg County, South Carolina.

13. Defendant Proline was hired by Defendant J K S & K, Inc. to paint or stripe the parking lot at 8940 Old Number Six Highway.

14. Defendant Proline painted or striped the parking lot at 8940 Old Number Six Highway prior to July 28, 2018.

15. On or about July 28, 2018, the Plaintiff, entered the restaurant located at 8940 Old Number Six Highway, Santee, South Carolina, which is owned, managed, and/or operated by the Defendants, for a meal; that while the Plaintiff was on the premises she slipped and fell on a painted line in the parking lot of the restaurant, resulting in serious bodily injury.

16. The area where the Plaintiff fell was an area where customers normally and customarily walk and frequent.

17. The area had no warnings posted warning the Plaintiff of the hazardous condition.

18. The Defendants knew or should have known that the condition of the parking lot and condition of the painted lines created a hazardous condition for the Plaintiff and other business invitees.

19. As a result of this accident the Plaintiff has incurred and will continue to incur substantial medical expenses, loss of enjoyment of life, pain and suffering, future impairment, property damage and lost wages.

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, and Recklessness)

20. Plaintiff re-alleges the allegations of the foregoing Paragraphs as if restated herein verbatim.

21. That the Defendants, individually and by and through the aforementioned actions or omissions of their agents and servants, employees, and/or subsidiaries, who were acting within

the scope and employment of said agency, service and/or employment were negligent, reckless, careless, willful, wanton, and/or grossly negligent in the following particulars to wit:

- a. In painting or striping the parking lot improperly;
- b. In permitting the parking lot to be improperly painted or striped;
- c. In failing to identify or correct the improperly painted or striped parking lot;
- d. In permitting the premises to remain in its current un-kept and un-maintained condition, thus creating a hazardous condition that the Defendants knew or should have known that such created an unreasonable risk of injury to Plaintiff and other business invitees;
- e. In failing to keep their premises free from hazards;
- f. In failing to keep the premises free from any obvious and latent defects;
- g. In failing to properly and adequately warn the Plaintiffs or other business invitees of unreasonable risks or hazards which existed on the Defendants' premises;
- h. In failing to exercise that degree of care which a reasonably prudent restaurant would exercise under the same and similar circumstances;
- i. In failing to maintain a reasonably safe environment for its business invitees;
- j. In failing to exercise that degree of due care and caution that a reasonable prudent business would have used under same or similar circumstances;
- k. In failing to keep the entrance and surrounding areas in a reasonably safe condition;
- l. In failing to properly hire, train, and supervise its employees;
- m. In creating a condition or activity on the premises that would prevent a reasonable person to apprehend a defect which would potentially cause injuries to someone on its premises and did so;

- n. In failing to discover unsafe conditions upon the Defendant's premises;
- o. In failing to have policies and procedures in place for the sweeping or maintaining of the premises and thoroughfares or if such policies and procedures existed, in failing to follow the same;
- p. In failing to prevent the injury caused to the Plaintiff that the Defendant and/or its agents had actual and/or constructive knowledge of such dangerous condition and failed to remedy it;
- q. In failing to have warnings posted;
- r. In operating the business and maintaining its premises in utter disregard for the safety of its invitees;
- s. In failing to maintain and repair its premises; and
- t. In all other and further particulars that the evidence at trial may show.

All of which combined and concurred as a direct and proximate result the injuries that the Plaintiff alleged herein thus, in violations of the statutes and common law of the State of South Carolina.

22. That as a direct and proximate result of the aforementioned conduct of the Defendants, the Plaintiff suffered severe, permanent and debilitating injuries, including great pain and suffering in the past, present and future, causing him/her to incur past, present and future medical expenses, shock, embarrassment, mental distress, permanent injury and impairment, mental anguish, emotional distress, as well as loss of enjoyment of life.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants for all actual damages, special damages, consequential damages, and punitive damages in an amount to

be determined by the jury at the trial of this action, the costs and disbursements of this action and for such other and further relief as this court deems just and proper.

The Plaintiff demands a jury trial.

Respectfully submitted,

s/William H. Yarborough, Jr.

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--AND--

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

October 23, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2020-CP-38-00428
 LINDA HOOKER,	)	
	)	
Plaintiff,	)	DEFENDANT McDONALD'S
	)	CORPORATION'S MOTION FOR
v.	)	SUMMARY JUDGMENT
	)	
McDONALD'S CORPORATION,	)	
McDONALD'S REAL ESTATE	)	
COMPANY, JKS & K, INC., and	)	
PAM HAMPTON,	)	
	)	
Defendants.	)	
	)	

PLEASE TAKE NOTICE that McDonald's Corporation, by and through its undersigned attorneys, hereby moves this Honorable Court pursuant to SCRCP 56 for an order granting it summary judgment. Discovery has failed to reveal a dispute as to any genuine issue of material fact and, therefore, McDonald's Corporation is entitled to summary judgment. More specifically, McDonald's Corporation, did not, and does not, own, operate and/or maintain the restaurant business located at 8940 Old Number Six Highway in Santee, South Carolina and, therefore, had no duty to Plaintiff. Additionally, Plaintiff has produced no evidence that McDonald's Corporation, as the purported franchisor, exercised any more control over the franchisee than was necessary to ensure uniformity of appearance and quality of services. Jamison v. Morris, 385 S.C. 215, 222-223, 684 S.E.2d 168, 172 (2009)("[A] franchisor is not vicariously liable for a tort committed at an independent [business] unless the plaintiff can show that the franchisor exercised more control over the franchisee than that was necessary to ensure uniformity of appearance and quality of services among its franchisees."). Accordingly, McDonald's Corporation is entitled to entry of summary judgment.

Finally, Plaintiff has produced no evidence that McDonald's Corporation, as the purported property owner and/or landlord, had any possession or control over the real property on which the accident occurred. Byerly v Connor, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992)("[W]hen land is occupied by a lessee, as in this case, the law of property regards the lease as the equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. After the premises are surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee."). Accordingly, McDonald's Corporation is entitled to entry of summary judgment.

This motion is supported by the South Carolina Rules of Civil Procedure, applicable case law, any supporting affidavits and/or memoranda and any other such materials the court may receive at or prior to the time of a hearing on this motion.

Respectfully Submitted,

HALL BOOTH SMITH, P.C.

/s/Joseph D. Thompson, III
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Phone: 843.720.3469

Attorneys for Defendant McDonald's Corporation

January 11, 2022
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2020-CP-38-00428
 LINDA HOOKER,	)	
	)	
Plaintiff,	)	DEFENDANT McDONALD'S
	)	REAL ESTATE COMPANY'S
v.	)	MOTION FOR SUMMARY
	)	JUDGMENT
McDONALD'S CORPORATION,	)	
McDONALD'S REAL ESTATE	)	
COMPANY, JKS & K, INC., and	)	
PAM HAMPTON,	)	
	)	
Defendants.	)	

PLEASE TAKE NOTICE that McDonald's Real Estate Company, by and through its undersigned attorneys, hereby moves this Honorable Court pursuant to SCRCP 56 for an order granting it summary judgment. Discovery has failed to reveal a dispute as to any genuine issue of material fact and, therefore, McDonald's Real Estate Company is entitled to summary judgment. More specifically, McDonald's Real Estate Company, did not, and does not, own, operate and/or maintain the restaurant business located at 8940 Old Number Six Highway in Santee, South Carolina and, therefore, had no duty to Plaintiff. Additionally, Plaintiff has produced no evidence that McDonald's Real Estate Company, as the purported property owner and/or landlord, had any possession or control over the real property on which the accident occurred. Byerly v Connor, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992)("[W]hen land is occupied by a lessee, as in this case, the law of property regards the lease as the equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. After the premises are surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter

develop or are created by the lessee.”). Accordingly, McDonald’s Real Estate Company is entitled to entry of summary judgment.

This motion is supported by the South Carolina Rules of Civil Procedure, applicable case law, any supporting affidavits and/or memoranda and any other such materials the court may receive at or prior to the time of a hearing on this motion.

Respectfully Submitted,

HALL BOOTH SMITH, P.C.

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Attorneys for Defendant McDonald's Real Estate Company

January 11, 2022
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2020-CP-38-00428
 LINDA HOOKER,	)	
	)	
Plaintiff,	)	DEFENDANT JKS & K, INC.'S
	)	MOTION FOR SUMMARY
v.	)	JUDGMENT
	)	
McDONALD'S CORPORATION,	)	
McDONALD'S REAL ESTATE	)	
COMPANY, JKS & K, INC., and	)	
PAM HAMPTON,	)	
	)	
Defendants.	)	
	)	

PLEASE TAKE NOTICE that Defendant JKS & K, Inc., by and through its undersigned attorneys, hereby moves this Honorable Court pursuant to SCRCP 56 for an order granting it summary judgment. Discovery has failed to reveal a dispute as to any genuine issue of material fact and, therefore, JKS & K, Inc. is entitled to summary judgment. More specifically, Plaintiff has not produced any evidence of any alleged defective condition of the property that proximately caused Linda Hooker's accident. Additionally, to the extent that a defective condition existed on the property, which is expressly denied, Plaintiff has failed to produce any evidence that JKS & K, Inc. knew, or should have known, about the alleged defective condition of the property. Accordingly, JKS & K, Inc. is entitled to summary judgment as a matter of law.

This motion is supported by the South Carolina Rules of Civil Procedure, applicable case law, any supporting affidavits and/or memoranda and any other such materials the court may receive at or prior to the time of a hearing on this motion.

(Signature on the following page)

Respectfully Submitted,

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Attorneys for Defendant JKS & K, Inc.

January 13, 2022

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2020-CP-38-00428
 LINDA HOOKER,	)	
	)	
Plaintiff,	)	DEFENDANT PAM HAMPTON'S
	)	MOTION FOR SUMMARY
v.	)	JUDGMENT
	)	
McDONALD'S CORPORATION,	)	
McDONALD'S REAL ESTATE	)	
COMPANY, JKS & K, INC., and	)	
PAM HAMPTON,	)	
	)	
Defendants.	)	
	)	

PLEASE TAKE NOTICE that Defendant Pam Hampton, by and through her undersigned attorneys, hereby moves this Honorable Court pursuant to SCRCP 56 for an order granting her summary judgment. Discovery has failed to reveal a dispute as to any genuine issue of material fact and, therefore, Defendant Hampton is entitled to summary judgment. More specifically, Plaintiff has not produced any evidence of any alleged defective condition of the property that proximately caused Linda Hooker's accident. Additionally, to the extent that a defective condition existed on the property, which is expressly denied, Plaintiff has failed to produce any evidence that Defendant Hampton knew, or should have known, about the alleged defective condition of the property. Accordingly, Defendant Pam Hampton is entitled to summary judgment as a matter of law.

This motion is supported by the South Carolina Rules of Civil Procedure, applicable case law, any supporting affidavits and/or memoranda and any other such materials the court may receive at or prior to the time of a hearing on this motion.

(Signature on the following page)

Respectfully Submitted,

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Attorneys for Defendant Pam Hampton

January 14, 2022

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2020-CP-38-00428
LINDA HOOKER,	)	
	)	
Plaintiff,	)	DEFENDANT MCDONALD'S
	)	CORPORATION'S MEMORANDUM
	)	IN SUPPORT OF MOTION FOR
	)	SUMMARY JUDGMENT
v.	)	
	)	
McDONALD'S CORPORATION,	)	
McDONALD'S REAL ESTATE	)	
COMPANY, JKS & K, INC.,	)	
PAM HAMPTON, and PROLINE	)	
STRIPING SERVICE, INC.	)	
	)	
Defendants.	)	
	)	

Defendant McDonald's Corporation submits this memorandum in support of its motion for summary judgment.

Procedural History

Defendant McDonald's Corporation adopts and incorporates herein by reference the Procedural History set forth in Defendant JKS & K., Inc.'s Memorandum in Support of Motion for Summary Judgment filed contemporaneously herewith.

Additionally, McDonald's Corporation would point out that the only discovery directed to it in the almost two years since the case has been pending are simple written discovery requests served at the beginning of the case. Plaintiff has not directed any additional discovery efforts to McDonald's Corporation.

Factual Background

Defendant McDonald's Corporation adopts and incorporates herein by reference the Factual Background set forth in Defendant JKS & K., Inc.'s Memorandum in Support of Motion for Summary Judgment filed contemporaneously herewith.

Additionally, the relevant franchise and lease agreements in place at the time of Plaintiff's accident clearly and unequivocally demonstrate that McDonald's Corporation was neither the franchisor nor the landlord to the franchised McDonald's restaurant business, which was independently owned and operated by JKS & K, Inc.¹ By way of additional history and explanation, a Franchise Agreement for the subject restaurant location demonstrates that it was executed on or about March 6, 2013, by and between McDonald's USA, LLC and the McMillan franchisees. The record demonstrates that the McMillan franchisees and JKS & K, Inc. entered into a Purchase and Sale Agreement on or about October 14, 2016, for the sale/transfer of the subject restaurant business. A subsequent amendment to the Purchase and Sale Agreement executed by the parties on October 28, 2016, changed the closing date to November 30, 2016. By way of an assignment agreement dated December 1, 2016, the McMillan franchisees and McDonald's USA, LLC agreed to the assignment of the McMillan franchisees' rights and obligations under the Franchise Agreement and Operator's Lease to JKS & K, Inc.² As a result of these commercial transactions, McDonald's USA, LLC was the franchisor of the restaurant business owned and operated by JKS & K, Inc. and lessor of the real property on which JKS & K, Inc. operated its restaurant business on the date of Plaintiff's accident on July 28, 2018.

¹ The franchise agreement and lease agreement are considered to be proprietary commercial business records and have been marked "Confidential" in accordance with a Consent Protective Confidentiality Order entered in the case on September 16, 2020.

² Technically, the assignment agreement transferred the McMillan franchisees' interest in the Franchise Agreement and Operator's Lease to James Booth. Subsequently, Booth assigned his interests to JKS & K, Inc.

Standard of Review

Rule 56, SCRCP, “mandates the entry of summary judgment, after adequate time for discovery . . . , against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” Baughman v. Am. Tel. & Tel. Co., 305 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). “In such a situation, there can be no ‘genuine issue of material fact,’” because “a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Id. (citing Celotex, 477 U.S. at 322–23).

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman, 305 S.C. at 115, 410 S.E.2d at 545 (citing Celotex, 477 U.S. 317; Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990)). “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by showing—that is, point out to the trial court—that there is an absence of evidence to support the nonmoving party’s case.’” Id. (quoting Celotex, 477 U.S. at 325). The movant “need not ‘support its motion with affidavits or other similar materials negating the opponent’s claim.’” Id. (quoting Celotex, 477 U.S. at 323).

Once the moving party carries this initial burden, it is incumbent on the party opposing summary judgment “to set forth specific facts showing there is a genuine issue for trial.” Id. (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986)). These specific facts must be proffered “by affidavit or other proof.” Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994) (citation omitted). Materials submitted to refute a motion for summary judgment must be “those which would be admissible in evidence.” Hall v. Fedor, 349

S.C. 169, 174, 561 S.E.2d 654, 657 (Ct. App. 2002) (citing Baughman, 306 S.C. 101, 410 S.E.2d 537) (other citations omitted); see Rule 56(e), SCRPC. “Rule 56(e) specifically prohibits the nonmoving party from resting upon mere allegations or denials of its pleadings.” Baughman, 305 S.C. at 115, 410 S.E.2d at 545 (citing SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990)); Rule 56(e), SCRPC. Furthermore, any “conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” Shupe, 315 S.C. at 516–17, 445 S.E.2d at 655 (citation omitted).

Argument

Defendant McDonald’s Corporation adopts and incorporates herein by reference the Argument set forth in Defendant JKS & K., Inc.’s Memorandum in Support of Motion for Summary Judgment filed contemporaneously herewith. In short, Defendant McDonald’s Corporation is entitled to summary judgment because Plaintiff has failed to produce any evidence that the parking lot was in any way defective or had a dangerous condition at the time of Plaintiff’s accident. Additionally, in the event that a defective or dangerous condition existed, which is specifically denied, Plaintiff has failed to produce any evidence that Defendant McDonald’s Corporation had any actual or constructive notice or knowledge of the allegedly defective condition. Accordingly, Defendant McDonald’s Corporation is entitled to summary judgment.

Additionally, McDonald’s Corporation cannot be held liable for Plaintiff’s accident because there is no evidence that it had any possession or control of the real property or any role in the restaurant business whatsoever at the time of the accident, and it would not be vicariously liable for Plaintiff’s accident. Accordingly, Defendant McDonald’s Corporation is entitled to summary judgment.

I. As an additional sustaining ground, McDonald's Corporation was neither the franchisor nor the lessor for the independently owned and operated McDonald's restaurant business operated by JKS & K, Inc. in Santee, South Carolina, and, therefore, it is entitled to summary judgment.

It is uncontradicted and undisputed that the McDonald's restaurant business in Santee, South Carolina, was owned and operated by JKS & K, Inc. at the time of Plaintiff's accident on July 28, 2018. More importantly, the Franchise Agreement in effect on that date clearly and unequivocally states that the franchisor is McDonald's USA, LLC, a Delaware limited liability company.³ McDonald's USA, LLC is not a party to this case and Plaintiff has produced no evidence of the connection between McDonald's Corporation, a Delaware corporation, and McDonald's USA, LLC, a Delaware limited liability company.⁴ In sum, Plaintiff has produced no evidence that McDonald's Corporation had any connection to the subject property at the time of the accident and, therefore, McDonald's Corporation should be granted summary judgment.

Importantly, even if McDonald's USA, LLC may be a subsidiary of McDonald's Corporation it is of no legal consequence in this case. It has long been held that "[t]he mere ownership of the capital stock of one corporation by another does not create an identity of corporate interest between the two companies, or render the holding company the owner of the property of the other, or create the relationship of principal and agent, or representative, or alter ego between the two." Gordon v. Hollywood-Beaufort Package Corp., 213 S.C. 438, 444, 49 S.E.2d 718, 719 (1948); Carroll v. Smith-Henry, Inc., 281 S.C. 104, 106, 313 S.E.2d 649, 651 (Ct. App. 1984)("Stock ownership alone ordinarily does not render a parent corporation liable for the

³ The Franchise Agreement included an Operator's Lease as Exhibit A. In the Operator's Lease, McDonald's USA, LLC is clearly and unequivocally identified as the "Landlord" for the real property at the time of Plaintiff's accident.

⁴ The only discovery directed to McDonald's Corporation in the almost two years since the case has been pending are simple written discovery requests served at the beginning of the case. Plaintiff has not directed any additional discovery efforts to McDonald's Corporation.

contracts of its subsidiary irrespective of whether the subsidiary is wholly owned or only partially owned [internal citation omitted]; and the fact that a parent and subsidiary share common officers or directors does not by itself impose liability on the parent for the contracts of its subsidiary.”).

Plaintiff simply has produced no evidence that Defendant McDonald’s Corporation should be held legally responsible for anything that happened on the real property where Plaintiff’s accident occurred on July 28, 2018. Accordingly, Defendant McDonald’s Corporation is entitled to summary judgment.

II. As an additional sustaining ground, McDonald's Corporation did not have any possession or control of the real property where Plaintiff's accident occurred and, therefore, it is entitled to summary judgment.

Again, it is uncontradicted and undisputed that the McDonald’s restaurant business in Santee, South Carolina, where Plaintiff’s accident occurred was owned and operated by JKS & K, Inc. at the time of the accident on July 28, 2018. As discussed hereinabove, it is also uncontradicted and undisputed that McDonald’s Corporation was neither the franchisor of JKS & K, Inc. nor the lessor of the real property to JKS & K, Inc. at the time of the accident. Accordingly, McDonald’s Corporation had no right of possession or control over the premises and, therefore, McDonald’s Corporation is entitled to summary judgment.

To be sure, the liability of an owner or occupant of real estate in reference to injuries caused by a dangerous or defective condition of the premises generally depends on the control of the property. Dunbar v. Charleston & W. C. Ry. Co., 211 S.C. 209, 216, 44 S.E.2d 314, 317 (1947). “In fact, such liability depends upon control, rather than ownership, of the premises. As a general rule, liability for injuries caused by dangerous instrumentalities terminates with a cessation of control thereover; and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question.” Id.

“One who controls the use of property has a duty of care not to harm others by its use. Conversely, one who has no control owes no duty.” Charleston Elec. Servs., Inc. v. Rahall, 427 S.C. 317, 323, 831 S.E.2d 122, 125 (Ct. App. 2019) (citing Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997)). Accordingly, McDonald’s Corporation owed no duty to Plaintiff at the time of the accident as a matter of law because it did not have control or possession of the property. See id., (affirming the lower court in finding the owner who had exclusive possession and control of the property where the injury occurred was the only party who owed a duty to the injured party).

The Court of Appeals previously addressed whether an owner could be held liable for actions occurring on its property, when it does not have possession or control. In Nesbitt v. Lewis, 335 S.C. 441, 446, 517 S.E.2d 11, 14 (Ct. App. 1999) the plaintiffs sought to recover damages from three property owners following a dog bite on their property. The owner, Gloria, lived on the premises, and her son and daughter also had ownership interests in the premises that they inherited upon the death of their father. Nesbitt, 335 S.C. at 444, 517 S.E.2d at 13. The son was on the premises at the time of the incident while the daughter did not live on the property at the time of the incident and she was not present on the day of the incident. 335 S.C. at 446, 517 S.E.2d at 14. In assessing liability of the owners, the Court of Appeals found as a matter of law that the daughter did not owe a duty to the plaintiffs because she lacked possession and control over the premises. Id.

Here, upon execution of the Franchise Agreement and Operator’s Lease with McDonald’s USA, LLC, JKS & K, Inc. assumed control and possession over the property. Byerly v. Connor, 307 S.C. 441, 443–44, 415 S.E.2d 796, 798 (1992). (When land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of

the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee). Since McDonald's Corporation was neither the franchisor, nor the lessor and had neither possession nor control over the property at the time of the accident, it owed Plaintiff no duty as a matter of law. Nesbitt, supra. Therefore, McDonald's Corporation's motion for summary judgment should be granted.

III. As an additional sustaining ground, McDonald's Corporation did not have any control over the day-to-day operations of the restaurant business where Plaintiff's accident occurred and, therefore, it is entitled to summary judgment.

Plaintiff has failed to produce any evidence that McDonald's Corporation had any role or interest in the day-to-day operations of the restaurant business owned and operated by JKS & K, Inc. at the time of Plaintiff's accident.⁵ For liability to be assessed against a franchisor, "there must be evidence [the franchisor] asserted sufficient control over the [franchisee's] *daily operations*." Bass v. Gopal, Inc., 384 S.C. 238, 248, 680 S.E.2d 917, 922 (Ct. App. 2009)(emphasis added), aff'd, 395 S.C. 129, 716 S.E.2d 910 (2011) (citing Allen v. Greenville Hotel Partners, Inc., 409 F.Supp.2d 672, 679 (D.S.C. 2006). Here, Plaintiff has failed to produce even a scintilla of evidence that McDonald's Corporation exercised any control over the daily operations of the restaurant business owned and operated by JKS & K, Inc. and, therefore, it is entitled to summary judgment.

The test to determine whether the master and servant relationship exists is whether the "purported master has the right or power to direct and control the servant in the performance of his work and in the manner in which the work is to be done." Jamison v. Morris, 385 S.C. 215, 221, 684 S.E.2d 168, 171 (2009). Regarding the franchisor/franchisee relationship specifically, franchisors are not vicariously liable for torts committed at an independent business unless a

⁵ While it has been established that the franchisor and lessor at the time of the accident was McDonald's USA, LLC, the argument herein applies equally to it as the actual franchisor and lessor.

plaintiff can show that the franchisor exercised more control over the franchisee than was necessary to ensure “uniformity of appearance and quality of services among its franchisees.” Jamison, at 222-23, 172. Further, it has been established that quality standards, operational standards, and inspection rights contained in a franchise agreement do not establish a franchisor’s control or right of control over a franchisee sufficient to support a claim for vicarious liability. Bass v. Gopal, Inc., 384 S.C. 238, 248, 680 S.E.2d 917, 922 (Ct. App. 2009), aff’d, 395 S.C. 129, 716 S.E.2d 910 (2011) (citing Allen v. Greenville Hotel Partners, Inc., 409 F.Supp.2d 672, 679 (D.S.C. 2006)).

Importantly, to assess liability against the franchisor, Plaintiff must produce evidence of a master-servant relationship “between the wrongdoer and the person sought to be charged for the result for the wrong *at the time and in respect to the very transaction out of which the injury arose.*” Richitelli v. Motiva Enterprises, LLC, 389 S.C. 184, 188-89, 697 S.E.2d 667, 670 (Ct. App. 2010) (emphasis in original) (finding in a personal injury case that a retailer/wrecker company's use of Texaco's signs, logos, products, advertising, and the presence of a marketing agreement which allowed Texaco the right to control the type of fuel sold, the manner it was delivered, the way retailers maintained their facilities, and the way the retailers' employees interacted with customers was not sufficient evidence to create a jury issue regarding the plaintiffs' argument that Texaco had the right to control the operation of the retailer's wrecker service). Here, there is no evidence that any individual or entity other than JKS & K, Inc. was responsible for the maintenance, inspection and care of the parking lot on the date of Plaintiff’s accident.

In Bass v. Gopal, Inc., 384 S.C. 238, 249, 680 S.E.2d 917, 923 (Ct. App. 2009), aff’d, 395 S.C. 129, 716 S.E.2d 910 (2011), the Court of Appeals affirmed the trial court’s grant of summary judgement to the franchisor, Super 8 Motels, Inc., finding it did not control the daily operations of

the franchisee motel owner and did not breach any duty of care to the plaintiff. The court held that there must be evidence that the franchisor asserted sufficient control over the franchisee's daily operations in order to find that the franchisor "operated" or controlled the motel. Id. at 248, 922. The franchisor, Super 8 Motels, Inc., had a franchise agreement with the franchisee motel owner, which required the motel owner to handle daily management of the motel operations, obtain liability insurance, allow the franchisor to right to inspect the premises on a regular basis, attend a training seminar, and pay Super 8 Motels, Inc. 8% of the profits from the motel's operation. Id. at 249, 922. The court found that the plaintiff presented no probative evidence that established that the franchisor controlled the motel's daily operations despite the franchise agreement's provisions. Id. Conversely, the court found that the franchise agreement's provisions set in place certain standards for the motel owner to follow to protect the franchisor's "good will" while the motel owner controlled the daily operation of the motel to implement the franchisor's standards. Bass, at 249, 922-23.

Here, Plaintiff has not produced any evidence that McDonald's Corporation exercised any control over JKS & K, Inc.'s daily operations sufficient to subject it to liability for Plaintiff's accident that occurred on July 28, 2018. Accordingly, McDonald's Corporation is entitled to summary judgment.

Conclusion

Based on the foregoing, Defendant McDonald's Corporation respectfully submits that its Motion for Summary Judgment should be granted and Plaintiff's lawsuit dismissed with prejudice.

Respectfully Submitted,

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January 28, 2022

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2020-CP-38-00428

LINDA HOOKER,

Plaintiff,

DEFENDANT MCDONALD'S
REAL ESTATE COMPANY'S
MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT

v.

McDONALD'S CORPORATION,
McDONALD'S REAL ESTATE
COMPANY, JKS & K, INC.,
PAM HAMPTON, and PROLINE
STRIPING SERVICE, INC.

Defendants.

Defendant McDonald's Real Estate Company ("MREC") submits this memorandum in support of its motion for summary judgment.

Procedural History

Defendant MREC adopts and incorporates herein by reference the Procedural History set forth in Defendant JKS & K., Inc.'s Memorandum in Support of Motion for Summary Judgment filed contemporaneously herewith.

Additionally, MREC would point out that the only discovery directed to it in the almost two years since the case has been pending are simple written discovery requests served at the beginning of the case. Plaintiff has not directed any additional discovery efforts to MREC.

Factual Background

Defendant MREC adopts and incorporates herein by reference the Factual Background set forth in Defendant JKS & K., Inc.'s Memorandum in Support of Motion for Summary Judgment filed contemporaneously herewith.

Additionally, the relevant franchise and lease agreements in place at the time of Plaintiff's accident clearly and unequivocally demonstrate that MREC was neither the franchisor nor the landlord to the franchised McDonald's restaurant business which was independently owned and operated by JKS & K, Inc.¹ By way of additional history and explanation, a Franchise Agreement for the subject restaurant location demonstrates that it was executed on or about March 6, 2013 by and between McDonald's USA, LLC and the McMillan franchisees. The record demonstrates that the McMillan franchisees and JKS & K, Inc. entered into a Purchase and Sale Agreement on or about October 14, 2016, for the sale/transfer of the subject restaurant business. A subsequent amendment to the Purchase and Sale Agreement executed by the parties on October 28, 2016, changed the closing date to November 30, 2016. By way of an assignment agreement dated December 1, 2016, the McMillan franchisees and McDonald's USA, LLC agreed to the assignment of the McMillan franchisees' rights and obligations under the Franchise Agreement and Operator's Lease to JKS & K, Inc.² As a result of these commercial transactions, McDonald's USA, LLC was the franchisor of the restaurant business owned and operated by JKS & K, Inc. and lessor of the real property on which JKS & K, Inc. operated its restaurant business on the date of Plaintiff's accident on July 28, 2018.

¹ The franchise agreement and lease agreement are considered to be proprietary commercial business records and have been marked "Confidential" in accordance with a Consent Protective Confidentiality Order entered in the case September 16, 2020.

² Technically, the assignment agreement transferred the McMillan franchisees' interest in the Franchise Agreement and Operator's Lease to James Booth. Subsequently, Booth assigned his interests to JKS & K, Inc.

Standard of Review

Rule 56, SCRCP, “mandates the entry of summary judgment, after adequate time for discovery . . . , against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” Baughman v. Am. Tel. & Tel. Co., 305 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). “In such a situation, there can be no ‘genuine issue of material fact,’” because “a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Id. (citing Celotex, 477 U.S. at 322–23).

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman, 305 S.C. at 115, 410 S.E.2d at 545 (citing Celotex, 477 U.S. 317; Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990)). “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by showing—that is, point out to the trial court—that there is an absence of evidence to support the nonmoving party’s case.’” Id. (quoting Celotex, 477 U.S. at 325). The movant “need not ‘support its motion with affidavits or other similar materials negating the opponent’s claim.’” Id. (quoting Celotex, 477 U.S. at 323).

Once the moving party carries this initial burden, it is incumbent on the party opposing summary judgment “to set forth specific facts showing there is a genuine issue for trial.” Id. (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986)). These specific facts must be proffered “by affidavit or other proof.” Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994) (citation omitted). Materials submitted to refute a motion for summary judgment must be “those which would be admissible in evidence.” Hall v. Fedor, 349

S.C. 169, 174, 561 S.E.2d 654, 657 (Ct. App. 2002) (citing Baughman, 306 S.C. 101, 410 S.E.2d 537) (other citations omitted); see Rule 56(e), SCRC.P. “Rule 56(e) specifically prohibits the nonmoving party from resting upon mere allegations or denials of its pleadings.” Baughman, 305 S.C. at 115, 410 S.E.2d at 545 (citing SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990)); S.C.R.C.P. 56(e). Furthermore, any “conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” Shupe, 315 S.C. at 516–17, 445 S.E.2d at 655 (citation omitted).

Argument

Defendant MREC adopts and incorporates herein by reference the Argument set forth in Defendant JKS & K., Inc.’s Memorandum in Support of Motion for Summary Judgment filed contemporaneously herewith. In short, MREC is entitled to summary judgment because Plaintiff has failed to produce any evidence that the parking lot was in any defective or dangerous condition at the time of Plaintiff’s accident. Additionally, in the event that a defective or dangerous condition existed, which is specifically denied, Plaintiff has failed to produce any evidence that MREC had any actual or constructive notice or knowledge of the allegedly defective condition. Accordingly, Defendant MREC is entitled to summary judgment.

Additionally, MREC cannot be held liable for Plaintiff’s accident because there is no evidence that it had any possession or control of the real property or any role in the restaurant business whatsoever at the time of the accident and it would not be vicariously liable for Plaintiff’s accident. Accordingly, Defendant MREC is entitled to summary judgment.

I. As an additional sustaining ground, MREC was neither the franchisor nor the lessor for the independently owned and operated McDonald's restaurant business operated by JKS & K, Inc. in Santee, South Carolina and, therefore, it is entitled to summary judgment.

It is uncontradicted and undisputed that the McDonald's restaurant business in Santee, South Carolina, was owned and operated by JKS & K, Inc. at the time of Plaintiff's accident on July 28, 2018. More importantly, the Franchise Agreement in effect on that date clearly and unequivocally states that the franchisor is McDonald's USA, LLC, a Delaware limited liability company.³ McDonald's USA, LLC is not a party to this case and Plaintiff has produced no evidence of the connection between McDonald's Corporation, a Delaware corporation, McDonald's USA, LLC, a Delaware limited liability company and/or MREC, a Delaware corporation.⁴ In sum, Plaintiff has produced no evidence that MREC had any connection to the subject property at the time of the accident and, therefore, MREC should be granted summary judgment.

Importantly, even if MREC may be a subsidiary of McDonald's Corporation it is of no legal consequence in this case. It has long been held that "[t]he mere ownership of the capital stock of one corporation by another does not create an identity of corporate interest between the two companies, or render the holding company the owner of the property of the other, or create the relationship of principal and agent, or representative, or alter ego between the two." Gordon v. Hollywood-Beaufort Package Corp., 213 S.C. 438, 444, 49 S.E.2d 718, 719 (1948); Carroll v. Smith-Henry, Inc., 281 S.C. 104, 106, 313 S.E.2d 649, 651 (Ct. App. 1984)("Stock ownership

³ The Franchise Agreement included an Operator's Lease as Exhibit A. In the Operator's Lease, McDonald's USA, LLC is clearly and unequivocally identified as the "Landlord" for the real property at the time of Plaintiff's accident.

⁴ The only discovery directed to MREC in the almost two years since the case has been pending are simple written discovery requests served at the beginning of the case. Plaintiff has not directed any additional discovery efforts to MREC.

alone ordinarily does not render a parent corporation liable for the contracts of its subsidiary irrespective of whether the subsidiary is wholly owned or only partially owned [internal citation omitted]; and the fact that a parent and subsidiary share common officers or directors does not by itself impose liability on the parent for the contracts of its subsidiary.”).

Plaintiff simply has produced no evidence that MREC should be held legally responsible for anything that happened on the real property where Plaintiff’s accident occurred on July 28, 2018. Accordingly, Defendant MREC is entitled to summary judgment.

II. As an additional sustaining ground, MREC did not have any possession or control of the real property where Plaintiff’s accident occurred and, therefore, it is entitled to summary judgment.

Again, it is uncontradicted and undisputed that the McDonald’s restaurant business in Santee, South Carolina, where Plaintiff’s accident occurred was owned and operated by JKS & K, Inc. at the time of the accident on July 28, 2018. As discussed hereinabove, it is uncontradicted and undisputed that MREC was neither the franchisor of JKS & K, Inc. nor the lessor of the real property to JKS & K, Inc. at the time of the accident. Accordingly, MREC had no right of possession or control over the premises and, therefore, MREC is entitled to summary judgment.

To be sure, the liability of an owner or occupant of real estate in reference to injuries caused by a dangerous or defective condition of the premises generally depends on the control of the property. Dunbar v. Charleston & W. C. Ry. Co., 211 S.C. 209, 216, 44 S.E.2d 314, 317 (1947). “In fact, such liability depends upon control, rather than ownership, of the premises. As a general rule, liability for injuries caused by dangerous instrumentalities terminates with a cessation of control thereover; and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question.” Id.

“One who controls the use of property has a duty of care not to harm others by its use. Conversely, one who has no control owes no duty.” Charleston Elec. Servs., Inc. v. Rahall, 427 S.C. 317, 323, 831 S.E.2d 122, 125 (Ct. App. 2019) (citing Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997)). Accordingly, MREC owed no duty to Plaintiff at the time of the accident as a matter of law because it did not have control or possession of the property. See id., (affirming the lower court in finding the owner who had exclusive possession and control of the property where the injury occurred was the only party who owed a duty to the injured party).

The Court of Appeals previously addressed whether an owner could be held liable for actions occurring on its property, when it does not have possession or control. In Nesbitt v. Lewis, 335 S.C. 441, 446, 517 S.E.2d 11, 14 (Ct. App. 1999) the plaintiffs sought to recover damages from three property owners following a dog bite on their property. The owner, Gloria, lived on the premises, and her son and daughter also had ownership interests in the premises that they inherited upon the death of their father. Nesbitt, 335 S.C. at 444, 517 S.E.2d at 13. The son was on the premises at the time of the incident while the daughter did not live on the property at the time of the incident and she was not present on the day of the incident. 335 S.C. at 446, 517 S.E.2d at 14. In assessing liability of the owners, the Court of Appeals found as a matter of law that the daughter did not owe a duty to the plaintiffs because she lacked possession and control over the premises. Id.

Here, upon execution of the Franchise Agreement and Operator’s Lease with McDonald’s USA, LLC, JKS & K, Inc. assumed control and possession over the property. Byerly v. Connor, 307 S.C. 441, 443–44, 415 S.E.2d 796, 798 (1992). (When land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and

control of the land to the lessee). Since MREC was neither the franchisor, nor the lessor and had neither possession nor control over the property at the time of the accident, it owed Plaintiff no duty as a matter of law. Nesbitt, supra. Therefore, MREC's motion for summary judgment should be granted.

III. As an additional sustaining ground, MREC did not have any control over the day-to-day operations of the restaurant business where Plaintiff's accident occurred and, therefore, it is entitled to summary judgment.

Plaintiff has failed to produce any evidence that MREC had any role or interest in the day-to-day operations of the restaurant business owned and operated by JKS & K, Inc. at the time of Plaintiff's accident.⁵ For liability to be assessed against a franchisor, "there must be evidence [the franchisor] asserted sufficient control over the [franchisee's] *daily operations*." Bass v. Gopal, Inc., 384 S.C. 238, 248, 680 S.E.2d 917, 922 (Ct. App. 2009)(emphasis added), aff'd, 395 S.C. 129, 716 S.E.2d 910 (2011) (citing Allen v. Greenville Hotel Partners, Inc., 409 F.Supp.2d 672, 679 (D.S.C. 2006). Here, Plaintiff has failed to produce even a scintilla of evidence that MREC exercised any control over the daily operations of the restaurant business owned and operated by JKS & K, Inc. and, therefore, it is entitled to summary judgment.

The test to determine whether the master and servant relationship exists is whether the "purported master has the right or power to direct and control the servant in the performance of his work and in the manner in which the work is to be done." Jamison v. Morris, 385 S.C. 215, 221, 684 S.E.2d 168, 171 (2009). Regarding the franchisor/franchisee relationship specifically, franchisors are not vicariously liable for torts committed at an independent business unless a plaintiff can show that the franchisor exercised more control over the franchisee than was necessary to ensure "uniformity of appearance and quality of services among its franchisees."

⁵ While it has been established that the franchisor and lessor at the time of the accident was McDonald's USA, LLC, the argument herein applies equally to it as the actual franchisor and lessor.

Jamison, at 222-23, 172. Further, it has been established that quality standards, operational standards, and inspection rights contained in a franchise agreement do not establish a franchisor's control or right of control over a franchisee sufficient to support a claim for vicarious liability. Bass v. Gopal, Inc., 384 S.C. 238, 248, 680 S.E.2d 917, 922 (Ct. App. 2009), aff'd, 395 S.C. 129, 716 S.E.2d 910 (2011) (citing Allen v. Greenville Hotel Partners, Inc., 409 F.Supp.2d 672, 679 (D.S.C. 2006)).

Importantly, to assess liability against the franchisor, Plaintiff must produce evidence of a master-servant relationship “between the wrongdoer and the person sought to be charged for the result for the wrong *at the time and in respect to the very transaction out of which the injury arose.*” Richitelli v. Motiva Enterprises, LLC, 389 S.C. 184, 188-89, 697 S.E.2d 667, 670 (Ct. App. 2010) (emphasis in original) (finding in a personal injury case that a retailer/wrecker company's use of Texaco's signs, logos, products, advertising, and the presence of a marketing agreement which allowed Texaco the right to control the type of fuel sold, the manner it was delivered, the way retailers maintained their facilities, and the way the retailers' employees interacted with customers was not sufficient evidence to create a jury issue regarding the plaintiffs' argument that Texaco had the right to control the operation of the retailer's wrecker service). Here, there is no evidence that any individual or entity other than JKS & K, Inc. was responsible for the maintenance, inspection and care of the parking lot on the date of Plaintiff's accident.

In Bass v. Gopal, Inc., 384 S.C. 238, 249, 680 S.E.2d 917, 923 (Ct. App. 2009), aff'd, 395 S.C. 129, 716 S.E.2d 910 (2011), the Court of Appeals affirmed the trial court's grant of summary judgement to the franchisor, Super 8 Motels, Inc., finding it did not control the daily operations of the franchisee motel owner and did not breach any duty of care to the plaintiff. The court held that there must be evidence that the franchisor asserted sufficient control over the franchisee's daily

operations in order to find that the franchisor “operated” or controlled the motel. Id., at 248, 922. The franchisor, Super 8 Motels, Inc., had a franchise agreement with the franchisee motel owner, which required the motel owner to handle daily management of the motel operations, obtain liability insurance, allow the franchisor to right to inspect the premises on a regular basis, attend a training seminar, and pay Super 8 Motels, Inc. 8% of the profits from the motel’s operation. Id., at 249, 922. The court found that the plaintiff presented no probative evidence that established that the franchisor controlled the motel’s daily operations despite the franchise agreement’s provisions. Id. Conversely, the court found that the franchise agreement’s provisions set in place certain standards for the motel owner to follow to protect the franchisor’s "good will" while the motel owner controlled the daily operation of the motel to implement the franchisor’s standards. Bass, at 249, 922-23.

Here, Plaintiff has not produced any evidence that MREC exercised any control over JKS & K, Inc.’s daily operations sufficient to subject it to liability for Plaintiff’s accident that occurred on July 28, 2018. Accordingly, MREC is entitled to summary judgment.

Conclusion

Based on the foregoing, Defendant McDonald’s Real Estate Company respectfully submits that its Motion for Summary Judgment should be granted and Plaintiff’s lawsuit dismissed with prejudice.

(Signature on the following page)

Respectfully Submitted,

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January 28, 2022
Mount Pleasant, South Carolina

*Attorneys for Defendant McDonald's Real
Estate Company*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2020-CP-38-00428
LINDA HOOKER,	)	
	)	
Plaintiff,	)	DEFENDANT JKS & K, INC.'S
	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY
v.	)	JUDGMENT
	)	
McDONALD'S CORPORATION,	)	
McDONALD'S REAL ESTATE	)	
COMPANY, JKS & K, INC.,	)	
PAM HAMPTON, and PROLINE	)	
STRIPING SERVICE, INC.	)	
	)	
Defendants.	)	

Defendant JKS & K, Inc. submits this memorandum in support of its motion for summary judgment.

Procedural History

This is a premises liability case. On July 28, 2018, Linda Hooker ("Plaintiff") allegedly slipped and fell on a painted striped line in the crosswalk of a parking lot of a McDonald's restaurant business located at 8940 Old Number Six Highway in Orangeburg County, South Carolina.¹ Plaintiff initiated this lawsuit against McDonald's Corporation, McDonald's Real Estate Company, JKS & K, Inc., and Pam Hampton on March 30, 2020. On October 23, 2020, Plaintiff amended her Complaint and added Defendant Proline Striping Service, Inc. ("Proline"). The parties have exchanged written discovery and taken the depositions of Plaintiff's husband

¹ Linda Hooker passed away due to complications from cancer in November 2020. Her husband Ralph Hooker was appointed personal representative of her estate by the Calhoun County Probate Court on January 4, 2021. A Motion to Substitute the Estate as the proper party in interest was filed March 12, 2021. Remarkably, it does not appear from the Public Index that an Order has been entered formally substituting in the Estate in accordance with SCRCP 25(a).

Ralph Hooker; Plaintiff's daughter Michelle Foxworth; Defendant Pam Hampton; JKS & K, Inc. employee and shift manager at the time of the accident Sherrie Washington; Defendant Proline's corporate representative Jared Marr; and Plaintiff's retained expert, Bryan Durig. The case first appeared on a jury trial roster in Orangeburg County for the week of January 31, 2022.

Factual Background

A. The Accident

On July 28, 2018, Plaintiff, her husband Ralph Hooker, and their daughter Michelle Foxworth, stopped at the McDonald's restaurant business in Santee to grab a bite to eat. Mr. Hooker was quite familiar with the restaurant and the parking lot having been there on many prior occasions. (R. Hooker Dep. 16:2-24). It was raining and the parking lot was wet when they pulled into the parking lot. (R. Hooker Dep. 23:20-24:4, M. Foxworth Dep. 20:2-7). It continued to rain as Plaintiff and her family used the crosswalk to access the restaurant. (R. Hooker Dep. 24:5-10). None of the family members experienced any trouble with traction as they walked in the rain across the wet parking lot in the crosswalk toward the restaurant. (M. Foxworth Dep. 21:6-25; 22:1-6).

During the 30 minutes or so that Plaintiff and her family were in the restaurant, it continued to rain "hard." (R. Hooker Dep. 24:20-23). Once the rain stopped², the family members exited the restaurant and started back across the crosswalk. Neither Mr. Hooker nor Foxworth slipped or lost footing in the crosswalk. (R. Hooker Dep. 29:16-17; 32:1-7)(M. Foxworth Dep. 24:14-25:17; 32:4-6). Notably, Plaintiff was the only one wearing flip-flop style shoes. (R. Hooker Dep. 30:3-5). Mr. Hooker and Foxworth made it to the other side of the crosswalk when they heard Plaintiff "holler" behind them. (R. Hooker Dep. 24:16-21; 26:8-28:1). Neither Mr. Hooker nor Foxworth saw the

² While both Ralph Hooker and Michele Foxworth testified under oath that it had stopped raining when the accident occurred, body cam video from a responding officer to the accident scene clearly, and unequivocally, caught Foxworth say "it was raining" when specifically asked how the accident occurred. Later in the same video, Foxworth stated a second time that "it was still raining" when the accident occurred.

initiation of the fall (*i.e.* what caused Plaintiff to fall). (R. Hooker Dep. 28:20-29:8; 29:13-15; 42:7-14)(M. Foxworth Dep., 25:11-24). As a result, there are no witnesses who will offer testimony as to how or why Plaintiff went to the ground.³

B. The Alleged Dangerous/Defective Condition

While there is not a single witness who will provide first-hand testimony or evidence that the accident actually happened as alleged in the Complaint, Plaintiff's theory is that Plaintiff slipped on the painted lines of the crosswalk due to an alleged lack of slip/skid-resistance. The question then is what evidence exists regarding the painted lines in the parking lot at the time of the accident on July 28, 2018. To that end, Plaintiff retained Dr. Bryan Durig in 2018 and he was eventually deposed on January 20, 2022.

Dr. Durig testified that the entirety of his physical investigation of the subject parking lot involved two separate site visits; the first was some unidentified date in 2018 and the second was on March 5, 2019.⁴ As to the first visit, Dr. Durig testified that he was there for 15-20 minutes "just to familiarize myself and look at the painted lines." (B. Durig Dep. 8:9-24). Dr. Durig took no photographs and conducted no scientific testing of the painted lines. (B. Durig Dep. 9:19-23). The parking lot and the painted lines were dry. (B. Durig Dep. 8:5-7). Remarkably, at the time of the first visit, Dr. Durig did not know where the accident was alleged to have occurred other than generally in the crosswalk. (B. Durig Dep. 9:13-16). The second visit was not much different from the first: it lasted 20 minutes; the parking lot and the painted lines were dry; no photographs were

³ While Plaintiff was alive at the time of the filing of the lawsuit and for seven or eight months thereafter, she did not write any statement, swear to any affidavit, or sit for a deposition to memorialize her testimony. Importantly, the body cam video of the responding officer also did not include any statements from Plaintiff as to how or why the accident occurred.

⁴ Dr. Durig never spoke to Plaintiff about the accident while she was alive and has never spoken with either Mr. Hooker or Foxworth. (B. Durig Dep. 69:15-23; 91:25-92:12).

taken; no measurements were taken; and “no formal testing of any kind” was performed.⁵ (B. Durig Dep. 13:8-18; 14: 3-5; 12-15). In reality, the only thing Dr. Durig did was to visualize the lines and then touch a small section of the painted lines to confirm that the paint did not include any abrasive material. Importantly, Dr. Durig only touched the painted lines in the area of the parking spaces and never touched the painted lines on which Plaintiff allegedly fell. (B. Durig Dep. 15:1-20).

Dr. Durig’s investigation did not include anything related to Plaintiff’s footwear at the time of the accident. While Dr. Durig admitted that flip-flops can be slippery on a wet floor, he did not conduct any investigation or inspection of Plaintiff’s flip-flops worn at the time of the accident.⁶ (B. Durig Dep. 68:5-25). Dr. Durig conceded that “flip-flops are more slippery than normal – other shoes. So yes, a flip flop would be a contributing factor to a slip-and-fall.” (B. Durig Dep. 68:5-25).

While it his opinion that the painted lines in the parking lot should have had abrasive material added to the paint, Dr. Durig readily conceded that not all painted lines in parking lots require abrasive material. Dr. Durig admitted that painted concrete and/or asphalt can retain its surface texture depending on the amount of paint that is applied to the surface. (B. Durig Dep. 64:24 – 65:6). He testified:

Q. Because if you had, for example, a single layer that still had the texture of the concrete or the asphalt, whatever it’s under or on top of, that could potentially impact the slip resistance?

A. It could potentially do that. Yes.

⁵ Invoices demonstrate that the parking lot was striped on or about April 4, 2018 (before the accident) and on March 2, 2019 (after the accident).

⁶ As a reminder, Dr. Durig was first contacted in 2018, closer in time to the accident, and at a time when Plaintiff was alive. Neither he nor Plaintiff’s lawyers made any effort to have the flip-flops presented for inspection.

(B. Durig Dep. 85:6-10). Remarkably, Dr. Durig testified that the painted lines in his own office parking lot do not have any abrasive material because: “Don’t need to because its got enough texturing from the surface underneath.” (B. Durig Dep. 116:17-18). Dr. Durig could not point to a single ordinance, code or universal industry standard that requires abrasive materials in painted parking lot lines or, more importantly, specifies a minimum level of slip resistance of a painted parking lot line. (B. Durig Dep. 53:4-8; 55:3-12).

While the central issue in the case is whether the painted lines were in a dangerous or defective condition at the time of the accident, Dr. Durig admitted that he has never conducted any slip/skid resistance testing of any of the painted lines, much less the line(s) on which Plaintiff allegedly slipped. (B. Durig Dep. 17:20-23; 85:21-23). Dr. Durig admitted that he cannot state the amount or thickness of the paint on the parking lot crosswalk at the time of the accident. (B. Durig Dep. 84:18-85:5). The significant deficiency of Dr. Durig’s alleged “expert” opinion is demonstrated in the following exchange:

Q. But you would agree with me that if the painted surface had a sufficient coefficient of friction, it would not need abrasive material?

A. Correct. And you would feel that. If you put your hand over brushed concrete with a single layer of paint, you still feel the texturing of the underlying material. When its smooth, that’s physically showing you that texturing is not coming through the paint layers.

Q. I understand. But you didn’t test that line [the line on which Plaintiff allegedly slipped] to determine whether – or how slippery it was.

A. Correct. I’ve told you that.

....

Q. And the reason for the abrasive material is...

A. To increase the coefficient of friction because a smooth painted surface is slippery when wet.

Q. Right, But you didn't test to determine whether, in fact, it [the line on which Plaintiff allegedly slipped] was in this circumstance.

A. Correct.

(B. Durig Dep. 93:6-18; 94:17-23). Finally, as for his opinion in this case, Dr. Durig testified quite simply:

Q. What I understand you are offering as an opinion is that whatever paint was used should have included some kind of abrasive material. Is that fair?

A. Yes.

Q. And then, obviously, the person or the entity responsible would be whoever put the paint on the surface of the parking lot, right? Is that fair?

A. Yes.

(B. Durig Dep. 8:19-82:2). Dr. Durig did not offer any testimony or opinions that any of the alleged restaurant-related entities would have or should have known about any alleged slipperiness of the painted lines at the time of the accident.

C. Ownership, Possession, Control of the Premises

JKS & K, Inc. purchased the restaurant business in 2016 and was the independent owner operator of the restaurant business at the time of the accident operating under a franchise agreement with McDonald's USA, LLC. This is uncontradicted in the record.

It is also uncontradicted that JKS & K, Inc. hired Proline to paint the lines in the restaurant parking lot. (J. Marr Dep. 46:8-17). While JKS & K, Inc. selected the painting contractor, it is uncontradicted that JKS & K, Inc. did not have any input in Proline's selection of paint and did not direct Proline's work at the restaurant. (J. Marr Dep. 46:1-24). It is uncontradicted that neither McDonald's Corporation nor McDonalds' Real Estate Company selected the painting contractor nor directed when the parking lot would be striped. Indeed, Proline's principal Jared Marr

confirmed that Proline has never had any contact with McDonald's Corporation or McDonald's Real Estate Company regarding its work at the restaurant. (J. Marr Dep. 46:8-12).

While JKS & K, Inc. employed Defendant Pamela Hampton as the general manager/store manager, Hampton was not at the store at the time of the accident. (P. Hampton Dep. 95:14-19, 96:2-5). Still, Hampton testified that there had been no incidents or accidents related to the restaurant's striped parking lot lines prior to the date of Plaintiff's accident. (P. Hampton Dep. 52:16-18). Similarly, Sherrie Washington, who was employed by JKS & K as the shift manager on duty at the time of the accident, testified that she was not aware of any other falls in the parking lot area of the restaurant during her time employed there. (S. Washington Dep. 28:21-24). There simply is no evidence that any Defendant had any notice or knowledge of any alleged defective condition of the painted lines in the parking lot, at any time, prior to Plaintiff's accident.

Regarding inspections of the exterior of the restaurant prior to the accident, Hampton offered testimony as to how JKS & K, Inc. employees regularly walked around the exterior of the restaurant every 30 minutes to an hour. (P. Hampton Dep. 86:5-21). There is no evidence that any JKS & K, Inc. employee ever found the painted lines in the parking lot to be slippery or in any way hazardous to customers. Plaintiff has not identified any experts to offer any testimony that the manner in which JKS & K, Inc. inspected and/or maintained its property was deficient in any manner or breached any standard of care.

Standard of Review

Rule 56, SCRCP, "mandates the entry of summary judgment, after adequate time for discovery . . . , against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." Baughman v. Am. Tel. & Tel. Co., 305 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)

(citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). “In such a situation, there can be no ‘genuine issue of material fact,’” because “a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Id. (citing Celotex, 477 U.S. at 322–23).

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman, 305 S.C. at 115, 410 S.E.2d at 545 (citing Celotex, 477 U.S. 317; Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990)). “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by showing—that is, point out to the trial court—that there is an absence of evidence to support the nonmoving party’s case.’” Id. (quoting Celotex, 477 U.S. at 325). The movant “need not ‘support its motion with affidavits or other similar materials negating the opponent’s claim.’” Id. (quoting Celotex, 477 U.S. at 323).

Once the moving party carries this initial burden, it is incumbent on the party opposing summary judgment “to set forth specific facts showing there is a genuine issue for trial.” Id. (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986)). These specific facts must be proffered “by affidavit or other proof.” Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994) (citation omitted). Materials submitted to refute a motion for summary judgment must be “those which would be admissible in evidence.” Hall v. Fedor, 349 S.C. 169, 174, 561 S.E.2d 654, 657 (Ct. App. 2002) (citing Baughman, 306 S.C. 101, 410 S.E.2d 537) (other citations omitted); see Rule 56(e), SCRPC. “Rule 56(e) specifically prohibits the nonmoving party from resting upon mere allegations or denials of its pleadings.” Baughman, 305 S.C. at 115, 410 S.E.2d at 545 (citing SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990)); Rule 56(e), SCRPC. Furthermore, any “conclusory statement as to the ultimate issue in

a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” Shupe, 315 S.C. at 516–17, 445 S.E.2d at 655 (citation omitted).

Argument

JKS & K. Inc. is entitled to summary judgement because Plaintiff has failed to produce any evidence that the parking lot was in any defective or dangerous condition at the time of Plaintiff’s accident. Additionally, in the event that a defective or dangerous condition existed, which is specifically denied, Plaintiff has failed to produce any evidence that JKS & K, Inc. had any actual or constructive notice or knowledge of the allegedly defective condition. Accordingly, JKS & K, Inc. is entitled to summary judgment.⁷

I. Plaintiff has not produced any evidence of any alleged defective or dangerous condition that proximately caused Plaintiff’s accident.

This is a premises liability case. It is fundamental that an owner of land has a “general duty to warn others of latent hazardous conditions on his land” which “arises from the owner’s superior knowledge of conditions on the premises within his control.” Byerly v. Connor, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992). While a merchant is not an insurer of the safety of his customer, the merchant owes a duty to exercise ordinary care to keep the premises in a reasonably safe condition. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). As to an invitee like Plaintiff, the merchant “owes a duty of care to discover risks and to warn of or eliminate foreseeable unreasonable risks.” Landry v. Hilton Head Plantation Prop. Owners Ass’n, Inc., 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994).

To recover damages for injuries caused by a dangerous or defective condition on a merchant’s premises, a plaintiff must show either (1) that the injury was caused by a specific act

⁷ The arguments that follow are equally applicable to Defendants Pam Hampton, McDonald’s Corporation and McDonald’s Real Estate Company and would warrant summary judgment being granted to each of them.

of the merchant which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). At its core, a premises liability case requires proof of a dangerous or defective condition on the property. Here, there simply is no evidence of any dangerous or defective condition existing at the time of Plaintiff's accident and, therefore, JKS & K, Inc. is entitled to summary judgment.

It is clear that the entirety of Plaintiff's case rests on whether the painted lines in the crosswalk of the parking lot were slip resistant at the time of Plaintiff's accident.⁸ Stated differently, if the painted lines were slip resistant at the time of the accident, then no defective or dangerous condition would have existed and no liability would attach. Fatal to Plaintiff's case is the absence of even a scintilla of evidence that the painted lines were in a defective and/or dangerous condition at the time of the accident.

First and foremost, the simple fact that Plaintiff fell to the ground within the crosswalk is not evidence of any dangerous or defective condition or any negligence on the part of anyone. It is axiomatic that South Carolina does not recognize the doctrine of *res ipsa loquitur* and Plaintiff may not use the simple fact of the fall itself to establish actionable negligence of any Defendant here. Hunter v. Dixie Home Stores, 232 S.C. 139, 144, 101 S.E.2d 262, 265 (1957). Moreover, there is substantial evidence that others, including Plaintiff and her family members, experienced the wet painted lines in the crosswalk going into the restaurant in the rain without any difficulty and that both Mr. Hooker and Foxworth crossed over a second time upon departure, also without difficulty. Consequentially, the simple fact that Plaintiff went to the ground in the crosswalk does

⁸ "Slip resistance" and "skid resistance" are used interchangeably herein.

not, in and of itself, constitute evidence of any dangerous or defective condition or any negligence on the part of any Defendant.

The question then is what evidence is there that the crosswalk was a defective or dangerous condition at the time of Plaintiff's accident. There can be no doubt that a walkway's slip resistance is the proper subject of expert testimony. Indeed, Plaintiff's expert Dr. Durig has been involved in countless numbers of slip-and-fall accidents and has been called upon to conduct formal, scientific slip resistance testing of various floor surfaces. However, for some inexplicable reason, Dr. Durig did not conduct any coefficient of friction testing of any aspect of the subject parking lot, much less the lines on which Plaintiff allegedly slipped. He repeatedly admitted, throughout his deposition, that he did not test the coefficient of friction of any of the painted lines in the parking lot and, therefore, cannot state whether they were/are skid resistant or not. Since Plaintiff's own retained expert cannot offer an opinion that the painted lines were not skid resistant at the time of the accident, Plaintiff's case fails as a matter of law and summary judgment should be granted to JKS & K, Inc.

While there is no evidence of the skid resistance of the painted lines at the time of the accident, Dr. Durig boldly opines that the painted lines should have included an abrasive material. Talk about putting the cart before the horse. Dr. Durig readily admits that painted parking lot lines are not required to have an abrasive material; in fact, the painted lines in his own office parking lot do not include any abrasive materials. Instead, abrasive materials are only required if the painted lines are not slip resistant. But Dr. Durig cannot, and will not, offer an opinion that the painted lines were not slip resistant at the time of the accident. After all, he did not conduct a single scientifically-accepted coefficient of friction test of any painted line surface, much less the painted

line(s) on which Plaintiff allegedly slipped.⁹ While set forth in the Factual Background hereinabove, the following testimony of Dr. Durig is most instructive here:

Q. But you would agree with me that if the painted surface had a sufficient coefficient of friction, it would not need abrasive material?

A. Correct. And you would feel that. If you put your hand over brushed concrete with a single layer of paint, you still feel the texturing of the underlying material. When its smooth, that's physically showing you that texturing is not coming through the paint layers.

Q. I understand. But you didn't test that line [the line on which Plaintiff allegedly slipped] to determine whether – or how slippery it was.

A. Correct. I've told you that.

....

Q. And the reason for the abrasive material is...

A. To increase the coefficient of friction because a smooth painted surface is slippery when wet.

Q. Right, But you didn't test to determine whether, in fact, it [the line on which Plaintiff allegedly slipped] was in this circumstance.

A. Correct.

(B. Durig Dep., 93:6-18; 94:17-23). Simply stated, Plaintiff has not produced even a scintilla of evidence that the painted lines were in a defective and/or dangerous condition at the time of the accident and, therefore, JKS & K, Inc. is entitled to summary judgment.

⁹ Perhaps most concerning is that Dr. Durig never visualized or felt the painted lines when wet. Both of his visits to the parking lot occurred in dry conditions. Dr. Durig never applied any water to the lines to get a sense of how they felt to the touch when wet. Even his decidedly unscientific sensual investigation did not replicate the simplest of conditions existing at the time of the accident.

- II. **Assuming *arguendo* that a dangerous or defective condition existed in the parking lot at the time of Plaintiff's accident, Plaintiff has failed to produce any evidence that either JKS & K, Inc. created the condition or that it knew or should have known about the alleged defective condition of the property and failed to remedy same.**

While the preceding section outlines the complete absence of evidence of any dangerous or defective condition at the time of the accident, if for some reason the court finds a scintilla of evidence of same, the record is equally clear and uncontradicted that JKS & K, Inc. did not create the condition and had no notice or knowledge of the condition prior to Plaintiff's accident. Consequentially, JKS & K, Inc. is entitled to summary judgment on this additional sustaining ground. As stated hereinabove, to recover damages for injuries caused by a dangerous or defective condition on a merchant's premises, a plaintiff must show either (1) that the injury was caused by a specific act of the merchant which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it. Garvin, at 628, 832. Thankfully, it will not take long to cover these topics.

It is uncontradicted that outside of selecting the painting contractor, JKS & K had absolutely nothing to do with the lines painted in its parking lot. It did not select the paint; it did not apply the paint; and it did not supervise the painting process. There simply is no evidence that JKS & K, Inc. created the allegedly dangerous condition.

The record is equally devoid of any evidence that JKS & K, Inc. had any actual or constructive, notice or knowledge, of any alleged problems with the painted lines prior to Plaintiff's accident. There is no evidence that any patron ever reported any problems with painted lines in the parking lot, much less any evidence of any other incidents or accidents occurring from an alleged encounter with the painted lines. There is no evidence that any employee ever reported any trouble, difficulty or problem with the painted lines, in dry or wet conditions. Plaintiff has not

identified any experts to offer any testimony that the manner in which JKS & K, Inc. inspected and/or maintained its property was deficient in any manner or breached any standard of care. Where is the notice? Where is the knowledge? The evidence is nonexistent and, therefore, even if a scintilla of evidence exists of a dangerous or defective condition, JKS & K, Inc. is still entitled to summary judgment.

Conclusion

Based on the foregoing, Defendant JKS & K, Inc. respectfully submits that its Motion for Summary Judgment should be granted and that Plaintiff's lawsuit be dismissed with prejudice.

Respectfully Submitted,

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Attorneys for Defendant JKS & K, Inc.

January 28, 2022
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2020-CP-38-00428
LINDA HOOKER,	)	
	)	
Plaintiff,	)	DEFENDANT PAM HAMPTON'S
	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY
v.	)	JUDGMENT
	)	
McDONALD'S CORPORATION,	)	
McDONALD'S REAL ESTATE	)	
COMPANY, JKS & K, INC.,	)	
PAM HAMPTON, and PROLINE	)	
STRIPING SERVICE, INC.	)	
	)	
Defendants.	)	

Defendant Pam Hampton submits this memorandum in support of her motion for summary judgment.

Procedural History

Defendant Hampton adopts and incorporates herein by reference the Procedural History set forth in Defendant JKS & K., Inc.'s Memorandum in Support of Motion for Summary Judgment filed contemporaneously herewith.

Factual Background

Defendant Hampton adopts and incorporates herein by reference the Factual Background set forth in Defendant JKS & K., Inc.'s Memorandum in Support of Motion for Summary Judgment filed contemporaneously herewith.

Standard of Review

Rule 56, SCRCP, "mandates the entry of summary judgment, after adequate time for discovery . . . , against a party who fails to make a showing sufficient to establish the existence of

an element essential to the party's case, and on which that party will bear the burden of proof at trial." Baughman v. Am. Tel. & Tel. Co., 305 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). "In such a situation, there can be no 'genuine issue of material fact,'" because "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. (citing Celotex, 477 U.S. at 322–23).

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman, 305 S.C. at 115, 410 S.E.2d at 545 (citing Celotex, 477 U.S. 317; Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990)). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by showing—that is, point out to the trial court—that there is an absence of evidence to support the nonmoving party's case.'" Id. (quoting Celotex, 477 U.S. at 325). The movant "need not 'support its motion with affidavits or other similar materials negating the opponent's claim.'" Id. (quoting Celotex, 477 U.S. at 323).

Once the moving party carries this initial burden, it is incumbent on the party opposing summary judgment "to set forth specific facts showing there is a genuine issue for trial." Id. (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986)). These specific facts must be proffered "by affidavit or other proof." Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994) (citation omitted). Materials submitted to refute a motion for summary judgment must be "those which would be admissible in evidence." Hall v. Fedor, 349 S.C. 169, 174, 561 S.E.2d 654, 657 (Ct. App. 2002) (citing Baughman, 306 S.C. 101, 410 S.E.2d 537) (other citations omitted); see Rule 56(e), SCRPC. "Rule 56(e) specifically prohibits the nonmoving party from resting upon mere allegations or denials of its pleadings." Baughman, 305

S.C. at 115, 410 S.E.2d at 545 (citing SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990)); Rule 56(e), SCRCP. Furthermore, any “conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” Shupe, 315 S.C. at 516–17, 445 S.E.2d at 655 (citation omitted).

Argument

Defendant Hampton adopts and incorporates herein by reference the Argument set forth in Defendant JKS & K., Inc.’s Memorandum in Support of Motion for Summary Judgment filed contemporaneously herewith. In short, Defendant Hampton is entitled to summary judgment because Plaintiff has failed to produce any evidence that the parking lot was in any defective or dangerous condition at the time of Plaintiff’s accident. Additionally, in the event that a defective or dangerous condition existed, which is specifically denied, Plaintiff has failed to produce any evidence that Defendant Hampton had any actual or constructive notice or knowledge of the allegedly defective condition. Accordingly, Defendant Hampton is entitled to summary judgment.

I. As an additional sustaining ground, Defendant Hampton was merely an employee of the corporation that owned and operated the restaurant where Plaintiff’s accident occurred and, without more, Hampton is entitled to summary judgment.

Generally speaking, South Carolina law limits the liability of corporate officers or directors for actions of the corporation. Hunt v Rabon, 275 S.C. 475, 272 S.E.2d 643 (1980). In Rabon, the South Carolina Supreme Court quoted with approval 19 C.J.S. Corporations § 845 – Torts which states:

A director, officer or agent is not liable for torts of the corporation or of other officers or agents merely because of his office. He is liable for torts in which he has participated or which he has authorized or directed.

Id. S.C. at 478, S.E.2d at 644. Here, it is undisputed that Defendant Hampton is neither a director nor officer of JKS & K, Inc. Even if somehow the rule in Rabon applied to an employee serving

as a general manager of a restaurant, there is no evidence that Hampton participated in, authorized or directed the painting of the parking lot lines at the restaurant. Accordingly, she is afforded and entitled to the shield of the corporate structure and, therefore, is entitled to summary judgment.

Conclusion

Based on the foregoing, Defendant Pam Hampton respectfully submits that her Motion for Summary Judgment should be granted and that Plaintiff's lawsuit be dismissed with prejudice.

Respectfully Submitted,

HALL BOOTH SMITH, P.C.

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January 28, 2022
Mount Pleasant, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

Linda Hooker,

Plaintiff,

Vs.

**McDonald's Corporation, McDonald's Real
Estate Company, JKS & K, Inc., Pam
Hampton, and Proline Striping Service, Inc.**

Defendants.

) **IN THE COURT OF COMMON PLEAS**
) **IN THE FIRST JUDICIAL CIRCUIT**
)

) **Civil Action No.: 2020-CP-38-00428**
)

) **PLAINTIFF'S MEMORANDUM IN**
) **OPPOSITION TO DEFENDANTS MOTION**
) **FOR SUMMARY JUDGMENT**
)
)
)
)
)

Plaintiff submits this Memorandum in Opposition to Defendants McDonald's Corporation, McDonald's Real Estate Company, J K S & K, Inc., and Pam Hampton's Motions for Summary Judgment and respectfully requests that the Court deny Defendants' Motions because genuine, triable issues of material fact exist.

FACTS

This action arises out of a slip-and-fall accident that occurred at a McDonald's franchise located at 8940 Old Number Six Highway in Orangeburg County on or about July 28, 2018. On the date of the fall, Plaintiff Linda Hooker, who is now deceased¹, was walking out of McDonald's when she slipped and fell on a white line painted in the parking lot and broke her elbow. Ralph Hooker Deposition, June 3, 2021, pp. 42:7–19; 74:9–22 (attached as Exhibit 1). Michelle Foxworth, Plaintiff's daughter, also experienced the slipperiness of the painted lines while she was attending to her mother who was still on the ground. Michelle Foxworth Deposition; June 3, 2021, p. 40:2–10 (attached as Exhibit 2). Sherrie Washington, the manager on duty at the time of the incident, testified that it is the procedure to put out wet surface signs at the exterior surface of the

¹ Plaintiff has filed a Statement Noting the Death of Linda Hooker and requested that the parties be formally substituted.

store when it is raining or other times when the surface was wet. Sherrie Washington Deposition, September 8, 2021, pp. 29:22–30:5 (attached as Exhibit 3). Despite Defendants’ procedure, it is clear from the body camera of the responding authorities that no such warnings were present at the time of Plaintiff’s fall:



Prior to the accident, Defendant J K S & K, Inc. contracted with Defendant Proline Striping Service, Inc. (hereinafter “Proline”) to re-stripe the parking lot. See Proline Invoice IN-18-1149, April 4, 2018 (attached as Exhibit 4). Jared Marr, the owner of Proline, testified that he had previously re-striped the Santee McDonald’s parking lot approximately 10 times by painting over the existing lines in the parking lot. Jared Marr Deposition, December 10, 2021, p. 35:3–18 (attached as Exhibit 5).

LEGAL STANDARD

A motion for summary judgment should be granted only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there

is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC.

“Summary Judgment should be granted only where it is perfectly clear that no issue of fact is involved.” *State ex. rel. McLeod v. Brown*, 278 S.C. 281, 294 S.E.2d 781, 782 (1982). “In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment.” *Bruce v. Durney*, 341 S.C. 563, 566, 534 S.E.2d 720, 722 (Ct. App. 2000) (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)). “Summary Judgment should not be granted even when the evidentiary facts are not in dispute, if there is [a] dispute as to the conclusion to be drawn from those facts.” *Waid v. Berkeley County*, 330 S.C. 311, 316, 498 S.E.2d 684, 687 (1998).

“Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence.” *Zurich American Ins. Co. v. Tolbert*, 387 S.C. 280, 283, 692 S.E.2d 523, 524 (2010) (citing *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009)).

ARGUMENT

A. The condition of the McDonald’s Defendants’ parking lot violated various state statutes and regulations and constitutes negligence *per se*.

“[A] statute may be the source of a duty owed in negligence.” *Rayfield v. S.C. Dep’t of Corr.*, 297 S.C. 95, 101, 374 S.E.2d 910, 913 (Ct. App. 1988). “In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.” *Id.* 297 S.C. at 103, 374 S.E.2d at 914. Once a plaintiff satisfies the elements set forth in *Rayfield*, negligence *per se* is established, “the jury need not decide if the defendant acted as would a reasonable man in the circumstances” because the “statute fixes the standard of conduct required by the defendant.” *Id.*

South Carolina Appellate Courts have also extended this jurisprudence to violations of regulations. *See e.g. Ravan v. Greenville Cty.*, 315 S.C. 447, 434 S.E.2d 296, (Ct. App. 1993) (upholding negligence per se jury charge based on regulatory violations).

The International Building Code (“IBC”) and the International Property Maintenance Code (“IPMC”) are published by the International Code Council (“ICC”). On the ICC’s website, it describes the purpose of its published codes as follows:

The *International Building Code* (IBC) is the foundation of the complete Family of International Codes®. It is an essential tool to preserve public health and safety that provides safeguards from hazards associated with the built environment. It addresses design and installation of innovative materials that meet or exceed public health and safety goals.

<https://www.iccsafe.org/products-and-services/i-codes/2018-i-codes/ibc/>. The ICC goes on to state that the principles of the IBC, in particular, “are based on protection of public health, safety and welfare.” *Id.* The South Carolina legislature directed the South Carolina Building Codes Council to adopt ICC building codes via S.C. Code Ann. § 6-9-50 in order to maintain the “public health, safety, and welfare of its citizens”, which the council does as directed by statute. *See* S.C. Code Ann. § 6-9-5(A).

Following Plaintiff’s fall, Plaintiff engaged Dr. Bryan Durig as an expert in mechanical engineering and safety. Dr. Durig physically and visually inspected the premise twice and generated opinions based on the inspections. *See* Bryan Durig Deposition, p. 14:17–25, January 20, 2022 (attached as Exhibit 6). Dr. Durig concluded that there were multiple layers of paint present on the lines that obscured any natural abrasive materials the underlying concrete may have initially had. *See* Durig Preliminary Report dated July 1, 2019 (attached as Exhibit 7); Durig Dep. at p. 93:5–14. He also concluded that the paint in Defendants’ parking lot did not have any abrasive material. Durig Dep. at pp. 85:3–20, 117:14–25. Ultimately, as a result of his inspection of the

premise, Dr. Durig has offered the opinion that the painted lines violated various codes and industry standards because they did not demonstrate any evidence of slip resistance. *Id.* at p. 118:1–14. In relevant part, Dr. Durig has opined that the lack of slip resistance on the painted lines violated:

- International Building Code § 1003.4 (“Walking surfaces of the means of egress shall have slip resistant surface . . .”), Durig dep.at pp. 39:17–40:2;
- International Property Maintenance Code § 302.3 (“All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be . . . maintained free from hazardous conditions.”) Durig Preliminary Report at p. 2;
- ASTM F1637 § 5.1.3 (“Painted walkways shall contain an abrasive additive. . . .”); Durig Preliminary Report at p. 2.

Dr. Durig further opined that the IBC and IPMC are directed to the owner of a building or his designee. *See* Durig Dep. at pp. 118:16 – 119:20.

Plaintiff has presented evidence that Defendants have violated statutorily adopted codes. Furthermore, Plaintiff, as both a member of the public and a citizen of the State of South Carolina was in the class of people the statute and code were designed to protect. Considering the statutes/codes speak directly to slip resistant surfaces, and Plaintiff has produced evidence that she in fact slipped, it stands to reason that she has suffered the type of harm the statute and code were intended to protect against. While Plaintiff readily admits that, even with a *prima facie* showing of negligence *per se*, whether Defendants actually violated the statute is a question for the jury, it is fatal to Defendants’ Summary Judgment Motions as they relate to the condition of the alleged defect.

B. Defendants recognized the need to warn of the condition but failed to follow their own warning procedures on the day of the accident.

Even if the evidence presented thus far was not proof of negligence *per se*, Defendants themselves appreciated the need to warn of the condition prior to Plaintiff’s fall. “Invitees are limited to those persons who enter or remain on land upon an invitation which carries with it an

implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make them safe for their reception.” *Sims v. Giles*, 343 S.C. 708, 716, 541 S.E.2d 857, 862 (Ct. App. 2001) (quoting Restatement (Second) of Torts § 332). “The owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty.” *Id.*, 343 S.C. at 718, 541 S.E.2d at 863 (citing *Larimore v. Carolina Power & Light*, 340 S.C. 438, 531 S.E.2d 535 (Ct.App.2000)). “The landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner has knowledge or should have knowledge.” *Id.* (citing *Callander v. Charleston Doughnut Corp.*, 305 S.C. 123, 406 S.E.2d 361 (1991)).

J K S & K, Inc. states that it did not have anything to do with the lines painted in its parking lot other than selecting the painting contractor. They further suggest that they were not on notice of the allegedly defective condition. However, it is not controverted that J K S & K, Inc.’s employees exercised control over the parking lot by conducting inspections. Washington Dep. at pp. 28:25–29:2. Despite the regular inspections, J K S & K’s manager admitted that not only did they never inspect the parking lot while it was raining, they also never inspected the painted lines when they were wet. *Id.* at 29:3–11. Even if Defendants claim they were not on actual notice of the allegedly defective condition that violated publicly available codes enacted by state statute, “constructive notice ... is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts.” *LeFont v. City of Myrtle Beach*, 430 S.C. 534, 544, 846 S.E.2d 355, 360 (Ct. App. 2020), *reh’g denied* (Aug. 24, 2020), *cert. denied* (Apr. 19, 2021) (internal citations omitted).

The parking lot had been painted on or about April 4, 2018. As a result, Defendants had ample opportunity to inspect the condition of the parking lot and painted lines in various conditions

they would expect their invitees to encounter it. Plaintiff would respectfully suggest that, had Defendants ever conducted the inspection at a time when substances are most likely to have been in a dangerous, slippery condition, they would easily have identified the same. A jury could certainly conclude that it is not reasonable to fail to conduct proper inspections over months, if not years, and then use the same failures to claim a lack of notice.

Plaintiff would also suggest that Defendants had actual notice that the parking lot and lines were slippery and unsafe when it was raining. As the manager on duty at the time of the accident, Sherrie Washington, stated in her deposition, the Defendants' procedure was to post a warning regarding the wet surfaces when it was raining. Sherrie Washington Dep. at pp. 29:22–30:5. Plaintiff would submit that the regular use of a warning device in the very vicinity of the fall is a tacit admission that a dangerous condition that required a warning existed. Furthermore, as depicted in the screenshot of the body worn camera, *supra*, it is clear that Defendants failed to follow their procedure and warn of what they knew to be a potentially dangerous condition as there are no warning signs in the parking lot.

C. McDonald's Corporation exerted sufficient control over the franchise such that they are a proper party.

"The decisive test in determining whether the relation of master and servant exists is whether the purported master has the right or power to direct and control the servant in the performance of his work and in the manner in which the work is to be done." *Jamison v. Morris*, 385 S.C. 215, 221, 684 S.E.2d 168, 171 (2009) (internal citations omitted). "In an actual agency case, the question is not whether the purported principal could have exercised control over its agent, but whether it did so." *Id.*, 385 S.C. at 222. "[A] franchisor is not vicariously liable for a tort committed at an independent [franchised location] unless the plaintiff can show that the

franchisor exercised more control over the franchisee than that necessary to ensure uniformity of appearance and quality of services among its franchisees.” *Id.*

In determining whether a franchise exercises “more control over the franchisee than that necessary to ensure uniformity of appearance and quality of services among its franchisees”, the Court begins the inquiry with the documents that govern the parties’ relationship. In the present case, the relationship is governed by a Franchise Agreement and an Operator’s Lease.² Initially, Plaintiff would note that these documents were not produced without significant redaction by the Defendants until January 24, 2022 despite being responsive to Plaintiff’s initial discovery requests and Plaintiff has now noticed a deposition of Defendant J K S & K, Inc. for February 8, 2022 to further discuss these documents.

The terms of the agreements that McDonald’s Corporation and the McDonald’s entity that is the owner of the property (collectively “McDonald’s”) highlight that they maintain a significant amount of control over every aspect of the operation of the franchise. In the very first paragraph of the Franchise Agreement, McDonald’s asserts that McDonald’s operates a “comprehensive system for the ongoing development, operation, and maintenance of McDonald’s restaurant locations.” The first paragraph then goes on to describe that the very “essence of this Franchise is the adherence by Franchisee to standards and policies of McDonald’s”. The Franchise Agreement indicates that McDonald’s provides the Franchisee with business manuals with, in part, “required operations procedures” and McDonald’s requires that the Franchisee “adopt and use exclusively the formulas, methods, and policies contained in the business manuals”. Franchise Agreement at p. 3, ¶ 4. McDonald’s specifies that the franchisee must comply with the entire McDonald’s System and that it cannot “make any alterations, conversions, or additions to the building,

² Both of these documents have been labelled Confidential and, therefore, will not be made exhibits to this Memorandum but will be provided to the Court.

equipment, or parking area” without the prior written consent of McDonald’s. *Id.* at p. 7, ¶ 12(d). McDonald’s also provides training and requires that all franchise operators and managers attend “Hamburger University”. *Id.* at p. 4, ¶ 6.

In addition to requiring strict adherence to what McDonald’s defines as an entirely comprehensive system of operation, McDonald’s has the “right to inspect the Restaurant at all reasonable times to ensure that Franchisee’s operation thereof is in compliance with the standards and policies of the McDonald’s System.” *Id.* at p. 7, ¶ 12. If McDonald’s determines that the Franchisee is not “in compliance with the standards prescribed by the McDonald’s System”, it can terminate the Franchise. *Id.* at p. 11, ¶ 18(a). Not only does McDonald’s maintain the right to terminate the Franchise, it also maintains “an immediate right to enter and take possession of the Restaurant in order to maintain continuous operation of the Restaurant . . . and to otherwise protect McDonald’s interest.” *Id.* at p. 13, ¶ 20(a). Defendants have produced several relevant portions of the McDonald’s System that demonstrate the high level of control McDonald’s maintains over its franchisees. In fact, McDonald’s has a 32-page long policy dedicated entirely to planned and daily maintenance that mandates what maintenance takes place, when and how often each task takes place, and even how it is directed to be done in tedious step by step fashion (e.g. “use a water broom or garden hose with sprayer to rinse off the walks”). Planned and Daily Maintenance at p. 12.³

To further bolster the complete control maintained via the Franchise Agreement, the Operator’s Lease also incorporates and requires compliance with the terms of the Franchise Agreement such that any breach of the Franchise Agreement operates as a material breach of the Operator’s Lease. Operator’s Lease, p. 8, ¶ 4.07. The Operator’s Lease also requires the

³ This document has also been marked confidential and will be produced to the Court.

Franchisee to get written permission to make any alteration to any part of the premise. *Id.* at p. 7, ¶ 4.03. Finally, the Operator's Lease ensures that, if McDonald's terminates the Franchise Agreement, the McDonald's entity that owns the land can terminate the lease and "either with or without process of law, re-enter, expel, remove and put out Tenant and all persons occupying the Premises under Tenant, using such force as may be necessary. . . ." *Id.* at pp. 10–11, ¶ 7.04.

To recap, McDonald's requires that J K S & K, Inc. follow a self-described comprehensive system that directs all manner of daily activities. McDonald's mandates that franchise owners and their managers get training at Hamburger University to ensure they know the system. McDonald's reserves the right to inspect at any time to ensure that J K S & K is following the comprehensive system. If McDonald's finds that J K S & K is not in compliance it terminates the franchise and the lease agreement, forcibly removes the franchisee, and takes over the operations of the restaurant. If any franchisor can be found to exercise "more control over the franchisee than that necessary to ensure uniformity of appearance and quality of services among its franchisees", it is McDonald's.

D. Defendant Hampton maintained control of the premise as the general manager.

"A person who operates a commercial establishment but is neither an owner nor a lessee may nonetheless have a duty to exercise reasonable care to remedy an allegedly dangerous condition." *Jones v. Ringer*, No. 4:17-CV-02182-RBH, 2017 WL 5077870, at *4 (D.S.C. Nov. 6, 2017) (citing *Benjamin v. Walmart Stores, Inc.*, 413 F. Supp. 2d 652, 655 (D.S.C. Feb. 9, 2006)) "Liability in such a situation depends upon *control* of the premises, not necessarily ownership." *Id.* (citing *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997); *Nesbitt v. Lewis*, 335 S.C. 441, 446, 517 S.E.2d 11, 14 (Ct. App. 1999)). "When evaluating whether a person has sufficient control—and thus a duty to inspect the premises for dangerous conditions—a court

should consider the person's power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee the management of the property. *Id.* (citing *Benjamin*, 413 F. Supp. 2d at 655–56).

As the general manager of the store, Defendant Hampton testified that she was responsible for ensuring that assistant managers received any updated training on policies and procedures, directly trained store employees in regard to safety, kept track of employee training, and generally “manage[d] the store itself”. Pamela Hampton Deposition, September 8, 2021, pp. 29:17–25, 30:8–17, 43:8–15 (attached as Exhibit 8). Based on Ms. Hampton’s own testimony and the applicable case law, she had requisite authority and control over the premise at the time of the accident such that suit can be maintained against her.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully request the Court deny Defendants’ Motions for Summary Judgment with prejudice.

~Signature Page Follows~

Respectfully Submitted,

s/ William H. Yarborough, Jr.

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

February 1, 2022

In the Matter of:

LINDA HOOKER

VS.

MCDONALD'S CORPORATION, ET AL

Ralph Hooker

June 3, 2021



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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
ORANGEBURG COUNTY

DEPOSITION OF RALPH HOOKER

LINDA HOOKER,

Plaintiff,

vs.

CASE NO. 2020-CP-38-00428

MCDONALD'S CORPORATION;
MCDONALD'S REAL ESTATE
COMPANY; JKS & K, INC.;
PAM HAMPTON; and PROLINE
STRIPING SERVICE, INC.,

Defendants.

DEPONENT: RALPH HOOKER

DATE: June 3, 2021

TIME: 9:56 A.M.

LOCATION: DEAN LAW FIRM, LLC
146 Centre Street
Orangeburg, South Carolina

REPORTED BY: TRISHA RARICK

A P P E A R A N C E S

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843.549.2516
brownmcleod@mfcclawfirm.com

ALSO PRESENT:

MICHELLE FOXWORTH
LYNN HOOKER

1 happened that day at the McDonald's parking lot?

2 A Yes.

3 Q And what did she tell you?

4 A Just the normal stuff. I mean, how it
5 happened. What happened, and why did it happen to
6 her and that kind of stuff. That's all.

7 Q And what did she say had happened?

8 A She came out, slipped down on that white
9 line and broke her elbow.

10 Q Okay. Did she tell you that she slipped
11 on the white line, or did she just tell you she
12 slipped?

13 A She -- no. She said she slipped on the
14 white line.

15 Q Okay. Do you know if she's ever told
16 anybody else at any time something different? That
17 it was something other than slipping on a white
18 line?

19 A No.

20 Q Like slipping in a puddle or slipping on
21 the water or anything like that?

22 A No.

23 Q You don't know anything about anything
24 like that?

25 A No.

1 **like that. I imagine they have. Sure -- I'm sure**
2 **they have. Three years ago.**

3 Q Yeah. And you testified earlier about
4 what your wife indicated about what caused the slip
5 and fall. Did she ever say anything about her shoes
6 contributing to it?

7 A **No.**

8 Q Okay. And --

9 A **And I could see where she slipped. I**
10 **could see it. You could see the mark.**

11 Q You could?

12 A **Yes.**

13 Q Okay.

14 A **Where she slipped.**

15 Q What did it look like?

16 A **Just you could see like it smeared a**
17 **little bit. That's all. That's all I could see.**
18 **You could see it.**

19 Q It was a smear?

20 A **It was a smear.**

21 Q Okay. The paint was dry, correct?

22 A **No. The paint was wet.**

23 Q Okay.

24 A **From the rain, it was still rain --**

25 Q Yeah. Right. But it wasn't wet paint.

In the Matter of:

LINDA HOOKER

VS.

MCDONALD'S CORPORATION, ET AL

Michelle Foxworth

June 3, 2021



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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
ORANGEBURG COUNTY

DEPOSITION OF MICHELLE FOXWORTH

LINDA HOOKER,

Plaintiff,

vs.

CASE NO. 2020-CP-38-00428

MCDONALD'S CORPORATION;
MCDONALD'S REAL ESTATE
COMPANY; JKS & K, INC.;
PAM HAMPTON; and PROLINE
STRIPING SERVICE, INC.,

Defendants.

DEPONENT: MICHELLE FOXWORTH

DATE: June 3, 2021

TIME: 11:16 A.M.

LOCATION: DEAN LAW FIRM, LLC
146 Centre Street
Orangeburg, South Carolina

REPORTED BY: TRISHA RARICK

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843.549.2516
brownmcleod@mfcclawfirm.com

ALSO PRESENT:

RALPH HOOKER
LYNN HOOKER

1 Q Is there anything we've left out?

2 A One thing to note is that while my mom was
3 on the ground -- of course, it was hot. While we
4 were waiting on EMTs, I did try to assist to try to
5 block some of the sun. And when I went to go across
6 her, I actually slipped. My right leg actually
7 slipped as I was trying to put it down to go over
8 her, and I had on tennis shoes.

9 Q What did you slip on?

10 A The white line.

11 Q Okay. And just to make sure that I have
12 an idea, there are lines that run across the parking
13 lot, right?

14 A Uh-huh.

15 Q That create the crosswalk, if you will,
16 right?

17 A Right.

18 Q I call those the long lines, okay, for the
19 purposes of this question. And then, you have the
20 lines that go between those lines, the shorter
21 lines, the cross lines, if you will.

22 A Uh-huh.

23 Q Which line did you slip on?

24 A I would say the longer.

25 Q Okay. And do you recall which of the

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF ORANGEBURG) C/A NO: 2020-CP-38-00428

3

4 Linda Hooker,)
 5 Plaintiff,) Deposition of
 6 v.) SHERRIE WASHINGTON
 7 McDonald's Corporation,) September 8, 2021
 8 McDonald's Real Estate)
 9 Company, JKS&K, Inc., Pam)
 Hampton, and Proline Striping)
 Service, Inc.,)
 10 Defendants.)
 11 _____)

11

12

13

14

15 Deposition on oral examination of

16 SHERRIE WASHINGTON reported by Andrea R. Taylor, Court
 17 Reporter and Notary Public in and for the State of
 18 South Carolina; said deposition taken pursuant to
 19 notice of deposition and in accordance with the South
 20 Carolina Rules of Civil Procedure, at the law offices
 21 of Dean Law Firm, 146 Centre Street, Orangeburg, South
 22 Carolina, commencing on Wednesday, September 8, 2021,
 23 at the hour of 12:11 p.m.

24

25

SHERRIE WASHINGTON 9/8/2021

1 APPEARANCES

2 Representing the Plaintiff:

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8 -and-
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16 Representing the Defendants: McDonald's Corporation,
17 McDonald's Real Estate Company, JKS&K, Inc., Pam
18 Hampton:

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25 Representing the Defendant: Proline Striping Service,
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27 McLeod, Fraser & Cone, LLC
28 111 East Washington Street
29 Walterboro, South Carolina 29488
30 brownmcleod@mfclawfirm.com

SHERRIE WASHINGTON 9/8/2021

1 lot area?

2 A. Yes.

3 Q. Okay. Did you ever inspect the parking
4 lot area while it was raining?

5 A. No.

6 Q. Did you ever inspect it right after it
7 rained?

8 A. Yes.

9 Q. In regards to the painted lines, did you
10 ever inspect those while they were wet?

11 A. No.

12 Q. Okay. Do you know if anyone ever did?

13 A. No.

14 Q. Was there a particular person who was
15 assigned to inspect the parking lot, or was it just
16 different people different days?

17 A. Different people, different days.

18 Q. Do you know if anything was done at that
19 McDonald's after this incident to prevent future
20 falls in the parking lot?

21 A. No.

22 Q. Okay. Do you guys have signs that say wet
23 surfaces for the exterior of the store?

24 A. Yes.

25 Q. Okay. When do you put those out?

ABC REPORTING SERVICE (803) 730-3015

SHERRIE WASHINGTON 9/8/2021

1 A. When it's wet.

2 Q. Does that include when it's raining?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes.

6 Q. Okay. Is there anything else about this
7 accident that you remember that I haven't asked you
8 about?

9 MR. THOMPSON: Objection.

10 A. No.

11 MR. YARBOROUGH: All right. Well, I'll
12 fulfill my promise on you at least to -- I take quick
13 depositions. These other lawyers might have some
14 questions for you, but I appreciate your time and you
15 being here today. I'm sorry we had to meet under
16 these circumstances.

17 MR. MCLEOD: I've got a couple of questions
18 real briefly.

19 EXAMINATION

20 BY MR. MCLEOD:

21 Q. My name is Brown McLeod, and I represent
22 the other co-defendant, Proline Striping Services.
23 Have you had any conversations with anyone with
24 Proline Striping Services?

25 A. No.

ABC REPORTING SERVICE (803) 730-3015

Proline Striping Service, Inc.
P.O. Box 7177
Fishers, IN 46038
Phone: 937-830-3098

Invoice

Date	Invoice #
4/4/2018	IN-18-1149

Bill To:

McDonald's- Santee
Doris Mander
8960 Old Number Six Hwy.
Santee, SC 29150

Vendor #	P.O. No.	Terms
		Net 15
Job Description		Amount
Complete Lot Striping Service		585.00
Back Parking Lot		75.00
Thank you for your business.		Total: \$660.00

1 State of South Carolina } Court of Common Pleas
 2 County of Orangeburg } No.: 2020-CP-38-00428

3
 4 Linda Hooker, }
 5 Plaintiff, }
 6 vs. } 30(B)(6) Deposition of
 7 McDonald's Corporation, } JARED MARR
 8 McDonald's Real Estate } December 10, 2021
 9 Company, JKS&K, Inc., Pam }
 Hampton and Proline }
 10 Striping Service, Inc., }
 Defendants. }

11
 12
 13 Videotaped Zoom deposition on oral examination
 14 of JARED MARR, reported by Brad H. Thomas,
 15 Registered Professional Reporter and Notary Public
 16 in and for the State of South Carolina; said
 17 deposition taken pursuant to agreement and in
 18 accordance with the South Carolina Rules of Civil
 19 Procedure, on December 10, 2021, at the hour of
 20 10:01 a.m.

21
 22
 23
 24
 25

JARED MARR 12/10/2021

2 Representing the Plaintiff:

6 -AND-
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 Orangeburg, South Carolina 29115

10 Representing the Defendants Pam Hampton, JKS & K,
11 Inc., McDonald's Real Estate Company, and McDonald's
Corporation:

16 Representing the Defendant Proline Striping Service,
Inc.:

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21

22 Also Present:

24

25

ABC REPORTING SERVICE (803) 730-3015

JARED MARR 12/10/2021

1 I -- I remember the parking lot. I've done it many
2 times.

3 Q. Do you know how many times you've done
4 this parking lot?

5 A. Actually it was -- years ago it was a
6 different owner. So I've done it from -- for a
7 couple different owners.

8 Q. Okay. Do you know how many times that
9 you've striped this parking lot though?

10 A. I don't. I mean, I -- I would just be
11 throwing a number out there, but if I had to guess,
12 I would say probably ten times.

13 Q. In those ten times doing this parking lot
14 have you ever removed the lines?

15 A. No.

16 Q. Every time you've done this parking lot
17 you've just painted over the existing lines?

18 A. Correct.

19 Q. Okay. And so we have essentially ten
20 layers of striping paint in this parking lot?

21 A. I -- I mean, I don't know if they had
22 somebody else come in in between. I don't -- you
23 know, because I'm not local. And obviously that is
24 going to wear off. It's not like it's just -- it's
25 not like it's permanent. So to say that there's ten



Deposition of:
Bryan Robert Durig , PhD

January 20, 2022

In the Matter of:
**Hooker, Linda v. McDonald's Corp., Et
Al**

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Page 1

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF ORANGEBURG

3 LINDA HOOKER,

4 Plaintiff,

5 vs.

CASE NO. 2020-CP-38-00428

6 McDONALD'S CORPORATION, McDONALD'S REAL
7 ESTATE COMPANY, JKS & K, INC., PAM HAMPTON,
8 and PROLINE STRIPING SERVICE, INC.,

9 Defendants.

10
11 D E P O S I T I O N

12
13 WITNESS: BRYAN ROBERT DURIG, PhD
14 DATE: Thursday, January 20, 2022
15 TIME: 2:05 p.m.
16 LOCATION: Cavanaugh & Thickers Law Firm
17 1717 Marion Street
Columbia, South Carolina 29201
18 TAKEN BY: Attorneys for Defendants
19 REPORTED BY: CAROLL ANNE BOUTAHAR
Certified Verbatim Reporter

1 APPEARANCES:

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5 BY: WILLIAM H. YARBOROUGH, JR., ESQUIRE

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19
20
21 (INDEX AT REAR OF TRANSCRIPT)

1 maybe, but I don't remember that.

2 Q. Okay.

3 Did you take any photographs during your
4 meeting or inspection on March 5, 2019?

5 A. No, sir, just a quick discussion with
6 Mr. Fogle. He described that she came out the door, and
7 she fell on the crosswalk. I pointed out to him that
8 there was no abrasive material in it. And, you know, at
9 that point, he was happy with what I told him, and we
10 parted and separated.

11 Q. Okay.

12 Did you take any measurements?

13 A. I didn't do anything other than talk with him.
14 No measurements, no inspection, no formal testing of any
15 kind.

16 Q. Just visual --

17 A. Visual discussion and showing him, Here's the
18 crosswalk, and there's no abrasive material.

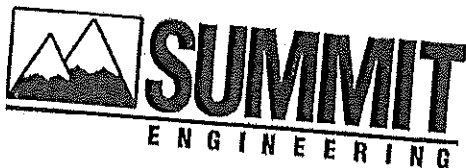
19 Q. All right.

20 And you can determine there's no abrasive
21 material just by looking at it.

22 A. By touching it, rubbing your hand across it.
23 You can feel it.

24 Q. So you did that.

25 A. Yes.



SUMMIT ENGINEERING, L.L.P.
P.O. BOX 211426
COLUMBIA, SC 29221-6426

TEL (803) 731-1200
FAX (803) 731-1202

July 1, 2019

Mr. Jimmy Fogle
Dean Law Firm, PC
Post Office Box
Orangeburg, South Carolina 29802

Reference: Fall Accident – Linda Hooker
Location: McDonald's Parking Lot
Santee, South Carolina
Summit File Number: DU062

Dear Mr. Fogle:

In follow-up to your request, Summit Engineering, L.L.P. has conducted a preliminary engineering investigation of a fall accident that injured Ms. Linda Hooker while she was attempting to cross a painted crosswalk at the McDonald's restaurant in Santee, South Carolina. Ms. Hooker was exiting the building and walking across the painted crosswalk lines when her foot slipped on a wet painted line. The purpose of this investigation has been to review available information and building codes/industry standards to evaluate if a hazardous condition existed with the painted lines in the parking lot that contributed to Ms. Hooker's fall accident.

The opinions and conclusions stated herein are stated to a reasonable degree of engineering certainty and are based on information available as of this writing. It is conceivable that additional information may be forthcoming which bears on these conclusions and opinions. The right is reserved, therefore, to review all conclusions and opinions at any future point in time should, in fact, additional information become available.

The painted crosswalk at the subject McDonald's restaurant provided a designated crossing from several handicap parking spaces as well as other vehicles parked in the designated parking spaces. The driveway is sloped away from the building down towards the parking spaces. Ms. Hooker has indicated it rained earlier in the day but was not raining at the time of her fall. However, the painted crosswalk lines were reportedly wet when she slipped.

The painted crosswalk provides a designated pedestrian crosswalk through the driveway for patrons to gain access to the building from the designated parking spaces including handicap parking spaces. The white painted lines were examined and they did not show any evidence of an abrasive material added to the paint. There were several layers of white paint on the lines and the underlying concrete material/textured surface had been smoothed out due to the multiple layers of paint. Wet, smooth painted lines in driveways and parking spaces can create slip hazards when wet or covered with a foreign substance. Vehicle fluids such as oil, brake fluid, transmission fluid and gasoline can drip off vehicles using the driveway and make the painted crosswalk more slippery than when wet with rain water. Abrasive material should be added to

July 1, 2019

Page 2

the paint being applied to the walking surface to increase the slip resistance of the painted walking surfaces.

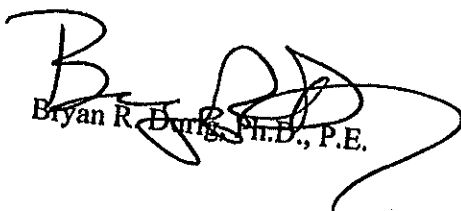
The ASTM F1637 industry standard discusses numerous safe practices and "minimum maintenance criteria" concerning walking surfaces. Section 5.1 states "Walkways shall be stable, planar, flush, and even to the extent possible. Where walkways cannot be made flush and even, they shall to confirm to the requirements of 5.2 and 5.3." Section 5.1.3 states "Walkway surfaces shall be slip resistant under expected environmental conditions and use. Painted walkways shall contain an abrasive additive, cross cut grooving, texturing or other appropriate means to render the surface slip resistant where wet conditions may be reasonably foreseeable." Section 5.7.1 states "Exterior walkways shall be maintained so as to provide safe walking conditions." Section 5.7.1.1 states "Exterior walkways shall be slip resistant." Section 5.7.1.2 states "Exterior walkway conditions that may be considered substandard and in need of repair include conditions in which the pavement is broken, depressed, raised, undermined, slippery, uneven or cracked to the extent that pieces may be readily removed." The subject painted white crosswalk was not being maintained in accordance with ASTM F1637 due to the lack of abrasive material in the painted lines. Multiple layers of paint (without abrasive material) masks the roughness of the underlying concrete surface, making the wet, painted crosswalk lines more slippery than the concrete was originally.

The International Property Maintenance Codes states: "The owner of the premises shall maintain the structures and exterior property in compliance with the requirements..." The IPMC also states in Section 302.3 Sidewalks and driveways "All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions." The subject painted crosswalk where Ms. Hooker fell was not being maintained in accordance with International Property Maintenance Code due to the lack of abrasive material in the paint. Multiple layers of paint masks the roughness of the underlying concrete surface, making the wet, painted crosswalk lines more slippery than the concrete was originally.

Based on a review of available information, it is concluded, to a reasonable degree of engineering certainty, that the painted crosswalk lines at the Santee, South Carolina McDonald's restaurant were not being maintained in accordance to the International Property Maintenance Code and the ASTM F1637 Standard Practice for Safe Walking Surfaces. The painted crosswalk lines did not have any abrasive material added to the paint to prevent the painted walkways becoming slippery when wet. It is understood that there were no warning cones or signs out at the time Ms. Hooker fell to alert patrons of the potentially slippery when wet condition of the painted crosswalk lines.

If you have any questions, please do not hesitate to call.

Sincerely,


Bryan R. Dunn, Ph.D., P.E.

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF ORANGEBURG) C/A NO: 2020-CP-38-00428

3

4 Linda Hooker,)
 5 Plaintiff,) Deposition of
 6 v.) PAMELA J. HAMPTON
 7 McDonald's Corporation,) September 8, 2021
 8 McDonald's Real Estate)
 9 Company, JKS&K, Inc., Pam)
 Hampton, and Proline Striping)
 Service, Inc.,)
 10 Defendants.)
 11 _____)

11

12

13

14

15 Deposition on oral examination of

16 PAMELA J. HAMPTON reported by Andrea R. Taylor, Court

17 Reporter and Notary Public in and for the State of

18 South Carolina; said deposition taken pursuant to

19 notice of deposition and in accordance with the South

20 Carolina Rules of Civil Procedure, at the law offices

21 of Dean Law Firm, 146 Centre Street, Orangeburg, South

22 Carolina, commencing on Wednesday, September 8, 2021,

23 at the hour of 10:01 a.m.

24

25

PAMELA J. HAMPTON 9/8/2021

1 APPEARANCES

2 Representing the Plaintiff:

3 WILLIAM H. YARBOROUGH, JR., ESQUIRE
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8 -and-
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14
15
16 Representing the Defendants: McDonald's Corporation,
17 McDonald's Real Estate Company, JKS&K, Inc., Pam
18 Hampton:

19 JOSEPH D. "TREY" THOMPSON, III, ESQUIRE
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23 jthompson@hallboothsmith.com

24
25 Representing the Defendant: Proline Striping Service,
Inc.:

26 PEDEN BROWN McLEOD, JR., ESQUIRE
27 McLeod, Fraser & Cone, LLC
28 111 East Washington Street
29 Walterboro, South Carolina 29488
30 brownmcleod@mfclawfirm.com

PAMELA J. HAMPTON 9/8/2021

1 Q. That's what I'm kind of trying to
2 understand. When you say updated within the company
3 --

4 A. Correct.

5 Q. -- do you mean JKS&K or do you mean
6 McDonald's?

7 A. McDonald's.

8 Q. Okay. So McDonald's has policies and
9 procedures?

10 A. Correct.

11 Q. And if McDonald's updates their policies
12 and procedures, that goes out to the owners; and then
13 through supervisor Mark, eventually gets disseminated
14 to you?

15 A. Yes.

16 MR. THOMPSON: Objection.

17 Q. Okay. So when you got that information,
18 when you got an update, what did you do with it?

19 A. Schedule a managers' meeting, went over it
20 with the managers, and then if there's policies that
21 need to be posted in the store, I would post them.

22 Q. All right. Did you ever give training
23 directly to the employees in the store?

24 A. It was something dealing with safety and
25 security or whatever, yes, we did.

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PAMELA J. HAMPTON 9/8/2021

1 Q. How did you make the determination of
2 whether or not something was dealing with safety and
3 security?

4 A. Well, when the email came in, we had a
5 managers' meeting about it, we would discuss those
6 things, because we had, you know, managers' meeting
7 with the GM's per se, then we moved down to.

8 Q. How did you track what new policies and
9 procedures you received?

10 A. Well, within the staff, we did a crew
11 roster. You know, we would -- everybody had to sign
12 off.

13 Q. Okay.

14 A. Once we discussed it with them.

15 Q. Is that something that was kept in the
16 store?

17 A. Yes. We had it in a book, yeah.

18 Q. So you have a book of all the trainings
19 that you would have given to your employees?

20 A. Well, we had, like the store has a book.
21 And once we go through all of them, everybody signed
22 off. So it -- it would be kept in the back of the
23 book. Yes.

24 Q. You had a physical sign-in sheet that says
25 employee A received this training on this date?

PAMELA J. HAMPTON 9/8/2021

1 Q. Okay. When you got a paycheck, did it say
2 McDonald's on it, or did it say JKS&K on it?

3 A. JKS&K.

4 Q. Okay. Did it say McDonald's anywhere on
5 it?

6 A. Yeah. It has the McDonald's arch on
7 there, yeah.

8 Q. Okay. All right. Generally speaking, as
9 a general manager of any of the McDonald's you've
10 been at, what is your role within the store?

11 A. My role is to manage the store itself. I
12 do payroll. I do scheduling. I do inventory.

13 Q. Okay.

14 A. And just take care of the needs of the
15 employees.

16 Q. All right. I don't think I need to mark
17 this, I just want to ask you a quick question about
18 it. It's just her interrogatory responses. Ms.
19 Hampton, the only question I really have about this
20 is have you ever seen this document before?

21 A. No.

22 Q. No?

23 MR. THOMPSON: Objection.

24 Q. You can always -- if he objects, unless he
25 instructs you not to answer, you can always answer my

ABC REPORTING SERVICE (803) 730-3015

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Linda Hooker,

Plaintiff,

Vs.

McDonald's Corporation, McDonald's Real
Estate Company, JKS & K, Inc., Pam
Hampton, and Proline Striping Service, Inc.

Defendants.

) IN THE COURT OF COMMON PLEAS
) IN THE FIRST JUDICIAL CIRCUIT
)

) Civil Action No.: 2020-CP-38-00428
)

) MOTION TO RECONSIDER ORDER
) GRANTING SUMMARY JUDGMENT
)

Plaintiff respectfully submits this Motion to Reconsider and requests this Court reconsider its Order granting Summary Judgment to Defendants because it did not consider evidence put forth that Ralph Hooker physically saw that the painted lines caused the Plaintiff to fall.

LAW

“A motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.” *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). “The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” *Arnold v. State*, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992) (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 1720, 100 L.Ed.2d 178, 184 (1988)). As a result, “a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Elam*, 362 S.C. at 21, 602 S.E.2d at 778-9. Thus, a motion for reconsideration is “one final chance not only to call the court’s attention to a possible misapprehension of an *earlier* argument, but also to revisit a *previously raised* argument.” *Id.* (emphasis added).

LEGAL STANDARD

A motion for summary judgment should be granted only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP.

“Summary Judgment should be granted only where it is perfectly clear that no issue of fact is involved.” *State ex. rel. McLeod v. Brown*, 278 S.C. 281, 294 S.E.2d 781, 782 (1982). “In determining whether any triable issues of fact exist, *the evidence and all reasonable inferences therefrom* must be viewed in the light most favorable to the party opposing summary judgment.” *Bruce v. Durney*, 341 S.C. 563, 566, 534 S.E.2d 720, 722 (Ct. App. 2000) (*citing Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)) (emphasis added). “Summary Judgment should not be granted even when the evidentiary facts are not in dispute, *if there is [a] dispute as to the conclusion to be drawn from those facts.*” *Waid v. Berkeley County*, 330 S.C. 311, 316, 498 S.E.2d 684, 687 (1998) (emphasis added).

“Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence.” *Zurich American Ins. Co. v. Tolbert*, 387 S.C. 280, 283, 692 S.E.2d 523, 524 (2010) (*citing Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009)).

ARGUMENT

The Court’s Order dated June 20, 2022 grants summary Judgment to Defendants based on the notion that the only evidence the decedent Plaintiff slipped on the painted lines in Defendants’ parking lot arises from a conversation between Plaintiff and her husband and inadmissible pursuant to the Dead Man’s Statute. For purposes of this Motion to Reconsider, Plaintiff does not dispute that the Dead Man’s Statute prevents them from using this conversation as evidence of the cause

of the fall. However, Plaintiff respectfully submits that there is evidence in the record that takes this case outside of the realm of the Dead Man's Statute and the Court's Order does not consider all of the evidence presented regarding the cause of the fall. In Plaintiff's Memorandum in Response to Defendants' Motion for Summary Judgment, and argued at the hearing, Plaintiff's counsel presented an excerpt from Ralph Hooker's deposition indicating that he physically saw the cause of the Plaintiff's fall in the very instance after the fall:

A: And I could see where she slipped. I could see it. You could see the mark.

Q: You could?

A: Yes.

Q: Okay.

A: Where she slipped.

Q: What did it look like?

A: Just you could see like it smeared a little bit. That's all. That's all I could see. You could see it.

Q: It was a smear?

A: It was a smear?

Q: Okay. The paint was dry, correct?

A: No. **The paint was wet.**

Q: Okay.

A: From the rain, it was still rain --

Ralph Hooker Deposition dated 6/3/2021, p. 74:7 – 24 (previously attached as Exhibit 1 to Plaintiff's Memorandum In Opposition to Defendants' Motion for Summary Judgment) (emphasis added).

Even if the conversations between the deceased Plaintiff and Ralph Hooker are inadmissible because of the Dead Man's Statute, which Plaintiff does not dispute for purposes of this Motion, there is at least a scintilla of other evidence in the record regarding what caused Plaintiff's fall: Ralph Hooker's testimony and present sense impressions of what he saw at the scene of the fall. The Court's Order granting Summary Judgment to Defendants does not take into account this section of testimony, including all reasonable inferences therefrom, in the light most favorable to the Plaintiff. In the light most favorable to Plaintiff, this testimony establishes the fact that Ralph Hooker saw a smear on the painted line that indicates the exact location where Plaintiff lost traction and slipped. The reasonable inference therefrom is that Ralph Hooker saw the cause of the Plaintiff's fall: the wet painted lines. This testimony, which the Court has not considered, presents more than a scintilla such that the case should be put before a jury for deliberation.

CONCLUSION

For the above-stated reasons, Plaintiff respectfully requests the Court Reconsider its Order Granting Defendants Motions for Summary Judgment, find that a scintilla of admissible evidence of the cause of Plaintiff's fall exists, and set this case for trial by jury.

~Signature Page Follows~

Respectfully submitted,

s/William H. Yarborough, Jr.

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

June 20, 2022

1 STATE OF SOUTH CAROLINA)
 2) IN THE COURT OF
 3 COUNTY OF ORANGEBURG) COMMON PLEAS
 4 LINDA HOOKER,)
 5 Plaintiff)
 6 Vs) CASE NO. 2020-CP-38-00428
 7 MCDONALD'S CORPORATION,) FEBRUARY 2, 2022
 8 MCDONALD'S REAL ESTATE) ORANGEBURG, SC
 9 COMPANY, JKS&K, INC., PAM)
 10 HAMPTON and PROLINE)
 11 STRIPING SERVICE, INC,)
 12 Defendants)

13 HONORABLE EDGAR W. DICKSON, JUDGE

14 A P P E A R A N C E S:

15 BY: WILLIAM H. YARBOROUGH, JR, ESQUIRE

16 Attorney for the Plaintiff

17 BY: JOSEPH D. THOMPSON, III, ESQUIRE

18 Attorney for the Defendants JKS&K,

19 McDonald's Corp, McDonald's Real Estate and Pam

20 Hampton

21 BY: P. BROWN MCLEOD, JR, ESQUIRE

22 Attorney for the Defendant Proline Striping

23 Service

24 KATHERINE A. SPIRES

25 REGISTERED PROFESSIONAL REPORTER

1 THE COURT: All right. Mr. Thompson --
2 and this is case 2020-CP-38-00428, Linda Hooker
3 verses McDonald's Corporation and others. And,
4 Mr. Thompson, you represent most of the as others;
5 right?

6 MR. THOMPSON: Yes, sir. All but
7 Proline Striping, Your Honor.

8 THE COURT: Okay. Let me hear from
9 you.

10 MR. THOMPSON: Thank you, Your Honor.
11 May it please the Court.

12 THE COURT: Yes, sir.

13 MR. THOMPSON: Again, my name is Trey
14 Thompson, Judge, with Hall Booth Smith in
15 Charleston. I represent all the Defendants with
16 the exception of Proline Striping, Inc. All the
17 Defendants have motions for summary judgement.

18 Before we get started, Your Honor, I
19 realized when we filed our memos in support, there
20 were references to deposition excerpts, but they
21 were not made exhibits at the time. So I've got
22 those here --

23 THE COURT: Oh, that will be great.

24 MR. THOMPSON: I'll hand those up. And
25 they're just the excerpts that are referenced in

1 the memos in support. Your Honor, this is a
2 premises liability case as a result of an accident
3 that happened at the McDonald's restaurant in
4 Santee on July 28, 2018. The way that I've
5 structured the memos and the way that I'll
6 structure my argument today, Your Honor, is very
7 simple. JKS&K, the Defendant, is the independent
8 owner/operator of the franchisee, if you will, of
9 the McDonald's restaurant in Santee. Pam Hampton,
10 the Defendant, was the general manager of that
11 restaurant at the time of loss was a JKS&K
12 employee.

13 McDonald's Corporation is a corporation
14 organized and existing in Delaware. It's principal
15 place of business and operation is in Chicago.
16 McDonald's Real Estate Company, I'll get to you,
17 I'm not really sure what it is and how it plays
18 into this, but I'll argue that at the end.

19 So, Your Honor, really we start with
20 this is a premises liability case. And as a result
21 of it being a premises liability case, what do we
22 have to have? We have to have a dangerous or
23 defective condition on the property. It's just as
24 simple as that. It really is. And so what is the
25 dangerous or defective condition in this case?

1 | What is the proof or the evidence of that dangerous
2 | or defective condition?

3 | Now, when we start talking about,
4 | obviously, in this circumstance, Ms. Linda Hooker,
5 | at the time of the loss was exiting the McDonald's
6 | restaurant. She was walking across in a crosswalk.
7 | She was following her husband, Ralph Hooker,
8 | following her daughter, Michelle Foxworth. Now,
9 | Ralph Hooker and Michelle Foxworth testified very
10 | clearly, they didn't see what happened. At best,
11 | they heard something happen, they turn around and
12 | they see here in the process of falling.

13 | Ms. Linda Hooker is actually the only
14 | one that would be able to tell this Court what
15 | happened that day. She was the only one that
16 | experienced whatever it was that she experienced
17 | and whatever it was that caused her to fall to the
18 | ground.

19 | Now, this lawsuit was filed when
20 | Ms. Linda Hooker was still with us. About seven or
21 | eight months after the lawsuit filing, she passed
22 | away as a result of complications from cancer.
23 | Now, in that period of time that the lawsuit was
24 | pending, nobody took a deposition, nobody got an
25 | affidavit, nobody got a written statement, nobody

1 got anything from Ms. Linda Hooker. So they were
2 left to the devices of what then happened on July
3 28, 2018. Right.

4 The allegations in the Complaint are
5 very simple. She was crossing the crosswalk and
6 allegedly slipped on one of the white painted lines
7 in the crosswalk. So if we start with and I will,
8 Judge, in the memos, I pointed out where there's
9 really no evidence that that even, you know,
10 there's evidence that that even actually happened.
11 Right. Ralph Hooker is the only one that says,
12 hey, she told me some time later; right, at the
13 scene of the accident she said she slipped. Some
14 time later she told me that she slipped on the
15 painted lines. Well, I've argued in our memo in
16 reply which was submitted yesterday, Ralph Hooker
17 is -- his testimony about what she said is going to
18 be inadmissible testimony on the Dead Man's
19 statute. He's obviously an heir, beneficiary on
20 her estate. If she makes a recovery in this case,
21 it endures directly to his financial benefit. It's
22 a classic Dead Man's statute why his testimony
23 about what she told him would be inadmissible.

24 Now, if we just assume for the purposes
25 of this argument, and, again, I'm not abandoning

1 that whatsoever. I believe that and throughout
2 this record there's nothing that says she actually
3 slipped on a painted line other than what Mr. Ralph
4 Hooker said. Now, if we assume that that happened,
5 why did she slip? Right. The argument is that the
6 line was not slip resistant.

7 The codes, every, you know, building
8 code, every code that has been cited by Plaintiff
9 in this case all require slip resistance in
10 interior walkways, exterior walkways, they've got
11 to be slip resistant. Right. Now, in this
12 circumstance that's the alleged defect. Slip
13 resistance. The line was not slip resistant.
14 Okay. Now, who offers testimony about slip
15 resistance?

16 Well, Dr. Bryan Durig, he offers
17 testimony about slip resistance all the time. He's
18 probably been in this courtroom before offering
19 testimony about slip resistance. I've had him in
20 plenty of cases. He offers testimony about how he
21 goes to a restaurant, how he goes to a store, and
22 how he then tests. Right. He gets a machine, he
23 gets a process, and he can actually put water on
24 the floor and then determine what the coefficient
25 of friction is. And then he says, it's either

1 | slippery or not. And as a result, it's either slip
2 | resistance or not and he offers the testimony and
3 | the opinion that floor is not slip resistant. It
4 | is then in violation of code because it's not slip
5 | resistant.

6 | Now, Bryan Durig in this case, Your
7 | Honor, went out to that site, went out to this
8 | restaurant twice. He never ever tested it. Never
9 | tested the coefficient of friction. Never. That's
10 | what he does for a living. He should know better.
11 | Now, in his deposition we talked about that and he
12 | said he was never authorized, it never was
13 | something that the lawyers asked him to do. But he
14 | didn't do it. So then what is Dr. Durig's
15 | testimony in this case? What is his opinion?

16 | Well, throughout his entire deposition,
17 | not once does he say that that painted line was
18 | slip resistant or not slip resistant. He admits
19 | over and over again he can't tell you because he
20 | didn't test it. So, what is his opinion? Dr.
21 | Durig's opinion is that the lines should have had
22 | abrasive material. Well, that's putting the
23 | proverbial cart before the horse, Judge. You got
24 | to first say that the lines are not slip resistant
25 | and then how do you fix a line that is not slip

1 resistant or a floor that's not slip resistant, you
2 add something to it. You either change the
3 flooring material or you put some abrasive material
4 in it to then make it slip resistant.

5 But in this case, Dr. Durig's only
6 opinion is that it should have had abrasive
7 material. Well, not one statute, not one code, not
8 one ordinance, not one anything requires abrasive
9 material on these painted lines, not one. And I
10 found it interesting during the course of his
11 testimony, Judge, Dr. Durig was actually asked
12 about his parking lot and the striping in his
13 parking lot. And he admitted, he doesn't have any
14 abrasive material in his lots. Do you know why?
15 One, it's not required. Two, obviously, if you can
16 feel the abrasive material underneath the asphalt
17 or the concrete, whatever it is, you don't have to
18 have the abrasive material. You just don't.

19 Now, in this circumstance, Dr. Durig,
20 not only did he not test, Judge, this is -- it's
21 really mind boggling. Because this accident
22 happened either during the rain, there's some
23 conflict about that, but certainly when everything
24 was soaking wet. No question about that. Dr.
25 Durig never went to the parking lot and felt,

1 visualized, or did anything to these painted lines
2 when they were wet. Every time he went, the two
3 times he went, it was dry. He never tested it. He
4 never even looked at it when it was wet.

5 Now, Plaintiff argues in this case, and
6 I'm going to -- I'll stop for that a minute because
7 I don't want to get ahead of myself. But the very
8 basic concept in a premises liability case is a
9 defective or dangerous condition. They haven't
10 been able to establish that. There's nothing.

11 Now, as a result of that, all the
12 Defendants in this case that I represent would be
13 entitled to summary judgement. Because you don't
14 have the dangerous or defective condition. You
15 can't prove any premises liability, it doesn't
16 matter what control or not control they don't have
17 or do have, it doesn't exist in the first instance,
18 so the Defendants are entitled to summary
19 judgement.

20 The second part of that is very simple
21 as well, Judge. If for some reason there is some
22 kind of evidence that somehow this line was not
23 slip resistant and was a dangerous or defective
24 condition, then what else do you have to have in a
25 premises liability case? You have to have notice,

1 | knowledge; right, of those in control or possession
2 | of the property have to understand and have some
3 | ability to see it, digest it, understand it, and
4 | then fix it or repair it. Right.

5 | So what evidence do we have?

6 | Obviously, there's again, if we're -- we're
7 | assuming there is some kind of defect with these
8 | lines, what do we have any evidence of any notice
9 | or knowledge to these Defendants? None. Right.
10 | The general manager, the manager on duty.
11 | Obviously, this case has been pending for two
12 | years, Plaintiff had all opportunity to depose
13 | whoever they wanted to. Right. Nobody ever
14 | slipped and fell. Nobody reported any problems
15 | with these painted lines. Nobody said they were
16 | dangerous. Nobody, not one customer, not one
17 | patron, not one employee, not one.

18 | So how is it that we're supposed to
19 | have anybody that may have possession or control of
20 | that property then have the notice or knowledge of
21 | that condition? Well, this is what I was getting
22 | to earlier. Plaintiff makes the argument that
23 | somehow the restaurant employees, the restaurant
24 | owner should have inspected these lines when it was
25 | wet. Right. Well, first of all, that begs the

1 question, why? Nobody has said there's any problem
2 with them. There's not an issue here. What --
3 why? You know.

4 The second part of that is, is probably
5 the easier one, Dr. Durig never went and looked at
6 it when it was wet. He didn't think that was
7 important. Not once. Yet then they want to assign
8 to the -- to my clients some duty to inspect some
9 condition that never presented itself as a problem.
10 Again, this is not, Judge, you know, a hole in the
11 back of the parking lot somewhere that maybe they
12 should have walked around and found and somebody
13 slipped and fell in it or tripped over it at night
14 and maybe that was something they could discover.
15 The white lines are all out there. They're right
16 in plain view of everyone. This is not a latent
17 condition. It's right there. If there was a
18 problem, it would have been identified. If there
19 was a problem, it would have been complained about.
20 There just wasn't any evidence of it.

21 So even if you get past the first step
22 which is the dangerous or defective condition which
23 we don't have any evidence of slip resistance or
24 nonslip resistance of the painted line, then you
25 have to go to the notice or knowledge condition

1 | which there's simply even less evidence of. Not
2 | that there was any evidence in the first instance,
3 | mind you. Right.

4 | And finally, Judge -- well, not
5 | finally, I've got a couple more arguments, but with
6 | regard to Durig, Dr. Durig and this is another
7 | really important piece of this. When he went, he
8 | didn't go and if you somehow suggest that he is
9 | performing a scientific test by visually looking at
10 | a line and then by rubbing your hand over it,
11 | right, where did he do that? He did it not where
12 | the accident occurred, he did it somewhere over
13 | towards the parking spaces. He didn't even look at
14 | or touch the line on which Ms. Hooker allegedly
15 | fell. He didn't put his hand on that to see if
16 | there was any roughness coming through. He can't
17 | tell you that because he didn't do it.

18 | So, Judge, you have a situation two
19 | levels, no dangerous or defective condition, no
20 | notice or knowledge. As a result, all these
21 | Defendants are entitled to summary judgement. Now,
22 | a step downs, Judge, with regard to, for example,
23 | Pam Hampton. She was the general manager. Now,
24 | for liability purposes, right, she's not the owner.
25 | She's not. She's just an employee. Right. So is

1 she one in control of the property? Absolutely
2 not. Right. In her testimony she says, look, you
3 know, the decision to paint or not paint, that is
4 JKS&K, that's my employer. They own and operate
5 this restaurant. They have control over the
6 premises, I don't. I can't tell them to do that or
7 not.

8 So Pam Hampton doesn't have the
9 requisite control. Doesn't have the requisite
10 possession, if you will, to be held liable
11 individually for this circumstance. Again, and
12 these are elements or arguments that build on,
13 right, the first two which is no defect, no
14 knowledge.

15 McDonald's Real Estate Company, Judge,
16 was neither the franchisor nor the lessor. There's
17 not been one piece of evidence in this case that
18 shows that they had any possession or control of
19 this property at all. Not one. At best, there may
20 be an argument, and I don't know, it may be that
21 they own the property, I don't know, but if they
22 did, there's still no evidence of possession and
23 control. And that's the key.

24 There's plenty of case law as we know
25 that, you know, just because you own the property

1 | doesn't mean anything. It's really who has the
2 | possession. Who has the control. Who can discover
3 | these things. Who can remedy them. Who can
4 | prevent the patrons from suffering incidents.

5 | Finally, Judge, McDonald's Corporation.
6 | McDonald's Corporation actually wasn't the
7 | owner/operator -- I mean, wasn't even the
8 | franchisor, wasn't the lessor. There had been some
9 | confusion on that and I have to admit, initially,
10 | they were with the prior franchisees. Over the
11 | course of time, McDonald's USA, LLC, which is an
12 | entity independent and separate from McDonald's
13 | Corporation became the owner or became the
14 | franchisor and became the lessor and those
15 | documents have been produced.

16 | But those documents demonstrate, Judge,
17 | that this is an operation that the independent
18 | owner/operator has the control of. Now, you know,
19 | the Lanham Act and there's all kinds of good case
20 | law in South Carolina that talk about franchisor or
21 | franchisee relationship and Plaintiff points to
22 | various aspects or provisions in the franchise
23 | agreement that suggest that somehow they have
24 | greater control. But at the end of the day, Judge,
25 | this is the classic example of the

1 franchisor/franchisee relationship where we are,
2 right, as a franchisor, making sure that every
3 McDonald's look like every McDonald's, looks like
4 every McDonald's, looks like every McDonald's.
5 That's the Lanham Act. We're supposed to do that.
6 If we don't, we lose it. We lose our trademark.
7 We have to protect it. We have to maintain it. We
8 have to make sure that it's uniform. Right.

9 And so, did McDonald's Corporation or
10 McDonald's USA, LLC have anything to do with this
11 painting contractor? Absolutely not. Did they
12 have a national contract or agreement with this
13 contractor? Absolutely not. Didn't have anything
14 to do with it. Didn't have a thing to do with it.

15 Did McDonald's Corporation have
16 anything to do with, you know, the painting when it
17 was done? No. Did McDonald's Corporation have
18 anything to do with the selection of the
19 contractor? No. That kind of goes back to, again,
20 it goes back to JKS&K, we start about the painting
21 of the line. You know, there's no evidence that
22 either McDonald's or JKS&K said, you know what, you
23 need to use this paint. You know what, you need to
24 use this particular method. We hired a painting
25 contractor. That's what he does.

1 THE COURT: But the person or the
2 entity that owns the -- this McDonald's is JKS&K
3 Inc?

4 MR. THOMPSON: That's correct, Your
5 Honor.

6 THE COURT: Okay. All right.

7 MR. THOMPSON: Independent owner and
8 operator franchisee at McDonald's USA, LLC.

9 THE COURT: Okay. All right.

10 MR. THOMPSON: So, Your Honor, I think
11 that covers it all, Judge. But I think from every
12 step down argument, you don't even have to get past
13 the first one. And I think that these Defendants,
14 Your Honor, are entitled to summary judgement in
15 this case and I appreciate your time.

16 THE COURT: Thank you, sir. All right.
17 And your name, again, please, sir?

18 MR. MCLEOD: Brown McLeod. I represent
19 Proline Striping and I don't want to reiterate the
20 argument, but basically, we put the paint down and
21 the Plaintiff's expert clearly testified he didn't
22 testify -- he didn't test it. He said, you know,
23 if he did test it, he would get figures that would
24 help him determine whether or not it's slippery or
25 not. And he didn't do it. And we just -- we would

1 adopt that same argument.

2 I would also point out that the
3 testimony is that the group, the three of them,
4 parked and took that crosswalk into the restaurant
5 prior to coming back out. And when she slipped and
6 nobody had any issues going on that crosswalk on
7 the way in.

8 And I also would like to point out that
9 the husband did testify that he saw a smear on the
10 paint. I don't know if that really matters, but it
11 indicates maybe a foreign substance and there's
12 been no testimony of how long any foreign substance
13 had possibly been there. So anyway, we'd like to
14 adopt the first argument made by cocounsel.

15 THE COURT: Okay. Let me just ask you
16 a question. I was glancing through Dr. Durig's
17 deposition and right toward the end of it, he
18 stated, but if I do get it repainted, meaning his
19 parking lot, it will have sand or shark grip in it.
20 You don't think that creates what you --

21 MR. MCLEOD: No, but it goes back to
22 the slip resistance. That's the standard. And so
23 he tries to -- he tries -- there's the word
24 abrasive in one of the standards that's not code or
25 anything, but it's just the standard and he says

1 that's one way to make it slip resistant. You
2 don't have to put any abrasion in it. It just
3 needs to be slip resistant.

4 MR. THOMPSON: Your Honor, may I real
5 quick to what you just asked. Because what happens
6 in his parking lot is not relevant to what happened
7 in this parking lot.

8 THE COURT: I know.

9 MR. THOMPSON: Because he needs to know
10 what happened in the McDonald's parking lot.

11 THE COURT: I agree. I just enjoyed
12 his comment in there. I'm sorry. Excuse me, I
13 didn't mean --

14 MR. THOMPSON: I'm sorry.

15 THE COURT: Anything else?

16 MR. MCLEOD: No, Your Honor.

17 THE COURT: Okay. All right. And --

18 MR. YARBOROUGH: Your Honor, Will
19 Yarborough for the Plaintiffs.

20 THE COURT: Yes, sir.

21 MR. YARBOROUGH: If I may approach.
22 And, Your Honor, I think you may naturally expect,
23 we have a little bit of disagreement on what the
24 testimony of the case is.

25 THE COURT: Oh, yeah, I'm sure that's

1 | why we're here.

2 | MR. YARBOROUGH: Sure, Judge. I think
3 | we would all be out of a job if we didn't ever have
4 | any disagreements on what the facts are.

5 | THE COURT: That's right.

6 | MR. YARBOROUGH: Judge, I'd first like
7 | to address the condition of the parking lot as it
8 | relates to what Ms. Hooker actually slipped on and
9 | if there's any testimony that would get into trial.
10 | So I think that the testimony will be even though
11 | it was not asked in her deposition with
12 | Ms. Foxworth, that immediately after the fall, she
13 | said she fell on the line. But I don't think we
14 | even need to get there, Judge, and I don't think
15 | she's covered by the Dead Man's statute because she
16 | does not have a direct financial benefit from the
17 | actual lawsuit that's pending, Judge.

18 | We don't need to get there because in
19 | Ralph Hooker's deposition which is your first
20 | exhibit. On page 74, he says, immediately after
21 | her fall he could see where she slipped. This is
22 | on line 9.

23 | "I could see it. You could see the
24 | mark.

25 | You could?

1 Yes.

2 Okay.

3 Where she slipped.

4 What did it look like?

5 You could just see like it smeared a
6 little bit. That's all. That's all I could see.
7 You could see it.

8 It was a smear?

9 It was a smear.

10 Okay. The paint was dry; correct?

11 No, the paint was wet."

12 So, Judge, right there in his own
13 testimony he's standing right in front of her, sees
14 her in the process of falling, he looked, and
15 because the ground's wet you can see where her foot
16 slipped out from under her. That's the smear he's
17 talking about. He talks about it being on the
18 painted line.

19 So even without the testimony of what
20 she said, Judge, it's clear from his own testimony
21 and what he saw physically at the exact moment of
22 her fall and precisely after it that she fell and
23 she slipped on the painted white line itself.

24 So, Judge, just to talk about the lines
25 a little bit. What they were doing is they hired

1 Proline every year for at least about 2013 when
2 this parking lot, and that's in Dr. Durig's
3 deposition, when the parking lot was put in the
4 configuration it's still in today, every year they
5 would have this company Proline come out and paint
6 those lines. And Proline's deponent said that he
7 never did anything to take up the lines. He would
8 simply just paint on top of the lines that were
9 already there.

10 And so what you have is concrete has a
11 natural type of abrasive material in it. But when
12 you paint over it multiple times, you lose the
13 natural abrasion that you can't -- so you cannot
14 feel through it, you're left with a flat, smooth
15 surface which is what we had on the day of the
16 accident. Which is what Dr. Durig saw in his
17 physical inspection of the lines themselves.

18 Mr. Thompson said that there is some
19 issue with him not feeling the exact line where she
20 slipped on, that may be true, but all the lines are
21 exactly the same. It's the same material. It's
22 the same section of the paint. And so it's got the
23 same number of layers and it's in the exact same
24 condition as the line that she actually would have
25 slipped on.

1 THE COURT: Why didn't he test the one
2 that she slipped on?

3 MR. YARBOROUGH: Judge, I think at the
4 time he just didn't know exactly which line she
5 slipped on.

6 THE COURT: Do y'all know exactly which
7 line she slipped on now?

8 MR. YARBOROUGH: Yeah, Judge, so we
9 actually have a video that you can -- we have a
10 screen shot from it. You can see where she's
11 laying there and so it looks like she slipped on
12 one of the vertical lines right there in the lot.

13 THE COURT: Does a video of what
14 happened to her actually?

15 MR. YARBOROUGH: No, sir. Sorry. It's
16 a body cam video of first responders that came
17 after the accident.

18 THE COURT: Okay.

19 MR. YARBOROUGH: And so she's laying on
20 the ground right at the line essentially in the 15,
21 20 minutes after the accident would have occurred,
22 Judge.

23 Anyway, so the lines have been painted
24 over and over and so that's why I think
25 Mr. Thompson brought up the fact of Dr. Durig in

1 his deposition which I agree is not relevant
2 whether or not he has slip resistance in the lines
3 in his lot. But what he actually said, is you can
4 go out and feel the lines in his lot and you can
5 feel the abrasive material coming out from either
6 the asphalt or the concrete underneath. Because
7 he's only got one line of paint that's been worn
8 over time, hasn't been repainted, and that he would
9 not repaint that line unless he put an abrasive
10 material in it. So I do think that that begs the
11 question of -- I think that creates an inference of
12 fact there, Judge.

13 So if we go to what Dr. Durig actually
14 said, Judge, in both his written opinions that have
15 been produced as Exhibit 7 and in his deposition
16 that I've given you as Exhibit 6, Judge. In those
17 -- in the testimony and in his written opinions, he
18 actually states when I asked him on page 117. I
19 started and I asked him about the evidence of
20 abrasive material. He said he didn't see any
21 because there's multiple layer of paint in the
22 parking lot. And he asked him if there are any
23 evidence -- or efforts undertaken to provide slip
24 resistance on the painted white lines that you saw.
25 He didn't observe any, no. And I asked him then,

1 Judge, are there -- are those violations about the
2 standards including the IBC, the International
3 Building Code, the IPMC, the International Property
4 Maintenance Code, ASTM, all kinds of codes that we
5 talked about previously in his deposition. If you
6 would like his whole deposition, Judge, I can
7 certainly provide that to you, but I think we can
8 avoid that.

9 I asked him if those would violate the
10 various codes and standards that we talked about
11 that day and he said directly, for slippery floor
12 surface, yes.

13 Judge, also just to back up a little
14 bit. Michelle Foxworth who is the daughter that
15 was with her, when she was actually attending to
16 Ms. Hooker at the time of the fall, she herself
17 experienced the slipperiness of the lines. She
18 stated in her deposition that she slipped on the
19 lines themselves as well.

20 But back to Dr. Durig, so what he's
21 saying is that these codes are violated. And these
22 codes have been adopted by South Carolina statute
23 and that's South Carolina Code Section 6-9-5 and
24 the other portions of that code itself. So South
25 Carolina by statute has adopted the International

1 Building Code. Dr. Durig in the IPMC which is also
2 published by the ICC, the International Code
3 Council.

4 And so Dr. Durig's actual opinion is
5 that the parking lot at issue and the painted lines
6 at issue actually violate South Carolina codes or
7 codes that have been adopted by South Carolina
8 statute. And so that is evidence by itself of
9 negligence per se. Both the statute and the ICC
10 say these are codes that are designed for public
11 safety. And South Carolina says for the citizens
12 of the State of South Carolina it's for their
13 safety.

14 Ms. Hooker was certainly a citizen of
15 the State of South Carolina at the time of the fall
16 and she was also a member of the public. And so we
17 have a code that's designed for safety, designed to
18 keep things from slipping, and that has been
19 adopted by statute, Judge. That's evidence of
20 negligence per se which is precisely for the jury
21 and I think it's dispositive of this motion such
22 that it should give us a summary judgement.

23 But even ignoring negligence per se, I
24 think if we step back, we've got two people who've
25 experienced a slippery substance or a slippery

1 condition allegedly defective in the parking lot
2 lines on the day of the accident. We've got Dr.
3 Durig who said they're smooth. And McDonald's as
4 the -- or I say McDonald's, I mean, all the
5 entities, JKS&K, McDonald's, we'll talk about them
6 a little bit and their relationship later, Judge.
7 But they as the owner of the land, whoever it is,
8 has a duty to invitees to warn of latent hazards
9 that they expect their customers to encounter.

10 Well, Ms. Washington who was the
11 manager on duty at the time of the accident
12 actually testified that they have warning signs
13 that they put outside when there's wet conditions.
14 So this is McDonald's accepting that, hey, these
15 conditions are potential hazardous. We expect our
16 customers to -- or invitees to experience them.
17 And so we should warn of that. So that's
18 McDonald's own admission that, hey, these might be
19 dangerous conditions that we should warn of.

20 So even without expert testimony,
21 Judge, I think we've got two people who slipped on
22 painted white lines the day of the accident.
23 McDonald's putting out warning signs for them. I
24 think we have to step back from the scientific part
25 of it and just understand sometimes a defective

1 condition doesn't need an expert, it's just there.
2 And we've got testimony of it, Judge, by two people
3 slipping on it and the fact that McDonald's
4 themselves thought the need to warn about it.

5 THE COURT: Well, now, just out of
6 curiosity, Mr. Yarborough, wouldn't the warning
7 signs just go up anytime it rains?

8 MR. YARBOROUGH: Yes, sir.

9 THE COURT: I mean, it's just like a
10 general, it's raining, it's slippery; right?

11 MR. YARBOROUGH: Yes, sir.

12 THE COURT: Okay. And the two people
13 that slipped on the day of the accident, they
14 slipped after the accident; right?

15 MR. YARBOROUGH: Well, one of the
16 people was my client, Judge, and then the second
17 one was her daughter. Yes, sir.

18 THE COURT: Yeah. But -- I mean, so
19 there was a notice issue there? I mean, there's --
20 correct?

21 MR. YARBOROUGH: Judge, yes, sir. I'll
22 address constructive notice.

23 THE COURT: Oh, good. I didn't mean to
24 jump ahead. I'm sorry. Go ahead.

25 MR. YARBOROUGH: I'm sorry. I'm going

1 on more than I normally do, Judge, and I apologize
2 for that.

3 THE COURT: That's okay. Go ahead.

4 MR. YARBOROUGH: So we've got the white
5 lines, we've got the negligence issue, we've got
6 the defective condition issue. Judge, I'd like to
7 point out that we talked about coefficient of
8 friction earlier, but none of the standards, none
9 of the codes, none of the standards actually have a
10 published coefficient of friction by which to
11 measure. And so if there's no standard by which to
12 measure, I think the coefficient of friction test
13 is a little bit extra. I think it's enough for him
14 to just say, hey, this was slippery because there's
15 nothing for him to measure against.

16 So, Judge, when we talk about notice,
17 this line was painted in April. They said they
18 inspected these things regularly. I think they
19 have a duty to inspect these things regularly.
20 They own the property. They could have -- since
21 these were statutes, Judge, they are on
22 constructive notice of the statute that they have
23 to have slip resistance in there parking lot. They
24 could have simply touched on it and realized
25 there's no slip resistance. I think saying that

1 | they don't have constructive notice because they
2 | didn't do it, I think that's a little bit of an
3 | ignorance of the law is no excuse, Judge, they just
4 | didn't do it.

5 | As it relates to the franchisor if we
6 | want to move to McDonald's a little bit. The
7 | controlling test as it relates to the owner of a
8 | franchise -- or the franchisor, so McDonald's in
9 | this case is in the *Jamison v Morris* case, Judge.
10 | I can give you that cite. It's in my memo if you
11 | need it.

12 | THE COURT: I'll see it.

13 | MR. YARBOROUGH: Okay. But the test is
14 | that they essentially have more control than that
15 | necessary to ensure uniformity of appearance and
16 | quality. And so if we actually read the terms of
17 | the franchise agreement and the operator's lease,
18 | they kind of work in conjunction. And what they
19 | essentially say is we have this comprehensive
20 | system which they refer to it as a comprehensive
21 | system almost every time they talk about it in
22 | there. That governs the way you are required to
23 | run this franchise.

24 | And if they -- I think fail to the
25 | argument against the owner of the property, the

1 franchisor, and the lessor, Judge, is the fact that
2 in both the lease agreement and the franchise
3 agreement it requires that any alterations or work
4 that's done on the parking get prior written
5 consent from the franchisor and the lessor.

6 And so they have to contractually get
7 approval from the franchisor and lessor. So that
8 -- and that is essentially the control, direct
9 control over the actual condition at issue in this
10 case, Judge. But even outside of that, they have
11 to follow this McDonald's system. I don't have all
12 of the McDonald's system, but I have some portions
13 of it that I think were produced as relevant to
14 this case. And you can just look at those, Judge,
15 which I produced to you by email. Because they're
16 marked confidential, I didn't want to make them an
17 exhibit primarily. We can file them certainly.

18 But it's got 32 pages of daily tasks
19 and maintenance things that goes into such detail
20 as to how and what kind of broom to use, when to
21 wash something, how to wash something, what kind of
22 materials to wash something with. So I think we're
23 well past just on that little bit the controller to
24 ensure uniformity of appearance. They're directing
25 every single task that these people have to do

1 every single day at basically gunpoint.

2 Because if they don't do these tasks,
3 then McDonald's retains the right to come in and
4 take their franchise away from them and directly
5 assume control of the operations of the restaurant
6 immediately. And the lease is actually cancelled
7 in that situation because it incorporates the
8 franchise agreement. And the lease -- I thought
9 this was kind of funny, Judge, actually says that
10 we will use whatever force is reasonably necessary.
11 So they're actually threatening force to come in
12 and take over possession of the property and then
13 run it as a McDonald's if they don't follow this
14 step-by-step system. I think that's clear evidence
15 of more control than is necessary.

16 As it relates to Ms. Hampton, the case
17 law, Judge, that I've included in my memorandum is
18 clear that a manager can have control over the
19 premise. Ms. Hampton essentially said that she was
20 a little squirrely with how she gave her job
21 description. But she said she manages the
22 restaurant, she trains the employees, she has
23 control over basically everything that happens in
24 the store. She would have certainly been in
25 control of the employees who would have put out the

1 warning sign that wasn't put out on the day of the
2 accident which we can see from the screen shot, so
3 I think the control for her is there as well,
4 Judge.

5 THE COURT: Okay. Anything else?

6 MR. YARBOROUGH: That's it, Judge. I
7 appreciate it.

8 THE COURT: All right. Thank you.
9 Mr. Thompson, anything in reply?

10 MR. THOMPSON: Very briefly, Your
11 Honor. With regard to McDonald's Corporation and
12 the franchisor. Your Honor, in the memoranda filed
13 for McDonald's Corporation, there is a whole lot
14 more law there than just *Jamison*. In fact, the
15 Court has said that in order for the franchisor to
16 a certain sufficient control or to be held liable,
17 they have to assert sufficient control over the
18 franchisees daily operations. That's *Bass verses*
19 *Gopal*.

20 Additionally, Your Honor, in *Richitelli*
21 *verses Motiva*, again, these are all cited in the
22 memoranda, "between the wrongdoer and the person
23 sought to be charged for the result for the wrong
24 at the time and in respect to the very transaction
25 out of which the injury arose." So it's not just

1 we have some ability to control, it is the daily
2 operation. It makes sense, right, because we want
3 to hold those people liable that would have the
4 ability to direct -- have the ability to fix the
5 things that are happening on that property on a
6 daily basis. McDonald's Corporation didn't have
7 any ability, didn't have any right, didn't have any
8 -- there's just no evidence that had anything to do
9 with these lines.

10 Now, Judge, going back to the concept
11 of the lines. And this is -- it's so important,
12 Judge, because what -- Mr. Yarborough with all due
13 respect, is suggesting and what Dr. Durig's said in
14 his deposition was that, yeah, this is in violation
15 of statutes for what, slippery floor surfaces.
16 Right. If you have a slippery floor surface then
17 you're in violation of these things. But you
18 haven't proved that it's slippery. You haven't
19 proved that it's slip resistance and that's the
20 important thing, Judge.

21 It's not slippery. It's not that you
22 can slip. It's slip resistance. Right. It's not
23 all inclusive you will never slip. That's slip
24 proof. Right. So we're talking about slip
25 resistance. It's not a characteristic or condition

1 that we're going to guarantee nobody slips or falls
2 on. It's slip resistant.

3 Now, what we know in this case is, as
4 has been pointed out, that these three individuals
5 walked into the restaurant in a rain over the very
6 same area where the accident happened. They walked
7 out. Everybody walked out without incident except
8 for Ms. Linda Hooker who was wearing flip-flops.
9 The only person that was wearing flip-flops. The
10 only person. And she went to the ground.

11 Now, slip proof, not the standard.
12 Slip resistant is the standard. Slip resistance
13 hasn't been demonstrated in this case at all. So
14 the very top, the very top line doesn't exist. Not
15 even a scintilla of evidence, Judge.

16 THE COURT: Thank you, sir.

17 MR. MCLEOD: I'd like to mention, I
18 totally agree with that that, yeah, there's been no
19 proof of a violation of any standard because he
20 didn't prove slip resistance or not.

21 The other thing is and Plaintiff's
22 counsel mentioned it, the smear, and he used the
23 term substance and then he corrected himself. But
24 he said -- and I looked at the definition in
25 Oxford. A smear -- this is the definition. A mark

1 or streak of a greasy or sticky substance. There's
2 no testimony how long that substance was there.
3 And so if it's a substance that left a streak,
4 they're going to need to prove it was there in
5 enough time where there's constructive notice and
6 there's totally no evidence related to that.

7 THE COURT: Okay. Thank y'all. All
8 right. I will get back to y'all with my decision.
9 Thank y'all. Appreciate it.

10 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina, on the 2nd of February, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 2, 2022

s/Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

In the Matter of:

LINDA HOOKER

VS.

MCDONALD'S CORPORATION, ET AL

Ralph Hooker

June 3, 2021



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Mt. Pleasant, SC 29465

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1 **A No.**

2 Q Okay. Had you ever been to the McDonald's
3 where this incident occurred?

4 **A Yes.**

5 Q How often had you been there?

6 **A I used to go a lot because I worked down**
7 **there myself, but my wife didn't. She -- she -- but**
8 **me only. I went a lot myself.**

9 Q Okay.

10 **A Maybe once a week or something like that,**
11 **but I worked down there every day.**

12 Q All right. That was back when you were
13 working at Terminix?

14 **A Uh-huh.**

15 Q Is that yes?

16 **A Yes.**

17 Q Okay. Again, you were -- you're shaking
18 your head, and I can see that --

19 **A I understand, yes.**

20 Q Okay. All right. So you had been there
21 multiple times?

22 **A I had.**

23 Q Okay. Familiar with the parking lot?

24 **A Sure.**

25 Q Familiar with the inside of the

1 **A She didn't take any medicine.**

2 Q Okay. Didn't have high blood pressure or

3 --

4 **A No.**

5 Q -- diabetes? Anything?

6 **A No. None whatsoever.**

7 Q So she didn't take any medicines on a

8 daily basis, to your knowledge?

9 **A No.**

10 Q Did your car at that time have any kind of

11 handicapped license tab?

12 **A No.**

13 Q Did you park in a handicapped spot?

14 **A No.**

15 Q Regular spot?

16 **A I don't have handicapped stickers.**

17 Q Okay. But you parked at a spot at

18 McDonald's?

19 **A Regular spot.**

20 Q Okay. When you and your family got to the

21 restaurant, was it raining?

22 **A It was.**

23 Q Okay. And in other words, when you drove

24 into the parking lot, it was raining?

25 **A Uh-huh.**

1 Q Is that yes?

2 A **Yes.**

3 Q Okay. The parking lot was wet?

4 A **Yeah.**

5 Q Okay. And you and your wife and daughter

6 went into the restaurant?

7 A **Yes.**

8 Q Okay. Was it still raining when you went

9 into the restaurant?

10 A **Yes. Lightly, yes.**

11 Q Okay. And did you-all plan to eat in the

12 restaurant?

13 A **We did.**

14 Q And ate in the restaurant?

15 A **Yes.**

16 Q Okay. Ordered your food?

17 A **Yes.**

18 Q And ate in the restaurant?

19 A **Yes.**

20 Q How long were you there?

21 A **Probably 30 minutes.**

22 Q Okay.

23 A **It was raining hard then.**

24 Q Okay. So that was going to be my next

25 question.

1 see anybody?

2 **A No.**

3 Q All right. Not under any time crunch?

4 **A No.**

5 Q And so when you walked out of the
6 restaurant door, had it stopped raining?

7 **A It had.**

8 Q Okay. And then, describe for me how the
9 family started across the parking lot. In other
10 words, were all three of you standing beside each
11 other? Was one in front of the other or two in
12 front of the other?

13 **A Right.**

14 Q Describe for me how you-all walked out.

15 **A Well, we all got to the door and opened
16 the door, and I went on to the car to unlock the
17 car. Okay?**

18 Q So you were ahead?

19 **A I was first, and my daughter was right
20 behind me next to her mother. My wife, Linda, was
21 last.**

22 Q Okay. Well, let me make sure I understand
23 because you're saying that she was right next to --

24 **A I was further away from them. Yeah. I
25 was further away.**

1 **A That's right, yes.**

2 Q Okay. So you get to the car first?

3 **A Right.**

4 Q And opened the door?

5 **A Opened the door.**

6 Q And what did -- you said you heard

7 something?

8 **A Oh, yes. She hollered.**

9 Q Okay. That was your wife?

10 **A My wife.**

11 Q Okay. And is that the first time you knew

12 that something was happening?

13 **A That's right, yes.**

14 Q Okay. Did you hear anything before that

15 like whoops or look out or oh or anything?

16 **A No.**

17 Q Really, the first thing you heard was a

18 scream?

19 **A Right. Yes.**

20 Q All right. And so you look, and you look

21 behind you; is that right?

22 **A That's right.**

23 Q And what do you see then?

24 **A I see her on the ground, and she was in a**

25 **lot of pain. And my daughter was over her.**

1 Q Okay. So when you look around, your wife
2 is on the ground, correct?

3 A **Right.**

4 Q All right. And then, your daughter is
5 attending to her?

6 A **That's right.**

7 Q Okay. What did you do next?

8 A **I went over there where they were.**

9 Q Okay. And did you ask what had happened?

10 A **Sure. I tried to get her off the ground.**
11 **Tried to get her up, and she was in too much pain to**
12 **get her up.**

13 Q Okay. What did she say -- what did your
14 wife say had happened?

15 A **She slipped.**

16 Q Okay. Was the parking lot wet?

17 A **It was wet.**

18 Q Okay. Were there places in the parking
19 lot where there was standing water like puddles?

20 A **Yes. Water was running. Still running**
21 **down. Yes. It was.**

22 Q It had just finished raining hard,
23 correct?

24 A **That's right.**

25 Q Okay. Do you remember anything about what

1 you wife was wearing?

2 **A Yes. I know what she was wearing.**

3 Q What was she wearing?

4 **A She had a blouse, and she had on capris,**
5 **and she had on flip-flops.**

6 Q Okay. Do you know how long she had had
7 those flip-flops?

8 **A No. No.**

9 Q Did she regularly wear flip-flops?

10 **A She did.**

11 Q Okay. Didn't know if she was -- normally
12 wore tennis shoes or --

13 **A She'd wear both. She wore all of them,**
14 **but in the summertime, she had flip-flops on.**

15 Q Coming back from the lake, right?

16 **A Right.**

17 Q Wearing the flip-flops?

18 **A Right.**

19 Q Okay. Do you recall what kind of shoes
20 you were wearing?

21 **A Kind of shoes I got on. Hard shoes. I**
22 **wear hard shoes.**

23 Q Leather?

24 **A I didn't have tennis shoes. I had leather**
25 **shoes.**

1 Q Okay. And so when you used the crosswalk,
2 you didn't have any problem?

3 A No.

4 Q Didn't have any slippage?

5 A No.

6 Q Didn't lose your footing?

7 A No.

8 Q Okay. Didn't, of course, slip back and
9 say, hey, you-all be careful? It's slippery.

10 A No. No. Because I didn't have any reason
11 to.

12 Q Okay. Did you take any extra precaution,
13 right? Because it had been raining and the parking
14 lot was wet, did you step gingerly or lightly or
15 carefully because it had been raining?

16 MR. YARBOROUGH: Object to the form. You
17 can answer.

18 A No.

19 BY MR. THOMPSON:

20 Q Did you do anything extra or different, or
21 did you walk normally?

22 A Walked normally.

23 Q Okay. Are you a fast walker or a slow
24 walker?

25 A Most of the time, I'm a fast walker, I

1 happened that day at the McDonald's parking lot?

2 A Yes.

3 Q And what did she tell you?

4 A Just the normal stuff. I mean, how it
5 happened. What happened, and why did it happen to
6 her and that kind of stuff. That's all.

7 Q And what did she say had happened?

8 A She came out, slipped down on that white
9 line and broke her elbow.

10 Q Okay. Did she tell you that she slipped
11 on the white line, or did she just tell you she
12 slipped?

13 A She -- no. She said she slipped on the
14 white line.

15 Q Okay. Do you know if she's ever told
16 anybody else at any time something different? That
17 it was something other than slipping on a white
18 line?

19 A No.

20 Q Like slipping in a puddle or slipping on
21 the water or anything like that?

22 A No.

23 Q You don't know anything about anything
24 like that?

25 A No.

1 **like that. I imagine they have. Sure -- I'm sure**
2 **they have. Three years ago.**

3 Q Yeah. And you testified earlier about
4 what your wife indicated about what caused the slip
5 and fall. Did she ever say anything about her shoes
6 contributing to it?

7 A **No.**

8 Q Okay. And --

9 A **And I could see where she slipped. I**
10 **could see it. You could see the mark.**

11 Q You could?

12 A **Yes.**

13 Q Okay.

14 A **Where she slipped.**

15 Q What did it look like?

16 A **Just you could see like it smeared a**
17 **little bit. That's all. That's all I could see.**
18 **You could see it.**

19 Q It was a smear?

20 A **It was a smear.**

21 Q Okay. The paint was dry, correct?

22 A **No. The paint was wet.**

23 Q Okay.

24 A **From the rain, it was still rain --**

25 Q Yeah. Right. But it wasn't wet paint.

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF CHARLESTON)

3 I, Trisha G. Rarick, a Court Reporter and Notary
4 Public of the State of South Carolina at Large, do hereby
5 certify that the witness in the foregoing deposition was by me
6 duly sworn to testify to the truth, the whole truth and
7 nothing but the truth in the within-entitled cause; that said
8 deposition was taken at the time and location therein stated;
9 that the testimony of the witness and all objections made at
10 the time of the examination were recorded stenographically by
11 me and were thereafter transcribed by computer-aided
12 transcription; that the foregoing is a full, complete and true
13 record of the testimony of the witness and of all objections
14 made at the time of the examination; and that the witness was
15 given an opportunity to read and correct said deposition and
16 to subscribe the same.

17 Should the signature of the witness not be affixed to
18 the deposition, the witness shall not have availed himself of
19 the opportunity to sign or the signature has been waived.

20 I further certify that I am neither related to nor
21 counsel for any party to the cause pending or interested in
22 the events thereof.

23 Witness my hand, I have hereunto affixed my official
24 seal on _____, 2021, at Charleston, Charleston
25 County, South Carolina.

15

16

17

Trisha G. Rarick
Court Reporter

18 My commission expires:

19 January 9, 2029

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In the Matter of:

LINDA HOOKER

VS.

MCDONALD'S CORPORATION, ET AL

Michelle Foxworth

June 3, 2021



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I N D E X

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E X H I B I T S

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DEFENDANTS' EXHIBITS

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1 **A Right.**

2 Q When you arrived at the McDonald's
3 restaurant, was it still raining?

4 **A Yes.**

5 Q Okay. When you got out of the vehicle to
6 go into the McDonald's restaurant, was it raining?

7 **A Yes.**

8 Q Did you, your mother or father use any
9 kind of umbrella?

10 **A No.**

11 Q Just walked in?

12 **A Correct.**

13 Q In the rain? Walked in the rain?

14 **A Yeah.**

15 Q Maybe tried to hustle through the rain or
16 just walked?

17 **A Just walked to the door.**

18 Q Okay. Weren't trying to get out of the
19 rain at all?

20 **A No. I mean -- well, no.**

21 Q Okay.

22 **A No more than normal.**

23 Q Well, some people do things differently
24 and try to get out of the rain. Don't like to get
25 wet, I guess. Must be made of sugar or something

1 like that, I guess, or -- do you have any
2 recollection of the time when you were walking in or
3 getting into the restaurant that day of having any
4 trouble with your footing?

5 **A No.**

6 **Q Was there any slipperiness?**

7 **A No.**

8 **Q Anything that caused you concern as you**
9 **were walking towards or into the restaurant?**

10 **A No.**

11 **Q What shoes were you wearing?**

12 **A My tennis shoes.**

13 **Q Okay. Did you have any trouble with your**
14 **traction walking into the restaurant?**

15 **A No.**

16 **Q Did anybody, as they were walking in, your**
17 **father or your mother, say anything, like, gosh, I**
18 **almost slipped and fell?**

19 **A No.**

20 **Q Or gosh, that's slippery?**

21 **A No.**

22 **Q Do you have any idea as you were walking**
23 **in that there was any trouble with the traction in**
24 **that parking lot?**

25 **A No.**

1 Q But it was wet, right?

2 A Yes.

3 Q I mean, the asphalt was wet?

4 A Yes.

5 Q The crosswalk was wet?

6 A Yes.

7 Q But you didn't have any problems going in,
8 did you?

9 A No.

10 Q As I understand, you and your parents ate
11 in the restaurant?

12 A Yes.

13 Q Nice leisurely supper-dinner?

14 A Yes.

15 Q Weren't trying to rush through or
16 anything?

17 A No.

18 Q Had no place to be?

19 A Nope.

20 Q Did it rain while you were in the
21 restaurant?

22 A Yes.

23 Q Did it rain harder while you were in the
24 restaurant?

25 A Yes.

1 Q Was ahead of both you and your mother?
2 A **Yes.**
3 Q Headed to the vehicle?
4 A **Correct.**
5 Q Was it parked generally in the area of the
6 crosswalk?
7 A **It was parked on the other side of the**
8 **crosswalk.**
9 Q Right. I meant in the normal parking
10 spaces --
11 A **Yeah.**
12 Q -- but close to the crosswalk?
13 A **Yes.**
14 Q All right. And did your father use the
15 crosswalk when he went out of the restaurant to his
16 vehicle?
17 A **Yes.**
18 Q Okay. Who followed behind him?
19 A **I was next.**
20 Q Okay. How far did you get across the
21 crosswalk before you became aware something had
22 happened?
23 A **I was on the other side of the crosswalk.**
24 Q Okay. Over on the parking area?
25 A **Well, coming off the crosswalk.**

1 Q All right. So to be clear, you had come
2 off the sidewalk adjacent to the restaurant,
3 correct?

4 A **Uh-huh.**

5 Q Is that yes?

6 A **Yes.**

7 Q And then, had made it across the crosswalk
8 to the other side of the parking lot?

9 A **Right.**

10 Q And then, you what? Heard something?

11 A **I heard Momma, and when I looked back, she**
12 **was in the process of falling.**

13 Q Okay.

14 A **I tried to get back to her.**

15 Q All right. Now, what did you hear?

16 A **Almost like an oop. Kind of like not**
17 **really a scream but kind of holler out.**

18 Q I mean, did she say anything? Was it a,
19 hey -- I guess I'm trying to figure out if -- you've
20 described she was in the middle of falling. That
21 might sound one way as opposed to having fallen and
22 then hurt yourself and maybe that sounds different.

23 A **She was in the process of falling. So**
24 **when I looked, she was already on her way down.**

25 Q Okay. But would that be a scream, or

1 Q The parking lot was wet at the time you
2 walked in?

3 A Yes.

4 Q The parking lot was wet at the time you
5 walked out?

6 A Yes.

7 Q Had you ever in your lifetime experienced
8 a slippery parking lot?

9 A No.

10 Q Ever in your lifetime experienced
11 slipperiness on the white painted lines of a parking
12 lot?

13 A No.

14 Q Did you even have an idea that that could
15 be an issue?

16 A No.

17 Q To your knowledge, did your mother sustain
18 any injury other than to her elbow?

19 A No.

20 Q Just like your father, can you -- and
21 again, I would expect or anticipate it being
22 personal to you, right? What you saw. What you
23 experienced with your mother. So just take me
24 through, you know, the date of the accident and when
25 she gets to the hospital on down the road, you know,

1 Q Is there anything we've left out?

2 A One thing to note is that while my mom was
3 on the ground -- of course, it was hot. While we
4 were waiting on EMTs, I did try to assist to try to
5 block some of the sun. And when I went to go across
6 her, I actually slipped. My right leg actually
7 slipped as I was trying to put it down to go over
8 her, and I had on tennis shoes.

9 Q What did you slip on?

10 A The white line.

11 Q Okay. And just to make sure that I have
12 an idea, there are lines that run across the parking
13 lot, right?

14 A Uh-huh.

15 Q That create the crosswalk, if you will,
16 right?

17 A Right.

18 Q I call those the long lines, okay, for the
19 purposes of this question. And then, you have the
20 lines that go between those lines, the shorter
21 lines, the cross lines, if you will.

22 A Uh-huh.

23 Q Which line did you slip on?

24 A I would say the longer.

25 Q Okay. And do you recall which of the

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF CHARLESTON)

3 I, Trisha G. Rarick, a Court Reporter and Notary
4 Public of the State of South Carolina at Large, do hereby
5 certify that the witness in the foregoing deposition was by me
6 duly sworn to testify to the truth, the whole truth and
7 nothing but the truth in the within-entitled cause; that said
8 deposition was taken at the time and location therein stated;
9 that the testimony of the witness and all objections made at
10 the time of the examination were recorded stenographically by
11 me and were thereafter transcribed by computer-aided
12 transcription; that the foregoing is a full, complete and true
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15 given an opportunity to read and correct said deposition and
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17 Should the signature of the witness not be affixed to
18 the deposition, the witness shall not have availed himself of
19 the opportunity to sign or the signature has been waived.

20 I further certify that I am neither related to nor
21 counsel for any party to the cause pending or interested in
22 the events thereof.

23 Witness my hand, I have hereunto affixed my official
24 seal on _____, 2021, at Charleston, Charleston
25 County, South Carolina.

15

16

17

Trisha G. Rarick
Court Reporter

18 My commission expires:

19 January 9, 2029

20

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Deposition of:
Bryan Robert Durig , PhD

January 20, 2022

In the Matter of:
**Hooker, Linda v. McDonald's Corp., Et
Al**

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1 A. No, sir. Just basically stopped by, got
2 something to drink, and looked at the parking lot, and
3 left.

4 Q. Okay.

5 When you stopped there the first time sometime
6 in 2018, was it dry or wet?

7 A. It was dry both times I was there.

8 Q. Okay.

9 How long do you think you spent at the
10 restaurant the first time you were there in 2018?

11 A. Fifteen, 20 minutes, just sitting there,
12 looking around the parking lot. Went inside, got
13 something to drink, came back out, looked around, and
14 left.

15 Q. Okay.

16 Any point to that investigation or that
17 inspection or that time that you were there?

18 A. Just to familiarize myself and look at the
19 painted lines. I've had a number of cases where we have
20 painted parking lots, painted stripes, painted ramps
21 that -- obviously, you look for abrasive material in the
22 paint. I didn't see any. I'm sure I would have relayed
23 that to Mr. Fogle that I went out there and didn't see
24 anything. It's just the first thing I look for.

25 Q. Okay.

1 Would you have told him that in 2018?

2 A. Yes.

3 Q. Okay.

4 Did you take any measurements in 2018?

5 A. That was just a visual observation, just an
6 initial -- I'd call initial scene assessment, go out
7 there and look at it and say, Yes. We've got a painted
8 crosswalk.

9 I don't -- actually, everybody keeps referring
10 to it as asphalt, but I believe it's concrete in the
11 area that the fall occurred. And as you paint over
12 concrete, you start losing some of the texture of the
13 concrete. And I would have relayed that to them. And
14 at that point, I don't think I knew exactly where she
15 fell other than the crosswalk, so I didn't really know
16 where to look.

17 Q. Okay.

18 And again, that first visit in 2018...

19 A. Yes. Just basically go out and look at a
20 parking lot and say, Yeah. We've got painted lines. I
21 don't see abrasive material in it. So what do you guys
22 want to do?

23 Q. Okay.

24 And that was the extent of your work or your
25 visit in 2018. Is that right?

1 A. Correct.

2 Q. Okay. All right. And so the next time you
3 were involved in this case was in March 2019.

4 A. Yeah. He apparently called, because I have in
5 my -- I sent him an email on February 26 that says,
6 Jimmy, I had a conflict come up for tomorrow, so I need
7 to reschedule our meeting tomorrow. What do you look
8 like next Wednesday afternoon, March 5?

9 And then he responded on February 27, I got
10 your email. Next Wednesday at 3 p.m. would be good with
11 me. Thanks.

12 So then I think that Wednesday must be March
13 5, 2019. I met him out at the McDonald's, and he
14 basically described that the client -- I think it's --
15 one of these was taken that time -- was taken during the
16 first phone call. Basically, the client was walking out
17 the -- it had rained earlier in the day, and she slipped
18 on a painted white line.

19 Q. Okay.

20 And again, you brought with you today two
21 handwritten notes.

22 A. Yes.

23 Q. Are those copies or are they originals?

24 A. Those are originals, so if they can make a
25 copy --

1 Q. So can we make copies of those while we're
2 here?

3 A. Yes.

4 MR. THOMPSON: Go ahead and do that now.
5 We'll go off the record.

6 (A recess transpired.)

7 (Defendants' Exhibit Number 2, Handwritten
8 Notes Beginning "Jimmy Fogle," marked for
9 identification.)

10 (Defendants' Exhibit Number 3, Handwritten
11 Notes Beginning "Linda Hooker," marked for
12 identification.)

13 BY MR. THOMPSON:

14 Q. Dr. Durig, were back on the record.

15 I've marked Exhibits 2 and 3, which appear to
16 be copies of notes from your file. Is that correct?

17 A. Yes.

18 Q. And just to match them up, 2 is blue original
19 print, and then 3 is black original print. Is that
20 right?

21 A. Yes, sir.

22 Q. And are you able to determine when either
23 Exhibit 2 or Exhibit 3 were created?

24 A. Not specifically. One would have been
25 probably the first phone call, the one I had with

1 Mr. Fogle, to give me a little background. The second
2 one would have been when I was out there with him. They
3 say basically the same thing. So I couldn't tell you
4 which one. I mean, they're --

5 Q. All right. Well, Exhibit 3, I'm having a hard
6 time reading your handwriting.

7 The last sentence?

8 A. Downward-sloping, slash, wet.

9 Q. Okay.

10 The information that you received or the
11 information that you recorded in Exhibits 2 and 3, where
12 did you receive that information?

13 A. Mr. Fogle.

14 Q. And Mr. Fogle being, again, an employee at the
15 Dean Law Firm. Is that right?

16 A. Yes.

17 Just based on looking at these notes, the blue
18 one, Exhibit 2, probably would have been the first one,
19 because I actually have Jimmy's name on it, who I was
20 talking to. The second one does not because I was in
21 person with him.

22 So my assumption, based on what's in the
23 notes, is Exhibit 2 would have been my first
24 conversation with him, and Exhibit 3 would have been
25 when I met him March 5, 2019.

1 Q. Okay.

2 Prior to going to the parking lot on March 5,
3 2019, did you have any additional conversation with
4 anyone else concerning this loss?

5 A. No. It just would have been with Mr. Fogle.
6 He's the only one I would have communicated with.

7 Q. Okay.

8 Then who would have met you at the parking lot
9 on March 5, 2019?

10 A. Mr. Fogle.

11 Q. Anybody else?

12 A. No, sir.

13 Q. How long were you there?

14 A. Twenty minutes.

15 Q. I think you testified earlier, the times that
16 you have been to that parking lot, it has been dry. Is
17 that right?

18 A. Yes, sir.

19 Q. Okay.

20 Have you been to that restaurant and observed
21 that parking lot when it's been wet?

22 A. Not that I remember. No, sir.

23 Q. Okay.

24 A. Not specifically for an inspection. I mean,
25 if I stopped in there to get something to eat or drink,

1 maybe, but I don't remember that.

2 Q. Okay.

3 Did you take any photographs during your
4 meeting or inspection on March 5, 2019?

5 A. No, sir, just a quick discussion with
6 Mr. Fogle. He described that she came out the door, and
7 she fell on the crosswalk. I pointed out to him that
8 there was no abrasive material in it. And, you know, at
9 that point, he was happy with what I told him, and we
10 parted and separated.

11 Q. Okay.

12 Did you take any measurements?

13 A. I didn't do anything other than talk with him.
14 No measurements, no inspection, no formal testing of any
15 kind.

16 Q. Just visual --

17 A. Visual discussion and showing him, Here's the
18 crosswalk, and there's no abrasive material.

19 Q. All right.

20 And you can determine there's no abrasive
21 material just by looking at it.

22 A. By touching it, rubbing your hand across it.
23 You can feel it.

24 Q. So you did that.

25 A. Yes.

1 Q. Where did you touch the crosswalk?

2 A. Mostly down here on the bottom side, towards
3 where the cars are parked. We were standing down there,
4 basically in the crosswalk.

5 Q. Okay.

6 And just because, obviously, we don't have a
7 video camera here today to orient us for your testimony,
8 the crosswalk goes, essentially, from the sidewalk
9 adjacent to the restaurant, across the parking lot, to
10 an area where there are parking spaces. Is that right?

11 A. Correct. It leads from the sidewalk near the
12 side entrance door to two handicap parking spaces on the
13 outer limit of the property.

14 Q. All right.

15 And so if I understand your testimony, then,
16 when you reached down to touch and feel the painted
17 lines, it was in the location near the parking spaces.
18 Is that right?

19 A. Yes, on the -- there's two wide lines that run
20 perpendicular to the sidewalk, and then there's six --

21 Q. Cross lines?

22 A. -- cross lines that run parallel. And I felt
23 the thicker line at the -- of the two that run
24 perpendicular, it would have been down by the vehicle
25 access aisle.

1 Q. Near the parking spaces.

2 A. Near the parking spaces. Yes. Sorry.

3 Q. And so when you said you touched the lines,
4 did you touch the cross lines or did you just touch the
5 perpendicular, longer lines?

6 A. The perpendicular, longer lines.

7 Q. Okay.

8 And did you touch both of them or just one of
9 them?

10 A. Probably both of them, as well as some of the
11 white ones in the crosshatch. I did not go and touch
12 everywhere. I don't think I knew that she had fallen at
13 the first set of cross lines, other than I knew she came
14 out and she fell on a line. And I don't know at that
15 point if I knew specifically where.

16 Q. Okay.

17 So when you were at the restaurant with
18 Mr. Fogle, you, at that time, did not know where the
19 fall occurred.

20 A. No. I don't remember saying -- other than it
21 was on this crosswalk, to know if it was at the car or
22 at the building.

23 Q. Okay.

24 Did Mr. Fogle not provide you any information
25 or demonstrate or show you where it might have happened?

1 A. Not that I remember. No. I just -- I mean, I
2 think if I'd had my notes and he'd pointed out, It
3 happened here, I'd have probably drawn a sketch and put
4 an X on it. But I don't remember him saying, She fell
5 here or here or here (indicating).

6 Q. So no photographs, right?

7 A. No, sir.

8 Q. No diagrams?

9 A. No, sir.

10 Q. No measurements?

11 A. No, sir.

12 Q. No slip resistance testing?

13 A. Not at that time. No, sir.

14 Q. Okay. Well, not at that time.

15 Have you done any slip resistance testing?

16 A. I have not -- I -- discussed whether or not we
17 needed to go out there and do a formal inspection or I
18 take slope measurements and coefficient of friction
19 tests, et cetera. But...

20 Q. But as we sit here today, January 20, you have
21 not done any slip resistance testing in that parking
22 lot, have you?

23 A. Correct. I was not asked to.

24 Q. Okay.

25 In addition to the, I guess, parking lot

1 meeting, in the 20 or so minutes you were there, what
2 else have you done with regard to an involvement in this
3 case?

4 A. Initially -- was it four months? -- four
5 months later, I was asked to write a preliminary report
6 just on what my observations were, which I did, dated
7 July 1, 2019. And after that, I hadn't heard anything
8 until recently, when I was asked to try to get some
9 dates for a deposition.

10 And since then, I have been provided
11 materials, discovery materials, depositions, and I've
12 reviewed those and basically pulled my research
13 material. Like I say, I do numerous cases like this
14 annually and have that material in my database and just
15 pull out the different articles or different
16 specifications for different materials.

17 Q. How long did you spend in preparation for this
18 deposition?

19 A. To get ready for today? I spent probably the
20 last hour and a half, really, just printing stuff out
21 and making sure I had everything.

22 Q. Okay.

23 Is there any more time that you've spent on
24 this matter that is not contained in the invoice which
25 is Exhibit 1, or the amount of time you just described

1 to me in preparation for this deposition?

2 A. Yes.

3 Q. Okay.

4 What additional time have you spent?

5 A. Well, I've read all the deposition transcripts
6 that were provided to me. And it's a selection of all
7 of them. (Indicating.)

8 Q. Well, let me ask you this. Do you have
9 another invoice other than Exhibit 1?

10 A. No. Not yet. I would have one -- most of
11 that work's been done in the last two or three weeks --

12 Q. Right.

13 A. -- so I haven't invoiced anything at this
14 point.

15 Q. Is there anything that you have that you keep
16 time entries contemporaneously where you could look it
17 up and say, I know that I've spent three hours over the
18 last two weeks?

19 A. I mean, I would have it written on a sheet of
20 paper. I'd have to go back.

21 Q. Okay.

22 But you don't have that with you today.

23 A. No.

24 Q. All right. Let's go through what you brought
25 with you today.

1 A. These are the three photographs that were
2 provided to me on August 23, 2018. I printed them out
3 in the email as well as individually.

4 (Tendering documents.)

5 Some of the things you see in here is the
6 staining between the perpendicular lines to the sidewalk
7 for vehicle traffic. This is where the cars would stop
8 as they're in the drive-through lane, and you can see
9 where they've dripped automotive fluids and stained the
10 concrete.

11 How do you want to do this?

12 Q. I just want to kind of go through it and --

13 A. Well, I mean, I can kind of just give the
14 factual stuff.

15 Q. I want to know what you brought with you
16 today. And we can -- as you go through it, to the
17 extent that you want to explain it, that's fine.

18 A. Okay.

19 Q. Those three photographs that you just
20 described, they were provided to you by Mr. Fogle. Is
21 that right?

22 A. Yes.

23 Q. Do you recognize any of the vehicles in the
24 photographs?

25 A. My assumption would be Mr. Fogle's would be

1 the left Ford pickup truck in the handicap parking
2 space.

3 Q. Why would you assume that?

4 A. Because I've ridden in the truck before.

5 Q. Does it look like his?

6 A. Looks like his.

7 Q. Okay.

8 A. I mean, it's -- I mean, like I said, this is
9 over two years ago. I've ridden in his truck before to
10 go do inspections. I don't remember if I rode with him
11 on this one. I kind of doubt it. But it's possible I
12 met him in Orangeburg and we rode over there together.
13 But I don't remember.

14 Q. Are these additional copies or are these the
15 only ones you have?

16 A. No. You can...

17 Q. I'm going to mark the -- as a set. These
18 three photographs will be Exhibit 4.

19 (Defendants' Exhibit Number 4, Three Color
20 Photographs of Crosswalk, for identification.)

21 THE WITNESS: I have three aerial -- four
22 aerial photographs off Google Earth Pro to get an idea
23 of, one, the overall layout, and two, to determine when
24 things may have changed.

25 And, obviously, between June 2011 and November

1 2013, that facility went through a major renovation. It
2 changed the parking lot, changed the flow of traffic,
3 changed the building.

4 And this subject crosswalk was likely built at
5 that time to be more compliant with the ADA requirements
6 that handicap parking spaces be as close as reasonable
7 to the entrance door. And prior to that, they were at
8 the very back of the facility, so they moved them up
9 front. And the date of the imagery is in the upper,
10 left-hand corner.

11 BY MR. THOMPSON:

12 Q. And these images you pulled off of Google
13 Earth. Is that right?

14 A. Yes.

15 Q. And just for the purposes of your orientation.
16 Is that right?

17 A. Yes, and to look up when things changed. I
18 mean, obviously, from the differences between two
19 images, you can tell the building has gone through a
20 major renovation. So we know this crosswalk wasn't
21 there in 2011. It's there in 2013.

22 The building's changed. The parking lot flow
23 has changed from two entrances and exit to a double --
24 or a wider entrance/exit. Landscaping's changed. I
25 haven't counted the parking spaces, but we've taken the

1 handicap spots from the back of the building and moved
2 them up closer to the door, which is an ADA requirement.

3 Q. Okay.

4 A. But it tells me that this crosswalk was
5 actually built between that 2011 to 2013.

6 As part of the discovery material, I was
7 provided the dashcam video from the police department.
8 From that dashcam video, I did two screen shots. And
9 both these were probably taken within the first minute
10 of that video. It's about a 12-and-a-half-minute video.
11 And these basically show where Ms. Hooker was, as well
12 as the fact that she was wearing flip-flops.

13 (Tendering documents.)

14 And you can have those if you want to mark
15 them.

16 MR. THOMPSON: We'll mark those Exhibit 5 as a
17 set.

18 (Defendants' Exhibit Number 5, Two Color
19 Photographs of First Responders, marked for
20 identification.)

21 BY MR. THOMPSON:

22 Q. And the court reporter was helping me out
23 there. So, just for the record, I've marked two
24 photographs Exhibit 5.

25 BY MR. THOMPSON:

1 Q. Those are screen shots from the video,
2 correct?

3 A. Correct.

4 Q. Good.

5 A. I've got a copy of my preliminary letter dated
6 July 1, 2019.

7 Let's see. I brought you a CV if you wanted
8 one, just updated last week.

9 Q. Updated last week?

10 A. Yes.

11 Q. Oh. Well, then, I will take that.

12 Make that Exhibit 6.

13 (Defendants' Exhibit Number 6, Curriculum
14 Vitae of Bryan Durig, PhD, marked for identification.)

15 THE WITNESS: All right. As far as -- I
16 didn't print all that. I just printed a couple sections
17 of that. But as far as discovery material goes, I have
18 two invoices from Proline Striping Services, one dated
19 March 2, 2019, and one dated April 4, 2018, for
20 restriping of the McDonald's parking lot.

21 BY MR. THOMPSON:

22 Q. Could you tell, obviously, on March 5 -- did
23 it look like that the lot was freshly painted?

24 A. I didn't notice it being freshly painted, but
25 it was smooth. But I didn't notice that it had been

1 painted three days earlier. No.

2 Q. Okay. I mean --

3 A. But I see that now. I mean, I just got that
4 in discovery. So at that point, there was obviously
5 nothing I could do anyway.

6 Q. And I don't know, necessarily, that it was
7 done that day. I don't know if it was done before --

8 A. No.

9 Q. -- and then invoiced that day.

10 A. Correct.

11 Q. Right?

12 A. True. True.

13 Q. So that's kind of my question.

14 A. No.

15 Q. Could you tell whether or when it might have
16 been painted --

17 A. No, sir.

18 Q. -- just by looking at it?

19 A. No, sir.

20 Q. All right.

21 A. I mean, it wasn't chipped and destroyed, but I
22 couldn't tell you it was painted within a week or two
23 weeks. No, sir.

24 Q. Okay.

25 A. I know a couple things, I saw different dates,

1 so I printed a couple. I printed an incident report
2 from the police department that does list it as 7/28,
3 5:00 p.m.

4 And I think -- here's -- the patient call was
5 at 5:05 to the EMS, which I think was after the police
6 got there. So that makes sense that they got there
7 around 5. They would have been calling the EMS shortly
8 thereafter.

9 I printed one page of some medicals just
10 because they had the date, 7/29. But that was from
11 Richland County. So I assume that she got transported
12 to Columbia after the 28th, because I think she went --
13 on the 28th, that night, she went to Orangeburg
14 Regional.

15 Q. I'll stop you there real quick.

16 In the video, the body cam footage from the
17 officer, did it have any date, time stamps on it?

18 A. You know, I didn't look specifically to see if
19 it's on there. It was 12 minutes. I don't remember
20 seeing it like you do on some. If it was on there, I
21 didn't pick it up.

22 Q. Okay.

23 A. I would have looked at it once to review it
24 and once to print the screen shots and forgot to look
25 and see if there was a times tamp consistent with that.

1 Q. All right.

2 A. But, I mean, she's on the ground. It's not
3 raining. The sun's out, and the ground is wet, which is
4 what was described in the first one that I was given,
5 although it says around 6:00, not 5:00.

6 Q. All right.

7 Do you know how long it was after the fall
8 before the body cam footage started?

9 A. No, sir. I think the run report indicates
10 5:00, and they left at -- they were dispatched at 7:01,
11 and they arrived -- or 5:01, and they arrived at 5:02.

12 Q. Okay.

13 A. So it doesn't look like it was much after the
14 fall.

15 Q. Right.

16 Do you know when it was after the fall that
17 911 or the police were called?

18 A. Say it again. I'm sorry.

19 Q. Yeah.

20 How long after the fall was 911 called or the
21 police summoned?

22 A. I don't know.

23 Q. Did you see any information as to when 911 was
24 called?

25 A. EMS was called at 5:05. The police department

1 was called at 5:01. Now, whether or not that's their
2 EMS, I don't know -- or 911, I don't know. I've not
3 seen a 911 call record.

4 Q. All right.

5 Do you know whether the fall happened and
6 somebody immediately called for the police or whether
7 the fall happened, and then there was an amount of time
8 that passed before the police were called?

9 A. I would say, reading the depositions, a short
10 amount of time because I think when they tried to pick
11 her up, she was in severe pain. And that's when they
12 decided to call. Now, whether or not it was one minute
13 or five minutes, I don't know.

14 Q. Okay.

15 And you don't recall anything on the body cam
16 as far as --

17 A. No.

18 Q. -- what the timing might be.

19 A. No. I mean, they got there at 5:02, so I
20 don't know -- and they were cleared by 5:30, so at some
21 point in there. And I think the EMS arrived during the
22 video. And they arrived at 5:19, so that's about
23 halfway through that video, so that would be about 7 --
24 they talk about calling EMS on the video. And that's
25 5:05 they called them.

1 Q. Did you --

2 A. But sometime between 5 and 5:15.

3 Q. Did you do any investigation of the weather
4 that day?

5 A. Yes.

6 Q. What investigation did you do of the weather
7 at the time of the loss?

8 A. I looked up -- researched the weather from the
9 local reporting station through Weather Underground.
10 And I printed it. And it might still be on the printer.
11 But I do know that it rained at mid-afternoon. And I
12 think the last reported rain on their website is
13 around -- oh, there it is -- is around 3:00, if I
14 remember right.

15 3:56. p.m., it shows light rain with
16 thunderstorms.

17 Q. In what area?

18 A. That would be -- closest reporting station was
19 Charleston.

20 Q. The Charleston station, as opposed to Santee?

21 A. Yes.

22 Q. How far away are those two places?

23 A. Sixty miles, probably.

24 Q. Okay.

25 A. I mean, you pull up -- you put in Santee, and

1 this is what it provides you.

2 Q. I understand.

3 But does that tell you whether it was raining
4 in Santee or not?

5 A. No, not specifically. Testimony does, but
6 this doesn't show that it was actively raining at 5:00.

7 Q. Right.

8 Did you -- you said you reviewed the body cam
9 footage, correct?

10 A. Yes.

11 Q. And did you review and see where Ms. Foxworth
12 said it was raining at the time of the accident?

13 A. Correct. And that's different than what I was
14 told.

15 Q. All right.

16 And she told the police it was raining at the
17 time the fall happened.

18 A. Correct. And that's written on the accident
19 report as well. It was raining hard.

20 Q. Okay.

21 Does that mean anything to you at all? Does
22 it make a difference?

23 A. I mean, if it was actively raining hard, you
24 would have more fluid on the walking surface. That
25 would make it easier to slip on. If it had rained and

1 stopped, you would still be wet. I mean, you could
2 still see it in the body cam that surfaces are still
3 wet.

4 So, I mean, it could make it easier if it was
5 raining harder. If it's raining less, you still have a
6 foreign substance on the paint. The harder the rain,
7 the easier it would be to slip.

8 Q. Right.

9 And did you review Mr. Hooker's deposition
10 testimony where he said that there was water running
11 down from the restaurant, down the slope at the time of
12 the accident?

13 A. Yes. That would imply that it was raining
14 hard. And you've got the sidewalk that funnels that
15 rain down to where the dimple pattern is for the sight
16 impaired. And then that would come off that sidewalk,
17 down that path. So, I mean, that would be consistent
18 with it raining hard at the time of the fall.

19 Q. Okay.

20 Does the amount of water on a surface make a
21 difference with regard to slip resistance?

22 A. I mean, it would. I mean, typically, when you
23 measure it, if you're measuring the wet, you would
24 put -- depending on what machine you're using, you'd
25 keep the surface wet, just a covering on it. There's

1 not a specific, I need to have this much, this thickness
2 on it.

3 And so, basically, you wet it and then run a
4 test. Then there's -- I mean, I don't know a specific
5 level of thickness or a specific thickness of water that
6 would be specified in a test.

7 So, it would make it -- you would have more
8 lubricant between the shoe and the surface if it's more
9 rain on it versus less, but I don't know if it would
10 change the coefficient of friction that much.

11 Q. All right.

12 Is the coefficient of friction dependent upon
13 how much water is on it or just the surface that you're
14 testing?

15 A. Well, you're testing the surface. So if you
16 have more liquid on it, yeah, you probably have a higher
17 chance of more lubricant between you. But when you test
18 it, you just test it wet. There's not a specific
19 thickness.

20 Q. All right.

21 But I'm just trying to confirm from an
22 engineering perspective, if there's more water, does
23 that make a difference or not?

24 A. I would say it probably makes a slight
25 difference. But if you're testing it and that's what

1 you're going to have to evaluate it on based on that
2 test, there's not a thickness required other than
3 uniform -- I mean, you uniformly wet the surface.

4 Q. All right.

5 If you were trying to recreate the situation
6 that may have occurred at a specific time, would you not
7 want to take into account and replicate the amount of
8 water that was experienced?

9 A. If you could. I mean, I'm not sure if -- that
10 would be tough to do, because you're having to -- you'd
11 have to run a hose up there at the right amount of flow
12 to get the right thickness. And when you run your test,
13 you know, it doesn't slip on the first time. If you use
14 an English XL, you have to -- you repeat the test
15 multiple times until you get the shoe to slip.

16 So yeah, you could, but it would be difficult.
17 You'd have to be able to specify that that thickness was
18 exactly it. But if you go back and compare it to
19 industry guidelines, there's not a thickness requirement
20 for the liquid surface.

21 Q. I understand that.

22 A. Yeah.

23 Q. If you're just testing the slip resistance of
24 the surface, that's one thing. But then trying to
25 recreate or simulate, if you will, the condition at a

1 time of a particular loss, you would have to take into
2 account those things that were happening at that time,
3 right?

4 A. Correct, her shoes -- specifically her shoes,
5 and specifically the thickness, and how much automotive
6 fluid may have been mixed in with that water.

7 Q. Okay.

8 Do you know if there were any?

9 A. I don't know if there was any. Like I say,
10 the photographs that were taken on the 23rd shows where
11 stains are. So that gets into your how much rain was
12 there.

13 Q. Right.

14 But has anybody in your investigation or in
15 the time that you've been in the case offered any
16 testimony that there was, in fact, any kind of pooled
17 automotive fluid in the area where the accident
18 happened?

19 A. Not that I'm aware of. No.

20 Q. Okay.

21 And obviously, staining is different from
22 pooling, right? Staining is, the material is actually
23 in the concrete, correct?

24 A. Or on the surface of it. But yes.

25 Q. All right.

1 Can you determine or have you been able to
2 tell whether there was any automotive fluid that would
3 have impacted this situation in July 2018?

4 A. No. I cannot. The photographs taken in
5 August of 2018 indicate there are -- there is staining.
6 But that's all I can say.

7 Q. Okay. All right.

8 What else have you got?

9 A. A couple of the pages dealing with one of the
10 discovery -- I guess it's Hooker defendant's documents.
11 I've got 01 -- or 0001 through 0003 and then the three
12 photographs -- I believe they're the same ones that I
13 was provided -- that are Hooker 0008, 9, and 10.

14 And this is the customer accident report.
15 What do they call this one? The Customer Incident
16 Reporting Form.

17 (Tendering documents.)

18 Q. Okay.

19 And in the customer accident form, it was
20 indicated that it was raining hard. Is that right?

21 A. Yes. Correct.

22 Q. And is that consistent with the information
23 that Ms. Foxworth provided to the officer, that it was
24 raining at the time of the loss -- time of the accident?

25 A. Yes.

1 Q. And consistent with Mr. Hooker's testimony
2 that the water was flowing down the parking lot slope at
3 the time of the accident.

4 A. Yes. I think her deposition testimony said it
5 had stopped, Ms. Hooker's daughter, Ms. --

6 Q. Foxworth.

7 A. -- Foxworth. Yes.

8 Q. Okay.

9 A. Then I've got -- this one is Defendant
10 JKS & K's First Supplemental Responses to Plaintiff's
11 First Request for Production. Basically, it talked
12 about the police report as well as -- I just had the --
13 the two invoices that I referenced as far as the
14 painting of the surface goes.

15 Q. Okay.

16 A. So I just printed that.

17 Then I have selected pages from four of the
18 depos. I don't think I printed out Mr. Hooker's depo.
19 But I've got depositions -- or pages from Mr. Jared
20 Marr, who is the owner of Proline Striping Services.

21 Q. Let me ask you a real quick question.

22 The things that you brought here today, the
23 excerpts of the depositions, were these excerpts
24 provided to you, or did you pull them out?

25 A. I printed select pages. I was provided the

1 entire document. I read them, and I print out select
2 pages.

3 Q. Okay.

4 So I'm going to mark -- this will be Exhibit
5 7.

6 (Defendants' Exhibit Number 7, Deposition
7 Transcript of Jared Marr, marked for identification.)
8 BY MR. THOMPSON:

9 Q. And again, for the record, Exhibit 7 is
10 excerpts from Jared Marr's deposition that you pulled
11 out after reading it or while you were reading it,
12 correct?

13 A. Correct.

14 Q. Okay.

15 A. The next one is the deposition of Pamela
16 Hampton. And the same thing. I printed out four or
17 five pages.

18 MR. THOMPSON: We'll mark that Exhibit 8.

19 (Defendants' Exhibit Number 8, Deposition
20 Transcript of Pamela Hampton, marked for
21 identification.)

22 BY MR. THOMPSON:

23 Q. And again, for the record, Exhibit 8 is
24 excerpts of the deposition of Pamela Hampton that you
25 pulled out. Is that right?

1 A. Correct.

2 Q. Okay.

3 A. Next is excerpts from the deposition of
4 Sherrie Washington.

5 MR. THOMPSON: Mark that Exhibit 9.

6 (Defendants' Exhibit Number 9, Deposition
7 Transcript of Sherrie Washington, marked for
8 identification.)

9 BY MR. THOMPSON:

10 Q. And again, for the record, Exhibit 9 are
11 excerpts of the deposition of Sherrie Washington that
12 you have pulled out. Is that right?

13 A. Correct.

14 And the last one I have printed here is
15 excerpts from the deposition of Linda Hooker. I'm
16 sorry --

17 Q. Yeah.

18 A. -- Michelle Foxworth.

19 Q. If it was, I would be, like, Wow.

20 A. Yeah. I was reading the --

21 Q. I was not there for that one.

22 A. Sorry.

23 (Defendants' Exhibit Number 10, Deposition
24 Transcript of Michelle Foxworth, marked for
25 identification.)

1 BY MR. THOMPSON:

2 Q. All right. So -- and again, for the record,
3 Exhibit 10 are excerpts of the deposition of Michelle
4 Foxworth, who is Linda Hooker's daughter. Is that
5 correct?

6 A. Yes, sir.

7 Q. And these are excerpts that you physically
8 pulled from the deposition.

9 A. Correct.

10 Q. Okay.

11 A. I did not do Mr. Hooker's. I probably just
12 ran out of time. I would normally go back, review them
13 again, and print some pages out. But since I don't --
14 since we're not doing it all electronically...

15 Q. Okay.

16 What else do you have?

17 A. Then I have -- let's separate these out to
18 make it a little easier. I've got -- I basically split
19 these up into three groups. I've got building codes and
20 standards in this one. And I would have -- I printed
21 out the 2012 International Building Code and the 2012
22 International Fire Code -- they're basically the same --
23 specifically the section 1003.4. I think it's the --
24 it's the same in both.

25 It's titled Floor Surface. Walking surfaces of

1 the means of egress shall have a slip-resistant surface
2 and be securely attached.

3 It just means as part of your means of egress,
4 it should be slip resistant. And I did the 2012 because
5 that's around the time that this building was modified.
6 It states the same requirements in 2006, 2003, and 2000.

7 Q. Okay. And we'll stop you there.

8 I can have these?

9 A. Yeah.

10 (Tendering documents.)

11 MR. MCLEOD: What section did you say?

12 THE WITNESS: 1003.4.

13 (Defendants' Exhibit Number 11, 2012
14 International Building Code, Page 240, marked for
15 identification.)

16 (Defendants' Exhibit Number 12, 2012
17 International Fire Code, Page 140, marked for
18 identification.)

19 BY MR. THOMPSON:

20 Q. All right. Going back, Dr. Durig, Exhibit 11
21 is the 2012 International Building Code, a section you
22 just described earlier. Is that correct?

23 A. Yes, sir.

24 Q. All right.

25 Have you done any research to determine the

1 building code in effect for the location where this
2 accident occurred at the time the accident occurred?

3 A. It wouldn't be directed at the time it
4 occurred. But the 2018 would have been published and
5 has the same requirement. But you would look at when it
6 was built as far as the building codes go.

7 And if it was built in 2013, you'd have to get
8 the specific dates to see if the 2012 IBC had been
9 adopted. If not, you go back to the 2006, because we
10 did not adopt the 2009 version, or the state did not.
11 But the state adopted it, and the state would dictate
12 that this would have been followed at that location.

13 Q. Okay.

14 So, the state adopts International Building
15 Codes. Is that right?

16 A. Yes, starting in -- they adopted it in '99,
17 and they became effective in, I think, 2002. And so the
18 state adopts them and says, You have to follow those.

19 Q. So it doesn't matter what Orangeburg County
20 adopts or doesn't adopt. They have to follow the
21 International Building Code adopted by the state.

22 A. Correct. But they have adopted what the state
23 has adopted now, so it included -- they adopted Chapter
24 1, which makes reference to one of the other documents
25 here.

1 But no. I do -- I mean, I'd look at on --
2 Municode, municode.com, lists most of the counties and
3 states. Or AM Legal was the other one that publishes
4 all these. And just from doing a lot of work in
5 Orangeburg, I know they have adopted what the state has.
6 They're required to. But yes. They have adopted it.

7 Q. Do you know when the original restaurant
8 building was built on that location?

9 A. No, I don't know when the original. But like
10 I said, when it went through the major modifications,
11 and they put in the handicapped parking spaces up front,
12 that's when they would have put in this concrete pad
13 with the access on it.

14 Q. Do you know the extent of the modifications or
15 the renovations that were conducted on that property?

16 A. Not the extent of them, other than the
17 building was enlarged and the parking lot was -- you
18 know, the front part of the parking lot by the road was
19 redone. But the building looks to be a bigger
20 footprint. Probably put in, I'm guessing, maybe an
21 indoor, you know, kids' little park, playground area.
22 That was a fad at one time, putting those in.

23 Q. Do you have any information or documentation
24 about the renovation of that restaurant?

25 A. No, sir.

1 Q. Or when it was accomplished?

2 A. No, just the fact of the dates between the two
3 aerial photographs I have, pre- and post- modifications.

4 Q. Or the extent or the amount of renovation or
5 modification that was performed?

6 A. Correct. I don't know what that was.

7 Q. Okay.

8 The extent of your information is simply some
9 Google Earth images from a satellite. Is that right?

10 A. Correct, that you can see that this concrete
11 pad and parking spaces were installed between those time
12 frames.

13 Q. All right.

14 But you don't know exactly when.

15 A. Not the specific date. No, sir.

16 Q. Okay.

17 A. Those requirements are the same all the way
18 back to the 2000 building code as far as those sections
19 right there go.

20 Q. So to be clear, 2012, the Exhibit 11, Section
21 1003 --

22 A. Point 4.

23 Q. -- point 4, That would be the same in the 2006
24 International Building Code.

25 A. 2006, 2003, and 2000.

1 Q. So it really doesn't matter.

2 A. It doesn't matter to me.

3 Q. How about with regard to Exhibit 12, the
4 International Fire Code? Same --

5 A. Same thing. The Fire -- the Chapter 10 of the
6 Fire Code is identical reprint of the Chapter 10 of the
7 Building Code. So same words, same -- every year.

8 Q. Okay.

9 So again, same concept. It would have been
10 the same in 2006 --

11 A. Correct.

12 Q. -- as it is in the 2012.

13 A. Correct.

14 Q. Okay.

15 So it really doesn't matter.

16 A. It doesn't matter.

17 Q. All right.

18 A. I was accused of stealing these last month, so
19 I'll put them back.

20 I printed out the 2015 International Property
21 Code. And this gets into the question you had, has this
22 been adopted in Orangeburg County?

23 Not directly. And I say not directly because
24 they have adopted Chapter 1 of the International
25 Building Codes. And Chapter 1 makes reference to follow

1 the International Property Maintenance Code on the first
2 page of Chapter 1. But the State also says that it's up
3 to the entity to adopt the property maintenance code.
4 They recognize it.

5 So I think that's kind of a gray area for me,
6 is, is it an ordinance, or is it an industry standard?
7 And either one. It's probably more of an industry
8 standard, but they have adopted Chapter 1, and Chapter 1
9 says follow it.

10 Q. Okay.

11 But it's odd to me. If it's an industry
12 standard, and then it says you don't have to follow it,
13 I don't understand why that would not be -- how could
14 you say it's an industry standard?

15 A. Because it's not adopted as an ordinance.
16 It's not a law that says you have to do it. But this is
17 an industry -- this is a building code published by the
18 same people that do the building codes that they have to
19 follow, and they adopt Chapter 1 that says you should
20 follow this.

21 Q. Right.

22 And make sure we get the language right. You
23 said, It should follow.

24 A. Correct.

25 Q. Is it a "shall," in other words, You will, or

1 is it, it's optional and -- or it's recommended or some
2 kind of language like that?

3 A. I don't know. I'd have to go back and read it
4 at this time. But I know the state has a discussion on
5 the LLR website that it's up to the entity involved to
6 specifically adopt this code. And some of them
7 specifically adopt it. Richland County specifically
8 adopts International Property Codes. Mount Pleasant
9 does, but Charleston County does not.

10 MR. McLEOD: And the entity -- sorry -- entity
11 you're referring to, a municipality.

12 THE WITNESS: Municipality, whether it be
13 Orangeburg or Santee. And Santee has their own
14 requirements, which is, follow Orangeburg County
15 requirements.

16 I'd have to go back and look and see if it
17 says "shall" or if it says these are what additional
18 codes should be followed. I don't know the specific
19 word.

20 BY MR. THOMPSON:

21 Q. And I think Mr. McLeod brings up a good
22 question there, or an issue. And let's make sure we're
23 clear. This restaurant's located in what municipality?

24 A. Orangeburg County.

25 Q. The municipality? Town? City?

1 A. It would be Santee.

2 Q. All right. Is it --

3 A. The Town of Santee, I guess it is.

4 Q. Is it in the town, or is it in unincorporated
5 Orangeburg?

6 A. It looked like to me it was in the Town of
7 Santee.

8 Q. Okay.

9 So then, the restaurant, the property would be
10 subject to Santee's municipal codes and ordinances,
11 correct?

12 A. Correct, and as Orangeburg County, also in
13 Orangeburg County.

14 Q. I understand. I'm stepping back, right?

15 A. Okay.

16 Q. So we're going to start at the local, right?

17 A. Yep.

18 Q. We've got to comply with Santee. If it's, in
19 fact, a --

20 A. Correct.

21 Q. -- a property that's located within the town,
22 subject to the town, it would then be required to follow
23 the town's ordinances and codes, right?

24 A. Correct.

25 Q. And then, of course, being within the

1 County of Orangeburg, it would also be required to be in
2 compliance with Orangeburg code, correct?

3 A. Yes.

4 Q. Okay.

5 A. And Santee actually references Orangeburg
6 County codes. The Town of Santee says, Follow the
7 Orangeburg County codes.

8 Q. All right. All right. So --

9 A. It just -- there's a generic -- not generic.
10 There's a single statement in here under 302.3,
11 Sidewalks and Driveways. And it states, Sidewalks,
12 walkways, stairs, driveways, parking spaces, and similar
13 areas shall be kept in a proper state of repair, comma,
14 and maintained free from hazardous conditions, period.

15 So if I've got a slippery walking surface,
16 then that's not being maintained hazard free.

17 Q. Okay.

18 Mark that Exhibit 13.

19 (Defendants' Exhibit Number 13, 2015
20 International Property Maintenance Code, Page 11, marked
21 for identification.)

22 BY MR. THOMPSON:

23 Q. But as we sit here today, the International
24 Property Maintenance Code, the Exhibit 13 you've brought
25 up, you don't know whether the town has specifically

1 adopted that section.

2 A. I do not believe the town has specifically
3 adopted that. No.

4 Q. Okay.

5 A. The Orangeburg County through Chapter 1 may
6 bring it into play.

7 Q. But we don't have that section, do we, in --

8 A. I didn't print it out, but I can email it to
9 everybody this afternoon.

10 Q. Okay. Very good.

11 A. Next document is ANSI A117.1. This is the
12 2009 version. It's also referenced in Chapter 11 of the
13 Building Codes to follow ANSI, as well as this was
14 adopted in the State of South Carolina in 1976 that all
15 buildings should follow the ANSI A117 standard. So it's
16 incorporated two different methods.

17 Q. Okay.

18 And just to stop you there, again, is it a
19 shall or is it a recommend? What is the language in the
20 building code with regard to ANSI?

21 A. Usually it's shall. I'd have to pull it up.
22 If you're designing accessible parking spaces such as
23 this, because this is an access aisle to a crosswalk to
24 those parking spaces, then you design it in accordance
25 with ANSI A-117.1. So I'd say it's a shall. But I'd

1 have to print the chapter for you. But the State of
2 South Carolina has adopted it and says you have to, so
3 it really doesn't matter what the building code says.

4 Q. So the State of South Carolina, then, to be
5 clear, says it doesn't matter where your building is
6 located in the state. You have to be in compliance with
7 all ANSI standards.

8 A. No, not all ANSI standards, ANSI A117.1.

9 Q. I'm sorry?

10 A. ANSI A117.1, Physical Handicap Access to
11 Buildings.

12 Q. And that's what you have a copy of there.

13 A. Correct. It's Chapter 3, which states similar
14 to what we just hit in the IBC and the IFC. Floor
15 surfaces shall be stable, firm, and slip resistant.

16 MR. THOMPSON: Mark that Exhibit 14.

17 (Defendants' Exhibit Number 14, ICC
18 A117.1-2009, Page 7, marked for identification.).

19 THE WITNESS: Next document is from Chapter 3
20 of the ADA. This is actually printed by the United
21 States Access Board, which is one of the government
22 entities that reprints some of these standards. Rather
23 than long detail, they give you more pictorial and
24 easier to read. So I normally provide that.

25 This is Chapter 3, Floor and Ground Surfaces.

1 And it states, Accessible floor and ground surfaces must
2 be stable, firm, and slip resistant. It's identical to
3 ANSI A117 because the ADA is based on the ANSI A117, so
4 it's the same verbiage on any of the same ones in there.
5 But the ADA is a federal requirement that these
6 buildings meet.

7 And without asking whoever redesigned this,
8 based on my experience in numerous other cases similar
9 to this, they moved the handicap parking spaces from the
10 back to the front to comply with the ADA. And the ADA
11 was republished in 2010 with a little stronger words
12 that you need to make your buildings accessible.

13 (Defendants' Exhibit Number 15, Guide to the
14 ADA Standards, Chapter 3, marked for identification.)
15 BY MR. THOMPSON:

16 Q. All right. So looking at Exhibit 15, in there
17 is a section that says Slip Resistance. I'm going to
18 read a section to you.

19 It says, Accessible surfaces must be slip
20 resistant, correct?

21 A. Yes.

22 Q. However, the standards do not specify a
23 minimum level of slip resistance.

24 A. Correct.

25 Q. Do you agree with that?

1 A. Yes. Well, it depends on which standard
2 you're talking about. But the ADA does not give you a
3 specific value. They did in 2004. Then they took it
4 out when they republished it in 2010.

5 Q. And then it also says, The reason there is not
6 a minimum level of slip resistance or a standard for
7 that is because a consensus method for rating slip
8 resistance remains elusive.

9 Do you agree with that?

10 A. In a fashion, yes. It depends on what machine
11 you use and how you measure it and what your surface is.

12 Q. Again, quote, While different measurement
13 devices and protocols have been developed over the years
14 for use in the laboratory or the field, a
15 widely-accepted method has not emerged, period, end
16 quote.

17 Do you agree with that?

18 A. There is one specific method. Yes. I agree
19 with that. There is multiple machines that use similar
20 numbers depending on if you're testing a static COF or a
21 dynamic COF.

22 And if it's a ramp, then you have different
23 numbers because of geometry issues, which is covered in
24 one of the articles I brought. But when you're on a
25 ramp, you're required to have a higher coefficient of

1 friction to be consistent with what it is on level
2 ground.

3 Q. All right.

4 So any of the exhibits thus far, any of these
5 code sections, 11, 12, 13, 14, and 15, the references
6 that you've created, do any of them specify a minimum
7 level of slip resistance?

8 A. They do not.

9 Q. Okay. All right.

10 A. So you have to go back and look at industry
11 standards. And that's depending on what machine you
12 want to test with.

13 Q. Right. Well, we'll get there. Let's keep
14 going.

15 A. This is an industry standard ASTM F1637. This
16 is the 2013 version. It was published in '07, '03, and
17 1995 was the first time it was published. Let's see.
18 Section 5.1.3, Walkway surfaces shall be slip resistant
19 under expected environmental conditions and use.
20 Painted walkways shall contain an abrasive additive,
21 crosscut grooving, texturing, or other appropriate means
22 to render the surface slip resistant where wet
23 conditions may be reasonably foreseeable.

24 Q. Okay.

25 A. And then one other section would be 5.7.1,

1 Exterior walkways shall be maintained so as to provide
2 safe walking conditions. 5.7.1.2, Exterior walkways
3 shall be slip resistant.

4 (Defendants' Exhibit Number 16, ASTM F1637-13
5 Standard Practice for Safe Walking Surfaces, marked for
6 identification.)

7 Q. Now, again, I want to go back to Exhibit 16
8 you just were talking about. This is an ASTM standard.
9 Is that correct?

10 A. Yes.

11 Q. And has it been adopted by either Santee, the
12 municipality, or Orangeburg, the county?

13 A. Not as an ordinance. No, sir.

14 Q. How about the State of South Carolina?

15 A. It's not a law in South Carolina to follow
16 that. No. It's an industry standard.

17 Q. Okay.

18 But it's not an ordinance. It's not been
19 adopted as a law in any of the municipalities, counties,
20 or in the State of South Carolina. Is that correct?

21 A. Correct.

22 That's it with any kind of building codes or
23 industry standards that I have. And then I have some
24 documents from Sherwin-Williams on some paint, some of
25 their additives. And then I have a stack of just

1 industry articles that talk about inspecting properties,
2 trying to make sure they're not too slippery.

3 Q. But to make sure I understand and make sure --
4 kind of round this up, all of the codes and standards
5 that have been marked today and that you've described,
6 none of them provide a specified minimum level of slip
7 resistance, do they?

8 A. Not specifically. The 2012 IBC made reference
9 to a specific test method, but I think that was taken
10 out of 2015 because they didn't want to specify, this is
11 the only way to do it, because there's multiple ways to
12 test.

13 Q. Right.

14 In other words, for example, there's no
15 standard that says -- and I know this is probably not
16 correct language -- but if the walkway has to be a
17 minimum slip resistance of 0.1, then you would be able
18 to test any surface to determine whether it meets that
19 standard.

20 A. Correct. There are standards out there that
21 have those values --

22 Q. Right. But --

23 A. -- but not in the building codes.

24 Q. Right. But not in the building codes, not in
25 the industry standard. There's nothing that we've

1 marked here today that would provide us a benchmark
2 against which we could compare the actual condition that
3 exists on that parking lot.

4 A. These do not. There is an ANSI standard that
5 recommends 0.5 as a guideline, which is what the
6 industry -- I say industry. It's what has been used
7 over the last 50 years, a 0.5 coefficient of friction,
8 static coefficient of friction. But there's no
9 specified method of how you test it. There are --

10 Q. Then that makes it hard to --

11 A. Yeah.

12 Q. -- say whether you've met the standard or not.

13 A. Well, it depends on which machine you use. If
14 you use the English XL, they typically use a 0.5 as the
15 value that you compare it to.

16 If you use a BOT-3000E, you're testing to a
17 different standard. You're testing -- or a different
18 standard which is published, and you use 0.42 as the
19 minimum for tile and other interior hard surfaces.

20 When you get outside, they say, We don't
21 really recommend this machine to test that because you
22 have other potential foreign substances, such as oil,
23 gas, transmission fluid, that would make things -- maybe
24 they're good with their test method, but if you add in
25 gasoline, gasoline makes brushed concrete unsafe. You

1 get down to, like, 0.33 if you test gasoline on top of
2 brushed concrete. But brushed concrete wet and dry is
3 great.

4 So there are foreign substances that make
5 things that are normally good -- can be bad. So there's
6 not a specific, Here's an industry standard that applies
7 to every situation in the country. No.

8 Q. Now I'll take a couple steps back.

9 During the times that you were at the
10 restaurant, looking at the parking lot, did you observe
11 anything out of the ordinary wrong with the concrete on
12 which the painted lines existed?

13 A. No, not in the concrete. No. I think I
14 mentioned in my preliminary letter that there is
15 multiple layers that basically mask the texturing of the
16 concrete.

17 Q. I'm not asking about the lines right now. I'm
18 asking about the concrete.

19 A. Well, that's all part of the concrete. But
20 I'm sorry.

21 Q. Right. The unstriped concrete --

22 A. Yeah.

23 Q. -- as it exists in the times that you saw --
24 the times that you were there at the restaurant, was
25 there anything wrong with the concrete?

1 A. I did not see anything wrong with the
2 concrete, although I did mention that we have some
3 staining. But that's the only thing that I saw in the
4 photographs.

5 Q. All right. What's next?

6 A. Probably -- based on Mr. Marr's deposition
7 that he uses Sherwin-Williams paint -- he did not
8 specify what type of paint. There is multiple types of
9 paint that Sherwin-Williams has for parking lots. I've
10 printed off some of my research material. I've got one
11 highway product that's Hotline waterborne traffic paint,
12 white or lead free yellow.

13 It talks about their applications, where to
14 put it down. Under precautions, For industrial use
15 only. See material safety data sheet. Read floor
16 warning labels on pack or follow warning labels on
17 packages.

18 And under that, Painted surfaces can become
19 slippery when wet. Traffic paints are not intended for
20 use as floor paints. Do not use on pedestrian walkways
21 or large surfaces such as dance floors and stairs which
22 may become slippery when wet.

23 Q. Now, Dr. Durig, I want to make sure that I
24 know one thing. Do you know what paint was used to
25 stripe the parking lot that is the subject of this case?

1 A. I don't know which specific one. Mr. Marr
2 said Sherwin-Williams.

3 Q. Okay.

4 So when you just read from the highway
5 products -- looks like Hotline waterborne traffic paint,
6 do you even know that that's the paint that was used in
7 this parking lot?

8 A. Not specifically. That's why I printed out
9 three other ones that are traffic paint that all have
10 basically the same warning on them.

11 Q. Okay.

12 You haven't been provided any information
13 about the specific paint that was used in the parking
14 lot.

15 A. No, just other than he purchased it from
16 Sherwin-Williams. Other cases I've had similar to this,
17 they would be able to provide us an invoice from
18 Sherwin-Williams showing what they purchased at that
19 time. I've not seen it.

20 Q. Do you even know if he used traffic paint?

21 A. He indicated he did in his deposition.

22 Q. Okay.

23 But you haven't been able to confirm that one
24 way or the other.

25 A. No.

1 Q. Okay.

2 A. Latex paints are even worse.

3 Q. Do you know if it was latex paint that was
4 used?

5 A. I don't. I'm saying, but I -- we have another
6 case in Atlanta where they just used the same wall paint
7 on the stairs, no abrasive material. Not a good thing.

8 Q. Do you know if it was an acrylic paint?

9 A. I don't know which one it was. He said it was
10 a fast-drying one. They do make a Promar. It's a
11 fast-drying zone marking paint. I don't know if that's
12 when he said it would be dry in two or three minutes. I
13 don't know.

14 Q. Okay.

15 A. He was not specific with which one. He just
16 basically said it, ready to put down. You don't have to
17 do anything with it.

18 Q. All right. I know what he said. All right.

19 But you don't know which paint it was that he
20 used.

21 A. I have not. So I've got three more printouts
22 that basically say the same thing.

23 Q. Do you have any more paint-related
24 documentation?

25 A. That's the paint. This is the additive that

1 Sherwin-Williams sells. It's called Sharkgrip, which is
2 an additive to the paint.

3 Q. Right. But let's get through the paints
4 first.

5 So the information that I'm holding in my
6 hand, this is the information that you researched
7 regarding Sherwin-Williams paint. Is that right?

8 A. It's -- yes and no. Yes, it's material that
9 I've researched. It's material I've used in other
10 cases. But I don't know which one he used, so I printed
11 all of them out.

12 Q. Okay.

13 I'm going to mark them as one exhibit, the
14 collection. But in my hand, Exhibit 17, these are all
15 of the paints that you researched or that you have
16 referenced with regard to this case. Is that right?

17 A. Yes. Yes. I'm sorry.

18 (Defendants' Exhibit Number 17, Product
19 Information for Traffic Marking Paints, marked for
20 identification.)

21 BY MR. THOMPSON:

22 Q. All right.

23 Now, I'm sorry for interrupting you, but you
24 were talking about some Sharkgrip.

25 A. Sharkgrip. And I got two printouts from it.

1 One of them is less specific. One of them is a little
2 bit more specific. But it's an additive that
3 Sherwin-Williams sells to add to increase the
4 coefficient of friction.

5 Q. Do you know or is it specified in any of that
6 documentation that you have or the material whether that
7 product can be used in any of the paints that are
8 identified in Exhibit 17 that you researched?

9 A. It basically goes in -- I'd have to see if it
10 uses all those paints. It says it goes into most
11 oil-based and latex paints and other coatings with
12 minimal effort. So my understanding is it goes in all
13 of them.

14 Q. Okay.

15 Even the ones that you researched with regard
16 to traffic paints.

17 A. Correct. This is an additive to get so that
18 if you are going to use it in those places, you would
19 put abrasive material. The other types of -- this is
20 just Sherwin-Williams. Other types of abrasive material
21 our crushed pecan shells and then silicone or sand.
22 Both of those are used as additives.

23 (Defendants' Exhibit Number 18, Product
24 Information for H&C Sharkgrip Slip-Resistant Additive,
25 marked for identification.)

1 BY MR. THOMPSON:

2 Q. All right.

3 And again, I've marked as Exhibit 18 -- this
4 is just your research of Sherwin-Williams and an
5 additive that you believe could be added to the product
6 or the paints that you've researched, which are Exhibit
7 17.

8 A. Correct. And some people do. I mean, I do
9 see it in some places. And it's real nice, almost like
10 sandpaper texture on it, which was not present --

11 Q. Right.

12 But do you know that it's Sharkgrip that
13 you've seen in the past?

14 A. I know one place was, yes, because they
15 produced the service -- the purchase orders that they
16 had purchased.

17 Q. Where was that?

18 A. I don't know. I do 10 or 20 of these a year.
19 I don't know which one is which.

20 Q. Okay.

21 But if it's only one and you know it's
22 Sharkgrip, you can't remember which location that was?

23 A. No.

24 Q. Okay.

25 A. And then the rest of these are just what I

1 would say are industry articles. Some of them are for
2 insurance companies. Some of them are -- let's see --
3 three -- these are three articles from insurance
4 companies just talking about slip and falls on walking
5 surfaces, basically trying to make sure you don't have a
6 slippery surface.

7 This one's specifically -- let's see. It talks
8 about floor and deck paints. Walkway surfaces which
9 have been painted with floor and deck paints can present
10 serious slip and fall hazards. Most paints produce
11 surfaces which are below a 0.5 coefficient of friction
12 and are therefore dangerous.

13 So, I mean, it's just articles that talk
14 about, more or less, when you paint stuff, you need to
15 be aware of it.

16 Q. Right.

17 But it was deck and floor paint, correct?

18 A. Yeah. It's still a painted surface. Well,
19 it's still a painted surface. It's a coating that is
20 between your shoe and a coating. Whether it's a highway
21 paint or oil-based paint or a latex paint, there's still
22 a -- it's a coating between your shoe and the underlying
23 material.

24 Q. Is it possible to paint a concrete or asphalt
25 surface, and that paint then retains the underlying -- I

1 don't want to say grit but the underlying --

2 A. Texture.

3 Q. -- texture?

4 A. Yeah. It is. It can. And the more you
5 paint, the more layers of paint, the thicker the paint,
6 the less that texture comes through.

7 Q. Okay.

8 Do you know how many layers of paint were in
9 the parking lot when you went there?

10 A. No. I could see multiple layers. You could
11 see --

12 Q. How many?

13 A. I said, I don't know. I could see multiple
14 layers.

15 Q. Well, if he said multiple, I mean --

16 A. More than two, or two or more.

17 Q. All right.

18 Can I see this?

19 A. Yeah. And those are the industry ones.
20 (Tendering documents.).

21 Q. Are there different standards for walk
22 surfaces or flooring surfaces, whether they're indoors
23 or outdoors?

24 A. There are some standards. The tile
25 manufacturers have their own industry standard for 0.42

1 to be considered slip resistant. There are other
2 standards that give you a range of up to 0.4. 0.3 to
3 0.42 is -- I forget their use. I don't use that
4 standard much anymore. It's basically adequate. You
5 may want to alter your flooring services because people
6 could fall. And then below, like, 0.3, and it's like,
7 You need to go fix it today.

8 Q. Right.

9 A. So it depends on which method you test it with
10 to tell you what the number is.

11 Q. Right.

12 And then, but is there any difference between
13 being indoors or outdoors?

14 A. No. If you're walking on a level ground, it
15 is better if you were indoors or outdoors. You still
16 need the same coefficient of friction for your shoe to
17 be able to safely walk across that surface.

18 Q. Right.

19 But is it fair to say that you're more likely
20 to encounter more slippery stuff outside naturally than
21 indoors?

22 A. Again, it depends on the surface. If it's --
23 it's more likely you're going to experience wet
24 conditions outdoors. Yes. And so if you've got a
25 painted surface that's wet, or if you have a marble

1 floor inside that gets wet, those two can be similar
2 slipperiness. Just outdoors, you've got more chance of
3 having a wet condition than indoors.

4 Q. Did you, in review of the depositions of
5 Ms. Foxworth and Mr. Hooker, read where it was raining
6 when they got to the restaurant?

7 A. Yes.

8 Q. Did you read where they went in the restaurant
9 through the same crosswalk?

10 A. Yes.

11 Q. Did you read anything -- did they say anything
12 about losing their footing going into the restaurant?

13 A. No. They didn't have any concern. I think
14 Ms. Foxworth in your question said she didn't see
15 anything that alerted her to a problem.

16 Q. Okay.

17 Is there any significance or difference in the
18 footwear that's being used?

19 A. Yeah. She had -- I mean, Ms. Hooker had
20 flip-flops on. I can't remember what Ms. Foxworth said
21 she had on. Maybe it was tennis shoes. They can
22 change, depending on the type of flip-flop. Some
23 flip-flops are slippery when you step on a wet floor.

24 Q. Have you done anything to review, inspect, or
25 research the flip-flops Ms. Hooker was wearing at the

1 time of the loss?

2 A. No, other than I printed out the photos from
3 the body camera to show that they were flip-flops.

4 Q. Well, I understand.

5 But do you know what the bottoms, what the
6 soles looked like?

7 A. No, sir.

8 Q. What the tread looked like?

9 A. No, sir.

10 Q. Determined whether they might be potentially
11 more slippery than otherwise?

12 A. Otherwise, what? I don't --

13 Q. I mean, I assume if you've got, like, a
14 significant tread on the bottom of a flip-flop, that's
15 going to give you better grip, better traction than a
16 smooth-bottomed flip-flop.

17 A. Correct, that's got heavy wear on it. Yes, it
18 will. It will change that slipperiness between the
19 flip-flop and the surface. Yes.

20 Q. Okay.

21 And have you done any research regarding
22 Ms. Hooker's footwear, the flip-flops?

23 A. No. I've read the deposition, and all she
24 could -- all the daughter could say was it was
25 flip-flops.

1 Q. Right.

2 A. And she did not purchase them, so she didn't
3 know what brand they were.

4 Q. Did the daughter have an understanding or know
5 which ones she had been wearing?

6 A. I don't think she did, because I think you
7 asked her who made it, and she didn't know.

8 Q. Okay. And I understand that.

9 But, for example, if -- whether the daughter
10 could go into her mother's closet and pick out the
11 flip-flops she was wearing at the time of loss.

12 A. I don't know. I didn't ask her that. I
13 haven't talked to her. No.

14 Q. Okay.

15 Have you ever talked to Ms. Foxworth?

16 A. No, sir.

17 Q. Have you ever talked with Mr. Hooker?

18 A. No, sir.

19 Q. When you were first engaged, Ms. Linda Hooker
20 was still with us.

21 A. Yes.

22 Q. Did you ever speak with Ms. Linda Hooker?

23 A. No, sir. It was Mr. Fogle. And he provided
24 the information that I have in those two exhibits. And
25 that was the extent of my involvement at the time.

1 Q. All right.

2 What else do you have in there?

3 A. Then I've got three other little articles.

4 One of them is, Watch Out! Or do we? A Review of
5 Literature on Human Locomotion, Visual Gaze, and
6 Expectation of Trip Hazards.

7 It's basically saying when you walk, you look
8 six to 10 feet out in front of you. You don't look at
9 your feet. So if she was walking on the unpainted
10 concrete and then stepped on a painted line, she
11 wouldn't be looking at her feet. She'd be looking out
12 ahead of her. That's all it discusses.

13 Fifty-seven is Warnings and Markings for
14 Stairways and Pedestrian Terrain, article that discusses
15 people expect the floors to be the same unless there's
16 some warning that tells them otherwise, such as a trip
17 hazard. Or if you're walking on a very high coefficient
18 of friction floor, then you step on one that's very low,
19 that can cause you to lose your balance, just the
20 difference between the surfaces.

21 Q. Are those human factors concepts?

22 A. They're engineering concepts. It's part of
23 human factors, which is part of that. But yes.

24 Q. But would you qualify yourself as a human
25 factors expert?

1 A. No, I would not qualify myself as a human
2 factors expert. But how these are used in a safety
3 concept of somebody falling, yes. I'm aware of how
4 these play into that.

5 Q. You agree with me that there are experts in
6 human factors, correct?

7 A. Yes.

8 Q. But you're not one of those, are you?

9 A. Correct. And they wrote most of these
10 articles that tell us the information. I mean, I didn't
11 find gravity out, but I know how it works. So I use
12 this information as data. I don't go out and say, This
13 is what everybody sees. That's hard to do. But this is
14 how people walk, from personal experience as well as
15 reviewing research material on it.

16 Q. But you're not offering any testimony today or
17 any opinions as to what Ms. Linda Hooker may have been
18 looking at, what she was doing at the time she was
19 walking out, or anything, are you?

20 A. Correct. No, sir. I'm not.

21 Q. All right.

22 A. Just --

23 Q. You have no clue.

24 A. I have no clue, nor does anybody. So -- but
25 based on normal walking methods, you don't look at your

1 feet.

2 Q. Okay.

3 Do you know if she was walking or jogging or
4 trotting or running? Do you have any recollection or
5 knowledge of that information?

6 A. I don't know. I do know Ms. Foxworth
7 indicated they were not in a hurry.

8 Q. Okay.

9 A. Just their normal -- so that's the only
10 information I have on it.

11 Q. Right.

12 And did you also glean the information that
13 Ms. Hooker was behind both Mr. Hooker and Ms. Foxworth
14 at the time she fell?

15 A. Correct. So she obviously wasn't walking any
16 faster than they were, or she'd be in front of them.

17 Q. Okay.

18 But do you know where Mr. Hooker and
19 Ms. Foxworth were when she fell, Ms. Linda Hooker fell?

20 A. Mr. Hooker was closer to his vehicle, which
21 was, I think, in the third parking space to the right of
22 the access aisle.

23 And Ms. Foxworth indicated she was in front of
24 her, and when she turned -- after she heard her, she
25 turned around and tried to help her. So she had to

1 be -- she couldn't be 20 feet away, because you wouldn't
2 be able to reach out your hand to try to catch her. So
3 she was in front of her. I don't know how many feet.

4 Q. Was there testimony to the effect that she
5 tried to catch her?

6 A. Yeah. I think it's in the video too, the
7 audio portion of the video. But I think it's in her
8 deposition as well, that she tried to turn around and
9 help her.

10 Q. So you believe she was that close to
11 Ms. Hooker.

12 A. I don't know how close she was. I'm just
13 saying that if I was 20 feet away, I wouldn't be trying
14 to help somebody.

15 Q. Okay.

16 A. The implication was, she was within 10 feet.

17 Q. Right.

18 Fair to say, though, that nobody saw whether
19 Ms. Hooker, Linda Hooker, was walking, running, jogging
20 prior to her fall.

21 A. No one saw her. But again, if she's running,
22 she's not running very fast because she's got two other
23 people she's with that are in front of her. So she
24 couldn't be going faster than they were. And if they
25 were walking, then she couldn't be running.

1 Q. Do you know what she was doing?

2 A. No, I don't.

3 Q. Okay.

4 Everything that you just said is just an
5 assumption.

6 A. Assumption that she wasn't walking faster or
7 she wasn't moving faster than the people that she was
8 with.

9 Q. Do you know if she started at the same point
10 in time as the rest of them, in other words, they were
11 equally spaced out so that then they kept the same pace?

12 A. I would say that they probably did not all
13 three walk through the door at the same time. So I'm
14 sure that they walked through individually. What that
15 spacing was, I don't know.

16 Q. But you don't even know if they did that.

17 A. It's kind of hard for three people to walk
18 through a door at one time, a 3-foot-wide door. So I
19 think that's pretty much, from an engineering
20 standpoint, not possible.

21 Q. Who went through first?

22 A. Probably Mr. Hooker, because he went out to
23 get the car because it was raining.

24 Q. How do you know that he went through first?

25 A. Because Ms. Foxworth indicated he was going to

1 the car to get it ready for them.

2 Q. What if Ms. Linda Hooker went out first, and
3 the other two followed, and they stood on the sidewalk,
4 and then Mr. Hooker went across first?

5 A. That's possible.

6 Q. Okay.

7 In other words, you don't know who went out
8 the door first.

9 A. No, I don't.

10 Q. Okay. All right.

11 Are those materials?

12 A. Yeah. Then this one just talks about the ramp
13 and the theoretical increase in value needed for slip
14 resistance on a ramp just based on the angles.

15 Q. These three materials, how would you describe
16 them?

17 A. I would say industry guidelines. They're by
18 insurance companies that talk about slip resistance
19 and hazard mitigation on your property, or risk
20 mitigation.

21 Q. Okay.

22 And these are -- it looks like they all come
23 from an insurance company or insurance companies. Is
24 that right?

25 A. Three different -- yeah, three different

1 insurance companies.

2 Q. So we'll just call those insurance company
3 materials.

4 A. Insurance guidelines. Yes.

5 Q. All right. That's Exhibit 19.

6 (Defendants' Exhibit Number 19, Insurance
7 Guidelines, marked for identification.)

8 BY MR. THOMPSON:

9 Q. And then Exhibit 20 is --

10 A. I'd say research material.

11 Q. Research material.

12 A. Yep.

13 (Defendants' Exhibit Number 20, Research
14 Material, marked for identification.)

15 BY MR. THOMPSON:

16 Q. All right.

17 Do we have anything else?

18 A. I printed out a few pages of the McDonald's
19 maintenance documents, just discussing doing inspections
20 and looking in parking lots.

21 Q. All right.

22 Anything else?

23 A. I don't think so.

24 Q. All right.

25 You want to take a break?

1 A. Sure.

2 (A recess transpired.)

3 BY MR. THOMPSON:

4 Q. Dr. Durig, we've been through the file
5 materials that you brought with you here today. Is that
6 right?

7 A. Yes, sir.

8 Q. Is there anything that you didn't bring that
9 is part of your file related to this case in any way?

10 A. I think Mr. Hooker's depo I have. I don't
11 think I've printed out any pages of it. But I think
12 that's it.

13 Q. All right. And I didn't check as I went
14 through.

15 The deposition excerpts that you pulled and
16 that have been marked as exhibits, did you write on any
17 of those excerpts?

18 A. No. They would just have something to do with
19 the specific incident when there was a reference to
20 weather conditions or what was in a report or what the
21 conditions were. That's pretty much the pages I would
22 have printed out.

23 Q. All right.

24 There's no annotations or highlights or
25 anything on those.

1 A. No, sir.

2 Q. Would that exist anywhere --

3 A. No.

4 Q. -- that you have excerpts or --

5 A. In my brain.

6 Q. Okay.

7 Or if you had the originals and you wrote on
8 the originals? You didn't --

9 A. No, sir.

10 Q. -- annotate them in any way.

11 A. No, sir.

12 Q. Okay. Let me go through what I've got here.

13 Did you have any contacts with any of the
14 attorneys who retained you prior to your deposition
15 today, in other words, not with regard to what we've
16 already talked about but in any kind of prep for today?

17 A. No. I'm trying to think. I think I was
18 contacted last week when we had to change the dates.
19 And that was pretty much it.

20 Q. Nothing substantive.

21 A. No, nothing substantive that I know of. I
22 think -- when this got scheduled, I think I went back to
23 my file, and I didn't have any more discovery material,
24 and they sent that to me and a Dropbox link. I did not
25 print that email. I can get that date, but I was

1 thinking it was December of this year -- or 2021.

2 Q. Your opinions, whatever they might be -- and
3 we'll get to that in a minute -- are in what field?

4 A. Safety, mechanical engineering and safety.
5 Coefficient of friction's kind of a mechanical
6 engineering issue. And in safety.

7 Q. Mechanical engineering and safety?

8 A. Yeah, mechanical engineering and safety is
9 what I would term it as well.

10 Q. Well, I understand safety's a very broad
11 category. I mean, are you just an expert in safety,
12 period?

13 A. Dealing with premises or machinery and fires.
14 Yes.

15 Q. Okay. Well, those are three specific areas.
16 So I'm trying to make sure I understand.

17 When you say you're an expert in safety, is it
18 limited in some fashion?

19 A. Yeah. I mean, I would say as it relates to
20 premises liability dealing with walkways, changes in
21 elevation, fall cases, that type stuff, how they occur,
22 what causes them, the building codes relating to those,
23 fires, the means of egress -- ingress, egress -- out of
24 a building. And then machinery, if you've got some type
25 of machine case dealing with pinch points or access to

1 equipment that can cut your fingers off.

2 Q. All right.

3 We talked earlier that there is a field of
4 expertise called human factors. Is that right?

5 A. Correct.

6 Q. Are you offering any human factors expert
7 opinions in this case?

8 A. No, sir.

9 Q. Do you consider yourself an expert in paint?

10 A. With reference to whether it's got abrasive in
11 it, yes. I've done a number of painting cases dealing
12 with application of paint where it's put on too thick
13 and it fails. I've done a number of failure cases with
14 paint. So from that aspect, looking at a failure of it,
15 yes. But as far as every paint in the world, no.

16 Q. All right.

17 Well, and to be clear, it's not paint. It's
18 the application of the paint. Is that fair?

19 A. Correct. Correct.

20 Q. In other words, you wouldn't be able to tell
21 me what one paint is compared to another paint or do
22 chemical composition or anything like that other than
23 looking at MSDS, perhaps.

24 A. Correct, looking at that. Or we've done some
25 testing in the past looking at chemical analysis,

1 looking for titanium and stuff. Whenever you're dealing
2 with the old days of uninsured motorist claim, when
3 you've got cars that's supposedly hit, you get paint and
4 look at paint samples to see if they're consistent with
5 the types of paints that might be automotive-type
6 paints. But not, you know, the how to make a paint or
7 knowing what all the chemical makeups are. No.

8 Q. All right.

9 Are you offering any opinions in this case as
10 to the specific paint that was used?

11 A. No. I don't know the specific paint that was
12 used.

13 Q. All right.

14 What I understand you are offering as an
15 opinion is that whatever paint was used should have
16 included some kind of abrasive material. Is that fair?

17 A. Yes.

18 Q. All right.

19 And then, obviously, the person or the entity
20 responsible would be whoever put the paint on the
21 parking lot surface, right?

22 MR. YARBOROUGH: Object to the form.

23 MR. McLEOD: Object to form.

24 BY MR. THOMPSON:

25 Q. Is that fair?

1 A. Yes.

2 Q. Okay.

3 Does it take an expert to offer an opinion as
4 to whether a paint has abrasive material in it?

5 A. I would say yes because, obviously, the person
6 who installed this doesn't think you have to do anything
7 with it. And he's doing 3000 paint jobs a year. So
8 someone that does this on a daily basis, I'm not sure
9 he's read this to know that we -- as you do multiple
10 layers, you're creating more slippery conditions, and
11 abrasive material is one that would help alleviate that
12 issue. So I would say yes.

13 Q. Is there any one specific additive that would
14 be required in this circumstance?

15 A. No. There's multiple choices. I gave three
16 earlier.

17 Q. Okay.

18 I would imagine those aren't the only three.

19 A. Correct.

20 Q. Do you have any understanding or knowledge as
21 to the application of those abrasive materials in a
22 paint that's being laid down by a machine in a striping
23 capacity?

24 A. What do you mean?

25 Q. Like, do you know whether --

1 used, the striper used, could, in fact, put down
2 abrasive material at the same time that the paint is
3 applied?

4 A. I don't know. I don't know the machine,
5 specific machine.

6 Q. Okay. In your report, you indicate that it's
7 a preliminary engineering investigation.

8 When is it going to be final?

9 A. I haven't been asked to finalize one. That's
10 my preliminary report based on the information I had at
11 that time. I have recently been provided additional
12 information. If we can get more information on the
13 specific type of paint, we could look at it. If I can't
14 do any testing at this point because the surfaces have
15 been recoated or repainted -- although if it's the exact
16 same paint, we may get similar results.

17 Q. Right.

18 But do you know the thickness of the level of
19 the paint at the time of the loss.

20 A. No, sir. I do not. We could cut a sample out
21 and try to delayer it and see how many times he's
22 painted it since then. He says he does it every year.
23 But there's two invoices, one post-dating the incident,
24 so I don't know if there's additional invoices after
25 that. So I can't tell you the thickness of the paint at

1 the time of the incident.

2 Q. Right.

3 And that could potentially impact the slip
4 resistance, right?

5 A. Potentially. Yes, sir.

6 Q. Because if you had, for example, a single
7 layer that still had the texture of the concrete or the
8 texture of the asphalt, whatever it's under or on top
9 of, that could potentially impact the slip resistance.

10 A. It could potentially do that. Yes.

11 Q. Okay.

12 Do you know what the condition of the lines
13 were at the time of the loss?

14 A. I mean, I looked at them before they were
15 repainted my first time out there. And they were
16 smooth. There was no abrasive material. How thick it
17 was, I don't know. But they were similar to -- both
18 times I looked at it, no paint -- or no abrasive
19 material in it.

20 Q. I understand.

21 But did you conduct any slip-resistance
22 testing the first time you were there?

23 A. No, sir.

24 Q. And do you know how many times the lines have
25 been painted since the date of the loss?

1 A. Because that's what she told her daughter, and
2 that's what her daughter testified to, that when she was
3 there, it was slippery, when she was trying to help her
4 mom. And that -- the one question, I think it was in
5 her deposition, when you ask her what did her mom tell
6 her, how she fell, she said she slipped on the line.

7 Q. Okay.

8 And are you sure and certain that Ms. Linda
9 Hooker told her daughter that she slipped on the painted
10 line?

11 A. I think that was in her deposition. Whatever
12 it says in her deposition.

13 Q. Okay.

14 It wasn't that she just slipped.

15 A. Correct.

16 Q. It was specifically, she slipped on the
17 painted line.

18 A. That's my memory of it. Yes.

19 Q. Okay.

20 A. I mean, that's what I was told from Day 1 as
21 well.

22 Q. I understand. But you were told by the lawyer
23 or the lawyer's office, correct?

24 A. Correct.

25 Q. You didn't have any communications with

1 Ms. Linda Hooker --

2 A. Correct.

3 Q. -- during the time when she was alive --

4 A. Correct.

5 Q. -- to get the information direct from her --

6 A. Correct.

7 Q. -- as to what happened.

8 A. Yes.

9 Q. You didn't contact or talk with Mr. Hooker.

10 A. No, sir.

11 Q. Or Ms. Foxworth, the daughter.

12 A. Correct.

13 Q. Okay.

14 So again, going back to the science piece of
15 this, all I gather in this particular case is that you
16 put your hand on the line over near where the parking
17 spaces are, and you found it to be smooth.

18 A. Correct. I found no abrasive material on the
19 surface of the paint.

20 Q. Right.

21 You didn't determine or test to see whether
22 that line that you felt had a specific coefficient of
23 friction or not.

24 A. That's correct.

25 Q. Okay.

1 So what is scientific about that, if anything?

2 A. That you can feel, physically feel that
3 there's no abrasive material in there which is
4 recommended for a painted surface.

5 Q. Well, I understand.

6 But would you agree with me that if the
7 painted surface had a sufficient coefficient of
8 friction, it would not need abrasive material?

9 A. Correct. And you would feel that. If you put
10 your hand over brushed concrete with a single layer of
11 paint, you still feel the texturing of the underlying
12 material. When it's smooth, that's physically showing
13 you that that texturing is not coming through the paint
14 layers.

15 Q. I understand.

16 But you didn't test that line to determine
17 whether -- or how slippery it was.

18 A. Correct. I've told you that. You've asked me
19 18 times, and I haven't --

20 Q. I understand. I'm trying to figure out if --

21 A. I did not run a test. Correct.

22 Q. But you didn't determine in the first instance
23 whether that line needed any abrasion or abrasive
24 material.

25 A. It felt smooth. There was no abrasive. I

1 felt no underlying texturing of the material, which is
2 why I said there's multiple layers of paint so --

3 Q. I understand.

4 But that's not scientific, is it?

5 A. I don't know. I mean --

6 Q. I mean, anybody can go out there and put their
7 hand down and say whether it's smooth or not.

8 A. Probably could. But would you understand what
9 that meant? Maybe not. I understand what it means.

10 Q. Well, I understand that you say it's smooth.
11 And then you feel like or opine that it should have some
12 abrasive material in it.

13 A. Correct. The industry guidelines are if
14 you've got a painted surface and it will be wet, you're
15 probably going to put abrasive -- put some abrasive
16 material in it.

17 Q. And the reason for the abrasive material is --

18 A. To increase the coefficient of friction
19 because a smooth, painted surface is slippery when wet.

20 Q. Right.

21 But you didn't test to determine whether, in
22 fact, it was in this circumstance.

23 A. Correct.

24 Q. Okay.

25 Do you have any knowledge as to whether you

1 they were smooth. And at that point, I didn't really
2 hear much until he asked me to write a preliminary
3 report, which I did. And then I didn't hear anything
4 until --

5 Q. So this preliminary report was based on those
6 two visits.

7 A. Yeah.

8 Q. Okay.

9 A. And my discussions with him.

10 Q. Do you have striping at your parking lot, at
11 your office?

12 A. Yes, one layer.

13 Q. Who did it?

14 A. I had it painted 10 years ago, one layer of
15 paint.

16 Q. You got sand in it?

17 A. Nope. Don't need to because it's got enough
18 texturing from the surface underneath. That's why I
19 won't get it repainted multiple times. But if I do get
20 it repainted, it will have sand or Sharkgrip in it.

21 Q. Was there sand in it when they first painted
22 it?

23 A. No.

24 Q. And was it compliant with the standards when
25 it was put in?

1 Q. Was there any evidence of any efforts
2 undertaken to provide any additional slip resistance on
3 the painted white lines that you saw on either of your
4 inspections?

5 A. I did not observe any. No.

6 Q. And are all of those violations -- without
7 rehashing all of the various codes and industry
8 standards that we've talked about today at length, are
9 all of the things we just discussed violations of the
10 various codes and industry standards?

11 MR. THOMPSON: Objection.

12 MR. McLEOD: Object to the form.

13 THE WITNESS: For a slippery floor surface,
14 yes.

15 BY MR. YARBOROUGH:

16 Q. The IBC, the International Building Code, is
17 directed primarily at the builder and the owner of the
18 building. Is that fair?

19 MR. THOMPSON: Objection.

20 THE WITNESS: Or the contractor. And/or the
21 contractor. Yes. I mean, he's got to build it to meet
22 the code, which is normally paid for by the owner.

23 BY MR. YARBOROUGH:

24 Q. And the IPMC, which is the International
25 Property Maintenance Code, is it fair to say that that's

1 directed at the person who is occupying the building?

2 MR. THOMPSON: Objection.

3 THE WITNESS: It's the owner or his designee,
4 typically. I think they've changed that. But it
5 basically says -- it's in the first section, chapter --
6 it says to the owner or -- I think it says designee
7 or -- you'd have to read what the scope is. But it's
8 the owner, or he can designate somebody to take his
9 place.

10 BY MR. YARBOROUGH:

11 Q. Sure. It's directed at either the owner or
12 the person the owner designates to be in charge of the
13 building.

14 A. Typically, yes.

15 MR. THOMPSON: Objection.

16 BY MR. YARBOROUGH:

17 Q. So it would be that person's responsibility
18 for ensuring compliance with it.

19 MR. THOMPSON: Objection.

20 THE WITNESS: Yes.

21 MR. YARBOROUGH: I'm going to correct and say
22 that it was probably -- actually, it was my fault.
23 These have actually been produced in discovery. I'll
24 mark these. I think we're at Exhibit 21, if I'm
25 correct. So I'll mark these as Exhibits 21 and 22.

CERTIFICATE OF REPORTER

I, Caroll Anne Boutahar, Certified
Verbatim Reporter and Notary Public for the
State of South Carolina at Large, do hereby
certify:

That reading and signing of the
foregoing deposition by the witness was waived.

That the foregoing deposition was
taken before me on the date and at the time and
location stated on page 1 of this transcript; that
the deponent was duly sworn to testify to the
truth, the whole truth and nothing but the truth;
that the testimony of the deponent and all
objections made at the time of the examination were
recorded by me and were thereafter transcribed;
that the foregoing deposition as typed is a true,
accurate and complete record of the testimony of
the deponent and of all objections made at the
time of the examination to the best of my ability.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 26th day of January,
2022, at Columbia, Richland County, South Carolina.



Caroll Anne Boutahar
Certified Verbatim Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
December 20, 2031

1 State of South Carolina } Court of Common Pleas
2 County of Orangeburg } No.: 2020-CP-38-00428

3
4 Linda Hooker, }
5 Plaintiff, }
6 vs. } 30(B)(6) Deposition of
7 McDonald's Corporation, } JARED MARR
8 McDonald's Real Estate } December 10, 2021
9 Company, JKS&K, Inc., Pam }
Hampton and Proline }
Striping Service, Inc., }
10 Defendants. }
11 _____

12
13 Videotaped Zoom deposition on oral examination
14 of JARED MARR, reported by Brad H. Thomas,
15 Registered Professional Reporter and Notary Public
16 in and for the State of South Carolina; said
17 deposition taken pursuant to agreement and in
18 accordance with the South Carolina Rules of Civil
19 Procedure, on December 10, 2021, at the hour of
20 10:01 a.m.

21
22
23
24
25

JARED MARR 12/10/2021

1 Q. JKS & K, did it have anything to do with
2 the selection of the paint that you used?

3 A. No.

4 Q. Okay. As I understand it, you've been
5 using the same paint for as long as you can
6 remember?

7 A. Yes, sir.

8 Q. The other entities in this case include
9 McDonald's Corporation and McDonald's Real Estate
10 Company. Have you had any contact with either of
11 those two entities about this location in Santee?

12 A. No.

13 Q. Okay. And again you would have been
14 contacted, contracted, and/or paid by JKS & K for
15 your work performed at the Santee McDonald's
16 restaurant, correct?

17 A. Yes.

18 Q. Okay. Did JKS & K have anything to do
19 with directing your work in the parking lot
20 restriping?

21 A. No.

22 Q. Okay. That's left to your professional
23 determination; is that right?

24 A. Yes.

25 Q. I think you answered this question

ABC REPORTING SERVICE (803) 730-3015

JARED MARR 12/10/2021

Certificate of Reporter

I, Brad H. Thomas, RPR and Notary Public in and for the State of South Carolina, do hereby certify that I reported the deposition of JARED MARR on the 10th day of December, 2021, that the witness was first duly sworn by me, and that the foregoing 48 pages constitute a true and correct transcription of the said deposition.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter sealed and delivered to WILLIAM H. YARBOROUGH, JR., ESQUIRE, Cavanaugh & Thickens, LLC, 1717 Marion Street (29201), P.O. Box 2409, Columbia, South Carolina 29202. This sealed original transcript shall be retained by the above party, who shall be responsible for filing same with Court prior to trial or any hearing which might result in a final order on any issue.

In witness whereof I set my hand and seal this 11th day of December, 2021.

My Commission
expires 12/19/27

Brad H. Thomas, RPR
and Notary Public for the
State of South Carolina

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF ORANGEBURG) C/A NO: 2020-CP-38-00428

3

4 Linda Hooker,)
5 Plaintiff,) Deposition of
6 v.) PAMELA J. HAMPTON
7 McDonald's Corporation,) September 8, 2021
8 McDonald's Real Estate)
9 Company, JKS&K, Inc., Pam)
Hampton, and Proline Striping)
Service, Inc.,)
10 Defendants.)
11 _____)

11

12

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14

15 Deposition on oral examination of

16 PAMELA J. HAMPTON reported by Andrea R. Taylor, Court

17 Reporter and Notary Public in and for the State of

18 South Carolina; said deposition taken pursuant to

19 notice of deposition and in accordance with the South

20 Carolina Rules of Civil Procedure, at the law offices

21 of Dean Law Firm, 146 Centre Street, Orangeburg, South

22 Carolina, commencing on Wednesday, September 8, 2021,

23 at the hour of 10:01 a.m.

24

25

PAMELA J. HAMPTON 9/8/2021

1 A. I'm not sure.

2 Q. And so your understanding is she just fell
3 on --

4 A. Well, I think it was raining outside or
5 something.

6 Q. Okay. And you mentioned something about
7 the striped lines?

8 MR. THOMPSON: Objection.

9 MR. MCLEOD: Object to the form.

10 Q. Did you not mention something about the
11 striped lines earlier?

12 A. Yes.

13 Q. Okay. And is it your understanding that
14 she fell on one of those striped lines?

15 A. Yes.

16 Q. Prior to this incident, did you have any
17 other incidents that occurred on those striped lines?

18 A. No.

19 Q. Did you have any other incidents that
20 occurred in the parking lot?

21 A. To my knowledge, I -- well, a lady tripped
22 on the other side, but she had some flip-flaps on and
23 tripped over her flip-flaps.

24 Q. Okay.

25 A. That was on the opposite side closer to

ABC REPORTING SERVICE (803) 730-3015

PAMELA J. HAMPTON 9/8/2021

1 Q. Okay.

2 A. Yeah. That's like the corp.

3 Q. Gotcha.

4 A. Yeah.

5 Q. Okay. If you'll look at page 5 with me
6 it's talking about a maintenance travel path. It
7 says "Design and maintenance travel path for your
8 restaurant." And who -- do you know who this
9 document is -- who is this directing, I guess is the
10 question. Is this guidelines on how a manager should
11 operate or who -- who is this directed at?

12 A. Well, it's management, crew people,
13 maintenance, everybody should be aware. But we do
14 travel -- we used to do travel paths every 30
15 minutes, so --

16 Q. What was your travel path?

17 A. The outside of the building, inside.

18 Q. So every 30 minutes, someone would walk
19 the path?

20 A. Well, within 30 minutes to an hour, yeah,
21 someone would.

22 Q. Okay. Was this tracked in any way?

23 A. Well, we used to have a travel path log
24 that we used to do.

25 Q. So there's a travel path log out there

ABC REPORTING SERVICE (803) 730-3015

PAMELA J. HAMPTON 9/8/2021

1 MR. THOMPSON: All right. Ms. Hampton, I
2 have some follow-up for you.

3 EXAMINATION

4 BY MR. THOMPSON:

5 Q. At the time this incident occurred, you
6 were employed by JKS&K, correct?

7 A. Yes.

8 Q. That's who paid you, who paid your salary,
9 correct?

10 A. Yes.

11 Q. All right. JKS&K owned and operated a
12 McDonald's restaurant, correct?

13 A. Yes.

14 Q. All right. So when Mr. Yarborough was
15 asking you questions and interchanging McDonald's
16 being your employer, JKS being your employer, to be
17 clear, at all times when this incident occurred, you
18 were employed by JKS&K, correct?

19 A. Yes.

20 Q. You've never been employed by McDonald's
21 corporation, have you?

22 A. No.

23 Q. Okay. And as I understand it, again,
24 JKS&K as an organization with folks in different
25 positions at different levels of management, correct?

ABC REPORTING SERVICE (803) 730-3015

PAMELA J. HAMPTON 9/8/2021

1 A. Yes.

2 Q. All right. And at the time of this
3 incident, you were the general manager of the store
4 in Santee, correct?

5 A. Yes.

6 Q. And then there were folks that were above
7 you that you would report to, including Mark,
8 correct?

9 A. Yes.

10 Q. He was the area supervisor?

11 A. Yes.

12 Q. All right. And then he, in turn, would
13 report to the director of operations, correct?

14 A. Yes.

15 Q. Who, in turn, would report to the owner?

16 A. Yes.

17 Q. Okay. And as we've established, JKS&K,
18 that's Mr. Booth, correct?

19 A. Yes.

20 Q. Okay. All right. Now, at this time as
21 you're giving this deposition today, you are not
22 employed with JKS&K; is that correct?

23 A. No.

24 Q. I mean, is that correct or not?

25 A. Yes.

ABC REPORTING SERVICE (803) 730-3015

PAMELA J. HAMPTON 9/8/2021

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CERTIFICATE OF REPORTER

I, Andrea R. Taylor, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify:

That the foregoing deposition was taken
before me on the date and the time and location
stated on Page 1 of this transcript; that the
deponent was duly sworn to testify to the truth, the
whole truth and nothing but the truth; that the
testimony of the deponent and all objections made at
the time of the examination were recorded by me and
were thereafter transcribed; that the foregoing
deposition as typed is a true, accurate, and complete
record of the testimony of the deponent and of all
objections made at the time of the examination to the
best of my ability.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto affixed
my official seal this 22nd day of September, 2021, at
Lexington County, South Carolina.

Andrea R. Taylor, Court Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
February 18, 2024

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF ORANGEBURG) C/A NO: 2020-CP-38-00428

3

4 Linda Hooker,)
5 Plaintiff,) Deposition of
6 v.) SHERRIE WASHINGTON
7 McDonald's Corporation,) September 8, 2021
8 McDonald's Real Estate)
9 Company, JKS&K, Inc., Pam)
Hampton, and Proline Striping)
Service, Inc.,)
10 Defendants.)
11 _____)

11

12

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15 Deposition on oral examination of
16 SHERRIE WASHINGTON reported by Andrea R. Taylor, Court
17 Reporter and Notary Public in and for the State of
18 South Carolina; said deposition taken pursuant to
19 notice of deposition and in accordance with the South
20 Carolina Rules of Civil Procedure, at the law offices
21 of Dean Law Firm, 146 Centre Street, Orangeburg, South
22 Carolina, commencing on Wednesday, September 8, 2021,
23 at the hour of 12:11 p.m.

24

25

SHERRIE WASHINGTON 9/8/2021

1 A. No.

2 Q. Okay. So this is Ms. Hampton's level or
3 above?

4 A. Correct. Yes.

5 Q. Okay. Is there any other way that the
6 employees who were working on the day of the incident
7 were tracked?

8 A. No.

9 Q. There's someone named Mark who's the
10 supervisor over Ms. Hampton, and I can't pronounce
11 his last name. Do you know who I'm --

12 A. Steinke.

13 Q. Steinke. Okay.

14 A. He's my supervisor.

15 Q. Okay. So Mark, did he ever come out to
16 the store after this incident to investigate?

17 A. I'm not -- I don't know.

18 Q. Do you ever remember him coming out to the
19 store to investigate this incident?

20 A. I don't know.

21 Q. While you were working at the McDonald's
22 in Santee, do you remember any other falls in the
23 parking lot area?

24 A. No.

25 Q. Okay. Did you ever inspect the parking

SHERRIE WASHINGTON 9/8/2021

1 CERTIFICATE OF REPORTER

2

3 I, Andrea R. Taylor, Court Reporter and
4 Notary Public for the State of South Carolina at
Large, do hereby certify:

5 That the foregoing deposition was taken
6 before me on the date and the time and location
stated on Page 1 of this transcript; that the
7 deponent was duly sworn to testify to the truth, the
whole truth and nothing but the truth; that the
8 testimony of the deponent and all objections made at
the time of the examination were recorded by me and
9 were thereafter transcribed; that the foregoing
deposition as typed is a true, accurate, and complete
10 record of the testimony of the deponent and of all
objections made at the time of the examination to the
best of my ability.

11

12 I further certify that I am neither
related to nor counsel for any party to the cause
13 pending or interested in the events thereof.

14 Witness my hand, I have hereunto affixed
my official seal this 22nd day of September, 2021, at
15 Lexington County, South Carolina.

16

17

18

19 Andrea R. Taylor, Court Reporter
Notary Public
20 State of South Carolina at Large
My Commission expires:
21 February 18, 2024

22

23

24

25

In the Matter of:

LINDA HOOKER

VS.

MCDONALD'S CORPORATION, ET AL

Ralph Hooker

June 3, 2021



www.spectrumcourtreporting.com

P.O. Box 1296

Mt. Pleasant, SC 29465

843-849-0133

Spectrumaaa@gmail.com

1 **A That's right, yes.**

2 Q Okay. So you get to the car first?

3 **A Right.**

4 Q And opened the door?

5 **A Opened the door.**

6 Q And what did -- you said you heard

7 something?

8 **A Oh, yes. She hollered.**

9 Q Okay. That was your wife?

10 **A My wife.**

11 Q Okay. And is that the first time you knew

12 that something was happening?

13 **A That's right, yes.**

14 Q Okay. Did you hear anything before that

15 like whoops or look out or oh or anything?

16 **A No.**

17 Q Really, the first thing you heard was a

18 scream?

19 **A Right. Yes.**

20 Q All right. And so you look, and you look

21 behind you; is that right?

22 **A That's right.**

23 Q And what do you see then?

24 **A I see her on the ground, and she was in a**

25 **lot of pain. And my daughter was over her.**

1 Q Okay. So when you look around, your wife
2 is on the ground, correct?

3 A **Right.**

4 Q All right. And then, your daughter is
5 attending to her?

6 A **That's right.**

7 Q Okay. What did you do next?

8 A **I went over there where they were.**

9 Q Okay. And did you ask what had happened?

10 A **Sure. I tried to get her off the ground.**
11 **Tried to get her up, and she was in too much pain to**
12 **get her up.**

13 Q Okay. What did she say -- what did your
14 wife say had happened?

15 A **She slipped.**

16 Q Okay. Was the parking lot wet?

17 A **It was wet.**

18 Q Okay. Were there places in the parking
19 lot where there was standing water like puddles?

20 A **Yes. Water was running. Still running**
21 **down. Yes. It was.**

22 Q It had just finished raining hard,
23 correct?

24 A **That's right.**

25 Q Okay. Do you remember anything about what

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF CHARLESTON)

3 I, Trisha G. Rarick, a Court Reporter and Notary
4 Public of the State of South Carolina at Large, do hereby
5 certify that the witness in the foregoing deposition was by me
6 duly sworn to testify to the truth, the whole truth and
7 nothing but the truth in the within-entitled cause; that said
8 deposition was taken at the time and location therein stated;
9 that the testimony of the witness and all objections made at
10 the time of the examination were recorded stenographically by
11 me and were thereafter transcribed by computer-aided
12 transcription; that the foregoing is a full, complete and true
13 record of the testimony of the witness and of all objections
14 made at the time of the examination; and that the witness was
15 given an opportunity to read and correct said deposition and
16 to subscribe the same.

17 Should the signature of the witness not be affixed to
18 the deposition, the witness shall not have availed himself of
19 the opportunity to sign or the signature has been waived.

20 I further certify that I am neither related to nor
21 counsel for any party to the cause pending or interested in
22 the events thereof.

23 Witness my hand, I have hereunto affixed my official
24 seal on _____, 2021, at Charleston, Charleston
25 County, South Carolina.

15

16

17

Trisha G. Rarick
Court Reporter

18 My commission expires:

19 January 9, 2029

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STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Mar 07 2023

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2022-000981

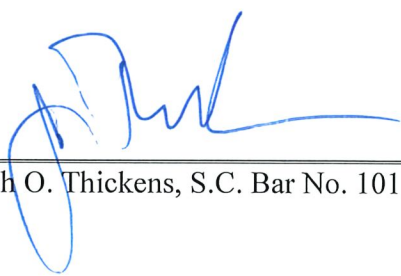
Ralph Hooker as Personal Representative of the Estate of Linda Hooker.....Appellant,

v.

McDonald's Corporation, McDonald's Real Estate Company, JKS & K, Inc., Pam Hampton, and
Proline Striping Service, Inc.....Respondents.

CERTIFICATION OF COUNSEL

I certify that the foregoing Amended Record on Appeal contains all material proposed to
be included by any of the parties and not any other material.



Joseph O. Thickens, S.C. Bar No. 101398