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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable Robert W. Buffington, Special Referee

Appeal No. 2023-001638

RECEIVED

OCT 30 2023

SC Court of Appeals

Mae McGruder, ... Respondent,

v.

Dollar General Corporation,
d/b/a Dollar General Store #1677 and Janie Davis, ... Appellants.

**MOTION FOR LEAVE TO FILE
MOTION FOR RELIEF FROM JUDGMENT
PURSUANT TO RULE 60(b), SCRPC**

This appeal involves a default judgment against Appellants Dollar General Corporation, d/b/a Dollar General Store #1677 and Janie Davis ("Appellants"). Pursuant to Rule 240, SCACR, Appellants hereby move this Court for leave to file with the Circuit Court a Motion for Relief from the default Judgment of Special Referee Robert W. Buffington, filed September 29, 2023. Appellants are seeking relief from the default Judgment on at least five grounds.

BACKGROUND

This civil action arises out of an alleged slip and fall that occurred on October 29, 2019 in a Dollar General store located at 2320 Peach Orchard Road in Sumter, South Carolina (the "Store"). (Exh. A, Complaint at ¶ 6) On March 30, 2022, the Plaintiff filed her Complaint

against “Dollar General Corporation d/b/a Dollar General Store #16677” and Davis. (Exh. A). According to the filed affidavit of service, Plaintiff served “Dollar General Corporation” by hand by delivering a copy of it to Algerina Pringle, the manager of the Store. (Exh. B, Affidavit of Service). Store managers are not authorized, and have never been authorized, to accept service on behalf of Dollar General Corporation or Dolgencorp, LLC. (Exh. C, Bengston Aff. at ¶ 7).

As to Davis, Plaintiff alleged that she was the manager of the Store at the time of her fall. (Exh. A, Complaint at ¶ 3). However, not only was Davis not the manager of the Store during the relevant time period, she was not employed by either Dollar General Corporation or Dolgencorp, LLC. (Exh. C, Bengston Aff. at ¶ 8).

Dollar General Corporation is a separate and distinct corporate entity from Dolgencorp, LLC. (Exh. C, Bengston Aff. at ¶ 6). Dollar General Corporation does not have a presence in South Carolina; however, Dolgencorp, LLC, which does, utilizes a registered agent pursuant to S.C. Code Ann. §15-9-240(a). (Exh. C, Bengston Aff. at ¶ 6).

Plaintiff moved for default, which was entered on August 4, 2022. (Exh. D). The matter was referred to a special referee, Robert W. Buffington, the following day. (Exh. E). However, the first time Dolgencorp, LLC learned about this lawsuit was August 17, 2022, because Plaintiff did not serve the Summons and Complaint on Dolgencorp, LLC’s registered agent. (Exh. C, Bengston Aff. at ¶¶ 4 & 10).

On August 19, 2022, Dolgencorp, LLC filed a motion to set aside default and an Answer. (Exh. F, Motion to Set Aside Default and/or for Extension of Time to File Answer, and an Answer). The motion to set aside default was heard by the Special Referee on September 22, 2022.

On October 19, 2022, the Special Referee denied the motion to set aside default. (Exh. G, Order Denying Motion for Relief from Entry of Default and Denying Motion for Limited Discovery). The Special Referee's order notes, among other things, that Appellants "are not entitled to relief from entry of default because they were sued under their trade name," and that service on the Store manager complied with Rule 4(d)(3) of the South Carolina Rules of Civil Procedure. *See id.* at p. 5, 9-10.

On October 27, 2022, Dolgencorp, LLC filed a motion to reconsider the order denying the motion to set aside default. (Exh. H, Dolgencorp, LLC's Motion to Reconsider the Order Denying their Motion to Set Aside Default). On July 3, 2023, the Special Referee denied the motion to reconsider. (Exh. I, Order Denying Motion to Reconsider the Order Denying the Motion of [sic] Set Aside Default).

On June 30, 2023, a damages hearing took place. On September 29, 2023, the Special Referee entered a final order in favor of Plaintiff, awarded her \$925,000.00 as "damages for pain, suffering, bodily injury, mental distress and medical bills." More than two-thirds of that total, \$686,976.00, is based on questionable future care estimates and alleged loss of Plaintiff's personal services. (Exh. J, Order of Judgment).

On September 28, 2023, Plaintiff filed a Rule 60, SCRCP, motion to amend final order of judgment seeking to amend the final order "to reflect the correct name of Defendant incorrectly named as Dollar General Corporation, d/b/a Dollar General Store #16677 to Dolgencorp, LLC." (Exh. K, Motion to Amend Final Order of Judgment). Plaintiff contends "[t]he basis for said motion is that the Defendant Dollar General Corporation, as named in the Complaint, is the commonly used trade name of Dolgencorp, LLC, the owner in fact of Dollar General Store

#16677.” (*See id.*). On October 10, 2023, Dolgencorp, LLC filed an opposition to Plaintiff’s Motion to Amend the Final Order. (Exh. L, Defendant’s Opposition to the Motion to Amend Final Order of Judgment).

On October 19, 2023, Appellants timely appealed the following to this Court: (1) the Order Denying Motion for Relief from Entry of Default and Denying Motion for Limited Discovery, dated October 19, 2022, (2) the Order Denying Motion to Reconsider the Order Denying the Motion of Set Aside Default filed July 3, 2023, and (3) the Order of Judgment filed September 29, 2023.

ARGUMENT

“It is generally recognized that courts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits.” *Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C. 556, 560, 274 S.E.2d 287, 289 (1981). In this case, there are compelling reasons why relief from the Default Judgment is proper under Rule 60(b), SCRPC. First, Dollar General Corporation, the Defendant actually named in the lawsuit, was never served with either the Summons or Complaint. Second, Dolgencorp, LLC, the actual owner of the Store, was not named in either the Summons or Complaint, was not properly served and did not have notice of the lawsuit against it until after default was entered. Third, Davis is not a proper party. Fourth, Appellants had, and continue to have, good cause for relief from the entry of default as well as a viable defense. Appellants moved for relief in a timely manner, and there will be no prejudice to Plaintiff to require her to prove the substance of her claims. Fifth, the amount awarded in a slip and fall case – nearly a million dollars – is patently excessive and unsupported by evidence.

A. Dollar General Corporation, the named Defendant, Was Never Served with the Summons or Complaint.

Plaintiff filed this lawsuit against Dollar General Corporation d/b/a Dollar General Store #16677. Dollar General Corporation is a separate and distinct corporate entity from Dolgencorp, LLC, which actually owns and operates the Store. It is undisputed that Plaintiff attempted to serve Dollar General Corporation by personally serving the Summons and Complaint on the manager of the Store, Algerina Pringle. However, Ms. Pringle is not, and has never been, an employee of Dollar General Corporation. Dollar General Corporation does not even have a presence in South Carolina.

As is discussed below, service on Ms. Pringle is not effective service on her employer, Dolgencorp, LLC, which is the owner of the Store. However, it should not even be disputed that service on Ms. Pringle is not effective service on an entity – Dollar General Corporation – which did not even employ her. Rule 4(d)(3), SCRCP, specifically provides that service is proper if the Summons and Complaint are delivered to “an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process....” There is no evidence that Ms. Pringle was “an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process” for Dollar General Corporation. It goes without saying that someone who is not even employed by an entity, cannot accept service on behalf of that entity. *See Roberson v. S. Fin. of South Carolina, Inc.*, 365 S.C. 6, 615 S.E.2d 112 (2005) (holding that even some employees are not agents authorized to accept service of process for a corporation).

Accordingly, here, service on Ms. Pringle of the Summons and Complaint is not effective service on Dollar General Corporation. Thus, default judgment against Dollar General Corporation is improper.

B. Dolgencorp, LLC, Which Was Not Named in the Summons or Complaint, was not properly served.

Plaintiff and the Special Referee suggest that service on Ms. Pringle is effective service on Dolgencorp, LLC because she was the local manager of the Store. However, service on a Store manager is not effective under Rule 4(d)(3). Plaintiff's argument, which the Special Referee appears to have accepted, is that a manager of a Store is a "managing agent" for purposes of Rule 4(d)(3) since they both derive from the root word "manage." There is no evidence Ms. Pringle, or any of the other over 200 local managers managing Dollar General Stores throughout the United States have either actual or apparent authority to accept service of summonses or complaints on behalf of Dolgencorp, LLC. In *Roberson*, the South Carolina Supreme Court unanimously held that an employee's authority to accept service must come from the corporation itself. 365 S.C. at 11, 615 S.E.2d at 115. The *Roberson* Court concluded the Special Referee erred in determining the employee could accept service of process for the corporation, because there was no evidence the corporate defendant ever allowed her to accept service of process in the past or expressly conferred that authority to the employee. *See Roberson*, 365 S.C. at 11, 615 S.E.2d at 115 ("apparent authority ... is established based upon manifestations by the principal, not the agent"). There is no evidence here that Dolgencorp, LLC ever took any step to bestow authority on Ms. Pringle – or any other local store manager – with authority to accept service. In fact, the evidence is exactly to the contrary. Rather than taking any action that would lead a third party to believe it was extending authority to local store

managers to accept service, Dolgencorp, LLC instead designated a registered agent for such service. (Exh. C, Bengston Aff. at ¶ 6). There is no dispute that Plaintiff failed to serve the registered agent Dolgencorp, LLC designated pursuant to S.C. Code Ann. §15-9-240(a).

Plaintiff appears to contend that the service of a summons and complaint in the name of a separate and distinct legal entity, Dollar General Corporation, on an employee of Dolgencorp, LLC is sufficient to maintain an action against Dolgencorp, LLC. Both Plaintiff and the Special Referee rely on *Tri-County Ice and Fuel Company v. Palmetto Ice Company*, 303 S.C. 237, 399 S.E.2d 779 (1990) and similar cases to support their position. However, those cases have a critical factual distinction. In *Tri-County*, the plaintiff filed a summons and complaint against “Palmetto Ice Company.” 303 S.C. at 238, 399 S.E.2d at 780. No such entity existed, as “Palmetto Ice Company” was owned and operated by “P&H Company, Inc.” *See id.* at 238, 399 S.E.2d at 781. After obtaining a default judgment, the plaintiff sought to amend the judgment to substitute P&H Company, Inc. for Palmetto Ice Company. *See id.* at 239, 399 S.E.2d at 781. In finding for the plaintiff, the South Carolina Supreme Court held that “we find that the amendment was not so extensive so as to substitute a new defendant, but was merely a correction of a clerical mistake in the name of the corporation.” *See id.*; *see also Tunstall v. Lerner Shops, Inc.*, 160 S.C. 557, 159 S.E. 386 (1931) (amended judgment was allowed because the amendment “was not so extensive as to substitute a new defendant but was merely a correction of a mistake in the name of the defendant.”).

Here, in stark contrast, Plaintiff’s attempt to amend the caption of the default judgment effectively seeks “to substitute a new defendant.” Plaintiff sued an existing entity, Dollar General Corporation, and then, after obtaining the default judgment, is attempting to substitute a

wholly distinct legal entity, Dolgencorp, LLC, for purposes of collecting that judgment. Plaintiff did not merely sue Dollar General – the trade name. She sued a different entity – Dollar General Corporation – a separate corporate entity that uses that trade name in other locations. Thus, this is not a matter of a mere misnomer, it is a matter of naming the wrong entity in the Summons and Complaint. Because Plaintiff failed to properly serve it with or even name it in the Complaint, the default judgment against Dolgencorp, LLC is improper and should be reversed.

C. Davis Is Not a Proper Party.

Davis is named in the lawsuit because Plaintiff alleges she was the manager of the Store at the time that Plaintiff allegedly fell. That is categorically untrue. No one by the name Janie Davis worked for Dolgencorp, LLC in South Carolina at the time of Plaintiff's accident. (Exh. C Bengston Affid. at ¶ 3). Consequently, Janie Davis is improperly named in the Complaint.

Moreover, even if Davis had been employed by Dolgencorp, LLC during the relevant time, which is denied, the Complaint fails to allege sufficient facts to impose personal liability on Davis. *See Benjamin v. Wal-Mart Stores, Inc.*, 413 F.Supp. 2d 652 (D.S.C. 2006). In *Benjamin*, a Wal-Mart pet department manager was held not liable for injuries sustained from a fall within the pet department. 413 F.Supp. 2d at 657. The court noted that the store owner owes a duty to keep the premises in a reasonably safe condition and may be liable for an injury resulting from a breach of that duty. 413 F.Supp. 2d at 655. However, as to the department manager, the court held that individual "liability depends upon control...of the premises." *See id.* Ultimately, the court held the pet department manager did not exercise enough control of the premises to owe a duty to keep the premises safe. 413 F.Supp. 2d at 656.

Here, Plaintiff does not allege sufficient facts to even assert that Davis, who was not even working at the Store or any other Dolgencorp, LLC store in South Carolina, exercised sufficient control over the Store to owe a duty to keep the premises safe for Plaintiff.

Thus, default judgment as to Davis is improper.

D. Appellants Have Good Cause for Relief from Entry of Default.

As explained above, Dollar General Corporation was not properly served as Ms. Pringle is not even an employee, let alone a person authorized to accept service on behalf of Dollar General Corporation. Critically, Dolgencorp, LLC was not properly served or even named in the Summons and Complaint; instead, a wholly distinct legal entity – Dollar General Corporation – was named. Finally, Davis is not a proper party and the Complaint does not allege facts which would subject her to liability.

After demonstrating good cause to set aside the default, the court is also required to analyze: (1) the timeliness of the Motion to Set Aside; (2) whether the defendant has a meritorious defense; and (c) the prejudice the plaintiff will potentially suffer if the default is set aside. *See generally Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989).

There can be no question that the motion to set aside the default was timely. It was filed two days after Dolgencorp, LLC discovered the entry of default.

Appellants have raised a meritorious defense in this action. “A meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to essential facts arising from conflicting or

doubtful evidence. *Graham v. Loris*, 272 S.C. 442, 453, 248 S.E.2d 594, 599 (1978); *Micronics v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). In their filed Answer, Appellants assert a number of affirmative defenses, including that Plaintiff's negligence was either the sole or a contributing cause of her injuries, Plaintiff was aware or should have been aware of the allegedly dangerous condition, and Appellants did not have notice of the foreign substance. (See Exh. F, Answer).

Finally, setting aside the entry of default would do little more than require the Plaintiff to engage in discovery and then to prove her claims based on the merits, just like any other plaintiff. Patently, "no cognizable prejudice inheres in requiring a plaintiff to prove a defendant's liability, a burden every plaintiff assumes in every civil action filed in every federal court." *Colleton Preparatory Academy v. Hoover Universal*, 616 F.3d 419 (2010). Furthermore, it is well-established that a "party requesting a judgment by default is not entitled to one as of right, even when the defendant is technically in default." *Ricks v. Weinrauch*, 293 S.C. 372, 375, 360 S.E.2d 535, 537 (Ct. App. 1987). Granting the relief sought herein will cause no prejudice to Plaintiff.

Thus, the default judgment against Appellants is improper. Both the entry of default and the default judgment should be set aside.

E. The Damage Award Is Patently Excessive.

Finally, in addition to the errors of law described above, the award here is excessive given the allegations in the Complaint. The objective evidence of damages presented by Plaintiff was scant and dubious. Other than Plaintiff's own statements, Plaintiff's evidence of damages was limited. Plaintiff failed to place any medical records into evidence to support the nature of

and extent of her injuries, or to corroborate the treatment she claims she received and/or that it was related to her October 29, 2019 fall, let alone for any alleged future losses or treatment. (Exh. M, Transcript of June 30, 2023 Damages Hearing).

The testimony Plaintiff offered to demonstrate objective costs is dubious at best. Plaintiff introduced testimony that she would need \$258,251.00 in future medical expenses. (Exh. M, 128:9-129:15). However, this opinion testimony was arrived at by relying on medical records, which ended in December 2022, suggesting a cessation of treatment, and which were not placed into evidence. (Exh. M, 112:21-113:1). Moreover, Plaintiff's expert did not communicate with any of Plaintiff's treating physicians. (Exh. M, 112:15-112:20). Further, a major driver of those damages is related to Plaintiff's potential need for a second knee replacement. Plaintiff already had had a left knee replacement in 2006. (Exh. M, 54:22-54:25). It was admitted that poor health conditions, such as diabetes, from which Plaintiff suffers and which is entirely unrelated to her fall, can cause knee replacements to fail earlier than expected. (Exh. M, 92:10-92:17).

More disturbingly, the largest portion of damages Plaintiff alleges she suffered was the loss of her personal services. Plaintiff introduced testimony, that she suffered \$428,725 in the loss of her own personal services (i.e. vacuuming, cooking, cleaning, grocery shopping, etc.) to herself. (Exh. M, 124:10-125:12 & 128:9-129:15). Critically, Plaintiff's expert admitted that there was no evidence Plaintiff paid any money to third parties, let alone in the amounts he calculated, due to the alleged loss of her own personal services. (Exh. M, 133:4-133:10). Moreover, the calculation appears to have been wholly invented out of thin air. Plaintiff's expert admitted that Plaintiff did not lose any wages or earning capacity. (Exh. M, 122:8-124:9). He simply opined an hourly wage for the personal services she allegedly provided and multiplied it

by what Plaintiff alleged she spent per week on these personal services. (Exh. M, at *id.*; 125:4-128:5). He did not rely on any objective evidence as to what Plaintiff did or was able to do before or after her fall. (Exh. M, 130:23-132:17). As explained below, Plaintiff's veracity was seriously called into question such that any expert opinion relying on Plaintiff's account of events or her condition is equally questionable.

Beyond the allegedly objective evidence, which is largely based on Plaintiff's subjective complaints, the remainder of Plaintiff's damages were necessarily subjective as they are based on items like pain, suffering, and mental distress. However, Plaintiff demonstrated she was not a reliable witness. Specifically, Plaintiff's credibility is called into question as she disputed the contents of the security camera footage showing her two visits to the Store on October 29, 2019, including her fall, and flatly accused Appellants of doctoring the footage when the video contradicted her version of events.

Plaintiff accused Appellants of acting recklessly by not placing a warning sign or floor mats on the subject premises when this incident occurred. (Exh. M, 46:2-46:14). She denied any employees attempted to mop the floor. *See id.* She also asserted that no Dollar General employee assisted her after she fell but, instead, that "it was three customer[s]....It was about three white women helped me up." (Exh. M, 11:1-11:7; 52:6-52:19). During the damages hearing, Appellants were permitted to show the footage to Plaintiff for impeachment purposes. Plaintiff and the Special Referee were shown multiple minutes of security camera footage that showed floor mats in place, a warning sign directly where the fall occurred, an employee mopping up tracked in water before the incident occurred, and an employee, along with one presumed customer, assisting the Plaintiff after she fell. (Exh. M, 48:2-54:21).

Rather than admit she was incorrect, Plaintiff insisted, without any supporting evidence, the video had been tampered with or doctored by Appellants. *See id.* Plaintiff's refusal to admit there were mats, a warning sign, and even an employee mopping wet water before her fall not only calls into question her character for truthfulness but also the veracity of her testimony concerning her alleged damages. Thus, as the vast majority of her damages were based on calculations solely dependent on her statements and subjective complaints, such as alleged loss of services, pain, suffering and mental distress – the award is unsupported by objective, reliable evidence and must be reversed.

Moreover, the nearly \$1 Million award in this slip and fall case is patently and grossly excessive. In *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E.2d 290 (1981), a breach of contract case involving unliquidated damages, the Supreme Court reversed a default judgment in the amount of \$200,000, explaining that, “[t]his case is one more in a series of cases which has given the court great concern. They involve large awards in default claims involving unliquidated damages.” The Supreme Court ruled that, even though the evidence supporting the \$200,000 judgment was not before it, “this award is patently so greatly out-of-proportion to the wrongs alleged in the complaint that this court, as a matter of common law ... should not allow the same to stand It is generally recognized that courts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits.” 275 S.C. at 566-567, 274 S.E.2d at 292. Courts must carefully review damages awards for excessiveness. *See Small v. Spring Indus., Inc.*, 292 S.C. 481, 486, 357 S.E.2d 452, 455 (1987) (It is the duty of the trial and appellate courts to set aside a verdict that is “grossly excessive” and/or “shockingly disproportionate to the injuries”).

The award in this case of \$925,000.00 for a slip and fall is unsupported by reliable evidence, and is excessive and shockingly disproportionate. Appellants are entitled to relief from such an excessive Default Judgment.

CONCLUSION

For all the reasons stated herein, Appellants request leave to file a Motion for Relief from Judgment with the Circuit Court. Appellants also request that, while this matter is being resolved by the Circuit Court, all appellate deadlines be stayed.

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE, LLC

October 26, 2023

By: s/Helen F. Hiser

Helen F. Hiser, S.C. Bar No.: 76124

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable Robert W. Buffington, Special Referee

Appeal No. 2023-001638

Mae McGruder, ... Respondent,

v.

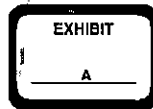
Dollar General Corporation,
d/b/a Dollar General Store #1677 and Janie Davis, ... Appellants.

PROOF OF SERVICE

I certify that on the 26th day of October 2023, I served Appellants' **Motion for Leave to File Motion for Relief From Judgment Pursuant to Rule 60(b), SCRPC**, with Exhibits on Mae McGruder by emailing a copy of it addressed to her attorney of record:

John D. Clark, Esquire
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s/Jake Markland
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*Attorneys for Appellants Dolgencorp, LLC
improperly identified as Dollar General
Corporation d/b/a Dollar General Store #16677
and Janie Davis*



STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2022-CP-43- _____

Mae McGruder,

Plaintiff,

-vs-

Dollar General Corporation, d/b/a
Dollar General Store #16677 and Janie
Davis,

Defendants.

SUMMONS

**TO: DOLLAR GENERAL CORPORATION, D/B/A DOLLAR GENERAL STORE
#16677 AND JANIE DAVIS, THE ABOVE-NAMED DEFENDANTS:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at this office at 22 East Liberty Street, Post Office Drawer 880, Sumter, South Carolina 29151-0880, within thirty (30) days after the service hereof, exclusive of the day of such service; and on your failure to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

(Signature Block on Next Page)

**CLARK LAW FIRM, LLC
ATTORNEYS FOR PLAINTIFF**

s/John D. Clark

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Sumter, South Carolina
March 30, 2022

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Mae McGruder,

Plaintiff,

-vs-

Dollar General Corporation, d/b/a
Dollar General Store #16677 and Janie
Davis,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2022-CP-43- _____

COMPLAINT
(Jury Trial Demanded)

The Plaintiff herein, complaining of the Defendants above named, would respectfully show unto this Honorable Court that:

1. Plaintiff is a citizen and resident of the County of Sumter, State of South Carolina.
2. The Defendant, Dollar General Store #16677 herein after referred to as "Dollar General", is a foreign Corporation organized under the laws of the State of Tennessee and is registered and authorized to do business in the State of South Carolina and at the time of the herein mentioned occurrence maintains agents and servants in the County of Sumter for the purpose of carrying on its business as a retail store.
3. The Defendant, Janie Davis, on information and belief, is a citizen and resident of the County of Sumter, State of South Carolina and at the time of the herein mentioned occurrence, was the store manager of Dollar General Store #16677 where the Plaintiff was injured and was acting as a servant of Defendant Dollar General Store

#16677 and had the duty and authority to manage, direct, superintend, restrict, regulate, govern, administrate and oversee the management of the operation of Dollar General Store #16677.

4. At all times herein mentioned, Defendant Dollar General Corporation was the developer, designer, owner and/or operator in possession and control of the buildings and premises at Dollar General Store #16677 located at 2320 Peach Orchard Rd Sumter, SC 29154 (the "Premises") to which the general public was invited and where the Plaintiff was injured as more particularly set forth below.

CAUSE OF ACTION
(Premises Liability - Gross Negligence)

5. Plaintiff incorporates by reference the allegations of paragraphs 1 through 3 above as if fully set forth herein.

6. On or about October 29, 2019, the Plaintiff was a customer at the Defendants' retail store and as Plaintiff was walking into the store, Plaintiff slipped on a foreign substance on the floor and fell violently suffering serious injuries.

7. As a result of said incident, the Plaintiff has suffered great physical harm and injury, all of which has caused her to incur a great sum of medical expenses, pain and suffering and lose time and wages from employment.

8. The Defendants owed to Plaintiff non-delegable duties of reasonable care to provide for her safety, including maintaining a safe premises free of dangerous conditions; and/or Defendants owed a duty to warn Plaintiff of latent or hidden dangers on the premises of which they had knowledge or were reasonably

discoverable; and/or they owed her a duty to anticipate the harm despite any obviousness of the dangerous conditions that existed.

9. The Defendants negligently, gross negligently and recklessly breached the duties of due care owed by them to Plaintiff in one or more of the following ways:

- a) The duty to safely maintain its premises, free of unreasonable, foreseeable hazards that could pose a danger to Plaintiff and in accordance with industry standards and safety rules;
- b) The duty to provide for Plaintiff's safety while on its premises, including keeping its premises in a reasonably safe condition and free from dangerous defects and conditions that could pose hazards to its invitees/guests;
- c) The duty to make reasonable inspections of its premises and discover risks to its invitees/guests and to warn of or eliminate foreseeable unreasonable risks;
- d) The duty to anticipate the harm to its invitees and to take precautions to remove the potential dangers and harm; and
- e) The duty to warn of latent or hidden dangers on premises of which Defendant and its agents had knowledge or should have had knowledge upon reasonable inspections.
- f) in failing to maintain a safe environment;
- g) in failing to maintain a proper look-out for said hazards;
- h) in failing to have adequate procedures in place for periodic inspections and/or in failing to properly inspect the premises so as to discover and remedy foreseeable dangers;
- i) in such other and further acts of negligent, gross negligent, reckless and willful conduct as will be shown by the evidence produced at trial.

As a direct and proximate result of Defendant's breach of its duty of care, Plaintiff suffered serious injury and incurred substantial medical bills and endured

significant pain and suffering.

10. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants, for actual damages and punitive damages in an appropriate amount.

WHEREFORE, Plaintiff request for judgment against the Defendant, for actual damages together with punitive damages, for the cost of this action, and for such other and further relief as the Court deems just and proper.

CLARK LAW FIRM, LLC
ATTORNEYS FOR PLAINTIFF

s/John D. Clark

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Sumter, South Carolina
March 30, 2022



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF SUMTER)

THIRD JUDICIAL CIRCUIT)

Docket No.: 2022-CP-43-00508)

Mae McGruder,)

Plaintiff,)

-v-)

AFFIDAVIT OF SERVICE)

Dollar General Corporation, d/b/a)

Dollar General Store #16677 and Janie)

Davis,)

Defendant.)

I, St. Andrews Albert, being duly and properly sworn, do depose and state that the SUMMONS AND COMPLAINT in the above captioned action was/were duly served upon the Defendant Dollar General Corporation by delivering the same to:

(X) Algerina Pringle, Store Manager/ Agent of Defendant Dollar General, personally, on April 4, 2022, 2022 at 5:32 a.m./p.m. at Defendant's Place of Business located at 2320 Peach Orchard Road Sumter, South Carolina 29154.

() a person of suitable age and discretion then residing at the residence of the Defendant and leaving with him/her one (1) copy of the same at _____ on _____ (Date) at _____ a.m./p.m.

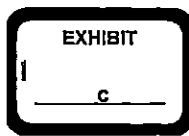
The deponent knows the person served to be the Store Manager/Agent of the Defendant mentioned and described in the document(s) served and that the deponent is not a party, lawyer for nor a relative of anyone involved in the captioned action.

St. Andrews Albert
St. Andrews Albert

SWORN TO before me this 14th day
of April, 2022

Patricia L. Pollard
Notary Public for South Carolina

My Commission Expires: April 9, 2023



STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

MAE MCGRUDER,

Civil Action No. 2022-CP-43-00508

Plaintiff,

vs.

AFFIDAVIT OF DAVID BENGTSON

DOLLAR GENERAL CORPORATION,
D/B/A DOLLAR GENERAL STORE
#16677 AND JANIE DAVIS,

Defendants.

PERSONALLY APPEARED BEFORE ME, the undersigned, David Bengtson, who,
after being duly sworn, deposes and states:

1. I am over the age of 18 years old.
2. I am the Director of General Liability for Dollar General Corporation.
3. I am in receipt of a Summons and Complaint filed on behalf of Mae McGruder against Dollar General Corporation in Sumter County, South Carolina dated March 30, 2022.
4. The first time I received a copy of the Summons and Complaint was on 08/17/2022.
5. Pursuant to the documents that we have been provided by Plaintiff's counsel, it appears the Plaintiff's counsel attempted service via hand-delivery on Janie Davis/Store Manager as 2320 Peach Orchard Road in Sumter, South Carolina.
6. Dolgencorp, LLC, which is a wholly-owned subsidiary of Dollar General Corporation, has a Registered Agent for service of process in South Carolina.
7. Janie Davis, nor any local Store Manager, has ever been authorized to accept

service on behalf of Dollar General and/or Dolgencorp, LLC.

8. I have searched our records and can confirm that Janie Davis was not the Store Manager as of March 30, 2022. In fact, my records do not reflect there was anyone by the name of Janie Davis that worked for us in South Carolina as of March 30, 2022. There are four (4) people in our Human Resources System named Janie Davis, but none of them have ever worked in South Carolina. The closest match we were able to find is a "Jani E. Davis," but she last worked for us in 1997.

9. The Store Manager as of March 30, 2022 was Algerina Pringle. She is still with the same store and is the current Store Manager.

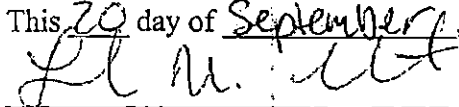
10. Plaintiff's counsel has not produced any evidence of service on Dolgencorp, LLC or Dollar General's Registered Agent for purpose of service of process.

FURTHER, AFFIANT SAYETH NAUGHT.

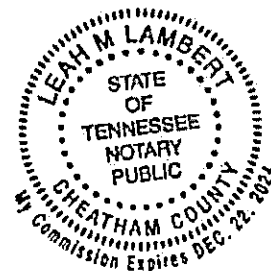

David Bengtson

SWORN TO AND SUBSCRIBED BEFORE ME

This 20 day of September, 2022.


Notary Public for South Carolina

My Commission Expires: 22 DEC 2024





STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

Mae McGruder,)

Plaintiff,)

-vs-)

Dollar General Corporation, d/b/a Dollar)
General Store #16677 and Janie Davis,)

Defendants.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2022-CP-43-00508

ENTRY OF DEFAULT

IT APPEARING to me from the filebook, the file in this case and the Affidavit of Counsel for the Plaintiff that the Defendant has failed to timely plead or otherwise defend in this case. Upon information and belief the Defendant is not a member of the armed services. Therefore, the Defendant shall be found in default.

AND IT IS SO ORDERED



Sumter Common Pleas

Case Caption: Mae Mcgruder VS Dollar General Corporation , defendant, et al

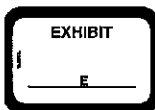
Case Number: 2022CP4300508

Type: Order/Entry of Default

So Ordered

s/James C. Campbell, Sumter County Clerk of
Court

Electronically signed on 2022-08-04 16:56:13 page 2 of 2



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	2022-CP-43-00508
	)	
Mae McGruder,	)	
	)	
Plaintiff,	)	ORDER OF REFERRAL TO SPECIAL
	)	REFEREE
-vs-	)	
	)	
Dollar General Corporation, d/b/a Dollar	)	
General Store #16677 and Janie Davis,	)	
	)	
Defendants.	)	
_____	)	

This matter comes before the Clerk upon motion of the Plaintiff pursuant to Rule 53 of the South Carolina Rules of Civil Procedure seeking referral of the matter to a Special Referee.

It appears that the Defendants, Dollar General Corporation, d/b/a Dollar General Store #16677, and Janie Davis, are in default in this action as evidenced by the Affidavit of Default filed herewith by Counsel for the Plaintiff.

IT IS THEREFORE ORDERED that this action is referred to Robert W. Buffington, as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53 of the South Carolina Rules of Civil Procedure, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this Default Judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, any action necessary to enforce the judgment, and any motions or

actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held by Robert W. Buffington, Special Referee, at Clark Law Firm, LLC, located at 22 East Liberty Street, Sumter, South Carolina, and all Orders of the Special Referee shall be filed with the Clerk of Court for Sumter County. The fees of the Special Referee shall be paid by the Plaintiff with the provision that if an appearance is made on behalf of the Defendant(s) the fees shall be equally divided between all parties who have appeared.

IT IS SO ORDERED.



Sumter Common Pleas

Case Caption: Mae Mcgruder VS Dollar General Corporation , defendant, et al

Case Number: 2022CP4300508

Type: Order/Referred to Master or Special Referee

So Ordered

s/James C. Campbell, Sumter County Clerk of
Court



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
MAE MCGRUDER,	)	Civil Action No. 2022-CP-43-00508
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO SET ASIDE DEFAULT
	)	AND/OR FOR EXTENSION OF TIME
DOLLAR GENERAL CORPORATION,	)	TO FILE ANSWER
D/B/A DOLLAR GENERAL STORE	)	
#16677 AND JANIE DAVIS,	)	
	)	
Defendants.	)	

TO: JOHN D. CLARK, ATTORNEY FOR PLAINTIFF:

You will please take notice that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendants, Dolgencorp, LLC, improperly named Dollar General Corporation, d/b/a Dollar General Store #16677 and Janie Davis, by and through their undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas, Sumter County, for an order setting aside any entry of default and/or default judgment against these Defendants pursuant to Rules 6(b), 55(c) and 60(b) of the South Carolina Rules of Civil Procedure. The basis of this motion is as follows: (1) there exists good cause to set aside the entry of default and/or default judgment in this case; (2) the default occurred due to mistake and/or excusable neglect; (3) this motion has been made within a reasonable time of the discovery of the default; (4) these Defendants were improperly and/or insufficiently served; (5) these Defendants were improperly placed into default without proper notice and without proper service; and, (6) these Defendants have valid defenses to the Plaintiff's Complaint.

Further, Defendants asserts Dolgencorp, LLC has not been properly served with the Complaint as it has a Registered Agent for purposes of service of process in the State of South

Carolina. S.C. Code Ann. §15-9-240(a) allows a foreign corporation (in this instance Dolgencorp) to designate a registered agent for purposes of service of process, which Dolgencorp has done through the S.C. Secretary of State. Service upon any individual other than the registered agent for a foreign corporation is improper service and is not binding. *See Kreke v. Ohio Gear-Wallace Murray Corp.*, 287 S.C. 388, 339 S.E.2d 115 (1986) (finding that service on plant manager and secretary of state improper, because the registered agent was never served). Defendants further assert a lack of proof or service provided by Plaintiff's counsel relative to service of the alleged Manager, Janie Davis. A search of the records reveals that Janie Davis was not the Manager at the time of this accident nor was she the Manager at the time service of process was made. As such, any attempt at service of process on Janie Davis would not be proper and further would not be binding upon Dolgencorp, LLC.

In the alternative, Defendants hereby move for an order pursuant to Rule 6(b) of the South Carolina Rules of Civil Procedure enlarging the time period in which to Answer, move or otherwise plead in the above captioned matter. Rule "6(b) allows that 'upon motion made after the expiration of a specified period, for good cause shown, the court can permit the act to be done.'" *Resolution Trust Corp v. Palmetto Fort*, 831 F.Supp. 510, 514 n.4 (1993). Further, an enlargement of time to answer is within the sound discretion of the trial court. *Beckham v. Durant*, 300 S.C. 329, 332, 387 S.E.2d 701, 703 (Ct. App. 1989). As is detailed above, good cause exists due to excusable neglect and mistake in this case. Therefore, Defendants should be allowed an enlargement of time in which to file a responsive pleading in this matter.

Accordingly, Defendants Dolgencorp, LLC and Janie Davis request that this Court set aside any entry of default and/or default judgment, deny any motions by the Plaintiff for entry of default and/or default judgment, extend the time to file an Answer to the Complaint, and allow

this matter to proceed to trial. This motion may be supported by affidavits, memoranda, briefs and evidence which may be received and/or required by the Court.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/R. Trippett Boineau, III

R. TRIPPETT BOINEAU, III (SC Bar No. 73769)

trippett.boineau@mgclaw.com

MICHAEL TRASK (SC Bar No. 103120)

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Columbia, South Carolina 29211

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Facsimile: (803) 748-0526

ATTORNEY FOR DEFENDANTS

August 19, 2022

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
MAE MCGRUDER,	)	Civil Action No. 2022-CP-43-00508
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER
	)	(Jury Trial Demanded)
DOLLAR GENERAL CORPORATION,	)	
D/B/A DOLLAR GENERAL STORE	)	
#16677 AND JANIE DAVIS,	)	
	)	
Defendants.	)	

Defendants, Dolgencorp, LLC (improperly identified as Dollar General Corporation d/b/a Dollar General Store #16677) and Janie Davis (hereinafter "Defendants") hereby answer the Complaint and respectfully assert the following:

FOR A SECOND DEFENSE

1. Defendants move, pursuant to Rules 12(b)(4)&(5), to dismiss the case for improper service and insufficient service of process.

FOR A FIRST DEFENSE

2. Plaintiff has sued the wrong corporate entity. Defendant Dolgencorp, LLC's correct corporate identity is solely Dolgencorp, LLC. Defendant authorizes the undersigned attorneys to accept service of an Amended Summons and Complaint correctly identifying this Defendant. In the event no such amendment is filed and served, Defendants reserves any and all rights available under Rule 12 of the South Carolina Rules of Civil Procedure and will move to dismiss this matter with prejudice. Defendants assert that Dolgencorp, LLC is the proper defendant as it is the Dollar General entity that operates retail stores within the State of South Carolina under the Dollar General brand name. Furthermore, Janie Davis was not the store

manager when the complained of incident occurred, and, therefore, the claims against Defendant Davis fail to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

3. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A THIRD DEFENSE

4. Defendants would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A FOURTH DEFENSE

5. Defendants lack sufficient information necessary to form a belief regarding the truth of the allegations complained in paragraph 1 and, therefore, deny the same.

6. In response to the allegations contained in paragraph 2, Defendant Dolgencorp, LLC, is a Kentucky entity with its principal place of business in Tennessee. Defendants admit there was a store location in Sumter County, but deny the remaining allegations therein.

7. Defendants deny the allegations contained in paragraph 3 and demand strict proof thereof.

8. Defendants object to the allegations contained in paragraph 4 to the extent the same assert legal conclusions. Subject to said objection, Defendants admit Dolgencorp, LLC, owned the subject premises referenced in the Complaint. Defendants deny the remaining allegations therein.

9. In response to the allegations contained in paragraph 5, Defendants reassert and reallege the previous paragraphs and defenses as if fully stated herein verbatim.

10. Defendants deny the allegations contained in paragraphs 6 and 7 based upon a lack of information.

11. Defendants object to the allegations contained in paragraph 8 as the same asserts legal conclusions that do not require a response. To the extent a response is required, Defendants move to strike.

12. Defendants deny the allegations contained in paragraphs 9 and 10, including any and all subparts, and demand strict proof thereof.

13. To the extent necessary, Defendants deny Plaintiff's Wherefore Clause.

FOR A FIFTH DEFENSE
(Comparative Negligence as Complete Bar)

14. Defendants plead the doctrine of comparative negligence and allege the negligence and recklessness of Plaintiff was greater than any negligence which may be established against Defendants and, therefore, Plaintiff is barred from recovery.

FOR A SIXTH DEFENSE
(Comparative Negligence – Reduction in Recovery)

15. Defendants plead the doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff was greater than the negligence, if any, which may be established against Defendants and, therefore, Plaintiff is barred from recovery. Defendants further allege that any injury and damage sustained by Plaintiff were due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing to the negligence and/or willfulness, if any, on the part of Defendants and that any amount of recovery awarded to Plaintiff for Plaintiff's alleged injuries and damages shall be reduced by the Court based upon the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR A SEVENTH DEFENSE
(Intervening and Superseding Negligence)

16. Defendant would allege and show that any injury and damage claimed by Plaintiff was directly and proximately caused by the intervening and superseding the acts of negligence, willfulness, and gross negligence of parties and/or non-parties other than Defendants.

FOR AN EIGHTH DEFENSE
(Sole Negligence of Plaintiff)

17. Defendant alleges any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever.

FOR A NINTH DEFENSE
(No Duty to Warn)

18. Defendant had no duty to warn about possible dangers or hazards, if any, which were not known or which were not capable of being known.

FOR A TENTH DEFENSE
(Assumption of the Risk)

19. Defendant alleges all of the risks and dangers, if any, existing at the time and place of Plaintiff's alleged accident and injury were open, obvious, apparent, and were either known by Plaintiff or should have been known by Plaintiff. Furthermore, Plaintiff was perfectly competent to judge the appropriateness of the circumstances and conditions alleged to exist at the time and place of the alleged accident and, therefore, by Plaintiff's actions, she freely and voluntarily exposed herself to the alleged danger, thereby assuming the risk of being injured in the manner alleged in the Complaint. Therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR AN ELEVENTH DEFENSE
(Open and Obvious)

20. Defendant alleges the condition on the premises Plaintiff alleges caused Plaintiff's injury was either open and obvious to Plaintiff at the time of his injury or was otherwise known to Plaintiff at the time of her injury. Furthermore, any danger created by said condition, which Defendants expressly deny, was not of a nature that should have been anticipated by Defendants. Therefore, Plaintiff is barred from recovery in this action against Defendants.

FOR A TWELFTH DEFENSE
(Third Party Negligence)

21. Defendant alleges, upon information and belief, that any injury and damage sustained by Plaintiff was due to and caused by the sole and negligent acts or omissions of some other person or persons other than Defendant over whom Defendant neither had nor exercised any authority or control and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A THIRTEENTH DEFENSE
(Punitive Damages)

22. Defendant would show the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damage issues are tried only after and if liability on the merits of this action has been found will violate Defendants' due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law and public policy of the State of South Carolina.

23. Defendant would show the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate

Defendants' due process rights guaranteed by United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

24. Defendant alleges the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- (a) Provided with sufficiently clear standards for determining the appropriateness of a punitive damage award or the size of such award;
- (b) Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- (c) Instructed that awarding punitive damages on invidiously discriminatory characteristics of Defendants is improper;
- (d) Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of Defendants upon which an award of punitive damages may be based; and,
- (e) Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness;

would violate Defendants' equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

FOR A FOURTEENTH DEFENSE
(Punitive Damages Caps)

25. Defendants are entitled to all caps and/or limitations of punitive damages and liabilities as set forth S.C. Code Ann. §§ 15-32-530 and 15-32-520 and other applicable state and federal law.

RESERVATION AND NON-WAIVER

26. Defendants reserve any additional and future defenses as may be revealed by additional information during the course of discovery and investigation and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered, Defendants pray that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/R. Trippett Boineau, III

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ATTORNEY FOR DEFENDANTS

August 19, 2022



STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Mae McGruder,

Plaintiff,

vs.

Dollar General Corporation, d/b/a Dollar
General Store #1677 and Janie Davis,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO: 2022-CP-43-00508

**ORDER DENYING MOTION FOR RELIEF
FROM ENTRY OF DEFAULT AND DENYING
MOTION FOR LIMITED DISCOVERY**

This matter came before the Special Referee on September 22, 2022 for hearing on Dolgencorp's motion to set aside Default and motion for limited discovery. For the reasons set forth herein these motions are denied.

PROCEDURAL HISTORY.

This is a premises liability case wherein Plaintiff alleges that she was injured in a slip and fall accident on October 29, 2019 caused by Defendants' negligence. A Summons and Complaint was filed on March 20, 2022. In the Complaint, Plaintiff alleges that Defendant Dollar General is liable for her injuries as owner of the premises and business and Defendant Janie Davis is liable as manager of the store on the date of accident.

The named defendant is Dollar General Corporation, d/b/a Dollar General Store #1677 Defendant was served with the Summons and Complaint on April 4, 2022 when Plaintiff's process server served Dollar General's Manager Algerina Pringle via hand delivery at Dollar General Store #16677 on Peach Orchard Road, Dalzell, South Carolina, where Plaintiff alleges she was injured. Defendant Janie Davis was personally served at her home on April 6, 2022.

Neither of the Defendants responded to Plaintiff's Complaint within 30 days of being served.

Default was entered against Defendants on August 4, 2022.

Defendants were notified of the damages hearing on August 17, 2022. On August 19, 2022 Defendants filed a Motion to Set Aside Default and/or for Extension of Time to File Answer. On August 23, 2022, Dolgencorp, LLC filed a Motion to Continue Damages Hearing and to Conduct Limited Discovery.

ISSUES PRESENTED

1. WHETHER DEFENDANTS ARE ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE PLAINTIFF NAMED DOLLAR GENERAL CORPORATION, THE TRADE NAME OF DOLGENCORP, LLC, AND DID NOT SPECIFICALLY NAME DOLGENCORP, LLC AS A DEFENDANT?
2. WHETHER DEFENDANT JANIE DAVIS IS ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE DEFENDANT DOLLAR GENERAL CORPORATION CONTENDS THAT SHE WAS NOT THE MANAGER ON THE DATE OF THE ACCIDENT?
3. WHETHER DEFENDANT DOLLAR GENERAL CORPORATION IS ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE PLAINTIFF SERVED ITS MANAGER INSTEAD OF DOLGENCORP, LLC'S REGISTERED AGENT?
4. WHETHER DEFENDANTS ARE ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BASED ON GOOD CAUSE UNDER RULE 55(c) SCRPC?
5. WHETHER DEFENDANTS ARE ENTITLED TO CONDUCT LIMITED DISCOVERY?

STANDARD OF REVIEW

Rule 55(a) SCRPC provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the

entry of default. The standard for granting relief from an entry of default under Rule 55(c) is "good cause". This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. Dixon v. Besco Engineering, Inc., 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. Williams v. Stalnaker, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009).

RULING.

1. DEFENDANTS ARE NOT ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE DOLGENCORP KNEW THEY WERE BEING SUED, WERE NOT MISLED AND DEFENDANTS DID NOT SUFFER PREJUDICE.

The law in South Carolina is clear that a corporation conducting business in a trade name may sue or be sued in the trade name. In Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 241, 399 S.E.2d 779 (1990) the Supreme Court of South Carolina, citing Tunstall v. The Lerner Shops, Inc., 160 S.C. 557, 159 S.E. 386 (1931) stated "We agree with the holding in Tunstall that where a corporation has acquired a name by usage an adjudication against it by the name so

acquired is valid and binding." Tri-County, 303 S.C. at 241, 399 S.E. 2d at 782, citing Tunstall, 160 S.C. at 566, 159 S.E. at 389 (internal quotations omitted), further citing Carroll v. Equico Lessors, 141 Ga. App. 279, 233 S.E.2d 255 (1977) (a corporation conducting business in a trade name may sue or be sued in the trade name). "Thus, we conclude that a default judgment entered against a defendant in the name under which a business is being operated may be amended by changing the name of the defendant to the name of the corporation which operates the business." Tri-County, 303 S.C. at 241, 399 S.E. 2d at 782. In reaching its conclusion, the Court in Tri-County stated that Defendants "have not been misled to their prejudice as to the nature of the lawsuit." citing Long v. Carolina Baking Co., 193 S.C. 225, 8 S.E.2d 326 (1939) (judgment would not be invalidated against corporation who is incorrectly named where corporate defendant has suffered no prejudice); Rollins v. Junior Miller Roofing Co., 55 N.C. App. 158, 284 S.E.2d 697 (1981) (if real party receives notice, no prejudice results in permitting him to be sued in trade or fictitious name). In this case, there is no dispute that Dollar General is the trade name of Dolgencorp, LLC and Defendants have presented no evidence that it was misled or suffered prejudice as a result of being sued in its trade name. In Griffin v. Cap. Cash, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992), the Court reasoned that a corporation may be known by several names in the transaction of its business. Long v. Carolina Baking Co., 193 S.C. 225, 8 S.E.2d 326 (1939). If it is sued in a name under which it transacts business, the process will ordinarily be sufficient to bring it before the court. United States v. A.H. Fischer Lumber Company, 162 F.2d 872 (4th Cir.1947). The misnomer of a corporation has the same effect as the misnomer of an individual. Long v. Carolina Baking Co., supra. If it later appears that the true name of the corporation is different from the name under



which it was sued, the misnomer is properly a subject of amendment. Id. However, failure to correct the corporate name does not invalidate the process or the judgment where the misnomer causes the corporation no prejudice. Id; United States v. A.H. Fischer Lumber Company, supra. In McCall v. IKON, 363 S.C. 646, 654, 611 S.E.2d 315, 318 (Ct. App. 2005), the South Carolina Court of Appeals addressed a scenario where a Defendant was sued in its trade name, stating "[b]ecause IKON prominently held itself out as IKON Education Services, it would be wholly inequitable to find McCall's attempts to serve the company under that name ineffective." Based on South Carolina case law, Defendants are not entitled to relief from entry of default because they were sued under their trade name. While the good cause standard is to be liberally applied, simply bringing this action against Dollar General Corporation d/b/a Dollar General Stoe #16677 is sufficient notice of suit as to Dolgencorp, LLC. Any misnomer is not sufficient to establish grounds for relief from entry of default.

2. DEFENDANT JANIE DAVIS IS NOT ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE SHE HAS NOT SHOWN GOOD CAUSE.

Defendants do not contend that they failed to answer Plaintiff's Complaint within 30 days of service. Therefore, they are in default and it is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability. Howard v. Holiday Inns Inc., 271 S.C. 238, 246 S.E.2d 880 (1978); Schenk v. National Health Care, Inc., 322 S.C. 316, 471 S.E.2d 736 (Ct.App.1996); State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985) Roche v. Young Bros., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). See also Rule 8(d) SCRPC. As such, Defendants cannot contest factual allegations while in default. Also, contesting factual allegations in the

Reub

Complaint does not constitute a basis for good cause for failing to timely answer Plaintiff's Complaint. It is noteworthy that although Counsel represents Janie Davis, Ms. Davis does not submit any evidence touching on the issues of service upon her, failing to timely answer the Complaint or her role or position with Dollar General. Without good cause shown, Defendant Janie Davis is not entitled to relief from entry of default.

3. DEFENDANT DOLLAR GENERAL CORPORATION IS NOT ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE SERVICE UPON ITS MANAGER IS PROPER SERVICE UNDER SOUTH CAROLINA LAW.

S.C. Code Ann. § 15-9-240 provides the means by which service of process on an authorized foreign corporation can be accomplished via registered agent or mail. However, subsection (e) provides that "This section does not prescribe the only means, or necessarily the required means, of serving a foreign business or nonprofit corporation." Rule (4)(d)(3) SCRPC provides an alternate means to serve corporations providing that: Corporations and Partnerships. Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process... In this case, Defendant admits that Algerina Pringle was the manager of Store #16677 on the date of service based on paragraph #9 of the affidavit of David Bengston, and Plaintiff's affidavit of service reflects that she was served and identified as manager. Despite the clear language of the rule, Defendants erroneously argue that service was improper because Plaintiff did not serve Dolgencorp's registered agent under the case Kreke v. Ohio Gear-Wallace Murray Corp., 287 S.C. 388, 389, 339 S.E.2d 115, 115



(1986). However, as pointed out during the hearing in this matter, Kreke has been reversed. In 1988, the South Carolina legislature repealed the 1981 South Carolina Business Corporation Act and enacted the South Carolina Business Corporation Act of 1988. S.C. Code Ann. § 33-1-101 (Rev.1990). The South Carolina Reporters' Comments to S.C. Code Ann. § 33-15-110 (Rev.1990) elucidate with clarity that service of process on a foreign corporation is permitted in a bifurcated fashion. In addition, the Model Act and Section 15-9-240 provide that either the procedure in South Carolina Civil Procedure Rule 4(d)(3) (serving an officer) or that contained in Section 15-9-240 (serving the agent) is proper. The Court in Schenk v. Nat'l Health Care, Inc., 322 S.C. 316, 320, 471 S.E.2d 736, 738 (Ct. App. 1996) stated that "the new language of subsection (d) clearly states that the service method in Kreke (or under Rule 4(d)(3)) is now valid." This is in keeping with the court's earlier opinion, Renney v. Doobs House, Inc., 275 S.C. 562, 274 S.E.2d 290 (1981). In Renny, the Court held that service on an assistant manager was proper service. It is important to note that in neither Schenk nor Renney does the Court mention anything about a manager being required to have explicit authority from the corporation. Therefore, service on the manager was proper and binding on Defendant Dollar General. Defendants also erroneously rely on Richardson v. P.V., Inc., 383 S.C. 610, 613, 682 S.E.2d 263, 264 (2009); however, this case actually supports Plaintiff's position. In Richardson, the manager was unavailable to receive service of process so the process server left the process with a front desk clerk, not a manager. Based on the circumstances of the case, the Court stated that "even if Cruel did not have actual authority, we find that she had apparent authority to accept service of process." Id. Therefore, Richardson does not stand for the proposition that a manager must be authorized to accept process, because the Rules of Civil Procedure clearly



authorize service on a manager. Richardson only addressed service on non-manager employees and their authority to accept service. The Court has found that exacting compliance with the rules is not required to effect service of process. Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Perhaps the most instructive case on this issue is Burris Chem., Inc. v. Daniel Const. Co., 251 S.C. 483, 487, 163 S.E.2d 618, 620 (1968). In Burris the court stated: The principal object of service of process is to give notice to the defendant corporation of the proceedings against it. Service upon a common laborer would normally be insufficient because such would not likely give notice to the corporation. It cannot be logically argued that the superintendent in charge of all of the remaining employees at a project of this magnitude is not such a representative of the corporation as contemplated by the legislature to apprise the corporation that an action had been commenced. The lower court was justified in finding that the person served was such an agent of the construction company. The service could reasonably be expected to result in prompt notice to the corporation with adequate opportunity to defend. This court will not reverse that finding unless unsupported by evidence or obviously influenced by error of law. Id., citing, Bass v. American Products Export and Import Corporation, 124 S.C. 346, 117 S.E. 594, 30 A.L.R. 168 (1923). In the case at bar, like Burris, it cannot be logically argued that Algerina Pringle, as manager of Dollar General Store #16677, in charge of the store, its inventory, sales, operation, and all of its employees, is not such a representative of the corporation as contemplated by the legislature to apprise the corporation that an action had been commenced. It is also noteworthy that Defendants have not presented evidence from Algerina Pringle as to whether she actually received the process and passed it on to the Corporation or why the Complaint was not timely answered. Defendants also argue that



even if the manager was served with the process, she was not authorized by company policy to accept service even though Defendants have not presented any written company policy on this issue. It is the Plaintiff's position that the manager is designated by law as being a person that can be served on behalf of a corporation and the company's authorization is not required. In other words, the company's policy does not trump state law. See Schenk and Renney, *supra*. While the language of Rule (4)(d)(3) SCRCP is clear, Defendants present no authority for their position. A close inspection of the interpretation of the rule shows that their reasoning is illogical. For instance, the rule says an officer of the corporation can be served on behalf of the corporation. It does not say that the officer must be authorized. It would not make sense for the legislature to intend for an officer to be required to have authorization to accept service since service if the officer should reasonably be expected provide notice to the corporation in that the officer occupies a position of authority comparable to that of a manager. In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes. Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 443 S.E.2d 906 (1994). If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced. See Knotts v. S.C. Dept. of Natural Resources, 348 S.C. 1, 558 S.E.2d 511 (2002); Maxwell v. Genez, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). The language of Rule (4)(d)(3) SCRCP is plain, unambiguous, and conveys a clear meaning. Therefore, interpretation is unnecessary and the stated meaning should be enforced. It is clear that a manager of a corporation can be served, just like an officer of the corporation. If the legislature intended that a manager have authorization before accepting service, it could have easily said as much. The legislature did not do so because it



would lead to uncertainty among litigants in commencing litigation. After finding the manager, process servers would then have to determine if the manager was authorized to accept service. Then, the corporation could defeat service by simply saying the manager was not authorized. To require the manager to be authorized was clearly not the intent of the legislature and the rule is clear and unambiguous. If the purpose of service is to give notice, Defendants were clearly put on notice and present no evidence that they were not provided sufficient notice of the lawsuit.

4. DEFENDANT DOLLAR GENERAL CORPORATION IS NOT ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE THEY HAVE NOT SHOWN GOOD CAUSE.

Defendants have failed to identify good cause for relief from default as required by Rule 55(c) SCRPC. No explanation was presented for why they did not timely answer the Complaint, despite Ms. Pringle's, the manager having received service of the pleadings. Defendants don't deny that service was effected as claimed by Plaintiff, and do not deny that they received the pleadings. No affidavits of the manager Algerian Pringle or Janie Davis were submitted. And although Defendants submit the affidavit of David Bengston, he sets forth no explanation either of why Defendant did not answer the complaint. The answer or motion was not timely made as it was filed four months after service was made. Moreover, Defendants have not demonstrated that they have a meritorious defense.

5. DEFENDANT DOLLAR GENERAL CORPORATION IS NOT ENTITLED TO CONDUCT LIMITED DISCOVERY BECAUSE THEY ARE IN DEFAULT?

South Carolina courts first addressed the issue of how a Defendant in default might contest damages in the case of Howard v. Holiday Inns, Inc., 271 S.C. 238, 241, 246 S.E.2d 880,

882 (1978). In Howard, the court considered "three possible approaches. We could (1) allow damages to be determined in an Ex parte proceeding, denying the defendant any right to participate; (2) allow damages to be ascertained after a full adversary contest, including the right of the defendant to produce evidence in rebuttal or in mitigation; or (3) allow damages to be ascertained with defense counsel's participation limited to cross-examination and objection to plaintiff's evidence. We hold that this third approach is the proper one and approve it for use in the courts of this state." This approach was revisited more recently in the case of Limehouse v. Hulse, 404 S.C. 93, 96, 744 S.E.2d 566, 568 (2013), but declined to expand Defendant's participation any further, stating: For the past thirty-five years, our appellate courts have consistently adhered to the decision in Howard. See, e.g., 115 Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998); Solley v. Navy Fed. Credit Union, 397 S.C. 192, 723 S.E.2d 597 (Ct.App.2012). Although our courts have scrutinized default judgments involving punitive damages in order to prevent harsh results, we have declined to expand a defendant's participation in these hearings beyond what was approved of in Howard. See Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc., 275 S.C. 556, 274 S.E.2d 287 (1981). Although the South Carolina Rules of Civil Procedure do not prohibit discovery by a party in default, case law is crystal clear that defaulting Defendant's participation is limited to cross examination and objections.

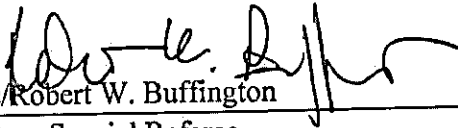
CONCLUSION

THEREFORE, Defendants' motions are DENIED. The case will proceed with a damages hearing in accordance with this order as soon as it can be reasonably heard.

[signature on following page]



October 19, 2022
Myrtle Beach, SC


s/Robert W. Buffington

By: Special Referee

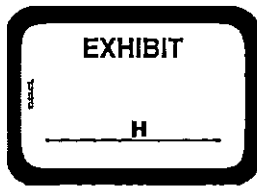
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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

MAE MCGRUDER,
Plaintiff,

Civil Action No. 2022-CP-43-00508

vs.

**DOLGENCORP, LLC'S MOTION TO
RECONSIDER THE ORDER
DENYING THEIR MOTION TO SET
ASIDE DEFAULT**

DOLLAR GENERAL CORPORATION,
D/B/A DOLLAR GENERAL STORE
#16677 AND JANIE DAVIS,
Defendants.

Defendants, Dolgencorp, LLC, improperly named Dollar General Corporation, d/b/a Dollar General Store #16677 and Janie Davis (hereinafter collectively referred to as "Defendants"), hereby move pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure* for an Order altering or amending the Order of the Special Referee denying their Motion to Set Aside Default and Motion to Conduct Limited Discovery. These Motions were heard by the Special Referee on September 22, 2022. As discuss in more detail below, the Court's decision that Defendant Davis and Dolgencorp, LLC, improperly identified as Dollar General Corporation d/b/a Dollar General (referred to as Defendant Dolgencorp or Dolgencorp for ease), failed to show good cause is unsupported by the evidence submitted at the Motions Hearing. Furthermore, the Order fails to analyze the *Wham* factors in determining whether to grant or deny Defendants Motion to Set Aside Default. A review of the evidence submitted at the hearing confirms good cause exists to set aside the entry of default and, as a result, this Court should reconsider its Order and grant Defendants Motion to Set Aside Default in its entirety.

FACTUAL BACKGROUND

This civil action arises out of an alleged slip and fall that occurred on October 29, 2019,

in a Dollar General store located at 2320 Peach Orchard Road in Sumter, South Carolina. The Plaintiff filed her Complaint on March 30, 2022, alleging she sustained personal injuries after slipping and falling on a foreign substance inside the subject store. According to the filed affidavits of service, the Plaintiff attempted to serve Defendant Dolgencorp, LLC, (improperly named Dollar General Corporation, d/b/a Dollar General Store #16677) on April 4, 2022, via hand delivery of the Summons and Complaint on the store manager for the specific Dollar General location. The store manager's name was Algerina Pringle. Furthermore, the Plaintiff allegedly served Defendant Davis via hand delivery at her residence on April 4, 2022, too. The Plaintiff's Complaint and both affidavits of service are attached hereto as Exhibits A, B, and C.¹

Defendant Dolgencorp (improperly named Dollar General Corporation, d/b/a Dollar General Store #16677) utilizes Corporation Services Company ("CSC") as their registered agent in South Carolina pursuant to S.C. Code Ann. §15-9-240(a). As evidenced by the attached affidavit of David Bengtson,² store managers are not authorized, and have never been authorized, to accept service on behalf of Defendant Dolgencorp. The first time Defendant Dolgencorp learned about this lawsuit was August 17, 2022, since Plaintiff never served the Summons and Complaint on CSC as Dolgencorp's registered agent. Defendant Dolgencorp filed a Motion to Set Aside Default and corresponding Answer on August 19, 2022.

Defendant's Motion to Set Aside Default and to Conduct Limited Discovery was heard by the Special Referee on September 22, 2022. Plaintiff argued that service was proper and there was no good cause shown to set aside the default against both Defendants. Further, Plaintiff argued that she sued Dolgencorp based on their trade name and any issues related to the parties

¹ Defendant is not re-attaching Exhibits A-D as these exhibits were previously produced to Plaintiff and the Court.

² The affidavit is attached hereto as Exhibit D. David Bengtson is the director of general liability for Dolgencorp, LLC.

were merely a misnomer that could be amended. Dolgencorp argued that: (1) Defendant Davis was not an employee when this incident occurred or when the suit was filed, which constituted good cause to set aside her default; (2) that the wrong corporate entity was sued; (3) that service was improper on Dolgencorp, because Plaintiff failed to serve the registered agent; (4) that good cause existed to set aside the default against Dolgencorp since the evidence confirmed it was a mere mistake based on the improper service that prevented them from filing a timely Answer; and (5) that the Rules of Civil Procedure allowed limited discovery on the issue of damages by a defaulting party. Notably, the only evidence presented by either Party at the hearing was the affidavit of David Bengtson (i.e. Exhibit D) the head of risk management for Dollar General.

The Court issued its ruling on October 19, 2022, denying Dolgencorp's Motion to Set Aside Default and Motion to Conduct Limited Discovery. The Order notes that: (1) Dolgencorp failed to show good cause necessary to set aside the default entry; (2) Defendant Davis failed to show good cause necessary to set aside the default entry; (3) Defendant Dollar General Corporation failed to show good cause necessary to set aside the default entry; (4) service on Algerina Pringle (i.e. the store manager when service was attempted by Plaintiff) was sufficient under Rule 4(d)(3); and (5) the Rules of Civil Procedure and applicable case law prohibit a defaulting party from conducting discovery on the issue of damages prior to a damages hearing be heard. Dolgencorp timely filed this Motion to Reconsider.

STANDARD OF REVIEW

Rule 59(e) authorizes a party to bring before the court a motion for reconsideration. 59(e), *SCRPC*. A "great number of . . . cases in South Carolina . . . have emphasized the importance and absolute necessity of ensuring all issues and arguments are presented to the lower court for its consideration." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772,

780 (2004). Therefore, it is proper for a party to request the court to reconsider issues already ruled upon to ensure the court does not innocently fail to consider the issue in its entirety. *Elam*, 361 S.C. at 24.

LEGAL ARGUMENTS

The decision whether to set aside an entry of default or a default judgment lies within the sound discretion of the trial judge. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). Rule 55(c) of the South Carolina Rules of Civil Procedure provides that, “[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).” The “good cause” standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Id.* Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and, (3) the degree of prejudice to the plaintiff if relief is granted. *Id.*

The discretionary element makes it clear that the party requesting a judgment by default is not entitled to one as of right, even when the defendant is technically in default. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App. 1997). South Carolina appellate courts have long preferred for cases to be determined by the merits and have required Rule 55(c) to be liberally construed to promote justice. *See Limehouse v. Hulsey*, 397 S.C. 49, 723 S.E.2d 211, 233 (Ct.App. 2011) (emphasis added).

A. The Order erroneously requires Defendant Davis to explain why she defaulted despite the evidence confirming she is an improper party.

The Court's Order expressly found that Defendant Davis failed to establish good cause for the set aside of her default, because she did not offer a reason as to why the default occurred. However, the only evidence presented to the Court regarding Defendant Davis was that she was an improper party to the litigation. The Bengtson Affidavit confirms that a Janie Davis neither worked at the subject store when the incident occurred, nor worked at a Dollar General in South Carolina at all. There is still no evidence explaining who Defendant Davis is other than the Plaintiff's mere allegations of her identity. The Plaintiff failed to present any evidence confirming Defendant Davis was a proper party. Without citing to any authority supporting the contention, the Order notes that disputing factual allegations alone does not amount to good cause.

The Order's conclusion begs the question: what evidence could Dolgencorp produce to satisfactorily explain the lack of response from Defendant Davis? Dolgencorp would be forced to locate an individual they never had a relationship with solely to inquire as to why the Complaint was not sent to Dolgencorp for their review. This creates an insurmountable duty on Dolgencorp that was doomed from the beginning. The lack of relationship between Dolgencorp and Defendant Davis certainly rises to the level of good cause to explain the default, because the lack of relationship clearly explains why Defendant Davis did not respond to the Complaint. It also confirms that she is an improper party to the litigation. The only logical conclusion is she was mistaken about her role in the litigation since she had never been employed by or had any relationship with the Dollar General store.

B. The Order Erroneously Held Service was Proper Under Rule 4(d)(3).

It is undisputed that Plaintiff attempted to serve Dolgencorp by personally serving the Summons and Complaint on the current store manager (Algerina Pringle) of the subject store.

The Order concludes this was proper service since Rule 4(d)(3) allows a corporate entity to be served by personally serving a managing agent of the corporate entity. 4(d)(3), SCRCP. The Rules specifically states service is proper if the Summons and Compliant are served on “an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . .” 4(d)(3). The Order concludes Ms. Pringle was a managing agent within the meaning of Rule 4(d)(3) simply because she is a store manager for the subject Dollar General store.

“Not every employee of a corporation is an agent of the corporation for the purposes of service of process.” “Not every employee of a corporation is an agent of the corporation for the purposes of service of process.” 383 S.C. 610, 682 S.E.2d 263 (2009) (citing *Roberson v. S. Fin. of South Carolina, Inc.*, 365 S.C. 6, 615 S.E.2d 112, (2005) (holding that a clerical employee was not an agent authorized to accept service of process for the corporation)). In *Roberson*, the South Carolina Supreme Court unanimously held that an employees authority to accept service must come from the corporation itself. *Roberson*, 365 S.C. at 11. The *Roberson* Court concluded the Special Referee erred in determining the clerical employee could accept service of process for the corporation, because there was no evidence the corporate defendant ever allowed the clerical employee to accept service of process in the past or expressly conferred that authority to the employee. *Id.*

Similar to *Roberson*, Dolgencorp never conferred the authority to accept service of process to Ms. Pringle or any other store manager. The only evidence presented to the Court touching upon this issue (the Bengtson Affidavit) confirms store managers have never been authorized to accept service of process on behalf of Dolgencorp or Dollar General. More importantly, Plaintiff failed to present any evidence at the Hearing to show Ms. Pringle had

accepted service of process in the past or had been authorized to accept service of process by Dolgencorp at any time. Dolgencorp utilizes a registered agent for service of process in South Carolina, which Plaintiff is aware of since her Counsel served the registered agent in a prior suit against Dolgencorp in 2014. Instead, Plaintiff simply offered their opinion that “managing agent” under Rule 4(d)(3) was the same as a store manager since they both derive from the word “manage.” Going one step further, the Order does not even cite to any evidence establishing Ms. Pringle had the authority to accept service of process on behalf of Dolgencorp or Dollar General Corporation. This is critical because according to the logic of the Order, any store manager (approximately 200 managers) are capable of accepting service on behalf of Dolgencorp because of their job title. The failure to rely on any evidence showing a Dollar General store manager had authority to accept service requires this Court to find service was improper. The evidence in this case and the designation of a registered agent, under S.C. Code Ann. §15-9-240(a), confirms service was improper in this case, and, as a result, the entry of default against Dolgencorp and/or Dollar General Corporation should be set aside.

C. The Order Fails to Make any Findings Regarding Defendants Meritorious Defense or the Other *Wham* Factors.

After explaining why the default occurred, the Court is required to analyze: (1) the timeliness of the Motion to Set Aside; (2) whether the defendant has a meritorious defense; and (c) the prejudice the plaintiff will potentially suffer if the default is set aside. *See generally Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). To establish that he has a meritorious defense, a complainant need not show that he would prevail on the merits, but only that her defense is meritorious. *McClurg v. Deaton*, 380 S.C. 563, 671 S.E.2d 563 (Ct.App. 2008).

“[A] meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.”

Id. The Order fails to analyze any of the three *Wham* factors in determining whether to set aside the entry of default. As outlined above, good cause for the default was sufficiently shown since service of process was improper and the facts and evidence lead to sole conclusion of a mistake on behalf of the Defendants. Certainly there is no dispute that good cause under Rule 55(c) is to be construed liberally to promote the ends of justice. *See Limehouse v. Hulsey*, 397 S.C. 49, 723 S.E.2d 211, 233 (Ct.App. 2011). At the Hearing, Dolgencorp provided evidence as to the timing, their meritorious defense and the lack of prejudice to the Plaintiff. However, the Order fails to analyze and determine whether those factors justify the set aside of the entry of default. At the Hearing, Plaintiff's only assertion as to prejudice was she would be required to litigate the merits of her case. The “law favors the resolution of disputes based upon all parties having their day in court.” *Williams v. Watkins*, 384 S.C. 319, 327, 681 S.E.2d 914, 918 (Ct. App. 2009) (*citing McClurg v. Deaton*, 380 S.C. 563, 580, 671 S.E.2d 87, 96 (Hearn, C.J., dissenting)). “We have repeatedly expressed a strong preference that, as a general matter, defaults be avoided and that claims and defenses be disposed of on their merits.” *Caldwell v. Wiquist*, 402 S.C. 565, 741 S.E.2d 583 (Ct. App. 2013). Litigating the merits of her case is not prejudicial as contemplated under Rule 60(b) for purposes of determining whether to set aside the entry of default.

The Order's failure to determine the weight and impact of Dolgencorp's arguments and evidence under the *Wham* factors only further confirms the flaws in the Court's holding. The Defendant's explanation under the *Wham* factors coupled with the lack of prejudice the Plaintiff

will suffer seemingly confirms the set aside of default would best serve the interests of justice in this matter.

D. There Exists Good Cause to Set Aside the Default.

The entry of default against both Defendants should be set aside, because good cause exists to do so. *See generally Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (explaining Rule 55(c) requires a showing of good cause and should be liberally construed to promote litigation on the merits). The facts and evidence in this case confirm a simple mistake on behalf of Defendants in failing to timely respond to the Complaint. The lack of employment relationship with Defendant Davis, whomever she is, confirms she was confused about her duties and why she was involved in this litigation. Furthermore, the improper service of process on Dolgencorp confirms a mere mistake was made on their part regarding their ability to respond. The store manager's failure to inform the corporate office for Dolgencorp confirms Ms. Pringle, was confused about what to do with the Summons and Complaint when she received it. Simply put, there exists good cause in this case to support the set aside of the entry of default.

CONCLUSION

Based on the above, this Court should grant Defendants Motion to Reconsider and set aside the entry of default against both Defendants and allow this action to be litigated based on the merits of the claims.

Signature Page to Follow

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/R. Trippett Boineau, III

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ATTORNEYS FOR DOLGENCORP, LLC

October 27, 2022

EXHIBIT

I

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SUMTER

THIRD JUDICIAL CIRCUIT

CIVIL ACTION NO: 2022-CP-43-00508

Mae McGruder,

Plaintiff,

vs.

Dollar General Corporation, d/b/a Dollar
General Store #1677 and Janie Davis,

Defendants.

**ORDER DENYING MOTION TO
RECONSIDER THE ORDER DENYING
THE MOTION OF SET ASIDE
DEFAULT**

Defendant Dolgencorp, LLC filed a motion to reconsider the Order Denying the Motion to Set Aside Default. For the reasons set forth herein, that motion is denied. Under South Carolina Rule of Civil Procedure 59(e), Dolgencorp has set forth four arguments in support of its motion to reconsider:

**A. DAVIS IS NOT ENTITLED TO RELIEF FROM ENTRY OF DEFAULT
BECAUSE SHE DID NOT PROVIDE AN EXPLANATION FOR DEFAULT.**

Dolgencorp argues it was error to require Defendant Davis to explain why she defaulted despite the evidence confirming she is an improper party. To be relieved of an entry of default, a party must first provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted, commonly known as the Wham factors. Wham v. Shearson Lehman Bros., Inc., 298



S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989); Sundown Operating Co. v. Intedg Indus., Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009). No explanation for default was provided, therefore, the Court was not required to reach the Wham factors. Defendant erroneously challenges the veracity of the allegations of the complaint regarding whether Davis was an employee of Dolgencorp. However, it is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability. Howard v. Holiday Inns Inc., 271 S.C. 238, 246 S.E.2d 880 (1978); Schenk v. National Health Care, Inc., 322 S.C. 316, 471 S.E.2d 736 (Ct.App.1996); State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985); Roche v. Young Bros., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). Therefore, Defendants have admitted the allegations of Plaintiff's complaint and cannot now challenge the allegations. Furthermore, Dolgencorp was served with the complaint containing the allegations which it now challenges and could have contested the veracity of these allegations by timely filing a response. Defendant also erroneously argues that the only logical conclusion is that Davis was mistaken about her role in the litigation. This argument must fail because Defendant has presented no evidence to support the conclusion. It is not enough to show good cause to set forth a mere allegation or speculation that Ms. Davis was an alleged improper party or that the alleged lack of a relationship between the defendants.

B. SERVICE WAS PROPER ON DOLGENCORP UNDER RULE 4(d)(c)(3).

Dolgencorp next argues that the Order erred in holding that service of process on Dolgencorp was proper. Service on Dolgencorp's admitted manager was proper under SCRCP 4(d)(3). The rule is clear on its face and does not require that managers have authorization to accept service. This would be illogical and lead to an undue burden on litigants to not only identify the manager



but also determine whether the said manager had authority to accept service. This would be unduly burdensome on Plaintiffs since Defendants could avoid the consequences of its failure to respond to process by simply declaring that the manager did not have such authority.

C. THE COURT DID NOT COMMIT ERROR IN FAILING TO MAKE FINDINGS REGARDING THE WHAM FACTORS BECAUSE NO EXPLANATION FOR DEFAULT WAS PROVIDED.

As stated above, the Court does not reach the Wham factors unless an explanation for default has been provided. But even if the Court did reach these factors the analysis would favor the Plaintiff. Defendants did not answer the Complaint until four months after service and never provided a meritorious defense and never provided evidence that Plaintiff would not be prejudiced by relieving Defendants from default. Although Defendants claim Janie Davis was not the manager on the date of the accident, they fail to provide the name of the actual manager. Now that the statute of limitations has run, Plaintiff would suffer prejudice if Defendants were granted relief from default.

D. DEFENDANTS FAILED TO PRESENT GOOD CAUSE TO SET ASIDE DEFAULT.

Defendants argue that the facts and evidence confirm a "simple mistake" on behalf of Defendants in failing to timely respond but offer no evidence of this "simple mistake." Defendants admit that Algerina Pringle was the manager on the date of service and Plaintiff's affidavit of service indicates that she was served. Though Defendants admit an employment relationship with Pringle, they offer no evidence from this person about any confusion or what actually happened to the Summons and Complaint after she was served. The employment relationship with Defendant Davis is admitted because of Default and there is no evidence of any confusion on the part of Defendant Davis.

It is therefore ordered that Defendant Dolgencorp's motion to reconsider is denied.

IT IS SO ORDERED.

June 30, 2023

Myrtle Beach, SC



s/Robert W. Buffington

By: Special Referee

Robert W. Buffington (SC Bar # 7825)

2411 North Oak Street, Suite 305-F

Myrtle Beach, South Carolina 29577

Tel: (843) 443-4019

Email: bobby@bufflawfirm.com

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	THIRD JUDICIAL CIRCUIT
Mae McGruder,	CIVIL ACTION NO: 2022-CP-43-00508
Plaintiff,	ORDER OF JUDGMENT
vs.	
Dollar General Corporation, d/b/a Dollar General Store #1677 and Janie Davis,	
Defendants.	

This matter came before the Special Referee on June 30, 2023 for a hearing on damages. Judgment is hereby entered in favor of Plaintiff for Nine Hundred Twenty Five Thousand and 00/100 Dollars (\$925,000.00) actual damages. No punitive damages are awarded.

This case arises from an automobile accident that occurred on October 29, 2019. Defendant is in default and as such the allegations of the complaint as to liability are deemed admitted. This case involves a slip and fall at Defendant's store resulting in injuries to Plaintiff. The Plaintiff had the burden of proving her damages with reasonable certainty, without leaving the amount of damages to speculation or conjecture.

The hearing on damages took place on June 30, 2023 via Zoom. Present were Plaintiff Mae McGruder, her counsel John Clark and Josephine Harriott and counsel for Defendant Trippett Boineau, III and Michael Trask. A court reporter was present and transcribed the

hearing. Pursuant to the rules governing default hearings, Plaintiff presented her damages testimony and Defendant's participation was limited to cross-examination of Plaintiff's witness.

Plaintiff testified that it was a rainy day when she walked into the Dollar General Store on Highway 441. Her grandson was with her. The fall was captured on video. Since liability is deemed admitted in this hearing, the video was used by Defendant for cross examination and impeachment purposes. The video clearly shows that the Plaintiff had a hard fall in the foyer of the Dollar General when her legs slipped out from under her as a direct result of the wet floor.

Ms. McGruder testified she went to the hospital on the day of the fall. She also testified to seeing a number of medical providers subsequent to the fall for injuries to her left knee, right hand, right shoulder and low back. She testified that she still uses a walker or cane as a result of her injuries.

Plaintiff also presented the expert testimony of Dr. Rodney Alan, an orthopedic surgeon with McLeod Orthopedic. He testified that the fall at the Dollar General caused a "mechanical loosening" of the previously installed knee replacement and testified it was his opinion that the loosening was caused by the fall. He further testified that the subsequent left knee revision surgery was required as a result of fall. The knee revision surgery involved the removal and replacement of the prior knee replacement. He also testified that Plaintiff right hand was injured in the fall and that her back was injured in the fall. He testified she had permanent back pain and stiffness. He further testified that Plaintiff had the current need for an assisting device (walker or cane) as a result of her condition and that that need was permanent. He said she may need another knee replacement in 10-15 years. Dr. Alan also noted that pre-accident Plaintiff's knee replacement was about 13 years old at the time of her fall and a typical knee replacement lasted 20 years and with certain health conditions, such as diabetes, a knee replacement could last less



than 20 years. While Plaintiff suffered from diabetes, there was no evidence that Plaintiff's knee replacement created any issues for Plaintiff prior to her fall or that it would not have lasted for the full life expectancy of the artificial knee.

Plaintiff presented the expert testimony of Jenn Massey, a life care planner. However, Ms. Massey did not testify in her capacity as a life care planner, and was qualified in the field of medical cost projections. She provided a cost projection report which she concluded was a conservative estimate of future medical care needed by Plaintiff regarding medical projections, based on her review of the medical records. Finally, Plaintiff presented the testimony of Dr. Oliver Wood who testified to the economic loss of Plaintiff. He testified that she had a personal services loss, past and future medical treatment costs, and arrived at a present value loss of \$686,976.00.

The weight of the evidence is that Plaintiff would have needed a knee replacement revision at some point in the next several years whether she had this fall or not. She received her initial knee replacement in 2006 and Dr. Alan testified that the average life span was 20 years. Dr. Alan testified that Plaintiff might be subject to a shorter span due to her health conditions. The weight of the evidence supports that Plaintiff suffered significant pain from the injuries received in this fall and that the fall hastened her knee revision surgery and for this she is entitled to damages. Dr. Alan further testified that plaintiff's injuries were permanent and that the use of an assisting device such as a cane or walker was permanent.

Based on this testimony, I find that plaintiff has met her burden of proof by a preponderance of the evidence and is entitled to damages for pain, suffering, bodily injury, mental distress and medical bills in the amount of \$925,000.00 as a direct and proximate result of

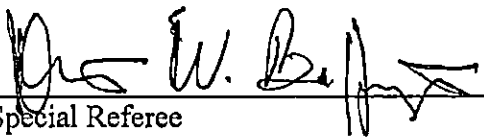


the incident. I find that there was insufficient clear and convincing evidence on which to base an award of punitive damages.

THEREFORE, JUDGMENT TO BE ENTERED IN FAVOR OF PLAINTIFF IN THE AMOUNT OF Nine Hundred Twenty Five Thousand Dollars (\$925,000.00) ACTUAL DAMAGES.

It is so Ordered.

September 25, 2023
Myrtle Beach, SC


By: Special Referee

Robert W. Buffington (SC Bar # 7825)
2411 North Oak Street, Suite 305-F
Myrtle Beach, South Carolina 29577
Tel: (843) 443-4019
Email: bobby@bufflawfirm.com

**EXHIBIT
K**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	2022-CP-43-00508
	)	
Mae McGruder,	)	
	)	
Plaintiff,	)	MOTION TO AMEND FINAL
	)	ORDER OF JUDGMENT
-vs-	)	
	)	
Dollar General Corporation, d/b/a	)	
Dollar General Store #16677 and Janie	)	
Davis,	)	
	)	
Defendants.	)	

TO: ROBERT W. BUFFINGTON, SPECIAL REFEREE, AND MICHAEL TRASK, ESQUIRE, ATTORNEY FOR THE ABOVE NAMED DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 60(A) of the South Carolina Rules of Civil Procedure, the Plaintiff by and through its undersigned Counsel, moves for an order Amending the Final Order of Judgment issued by the Special Referee on September 25, 2023, to reflect the correct name of Defendant incorrectly named as Dollar General Corporation, d/b/a/ Dollar General Store #16677 to Dolgencorp, LLC.

The basis for said motion is that the Defendant Dollar General Corporation, as named in the Complaint, is the commonly used trade name of Dolgencorp, LLC, the owner in fact of Dollar General Store #16677 and Dolgencorp, LLC was served with process and not misled as to the true defendant. Plaintiff moves for amendment of the Final Order of Judgment to change named defendant to Dolgencorp, LLC.

The undersigned Counsel affirms pursuant to SCRCP 11 that consultation with opposing Counsel will serve no useful purpose.

**CLARK LAW FIRM, LLC
ATTORNEYS FOR PLAINTIFF**

s/ John D. Clark

John D. Clark, Esquire SC Bar #64296
22 East Liberty Street
Post Office Drawer 880
Sumter, South Carolina 29151-0880
(803) 775-1234 • (803) 775-8590 *Fax*
jclark@theclarklawfirm.com

Sumter, South Carolina
September 28, 2023

EXHIBIT**L**

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS)

MAE MCGRUDER,)

Plaintiff,)

v.)

DOLLAR GENERAL CORPORATION,
D/B/A DOLLAR GENERAL STORE
#16677 AND JANIE DAVIS,)

Defendants.)

Civil Action No. 2022-CP-43-00508

**DEFENDANT'S OPPOSITION TO THE
MOTION TO AMEND FINAL ORDER
OF JUDGMENT**

Defendants, Dolgencorp, LLC, improperly named Dollar General Corporation, d/b/a Dollar General Store #16677 hereby respectfully submits this opposition to Plaintiff's Motion to Amend Final Order of Judgment pursuant to Rule 60(A).

FACTUAL AND PROCEDURAL BACKGROUND

This civil action arises out of an alleged slip and fall that occurred on October 29, 2019, in a Dollar General store located at 2320 Peach Orchard Road in Sumter, South Carolina (the "Store"). On March 30, 2022, the Plaintiff filed her Complaint against "Dollar General Corporation d/b/a Dollar General Store #16677" and an individual named Janie Davis. Plaintiff alleged she sustained personal injuries after slipping and falling on a foreign substance inside the Store. *See id.* According to the filed affidavit of service, Plaintiff served "Dollar General Corporation" by hand-delivery through Algerina Pringle, the manager of the Store. Store managers are not authorized, and have never been authorized, to accept service on behalf of Dollar General Corporation or Dolgencorp, LLC. *See* Affidavit of David Bengston ("Bengston Aff.") at ¶ 7, attached hereto as Exhibit A.

Dollar General Corporation is a separate and distinct corporate entity from Dolgencorp, LLC. *See Bengston Aff.* at ¶ 6. Dollar General Corporation does not have a presence in South Carolina, however, Dolgencorp, LLC, which does, utilizes a registered agent pursuant to S.C. Code Ann. §15-9-240(a). *See Bengston Aff.* at ¶ 6. The first time Dolgencorp, LLC learned about this lawsuit was August 17, 2022, since Plaintiff never served the summons and complaint on Dolgencorp, LLC's registered agent. *See Bengston Aff.* at ¶¶ 4 & 10.

On August 19, 2022, "Dolgencorp, LLC, improperly named Dollar General Corporation, d/b/a Dollar General Store #16677" filed a motion to set aside default and an answer. The motion to set aside default was heard by the Special Referee on September 22, 2022.

On October 19, 2022, the Court denied the motion to set aside default. The Court's order notes, among other things, that "Defendants are not entitled to relief from entry of default because they were sued under their trade name" and that service on the Store manager complied with Rule 4(d)(3) of the South Carolina Rules of Civil Procedure.

On October 27, 2022, "Dolgencorp, LLC, improperly named Dollar General Corporation, d/b/a Dollar General Store #16677" filed a motion to reconsider the order denying the motion to set aside default. On July 3, 2023, the Special Referee denied the motion to reconsider.

On June 30, 2023, a hearing on damages took place. On September 25, 2023, the Special Referee entered a final order in favor of Plaintiff. On September 28, 2023, Plaintiff filed a motion to amend final order of judgment seeking to amend the final order "to reflect the correct name of Defendant incorrectly named as Dollar General Corporation, d/b/a Dollar General Store #16677 to Dolgencorp, LLC." Plaintiff contends "[t]he basis for said motion is that the Defendant Dollar General Corporation, as named in the Complaint, is the commonly used trade name of Dolgencorp, LLC, the owner in fact of Dollar General Store #16677."

LEGAL ARGUMENT

Plaintiff should be precluded from amending the order against Dollar General Corporation based on her error, because Dollar General Corporation is a separate and distinct legal entity and Dolgencorp, LLC was never provided proper notice of a lawsuit against it.

A. Dollar General Corporation Is a Distinct Entity

The Special Referee relied on his finding that Dolgencorp, LLC was properly served because the lawsuit was filed in Dolgencorp, LLC's trade name. However, that is incorrect. Plaintiff sued Dollar General Corporation. While Dolgencorp, LLC may use the trade name Dollar General, Dollar General Corporation is not a trade name, it is a wholly distinct legal entity.

Accordingly, Plaintiff and the Special Referee's reliance on *Tri-County Ice and Fuel Company v. Palmetto Ice Company*, 303 S.C. 237, 399 S.E.2d 779 (1990) and similar cases is inapposite. In *Tri-County*, the plaintiff filed a summons and complaint against "Palmetto Ice Company." *See id.* at 238, 399 S.E.2d at 780. No such entity existed, as "Palmetto Ice Company" was owned and operated by "P&H Company, Inc." *See id.* at 238, 399 S.E.2d at 781. After obtaining a default judgment, the plaintiff sought to amend the judgment to substitute P & H Company, Inc. for Palmetto Ice Company. *See id.* at 239, 399 S.E.2d at 781. In finding for the plaintiff, the South Carolina Supreme Court held that "we find that the amendment was not so extensive so as to substitute a new defendant, but was merely a correction of a clerical mistake in the name of the corporation." *See id.*; *see also Tunstall v. Lerner Shops, Inc.*, 160 S.C. 557, 159 S.E. 386 (1931) (amended judgment was allowed because the amendment "was not so extensive as to substitute a new defendant but was merely a correction of a mistake in the name of the defendant.")).

Here, Plaintiff is seeking “to substitute a new defendant.” Plaintiff sued one entity, Dollar General Corporation, but now seeks to substitute a wholly distinct legal entity Dolgencorp, LLC. Plaintiff did not merely sue Dollar General – the trade name. She sued a different entity – Dollar General Corporation – that uses that trade name as well. Thus, the amendment is not allowed as it would serve to enter judgment against a party that was not named and was not served with a summons or complaint.

B. Dolgencorp, LLC Was Not Provided Proper Notice of a Lawsuit against it.

Rule 4(d)(3) of the South Carolina Rules of Civil Procedure provides the means by which a party can serve a corporate entity. Rule 4(d)(3) states service can be accomplished by delivering a copy of the summons and complaint to “an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.” *See* S.C. R. Civ. Proc. 4(d)(3). There is no dispute that Plaintiff failed to serve the registered agent Dolgencorp, LLC designated pursuant to S.C. Code Ann. §15-9-240(a). Rather, Plaintiff alleges she served Dollar General Corporation by hand delivering a copy of the summons and complaint to a store manager. However, the store manager, Algerina Pringle, was not an officer, agent of any type, or even an employee of Dollar General Corporation. Accordingly, she could not accept service of a lawsuit filed against Dollar General Corporation. *See Roberson v. S. Fin. of South Carolina, Inc.*, 365 S.C. 6, 615 S.E.2d 112 (2005) (holding that even some employees are not agents authorized to accept service of process for a corporation).

Furthermore, to the extent it is determined that Ms. Pringle would have been authorized to accept service of a summons and complaint on behalf of Dolgencorp, LLC, that entity was not the defendant in the lawsuit.¹ Ms. Pringle, even assuming she was aware that she was legally

¹ The Special Referee has already found Ms. Pringle was a “managing agent” of Dolgencorp, LLC by virtue of her being the manager of the Store. While Defendant disagrees with that finding, it will be not be re-argued at this time.

authorized to accept service of a lawsuit against Dolgencorp, LLC, was not served with a summons or complaint in the name of Dolgencorp, LLC. She was served with a summons and complaint against an entity for which there can be no basis to suggest she had the legal authority to accept service. Accordingly, to allow default judgment against one entity, Dollar General Corporation, which was not served as the person accepting service had no authority to accept such service to become simply by operation of law a default judgment against another entity, Dolgencorp, LLC, which was not named in the lawsuit, undermines the very purpose of the litigation process. *See Limehouse v. Hulsey*, 397 S.C. 49, 723 S.E.2d 211, 233 (App. 2011) (emphasis added) (expressing the strong preference for cases to be determined by the merits).

CONCLUSION

For the above stated reasons, this Court should deny Plaintiff's Motion to Amend Final Order of Judgment.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Michael M. Trask

R. TRIPPETT BOINEAU, III (SC Bar No. 73769)

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1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211

Telephone: (803) 779-2300

Facsimile: (803) 748-0526

October 10, 2023

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

MAE MCGRUDER,

Plaintiff,

vs.

DOLLAR GENERAL CORPORATION,
D/B/A DOLLAR GENERAL STORE
#16677 AND JANIE DAVIS,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-43-00508

AFFIDAVIT OF DAVID BENGTSON

PERSONALLY APPEARED BEFORE ME, the undersigned, David Bengtson, who, after being duly sworn, deposes and states:

1. I am over the age of 18 years old.
2. I am the Director of General Liability for Dollar General Corporation.
3. I am in receipt of a Summons and Complaint filed on behalf of Mae McGruder against Dollar General Corporation in Sumter County, South Carolina dated March 30, 2022.
4. The first time I received a copy of the Summons and Complaint was on 08/17/2022.
5. Pursuant to the documents that we have been provided by Plaintiff's counsel, it appears the Plaintiff's counsel attempted service via hand-delivery on Janie Davis/Store Manager as 2320 Peach Orchard Road in Sumter, South Carolina.
6. Dolgencorp, LLC, which is a wholly-owned subsidiary of Dollar General Corporation, has a Registered Agent for service of process in South Carolina.
7. Janie Davis, nor any local Store Manager, has ever been authorized to accept

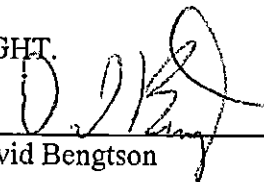
service on behalf of Dollar General and/or Dolgencorp, LLC.

8. I have searched our records and can confirm that Janie Davis was not the Store Manager as of March 30, 2022. In fact, my records do not reflect there was anyone by the name of Janie Davis that worked for us in South Carolina as of March 30, 2022. There are four (4) people in our Human Resources System named Janie Davis, but none of them have ever worked in South Carolina. The closest match we were able to find is a "Jani E. Davis," but she last worked for us in 1997.

9. The Store Manager as of March 30, 2022 was Algerina Pringle. She is still with the same store and is the current Store Manager.

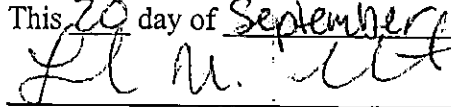
10. Plaintiff's counsel has not produced any evidence of service on Dolgencorp, LLC or Dollar General's Registered Agent for purpose of service of process.

FURTHER, AFFIANT SAYETH NAUGHT.

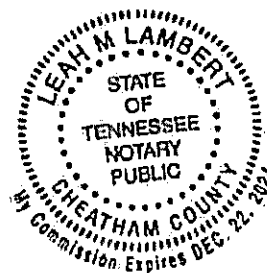

David Bengtson

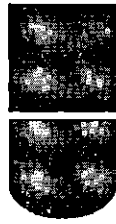
SWORN TO AND SUBSCRIBED BEFORE ME

This 20 day of September, 2022.


Notary Public for South Carolina

My Commission Expires: 22 DEC 2024





Garber

Reporting Service & Videoconferencing

1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

HEARING PROCEEDINGS

June 30, 2023

Mae McGruder

VS

Dollar General Corporation, etc., et. al.

2022-CP-43-00508

REPORTER: Jennifer Nottle

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) CASE NO.: 2022-CP-43-00508
3
4 Mae McGruder,)
5 Plaintiff,)
6 vs.) Hearing:
7 Dollar General Corporation,) Friday, June 30, 2023
8 d/b/a Dollar General Store,) 12:26 p.m. - 3:52 p.m.
9 #16677 and Janie Davis,)
10 Defendants.)
11 _____)

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13
14 The hearing before the Honorable Robert W. Buffington,
15 Special Referee, was taken via teleconference on the 30th
16 day of June, 2023 before Jennifer Nottle, Court Reporter
17 and Notary Public in and for the State of South Carolina.
18
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APPEARANCES:

Representing the Plaintiff:

JOHN D. CLARK, ESQUIRE
Clark Law Firm, L.L.C.
Post Office Drawer 880
Sumter, South Carolina 29151

Representing the Defendant:

ROBERT TRIPPETT BOINEAU, III, ESQUIRE
McAngus, Goudelock & Courie, L.L.C.
1320 Main Street, 10th Floor
Columbia, South Carolina 29201

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* * * * *

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Court Reporter's Legend:

12

dashes [-] Intentional or purposeful interruption

13

[ph] Denotes phonetically written

14

[sic] Written as said

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1
2 THE COURT: Welcome everybody. This is in the case of
3 Mae McGruder versus Dollar General Corporation
4 d/b/a Dollar General Store number 1677 and Janie
5 Davis. Civil action number 2022-CP-43-00508.
6 We're here today on Zoom to conduct the damages
7 hearing in the case. I'm serving a special
8 referee. My plan for the procedure is to allow
9 openings -- brief openings if you'd like to do
10 those. Let the Plaintiff present his case, cross
11 examination by the Defendant and then closing
12 arguments if y'all want to make those as well.
13 Is there anything that -- John Clark anything
14 from you before we get started?

15 MR. CLARK: No, sir.

16 THE COURT: Okay. Trippett, anything from you before
17 we get started?

18 MR. BOINEAU: No, sir. No, sir.

19 THE COURT: All right. Then with that John I will
20 turn it over to you if you want to do an opening.

21 MR. CLARK: Yes, sir. Thank you.

22 OPENING REMARKS BY MR. CLARK:

23 MR. CLARK: Just very briefly, this is a slip and fall
24 case that happened on October 29, 2019 at the
25 Dollar General on Highway 441 here in Sumter. It

1 was a rainy day, we think what happened here is
2 it was raining and the water -- the floor was
3 covered in water. We'll show that Dollar General
4 didn't -- what was reckless in the way they
5 maintained the floor that day. And my client
6 fell and she was severely injured. And we intend
7 to present her damages today.

8 THE COURT: All right. Thank you for that. Trippett
9 any opening from you?

10 MR. BOINEAU: Thank you. Thank you, sir, yes, sir.

11 OPENING REMARKS BY MR. BOINEAU:

12 MR. BOINEAU: Just briefly. So as you know we
13 represent the Defendants in this matter and for
14 purposes of the day we understand our limitations
15 pursuant to the rules. We do intend to show some
16 video that we do have, not for purposes of
17 introduction of evidence but for purposes of
18 demonstrative to cross-examine Ms. McGruder and
19 we think that we will show the Court our position
20 with respect to the damages and the issues that
21 Ms. McGruder may have had prior to this accident
22 as well. So that's all we really have to add at
23 this time until we get started.

24 THE COURT: Thank you. John you want to call your
25 first witness?

1 MR. CLARK: Yes, sir. I call Mae McGruder.

2 THE COURT: Ms. McGruder, you've been called as the
3 witness in this case.

4 MAE McGRUDER, being duly sworn, testifies as follows:

5 THE COURT: All right. John, go ahead please.

6 MS. McGRUDER - EXAMINATION BY MR. CLARK:

7 Q. Thank you. State your full name, please?

8 A. Mae McGruder.

9 Q. And what's your address ma'am?

10 A. 3870 Delaware Drive, Dalzell, South Carolina,
11 29040.

12 Q. And what's your date of birth?

13 A. 5/19/1965.

14 Q. So how old are you today?

15 A. Fifty-eight.

16 Q. All right. And what's your marital status?

17 A. Separated.

18 Q. You have any children?

19 A. I have two.

20 Q. How old are they?

21 A. Thirty and thirty-eight.

22 Q. Okay. You have any grandchildren?

23 A. I got four.

24 Q. Okay. All right. Now tell me about what's the
25 highest level of education that you have?

1 A. Associate degree.

2 Q. Okay. And so I'm assuming you did graduate from
3 high school and attended some college, correct?

4 A. Yes.

5 Q. All right. Have you ever been in the military?

6 A. No.

7 Q. All right. And on the day this accident which
8 we've alleged was October 29, 2019, were you
9 employed?

10 A. No.

11 Q. And are you seeking lost wages in this case?

12 A. No.

13 Q. All right. So having said that, tell Mr.
14 Buffington briefly how you were injured in this
15 case.

16 A. A fall.

17 Q. All right. And where did you fall? In the
18 store?

19 A. Yes.

20 Q. All right. Was it raining that day?

21 A. Yes.

22 Q. All right. And did you slip on water in the
23 store?

24 A. Yes.

25 Q. Were there any mats or anything down?

1 A. No.

2 Q. All right. And was that the Dollar General on
3 441?

4 A. Yes.

5 Q. All right. And was anybody with you?

6 A. My grandson.

7 Q. How old was he?

8 A. Three.

9 Q. Okay, he was three. All right. Were there any
10 witnesses to the fall?

11 A. The customers in the store.

12 Q. All right. And when you fell how did you feel?

13 A. Embarrassed, hurting.

14 Q. Okay.

15 A. Humiliated.

16 Q. Where were you hurting at?

17 A. My whole body. Especially my knee I was in a lot
18 of pain, lot of pain.

19 Q. Which knee was that?

20 A. Left knee.

21 Q. All right. How bad were the water conditions on
22 the floor?

23 A. It was terrible. There was a lot of water.
24 Muddy, lot of water from people putting print and
25 all, leave a lot water on the floor.

- 1 Q. Okay. All right. Did you speak to anybody at
2 the -- how did you get up off the floor?
- 3 A. The customer ran to me. A lot of customer ran to
4 help me.
- 5 Q. Okay. Did anybody from Dollar General help you
6 get up?
- 7 A. No.
- 8 Q. All right. Did you speak to anybody from Dollar
9 General that day?
- 10 A. Yes.
- 11 Q. Who did you speak to?
- 12 A. A cashier was steady calling the manager.
- 13 Q. Okay.
- 14 A. But she wouldn't -- she wouldn't come up front.
- 15 Q. All right. So the manager never came out to meet
16 with you?
- 17 A. No, she wouldn't come.
- 18 Q. All right. Did you eventually leave the store
19 that day?
- 20 A. After ten minutes waiting I was in so much pain I
21 had to leave.
- 22 Q. Okay. All right. And did you drive yourself
23 home?
- 24 A. Yes.
- 25 Q. All right. And how was your condition on the way

1 home?

2 A. In a lot of pain. Couldn't get out, I couldn't
3 get out.

4 Q. All right. Okay. When you got home you couldn't
5 get out of the car?

6 A. I couldn't get out. I had to call somebody to
7 help me.

8 Q. Okay. All right. And did you go to the hospital
9 that day?

10 A. Yes.

11 Q. And so for this accident you started receiving
12 medical treatment on the same -- on the day of
13 the accident?

14 A. Yes.

15 Q. All right and that was October 29 of 2019?

16 A. Yes.

17 Q. And are you still receiving medical treatment for
18 injuries that you suffered in this accident?

19 A. Yes.

20 Q. Okay. Now I just want to go through the medical
21 providers that you've seen for this accident and
22 you tell me if you've seen these people or not,
23 okay? Did you go to McLeod Health Clarendon
24 Emergency Room on the day of the accident?

25 A. Yes.

1 Q. Did you go to -- did you see a physician in the
2 emergency room that day?

3 A. Yes.

4 Q. All right. Did you have x-rays and scans taken
5 that day?

6 A. Yes.

7 Q. At Carolina Radiology?

8 A. Yes.

9 Q. All right. Did you eventually see Midlands
10 Orthopedic and Neurosurgery for injuries that you
11 suffered in this accident?

12 A. Yes.

13 Q. And did you eventually see McLeod Physicians
14 Orthopedics for injury suffered in this accident?

15 A. Yes.

16 Q. Did you also see Lexington Medical Center, the
17 Columbia medical group for injuries that you
18 suffered in this accident?

19 A. Yes.

20 Q. And is that your PCP or your personal physician?

21 A. Yes. My personal physician.

22 Q. Okay. Did you see Palmetto Health -- I'm sorry,
23 Prisma Health Medical Group Midlands for injuries
24 that you sustained in this accident?

25 A. Yes.

1 Q. And did you have -- end up having surgery on your
2 knee at NUSC Health as a result of this injuries
3 you suffered in this accident?

4 A. Yes.

5 Q. All right. And did you end up getting a walker
6 and wheelchair from Palmetto Home Medical
7 Equipment and Supplies as a result of the injury
8 suffered in this accident?

9 A. Yes.

10 Q. All right. And did you have scans at Palmetto
11 imaging in this accident -- as a result of
12 injuries you suffered in this accident?

13 A. Yes.

14 Q. All right. And so you say you're still treating
15 today for injuries suffered in this accident?

16 A. Yes.

17 Q. All right. Ms. McGruder, I have a list of
18 medical bills. Did you review these medical
19 bills before you testified today?

20 A. Yes.

21 Q. All right. And the total of these medical bills
22 totaled \$203,766.55. Is that your understanding
23 of what your total medical bills are?

24 A. Yes.

25 Q. And you were treated for your left knee?

1 A. Yes, yes.

2 Q. Your right knee, is that right?

3 A. Yes.

4 Q. Your back?

5 A. Yes.

6 Q. Your shoulder?

7 A. Yes.

8 Q. Your wrist?

9 A. Yes.

10 Q. Your right hand and your left hand, that correct?

11 A. Yes. Chest.

12 Q. Your left shoulder?

13 A. Yes.

14 Q. And your chest?

15 A. Yes.

16 Q. And these are your medical bills to date from
17 this accident?

18 A. Yes.

19 Q. And they total \$203,766.55?

20 A. Yes.

21 Q. Is that correct?

22 A. Yes.

23 MR. CLARK: Mr. Buffington, at this time I move to
24 admit these medical bills into the evidence as
25 Exhibit -- Plaintiff's Exhibit Number 1 and I'm

1 going to have Josephine email them to you and
2 counsel.

3 THE COURT: So admitted

4 MR. CLARK: Thank you. Josephine if you would go
5 ahead and email them. I don't think there's
6 anything that you need to look at right now, Mr.
7 Buffington, but they're on the way to you.

8 (Plaintiff's Exhibit Number 1 was marked for
9 identification purposes - Bills.)

10 Q. Okay. So, Ms. McGruder, you said you first
11 received treatment for this accident in the
12 Clarendon ER?

13 A. Yes.

14 Q. And what was bothering you -- and that was on the
15 day of the accident, right?

16 A. Yes, yes.

17 Q. And what complaints did you make, what problems
18 were you having when you went to the ER that day?

19 A. My whole body.

20 Q. Whole body?

21 A. Especially my knee. Yeah, whole body.

22 Q. All right. And was anything in particular
23 bothering you more?

24 A. My left knee.

25 Q. Okay. Now, before this accident happened had you

1 had your left knee -- had you had a total knee
2 replacement before this accident?

3 A. Yes.

4 Q. And when did you have that total knee
5 replacement?

6 A. 2006.

7 Q. Okay. And in 2019, when you had this accident,
8 were you having any problems with your total knee
9 replacement that you had?

10 A. Oh, no. No.

11 Q. All right. And as a result of this accident have
12 you had a revision of that total knee replacement
13 that you had on the left side?

14 A. Yes.

15 Q. And you had that on June 20th, 2022, correct?

16 A. Yes.

17 Q. All right. And so would you say that the left
18 knee was the most severe injury that you had?

19 A. Yes.

20 Q. Okay. All right. So let's talk about that for a
21 minute. When you went to the hospital on the
22 first day did they give you any pain medicine?

23 A. Yes.

24 Q. Did that make you feel a little somewhat better?

25 A. No.

1 Q. It did not?

2 A. I got sick on Percocet.

3 Q. Huh?

4 A. I got sick. Percocet make me sick.

5 Q. Okay so they gave you some Percocet and it made
6 you stomach sick?

7 A. Yes.

8 Q. All right. When you left the hospital, how were
9 you feeling when you went home?

10 A. Pain, pain, painful.

11 Q. Where were you feeling pain?

12 A. My whole body.

13 Q. Okay. Were you feeling pain in your left knee?

14 A. Yeah left knee, my whole body was aching. My
15 whole body. Everything was aching on me.

16 Q. All right. Your back?

17 A. Yeah my back, my neck, my shoulder, my leg, my
18 hand, even my thumb.

19 Q. Okay. Was the hardware loose in your left knee
20 that day?

21 A. Yes, it pull it up. The hardware came loose and
22 it was pushed all the way into the back of my
23 leg.

24 Q. Okay. All right. And how did you get to the
25 hospital?

- 1 A. So I had to get a friend to drive me.
- 2 Q. Okay. Were you able to drive yourself?
- 3 A. No. I couldn't go no more.
- 4 Q. All right. And when you went home were you able
- 5 to care for yourself that night?
- 6 A. No.
- 7 Q. All right. Were you able to rest that night?
- 8 A. No.
- 9 Q. All right. Now prior to this accident, did you
- 10 live alone?
- 11 A. Yes.
- 12 Q. Were you able to care for yourself?
- 13 A. Yes.
- 14 Q. Were you able to drive and do things?
- 15 A. Yes.
- 16 Q. All right. Right after this accident did you
- 17 require help from someone?
- 18 A. Yes.
- 19 Q. And who was that?
- 20 A. I had to call my daughter.
- 21 Q. Okay. And what's your daughter's name?
- 22 A. Melissa Stuckey.
- 23 Q. And she lived with you after the accident?
- 24 A. Yeah, she had to move in.
- 25 Q. Okay. All right. And what did she help you with

1 right after the accident?

2 A. Bathing, cooking, taking me back and forth to the
3 doctor, therapy. Cleaning the house, getting the
4 yard maintained.

5 Q. Okay. All right. And so the next day after the
6 accident did you go to your doctor at Lexington
7 Medical Center?

8 A. Yes.

9 Q. And were you complaining as the pain for your
10 back and your shoulder and all that that day as
11 well?

12 A. Yes, yes.

13 Q. All right. And did you get any -- did they give
14 you any treatment or anything like that?

15 A. Yes, gave me some medication, yes.

16 Q. All right. Did that make you feel better?

17 A. No.

18 Q. Didn't make you feel better?

19 A. It feel a little but not better.

20 Q. Okay. All right. Now the next day to did see
21 McLeod Orthopedic? That would have been October
22 31 of 2019, McLeod Orthopedic down in Manning
23 about your left knee?

24 A. Yes.

25 Q. All right. And were you then referred to Dr.

1 Rodney Alan, orthopedic surgeon in Florence?

2 A. Yes.

3 Q. All right. And did you get some medication that
4 day?

5 A. Yes.

6 Q. Okay. Now the records indicate that you saw Dr.
7 Alan on on December 20, 2019, does that sound
8 about right?

9 A. Yes.

10 Q. Okay. And in between the time that Dr.
11 Christianson referred you which October 31st of
12 2019 and December 20th, 2019 did you continue to
13 see Lexington Medical Center about your injuries?

14 A. Yes.

15 Q. All right. And did you eventually get referred
16 to Palmetto Health USC Orthopedic?

17 A. Yes.

18 Q. For your right hand and your right wrist?

19 A. Yes.

20 Q. All right. And did you have scans and images
21 done of your right hand?

22 A. Yes.

23 Q. And were you eventually put in a cast for that
24 right hand?

25 A. Yes.

1 Q. And the splint as well?

2 A. Yes.

3 Q. All right. Mr. Buffington, I'd like to share my
4 screen if I can.

5 THE COURT: You should be able to.

6 MR. CLARK: Okay. Let's see. I don't want to share
7 too much, uh oh, that didn't do it. Can you see
8 it?

9 THE COURT: Yes, it -- yes.

10 Q. All right. Ms. McGruder is that a picture of the
11 splint on your hand?

12 A. Yes.

13 Q. Did you have a cast on it before you had that
14 splint on?

15 A. Yes.

16 Q. All right.

17 MR. CLARK: And we want to admit that picture Mr.
18 Buffington as Exhibit Number 2. And Josephine
19 we'll go ahead and submit that.

20 THE COURT: Admitted.

21 (Plaintiff's Exhibit Number 2 was marked for
22 identification purposes - Photo.)

23 Q. Thank you. Okay. So before you saw Dr. Alan
24 which was December 20, 2019 what kind of
25 treatment did you get for your hand?

1 A. They was doing therapy then I went to -- I had a
2 cast put on it then I had -- in the cast for a
3 while. Then they put the splint on it and it
4 still been in pain, so. I still, you know,
5 taking treatment from her for that.

6 Q. Okay. What kind of treatment are you getting now
7 for that hand?

8 A. Some medicine.

9 Q. Okay. You taking pain medication?

10 A. Pain medication, yeah.

11 Q. So the right hand still bothers you?

12 A. Yes. You can't -- I can't turn it. You know,
13 the loosen up stuff.

14 Q. Okay. You first started seeing Palmetto Health
15 USC Orthopedic for your right hand in November of
16 2019. Did you continue to see them for about a
17 year about your hand?

18 A. Yes. Uh-huh.

19 Q. All right. And is that hand still bothering you
20 today?

21 A. Yes.

22 Q. Okay. And then you saw Dr. Alan on December 20,
23 2019.

24 A. Yes.

25 Q. Correct? And that was about the loosening of

1 your prior knee replacement that you had?

2 A. Yes.

3 Q. All right. And after seeing Dr. Alan, did you
4 end up seeing Dr. Disilva at Midlands Orthopedic
5 and Neurosurgery?

6 A. Yes.

7 Q. All right. And did Dr. Disilva treat your right
8 shoulder?

9 A. Yes.

10 Q. Did he give you an injection for that?

11 A. Yes.

12 Q. All right. And did he examine your left knee?

13 A. Yes.

14 Q. And once he examined your left knee, did he refer
15 you to Dr. Ulrich?

16 A. Yes.

17 Q. And that's over at Midlands Orthopedic and
18 Neurosurgery?

19 A. Right.

20 Q. And was that in January of 2020?

21 A. Yes.

22 Q. All right. And at that time were you scheduling
23 a revision of that knee surgery? Of that total
24 knee replacement?

25 A. Yes.

1 Q. And were you able to have that revision surgery
2 in 2020?

3 A. No.

4 Q. Why not?

5 A. The pandemic and they stopped all the electoral
6 surgery -- the stopped all surgery.

7 Q. Okay. So you couldn't have the surgery in 2020?

8 A. Right.

9 Q. All right. Did you believe you were high risk
10 for Covid as well?

11 A. Yes.

12 Q. All right. And did you eventually have that
13 revision of the total knee on June 20, 2022?

14 A. Yes, Lord, yes.

15 Q. Okay. So you had to wait a couple years before
16 you could have the surgery?

17 A. Yes. Uh-huh.

18 Q. And according my calculations you waited about
19 973 days before you could have the surgery?

20 A. Yes.

21 Q. All right. And that was because of Covid?

22 A. Right.

23 Q. All right. Now and then -- in between January of
24 2020 and the time that you had the surgery in
25 June of 2022, did you see any doctors at all for

1 your knee or you just had to wait?

2 A. I had to wait.

3 Q. Okay. All right. Wait. Now after you had the
4 surgery on June 20, 2022 did you -- how long did
5 you stay in the hospital with that surgery?

6 A. Almost about three days. Three days something
7 like that.

8 Q. All right. And then after you had the surgery
9 did you go to rehab?

10 A. Yes.

11 Q. All right how long -- was that inpatient rehab?

12 A. Inpatient about three weeks.

13 Q. Okay. And was the -- was the surgery on your
14 left knee painful?

15 A. Yes, Lord, yes, yes, yes, yes.

16 Q. All right. Ms. McGruder, do you recognize that
17 picture that I'm sharing on the screen right now?

18 A. Yes.

19 Q. What is that? Is that your knee after the
20 surgery?

21 A. Yes.

22 Q. Okay.

23 MR. CLARK: All right Mr. Buffington want to admit
24 this photograph as the next exhibit please.

25 THE COURT: Admitted as Exhibit 3, I believe.

1 MR. CLARK: Thank you.

2

3 (Plaintiff's Exhibit Number 3 was marked for
4 identification purposes - Photo.)

5 Q. Okay. Now, Ms. McGruder, almost three and a half
6 years out from the accident, are you still
7 receiving treatment for that left knee?

8 A. Yes, yes.

9 Q. You still receiving treatment for your back pain?

10 A. Yes.

11 Q. Are you still receiving treatment for your wrist?

12 A. Yes.

13 Q. What about your left shoulder?

14 A. Yes.

15 Q. All right. Now how is -- before this accident
16 that you had at Dollar General, what was your
17 activity level?

18 A. I was doing everything for myself. Going to
19 church, I do Harvest Hope at my church feeding
20 the homeless, you know, once a month. I'm over
21 that program. But I had to give everything up.
22 And I go on trips and I take care of the grand
23 kids and play with them and do a lot of stuff
24 that, you know, the community stuff so my life
25 came to a stop.

1 Q. All right. You aren't able to do the things that
2 you normally would do?

3 A. No, huh-uh.

4 Q. All right. And were you required to have
5 somebody live with you?

6 A. Yes, my daughter.

7 Q. All right. And your daughter moved in with you?

8 A. Yes, she moved in.

9 Q. And she took time off from her job to be with
10 you?

11 A. Yes.

12 Q. Now just saying for the first six months after
13 the accident, were you able to do anything to
14 care for yourself?

15 A. No, no.

16 Q. Were you eventually able to do more to care for
17 yourself?

18 A. Do a little bit but when it first happened, no,
19 huh-uh.

20 Q. All right. Now you were separated from your
21 husband?

22 A. Yes.

23 Q. Y'all still have a relationship though?

24 A. Yeah we still, you know, back and forth.

25 Q. Okay. How about your intimate relationship with

- 1 him, was that affected by your injury?
- 2 A. Yes.
- 3 Q. Were you able to have sex?
- 4 A. No.
- 5 Q. Why not?
- 6 A. Cause I'm in pain, hurting.
- 7 Q. Okay. What about since this accident have you
- 8 been able to engage in sexual activity.
- 9 A. No, no, huh-uh.
- 10 Q. Okay. Is that something that you wanted to do?
- 11 A. Yes.
- 12 Q. Okay. So just going back to your left knee I
- 13 want to ask you about these injuries that you
- 14 testified to. Your left knee, just before this
- 15 accident were you having any problem with your
- 16 left knee?
- 17 A. No, huh-uh, no.
- 18 Q. All right. And after the accident what kind of
- 19 problems were you having with it?
- 20 A. Sharp pain, dull pain, you can't -- couldn't walk
- 21 on it because it was too much pain.
- 22 Q. How often did it bother you?
- 23 A. All day.
- 24 Q. What about at night?
- 25 A. Oh at night, you up.

1 Q. Did the surgery make your knee pain any better?

2 A. It helped some but I'm not hurting. You know,
3 back what I used to but I'm still hurting now,
4 I'm still hurting some.

5 Q. After the accident, if I ask you to rate your
6 pain on a scale to zero to ten, what was your
7 pain scale after the accident?

8 A. Probably six, seven.

9 Q. Okay. All right. What is it -- do you have pain
10 in the knee now?

11 A. Yes.

12 Q. What is it -- what would you rate it at now?

13 A. Now it be sitting at probably about a five.

14 Q. Okay. All right. Does the pain ever go away?

15 A. No.

16 Q. All right. Is there anything that you do to help
17 ease the pain?

18 A. You have to stand some, sit some. You can't sit
19 for a long period of time.

20 Q. Okay.

21 A. And most of the time I have to take medication to
22 knock me out just to make it the next day.

23 Q. Right.

24 A. And if the medication don't help I take sleeping
25 tablets. Just to sleep because I can't the pain

1 no more.

2 Q. Okay. Is your left knee getting better, worse,
3 or is it about the same?

4 A. About the same.

5 Q. Okay.

6 A. It's not like it used to be when I fall and now
7 but it's still painful.

8 Q. Okay. That photograph that we introduced to show
9 the staples in your knee, do you have a scar
10 there now?

11 A. Yes.

12 Q. And does it run from above your knee to down
13 below your knee?

14 A. All the way down, yes.

15 Q. Okay. All right, does that scar bother you at
16 all?

17 A. Yes, I still have to treat it. You know with the
18 tissue I have to buy oil, vitamin E oil and cocoa
19 butter. And I have to -- they massage it, when I
20 go to therapy they massage it. I put that on and
21 they try to massage it to keep it.

22 Q. All right. Now let me ask you about your back.
23 Did you hurt your back in this accident?

24 A. Yes.

25 Q. What part of your back you hurt?

1 A. The lower part.

2 Q. Okay. Can you describe what kind of problems you
3 were having with your back?

4 A. It's like shooting pain, sharp pain. Sometimes
5 it shoot down your leg and your back it sometimes
6 it'll stop me from walking, I can't walk.

7 Q. Okay. Now was that the way it was right after
8 the accident?

9 A. Yes.

10 Q. Okay how long did that last?

11 A. I still got it, I still have the pains.

12 Q. It got any better?

13 A. No, ain't nothing going -- I still got it.

14 Q. Okay. You get treatment for that?

15 A. Yes.

16 Q. Who gives you treatment for your back?

17 A. Dr. Francis. I get shots in my back every three
18 months.

19 Q. Okay. All right. If you had to rate this pain
20 on a scale of zero to ten how would you rate it,
21 the pain in your back?

22 A. Now?

23 Q. Yes.

24 A. Probably about a seven.

25 Q. Okay. What about right after the accident?

1 A. About a ten then. Ten probably nine or ten.

2 Q. Okay. When does that bother you?

3 A. All day.

4 Q. What about at night?

5 A. At night I'm up all night.

6 Q. Is it getting any better or worse or is it --

7 A. No it ain't getting no better, ain't getting no
8 better.

9 Q. All right. And you still seeing Dr. Francis you
10 said?

11 A. Yes. Still see Dr. Francis.

12 Q. And you ever hurt your back before?

13 A. No, huh-uh.

14 Q. And you ever needed treatment for your back
15 before?

16 A. No, huh-uh.

17 Q. Okay. Now let me ask you about your right hand,
18 is that one you said you had a cast on it?

19 A. Yes.

20 Q. You had a splint on it as well?

21 A. Yes.

22 Q. How would you rate the pain in that hand after
23 the accident?

24 A. About a seven, seven or eight.

25 Q. What about now?

1 A. Probably about a four.

2 Q. Are you still getting treatment for it?

3 A. Yes.

4 Q. And when does it bother you?

5 A. All day.

6 Q. What about at night?

7 A. Yes.

8 Q. All right. Does it interfere with your ability
9 to function, to use your hand?

10 A. Yes.

11 Q. What kind of problems are you having with it now?

12 A. If I go open up something. Like used to I could
13 take a jar, you know, hit the bottom and turn the
14 lid and open but I can't do it. So if my
15 daughter at work and the grandkids can't open it
16 I just got to do without.

17 Q. Okay.

18 A. I used to call the neighbor and pay somebody to
19 come over to help me, you know do some stuff,
20 just got to pay somebody.

21 Q. So is somebody at the house helping you now?

22 A. Yeah I got somebody that helping me, yeah.

23 Q. Who is that?

24 A. My daughter.

25 Q. Okay.

1 A. And her two boys.

2 Q. Okay. All right. And are you seeing a doctor
3 for the right hand now, right wrist?

4 A. Yes.

5 Q. Who is that?

6 A. My regular doctor.

7 Q. Okay and that's at Lexington Medical Center?

8 A. Yes.

9 Q. All right. And what kind of treatment are you
10 getting for it?

11 A. Medicine.

12 Q. Pain medicine?

13 A. Pain medicine.

14 Q. All right. Did you injure your left shoulder in
15 this accident?

16 A. Yes.

17 Q. How did you injure that?

18 A. When I fall with me bracing to the floor. To the
19 going down to the floor. And that's what I --
20 what happened.

21 Q. Had you ever had any problems with your left
22 shoulder before?

23 A. No.

24 Q. What kind of -- can you describe the problem that
25 you had with your left shoulder right after the

1 accident?

2 A. Pain, sharp pain.

3 Q. Okay. All right. And on a scale of zero to ten
4 right after the accident how would you rate the
5 pain?

6 A. Probably about a four or five.

7 Q. Is the left shoulder still bothering you?

8 A. Yes.

9 Q. Has it bothered you since this accident?

10 A. Yes.

11 Q. Are you seeing any doctor for it now?

12 A. My regular doctor.

13 Q. Okay. Did you ever see an orthopedist about that
14 though?

15 A. Yes, yes.

16 Q. Who was that?

17 A. Medical -- Midlands.

18 Q. Midlands Ortho?

19 A. Yeah.

20 Q. Okay. And what kind of treatment did they give
21 you?

22 A. Some medicine.

23 Q. Did you ever get an injection in the shoulder?

24 A. Yeah, I got some injection.

25 Q. Okay. All right. Did I ask you when does it

1 bother you?

2 A. All day.

3 Q. Okay what about at night?

4 A. All night.

5 Q. Okay. Anything you can't do with the shoulder
6 that you could do before this accident?

7 A. Like sometime -- when it cold or hot, you know, I
8 have to cover up. I got a blanket I have to
9 cover up because of the ache and the pain.

10 Q. Okay. All right. And what about your -- what
11 about your left wrist, did you injure that in the
12 fall?

13 A. Yes.

14 Q. How did you injure your left wrist?

15 A. Bracing to go to the floor, bracing. When I fall
16 I brace, you know.

17 Q. All right. Did you have any chest pain following
18 this accident?

19 A. Yes.

20 Q. All right, can you describe that?

21 A. Yeah it's like your tight, like to fixing to have
22 a heart attack, you know.

23 Q. Okay. All right. Now going back to your left
24 knee, how is it different than it was just before
25 the accident?

1 A. I couldn't walk or do stuff with my left knee, I
2 got to use a walker, I got to use a cane.

3 Q. Okay.

4 A. I have two walker, I got about three canes. They
5 staged all in the house.

6 Q. Okay.

7 A. I have to get them to go to the bathroom, to use
8 the bathroom sometimes, or either to get in the
9 shower.

10 Q. All right. Did you have to do that before?

11 A. No.

12 Q. Okay. Can you bend it as much as you could
13 before?

14 A. Oh, no, huh-uh.

15 Q. Can you lift as many -- as much?

16 A. Oh, no, I can't even carry a -- I can't even
17 carry a basket of clothes.

18 Q. What about climbing stairs?

19 A. Oh, no. Huh-uh.

20 Q. Have you had to climb any stairs since this
21 happened?

22 A. No, huh-uh.

23 Q. Okay. All right. What about your back? What's
24 different about your back now than it was before?

25 A. Now it -- I'm limited to what I can do with my

1 back.

2 Q. Okay.

3 A. Can't lift things that I used to lift. Like I
4 say I can't lift a basket of dry clothes. I even
5 -- I told my doctor. I can't even lift a basket
6 of clothes because it hurts so bad. And then
7 when you get in that pain it will stop you from
8 walking. You just got to stand there for a
9 second.

10 Q. All right. Ms. McGruder, do you believe you
11 suffered depression as a result of your injuries
12 in this accident?

13 A. Yes.

14 Q. All right. Are you having problems with your
15 mood?

16 A. Yes.

17 Q. Do you feel down or depressed sometimes?

18 A. Yes.

19 Q. Have you ever felt like that before?

20 A. No.

21 Q. Why do you feel that way now?

22 A. Because I feel humiliated when I fall on that
23 floor. I still see myself on the floor.

24 Q. Okay.

25 A. And they couldn't help me get up.

1 Q. Okay.

2 A. You know?

3 Q. Have you had nightmares about this accident?

4 A. Yes.

5 Q. Have you ever felt angry or anything about it?

6 A. Yes because I can't do what I been doing.

7 Q. Okay. Do you have any trouble concentrating or
8 anything like that?

9 A. When I get upset with myself that I can't -- you
10 know, can't do what I used to do.

11 Q. Okay. Do you have times where you worry about
12 the injuries?

13 A. Yes.

14 Q. How often is that?

15 A. All the time.

16 Q. All right. When you go the doctor are they doing
17 scanning and imaging of your knee and your back?

18 A. Yes, uh-huh.

19 Q. And have you had therapy since you were released
20 from the hospital?

21 A. Yes, yes.

22 Q. Still scheduling physical therapy?

23 A. Yes, uh-huh. Yes.

24 Q. And you're still getting injections?

25 A. Yes.

1 Q. Okay. Otherwise than the injuries you suffered
2 in this accident, how is your health?

3 A. Poor right now.

4 Q. Okay when you say poor what do you mean by that?

5 A. Because my -- I can't do what I been doing, my
6 health.

7 Q. Uh-huh.

8 A. It's not good.

9 Q. Okay.

10 A. It's not good. I have to depend on somebody.

11 Q. Okay.

12 A. I have to call somebody. Nobody going to do
13 nothing for you for free. I have to pay, pay
14 somebody.

15 Q. Okay. Do you have any other like major health
16 issues like heart, kidneys, anything like that as
17 a big problem?

18 A. Yeah I had -- I fall so hard. I had kidney
19 stone.

20 Q. Oh.

21 A. One of them drop. And they said, you fall?

22 Q. Uh-huh. So you had a kidney stone but it
23 happened and one of them dropped as a --

24 A. Right.

25 Q. -- result of the fall?

1 A. Yeah.

2 Q. But you don't have any major health issues like
3 heart or?

4 A. No just high blood pressure and I'm a diabetic,
5 other than that, that's it.

6 Q. Okay. And your daughter continues to help you to
7 this day?

8 A. Yes.

9 MR. CLARK: All right. Mr. Buffington can we take a
10 short break at this point?

11 THE COURT: Yes.

12 MR. CLARK: I think I'm about done I just need about
13 five minutes.

14 THE COURT: Okay. We'll be in recess for five
15 minutes.

16 MR. CLARK: All right, thank you.

17 (Off the Record)

18 Q. Ms. McGruder, is there anything else you want to
19 tell Mr. Buffington about your injuries?

20 A. Yes. I been through a lot. This time last year
21 I was going through a lot because my surgery been
22 a year, this time last year in June when I had
23 surgery. I never experienced nothing like this
24 before. This is different from the total knee
25 replacement surgery, this revision that I had

1 done. And I have been through so much shots and
2 so much pain medicine. I have to dope myself up
3 a lot just if I want to try to go get my medicine
4 or try to go do something. And then they had me
5 to go and see what I can do so they can know how
6 much pain medicine to give me in the shot.
7 Because the first set didn't work. And so they
8 give me like I took eight -- eight blockers at
9 one time. That's painful for me to take this
10 shots right here on top of my pain, just to move
11 around. Now just for me sitting her today I took
12 a lot of pain medicine. Just to move around, to
13 get where I got to go, you know, from A to B I
14 took a lot of pain medicine. And that's why I
15 have to have help. And so I been through a whole
16 lot and my life is turned upside down. I mean
17 it's turned upside down. I get so emotional I
18 cry at night. Today I'm up crying, up praying,
19 I'm up reading asking the lord to help me because
20 I can't put my daughter life on hold to help me.
21 But I don't have the money to pay people other
22 time to come and help me. So sometime I do try
23 to get up, take up -- load myself up with pain
24 medicine try to go out to do a little something,
25 come back, and see what I can do. And you know,

1 it hurt me when I get up to go. I can't hardly
2 take a bath, you know. And the doctor said I
3 have a -- that sciatic nerve got me so bad. Feel
4 like my whole foot sometimes is I got -- it's
5 like static electricity going through my whole
6 body. But I'm going through a whole lot. I'm
7 sorry to get emotional; but I'm just -- I'm just
8 seeing my -- I'm just going through a whole lot
9 right now.

10 Q. All right. Thank you, ma'am.

11 MR. CLARK: Mr. Buffington, those are all the
12 questions that I have.

13 THE COURT: Okay. Thank you. Trippett, I'll turn it
14 over to you for cross-examination.

15 MR. BOINEAU: Thank you Mr. Buffington.

16 MS. McGRUDER - EXAMINATION BY MR. BOINEAU:

17 Q. Ms. McGruder, are you -- can you hear me okay?

18 A. Yes.

19 Q. Yes, ma'am. Are you okay to go ahead or do you
20 need a minute break?

21 A. I can go ahead.

22 Q. Okay, well if you need a break at any time you
23 let me know, okay?

24 A. Okay.

25 Q. All right. Well first of all let me tell you I'm

1 sorry that you're hurting and sorry that you fell
2 down, okay. You know I'm Trippett Boineau we
3 introduced ourselves earlier and I represent
4 Dollar General in this matter. And I'm going to
5 just ask you a few questions about sort of how
6 all this happened and why we're here. You
7 testified earlier when Mr. Clark was asking
8 questions that you were in the Dollar General
9 store in Sumter, is that correct?

10 A. Yeah 411.

11 Q. 441, and that was October 29, 2019, right?

12 A. Right.

13 Q. And on that date you were in there I believe with
14 one of your grandchildren, correct?

15 A. Right.

16 Q. All right. How many times did you go in the
17 store, that day?

18 A. I went in twice.

19 Q. So you went in the store the first time, is that
20 correct?

21 A. Right.

22 Q. And then you left and then you went back in
23 again?

24 A. Right.

25 Q. On which occasion did you fall?

1 A. The second time, the last time.

2 Q. Okay and you said that when you went in the store
3 you testified earlier there was no mats?

4 A. No. Right, there was no mats, no nothing down.

5 Q. Was there a wet floor sign or anything like that?

6 A. No, huh-uh, nothing whatsoever.

7 Q. Okay. And when you walked in the first time did
8 you notice the floor? Did it look -- you said it
9 looked wet to you?

10 A. Yes.

11 Q. All right. While you were in there did you ever
12 seen anybody from Dollar General attempt to mop
13 the floor or anything like that?

14 A. No. They real nasty, no.

15 Q. Okay. I want to go ahead if you will I'm going
16 to show you, I want to make sure -- I want you to
17 identify this is you real fast. I'm gonna ask --
18 I'm going to share my screen, Mr. Buffington.

19 MR. CLARK: Mr. Buffington I object to this. I don't
20 think the Defendant has a right to cross-examine
21 on something that's not in evidence that he
22 doesn't have the right to put in evidence. So
23 object to this especially if it's on the facts of
24 the case, because the facts of the negligence is
25 already admitted, so. But according to the rule

1 and Limehouse v. Hulsey he is limited to cross-
2 examination -- that's what he's limited to. So
3 he can't he can't put in a document -- he can't
4 put in a document and he can't say I want to
5 question you about a document that's not in -- or
6 evidence that's not in evidence. I object to
7 this.

8 MR. BOINEAU: Mr. Buffington, briefly on reply if you
9 don't mind.

10 THE COURT: Yes. Go ahead.

11 MR. BOINEAU: Mr. Buffington it happens all the time
12 for purpose of impeachment purposes. There's all
13 kinds of documents that can't be offered into
14 evidence. And I'm not intending to offer into
15 evidence, I agree the rule wouldn't allow me. I
16 certainly would like to offer into evidence but I
17 don't think the rule allows that. But I
18 certainly can use it for purposes of impeachment
19 to question the witness about it so it's the only
20 option I have here is cross-examination.

21 MR. CLARK: Well she denies it, she denies it and
22 that's it, because it's not in evidence.

23 THE COURT: I'm going to overrule the objection and
24 allow the video to be used for demonstrative
25 purposes only.

1 MR. BOINEAU: Thank you, Mr. Buffington.

2 Q. And Mr. Buffington and Ms. McGruder we'll go
3 through this it's about a -- we won't take the
4 whole video I will just show you the pieces of it
5 that I'm going to use for purposes of your
6 examination. Ms. McGruder, if you will I'm going
7 to ask you hear I want to make sure that I see do
8 you recognize is this you coming into the store
9 with your grandbaby?

10 A. Yes.

11 Q. Okay. Do you see there on the ground is there a
12 mat there?

13 A. Yes.

14 Q. Okay. Is there a wet floor sign there as well?

15 A. No there -- I didn't never seen a wet floor sign
16 in there, huh-uh.

17 Q. So are you saying it's not there or you just
18 didn't see it?

19 A. No, it wasn't there, it wasn't there. It wasn't
20 there.

21 Q. Do you see one in this video?

22 A. Yeah but it wasn't there. I don't know how you
23 did it but it wasn't there.

24 Q. Okay. Well we'll just we'll hit play then and
25 just move forward. This is you coming in?

1 A. Yes.

2 Q. Okay. And do you -- you're doing your shopping
3 at this time?

4 A. Yes.

5 Q. Okay. And I'm going to go ahead and forward this
6 Ms. McGruder to a point in the video where right
7 here Ms. McGruder is this still -- is this the
8 same entrance that we were looking at just a
9 second ago?

10 A. Yes. I knew it wasn't there because they had
11 noticed I was there. And the leader hollered out
12 she forgot to put the sign up and the mat out so
13 I know it wasn't there.

14 Q. Ms. McGruder, do you see someone in this video
15 mopping the floor?

16 A. Yeah but she wasn't mopping it was only two
17 people in the store and one at the register, and
18 the manager was upstairs.

19 Q. And do you know whether that's the -- do you
20 recognize the woman in this video have you ever
21 seen her before?

22 A. No, that not what -- not that lady at the
23 register.

24 Q. You never seen -- that wasn't the woman at the
25 register?

1 A. No, huh-uh.

2 Q. I'm going to show you another piece of this video
3 Ms. McGruder as we move forward in time.

4 A. She was a young girl at the register. It was a
5 younger ringing me up, a young one.

6 Q. You don't recognize that girl?

7 A. No, it was a young girl.

8 Q. Okay. We're going to go forward Ms. McGruder,
9 I'm going to ask you. This is the portion of the
10 video here again. You're going to see here. Is
11 that your grandchild right there, and is that
12 you?

13 A. Yeah.

14 Q. All right. You leaving the store here?

15 A. Right. But that ain't right because I only had
16 two thing out the door so I didn't need no buggy.

17 Q. Okay.

18 A. I only had two thing out the store that was a can
19 of Pringles, potato chip.

20 Q. Did you walk right past, was there a wet floor
21 sign in the video you just saw then?

22 A. No it wasn't out.

23 Q. Okay, well let's --

24 A. I don't know how y'all got the video cock up,
25 because when I was laying down on the floor, the

1 girl -- the manager did not come because she said
2 she wasn't going to get fired because she didn't
3 have the sign down and she didn't have the mat
4 down. She never came. And the girl at the
5 register was saying you got to give a her a
6 incident report. She never came and she said she
7 wasn't going to do it because was going to get
8 fired. She was going get fired. So I don't know
9 how y'all got alternate the video but that did
10 not happen. And the manager did not come because
11 she was going to get fired.

12 **Q. How long after you --**

13 **A.** She didn't have the mat down and she didn't have
14 the sign up. And I sent someone back to the
15 store to check whether the sign was up and the
16 mat to make sure and it wasn't there. And then
17 after I fall, Dollar General sent a note out and
18 that's when they start making all the stores put
19 the mat and the sign up when it rain.

20 **Q. Ms. McGruder, after you fell how long were you in**
21 **the store?**

22 **A.** About five or ten minutes because I was waiting
23 on the manager, she wouldn't come.

24 **Q. Okay. I'm going to go ahead and take the video**
25 **forward then and I want to again ask you if you**

1 recognize this individual coming into the store.

2 Ms. McGruder is this you coming back in?

3 A. Yes.

4 Q. Is that you falling down?

5 A. Yes.

6 Q. Okay and who -- is there somebody that comes over
7 there immediately to check on you?

8 A. It was a -- some customer. It was three customer
9 it was not -- the lady that same lady that you
10 showed mopping, no. It was one worker in the
11 store she was running the register. She could
12 not leave the register and it was about three
13 white women helped me up. It was three white
14 women. Matter of fact they live on base, Shaw
15 Air Force Base, they helped me up. And they was
16 talking trash because it didn't make no sense.
17 The lady couldn't leave the register to help me,
18 the manager wouldn't come. So this tape is all
19 off, huh-uh.

20 Q. Okay.

21 A. Something added on that, huh-uh, no. Because the
22 manager wouldn't come because she didn't have the
23 sign and the mat down and she said she was going
24 to get fired. And not come to do incident
25 report.

1 Q. That lady who's talking to you right now she
2 doesn't have a Dollar General tag on her?

3 A. She has it but that's not the lady. Okay. That
4 -- it was a young girl, it was a young girl I was
5 talking to. Because the lady wouldn't even leave
6 the register, she couldn't leave the register.
7 She couldn't even leave the register.

8 Q. Yes, ma'am. Is that you in the video?

9 A. Right.

10 Q. And you're talking to somebody from Dollar
11 General right now?

12 A. Yes I do talk to but that not her, it was a young
13 girl.

14 Q. Okay.

15 A. And she was still at the register, and she was on
16 the phone steady paging the manager. And the
17 manager wouldn't come.

18 Q. Okay. So you said she paged the manager while
19 you were there?

20 A. Paged the manager about ten times in that store
21 and the manager wouldn't come. And everybody in
22 the store started talking. The manager would not
23 come.

24 Q. How long had you been there talking to her?

25 A. Probably about ten minute I stand because she

1 said you got to get an incident report and then
2 the manager said she wasn't coming because she
3 didn't have the sign down or the mat down and she
4 was not coming, 'cause she would lose her job.
5 And she would not come. And I sent somebody back
6 to the store to make sure and it wasn't down. I
7 even called back to the store and tell the lady
8 could I speak to a manager. I said you didn't
9 give me my incident report or nothing. And she
10 said I'm not giving you no so and so incident
11 report because I'm not losing my job. Cussed me
12 out and hang the phone up on me.

13 **Q. Okay.**

14 **A. They were very, very nasty. There were two**
15 workers in the store and the manager would not,
16 she would not come out. Just because she didn't
17 have the sign up nor the mat down. And was going
18 to lose -- she said she was going to lose her
19 job.

20 **Q. That you leaving the store?**

21 **A. Yes that's me leaving.**

22 **Q. Okay. All right. All right, quickly. In 2006,**
23 **Ms. McGruder, you had a knee replacement surgery,**
24 **did you not?**

25 **A. Right.**

1 Q. All right. In 2006 you also applied for
2 disability benefits, did you not?

3 A. Right.

4 Q. And they -- and you applied and you complained of
5 nerve pain all over your body, didn't you?

6 A. Yeah that's because I had some surgery done. And
7 then this snip in my groin.

8 Q. Yes, ma'am. But when did you finally get your
9 disability?

10 A. I don't know when it was that was some years and
11 years ago. It was about 2000 and something.

12 Q. Do you remember why they gave you full
13 disability?

14 A. Yeah because of my nerve, I used to go to
15 Charleston and take shots. It calmed the nerve
16 down.

17 Q. It was bad nerve pain?

18 A. Yeah when they went in I had a blockage. And
19 they snip a nerve in my groin. And that's on the
20 right side of me, that's my left -- my right
21 side.

22 Q. You had a blockage in your heart?

23 A. Yeah when I had a physical done they found out I
24 had a heart -- I had -- you know your cholesterol
25 build up. And I had a blockage and it had going

1 on through the blockage.

2 Q. Who did that?

3 A. You talking about something 20 years ago.

4 Q. And they messed it up when they did it?

5 A. No they just snipped the nerve that something
6 happened. Can happen to.

7 Q. And where was the nerve pain?

8 A. It was in my groin.

9 Q. Do you remember complaining of nerve pain all
10 over your body when you filed for disability?

11 A. No it was make ants crawl all over you like ants
12 crawling over your whole body.

13 Q. You felt like ants over your whole body?

14 A. Yeah over your whole body and I had to get shots
15 to calm the ants -- the nerve down.

16 Q. Okay. How long did you get shots for that?

17 A. I can't remember probably a year, two years,
18 something like that.

19 Q. Okay. And after you got the full disability you
20 never worked after that, did you?

21 A. No.

22 Q. Okay. And you said you just can't remember it
23 was so long ago when you got it?

24 A. I can't remember that was you talking about
25 probably fifteen ten or twenty years ago.

1 Q. Yes, ma'am. And Ms. McGruder, do you have a cell
2 phone?

3 A. Yes.

4 Q. Okay do you use the cell phone?

5 A. Yes.

6 Q. You take pictures of the cell phone -- take
7 pictures with it?

8 A. Sometimes.

9 Q. Okay do you ever post them on Facebook?

10 A. Sometime.

11 Q. Okay when you go places do you take pictures of
12 you and your kids or grand kids if you're going
13 somewhere and post it on Facebook?

14 A. Sometime.

15 Q. Okay. I want to show you Ms. McGruder well let
16 me ask you first. Since this accident have you
17 done any traveling at all?

18 A. Not really, no.

19 Q. Have you been to Dominican Republic at all?

20 A. Dominican Republic?

21 Q. You ever traveled out the country?

22 A. No I don't even know Dominican Republican.

23 Q. Have you been outside the country since then?

24 A. No.

25 Q. Okay have you gone to any monster truck rallies

1 since this accident?

2 A. No. I wouldn't do that.

3 Q. Do you know what Cottle Farms is, the strawberry
4 farm?

5 A. Yes.

6 Q. Have you ever -- have you been there since the
7 accident?

8 A. I might ride, ride out there.

9 Q. But then you would have gone there with your
10 grand kids?

11 A. With my grand or something.

12 Q. All right I'm just going to show you these photos
13 I just want to ask about them. You can again not
14 introduce them as evidence just for demonstrative
15 purposes to ask you about your particular
16 injuries. And bear with me one second Ms.
17 McGruder, computer is running a little slow
18 today. I can see you straining. Ms. McGruder,
19 do you recognize the picture here do you
20 recognize where that is?

21 A. That's my daughter and son.

22 Q. Okay was that -- at the bottom it says Mae
23 McGruder is that your Facebook page?

24 A. She tagged me in -- when they go somewhere with
25 the kids and I can't go they tag me into it so I.

1 can see it. So can see what they doing, yeah.

2 Q. Okay so you didn't post this?

3 A. No, they tagged me. No, huh-uh.

4 Q. Okay so you have not you said you have been to --

5 A. No you pulling up pictures that somebody tag you
6 in and it may say you there but you ain't there
7 it's just that they tagged you into something, so
8 you know. You know what I mean?

9 Q. Yes -- so you didn't take this photo?

10 A. No, huh-uh.

11 Q. Okay. So all the pictures that you have on your
12 Facebook, it's your testimony you didn't take any
13 of those, those or just pictures that somebody
14 tagged you in and that's why they show up?

15 A. Right. And you can put save and then pull them
16 up yourself, or someone put them on your own and
17 they can put you there at that location but you
18 know you not there. I could send you a picture
19 right now and tag you it'll say you and me
20 together but we not together.

21 Q. Yes, ma'am. So that's your testimony is you
22 weren't with her in that picture?

23 A. No. That's my daughter.

24 Q. Bear with me one second. And is that the same
25 daughter that lives with you?

1 A. Yes.

2 Q. Where did she live prior to October of 2019, Ms.
3 McGruder?

4 A. Off of 441.

5 Q. And do you remember her address?

6 A. No.

7 Q. When did she move in with you?

8 A. After -- she moved in after I had -- well she
9 went back and forth. She move in some when I
10 fall and stay a lot. Then she had to move
11 permanent back in and give up her lease, to live
12 with me. She had to give it back up.

13 Q. Had she lived with you prior to the fall?

14 A. Yes, some.

15 Q. Okay.

16 A. Back and forth.

17 Q. She had gone back and forth prior to the fall?

18 A. Right, right.

19 Q. I'll ask about it. Sorry, Ms. McGruder, bear
20 with me one. This is a picture, Ms. McGruder, we
21 found I'm just asking you, is this -- you didn't
22 take a trip in April of 2021, did you?

23 A. No.

24 Q. Okay. You didn't go anywhere during that time
25 period?

1 A. No.

2 Q. You recognize that photo at all?

3 A. No, you just -- the airplane.

4 Q. There's an airplane? When's the last time you
5 were on an airplane.

6 A. I can't remember.

7 Q. Have you been on an airplane since the fall?

8 A. No.

9 Q. Okay.

10 A. Now my Facebook page have been hacked and I tried
11 to rid about three or four page with my name
12 under there.

13 Q. Okay so it may have been that it was hacked?

14 A. Well, I know on my Facebook page because I have a
15 lot of people, you know they'll say somebody send
16 you a friend request and don't accept because
17 it's not me.

18 Q. Yes, me.

19 A. So I have a lot of people them say somebody send
20 me a friend request, but I said that not me.

21 Q. Well Ms. McGruder during the time period of Covid
22 when you didn't have your -- when you couldn't
23 have your surgery did you have any other
24 treatment during that time period that you talked
25 about? I think it was 2020 to about 2022?

1 A. Yes I was steady going back and forth you know to
2 the doctor during that time. The just couldn't
3 do surgery.

4 Q. Okay.

5 A. Our government stopped all electronic (sic)
6 surgery here, the government done that.

7 Q. All the elective surgery?

8 A. Yeah the government done that.

9 Q. Yes, ma'am.

10 A. Governor McMaster done that, he stopped all those
11 surgery. If you don't believe me, look on the
12 news and all that. And he stopped it twice.

13 Q. Yes, ma'am. When you had the first knee surgery
14 in 2006 they tell you about how long that surgery
15 would last?

16 A. Yeah.

17 Q. How long did they say the surgery would last?

18 A. Long as I don't fall. They said long as you
19 don't fall.

20 Q. Okay.

21 A. That's why they gave me -- they gave me the
22 metal. As long as you don't fall.

23 Q. Okay. Bear with me one second, Ms. McGruder. I
24 may be just about done if you give me just a
25 minute, okay? All right, Ms. McGruder, I

1 appreciate your time and I hope you get feeling
2 better soon.

3 A. Thank you.

4 Q. Thank you ma'am, thank you Mr. Buffington.

5 THE COURT: You, Trippett. John. Any other
6 witnesses?

7 MR. CLARK: Yes, I have other witnesses but could I do
8 a short re-direct?

9 THE COURT: Oh certainly yes you can. Sorry.

10 MS. McGRUDER - RE-EXAMINATION BY MR. CLARK:

11 Q. So Ms. McGruder, the video that Mr. Boineau --
12 Boineau, let me get that right, showed you. Did
13 it show that you fell on the vestibule of the
14 store?

15 A. Yeah.

16 Q. All right. Was that a hard fall?

17 A. Yes because, like I said, I had to go to my
18 doctor.

19 Q. Okay.

20 A. Another doctor, went to the one for kidney stone.
21 And when I told him and he said well the stone --
22 I told him I fall. He said you fall hard because
23 this stone dropped.

24 Q. Okay. All right. And that wet floor was that
25 did you see the vestibule of that store water on

1 the floor?

2 A. Yes.

3 Q. All right. Were there any wet floor signs
4 outside of the door?

5 A. No. Ain't no sign in there or nothing in there
6 because I send my neighbor back. He's a police
7 officer. I sent him back to look and nothing was
8 there.

9 Q. Okay was there a mat there in on that in that
10 vestibule?

11 A. No, it wasn't no mat, it wasn't there. I sent a
12 police officer back to look.

13 Q. Okay, all right. Now Mr. Boineau asked you have
14 you ever been to the -- did you go to Dominican
15 Republic. Did you go to Dominican Republic?

16 A. I never been to the Dominican Republic in my
17 whole life.

18 Q. Okay, all right.

19 A. When people put stuff on Facebook they lie, you
20 know what I mean? And my page been hacked about
21 three or four times.

22 Q. All right so you never been to Dominican
23 Republic?

24 A. No.

25 Q. All right. And that photograph that he showed

1 you at Cottle Farms is that your daughter in that
2 picture?

3 A. That's my daughter and her kids.

4 Q. Okay.

5 A. And sometimes they tag me when they go to places,
6 they tag me because I can't go. And it'll make
7 it seem like I'm there but they tag me in stuff.

8 Q. And is your daughter here with you today?

9 A. Yes.

10 Q. Is she sitting right in that room?

11 A. Yes.

12 Q. Can you ask her to show her face on the screen?

13 A. Yes.

14 Q. And what's her name?

15 A. Melissa Stuckey.

16 Q. Melissa Stuckey, and that's her daughter --
17 that's your daughter. And that picture was her
18 grandson?

19 A. That was her son.

20 Q. Your grandson.

21 A. Yes.

22 Q. And you weren't in the field were you?

23 A. No I -- they tagged me when they go some place so
24 I can get to see. They don't want me to sit at
25 home.

1 Q. All right you can have a seat, thank you. Now
2 could you tell who that was on the airplane?

3 A. No, all I saw was a seat.

4 Q. Okay. Do you know if your daughter or anybody
5 traveled on the airplane or anything?

6 A. Yeah, my daughter done.

7 Q. Oh she did travel on the airplane?

8 A. Yeah.

9 Q. Okay.

10 A. Look my daughter young I can't tell you where all
11 they be going, I can't tell you.

12 Q. But did that photograph show you on that plane at
13 all?

14 A. No.

15 Q. Did it say you were on the plane?

16 A. No.

17 Q. The photograph of Cottle Farms did it say that it
18 was you out there picking the strawberries?

19 A. No.

20 Q. All right. Did it say you took the picture?

21 A. No.

22 Q. Was there any comment from you?

23 A. No.

24 Q. All right. And the nerve pain that you had from
25 the medical issue then, is that totally different

1 **than the pain you had from this accident?**

2 A. That's totally different, this two different
3 occasions. I already got healed from that, that
4 was some years ago.

5 **Q. Okay. Thank you ma'am, those are all the**
6 **questions I have.**

7 THE COURT: All right. Any re-cross?

8 MR. BOINEAU: Nothing, thank you Mr. Buffington.

9 THE COURT: Call your next witness, John.

10 MR. CLARK: I would call Melissa Stuckey.

11 MR. BOINEAU: Mr. Buffington, I'm going to object,
12 nobody disclosed that she was in the room with
13 Ms. McGruder when they were there. She should
14 have sequestered herself or not been in the room
15 or somebody should have at least said she's
16 there, I mean she's listened to everything Ms.
17 McGruder said. I mean, I'm limited in what I can
18 do anyway but allowing her to testify is
19 certainly going to limit me further in my cross-
20 examination since she's heard everything that her
21 mom said.

22 MR. CLARK: Well Mr. Buffington, I mean, he didn't
23 move to sequester and this witness is only
24 talking about she wasn't with her at the time of
25 the accident, Ms. McGruder has already testified

1 that her daughter helped her and her testimony is
2 only to testify that she did help her and to
3 testify about the videos that he just introduced
4 or tried to use that we didn't know existed.

5 MR. BUFFINGTON: I'm going to let her testify. I
6 would have -- I guess it probably would have been
7 better if we could have dealt with whether or not
8 to sequester the witnesses or not but I don't
9 think it's appropriate to disallow her testimony
10 so I'm going to allow her to testify.

11 MR. BOINEAU: And Mr. Buffington, I understand your
12 ruling. Just to protect the record, I had no
13 idea there was anybody in the room with her, it
14 was not disclosed to me at any point. Had it
15 done sure I would have asked for you to sequester
16 the witnesses I just had no clue. I thought it
17 was all via Zoom so that's the basis. I
18 certainly understand your ruling I just wanted
19 that to be clear for the record.

20 THE COURT: I understand. Thank you. All right.

21 MR. CLARK: Would you switch out with your mother
22 please? With your daughter. How are you Ms.
23 Stuckey?

24 MS. STUCKEY: All right, how you doing.

25 THE COURT: Ms. Stuckey could you just state your full

1 name and spell your name for the court reporter?

2 MS. STUCKEY: Yes, sir. Melissa Stuckey, M-E-L-I-S-A
3 S-T-U-C-K-E-Y.

4 THE COURT: And you've been called as a witness in
5 this case.

6 MELISSA STUCKEY, being duly sworn, testifies as
7 follows:

8 THE COURT: John, you can proceed.

9 MS. STUCKEY - EXAMINATION BY MR. CLARK:

10 Q. Thank you. Ms. Stuckey, who is your mother?

11 A. Mae McGruder.

12 Q. All right. And you saw the video that Mr.
13 Boineau and the pictures that he put on the
14 screen just now, did you see those?

15 A. Yes, sir.

16 Q. All right. Do you know who that was in the
17 Cottle Strawberry Farm?

18 A. That was me and my son.

19 Q. Okay has anybody ever told you you look like your
20 mother?

21 A. All the time.

22 Q. Okay. All right. Do you know who took that
23 picture?

24 A. It's probably my kids father took that picture.

25 Q. Okay. Do you post to Facebook and tag your

1 mother sometimes?

2 A. Yes, sir. Because she don't get to go no place
3 with us so I tag her and put her so she can see
4 what her grand kids is doing.

5 Q. Okay. All right. And you saw the photograph on
6 the back of a airplane seat, you know where that
7 picture was?

8 A. No.

9 Q. Did you post that?

10 A. No, sir.

11 Q. Okay. Did you -- when's the last time you been
12 on the airplane?

13 A. Oh, lord.

14 Q. You don't fly frequently?

15 A. No. I don't fly like that.

16 Q. You don't -- you like airplanes?

17 A. No. You get up there and something go wrong?
18 Messed up.

19 Q. A lot of people feel that way. So now were you
20 aware that your mother had this accident on
21 October 29 of 2019?

22 A. Yes, I got a call at work.

23 Q. Okay. How was your mother before that?

24 A. She was cool, she was cool. She went and did her
25 own thing.

1 Q. Okay. And the picture -- that the video that we
2 saw her walking in the store before she fell was
3 that with your son?

4 A. Yes, sir.

5 Q. She was able to get around?

6 A. Yes, sir.

7 Q. She took care of the kids sometimes?

8 A. Yes, sir.

9 Q. And did she live by herself?

10 A. Yes, sir.

11 Q. All right. Tell me how she changed after she had
12 this slip and fall accident.

13 A. She can't go nowhere, she can't do nothing. When
14 I want to take her places for her birthday my
15 kids birthday she can't go out. She can't do
16 none of that. So therefore she misses my kids
17 birthday. I can't take her out for her birthday.
18 And her mood swings, you know she may have an
19 attitude with you the next day or when you come
20 to the house she may get ...

21 Q. Okay. After the accident did you move in with
22 her?

23 A. Yes, sir.

24 Q. Why did you move in with her?

25 A. She couldn't do nothing for herself.

1 Q. Nothing for herself?

2 A. She couldn't wash herself, she couldn't wash her
3 clothes, she couldn't cook. I had to bathe her,
4 dry her off, I had to take her back and forth to
5 a doctor.

6 Q. Okay. All right. And you were employed at that
7 time, weren't you?

8 A. Yes, sir.

9 Q. And you still employed aren't you?

10 A. Yes, sir.

11 Q. And you tell -- who you do you work for?

12 A. I work for the South Carolina Department of
13 Corrections.

14 Q. You're a correctional officer?

15 A. Yes, sir.

16 Q. And you're currently assigned to Kershaw
17 Correctional Institute?

18 A. Yes, sir.

19 Q. How long have you been there?

20 A. Fourteen years.

21 Q. So you've been with the department fourteen
22 years?

23 A. Yes, sir.

24 Q. Okay. Things are going well for you there?

25 A. Yes, sir. I'm a supervisor -- I'm a sergeant

1 over contraband.

2 Q. Okay. So you stay busy?

3 A. Yes, sir.

4 Q. Okay. All right. Now where were you living when
5 your mother had the accident?

6 A. On 441.

7 Q. All right. Were you living with her?

8 A. No, sir. Huh-uh. I had my own place.

9 Q. All right and that was you and your two sons?

10 A. Yes, sir.

11 Q. All right and then after the accident you moved
12 in with her?

13 A. Yes, sir. Yes, sir.

14 Q. All right. And did you have to take a family
15 medical leave act to be at home?

16 A. Yes, sir.

17 Q. And you took your time off of your job to be
18 there?

19 A. Yes, sir. I had to get the paper to fill out
20 every year.

21 Q. All right and so how long were you living with
22 her?

23 A. When it first happened I was back and forth. But
24 I couldn't do that back and forth because if she
25 called me I have to come from my house all the

1 way to her house. So I just -- after she had her
2 surgery I moved. I just gave my house up. I
3 gave my house up, put everything in storage and I
4 moved back in with her. Just to be there full
5 time.

6 Q. Okay and are you still there with her?

7 A. Yes, sir.

8 Q. Have you gone back to work?

9 A. Yes, sir.

10 Q. All right. And how old are your boys now?

11 A. One is eight and the other one is six.

12 Q. Okay. Are they out for the summer, out of
13 school?

14 A. Yes, sir.

15 Q. Do they help her when you're going to work?

16 A. Oh, yes, sir.

17 Q. Okay. Tell me what a typical day for your mother
18 is like.

19 A. She can't do nothing she just sit there. She
20 sits on her -- I bought her a chair so she can
21 kind of be comfortable. Kind of like a striped
22 chair but it's a nice chair I bought her so she
23 can be comfortable. So she can -- she tries to
24 sit, try to keep her leg propped up, she gets up
25 try to. But my son have to help her up then my

1 son has to take the clothes -- my older son take
2 the clothes put them in the washing machine for
3 her, got to dry them. He even know how to cook.
4 Spaghetti, he'll cook spaghetti. And they have
5 to really cook for her and bring her her stuff
6 because she can't really do it.

7 **Q. All right. And has she been like that pretty**
8 **much since the accident?**

9 A. Yes, sir.

10 **Q. All right. Did she use a walker before this**
11 **accident?**

12 A. No, huh-uh.

13 **Q. Okay. She was able to walk like you saw in the**
14 **video going in the store?**

15 A. Yeah she was able to walk, drive for herself, go
16 to her own physicals if she had a doctor
17 appointment or something she was able to do all
18 that before this.

19 **Q. What about at night, how was her nights?**

20 A. You can hear her in there crying. You can hear
21 her in there crying and I go around there momma
22 what's wrong? She like she in so much pain that
23 she can't sleep.

24 **Q. Okay. Does she take medication?**

25 A. Yes, sir. Yes, sir, we got a desk full.

1 Q. Okay. So would you say her whole condition is
2 different than it was before this accident?

3 A. Yes, sir.

4 Q. All right. Has she ever complained of depression
5 to you or you ever believe she was depressed?

6 A. You can tell when she's depressed because she
7 can't go to family functions and then she gets
8 down where she don't answer nobody. She like
9 mute you off because she can't go.

10 Q. All right.

11 A. She can't go.

12 Q. Okay briefly tell me what kind of things she did
13 before she was injured.

14 A. She would take my grand kids to different places.
15 She used to go with her sisters. They used to go
16 eat out have they little sister dates and go with
17 her brother different places. She used to travel
18 and I never had to go with them because she could
19 have done it by herself.

20 Q. Okay. All right, she hasn't done that since the
21 accident?

22 A. She did the Harvest Hope, she did the Harvest
23 Hope where she feed the homeless, she did that.

24 Q. This was before the accident, right?

25 A. Yeah before the accident yeah she used to feed

1 the homeless with Harvest Hope and she used to go
2 and deliver food around to different people that
3 need, especially the old folks that need stuff.
4 She used to do that, she used to make baskets for
5 them and all that.

6 Q. Do you think she needs your help still today?

7 A. Yes, sir.

8 Q. You drive her pretty much where she goes?

9 A. Yes, sir.

10 Q. Have y'all had to make any modifications to the
11 house for her to get around?

12 A. Yes, sir.

13 Q. What have you done?

14 A. I had to do the toilet up. Because she can't get
15 down on them low toilets so I had to put had
16 somebody come in to do the toilet up. I have
17 ramp up. I also had to do the carpet on the
18 floor because her walker. So I had somebody try
19 to make the floor smoother for her so she can use
20 her walker. And had to redo her shower and get
21 her a chair for the shower that you put in so she
22 can try to sit and I can at least try to wash her
23 like that so she won't stand so long.

24 Q. All right. Ms. Stuckey I think those are all the
25 questions I have, thank you.

1 A. Yes, sir.

2 THE COURT: Cross-examination?

3 MR. BOINEAU: Nothing from us, Mr. Buffington.

4 THE COURT: Thank you.

5 MR. CLARK: I've got two more witnesses that I need
6 about ten minutes to get lined up, if that's
7 okay.

8 THE COURT: Okay, are they are they -- they in the
9 building? Your office?

10 MR. CLARK: No, sir, they're going to log in on Zoom.

11 THE COURT: Okay.

12 MR. CLARK: Yes, sir. If you can just give me about
13 ten minutes we should be ready.

14 THE COURT: All right we'll take a recess until 2:00
15 o'clock.

16 MR. CLARK: Thank you.

17 (Off the Record)

18 (Audio cuts out.)

19 DR. ALAN - EXAMINATION BY MR. CLARK:

20 Q. And now just talk about your educational
21 background. Where'd you go to college?

22 A. Undergrad Morehouse College. BS in Biology 1996.
23 Medical school at Duke 1996 to 2000. A residency
24 at University of South Carolina and Orthopedics
25 2000 to 2005. One year adult reconstruction

1 fellowship New Jersey Institute for Advanced
2 Orthopedics 2005-2006. Practice with Mike
3 Drakeford Palmetto Orthopedics in sports medicine
4 surgery in Sumter from 2006 to 2008 and then
5 McLeod from 2008 until present.

6 **Q. All right. And what kind of cases do you handle,**
7 **doctor?**

8 A. I practice in McLeod Florence. McLeod has since
9 bought couple hospitals and so I see patients at
10 McLeod, Sumter now McLeod Clarendon. When I'm at
11 McLeod Florence I primarily specialized in adult
12 reconstruction. That's hip and knee replacements
13 as well as hip and knee revisions and when I
14 traveled to the outlying facilities is about
15 fifty percent adult reconstruction and about
16 fifty percent general. So general would be ankle
17 fractures, hip fractures, wrist fractures,
18 infections, carpal tunnel, knee arthroscopy,
19 sports medicine injuries, and things of that
20 nature.

21 **Q. Have you ever been designated as an expert in the**
22 **field of orthopedic surgery, orthopedic medicine?**

23 A. Yes.

24 **Q. And you've given sworn testimony in the courts of**
25 **South Carolina before?**

1 A. Yes.

2 Q. And doctor tell us what organizations, societies,
3 all those good things that you might be a member
4 of.

5 A. I am a member of American Orthopedic AOS.
6 American Academy of Orthopedic Surgeons. I'm a
7 fellow of the ABOS, American Board of Orthopedic
8 Surgeons. I am a member of South Carolina Medical
9 Association. I'm a member of the Gladden Society
10 of Orthopedic Surgeons that focus on minority
11 issues. And I think that's all the relevant
12 memberships that I have.

13 Q. All right. Have you given opinions on causation
14 and diagnosis and the necessity for treatment and
15 future treatment and permanent injury and all
16 those kind of things?

17 A. Yes.

18 MR. CLARK: At this time, Mr. Buffington, I would
19 offer Dr. Alan as an expert in the field of
20 orthopedic surgery. And/or I should say.

21 MR. BOINEAU: No objection.

22 MR. CLARK: Thank you.

23 THE COURT: So qualified.

24 MR. CLARK: Thank you Mr. Buffington.

25 Q. Okay Mr. -- Dr. Alan, did you see Ms. McGruder on

1 or about December 20, 2019?

2 A. Yes.

3 Q. All right. And at that time did she complain to
4 you about being in a fall?

5 A. Yes.

6 Q. All right. And did you -- and she complained of
7 problem with her left knee?

8 A. Yes.

9 Q. All right. And at that time did you diagnose her
10 with acute pain in the left knee and mechanical
11 loosening of internal left knee prosthetic?

12 A. Yes.

13 MR. BOINEAU: Hold on -- John we might have lost -- oh
14 there, Mr. Buffington. I object to the purposes
15 of leading the witness.

16 THE COURT: John, don't lead the witness.

17 Q. Okay. What did she complain of when she came to
18 see you on December 20, 2019?

19 A. The chief complaint I have the record dated
20 December 20th, 2019 my office note in McLeod
21 Orthopedics. Left knee loosening, left knee
22 total arthroplasty referred by Brian
23 Christianson. She reported falling October 28th
24 it was 2019, injuring her right hand and left
25 knee. Said she was walking in Dollar General

1 when she fell forwards.

2 Q. And doctor, in your opinion stated to a
3 reasonable degree of medical certainty, was the
4 mechanical loosening of the internal left knee
5 caused by this fall that she complained of to
6 you?

7 A. So my diagnosis was December 18 was acute pain
8 left knee, mechanical loosening of internal left
9 knee prosthetic joint.

10 Q. And in your opinion to a reasonable degree of
11 medical certainty, was that injury that you just
12 described caused by the fall that she described
13 to you that she had at Dollar General?

14 A. Yes.

15 Q. All right. And doctor did you see Ms. McGruder
16 again on October 5th of 2022?

17 A. I believe it was October 4th.

18 Q. Okay.

19 A. It was either the 4th or the 5th.

20 Q. Okay. And was that after she had had revision of
21 the left knee?

22 A. Yes.

23 Q. All right. And in your opinion to a reasonable
24 degree of medical certainty, was that revision
25 caused by -- or necessitated because of the fall?

1 A. Yes.

2 Q. All right. And doctor can you explain the
3 difference between a revision and a knee
4 replacement?

5 A. So a knee replacement refers to a primary knee
6 replacement. And so a primary knee replacement
7 is when you have your quote/unquote native knee
8 meaning a distal femur and a proximal tibia and
9 no prosthetic joint replacement in place. And
10 that is what we use when we say knee replacement,
11 or primary knee replacement. And revision knee
12 replacement means that you're operating through
13 previously operated knee and you remove a dermal
14 component and or any tibial component and/or a
15 patella component and replace it with another
16 prosthesis.

17 Q. Is a revision more complicated than the original
18 replacement?

19 A. Yes.

20 Q. All right. Does it have a longer recovery
21 period?

22 A. It can. Sometimes it does, sometimes it doesn't.
23 It depends on the extent of the revision. In
24 this case I would anticipate that it had a longer
25 recovery.

1 Q. Okay. And on October 4 -- or October 5th, 2022
2 did Ms. -- well let's go back to December 20,
3 2019. Did Ms. McGruder complain of any pain to
4 her right hand?

5 A. Yes.

6 Q. All right. And in your opinion did she injure
7 her right hand in this fall?

8 A. Yes.

9 Q. And is that to a reasonable degree of medical
10 certainty?

11 A. Yes.

12 Q. All right. Now when she came back to see you on
13 October 4th, 2022 she had already had the
14 surgery, the revision, correct?

15 A. Yes.

16 Q. What was her knee condition like when she came
17 back to see you on October 4th or 5th 2022?

18 A. She was walking with an assistive aid, she still
19 had some pain. The knee was -- didn't have full
20 range of motion.

21 Q. Okay. Did she complain to you of her back on
22 that day as well?

23 A. Yes.

24 Q. Okay. In your opinion to a reasonable degree of
25 medical certainty do you believe Ms. McGruder

1 injured her back in the accident?

2 A. Yes.

3 Q. Now doctor do you believe -- you testified that
4 when Ms. McGruder came to see you back in October
5 of '22 that she had pain and limited range of
6 motion. Do you expect her to have pain on a
7 permanent basis?

8 A. I expect her to have impairment which includes
9 pain and a stiffness. Pain is -- you know, pain
10 is described by patient experience so it may
11 changed based on what situation and circumstance.
12 It's -- she has impairment. How she reports her
13 pain is a personal experience.

14 Q. Okay. What about back, do you think her back as
15 a permanent injury as a result of this accident?

16 A. Yes.

17 Q. Do you believe that she's going to need an
18 assisted -- assistive or assisting device? I
19 don't know exactly how y'all say it but what I'm
20 talking about is a walker, cane, wheelchair, do
21 you think she's going to need that on a permanent
22 basis?

23 A. Yes.

24 Q. And that's a result of the injury to her knee and
25 her back?

1 A. In part result of the injury to the knee and the
2 back.

3 Q. Okay. Now doctor do you think she's going to
4 need future treatment?

5 A. Yes.

6 Q. Will she need physician followup care for these
7 injuries that you just described for the balance
8 of her life?

9 A. Yes.

10 Q. Will she need to see a doctor annually in your
11 opinion?

12 A. Yes.

13 Q. Will she need pain management and orthopedic
14 visits?

15 A. Yes.

16 Q. Will she need medications to treat these injuries
17 as she has?

18 A. Yes.

19 Q. And she'll need that for the balance of her life?

20 A. Yes.

21 Q. Will she need diagnostic testing, laboratory
22 analysis to manage her care for the rest of her
23 life?

24 A. Yes.

25 Q. And you've already testified she'll need that

1 rolling walker and the cane for life, correct?

2 A. Yes.

3 Q. And will she need physical therapy in the future
4 to treat her?

5 A. Yes.

6 Q. Will she need steroid injections and medial
7 branch blocks in her back?

8 A. Many patients with chronic pain after a knee
9 replacement or knee revision need that. After
10 seeing her in October 2022 that's my opinion,
11 yes.

12 Q. All right. And doctor will she need a revision,
13 another revision, during the time of her life as
14 a result of the injury suffered in this fall?

15 A. Yes. With her having a revision knee replacement
16 and other factors associated with the patient I
17 anticipate a life expectancy of her revision
18 needing between ten and fifteen years, would put
19 her somewhere between 68 and 73, when she needs
20 another revision.

21 Q. And that's because of the fall in this case?

22 A. Yes.

23 MR. BOINEAU: Objection. Mr. Buffington, he's not
24 been qualified as a bio-mechanical expert. He
25 can testify as to what she told him but other

1 than that I don't think he's qualified to testify
2 as to the mechanics of the accident itself.

3 MR. CLARK: Well he testified to the cause of the
4 injury, I mean.

5 MR. BUFFINGTON: I'll allow his answer.

6 Q. Now, do you think she'll need assistance around
7 the house or in her daily life as a result of
8 these injuries Dr. Alan?

9 A. Yes.

10 Q. All right. You got more surgeries to do today?

11 A. No.

12 Q. Okay. Well, we're going to be done with you in a
13 minute anyway.

14 A. I think I froze.

15 Q. Okay. No we can hear you.

16 A. Okay. Dr. Alan, I believe those are all the
17 questions I have for you, thank you. Mr. Boineau
18 might have a few questions.

19 DR. ALAN EXAMINATION BY MR. BOINEAU:

20 Q. Thank you, Mr. Buffington. Dr. Alan, good
21 afternoon.

22 A. Hi.

23 Q. I'm Trippet Boineau, we've never met before but
24 I'm an attorney here at Columbia South Carolina I
25 appreciate you being here with us today. Can you

1 hear me okay?

2 A. I think you went out a little bit. Yeah when you
3 come up your screen says one bar.

4 Q. Can you hear me okay?

5 A. It's a delay, it's an echo.

6 Q. My apologies.

7 A. Is there a number I can call?

8 Q. It says I have full service, we haven't had a
9 problem yet today on it so I don't know.

10 A. Now you're good.

11 Q. Okay. Sorry, I'll try to -- if I'm not for any
12 reason, please let me know.

13 A. All right. I'll put up one finger if it pauses.

14 Q. Perfect, thank you, sir. Dr. Alan, you've done
15 knee replacement surgeries before, correct?

16 A. Yes.

17 Q. Okay. What is the typical life span of a knee
18 replacement surgery?

19 A. So a primary knee replacement life survivorship
20 is 80 percent at 20 years. So 80 percent of the
21 time the same knee will be in 20 years later for
22 a primary knee replacement.

23 Q. And that means after and the other 20 percent of
24 the time it can be less than that?

25 A. Yes.

1 Q. Okay. And does the reoccurrence of the need for
2 a knee replacement or revision surgery on a knee
3 replacement does that have anything to do with
4 the overall health condition of the patient
5 themselves?

6 A. You went in and out, I'm sorry.

7 Q. No, no problem, I'll ask the question again. Can
8 everybody else hear me okay?

9 MR. CLARK: Yes.

10 THE COURT: Yes.

11 COURT REPORTER: Yes, sir.

12 Q. I don't think it's on my end. Dr. Alan, with
13 regards to a total knee replacement and when that
14 needs to be redone, does the time period for when
15 it needs to be redone have anything to do with
16 the overall health condition of the patient?

17 A. Yes.

18 Q. Okay. And you've evaluated Ms. McGruder,
19 correct?

20 A. I'm sorry it went in and out. Maybe I can call
21 another number.

22 MR. BOINEAU: If they can hear you I'm happy to give a
23 number. Mr. Buffington, do you want me to have
24 him call my cell and I'll put it on speaker right
25 here and we can do it that way?

1 THE COURT: That's acceptable. That's fine to do it
2 that way.

3 COURT REPORTER: Sure.

4 MR. BOINEAU: Madam court reporter, as long as you can
5 hear then we're okay. Mr. Alan, Dr. Alan let me
6 --

7 MR. CLARK: Can we try to go on where we were because
8 you know it worked a good bit and we might be
9 able to finish the way we are. I'd prefer to do
10 that before we do with the phone, to be honest
11 with you.

12 MR. BOINEAU: I'm with you, John. I agree I would
13 too.

14 DR. Alan: You're good now.

15 MR. BOINEAU: Okay, great. All right.

16 Q. You said we were talking before we got sort of
17 cut off about the overall health condition of a
18 patient affecting the length of time a knee
19 replacement lasts, correct?

20 A. Yes.

21 Q. Okay. And does it matter if one is considered to
22 be -- tell me what factors play into that?

23 A. Bone quality, body habitus, absence of presence -
24 - absence of presence of diabetes. You know the
25 majority of revisions earlier done for things

1 like infection. So anything that put the patient
2 at a higher infection risk, being on dialysis,
3 need for dialysis. Chronic infection in other
4 areas. And then the late revisions are done for
5 loosening or aseptic loosening. And then that's
6 where body habitus, the original alignment of the
7 knee comes into play. You know, activity level
8 if they have, you know, you put a joint in Bo
9 Jackson, and he wears it out pretty fast.

10 **Q. Right and so things like diabetes does that**
11 **increase or decrease rather the amount of times**
12 **that you expect a knee replacement to last?**

13 A. Did you say diabetes?

14 **Q. Yes, sir.**

15 A. Yeah so if diabetes is severe and uncontrolled
16 then it affects the quality of bone, then
17 absolutely.

18 **Q. In this case you saw initially on December 20th,**
19 **2019 Ms. McGruder, correct?**

20 A. Yes.

21 **Q. And at that visit the only two things she**
22 **complained of to you and your records are her**
23 **right hand and her left knee, correct?**

24 A. Yes.

25 **Q. She -- the first time she ever complained of any**

1 other issue and that only being the back was in
2 2022, was that correct?

3 A. Well you know any time I evaluate a patient for
4 painful joint replacement, and that's how these
5 patients present. It's painful joint
6 replacement. Now this case it was after a fall
7 and after another orthopedic surgeon had seen the
8 patient and you have a working diagnosis or
9 provisional diagnosis for which the patient is
10 referred to you. But it's a painful knee
11 replacement and if I review my documentation from
12 the account of her on the 19th, one of the things
13 it says is that she states the pain is worse at
14 night when laying down and occasionally radiates
15 up towards her hip. And I can tell you just in
16 my general practice that I put those things in
17 the note as a way of evaluating whether or not I
18 think there is a separate component to the cause
19 of the pain in the extremity, i.e. the back.
20 Additionally on the examination On the 19th --
21 I'm sorry the 20 -- December 20th, 2019 I put,
22 you know, pain with straight leg raised. Those
23 are all kind of things that I do to try to assess
24 whether there's a component of a back problem
25 that comes into play. So even in looking at my

1 notes today it suggest that that was part of the
2 consideration, the looking at the assessments
3 listed didn't list it in the assessments.

4 Q. And you did not note that that was something she
5 had complained of either, did you?

6 A. Sorry?

7 Q. You did not note that was something she had
8 specifically complained of?

9 A. Correct.

10 Q. Okay. With regards to the loosening of the
11 equipment in the left knee, did you determine
12 that by way of reviewing an MRI or a CT scan?

13 A. Can you repeat that?

14 Q. Yes, sir. No problem at all, Dr. Alan. With
15 regards to the loosening of the left knee that
16 you testified to, was -- did you determine that
17 by way of reviewing an MRI or a CT scan?

18 A. So you're asking me about my testimony of the
19 cause of the loosening being a result of the fall
20 or injury? Is that what you're asking about?

21 Q. No, sir, Dr. Alan. I'm just asking what you
22 reviewed to determine that it was loose, the
23 equipment?

24 A. Yes. So in our system with McLeod Health we're
25 about to see x-rays. And one of the x-rays that

1 was and is available to me is an x-ray from
2 October 29th, 2019. I believe that was maybe an
3 emergency room at Clarendon Hospital when she
4 presented after she fell.

5 **Q. Okay. Did -- was that what you used to determine**
6 **that in fact she did have a loosening in the left**
7 **knee of the total knee replacement?**

8 A. I don't simply rely on one thing but yes, if
9 you're looking at this x-ray I think the majority
10 of orthopedic surgeons with my background and
11 experience is gonna call this a definite
12 loosening.

13 **Q. Got you. Yes, sir. And did you prescribe any**
14 **treatment for her for her back in December of**
15 **2019?**

16 A. When I saw her -- when I saw her on December
17 20th, 2019 I recommended ordering labs and a bone
18 scan for further to work up.

19 **Q. Okay. Did you recommend a surgery on her knee at**
20 **that time?**

21 A. You know I'm just going by my notes. Yeah, my
22 notes suggest that -- my notes suggest that I
23 didn't recommend an immediate surgery however I
24 wanted to get labs and a bone scan.

25 **Q. Okay. So you did not recommend an immediate**

1 surgery, you wanted to review the labs and a bone
2 scan first?

3 A. Yes.

4 Q. Did you do that?

5 A. She did not follow up with me until after -- you
6 know, she sought care at another facility or
7 institution.

8 Q. Okay. When is the first time you recommended her
9 having knee surgery?

10 A. I don't have any notes or recollection of me
11 telling her she needs knee surgery. And the
12 reason why is because the treatment is different
13 based on some preoperative findings and
14 preoperative testing that I typically do in my
15 practice.

16 Q. Do you know whether those were done in this case?

17 A. Well here I can review the operative note. And I
18 suspect that they ordered a CPC, which would
19 assess for the appropriateness of someone's
20 ability to tolerate a surgery. I -- as an
21 orthopedic surgeon, I know that other orthopedic
22 surgeons are going to assess for the precedence
23 of infection and the ability for someone to
24 tolerate a surgery. And depending on where
25 you're going to do surgery, there may be

1 additional resources that you have to put in
2 place prior to just scheduling the surgery if
3 that makes any sense.

4 Q. Sure. Yes, sir. Did you do surgeries between
5 December 20th, 2019 and October of 2022?

6 A. Sorry?

7 Q. Did you do any surgeries between December 20,
8 2019 and October of 2022?

9 A. Yes.

10 Q. You've never operated on Ms. McGruder though,
11 have you?

12 A. No.

13 Q. What treatment did you recommend for her in
14 December 20, 2019 for her right hand?

15 A. I did not recommend any specific treatment, my
16 note says that she has a torn ligament in the
17 right hand, she's following up with a hand
18 specialist in USC.

19 Q. So you as a far as the right hand treatment goes,
20 you don't have any testimony to offer in that
21 regard at all?

22 A. My only testimony is that she fell or she reports
23 falling October 28th, 2019 and injuring her right
24 hand and left knee.

25 Q. Got you. And those the reports that you have to

1 rely on what the patient tells you, correct
2 doctor?

3 A. Yes.

4 Q. That's what we call in your world a subjective
5 finding as opposed to an objective finding,
6 correct?

7 A. Well you know it's subjective from the patient,
8 it's a little bit objective in the sense that
9 that's the same thing from the ER and from Dr.
10 Christianson.

11 Q. Have you ever recommended any treatment for her
12 for her back? Dr. Alan, can you hear me?

13 A. Sorry?

14 Q. Yes, sir. Have you ever recommended any
15 treatment for her back?

16 A. No, I don't have any specific treatments for her
17 back because I did not complete a full evaluation
18 and work up for that particular body area.

19 Q. Doctor, when you do knee replacement and knee
20 revision surgeries do you do them to make the
21 patient better?

22 A. Yes.

23 Q. Okay. And how often after you do it do you
24 revision surgery do you typically see that
25 particular patient?

1 A. In someone who has a less complicated procedure I
2 might see them in a similar frequency as a
3 primary knee replacement. Suture removal at two
4 weeks, physical therapy for six weeks,
5 reevaluation after physical therapy, probably
6 repeat physical therapy, Reevaluation after that.
7 Follow-up in one year. And then if -- again
8 depending on the amount of bone loss, depending
9 on the construct that you put in, I might send
10 someone away for five years or tell them to come
11 back if they have a problem. In this situation
12 with Ms. McGruder, I would most likely see her at
13 least once a year. And that's based on seeing
14 her after the revision and knowing that you know
15 she's got some ongoing problems.

16 Q. When you say ongoing problems are you talking
17 about with regards to the knee or other health
18 issues?

19 A. I don't think those are mutually exclusive. I
20 think yes and yes.

21 Q. Okay. And with seeing her once a year would you
22 do scans every time you saw her or would you just
23 would it be just a typical physical examination?

24 A. A lot of it was review information and yes, a
25 brief physical examination.

1 Q. Okay. All right, I think that's all the
2 questions I have, Dr. Alan. I really appreciate
3 your time. Sorry it took me as long as it did.

4 THE COURT: Any redirect?

5 MR. CLARK: Just briefly, sir.

6 THE COURT: Okay.

7 DR. ALAN - RE-EXAMINATION BY MR. CLARK:

8 Q. Mr. Alan -- Dr. Alan, you were asked a question
9 do you do surgery to make people better and you
10 said yes -- well strike that question. Is it
11 true that -- well let me ask you this. Do some
12 knee replacement last for a lifetime and they
13 don't have to be revised?

14 A. Standard recommendation of the knee replacement
15 will gradually wear out. Standard --

16 COURT REPORTER: He froze on my end.

17 THE COURT: Yes.

18 DR. ALAN: If I see someone who's --

19 THE COURT: Dr. Alan excuse me for interrupting you
20 froze and you said after you said they would
21 typically wear out, we didn't hear your response
22 after that. So if you could start over.

23 A. Okay when I counsel patients on knee replacement
24 I advise them that the knee will loosen over
25 time. When I counsel patients I advise them to

1 get the procedure when they have severe arthritis
2 and I also advise them on the life expectancy.
3 If this is a patient who's 65 years old, I
4 typically advise them that a well-done knee
5 replacement should last you the rest of your
6 life. And that's -- that was where I was getting
7 with my answer to the question.

8 Q. And in this case the revision in this case was
9 definitely related to this fall though, wasn't
10 it?

11 MR. BOINEAU: Objection.

12 MR. CLARK: Can you hear me doctor?

13 DR. Alan: It froze, I don't know if y'all can hear
14 me.

15 Q. Let me ask you a different question. In your
16 opinion -- well you already gave your opinion
17 that the revision in this case based on a
18 reasonable degree of medical certainty was
19 necessary because of the fall, is that correct?

20 A. Yes, that's the short answer. If you want me to
21 give more information, I can.

22 Q. No, that's fine. Now because she had a revision
23 in 2022 would that accelerate her need for
24 another revision that would not have been
25 accelerated had she not had this revision?

1 A. I will give a response and then you tell me if
2 this answers your question. The life expectancy
3 of a revision is not as long as the life
4 expectancy for a primary knee replacement. Just
5 like the leg, primary knee replacement to a
6 certain age allows you to have a primary knee
7 replacement to last the rest of your life,
8 delaying a revision knee replacement to a certain
9 age may allow you to only have one revision knee
10 replacement in the rest of your life.

11 Q. All right. And you were asked about whether you
12 did surgery during 2020 -- or from 2019 to 2022.
13 My question is, were some surgeries put on hold
14 during the Covid pandemic?

15 A. Yes.

16 Q. All right. And was that pretty much up to the
17 particular institution where the surgery was
18 taking place?

19 A. Wow, you know, layers and layers, layers and
20 layers. I think some of it was up to the
21 governor. I think some of it was up to, you
22 know, the institution.

23 Q. Right.

24 A. Some patients had family members dead. I mean, I
25 don't know how you want me to answer that.

1 Q. Okay well you answered it. So was there a
2 suspension or a stoppage of some surgeries during
3 that period? I think you may have answered the
4 question already.

5 A. Yes.

6 Q. All right. And that wasn't because the person
7 didn't need the surgery, was it?

8 A. Correct.

9 Q. And doctor, having diabetes did that have
10 anything to do with Ms. McGruder needing revision
11 surgery following the fall?

12 A. Yes, that's the short answer. The more complex
13 answer would be how well was it controlled, what
14 medications was she taking, how was it affecting
15 other organ systems, and that would require more
16 diagnostic studies and that is typically what I
17 would do if I were -- you know, if I were
18 counseling a patient on how we should manage
19 their care.

20 Q. Okay. But did diabetes cause the need for
21 revision in this case is what I'm asking you?

22 A. No --

23 MR. BOINEAU: Objection. Asked and answered.

24 THE COURT: I'll let him answer it.

25 Q. To a reasonable degree of medical certainty, is

1 it your opinion that diabetes caused the knee
2 surgery?

3 A. Diabetes by itself is not considered a cause for
4 revision just with, you know, someone is having
5 diabetes that's not an indication to revise the
6 knee.

7 Q. Thank you, Dr. Alan, those were all the questions
8 I had for you.

9 THE COURT: Any re-cross?

10 DR. ALAN: I'm sorry, it went out, I'm sorry.

11 MR. BOINEAU: No, I -- Dr. Alan I appreciate your time
12 very much, thank you. I don't have anything, Mr.
13 Buffington.

14 THE COURT: All right. Well then unless somebody has
15 an objection or unless Dr. Alan just wants to
16 hang around we will excuse him from this hearing
17 and he can sign off. Miss court reporter do you
18 need anything else from him before we?

19 COURT REPORTER: No, sir. I do not. But I will say
20 Trip, I did send you a private message if you'll
21 look at it for something, thank you. But I don't
22 need anything from Dr. Alan, thank you doctor.

23 MR. BOINEAU: You wanted the case caption, is that
24 right?

25 COURT REPORTER: Yeah I thought I had it but I don't.

1 MR. BOINEAU: I asked Mike to send it to you so he'll
2 send it here.

3 THE COURT: Thank you Dr. Alan. We'll excuse you from
4 the hearing.

5 DR. ALAN: Thank you.

6 MR. BOINEAU: Thanks doctor. Thank you.

7 MR. CLARK: I need about three minutes for the next
8 witness.

9 THE COURT: All right. Just let us know, we'll be on
10 standby until you come tell us you're ready.

11 MR. CLARK: All right thank you, thanks guys.

12 (Off the Record)

13 MR. CLARK: This is Jennifer Masse, Mr. Buffington.

14 THE COURT: Thanks. Ms. Masse, I'm Bobby Buffington
15 I'm the special referee if you would just state
16 your full name and spell it for the court
17 reporter.

18 MS. MASSE: My full name is Jennifer Masse. J-E-N-N-
19 I-F-E-R, M-A-S-S-E.

20 JENNIFER MASSE, being duly sworn, testifies as
21 follows:

22 THE COURT: John you can proceed.

23 MS. MASSE - EXAMINATION BY MR. CLARK:

24 Q. Thank you. How are you employed, Ms. Masse?

25 A. I am a nurse life care planner. I do cost

1 projections and I also cover the local OR as
2 needed, prn. And then I work for A&S solutions,
3 I do workers comp reviews on the defense side.

4 **Q. Okay now let me ask you a little bit about your**
5 **background. Where are you from?**

6 A. Kentucky, go Cats.

7 **Q. All right, go Cats, okay. Except when they're**
8 **playing the Gamecocks. But anyway so you're from**
9 **Kentucky, where'd you go to college?**

10 A. South Carolina bachelors of nursing. And I
11 apologize I have a little bit of a cold so please
12 excuse me. I have a bachelors in nursing, I did
13 (inaudible) in Kentucky. And then when we
14 relocated to South Carolina I started working
15 analysis and I started running a clinic and so I
16 got an MBA for some upward mobility. And after
17 fighting the good fight in the corporate world
18 for almost a decade while wearing my scrubs I
19 decided to pivot and I went in the world of life
20 care planning. I subcontracted initially for a
21 couple of years just to kind of get my feet wet
22 and to understand the business and the
23 expectation. And then I started Masse Medical in
24 November of 2020.

25 **Q. Okay. And so you are a registered nurse,**

1 correct?

2 A. Yes, sir.

3 Q. And you have a bachelor of nursing, is that
4 right?

5 A. Yes, sir.

6 Q. You have a master of business administration?

7 A. Yes, sir.

8 Q. All right. And CNLCP, what is that an acronym
9 for?

10 A. I'm a certified nurse life care planner so
11 there's a certification exam that you take to
12 become certified and it's non-profit. You have
13 to renew every five years and it's governed by
14 multiple governing bodies. And then I'm also a
15 certified brain injury specialist.

16 Q. All right. And have you ever been designated as
17 an expert in the preparation of medical cost
18 projections?

19 A. Yes, sir.

20 Q. And you've given testimony in legal matters in
21 South Carolina before?

22 A. Yes, sir.

23 Q. And you have experience doing cost projections?

24 A. Yes, sir.

25 Q. And you have experience involving patients with

1 total knee revision?

2 A. Yes, sir.

3 Q. All right. At this time Mr. Buffet then I would
4 offer Ms. Masse as an expert in medical cost
5 projection.

6 THE COURT: Any objections?

7 MR. BOINEAU: No objection.

8 THE COURT: So qualified.

9 Q. Now, Ms. Masse, did you do a medical cost
10 projection for Mae McGruder?

11 A. Yes, sir.

12 Q. All right and did you determine her date of birth
13 as May 19, 1965, correct?

14 A. Yes, sir.

15 Q. And I assume when you -- when did you do the cost
16 projection?

17 A. So this was completed April 18th of 2023.

18 Q. Okay and she was 55 years old at that time?

19 A. Yes, sir.

20 Q. And she had a life expectancy of 27.4 years per
21 the CDC volume 71?

22 A. Well initially it was a 57 year old to be 24.6
23 additional years but because of her impending
24 birthday we went ahead and used the life
25 expectancy for a 58 year old rather than a 57

- 1 year old.
- 2 **Q.** **Okay. And did you review medical records from**
- 3 **Carolina Radiology?**
- 4 **A.** **Yes, sir.**
- 5 **Q.** **Columbia Medical Group?**
- 6 **A.** **Yes, sir.**
- 7 **Q.** **Lexington Medical Center?**
- 8 **A.** **Yes, sir.**
- 9 **Q.** **McLeod Orthopedic?**
- 10 **A.** **Yes, sir.**
- 11 **Q.** **Midlands Orthopedic and Neurosurgery?**
- 12 **A.** **Yes, sir.**
- 13 **Q.** **Midlands Regional Rehabilitation Hospital?**
- 14 **A.** **Yes, sir.**
- 15 **Q.** **Prisma Health Medical Group Midlands?**
- 16 **A.** **Yes, sir.**
- 17 **Q.** **Prisma Health -- I'm sorry Palmetto Health**
- 18 **Orthopedic Lexington?**
- 19 **A.** **Yes, sir.**
- 20 **Q.** **Prisma Health Toomey?**
- 21 **A.** **Yes, sir.**
- 22 **Q.** **Medical University of South Carolina?**
- 23 **A.** **Yes, sir.**
- 24 **Q.** **And McLeod Health Clarendon?**
- 25 **A.** **Yes, sir.**

1 Q. All right. In your opinion stated to a
2 reasonable degree of nursing certainty -- well
3 strike that let me ask you a question. Did you
4 do a future medical cost projection in this case?

5 A. Yes, sir.

6 Q. All right. And what did -- what did you project
7 would be the future medical cost for Ms.
8 McGruder?

9 A. In totality?

10 Q. Well can you tell us each -- yeah in totality.

11 A. In totality \$272,292.99.

12 Q. Okay. And that would be for everything from
13 physician followup care, medication, diagnostics,
14 medical equipment, therapy, procedures, etcetera,
15 correct?

16 A. Yes, sir. What I did is after going through all
17 of the medical records I put together an outline
18 of a chronology of what occurred and when. And
19 in the narrative section of my report I tried to
20 include pictures when possible or illustrations
21 and I tried to hit the highlights of what care
22 she received through whatever records that were
23 provided for us.

24 Q. Okay.

25 A. And then what we did is we took the -- I took the

1 billing zip code, I took the life expectancy, and
2 then I allocated recommendations for physician
3 follow-up care, medication, diagnostics, dural
4 medical equipment, therapy and physical therapy,
5 procedures which is like injections and then
6 surgical considerations.

7 Q. Okay. And that total you said was \$272,292.99?

8 A. Yes, sir.

9 Q. And is that your opinion to a reasonable degree
10 of nursing certainty?

11 A. Yes, this is a conservative future estimate. We
12 don't include any complications that might occur
13 with procedures or any medical care, there are a
14 lot of variables in complications that can occur.
15 Those are not taken into consideration. But yes
16 given the information that was provided and the
17 medical records provided to me this is -- my
18 nursing life care cost projection opinion for
19 future care. Yes, sir.

20 Q. Thank you, Ms. Masse, those are all the questions
21 I have.

22 THE COURT: Cross-examination?

23 MR. BOINEAU: Yes, sir.

24 MS. MASSE - EXAMINATION BY MR. BOINEAU:

25 Q. Good afternoon Ms. Masse.

1 A. Good afternoon.

2 Q. Nice to see you, appreciate you being with us
3 here today. Can you hear me okay?

4 A. I can. I was just trying to figure out how to
5 pronounce your last name.

6 Q. Oh, it's Boineau.

7 A. Boineau, okay. Mr. Boineau, yes, sir.

8 Q. Yeah when I was a kid my mother used to embarrass
9 me and say girl yes boy no and I say mom that
10 worked for you but not me. So anyway. I
11 represent Dollar General and I've got just a few
12 questions for you. Is Ms. Masse fine, is that
13 you go by?

14 A. You can call me Ms. Masse, you can call me Jen.

15 Q. Great. Have you spoken with any of Ms.
16 McGruder's treating physicians?

17 A. No, sir.

18 Q. Has any treating physician told you that she's
19 going to need future care?

20 A. I have not spoken with any of her providers.

21 Q. Okay. And so do you know when the last time Ms.
22 Massey sought treatment relative to this accident
23 was?

24 A. The last medical records that were provided to
25 us, I believe, were in December of '22 if I

1 recollect.

2 **Q. You don't have any records since then of her**
3 **seeking treatment?**

4 A. I want to say it was the end of '22 but I cannot
5 -- I can't claim 100 percent for sure on that.

6 **Q. And who was that with?**

7 A. It was with -- one moment and I'll tell you, I
8 apologize. Midlands Ortho.

9 **Q. Okay. Do you know what doctor that was?**

10 A. I don't have the doctor's name listed in the
11 narrative. The doctors have a tendency to change
12 so often I try to just stick with the office.

13 **Q. Do you typically put together a medical cost**
14 **projection without speaking to the doctors?**

15 A. So the methodology for a life care plan is
16 different than that of a cost projection or a
17 medical cost projection report. Life care plan
18 specific for trial, speak with only treating
19 physicians and only their recommendations are
20 listed for cost projections, cost projection
21 reports. There's a combined methodology. We can
22 speak to physicians if requested, but the
23 methodology is standards of care and research and
24 looking through the soap notes, meaning what's
25 the subject of an objective assessments by the

1 providers they've gone to see thus far and then
2 what is their plan for them. And that's what we
3 utilize.

4 Q. And your role though -- you can't prescribe
5 treatment for a patient?

6 A. Oh, no. No, sir.

7 Q. Okay. And you can't tell them what they should
8 or shouldn't do in terms of the follow-ups?

9 A. No, sir.

10 Q. Okay. You rely on the doctor to do that, right?

11 A. Yes, sir.

12 Q. Okay. And you're not testifying here today as a
13 life care planner, correct?

14 A. That's correct.

15 Q. Okay you're only testifying as a medical cost
16 projection, correct?

17 A. Correct.

18 Q. And you're just taking what's in the medical
19 records and to do that you have to presume that
20 she's gonna go get the treatment that you put in
21 there, correct?

22 A. To -- I'm sorry can you ask that one more time, I
23 didn't understand the question. I apologize.

24 Q. Yeah I think it's -- anyway maybe I didn't ask
25 it. It happens all the time, so my apologies.

1 But when you're coming up with this cost
2 projection, you're presuming. You have to
3 presume this person is gonna go get that
4 treatment, correct?

5 A. So when I put a cost projection, it's a
6 conservative estimate of future care typical to
7 the standard of care for this or that injury.
8 Injury A or injury B. I don't have -- I'm sorry
9 I didn't mean to interrupt, go ahead.

10 Q. No I interrupted you, my apologies.

11 A. That's okay. I don't know what I was ending on,
12 so please.

13 Q. You said I don't have a -- and then you stopped.

14 A. Nope, don't know where I was going.

15 Q. Okay. No problem. Have you ever talked to Ms.
16 McGruder?

17 A. No, I have not.

18 Q. Okay. You've never spoken with her at all about
19 any treatment she's received then?

20 A. I only know her through her medical records.

21 Q. Got you. And you know nothing about how this
22 accident occurred or when it occurred other than
23 what's in the medical records?

24 A. I just have what's in the records.

25 Q. Okay. Excellent. I'll tell you what, I think

1 **Ms. Masse that's all the questions I have for**
 2 **you, I appreciate your team.**

3 MR. CLARK: Just briefly Mr. Buffington, please?

4 THE COURT: Briefly.

5 MS. MASSE - RE-EXAMINATION BY MR. CLARK:

6 **Q. Ms. Masse, do you normally just rely on the**
 7 **medical records?**

8 A. For cost projections and medical cost projection
 9 reports 90 percent of them are completed with
 10 medical records, yes, sir.

11 **Q. And that's the industry standard?**

12 A. Yes, sir.

13 **Q. Thank you. That's all I have.**

14 THE COURT: All right

15 MR. CLARK: Thank you Ms. Masse.

16 MS. MASSE: Thank you, sir.

17 THE COURT: Unless anybody has any objection we'll let
 18 Ms. Masse be excused from the hearing.

19 MR. BOINEAU: No objection, nice to see you Ms. Masse.

20 COURT REPORTER: All good here.

21 MS. MASSE: Thank you all, have a safe weekend.

22 MR. CLARK: Thank you. We got one more witness Mr.
 23 Buffington and he's already in the cue. Sir it's
 24 Dr. Oliver Wood. Dr. Wood can you go ahead and
 25 log in please?

1 (Off the Record)

2 THE COURT: Can you hear us okay, Dr. Wood?

3 DR. WOOD: Very well.

4 THE COURT: All right. Then if you would just state
5 your full name for the court reporter and spell
6 your name so she'll have that information we'll
7 get going.

8 DR. WOOD: Oliver G. Wood, Jr., W-O-O-D. This is
9 first for me I am sitting at my farm in Tennessee
10 and doing a Zoom testimony. I've done thousands
11 of them but never from my farm, in my den, so
12 this is a first.

13 THE COURT: Certainly the wave of the future makes it
14 a lot easier on everybody. So you're about to
15 testify in this case.

16 OLIVER WOOD, JR., being duly sworn, testifies as
17 follows:

18 THE COURT: All right. Then with that I think the
19 parties have agreed to stipulate to your
20 expertise as an economist and with that John
21 Clark I'll turn it over to you.

22 MR. CLARK: Thank you. Mr. Boineau, you stipulated
23 Dr. Oliver G. Wood, Jr. is an economic expert in
24 the evaluation of economic loss and personal
25 injuries. Do you stipulate, sir?

1 MR. BOINEAU: Yes.

2 MR. CLARK: All right, thank you.

3 DR. WOOD: Just wiped out twenty minutes.

4 MR. CLARK: You got all dressed up, you look good
5 though.

6 MR. BOINEAU: Hope you're not getting paid by the
7 hour, Dr. Wood.

8 MR. CLARK: Well you helped me out on that Trippett.

9 DR. WOOD - EXAMINATION BY MR. CLARK:

10 Q. Now Dr. Wood were you hired by my firm to do a
11 study of economic loss in this case involving Mae
12 McGruder?

13 A. Yes.

14 Q. And you actually spoke to her, didn't you?

15 A. Yes, I interviewed Ms. McGruder.

16 Q. And you do all your subjects that way, don't you?

17 A. I do.

18 Q. Okay. And what facts have you considered in
19 preparing economic loss evaluation in this case?

20 A. Here are the facts I took into account. I only
21 evaluated the loss of personal services and the
22 costs of funding this medical cost projection Ms.
23 Masse just put up. I did not do any loss in
24 earning capacity, pre-trial or post-trial. Here
25 are the facts that I took into account. She was

1 born on May 19th 1965, she was injured on October
2 the 29th, 2019. At that time she was 54.45 year
3 of age. As far as life expectancy I used South
4 Carolina code 19-1-150. On the day of her injury
5 she had a life expectancy of 29.14 years. That
6 would have taken her to age 83.59. I do not use
7 the life expectancy tables Ms. Masse used. Now I
8 base mine on the day of the event because that's
9 the day you're trying to put them back into
10 position they would have been in. Now since that
11 day of the event we've had a lapsed time of 3.67
12 years. So you have to subtract that to get what
13 is the remaining life expectancy. And that's
14 25.47 years, until her statutory life expectancy.
15 All right. According to Ms. McGruder, before she
16 was injured, she had no reason to expect less
17 than a normal life expectancy. Before she was
18 injured she performed an average of 40 hours a
19 week of personal services around her home.
20 Including cooking, washing dishes, vacuuming,
21 laundry, general household cleaning, grocery
22 shopping, and lawn care. According to Ms.
23 McGruder, for approximately six months after her
24 injury she was unable to perform any personal
25 services. Since that six month point she's been

1 able to perform about three and a half hours per
2 week. I created a loss of 36 and a half hours.
3 I valued those personal service hours on a
4 current basis at \$12 an hour.

5 MR. BOINEAU: Dr. Wood, I'm sorry to interrupt. I'm
6 going to object to the valuation of personal
7 services. I don't know that she's testified as
8 to any amount of money she's ever made or what
9 the value is to anybody in services she's
10 completed and Dr. Wood is he's an economist he's
11 able to compute present value of what someone's
12 damages are, but he's now creating damages for
13 her as opposed to doing that. So while I respect
14 Dr. Wood as an economist certainly I don't think
15 he's qualified to testify as to what one values
16 their life or their time. And she didn't offer
17 any testimony in that regard. She said she
18 doesn't have a lost wages claim. So we would
19 object any testimony about what kind of services
20 and putting a value on those. There's just no
21 basis for it at all.

22 MR. CLARK: Mr. Buffington, I think Mr. Boineau
23 misunderstands what Dr. Wood is testifying to.
24 He's not testifying anything about wages or lost
25 wages, he's testifying to the services that this

1 lady has lost in taking care of herself, and so
2 it's not a -- she testified she needed her
3 daughter to care for her, she was limited in what
4 she could do. And so if his objection is to
5 economic loss as far as wages we're not
6 presenting any economic loss as far as for wages.
7 This is simply loss of services to her and Dr.
8 Wood can speak to that exactly what is. Is not
9 wages. It's not wages.

10 MR. BOINEAU: I've been in a lot of these and unless
11 somebody's quantified the amount, the economist
12 is not there to quantify what somebody's time is
13 worth. He is there to tell you that if it's
14 testified to what the present value of that might
15 be but in this case I'm not even sure a doctor
16 could do -- a medical doctor could do this and we
17 have nothing in evidence but it's to be his -- I
18 mean, in this case you could almost let Mr. Clark
19 testify as to what he thinks it is and let Dr.
20 Wood do it, that would be the same thing. I've
21 never heard of anybody qualified to testify as to
22 the individual services that somebody is
23 providing and then sort of say well they lost 40
24 hours or 120 hours or whatever it is so.

25 MR. CLARK: Well, Mr. Boineau, what I was saying is

1 just because you never heard if it doesn't mean
2 it doesn't exist and Dr. Wood's been around
3 longer than both of us so he can speak to that if
4 Mr. Buffington needs him to.

5 THE COURT: I'll overrule that objection. I think
6 that's within the scope of Dr. Wood's expertise.

7 MR. BOINEAU: Thank you.

8 **Q. So you would you continue, Dr. Wood?**

9 A. National economic statistics is collected for
10 market for due services. And that's under the
11 heading of lost wages or lost earning capacity.
12 In this case there is no loss in wages or earning
13 capacity for Ms. McGruder. Services performed
14 around the home are called non-market services.
15 Everybody recognizes that they have a value. And
16 I've testified thousands of times about family
17 services. You don't think they don't have value,
18 don't cut the grass or don't take out the
19 garbage. They are services that are produced
20 around the home and they have a value. Well, the
21 value is how much you would have to pay to get
22 someone to do those. A federal minimum wage is
23 7.25 an hour. But everyone knows it's out of
24 date. And everyone knows that in the last two or
25 three years, we've had a wage explosion. All you

1 have to do is look at the hiring signs. When I
2 first started evaluating lost family services, I
3 valued them at seven or eight dollars an hour.
4 But over the years I've raised that to nine to
5 ten and now use twelve dollars an hour. I think
6 that's the minimum, effective minimum wage in the
7 marketplace now. You got to hire someone for
8 work around your home, I think you got to pay
9 about 12. I was looking at the Walmart annual
10 report last week. The average wage rate at
11 Walmart is \$17.50 an hour. And if you look at
12 any restaurant or business out you see for hire
13 signs and they have got 12, 13, 14, 15 dollars an
14 hour. What I did was to value the cost of
15 replacing those non-market services that Ms.
16 McGruder was performing. And I used twelve
17 dollars an hour. The last thing I did was to put
18 then present value on Ms. Masse's future medical
19 cost projections. What Ms. Masse just did in her
20 testimony was to add up what she projected and
21 said that's it. Well I have two steps on a life
22 care plan. The first is I have to adjust future
23 medical expenses to reflect inflation. And the
24 Bureau of Labor Statistics collects inflation by
25 medical service. And I'll show you that in just

1 minute. But anyway, I've done two things. Value
2 the cost of replacing her non-market family
3 services and two the cost of funding the future
4 medical costs. All right. Having said all that,
5 would you like me to go through my charts that I
6 had prepared? I think I've sent those to Mr.
7 Clark and if he hasn't done so he needs to
8 distribute it to Mr. Boineau and Judge Buffington
9 and the court reporter.

10 **Q. Dr. Wood, would you please tell us what the total**
11 **amount of personal services loss by Ms. McGruder**
12 **as a result of this injury?**

13 **A.** Well, I have divided it into two different
14 periods. The before trial period and the after
15 trial period. In our legal system before trial
16 losses do not have interest added to them. And
17 they are considered a present value. Now in
18 finance theory, if we had losses in the past, we
19 would add interest to that. But the court system
20 has not seen any need to do that. So I have
21 prepared before trial and after trial loss and
22 family services. If you'll look at my chart one,
23 I have calculated the before trial loss in family
24 services. Have you distributed that Mr. Clark?

25 **Q. No, sir. We're not going to put that into**

1 evidence, if you'll just testify what the total
2 is.

3 A. Okay.

4 Q. Yes, sir.

5 A. From the time of her injury, October 29th or
6 beginning October 30th through June 30th of this
7 year, replacing 40 hours a week through April
8 30th for six months and then 36 and a half hours,
9 that total comes to \$73,328. That is the before
10 trial loss. I don't have any estimate of past
11 medicals or anything of that nature. So I
12 haven't covered that.

13 Q. And can you tell us what the after-trial figure
14 is?

15 A. Yes.

16 Q. Okay.

17 A. Let's go to her family services. Her family
18 services for 25.47 years. As I explained earlier
19 I subtract elapsed time. I've only seen one
20 judge in 50 years say to use the trial date for
21 determining life expectancy, and that was Judge
22 Grumble, and he's buried over in Elmwood Cemetery
23 right now. But theoretically what you're trying
24 to do is to put her back in the position she
25 would have been in as of the date of injury. The

1 cost, the present value of replacing her personal
2 services, is \$355,397. With respect to her
3 future medical costs I took Ms. Masse's life --
4 or future cost projection and adjusted each --

5 COURT REPORTER: Y'all, I can't hear Dr. Wood. Dr.
6 Wood, I was waving like a crazy person. I
7 dropped your voice completely for some reason.

8 DR. WOOD: It's okay.

9 COURT REPORTER: It was like when you started to read.
10 I can hear you fine now.

11 DR. WOOD: Okay.

12 COURT REPORTER: I could see you but I couldn't hear
13 you.

14 DR. WOOD: I was going to give the inflation rates
15 that I used.

16 COURT REPORTER: Okay you're good now, thank you.

17 A. By way of reference the general CPI the last 30
18 years has been 2.48 percent. The general medical
19 CPI 3.58, above the general CPI. And the reason
20 that's above is because of the hospital costs in
21 medication and professional services. All right,
22 professional service interesting over the last 30
23 years has been 2.88 percent. That's less than
24 that general medical CPI because hospital costs
25 are about six. That pulls up the general index.

1 But doctors 2.88 and then the services they
2 charge you for in their office is 2.78. That's
3 why I like to say doctors must be pretty good
4 economists because they are marking up their
5 services almost in line with their own charges,
6 2.78 to 2.88. Medical care commodities 2.44.
7 Services of other medical professions like
8 psychologists and nurse practitioners and so
9 forth, 2.27. And then lastly prescription
10 medication. That's 3.08. 3.08 is less than the
11 general medical CPI. All right I then took those
12 rate and projected everything in Ms. Masse's
13 medical cost projection and then reduced it to
14 present value at a rate of five percent
15 compounded annually. I've used five percent for
16 50 years. I think it's a reasonable return for
17 an average person facing the full range of
18 financial risks. All right. When you take her
19 life care or medical cost projection. The
20 present value is \$258,251. That's less than her
21 tabulation in her medical cost projection. As an
22 aside, the reason life care planners and medical
23 cost projectionists do that is because there are
24 attorneys who are too penurious to hire an
25 economist. So some attorneys jump on that

1 projection from the medical cost projectionist
2 and say bingo that's it. It's not. You want to
3 know the present value as of June 30th of those
4 future medical care expenses. I can run over
5 those very quickly.

6 Q. Well, Dr. Wood, you prepared eight charts,
7 correct?

8 A. I did.

9 Q. All right. Mr. Buffington I move to admit those
10 charts, I just sent them over to you. Josephine
11 just sent them over to you. They are one through
12 eight and they would be the next eight exhibit.

13 THE COURT: Hello.

14 MR. CLARK: You don't see them?

15 THE COURT: Well, I do I have an exhibit, yeah Exhibit
16 Four. So what you're talking about Exhibit Four
17 through Eleven?

18 MR. CLARK: Yes. Those are the eight charts.

19 THE COURT: Okay. Yes then.

20 (Plaintiff's Exhibit Numbers 4 through 11 was marked
21 for identification purposes - Charts Prepared by Dr.
22 Wood.)

23 DR. WOOD: Mr. Boineau needs to look at them, too.

24 MR. CLARK: Well he -- we sent him a copy, he got a
25 copy, we emailed him a copy doctor.

1 MR. BOINEAU: I've never seen them but I'll look at
2 them.

3 MR. CLARK: Yeah we sent them to him. He wasn't
4 entitled to them before this hearing, doctor.
5 But anyway.

6 A. So when you add personal services due to medical
7 on a before trial and after trial basis that
8 total comes to \$686,976. And that consists of
9 \$73,328 in the before trial loss which is only
10 family services. In the after-trial loss
11 \$613,648. And that consists of two parts.
12 Personal services, \$355,397. And future medical,
13 \$258,251. Which makes the after trial all
14 \$613,648. And that's my opinion in Ms.
15 McGruder's case.

16 Q. And is that opinion to a reasonable degree of
17 economic certainty, is that how you usually
18 testify doctor?

19 A. Yes.

20 Q. All right. And those charts that you prepared,
21 does that illustrate your calculations and the
22 numbers that you testified to?

23 A. Yes.

24 Q. All right. And the figures that you testified
25 to, do they include anything for past medical

1 costs?

2 A. No.

3 Q. Do they include anything for loss of enjoyment of
4 life?

5 A. No.

6 Q. Do they include anything for pain and suffering?

7 A. No. Those are -- those last two are non-economic
8 damages and I don't evaluate non-economic
9 damages.

10 Q. Thank you, sir. Those are all the questions I
11 have.

12 THE COURT: Trippet, turn over to you for cross-
13 examination.

14 DR. WOOD - EXAMINATION BY MR. BOINEAU:

15 Q. Thanks, Mr. Buffington. Thanks, Dr. Wood. Good
16 to see you again.

17 A. Good to see you, sir.

18 Q. Yes, sir. Appreciate you being with us here
19 today for any reason you lose me just let me know
20 raise your hand I'll do my best to stop and I'll
21 do the same for you if that's okay.

22 A. I will.

23 Q. Excellent. Are you aware with regards to family
24 service Dr. Wood you mentioned things such as
25 cutting the grass as part of family services.

1 **Are there other things in there as well?**

2 A. Yes, let me get my form. I have a form that I
3 use to interview, in this case females. And I
4 have it divided into inside chores and outside
5 chores. I take that chart and interview her with
6 respect to inside chores. She indicated that
7 before she was injured she cooked meals, baked,
8 washed dishes, sweep, mop, wax, wash windows,
9 laundry, ironing, canning, freezing, vacuuming,
10 dusting, clean bathrooms, take out the trash,
11 sewing, mending, and hair braiding. Now with
12 respect to outside chores, she said she did mow
13 the grass, did rake leaves, did not trim shrubs,
14 did wash the car, did not paint inside or
15 outside, did not clean gutters, did not do pet
16 care, did not do carpentry work. However she did
17 weed the flower bed, pump gas, grocery shop,
18 clothes shop, tend a vegetable garden, some auto
19 repairs and home repairs. And when I interviewed
20 her I interviewed her closely. Monday through
21 Friday she said she did six hours a day.
22 Saturday, six. Sunday, four. So that's how we
23 got to 40. And I went through those line by line
24 with her and I presume she's telling me and
25 everybody else the truth about what she did

1 before or after. Now -- hold it. After injury.
2 She said she couldn't do anything for six months.
3 Then she says -- and I have chores now divided
4 into three categories. Able to perform without
5 pain, can perform at times but with difficulty,
6 unable to perform at any time. She indicated
7 that she could cook, do laundry, dust, and clean
8 bathrooms at times but with difficulties. All
9 the other inside chores she couldn't do. With
10 respect to outside chores, she said she couldn't
11 do any of that yard work at any time, she said
12 she could pump gas and do most grocery shopping
13 at times but with difficulty. And I went over
14 this very closely with her. Said can you do a
15 half hour a day on the average? She said yes.
16 Comes out to three and a half hours a week. Now
17 that's based on her testimony.

18 **Q. You have to rely on her for that, don't you?**

19 **A. Absolutely.**

20 **Q. Yeah and with regard to -- did she provide you**
21 **with any evidence of her having paid anybody to**
22 **do the services that we talked about?**

23 **A. No, I don't ask that question because we don't**
24 **care. Those services have a value and whether or**
25 **not she chose to buy and pay for someone to do it**

1 doesn't really matter. We're looking at what
2 services she was doing versus what services she
3 can do now.

4 Q. And I understand, I just want to make sure for
5 the record that she never provided you with any
6 documentation of having paid anybody for those
7 services?

8 A. Correct.

9 Q. Okay.

10 A. Correct.

11 Q. And doctor when you talked about the different
12 rates that you use for purposes of calculating
13 present value in your calculation. You took into
14 consideration the medical cost projection
15 inflation, correct?

16 A. Yes. By function.

17 Q. Did you -- but you used the same five percent
18 rate of return for fifty years. Did you take
19 into consideration any inflation there?

20 A. Well, the discount rate is a rate that I think an
21 ordinary person might be expected to earn in the
22 financial markets facing the full range of
23 financial risks. So yes, interest rates do
24 contain an inflation component. And so whatever
25 we see in the market place now has an inflation

1 component.

2 Q. And you got to pick the discount rate, correct?

3 A. Yes.

4 Q. Okay. You could have used a different rate,
5 correct?

6 A. Right.

7 Q. And you've seen different economists use
8 different rates, I presume, calculating future --
9 or present value of future -- alleged future
10 damages?

11 A. Correct that the most popular rate is a
12 ridiculous half of one percent.

13 Q. Okay.

14 A. That is under the heading of ridiculous.

15 Q. Yes, sir. I understand. With regard to Ms.
16 Masse's testimony, I think you actually may have
17 been on here for it. Do you know whether she
18 takes into consideration increased medical cost?

19 A. I don't think she did. I think she lays out the
20 current cost. And then it's really up to the
21 economist to say this particular item has
22 displayed an inflation rate of X percent over the
23 last thirty years. So I don't think she does
24 that. And I don't think she should do that.
25 It's not her job.

1 Q. Did you talk to her about it at all?

2 A. No. I did not interview Ms. Masse.

3 Q. Got you. Thank you, thank you, sir. That's all
4 the questions I have for you, Dr. Wood. I
5 appreciate your time today. Good seeing you.

6 A. Good seeing you, have a good afternoon.

7 Q. Yes, sir. You do the same.

8 THE COURT: Any redirect?

9 MR. CLARK: Just briefly.

10 DR. WOOD - RE-EXAMINATION BY MR. CLARK:

11 Q. Dr. Wood, you were asked did you rely on what Ms.
12 McGruder told you. Is that how things are done?
13 Is that -- I mean, is there any other way for you
14 to do the analysis other than rely on what she's
15 saying?

16 A. Not really. And I always fall back on the
17 position that she's in the case, and she
18 testifies she's going to be sworn to tell the
19 truth. And if she doesn't tell the truth then I
20 got a problem and she's got a problem. So
21 presumably she's going to tell the truth. And if
22 she comes up with a different answer than she
23 told me then I can't do anything about it.

24 Q. Right. And have all your calculations,
25 projections, interviews been done according to

1 industry standards for economists like yourself
2 performing a economic loss evaluation?

3 A. Yes.

4 Q. Thank you, sir. Those are all the questions I
5 have.

6 THE COURT: Any re-cross?

7 MR. BOINEAU: Nothing your honor, thank you.

8 THE COURT: All right. Then we'll excuse Dr. Wood to
9 enjoy his fourth of July holiday.

10 DR. WOOD: Thank you folks.

11 THE COURT: Yes, sir. Thank you for letting us, it's
12 good to see you.

13 MR. CLARK: Buffington that's the plaintiff's case.

14 THE COURT: All right. Then anything further from
15 you, Trip?

16 MR. BOINEAU: No, I don't think I can. You know if
17 you let me I will.

18 MR. CLARK: I object to all of that, so.

19 THE COURT: If y'all wanted to give brief closings now
20 you can do that, if you want to send me a written
21 submission in the next week you can do that. I'm
22 gonna kind of give a general -- whatever verdict
23 is going to be it's not going to be in a lot of
24 detail but I'm happy to hear closing arguments
25 from you now if y'all need some time to gather

1 your thoughts and send me something that's fine
2 as well.

3 MR. CLARK: I'd like to do a quick closing.

4 MR. BOINEAU: Can we send you something? Would you
5 mind? I mean, I'd almost rather do that if you
6 don't mind as long as we agree that it's made
7 part of the record of the total hearing.

8 THE COURT: Yeah. I'm fine to do -- I -- we kind of
9 had all of this going on and y'all might need
10 some time to kind of digest it so I'm happy to
11 hear from you now if you want or I'm happy to.

12 MR. CLARK: I'd like to go ahead, I'd like to go ahead
13 do a closing and then have the opportunity to
14 respond to Mr. Boineau if he submits something
15 writing since that's how the closing would be and
16 so I'll go ahead and do mine. I might not need
17 to respond to what he does but I think I have the
18 right to.

19 MR. BOINEAU: Real fast for clarification John, are
20 you talking about sending something that just
21 you're going to get?

22 MR. CLARK: No, no, no, no. What I'm saying is I'm
23 going to do a closing right now and then when you
24 submit what you're going to submit, I'm assuming
25 you're going to send me a copy. And I'd like to

1 have the opportunity to respond to what you're
2 saying in your closing. As the final closing
3 which I would be permitted to do in a trial.

4 MR. BOINEAU: I just want to -- just for clarification
5 Mr. Buffington are we going to -- if I give a
6 brief closing here are you going to allow me to
7 submit something or do you want me to just submit
8 something?

9 THE COURT: I'll allow you to do both if you wanted
10 to. So basically what we'll do is John's going
11 give a closing. You're welcome to give a brief
12 closing. And then we can do one of two ways
13 John. You can send me a written closing and then
14 Trip you can respond and John you can reply to
15 that or Trip you can send me your closing in
16 writing and John can reply. Either one of those.

17 MR. CLARK: I'd like to go ahead and give an oral
18 closing, he can respond in writing, then I'd like
19 to have the opportunity to respond to reply to
20 his closing.

21 THE COURT: And that's -- Trip if you want to give us
22 a brief if you want to do that and blend it you
23 can do that so John's going to give a closing,
24 Trip's gonna give an oral closing followed up
25 with a written closing, and then John will do a

1 reply.

2 MR. CLARK: Thank you, Mr. Buffington.

3 THE COURT: Does that work for y'all? All right. Then
4 John I'll turn it over to you.

5 CLOSING ARGUMENT BY MR. CLARK:

6 MR. CLARK: Okay thank you. Just very briefly. Mr.
7 Buffington, this is a very serious accident this
8 lady sustained very serious injuries that have
9 been life altering. She had -- she had the
10 hardware knocked loose in her knee. She had to
11 wait 973 days before she could get the surgery
12 and she -- so she testified that you know the
13 pain to her knee, her back, her shoulder, her
14 hand, and how her life is changed she's testified
15 about the depression, anxiety, loss of enjoyment
16 of life. There's been testimony that she has
17 permanent injury and that she will need future
18 medical treatment. Our special damages that we
19 have submitted total \$904,784.54. That is the
20 special damages in this case. The video that Mr.
21 Boineau showed supports our position for punitive
22 damages in this case. The video showed that the
23 whole vestibule was covered in water, there was
24 no wet -- no mat at all. The wet floor sign
25 really is not relevant because negligence is

1 admitted that we allege. They didn't respond so
2 there is no comparative negligence argument here
3 at all. But I submit that I don't think you can
4 see the wet floor sign from outside of the door
5 but it doesn't matter. My point is the vestibule
6 was covered with water, it was testimony that it
7 was a rainy day, under the law they've got the
8 duty to put to take reasonable steps. And I
9 submit to you that that photograph shows they
10 didn't take any reasonable steps. And all they
11 had to do is put a mat down, put a couple mats
12 down to soak the water up. I think you can see
13 from the fall that this was a hard fall and so
14 we'd ask we're considering this \$900,000 in
15 special damages. We'd ask for an award of actual
16 damage at an amount of four million dollars and a
17 punitive damage award of \$500,000. Thank you,
18 that's all I have.

19 THE COURT: Thank you.

20 CLOSING REMARKS BY MR. BOINEAU:

21 MR. BOINEAU: A brief summation, Mr. Buffington if you
22 will. Mr. Clark made reference to the video that
23 we showed. I think your honor as you sit there
24 and you look at this video what you clearly see
25 is not only a wet floor sign and a mat which was

1 denied by the Plaintiff which I think is telling
2 for purposes of future testimony but I'll address
3 that more in my submission to you than I will
4 right here in this call. But, Your Honor, I
5 think that being there along with the fact that
6 you never see this, somebody's mopping the floor
7 in between it. I mean, yeah I bet Mr. Clark's
8 had a bunch of these type cases he's never seen a
9 video where somebody is actually mopping the
10 floor. So it is relevant for purposes of him
11 arguing punitive damages. In fact, punitive
12 damages is there for recklessness it goes to the
13 damages so this video has now been made not only
14 for purpose of impeachment, which it did do. But
15 it's also made relevant for purposes of the
16 damages that are there including the fact that
17 somebody from Dollar General immediately was over
18 there. You see the name tag and helping her,
19 which was denied during her testimony and then
20 the video clearly showed it. Your Honor, they
21 then put up her daughter who did a fine job
22 testifying, followed by Dr. Alan. Dr. Alan said
23 when he first saw her there was only two
24 complaints. We now listed a lot more than that,
25 the medical cost projection we don't have it but

1 we assume it seeks treatment for more than that.
2 He never prescribed any treatment for her back,
3 he didn't recommend the surgery. She just went
4 to somebody else, she didn't follow up with him.
5 He says that at most he would see her after a
6 knee revision would be about once a year for five
7 years. And yet we put in front of you a 200 and
8 some odd thousand dollar future cost and it's not
9 a life care plan, Mr. Buffington. They are very,
10 very different in what those are. This is
11 somebody who simply did not talk to a single
12 doctor, looked at past medical records, and said
13 here's what I think. And all of it relies on Ms.
14 McGruder doing the things they think she's going
15 to do. And I will tell you the veracity of the
16 witness your honor is something that you got to
17 consider as we move forward based upon what
18 you've heard. And Dr. Wood can testify as to the
19 future cost but he said he best when he finished.
20 I rely on her. And that is the key to this whole
21 issue. And we'll be happy to submit something.
22 We, Your Honor, do not believe that the -- we
23 think that the costs that they put up are not
24 supported, there's no evidence to support it, and
25 we'd ask that you give a much more reasonable

1 return than what they have asked you for, so.

2 THE COURT: All right, thank you for that. Okay guys

3 then we'll wrap this up.

4 (There being nothing further, the proceeding concluded at

5 3:52 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC
3 IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THIS PROCEEDING, ON FRIDAY, THE
5 30TH DAY OF JUNE, 2023, AND THAT THE FOREGOING 143 PAGES
6 CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY STENOMASK
7 REPORT OF SAID PROCEEDING.

8 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
9 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
10 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
11 INTERESTED IN SAID CAUSE.

12 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
13 WAS THEREAFTER SEALED BY ME AND DELIVERED TO ROBERT
14 TRIPPETT BOINEAU, III, ESQUIRE, McANGUS, GOUDELOCK &
15 COURIE, L.L.C., 1320 MAIN STREET, 10TH FLOOR, COLUMBIA,
16 SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED ORIGINAL
17 TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH
18 THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT
19 IN A FINAL ORDER ON ANY ISSUE.

20 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
21 10TH DAY OF JULY, 2023. *Jennifer Nottle*

22
23 JENNIFER NOTTLE, COURT REPORTER

24 MY COMMISSION EXPIRES JULY 11, 2023
25

mgc

Reply To
HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

October 26, 2023

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SC Court of Appeals

Via S.C. Courts E-filing & U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201

RE: Mae McGruder v. Dollar General Corporation d/b/a Dollar General Store
#16677 and Janie Davis
Civil Action No.: 2022-CP-43-00508 (Sumter)
Date of Incident: October 29, 2019
Carrier Claim No.: 201916549
MGC File No.: 20689.22022
Appeal No.: 2023-001638

Dear Ms. Kitchings:

Enclosed please find the original of Appellants' Motion for Leave to File Motion for Relief From Judgment Pursuant to Rule 60(b), SCRCP, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email only. We will send our firm's check in the amount of \$50 for filing the motion via U.S. Mail with a copy of this filing.

Please do not hesitate to contact the undersigned if the Court requires additional copies and/or if you have any questions.

Sincerely,
McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: John D. Clark, Esq.

McANGUS GOUDELOCK & COURIE LLC

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