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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2024-001299

Estate of Thomas Sullivan, Respondent,

v.

Dolgencorp, LLC d/b/a Dollar General Corporation, Appellant.

RECORD ON APPEAL

VOLUME I

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP4600085

Thomas Sullivan et al
PLAINTIFF(S)

Dolgencorp llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Court denied Defendant's Motion for Summary Judgment.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/15/2022 .

Dollar General
Thomas Sullivan Estate

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Nov 15 4:11 PM - YORK - COMMON PLEAS - CASE#2022CP4600085

Court Reporter:

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



York Common Pleas

Case Caption: Thomas Sullivan VS Dolgencorp llc , defendant, et al

Case Number: 2022CP4600085

Type: Order/Electronic Form 4

So Ordered

s/ Edward W. Miller

Electronically signed on 2022-11-15 15:58:25 page 3 of 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP4600085

Thomas Sullivan et al
PLAINTIFF(S)

Dolgencorp llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

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

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

The defendant's motion for summary judgment is denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/13/2024 .

Dollar General
Thomas Sullivan Estate

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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York Common Pleas

Case Caption: Thomas Sullivan VS Dolgencorp llc , defendant, et al

Case Number: 2022CP4600085

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2024-02-13 11:05:12 page 3 of 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP4600085

Thomas Sullivan et al
PLAINTIFF(S)

Dolgencorp llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's post-trial motions are DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/11/2024 .

Dollar General
Thomas Sullivan Estate

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



York Common Pleas

Case Caption: Thomas Sullivan VS Dolgencorp llc , defendant, et al

Case Number: 2022CP4600085

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2024-07-11 10:24:08 page 3 of 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
THOMAS SULLIVAN,)
)
Plaintiff,)
)
vs.)
)
DOLLAR GENERAL CORPORATION,)
)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS

COMPLAINT
(Tort Claim)
(Jury Trial Requested)

Civil Action Number: 2019-CP-_____

TO: THE ABOVE-NAMED DEFENDANT AND DEFENDANT'S ATTORNEYS:

The Plaintiff, complaining of the acts and omissions of the Defendant, would respectfully show unto this Court and allege as follows:

1. The Plaintiff is a citizen and resident of the City of Rock Hill in York County, South Carolina.
2. The Plaintiff is informed and believes that the Defendant Dollar General Corporation is a Tennessee corporation, which may be authorized to do business in the State of South Carolina, and specifically operates a business located at 1333 East Main Street in Rock Hill, South Carolina.
3. This honorable court has jurisdiction over the parties herein and of the subject matter hereof set forth.
4. That on or about June 10, 2019, the Plaintiff was a business invitee and customer at the aforementioned Dollar General Corporation store located in Rock Hill, South Carolina.
5. That Dollar General by and through its employees and/or agents had placed at the front interior entrance of the store, an unsecured, poorly maintained rug at a point where Plaintiff

and other customers of the Dollar General store were entering the store to shop for merchandise, causing an unreasonable risk of injury to such customers and specifically to the Plaintiff.

7. That Dollar General by and through its employees and/or agents failed to secure the rug to the floor and/or maintain the rug to avoid slipping, bunching and/or obstruction at the front interior entrance of the store, causing an unreasonable risk of injury to such customers and specifically to the Plaintiff.

6. That Plaintiff, a senior citizen, slipped, tripped and/or fell over the unsecured, poorly maintained, rug at the entrance of the Dollar General, causing Plaintiff, to fall violently to the floor, resulting in severe personal injuries to the Plaintiff, together with humiliation, shock, pain and injury.

FOR A FIRST CAUSE OF ACTION
(GENERAL NEGLIGENCE)

7. That each and every allegation contained in paragraphs one (1) through six (6) of this Complaint is re-alleged as if set forth herein fully in its entirety.

8. The Defendant, individually and by and through Defendant's servants, agents, and/or employees, by its acts and/or omissions, was negligent, grossly negligent, careless, reckless, willful and/or wanton in causing the accident of which the Plaintiffs herein complain, to wit:

(a) The Defendant created the condition which caused the accident of which the Plaintiff herein complains;

(b) The Defendant owed its invitees, and specifically Plaintiff, the duty of exercising reasonable or ordinary care for the customer's personal safety and is liable for the resulting injuries from the breach of this duty;

(c) The Defendant owed its invitees, and specifically Plaintiff, the duty of exercising

ordinary care to keep its premises in a reasonably safe condition, but failed to do so;

(d) The Defendant owed its invitees, and specifically Plaintiff, the duty of due care to discover risks and to take safety precautions to warn of or eliminate unreasonable risks, but failed to do so;

(e) The Defendant knew or should have known that the unsecured, poorly maintained rug, created an obstruction at the interior entrance of the store and created a safety hazard for business invitees and customers, and specifically Plaintiff, but negligently failed to secure, maintain or otherwise remove the obstruction or warn business invitees and/or customers of the hazard and danger;

(f) The Defendant had been told and/or knew or should have known of the existence of said condition and the danger and unsafe nature of said condition and failed to warn Plaintiff of the same;

(g) The Defendant knew or should have known of the likelihood that an invitee and/or customer, and specifically Plaintiff could slip, trip and/or fall as a result of the hazardous condition created by the unsecured, poorly maintained rug in the pathway of customers entering the store and failed to take any precautions to preclude same or warn users of the same;

(h) The Defendant then and there failed to properly train its servants, agents and/or employees to avoid the creation of this hazardous condition;

(i) The Defendant then and there failed to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;

(j) The Defendant then and there endangered the safety of its invitees and/or customers, and specifically Plaintiff;

(k) The Defendant failed to properly supervise, train and/or educate its employees and/or agents so as to avoid the hazardous condition created;

(l) The Defendant failed to properly secure or maintain the rug or remove the obstruction after creating the unsafe and/or hazardous condition and/or observing the condition and/or being notified by invitees and/or customers and/or receiving notice of the hazardous condition; and

(m) Such other and further particulars as the evidence at trial may show.

All of which were the direct and proximate cause of injuries and damages the Plaintiff suffered, as are more fully set forth below, said acts being in violation of the laws of the State of South Carolina.

9. That as the direct and proximate result of the aforementioned negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendants, individually and/or by and through its servants, agents, and/or employees, the Defendants created the circumstances by which the Plaintiff was injured. Accordingly, the Plaintiff:

(a) Was severely, seriously, and painfully injured;

(b) Suffered injuries, including without limitation, left hip intertrochanteric femur fracture, left hip and pelvis pain, stain and stiffness, impaired gait and interference with activities of daily living, walking instability and weakness, from which this Plaintiff is informed and believes Plaintiff will have permanent adverse effect and disability;

(c) Has incurred and will incur in the future substantial medical and doctor bills;

(d) Was subjected to the administration of strong and potent drugs and medications;

(e) Was subjected to extreme pain, mental anguish, suffering and discomfort over a long period of time, said condition to be permanent;

- (f) Has suffered and continues to suffer loss of range of motion, stiffness and pain;
- (g) Has suffered a loss of enjoyment of life;
- (i) Has suffered lost wages and/or loss of earning capacity;
- (j) Has suffered a loss of physical condition; and
- (k) For such other and further particulars as the evidence at trial may show.

WHEREFORE, Plaintiff demands judgment against the Defendant for such sum of actual and punitive damages that a trier of fact may find, for the costs of this action, and for such other relief as the Court may deem just and proper.

Respectfully submitted,

s/T. Elaine White
T. Elaine White
Attorney for Plaintiff
Love Sloan Law, LLC
P. O. Box 12627
(312 Oakland Ave., 29730)
Rock Hill, SC 29731
(803)326-0000
(803)326-0007 - Fax

Date: December 19, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

THOMAS SULLIVAN,

Plaintiff,

vs.

DOLLAR GENERAL CORPORATION,

Defendant

CERTIFICATE OF SERVICE

(Tort Claim)
(Jury Trial Requested)

Civil Action Number: 2019-CP-_____

I, Theresa Drumm, an employee with Love Sloan Law, LLC, do hereby certify that a true and correct copy of the **Summons and Complaint** has been served upon the following by depositing the same in the U.S. Mail postage, pre-paid; certified, return receipt requested, this 20TH day of December, 2019, addressed as follows:

Corporation Service Company
(Registered Agent For Dollar General Corporation)
2908 Poston Avenue
Nashville, TN 37203-1312 USA



Theresa Drumm, Paralegal To
T. Elaine White, Attorney At Law

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
THOMAS SULLIVAN,)
)
Plaintiff,)
)
vs.)
)
DOLLAR GENERAL CORPORATION,)
)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS

SUMMONS

**(Tort Claim)
(Jury Trial Requested)**

Civil Action Number: 2019-CP-_____

TO: THE ABOVE-NAMED DEFENDANT AND DEFENDANT'S ATTORNEYS:

YOU MAY PLEASE TAKE NOTICE that you are hereby summoned and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the attorney for the Plaintiff listed below at her office at Post Office Box 12627, Rock Hill, South Carolina, 29731, within thirty (30) days after service hereof excluding the date of such service. IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN THE TIME AFORESAID, PLAINTIFF WILL APPLY TO THE COURT FOR A JUDGMENT BY DEFAULT FOR THE RELIEF DEMANDED IN THE COMPLAINT AND ANY OTHER RELIEF DEEMED APPROPRIATE.

s/T. Elaine White
Attorney for Plaintiff
Love Sloan Law, LLC
P. O. Box 12627
(312 Oakland Ave., 29730)
Rock Hill, SC 29731
(803)326-0000
(803)326-0007 - Fax

Date: December 19, 2019



LOVE SLOAN LAW, LLC
Post Office Box 12627
Rock Hill, SC 29731-2627

CERTIFIED MAIL



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0002604277 DEC 20 2019
MAILED FROM ZIP CODE 29730
US POSTAGE
\$ 006.95

Corporation Service Company
(Registered Agent for Dollar General Corporation)
2908 Poston Avenue
Nashville, TN 37203-1312

37203&1312 6031

FOR A THIRD DEFENSE

3. Defendant 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

4. The Complaint fails to state sufficient facts sufficient to constitute a cause of action for which relief may be granted against this Defendant and should, therefore, be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE

5. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of Paragraph 1 of the Complaint and strict proof is demanded.

6. By way of response to the allegations contained in Paragraph 2 of the Complaint, Defendant admits so much of the allegations contained therein as may allege Dolgencorp, LLC is a single member limited liability company organized under the laws of the State of Kentucky with its principal place of business in Goodlettsville, Tennessee and operates retail stores within the State of South Carolina under the Dollar General brand name. By way of further response, Dollar General Corporation is the sole member of Dolgencorp, LLC and is a corporation organized under the laws of the State of Tennessee with its principal place of business located in Goodlettsville, Tennessee. Further responding, Dolgencorp, LLC is a fully owned subsidiary of the Dollar General Corporation. By way of final response to the allegations contained in Paragraph 2 of the Complaint, Dolgencorp, LLC admits it does have a store located at 1333 East Main Street, Rock Hill, South Carolina.

7. Defendant objects to the allegations contained in Paragraph 3 of the Complaint to the extent that they call for a legal conclusion, and asserts that no response is required.

8. Defendant objects to the allegations contained in Paragraph 4 of the Complaint to the extent that they call for a legal conclusion regarding Plaintiff's legal status. Subject to and without waiving this objection, Defendant admits Plaintiff visited Defendant's store on June 10, 2019, located in Rock Hill, South Carolina.

9. Defendant denies the allegations contained within Paragraph 5 of the Complaint and demands strict proof.

10. Plaintiff's Complaint contains two distinct Paragraphs "7." As to the first Paragraph 7, Defendant denies the allegations contained therein and demands strict proof.

11. As to Paragraph 6 of Plaintiff's Complaint, Defendant lacks sufficient knowledge as to Plaintiff being a senior citizen. Defendant denies all remaining allegations of Paragraph 6 and strict proof is demanded.

12. Answering the second Paragraph 7 of the Complaint, Defendant reasserts and realleges each and every paragraph above as if fully set forth herein verbatim.

13. Defendant objects to the allegations contained within Paragraph 8 of the Complaint, including subparts (a) through (m) contained therein, that call for a legal conclusion regarding duties owed. Subject to and without waiving this objection, Defendant admits only that it owed those duties as required by law and not otherwise waived. By way of further response to the allegations contained within Paragraph 8 of the Complaint, including subparts (a) through (m) contained therein, Defendant denies the allegations and demands strict proof thereof.

14. Defendant denies the allegations contained in Paragraph 9 of the Complaint, including subparts (a) through (k), and strict proof is demanded.

15. Defendant denies Plaintiff is entitled to the relief requested in the Prayer for Relief of the Complaint.

FOR A SIXTH DEFENSE

(Lack of Notice)

16. Defendant pleads lack of notice as a complete bar to Plaintiff's claims.

FOR A SEVENTH DEFENSE

(Comparative Negligence as Complete Bar)

17. Defendant pleads the doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff was greater than any negligence which may be established against Defendant and, therefore, Plaintiff is barred from recovery.

FOR A EIGHTH DEFENSE

(Comparative Negligence – Reduction in Recovery)

18. Defendant pleads 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 Defendant and, therefore, Plaintiff is barred from recovery. Defendant further alleges 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 Defendant 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 NINTH DEFENSE

(Intervening and Superseding Negligence)

19. 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 Defendant.

FOR A TENTH DEFENSE
(Sole Negligence of Plaintiff)

20. 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, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR AN ELEVENTH DEFENSE
(No Duty to Warn)

21. 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 TWELFTH DEFENSE
(Assumption of the Risk)

22. 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, he freely and voluntarily exposed himself 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 A THIRTEENTH DEFENSE
(Open and Obvious)

23. 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 his injury. Furthermore, any danger created by said condition, which Defendant expressly denies, was not of a nature that should have been anticipated by Defendant. Therefore, Plaintiff is barred from recovery in this action against Defendant.

FOR A FOURTEENTH DEFENSE
(Third Party Negligence)

24. 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 this 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 FIFTEENTH DEFENSE
(Punitive Damages)

25. 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 Defendant's 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.

26. 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 Defendant's 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.

27. 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 Defendant 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 Defendant 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 Defendant's 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 SIXTH DEFENSE
(Punitive Damages Caps)

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

RESERVATION AND NON-WAIVER

29. Defendant reserves 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, Defendant prays 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 GOUDELICK & COURIE, L.L.C.

s/R. Trippett Boineau, III

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

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ATTORNEY FOR DOLLAR GENERAL
CORPORATION

January 23, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

THOMAS SULLIVAN,

FIRST AMENDED
COMPLAINT

Plaintiff,

(Tort Claim)

vs.

(Jury Trial Requested)

DOLGENCORP, LLC

D/B/A DOLLAR GENERAL

Defendant

Civil Action Number: 2019-CP-4604326

TO: THE ABOVE-NAMED DEFENDANT AND DEFENDANT’S ATTORNEYS:

The Plaintiff, complaining of the acts and omissions of the Defendant, would respectfully show unto this Court and allege as follows:

1. The Plaintiff is a citizen and resident of the City of Rock Hill in York County, South Carolina.

2. The Plaintiff is informed by Defendants and believes that the Defendant Dolgencorp, doing business as Dollar General is a Kentucky corporation, which may be authorized to do business in the State of South Carolina, and specifically operates a business located at 1333 East Main Street in Rock Hill, South Carolina.

3. This honorable court has jurisdiction over the parties herein and of the subject matter hereof set forth.

4. That on or about June 10, 2019, the Plaintiff was a business invitee and customer at the aforementioned Dollar General store operated by Defendant and located in Rock Hill, South Carolina.

5. That Defendant by and through its employees and/or agents had placed at the front interior entrance of the store, an unsecured, poorly maintained rug at a point where Plaintiff and other customers of the Dollar General store were entering the store to shop for merchandise, causing an unreasonable risk of injury to such customers and specifically to the Plaintiff.

7. That Defendant by and through its employees and/or agents failed to secure the rug to the floor and/or maintain the rug to avoid slipping, bunching and/or obstruction at the front interior entrance of the store, causing an unreasonable risk of injury to such customers and specifically to the Plaintiff.

6. That Plaintiff, a senior citizen, slipped, tripped and/or fell over the unsecured, poorly maintained, rug at the entrance of the Dollar General, causing Plaintiff, to fall violently to the floor, resulting in severe personal injuries to the Plaintiff, together with humiliation, shock, pain and injury.

FOR A FIRST CAUSE OF ACTION
(GENERAL NEGLIGENCE)

7. That each and every allegation contained in paragraphs one (1) through six (6) of this Complaint is re-alleged as if set forth herein fully in its entirety.

8. The Defendant, individually and by and through Defendant's servants, agents, and/or employees, by its acts and/or omissions, was negligent, grossly negligent, careless, reckless, willful and/or wanton in causing the accident of which the Plaintiffs herein complain, to wit:

(a) The Defendant created the condition which caused the accident of which the Plaintiff herein complains;

(b) The Defendant owed its invitees, and specifically Plaintiff, the duty of exercising reasonable or ordinary care for the customer's personal safety and is liable for the resulting

injuries from the breach of this duty;

(c) The Defendant owed its invitees, and specifically Plaintiff, the duty of exercising ordinary care to keep its premises in a reasonably safe condition, but failed to do so;

(d) The Defendant owed its invitees, and specifically Plaintiff, the duty of due care to discover risks and to take safety precautions to warn of or eliminate unreasonable risks, but failed to do so;

(e) The Defendant knew or should have known that the unsecured, poorly maintained rug, created an obstruction at the interior entrance of the store and created a safety hazard for business invitees and customers, and specifically Plaintiff, but negligently failed to secure, maintain or otherwise remove the obstruction or warn business invitees and/or customers of the hazard and danger;

(f) The Defendant had been told and/or knew or should have known of the existence of said condition and the danger and unsafe nature of said condition and failed to warn Plaintiff of the same;

(g) The Defendant knew or should have known of the likelihood that an invitee and/or customer, and specifically Plaintiff could slip, trip and/or fall as a result of the hazardous condition created by the unsecured, poorly maintained rug in the pathway of customers entering the store and failed to take any precautions to preclude same or warn users of the same;

(h) The Defendant then and there failed to properly train its servants, agents and/or employees to avoid the creation of this hazardous condition;

(i) The Defendant then and there failed to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;

(j) The Defendant then and there endangered the safety of its invitees and/or customers, and specifically Plaintiff;

(k) The Defendant failed to properly supervise, train and/or educate its employees and/or agents so as to avoid the hazardous condition created;

(l) The Defendant failed to properly secure or maintain the rug or remove the obstruction after creating the unsafe and/or hazardous condition and/or observing the condition and/or being notified by invitees and/or customers and/or receiving notice of the hazardous condition; and

(m) Such other and further particulars as the evidence at trial may show.

All of which were the direct and proximate cause of injuries and damages the Plaintiff suffered, as are more fully set forth below, said acts being in violation of the laws of the State of South Carolina.

9. That as the direct and proximate result of the aforementioned negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendant, individually and/or by and through its servants, agents, and/or employees, the Defendant created the circumstances by which the Plaintiff was injured. Accordingly, the Plaintiff:

(a) Was severely, seriously, and painfully injured;

(b) Suffered injuries, including without limitation, left hip intertrochanteric femur fracture, left hip and pelvis pain, stain and stiffness, impaired gait and interference with activities of daily living, walking instability and weakness, from which this Plaintiff is informed and believes Plaintiff will have permanent adverse effect and disability;

(c) Has incurred and will incur in the future substantial medical and doctor bills;

(d) Was subjected to the administration of strong and potent drugs and medications;

(e) Was subjected to extreme pain, mental anguish, suffering and discomfort over a long period of time, said condition to be permanent;

(f) Has suffered and continues to suffer loss of range of motion, stiffness and pain;

(g) Has suffered a loss of enjoyment of life;

(i) Has suffered lost wages and/or loss of earning capacity;

(j) Has suffered a loss of physical condition; and

(k) For such other and further particulars as the evidence at trial may show.

WHEREFORE, Plaintiff demands judgment against the Defendant for such sum of actual and punitive damages that a trier of fact may find, for the costs of this action, and for such other relief as the Court may deem just and proper.

Respectfully submitted,

s/T. Elaine White

T. Elaine White
Attorney for Plaintiff
Love Sloan Law, LLC
P. O. Box 12627
(312 Oakland Ave., 29730)
Rock Hill, SC 29731
(803)326-0000
(803)326-0007 - Fax

Date: January 30, 2020

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	
)	
THOMAS SULLIVAN,	)	Civil Action No. 2019-CP-46-04326
)	
Plaintiff,)	
)	
vs.	)	ANSWER TO PLAINTIFF'S FIRST
	)	AMENDED COMPLAINT
DOLGENCORP, LLC D/B/A DOLLAR	)	(Jury Trial Demanded)
GENERAL,)	
)	
Defendant.)	

Defendant, Dolgencorp, LLC D/B/A Dollar General, answers the Amended Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

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

FOR A SECOND DEFENSE

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

FOR A THIRD DEFENSE

3. The Amended Complaint fails to state sufficient facts sufficient to constitute a cause of action for which relief may be granted against this Defendant and should, therefore, be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

4. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of Paragraph 1 of the Amended Complaint and strict proof is demanded.

5. By way of response to the allegations contained in Paragraph 2 of the Amended Complaint, Defendant admits so much of the allegations contained therein as may allege Dolgencorp, LLC is a single member limited liability company organized under the laws of the State of Kentucky with its principal place of business in Goodlettsville, Tennessee and operates retail stores within the State of South Carolina under the Dollar General brand name. By way of further response, Dollar General Corporation is the sole member of Dolgencorp, LLC and is a corporation organized under the laws of the State of Tennessee with its principal place of business located in Goodlettsville, Tennessee. Further responding, Dolgencorp, LLC is a fully owned subsidiary of the Dollar General Corporation. By way of final response to the allegations contained in Paragraph 2 of the Amended Complaint, Dolgencorp, LLC admits it does have a store located at 1333 East Main Street, Rock Hill, South Carolina.

6. Defendant objects to the allegations contained in Paragraph 3 of the Amended Complaint to the extent that they call for a legal conclusion, and asserts that no response is required.

7. Defendant objects to the allegations contained in Paragraph 4 of the Amended Complaint to the extent that they call for a legal conclusion regarding Plaintiff's legal status. Subject to and without waiving this objection, Defendant admits Plaintiff visited Defendant's store on June 10, 2019, located in Rock Hill, South Carolina.

8. Defendant denies the allegations contained within Paragraph 5 of the Amended Complaint and demands strict proof.

9. Plaintiff's Amended Complaint contains two distinct Paragraphs "7." As to the first Paragraph 7, Defendant denies the allegations contained therein and demands strict proof.

10. As to Paragraph 6 of Plaintiff's Amended Complaint, Defendant lacks sufficient knowledge as to Plaintiff being a senior citizen. Defendant denies all remaining allegations of Paragraph 6 and strict proof is demanded.

11. Answering the second Paragraph 7 of the Amended Complaint, Defendant reasserts and realleges each and every paragraph above as if fully set forth herein verbatim.

12. Defendant objects to the allegations contained within Paragraph 8 of the Amended Complaint, including subparts (a) through (m) contained therein, that call for a legal conclusion regarding duties owed. Subject to and without waiving this objection, Defendant admits only that it owed those duties as required by law and not otherwise waived. By way of further response to the allegations contained within Paragraph 8 of the Amended Complaint, including subparts (a) through (m) contained therein, Defendant denies the allegations and demands strict proof thereof.

13. Defendant denies the allegations contained in Paragraph 9 of the Amended Complaint, including subparts (a) through (k), and strict proof is demanded.

14. Defendant denies Plaintiff is entitled to the relief requested in the Prayer for Relief of the Complaint.

FOR A FIFTH DEFENSE

(Lack of Notice)

15. Defendant pleads lack of notice as a complete bar to Plaintiff's claims.

FOR A SIXTH DEFENSE

(Comparative Negligence as Complete Bar)

16. Defendant pleads the doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff was greater than any negligence which may be established against Defendant and, therefore, Plaintiff is barred from recovery.

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

17. Defendant pleads 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 Defendant and, therefore, Plaintiff is barred from recovery. Defendant further alleges 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 Defendant 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 AN EIGHTH DEFENSE
(Intervening and Superseding Negligence)

18. 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 Defendant.

FOR A NINTH DEFENSE
(Sole Negligence of Plaintiff)

19. 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, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A TENTH DEFENSE
(No Duty to Warn)

20. 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 AN ELEVENTH DEFENSE
(Assumption of the Risk)

21. 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, he freely and voluntarily exposed himself 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 A TWELFTH DEFENSE
(Open and Obvious)

22. 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 his injury. Furthermore, any danger created by said condition, which Defendant expressly denies, was not of a nature that should have been anticipated by Defendant. Therefore, Plaintiff is barred from recovery in this action against Defendant.

FOR A THIRTEENTH DEFENSE
(Third Party Negligence)

23. 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 this 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 FOURTEENTH DEFENSE
(Punitive Damages)

24. 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 Defendant's 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.

25. 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 Defendant's 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.

26. 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 Defendant 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 Defendant 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 Defendant's 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 FIFTEENTH DEFENSE
(Punitive Damages Caps)

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

RESERVATION AND NON-WAIVER

28. Defendant reserves 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, Defendant prays that the Amended 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
R. TRIPPETT BOINEAU, III (SC Bar No. 73769)
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ATTORNEY FOR DOLLAR GENERAL
CORPORATION

February 13, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
ESTATE OF THOMAS SULLIVAN,)
)
)
Plaintiff,)
)
vs.)
)
DOLGENCORP, LLC)
D/B/A DOLLAR GENERAL)
)
Defendant)
)
_____)

IN THE COURT OF COMMON PLEAS

SUMMONS
(SECOND AMENDED
COMPLAINT)

(Tort Claim)
(Jury Trial Requested)

Civil Action Number: 2022-CP-46-00085

TO: THE ABOVE-NAMED DEFENDANT AND DEFENDANT’S ATTORNEYS:

YOU MAY PLEASE TAKE NOTICE that you are hereby summoned and required to answer the Second Amended Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the attorney for the Plaintiff listed below at her office at Post Office Box 12627, Rock Hill, South Carolina, 29731, within thirty (30) days after service hereof excluding the date of such service. IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN THE TIME AFORESAID, PLAINTIFF WILL APPLY TO THE COURT FOR A JUDGMENT BY DEFAULT FOR THE RELIEF DEMANDED IN THE COMPLAINT AND ANY OTHER RELIEF DEEMED APPROPRIATE.

s/T. Elaine White
Attorney for Plaintiff
Love Sloan Law, LLC
P. O. Box 12627
(312 Oakland Ave., 29730)
Rock Hill, SC 29731
(803)326-0000
(803)326-0007 - Fax

Date: January 25, 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
ESTATE OF THOMAS SULLIVAN,)
)
Plaintiff,)
)
vs.)
)
DOLGENCORP, LLC)
D/B/A DOLLAR GENERAL)
)
Defendant)
)
_____)

IN THE COURT OF COMMON PLEAS

**SECOND AMENDED
COMPLAINT**

**(Tort Claim)
(Jury Trial Requested)**

Civil Action Number: 2022-CP-46-00085

TO: THE ABOVE-NAMED DEFENDANT AND DEFENDANT’S ATTORNEYS:

The Plaintiff, complaining of the acts and omissions of the Defendant, would respectfully show unto this Court and allege as follows:

1. Plaintiff is the Estate of Thomas Sullivan (the “Decedent”). The Decedent, who was a citizen and resident of the City of Rock Hill in York County, South Carolina, died on or about August 21, 2020; therefore Martha Sullivan Ballew, the sister of the Decedent was subsequently appointed as the personal representative of the Estate of Thomas Sullivan, legally authorized to represent the Estate of Thomas Sullivan in this action.

2. The Plaintiff is informed by Defendants and believes that the Defendant Dolgencorp, doing business as Dollar General is a Kentucky corporation, which may be authorized to do business in the State of South Carolina, and specifically operates a business located at 1333 East Main Street in Rock Hill, South Carolina.

3. This honorable court has jurisdiction over the parties herein and of the subject matter hereof set forth.

4. That on or about June 10, 2019, the Decedent was a business invitee and customer at the aforementioned Dollar General store operated by Defendant and located in Rock Hill, South Carolina.

5. That Defendant by and through its employees and/or agents had placed at the front interior entrance of the store, an unsecured, poorly maintained rug at a point where Decedent and other customers of the Dollar General store were entering the store to shop for merchandise, causing an unreasonable risk of injury to such customers and specifically to the Decedent.

7. That Defendant by and through its employees and/or agents failed to secure the rug to the floor and/or maintain the rug to avoid slipping, bunching and/or obstruction at the front interior entrance of the store, causing an unreasonable risk of injury to such customers and specifically to the Decedent.

6. That Decedent, a senior citizen, slipped, tripped and/or fell over the unsecured, poorly maintained, rug at the entrance of the Dollar General, causing Decedent, to fall violently to the floor, resulting in severe personal injuries to the Decedent, together with humiliation, shock, pain and injury.

FOR A FIRST CAUSE OF ACTION
(GENERAL NEGLIGENCE)

7. That each and every allegation contained in paragraphs one (1) through six (6) of this Complaint is re-alleged as if set forth herein fully in its entirety.

8. The Defendant, individually and by and through Defendant's servants, agents, and/or employees, by its acts and/or omissions, was negligent, grossly negligent, careless, reckless, willful and/or wanton in causing the accident of which the Plaintiff herein complains, to wit:

(a) The Defendant created the condition which caused the accident of which the Plaintiff herein complains;

(b) The Defendant owed its invitees, and specifically Decedent, the duty of exercising reasonable or ordinary care for the customer's personal safety and is liable for the resulting injuries from the breach of this duty;

(c) The Defendant owed its invitees, and specifically Decedent, the duty of exercising ordinary care to keep its premises in a reasonably safe condition, but failed to do so;

(d) The Defendant owed its invitees, and specifically Decedent, the duty of due care to discover risks and to take safety precautions to warn of or eliminate unreasonable risks, but failed to do so;

(e) The Defendant knew or should have known that the unsecured, poorly maintained rug, created an obstruction at the interior entrance of the store and created a safety hazard for business invitees and customers, and specifically Decedent, but negligently failed to secure, maintain or otherwise remove the obstruction or warn business invitees and/or customers of the hazard and danger;

(f) The Defendant had been told and/or knew or should have known of the existence of said condition and the danger and unsafe nature of said condition and failed to warn Decedent of the same;

(g) The Defendant knew or should have known of the likelihood that an invitee and/or customer, and specifically Decedent could slip, trip and/or fall as a result of the hazardous condition created by the unsecured, poorly maintained rug in the pathway of customers entering the store and failed to take any precautions to preclude same or warn users of the same;

(h) The Defendant then and there failed to properly train its servants, agents and/or employees to avoid the creation of this hazardous condition;

(i) The Defendant then and there failed to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;

(j) The Defendant then and there endangered the safety of its invitees and/or customers, and specifically Decedent;

(k) The Defendant failed to properly supervise, train and/or educate its employees and/or agents so as to avoid the hazardous condition created;

(l) The Defendant failed to properly secure or maintain the rug or remove the obstruction after creating the unsafe and/or hazardous condition and/or observing the condition and/or being notified by invitees and/or customers and/or receiving notice of the hazardous condition; and

(m) Such other and further particulars as the evidence at trial may show.

All of which were the direct and proximate cause of injuries and damages the Decedent suffered, as are more fully set forth below, said acts being in violation of the laws of the State of South Carolina.

9. That as the direct and proximate result of the aforementioned negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendant, individually and/or by and through its servants, agents, and/or employees, the Defendant created the circumstances by which the Decedent was injured. Accordingly, the Plaintiff:

(a) Was severely, seriously, and painfully injured;

(b) Suffered injuries, including without limitation, left hip intertrochanteric femur fracture, left hip and pelvis pain, stain and stiffness, impaired gait and interference with activities

of daily living, walking instability and weakness, from which this Plaintiff is informed and believes Decedent suffered permanent adverse effect and disability;

(c) Has incurred and did incur prior to the Decedent's death substantial medical and doctor bills;

(d) Was subjected to the administration of strong and potent drugs and medications;

(e) Was subjected to extreme pain, mental anguish, suffering and discomfort prior to Decedent's death over a long period of time, said condition to be permanent;

(f) Suffered and continued to suffer prior to Decedent's death loss of range of motion, stiffness and pain;

(g) Has suffered and continued to suffer prior to the Decedent's death a loss of enjoyment of life;

(i) Has suffered and continued to suffer prior to the Decedent's death lost wages and/or loss of earning capacity;

(j) Has suffered and continued to suffer prior to the Decedent's death a loss of physical condition; and

(k) For such other and further particulars as the evidence at trial may show.

WHEREFORE, Plaintiff demands judgment against the Defendant for such sum of actual and punitive damages that a trier of fact may find, for the costs of this action, and for such other relief as the Court may deem just and proper.

Respectfully submitted,

s/T. Elaine White
T. Elaine White
Attorney for Plaintiff
Love Sloan Law, LLC
P. O. Box 12627
(312 Oakland Ave., 29730)
Rock Hill, SC 29731
(803)326-0000
(803)326-0007 - Fax

Date: January 18, 2022

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	
)	
THOMAS SULLIVAN,	)	Civil Action No. 2019-CP-46-04326
)	
Plaintiff,)	
)	
vs.	)	ANSWER TO PLAINTIFF'S SECOND
	)	AMENDED COMPLAINT
DOLGENCORP, LLC D/B/A DOLLAR	)	(Jury Trial Demanded)
GENERAL,)	
)	
Defendant.)	
)	

Defendant, Dolgencorp, LLC D/B/A Dollar General, answers the Second Amended Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Second Amended Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

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

FOR A THIRD DEFENSE

3. The Second Amended Complaint fails to state sufficient facts sufficient to constitute a cause of action for which relief may be granted against this Defendant and should, therefore, be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

4. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of Paragraph 1 of the Second Amended Complaint and strict proof is demanded.

5. Defendant admits the allegations contained in Paragraph 2 of the Second Amended Complaint.

6. Defendant objects to the allegations contained in Paragraph 3 of the Second Amended Complaint to the extent that they call for a legal conclusion, and asserts that no response is required.

7. Defendant objects to the allegations contained in Paragraph 4 of the Second Amended Complaint to the extent that they call for a legal conclusion regarding Plaintiff's legal status. Subject to and without waiving this objection, Defendant admits Plaintiff visited Defendant's store located in Rock Hill, South Carolina on June 10, 2019.

8. Defendant denies the allegations contained within Paragraph 5 of the Second Amended Complaint and demands strict proof.

9. Plaintiff's Second Amended Complaint initially skips a Paragraph "6" and goes to Paragraph "7". Further, Plaintiff's Second Amended Complaint contains two distinct Paragraphs "7." As to the first Paragraph 7, Defendant denies the allegations contained therein and demands strict proof.

10. As to Paragraph 6 of Plaintiff's Second Amended Complaint, Defendant lacks sufficient knowledge as to Plaintiff being a senior citizen. Defendant denies all remaining allegations of Paragraph 6 and strict proof is demanded.

11. Answering the second Paragraph 7 of the Second Amended Complaint, Defendant reasserts and realleges each and every paragraph above as if fully set forth herein verbatim.

12. Defendant objects to the allegations contained within Paragraph 8 of the Second Amended Complaint, including subparts (a) through (m) contained therein, that call for a legal conclusion regarding duties owed. Subject to and without waiving this objection, Defendant admits only that it owed those duties as required by law and not otherwise waived. By way of

further response to the allegations contained within Paragraph 8 of the Second Amended Complaint, including subparts (a) through (m) contained therein, Defendant denies the allegations and demands strict proof thereof.

13. Defendant denies the allegations contained in Paragraph 9 of the Second Amended Complaint, including subparts (a) through (k), and strict proof is demanded.

14. Defendant denies Plaintiff is entitled to the relief requested in the Prayer for Relief of the Complaint.

FOR A FIFTH DEFENSE

(Lack of Notice)

15. Defendant pleads lack of notice as a complete bar to Plaintiff's claims.

FOR A SIXTH DEFENSE

(Comparative Negligence as Complete Bar)

16. Defendant pleads the doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff was greater than any negligence which may be established against Defendant and, therefore, Plaintiff is barred from recovery.

FOR A SEVENTH DEFENSE

(Comparative Negligence – Reduction in Recovery)

17. Defendant pleads 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 Defendant and, therefore, Plaintiff is barred from recovery. Defendant further alleges 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 Defendant 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 AN EIGHTH DEFENSE
(Intervening and Superseding Negligence)

18. 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 Defendant.

FOR A NINTH DEFENSE
(Sole Negligence of Plaintiff)

19. 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, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A TENTH DEFENSE
(No Duty to Warn)

20. 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 AN ELEVENTH DEFENSE
(Assumption of the Risk)

21. 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, he freely and voluntarily exposed himself to the alleged danger, thereby assuming the risk of being injured in the manner alleged in the Second Amended Complaint. Therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A TWELFTH DEFENSE
(Open and Obvious)

22. 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 his injury. Furthermore, any danger created by said condition, which Defendant expressly denies, was not of a nature that should have been anticipated by Defendant. Therefore, Plaintiff is barred from recovery in this action against Defendant.

FOR A THIRTEENTH DEFENSE
(Third Party Negligence)

23. 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 this 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 FOURTEENTH DEFENSE
(Punitive Damages)

24. 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 Defendant's 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.

25. 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 Defendant's 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.

26. 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 Defendant 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 Defendant 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 Defendant's 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 FIFTEENTH DEFENSE
(Punitive Damages Caps)

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

RESERVATION AND NON-WAIVER

28. Defendant reserves 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, Defendant prays that the Second Amended 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

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

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ATTORNEY FOR DOLGENCORP, LLC

February 9, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

THOMAS SULLIVAN,
Plaintiff,

Civil Action No. 2022-CP-46-00085

vs.

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

DOLGENCORP, LLC D/B/A DOLLAR
GENERAL,
Defendant.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorney for Dolgencorp, LLC D/B/A Dollar General (“Defendant”), will move before the presiding Judge of the York County Court of Common Pleas for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting Defendant summary judgment as to all causes of action and claims against Defendant on the grounds that there is no genuine issue as to any material fact and Defendant is entitled to judgment as a matter of law.

Defendant's Motion is based upon the pleadings, discovery, affidavits, exhibits, deposition transcripts, and other admissible evidence as well as the applicable common law and statutory law.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Adrian D. Dukes

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ATTORNEY FOR DOLLAR GENERAL
CORPORATION

July 7, 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
ESTATE OF THOMAS SULLIVAN,)
)
Plaintiff,)
)
vs.)
)
DOGENCORP, LLC)
D/B/A DOLLAR GENERAL,)
)
Defendant)
)

IN THE COURT OF COMMON PLEAS

PLAINTIFF’S OPPOSITION TO
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT

(TORT CLAIM/JURY TRIAL REQUESTED)

Civil Action Number: 2022-CP-46-0085

Defendant by and through Defendant’s counsel filed a Motion For Summary Judgment (the “Motion”), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (“SCRCP”). Plaintiff opposes and respectfully replies to the Motion as follows:

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Defendant’s Motion For Summary Judgment should be denied in its entirety because Plaintiffs have presented evidence that reveals genuine issues of material fact that preclude summary judgment and issues of negligence, liability and causation are inherently questions of fact for the jury.

I. FACTUAL BACKGROUND

On or about June 10, 2019, the decedent Thomas Sullivan was exiting the Dollar General Store located on East Main Street in Rock Hill, South Carolina. Thomas Sullivan was 68 years old at the time of the accident. He was pushing his grocery cart out of the store. In the foyer of the store at the exit, Defendants had placed a poorly maintained rug of indeterminate age in the pathway of all customers exiting and entering the store. Thomas Sullivan tripped due to the

curled end/edge of the rug and fell violently to the floor. The rug was unsecured and lifted from the floor, which caused and increased the severity of the fall. Mr. Sullivan's sister, Martha Sullivan Ballew is the personal representative of the Estate of Thomas Sullivan. She testified at deposition that her brother explained that he tripped due to the poor condition of the rug and the curled edge that he did not see until after he fell. The medical records submitted by Plaintiff also confirm that Mr. Sullivan stated he tripped and fell over a rug at the Defendant's Store and was injured. Due to injuries from the fall, Mr. Sullivan was immediately taken directly from the Store to Piedmont Hospital. He suffered severe injuries from the fall, including without limitation, left hip fracture, left hip and pelvis pain, strain and stiffness. He underwent surgery a few days after the fall and endured several weeks of rehabilitation. The injuries caused an impairment of his gait and interference with activities of daily living, walking instability and weakness.

Thomas Sullivan commenced this case prior to his death. His sister testified at deposition that the increased pain, decreased mobility, and inability to recover fully from the injuries of the fall resulted in increasing hopelessness and depression. On August 21, 2020, Mr. Sullivan committed suicide.

II. GENUINE ISSUES OF MATERIAL FACT RAISED BY EVIDENCE

Although Plaintiff has produced substantial evidence supporting allegations of negligence, causation and damages, Defendant continues to deny liability. The current district manager of the Dollar General admitted during his deposition that curling of the rugs at Dollar General does occur and would create a trip hazard for customers. The manager did not have any information or knowledge regarding the specific rug involved in this action. He further testified that inspection of rugs was a task left for cashiers and other non-specialized employees of Dollar

General. The Defendant apparently did not preserve the rug that is the subject of this lawsuit and have not produced any records regarding the inspection, age or condition of the rug. Further, the Defendant has not responded to supplemental discovery regarding the Accident and specifics regarding inspection, age and condition of the subject rug.

Plaintiff has alleged, that among other acts of negligence, Defendant and Defendant's employees failed to inspect, maintain, secure, replace or repair the rug, failed to properly train employees and failed to take proper precaution. Further, Plaintiff alleges Defendant knew or should have known of the hazard and failed to correct or warn invitees, specifically Mr. Sullivan of the hazardous condition created by the unsecured, poorly maintained rug.

In response to Plaintiff's discovery requests, Defendant produced a videotape of the accident scene, including Thomas Sullivan's fall. Defendant's video surveillance evidence that the accident occurred as Mr. Sullivan alleged. **See Plaintiff's Exhibit A, Photographs from Defendant's Video Surveillance.** The personal representative of the Estate reviewed the videotape for the first time at the deposition and confirmed that the accident occurred as Mr. Sullivan had described prior to his death. **See Plaintiff's Exhibit B, Deposition of Martha Sullivan Ballew.** The video surveillance appears to show visible wear and tear to the rug, especially in the area that Plaintiff alleges caused the fall. Additionally, the lack of adherence of the rug to the floor during the Accident suggests that the rubber edging was likely damaged. Also, the Defendant's video surveillance appears to show that the side of the rug that caused the fall was lifted consistent with the decedent's statement that there was some curling or other defect present. As stated, the Defendant's district manager testified that curling of the rugs utilized by Defendant's stores does occur and creates a trip hazard for customers. The video tape further evidence that there were no signs or warnings of the trip hazard. Additionally, there was

no way for customers, specifically Mr. Sullivan to avoid the hazard created by the defective, poorly maintained, unsecured rug.

In summary, the video surveillance produced by Defendant fully supports the statements made by the decedent and the personal representative and other witnesses. The video surveillance itself raises genuine issues of material fact that requires witness testimony and the fact-finding role of the jury for proper resolution.

The first person to arrive at the accident scene was David Riley, a friend that drove Mr. Thomas Sullivan to the Store on the date of the accident and witnessed a portion of the Accident. David Riley has affirmed that Thomas Sullivan suffered a violent fall on the date of the accident as a result of the defective rug, and never fully recovered his pre accident mobility. **See Plaintiff's Exhibit C, Affidavit of David Riley.**

In response to discovery, Plaintiff has provided medical documents, including emergency room and surgical and rehabilitation center records confirming the injuries suffered by Thomas Sullivan, including the fractured hip caused by the fall. These medical documents contain statements made by Mr. Sullivan regarding his slip and fall accident at the Store. Defendant has failed to provide any evidence to refute Plaintiff's allegations. As of the date of this filing, Defendant has not provided any documents, testimony or other evidence of the age, condition, inspection or preservation of the rug that is the subject of this litigation.

III. PROCEDURAL HISTORY AND INCOMPLETE DISCOVERY

Discovery in this case has been interrupted and substantially delayed due to the death of Mr. Thomas Sullivan following the Accident. Following the death, Plaintiff's counsel filed a 40(j) motion, pending appointment of a personal representative. A number of additional difficulties and tragedies in the Sullivan family delayed the appointment of the personal

representative. After the personal representative for the Estate of Thomas Sullivan was appointed, Plaintiff, at the request of the Estate, filed a motion to restore the case to the docket.

Prior to the Defendant's filing of the Motion for Summary Judgment, Plaintiff's counsel served supplemental interrogatories and requests for production. After receiving the supplemental discovery and before responding, Defendant's counsel filed the current motion. Plaintiff asserts that Defendant's summary judgment motion is premature. At a minimum, Defendant should be required to respond to the pending discovery requests prior to summary judgment consideration in this case.

IV. STANDARD FOR SUMMARY JUDGMENT

Here, the Defendant has not met the applicable standard for summary judgment. Summary judgment is appropriate only if the moving party clearly shows that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. See SCRCP 56 (c). Summary judgment should be denied if the non-moving party presents even a scintilla of evidence indicating that a genuine issue of material fact is in dispute. See Hancock v. Mid-South Management Co., Inc., 381 SC 326, 330, 673 SE 2d 801, 803 (2009). Even if a dispute exists regarding only the inferences or conclusions to be drawn from evidentiary facts, summary judgment should be denied. See Montgomery v. CSX Transp. Inc., 376 S.C. 37, 656 S.E. 2d 20 (2008) (citing Wilson v. Style Crest Products, Inc., 367 S.C. 653, 656, 627 S.E. 2d 733,735(2006)). Further, the evidence proffered by Plaintiff and all inferences which could be reasonably drawn from the evidence must be viewed in the light most favorable to the Plaintiff as the non-moving party. See Wilson v. Style Crest Products, Inc., 367 S.C. at 656 (citing Hamilton v. Miller, 301 S.C. 45, 47, 389 S.E. 2d 652, 653 (1990)).

Case law has firmly established that issues of negligence, liability and causation are inherently questions of fact for the jury. Summary judgment is appropriate only when the evidence is susceptible to only one inference. See Vinson v. Hartley, 324 S.C. 389, 402, 477 S.E. 2d 715, 721 (Ct. App. 1996).

V. Here, Genuine Issues of Material Fact Exist Precluding Summary Judgment

Plaintiff has submitted testimonial evidence, medical records, and the Defendant's own video surveillance in support of the Plaintiff's allegations. The issues are disputed by Defendant without justification or evidentiary proof. Defendant has denied the allegations, but Defendant has not produced any evidence to support the denial. Consequently, the Defendant has failed to provide justification for departing from the well settled position that liability and causation issues remain questions of fact that should be decided by the jury. Accordingly, the Defendant's Motion should be denied.

Additionally, Plaintiff is waiting for Defendant's response to supplemental discovery requests submitted. Accordingly, summary judgment on behalf of Defendant should be denied. Based upon the evidence provided by Plaintiff and obtained through discovery, Plaintiff reserves the right to submit Plaintiff's motion for summary judgment in favor of Plaintiff in this matter.

CONCLUSION

South Carolina courts have consistently held that the drastic remedy of summary judgment should not be utilized to deprive the Plaintiff of a trial on disputed factual issues. See e.g., Cunningham v. Helping Hands, Inc., 352 S.C. 485, 491 575 S.E. 2d 549, 552 (2003)(citing Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E. 2d 606 (2002)(summary judgment is a drastic remedy that should be cautiously invoked so litigants will not be improperly deprived of

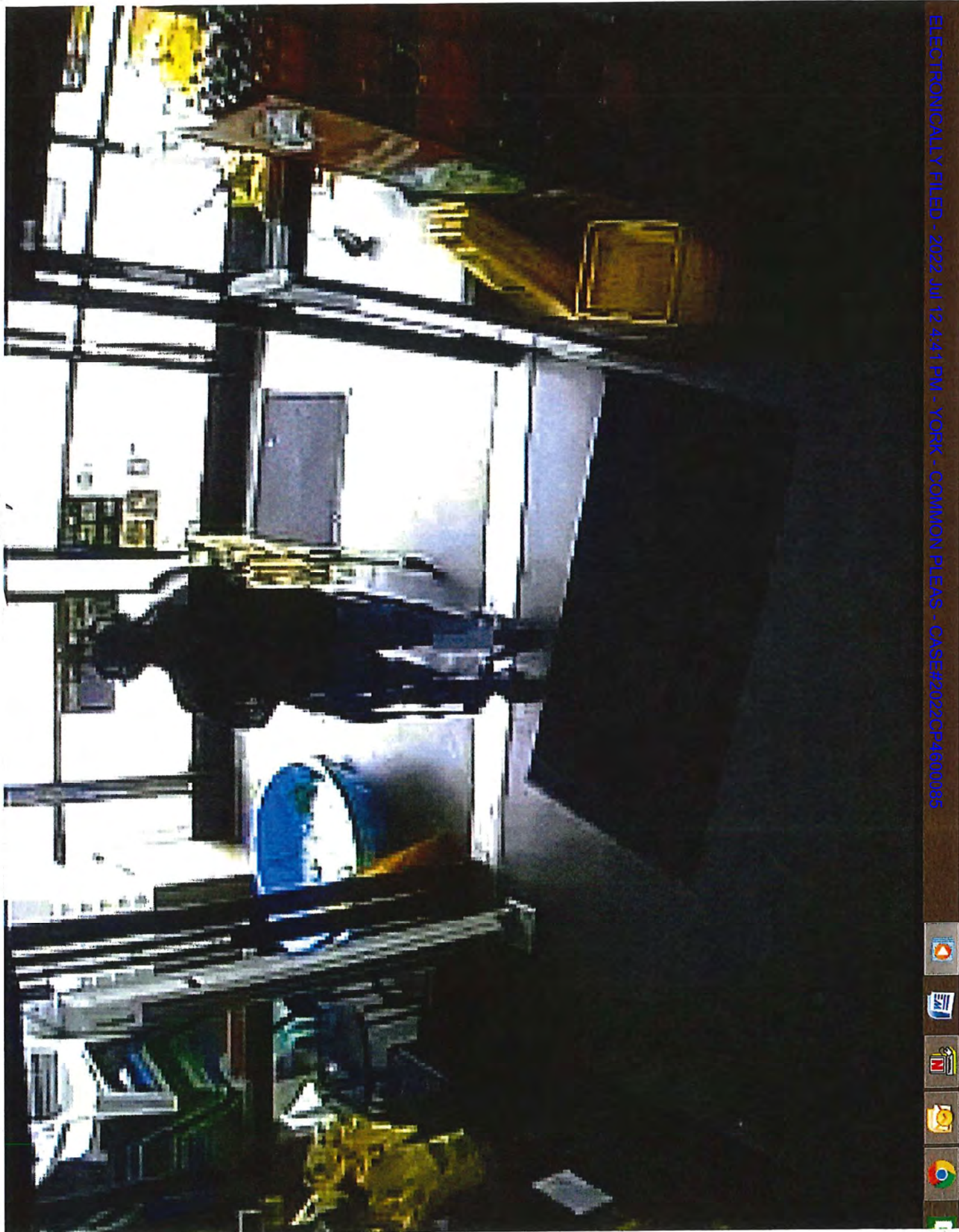
trial on disputed factual issues): Accordingly, based upon the evidence presented and underlying factual disputes asserted by the parties, the issues should be properly submitted for jury determination in accordance with applicable standards and Defendant's Motion For Summary Judgment should be denied in its entirety.

RESPECTFULLY SUBMITTED:

s/T. Elaine White
T. Elaine White
Attorney for the Plaintiffs
Love Sloan Law, LLC
P. O. Box 12627
(312 Oakland Ave., 29730)
Rock Hill, SC 29731
(803)326-0000

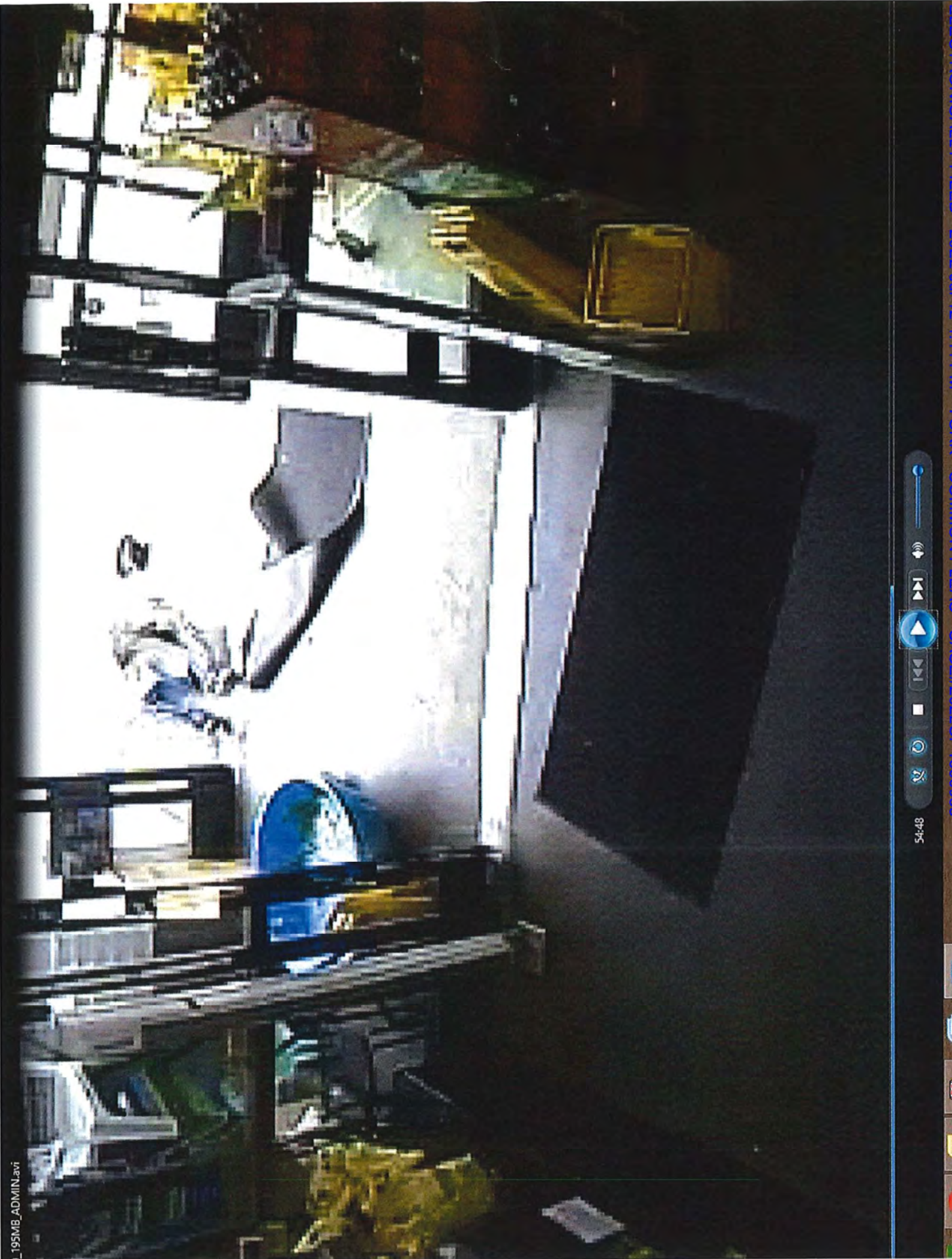
July 12, 2022

EXHIBIT A—VIDEO SURVEILLANCE PHOTOGRAPHS





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EXHIBIT B—DEPOSITION OF MARTHA SULLIVAN BALLEW

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

ESTATE OF THOMAS SULLIVAN	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action Number:
	:	2022-CP-46-00085
	:	
DOLGENCORP, LLC	:	
D/B/A DOLLAR GENERAL	:	
	:	
Defendant.	:	

DEPOSITION OF MARTHA BALLEW

DATE TAKEN:	Tuesday, April 19, 2022
TIME BEGAN:	12:58 p.m.
TIME ENDED:	2:03 p.m.
LOCATION:	Remote
REPORTED BY:	JOHANA PLATAS P.O. Box 1459 Columbia, South Carolina 29202 803-212-0012

APPEARANCES:

LOVE SLOAN LAW, LLC
BY: T. ELAINE WHITE, ESQUIRE
312 Oakland Avenue
Rock Hill, South Carolina 29730
(803)326-0000
elaine@lovesloanlaw.com
Representing the Plaintiff

MCANGUS GOUDELOCK & COURIE, LLC
BY: ADRIAN D. DUKES, ESQUIRE
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Columbia, South Carolina 29201
(803) 779-2300
adrian.dukes@mgclaw.com
Representing the Defendants

I N D E X

WITNESS

Ms. Martha Ballew

By Mr. Dukes 4

By Ms. White 48

Further Examination

By Mr. Dukes 48

Certificate of Reporter 50

E X H I B I T S

EXHIBIT DESCRIPTION

MARKED

None Marked

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PROCEEDINGS

MARTHA BALLEW, after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DUKES:

Q. Good afternoon. My name is Adrian Dukes. I'm an attorney with McAngus Goudelock & Courie in Columbia, South Carolina. I represent the defendants with regards to a second amended complaint filed by the estate of Mr. Thomas Sullivan on January 25th, 2022.

It's my understanding that you're the personal representative of Mr. Sullivan's estate?

A. Yes ma'am -- sir. Yes, sir. Sorry.

Q. It's fine. Have you ever had a deposition taken before?

A. No. No, sir.

Q. Couple of ground rules to help facilitate the deposition as we progress through it. Now that we're on the record, do you understand that your testimony here today carries the same weight as if we were in court?

1 A. Yes, ma'am -- sir.

2 Q. And you're doing a -- doing a good job
3 so far, but because we have a court reporter
4 that's catching everything that's said throughout
5 the entirety of this deposition, it's going to be
6 important that you continue to give verbal answers
7 throughout the deposition, okay?

8 A. Yes, sir.

9 Q. Again, you're doing a good job with
10 this also, but just throughout the deposition --
11 sometimes these depositions become conversational,
12 and so you may know what question is coming next,
13 and try to jump ahead and answer the question
14 before I get a chance to get it out. Just try to
15 allow me to finish asking my question before you
16 answer it, and I'll allow you to answer the
17 question before I ask my next question, okay?

18 A. Okay. That's fine.

19 Q. Sometimes I ask bad questions, and so
20 your attorney may -- or Ms. White may object. Not
21 your attorney, but Ms. White may object to my
22 question. You still have to answer my question
23 unless she specifically says not to, but if that
24 happens, then we would take it up at that point,
25 okay?

1 A. Okay. Yes, sir.

2 Q. If for some reason you need a break,
3 let me know, I'll be happy to accommodate you. I
4 just ask that you ask -- answer the last question
5 I asked before we go off the record, okay?

6 A. Okay.

7 Q. If for some reason you don't
8 understand one or more of my questions, just ask
9 me to rephrase it or restate it, and I'll be happy
10 to do so. Is that fair?

11 A. Yes, sir.

12 Q. Are you under the influence of any
13 type of drugs, alcohol or medication that would
14 affect your ability to understand my questions
15 today?

16 A. No, sir.

17 Q. Okay. If you answer my question, is
18 it fair to assume that you understood my question?

19 A. Yes, sir.

20 Q. What is your full name?

21 A. Martha Lizzette Ballew.

22 Q. Can you spell your middle name for me?

23 A. L-I-Z-Z-E-T-T-E.

24 Q. And spell your last name for me.

25 A. B-A-L-L-E-W.

1 Q. Do you have any nicknames that you go
2 by?

3 A. No, sir.

4 Q. What's your date of birth?

5 A. 11/01/61.

6 Q. Do you know Mr. Sullivan's date of
7 birth?

8 A. I believe it's 12/31/51.

9 Q. Are you married?

10 A. No, sir. My husband has passed.

11 Q. Okay. Do you know whether
12 Mr. Sullivan was married before his passing?

13 A. No, he wasn't.

14 Q. Okay. Do you know whether
15 Mr. Sullivan had any previous marriages?

16 A. No, he didn't. To my knowledge, he
17 didn't. I don't think --

18 Q. And the reason I ask, I saw on
19 Mr. Sullivan's death certificate that he had been
20 divorced.

21 A. Oh, then just the one time, then.

22 Q. Okay. Do you recall what his previous
23 wife's name would've been?

24 A. I know that it was Kim. I don't know
25 what her maiden name --

1 Q. Okay.

2 A. -- was.

3 Q. Do you know where she lived?

4 A. I don't. I probably haven't heard
5 from her in, well, about 30 years or so. It's
6 been forever.

7 Q. And I just heard someone talking in
8 the background. Is anyone else in the room with
9 you?

10 A. That's my daughter.

11 Q. Okay.

12 MS. WHITE: Yeah, she -- she needed
13 some technical assistance today getting on
14 Zoom so her daughter, Lisa, is helping her.

15 MR. DUKES: Okay.

16 BY MR. DUKES:

17 Q. All right. What's your relationship
18 to Mr. Sullivan?

19 A. We had a good relationship.

20 Q. What -- and by that, I mean, I'm
21 assuming you-all are family, correct?

22 A. Yes. He's my brother.

23 Q. Okay. So you're his sister?

24 A. Yes, sir.

25 Q. And again, it's also my understanding

1 that you've been appointed the personal
2 representative of his estate?

3 A. Yes, sir.

4 Q. Okay. Do you recall when you were
5 first appointed?

6 A. Not exactly. Maybe a year or so.
7 Something like that.

8 Q. So your best guess is about a year
9 ago?

10 A. About that. It was right -- it was
11 before my last brother had passed, so...

12 Q. Okay. Do you recall whether it was an
13 informal hearing or a formal hearing to be
14 appointed?

15 A. I -- it was informal, yeah. I had
16 went to the probate court. Now, I guess, that's
17 what that was, I'm not sure.

18 Q. Okay. And so you went to a probate
19 court yourself and you filled out an application
20 to become the personal representative?

21 A. I guess, sir. I'm not really sure --

22 Q. Okay.

23 A. -- how that all transpired.

24 Q. Did someone help you become appointed?

25 A. Other than just my brother, Robert.

1 Because he couldn't -- he was going to do it, but
2 he lives or did live in Louisiana, and it would've
3 been hard for him to come back and forth to South
4 Carolina. His wife, at that time, was terminally
5 ill, also.

6 Q. Okay.

7 A. So he asked me to do it, and --

8 Q. Okay. Do you know what stage of the
9 probate process you're currently in for
10 Mr. Sullivan's estate?

11 A. I don't.

12 Q. Have you filled out something called
13 an inventory and appraisal, yet?

14 A. At the probate place? Because I did
15 file a -- filled out a lot of forms there.

16 Q. Yes, ma'am. That would've been one of
17 the forms that you're typically required to fill
18 out within 90 days of becoming a personal
19 representative.

20 A. Okay.

21 Q. Do you recall doing that?

22 A. I don't recall, but I'm sure I
23 probably did. I'm just not sure what the -- I
24 know that I talked to her about all sorts of
25 things, his heirs and all of that, so...

1 Q. Who -- and when you say you talked to
2 her, were you talking to the probate judge?

3 A. No, she wasn't a judge. She was --
4 I'm not sure what her title was.

5 Q. Did she work for the probate office?

6 A. Yes, sir. Yes, sir.

7 Q. You mentioned that you talked to
8 someone in the probate office about Mr. Sullivan's
9 heirs. Who are Mr. Sullivan's heirs?

10 A. Well, at the time that we talked, it
11 was just me, my brother Robert, were the only ones
12 left. And -- but since then, my brother Robert
13 passed away also. So then it just leaves me, and
14 Robert's two kids, and my brother Benny's two
15 kids.

16 So, I guess, it would've started out
17 being me, and Benny, and Robert. But Benny passed
18 away, so then it's just his two kids and then
19 Robert's -- actually, Robert only has one, but he
20 has a stepchild.

21 Q. Okay. And so you said Robert passed
22 away also?

23 A. Yes, sir.

24 Q. When did Robert pass away?

25 A. It hasn't been very long, just a few

1 months.

2 Q. Okay.

3 A. Not anywhere near a year, yet.

4 Q. Do you -- what's Robert's last name?

5 A. Sullivan.

6 Q. And Benny's last name is Sullivan

7 also?

8 A. Yes, sir.

9 Q. And, I believe, you said Robert lived
10 in Louisiana?

11 A. Yes, sir.

12 Q. Where did Benny live?

13 A. Benny lived in Rock Hill. He lived
14 with Tommy. Tommy lived with Benny until shortly
15 after he died, and then he went to take care of my
16 mom in Greenwood.

17 Q. And when you say Tommy, you're talking
18 about Thomas Sullivan?

19 A. Yes, sir. I'm sorry.

20 Q. Do you know where Robert's two kids
21 live, currently?

22 A. Yes. They both live in Louisiana.

23 Q. What's their names?

24 A. Robert -- it must be Jr. Robert
25 Sullivan Jr., because we always called him

1 Rocky -- I mean, Robby.

2 Q. Okay.

3 A. And my -- his wife had a child. Now,
4 Robert did not adopt him or anything, but --

5 Q. Right.

6 A. -- he considered him his, and his name
7 was Rocky.

8 Q. Okay. And Benny's two kids, what are
9 their names?

10 A. That's Benji. That's Benny
11 Edwards Jr., and Crystal.

12 Q. What's their last names?

13 A. Sullivan. They're both Sullivan.

14 Q. Do you know where Benji lives?

15 A. Benji lives in Greenwood at -- where
16 my mama used to live. He -- she left him the
17 house. And Crystal, I think, lives in Gaffney
18 now.

19 Q. Okay.

20 A. My daughter has all these e-mails
21 addresses for these people, but --

22 Q. Okay.

23 A. I don't know what their physical
24 address is. I do now what Benji's physical
25 address is because that's my mama's house.

1 Q. Did Mr. Sullivan have any kids?

2 A. Who?

3 Q. Mr. Sullivan, Tommy Sullivan.

4 A. Tommy, no, sir.

5 Q. What's your current address?

6 A. Mine?

7 Q. Yes, ma'am.

8 A. 220 -- I'm sorry. 229 Oak Lea, that's
9 two words, Oak Lea Drive or -- in Conway, South
10 Carolina.

11 Q. Prior to Mr. Sullivan's passing, do
12 you recall when you -- you first -- you last
13 talked to him before he passed?

14 A. Oh, maybe, I would say, a week and a
15 half before he passed, he called me.

16 Q. Okay. How often did you-all talk in a
17 year, would you say?

18 A. Oh, gosh. We talked quite a bit.
19 About -- maybe once a month, every five weeks,
20 something like that. Just -- close to once a
21 month or so.

22 Q. How often did you see Mr. Sullivan?

23 A. I saw him a good bit, too. Like I
24 said, he stayed with my mom to help her out there
25 for several months, and we would go down there.

1 Q. So Mr. -- Mr. Thomas Sullivan was
2 helping -- staying with your mother and
3 helping her out?

4 A. Yes, sir.

5 Q. And how often would you make it to
6 that area to see your mom and your brother?

7 A. I would say maybe once every three
8 months at least because -- just quite often.

9 Q. How long have you lived at your
10 current address?

11 A. We've only lived here a year.

12 Q. Okay.

13 A. We just -- they just bought the house,
14 my daughter and her husband.

15 Q. Okay. Have you ever lived in York
16 County, South Carolina?

17 A. I did, but, gosh, that was when they
18 were all little, so they're -- she's 40 now. So
19 that would've been 35, 36 years ago, something --
20 a long that.

21 Q. And you said you currently live with
22 your daughter?

23 A. Uh-huh, yes, sir.

24 Q. What's your daughter's name?

25 A. Lisa Johnson.

1 Q. And what's her husband's name?

2 A. Karl. It's with a K.

3 Q. And I see under your picture on this
4 Zoom meeting, I see Lisa and Karl. Are they the
5 Lisa and Karl that you're talking about?

6 A. Yes, sir.

7 Q. Tell me about your educational
8 background. Where did you -- where did you go to high
9 school?

10 A. In Laurens. Laurens District 55.

11 Q. Did you graduate?

12 A. No. I went back --

13 Q. How far did you get?

14 A. -- to get my GED, but --

15 Q. I'm -- and I broke one of my rules. I
16 interrupted you while you were answering my
17 question before I started asking my question, so I
18 apologize for that. Can you restate your answer
19 again?

20 A. What was the question you asked?

21 Q. I asked you, did you -- I was asking
22 whether you finished and then you --

23 A. Oh, oh, no, sir, I didn't.

24 Q. Okay.

25 A. I went and got my GED.

1 Q. When did you get your GED?

2 A. When?

3 Q. Yes, ma'am.

4 A. That would've been in May of '81, I
5 think, yeah.

6 Q. And how far did you go in high school
7 at Laurens District 55?

8 A. Just through the tenth. Yes, sir.

9 Q. Did you ever attend college?

10 A. No, sir.

11 Q. Do you know about Mr. Sullivan's
12 educational background? Where did he go to high
13 school?

14 A. I know it would've been Laurens that
15 he went to high school. And he got -- he went in
16 the Army and shipped away for Vietnam for two
17 terms, so I don't think he -- I don't think he
18 finished there. I think maybe the Army -- he got
19 a GED through them or something, maybe.

20 Q. Do you know what year he went into the
21 Army, initially?

22 A. The first year was 1969, maybe. '69
23 or possibly '70.

24 Q. Okay. Do you know --

25 A. I know he was there in '70. Sorry.

1 Q. Do you know whether Mr. Sullivan ever
2 attended college?

3 A. I don't think he did. No, sir.

4 Q. Are you currently working?

5 A. No, sir.

6 Q. What do you do for income?

7 A. I had -- I get disability.

8 Q. What disability were you approved
9 from -- approved for?

10 A. It's for medic for -- what's that
11 called? COPD.

12 Q. When were you approved?

13 A. I think in 2018, maybe. It was '17 or
14 '18.

15 Q. Did you represent yourself or were you
16 represented by an attorney?

17 A. Oh, no. I wasn't represented by
18 anybody. It was just -- just me.

19 Q. Okay.

20 A. And, I guess, the doctors.

21 Q. What about Mr. Sullivan? Do you know
22 what Mr. Sullivan's source of income was at the
23 time of his passing?

24 A. No. I know he got the -- a check from
25 the Army. Some type of military thing, maybe. I

1 think that's what he got.

2 Q. Okay. Do you know whether he ever
3 received social security disability benefits?

4 A. I don't know. I really don't.

5 Q. Okay. Do you recall when the last
6 time Mr. Sullivan would've engaged in active
7 employment other than the Army?

8 A. Gosh, it would've been -- let's see, I
9 really -- I don't know to tell you the truth. I
10 really don't know.

11 Q. Are you a part of any local or
12 national organizations or clubs?

13 A. No, sir.

14 Q. Do you recall whether Mr. Sullivan
15 would've been a part of any local or national
16 organizations or clubs in York County?

17 A. No. I think the only thing he was in
18 was the -- the VFW thing, yeah.

19 Q. Do you have any family by blood or
20 marriage that resides in York County, South
21 Carolina?

22 A. Well, just my -- well, no, she doesn't
23 live there anymore. So no, no, not anymore.

24 Q. And I'm assuming that would be the
25 same for Mr. Sullivan?

1 A. Yeah. Because with everybody --
2 everybody died away.

3 Q. I'm going to apologize in advance for
4 my next question, I ask it in every deposition.
5 Have you ever been arrested or charged with a
6 crime?

7 A. I did get arrested once for a DUI in
8 1980 -- or was it '81? I'd say '81.

9 Q. Other than that DUI in 19 -- about
10 1980, 1981, have you ever been arrested or charged
11 with a crime?

12 A. No, sir.

13 Q. What about Mr. Sullivan?

14 A. I know he had done some time for
15 something, but gosh, I don't -- I was a child,
16 so -- and other than that, I don't have any
17 remember -- any memory of him being in trouble
18 after that. And I'm not even sure what that was.
19 I just have a memory of him being, you know, in
20 jail, like, a county jail somewhere --

21 Q. Okay.

22 A. -- Greenville, maybe.

23 Q. In what county?

24 A. I think it was Greenville.

25 Q. Other than the claim and the lawsuit

1 that we're here talking about, do you know whether
2 Mr. Sullivan filed any other -- or had prior
3 insurance claims for injury?

4 A. I don't think he did. Not that I know
5 of, he didn't.

6 Q. And it's my understanding that this
7 incident occurred on June 10th, 2019.

8 A. Yes, sir.

9 Q. Do you recall whether Mr. Sullivan
10 experienced any -- or filed a claim for any injury
11 sustained after that date?

12 A. Other than just the -- what he filed
13 with this thing. I don't think there was anything
14 else other than that.

15 Q. Okay. Prior to June 10th, 2019, do
16 you recall Mr. Sullivan experiencing a trip or
17 fall or slip and fall resulting in an injury?

18 A. No, not before that.

19 Q. Okay. What about after June 10th,
20 2019?

21 A. Well, just -- just when he fell on
22 that date, as far as I know, is the only time he
23 ever fell.

24 Q. Okay. I am going to share my screen
25 and attempt to use technology, and I want to show

1 you the interrogatories that -- request that we
2 sent over to Mr. Sullivan now that you are part of
3 the case. I apologize if I screw this up in
4 advance.

5 A. Okay.

6 Q. Can you see that?

7 A. Yeah, a little bit.

8 Q. Okay.

9 A. Yeah, some of it.

10 Q. Does that help any?

11 A. Okay. Yeah.

12 Q. Do you see interrogatories?

13 A. I'm not sure what that is.

14 Q. Do you -- oh, do you see the -- do you
15 see a caption stating, State of South Carolina
16 County of York, Thomas Sullivan v. Dollar General
17 Corporation?

18 A. Let me see. I think I see that. Oh,
19 I can't see.

20 Q. Let me try one more thing.

21 A. Well, I can put my glasses on. I
22 didn't think about that. I got it.

23 Q. Okay. I'm going to try one more time
24 and make it even bigger. One moment. What about
25 now?

1 A. Okay.

2 Q. Can you see that?

3 A. Yeah.

4 Q. Thomas Sullivan versus Dollar General
5 Corporation?

6 A. Yes, sir. I see that.

7 Q. Just kind of want to go over the
8 responses. I know that you're recently getting
9 involved and you recently filed the second -- or
10 plaintiff's counsel filed a second amended
11 complaint on behalf of Mr. Sullivan and the
12 estate, so I wanted to review them with you.

13 As far as any witnesses to the incident,
14 it looks like it would be plaintiff, plaintiff's --
15 defendant's personnel, David Riley, and medical
16 personnel. Are you aware of any other potential
17 witnesses to Mr. Sullivan's fall other than those
18 witnesses listed --

19 A. No.

20 Q. -- for interrogatory -- interrogatory
21 number one?

22 A. Right. Yes, sir, that's all that I
23 know of.

24 Q. Okay. Who is David Riley?

25 A. That was a neighbor of his.

1 Q. Do you know David Riley personally?

2 A. No, I -- I've seen him, but, I mean, I
3 didn't even know his last name. I just know that
4 he's a neighbor, and he would give Tommy rides and
5 stuff.

6 Q. All right. Looking at interrogatory
7 number five. Set forth a statement of all medical
8 costs incurred by plaintiff, identify each
9 specific medical provider and the cost associated
10 with said provider.

11 You'll see that there are nine medical
12 providers listed and a total medicals and specials
13 of \$115,499.00 are you aware of any other medical
14 providers that Mr. Sullivan treated with regarding
15 the June 10th, 2019, incident?

16 A. No, sir, not that I know.

17 Q. Okay. Do you know what Mr. Sullivan's
18 injuries were as a result of the incident?

19 A. I believe that he fractured his hip.
20 I know he had to have some kind of surgery to his
21 hip.

22 Q. Okay. Any other injuries other than a
23 hip fracture?

24 A. No. No, I think, everything pretty
25 much came from that.

1 Q. And again, these are discovery
2 responses before you were a part of the case, but
3 it seems to indicate that he had a hip fracture,
4 left hip and pelvis pain. I'm assuming that means
5 strain and stiffness, impaired gait, and
6 interference with activities of daily living,
7 walking instability, and weakness?

8 A. Yes.

9 Q. Do you know whether Mr. Sullivan
10 suffered from any of those impairments prior to
11 June 10th, 2019?

12 A. No, I don't think so. I never heard
13 him say anything about his hip or anything like
14 that.

15 Q. Other -- besides these ailments listed
16 under number seven, are you aware of any personal
17 injuries or impairments or physical disabilities
18 that Mr. Sullivan was experiencing prior to June
19 10th, 2019?

20 A. Well, see, he'd had a stroke, but --
21 in about 2014, maybe -- '15, '14, '15, and -- but
22 in the last few years he was doing better from
23 that.

24 Q. How would -- prior to June 10th, 2019,
25 how would you describe Mr. Sullivan's mobility or

1 ability to walk?

2 A. It was okay. I mean, sometimes he
3 used a cane, but not often. And -- but yeah, like
4 I said, it had gotten much better. I guess, he
5 did get some movement back, you know, from the
6 stroke so...

7 Q. Why was he using a cane?

8 A. I think it had -- well, one of his
9 legs was affected from the stroke, is what it -- I
10 think it was his left leg, maybe or -- I think.

11 Q. Okay. And when you say his leg was
12 affected, what -- what issues did it cause with
13 his left -- left leg?

14 A. I think he had numbness in it. Maybe
15 it didn't have much feeling or -- as much feeling
16 in it.

17 Q. Okay. As far as -- going back to
18 number seven on the interrogatories, again, I told
19 you -- or it looks like his total medical bills,
20 at least on this date of the interrogatories, was
21 \$115,499.00. Are you aware of any other medical
22 costs or bills associated with the fall?

23 A. No, Sir.

24 Q. Okay. After Mr. Sullivan's fall, when
25 did you first speak with him?

1 A. It was maybe a couple of weeks later.

2 Q. Okay.

3 Did you have an opportunity to go down
4 and see him at any time after his fall?

5 A. Yeah, I did go and visit him.

6 Q. While he was in the hospital or
7 afterwards?

8 A. After.

9 Q. Okay. Did -- do you have any
10 information related to number eight in regards to
11 Mr. Sullivan's pain and suffering?

12 A. I -- well, I know it bummed him out
13 really bad because he felt like if he had to go
14 back through surgery, you know, he didn't want to
15 have to do that again, and he was -- I know he was
16 depressed, obviously, about everything to -- I
17 mean, he just gave up, I guess.

18 Q. He told you that he was depressed?

19 A. Yeah.

20 Q. Okay. Tell me about that conversation
21 and when it occurred.

22 A. Gosh. This was maybe -- gosh, a
23 couple of months afterward. And they were going
24 to do more surgery or something, and he was -- he
25 didn't think that that would fix it, and so he

1 felt like he didn't have any future because it was
2 never going to get better, only worse. Now, that
3 was --

4 Q. What was his --

5 A. -- his thinking.

6 Q. What was the surgery going to be for?

7 A. I think it had it -- well, something
8 about his hip joint, maybe, or some kind of
9 surgery to do with his hip. And I don't know if
10 the first surgery didn't, you know, give him a
11 good result or what.

12 Q. Do you have any evidence related to
13 whether it was due to his fall on June 10th, 2019,
14 or because of anything else?

15 A. If what was related?

16 Q. So this -- this second surgery that
17 you said --

18 A. Oh.

19 Q. -- was it released to June 10th,
20 2019 --

21 A. Oh, yes.

22 Q. -- or was it related to his stroke in
23 the past?

24 A. This was something to try to get out
25 of pain. Something to help him heal his leg, I

1 guess, is that -- I think he felt that he -- that
2 it wasn't going to work.

3 Q. And he told you that it was to help
4 heal his leg?

5 A. Yeah, that they were going to have to
6 do more stuff, and he didn't want to have to go back
7 to the hospital.

8 Q. Okay.

9 A. He told me that he didn't want to have
10 to go back to the hospital.

11 Q. Are you aware --

12 A. He didn't tell me what they were going
13 to do, but he just said he didn't want to go back
14 through that.

15 Q. Are you aware of what doctor told him
16 he would need a second surgery?

17 A. No, sir. I don't know.

18 Q. Are you in possession of any medical
19 records or documents relating to the need for a
20 second surgery for Mr. Sullivan?

21 A. No, sir.

22 Q. Do you know who Mr. Sullivan's primary
23 care physician was?

24 A. I don't. I honestly don't. I know,
25 like I said, I don't know whether it was through

1 the VA or whether it was a local doctor.

2 Q. So Mr. Sullivan received treatment
3 through the VA?

4 A. I -- I don't know. That's -- I have
5 no idea. That's what I'm saying, I don't know
6 whether he went with them, being a veteran --

7 Q. Okay.

8 A. -- or whether he had just gotten a
9 local doctor. I'm not sure.

10 Q. All right. So Mr. Sullivan filed a
11 complaint and you're now the PR representing
12 Mr. Sullivan, and so you're essentially stepping
13 into his place with regards to the lawsuit. Why
14 are you suing Dollar General on behalf of the
15 estate?

16 A. Well, I just wish what -- I wanted to
17 make sure to get resolution of it, you know. And
18 since my brother, Robert, is originally the one
19 that Tommy talked to most about it, and then when
20 Kathy got so sick, and he couldn't come back to
21 South Carolina as often, he asked me to -- to do
22 that. To be -- to get the resolution and so, I
23 feel like if Tommy started this, and he didn't
24 tell me not to do anything else, I don't feel like
25 I had any choice but to move forward.

1 Q. What did Dollar General do to cause
2 Mr. Sullivan's fall?

3 A. Well, Tommy said that the rug was --
4 it looked dry rotted and had a curl on the corner
5 of the rug that he didn't see until he hit the
6 ground and landed right next to this curl, so...

7 Q. And Mr. Sullivan personally told you
8 that in a conversation?

9 A. Yes, sir.

10 Q. Have you seen the video of the
11 incident?

12 A. No, sir. I haven't.

13 Q. I'm going to attempt to use technology
14 again. So again, please excuse me if I screw this
15 up. Can you see my screen, Ms. Sullivan?

16 (Video Playing.)

17 THE WITNESS: Oh, God.

18 BY MR. DUKES:

19 Q. If at any time we need to take a break
20 or anything, let me know. I'm happy to do so,
21 okay?

22 A. Okay. Let's see.

23 Q. Why don't we go off the record for a
24 moment.

25 (A discussion was held off the record.)

1 BY MR. DUKES:

2 Q. We're back on the record. Can you --
3 are you able to see my screen?

4 A. Yes, sir.

5 Q. And does it appear to be a video --
6 in-store video footage?

7 A. That's what it looks like.

8 MS. WHITE: Objection.

9 BY MR. DUKES:

10 Q. And again, sometimes Ms. White may
11 object to my questions, you can still answer,
12 okay? She just noted -- she's noting an objection
13 for the record.

14 A. Okay. Yes. That is what it looks
15 like to me.

16 Q. Okay. I'm going to hit play.

17 (Video Playing.)

18 THE WITNESS: Oh, God.

19 BY MR. DUKES:

20 Q. Were you able to watch the video in
21 its entirety?

22 A. Uh-huh, yes, sir.

23 Q. Based on the video, what happened, in
24 your opinion?

25 A. It looks to me like there was some

1 curling along the edge there. And it looked like
2 his foot just literally slid up under the curl, to
3 me. It really did.

4 Q. Okay. In the video, does it appear
5 that Mr. Sullivan is dragging his left foot along
6 the floor?

7 A. Oh, no, sir. I don't think so.
8 Because when --

9 Q. You don't --

10 (Video Playing.)

11 THE WITNESS: But watch, he goes right
12 under the edge of that thing.

13 BY MR. DUKES:

14 Q. But my question is, does it appear
15 that Mr. Sullivan is dragging his left foot?

16 MS. WHITE: Objection. Asked and
17 answered.

18 BY MR. DUKES:

19 Q. You can still answer my question.

20 A. I don't think so.

21 Q. Okay.

22 A. Not -- nothing. What I saw was his
23 foot go under the rug, to me. And it just keeled,
24 to me, that way.

25 Q. Okay.

1 A. Gosh.

2 MS. WHITE: Ms. Ballew, are you okay?
3 Do you need a break now? Are you all
4 right?

5 THE WITNESS: I'm okay.

6 MR. DUKES: Let's take a two minute
7 break. Just -- off the record.

8 (A recess was taken from 1:37 p.m. to 1:39 p.m.)

9 BY MR. DUKE:

10 Q. Ms. Ballew, we're back on the record
11 after a brief break. Have you had a chance to
12 review any of Mr. Sullivan's medical records --

13 A. I have not.

14 Q. -- after the accident? Okay. Do you
15 know the events that transpired immediately after
16 his fall?

17 A. I don't.

18 Q. Okay. And again, you testified
19 earlier that you didn't talk to Mr. Sullivan
20 for -- until after a few weeks from the big fall.

21 A. No. Maybe about a week or so later,
22 but I didn't see him for about six weeks.

23 Q. Okay. And so, you have no personal
24 knowledge of what pain Mr. Sullivan would have
25 suffered from on June 10th, 2019?

1 A. Not on that one particular day.

2 Q. Okay. Do you know when Mr. Sullivan
3 completely healed from his injuries stemming from
4 June 10th, 2019?

5 A. I don't think he ever did heal
6 completely. That was what made him so depressed.
7 He wasn't healing.

8 Q. Was that because of the fall on June
9 10th, 2019, or was that because of the stroke in
10 2014 and the events that transpired thereafter?

11 A. No, that was the fall, because he'd
12 improved a good bit on the stroke, and that was
13 something that he was okay with. Psychologically,
14 he was okay with that. He had already improved a
15 great deal, you know.

16 Q. Do you know if Mr. Sullivan ever went
17 and sought treatment due to his depression?

18 A. I don't think so. I don't think so.
19 Now, whether his doctor might've given him
20 something for it, I couldn't say, but I don't
21 think so.

22 Q. Were you aware that Mr. Sullivan could
23 not usually feel pain on his left side?

24 A. Not until -- no, he didn't have any
25 pain, at least not until he fell. He just had

1 that weakness, but no pain that I know of.

2 Q. But my specific question, are you
3 aware that he was not able to feel pain?

4 MS. WHITE: Objection. Asked and
5 answered.

6 BY MR. DUKES:

7 Q. You can answer my question.

8 A. Yeah, he could feel pain if -- I'm
9 just saying, I don't think he had any until he
10 fell.

11 Q. So if Mr. Sullivan's records indicated
12 that he could not feel pain on his left side, you
13 would disagree?

14 MS. WHITE: Objection. Witness is not
15 required to guess. She's answered the
16 question that she has not reviewed the
17 medical records.

18 BY MR. DUKES:

19 Q. You can still answer my question.

20 A. No. It wasn't that he had an
21 inability to feel pain.

22 Q. Okay.

23 A. If he got kicked, it would still hurt.

24 Q. Okay.

25 A. It just -- weakness, I guess, is a

1 better word. It wasn't numb.

2 Q. Do you recall when -- do you recall
3 Mr. Sullivan seeking physical -- receiving
4 physical therapy treatment at Encompass Health
5 Rehabilitation Hospital?

6 A. Oh, I don't know. I think he did get
7 some rehabilitation, though.

8 Q. Okay. Do you know whether that helped
9 with his pain?

10 A. If what -- oh. If it -- if it did, he
11 didn't say anything about it because they were
12 still talking about doing something else
13 surgically.

14 Q. Okay. I want to share my screen
15 again. I guess I should move this over.

16 MS. WHITE: Adrian, just to cut this
17 as fast, what is -- what is it that you're
18 about to share? Is it an exhibit or...

19 MR. DUKES: Medical records from
20 Encompass Health.

21 MS. WHITE: Okay.

22 BY MR. DUKES:

23 Q. Ms. Ballew, I'm showing you
24 Mr. Sullivan's medical record from Encompass
25 Health Rehabilitation Hospital in Rock Hill. This

1 is page 91. No, scratch that. This record says
2 80 of 414 pages, and with regards to this
3 particular subpoena -- with regards to the
4 document production received by subpoena, it's
5 page 91 of 430. It states at the top, admit date
6 to Encompass Health June 15th, 2019; discharge
7 date June 26th, 2019.

8 Under subjective it states, "Patient has
9 no new complaints. He is ready for discharge home
10 tomorrow. Nursing supervisor reports patient was
11 vaping marijuana. Marijuana confiscated in the
12 room."

13 So and with regards to that, I have a
14 couple questions. One, would you agree that
15 Mr. Sullivan's records indicate that as of June
16 26th, 2019, he had no new complaints?

17 MS. WHITE: Objection. Adrian, she
18 has not reviewed the records as she
19 testified, and she's not competent to even
20 testify with respect to the medical
21 records.

22 MR. DUKES: But there -- this -- this
23 is being shown to her, and she can read it
24 herself.

25 MS. WHITE: And this is her first time

1 seeing it, and neither have I seen it. I
2 did send --

3 MR. DUKES: You saw it June 22nd --

4 MS. WHITE: -- all of the exhibits
5 that I was going to show to you prior to
6 the deposition. I don't think we received
7 these records that you got via subpoena.
8 I'm looking at my Bates stamps on my
9 records. When you gave me the page number,
10 I thought I could find them here, but I
11 don't have that.

12 MR. DUKES: I would --

13 MS. WHITE: Is that Bates Stamp?

14 MR. DUKES: It is. And in response to
15 that objection, it's being shown to her and
16 so she can testify to it. One, I believe
17 we have produced it, and if we didn't, I
18 believe the rules allow you to talk to her
19 about it, but she still has -- she can
20 still testify regarding records shown to
21 her on the day of the deposition.

22 MS. WHITE: Yes. But those exhibits
23 should've been shared with me prior to the
24 deposition.

25 MR. DUKES: That -- that's not a

1 required rule, and I'm not making this an
2 exhibit.

3 MS. WHITE: It should be an exhibit
4 because that's what you're -- this is
5 not -- these are documents that you're
6 showing her that would be in an Exhibit
7 form that I have not seen. You say that's
8 a Bates Stamp, but I don't actually see
9 that as a Bates Stamp. I don't know
10 whether we've gotten those records or not.

11 MR. DUKES: Again, if you would like
12 to --

13 MS. WHITE: You can proceed with
14 your -- you can proceed with your
15 questioning, but just -- my objection has
16 been stated for the record.

17 MR. DUKES: Thank you.

18 BY MR. DUKES:

19 Q. Again, looking at this particular
20 record in page -- in this page, under subjective,
21 do you agree with me that the record says that
22 patient has no new complaints?

23 MS. WHITE: Objection. Again, you're
24 attempting to testify for her as to your
25 opinion.

1 MR. DUKES: That's my question. It's
2 a yes or no question.

3 BY MR. DUKES:

4 Q. Do you agree that the record states,
5 patient has no new complaints?

6 A. Yeah. But it sounds to me like he was
7 wanting to get out of the hospital, and I know
8 it -- I've said I felt better just to get out of
9 there, you know, even when I don't necessarily
10 feel so good, because you just get ready to go.
11 So...

12 Q. Okay. Do you agree that the record --
13 this record states, he is ready for discharge home
14 tomorrow?

15 A. Yeah.

16 Q. Okay. Do you agree that the record
17 states "Nursing supervisor reports patient was
18 vaping marijuana."?

19 A. Oh, I have no idea.

20 Q. I understand that you weren't there;
21 however, does the record indicate that?

22 A. Oh, the record seems to say that.

23 Q. Okay. Are you aware that
24 Mr. Sullivan, at some point in time, went and
25 sought and received treatment from Ortho Carolina?

1 A. I guess. I don't know. I know he
2 went to different doctors.

3 Q. And that -- that's probably a bad
4 question. I'll submit to you that Mr. Sullivan
5 did receive treatment and one of his medical
6 providers was Ortho Carolina.

7 A. Okay. Yes, sir.

8 Q. This is a record -- I'm going to share
9 my screen again.

10 MR. DUKES: Elaine, this is a record
11 from Ortho Carolina. It's dated December, sorry,
12 scratch that. It's dated July 31st, 2019. My
13 Bates Stamp is OC Page 4. The records contain 12
14 pages altogether?

15 MS. WHITE: If you can give me a
16 moment to get to that.

17 MR. DUKES: Absolutely.

18 MS. WHITE: And what date are you
19 looking at?

20 MR. DUKES: July 31st, 2019.

21 MS. WHITE: Okay. You can go ahead
22 and proceed with your question.

23 MR. DUKES: Okay.

24 BY MR. DUKES:

25 Q. Ms. Ballew, as previously stated, I'm

1 showing you a record for Mr. Sullivan dated --
2 date of visit July 31st, 2019. Chief complaint
3 appears that Mr. Sullivan is 68 year-old-male.
4 Presents for follow up of hip pain. Pain is best
5 described as -- at present pain scale one out of
6 ten. He indicates the pain does not wake him from
7 sleep.

8 And if you go down to the -- scratch that.
9 Looking at the history of present illness, do
10 you -- would you agree those records seem to
11 indicate that on July 31st, 2019, Mr. Sullivan had
12 no pain at his left hip?

13 MS. WHITE: Objection. The record
14 speaks for itself. It is as stated.

15 BY MR. DUKES:

16 Q. You can answer the question.

17 A. I don't think so. He obviously would
18 have some pain, so I'm not sure.

19 Q. So is it your response that this
20 record does not indicate or state that he has no
21 pain at his left hip?

22 A. No. I don't think it says he has no
23 pain.

24 Q. Okay.

25 A. He wasn't hurting as much that day or

1 something.

2 Q. Okay. Are you aware of Mr. Sullivan
3 ever having bilateral -- bilateral femur surgery
4 prior to June 10th, 2019?

5 A. He was in a wreck once, and hurt --
6 broken his leg.

7 Q. Okay. When was he in a wreck?

8 A. I don't know if he had surgery or not.

9 Q. When was he in that wreck?

10 A. That would've been in about 1979,
11 1980. Not 1980, it was before -- so that would be
12 about 1978.

13 Q. Are you aware of whether Mr. Sullivan
14 experienced any other car incidents?

15 A. Oh, no, sir. Not that I know of.

16 Q. Okay. Do you believe that Dollar
17 General would intentionally cause Mr. Sullivan to
18 fall?

19 A. Not intentionally.

20 Q. Okay. Do you believe that
21 Mr. Sullivan did anything to cause himself to
22 trip?

23 A. No. I don't think he did.

24 MR. DUKES: Off the record.

25 (A discussion was held off the record.)

1 BY MR. DUKES:

2 Q. We're back on the record after a brief
3 break. Ms. Sullivan, I have a couple more
4 questions for you before I let you go. It's my
5 understanding that Mr. Sullivan passed away mid
6 last year?

7 A. Yes, sir.

8 Q. Do you recall what date he passed on?

9 A. Oh, wow. No, sir. I sure can't. I'd
10 have to look at the -- I have the papers from the
11 funeral and stuff, but I -- I don't have the exact
12 date right off the bat.

13 Q. And I have a copy of it, but I don't
14 think I need to pull that up. Do you recall what
15 his cause of death was?

16 A. Yes, sir. He shot himself.

17 Q. And it's my understanding that the
18 death certificate indicates that it was a suicide?

19 A. Yes, sir. Well, it says, gunshot
20 wound, self-inflicted.

21 Q. Okay. Did Mr. Sullivan ever talk to
22 you or do you recall any conversations with anyone
23 regarding Mr. Sullivan's mental state prior to
24 that happening?

25 A. I knew that he was depressed. I knew

1 that. But I didn't realize it was this bad. He
2 had called and wanted my address, and that was a
3 red flag to me, because why would he want to write
4 me a letter instead of telling me whatever it was
5 on the phone.

6 He promised everything was okay, and
7 then, I think, maybe a day and a half later or a
8 day later, he did this. And I got a letter saying
9 that he was sorry he lied to me in regards to
10 everything was okay, when he was really
11 contemplating doing this.

12 Q. Do you still have that letter?

13 A. I do.

14 Q. Okay. Did the letter indicate what
15 the cause of him committing that act --

16 (Pause in proceedings.)

17 BY MR. DUKES:

18 Q. Ms. Ballew, did Mr. Sullivan's letter
19 to you indicate what the cause of him committing
20 that act was due to?

21 A. No, it didn't. Just typical --
22 actually, just -- he said that by the time I got
23 the letter, he would be gone and that he had
24 finished arrangements with the funeral home, and
25 not to be sad, and that he's sorry he had to lie

1 to me.

2 Q. Okay.

3 A. And he was always thinking about me.

4 He even sent me money to get down to make
5 arrangements at his funeral -- for his funeral.
6 Always looking out me.

7 Q. Do you -- do you know whether he wrote
8 letters to his other siblings also?

9 A. No. I don't think that he did. I
10 know he sent Benji a letter, which is Benny's son,
11 and just said "Here, use this for gas, good bye."
12 I don't know what that was about, but I could
13 imagine.

14 Q. Okay. Ms. Ballew, is there anything
15 that you can think of, anything else that you
16 would want to let me know regarding this case on
17 behalf of Mr. Sullivan, anything that I haven't
18 asked you that you would like to let me know now?

19 A. No, sir, I don't think so.

20 Q. Have you understood all of my
21 questions?

22 A. Yes, sir.

23 Q. Have you answered them truthfully and
24 to the best of your ability?

25 A. Yes, sir. I have.

1 MR. DUKES: Those are all of the
2 questions I have for you.

3 THE WITNESS: Okay.

4 MS. WHITE: Ms. Ballew, I just have
5 one question.

6 EXAMINATION

7 BY MS. WHITE:

8 Q. In your opinion, was the depression
9 and the suicide a result of the fall and the
10 injuries from Dollar General?

11 A. Yes, ma'am, it was. Because he
12 thought he would never be able to get any kind of
13 level of movement back and that he would just be
14 sent back to the hospital. I'm sure that's what
15 it was.

16 MS. WHITE: I have no other questions.
17 Thank you.

18 MR. DUKES: Just one brief follow-up
19 question.

20 FURTHER EXAMINATION

21 BY MR. DUKES:

22 Q. Did Mr. Sullivan ever explicitly state
23 to you that the -- that he would commit suicide or
24 harm himself as a result of his fall on June 10th,
25 2019, at Dollar General?

1 A. No. He didn't tell me he was ever
2 contemplating anything like that. He wouldn't
3 have dared. Because he knew that my son had
4 passed just a few years of the same thing.

5 Q. Okay.

6 A. So he wouldn't dare to let me know
7 that. That's part of why he apologized.

8 MR. DUKES: Okay. I don't have any
9 other questions. Thank you for your time..

10 THE WITNESS: Thank you.
11 (Discussion off the record.)

12
13 MS. WHITE: We will waive review and
14 will take hard copies and E-Trans.

15 THE COURT REPORTER: Mr. Dukes, would
16 you like a copy?

17 MR. DUKE: I will take the original
18 and then E-Tran.

19 - - -
20 (Read and sign was waived.)

21 - - -
22 (Witness excused.)

23 - - -
24 (Deposition concluded at 2:03 p.m.)

25 - - -

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CERTIFICATE OF REPORTER

I, Johana Platas, Court Reporter, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, this 19 of April, 2022, at Gastonia, Gaston County, North Carolina.



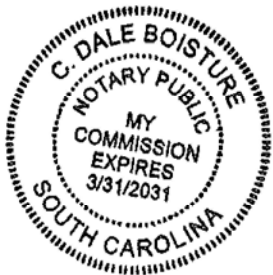
Johana Platas, Court Reporter

Certificate of Notary Public

I C. Dale Boisture , Notary Public for the state of South Carolina , do hereby certify that the deponent, Martha Ballew , was duly sworn to testify to the truth, the whole truth, and nothing but the truth.

Witness my hand this 19th day of April , 2022 via Zoom

Signature: C. Dale Boisture
Print Name: C. Dale Boisture
State: South Carolina
County of: Richland
My Commission expires: 3/31/2031



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EXHIBIT C—AFFIDAVIT OF WITNESS DAVID RILEY

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS)
DAVID RILEY)

ESTATE OF THOMAS SULLIVAN)
Plaintiff)

vs.)

DOGENCORP, LLC)
D/B/A DOLLAR GENERAL,)

Defendant

Civil Action Number: 2022-CP-46-0085

AFFIDAVIT OF DAVID RILEY

Comes now the affiant, David Riley ("Affiant"), and having first being duly sworn and cautioned hereby states the following:

1. That each of the statements set forth in this Affidavit is based upon the undersigned's personal knowledge of the personal injury accident which occurred on or about July 10, 2019, which is the subject of a claim by the Estate of Thomas Sullivan (the "Accident").
2. That each of the statements set forth in this Affidavit is stated to the best knowledge, information and belief of the Affiant.
3. That the undersigned is of legal age and competent to testify to the statements set forth in this Affidavit.
4. That on July 10, 2019, the Affiant drove Thomas Sullivan to the Dollar General Store located in Rock Hill, South Carolina (the "Store").
5. That Affiant parked outside the Store and waited for Mr. Sullivan to exit the Store.
6. That as Affiant returned to the entrance, Affiant witnessed Thomas Sullivan falling to the ground immediately in front of the Store.
7. Affiant observed that Thomas Sullivan was in pain and unable to get up without assistance due to the fall.
8. Mr. Sullivan communicated to Affiant that the fall was caused by the rug in the foyer of the Store.
9. Affiant observed that the rug was crumpled up and lying on the floor inside the door of the Store in close proximity to the place where Mr. Thomas Sullivan lay injured on the ground.
10. Affiant observed that nothing had stopped the movement of the rug and Affiant believes that the rug lacked any suction or grip to hold the rug to the floor.

11. Affiant observed the pain and distress of Mr. Thomas Sullivan as he waited for the ambulance.
12. Affiant observed that after the Accident, Mr. Thomas Sullivan was unable to fully resume his normal activities, daily tasks and hobbies due to additional impairment of his ability to walk.

Further the Affiant sayeth not.

David Riley
David Riley

Dated: July 12, 2022

SWORN to and subscribed
before me this 12th day of July 2022

Theresa D. Drummond
Notary Public for South Carolina
My Commission Expires
December 17, 2025

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	
)	
THOMAS SULLIVAN,	)	Civil Action No. 2022-CP-46-00085
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S MEMORANDUM IN
	)	SUPPORT OF MOTION FOR
DOLGENCORP, LLC D/B/A DOLLAR	)	SUMMARY JUDGMENT
GENERAL,)	
)	
Defendant.)	
)	

YOU WILL PLEASE TAKE NOTICE Defendant, Dolgencorp, LLC, moves this Court for an Order granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendant will show there is no genuine issue as to any material fact and that Defendant is entitled to judgment as a matter of law.

FACTS AND PROCEDURAL HISTORY

Plaintiff Thomas Sullivan filed his First Amended Complaint on January 30, 2020, in the Court of Common Pleas, County of Richland, State of South Carolina. *Pls.' First Am. Compl.* Mr. Sullivan alleged he was a business invitee and customer at Defendant's store when he slipped, tripped, and/or fell over an unsecured, poorly maintained rug at the store's entrance. *Id.* at 4 – 6.

Defendant filed its Answer to the First Amended Complaint on February 9, 2022. Defendant's Answer denied all acts of negligence. Further, it asserted the affirmative defenses of comparative negligence, open and obvious, sole negligence, and third-party negligence, amongst other affirmative defenses. *Def.[s] Answer to Pls.' First Am. Compl.*

On January 25, 2022, Plaintiff filed a Second Amended Complaint substituting the original Plaintiff Thomas Sullivan for the Estate of Thomas Sullivan. *Pls.' Second Am. Compl.* Mr. Sullivan, unfortunately, passed away on August 21, 2020. (*Exhibit 1*). As a result, Mr. Sullivan's sister Martha Ballew was appointed Personal Representative of his Estate. *Martha Ballew Dep.* 9:1-3.

STANDARD OF REVIEW

In ruling on a summary judgment motion, this Court must determine whether a genuine issue of material fact exists. Rule 56, SCRCP. A party seeking summary judgment bears the burden of identifying those portions of the pleadings, depositions, answers to interrogatories, any admissions on file, together with the affidavits, if any, which show that there is no genuine issue as to any material fact that the moving party is entitled to judgment as a matter of law. *Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994). Although the burden is on the party seeking summary judgment, the non-moving party must point to specific facts showing that there is a genuine issue for trial rather than resting on the assertions of its pleadings. *Id.* Thus, a court must grant summary judgment if the non-movant fails to make a sufficient showing to establish a genuine issue of material fact for trial. *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991) *Rev.'d in part on other grounds* 311 S.C. 218, 428 S.E.2d. 700 (1992). A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for the purposes of resisting summary judgment. *German v. New York Life Ins. Co.*, 286 S.C. 34, 331 S.E.2d. 385 (Ct. App. 1985); *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994). Ordinarily, the comparison of the Plaintiff's negligence with that of the defendant is a question of fact for the jury to decide. *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000). However, the trial court should determine judgment as a matter of law if

the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. *Id.* A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *Snavely v. AMISUB of South Carolina, Inc.*, 379 S.C. 386, 665 S.E.2d 222, 225 (Ct. App. 2008). A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54-5, 677 S.E.2d 32, 36 (Ct. App. 2009). While summary judgment is a drastic remedy, in the rare case where a verdict is not reasonably possible under the facts presented in a comparative negligence claim, summary judgment is proper. *Bloom* at 425, 529 S.E.2d at 714.

ARGUMENT

South Carolina courts recognize four general classifications of persons who come on premises: adult trespassers, invitees, licensees, and children. *Sims v. Giles*, 343 S.C. 708, 715 (Ct. App. 2001). In the instant case, we concede that Plaintiff most likely held the status of an invitee. Therefore, under South Carolina law, Dolgencorp owed only the duty of exercising ordinary care to keep the premises in a reasonably safe condition. *Pennington v. Zayre Corp.*, 252 S.C. 176, 165 S.E.2d 695 (1969).

To recover damages for injuries caused by a dangerous or defective condition on a storekeeper's premises, the plaintiff must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had

actual or constructive knowledge of the dangerous condition and failed to remedy it. *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (S.C. 2001) (citing *Anderson v. Racetrac Petroleum Inc.*, 296 S.C. 204, 371 S.E.2d 530 (1988); *Pennington v. Zayre Corp.*, 252 S.C. 176, 165 S.E.2d 695 (1969); *Hunter v. Dixie Home Stores*, 232 S.C. 139, 101 S.E.2d 262 (1957); *Cook v. Food Lion, Inc.*, 328 S.C. 324, 491 S.E.2d 690 (Ct.App.1998)). Further, a merchant is not an insurer of the safety of his customer but owes only the duty of exercising ordinary care to keep the premises in a reasonably safe condition. *Id.*

I. There does not exist evidence sufficient to show that Dolgencorp was negligent.

This case is similar to but distinguishable from *Cook*. In *Cook*, Plaintiff tripped and fell on a floor mat near the exit of Food Lion as she was leaving the store. *Id.* at 326, 491 S.E.2d at 691. Thereafter, Cook brought a negligence action against Food Lion, alleging the floor mat was improperly placed and was not flush with the floor. *Id.* The trial judge granted Food Lion's motion to exclude any evidence regarding the tendency or proclivity of Food Lion's floor mats to wrinkle on occasions previous to Cook's accident. *Id.* As a result, Cook proffered the testimony of several witnesses: 1) Martha Cantrell, a cashier, testified the floor mats sometimes wrinkled or crumpled when people would kick them but did not see the mats wrinkle on the day of the accident; 2) Joseph Gokey, a bagger had previously seen the floor mats in a wrinkled or bent position, and that the mats became twisted a lot; and, 3) Randall Horne, who was also a bagger for Food Lion at the time of the accident, testified that he had seen the mats become wrinkled, that he had straightened out the mats and had seen other Food Lion employees straighten out the mats, and that they wrinkled pretty often. *Id.* The trial judge directed a verdict in favor of Food Lion on the issue of liability, holding that Cook presented no evidence Food Lion had notice on

the date of the accident that the mats had become wrinkled. *Id.* The Court of Appeals reversed and remanded the case, stating it was unnecessary for Cook to show that Food Lion employees had notice that the floor mats were wrinkled or bunched immediately prior to Cook's fall. *Id.* at 327-28, 491 S.E.2d at 692. Further, the court stated the testimony of the tendency of the floor mats to wrinkle was directly relevant to the issue of whether a dangerous condition existed in the store and should not have been excluded. *Id.* at 328, 491 S.E.2d at 692. The Court took Cook's testimony that she slipped on a wrinkled floor mat as true in determining whether the trial judge properly granted a directed verdict and believed causation was not an issue in this case. *Id.*, at 329 n.2, 491 S.E.2d at 692.

This case is also similar to *Sellers v. Jc Penney Corp.*, Civil Action No. 5:10-2568-MBS, 2011 U.S. Dist. LEXIS 124683, at 1 (D.S.C. Oct. 27, 2011). The *Sellers* case involved the South Carolina District Court affirming a grant of summary judgment related to a rug or floor mat at the entrance of a mall. (*See Id.*) In *Sellers*, Plaintiff entered a JCPenney store through a mall entrance near the door in a JCPenney store. *Id.* at 2. There was a tear in the rug at the entrance, and Plaintiff's shoe became entangled, causing Plaintiff to stumble and fall over a clothes rack. *Id.* A cashier brought Plaintiff a chair and helped her into it. *Id.* 2-3. Plaintiff could see the tear in the rug from where she was sitting. *Id.* In analyzing whether there was sufficient evidence to show Defendant was negligent, the court looked to the *Cook* case. The court recognized that "the *Cook* court did not hold that floor mats at the exit of a store are "dangerous conditions" per se; rather, the finding of dangerousness was based on the evidence in the record showing that the mats were frequently in a dangerous wrinkled state." *Id.* at *9. The court found that even assuming that Plaintiff is correct that there was a torn rug at the JCPenney entrance, Plaintiff introduced no evidence showing that any JCPenney employee was aware of a tendency of such a

purported rug to tear or otherwise become dangerous. *Id.* Plaintiff could not show that Defendant created a dangerous condition by the placement of a rug with a tendency to tear at its mall entrance. *Id.* The court further found Plaintiff may not simply rely upon a presumption that if the rug was torn at the time of her fall, it was likely torn for some time beforehand and should have been observed by Defendant's employees. *Id.* The court found no reasonable jury could find that Defendant negligently maintained its premises. *Id.* at 11. Defendant's motion for summary judgment was granted. *Id.*

In this case, there is no evidence in the record that Dolgencorp negligently maintained the rug that Mr. Sullivan encountered prior falling.¹ Plaintiff alleges "Decedent, a senior citizen, slipped, tripped, and/or fell over the unsecured, poorly maintained, rug at the entrance of the Dollar General." (*Pls.' Second Am. Compl.*). Again, there is no evidence to support that assertion. At best, Plaintiff can only suggest the rug was negligently maintained by attempting to introduce self-serving testimony from the Estate's Personal Representative, Martha Ballew. However, the Dead Man's Statute would prohibit such self-serving testimony. The Dead Man's Statute prohibits any interested person from testifying concerning conversations or transactions with the Decedent if the testimony could affect his or her interest. *See Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997). The rule is founded on the principle that it is against public policy to allow a witness thus interested to testify as to such matters when such testimony, if untrue, cannot be contradicted. *Id.* at 151, 485 S.E.2d at 909. *Brooks v. Kay*, 339 S.C. 479, 486, 530 S.E.2d 120, 124 (2000). Ms. Ballew was Mr. Sullivan's sister. There has been no evidence

¹ Plaintiff's claims are premised on speculation and conjecture. Plaintiff has failed to produce any evidence demonstrating the mat's age, how it was weathered, where the alleged curl was, what caused the alleged curl, that the curl was not an open and obvious defect, or that Defendant was on notice of the mats alleged dangerous condition. Plaintiff cannot side-step a proper Motion for Summary Judgment with mere speculation. . *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991) *Rev.'d in part on other grounds* 311 S.C. 218, 428 S.E.2d. 700 (1992).

presented in this case that Mr. Sullivan executed a Last Will and Testament before his death. Further, Decedent did not have any children and was unmarried. Therefore, Ms. Ballew stands to directly benefit from the outcome of the trial and resolution of this action. As a result, testimony by Ms. Ballew regarding conversations with the Decedent about the alleged negligence of Defendant should be prohibited.

Plaintiff refers to the deposition of Sam Greene in his memorandum in opposition to Defendant's Motion. Specifically, Plaintiff states, "the current district manager of the Dollar General admitted during his deposition that curling of the rugs at Dollar General does occur and would create a trip hazard for customers." (*Pl. [s] Mem. In Opp'n of Def. [s] Mot. For Summ. J.*); That is not an accurate representation of Mr. Greene's testimony. Mr. Greene merely described what could cause the curling of rugs when asked questions by Plaintiff's Counsel:

- Q. And can you explain what that curling is like?
- A. Just when a rug is weathered or old, the edges typically kind of curl up.
- Q. And does that create a hazard?
- A. It would.
- Q. Can you describe the type of hazard that it creates?
- ...
- A. THE WITNESS: It would be a tripping hazard if it was curled up.

(*Sam Greene Dep.*, 18: 4-15).

Mr. Greene **never** testified that the subject rug was weathered, old, or had edges that curled. Further, Plaintiff states, "the manager did not have any information or knowledge regarding the specific rug involved in this action." (*Pl. [s] Mem. In Opp'n of Def. [s] Mot. For Summ. J.*). Defendant agrees with that notion and suggests that the same rationale holds for Ms. Ballew. Ms.

Ballew nor Mr. Greene were at the scene of Plaintiff's fall.

Plaintiff has also provided an affidavit of David Riley for the first time as an exhibit to her memo. However, Mr. Riley's affidavit is not enough to defeat Defendant's Motion. Mr. Riley's only reference to the condition of the rug are statements that Mr. Sullivan communicated the fall was caused by the rug in the foyer of the store, and that he observed that the rug was crumpled up and lying on the floor inside the door of the store in close proximity to the place where Mr. Sullivan layed injured on the ground. *Pl. [']s] Aff.* ¶¶ 8-9. However, those statements fail to mention that the rug was defective in any way. At most, the affidavit merely states that the rug was crumpled **after** Mr. Sullivan's fall. It explicitly does not state the condition of the rug prior to Mr. Sullivan's contact with it.

As stated above, Mr. Sullivan passed away on August 21, 2020. Before his death, he did not provide any testimony in this case. Moreover, there is no witness testimony of any defective condition of the subject rug alleged in Plaintiff's Complaint prior to Plaintiff's encounter with it. Further, [n]o evidence [is] pointed out which reasonably tends to prove that the [dangerous condition] was on the floor at any particular time prior to [the plaintiff's] actual fall. *Wimberley v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 122, 165 S.E.2d 627, 629 (1969). The jury should not be permitted to speculate that [the dangerous condition] was on the floor for such a length of time as to infer that defendant was negligent in failing to detect and remove it. *Id.*

II. The mat was an open and obvious condition.

Assuming, *arguendo*, that this Court determines the mat was curled and/or defective in some way, the Plaintiff's claims still fails as a matter of law since the alleged condition was open and obvious. As this Court is aware, a merchant does not owe a duty of care for open and obvious conditions. *See Callander v. Charleston Doughnut Corp.*, 305 S.C. 123, 126, 406 S.E.2d

361, 362 (1991). A "possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 331, 673 S.E.2d 801, 803 (2009).

The Decedent fell after tripping on a flat mat while exiting the subject Dollar General premises. There exists no evidence to establish the mat was concealed in any manner. In fact, the security camera footage firmly establishes that the complained of mat was open and obvious when this incident occurred. The security camera footage is attached hereto as Exhibit A. Based on the proximity of the mat to the front entrance, Decedent encountered the mat while entering the store long before the fall occurred. As a result, Plaintiff cannot now argue Decedent was unaware of the mat's location or, if it exists, the condition of the mat when the fall occurred since Decedent encountered it while entering the store. Simply put, the evidence in this case confirms that the mat was not concealed in any manner. Therefore, Plaintiff's claims fail as a matter of law.

CONCLUSION

"Not every accident that occurs gives rise to a cause of action upon which the party injured may recover damages from [someone]. Thousands of accidents occur every day for which no one is liable in damages, and often no one is to blame, not even the ones who are injured." *Young v. Meeting Street Piggly Wiggly*, 288 S.C. 508, 511, 343 S.E.2d 636, 638 (S.C. Ct. App. 1986) (quoting *S. S. Kresge Co. v. Fader*, 116 Ohio St. 718, 724, 158 N.E. 174, 175-76 (Ohio 1927)). Dolgencorp submits it cannot be held liable to the Plaintiff for negligence as a matter of law and a "landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner is on actual or constructive notice." *Larimore v. Carolina Power & Light*,

340 S.C. 438, 445, 531 S.E.2d 535, 538 (Ct. App. 2000). Dolgencorp did not violate its duty to exercise reasonable and ordinary care in keeping its customers safe. Further, South Carolina does not recognize the doctrine of res ipsa loquitur. *Fletcher v. Med. Univ.*, 390 S.C. 458, 463, 702 S.E.2d 372, 374 (Ct. App. 2010).

In the absence of any evidence that Dolgencorp created a dangerous condition or had knowledge of the condition, there is no genuine issue of material fact. Moreover, the evidence confirms the mat was open and obvious and not concealed to Decedent in any way. Therefore, Defendant requests the Court grant Defendant's Motion for Summary Judgment, expressly ruling that Plaintiff has not sufficiently stated nor established facts to support a cause of action for negligence.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Michael M. Trask

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ATTORNEY FOR DOLGENCORP, LLC

September 20, 2022

I. FACTUAL BACKGROUND

On or about June 10, 2019, the decedent Thomas Sullivan was exiting the Dollar General Store located on East Main Street in Rock Hill, South Carolina. Thomas Sullivan was 68 years old at the time of the accident. He was pushing his grocery cart out of the store. In the foyer of the store at the exit, Defendants had placed a poorly maintained rug of indeterminate age in the pathway of all customers exiting and entering the store. Thomas Sullivan tripped due to the poor condition and/or curled end/edge of the rug and fell violently to the floor. The rug was unsecured and lifted from the floor, which caused and increased the severity of the fall. Mr. Sullivan's sister, Martha Sullivan Ballew is the personal representative of the Estate of Thomas Sullivan. She testified at deposition that her brother explained that he tripped due to the poor condition of the rug and the curled edge that he did not see until after he fell. The medical records submitted by Plaintiff also confirm that Mr. Sullivan stated he tripped and fell over a rug at the Defendant's Store and was injured. Due to injuries from the fall, Mr. Sullivan was immediately taken directly from the Store to Piedmont Hospital. He suffered severe injuries from the fall, including without limitation, left hip fracture, left hip and pelvis pain, strain and stiffness. He underwent surgery a few days after the fall and endured several weeks of rehabilitation. The injuries caused an impairment of his gait and interference with activities of daily living, walking instability and weakness.

Thomas Sullivan commenced this case prior to his death. His sister testified at deposition that the increased pain, decreased mobility, and inability to recover fully from the injuries of the fall resulted in increasing hopelessness and depression. On August 21, 2020, Mr. Sullivan committed suicide.

II. GENUINE ISSUES OF MATERIAL FACT RAISED BY EVIDENCE

A. Condition of the Rug

The condition of the rug is the central issue of this litigation. Plaintiff has alleged that the rug was poorly maintained, and the curling and/or other defects of the rug caused the fall. Although Plaintiff has produced substantial evidence supporting allegations of negligence, causation and damages, Defendant continues to deny liability.

The current district manager of the Dollar General admitted during his deposition that curling of the rugs at Dollar General does occur and would create a trip hazard for customers. The manager did not have any information or knowledge regarding the specific rug involved in this action. However, his statements were based on his experience as manager of twenty Dollar General locations. He further testified that inspection of rugs was a task left for cashiers and other non-specialized employees of Dollar General. The Defendant apparently did not preserve the rug that is the subject of this lawsuit and have not produced any records regarding the inspection, age or condition of the rug.

Plaintiff has alleged, that among other acts of negligence, Defendant and Defendant's employees failed to properly maintain, inspect, secure, replace or repair the rug, failed to properly train employees and failed to take proper precaution. Further, Plaintiff alleges Defendant knew or should have known of the hazard and failed to correct or warn invitees, specifically Mr. Sullivan of the hazardous condition created by the unsecured, poorly maintained rug. Here, Plaintiff alleges that the dangerous condition was created by the Defendant when they placed the defective rug at the exit in the path of customers. As stated in the case law discussed in this memorandum, a defendant cannot avoid liability by claiming lack of notice when the defendant created the condition that caused the injury.

In his deposition, Defendant's District Manager stated that he is the district manager for twenty Dollar General locations, including the store at which the incident took place. Sam Greene Dep. 10:2-3. The District Manager stated that all rugs are ordered using the store's POS system, and individual stores make the purchase request as needed. Id. 17:18-23. Based on this testimony from Defendant's own witness, the age of the rug could be easily determined from the Defendant's electronic records. Here, Plaintiff has alleged based on testimony and the video surveillance that the rug was defective. The age and condition of the rug are relevant to Defendant's duty to exercise reasonable care to discover and prevent hazards that could injure business invitees such as the Plaintiff. According to the district manager's testimony, the curling of the rug is most likely to occur when the rug is weathered or old. Id. 18:6-7).

B. Video Surveillance

Both Plaintiff and Defendant rely on the video tape in support of their respective positions. In response to Plaintiff's discovery requests, Defendant produced a videotape of the accident scene, including Thomas Sullivan's fall. Defendant's video surveillance evidence that the accident occurred as Mr. Sullivan alleged. See Plaintiff's Exhibit A, Photographs from Defendant's Video Surveillance. Defendants have also submitted a clip from the video surveillance to the Court. See Exhibits previously submitted by the parties.

The video surveillance itself raises genuine issues of material fact that requires witness testimony and the fact-finding role of the jury for proper resolution. Again, the condition of the rug is the disputed issue. The video tape alone does not fully resolve the issues in the case. There are no up-close shots of the rug from the video surveillance. Rather, the overhead angle of the surveillance shows primarily the top of the rug. The video surveillance does appear to show

visible wear and tear to the rug, especially in the area that Plaintiff alleges caused the fall.

Defendant's District Manager admitted that the folding of the rug as shown in the video tape and pictures could have been caused by the curling of the rug. During the deposition, he viewed the still photographs taken from the video clip provided to the Court and testified as follows: (*Sam Greene Dep. 33:4-12*).

Q. Based on your observations on the picture, did the rug move?

District Manager. The rug didn't slide; it folded. So like I said, it's a movement.

Q. Could that folding of the rug be caused by the—caused by the—I wanted to—caused by the edge of the rug?

District Manager. If the rug is—if the edges of the rug is curled, then that could cause it.

The personal representative of the Estate reviewed the videotape for the first time at the deposition and confirmed that the accident occurred as Mr. Sullivan had described prior to his death. *See Plaintiff's Exhibit B To Memo In Opposition To Summary Judgment Motion, Deposition of Martha Sullivan Ballew (previously submitted)*. As stated, the video surveillance appears to show visible wear and tear to the rug, especially in the area that Plaintiff alleges caused the fall. Additionally, the lack of adherence of the rug to the floor during the Accident suggests that the rubber edging was likely damaged. Also, the Defendant's video surveillance appears to show that the side of the rug that caused the fall was lifted consistent with the decedent's statement that there was some curling or other defect present. As stated, the Defendant's district manager testified that curling of the rugs utilized by Defendant's stores does occur and creates a trip hazard for customers. *Sam Greene Dep. 18:6-15*. The video tape further evidences that there were no signs or warnings of the trip hazard. Additionally, there was no way

for customers, specifically Mr. Sullivan to avoid the hazard created by the defective, poorly maintained, unsecured rug.

In summary, the Plaintiff asserts that the video surveillance produced by Defendant fully supports the statements made by the decedent and the personal representative and other witnesses. Defendant's counsel raised an objection to the testimony of Martha Sullivan Ballew based upon her status as a beneficiary of the estate. However, other disinterested persons who have no blood relationship to the decedent Thomas Sullivan and no beneficiary status confirm statements made by the decedent Thomas Sullivan and Ms. Ballew's testimony that the rug was curled and/or defective and caused the accident. See Plaintiff's Exhibit C, Affidavit of Crystal Stauffer; Plaintiff's Exhibit D, Affidavit of David Riley.

The first person to arrive at the accident scene was David Riley, a friend that drove Mr. Thomas Sullivan to the Store on the date of the accident and witnessed a portion of the Accident. David Riley has affirmed that Thomas Sullivan suffered a violent fall on the date of the accident as a result of the defective rug, and never fully recovered his pre accident mobility. See Plaintiff's Exhibit D, Affidavit of David Riley. Again, witness David Riley's testimony is not precluded by or subject to the Dead Man Statute interested witness objection raised by defense counsel. David Riley confirms the alleged defective condition of the rug. Defense counsel has not taken or requested the deposition of David Riley.

In response to discovery, Plaintiff has provided medical documents, including emergency room and surgical and rehabilitation center records confirming the injuries suffered by Thomas Sullivan, including the fractured hip caused by the fall. These medical documents contain statements made by Mr. Sullivan regarding his slip and fall accident at the Store.

Defendant's District Manager testified in his deposition that the purchase orders for rugs

are made electronically at the store level, Despite discovery requests, as of the date of this filing, Defendant has not provided any documents, testimony or other evidence of the age, condition, inspection or preservation of the rug that is the subject of this litigation.

III. DEFENDANT'S DISCOVERY RESPONSES CONTRADICT DEFENDANT'S DISTRICT MANAGER'S TESTIMONY

At the September hearing on this matter, the Court ordered the Defendant to respond to Plaintiff's supplemental discovery requests which had been submitted to Defendant's counsel in June of 2022. The discovery requests were directly applicable to the condition of the rug. After the Court order, Defendant's counsel responded to the Plaintiff's June, 2022 request via email on October 4, 2022. Defendant's responses to the discovery contradict the deposition testimony of Defendant's District Manager, who manages twenty Dollar General locations . The District Manager testified that each store orders rugs by using the instore POS system, and that rugs are ordered individually by store personnel as needed. *Sam Greene Dep. 17:17-25 through 18:1-3*. He testified as follows: "...a key holder or store manager can go into the computer and order a new rug, really whenever they want. So there is no specific timeframe." *Id.* at 17:20-23.

In contradiction, Defendant responded to Plaintiff Interrogatory Number 7, stating that all rug orders are made in bulk. Plaintiff's Interrogatory Number 7 and Defendant's response was as follows:

Interrogatory 7: State the original purchase date of the rug that is the subject of this litigation and the date the rug was replaced.

Defendant's Answer: "Defendant does not catalog the purchase date of specific rugs since they are purchased in bulk. As a result, Defendant does not have

any responsive information.

In essence, Defendant substantially denied the existence of any available information regarding the rug. Defendant's District Manager for the store stated that the rugs used by Dollar General "curl" with age or weathering. Sam Greene Dep.18:6-15 . In contradiction, Defendant produced a manufacturer specification sheet claiming that the rugs do not curl. The manufacturer specification carries less weight than the District Manager's testimony on the actual performance of the rugs in twenty Dollar General locations. Additionally, Defendant has no support that the rug described in the specifications is the same type as the rug that is the subject of this litigation because Defendant denies that it maintains records of purchase for specific store locations.

These numerous contradictions between the Defendant's District Manager's testimony and the delayed discovery responses raise additional significant issues of material fact regarding the true age, inspection and condition of the subject rug. Additionally, the contradictions raise significant issues regarding Defendant's true operating procedures for maintenance, inspection and replacement of aged and/or defective rugs. This is significant because of Plaintiff's allegations and Defendant's District Manager's testimony that an aged or weathered rug of the type used in Defendant's stores creates a trip hazard. See Sam Greene Dep. 18:4-15. The contradictions further raise significant issues of material fact regarding whether Defendant exercised reasonable care to discover and prevent hazards that could cause injury to business invitees like Thomas Sullivan.

IV. DEPOSITIONS ARE PENDING

The contradictions between Defendant's district manager's testimony and the delayed,

incomplete discovery responses raise issues regarding Defendant's diligence in responding fully and truthfully to the discovery requests. Plaintiff believes that these additional issues require the deposition testimony of the store level employees named by Defendant in the supplemental discovery.

On October 12, 2022, Plaintiff requested that Defendant provide available dates in October or November for the depositions of the store level employees, which Defendant stated are all employed currently by Dollar General. Defendant's counsel responded by email that he would respond back with available dates "ASAP". As of the date of this filing, no dates have been provided by Defendant. Plaintiff therefore requests the Court to permit the additional discovery depositions to resolve the issues and contradictions created by Defendants. Again, these issues highlight the premature nature of Defendant's request for summary judgment. Genuine issues of material fact regarding the condition of the rug remain unresolved. Even absent the depositions, Plaintiff has submitted sufficient evidence, and Defendant has not met the standard for summary judgment. Therefore, summary judgment should be denied at this time.

V. DEFENDANT'S INVALID ARGUMENTS REGARDING NOTICE

The Cook v. Food Lion, Inc., case cited by Defendant in Defendant's Memo In Support of Summary Judgment supports the denial of summary judgment in this case and refutes Defendant's arguments regarding applicable notice requirement. 328 S.C. 324, 491 S.E. 2d 690 (Ct. App. 1998). In *Cook*, the plaintiff fell on a floor mat which Food Lion admittedly placed on the floor for its customers. The Court stated that to "prove negligence, the plaintiff must show *either* that the defendant or defendant's employees created the condition, *or* that the defendant had "notice" of it. *Id.* at 327. When the defendant allegedly "created the dangerous

condition by placing the mats by the exit doors,” the Court stated “it was not necessary for the plaintiff to show that the defendant had notice of the defective condition prior to the plaintiff’s fall. *Id.* at 328. Here, as in *Cook*, the Plaintiff alleges that Defendant created the dangerous condition by placing the allegedly defective rug on the floor at the exit. This fulfils the applicable notice requirement. The Defendant admits that the facts in *Cook* are similar to this case, but Defendant failed to properly state the applicable notice standard which the Court clearly explained in the case. In *Cook*, the Defendant’s motion for summary judgment was denied, and based on this precedent denial of summary judgment is also appropriate in this case.

**VI. HERE, GENUINE ISSUES OF MATERIAL FACT EXIST
PRECLUDING SUMMARY JUDGMENT**

Here, the Defendant has not met the applicable standard for summary judgment. The video surveillance, depositions and affidavits support Plaintiff’s position. Additionally, the Defendant’s unwillingness and/or inability to provide any additional information regarding the age or condition of the rug and the statements contradicting the Defendant’s District Manager’s testimony raises additional issues and disputes. As stated, depositions are pending to further clarify the issues and Defendant has agreed to provide dates. Summary judgment is appropriate only if the moving party clearly shows that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. See SCRCP 56 (c). Summary judgment should be denied if the non-moving party presents even a scintilla of evidence indicating that a genuine issue of material fact is in dispute. See *Hancock v. Mid-South Management Co., Inc.*, 381 SC 326, 330, 673 SE 2d 801, 803 (2009). Even if a dispute exists regarding only the inferences or conclusions to be drawn from evidentiary facts, summary judgment should be

denied. See Montgomery v. CSX Transp. Inc., 376 S.C. 37, 656 S.E. 2d 20 (2008) (citing Wilson v. Style Crest Products, Inc., 367 S.C. 653, 656, 627 S.E. 2d 733,735(2006). Further, the evidence proffered by Plaintiff and all inferences which could be reasonably drawn from the evidence must be viewed in the light most favorable to the Plaintiff as the non-moving party. See Wilson v. Style Crest Products, Inc., 367 S.C. at 656 (citing Hamilton v. Miller, 301 S.C. 45, 47, 389 S.E. 2d 652, 653 (1990).

Case law has firmly established that issues of negligence, liability and causation are inherently questions of fact for the jury. Summary judgment is appropriate only when the evidence is susceptible to only one inference. See Vinson v. Hartley, 324 S.C. 389, 402, 477 S.E. 2d 715, 721 (Ct. App. 1996). Plaintiff has submitted affidavits, testimonial evidence, medical records, and the Defendant's own video surveillance in support of the Plaintiff's allegations. Genuine issues of material fact exist, and Plaintiff has submitted evidence in support of the case. Consequently, the Defendant has failed to provide justification for departing from the well settled position that liability and causation issues remain questions of fact that should be decided by the jury. Accordingly, the Defendant's Motion should be denied.

CONCLUSION

South Carolina courts have consistently held that the drastic remedy of summary judgment should not be utilized to deprive the Plaintiff of a trial on disputed factual issues. See e.g., Cunningham v. Helping Hands, Inc., 352 S.C. 485, 491 575 S.E. 2d 549, 552 (2003)(citing Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E. 2d 606 (2002)(summary judgment is a drastic remedy that should be cautiously invoked so litigants will not be improperly deprived of trial on disputed factual issues): Accordingly, based upon the evidence presented and underlying factual disputes asserted by the parties, the issues should be properly submitted for jury

determination in accordance with applicable standards and Defendant's Motion For Summary Judgment should be denied in its entirety.

RESPECTFULLY SUBMITTED:

s/T. Elaine White
T. Elaine White
Attorney for the Plaintiffs
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P. O. Box 12627
(312 Oakland Ave., 29730)
Rock Hill, SC 29731
(803)326-0000

October 21, 2022

EXHIBIT C—AFFIDAVIT OF WITNESS CRYSTAL STAUFFER*

NOTE—EXHIBITS A AND B (PREVIOUSLY SUBMITTED)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
ESTATE OF THOMAS SULLIVAN)
Plaintiff)
vs.)
DOGENCORP, LLC)
D/B/A DOLLAR GENERAL,)
Defendant

IN THE COURT OF COMMON PLEAS
CRYSTAL STAUFFER

Civil Action Number: 2022-CP-46-0085

AFFIDAVIT OF CRYSTAL STAUFFER

Comes now the affiant, Crystal Stauffer ("Affiant"), and having first being duly sworn and cautioned hereby states the following:

1. That each of the statements set forth in this Affidavit is based upon the undersigned's personal knowledge of the personal injury accident which occurred on or about June 10, 2019, which is the subject of a claim by the Estate of Thomas Sullivan (the "Accident").
2. That each of the statements set forth in this Affidavit is stated to the best knowledge, information and belief of the Affiant.
3. That the undersigned is of legal age and competent to testify to the statements set forth in this Affidavit.
4. That the undersigned was a neighbor and friend of Thomas Sullivan prior to his death.
5. That in June of 2019, the Affiant spoke by telephone with Thomas Sullivan regarding his slip and fall accident at the Dollar General Store located in Rock Hill, South Carolina (the "Store").
6. That at the time of the conversation, Thomas Sullivan was confined at the Encompass Rehabilitation Center in Rock Hill, South Carolina and being treated for his injuries from the accident.
7. That Thomas Sullivan communicated to Affiant that the fall was caused by a defect in the rug in the foyer of the Store.
8. That Thomas Sullivan said to Affiant that the rug was "curled", and this defect caused Mr. Sullivan to trip and fall
9. That Affiant further spoke to Thomas Sullivan after he returned home after being released from Encompass Rehabilitation.
10. That on several occasions, Thomas Sullivan again stated that his fall was caused by the defective rug.

Further the Affiant sayeth not.

" Crystal Stauffer
Crystal Stauffer

Dated: September 30, 2022

SWORN to and subscribed
before me this 30th day of September 2022

Satira D Daughler
Notary Public for South Carolina
My Commission Expires
January 07, 2031

EXHIBIT D—AFFIDAVIT OF WITNESS DAVID RILEY

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
DAVID RILEY

ESTATE OF THOMAS SULLIVAN)
Plaintiff)

vs.)

DOGENCORP, LLC)
D/B/A DOLLAR GENERAL,)

Civil Action Number: 2022-CP-46-0085

Defendant

AFFIDAVIT OF DAVID RILEY

Comes now the affiant, David Riley ("Affiant"), and having first being duly sworn and cautioned hereby states the following:

1. That each of the statements set forth in this Affidavit is based upon the undersigned's personal knowledge of the personal injury accident which occurred on or about July 10, 2019, which is the subject of a claim by the Estate of Thomas Sullivan (the "Accident").
2. That each of the statements set forth in this Affidavit is stated to the best knowledge, information and belief of the Affiant.
3. That the undersigned is of legal age and competent to testify to the statements set forth in this Affidavit.
4. That on July 10, 2019, the Affiant drove Thomas Sullivan to the Dollar General Store located in Rock Hill, South Carolina (the "Store").
5. That Affiant parked outside the Store and waited for Mr. Sullivan to exit the Store.
6. That as Affiant returned to the entrance, Affiant witnessed Thomas Sullivan falling to the ground immediately in front of the Store.
7. Affiant observed that Thomas Sullivan was in pain and unable to get up without assistance due to the fall.
8. Mr. Sullivan communicated to Affiant that the fall was caused by the rug in the foyer of the Store.
9. Affiant observed that the rug was crumpled up and lying on the floor inside the door of the Store in close proximity to the place where Mr. Thomas Sullivan lay injured on the ground.
10. Affiant observed that nothing had stopped the movement of the rug and Affiant believes that the rug lacked any suction or grip to hold the rug to the floor.

11. Affiant observed the pain and distress of Mr. Thomas Sullivan as he waited for the ambulance.
12. Affiant observed that after the Accident, Mr. Thomas Sullivan was unable to fully resume his normal activities, daily tasks and hobbies due to additional impairment of his ability to walk.

Further the Affiant sayeth not.

David Riley
David Riley

Dated: July 12, 2022

SWORN to and subscribed
before me this 12th day of July 2022

Theresa D. Drummond
Notary Public for South Carolina
My Commission Expires
December 17, 2025

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
ESTATE OF THOMAS SULLIVAN,)
)
Plaintiff,)
)
vs.)
)
DOGENCORP, LLC)
D/B/A DOLLAR GENERAL,)
)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS

OFFER OF JUDGMENT

Civil Action Number: 2022-CP-46-0085

Pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, Plaintiff, by and through Plaintiff's undersigned attorney, hereby submits an Offer of Judgment to Defendant, of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), to settle the above-referenced action. This Offer of Judgment is subject to the time limitations and other provisions specified in Rule 68 of the South Carolina Rules of Civil Procedure.

LOVE SLOAN LAW, LLC

s/ T. Elaine White
T. Elaine White,
Attorney for Plaintiff
Love Sloan Law, LLC
Post Office Box 12627
Rock Hill, South Carolina 29731
Telephone: (803) 326-0000

Rock Hill, South Carolina
March 9, 2023

2010) ("a non-moving party may not rely on speculation to defeat a motion for summary judgment"). Furthermore, the South Carolina Dead Man's Statute (S.C. Code Ann. § 19-11-20) precludes Plaintiff from offering any hearsay testimony to try and sidestep or undermine this Motion. As a result, Plaintiff's only offered "evidence" in this case that the mat was curled is: (1) Counsel's own interpretation of the video footage of the fall; and (2) the speculative assertions by an expert witness that the mat was curled despite never inspecting the mat or even stepping foot inside the subject premises. As a result, Defendant's Motion should be granted and this case should be dismissed with prejudice.

Defendant's Motion is based upon the pleadings, discovery, affidavits, exhibits, deposition transcripts, and other admissible evidence as well as the applicable common law and statutory law.

MCANGUS GOUDELICK & COURIE, L.L.C.

s/R. Trippett Boineau, III

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ATTORNEY FOR DOLLAR GENERAL
CORPORATION

October 16, 2023