

**RECEIVED**

**Dec 10 2024**

**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 II**

---

McANGUS GOUDELOCK & COURIE, PLLC  
R. Trippett Boineau, III  
Michael Trask  
Post Office Box 12519  
1320 Main Street, 10th Floor (29201)  
Columbia, South Carolina 29211  
Telephone: (803) 779-2300  
trippett.boineau@mgclaw.com  
michael.trask@mgclaw.com  
*Attorneys for Appellant*

LOVE SLOAN LAW, LLC  
T. Elaine White  
Post Office Box 12627  
Rock Hill, South Carolina 29731  
Telephone: (803) 326-0000  
elaine@lovesloanlaw.com  
*Attorney for Respondent*

**INDEX**

**VOLUME I**

**ORDERS**

Form 4 Denying Defendant’s Motion for Summary Judgment, filed November 15, 2022.....	1
Form 4 Denying Defendant’s Renewed Motion for Summary Judgment, filed February 13, 2024.....	4
Form 4 Denying Defendant’s post-trial motions, filed July 11, 2024 .....	7

**PLEADINGS**

Summons and Complaint, filed December 19, 2019 .....	10
Answer, filed January 23, 2020 .....	18
First Amended Summons and Complaint, filed January 30, 2020 .....	26
Answer to Plaintiff’s First Amended Complaint, filed February 13, 2020 .....	32
Second Amended Summons and Complaint, filed February 9, 2020.....	39
Answer to Plaintiff’s Second Amended Complaint, filed February 9, 2022 .....	46
Defendant’s Motion for Summary Judgment, filed July 7, 2022 .....	53
Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, filed July 12, 2022.....	55
Defendant’s Memorandum in Support of its Motion for Summary Judgment, filed September 20, 2022 .....	129
Plaintiff’s Amended Memo in Opposition to Defendants’ Motion for Summary Judgment, filed October 21, 2022.....	139
Plaintiff’s Offer of Judgment, filed March 9, 2023 .....	157
Defendant’s Renewed Motion for Summary Judgment, filed October 16, 2023 .....	158

**VOLUME II**

Plaintiff’s Memorandum in Opposition to Defendants’ Renewed Motion for Summary Judgment, filed February 6, 2024 .....	160
Defendant’s Motions in Limine, filed June 14, 2024 .....	291
Defendant’s Motion for Judgment Notwithstanding the Verdict or for a New Trial, filed June 28, 2024 .....	296
Plaintiff’s Memorandum in Opposition to Defendants’ Motion for Judgment Notwithstanding the Verdict or for a New Trial, filed July 3, 2024.....	308

**VOLUME III**

**HEARING TRANSCRIPTS**

Transcript of Trial dated June 17, 2024.....	318
Martha Sullivan Blue – Direct .....	337
David Ray Riley – Direct.....	355
David Ray Riley – Cross.....	375
David Ray Riley – Redirect .....	376
Dr. Edward Brown – Direct .....	385
Transcript of Trial dated June 18, 2024 .....	414
Robert McNealy – Direct.....	417
Robert McNealy – Cross.....	452
Robert McNealy – Redirect .....	456
Laura W. Myers – Direct .....	464
Laura W. Myers – Cross .....	473
Brian M. Boggess – Direct.....	485
Brian M. Boggess – Cross .....	493

**VOLUME IV**

**EXHIBITS**

Plaintiff’s Trial Exhibit 1 – Sullivan Medical Records and Provider Affidavits.....	566
Plaintiff’s Trial Exhibit 2 – Sullivan Medical Billing and Provider Affidavits.....	592
Plaintiff’s Trial Exhibit 3 – Dollar General Video Clip of Sullivan Entering .....	703
Plaintiff’s Trial Exhibit 4 – Dollar General Video Clip of Sullivan Accident .....	704
Plaintiff’s Trial Exhibit 5 – Dollar General Full Video Surveillance .....	705
Plaintiff’s Trial Exhibit 6 – Video Deposition of Dr. Edward Brown.....	706
Plaintiff’s Trial Exhibit 7 – Robert McNealy Curriculum Vitae .....	707

**CERTIFICATE OF COUNSEL**

Executed Certificate of Counsel .....	718
---------------------------------------	-----



issues of negligence, liability and causation are disputed based upon the video surveillance, witness and expert testimony. Plaintiff has submitted the video surveillance, Plaintiff and Defendant deposition testimony and affidavits and the affidavit and deposition transcript of Plaintiff's expert Robert L. McNeely in support of Plaintiff's allegations.

The additional evidence and depositions taken after Defendant's prior unsuccessful attempts to dismiss the case further support Plaintiff's allegations. Specifically, Plaintiff's expert Robert McNeely was retained after Defendant's last motion for summary judgment was denied. Defendant claims that the Renewed Motion is due to new evidence. However, the new evidence does not negate the disputes regarding genuine issues of material fact. Therefore, summary judgement should be denied.

**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. Plaintiff's expert Robert McNeely concluded in his report that based on the video surveillance, among other deficiencies, the rug that Plaintiff alleged caused his fall was in a "severe state of disrepair and posed a dangerous and hazardous condition for pedestrians." *See Exhibit A-Affidavit of Robert L. McNeely, page 9; See also, Exhibit B Deposition Transcript of Robert McNeely, pages 36-50.*

The rug was unsecured and lifted from the floor, which caused and increased the severity

of the fall. 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 severely injured. The poor condition of the rug was confirmed by the affidavit and deposition of David Riley, an eyewitness who transported Mr. Sullivan to the Dollar General, assisted Mr. Sullivan after the fall and remained with Mr. Sullivan until the ambulance arrived. According to David Riley's testimony in a series of excited utterances contemporaneously with the fall and at the scene of the accident, Mr. Sullivan indicated that the defective rug caused his fall. *See Exhibit C Affidavit of David Riley; See Also, Exhibit D Deposition Transcript Excerpts of David Riley, pages 29-37.*

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. Disputes Regarding Evidence**

The condition of the rug is a central issue of this litigation. Although Plaintiff has produced substantial evidence supporting allegations of negligence, causation and damages, Defendant continues to deny liability. Plaintiff alleges the poor performance of the rug and the

poor physical appearance of the rug in the video clip of the accident, rug migration, buckling and deterioration, along with the testimony of Plaintiff's witnesses and defendant's witnesses' evidence that the rug was poorly maintained and in disrepair. As discussed later, Plaintiff's expert's testimony affirms the accuracy of these allegations.

Plaintiff's counsel took the 30(b)(6) deposition of Sam Greene, a district manager for twenty Dollar General locations. Mr. Sullivan alleged that the rug was curled/damaged and caused his fall. He made these statements to his relatives prior to his death. Additionally, in a series of excited utterances at the accident scene he clearly communicated to David Riley that the rug caused his fall. Contrary to the Defendant's assertions and discovery responses, Mr. Greene admitted during his deposition that curling/deterioration of the rugs at Dollar General does occur and would create a trip hazard for customers. *See Plaintiff's Amended Memo In Opposition To Defendant's Motion for Summary Judgment, filed with the Court on October 21, 2022.*

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. He however did not examine the actual rug involved. Mr. Greene further testified that inspection of rugs was a task left for cashiers and other non-specialized employees of Dollar General. Further the testimony of the store manager and the district manager affirmed that the rugs/mats in Defendant's store were not maintained in accordance with manufacturer standards. The Defendant did not preserve the rug that is the subject of this lawsuit and has not produced any records establishing the inspection, age or condition of the rug.

#### **B. Expert Witness Disputes**

Based on the testimony of Defendant's witnesses and the video surveillance of the accident, Plaintiff's expert witness concluded as follows:

1. **In the morning of 6/10/2019, Mr. Thomas Sullivan a (then) 69-year-old male tripped and fell on an mat while exiting Dollar General (#4153), located at 1333 East Main Street, Rock Hill, SC 84107 at approximately 11:10 AM.**
2. **The walk off mat was in a severe state of disrepair and posed a dangerous and hazardous condition for pedestrians.**
3. **The Defendant failed to place barriers or warning signs to notify or otherwise protect pedestrians from the hazardous condition of the walkway mat.**
4. **The Defendant violated numerous federal and state regulations and industry standards by failing to maintain their walkway mat in safe condition.**
5. **The Defendant's failure to adhere to federal and state regulations and industry standards constituted negligence.**
6. **The Defendant's negligence is responsible for the Plaintiff's trip and fall and subsequent injuries.**

Plaintiff's expert further concluded that the visual appearance and lack of proper performance of the rug/mat in the video and the deposition testimony of Defendant's employees supported his conclusions that the rug/mat was not maintained in accordance with the manufacturer's requirements set forth in the discovery produced by Defendant. *See Exhibit A, Affidavit of Robert L. McNeely, pages 4, 9-10; See also, Exhibit B-Depo. Transcript 39-50.* "These factors contributed to an unsafe and unstable walking surface that posed risks to anyone traversing the walkway, particularly those with limited mobility, disabilities or visual impairments." *Affidavit of Robert L. McNeely, page 4.*

In contrast to the Plaintiff's expert's emphasis on rug/mat safety standards, avoidance of negligence and protection of customers, Defendant's expert erroneously concluded that any

damage to the rug/mat has to be “significant” before the rug is replaced. *See Exhibit E Deposition Transcript Excerpt of Brian Boggess, page 63:9-65.* This opinion conflicts with the Defendant’s standards set forth in the Standard Operating Procedures produced in discovery, the testimony of the Dollar General district manager and industry safety standards. The Defendant’s expert’s resume and testimony revealed that his primary expertise is in vehicular accidents involving biomechanical engineering components, with little or no direct experience in inspecting rugs/mats.

South Carolina case law reveals the certainty that industry standards are relevant to the issue of negligence. *See Elledge v. Richardson Lexington School District Five, 341 S.C. 473 (2000).* The Defendant’s expert’s testimony revealed a lack of awareness of mat safety standards and an uncertainty that the standards were applicable. This opinion on safety standards conflicts with applicable case law in South Carolina. In *Elledge v. Richardson Lexington School District Five, 341 S.C. 473 (2000)*, the Court stated that “evidence of industry standards, customs and practices is “often highly probative when defining a standard of care for negligence”, regardless of whether the standards have been adopted as law or adopted by the Defendant. *Id. at 477-479.*

Defendant’s expert did not prepare a written report and provided no evidence to support his conclusion that Mr. Sullivan “kicked” the rug. The video surveillance does not show any kicking occurrence, and the medical records indicate that due to his disability, Mr. Sullivan was likely physically incapable of kicking the rug.

Further, the materials on which the Defendant’s expert relied and/or supplied as a basis in forming his opinion supports Plaintiff’s allegations of negligence and liability. An article supplied by Defendant’s expert regarding mechanics of same level falls states that slip and fall accidents are primarily caused by extrinsic factors like the condition of the mat or floor surface,

not the gait of the walker. Specifically, the article stated that an accident “ like a slip or trip is caused primarily by environmental factors, consequently, a claim of negligence is made against the owner or the party in control of the property where the trip and fall occurred.” *See Exhibit E Deposition Transcript Excerpt of Brian Boggess, pages 43:9- 44.* When questioned on this point the Defendant’s expert admitted that his materials included this statement and attempted to disagree with or discredit the article that he has supplied as a basis for his opinion.

Plaintiff has alleged that among other acts of negligence, Defendant and Defendant’s employees failed to properly maintain, inspect, secure, replace or repair the defective rug/mat, failed to properly train employees and failed to take proper precautions. 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 Plaintiff Amended Opposition To Defendant’s Motion For Summary Judgment, a defendant cannot avoid liability by claiming lack of notice when the defendant created the condition that caused the injury. *See Plaintiff’s Amended Memo In Opposition To Defendant’s (First) Motion For Summary Judgment, filed October 21, 2021.*

C. **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 and expert testimony support Plaintiff’s position. 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 SCRC P 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  
Love Sloan Law, LLC  
P. O. Box 12627  
(312 Oakland Ave., 29730)  
Rock Hill, SC 29731  
(803)326-0000

February 6, 2024

**EXHIBIT A—AFFIDAVIT OF ROBERT L. MCNEELY**

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

ESTATE OF THOMAS SULLIVAN,  
Plaintiff,

VS.

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

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action Number: 2022-CP-46-00085

STATE OF UTAH §  
COUNTY OF SALT LAKE §

**AFFIDAVIT OF ROBERT L. MCNEALY**

BEFORE ME, the undersigned authority, on this day personally appeared Robert L. McNealy, who being duly sworn, stated on his oath as follows:

“My name is Robert L. McNealy. I am over the age of twenty-one (21) and have never been convicted of a felony or misdemeanor involving moral turpitude, and I am competent in all matters to make the following statements which are true and correct and within my personal knowledge:

**BACKGROUND & QUALIFICATIONS**

1. With nearly two decades of experience in the flooring industry, I am a highly experienced flooring contractor, certified floor inspector, and certified walkway auditor. I have a comprehensive understanding of a wide range of flooring types, including natural stone tile, mats, rugs, polished and coated concrete, ceramic tile, hardwood flooring, laminate flooring, carpet, and resilient flooring. My inspection training has provided me with a deep understanding

of the proper installation, inspection, and maintenance of these flooring materials, and has prepared me to identify any defects or potential hazards. In 2014, I founded Flooristics, LLC, a company specializing in providing expert witness testimony, certified floor inspections, and walkway audits. As a certified floor inspector, expert witness, and walkway auditor, I focus primarily on slips, trips, and falls, floor system defects, subfloor/substrate failures, and compliance with government and industry regulations and standards such as ADA, ASTM, ANSI, NFSI, MSHA, FRA, and OSHA. In addition, I used to own a retail store, where I owned and maintained commonly used floor mats and was responsible for ensuring that walkways were kept orderly and safe. My experience as a volunteer EMT and firefighter has instilled in me a strong commitment to safety and health, which I incorporate into my work as a certified walkway auditor and certified floor inspector. My experience with architectural and interior design and planning has also given me an exceptional ability to properly specify floor coverings for different applications. As an expert witness, my main role is to assist clients, judges, and jurors in understanding the technical aspects of flooring-related cases. I have a talent for clearly and effectively communicating complex technical information in simple and easy-to-understand terms. Overall, I am proud to offer my expertise and knowledge to clients seeking unparalleled knowledge and guidance in the flooring industry. Please see my attached CV for a full overview of my credentials and experience.

## INTRODUCTION

2. In 2023, I was hired by Love Sloan Law, LLC, representing the Plaintiff, the Estate of Thomas Sullivan, to act as an expert witness in the matter of *Estate of Thomas Sullivan Vs. DOLGENCORP, LLC B/B/A DOLLAR GENERAL*; Civil Action Number: 2022-CP-46-00085; State of South Carolina County of York, In the Court of Common Pleas.

The case involves an incident where Mr. Thomas Sullivan (DOB: 12/30/1950), an adult male over the age of 65 (at the time of incident), tripped and fell on a defective mat while exiting an open-to-the-public discount retail store, and as a result, was severely injured. The incident occurred at the Dollar General (#4153), located at 1333 East Main Street, Rock Hill, SC 84107, on 6/10/2019, at approximately 11:10 AM.

3. I reviewed the following sources of information relevant to this case:

- Video Clip of the Slip and Fall (USB)
- Surveillance Video (Full Video/USB)
- Photographs of Dollar General (Taken 203)
- Photographs from Surveillance Video
- Plaintiff's Motion to Opposing Summary Judgement (Allegations Regarding Negligence)
- Dollar General Incident Report & Denial Letter
- Defendant's Standard Operating Procedure 42 (Floor Maintenance and Mats)
- Defendant-Manufacturer's Description of Rug
- Store Manager Deposition (Laura Meyers)
- District Manager Deposition (Sam Greene)
- Affidavit of Plaintiff's Witness (David Riley)
- Mat Purchase Log History

#### ANALYSIS

4. **CCTV footage shows that the Plaintiff tripped on an unexpected hazard on the walkway.** Upon careful analysis of the CCTV surveillance video footage (*Video Clip of the Slip and Fall*) that was provided, the video depicts the Plaintiff walking out of the exit without any apparent visual cues, warning signs or explicit indications of any potential trip hazards being present. The Plaintiff's trip and fall seems to occur spontaneously and without any evident predisposing factors. The absence of visible hazards or precautionary measures raises questions

about the level of maintenance and proactive measures taken to ensure the safety and accessibility of the premises.

5. **The Defendant failed to adequately maintain their walkways in a safe condition, which caused the Plaintiff's trip and fall.** The collection of daylight photographs and CCTV surveillance video (*Photographs of Dollar General (Taken 2023)*, *Photographs from Surveillance Video and Video Clip of the Slip and Fall*) provide compelling visual evidence regarding the condition of the mat in question. These photographs provide a clear depiction of a mat that exhibits signs of significant deterioration and posed various hazards to pedestrians. Upon a thorough examination of the visual evidence, it was quite evident that the mat had curled edges and wrinkles and displayed visible signs of wear and tear. The mat also easily slid and buckled when walked on, indicating a likely lack of proper maintenance and regular upkeep by the Defendant. This is supported by the store manager, Laura Meyers, (*Page 17, section 20-25 of her deposition transcript*), when asked:

**"Okay. Is there anyone that comes in specifically to inspect the rugs?"**

She responded:

**"No, ma'am. Every day that we walk in, you would inspect the rugs and do your walk of the store because you're walking in the store. They're swept at night."**

Walk off mats need to be cleaned according to the manufacturer's requirements to perform properly and safely. The manufacturer's own documentation (*Carpet Mat Specifications*) states: **"Easy to clean: Just vacuum or hose off and hang to dry."** Sweeping is not listed as a recommended method of cleaning the walk off mat in question. These factors contributed to an unsafe and unstable walking surface that posed risks to anyone traversing the walkway, particularly those with limited mobility, disabilities, or visual impairments.

6. **The Defendant violated federal, state regulations and industry standards.** The Defendant violated the following government regulations and industry standards for walkway safety including:

- **National Floor Safety Institute, B101.6 Standard Guide for Commercial Entrance Matting in Reducing Slips, Trips and Falls, Section 7. Care, Maintenance and Storage of Matting,** states: *“The competent person and/or qualified person shall ensure that entrance mats are cleaned according to the manufacturers’ recommendations to preserve the mat’s effectiveness in removing soil, moisture, and contaminants from footwear.*

*The competent person and/or qualified person shall also implement regular cleaning practices at the facility and daily inspection of mats to ensure that the entrance mats are in a condition sufficient to help reduce soil, moisture, and contaminants from footwear of pedestrians entering their property. Mats exhibiting any defects should immediately be taken out of service and replaced.”*
- **National Floor Safety Institute, B101.6 Standard Guide for Commercial Entrance Matting in Reducing Slips, Trips and Falls, Section 8. Reduction of Hazards Related to Matting,** states: *“The competent person and/or qualified person should take precautions to avoid mats becoming a hazard in and of themselves through regular inspection, particularly during inclement weather. All the following are actions that the competent person and/or qualified person should take to prevent these hazards from occurring.”*
- **National Floor Safety Institute, B101.6 Standard Guide for Commercial Entrance Matting in Reducing Slips, Trips and Falls, Section 8.2 Rippled Edges,**

states: *"When mats ripple, curl or have torn edges the mats should be removed from service and replaced with mats that lay flat."*

- **National Floor Safety Institute, B101.6 Standard Guide for Commercial Entrance Matting in Reducing Slips, Trips and Falls, Section 8.3 Buckling,** states: *"For a buckled mat, either correct the condition that caused the buckle or remove the buckled mat from service and replace it with a suitable mat."* And, *"Buckling can be reduced by increasing the normal force (weight) of the mat. Heavier mats are less likely to ripple than lighter/thinner mats."*
- **National Floor Safety Institute, B101.6 Standard Guide for Commercial Entrance Matting in Reducing Slips, Trips and Falls, Section 8.6 Floor Condition,** states: *"Mats should only be placed on a clean, dry, and Slip Resistant walkway."* And, *"If there is soil on the floor upon which a mat is placed, the mat will have a propensity to slip or migrate. To avoid this hazard, only place mats on clean floors. If the floor is wet, the floor should be dried before installing the mats. If the floor beneath the mat becomes soiled or wet, the mat should be removed, and the floor cleaned and/or dried prior to mat replacement. Slip Resistant walkways are defined in the NFSI B101.1 and B101.3 COF Standards."*
- **The General Duty Clause of OSHA States in 29 U.S.C. § 654, 5(a)1,** states: *"Each employer shall furnish to each of his employees a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."* And **29 U.S.C. § 654, 5(a)2,** states: *"Each employer shall comply with occupational safety and health standards promulgated under this act."*

- **OSHA 29 CFR § 1910.22 General requirements. (a) Surface conditions. The employer must ensure: (1)** states: *"All places of employment, passageways, storerooms, service rooms, and walking-working surfaces are kept in a clean, orderly, and sanitary condition."*
- **OSHA 29 CFR § 1910.22 - General requirements (a) Surface conditions. The employer must ensure: (3),** states: *"Walking-working surfaces are maintained free of hazards such as sharp or protruding objects, loose boards, corrosion, leaks, spills, snow, and ice."*
- **OSHA 29 CFR § 1910.22 General requirements. (d) Inspection, maintenance, and repair. The employer must ensure: (1)** states: *"Walking-working surfaces are inspected, regularly and as necessary, and maintained in a safe condition;"*
- **OSHA 29 CFR § 1910.22 General requirements. (d) Inspection, maintenance, and repair. The employer must ensure: (2)** states: *"Hazardous conditions on walking-working surfaces are corrected or repaired before an employee uses the walking-working surface again. If the correction or repair cannot be made immediately, the hazard must be guarded to prevent employees from using the walking-working surface until the hazard is corrected or repaired; [emphasis added]"*
- **Americans with Disabilities Act (ADA) Standards, Chapter 3: Building Blocks, 302.1 General,** states: *"Floor and ground surfaces shall be stable, firm, and slip resistant and shall comply with 302."*
- **ASTM F1637 – 21, Standard Practice for Safe Walking Surfaces, in Section 5.4.6 Mats,** states: *"Mats, runners, and area rugs shall be maintained so as not to create*

*pedestrian hazards. Mats, runners, and area rugs shall not have loose or frayed edges, worn areas, holes, wrinkles, or other hazards that may cause trip occurrences."*

- **ASTM F1637 – 21, Standard Practice for Safe Walking Surfaces, in Section 5.1.2, states:** *"Walkway surfaces for pedestrians shall be capable of safely sustaining intended loads."*

**7. The Defendant's negligence caused the hazard and the Plaintiff's trip and fall.**

Based on my extensive education, experience, and familiarity with government regulations and industry standards, along with a thorough review of the evidence presented by the Plaintiff's counsel, it is evident that had the Defendant followed the prescribed guidelines and complied with the applicable regulations, the trip hazard responsible for the Plaintiff's fall and subsequent injuries could have been significantly mitigated.

Government regulations and industry standards are established with the primary objective of ensuring the safety and well-being of individuals within various settings. By adhering to these guidelines, entities are expected to implement proactive measures to identify, address, and minimize potential hazards. In this case, the Defendant's adherence to these regulations would have involved conducting regular inspections, performing necessary maintenance, and promptly repairing any identified trip hazards. If any hazardous walkway conditions could not have been immediately mitigated or repaired, the walkway should have been closed to pedestrian traffic.

By diligently following the prescribed protocols, the Defendant would have demonstrated a commitment to fulfilling their duty of care and mitigating risks. This proactive approach aligns with the overarching goal of preventing accidents and injuries, such as the one suffered by the Plaintiff.

Based on the evidence at hand, it becomes increasingly apparent that the Defendant's failure to meet the required standards played a significant role in the occurrence of the accident. Non-compliance with established regulations reflects a lack of diligence in ensuring a safe environment for individuals present on their premises.

Therefore, considering my expertise and analysis of the provided evidence, it is clear that had the Defendant adhered to government regulations and industry standards, they would have implemented the necessary measures to identify and address the trip hazard, thus significantly reducing the risk and preventing the Plaintiff's unfortunate fall and subsequent injuries.

### OPINIONS AND CONCLUSIONS

8. **Conclusions.** Based upon a reasonable degree of scientific certainty, and the information received and reviewed to date, I conclude the following:

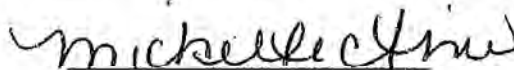
1. In the morning of 6/10/2019, Mr. Thomas Sullivan a (then) 69-year-old male tripped and fell on an mat while exiting Dollar General (#4153), located at 1333 East Main Street, Rock Hill, SC 84107 at approximately 11:10 AM..
2. The walk off mat was in a severe state of disrepair and posed a dangerous and hazardous condition for pedestrians.
3. The Defendant failed to place barriers or warning signs to notify or otherwise protect pedestrians from the hazardous condition of the walkway mat.
4. The Defendant violated numerous federal and state regulations and industry standards by failing to maintain their walkway mat in safe condition.
5. The Defendant's failure to adhere to federal and state regulations and industry standards constituted negligence.

6. The Defendant's negligence is responsible for the Plaintiff's trip and fall and subsequent injuries.

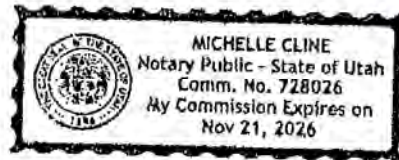
**FURTHER AFFIANT SAYETH NAUGHT**

  
\_\_\_\_\_  
ROBERT L. MCNEALY

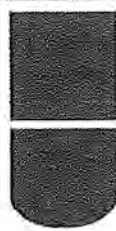
SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on  
this the 5th day of July, 2023.

  
Notary Public, in and for  
the State of Utah

My Commission Expires: Nov 21, 2026



**EXHIBIT B- DEPOSITION TRANSCRIPT OF ROBERT L. MCNEELY**



# Garber

Reporting Service  
& Videoconferencing

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

**ROB MCNEALY**

*August 23, 2023*

**Estate of Thomas Sullivan**

VS

**Dolgencorp, LLC, etc.**

**2022-CP-46-00085**

REPORTER: Donna Currey

1 STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
2 COUNTY OF YORK ) CASE NO.: 2022-CP-46-00085  
3  
4 Estate of Thomas Sullivan, )  
5 Plaintiff, ) DEPOSITION OF  
6 vs. ) ROB MCNEALY  
7 Dolgencorp, LLC D/B/A Dollar ) AUGUST 23, 2023  
8 General Corporation, )  
9 Defendant. )  
10 \_\_\_\_\_ )  
11

12 The video conference deposition on oral examination of  
13 ROB MCNEALY, reported by Donna M. Currey, Court Reporter  
14 and Notary Public in and for the State of South Carolina;  
15 pursuant to Rule 30 of the South Carolina Rules of Civil  
16 Procedure; said deposition was taken via Zoom Video  
17 Conference on Wednesday, the 23rd day of August, 2023;  
18 commencing at the hour of 9:49 a.m.  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

REPRESENTING THE PLAINTIFF:

T. ELAINE WHITE, ESQ.  
Love Sloan Law, LLC  
Post Office Box 12627  
Rock Hill, South Carolina 29731  
(elaine@lovesloanlaw.com)

REPRESENTING THE DEFENDANT:

MICHAEL TRASK, ESQ.  
McAngus Goudelock & Courie, LLC  
Post Office Box 12519  
Columbia, South Carolina 29211  
(michael.trask@mgclaw.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CONTENTS:

PAGE:

Exhibit Index.....	3
Stipulations.....	5
Examination by Mr. Trask.....	5
Certification of Reporter.....	67
Index	

\* \* \* \* \*

EXHIBIT INDEX:

PAGE:

(Copies of exhibits attached to transcript.)	
Defendant's Exhibit 1 .....	17
- Video	
Defendant's Exhibit 2 (8 pages).....	31
- Photos	
Defendant's Exhibit 3 (11 pages).....	32
- Affidavit	
Defendant's Exhibit 4 (9 pages).....	60
- CV	
Defendant's Exhibit 5 (4 pages).....	60
- Testimony List	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\* \* \* \* \*

Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption

... Indicates trailing off

[ph] Denotes phonetically written

[sic] Written as said

## STIPULATIONS

1  
2 This video conference deposition is taken in  
3 accordance with the South Carolina Rules of Civil  
4 Procedure.

5 It is agreed and stipulated by the deponent and  
6 respective counsel that the reading and signing of the  
7 deposition by the deponent is expressly waived.

## WHEREUPON:

8  
9 ROB MCNEALY, being duly sworn and cautioned to  
10 speak the truth, the whole truth and nothing but the truth,  
11 testifies as follows:

12 EXAMINATION BY MR. TRASK: --

13 Q. All right, Mr. McNealy, my name is Mike Trask. I  
14 represent Dolgencorp, LLC, which is the corporate  
15 name for Dollar General. My understanding is  
16 that you've been retained to serve as an expert  
17 witness in this case brought by the Estate of  
18 Thomas Sullivan regarding a trip and fall  
19 incident that occurred in June of 2019 with  
20 regards to a mat. I'm going to call it a mat  
21 today. There's some interchangeable words there  
22 between mat and rug, but I'm going to call it a  
23 mat. Is that your understanding of your role in  
24 this case?

25 A. That is my understanding, and mat is probably the

1 more correct term, but I don't get nitpicky about  
2 stuff like that. But yeah, I call it a mat as  
3 well.

4 **Q. Okay. What is the exact issue with the mat that**  
5 **caused the fall to occur?**

6 A. There's several issues with the mats that all  
7 kind of factor in. So one, I don't believe they  
8 were maintained very well. They probably weren't  
9 cleaned very well. They're offs -- off kilter.  
10 They're not -- and that's indicated that there  
11 was probably a loss of traction under the mat.  
12 Usually that's caused by improper maintenance.  
13 The first mat in the video, which we'll probably  
14 get to at some point in this deposition, there's  
15 clearly very evident wrinkles which is the first  
16 mat that the person walked over and then when the  
17 -- Mr. Sullivan walked over the second mat, it  
18 looks like it also is off skew, which could  
19 indicate that it's lost traction from  
20 maintenance. There does appear to be a wrinkle -  
21 - slight wrinkle in that one. And then it  
22 completely buckled when he slid over it, which  
23 also indicates that the mat probably wasn't  
24 properly affixed to the floor. So there's  
25 multiple things that I would see as issues with

1 the mat, both mats, in fact, at that location at  
2 that time based on the video evidence.

3 **Q. Okay. In coming to those issues or formulating**  
4 **those issues, what have you relied upon?**

5 A. I've relied upon -- in my -- in my report, I list  
6 all the documents that I've read, but I've read  
7 several documents from just normal case filings.  
8 I've looked at the video extensively. I've read  
9 several deposition transcripts, and I've also  
10 reviewed several industry and government  
11 regulations -- industry standards and government  
12 regulations.

13 **Q. What is an industry standard?**

14 A. What is an industry standard?

15 **Q. Yeah. Help me understand that for a little bit.**  
16 **What is an industry standard?**

17 A. Industry standards are best practices put  
18 together by industries on how to do something.

19 **Q. Okay. How does something become an industry**  
20 **standard?**

21 A. That's a very interesting conversation that we  
22 could have, but it could take a long time. But  
23 the general process whether it's like an ANSI  
24 standard or National Floor Safety Institute  
25 standard or ASTM standard, there's -- there's

1 multiple standard writing bodies. And in this  
2 industry, there's several that apply. Generally,  
3 what happens is that some -- generally science --  
4 a problem -- so the process is like this.  
5 Generally when a standard is formed, there's a  
6 problem noticed by somebody in the world.  
7 There's a problem. Someone said, hey, maybe  
8 we're slipping; hey, maybe there's a problem with  
9 this one thing. And so people that have some  
10 concerns about that problem may approach one of  
11 the industry standard writing bodies, and then  
12 the process is pretty extensive and lengthy. And  
13 what they'll do is they'll actually form a  
14 standards writing committee under one of those  
15 industry standard writing bodies, and then  
16 they'll create a consensus meaning from the  
17 industry that's most affected or the people that  
18 are most affected by that standard. And then  
19 they will find experts that volunteer to step up  
20 to help research and solve the problem, come up  
21 with best practices, and then it gets voted on by  
22 interesting -- interested parties or affected  
23 parties. And then eventually, it gets codified  
24 into a standard. And then long term, standards  
25 often get codified into law, but it's kind of

1 like a long process for all that to happen. But  
2 that's the general kind of workflow on how a  
3 standard -- you know, how a problem gets  
4 identified, then becomes a standard, then  
5 eventually becomes law. But generally science is  
6 what the problem comes first, then it gets -- you  
7 know, some science around analyzing that and then  
8 moves on eventually to regulation. It's just a  
9 long process.

10 Q. Okay. I understand, and correct me if I'm wrong,  
11 there were three standards that you were  
12 primarily -- well, three general standards that  
13 you're primarily relying upon. We have the ASTM,  
14 National Floor Institute, and then OSHA. Are  
15 those the three that I think are cited in your  
16 affidavit report?

17 A. Well, OSHA is government regulations. That's --  
18 that's actually further down river from the  
19 standards. So that's actually law. And then I  
20 also reference, I believe, ADA, American  
21 Disability Act, which is also law. So standards  
22 and laws are a little bit different, but they do  
23 interplay.

24 Q. Okay. For the standards then, is it just the  
25 other two that I mentioned, ASTM and the National

1 **Floor Safety Institute?**

2 A. Let's see, because I quoted a lot of things.  
3 Let's see. So I think it was ASTM, National  
4 Floor Safety Institute. I think are the two main  
5 ones that are industry standards, and I might  
6 have referenced -- there's one ASTM, I think I  
7 referenced 16. Yes, 1637. So ASTM, National  
8 Floor Safety Institute are the two main standards  
9 that I referenced.

10 Q. **Okay. The National Floor Safety Institute**  
11 **standards that you site to, have those been**  
12 **accepted in South Carolina as industry standards?**

13 A. I don't know what you mean by -- can you define  
14 what you mean by accepted?

15 Q. **Yeah, are they codified into law?**

16 A. Not that I'm aware of.

17 Q. **How do I know that those standards are applicable**  
18 **in this case other than just the governing body**  
19 **that you're a board member on or you helped found**  
20 **or create and compile these has come up with**  
21 **them? How do I know they apply to this**  
22 **situation?**

23 A. Well, because they're based on science, and it  
24 went through the -- like I explained, it went  
25 through a lengthy process for real world

1 standards. So how, like I said, there's science  
2 that leads the standards, developed by a whole  
3 bunch of different people that are in the  
4 industry affected, and it's tested and meted out  
5 through scientific methodologies and gets applied  
6 and put out to the public and finally published.  
7 So National Floor Safety Industry standards have  
8 been around a long time now. And standards get  
9 revised over time as well. So there's a whole  
10 process, but as far as acceptance, it's not about  
11 whether necessarily they get accepted into law or  
12 not. That still doesn't -- so best practices  
13 aren't always just based on a law. And in fact,  
14 a lot of times legal, you know, government  
15 regulations are lagging when it comes to science.  
16 So there's -- that's why I said it's like a very  
17 long process. But acceptance I don't think it's  
18 the correct term, because standards as best  
19 practices aren't necessarily all codified into  
20 law, let alone at a state by state basis. It's  
21 up to individuals to adopt them and use them and  
22 put best practices into play.

23 Q. Okay. (Technical inaudible) agency ever cited to  
24 the National Floor Safety Institute standards  
25 that you cite to?

1 A. I'm sorry, I didn't hear the first part of that.  
2 Could you repeat, please?

3 Q. Yeah. Has any South Carolina governmental agency  
4 ever cited to the National Floor Safety Institute  
5 standards that you cite to as controlling in this  
6 case?

7 A. I don't know.

8 Q. Has any --

9 A. And I don't know how that would be even relevant.

10 Q. Has any court of law ever found -- in South  
11 Carolina, has any South Carolina court ever found  
12 that the National Floor Safety --

13 MS. WHITE: Objection. The expert here has  
14 been hired to provide an expert opinion. He is  
15 not an attorney and is not expected to provide a  
16 legal opinion on South Carolina law in cases.

17 Q. That's fine. You can still answer the question.  
18 Has any court of law -- any South Carolina Court  
19 of Law ever accepted the National Floor Safety  
20 Institute standards you cite as a controlling  
21 industry standard in a premises liability case?

22 A. I don't know.

23 Q. Do you think that's relevant to you trying to  
24 decide what standards do and do not apply in this  
25 case?

1 A. I don't think that's a correct -- I don't think -  
2 - I don't think that's a relevant question.

3 Q. Unfortunately, you don't get to decide what is  
4 and what is not relevant. The question is, do  
5 you think it's important for you to know whether  
6 or not a South Carolina Court has ever accepted  
7 the standards as controlling in a premises  
8 liability case? It's a yes or no question.

9 MS. WHITE: Objection

10 Q. That's fine. You can still answer.

11 MS. WHITE: You're requiring the expert to  
12 provide a legal opinion. That's not what he was  
13 hired for. And again, I object based on  
14 relevance.

15 MR. TRASK: I don't think you need to object  
16 on relevance. Those are preserved under Rule 32  
17 for trial, and honestly, this isn't a trial  
18 deposition because it's just a discovery depo,  
19 but your objection is noted.

20 Q. You can still answer the question.

21 A. From my -- from my perspective and forming  
22 opinions, I don't care what a judge rules as far  
23 as an industry standard because science is what  
24 is determining what's happening. And so I base  
25 my opinions based on science, not on whether a --

1           you know, a court, a judge or a jury feels one  
2           way or another about a standard. I have to go by  
3           best practices and science so I can be as  
4           objective as I can be. And sometimes, juries and  
5           judges sometimes make the wrong call, and  
6           sometimes they don't understand the science. So  
7           whether or not a court in, you know, some state  
8           somewhere doesn't agree with the science, one,  
9           I'm not aware that they are, but I have to go  
10          with the science because that's where the  
11          ultimate truth is.

12       **Q.    Okay.**

13       **A.    I mean, that sounds like a political question to**  
14       **me. So whether -- it's like, you know, if a**  
15       **politician has an opinion about something, I**  
16       **don't really care. It doesn't matter, because**  
17       **the politician's opinion isn't relevant to --**  
18       **from the standpoint of science.**

19       **Q.    Gotcha. All right. Let's see if I can make this**  
20       **work. Can you see -- I think I've pulled up your**  
21       **affidavit report on my screen. Can you see it?**

22       **A.    I see a window of exhibits, but I don't see the**  
23       **report specifically.**

24       **Q.    Let's see. That's gonna be the problem, I think.**  
25       **Let me see if I can make this work again. That's**

- 1           okay. Do you have your report in front of you?
- 2    A.    I do.
- 3    Q.    Okay. Can you flip with me -- I think it's page
- 4           nine and subheading eight where you have your
- 5           opinions and your conclusions.
- 6    A.    I'm there.
- 7    Q.    Okay. What did you rely on in determining that
- 8           the mat in question was in a severe state of
- 9           disrepair?
- 10   A.    The video, mostly.
- 11   Q.    Is that the video of the fall, or is there
- 12           another video?
- 13   A.    The video of the fall.
- 14   Q.    What specifically in the video led you to believe
- 15           that it was in a severe state of disrepair?
- 16   A.    Well, as I mentioned earlier, in the video, it's
- 17           clear that, you know, the mats have some
- 18           rimpling, and the mats have slid out of place.
- 19           And so there's visual evidence that the mats are
- 20           not a serviceable -- serviceable condition.
- 21   Q.    Have you ever visited the store?
- 22   A.    No, sir.
- 23   Q.    Okay. Do you intend to visit the store?
- 24   A.    I don't think it's relevant.
- 25   Q.    And why not?

1 A. Because the mats that were there at the time of  
2 the accident are probably not there now. So I'm  
3 not sure what else I can gain, but I'm not  
4 opposed to going. You guys want to fly me down,  
5 I'm more than happy to go to the store and take a  
6 look. I just don't know what I can glean from it  
7 that I can't already glean from the data that  
8 I've seen.

9 Q. Do you know how old the mat was that Mr. Sullivan  
10 tripped and fell over?

11 A. I don't.

12 Q. Okay. Let me try this again. I'm trying to get  
13 my screen to work. I might have to jump onto a  
14 different computer here. So bear with me for  
15 just a second if you don't mind.

16 A. The age of a mat doesn't necessarily indicate one  
17 thing or another when it comes to a mat being  
18 serviceable. You can have a newer mat that's  
19 still not serviceable or an older mat that might  
20 be. It just depends on the condition that it's  
21 in. The lifespan of the mats fluctuate  
22 tremendously based on the conditions and  
23 environment that they're placed in.

24 Q. Okay. I'm going to try this one more time and  
25 then if it doesn't work, I might have to take a

1 quick break to jump onto my other computer just  
2 so we can work through this. Let's see. All  
3 right. Is that being played to you now?

4 A. Yes, I do see that.

5 Q. Okay. I'm going to play this in its entirety.  
6 It's 30 seconds, and I just want to make sure  
7 this is the same video that you looked at.

8 (Video Plays)

9 EXAMINATION CONTINUES BY MR. TRASK:

10 Q. Okay. Is this the video that you relied upon in  
11 forming the opinion that the mat was a dangerous  
12 condition or hazardous condition?

13 A. I believe so.

14 Q. Okay.

15 MR. TRASK: We're going to mark this as  
16 Exhibit 1, and I'll just email the exhibits  
17 afterwards and Elaine, I'll put you on the email  
18 so you can see what I'm sending.

19 (DEFENDANT'S EXHIBIT 1 MARKED FOR IDENTIFICATION  
20 PURPOSES - VIDEO)

21 Q. Let's play forward for just a little bit. All  
22 right, and I'm going to pause it right there.  
23 Tell me exactly -- so I'm looking at the mat that  
24 he actually trips and falls on. I know there are  
25 two here. All right. We've got the one inside

1 the store, and then we've got the one by the --  
2 by the kiddie pool just for identification  
3 purposes. When you're looking at this video,  
4 help me understand what exactly in here is  
5 showing you that it is rumpled or that it is  
6 bulging already or that it is in a severe state  
7 of disrepair?

8 A. Well, you can say even -- the problem with the  
9 second mat in this video, and I only -- I didn't  
10 rely on only the condition of the one mat,  
11 because generally mats are, you know, maintained  
12 in the similar, you-know, manner. Number one is  
13 that both mats are askew, meaning they're not  
14 squared, and that indicates movement. It also  
15 violates the policies of Dollar General that  
16 they're not pushed up flush against the  
17 threshold, which is in their own documentation.  
18 If you look at -- so whenever you see a mat  
19 that's sliding, that's a hazard. And so there's  
20 -- there's a couple things that can cause that,  
21 but that's number one. So the fact that the mats  
22 are sliding and not fixed and stable against the  
23 floor, that's a hazard right off the bat. The  
24 first mat certainly has clear curling on the  
25 leading edge and --

1 Q. Hold on one sec, just to interrupt you. When you  
2 say the first mat, just so that we're clear on  
3 the record. The first mat is the one that's  
4 inside of the Dollar General that his cart is  
5 over right now. Is that fair to say?

6 A. Yes.

7 Q. And then mat two is by the actual -- that's the  
8 actual mat that he trips over?

9 A. Correct.

10 Q. Okay, I'm sorry to interrupt you. I just wanted  
11 to make sure that was clear. Okay, go ahead.

12 A. And so and then, the mat in the foreground, the  
13 first mat is -- obviously the video is kind of a  
14 poor quality, but you can clearly see that the  
15 first mat is in a really bad state -- state of  
16 disrepair, that there's curling on the leading  
17 edge in multiple locations. And then on the  
18 second mat, besides being not askew, looking at  
19 when we move forward, there's some frames where  
20 you can see what looks like curling. It's a  
21 little hard to see, but it's shadows. Usually  
22 are indicative of a little bit of an edge curl,  
23 because it doesn't take much of an edge curl to  
24 create a hazard, but the second rug from this  
25 video isn't as clear there but the shadows are

1 clear. So that indicates to me that there's a  
2 likely also a curling on the second edge and  
3 given the presence of the first, I'm going to go  
4 with that the likelihood that there's also  
5 curling on the second edge, better than not.

6 Q. Okay. And you said that I should be able to see  
7 the shadows as we play the video?

8 A. Yeah.

9 Q. Is that the case?

10 A. Yeah.

11 Q. Okay. I'm going to play it. Tell me when to  
12 stop it if you don't mind.

13 (Video plays.)

14 A. So you can you can already see if you look, it  
15 kinda looks like -- so I'm pointing right now to  
16 the bottom or the leading edge of the second  
17 video -- your mouse is right there. So you look  
18 at it kind of looks like it's -- there's a little  
19 shadow across different spots, and part of this  
20 is what happens is when sunlight is bouncing off  
21 a little shiny edge, because the edge of these  
22 mats is generally an SBR or nitrile rubber and it  
23 has a little bit of a reflective property. And  
24 so when the sun's hitting it, it kind of bounces  
25 a little bit and creates a shadow, and that's why

1 it looks a little pixelated when you have a low  
2 res camera like this. But right where you -- so  
3 right here on this frame, please don't move it.  
4 If you look to the left, so when his shopping  
5 cart started going out, it changed the -- it  
6 changed the shadow a little bit, and you can see  
7 in the bottom left hand corner of the mat, the  
8 second mat, right next to his left foot going  
9 forward there's that shadow. And to me, once he  
10 gets -- so that's not pixelated right there.  
11 That looks to me like there's probably curling  
12 right there based on the shadows on that second  
13 mat.

14 Q. When you say the shadow where my mouse is, are  
15 you talking about this little area right here?

16 A. Yes, sir.

17 Q. Okay. All right, not the left corner, this kind  
18 of --

19 A. Well the left corner --

20 Q. -- like --

21 A. I'm saying the second mat is not super clear. We  
22 all agree on that. But that mat is off kilter.  
23 So there's already a hazard on that mat, which --  
24 and -- but in looking at the shadows right there,  
25 that indicates that there's probably curling and

1 other edges that are issues. If you look at the  
2 upper right hand corner, right next to the door,  
3 that's also more pronounced, which looks like  
4 that's curling as well.

5 Q. Let me ask you, let's back it up for a second. I  
6 just backed it to zero. Is there anything  
7 obstructing Mr. Sullivan's view from seeing the  
8 mat and -- the second mat, mat two?

9 A. Obstructing?

10 Q. Do you think it's hidden in any way?

11 A. If it's not -- so if it's -- so it doesn't take  
12 much to create that little shadow, and it doesn't  
13 take much as far as an edge curl to be a hazard.  
14 And you -- and it's not always obvious to people  
15 that that hazard is present even though it is.  
16 So I can't state what Mr. Sullivan did or didn't  
17 see, because some of these hazards are more --  
18 can be very subtle. If this is the minor amount  
19 of edge curling. So I can't speak to what Mr.  
20 Sullivan did or didn't see. And there's other  
21 factors on what people see. As we get older, our  
22 eyes don't take in light as well. Our depth  
23 perception kind of decreases over time. So I  
24 can't speak for what Mr. Sullivan did or didn't  
25 see.

1 Q. Let me ask you just -- I understand the shadow  
2 but the mat as a whole, do you think the mat is  
3 hidden or concealed in any way?

4 A. Do I think the mat is hidden? No.

5 Q. Okay. It's a pretty open and obvious condition.  
6 Would you agree with me as to that?

7 A. I don't know what you mean by open.

8 MS. WHITE: Objection.

9 Q. Okay. How did Mr. Sullivan get into the Dollar  
10 General?

11 A. From my understanding, he walked over that same  
12 mat.

13 Q. Okay. Would you agree with me then that he knew  
14 the mat was there since he had to walk over it?

15 A. Do I agree that the mat was there? Yes.

16 Q. No, do you agree that he would have known the mat  
17 was there since he had to walk over it?

18 A. I have no idea if he recalls it, because most  
19 people don't pay attention to things like that.  
20 You know, until it matters. So I would assume he  
21 would probably have noticed the mat when he  
22 walked over, but I never got the opportunity to  
23 speak to him.

24 Q. Do you think Mr. Sullivan had a duty to look at  
25 the mat before stepping on it?

1 A. A duty?

2 Q. Yeah. Do you think he had a duty to protect  
3 himself, a duty to make sure that what he was  
4 stepping on was -- let's say what you're saying -  
5 -

6 MS. WHITE: Objection. Again, you're asking  
7 the expert for a legal opinion. We're here today  
8 to provide his expert opinion both on the  
9 condition of the rug and the causation for the  
10 fall. Not upon legal opinions.

11 MR. TRASK: Listen, that's fine. You don't  
12 need the speaking objections. And if we're going  
13 to continue with the speaking objections, we can  
14 call a judge and get them to rule on it. But  
15 you're influencing testimony.

16 MS. WHITE: My objection is to make note,  
17 Michael.

18 MR. TRASK: I'm just letting you know you  
19 can object, and simply saying object to the form  
20 preserves what you're trying to preserve. You  
21 don't need to influence the witness with -- with  
22 your speaking objections. So just say object to  
23 the form moving forward, please.

24 Q. Do you think, and we'll still answer the  
25 question. All right. Let's assume what you're

1 saying is true in that there is some shadowing  
2 here and that it is curled up, right, based on  
3 this video. Do you think that Mr. Sullivan had a  
4 duty to look and make sure the mat was flat  
5 before he stepped on it?

6 A. No.

7 Q. Why not?

8 A. Because duty is a legal argument and a legal  
9 construct, and the only people in this  
10 conversation or in this incident that have a  
11 duty, which is a legal obligation, would be the  
12 facility which would be Dollar General.

13 Q. So --

14 A. And that is to provide a safe walking  
15 environment.

16 Q. So people do not have a duty to watch where  
17 they're walking?

18 A. Duty is a legal construct. So if you're using  
19 the word duty, I would say no person has a duty,  
20 because that's a legal term. That's a loaded  
21 legal term. Do they have -- so no.

22 Q. Okay. Should he be watching where he's walking?

23 A. Should he be watching where he's walking?

24 Q. Uh-huh (affirmative response).

25 A. Even if he was walking -- so even if he was

1 watching where he's walking, that doesn't mean  
2 he's going to know that the mat's hazardous. It  
3 requires special training to understand what  
4 might be a hazardous mat and not a hazardous mat  
5 that most normal people don't have that training.  
6 They're not going to be aware of that hazard.  
7 That's why the obligation to provide a safe  
8 environment rests with the individual stores and  
9 facilities that have people, invitees coming in.  
10 That's why they have that obligation, because  
11 they do have that training or should have that  
12 training and knowledge, but individual people  
13 don't have training and floor safety or mat  
14 safety. That's not even reasonable to expect  
15 that.

16 Q. Let me show you these photos real quick, and  
17 we'll march on. Bear with me. This laptop is  
18 awful.

19 A. It happens.

20 Q. All right. Can you see my -- the photos on the  
21 screen?

22 A. I do.

23 Q. Okay. These appear to be taken on March 3, 2023.  
24 Do you know who took these photos?

25 A. I don't.

1 Q. Who were they sent to you? Or who sent them to  
2 you?

3 A. Everything I got was from Elaine.

4 Q. Okay. Did you rely on any of these photos in  
5 forming your opinion? And I can scroll through  
6 all of them. I think there's eight.

7 A. I perused them, but no, because these aren't even  
8 the same mats.

9 Q. Okay.

10 A. Or at least this picture isn't the same mat.

11 Q. Let's look at this one. Do you know, is that the  
12 same mat? This is photo number two?

13 A. I don't believe it is.

14 Q. Okay. Why not?

15 A. Because there's no curling on the front, and once  
16 a mat starts to curl, it doesn't go away. It  
17 needs to be taken out of service. When an edge  
18 on a mat is curled at all, it's going to be a  
19 permanent problem and that mat needs to be  
20 removed. This mat there does not have that  
21 curling, so I don't think that's the same mat.

22 Q. Is there a specific height -- so in regard to  
23 curling, is there a specific height that you have  
24 to look for to say it needs to be taken out of  
25 service or is it just the second it starts

1       curling at all?

2       A.    The second it starts curling at all, it creates a  
3       trip hazard.

4       Q.    Okay. All right. And in the second that it  
5       starts curling at all, is that from the National  
6       Floor Safety Institute, or is that from the ASTM  
7       standards?

8       A.    I think most of those regulations and standards  
9       kind of overlap in that regard.

10      Q.    Okay. Which standards specifically with the  
11      National Floor Safety Institute are you relying  
12      on for the second it starts to curl that you have  
13      to take it out of service?

14      A.    The second it starts to curl? So that starts to  
15      get loaded again. They have an obligation to  
16      make it safe and to make sure that they do visual  
17      inspections and most of the -- none of them use  
18      the term the second like I did. So they have an  
19      obligation to remove those mats and make sure  
20      that their mats are safe all the time. That  
21      doesn't go away. So when I say the second it  
22      starts happening means that they need to be  
23      checking that stuff every day and making sure  
24      that it's okay, because these things pop up and  
25      whenever you have people coming into an

1 environment like that or to your store, you've  
2 got to make sure that the mats are safe.

3 **Q. Do you know how often the mats were checked back**  
4 **in 2019 when the incident occurred?**

5 A. Well, according to the deposition transcripts of  
6 Laura Meyers and what's his name -- I'm blanking  
7 on his name, the regional manager, Sam Greene,  
8 that they were done on a daily basis.

9 **Q. Is that not sufficient to be checking them on a**  
10 **daily basis?**

11 A. Well, it depends on who's checking and how  
12 they're checking. If -- the fact that that first  
13 mat has that curl, that big of a curl, doesn't  
14 look like they're checking it on a daily basis,  
15 because curling doesn't get that big on it over  
16 the course of one day. It usually takes time for  
17 it to get there. So there's -- so that means  
18 that mat should have been taken out of service  
19 much earlier than it was just to get to that  
20 level of, you know, having a problem with that,  
21 you know, curling.

22 **Q. When we talk about the first mat, how large was**  
23 **the curl in inches?**

24 A. I can't see, so I can't give you an exact number  
25 but from a visual -- more than one.

- 1 Q. Did you take any measurements?
- 2 A. I didn't measure it. I don't have the ability to  
3 measure that, because the mat is not available  
4 for me to measure.
- 5 Q. So when you said more than one inch, is that just  
6 you eyeballing it from the video?
- 7 A. Yes.
- 8 Q. Okay. How large were the curls on the second  
9 mat, the mat that Mr. Sullivan actually tripped  
10 and fell over? How high off the ground were  
11 those curls?
- 12 A. I don't know.
- 13 Q. Okay. Did you --
- 14 A. But it doesn't matter, because any curling is too  
15 much curling.
- 16 Q. Okay. So --
- 17 A. Any edge lift is too much edge lift, because any  
18 of it creates a hazard. So it doesn't matter if  
19 it's a half an inch, an eighth of an inch or  
20 three inches. It's all a hazard and should be  
21 pulled out of service.
- 22 Q. What if it is one-96ths of an inch?
- 23 A. Probably hard to tell, but it depends on the  
24 person.
- 25 Q. What if it's one-482nds of an inch?

1 A. I don't even know how to measure that.

2 Q. I don't either, but you're saying any -- any  
3 height, so that's what I'm curious here. Does  
4 there come a point where it's so minuscule that  
5 the height doesn't matter, or is it just the  
6 second you see any type of space in between, it  
7 must be taken out of service? And I realize that  
8 that isn't used in the standards. I realize I'm  
9 saying that, so I'm not holding you to a second.

10 A. I mean that's a little obnoxious, right? That's  
11 one of those real kind of like, let's be an edge  
12 Lord kind of thing. No, I would say generally  
13 from a standing position if you can see any edge  
14 curl that would be reasonable for a competent or  
15 responsible person or whoever is responsible for  
16 floor and mat safety, if they can see a visible  
17 curl, a visual curl from a standing position,  
18 that's generally the standard by the way that  
19 we're taught in walkway auditor school or floor  
20 inspector schools is generally from a standing  
21 position if you can see any kind of edge curl,  
22 it's probably an issue.

23 (DEFENDANT'S EXHIBIT 2 MARKED FOR IDENTIFICATION  
24 PURPOSES (8 pages) - PHOTOS)

25 Q. Okay. Let me see if I can do this again. I

1 apologize for all the technical stuff here.

2 Okay, can you see that now? I think this is your  
3 affidavit report that was produced to me.

4 A. Yes.

5 (DEFENDANT'S EXHIBIT 3 MARKED FOR IDENTIFICATION  
6 PURPOSES (11 pages) - AFFIDAVIT)

7 Q. Okay. What I'm going to do is -- so it goes one  
8 through 11 here. I'm just going to go through  
9 very quickly. Tell me if I'm scrolling too fast.  
10 Tell me if this looks like it's been changed at  
11 all. I just want to make sure this is the report  
12 that you know and you have and that it has not  
13 been altered in any way and that it's accurate.

14 A. Well, I don't know if I can say, you know, 100  
15 percent that it hasn't been changed unless I read  
16 the whole thing and compare note to note, and  
17 that would probably take a lot of time, but I  
18 don't see -- like if you scroll all the way to  
19 the bottom, I don't see anything that seems to be  
20 incorrect from my original.

21 Q. Well, and I will tell you I have not altered it  
22 in any way. One I'm not, and I think I've proven  
23 this on this deposition, I'm not technologically  
24 capable of doing that.

25 A. Somebody is.

- 1 Q. Somebody might be. But two, I have not. Do  
2 these seem to be the opinions that you have  
3 formed? Here's one through five. Read those  
4 real quick and just tell me if they're different,  
5 and then I'll scroll to page 10 for number six.
- 6 A. They look correct.
- 7 Q. Okay. And then this should be number six.
- 8 A. Yes. Correct.
- 9 Q. Okay. Are there any prior drafts of this  
10 affidavit report?
- 11 A. No.
- 12 Q. Okay. Are you the only person who helped  
13 complete this or did somebody else help you  
14 complete it?
- 15 A. Well, my wife helped edit it a little bit. She  
16 tries to find my typos for me.
- 17 Q. Okay. But she didn't, I'm assuming, add anything  
18 substantive. It's just --
- 19 A. No.
- 20 Q. -- a comma in the right place, comma in the wrong  
21 place, use the semicolon and stuff like that?
- 22 A. Correct.
- 23 Q. Okay.
- 24 A. We argue about Oxford commas a lot.
- 25 Q. Are you an Oxford comma guy, or are you not an

1 Oxford comma guy?

2 A. I'm Gen X man. I like Oxford commas, but my wife  
3 writes -- my wife's a medical doctor, and she  
4 writes all sorts of long lengthy reports for her  
5 world. So she doesn't like Oxford commas  
6 anymore.

7 Q. That's fair, I'm in Oxford comma, guy. Another  
8 attorney here is anti Oxford comma. Not that  
9 that matters to this, but it's kind of funny that  
10 that's such a thing. All right, this right here  
11 looks to be these are the sources of information  
12 that you reviewed. -- Outside of this list, have  
13 you reviewed anything else?

14 A. No, sir.

15 Q. Okay. And this is the photographs that Dollar  
16 General had taken 203; I think that's supposed to  
17 be 2023.

18 A. Yeah, I think that's a typo I missed, sorry. So  
19 other than, you know, I looked at some of the  
20 standards that are also -- that we -- I sent  
21 along with it. So I don't always include the  
22 standards, but it's just stuff I look at it on  
23 all these things. But so yeah, so I technically  
24 I did look at some of the standards when I was  
25 also writing this, but these are the documents

1 from -- that are specific to the case that I  
2 looked at.

3 Q. Okay. The photographs from the surveillance  
4 videos, is that the -- when you say surveillance  
5 video, is that the video of the slip and fall or  
6 what is the surveillance video?

7 A. Of the slip -- the trip and fall.

8 Q. Okay.

9 A. The video that we just looked at.

10 Q. Okay. And what I'm trying to figure out is  
11 clearly someone went and took photos in March of  
12 2023. And so was there a video that was sent to  
13 you from March of 2023 of some inspection that  
14 might have occurred?

15 A. Off the top my head, I think -- I don't recall if  
16 there was a specific video. There might have --  
17 maybe. No, I don't think there was a video.

18 THE WITNESS: Was there Elaine?

19 MS. WHITE: No, it was the photographs from  
20 the Defendant's surveillance video.

21 A. Yeah, so there was a video. I just don't think  
22 there was a later video.

23 MS. WHITE: Mike, they would specifically be  
24 screenshots is what he's referring to.

25 A. Yeah.

1 Q. And that's what I figured, okay. All right. So  
2 let's go down through this. Do you believe that  
3 there was a warning sign that needed to be posted  
4 for the second mat?

5 A. It would be helpful if there's a hazard present  
6 that it wasn't identified. Yes, there should be  
7 some kind of notice that there's going to be a  
8 hazard present for all people coming in. If  
9 there's hazards, you should identify them and let  
10 people know.

11 Q. Okay. Let's see. All right. Let's get into the  
12 standards a little bit here just so I can  
13 understand them. So the National Floor Safety  
14 Institute B101.6. What evidence do we have that  
15 they weren't properly cleaned?

16 A. So, as I stated in my affidavit, the depositions  
17 of Sam Greene and Laura Meyers state that they,  
18 you know, swept the actual mats on some regular  
19 basis. The manufacturer of this suggests that  
20 they need to be vacuumed and/or hosed off, and  
21 there's specific reasons for that when it comes  
22 to mats. So -- and that goes back to why I  
23 believe the maintenance was a problem here is  
24 that because these mats are designed to not  
25 slide, because they're made of SBR rubber or

1 nitrile rubber. In this case, they're SBR rubber  
2 which is like this -- like high traction bottom  
3 of these mats. They're designed to not slide.  
4 What can happen though is that if the mats are  
5 not cleaned on a regular basis and the floor that  
6 they're placed on, on a regular basis, are not  
7 cleaned, it gets contaminated with dust and  
8 debris, and the mat loses its traction. So  
9 whenever you see a mat sliding around, one of  
10 these mats typically when they're sliding around  
11 on concrete, what's happened is the back of that  
12 mat got contaminated. And to -- you have to  
13 remove that contamination best with vacuuming,  
14 but in these cases a lot of times you have to go  
15 and hose them down and let them dry before you  
16 place them back down and then also clean the  
17 floor where they're going to go. So that floor -  
18 - so that mat kind of stays put and is stable and  
19 is affixed to the ground. In this case, the fact  
20 that both mats are askew indicate that they're  
21 not properly being maintained and they are  
22 sliding around, which is -- is an issue, and I do  
23 believe it's an issue that directly impact why  
24 Mr. Sullivan tripped.

25 Q. Okay. Do you think -- well, let me ask this. So

1 we've talked about how they're not completely  
2 centered; they're askew. Do you think that they  
3 were laid down that way, or do you think that as  
4 customers were walking over those mats, they were  
5 sliding over time?

6 A. Probably they were sliding with traffic, but even  
7 Dollar General says they should be pushed against  
8 the threshold and squared up.

9 Q. Do you know how many people walked over those  
10 mats before Mr. Sullivan encountered it?

11 A. I do not.

12 Q. Okay. Do you know any other people who tripped  
13 and fell that morning on either mat before Mr.  
14 Sullivan encountered it?

15 A. I don't.

16 Q. Do you know how much dust was on the back of the  
17 second mat prior to Mr. Sullivan encountering it?

18 A. I don't have to know that there's -- how much  
19 dust is on there to know that the mat moved.

20 Q. Okay. So basically, it's just there must be  
21 dust, because the mat moved? Is that fair? Is  
22 that the fair way that you're saying?

23 A. Part of it. That's absolutely -- it's a high  
24 likelihood, yeah.

25 Q. How much dust needs to be on the back of the mat

- 1 to decrease the ability of the mat to stay put?
- 2 A. Any amount of dust will decrease its traction.
- 3 Q. Okay. So one speck of dust could decrease the
- 4 entire mat's traction?
- 5 A. One specs worth, but yes.
- 6 Q. Okay.
- 7 A. When it comes to measuring coefficient of
- 8 friction, you know, dust and debris can act like
- 9 a lubricant. And so it just -- how much it's
- 10 going to, you know, affect it is going to be
- 11 determined by how much dust is there.
- 12 Q. Do you know what the coefficient of friction is
- 13 for the floor where the mat was?
- 14 A. I haven't tested it, no.
- 15 Q. Okay. Are you going to test it?
- 16 A. I could, but I don't -- it's not -- I don't think
- 17 it's relevant for this case.
- 18 Q. Does that not matter when we're trying to decide
- 19 whether or not the mat -- how much dust would be
- 20 -- need to be there for it to be sliding?
- 21 A. No.
- 22 Q. Okay. Would the sweeping -- I think Miss Meyers
- 23 said that she would sweep the mats or somebody
- 24 would sweep the mats. Does that not also clean
- 25 it and help -- help with the traction?

1 A. Well, if you sweep the top of the mat, it might  
2 help traction on the top of the mat, but that's  
3 not going to help the traction of the mat staying  
4 in place over the concrete at the time on the sub  
5 floor.

6 Q. Do you know did she ever sweep the bottom of the  
7 mat?

8 A. I have no idea.

9 Q. Okay. Was that question asked in her deposition?

10 A. I don't know if it was. I don't recall that  
11 being asked specifically, but the manufacturer  
12 doesn't say sweep the mat. The manufacturer says  
13 vacuum or hose it.

14 Q. Okay. Let's see. Let's go to the second one  
15 here. Qualified persons should take precautions  
16 to avoid mats to become a hazard in and of  
17 themselves through regular inspection,  
18 particularly during inclement weather. Do you  
19 think there were regular inspections of the mats  
20 before this incident occurred?

21 A. Do I think? Well, they said they did regular  
22 inspections, but given the condition of the mat  
23 I'm not sure they did them very well.

24 Q. Okay. How should one inspect a mat?

25 A. Well, you -- the main way is visually inspect it.

1 And then when you see a hazard, you remove the  
2 mat or correct the hazard. And that wasn't done  
3 in this case.

4 Q. Is it possible that the curling began after the  
5 mat was put down for the day?

6 A. Well, not -- no, because the amount of --

7 Q. Why not?

8 A. Because the amount of curling in the mat doesn't  
9 occur that quickly.

10 Q. Okay.

11 A. It takes a lot more time for that level of the  
12 curling to occur, over days, weeks and months.

13 Q. And what was the measurement of curling again on  
14 the mat, mat number two?

15 A. As I said, I didn't measure that, so I don't  
16 know.

17 Q. Okay. How long do you think it was curled like  
18 that for?

19 A. I have no idea.

20 Q. Okay.

21 A. I have no way to know how much or how long, but I  
22 can say on the first mat where they have a really  
23 large curl, that's going to take some time.

24 Q. Did Mr. Sullivan trip and fall over the first  
25 mat?

1 A. No.

2 Q. It was the second mat, right?

3 A. Yes.

4 Q. Okay. Do we have any measurements related to the  
5 second mat at the height of the curl?

6 A. We don't have measurements of either mats.

7 Q. Okay.

8 A. Because any curling present is a hazard, I don't  
9 need to measure how much. The presence of  
10 curling is the hazard. The presence of mats  
11 being askew and sliding are the hazard. The fact  
12 that someone crossing over a mat and can move it  
13 from crossing over it is the hazard. That's what  
14 my report is based on. It's not based on an  
15 eighth of an inch or three inches of curling.  
16 It's based on multiple factors that those mats  
17 were not maintained within proper standards or  
18 government regulations.

19 Q. Okay. How much force does it take to curl the  
20 mat when a foot hits it?

21 A. How much force?

22 Q. Yeah. Is there any sort of measurement we can do  
23 to determine how much force it takes to curl a  
24 mat?

25 A. I don't know. I don't know of any such test for

1 a mat. My light just went crazy.

2 Q. Oh, do you need a second?

3 A. No, let me see if I can just shut one of these  
4 off. No, that's all right. Just a little bright  
5 right now.

6 Q. Okay. Just let me know. We can take a break  
7 whenever you want to.

8 A. No. That's fine. We can go.

9 Q. Okay. Let's see. OSHA. Do you know were there  
10 any OSHA violations related to this incident?

11 A. I believe that they violated some elements of  
12 walking and working surfaces. Yes.

13 Q. Okay. And that's just because the video, you  
14 believe, shows a curl?

15 A. No, it's because the video shows several other  
16 issues beyond just a curl.

17 Q. Okay. And help me understand, what are the other  
18 issues besides the curl?

19 A. We have curling that's present. We have the mats  
20 that are askew, and then in the final one, when  
21 Mr. Sullivan crossed the mat, the mat completely  
22 bunched up, buckled, went under, you know, a  
23 little bit of drag. And so, the mats are not  
24 supposed to be able to be moved when you're  
25 walking over them. They're not supposed to move.

1 That makes them dangerous.

2 Q. Is there a certain measure of movement that  
3 create -- that makes it dangerous or is it just  
4 any movement at all?

5 A. Any movement would make it dangerous.

6 Q. Okay. Do you know, has Dollar General received  
7 any OSHA citations or violations related to the  
8 mats?

9 A. I'm unaware of any.

10 Q. Did you research that at all?

11 A. I did not.

12 Q. Okay. All right. - ASTM F1637-5.4.6. Based on  
13 the video, do you believe there are any frayed  
14 edges, holes or wrinkles, worn areas? I guess  
15 the wrinkle, that would be the curling we've  
16 talked about, right?

17 A. Yes, wrinkles, curling were both present.

18 Q. Okay. Frayed edges, did you see any frayed  
19 edges?

20 A. Not from the video.

21 Q. Okay. Any worn areas that you could see?

22 A. Specifically, the first mat looks like it's  
23 probably a bit worn. But the first part of the  
24 standard is not just about those specific  
25 individual things in general, because a lot of

1 these standards go from a general to sometimes  
2 more specific, but mats, runners and area rugs  
3 shall not be maintained as not to create a hazard  
4 -- to create pedestrian hazards. That's number  
5 one. These mats were both -- both those mats,  
6 not just one, both of those mats were hazardous.  
7 And that is a violation of ASTM 1637.

8 Q. Does it matter that no other customer tripped and  
9 fell over the mat? Mat number two?

10 A. Not to Mr. Sullivan.

11 Q. Well, I understand that. But I'm just saying  
12 when we're sitting here talking about a hazardous  
13 condition, I mean, does it matter that, you know,  
14 X amount of people were able to safely navigate  
15 the mat?

16 A. No.

17 Q. Does that not indicate that the curling was not  
18 significant enough to warrant it being taken out  
19 of service?

20 A. No, and I got a great -- so it's interesting. I  
21 had a different case, and it is relevant to this  
22 case where they had a very lengthy high def  
23 surveillance video of an incident for like an  
24 hour, and I spent like four hours analyzing this  
25 video. And during the course of this video,

1 which had similar mat related problems, I counted  
2 three almost -- so we had a severe injury from a  
3 trip and fall and two other people in the course  
4 of one hour almost fell but didn't. Like one  
5 person caught themselves, another person saw it  
6 and walked around it. So the problem is when you  
7 create a hazard, it doesn't matter -- it's not --  
8 it's not a hazard if only someone fell, right?  
9 That's -- that's nonsense. It's a hazard  
10 regardless if someone falls. And honestly, it's  
11 just, you know, it's dumb luck if someone else  
12 didn't fall, because the hazard is present. And  
13 the longer the hazard is present, the more likely  
14 someone is going to fall and eventually, Mr.  
15 Sullivan did fall. And so whether or not someone  
16 falls is not what determines whether or not  
17 something's a hazard or not. It's just that just  
18 determines whether or not someone got injured  
19 from that hazard. But that doesn't mean that  
20 there's not a hazard present.

21 **Q. How many people prior to Mr. Sullivan almost fell**  
22 **on mat number two?**

23 **A.** I have no idea.

24 **Q. Okay.**

25 **A.** But if we have -- we had high def video and a

1 long term, we could probably sort that out.

2 Q. Okay. Does the law require high def video?

3 A. No.

4 Q. Okay.

5 MR. TRASK: Let's take a quick five minute  
6 break. We'll come back at 10:40.

7 COURT REPORTER: We're off the record.

8 (Off the Record)

9 EXAMINATION CONTINUES BY MR. TRASK:

10 Q. All right. I just want to make sure before I  
11 move on, I'm going to kind of go into background  
12 information a little bit. So I just want to make  
13 sure, the reason you think mat number two -- and  
14 I know we've talked about mat one and mat two,  
15 but obviously mat two is what Mr. Sullivan  
16 tripped and fell over. So that's what I'm  
17 focused on. Mat two is a hazardous condition  
18 because it is bunched up, it is curled, and it  
19 was askew. Right? Those are the three issues  
20 that you believe makes it a hazardous condition  
21 when he encountered it?

22 A. Correct.

23 Q. Okay. And I don't think I've asked this, but I  
24 just want to make sure and so if I have I  
25 apologize. I'm sure Elaine will object, and

1 that's fine. But how long had those curls that  
2 you believe you saw, how long did those exist  
3 for?

4 A. I don't know.

5 Q. Okay. How long -- when we say the mat was  
6 bunched up, are you saying it was bunched up  
7 after the fall or prior to the fall it was  
8 bunched up?

9 A. When he was in -- when he went across it, it got  
10 bunched up. It moved when he was moving across  
11 it.

12 Q. So really when we say bunched up, it's the  
13 movement of the bunching, not that it was pre  
14 bunched up. It's that his foot was able to bunch  
15 it. Is that a correct way to say that?

16 A. Correct.

17 Q. Okay. And then the mat's askew, that just means  
18 that it's not lined up, you know --

19 A. Sliding.

20 Q. Right. It slid. Okay. And do we know -- we  
21 just think that there was some dust on the back  
22 or some contaminant that was causing it to slide  
23 right?

24 A. That's the most likely reason for that, yes.

25 Q. Okay. We don't know the amount of -- well, we

1 don't even know what was on the back of it,  
2 correct?

3 A. Correct.

4 Q. Okay. And we don't know the amount of whatever  
5 was on the back of it that could be causing it to  
6 slide?

7 A. Right. It doesn't take much in a lot of these  
8 cases so, but that is -- the fact that it was  
9 sliding around is a problem. They shouldn't  
10 move.

11 Q. Is any movement an issue or is there certain  
12 movement that's okay?

13 A. No movement -- no movement is okay.

14 Q. Okay. So, anybody who encounters it, it should  
15 not move in any regard?

16 A. Correct.

17 Q. Okay. And when we say movement, we mean from  
18 side to side, or are you talking about up and  
19 down or stretching? Is it all movement or what  
20 kind of movement?

21 A. Any of those movements would create a trip hazard  
22 potentially.

23 Q. Okay. So hypothetically, if I step on the mat  
24 and as I step on the mat, I push down and it  
25 pushes out because the force of my foot has

1 pushed out the mat, that's a trip hazard?

2 A. Yes, or that would probably be a slip hazard at  
3 that point. Yes.

4 Q. Okay. All right. Are there any other issues  
5 that we haven't talked about in regard to mat two  
6 that you believe makes it a hazardous condition?

7 A. Not that I'm aware of.

8 Q. Okay. Do you know were there any prior  
9 complaints about mat two before this incident  
10 occurred by any customers?

11 A. I'm not aware of any.

12 Q. Okay. Let me see again. Well, let me do it this  
13 way because I don't want to scroll and have you  
14 kind of follow along. The CV that you produced  
15 in response to our subpoena, is that your most up  
16 to date CV in this case?

17 A. I believe it's -- it's very, very fairly  
18 accurate. Yeah, I think it's pretty much the  
19 most, yeah. I would say it covers everything.  
20 Well, I'm not sure. I might have an extra case  
21 that -- or two that I've been retained on since  
22 the -- on the cases that I also were attached to  
23 the cases, but I have to look to see, but I think  
24 everything's pretty close.

25 Q. Okay. And I think that has your educational

1 background on it?

2 A. Yes, sir.

3 Q. Okay. And then I think there's a testimony list,  
4 and you're saying that there might be one or two  
5 that might need to be added to it, but the  
6 testimony list that was produced in the subpoena  
7 that should be pretty accurate as well?

8 A. Yes.

9 Q. Okay. What is generally your -- this is going to  
10 sound weird, but obviously at some point, you're  
11 going to be offered as an expert when this trial  
12 occurs, so I'm just curious what that will be.  
13 What is your field of expertise that you're  
14 typically offered in?

15 A. So I always kind of say that I focus in the  
16 flooring world, so I only opine on floor matters.  
17 And so I deal with floor safety and then  
18 construction defect with floors, so I deal with  
19 broken floors and floor safety.

20 Q. All right. How many times have you been  
21 recognized as an expert by a court?

22 A. As far as how many times have I actually been in  
23 court court to testify?

24 Q. Yeah, that's a poorly worded question. Let me  
25 reask it. How many times have you testified at

1 trial?

2 A. That's a good question. I don't recall off the  
3 top of my head. It's listed in my case thing,  
4 but I don't recall off the top of my head.

5 Q. Have you ever been excluded as an expert by a  
6 court?

7 A. I've never been excluded as an expert, no. I had  
8 one opinion in one case that was excluded.

9 Q. Was that the one in Texas?

10 A. No.

11 Q. Okay. I thought there was a district court case  
12 in Texas where they -- they said that you were  
13 not qualified in the expert field or your  
14 opinions were not based on a reasonable amount of  
15 information.

16 A. Oh, okay. So -- so okay. I thought you wanted -  
17 - okay. So yes, I've had -- there's been three  
18 motions to strike in my career. One was granted,  
19 I believe two were not.

20 Q. Okay. And the one that was granted, that's that  
21 Texas case that I'm referencing, right?

22 A. I'm not -- I don't recall that. But I don't  
23 know. I haven't -- I never heard the -- the  
24 attorney never told me one way or the other. I  
25 wrote a response to a motion to strike, but I

1 never heard back what happened in that case.

2 **Q. Okay, gotcha.**

3 **A.** Now, there was an opinion in the case in Idaho,  
4 where one -- one of my opinions was removed, but  
5 in that case -- I'm not throwing the attorney  
6 under a bus but in that case, the attorney never  
7 even told me there was a motion to strike and I  
8 never even got the chance to rebut or respond to  
9 it and I think we would have prevailed but no,  
10 but I've never been impeached as an expert  
11 witness on any case.

12 **Q. Okay. Have you ever been or have you ever**  
13 **testified in a South Carolina court as an expert**  
14 **witness?**

15 **A.** Not yet, but I'm looking forward to it.

16 **Q. You picked a good county to come to, to be fair.**  
17 **I mean, there's a lot to do in York County**  
18 **compared to other ones, so.**

19 **A.** Oh, I've been to -- I've been to Myrtle Beach.  
20 My wife's grandparents used to live in Little  
21 River. So like I love -- I love the south and  
22 all my family's from Kentucky and Tennessee. So  
23 I love it.

24 **Q. Flooristics, is that the company that you're**  
25 **currently running?**

1 A. Correct.

2 Q. Okay. What's the difference between Flooristics  
3 and Safer Walkways Association?

4 A. Safer Walkways Association is kind of a trade  
5 association that I've been involved with that I  
6 co-founded that was kind of more about trying to  
7 promote the field of walkway auditing.

8 Q. The Flooristics, is that the company that you  
9 offer your expert witness services through?

10 A. One of -- yeah, that's one of the things I do but  
11 I don't just do expert work. I don't do expert  
12 work full time.

13 Q. How much of your business through Flooristics is  
14 expert work?

15 A. I work on a couple cases a year typically.

16 Q. Okay. You think it's more or less than 50  
17 percent?

18 A. Time wise, hour wise, money wise? It pays better  
19 than some of the other things that I do, but I  
20 spend more time doing field work. Floor safety  
21 consulting, construction defect inspections,  
22 things of that nature. So it's -- I kind of  
23 monetize the knowledge and skills that I have in  
24 a couple of different ways. Expert is just part  
25 of it, but it's not what I do full time. I don't

1 consider expert work full time.

2 Q. Okay. How much money do you think you make every  
3 year as an expert witness?

4 A. As an expert witness?

5 Q. Yeah. In that aspect of your business.

6 A. Oh, it's kind of growing a little bit because  
7 I've been doing more of it in the last couple --  
8 this year and last year, I've done more than  
9 prior years. So I think this year, it'll  
10 probably be about 60 percent or 50 percent,  
11 maybe. I don't know. I'd have to -- I haven't  
12 actually looked at the revenue breakdown.

13 Q. How much have you charged the Plaintiff for your  
14 work in this case?

15 A. So far, I've only billed them -- so in this case,  
16 I was hired through like -- I don't know how you  
17 call it, like a placement agency. So Ruben  
18 Anders put me in contact with a counsel that I'm  
19 working for so -- but I've only billed out -- I  
20 have it here somewhere. I think I've billed out  
21 like 3000. I think that's the only thing, about  
22 \$3,000 so far.

23 Q. Okay. Do you have actual invoices that you've  
24 sent them? I have not seen any invoices.

25 A. For the initial report and things, I think I've

1           only sent one invoice to Ruben Anders, and then  
2           they bill Elaine's office.

3   **Q.   Where is Ruben Anders based out of?**

4   A.   That's a good question. This is the first time  
5       I've worked for them. I think they're either in  
6       New York or New Jersey. No, I'm sorry,  
7       Massachusetts.

8   **Q.   Do you have emails with them regarding this case?**

9   A.   About the case, no, only about putting me in  
10      contact and negotiating working on the case.

11   **Q.   Okay. Did they give you any background facts or**  
12      **send you any documents or anything like that?**

13   A.   I think they asked me if -- I think they gave me  
14      like a very, very brief overview, but I don't  
15      recall what it was. It was just a very are you  
16      interested in working on a mat case? I think it  
17      was about -- I don't even recall.

18   **Q.   Okay.**

19   A.   Something like that. And then like I said, sure.  
20      I'm open to, you know, working on any kind of  
21      case really, so.

22   **Q.   Okay. Flooristics, what caused you to open**  
23      **Flooristics?**

24   A.   So I started doing expert work in Wyoming, but we  
25      moved from Wyoming to Utah. So it was just a

1 name change, but it was the same work  
2 essentially.

3 Q. Let's see. Well, let's do it like this because  
4 I'm just -- I'm tracking your CV right now just  
5 trying to figure out when you did this. It looks  
6 like Natural Wood Floors, LLC. Did you offer  
7 expert witness services through that company?

8 A. I did a couple cases under Natural Wood Floors  
9 when I was there. That's kind of where I first  
10 started.

11 Q. Okay. I might mispronounce this. I'm sorry.  
12 Knightia.

13 A. Knightia sounds great.

14 Q. Knightia, okay. Knightia, is that kind of when  
15 you first opened and really got into the expert  
16 witness realm?

17 A. So what happened is I -- when I left -- so I went  
18 from -- Natural was in Colorado. Then we moved  
19 to Wyoming; then we moved to Utah. So I started  
20 doing -- I stopped contracting when I went --  
21 when they stopped doing Natural Wood Floors, I  
22 stopped contracting, but I was also doing floor  
23 inspections when I was -- so I was in flooring.  
24 So Natural Wood Floors was a flooring contractor  
25 business, but then I also was certified as a

1 floor inspector, and then I did a couple cases --  
2 one or two cases when I was at Natural Wood  
3 Floors. And then when we moved to Wyoming, I  
4 started Knightia, and then I still wasn't -- I  
5 was still a floor inspector and then I got cross  
6 trained as a walkway auditor and I started doing  
7 more expert witness work, but I wasn't  
8 contracting anymore. So it's kind of -- they're  
9 all like all overlapping. But basically from the  
10 time I started doing Knightia to where I am  
11 today, like the bulk of my work, the percentages  
12 have changed a little bit but it's all been kind  
13 of the same work, floor inspections and walkway  
14 auditing, and expert work.

15 **Q. Okay. And I'm sorry, do you know how much you**  
16 **charge an hour for your work in this case?**

17 A. This year, 250 I believe it is. 250 or 225. Let  
18 me -- I think it's 225 is what I'm charging.

19 **Q. Is that for everything, or does it change based**  
20 **on the tasks that you're doing?**

21 A. It's based -- it's changed based on tasks. So  
22 for -- I'm looking at the rate right here. And  
23 so for just doing normal consulting, reviewing  
24 documents, things like that, that's 225 an hour.  
25 If I do any lab work, it's 250 an hour. I didn't

1 do any lab work on this case, and then 350 an  
2 hour for arbitration and then 500 an hour for  
3 deposition testimony and then 2500 for a half day  
4 of trial.

5 Q. And I'm assuming the 2500, that doesn't include  
6 reimbursement for, you know, flight fees and  
7 stuff like that right?

8 A. Correct.

9 Q. All right. So obviously, we've watched the video  
10 and we've talked about the three issues, the  
11 bunching, the curling and the askewness. I don't  
12 even know if askewness is a word, but we'll use  
13 askewness and create a word. But outside of the  
14 video, what else did you rely on specifically to  
15 come and determine that those were the three  
16 issues that made the mat number two a dangerous  
17 condition?

18 A. As I said before, the documents that I reviewed  
19 that are also listed in my affidavit and the  
20 standards that we've also referenced in the  
21 affidavit.

22 Q. All right. Let's do this then, just bear with me  
23 again. We're going right to Best Buy after this  
24 to buy a new computer.

25 COURT REPORTER: Before you do that, are you

1 going to mark the CV as an exhibit?  
2 MR. TRASK: Yeah, let's do that as Exhibit  
3 4. Thank you.  
4 COURT REPORTER: Okay, thank you.  
5 MR. TRASK: And we'll also do the testimony  
6 list is Exhibit 5.  
7 COURT REPORTER: Perfect.  
8 (DEFENDANT'S EXHIBIT 4 MARKED FOR IDENTIFICATION  
9 PURPOSES (9 pages) - CV)  
10 (DEFENDANT'S EXHIBIT 5 MARKED FOR IDENTIFICATION  
11 PURPOSES (4 pages) - TESTIMONY LIST)  
12 Q. I just want to go over this real quick. So this  
13 is the -- what you were just referencing. These  
14 are the documents or the photos or whatever that  
15 was that you relied on in coming to these three  
16 issues to give the opinion that the mat number  
17 two is a hazardous condition. So the video clip  
18 of the slip and fall, we watched that. That's  
19 Exhibit 1, right?  
20 A. Yes.  
21 Q. Okay. Surveillance video, that's the same thing.  
22 That's also Exhibit 1, because that's -- that's  
23 the video of the slip and fall as well, right?  
24 A. Correct.  
25 Q. Photographs of Dollar General taken 2023, you

1 didn't actually really use that at all, correct?

2 A. No.

3 Q. Okay. Photographs from the surveillance video,  
4 that would just be still frames from the -- from  
5 Exhibit 1, what we've looked at already, correct?

6 A. Correct.

7 Q. Okay. Plaintiff's motion to opposing summary  
8 judgment, did you -- and it says allegations.  
9 Did you just do that for the allegations, or was  
10 there something specific from the memo and  
11 opposition that you took?

12 A. So these are actually the file names of the  
13 documents. So I just -- when I get a document, I  
14 just quote either the file name or the title of  
15 the documents. So that's -- I think that's how  
16 it was presented to me so, but I don't believe  
17 there's anything specific in there that I  
18 reference to form my opinions on, but it's more  
19 about background on the case.

20 Q. Okay. Dollar General incident report and denial  
21 letter, is that also just for background on the  
22 case, or did that help you in coming to the  
23 decision on the three issues we've talked about?

24 A. The three issues primarily were from the  
25 surveillance video.

1 Q. Okay.

2 A. But when I look at it -- when I look at any case,  
3 I want to know as much as I can about the case.  
4 So I can, you know, confirm or, you know, confirm  
5 what I think is happening based on what I see.  
6 So having -- I mean, it's always good to get a  
7 history as best you can about any claim.

8 Q. The standard operating procedure number 42, is  
9 that just background on what Dollar General's  
10 standard operating procedures are and what they  
11 say about floor maintenance and mats? Is that  
12 fair?

13 A. That sounds reasonable to me.

14 Q. Okay. The description of the rug, I'm assuming  
15 you just used that to try to figure out what  
16 exactly the rug was comprised of and what it was  
17 made of. Did you use it for anything else or --

18 A. Yeah --

19 Q. -- is that what you used it for?

20 A. -- I did use it for the maintenance on how the  
21 rug is supposed to be cleaned.

22 Q. Okay.

23 A. The manufacturer, so yeah. So I wanted to know  
24 what it's made out of. And usually, like I said  
25 earlier, that most of these rugs have a textile

1 top and either an SBR or a nitrile -- a nitrile  
2 rubber bottom and edging. And then I wanted to  
3 understand, you know, how it was made, how the  
4 manufacturer wants it to be maintained.

5 Q. Would it be fair to say -- so if we assume for a  
6 second that the video does show a curl like you  
7 think it does, would it be fair to say that if  
8 there was no curl then the mat itself would not  
9 be a hazardous condition?

10 A. That would be incorrect.

11 Q. Okay, why?

12 A. Because the mat still slipped and was out of  
13 skew. So there's more than one hazard present on  
14 both the mats, not just the second mat but both  
15 mats have multiple issues from a hazard  
16 perspective.

17 Q. Gotcha. All right. And then the depo -- the two  
18 depositions, is that just for background on mat  
19 maintenance and just the mats in general or was  
20 there anything more specific from Sam Greene and  
21 Laura Meyers that you took?

22 A. Well, about the entire -- it's about -- well, I  
23 mean, throughout the -- from a holistic  
24 standpoint, you know, they covered a lot of  
25 ground in both of those. So I can't go point by

1 point on which one, you know, gave me which  
2 element of the background, but I did glean from  
3 how they're maintained or supposed to be  
4 maintained -- the mats, how they're supposed to  
5 be maintained or not maintained from both of  
6 those testimonies and those depositions.

7 Q. And then David Riley, did you -- anything  
8 specific that you recall from David Riley that  
9 helped you in formulating the three issues and  
10 then your opinions or again was it just more  
11 background?

12 A. It did indicate that the mat was bunched up based  
13 on his report, but the video also clearly shows  
14 that and typically, if I'm going to look at a  
15 piece of evidence, I think video and photos are  
16 always going to be better than, you know,  
17 someone's recollections if I can find that.

18 Q. Okay.

19 A. I like to -- I like to form my own opinion based  
20 on what I can see if that evidence is available.  
21 It's just a better evidence.

22 Q. That's fair. That's fair. So would you agree  
23 with me then the video clip, that's -- that's  
24 what you're primarily relying upon? Is that  
25 fair?

1 A. I wouldn't say -- I would say primarily, but not  
2 only.

3 Q. Right. No, no, no, I'm not saying only. I know  
4 you've got all this listed here, but I'm saying  
5 that's -- that's probably the most important  
6 piece of information or evidence, whatever you  
7 want to call it that you're relying on in coming  
8 to your opinion regarding the hazardous condition  
9 of the mat and the three issues that you've  
10 identified. Right?

11 A. That's reasonable.

12 Q. Okay. Okay. Mat purchase log history, is that  
13 just to see how often mats are being purchased or  
14 is there something else?

15 A. Yeah, it was just background.

16 Q. Okay.

17 A. I don't think there was anything I gleaned out of  
18 that that could be useful for this case.

19 Q. All right. So and I swear I'm almost done. This  
20 is probably going to be the last of like one or  
21 two questions. So opinion from a 30,000 foot  
22 level, the opinion is that mat number two is in  
23 dangerous condition and it was hazardous because  
24 it was curled based on the video footage, it was  
25 curled because it slipped and it was askew?

1           Those are the three issues, correct?

2           A.   Well, that applies to both mats, not just the  
3           second mat.

4           Q.   I understand that. Now what I'm really trying to  
5           focus on is I'm just trying to make sure there  
6           are no other issues that we have not covered  
7           regarding -- we can say both mats, in regards to  
8           you formulating your opinion. Like we've covered  
9           all the issues that lead you to say this is why  
10          that's a hazardous condition. Is that fair? Or  
11          are there other issues?

12          A.   I would say that's fair.

13          Q.   Okay. Perfect. All right. Have you understood  
14          all my questions today?

15          A.   Reasonably.

16          Q.   All right. Ms. White might have some questions  
17          for you. I told you I take quick depositions,  
18          and then I might have some followup after that.

19                 MS. WHITE: No, I have no further questions.  
20                 Further deponent sayeth not.

21                 (There being no further questions, the deposition  
22                 concluded at 11:04 a.m.)

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

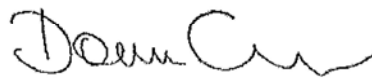
CERTIFICATE OF REPORTER

I, DONNA M. CURREY, COURT REPORTER AND NOTARY PUBLIC  
IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY  
CERTIFY THAT I REPORTED THE VIDEO CONFERENCE DEPOSITION OF  
ROB MCNEALY, ON WEDNESDAY, THE 23RD DAY OF AUGUST, 2023;  
THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE  
FOREGOING 66 PAGES CONSTITUTE A TRUE AND CORRECT  
TRANSCRIPTION OF SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR  
COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE  
PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY  
INTERESTED IN SAID CAUSE. --

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT  
WAS THEREAFTER SEALED BY ME AND DELIVERED TO MICHAEL TRASK,  
ESQ., MCANGUS GOUDELOCK & COURIE, LLC, POST OFFICE BOX  
12519, COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS  
SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR  
FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING  
WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS  
5TH DAY OF SEPTEMBER, 2023.



\_\_\_\_\_  
DONNA M. CURREY, COURT REPORTER  
MY COMMISSION EXPIRES JANUARY 31, 2024

<b>Exhibits</b>	<b>1637</b> 10:7 45:7	<b>5</b>	51:7	9:20
<b>230823DC.</b>			<b>act</b>	<b>amount</b>
<b>MCN_11242_</b>	<b>2</b>	<b>5</b>	9:21 39:8	22:18 39:2 41:6,
<b>Exh 2</b>	31:23	60:6,10	<b>actual</b>	8 45:14 48:25
3:15 31:23	<b>2019</b>	<b>50</b>	19:7,8 36:18	49:4 52:14
<b>230823DC.</b>	5:19 29:4	54:16 55:10	55:23	<b>analyzing</b>
<b>MCN_11242_</b>	<b>2023</b>	<b>500</b> <small>ROB MCNEALY</small>	<b>ADA</b>	9:7 45:24
<b>Exh 3</b>	26:23 34:17		9:20	<b>and/or</b>
3:17 32:5	35:12,13 60:25	<b>6</b>	<b>add</b>	36:20
<b>230823DC.</b>	<b>203</b>		33:17	<b>Anders</b>
<b>MCN_11242_</b>	34:16	<b>60</b>	<b>added</b>	55:18 56:1,3
<b>Exh 4</b>	<b>225</b>	55:10	51:5	<b>ANSI</b>
3:19 60:2,3,8	58:17,18,24	<b>8</b>	<b>adopt</b>	7:23
<b>230823DC.</b>	<b>250</b>		11:21	<b>anti</b>
<b>MCN_11242_</b>	58:17,25	<b>8</b>	<b>affect</b>	34:8
<b>Exh 5</b>	<b>2500</b>	31:24	39:10	<b>anymore</b>
3:21 60:6,10	59:3,5	<b>9</b>	<b>affected</b>	34:6 58:8
<b>\$</b>	<b>3</b>		8:17,18,22 11:4	<b>apologize</b>
<b>\$3,000</b>	26:23 32:5	<b>9</b>	<b>affidavit</b>	32:1 47:25
55:22	<b>30</b>	60:9	9:16 14:21 32:3,	<b>applicable</b>
<b>1</b>	17:6	<b>A</b>	6 33:10 36:16	10:17
<b>1</b>	<b>30,000</b>	<b>a.m.</b>	59:19,21	<b>applied</b>
17:16,19 60:19,	65:21	66:22	<b>affirmative</b>	11:5
22 61:5	<b>3000</b>	<b>ability</b>	25:24	<b>applies</b>
<b>10</b>	55:21	30:2 39:1	<b>affixed</b>	66:2
33:5	<b>32</b>	<b>absolutely</b>	6:24 37:19	<b>apply</b>
<b>100</b>	13:16	38:23	<b>age</b>	8:2 10:21 12:24
32:14	<b>350</b>	<b>acceptance</b>	16:16	<b>approach</b>
<b>10:40</b>	59:1	11:10,17	<b>agency</b>	8:10
47:6	<b>4</b>	<b>accepted</b>	11:23 12:3	<b>arbitration</b>
<b>11</b>		10:12,14 11:11	55:17	59:2
32:6,8	<b>42</b>	12:19 13:6	<b>agree</b>	<b>area</b>
<b>11:04</b>	62:8	<b>accident</b>	14:8 21:22 23:6,	21:15 45:2
66:22		16:2	13,15,16 64:22	<b>areas</b>
<b>16</b>		<b>accurate</b>	<b>ahead</b>	44:14,21
10:7		32:13 50:18	19:11	<b>argue</b>
			<b>allegations</b>	33:24
			61:8,9	<b>argument</b>
			<b>altered</b>	25:8
			32:13,21	<b>askew</b>
			<b>American</b>	18:13 19:18

37:20 38:2 42:11 43:20 47:19 48:17 65:25 askewness 59:11,12,13 aspect 55:5 association 54:3,4,5 assume 23:20 24:25 63:5 assuming 33:17 59:5 62:14 ASTM 7:25 9:13,25 10:3,6,7 28:6 44:12 45:7 attached 50:22 attention 23:19 attorney 12:15 34:8 52:24 53:5,6 auditing 54:7 58:14 auditor 31:19 58:6 avoid 40:16 aware 10:16 14:9 26:6 50:7,11 awful 26:18	<b>B</b>	began 41:4 big 29:13,15 bill 56:2 billed 55:15,19,20 bit 7:15 9:22 17:21 19:22 20:23,25 21:6 33:15 36:12 43:23 44:23 47:12 55:6 58:12 blanking 29:6 board 10:19 bodies 8:1,11,15 body 10:18 bottom 20:16 21:7 32:19 37:2 40:6 63:2 bounces 20:24 bouncing 20:20 break 17:1 43:6 47:6 breakdown 55:12 bright 43:4 broken 51:9 brought 5:17	buckled 6:22 43:22 bulging 18:6 bulk 58:11 bunch 11:3 48:14 bunched 43:22 47:18 48:6,8,10,12,14 64:12 bunching 48:13 59:11 bus 53:6 business 54:13 55:5 57:25 buy 59:23,24	<b>C</b>	cart 19:4 21:5 case 5:17,24 7:7 10:18 12:6,21, 25 13:8 20:9 35:1 37:1,19 39:17 41:3 45:21,22 50:16, 20 52:3,8,11,21 53:1,3,5,6,11 55:14,15 56:8,9, 10,16,21 58:16 59:1 61:19,22 62:2,3 65:18 cases 12:16 37:14 49:8 50:22,23 54:15 57:8 58:1, 2 caught 46:5 causation 24:9 caused 6:5,12 56:22 causing 48:22 49:5 centered 38:2 certified 57:25 chance 53:8 change 57:1 58:19 changed 21:5,6 32:10,15 58:12,21 charge 58:16
--	----------	---	--	----------	---

<b>charged</b> 55:13	8	50:6 59:17	13:1 19:9 33:6, 8,22 41:2 47:22	<b>curious</b> 31:3 51:12
<b>charging</b> 58:18	<b>commas</b> 33:24 34:2,5	60:17 63:9 65:8, 23 66:10	48:15,16 49:2,3, 16 54:1 59:8	<b>curl</b> 19:22,23 22:13 27:16 28:12,14 29:13,23 31:14, 17,21 41:23 42:5,19,23 43:14,16,18 63:6,8
<b>checked</b> 29:3	<b>committee</b> 8:14	<b>conditions</b> 16:22	60:24 61:1,5,6 66:1	<b>curled</b> 25:2 27:18 41:17 47:18 65:24,25
<b>checking</b> 28:23 29:9,11, 12,14	<b>company</b> 53:24 54:8 57:7	<b>confirm</b> 62:4	<b>counsel</b> 55:18	<b>curling</b> 18:24 19:16,20 20:2,5 21:11,25 22:4,19 27:15, 21,23 28:1,2,5 29:15,21 30:14, 15 41:4,8,12,13 42:8,10,15 43:19 44:15,17 45:17 59:11
<b>citations</b> 44:7	<b>compare</b> 32:16	<b>consensus</b> 8:16	<b>counted</b> 46:1	<b>curls</b> 30:8,11 48:1
<b>cite</b> 11:25 12:5,20	<b>compared</b> 53:18	<b>construct</b> 25:9,18	<b>county</b> 53:16,17	<b>customer</b> 45:8
<b>cited</b> 9:15 11:23 12:4	<b>competent</b> 31:14	<b>construction</b> 51:18 54:21	<b>couple</b> 18:20 54:15,24 55:7 57:8 58:1	<b>customers</b> 38:4 50:10
<b>claim</b> 62:7	<b>compile</b> 10:20	<b>consulting</b> 54:21 58:23	<b>court</b> 12:10,11,18 13:6 14:1,7 47:7 51:21,23 52:6, 11 53:13 59:25 60:4,7	<b>CV</b> 50:14,16 57:4 60:1,9
<b>clean</b> 37:16 39:24	<b>complaints</b> 50:9	<b>contact</b> 55:18 56:10	<b>covered</b> 63:24 66:6,8	<b>D</b>
<b>cleaned</b> 6:9 36:15 37:5,7 62:21	<b>complete</b> 33:13,14	<b>contaminant</b> 48:22	<b>covers</b> 50:19	<b>daily</b> 29:8,10,14
<b>clear</b> 15:17 18:24 19:2,11,25 20:1 21:21	<b>completely</b> 6:22 38:1 43:21	<b>contaminated</b> 37:7,12	<b>crazy</b> 43:1	<b>dangerous</b> 17:11 44:1,3,5 59:16 65:23
<b>clip</b> 60:17 64:23	<b>comprised</b> 62:16	<b>contamination</b> 37:13	<b>create</b> 8:16 10:20 19:24 22:12 44:3 45:3,4 46:7 49:21 59:13	
<b>close</b> 50:24	<b>computer</b> 16:14 17:1 59:24	<b>continue</b> 24:13	<b>creates</b> 20:25 28:2 30:18	
<b>co-founded</b> 54:6	<b>concealed</b> 23:3	<b>CONTINUES</b> 17:9 47:9	<b>cross</b> 58:5	
<b>codified</b> 8:23,25 10:15 11:19	<b>concerns</b> 8:10	<b>contracting</b> 57:20,22 58:8	<b>crossed</b> 43:21	
<b>coefficient</b> 39:7,12	<b>concluded</b> 66:22	<b>contractor</b> 57:24	<b>crossing</b> 42:12,13	
<b>Colorado</b> 57:18	<b>conclusions</b> 15:5	<b>controlling</b> 12:5,20 13:7		
<b>comma</b> 33:20,25 34:1,7,	<b>concrete</b> 37:11 40:4	<b>conversation</b> 7:21 25:10		
	<b>condition</b> 15:20 16:20 17:12 18:10 23:5 24:9 40:22 45:13 47:17,20	<b>corner</b> 21:7,17,19 22:2		
		<b>corporate</b> 5:14		
		<b>correct</b> 6:1 9:10 11:18		

<b>data</b> 16:7	<b>depo</b> 13:18 63:17	34:3	<b>E</b>	<b>entire</b> 39:4 63:22
<b>date</b> 50:16	<b>deponent</b> 66:20	<b>document</b> 61:13		<b>entirety</b> 17:5
<b>David</b> 64:7,8	<b>deposition</b> 6:14 7:9 13:18 29:5 32:23 40:9 59:3 66:21	<b>documentation</b> 18:17	<b>earlier</b> 15:16 29:19 62:25	<b>environment</b> 16:23 25:15 26:8 29:1
<b>day</b> 28:23 29:16 41:5 59:3	<b>depositions</b> 36:16 63:18 64:6 66:17	<b>documents</b> 7:6,7 34:25 56:12 58:24 59:18 60:14 61:13,15	<b>edge</b> 18:25 19:17,22, 23 20:2,5,16,21 22:13,19 27:17 30:17 31:11,13, 21	<b>essentially</b> 57:2
<b>days</b> 41:12	<b>depth</b> 22:22	<b>Dolencorp</b> 5:14	<b>edges</b> 22:1 44:14,18, 19	<b>Estate</b> 5:17
<b>deal</b> 51:17,18	<b>description</b> 62:14	<b>Dollar</b> 5:15 18:15 19:4 23:9 25:12 34:15 38:7 44:6 60:25 61:20 62:9	<b>edging</b> 63:2	<b>eventually</b> 8:23 9:5,8 46:14
<b>debris</b> 37:8 39:8	<b>designed</b> 36:24 37:3	<b>don't</b> 12:22 16:15 27:13 35:21 59:11	<b>edit</b> 33:15	<b>everything's</b> 50:24
<b>decide</b> 12:24 13:3 39:18	<b>determine</b> 42:23 59:15	<b>door</b> 22:2	<b>educational</b> 50:25	<b>evidence</b> 7:2 15:19 36:14 64:15,20,21 65:6
<b>decision</b> 61:23	<b>determined</b> 39:11	<b>drafts</b> 33:9	<b>eighth</b> 30:19 42:15	<b>evident</b> 6:15
<b>decrease</b> 39:1,2,3	<b>determines</b> 46:16,18	<b>drag</b> 43:23	<b>Elaine</b> 17:17 27:3 35:18 47:25	<b>exact</b> 6:4 29:24
<b>decreases</b> 22:23	<b>determining</b> 13:24 15:7	<b>dry</b> 37:15	<b>Elaine's</b> 56:2	<b>EXAMINATION</b> 5:12 17:9 47:9
<b>def</b> 45:22 46:25 47:2	<b>developed</b> 11:2	<b>dumb</b> 46:11	<b>element</b> 64:2	<b>excluded</b> 52:5,7,8
<b>defect</b> 51:18 54:21	<b>difference</b> 54:2	<b>dust</b> 37:7 38:16,19, 21,25 39:2,3,8, 11,19 48:9	<b>elements</b> 43:11	<b>exhibit</b> 17:16,19 31:23 32:5 60:1,2,6,8, 10,19,22 61:5
<b>DEFENDANT'S</b> 17:19 31:23 32:5 60:8,10	<b>directly</b> 37:23	<b>duty</b> 23:24 24:1,2,3 25:4,8,11,16,18, 19	<b>email</b> 17:16,17	<b>exhibits</b> 14:22 17:16
<b>Defendant's</b> 35:20	<b>Discovery</b> 9:21		<b>emails</b> 56:8	<b>exist</b> 48:2
<b>define</b> 10:13	<b>discovery</b> 13:18		<b>encountered</b> 38:10,14 47:21	<b>expect</b> 26:14
<b>denial</b> 61:20	<b>disrepair</b> 15:9,15 18:7 19:16		<b>encountering</b> 38:17	<b>expected</b> 12:15
<b>depends</b> 16:20 29:11 30:23	<b>district</b> 52:11		<b>encounters</b> 49:14	<b>expert</b>
	<b>doctor</b>			

5:16 12:13,14 13:11 24:7,8 51:11,21 52:5,7, 13 53:10,13 54:9,11,14,24 55:1,3,4 56:24 57:7,15 58:7,14	<b>facts</b> 56:11	<b>final</b> 43:20	<b>fly</b> 16:4	<b>frayed</b> 44:13,18
<b>expertise</b> 51:13	<b>fair</b> 19:5 34:7 38:21, 22 53:16 62:12 63:5,7 64:22,25 66:10,12	<b>finally</b> 11:6	<b>focus</b> 51:15 66:5	<b>friction</b> 39:8,12
<b>experts</b> 8:19	<b>fairly</b> 50:17	<b>find</b> 8:19 33:16 64:17	<b>focused</b> 47:17	<b>front</b> 15:1 27:15
<b>explained</b> 10:24	<b>fall</b> 5:18 6:5 15:11, 13 24:10 35:5,7 41:24 46:3,12, 14,15 48:7 60:18,23	<b>fine</b> 12:17 13:10 24:11 43:8 48:1	<b>follow</b> 50:14	<b>full</b> 54:12,25 55:1
<b>extensive</b> 8:12	<b>falls</b> 17:24 46:10,16	<b>fixed</b> 18:22	<b>followup</b> 66:18	<b>funny</b> 34:9
<b>extensively</b> 7:8	<b>family's</b> 53:22	<b>flat</b> 25:4	<b>foot</b> 21:8 42:20 48:14 49:25 65:21	<hr/> <b>G</b> <hr/>
<b>extra</b> 50:20	<b>fast</b> 32:9	<b>flight</b> 59:6	<b>footage</b> 65:24	<b>gain</b> 16:3
<b>eyeballing</b> 30:6	<b>fast</b> 32:9	<b>flip</b> 15:3	<b>force</b> 42:19,21,23 49:25	<b>gave</b> 56:13 64:1
<b>eyes</b> 22:22	<b>feels</b> 14:1	<b>floor</b> 6:24 7:24 9:14 10:1,4,8,10 11:7,24 12:4,12, 19 18:23 26:13 28:6,11 31:16, 19 36:13 37:5, 17 39:13 40:5 51:16,17,19 54:20 57:22 58:1,5,13 62:11	<b>foreground</b> 19:12	<b>Gen</b> 34:2
<hr/> <b>F</b> <hr/>	<b>fees</b> 59:6	<b>flooring</b> 51:16 57:23,24	<b>form</b> 8:13 24:19,23 61:18 64:19	<b>general</b> 5:15 7:23 9:2,12 18:15 19:4 23:10 25:12 34:16 38:7 44:6, 25 45:1 60:25 61:20 63:19
<b>F1637-5.4.6.</b> 44:12	<b>fell</b> 16:10 30:10 38:13 45:9 46:4, 8,21 47:16	<b>Flooristics</b> 53:24 54:2,8,13 56:22,23	<b>formed</b> 8:5 33:3	<b>generally</b> 8:2,3,5 9:5 18:11 20:22 31:12,18,20 51:9
<b>face</b> 29:6	<b>field</b> 51:13 52:13 54:7,20	<b>floors</b> 51:18,19 57:6,8, 21,24 58:3	<b>forming</b> 13:21 17:11 27:5	<b>General's</b> 62:9
<b>facilities</b> 26:9	<b>figure</b> 35:10 57:5 62:15	<b>fluctuate</b> 16:21	<b>formulating</b> 7:3 64:9 66:8	<b>give</b> 29:24 56:11 60:16
<b>facility</b> 25:12	<b>figured</b> 36:1	<b>flush</b> 18:16	<b>forward</b> 17:21 19:19 21:9 24:23 53:15	<b>glean</b> 16:6,7 64:2
<b>fact</b> 7:1 11:13 18:21 29:12 37:19 42:11 49:8	<b>file</b> 61:12,14		<b>found</b> 10:19 12:10,11	<b>gleaned</b> 65:17
<b>factor</b> 6:7	<b>filings</b> 7:7		<b>frame</b> 21:3	<b>good</b> 52:2 53:16 56:4
<b>factors</b> 22:21 42:16			<b>frames</b> 19:19 61:4	

62:6 <b>gotcha</b> 14:19 53:2 63:17 <b>governing</b> 10:18 <b>government</b> 7:10,11 9:17 11:14 42:18 <b>governmental</b> 12:3 <b>grandparents</b> 53:20 <b>granted</b> 52:18,20 <b>great</b> 45:20 57:13 <b>Greene</b> 29:7 36:17 63:20 <b>ground</b> 30:10 37:19 63:25 <b>growing</b> 55:6 <b>guess</b> 44:14 <b>guy</b> 33:25 34:1,7 <b>guys</b> 16:4	37:11 53:1 57:17 <b>happening</b> 13:24 28:22 62:5 <b>happy</b> 16:5 <b>hard</b> 19:21 30:23 <b>hasn't</b> 32:15 <b>hazard</b> 18:19,23 19:24 21:23 22:13,15 26:6 28:3 30:18, 20 36:5,8 40:16 41:1,2 42:8,10, 11,13 45:3 46:7, 8,9,12,13,17,19, 20 49:21 50:1,2 63:13,15 <b>hazardous</b> 17:12 26:2,4 45:6,12 47:17, 20 50:6 60:17 63:9 65:8,23 66:10 <b>hazards</b> 22:17 36:9 45:4 <b>head</b> 35:15 52:3,4 <b>hear</b> 12:1 <b>heard</b> 52:23 53:1 <b>height</b> 27:22,23 31:3,5 42:5 <b>helped</b> 10:19 33:12,15 64:9	<b>helpful</b> 36:5 <b>Here's</b> 33:3 <b>hey</b> 8:7,8 <b>hidden</b> 22:10 23:3,4 <b>high</b> 30:10 37:2 38:23 45:22 46:25 47:2 <b>hired</b> 12:14 13:13 55:16 <b>history</b> 62:7 65:12 <b>hits</b> 42:20 <b>hitting</b> 20:24 <b>Hold</b> 19:1 <b>holding</b> 31:9 <b>holes</b> 44:14 <b>holistic</b> 63:23 <b>honestly</b> 13:17 46:10 <b>hose</b> 37:15 40:13 <b>hosed</b> 36:20 <b>hour</b> 45:24 46:4 54:18 58:16,24, 25 59:2 <b>hours</b> 45:24	<b>hypothetically</b> 49:23 <hr/> <b>I</b> <hr/> <b>Idaho</b> 53:3 <b>idea</b> 23:18 40:8 41:19 46:23 <b>identification</b> 17:19 18:2 31:23 32:5 60:8, 10 <b>identified</b> 9:4 36:6 65:10 <b>identify</b> 36:9 <b>impact</b> 37:23 <b>impeached</b> 53:10 <b>important</b> 13:5 65:5 <b>improper</b> 6:12 <b>inaudible</b> 11:23 <b>inch</b> 30:5,19,22,25 42:15 <b>inches</b> 29:23 30:20 42:15 <b>incident</b> 5:19 25:10 29:4 40:20 43:10 45:23 50:9 61:20 <b>inclement</b> 40:18	<b>include</b> 34:21 59:5 <b>incorrect</b> 32:20 63:10 <b>indicative</b> 19:22 <b>individual</b> 26:8,12 44:25 <b>individuals</b> 11:21 <b>industries</b> 7:18 <b>industry</b> 7:10,11,13,14, 16,17,19 8:2,11, 15,17 10:5,12 11:4,7 12:21 13:23 <b>influence</b> 24:21 <b>influencing</b> 24:15 <b>information</b> 34:11 47:12 52:15 65:6 <b>initial</b> 55:25 <b>injured</b> 46:18 <b>injury</b> 46:2 <b>inside</b> 17:25 19:4 <b>inspect</b> 40:24,25 <b>inspection</b> 35:13 40:17 <b>inspections</b> 28:17 40:19,22 54:21 57:23 58:13
<hr/> <b>H</b> <hr/> <b>half</b> 30:19 59:3 <b>hand</b> 21:7 22:2 <b>happen</b> 9:1 37:4 <b>happened</b>				

<b>inspector</b> 31:20 58:1,5	<b>I'd</b> 55:11	28:9 31:11,12, 21 34:9 36:7 37:18 47:11 49:20 50:14 51:15 54:4,6,22 55:6 56:20 57:9, 14 58:8,12	<b>leading</b> 18:25 19:16 20:16	<b>lined</b> 48:18
<b>Institute</b> 7:24 9:14 10:1, 4,8,10 11:24 12:4,20 28:6,11 36:14	<b>I'm</b> 10:16 21:21 29:6 50:20 52:22 58:18 65:19	<b>kinda</b> 20:15	<b>leads</b> 11:2	<b>list</b> 7:5 34:12 51:3,6 60:6,11
<b>intend</b> 15:23	<b>I've</b> 7:5	<b>knew</b> 23:13	<b>led</b> 15:14	<b>listed</b> 52:3 59:19 65:4
<b>interchangeable</b> 5:21	<b>J</b>	<b>Knights</b> 57:12,13,14 58:4,10	<b>left</b> 21:4,7,8,17,19 57:17	<b>listen</b> 24:11
<b>interested</b> 8:22 56:16	<b>Jersey</b> 56:6	<b>knowledge</b> 26:12 54:23	<b>legal</b> 11:14 12:16 13:12 24:7,10 25:8,11,18,20, 21	<b>live</b> 53:20
<b>interesting</b> 7:21 8:22 45:20	<b>judge</b> 13:22 14:1 24:14	<b>L</b>	<b>lengthy</b> 8:12 10:25 34:4 45:22	<b>LLC</b> 5:14 57:6
<b>interplay</b> 9:23	<b>judges</b> 14:5	<b>lab</b> 58:25 59:1	<b>let alone</b> 11:20	<b>loaded</b> 25:20 28:15
<b>interrupt</b> 19:1,10	<b>judgment</b> 61:8	<b>lagging</b> 11:15	<b>letter</b> 61:21	<b>location</b> 7:1
<b>invitees</b> 26:9	<b>jump</b> 16:13 17:1	<b>laid</b> 38:3	<b>letting</b> 24:18	<b>locations</b> 19:17
<b>invoice</b> 56:1	<b>June</b> 5:19	<b>laptop</b> 26:17	<b>Let's</b> 10:2 14:24 17:2 27:11 36:11 43:9 47:5	<b>log</b> 65:12
<b>invoices</b> 55:23,24	<b>juries</b> 14:4	<b>large</b> 29:22 30:8 41:23	<b>level</b> 29:20 41:11 65:22	<b>long</b> 7:22 8:24 9:1,9 11:8,17 34:4 41:17,21 47:1 48:1,2,5
<b>involved</b> 54:5	<b>jury</b> 14:1	<b>Laura</b> 29:6 36:17 63:21	<b>liability</b> 12:21 13:8	<b>longer</b> 46:13
<b>issue</b> 6:4 31:22 37:22, 23 49:11	<b>K</b>	<b>law</b> 8:25 9:5,19,21 10:15 11:13, 13, 20 12:10,16,18, 19 47:2	<b>level</b> 29:20 41:11 65:22	<b>looked</b> 7:8 17:7 34:19 35:2,9 55:12 61:5
<b>issues</b> 6:6,25 7:3,4 22:1 43:16,18 47:19 50:4 59:10,16 60:16 61:23,24 63:15 64:9 65:9 66:1, 6,9,11	<b>Kentucky</b> 53:22	<b>laws</b> 9:22	<b>liability</b> 12:21 13:8	<b>longer</b> 46:13
<b>it's</b> 16:20 17:6 38:23 44:22 50:17 58:25	<b>kiddie</b> 18:2	<b>lead</b> 66:9	<b>lifespan</b> 16:21	<b>Lord</b> 31:12
	<b>kilter</b> 6:9 21:22		<b>lift</b> 30:17	<b>loses</b> 37:8
	<b>kind</b> 6:7 8:25 9:2 19:13 20:18,24 21:17 22:23		<b>light</b> 22:22 43:1	<b>loss</b> 6:11
			<b>likelihood</b> 20:4 38:24	<b>lost</b> 6:19
				<b>lot</b>

10:2 11:14 32:17 33:24 37:14 41:11 44:25 49:7 53:17 63:24	<b>manager</b> 29:7	46:1,22 47:13, 14,15,17 48:5	<b>measurement</b> 41:13 42:22	<b>months</b> 41:12
<b>love</b> 53:21,23	<b>manner</b> 18:12	49:23,24 50:1,5, 9 56:16 59:16	<b>measurements</b> 30:1 42:4,6	<b>morning</b> 38:13
<b>low</b> 21:1	<b>manufacturer</b> 36:19 40:11,12 62:23 63:4	60:16 63:8,12, 14,18 64:12	<b>measuring</b> 39:7	<b>motion</b> 52:25 53:7 61:7
<b>lubricant</b> 39:9	<b>march</b> 26:17,23 35:11, 13	65:9,12,22 66:3	<b>medical</b> 34:3	<b>motions</b> 52:18
<b>luck</b> 46:11	<b>mark</b> 17:15 60:1	<b>marks</b> 6:6 7:1 15:17, 18,19 16:1,21 18:11,13,21 20:22 27:8 28:19,20 29:2,3 36:18,22,24 37:3,4,10,20 38:4,10 39:23, 24 40:16,19 42:6,10,16 43:19,23 44:8 45:2,5,6 62:11 63:14,15,19 64:4 65:13 66:2, 7	<b>member</b> 10:19	<b>mouse</b> 20:17 21:14
<b>M</b>	<b>MARKED</b> 17:19 31:23 32:5 60:8,10		<b>memo</b> 61:10	<b>move</b> 19:19 21:3 42:12 43:25 47:11 49:10,15
<b>made</b> 36:25 59:16 62:17,24 63:3	<b>Massachusetts</b> 56:7		<b>mentioned</b> 9:25 15:16	<b>moved</b> 38:19,21 43:24 48:10 56:25 57:18,19 58:3
<b>main</b> 10:4,8 40:25	<b>mat</b> 5:20,22,23,25 6:2,4,11,13,16, 17,23 7:1 15:8 16:9,16,17,18, 19 17:11,23 18:9,10,18,24 19:2,3,7,8,12, 13,15,18 21:7,8, 13,21,22,23 22:8 23:2,4,12, 14,15,16,21,25 25:4 26:4,13 27:10,12,16,18, 19,20,21 29:13, 18,22 30:3,9 31:16 36:4 37:8, 9,12,18 38:13, 17,19,21,25 39:1,13,19 40:1, 2,3,7,12,22,24 41:2,5,8,14,22, 25 42:2,5,12,20, 24 43:1,21 44:22 45:9,15		<b>meted</b> 11:4	<b>movement</b> 18:14 44:2,4,5 48:13 49:11,12, 13,17,19,20
<b>maintained</b> 6:8 18:11 37:21 42:17 45:3 63:4 64:3,4,5			<b>methodologies</b> 11:5	<b>movements</b> 49:21
<b>maintenance</b> 6:12,20 36:23 62:11,20 63:19			<b>Meyers</b> 29:6 36:17 39:22 63:21	<b>moves</b> 9:8
<b>make</b> 14:5,19,25 17:6 19:11 24:3,16 25:4 28:16,19 29:2 32:11 44:5 47:10,12,24 55:2 66:5			<b>Michael</b> 24:17	<b>moving</b> 24:23 48:10
<b>makes</b> 44:1,3 47:20 50:6			<b>Mike</b> 5:13 35:23	<b>multiple</b> 6:25 8:1 19:17 42:16 63:15
<b>making</b> 28:23			<b>mind</b> 16:15 20:12	<b>Myrtle</b> 53:19
<b>man</b> 34:2			<b>minor</b> 22:18	<b>N</b>
			<b>minuscule</b> 31:4	<b>names</b> 61:12
			<b>minute</b> 47:5	<b>National</b> 7:24 9:14,25 10:3,7,10 11:7, 24 12:4,12,19
			<b>mispronounce</b> 57:11	
			<b>missed</b> 34:18	
			<b>monetize</b> 54:23	
			<b>money</b> 54:18 55:2	

28:5,11 36:13		<b>one-96ths</b>	<b>Oxford</b>	<b>person</b>
<b>Natural</b>	<b>O</b>	30:22	33:24,25 34:1,2,	6:16 25:19
57:6,8,18,21,24		<b>open</b>	5,7,8	30:24 31:15
58:2	<b>object</b>	23:5,7 56:20,22		33:12 46:5
<b>nature</b>	13:13,15 24:19,	<b>opened</b>	<b>P</b>	<b>persons</b>
54:22	22 47:25	57:15		40:15
<b>navigate</b>	<b>objection</b>	<b>operating</b>	<b>pages</b>	<b>perspective</b>
45:14	12:13 13:9,19	ROB MCNEALY 62:8,10	31:24 32:6 60:9,	13:21 63:16
<b>necessarily</b>	23:8 24:6,16	<b>opine</b>	11	<b>perused</b>
11:11,19 16:16	<b>objections</b>	51:16	<b>part</b>	27:7
<b>needed</b>	24:12,13,22	<b>opinion</b>	12:1 20:19	<b>photo</b>
36:3	<b>objective</b>	12:14,16 13:12	38:23 44:23	27:12
<b>negotiating</b>	14:4	14:15,17 17:11	54:24	<b>photographs</b>
56:10	<b>obligation</b>	24:7,8 27:5 52:8	<b>parties</b>	34:15 35:3,19
<b>newer</b>	25:11 26:7,10	53:3 60:16	8:22,23	60:25 61:3
16:18	28:15,19	64:19 65:8,21,	<b>pause</b>	<b>photos</b>
<b>nitpicky</b>	<b>obnoxious</b>	22 66:8	17:22	26:16,20,24
6:1	31:10	<b>opinions</b>	<b>pay</b>	27:4 31:24
<b>nitrile</b>	<b>obstructing</b>	13:22,25 15:5	23:19	35:11 60:14
20:22 37:1 63:1	22:7,9	24:10 33:2	<b>pays</b>	64:15
<b>nonsense</b>	<b>obvious</b>	52:14 53:4	54:18	<b>picked</b>
46:9	22:14 23:5	61:18 64:10	<b>pedestrian</b>	53:16
<b>normal</b>	<b>occur</b>	<b>opportunity</b>	45:4	<b>picture</b>
7:7 26:5 58:23	6:5 41:9,12	23:22	<b>people</b>	27:10
<b>note</b>	<b>occurred</b>	<b>opposed</b>	8:9,17 11:3	<b>piece</b>
24:16 32:16	5:19 29:4 35:14	16:4	22:14,21 23:19	64:15 65:6
<b>noted</b>	40:20 50:10	<b>opposing</b>	25:9,16 26:5,9,	<b>pixelated</b>
13:19	<b>occurs</b>	61:7	12 28:25 36:8,	21:1,10
<b>notice</b>	51:12	<b>opposition</b>	10 38:9,12	<b>place</b>
36:7	<b>offer</b>	61:11	45:14 46:3,21	15:18 33:20,21
<b>noticed</b>	54:9 57:6	<b>original</b>	<b>percent</b>	37:16 40:4
8:6 23:21	<b>offered</b>	32:20	32:15 54:17	<b>placement</b>
<b>number</b>	51:11,14	<b>OSHA</b>	55:10	55:17
18:12,21 27:12	<b>office</b>	9:14,17 43:9,10	<b>percentages</b>	<b>Plaintiff</b>
29:24 33:5,7	56:2	44:7	58:11	55:13
41:14 45:4,9	<b>offs</b>	Garber Reporting info@garberreporting.com	<b>perception</b>	<b>Plaintiff's</b>
46:22 47:13	6:9	<b>overlap</b>	22:23	61:7
59:16 60:16	<b>older</b>	28:9	<b>Perfect</b>	<b>play</b>
62:8 65:22	16:19 22:21	<b>overlapping</b>	60:7 66:13	11:22 17:5,21
	<b>one-482nds</b>	58:9	<b>permanent</b>	20:7,11
	30:25	<b>overview</b>	27:19	<b>played</b>
		56:14		

17:3 <b>plays</b> 17:8 20:13 <b>point</b> 6:14 31:4 50:3 51:10 63:25 64:1 <b>pointing</b> 20:15 <b>policies</b> 18:15 <b>political</b> 14:13 <b>politician</b> 14:15 <b>politician's</b> 14:17 <b>pool</b> 18:2 <b>poor</b> 19:14 <b>poorly</b> 51:24 <b>pop</b> 28:24 <b>position</b> 31:13,17,21 <b>posted</b> 36:3 <b>potentially</b> 49:22 <b>practices</b> 7:17 8:21 11:12, 19,22 14:3 <b>pre</b> 48:13 <b>precautions</b> 40:15 <b>premises</b> 12:21 13:7	<b>presence</b> 20:3 42:9,10 <b>present</b> 22:15 36:5,8 42:8 43:19 44:17 46:12,13, 20 63:13 <b>presented</b> 61:16 <b>preserve</b> 24:20 <b>preserved</b> 13:16 <b>preserves</b> 24:20 <b>pretty</b> 8:12 23:5 50:18, 24 51:7 <b>prevailed</b> 53:9 <b>primarily</b> 9:12,13 61:24 64:24 65:1 <b>prior</b> 33:9 38:17 46:21 48:7 50:8 55:9 <b>problem</b> 8:4,6,7,8,10,20 9:3,6 14:24 18:8 27:19 29:20 36:23 46:6 49:9 <b>problems</b> 46:1 <b>procedure</b> 62:8 <b>procedures</b> 62:10 <b>process</b> 7:23 8:4,12 9:1, 9 10:25 11:10, 17	<b>produced</b> 32:3 50:14 51:6 <b>promote</b> 54:7 <b>pronounced</b> 22:3 <b>proper</b> 42:17 <b>properly</b> 6:24 36:15 37:21 <b>property</b> 20:23 <b>protect</b> 24:2 <b>proven</b> 32:22 <b>provide</b> 12:14,15 13:12 24:8 25:14 26:7 <b>public</b> 11:6 <b>published</b> 11:6 <b>pulled</b> 14:20 30:21 <b>purchase</b> 65:12 <b>purchased</b> 65:13 <b>purposes</b> 17:20 18:3 31:24 32:6 60:9, 11 <b>push</b> 49:24 <b>pushed</b> 18:16 38:7 50:1 <b>pushes</b> 49:25 <b>put</b>	7:17 11:6,22 17:17 37:18 39:1 41:5 55:18 <b>putting</b> 56:9 <hr/> <b>Q</b> <hr/> <b>qualified</b> 40:15 52:13 <b>quality</b> 19:14 <b>question</b> 12:17 13:2,4,8, 20 14:13 15:8 24:25 40:9 51:24 52:2 56:4 <b>questions</b> 65:21 66:14,16, 19,21 <b>quick</b> 17:1 26:16 33:4 47:5 60:12 66:17 <b>quickly</b> 32:9 41:9 <b>quote</b> 61:14 <b>quoted</b> 10:2 <hr/> <b>R</b> <hr/> <b>rate</b> 58:22 <b>read</b> 7:6,8 32:15 33:3 <b>real</b> 10:25 26:16 31:11 33:4 60:12	<b>realize</b> 31:7,8 <b>realm</b> 57:16 <b>reask</b> 51:25 <b>reason</b> 47:13 48:24 <b>reasonable</b> 26:14 31:14 52:14 62:13 65:11 <b>reasons</b> 36:21 <b>rebut</b> 53:8 <b>recall</b> 35:15 40:10 52:2,4,22 56:15, 17 64:8 <b>recalls</b> 23:18 <b>received</b> 44:6 <b>recognized</b> 51:21 <b>recollections</b> 64:17 <b>record</b> 19:3 47:7,8 <b>reference</b> 9:20 61:18 <b>referenced</b> 10:6,7,9 59:20 <b>referencing</b> 52:21 60:13 <b>referring</b> 35:24 <b>reflective</b> 20:23 <b>regard</b>
---	---	---	---	---

27:22 28:9 49:15 50:5 <b>regional</b> 29:7 <b>regular</b> 36:18 37:5,6 40:17,19,21 <b>regulation</b> 9:8 <b>regulations</b> 7:11,12 9:17 11:15 28:8 42:18 <b>reimbursement</b> 59:6 <b>related</b> 42:4 43:10 44:7 46:1 <b>relevance</b> 13:14,16 <b>relevant</b> 12:9,23 13:2,4 14:17 15:24 39:17 45:21 <b>relied</b> 7:4,5 17:10 60:15 <b>rely</b> 15:7 18:10 27:4 59:14 <b>relying</b> 9:13 28:11 64:24 65:7 <b>remove</b> 28:19 37:13 41:1 <b>removed</b> 27:20 53:4 <b>repeat</b> 12:2 <b>report</b> 7:5 9:16 14:21,	23 15:1 32:3,11 33:10 42:14 55:25 61:20 64:13 <b>REPORTER</b> 47:7 59:25 60:4, 7 <b>reports</b> 34:4 <b>represent</b> 5:14 <b>require</b> 47:2 <b>requires</b> 26:3 <b>requiring</b> 13:11 <b>res</b> 21:2 <b>research</b> 8:20 44:10 <b>respond</b> 53:8 <b>response</b> 25:24 50:15 52:25 <b>responsible</b> 31:15 <b>rests</b> 26:8 <b>retained</b> 5:16 50:21 <b>revenue</b> 55:12 <b>reviewed</b> 7:10 34:12,13 59:18 <b>reviewing</b> 58:23 <b>revised</b> 11:9	<b>Riley</b> 64:7,8 <b>rimpling</b> 15:18 <b>river</b> 9:18 53:21 <b>role</b> ROB MCNEALY 5:23 <b>rubber</b> 20:22 36:25 37:1 63:2 <b>Ruben</b> 55:17 56:1,3 <b>rug</b> 5:22 19:24 24:9 62:14,16,21 <b>rugs</b> 45:2 62:25 <b>rule</b> 13:16 24:14 <b>rules</b> 13:22 <b>rumpled</b> 18:5 <b>runners</b> 45:2 <b>running</b> 53:25 <hr/> <b>S</b> <hr/> <b>safe</b> 25:14 26:7 28:16,20 29:2 <b>safely</b> Garber Reporting info@garberreporting.com 45:14 <b>Safer</b> 54:3,4 <b>safety</b> 7:24 10:1,4,8,10 11:7,24 12:4,12, 19 26:13,14	28:6,11 31:16 36:13 51:17,19 54:20 <b>Sam</b> 29:7 36:17 63:20 <b>sayeth</b> 66:20 <b>SBR</b> 20:22 36:25 37:1 63:1 <b>school</b> 31:19 <b>schools</b> 31:20 <b>science</b> 8:3 9:5,7 10:23 11:1,15 13:23, 25 14:3,6,8,10, 18 <b>scientific</b> 11:5 <b>screen</b> 14:21 16:13 26:21 <b>screenshots</b> 35:24 <b>scroll</b> 27:5 32:18 33:5 50:13 <b>scrolling</b> 32:9 <b>sec</b> 19:1 <b>seconds</b> 17:6 <b>semicolon</b> 33:21 <b>send</b> 56:12 <b>sending</b>	17:18 <b>serve</b> 5:16 <b>service</b> 27:17,25 28:13 29:18 30:21 31:7 45:19 <b>serviceable</b> 15:20 16:18,19 <b>services</b> 54:9 57:7 <b>severe</b> 15:8,15 18:6 46:2 <b>shadow</b> 20:19,25 21:6,9, 14 22:12 23:1 <b>shadowing</b> 25:1 <b>shadows</b> 19:21,25 20:7 21:12,24 <b>shiny</b> 20:21 <b>shopping</b> 21:4 <b>show</b> 26:16 63:6 <b>showing</b> 18:5 <b>shows</b> 43:14,15 64:13 <b>shut</b> 43:3 <b>side</b> 49:18 <b>sign</b> 36:3 <b>significant</b> 45:18 <b>similar</b>
--	---	---	---	--

18:12 46:1	46:17	45:24	<b>stay</b>	<b>Sullivan</b>
<b>simply</b>	<b>sort</b>	<b>spots</b>	39:1	5:18 6:17 16:9
24:19	42:22 47:1	20:19	<b>staying</b>	22:16,20,24
<b>sir</b>	<b>sorts</b>	<b>squared</b>	40:3	23:9,24 25:3
15:22 21:16	34:4	18:14 38:8	<b>stays</b>	30:9 37:24
34:14 51:2	<b>sound</b>	<b>stable</b>	37:18	38:10,14,17
<b>site</b>	51:10	18:22 37:18	<b>step</b>	41:24 43:21
10:11	<b>sounds</b>	ROB MCNEALY	8:19 49:23,24	45:10 46:15,21
<b>sitting</b>	14:13 57:13	<b>standard</b>	<b>stepped</b>	47:15
45:12	62:13	7:13,14,16,20,	25:5	<b>Sullivan's</b>
<b>situation</b>	<b>sources</b>	24,25 8:1,5,11,	<b>stepping</b>	22:7
10:22	34:11	15,18,24 9:3,4	23:25 24:4	<b>summary</b>
<b>skew</b>	<b>south</b>	12:21 13:23	<b>stop</b>	61:7
6:18 63:13	10:12 12:3,10,	14:2 31:18	20:12	<b>sun's</b>
<b>skills</b>	11,16,18 13:6	44:24 62:8,10	<b>stopped</b>	20:24
54:23	53:13,21	<b>standards</b>	57:20,21,22	<b>sunlight</b>
<b>slid</b>	<b>space</b>	7:11,17 8:14,24	<b>store</b>	20:20
6:22 15:18	31:6	9:11,12,19,21,	15:21,23 16:5	<b>super</b>
48:20	<b>speak</b>	24 10:5,8,11,12,	18:1 29:1	21:21
<b>slide</b>	22:19,24 23:23	17 11:1,2,7,8,	<b>stores</b>	<b>supposed</b>
36:25 37:3	<b>speaking</b>	18,24 12:5,20,	26:8	34:16 43:24,25
48:22 49:6	24:12,13,22	24 13:7 28:7,8,	<b>stretching</b>	62:21 64:3,4
<b>sliding</b>	<b>special</b>	10 31:8 34:20,	49:19	<b>surfaces</b>
18:19,22 37:9,	26:3	22,24 36:12	<b>strike</b>	43:12
10,22 38:5,6	<b>specific</b>	42:17 45:1	52:18,25 53:7	<b>surveillance</b>
39:20 42:11	27:22,23 35:1,	59:20	<b>stuff</b>	35:3,4,6 45:23
48:19 49:9	16 36:21 44:24	<b>standing</b>	6:2 28:23 32:1	60:21 61:3,25
<b>slight</b>	45:2 61:10,17	31:13,17,20	33:21 34:22	<b>surveillance</b>
6:21	63:20 64:8	<b>standpoint</b>	59:7	35:20
<b>slip</b>	<b>specifically</b>	14:18 63:24	<b>subheading</b>	<b>swear</b>
35:5,7 50:2	14:23 15:14	<b>started</b>	15:4	65:19
60:18,23	28:10 35:23	21:5 56:24	<b>subpoena</b>	<b>sweep</b>
<b>slipped</b>	40:11 44:22	57:10,19 58:4,6,	50:15 51:6	39:23,24 40:1,6,
63:12 65:25	59:14	10	<b>substantive</b>	12
<b>slipping</b>	<b>speck</b>	<b>starts</b>	33:18	<b>sweeping</b>
8:8	39:3	27:16,25 28:2,5,	<b>subtle</b>	39:22
<b>solve</b>	<b>specs</b>	Garber Reporting info@garberreporting.com	22:18	<b>swept</b>
8:20	39:5	<b>state</b>	<b>sufficient</b>	36:18
<b>someone's</b>	<b>spend</b>	11:20 14:7 15:8,	29:9	
64:17	54:20	15 18:6 19:15	<b>suggests</b>	
<b>something's</b>	<b>spent</b>	22:16 36:17	36:19	
		<b>stated</b>		
		36:16		

<b>T</b>	<p><b>testimony</b> 24:15 51:3,6 59:3 60:5,11</p> <p><b>Texas</b> 52:9,12,21</p> <p><b>textile</b> 62:25</p> <p><b>that's</b> 43:4</p> <p><b>they're</b> 37:3 58:8</p> <p><b>thing</b> 8:9 16:17 31:12 32:16 34:10 52:3 55:21 60:21</p> <p><b>things</b> 6:25 10:2 18:20 23:19 28:24 34:23 44:25 54:10,19,22 55:25 58:24</p> <p><b>Thomas</b> 5:18</p> <p><b>thought</b> 52:11,16</p> <p><b>threshold</b> 18:17 38:8</p> <p><b>throwing</b> 53:5</p> <p><b>time</b> 7:2,22 11:8,9 16:1,24 22:23 28:20 29:16 32:17 38:5 40:4 41:11,23 54:12, 18,20,25 55:1 56:4 58:10</p> <p><b>times</b> 11:14 37:14 51:20,22,25</p>	<p><b>title</b> 61:14</p> <p><b>today</b> 5:21 24:7 58:11 66:14</p> <p><b>told</b> 52:24 53:7 68:17</p> <p><b>top</b> 35:15 40:1,2 52:3,4 63:1</p> <p><b>tracking</b> 57:4</p> <p><b>traction</b> 6:11,19 37:2,8 39:2,4,25 40:2,3</p> <p><b>trade</b> 54:4</p> <p><b>traffic</b> 38:6</p> <p><b>trained</b> 58:6</p> <p><b>training</b> 26:3,5,11,12,13</p> <p><b>transcripts</b> 7:9 29:5</p> <p><b>Trask</b> 5:12,13 13:15 17:9,15 24:11, 18 47:5,9 60:2,5</p> <p><b>tremendously</b> 16:22</p> <p><b>trial</b> 13:17 51:11 52:1 59:4 5:18 28:3 35:7 41:24 46:3 49:21 50:1</p> <p><b>tripped</b> 16:10 30:9 37:24 38:12</p>	<p>45:8 47:16</p> <p><b>trips</b> 17:24 19:8</p> <p><b>true</b> 25:1</p> <p><b>truth</b> 14:11</p> <p><b>type</b> 31:6</p> <p><b>typically</b> 37:10 51:14 54:15 64:14</p> <p><b>typo</b> 34:18</p> <p><b>typos</b> 33:16</p>	<b>V</b>
			<b>U</b>	
			<p><b>Uh-huh</b> 25:24</p> <p><b>ultimate</b> 14:11</p> <p><b>unaware</b> 44:9</p> <p><b>understand</b> 7:15 9:10 14:6 18:4 23:1 26:3 36:13 43:17 45:11 63:3 66:4</p> <p><b>understanding</b> 5:15,23,25 23:11</p> <p><b>understood</b> 66:13</p> <p><b>upper</b> 22:2</p> <p><b>Utah</b> 56:25 57:19</p>	<p><b>vacuum</b> 40:13</p> <p><b>vacuumed</b> 36:20</p> <p><b>vacuuming</b> 37:13</p> <p><b>video</b> 6:13 7:2,8 15:10,11,12,13, 14,16 17:7,8,10, 20 18:3,9 19:13, 25 20:7,13,17 25:3 30:6 35:5, 6,9,12,16,17,20, 21,22 43:13,15 44:13,20 45:23, 25 46:25 47:2 59:9,14 60:17, 21,23 61:3,25 63:6 64:13,15, 23 65:24</p> <p><b>videos</b> 35:4</p> <p><b>view</b> 22:7</p> <p><b>violated</b> 43:11</p> <p><b>violates</b> 18:15</p> <p><b>violation</b> 45:7</p> <p><b>violations</b> 43:10 44:7</p> <p><b>visible</b> 31:16</p> <p><b>visit</b> 15:23</p> <p><b>visited</b> 15:21</p>

<p><b>visual</b> 15:19 28:16 29:25 31:17</p> <p><b>visually</b> 40:25</p> <p><b>volunteer</b> 8:19</p> <p><b>voted</b> 8:21</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>walk</b> 23:14,17</p> <p><b>walked</b> 6:16,17 23:11, 22 38:9 46:6</p> <p><b>walking</b> 25:14,17,22,23, 25 26:1 38:4 43:12,25</p> <p><b>walkway</b> 31:19 54:7 58:6, 13</p> <p><b>Walkways</b> 54:3,4</p> <p><b>wanted</b> 19:10 52:16 62:23 63:2</p> <p><b>warning</b> 36:3</p> <p><b>warrant</b> 45:18</p> <p><b>watch</b> 25:16</p> <p><b>watched</b> 59:9 60:18</p> <p><b>watching</b> 25:22,23 26:1</p> <p><b>ways</b> 54:24</p>	<p><b>weather</b> 40:18</p> <p><b>weeks</b> 41:12</p> <p><b>weird</b> 51:10</p> <p><b>we've</b> 17:25 18:1</p> <p><b>White</b> 12:13 13:9,11 23:8 24:6,16 35:19,23 66:16, 19</p> <p><b>wife</b> 33:15 34:2</p> <p><b>wife's</b> 34:3 53:20</p> <p><b>window</b> 14:22</p> <p><b>wise</b> 54:18</p> <p><b>Wood</b> 57:6,8,21,24 58:2</p> <p><b>word</b> 25:19 59:12,13</p> <p><b>worded</b> 51:24</p> <p><b>words</b> 5:21</p> <p><b>work</b> 14:20,25 16:13, 25 17:2 54:11, 12,14,15,20 55:1,14 56:24 57:1 58:7,11,13, 14,16,25 59:1</p> <p><b>worked</b> 56:5</p> <p><b>workflow</b> 9:2</p>	<p><b>working</b> 43:12 55:19 56:10,16,20</p> <p><b>world</b> 8:6 10:25 34:5 51:16</p> <p><b>worn</b> ROB MCNEALY 44:14,21,23</p> <p><b>worth</b> 39:5</p> <p><b>wrinkle</b> 6:20,21 44:15</p> <p><b>wrinkles</b> 6:15 44:14,17</p> <p><b>writes</b> 34:3,4</p> <p><b>writing</b> 8:1,11,14,15 34:25</p> <p><b>wrong</b> 9:10 14:5 33:20</p> <p><b>wrote</b> 52:25</p> <p><b>Wyoming</b> 56:24,25 57:19 58:3</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>year</b> 54:15 55:3,8,9 58:17</p> <p><b>years</b> 55:9</p> <p><b>York</b> Garber Reporting info@garberreporting.com 54:17 56:16</p> <p><b>You're</b> 13:11</p> <p><b>you've</b> 29:1 65:4</p>
--	---	--

**EXHIBIT C—AFFIDAVIT OF DAVID RILEY**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	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 12<sup>th</sup> day of July 2022

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

**EXHIBIT D—DEPOSITION TRANSCRIPT OF DAVID RILEY (EXCERPTS)**



# Garber

Reporting Service  
& Videoconferencing

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

**DAVE RILEY**

*September 13, 2023*

**Estate of Thomas Sullivan**

VS

**Dolgencorp, LLC, etc.**

**2022-CP-46-00085**

REPORTER: Alison Peterson

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
ESTATE OF THOMAS SULLIVAN,  
Plaintiff,  
vs. CASE NO. 2022-CP-46-00085  
DOLGENCORP, LLC D/B/A DOLLAR GENERAL CORPORATION,  
Defendant.

~~~~~

DEPOSITION OF  
DAVE RILEY

September 13, 2023  
10:02 a.m.

Via Remote Videoconference for  
All Parties

Alison N. Peterson, Court Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF  
ESTATE OF THOMAS SULLIVAN:

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

ATTORNEYS FOR DEFENDANT  
DOLGENCORP, LLC D/B/A DOLLAR GENERAL  
CORPORATION:

MCANGUS, GOUDELICK & COURIE, LLC  
BY: MICHAEL TRASK, ESQUIRE  
1320 Main Street  
Meridian, 10th Floor  
Columbia, South Carolina 29201  
(803) 779-2300  
Michael.trask@mgclaw.com

Garber Reporting  
info@garberreporting.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF EXAMINATION

WITNESS: DAVE RILEY

|              |      |
|--------------|------|
| EXAMINATION  | PAGE |
| By Mr. Trask | 4    |
| By Ms. White | 35   |

FURTHER EXAMINATION

|              |    |
|--------------|----|
| By Mr. Trask | 36 |
|--------------|----|

INDEX TO EXHIBITS

| RILEY     | DESCRIPTION              | PAGE |
|-----------|--------------------------|------|
| Exhibit 1 | Photograph               | 16   |
| Exhibit 2 | Photograph               | 16   |
| Exhibit 3 | Affidavit of David Riley | 29   |

(Original exhibits included with original transcript.)

Garber Reporting  
info@garberreporting.com

[ ]

1 A. Jim or James or something.

2 Q. And was it also Sullivan?

3 A. Yeah. I think he's deceased too.

4 Q. Did Jim or James, his brother, did he tell  
5 you about the note with the liver issue?

6 A. Yeah, that's who told me.

7 Q. Did he ever tell you the note said anything  
8 about Dollar General or the fall at Dollar  
9 General?

10 A. He didn't say. DAVE RILEY

11 Q. Did you ever read the note?

12 A. No.

13 Q. Okay. I want to show you real quick the  
14 affidavit that I received, which is how we figured  
15 out that you were a potential witness in this  
16 case. Can you see that on my screen?

17 A. Yeah. Garber Reporting  
info@garberreporting.com

18 Q. It should say Exhibit D, Affidavit of  
19 Witness David Riley. Do you see that?

20 A. Yes.

21 Q. Okay. We're going to make this --

22 MR. TRASK: What are we up to, Exhibit  
23 3? We'll make this Exhibit 3.

24 (RILEY EXH. 3, Affidavit of David  
25 Riley, was marked for identification.)

1 BY MR. TRASK:

2 Q. Did you write this affidavit?

3 A. I don't really remember. I don't know if I  
4 actually wrote it out or somebody wrote it as I  
5 was giving it.

6 Q. Who do you think you would have been giving  
7 this information to?

8 A. Well, Tommy's attorney.

9 Q. Okay. Did you go to her office to sign this  
10 or did somebody come to you or did you meet  
11 someplace?

12 A. I came to her office.

13 Q. Okay. And so I just, I want to focus on a  
14 couple -- so Number 6 says, "Affiant," so that's  
15 you, "returned to the entrance. Affiant witnessed  
16 Thomas Sullivan falling to the ground immediately  
17 in front of the store."

18 Were you at the entrance when the fall  
19 occurred or were you by your vehicle?

20 A. I was walking around behind it to open the  
21 door.

22 Q. Were you opening the trunk door or one of  
23 the back seat doors?

24 A. The back seat door.

25 Q. Behind the driver side or behind the

1 passenger side?

2 A. Passenger side.

3 Q. Okay. And so the first time that you saw  
4 the incident occur, Mr. Sullivan was already on  
5 his way down at, like, a 45-degree angle, right?

6 A. Yeah.

7 Q. You didn't see any of the lead-up or the  
8 actual trip and fall occur?

9 A. No.

10 Q. Okay. Let's see. <sup>DAVE RILEY</sup> "Mr. Sullivan  
11 communicated to affiant that the fall was caused  
12 by the rug in the foyer of the store."

13 Is that just what you told me earlier, where  
14 he said "That damn rug"?

15 A. Yes.

16 Q. That you, "observed the rug was crumpled up  
17 and lying on the floor <sup>Garber Reporting</sup> inside the door of the  
18 store in close proximity to the place where  
19 Mr. Thomas Sullivan lay injured on the ground."

20 That's after the fall, correct? You didn't  
21 see the rug before the fall occurred?

22 A. No, I didn't see it before.

23 Q. Okay. That you "observed that nothing had  
24 stopped the movement of the rug, and affiant  
25 believes that the rug lacked any suction or grip

1 to hold the rug to the floor."

2 What kind of testing did you do on the mat  
3 to determine that there was no suction or grip on  
4 it?

5 A. Well, I -- I didn't. But I thought those  
6 rugs were a lot firmer than that. I thought they  
7 were -- didn't fold up as easy in my opinion.

8 Q. Okay. That's fair. What other rugs have  
9 you come -- or let's do it this way: What other  
10 stores have you gone to, <sup>where</sup> to look at rugs to  
11 determine how firm they are or how hard they are  
12 to move them?

13 A. Lowes, Home Depot. I see them stuck in the  
14 automatic door sometimes and I pull them out of  
15 the way so the door would close.

16 Q. Did you do any specific testing on the mat  
17 that Mr. Sullivan tripped and fell over?

18 A. No.

19 Q. The Number 12, that you "observed after the  
20 accident Mr. Sullivan was unable to fully resume  
21 his normal activities, daily tasks, and hobbies  
22 due to the additional impairment of his ability to  
23 walk."

24 So what kind of activities, tasks, and  
25 hobbies was he unable to do?

1 A. Well, I had helped him get a little garden  
2 started, and he kind of gave up on that. And he  
3 used to come out of his front door, it was about  
4 five steps, and he couldn't really do that  
5 anymore. He had to come out the other side door,  
6 sliding door that was level with the parking  
7 driveway.

8 Q. The garden, do you know when the garden was  
9 built?

10 A. That spring. DAVE RILEY

11 Q. All right. And when about did he give up  
12 tending to the garden?

13 A. Midsummer.

14 Q. Okay.

15 A. He was going out watering and stuff with the  
16 water hose.

17 Q. Was he doing that after the fall occurred,  
18 was he watering it?

19 A. No.

20 Q. Okay. And then the different doors, so the  
21 front door had five steps but the other one was a  
22 sliding glass door that was level with the ground;  
23 is that my understanding? Is that right?

24 A. Yeah, yeah.

25 Q. Prior to the fall, did he ever struggle due

1 to his prior condition, with the five different  
2 steps?

3 A. Well, he had it down pretty good. He could  
4 come up and down them pretty good.

5 Q. Okay. Any other tasks or hobbies that he  
6 struggled with as outlined in Number 12 of your  
7 affidavit?

8 A. I wouldn't know, really, what -- anything  
9 else.

10 Q. Okay. All right. <sup>DAVE RILEY</sup> Let's do this. Let's  
11 take a quick five-minute break, and then we'll  
12 come back at 10:45. Let me just check my notes.  
13 I might be done.

14 (Recess was taken.)

15 BY MR. TRASK:

16 Q. All right, sir. We've obviously talked  
17 about the trip and fall <sup>Garber Reporting</sup> a good bit. Is there  
18 anything that we have not talked about related to  
19 it that you recall?

20 A. No.

21 Q. Okay. Your affidavit says that it occurred  
22 on July 10th, 2019. Do you know why the date  
23 discrepancy there?

24 A. No.

25 Q. Okay. If I told you June 10th, 2019, was

1 the date, would you disagree with me at all or you  
2 think that's fair?

3 A. I really don't know what the date was. I  
4 mean. . .

5 Q. Do you know where Mr. Sullivan was getting  
6 treatment for his liver problem?

7 A. I didn't even know he had any problem.

8 Q. Okay. And Mr. Sullivan, did he ever consume  
9 alcohol regularly that you saw?

10 A. No.

11 Q. And he never told you about any liver issues  
12 he was having prior to the incident?

13 A. No.

14 Q. All right. Have you understood all my  
15 questions today?

16 A. Yes.

17 MR. TRASK: All right. Ms. White may  
18 have some questions for you, and then I might have  
19 some follow up, but I appreciate your time, sir.

20 THE WITNESS: All right.

21 EXAMINATION

22 BY MS. WHITE:

23 Q. I just have some very brief questions for  
24 you about Mr. Sullivan's condition after the  
25 accident.

1           You mentioned that prior to the accident the  
2 two of you would walk your dogs. Was he able to  
3 walk the dog after the accident?

4       A.       No.

5       Q.       And so that was another bad effect that the  
6 fall had on his lifestyle afterwards?

7       A.       Yeah.

8       Q.       You also mentioned that after the fall that  
9 he had to use one of those riding carts for his  
10 shopping. Was that another bad effect from the  
11 fall?

12      A.       Yes.

13      Q.       And you also stated that the -- that the rug  
14 caused Mr. Sullivan to fall?

15                   MR. TRASK: Object to the form.

16      A.       Yeah.

17                   MS. WHITE: I have no further  
18 questions.

19                                   FURTHER EXAMINATION

20 BY MR. TRASK:

21      Q.       Prior to the incident occurring, how far  
22 would y'all walk your dogs?

23      A.       Just it was a dead-end road, so it wasn't  
24 very far.

25      Q.       You think like half a mile or less than

1 that?

2 A. Less than that.

3 Q. **Maybe like a quarter of a mile?**

4 A. Yeah.

5 MR. TRASK: Okay. All right. That's  
6 all I got. I appreciate it.

7 MS. WHITE: All right. Thank you.

8 (The deposition was concluded at 10:49  
9 a.m.)

10 (This transcript may contain quoted  
11 material. Such material is reproduced as read or  
12 quoted by the speaker.)

13  
14  
15  
16  
17 Garber Reporting  
18 info@garberreporting.com  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I, Alison N. Peterson, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on Page 1, that the deponent was duly sworn to testify to 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 transcript as typed is a true, accurate, and complete record of the testimony of the deponent and all objections made at the time of examination to the best of my ability.

I further certify I am neither related to nor counsel for any party to the cause pending or interested in the events hereafter.

Witness my hand, I have hereunto affixed my official seal this 19th day of September, 2023, at Myrtle Beach, Horry County, South Carolina.

John Ewing  
Myrtle Beach, SC



Alison N. Peterson,  
Court Reporter  
My Commission expires  
April 26, 2033

**EXHIBIT E-DEPOSITION TRANSCRIPT OF BRIAN BOGGESS (EXCERPTS)**

|                            |   |                   |
|----------------------------|---|-------------------|
| State of South Carolina    | ) |                   |
|                            | ) |                   |
| County of York             | ) |                   |
|                            | ) |                   |
| Estate of Thomas Sullivan, | ) | 2022-CP-46-00085  |
|                            | ) |                   |
| Plaintiff,                 | ) |                   |
|                            | ) |                   |
| v.                         | ) | Deposition        |
|                            | ) |                   |
| Dolgencorp, LLC d/b/a      | ) | of                |
| Dollar General,            | ) |                   |
|                            | ) | Brian Boggess, PE |
| Defendant.                 | ) |                   |

Date: October 18, 2023

Time: 1:55 p.m.

Location: Via Remote Videoconference for All Parties

Reported by  
Susan A. Wyant

APPEARANCES

For the Plaintiff: T. Elaine White, Esq.  
Love Sloan Law, LLC  
Rock Hill, South Carolina

For the Defendant: Michael M. Trask, Esq.  
MGC Insurance Defense  
Columbia, South Carolina

Also Present: Miranda Brown, VC Tech

INDEX

Stipulations: 3  
Examination by Ms. White: 3

EXHIBITS

Plaintiff's Exhibit Number A, Color still images from  
surveillance camera of entrance/exit to Dollar  
General. 86

Plaintiff's Exhibit Number B, Color still images from  
surveillance camera of entrance/exit to Dollar General  
including incident. 90

ELECTRONICALLY FILED - 2024 Feb 06 10:09 AM - YORK - COMMON PLEAS - CASE#2022CP4600085

1 -- I mean, my opinion is -- is that the -- there  
2 was nothing about the mat that was improper, that  
3 was unexpected, was, you know, irregular that led  
4 or caused or contributed to the fall, and so we're  
5 left with, essentially, Mr. Sullivan and his gait,  
6 and -- or other variables related to him that are  
7 the cause of the fall.

8 Q In the article that you provided on "Mechanics of  
9 Same Level Falls," if you can look on Page 7 of  
10 that article, and in the first paragraph, the last  
11 sentence of the paragraph says that, "Like a slip  
12 or trip is caused primarily by environmental  
13 factors, consequently, a claim of negligence is  
14 made against the owner or the party in control of  
15 the property where the trip and fall occurred." So  
16 according -- would you agree that according to this  
17 article, that these types of falls are caused  
18 primarily by environmental factors?

19 A No. They can be, but they're not -- that's -- and  
20 it's how are you taking causation? Is that the  
21 cause of the fall, or is it there's some  
22 interaction with the environment because of gait  
23 issues or other things leading to it? That is way  
24 too general to -- and again, I wouldn't  
25 holistically agree with that.

1 Q But you did supply this as part of the -- what you  
2 relied upon in forming your opinions?

3 A This is an article that I've reviewed historically;  
4 it talks about the different fall mechanics, and it  
5 provides, you know, some fundamental definitions of  
6 what a slip is and what a trip is and what a  
7 stumble is, so it's got some fundamental  
8 descriptions/mechanics of basic falls. And then  
9 with sentences like that, it goes beyond what I  
10 would use this for because it's a very general  
11 statement and not specific to any one incident or  
12 one case or one particular fall; it's just kind of  
13 a -- a general statement that this particular  
14 author elected to share.

15 Q Based on your review, what organizations provide  
16 applicable industry standards relating to mats and  
17 rugs?

18 A I mean, the building codes talk about the  
19 requirements for the building and the construction  
20 and the usage and things like that. I mean, the --  
21 I mean, we -- just talking about the B101.6  
22 standard, ANSI document, I mean, that is a document  
23 that's out there that has some information specific  
24 to mats, some general statements on kind of the  
25 placement of them, the selection of them, things

1 to attach the carpet pile material that's -- that  
2 makes up the prime -- the most significant area of  
3 the walking surface of the mat.

4 Q Is the rug's backing intended to keep the rug in  
5 place?

6 A To the degree that it can, sure, it does.

7 Q What are some indicators that a mat is damaged  
8 beyond its usefulness?

9 A Again, significant rippling, curling, tearing,  
10 things like that. I mean, you know, again, it  
11 depends. It's a very qualitative -- qualitative  
12 thing. But, you know, significant damage to it in  
13 some form or another.

14 Q Are you testifying that the damage has to be  
15 significant before the rug is in poor condition?

16 A Again, we're talking very qualitative. I mean, if  
17 -- if you look at, you know, microscopically or  
18 even -- even very close up, if there's the  
19 slightest tear in the edge of the rubber wiper,  
20 meaning, you know, it's a couple millimeter tear in  
21 a corner, no. You don't need to take a couple  
22 hundred dollar rug and throw it in the trash can.  
23 It still has usefulness to it. If the -- you know,  
24 the edge is torn up and it's puckering up and it's,  
25 you know, got significant lift to it and things

ELECTRONICALLY FILED - 2024 Feb 06 10:09 AM - YORK - COMMON PLEAS - CASE#2022CP4600085

1           like that, yeah. It's probably reached the stage,  
2           the stage of time to get rid of it or time to  
3           replace it. It depends on the level of -- of that  
4           damage.

5    Q       According to national standards, should a rug be  
6           left -- a deteriorated rug be left in place until  
7           the damage is significant?

8    A       They don't really provide qualification in -- to  
9           that. They -- you know, essentially they are  
10           saying, again, if -- if it exhibits, you know,  
11           those -- those significant conditions, then it  
12           should probably be replaced. It recommends to  
13           replace. But again, it's a very qualitative  
14           judgement. It's not -- there's not a absolute  
15           define if the tear is 1 millimeter or 1 foot, which  
16           is why the standard is very generic and -- and, you  
17           know, again, which is part of the reason it's not  
18           adopted as code either, because there's not hard  
19           and fast metrics in which to make those judgements.

20   Q       According to Dollar General's standards, is it --  
21           does the damage have to be significant in order for  
22           -- in order for the rug to be deteriorated and  
23           replaced?

24   A       You'd have to ask Dollar General that. I mean,  
25           I've -- I've seen the testimony, and the -- in

1           general, if it's -- if the mats are getting torn  
2           up, then they would replace them.

3    Q       I'd like to share with you, if you can turn to the  
4           deposition of Sam Greene on Page 17.

5    A       I'm loading it up. Give me one minute.

6    Q       Okay.

7    A       Okay. I'm with you.

8    Q       I'm at Line 18, so I'm on Page 17, Line 18.

9    A       Yes, ma'am.

10   Q       And if you see there, Mr. Greene states, "So in the  
11           SOP," which is their Standard Operating Procedures,  
12           "it states that whenever a rug starts to curl, that  
13           you can, that you should immediately have it  
14           replaced."

15   A       I see that.

16   Q       And so isn't it true that Dollar General's policy,  
17           just like the national standards, state that if  
18           there's damage to the rug, it should immediately be  
19           replaced?

20   A       I wouldn't say -- I wouldn't say exactly the same.  
21           But if that's what he's reading, is that if it's --  
22           it curls -- curls up like it's -- and then he  
23           clarifies, so if you see it, then it needs to be  
24           changed out. All right. Sorry. "When a rug is  
25           weathered or old, yeah, it just typically kind of



|                              |   |                                      |
|------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA      | ) |                                      |
|                              | ) | IN THE COURT OF COMMON PLEAS         |
| COUNTY OF YORK               | ) |                                      |
|                              | ) |                                      |
| ESTATE OF THOMAS SULLIVAN,   | ) | Civil Action No. 2022-CP-46-00085    |
|                              | ) |                                      |
| Plaintiff,                   | ) |                                      |
|                              | ) |                                      |
| vs.                          | ) | <b>DEFENDANT'S MOTIONS IN LIMINE</b> |
|                              | ) |                                      |
| DOLGENCORP, LLC D/B/A DOLLAR | ) |                                      |
| GENERAL CORPORATION,         | ) |                                      |
|                              | ) |                                      |
| Defendant.                   | ) |                                      |

Defendant, Dolgencorp, LLC, d/b/a Dollar General Corporation (hereinafter referred to as "Defendant"), by and through their undersigned counsel, hereby moves in limine for an Order: (1) preventing Plaintiff from testifying about any facts related to the incident; (2) excluding Plaintiff's liability expert from testifying at trial; and (3) excluding any testimony that Decedent committed suicide due to this incident. By way of background, this civil action arises out of a trip and fall incident that occurred on June 10, 2019, at a Dollar General store located in York County, South Carolina. The Decedent was exiting the store when, due to a pre-existing impaired gait, he kicked up a flat mat and fell to the ground. The Decedent committed suicide on August 21, 2020. The Decedent was not deposed before his death.

**A. Any testimony offered by Plaintiff about the incident should be excluded under the S.C. Dead Man's Statute.**

It is undisputed that Decedent took his own life on August 21, 2020, merely twenty-five days before his deposition was scheduled to occur. Martha Ballew, the Decedent's sister, was made the personal representative for the Decedent's Estate and, subsequently, took over as the Plaintiff in this action. During her deposition, Plaintiff testified that the Decedent told her the

subject mat was looked “dry rotted” and had a “curl” that he did not see until he fell to the ground. (Ballew Dep., 31:1-9). This statement, along with any other statement learned from Decedent, is inadmissible under the S.C. Dead Man’s Statute. S.C. Code Ann. § 19-11-20.

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).

To date, Plaintiff has never presented a Last Will and Testament for Decedent to dispute the notion that she has a personal interest in this litigation. The Decedent was unmarried and did not have any children. As a result, any information regarding the incident or the condition of the rug the Plaintiff learned from Decedent before his passing is inadmissible under S.C. Code Ann. § 19-11-20. Moreover, somehow assuming the Dead Man’s Statute does not preclude the aforementioned statement, the conversations are still inadmissible as hearsay under Rule 801, SCRE.

**B. Plaintiff’s liability expert should be excluded from testifying at trial.**

The Plaintiff retained Robert McNealy, a witness from the State of Utah, to serve as an expert witness regarding liability in this action. During his deposition, Mr. McNealy confirmed that his opinions were based primarily on the video footage of this incident. (McNealy Dep., 15:7-13). Consistent with his report (attached as Exhibit C), Mr. McNealy opined that the mat was in a sever state of disrepair and was a hazardous condition when the Decedent encountered it. Mr. McNealy performed zero testing or inspection on any mat from the Dollar General store

before formulating his opinions in this case.

"The trial court serves as the gatekeeper in the admission of all evidence presented at trial...." *Watson v. Ford Motor Co.*, 389 S.C. 434, 456, 699 S.E.2d 169, 180 (2010). "In determining whether to admit expert testimony, the court must make three inquiries." *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). "First, the [circuit] court must determine whether the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Watson*, 389 S.C. at 446, 699 S.E.2d at 175. Second, the expert must have "acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter," although he "need not be a specialist in the particular branch of the field." *Id.* Finally, the substance of the testimony must be reliable. *Id.* It is this final requirement of reliability which is the central feature of the inquiry. *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). In analyzing the reliability of proposed expert testimony the court must consider the following factors: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *Ray v. City of Rock Hill*, 428 S.C. 358, 369-70, 834 S.E.2d 464, 470 (Ct. App. 2019)

It is clear from Mr. McNealy's deposition testimony and expert report that: (1) his opinions would not assist the jury in determining the fact issues; and (2) any opinions offered by Mr. McNealy are unreliable at best. Mr. McNealy simply reviewed the video footage of the subject incident and offered an opinion. There was no scientific principles or technical expertise applied. Mr. McNealy simply sat in front of his computer screen and watched a video clip; something each member of the jury is capable of doing themselves. Simply put, Mr. McNealy

adds nothing to the equation and his expert opinions, if they can even be considered that, are unreliable. Therefore, Mr. McNealy should be excluded from testifying at trial.

**C. This Court should exclude any testimony regarding why the Decedent took his own life.**

During the pendency of this litigation, Decedent tragically took his own life in August of 2020. The Plaintiff produced the Decedent's suicide note, which is attached hereto as Exhibit D. Notably, the suicide note does not mention this incident or Dollar General in any manner. Throughout discovery, Plaintiff has taken the position that Decedent took his own life because he was depressed after the incident. The Plaintiff has failed to produce any medical records or other documents to support this position. Moreover, there are no treating physicians and/or qualified expert witnesses who have offered any opinion testimony that Decedent took his own life because of this incident, or was depressed because of this incident.

This theory, and any testimony regarding the same, is speculative and should be excluded from trial. The only person who could explain why Decedent took his own life is: the Decedent himself. Allowing Plaintiff to testify to her belief as to the cause of the suicide, based on zero supporting evidence, is improper under Rule 701 and 702 of the South Carolina Rules of Evidence. Therefore, this Court should exclude any testimony regarding the cause of Decedent's suicide and any mental health diseases/issues Decedent may have been suffering from prior to his suicide.

*Signature Following Page*

MCANGUS GOUDELICK & COURIE, L.L.C.

*s/Michael Trask*

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

trippett.boineau@mgclaw.com

MICHAEL TRASK (SC Bar No. 103120)

Michael.trask@mgclaw.com

Post Office Box 12519

1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211

Telephone: (803) 779-2300

Facsimile: (803) 748-0526

ATTORNEY FOR DOLGENCORP, LLC

June 14, 2024



his own life in August of 2020, and his personal representative, Martha Ballew (i.e. "Plaintiff") continued prosecuting the case. The Decedent was not deposed before his death. The Plaintiff's entire theory of liability was predicated on the subject mat being curled, unmaintained, and unsecured. Defendant denies liability for this incident and the case proceeded to a jury trial on June 17, 2024.

The Plaintiff called four witnesses during their case-in-chief: (1) Plaintiff; (2) Dave Riley; (3) Dr. Edward Brown; and (4) Robert McNealy. The Plaintiff testified that she was not present when the incident occurred. She presented no independent knowledge of the mat's condition before Decedent came into contact with it. Mr. Riley testified that he drove the Decedent to the subject store, but waited in the vehicle while the Decedent shopped. He never went inside the store to assist the Decedent. More importantly, Mr. Riley confirmed he did not see the mat prior to the incident occurring. He did help the Decedent and inspected the condition of the mat after the incident occurred. He then took the Decedent's groceries home after the Decedent was taken to the hospital.

Dr. Edward Brown testified via video deposition, which occurred before trial. Dr. Brown was the orthopedic surgeon who surgically fixed the Decedent's fractured hip after this incident occurred. Interestingly, Dr. Brown testified that the Decedent had a prior stroke and, as a result, had an impaired GAIT with his left foot. Dr. Brown watched the video ad nauseam and offered the following opinions to the jury: (1) the subject mat was flat and did not contribute to the subject incident; and (2) the Decedent's impaired GAIT was the sole cause of the subject incident.

Robert McNealy, Plaintiff's alleged liability expert, was permitted to testify over an

objection as to the reliability and helpfulness of his opinion.<sup>3</sup> Mr. McNealy testified that he reviewed the video footage of the incident in this action. He opined that the mat was “dirty” based on his view of the video footage. He also testified that the mat was unsecured, because the Decedent was able to kick up the mat with his impaired GAIT and fell to the ground. Mr. McNealy then attempted to testify that the mat was curled when the Decedent came into contact with it, but never actually identified the actual curl in the mat before the jury. Mr. McNealy then conceded he never inspected the subject mat, never spoke to the Decedent, and was impeached for visiting the store despite claiming it held no relevance to his formulation of opinions in this case. Finally, Mr. McNealy himself agreed that the mat was not concealed from the Decedent in any manner and agreed the Decedent had to walk over the same mat to enter the store before the incident occurred.

After the Plaintiff rested her case, Defendants moved for a directed verdict. Specifically, the Defendant argued: (1) there was no evidence of a mat curl, which required a finding that the mat was not hazardous; (2) there was no evidence Defendant knew or should have known about the alleged curl in the mat; (3) the mat was an open and obvious condition that did not require a warning; and (4) Decedent’s comparative negligence far exceeded any negligence attributable to Defendant based on Dr. Brown’s testimony. The Court denied the Defendant’s Motion for Directed Verdict.<sup>4</sup>

---

<sup>3</sup> As way of background, Defendant objected to Mr. McNealy testifying, pursuant to Rules 702, 401 and 403 of the *South Carolina Rules of Evidence*, since his opinions were solely based on the video footage. Defendant’s position is Mr. McNealy’s paid for “opinions” invaded the province of the jury, were not helpful to the jury, and, most importantly, were not based on any “scientific, technical, or other specialized knowledge . . .” 702, SCRE; *see also Castro v. Wal-Mart Real Estate Bus. Trust*, 645 F.Supp.3d 638, 646 (W.D.TX. 2022) (expressly finding that Robert McNealy’s opinions as to the condition of the subject mat lacked any sense of helpfulness to the jury since it was primarily based on a review of video footage and his opinions were excluded from trial for invading the province of the jury. “the Court is not convinced that Mr. McNealy’s testimony as to the condition of the mat will be helpful to the jury, given that it will primarily rely on video footage available to the jury.”

<sup>4</sup> The Court did grant Defendant’s Motion for Directed Verdict regarding the issue of punitive damages since there was no evidence of reckless conduct or heightened negligence attributable to the Defendant.

The Defendant then proceeded to present two witnesses during their case-in-chief: (1) Laura Myers; and (2) Brian Boggess. Ms. Myers was the assistant manager when this incident occurred. She testified that the mat was not curled, dirty, or poorly maintained before Decedent encountered it. She also testified that the employees would inspect the mats, including the subject mat, every morning before the store opened. She also testified that the mats were cleaned every night after the store closed. Brian Boggess was offered as an expert in biomechanical engineering and mechanical engineering without objection. He opined that the mat was flat and the incident occurred because of the Decedent's impaired GAIT. Specifically, Mr. Boggess testified that the Decedent kicked the mat while exiting the store, which caused the fall to occur. At the close of Defendant's case-in-chief, Defendant renewed their Motion for Directed Verdict on the same grounds previously listed. The Court, again, denied Defendant's Motion for Directed Verdict. The Jury ultimately returned a verdict for Plaintiff and found Defendant 100% liable for the incident. The Jury awarded the Plaintiff \$296,000.00 dollars.

#### **STANDARD OF REVIEW**

Rule 50(b) of the South Carolina Rules of Civil Procedure permit a Party to move for a Judgment Notwithstanding the Verdict after the conclusion of a trial. 50(b), SCRPC. A motion for a Judgment Notwithstanding the Verdict ("JNOV") is just a post-trial renewal of the Party's Motion for Directed Verdict. *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006). When determining whether to grant or deny a JNOV, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27-28, 602 S.E.2d 772, 782 (2004). A JNOV must be granted where there exists no evidence to prove an essential element of the causes of action asserted against the Party. *Richardson v. Piggly Wiggly Cent., Inc.*, 404 S.C. 231, 743 S.E.2d 858

(Ct. App. 2015) (reversing the trial court and explaining that defendant's motion for directed verdict should have been granted because there was no evidence defendant breached a duty of care owed to plaintiff); *see also Critzer v. Kerlin*, 231 S.C. 315, 98 S.E.2d 761, (1957) ("It is elementary that in order for the plaintiff to recover damages, she must prove not only her injury, but also that it was caused by the actionable negligence of the defendant.").

Rule 50(b) also allows a party to seek a new trial while also seeking a JNOV. 50(b), SCRCP. Rule 59(a) permits a party to seek a new trial at the conclusion of the trial in a case. 59(a), SCRCP. A trial judge has the ability to grant a new trial based upon the thirteenth juror doctrine. *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002). "The thirteenth juror doctrine empowers a trial court who believes the verdict is contrary to the evidence to 'hang' the jury, thus necessitating a new trial." *Ex Parte Travelers Home & Marine Ins. Co.*, 427 S.C. 238, 830 S.E.2d 718 (Ct. App. 2019) (citing to *Trivelas v. S.C. Dep't of Transp.*, 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004)). The trial court is "is duty-bound to grant a new trial if the evidence does not support the verdict." *Id.* at 244.

### **LEGAL ARGUMENTS**

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)).

**1. The Plaintiff failed to provide evidence establishing the mat was a danger condition**

There is no evidence supporting the jury's finding that Defendant acted negligently or that the mat was a dangerous condition when Decedent encountered it. It is crucial in a premises liability case that actual evidence of a dangerous condition be presented. After all, 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. *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)). This case is 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.*

The only evidence regarding the condition of the mat shown at trial was the video footage, which confirmed the mat was flat when the incident occurred. There was no evidence showing the mat was curled in any manner before the Decedent encountered it. More importantly, the only evidence offered by Plaintiff was that the mat was dirty; an issue that had not impact on Decedent's trip and fall incident. It is clear from the verdict in this case that the Jury either misunderstood the law or misapplied the law. As a result, the Court should grant Defendant's Motion for Judgment Not Withstanding the Verdict and dismiss this action.

**2. Even if the jury could properly find the mat was defective in a dangerous condition, there is no evidence to show that Defendant had notice of the condition.**

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.*

The Plaintiff failed to present any evidence at trial to establish: (a) the alleged curl in the mat was caused by Defendant; (b) Defendant's employees had actual notice of the alleged curl; or (3) the curl existed for so long to create constructive notice of the alleged mat curl. The Plaintiff's entire theory of liability rested upon the notion that the mat was curled in a manner creating a dangerous condition. Their own "expert," failed to identify the alleged curl while testifying at trial. He told the jury multiple times that the curl existed if the video was slowed down enough, but then failed to ever actually follow through on how self-serving statements and identify the curl. Defendant's witness Laura Myers, in fact, testified that she nor any of her coworkers knew of any issues with the mat prior to the fall and that she followed cleaning procedures both on the mat's surface and beneath the mat. The Plaintiff's failure to offer evidence of this essential element requires this Court to grant Defendant's Motion for Judgment Notwithstanding the verdict.

### **3. The condition of the mat 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).

Plaintiff has provided no evidence to show that the condition of the mat was in any way hidden. At trial, Plaintiff's expert witness even testified that the mat was not hidden. Perhaps most alarming, the video footage showed the Decedent walking over the same mat to enter the

store. To claim the alleged curl or the mat was somehow a hidden condition requires an individual to ignore every piece of evidence submitted to the jury in this case. As a result, the Court should grant Defendant's Motion for Judgment Not Withstanding the Verdict and dismiss this action.

**4. Plaintiff was comparatively at fault for his own injuries.**

"Ordinarily, 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, 529 S.E.2d 710 (2000) (citing to *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997)). "If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created and a directed verdict motion is properly granted." *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996).

The Plaintiff's own expert, Dr. Brown, testified the accident would not have occurred but for the Decedent's impaired GAIT. The evidence offered by Plaintiff establishes comparative negligence in this action. The Decedent walked over the same mat entering the store that he tripped over while exiting. It is clear he had knowledge of the mat's existence. Decedent's failure to protect himself, and his impaired GAIT, while leaving the store firmly establishes his comparative negligence far exceeds any negligence that could be attributable to Defendant. As a result, the Court should grant Defendant's Motion for Judgment Not Withstanding the Verdict and dismiss this action.

**5. Defendant is entitled to a New Trial.**

Rule 59(a) permits a party to seek a new trial at the conclusion of the trial in a case. 59(a), SCRPC. A trial judge has the ability to grant a new trial based upon the thirteenth juror doctrine. *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002).

“The thirteenth juror doctrine empowers a trial court who believes the verdict is contrary to the evidence to ‘hang’ the jury, thus necessitating a new trial.” *Ex Parte Travelers Home & Marine Ins. Co.*, 427 S.C. 238, 830 S.E.2d 718 (Ct. App. 2019) (citing to *Trivelas v. S.C. Dep’t of Transp.*, 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004)). The trial court is “is duty-bound to grant a new trial if the evidence does not support the verdict.” *Id.* at 244.

It is clear from the verdict in this case that the verdict is contrary to the evidence submitted at trial. As discussed above, there is no evidence demonstrating: (1) a curl in the mat; (2) the Defendant created the curl; (3) the Defendant had actual or constructive notice of the curl; (4) the mat was hidden from Decedent in some manner. More importantly, the jury’s failure to apportion some, if not all, fault to the Plaintiff for this incident confirms the verdict is contrary to the evidence submitted in this case. Plaintiff’s own expert witness, Dr. Brown, unwaveringly testified that the Decedent’s GAIT was the cause of the incident; an opinion confirmed by Brian Boggess, Defendant’s biomechanical engineer. Even Plaintiff’s liability “expert,” Robert McNealy, failed to offer any opinions regarding the Decedent’s GAIT. He simply focused on mat migration and the cleanliness of the mat after watching a video of the fall.

Additionally, the court allowed testimony from Plaintiff’s “expert” which should have been excluded. The court denied Defendant’s pre-trial motion to exclude the testimony of Robert McNealy. Robert McNealy’s testimony has been excluded by multiple other courts including the Texas Southern District Court which held that “the basis of McNealy’s expert opinions is unclear. McNealy does not describe how he arrived at his opinions, or how they are the product of reliable principles and methods” and found his opinions to be “conclusory and unreliable”. *Villanueva v. Wal-Mart Stores Texas, LLC*, 2023 U.S. Dist. LEXIS 17681, 2023 WL 1069306 (S.D. Tex. Jan. 6, 2023). Additionally, the Texas Western District Court granted a defendant’s

motion to exclude McNealy's testimony in *Castro v. Wal-Mart Real Estate Bus. Trust*, 645 F. Supp. 3d 638 (W.D. Tex. Dec. 8, 2022) after finding that although McNealy was qualified as an expert in flooring, "the Court [was] not convinced that Mr. McNealy's testimony as to the condition of the mat [would] be helpful to the jury, given that it [would] primarily rely on footage available to the jury." In this case, Robert McNealy relied solely upon video footage of the mat to come to his conclusions. This review required no more specialized knowledge than that of a lay juror and thus invaded the province of the jury. As such, Defendant moves for a new trial in the alternative.

The jury's verdict in this action confirms they were misled by Mr. McNealy who should have never been allowed to testify as an expert. More importantly, it confirms the verdict is unsupported by the evidence in this action.<sup>5</sup> Therefore, this Court should grant Defendant a new trial if this Court denies Defendant's Motion for Judgment Notwithstanding the Verdict.

### **CONCLUSION**

Based on the above arguments, the court should grant a Judgment Notwithstanding the Verdict, or, in the alternative a new trial.

---

<sup>5</sup> Defendant further moves for a New Trial Nisi Remittitur. The Plaintiff presented medical bills of \$115,000.00 dollars. However, it is undisputed that the Decedent tragically took his own life nearly one year after the incident occurred. There was no evidence provided by Plaintiff to support the Jury's award of \$296,000.00 dollars. In fact, Dr. Brown testified that the Decedent healed quickly from his fracture and was even released early from care. Therefore, the Defendant respectfully requests a remittitur in an amount supported by the evidence.

MCANGUS GOUDELOCK & COURIE, L.L.C.

*s/Michael Trask*

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

trippett.boineau@mgclaw.com

MICHAEL TRASK (SC Bar No. 103120)

Michael.trask@mgclaw.com

Post Office Box 12519

1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211

Telephone: (803) 779-2300

Facsimile: (803) 748-0526

ATTORNEY FOR DOLGENCORP, LLC

June 28, 2024

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK )

PLAINTIFF'S MEMORANDUM IN  
OPPOSITION TO DEFENDANTS'  
MOTION FOR JUDGMENT  
NOTWITHSTANDING THE VERDICT  
OR FOR A NEW TRIAL

ESTATE OF THOMAS SULLIVAN, )

Plaintiff, )

vs. )

Civil Action Number: 2022-CP-46-0085

DOGENCORP, LLC )

D/B/A DOLLAR GENERAL, )

Defendant )

Plaintiff requests that Defendant's Motion for Judgment Notwithstanding the Verdict ("JNOV") and alternative Motion for New Trial be denied because Defendant has failed to meet the standards required by South Carolina Rules of Civil Procedure 50 or Rule 59 ("SCRCP").

Plaintiff opposes and respectfully replies to the motions as follows:

**STANDARD FOR REVIEW**

When reviewing a motion for JNOV, the Court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party, and a JNOV is not appropriate where the evidence yields more than one inference, or its inference is in doubt. *Daves v. Cleary*, 355 SC 216, 229, 584 S.E. 2d 423, 429-430 (S.C. App. 2003). If the evidence is susceptible of more than one reasonable inference, the JNOV should be denied. *Id.* Additionally, the jury has the authority to decide credibility issues and resolve conflicts in the testimony and evidence." *Id.*

Here, the Defendant is asking the Court to override the jury verdict based on Defendant's opinion that the jury should have believed the Defendant's one witness and Defendant's expert despite their lack of credibility. In reviewing a JNOV, "the jury's verdict must be upheld unless

no evidence reasonably supports the jury's findings." *Curio v. Caterpillar, Inc.*, 355 S.C. 316,320, 585 S.E. 2d 272, 274 (2003).

**I. FACTUAL BACKGROUND AND WITNESSES**

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, a Vietnam veteran 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. Plaintiff's expert testified that due to the poor condition of the rug, including, without limitation, curling on the edge of the rug, the rug caught Mr. Sullivan's foot. Further he testified, the rug was unsecure, contaminated by dirt and debris, poorly maintained and in disrepair. Therefore, the rug also buckled, slid and migrated across the floor causing Mr. Sullivan to trip and fall. Due to the poor condition and malfunctioning of the rug, Mr. Sullivan was violently thrown from the foyer to the outside of the store onto the cement pavement. As a result, Mr. Sullivan fractured his hip, struck his head and chest and sustained abrasions from falling on the cement. He was transported directly from the Dollar General to Piedmont Medical Hospital and underwent hip surgery the following day. Defendant denied all liability.

Plaintiff called four witnesses during Plaintiff's case-in-chief: (1) Martha Ballew, the surviving sister of Mr. Sullivan who is deceased; (2) Dave Riley, an eyewitness who drove Mr. Sullivan to the store, witnessed a portion of the accident, and remained with Mr. Sullivan at the Dollar General store for approximately thirty minutes until EMS arrived; (3) Dr. Edward Brown of OrthoCarolina who performed the hip surgery for Mr. Sullivan; and (4) Robert McNealy, an expert with approximately twenty years of experience in flooring (including mats and rugs) and

walkway safety.

The testimony of all four witnesses supported Plaintiff's allegations. Ms. Sullivan Ballew testified that her brother had no prior history of falling and was able to live independently prior to the fall and provide care for family members. She testified that due to the fall he suffered a loss of mobility, had to use a walker from the time of the accident until his death, incurred substantial medical expenses, suffered continuing pain, lost hope and was unable to resume activities of daily living including gardening, walking and caring for his pets. She testified that as personal representative of the estate she reviewed the affidavits and billing provided by all medical providers relating to her brother's treatment from the accident and confirmed the accuracy of the affidavits and billing records. The affidavits and medical billing were admitted into evidence without objection.

David Riley testified that while at the scene and suffering under the shock of the fall, Mr. Sullivan stated in an excited utterance that the rug caused his fall. Additionally, David Riley testified that during his wait for the EMS, he observed that the rug was dirty, flimsy and unsecure and had slid and migrated across the floor in the process of the fall. He also confirmed that the rug caused Mr. Sullivan's fall, and Mr. Sullivan was capable of walking independently and was suffering no difficulties prior to the fall. He also testified to the loss of mobility and the devastating effect of the fall and injuries sustained on Mr. Sullivan's life and activities of daily living.

Dr. Brown testified by videotape. He reviewed the medical records and confirmed that all the medical treatment and injuries suffered by Mr. Sullivan were directly related to the fall and necessary for his treatment. The medical records were admitted into evidence without objection. He further testified that based on the videotape of the accident, Mr. Sullivan was physically and

medically capable of walking without falling. Dr. Brown testified that Mr. Sullivan demonstrated in the video tape his ability to lift his foot and walk across other mats in the store until he encountered the rug that Plaintiff alleged caused the fall. Regarding the continuing effects from the injury, Dr. Brown testified that 50% of all patients suffer a loss of at least one level of mobility following the type of fall and surgery Mr. Sullivan experienced. He further testified he only saw Mr. Sullivan twice following the surgery. At the first postoperative visit in June of 2019, Dr. Brown noted Mr. Sullivan reported to the nurse a pain level of 8 out of 10 and reported that the pain was waking him from his sleep. Dr. Brown reported that at the second postoperative visit in July of 2019, Mr. Sullivan was utilizing a walker and a motorized wheelchair for ambulation and expressed his desire that he wanted to return to his pre fall status that did not require a walker or a wheelchair. Dr. Brown's testimony confirmed the testimony of Martha Sullivan Ballew and David Riley that the fall and the injuries sustained had a significant negative impact on Mr. Sullivan's mobility and activities of daily living. Further Dr. Brown admitted during the video deposition that in his initial viewing of the videotape, he had opined that the mat was lifted and contributed to Mr. Sullivan's fall. Dr. Brown repeatedly admitted he had no expertise regarding mats or walkway safety. During the videotape deposition, defense counsel noted on record that he had a continuing objection to any comments from Dr. Brown regarding the condition of the mat. Both parties agreed that Dr. Brown's area of expertise was solely in orthopedic surgery. The full video tape of the testimony of Dr. Brown was admitted into evidence without objection.

Plaintiff's expert witness, Robert McNealy provided extensive testimony regarding the standard of care relating to mats and rugs based upon national standards, federal regulations, Dollar General's policies and the testimony of Dollar General's employees, including Laura

Myers. Based on his expertise, he concluded that several factors relating to the poor condition of the rug caused and contributed to the trip and fall accident, including the following: failure to inspect; failure to clean and maintain the rug in accordance with manufacturer instructions, failure to remove or replace the rug which showed clear evidence of curling, rug sliding or migration; failure by Dollar General to provide a firm, secure walking surface for customers in violation of federal regulations; and failure to warn customers of the hazardous condition caused by the poorly maintained, unsecured, damaged, curled rug. Mr. McNealy used the Dollar General video tape surveillance, the testimony of Dollar General employees, documents produced in discovery and his twenty years of expertise in flooring (including mats and rugs) and walkway safety to reach and explain observations and his conclusions to the jury.

## II. DEFENDANT'S INVALID ARGUMENT REGARDING NOTICE

The parties agreed that Mr. Sullivan was a customer and invitee of Dollar General. Yet, Defendant denied that Dollar General breached any duty owed to Mr. Sullivan. In the JNOV motion, Defendant erroneously attempts to shift responsibility for inspection to Mr. Sullivan and suggests that Mr. Sullivan had responsibility to identify the dangerous condition of the rug. Again, this is an erroneous statement regarding premises liability principles.

The Cook v. Food Lion, Inc. case supports the denial of JNOV in this case and refutes Defendant's arguments regarding the 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 damaged, dirty, unsecured rug on the floor at the exit and failing to inspect, maintain or remove or warn of the danger. Defendant cannot create a dangerous condition and then claim that Defendant had no notice. The Defendant is deemed to have known or should have known because Dollar General placed the mat on the floor and failed to inspect, maintain or replace the damaged mat. Further even if the alternative notice standard was applicable, Dollar General failed to conduct a reasonable inspection and cannot claim ignorance or lack of notice when a reasonable inspection would have revealed the severe deterioration of the mat and the danger to invitees like Mr. Sullivan. *See* Discussion in Section III below regarding inspection.

### **III. DEFENDANT'S BREACH OF THE DUTY TO DISCOVER RISKS AND WARN CUSTOMERS**

The video surveillance reveals the deteriorated mat/rug and the resulting trip and fall hazard to customers. Both parties agreed that Mr. Sullivan was a business invitee and Dollar General owed Mr. Sullivan a duty to take safety precautions and remove or warn of any unsafe conditions. This duty includes a duty to inspect the premises. Dollar General cannot negate its duty to customers/invitees by failing to conduct a reasonable inspection or by denying the facts that the Dollar General video surveillance clearly reveals regarding the deteriorated appearance of the mat and the mat malfunction (resulting from the deteriorated condition) in Mr. Sullivan's accident. The deterioration was a result of an extended period of negligent maintenance and inspection that caused the curling, loss of traction, migration and malfunction of the mat/rug.

Defendant presented Laura Myers as Defendant's sole fact witness. In cross

examination, Ms. Myers admitted that she had no prior experience in inspecting mats before being hired by Dollar General. She admitted that Dollar General did not provide her with any videos, manuals or training meetings regarding mat safety or inspections, and Dollar General never checked or did anything to ensure that she actually knew what to do regarding mat inspections. She admitted Dollar General did not require any written documentation or checklist to show any inspection was done. She admitted that Dollar General did not provide any video surveillance to show she ever completed an inspection and she never completed any written documents regarding inspection. She admitted she was not familiar before the trial with certain terminology relating to mat safety. She admitted that her duties included cashiering, stocking, customer service and other duties, and mat safety and inspection was not her primary duty. In fact, no one person was responsible for inspections, and no one was required by Dollar General to document inspections. She admitted that she only looked at the mats quickly once a day as she walked in. She admitted that on the day of the accident, she never inspected the rug after Mr. Sullivan's fall. Further other than her testimony, she had no proof she inspected on any day. She testified that her cash register was directly in front of the mat inside the store. The video surveillance showed the severe deterioration and movement of the mat. Yet, Ms. Myers was not trained to recognize the problems and did nothing. Her testimony and actions indicated that Dollar General failed to train its employees and failed to adopt any procedures to ensure inspections were properly made or to correct any dangerous conditions caused by failure to inspect or maintain the mats in the store. Further the Defendant's expert and Plaintiff's expert confirmed that Dollar General had not provided any written proof of any inspections or inspection procedures completed by any employee at any time.

Based on Laura Myers' testimony and the video surveillance, the jury was justified in

doubting the credibility of any statements by this witness regarding fulfillment of Dollar General's duty to inspect and maintain mats in safe condition for its customer Thomas Sullivan and others. Additionally, the Dollar General video surveillance and the testimony of Plaintiff's eye-witness David Riley, and Mr. Sullivan's excited utterance contradicted Ms. Myers testimony and supported the allegations of Plaintiff regarding the deteriorated and unsafe condition of the mat/rug. The jury was entitled to rely upon the evidence presented by the Plaintiff.

#### IV. EXPERT WITNESSES

The qualification of an expert and the admissibility of an expert's testimony are matters within the discretion of the trial judge. *Daves v. Cleary*, 355 S. C. 216, 228. Here, Defense counsel refuses to accept the Court's ruling regarding the qualification of Plaintiff's expert, Robert McNealy despite Mr. McNealy's approximately 20 years of experience in flooring (including mats and rugs) and walkway safety, numerous certifications and inspection experience. See Section I above summarizing the testimony of expert Robert McNealy. Mr. McNealy's expert opinion regarding Dollar General's breach of the standard of care and the cause of the accident was supported by the excited utterance of Mr. Sullivan, the testimony of eyewitness David Riley, the Dollar General video surveillance and the testimony of Defendant's employees, national standards, and federal regulations. The Defendant's repetitive arguments in the JNOV Motion to preclude testimony by Plaintiff's expert were reviewed and rejected by the Court in Defendant's summary judgment attempts and in Defendant's pre-trial motion.

All of Defendant's arguments would invalidate Dollar General's own expert in this case, Brian Boggess. Mr. Boggess admitted his primary expertise was in vehicular accident reconstruction, and less than 10% of his practice involved mats or trip and fall accidents. Mr.

Boggess admitted he had never worked, owned or been affiliated with any mat inspection entity. Further he admitted he had no certifications or professional affiliations related to mat or walkway safety organizations. Mr. Boggess did not have any personal subscriptions to any mat or walkway safety periodicals or materials and did not provide any written report or basis for the opinions he expressed in his testimony. Further, he had no medical training, and his conclusion that Mr. Sullivan had a gait impairment associated with a stroke that occurred 20 years prior to the accident was unenlightening and irrelevant. Finally, his theory that Mr. Sullivan “kicked” the rug was not supported by the Dollar General video surveillance evidence or any witness testimony. The jury was justified in rejecting his testimony in light of these deficiencies in his background and opinion.

Defense counsel’s first objection is to the Court’s authority to determine the qualification and admissibility of an expert’s testimony. Defense counsel’s second objection is to the jury’s authority to determine issues of credibility and render a verdict based on the Dollar General video surveillance and other evidence presented by Plaintiff. Both objections are erroneous and do not form a proper basis for grant of the Defendant’s motions requested.

In this case, the jury decided the issues in the case fairly based on sufficient evidence presented by Plaintiff. The verdict indicates that the jury believed the testimony of Plaintiff’s witnesses and the evidence presented by Plaintiff. The jury obviously rejected the testimony of Laura Myers and Brian Boggess. This is within the jury’s prerogative based on the lack of credibility and other issues.

### **CONCLUSION**

The Defendant’s motions for JNOV and alternatively a new trial should be denied.

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 3, 2024