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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2024-001299

Estate of Thomas Sullivan, ... Respondent,

v.

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

RECORD ON APPEAL

VOLUME III

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STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT 16
COUNTY OF YORK) DOCKET NO. 2022-CP-46-00085

ESTATE OF THOMAS SULLIVAN,)
 Plaintiff,)
versus)
)
DOLGENCORP, LLC D/B/A DOLLAR GENERAL)
CORPORATION,)
 Defendant.)

H E A R I N G
BEFORE THE HONORABLE WILLIAM MCKINNON

DATE: June 17, 2024
TIME: 2:12 p.m. - 4:55 p.m.
LOCATION: South Carolina Circuit Court 16

TRANSCRIBED BY: Natasha Barrientos

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: All right. Welcome back ladies and
2 gentlemen. Thank you all for being so punctual. This is the
3 case of the Estate of Thomas Sullivan versus Dolgencorp doing
4 business as Dollar General. It's a civil action
5 2022-CP-46-00085. I'm going to give you just a general
6 introduction right now. This is not my explanation of the
7 law of the case. That will happen at the end of the case.
8 You'll hear me. I -- I'll explain the law to you.

9 So, this is not a criminal case. This is a civil case
10 where someone is suing for money damages. The first thing
11 I'm going to say is you -- if you've ever seen a TV show or
12 read a book about the law, you may have heard beyond a
13 reasonable doubt is a standard of proof. That is a standard
14 of proof in criminal cases where the State is charging
15 someone with a crime.

16 And a civil case, a standard of proof is preponderance
17 of the evidence or more likely than not. So that is the --
18 the Plaintiff, the person bringing the lawsuit. That's their
19 burden of proof. It's a lower standard of proof in a civil
20 case than in a criminal case.

21 And ladies and gentlemen, it'll be your job after you
22 hear all the evidence and you hear the arguments from the
23 lawyers to determine whether or not you believe the Plaintiff
24 has proven their case by a preponderance of the evidence.
25 That's your job as jurors. So, your job is to define and

1 determine the facts. You, the jury, are the sole judge of
2 the facts.

3 And if any time I make a comment that suggests that I
4 have a view of the facts, you should disregard that. Because
5 I -- as a Judge, I'm a neutral party and I'm not permitted to
6 have any view of the facts in the case.

7 You should determine the facts from the testimony you
8 hear from the witness stand and determine -- and any other
9 exhibits that are in -- or presented in to evidence. And
10 then, any inferences that you feel you can draw from the
11 evidence. It's especially important that you perform your
12 duty diligently and conscientiously because ordinarily, there
13 is no way to correct a mistake made by the jury. And -- and
14 determining the facts.

15 On the equal -- on the other hand, with equal emphasis,
16 the law that makes you the judge of the facts makes me the
17 Judge of the law. I'm not permitted to disagree with you
18 about what the facts are, and you are not permitted to
19 disagree with me about what the law is or what you think it
20 ought to be. So, your job is to apply the law as I explain
21 it to you -- to the facts that you find in the case. And
22 then, render your verdict.

23 As I talked with you earlier, until you begin juror
24 deliberations at the very end of the case, you may not
25 discuss the case with anybody and that includes each other.

1 So, you're free to go out to lunch together or you talk
2 together, but you have to talk about anything but the case.

3 Of course, don't talk to anyone else outside the
4 courtroom, you know, don't read or watch any news reports
5 about the case and that, you know that -- and then also don't
6 do any outside research, okay? Like we've talked about.

7 I trust that you're going to follow the rule I give
8 you, but if someone in one of your fellow jurors is not
9 following the rules, please let me know. Because if I find
10 out during the case, I can probably fix it. If I find out
11 after the case that a juror is not following my instructions,
12 then I would likely have to redo the whole trial. Okay?

13 So, ladies and gentlemen please keep an open mind and
14 don't decide any issue in the case until you've heard all the
15 evidence and you've heard from the attorneys' arguments. In
16 just a second, you're going to hear the attorneys make
17 opening statements in the case, and that often will be a --
18 an overview or a preview of what they think the evidence is
19 going to show you. And those are very important, and I
20 encourage you to pay close attention, but just please
21 remember, the arguments of the attorneys are not the same
22 things as evidence.

23 Evidence is what you hear from the witness stand and
24 the written and other kinds of evidence that gets admitted in
25 to court. Okay?

1 So, occasionally during the trial, you're going to hear
2 the attorney say something like, "Judge, I object," or "I
3 have a motion." Or Judge, "Can we speak to you at the
4 bench?" And what that means is the attorneys have a legal
5 issue they need me to make a ruling on as a Judge. If it's
6 something that I think can be handled quickly, I will
7 sometimes make a ruling at the Judge's bench. The attorneys
8 will come up and I'll make a ruling, but something I think
9 will take longer, I'll excuse you to go back to the jury room
10 and then I'll have -- I'll hear from the attorneys. That way
11 you don't have to sit in here and listen to the argument with
12 the attorneys. Okay?

13 So, ladies and gentlemen, I do not permit jurors to
14 take notes. And the reason for that is some people, based on
15 their jobs or their education, are better notetakers than
16 other people. And I don't want your deliberation in the jury
17 room to come down to who has the better notes. Okay? So
18 please pay close attention. We have a court reporter here
19 and everything in the courtroom is being recorded on
20 microphones. So, if you get time to deliberate on the case
21 and you can't agree on what somebody said, there's some piece
22 of evidence that you can't agree on, it can be played back
23 for you. Okay? And -- and during deliberations.

24 Ladies and gentlemen, in determining what the facts
25 are, you must decide whether or not the testimony of a

1 witness is believable. It's my job as a judge to decide
2 whether a witness is allowed to testify, but once they
3 testify, it's your job as a juror to decide, is that
4 testimony believable? Is it true, partially true, or not
5 true at all? That's your job as jurors to determine the
6 credibility of the witnesses.

7 I'm -- in deciding whether you should believe a
8 witness, you have the right to consider any possible interest
9 or bias, or prejudice, whether the witness has the chance to
10 see or hear the things they're testifying about, and the way
11 they act on the witness stand.

12 So, ladies and gentlemen, please pay close attention.
13 Focusing on testimony as people talk for hours on end is a
14 difficult thing to do. So if you need a break, please raise
15 your hand and say, "Judge, we need a break." I'm happy to
16 let you use the restroom or stretch your legs, or anything
17 like that. Okay? It's not an endurance test, but just let
18 me know. All right?

19 I am also going to ask you on your first break to elect
20 a foreperson, what used to be called a foreman. In
21 South Carolina, all jurors have an equal vote: One person,
22 one vote, and the vote has to be unanimous, but the
23 foreperson has two additional jobs: The first is if there's
24 any issue you need to communicate to me, like, there's
25 something like, it's too hot or it's too cold, or you're

1 having trouble hearing, or any -- any issue at all. There's
2 no coffee in the jury room, whatever the issue is, the
3 foreperson can write it on a note and give it to the bailiff,
4 and they'll bring it to me and I'll try to deal with it.

5 And then secondly, once it becomes time to deliberate
6 and decide how you're going to vote in the case, the
7 foreperson's job is to make sure every person has a chance to
8 give their opinion, and no one person is dominating the
9 discussion in the jury room. Okay?

10 So, ladies and gentlemen that said, I'm going to give
11 the attorneys a chance to object and make sure I haven't said
12 anything that I should not have, and then we'll turn it over
13 to the lawyers.

14 Any objections from the Plaintiff to my opening
15 remarks?

16 MS. WHITE: No, Your Honor.

17 THE COURT: From the Defense?

18 MR. TRASK: No, Your Honor.

19 THE COURT: Okay. Ladies -- Madam Clerk, if you can
20 swear in the -- the jury and we'll get started.

21 THE CLERK: Ladies and gentlemen, please stand and
22 raise your right hand for me.

23 JURY SWORN

24 THE COURT: And ladies and gentlemen the Plaintiff has
25 the burden of proof, so they go first.

1 MS. WHITE: Thank you, Your Honor.

2 Good afternoon. I am Elaine, Elaine White of
3 Love Sloan Law in Rock Hill, South Carolina. And I represent
4 -- in this case, our firm represents Thomas Sullivan. This
5 case involves a slip-and-fall accident at the Dollar General
6 on Main Street in Rock Hill.

7 And this accident occurred on June 10, 2019. That's a
8 long time, isn't it? And so, we are here today because we
9 know that you have the power and the authority as the jury to
10 bring resolution to the family of Thomas Sullivan. And so,
11 we're asking you for your attention today, and I'm sure we're
12 going to receive that.

13 This case -- what we have on our hands is an accident
14 that was just waiting to happen. You -- have you ever been
15 driving in your car and the red light comes, on the check
16 engine light, and you know that means that there's some type
17 of repair, there's some type of maintenance that needs to be
18 done. And the longer you ignore that light, the worse the
19 problem becomes, but it's a risk from day one.

20 And so in this case, what we have on our hands is an
21 accident that was waiting to happen, and it's our allegations
22 that Dollar General had that red light, those warning signs,
23 that the rug in this Dollar General store was creating a trip
24 and haul -- trip-and-fall hazard for all of their customers.
25 Not just Thomas -- not just Thomas Sullivan, but for anyone

1 that came in during that time that that warning was there.

2 And so, it was an accident waiting to happen.

3 And unfortunately, that accident happened to our
4 client, to Thomas Sullivan. He went in to the doors of that
5 Dollar General store on that day to get groceries. He was a
6 customer. He went in to get groceries, he picked up his
7 groceries, he paid at the counter, and he went out of those
8 exit doors not knowing that a trip-and-fall hazard was there.

9 We are alleging in this suit that the rug was in a
10 severe state of disrepair. It wasn't just one thing that was
11 wrong. There were many things because Dollar General had
12 ignored that red warning light. And the accident was waiting
13 to happen because they failed to clean that rug; they failed
14 to properly inspect that rug; they failed to replace that
15 rug. They failed to secure that rug; they failed to replace
16 the rug when it began to curl, buckle, slide, and
17 deteriorate; and they failed to warn their customer,
18 Thomas Sullivan and other customers of the dangerous
19 condition of a slip-and-fall hazard.

20 A premises owner, like Dollar General, has an
21 obligation to people like you and I that come into the store
22 to buy merchandise. They are to make the premises reasonably
23 safe and to warn customers of any dangerous conditions, or
24 remove the dangerous condition, including worn out rugs.

25 And we are alleging that Dollar General failed to do

1 that. So, Thomas Sullivan was severely injured. In this
2 case, Dollar General has denied any liability for Mr.
3 Sullivan's injuries. Defense counsel will tell you that Mr.
4 Sullivan failed because he had a stroke 20 years ago, and had
5 a gait impairment, and carried a cane. Yes, he did. He did
6 have a stroke 20 years ago. That's in 19 -- the 1990s. This
7 accident occurred in 2019. And up until the date that Thomas
8 Sullivan encountered this rug at Dollar General, he was doing
9 just fine. He was doing just fine.

10 We have alleged that Dollar General is responsible for
11 the fall and Mr. Sullivan -- Sullivan's injuries because they
12 failed to properly clean that rug; they failed to properly
13 inspect that rug; they failed to replace that rug; they
14 failed to secure that rug, and they failed to replace it when
15 it began to curl, buckle, slide, deteriorate; and they failed
16 to warn their customer, Thomas Sullivan, that there was a
17 trip-and-fall whole hazard, that there was a dangerous
18 condition.

19 You see, it wasn't his obligation to inspect the rug.
20 It was their obligation. It wasn't his obligation to clean
21 it, it was their obligation, because we as customers go in
22 expecting that we are valued by the premises owner. And so,
23 Thomas Sullivan went in to that store with that
24 understanding.

25 Dollar General wants to blame their faithful customer,

1 Thomas Sullivan, but in fact, Thomas Sullivan is the victim
2 of Dollar General's neglect, and it was an accident waiting
3 to happen. Mr. Sullivan just happened to be the customer
4 that it happened to.

5 It would've been easy to prevent this accident. They
6 could have replaced that rug or they could have just had one
7 of those warning signs of a trip-and-fall hazard. And then,
8 customers could have made a decision about whether they were
9 willing to take the risk of going in to a premises where it
10 was not being properly maintained. Those are allegations;
11 this was a severe fall.

12 When he fell on that cement, Mr. Sullivan broke his
13 left hip, hit his head, bruised his rib area. This was a
14 hard-severe fall on cement for a 68-year-old Vietnam veteran.
15 And Dollar General has denied that the fall caused his
16 injuries. And you'll have to decide that issue.

17 Defense counsel will tell you that the rug had no
18 issues. Where's the rug? If it had no issues, that would've
19 been the easiest way to resolve this case. Where is the rug?
20 We don't know. But we do want to present some evidence to
21 you to help you make a decision in this case.

22 First of all, we're going to show you the video clips
23 of the accident from Dollar General's own surveillance video.
24 And everyone in this case has an opinion on the condition of
25 that rug and how the accident happened, but you're the jury,

1 so you're going to get a chance to resolve this for us today.

2 And with the permission of the Court, I would like at
3 this time to show the clip of the fall incident. Both
4 Plaintiff and Defendant have agreed to the submission of this
5 in to evidence, but we would like to show it at this time,
6 Your Honor.

7 THE COURT: In evidence by stipulation?

8 MR. TRASK: Yes, Your Honor.

9 THE COURT: You may show it.

10 MS. WHITE: And as she queues that up, what I want you
11 to do is -- Dollar General says, "Just look at Thomas
12 Sullivan." I want you to look at the rug. I want you to
13 look at the rug and you'll see this customer leaving the
14 Dollar General store, and that's the rug. And he was thrown
15 from the inside of that store onto the cement on the outside.

16 Also, in addition to the video clips, we're also going
17 to give an opportunity for other witnesses to give you
18 information for the case. You're going to hear from his
19 sister, Martha Sullivan Blue. She's going to talk to you
20 about the devastating impact that this fall had on her
21 brother's physical and mental state. You're going to hear
22 from David Riley, the neighbor that took him to the store on
23 that day when Mr. Sullivan suffered this fall. You know, the
24 great thing about his testimony is he saw the rug, he saw the
25 actual rug, he didn't inspect the rug, but he can at least

1 tell you what he saw about the rug that Dollar General claims
2 was in great condition.

3 You're going to hear from Dr. Brown by video. He is
4 the surgeon who performed the surgery on doctor -- on
5 Mr. Sullivan's hip that was broken in the fall. The only
6 reason he's testifying is because he did the surgery. He's
7 not a rug or mat expert, but we had to get his testimony
8 because Dollar General has denied that Mr. Sullivan's
9 injuries were caused by the fall.

10 Also, you're going to hear from Rob McNeely, who is our
11 Plaintiff's expert. Has 20 years of experience in inspecting
12 flooring mats and walkway safety, including the types of mat
13 that were included in this store. Some of you may have had
14 some damage from the hailstorm that we recently had through
15 Rock Hill. And we all know that we are not the experts that
16 could inspect that because we'll miss things that an expert
17 can see.

18 And so, we are presenting Robert McNeely's testimony so
19 that he can tell you what this rug --, how this rug was
20 supposed to perform, and what damage existed with that rug.
21 And so, we wanted to give you the benefit of that, of getting
22 expert testimony the same way that you would do if you had
23 any type of damage at your home. You would want to hear from
24 an expert that knows on that matter.

25 And then lastly, you're going to hear from Defense's

1 witnesses. You're going to hear from Laura Myers, the store
2 manager at the Dollar General. We are not mad at Laura Myers
3 because Laura Myers was just doing what Dollar General did or
4 did not expect. You know, you have to inspect what you
5 expect and if you don't inspect what you expect as a premises
6 owner, then what your employer's employees don't do, you are
7 responsible for that.

8 Also, you're going to hear from the expert Brian Bogus
9 and Brian is the expert for the Defense. He will tell you
10 that Mr. Sullivan caused his own fall because of that stroke
11 from 20 years ago in his gait. We of course, as I've stated
12 before, disagree with that conclusion.

13 Mr. Bogus will have you ignore the rug, but we want you
14 to look at the rug, and we want you to be able to have the
15 information that you need. When this is all over, after we
16 presented our evidence, we're going to ask you to resolve
17 this case and bring closure for the family of
18 Thomas Sullivan. He's not here today. He has passed away.
19 He is deceased, but his family members are here and we are
20 going to ask you to award full payment for the bills he
21 incurred from that fall.

22 We are going to ask you to award pain-and-suffering
23 damages based on the severity of the fall, that he didn't
24 just sprain something, he broke his hip. We are also going
25 to ask you to compensate for the huge physical and mental

1 impact from the loss of mobility that he had from the day of
2 the accident to the day of his death. We can't get you to
3 decide the number, but we can certainly give you information
4 to help you out.

5 And so again, I thank each of you for your attention
6 today. Thank you.

7 THE COURT: Thank you, ma'am.

8 Yes, sir.

9 MR. TRASK: Can we take the blocker off of the
10 computer, please?

11 THE COURT: Publish the Defense screen?

12 MR. TRASK: Yes, Your Honor.

13 On June 10, 2019, Thomas Sullivan came to a
14 Dollar General right here in Rock Hill, South Carolina. You
15 just heard from Ms. White, he showed up, his friend Dave
16 Riley drove him to the Dollar General store. Mr. Riley
17 stayed inside the car, you're going to learn that.

18 Mr. Sullivan proceeded in and when he was coming out,
19 he unfortunately tripped and fell. You know, this is unique
20 because in this line of work, you normally don't get to see
21 incidents on video, but we have the video, and so I want to
22 play that for you real quick before we talk about some of the
23 nuanced issues that you all are going to have to grapple with
24 throughout this trial.

25 That right there, that person walking in, that's

1 Mr. Sullivan entering. You can see him walk over two mats,
2 that car right there in the handicapped-parking spot, that's
3 Mr. Riley and he stays in his vehicle.

4 We go to the second video, that's him going in. And
5 then right here, we see the second video. This is him
6 exiting. Let's just play it one more time. That members of
7 the jury is what brings us all together today. That is the
8 incident that you all are going to have to grapple with
9 before reaching your verdict.

10 Now, my name is Mike Trask and along with Robert
11 Boineau, we represent Dolgencorp, LLC, that's the corporate
12 name for Dollar General. We're here with our client
13 Laura Myers, the assistant store manager at that store back
14 in June of 2019 when this incident happened.

15 I want to thank you all for being here. I'm fairly
16 confident in saying this is not how you wanted to spend a
17 Monday and, most likely, a Tuesday sitting here on this
18 chair. But truly, we have the greatest civil justice system
19 in the world, let our community members come together with
20 varying life experiences and backgrounds to resolve the
21 dispute amongst the party.

22 And so, you've heard a lot about it already and so, I'm
23 going to try to be quick because I think we should just get
24 in to the witnesses and we should start listening to the
25 testimony, but what you really need to ask yourself -- this

1 was the mat curl. You have video of the incident, that's
2 going to go back with you when you deliberate.

3 If it was curled, how long was it curled for? How did
4 it become curled? These are all questions that have to be
5 answered and they have to be answered by the Plaintiff. See,
6 they brought the lawsuit, it's their burden of proof. And
7 you heard Judge McKinnon a second ago, tell you that it's by
8 preponderance of the evidence, but it's still a burden. They
9 still have to bring real evidence in here to prove that mat
10 was curled before Mr. Sullivan got there.

11 And you're going to hear about the stroke from 20 years
12 ago because you can see on the video that he has difficulty
13 with walking -- his difficulty with that left foot bringing
14 it up. And you have to ask yourself, how did that contribute
15 to this incident? Those are all questions that have to be
16 answered throughout this trial, and that you're going to have
17 to grapple with.

18 Now, ultimately, you're going to see this video a lot
19 throughout this trial and that's what I really want you to
20 remember. When each witness comes up here to testify,
21 remember the video, because you can see when he leaves that
22 nobody is with him. Mr. Riley is not in the store when the
23 fall occurs.

24 Mr. Riley, outside of watching the video, can't tell
25 you what the mat looked like. The Plaintiff wasn't there.

1 Robert McNeely from Utah wasn't there. Dr. Brown wasn't
2 there.

3 If you trust your eyes and use your common sense and
4 you watch the video, I think that you will come to the only
5 logical conclusion in this case, which is what we're going to
6 ask you for at the end of the trial. And that is the find
7 Dollar General, not liable. Thank you.

8 THE COURT: Thank you, Counsel.

9 Ms. White, you may call your first witness.

10 MS. WHITE: Yes, we'd like to call at this time,
11 Martha Sullivan Blue.

12 THE COURT: All right.

13 THE CLERK: (Inaudible).

14 MARTHA SULLIVAN BLUE,
15 having been first duly sworn, testified as follows:

16 THE CLERK: Thank you. Please be seated.

17 DIRECT EXAMINATION

18 BY MS. WHITE:

19 Q. Ms. Blue, I'm going to hand you your glasses.

20 A. Oh, I'm sorry. I didn't realize I'd need them.
21 Thank you. I'm sorry.

22 Q. Ms. Blue, can you state your name again for the
23 record?

24 A. Martha Sullivan Blue.

25 Q. And what's your family relationship with

1 Thomas Sullivan?

2 A. He's my brother.

3 Q. And Ms. Blue, where do you currently live?

4 A. In Myrtle Beach, South Carolina.

5 Q. And how long have you lived there?

6 A. For 22 years.

7 Q. So, you've lived your entire life in

8 South Carolina?

9 A. Yes, ma'am.

10 Q. And what's your marital status?

11 A. I'm a widow.

12 Q. And how long have you been a widow?

13 A. Since 2017.

14 Q. And do you have any children?

15 A. I do.

16 Q. And how many do you have?

17 A. I have: Three, one passed away and I have three
18 living.

19 Q. And are you employed at this time?

20 A. No.

21 Q. Okay. And do you have any type of disability?

22 A. Yes.

23 Q. Can you describe that disability?

24 A. I have COPD.

25 Q. And when did you become disabled?

1 A. Say 2018.

2 Q. And so prior to that time, what type of work did
3 you do prior to that?

4 A. I was a cashier for a lot of years and a
5 housekeeper for a lot of years.

6 Q. Okay. And -- all right, have you been appointed
7 by the probate court as the personal representative for
8 Mr. Sullivan?

9 A. Yes, ma'am.

10 Q. And did Mr. Sullivan own any land or houses, or
11 anything that's part of the Estate?

12 A. No, ma'am

13 Q. Did Mr. Sullivan -- how many, according to what
14 you filed as the personal representative for the Estate, how
15 many persons -- how many persons are also heirs in addition
16 to yourself?

17 A. Well, I have five brothers and me too, not
18 counting Tommy, that'd be four and --

19 Q. Okay. But those -- in terms of the survivors,
20 that will -- are part of the heirs of the Estate, how many of
21 those?

22 A. There's nobody left now.

23 Q. Okay. Okay. But those -- your brothers had
24 children, are those children part of the heirs for the
25 Estate?

1 A. (Inaudible).

2 Q. Okay. And did Mr. Sullivan start this lawsuit
3 before his death?

4 A. Pardon me.

5 Q. Did Mr. Sullivan start this lawsuit before his
6 death?

7 A. (Inaudible).

8 Q. And why did you choose to continue the suit as
9 personal representative after his death?

10 A. I felt I owe him that, seeing what he'd been
11 through for the last -- yeah, I owe that to him.

12 THE COURT: Ma'am, I'm not sure the microphone is
13 picking you up.

14 THE WITNESS: Oh, I'm sorry.

15 THE COURT: You -- it -- it can -- you can bend it too,
16 may bend it a little bit closer --

17 THE WITNESS: Oh, okay.

18 THE COURT: -- to your mouth, you know.

19 THE WITNESS: Sorry.

20 THE COURT: That's much better. Thank you, ma'am.

21 MS. WHITE: Thank you, Ms. Blue.

22 BY MS. WHITE:

23 Q. And in your opinion, is Dollar General responsible
24 for the injuries your brother suffered from the fall at
25 Dollar General on June 10th?

1 A. Yes, it's their rug.

2 Q. Okay. And how long after the accident did
3 Mr. Sullivan pass away?

4 A. Let me see. Gosh, not -- it was a few years.

5 Q. Okay.

6 A. Oh, my. I lost so many brothers in the last few
7 years. The accident happened in what, in '19?

8 Q. In 2019.

9 A. So -- okay. And then Tommy, and then Robert. So,
10 I would say maybe four years at the most. Three, four years.

11 Q. Okay. So, the accident occurred in 2019 and
12 Mr. Sullivan passed away in 2020; is that correct?

13 A. Yeah, I'm not exactly sure of the date.

14 Q. Okay. And how many --

15 A. I lost so many brothers in the last 10 years.

16 Q. And how many siblings did you have total?

17 A. Five and me.

18 Q. And were -- were -- what was the makeup in terms
19 of boys and girls?

20 A. Tommy, the oldest, and then Robert, and Benny,
21 Jim, and Larry.

22 Q. And you're the only girl?

23 A. Yes.

24 Q. And you're the only survivor?

25 A. Yes, ma'am.

1 Q. And was Mr. Sullivan your oldest brother?

2 A. Yes, he was.

3 Q. Are any of your -- we've already answered that
4 question. Were you -- were the two of you -- you and
5 Mr. Sullivan, were you close?

6 A. Yes.

7 Q. As children and as adults?

8 A. Yes.

9 Q. And how often did you speak to each other by
10 phone?

11 A. Gosh, once a week.

12 Q. And how often did you see each other?

13 A. Once a month, once every six weeks. Quite there.

14 Q. And was that closeness another reason that you
15 were -- you felt it necessary to continue the lawsuit that he
16 had started?

17 A. Yes, he really was.

18 Q. Was Mr. Sullivan a veteran?

19 A. He was.

20 Q. And which ward was he enlisted in?

21 A. Vietnam.

22 Q. And what branch of service did he serve in?

23 A. (Inaudible).

24 Q. Okay. And how many terms did he serve in the
25 Army?

1 A. (Inaudible).

2 Q. Did he receive any medals or awards for his
3 service?

4 A. He -- he -- the Army Commendation Medal, and then
5 maybe a Purple Heart. He -- I inherited all that. I got all
6 that in my room hanging up.

7 Q. And so, you still have all of those awards that he
8 earned?

9 A. I got everything (inaudible).

10 Q. And when Mr. Sullivan was working, what type of
11 employment -- what field of employment?

12 A. Construction.

13 Q. Okay. So he was in the construction industry?

14 A. (Inaudible).

15 Q. And prior to June 10th, did Mr. Sullivan serve as
16 a caregiver for any family members?

17 A. He saved my mother, and took care of her.

18 Q. And so, he had a caregiver role in your family?

19 A. (Inaudible).

20 Q. Okay. Did Mr. Sullivan do any driving?

21 A. He didn't drive.

22 Q. Okay. And when he needed to get -- go somewhere,
23 how did he normally get there?

24 A. Somebody would take him or, yeah, we -- somebody
25 would take him. My mother drove for a while until she got

1 very sick the last couple of years, so --

2 Q. -- okay. And prior to this lawsuit, do you
3 remember a David Riley?

4 A. I know who he was.

5 Q. Okay. Is he one of the people that would take
6 Mr. Sullivan places --

7 A. Yes.

8 Q. -- he needed to go? And prior to this lawsuit,
9 had Mr. Sullivan ever filed any type of lawsuit against
10 anyone?

11 A. No.

12 Q. And prior to the accident at Dollar General, did
13 Mr. Sullivan live alone?

14 A. He did.

15 Q. And was he able to take care of his daily needs
16 without assistance?

17 A. Yes.

18 Q. Did he ever complain to you about being depressed
19 prior to this accident?

20 MR. TRASK: Objection, hearsay, Your Honor.

21 THE WITNESS: No.

22 THE COURT: Yes, ma'am. Any response?

23 MS. WHITE: Your Honor, she is testifying with respect
24 to the mental state of her brother before and after the
25 accident. This is based on her own observations, not

1 hearsay.

2 THE COURT: Well, you can -- you can rephrase the
3 question, but a -- a -- as phrased, I'll sustain the
4 objection.

5 MS. WHITE: Okay. I'll move on Judge.

6 THE COURT: Okay.

7 BY MS. WHITE:

8 Q. Okay. And prior to this accident at
9 Dollar General, did Mister -- had Mr. Sullivan ever fallen?

10 A. No.

11 Q. And did Mr. Sullivan have a stroke at some point
12 in his life?

13 A. Yes.

14 Q. And was that the stroke from about 20 years ago
15 that we talked about?

16 A. Yes.

17 Q. And after that stroke, did he complain about pain?

18 A. No. No -- no.

19 Q. And how did you find out that Mr. Sullivan had had
20 this accident at Dollar General?

21 A. My other brother is the one that told me about it.
22 Robert, at the time, he was still alive.

23 Q. And how soon after the accident did you see
24 Mr. Sullivan?

25 A. Maybe -- it's been a couple of months, maybe.

1 Q. Okay. And after the accident, was he still using
2 his cane or was he on a walker at that point?

3 A. Walker, yes, yeah.

4 Q. And so as a result of the accident, he was no
5 longer walking with the cane, he was having to use the walker
6 at that point?

7 A. Yes.

8 Q. And how -- how long did he have to use the walker
9 as opposed to the cane?

10 A. He never got away from the walker the rest of his
11 life.

12 Q. Okay. And how did he feel about having to use
13 that walker?

14 A. He was upset; he couldn't get in his garden. He
15 couldn't contribute to his own well-being because he was
16 stranded on the porch and couldn't get out.

17 Q. And after the accident, did his level of activity
18 decrease?

19 A. (Inaudible).

20 Q. Can you describe exactly what happened in terms of
21 the change in his activities?

22 A. He didn't do anything. Yeah. You could see that
23 he was heartbroken over that. He couldn't do his garden; he
24 couldn't run with his dog; he couldn't play with his dog;
25 couldn't do anything anymore, that I think made him feel

1 hopeless.

2 Q. Okay. And did he -- and the reason that he
3 couldn't do the gardening was because of the -- was it
4 because of the injury from the fall?

5 A. Yes.

6 Q. Okay. And as PR for the
7 Estate of Thomas Sullivan, did you have an opportunity to
8 review the medical records and the medical billing for the
9 treatment he received after the fall?

10 A. (Inaudible).

11 Q. I'm going to present to you now Exhibit 1A, and
12 this has been previously marked -- marked and also shared
13 with Defense counsel.

14 A. Okay.

15 Q. And after (inaudible) on that exhibit.

16 A. Okay.

17 Q. So Ms. -- Ms. Blue, looking at that exhibit,
18 what's included in this exhibit that I just handed to you?

19 A. Medical services and charges.

20 Q. And is this for treatment for your brother after
21 the fall?

22 A. Yes, ma'am.

23 Q. So, let's start with Exhibit A1 (sic), can you
24 tell me the name of the provider that supplied that billing?

25 A. Piedmont Health Care Center.

1 Q. And did your brother receive treatment at
2 Piedmont Medical Center?

3 A. He did -- he did.

4 Q. Can you describe just generally what they did for
5 him at Piedmont?

6 A. Would assume that they did the surgery there.

7 Q. Okay. And does the affidavit that you have before
8 you, provide that the billing is for the period that he was
9 there at Piedmont?

10 A. Uh-huh. From June 10th to June 15th.

11 Q. And is the total amount that Piedmont charged for
12 those services \$88,305.77?

13 A. Yes, ma'am.

14 Q. And does that total also include the bill for the
15 ambulance service from Dollar General to Piedmont?

16 A. Oh, ma'am. It may, but I have a separate one for
17 the ambulance.

18 Q. Okay.

19 A. I'm not sure if that's from just the hospital to
20 TransMed.

21 Q. Okay. Let's -- let's go through it. (Inaudible).

22 A. I'm not sure.

23 Q. It's confusing when you're looking at those bills.
24 Let's look at exhibit -- the next exhibit.

25 A. Okay.

1 Q. Can you tell me the name of the medical provider
2 that supplied that billing?

3 A. 1B?

4 Q. Yes.

5 A. That is Piedmont Medical Center, yes, ma'am.

6 Q. Okay. And the next one after that, is that
7 ACS Primary?

8 A. It is, yes, ma'am.

9 Q. Did your brother receive treatment at the
10 emergency room at Piedmont after being admitted -- before
11 being admitted to the hospital?

12 A. Yes, ma'am.

13 Q. And does the affidavit provide that the billing
14 for that was for the period that he was there at the ER?

15 A. Yes. Yes, ma'am.

16 Q. And was the total amount \$1,962 for those
17 services?

18 A. Yes, ma'am, it was.

19 Q. And for both of those affidavits, they provide
20 that the charges were reasonable for the services provided.
21 Do you agree with that statement?

22 A. Yes, ma'am.

23 Q. If you look at the next one, can you tell me who
24 the provider was for Exhibit 1C?

25 A. Rock Hill Radiology.

1 Q. And did your brother have X-rays taken at
2 Rock Hill Radiology while at Piedmont?

3 A. Yes, ma'am.

4 Q. And does the affidavit provide that this is the
5 billing for the period that he had the X-rays?

6 A. Yes, ma'am.

7 Q. And was the total amount that Rock Hill Radiology
8 charged for these services \$475?

9 A. Yes, ma'am.

10 Q. And again, does that affidavit state that the
11 charges were reasonable for the services provided?

12 A. Yes.

13 Q. And do you agree with that statement?

14 A. Yes.

15 Q. And the next -- 1D is -- can you tell me the name
16 of the provider that is listed?

17 A. Anesthesia Associates.

18 Q. Anesthesia Associates?

19 A. In Rock Hill, yes.

20 Q. Okay. And did your brother receive anesthesia
21 services in connection with his surgery?

22 A. Yes, ma'am.

23 Q. And does the affidavit provide that this is the
24 billing for the period that he was there?

25 A. Yes, ma'am.

1 Q. And was the total amount that
2 Anesthesia Associates charged \$2,590?

3 A. Yes, ma'am.

4 Q. And the affidavit again provides that the charges
5 were reasonable for the service provided. Do you agree with
6 that statement?

7 A. (Inaudible).

8 Q. If you look at the next exhibit, can you tell me
9 1E?

10 A. (Inaudible) in Transmit Incorporated?

11 Q. Yes.

12 A. Yes, ma'am.

13 Q. And was the total amount that Transmit charged for
14 their services \$352.50?

15 A. Yes, ma'am.

16 Q. There's no affidavit for that charge, but do you
17 believe that charge was reasonable and valid?

18 A. (Inaudible).

19 Q. If you'll look at the next one -- and we're almost
20 done with -- 1F?

21 A. That's Encompass Health Rehabilitation.

22 Q. Yes. Did your brother receive treatment at
23 Encompass Rehab after discharge from Piedmont?

24 A. Yes, ma'am, he did.

25 Q. And does the affidavit provide that this is the

1 billing for the period that he was there?

2 A. Yes, ma'am.

3 Q. And was the total amount that Piedmont charged for
4 the services provided \$19,521.69?

5 A. Yes, ma'am.

6 Q. And the affidavit provides that the charges were
7 reasonable for the services provided. Do you agree with that
8 statement as PR?

9 A. (Inaudible).

10 Q. And then we -- at the final one, Ms. Blue.

11 A. Okay.

12 Q. 1G. Can you tell me the name of the provider that
13 supplied that affidavit?

14 A. OrthoCarolina.

15 Q. And did your brother receive treatment at
16 OrthoCarolina?

17 A. Yes, ma'am.

18 Q. And does the affidavit provide that the -- that
19 the billing is for the period that he was there at
20 OrthoCarolina or received treatment there?

21 A. Yes, ma'am.

22 Q. And was the total \$2,637?

23 A. Yes, ma'am.

24 Q. And the affidavit provides that the charges were
25 reasonable for the services provided. Do you agree with that

1 statement?

2 A. Yes, ma'am.

3 Q. Do you know, Ms. Blue, the approximate total of
4 all of those medical bills that you received and reviewed as
5 PR for the Estate?

6 A. (Inaudible) total.

7 Q. If I said that total was 115,636 -- \$115,636, does
8 that sound about right to you?

9 A. (Inaudible).

10 MS. WHITE: Okay. At this time, I'd like to submit in
11 to evidence Plaintiff's Exhibit 1.

12 THE COURT: Any objection?

13 MR. TRASK: Without objection, Your Honor.

14 THE COURT: In evidence without objection,
15 Plaintiff's 1.

16 (Plaintiff's Exhibit 1 admitted into evidence.)

17 THE COURT: Since the video is in by stipulation, what
18 -- what exhibit number is that?

19 MS. WHITE: That's Exhibit 2, 3, and 4 is the USB with
20 all of the video clips.

21 THE COURT: Are they all in by stipulation?

22 MR. TRASK: Yes, sir, Your Honor.

23 THE COURT: Plaintiff's 2, 3, and 4. All in by
24 stipulation without objection.

25 (Plaintiff's Exhibits 2, 3, 4 were marked for

1 identification.)

2 BY MS. WHITE:

3 Q. Ms. Blue, just a few final questions. After
4 receiving the last treatment from OrthoCarolina on
5 July 31, 2019, was your brother still experiencing pain from
6 the surgery?

7 A. He was.

8 Q. And after receiving that, was he still
9 experiencing limitations?

10 A. He was (inaudible).

11 Q. And at the time of his death, was he still
12 experiencing those same problems and limitations that you
13 spoke of earlier?

14 A. (Inaudible).

15 Q. And at the time of his death, was he still
16 suffering from depression as a result of the fall?

17 A. (Inaudible).

18 MS. WHITE: I have no further questions for you. I
19 think Defense counsel has questions at this time.

20 THE COURT: Cross-examination?

21 MR. TRASK: Nothing, Your Honor. Thank you, sir.

22 THE COURT: Thank you, ma'am. You can step down.

23 MS. BLUE: Thank you.

24 THE COURT: Okay, ma'am.

25 Ms. White, you may call your next witness.

1 MS. WHITE: Your Honor, she's going out to get
2 David Riley, should be out in the corridor.

3 THE COURT: Okay.

4 DAVID RAY RILEY,
5 having been first duly sworn, testified as follows:

6 THE CLERK: Thank you. Please be seated.

7 DIRECT EXAMINATION

8 BY MS. WHITE:

9 Q. Good afternoon, Mr. Riley.

10 A. (Inaudible).

11 Q. Can you state again your full name?

12 A. David Ray Riley.

13 Q. And what's your --

14 THE COURT: Mr. Riley, I'm not sure the mic is picking
15 you up either. Can you -- you can bend it to you if you
16 don't mind. Just trying to make sure the mic is picking you
17 up.

18 THE WITNESS: David Ray Riley.

19 BY MS. WHITE:

20 Q. Okay. And can you explain what your relationship
21 was with Mr. Thomas Sullivan?

22 A. I would take him for the doctor's appointments,
23 grocery shopping, stuff like that.

24 Q. And as far as your background, Mr. Riley, where
25 did you -- where did you receive your -- where did you attend

1 high school?

2 A. Lewisville.

3 Q. And you received a GED?

4 A. Yes.

5 Q. And did you attend any trade school?

6 A. Yeah, HVAC.

7 Q. And so you have a certification in HVAC?

8 A. (Inaudible).

9 Q. And, Mr. Riley, where do you currently live?

10 A. Edgemoor.

11 Q. And how long have you lived at that address?

12 A. '09 -- 2009.

13 Q. Okay. And does anyone else live with you at that
14 address?

15 A. My mom.

16 Q. And how old is your mother?

17 A. Ninety-one.

18 Q. And are you the caretaker for your mother?

19 A. Yes.

20 Q. And does your mother require full-time care?

21 A. Yes.

22 Q. Do you work any other job other than taking
23 full-time care of your mom?

24 A. No.

25 Q. And where did you work prior to taking on that

1 full-time care?

2 A. Ross warehouse, installed the conveyor belt.

3 Q. And you had to discontinue that work due to the
4 need for you to be a caretaker for your mom?

5 A. (Inaudible).

6 Q. And when did you first meet Mr. Sullivan?

7 A. 2015, just maybe, '16.

8 Q. Okay.

9 A. Something like that.

10 Q. And approximately how long had you known him
11 before the accident in June of 2019?

12 A. A few years -- four years, five. Four or five
13 years maybe.

14 Q. Okay. And on average, how many times a week did
15 you see him?

16 A. Three, four, something like that, depending on my
17 mom.

18 Q. Okay. Did you all have any common hobbies or
19 things you did together when you would see him?

20 A. Yeah, our little Chihuahuas would play together.

21 Q. And so you all -- did Mister -- so you're saying
22 at that time, Mr. Sullivan and yourself had Chihuahuas, did
23 you?

24 A. Yeah. Yeah.

25 Q. Did you all walk those dogs together?

1 A. Yeah.

2 Q. Okay. And after this accident at Dollar General,
3 was he able to continue to walk those pets?

4 A. No.

5 Q. And when you took Mr. Sullivan errands, did you go
6 in to the store with him?

7 A. Not usually.

8 Q. Did he require any assistance in completing his
9 errands?

10 A. No.

11 Q. Did Mr. Sullivan use a cane or another device to
12 help him in walking?

13 A. A cane.

14 Q. And do -- was the use of that cane associated with
15 the stroke from 20 years prior?

16 A. (Inaudible).

17 Q. And was Mr. Sullivan able to do the things he
18 needed to do in his home, and on the errands, without
19 assistance?

20 A. Yes.

21 Q. And prior to this accident, had he ever tripped or
22 fallen on an errand with you?

23 A. No.

24 Q. Do you remember the date that Mr. Sullivan fell at
25 Dollar General?

1 A. It was about this time of year, I think June -- in
2 June.

3 Q. Okay. That's good. In June of 2019?

4 A. (Inaudible).

5 Q. And which Dollar General did you take Mr. Sullivan
6 to in June of 2019?

7 A. The one on Main Street.

8 Q. And why did you go to that specific
9 Dollar General?

10 A. It's the closest one to his house.

11 Q. And when you arrived at Dollar General, where did
12 you park?

13 A. In the front, or handicapped, where I could see
14 the register.

15 Q. Okay. And did Mr. Sullivan require any assistance
16 from you to get out of the car?

17 A. No.

18 Q. And did he have any problem walking in to the
19 store on that day?

20 A. No.

21 MS. WHITE: At this time, we would like to display
22 video clip number one, Mr. Sullivan entering the store.

23 THE COURT: You may -- you may publish.

24 BY MS. WHITE:

25 Q. And Mister -- Mr. Riley, after we've watched this

1 video, which is a very short video, I'm going to ask just a
2 few follow up questions regarding the video.

3 (Video played.)

4 BY MS. WHITE:

5 Q. And can you -- if you can stop right there? Can
6 you identify Mr. Sullivan in this video?

7 A. Yeah, that's him. He put his cane in the grocery
8 cart.

9 Q. Okay. And so, he's the gentleman wearing the hat
10 there?

11 A. Yes.

12 Q. Okay. And when he entered the Dollar General on
13 that -- on that day, he didn't need any help from you getting
14 in to the Dollar General, correct?

15 A. (Inaudible).

16 Q. And was he experiencing any problems walking on
17 that day?

18 A. No.

19 Q. And how long did Mr. Sullivan remain in the
20 Dollar General?

21 A. Fifteen minutes, give or take a little bit.

22 Q. And did he buy any items while he was there?

23 A. Yes.

24 Q. And after he entered the store, when was the next
25 time that you saw Mr. Sullivan?

1 A. Say it again, ma'am.

2 Q. After he had entered the store, when was the next
3 time that you saw him? Was that when he was exiting?

4 A. Yeah, I could see -- I could see that register
5 here. And that way, when he -- when he would come out, I
6 would get out.

7 MS. WHITE: Okay. And at this time, I'd like to just
8 publish, Your Honor, video clip number two: Mr. Sullivan
9 exiting the store.

10 THE COURT: You may publish.

11 BY MS. WHITE:

12 Q. And Mr. Sullivan (sic), again, after you've
13 watched this, I just have a few questions to ask you.

14 And so, at this time when he's exiting the store, where
15 are you?

16 A. I'm in the front to the right, up in the
17 right-hand corner.

18 Q. So, you were able to see him as he began his exit?

19 A. Yes. I saw him coming out and then I got out of
20 my car to go around the back. And then, what I'd normally do
21 is open the back door, and then go ahead and open the
22 passenger door for him. He would give me the cart and I'd
23 throw his stuff in the back, and then take off.

24 Q. Okay. And was he exiting from the same entrance
25 where he came in to the Dollar General?

1 A. Yes.

2 Q. And when you -- we're going to look at another
3 video that shows what happened after the fall until the time
4 that EMS came in. We're going to do this one kind of
5 quickly, and I'm going to ask you -- to ask you some
6 questions.

7 MS. WHITE: If we can publish video clip number three.

8 THE COURT: You may publish.

9 BY MS. WHITE:

10 Q. And again, this video is going to deal with the
11 segment of time from, the time of the fall to the time that
12 EMS arrived. And during that time, did you remain with him
13 at Dollar General after he fell?

14 A. Yes.

15 Q. And what did you do when you saw Mr. Sullivan
16 coming out of the store -- you can go ahead and begin the
17 play of the video.

18 MR. TRASK: I think the blocker needs to be taken off
19 mine -- if you want me to play it. (Inaudible) you just --
20 approach for just a quick second. Just I -- get
21 clarification.

22 THE COURT: Certainly.

23 (Bench conference.)

24 MS. WHITE: And so, Mr. Riley, if you'll pay close
25 attention to the video, and I'm going to just ask you a -- a

1 number of questions as the video progresses.

2 MR. TRASK: It's released on my screen. I think my --

3 THE COURT: (Inaudible) publish that.

4 MS. WHITE: Okay.

5 THE COURT: Go ahead.

6 MS. WHITE: And if we can go ahead and enlarge there.

7 So, this is -- we're going to wait one moment so that I can
8 see the next thing that's happening there. And we were
9 looking at the time, at about 10:44 from the time he had
10 fallen?

11 MR. TRASK: Just one second.

12 MS. WHITE: So, I don't think we've gotten to that
13 point yet, correct?

14 MR. TRASK: Not yet.

15 MS. WHITE: Okay.

16 MR. TRASK: It should be right.

17 BY MS. WHITE:

18 Q. So, Mr. Riley, while -- while he's queuing that up
19 and while that's going forward, let's go a little bit further
20 with what was happening during this time. So, you were there
21 -- your testimony is that you were there in the handicap
22 space waiting for him to come out?

23 A. Uh-huh.

24 Q. And you could -- could you see him as he was
25 exiting the store?

1 A. Yeah. I could see him from that cash register.

2 Q. Okay.

3 A. And when she -- when she would put his stuff in
4 the cart, that's when I would usually get out.

5 Q. Okay. And so, this shows where he had fallen,
6 here. And if you'll look there, I want you to identify
7 yourself in this video. So Mister -- this is Mr. Sullivan
8 here on the ground, correct?

9 A. Yes. And that's me coming up there.

10 Q. That's you coming up, you're the gentleman behind
11 him that's assisting him up from the ground?

12 A. Yeah, he was asking me to pick him up.

13 Q. Okay. And so at that time, was he able to stand
14 at all on his own?

15 A. No. He thought he could, but he couldn't.

16 Q. And so, what's the next thing that happened? So
17 after he had fallen and you were assisting him, where was he
18 placed? Where did he stay until immediately after the
19 accident?

20 A. Well, I kind of had to balance him and somebody
21 else brought him a chair, I think.

22 Q. And so, you see here on the video, it seems that
23 there's another gentleman that's coming out again. Is that
24 the two of you standing outside the store?

25 A. Yes.

1 Q. And so now, we see some other people coming. And
2 so, you were still at the site --

3 A. Yeah.

4 Q. -- during this time, correct?

5 A. Yeah, I'm right there in front of him most of the
6 time. I think those were Dollar General employees.

7 Q. Okay. And we see the -- we see the rug, I think
8 the -- the rug that caused the fall, there in the video. And
9 is that Mr. Sullivan sitting in the chair right there outside
10 the store?

11 A. Yes, with his back to us.

12 Q. And so he was seated -- after this accident, the
13 Dollar General employee seated him outside the store. And
14 what was the day like on that day? Was it cold? Warm?

15 A. It was sunny and hot.

16 Q. Okay. And so, he's seated outside in this chair
17 for some period of time, and you're still there with him,
18 correct?

19 A. Yeah, I think that's me right in front of him.

20 Q. And now, we see some movement with some other
21 people. Can you identify the person that is walking back and
22 forth?

23 A. There were other guys just asking -- saying -- I
24 really don't remember, but --

25 Q. Okay.

1 A. -- there was a couple of guys -- one guy acted
2 like he was some kind of EMS or something.

3 Q. Okay.

4 A. Kind of barking orders. Yeah, that's me putting
5 his cart away.

6 Q. So, this is you in the striped shirt putting the
7 cart away?

8 A. Yes, ma'am.

9 Q. So, you're still there on site?

10 A. Yes.

11 Q. And so, when the -- during opening argument,
12 Defense counsel stated that, "You were not inside the store,"
13 but you are inside the store on this video, correct?

14 A. Yes. In, like, the foyer there.

15 Q. And did you remain inside the store the entire
16 time?

17 A. I was probably trying to get out of the sun.

18 Q. And so here again, we see people coming in and out
19 of the store, but you are still standing there. Again you
20 identify yourself as the person there in the striped shirt,
21 correct?

22 A. Yes, ma'am.

23 Q. And so, we're going to allow the video to continue
24 to run, and we're going to go through some other parts of
25 your testimony. Again, you state that after the fall, he was

1 unable to get up unassisted; is that correct?

2 A. That's correct.

3 Q. And did you remain there -- you -- you remained
4 there at the Dollar General from the time that you picked him
5 up in that video -- we saw you pick him up until the time EMS
6 arrived?

7 A. Yes, ma'am.

8 Q. And how long do you think that time period -- that
9 waiting period was?

10 A. Fifteen minutes. It seemed like a long time for
11 an ambulance, but 15 minutes give or take.

12 Q. And when Mr. Sullivan was there at -- right after
13 the fall, what was the first time that he spoke to you at --
14 the time he spoke to you, was he still on the ground?

15 A. Yeah, he was talking to me then.

16 Q. And at that time, was he still suffering from the
17 shock and surprise from the fall?

18 A. Yeah. Yeah, he was. I think he hit his head or
19 something.

20 Q. And he began speaking to you while he was still on
21 the ground as you were helping him up?

22 A. Yeah. When I -- when -- he was saying, "Pick me
23 up," but the first thing he said was "that damn rug."

24 Q. Okay. And so, from that statement again, can you
25 -- you say that he said he made that statement while he was

1 -- while you were helping him up before he gets into the
2 chair?

3 A. Yes, ma'am. Yeah.

4 Q. Okay. And so, he was still under the surprise and
5 shock from the fall?

6 A. (Inaudible).

7 Q. And when he said that, did you understand him to
8 mean that the rug caused his fall?

9 MR. TRASK: Objection, Your Honor. Hearsay and
10 speculation.

11 THE COURT: (Inaudible).

12 MS. WHITE: Let me go back. Maybe this will clarify.

13 BY MS. WHITE:

14 Q. Exactly what did he say when you -- when you were
15 helping him up?

16 MR. TRASK: Objection, Your Honor.

17 THE COURT: (Inaudible) Counsel, approach.

18 (Bench conference.)

19 THE COURT: Objection's overruled.

20 BY MS. WHITE:

21 Q. And so, Mr. Riley, did Mr. Sullivan ever say that
22 anything other than the rug caused the fall?

23 A. No, ma'am.

24 Q. Did he ever say that he was in -- in any way
25 responsible?

1 A. No, ma'am.

2 Q. And we see here in this video, that you are still
3 there at the scene at Dollar General throughout this entire
4 time, correct?

5 A. (Inaudible).

6 Q. And did you have an opportunity yourself to see
7 the rug after the fall?

8 A. Yes, I think I was looking at it -- kind of
9 kicking the ground when I was in the foyer.

10 Q. And there's -- as we progress the video, we'll see
11 -- when we get to that part, I'll ask you to identify
12 yourself again when you were there. Can you describe the rug
13 that tripped Mr. Sullivan?

14 A. It seemed kind of thin and clumsy to me. Dirty.
15 Yeah, just older.

16 Q. And what was the coloring of the rug like?

17 A. Faded blue maybe, gray, blue-ish gray.

18 Q. And you said that in terms of -- when I asked you
19 the question, "Was the rug clean?" What was your response?

20 A. It was dirty.

21 Q. Okay. And when you looked at the rug, based on
22 your observation at the scene, did the rug move or slide
23 during the fall?

24 A. Yes. Yes. I seen it -- I seen him almost on the
25 ground. When I looked up from around the car, he was -- he

1 was, like, halfway down, and when I looked up, he hit the
2 ground and I seen the rug doing something at the same split
3 second.

4 Q. Okay. And can you describe what the rug looked
5 like after the fall?

6 A. It was folded up in a couple of folds -- look like
7 --

8 Q. And what's this -- based on your observation there
9 at the scene, was this a -- was this rug secured in any way
10 to the floor?

11 A. No, ma'am.

12 Q. Did it have any grip or anything that prevented it
13 from sliding?

14 A. I don't think so.

15 Q. And you were standing in the foyer and around this
16 rug -- throughout this -- approximately 30 minutes from the
17 time he fell to the time that EMS picked him up?

18 A. Say that again now.

19 Q. And so, you were standing either outside or in the
20 foyer throughout the time, from the time that he fell to the
21 time that EMS picked him up?

22 A. Yes, ma'am.

23 Q. And so during that time, you were able to -- is
24 that why you -- why you were able to get a clear view of the
25 rug?

1 A. Yes -- yes. Because that the -- probably the
2 employee had just straightened it out, but when -- when I
3 walked up there, it was still folded -- folded up on itself
4 like.

5 Q. And based on the condition of the rug that you saw
6 at Dollar General, do you believe that the rug caused the
7 fall?

8 A. Yes.

9 Q. And based on what you saw of the -- on the date of
10 the accident, did Mr. Sullivan do anything wrong or unusual
11 on that day?

12 A. No. I mean, he had been in that -- going in that
13 store for years.

14 Q. We see here on the video -- at this point, we're
15 far into the video and Dollar General still has him seated
16 outside. And you said, "This was about this time of year
17 when it's warm," correct?

18 A. Okay.

19 Q. And what happened to the groceries that he had
20 purchased from Dollar General on that day?

21 A. I must have went ahead and put them in the car.
22 Yeah. Yeah, I did. Because I took them home for him.

23 Q. Okay. And so the groceries kind of spilled out of
24 the cart when he fell?

25 A. I don't remember.

1 Q. Okay. Fair enough. Do you know what hospital
2 Mr. Sullivan was taken to after the fall?

3 A. (Inaudible).

4 Q. And did you speak to him or visit him while he was
5 in the hospital?

6 A. (Inaudible).

7 Q. And did Mr. Sullivan go to a rehabilitation center
8 for discharge after the hospital visit?

9 A. Yes, ma'am.

10 Q. And did you also visit him there at -- at that --
11 at that rehab?

12 A. Yes, ma'am.

13 Q. And was he still suffering the effects from the
14 fall at Dollar General?

15 A. Yes, ma'am.

16 Q. And after the fall, when was the first time --
17 after the fall, what was he using after the fall to get
18 around? I know before the accident he was using the cane,
19 but after the fall, what was he using?

20 A. I mean, after he got home from rehab?

21 Q. Yes. During the -- yes, after he got home from
22 rehab?

23 A. Yeah, a walker.

24 Q. So he went from the cane to the walker?

25 A. (Inaudible).

1 Q. And what activities was he no longer able to do?

2 A. Well, he -- it was recently, he -- he wanted me to
3 till him up a garden, right beside his front yard. So I did
4 that, planted, put some vegetables in there, and that's what
5 he would do, is come down his front porch there and water
6 them with the water hose every evening, but he -- he couldn't
7 do that anymore because it was, like, five or six steps down
8 the front porch. He -- he couldn't come down the steps
9 anymore.

10 Q. And so after the accident, he was no -- no longer
11 able to go down the steps to his garden?

12 A. He had to use the other door that was level with
13 the ground.

14 Q. And what happened to the garden that he had paid
15 you to till up and plant for him?

16 A. It pretty much died.

17 Q. It pretty much died. And after the fall,
18 Mr. Sullivan's last ortho visit or last visit at
19 OrthoCarolina was in July of 2019. Were you the person that
20 drove him to that visit?

21 A. Yes, ma'am.

22 Q. Now, if we look in the video here, Mr. Sullivan
23 has now been moved. Is -- is -- has he?

24 A. Yes. That's him in the shade now.

25 Q. And so, how did he get from the outside of the

1 store back to that area?

2 A. That's a guy that was telling us a lot what --
3 what to do or whatever, I think. I think they slid, you
4 know, moved him, helped. I don't think I helped move him.

5 Q. Okay. And so, these were some other people at the
6 store that -- how did they get him there? Was he able to
7 walk from that outside to the inside?

8 A. Oh, they slid him in the chair, but I -- I wasn't
9 even watching.

10 Q. Yeah. Okay. And so now, you are still at the
11 scene during this time when he's sitting in this chair in the
12 inside?

13 A. Yeah, that's me all the way in the right corner.

14 Q. Okay. And so again, you've testified as to the
15 condition of the rug, that it was dirty and flimsy, and so
16 you're standing right there and you're able to see the rug,
17 correct?

18 A. Yes, ma'am.

19 Q. And you stayed in that spot where you -- was your
20 -- what was your main concern there? Were you -- were you
21 trying to watch Mr. Sullivan, or what exactly were you doing?

22 A. I really kind of didn't know what to do, but I was
23 really waiting on, you know, EMS.

24 Q. Okay.

25 A. Because I knew something had to be wrong, the way

1 he was holding his leg.

2 Q. And so again, you're standing here in the corner
3 with the striped shirt on; is that right?

4 A. (Inaudible).

5 Q. And so again, you were there with Mr. Sullivan
6 from the time of the fall up until the time that EMS arrived?

7 A. That's correct.

8 MS. WHITE: And, Your Honor, I have no further
9 questions. And we can stop the video, and thank you very
10 much.

11 THE COURT: Cross-examination?

12 MR. TRASK: Just beg the Court's indulgence,
13 Your Honor.

14 THE COURT: Yes, sir.

15 Ms. Fox, you can just unpublish it that way.

16 MR. TRASK: Actually, Judge, if we could -- could -- we
17 need to publish.

18 THE COURT: Oh, leave it out. Sounds good.

19 MS. WHITE: (Inaudible).

20 THE COURT: Yes, ma'am. You'd like it back on the
21 screen? Okay.

22 MR. TRASK: Yes, Your Honor. May I please the Court?

23 THE COURT: Certainly.

24 CROSS-EXAMINATION

25 BY MR. TRASK:

1 Q. Mr. Riley, on June 10, 2019, you drove
2 Mr. Sullivan to the Dollar General store, correct?

3 A. Yes.

4 Q. You stayed in the car, correct?

5 A. Yes.

6 Q. You didn't go in with him?

7 A. No.

8 Q. Now, he went in on his own, right?

9 A. Yeah.

10 Q. Purchased his groceries on his own?

11 A. Yeah.

12 Q. Got the cart and pushed it back out on his own
13 until he fell, correct?

14 A. Yes.

15 Q. Look at that video right there. You're not in the
16 foyer with them, are you?

17 A. No.

18 Q. You have no independent knowledge as to how that
19 mat looked prior to the fall occurring because you were not
20 in the Dollar General store with them, correct?

21 A. Correct.

22 MR. TRASK: Okay. No further questions.

23 THE COURT: Any re-direct?

24 MS. WHITE: Yes, Your Honor.

25 RE-DIRECT EXAMINATION

1 BY MS. WHITE:

2 Q. Mr. Riley, just to clarify, you weren't there when
3 -- before, but you saw this same rug afterwards, correct?

4 A. Yes.

5 Q. And was the rug raised when you saw it?

6 A. You mean after he fell?

7 Q. Yes.

8 A. Yes, it was -- it was still folded up.

9 Q. Yes. It was still folded up at that point. And
10 you were able -- again, you were able to observe the rug
11 after the accident, the same rug, correct?

12 A. Correct.

13 Q. And so, your testimony about the physical
14 appearance of the rug and the sliding is based on what you
15 saw as you were coming -- as Mr. Sullivan was falling. How
16 much of his fall would you say that you actually saw?

17 A. The last half of it, like just a split second. I
18 looked up just in time to see him hit the ground.

19 Q. And how did you -- how did you know that he was
20 falling?

21 A. He may --

22 MR. TRASK: Judge, objection. I think it's outside the
23 scope.

24 THE COURT: I'm going to sustain the objection.

25 MR. TRASK: Thank you.

1 MS. WHITE: Let me move on to another question.

2 THE COURT: Okay.

3 BY MS. WHITE:

4 Q. Okay. And so after the accident, after everything
5 was over and EMS had come, then at that time, that's when you
6 left the scene?

7 A. Yes.

8 Q. But throughout this time, you were able to observe
9 both the rug and Mr. Sullivan's condition?

10 MR. TRASK: Objection, Your Honor. This is still
11 outside the scope.

12 THE COURT: Counsel, just limit the questions as to
13 what was on cross-examination, please.

14 MS. WHITE: I have no further questions, Your Honor.

15 THE COURT: Okay. Thank you, ma'am.

16 Any re-direct? Any re-cross?

17 MR. TRASK: No, Your Honor. No -- no, Your Honor.

18 THE COURT: Thank you, sir. You can step down.

19 MS. WHITE: Your Honor, I ask that Mr. Riley be excused
20 at this time.

21 THE COURT: Any objection from the Defense?

22 MR. TRASK: No, Your Honor.

23 THE COURT: Thank you, sir, you are excused from your
24 subpoena. Okay.

25 Ms. White, you may call your next witness.

1 MS. WHITE: At this time, Your Honor, our next witness
2 will appear via video deposition.

3 THE COURT: Okay.

4 MS. WHITE: We would like to publish the
5 video deposition of Dr. Edward Brown who performed the hip
6 surgery.

7 THE COURT: Okay.

8 MR. TRASK: Judge, there's just one little issue with
9 that, that we took up pretrial. I don't know if you want us
10 to approach to talk about it.

11 THE COURT: You can approach. That would be great.

12 (Bench conference.)

13 THE COURT: Ladies and gentlemen, I need to speak to
14 the lawyers about a legal matter, so I'm going to ask you to
15 have -- step back to the jury room, please.

16 (Jury exits courtroom.)

17 MR. TRASK: Objection.

18 THE COURT: Yeah. If you have a copy of the transcript
19 the Court could look at, that would be great too.

20 MR. TRASK: And would you mind (inaudible).

21 MS. WHITE: Your Honor, I had a question for the clerk
22 regarding the display of the video.

23 THE COURT: Yes, ma'am. Go ahead

24 MS. WHITE: I'm assuming that since it's on this, that
25 the Court will -- that you'll be able to display it directly.

1 Do you need us to display it here, or how does that work?

2 THE COURT: I -- I'm not sure

3 MS. WHITE: The original -- the original copy of the
4 video deposition of Dr. Brown has been put in evidence at the
5 end.

6 THE COURT: Right

7 MS. WHITE: (Inaudible) now or?

8 THE COURT: Well, no. The -- typically you'd give it to
9 the court reporter, have it marked as an exhibit, and most
10 attorneys have another copy on their computer they use to
11 display.

12 MS. WHITE: Okay. So, we -- we have had it marked and
13 so that's what --

14 THE COURT: Usually, most attorneys either use it --

15 MS. WHITE: -- to (inaudible) display for the Court --

16 THE COURT: No, the -- the -- the clerk -- the -- the --
17 the court reporter can't display it.

18 MS. WHITE: (Inaudible).

19 THE COURT: Yes, ma'am.

20 MS. WHITE: Yeah, we -- it should be -- we had the extra
21 -- motion to exclude, this is it. So we marked -- where's
22 the one that we marked? Yeah, the one we marked. This
23 should be in here. This is the one that we marked and this
24 is the one.

25 UNIDENTIFIED FEMALE SPEAKER: No. This is the motion to

1 exclude.

2 MS. WHITE: Okay.

3 THE COURT: Yes, absolutely. And now you're going --
4 you -- you -- no -- you go right ahead. It's a good time.

5 MR. TRASK: You asked, based on the seven, are you aware
6 that Mr. Sullivan (inaudible)?

7 MS. WHITE: Walked right out of it.

8 THE WITNESS: It's me that answered. No, but I just
9 opened the door.

10 MR. TRASK: See it, Your Honor?

11 THE COURT: Yes, sir. Okay.

12 MR. TRASK: I think that's the discovery depo.

13 THE COURT: Oh.

14 MR. TRASK: Yeah. That's from May 7, 2024. Your Honor,
15 sorry, if you could just bear with me for one second.

16 THE COURT: Okay. Yes, sir. This -- this isn't -- this
17 is a -- this is a May 7th depo. Yes.

18 MR. TRASK: Yeah, that's the discovery deposition. I'm
19 just double-checking in the trial deposition -- for some
20 reason, maybe I'm mistaken -- I thought that it had been
21 brought up, so I just want to be extra cautious.

22 THE COURT: Counsel, would you like your (inaudible).

23 UNIDENTIFIED MALE SPEAKER: I didn't mean to be wrong.

24 THE COURT: It's okay.

25 MR. TRASK: No. Maybe you're right. Maybe I'm

1 mistaken. I thought -- trial deposition.

2 MS. WHITE: Yes. You -- you -- no, that was the
3 discovery deposition when -- when he talked about those
4 issues.

5 MR. TRASK: Okay.

6 MS. WHITE: There is a point where --

7 MR. TRASK: I know depression got brought up at one
8 point.

9 MS. WHITE: Yeah.

10 MR. TRASK: I remember that.

11 MS. WHITE: You made an objection regarding that. But
12 that was (inaudible) the same way he started talking about --
13 about the rug. When I'm asking him --

14 MR. TRASK: Dr. Brown did that, didn't he? Okay. Well
15 then, Your Honor, I apologize for -- for wasting the Court's
16 time. I --

17 THE COURT: You didn't waste my time. That's -- that's
18 what I'm -- I'm -- I'm -- I'm -- I like it when folks bring
19 up issues before we get to the point where it's -- you've
20 gone too far.

21 MS. WHITE: There is -- there is a reference here on
22 page 59, so you might need to look at that.

23 THE COURT: Would it -- reference to what, Ms. White?

24 MS. WHITE: It referenced both the -- it referenced the
25 suicide.

1 THE COURT: Oh.

2 MS. WHITE: 59 might be discovery.

3 MR. TRASK: That's the discovery.

4 MS. WHITE: Is that the discovery depo?

5 MR. TRASK: Yeah, that's the discovery deposition. This
6 deposition, yes. And, Your Honor, obviously it's not a
7 certified copy, but if you'd like a copy of the trial
8 deposition, I have one right here.

9 THE COURT: I don't need one as long as -- I mean, that
10 -- I was going to try to figure out how to, you know, unspill
11 the milk there if we had a -- you know, but anyway, I'm glad
12 that it's not mentioned in the -- the -- the trial
13 deposition. And I think we're good to go.

14 Counsel, while the -- the jury's out, Ms. White, were
15 you planning on calling an additional witness after we play
16 the video?

17 MS. WHITE: No. No, Your Honor.

18 THE COURT: You said it's about an -- about an hour?

19 MS. WHITE: My last witness's on tomorrow.

20 THE COURT: Okay. And you said the video's about an
21 hour?

22 MS. WHITE: Yeah. Hour -- hour and 10 minutes.

23 THE COURT: That'd be perfect then. Okay, well, let's
24 just take a couple minutes. The Court's going to use the
25 restroom. Anyone else use the restroom? We'll do that.

1 Then we'll bring the jury in and play the video. Thank you,
2 Counsel.

3 (Off the record.)

4 THE COURT: All right. Counsel, the jury's informed me
5 that juror, Norman, number 178 is the foreperson.

6 If you'd raise your hand, sir. Thank you, sir.

7 Ladies and gentlemen, what you're about to see is a
8 videotaped deposition of a doctor. And what this means, is
9 sometimes attorneys, when they know a case is going to trial,
10 they will video a doctor's testimony and that way the doctor
11 doesn't have to take a day off from seeing patients.

12 This is testimony under oath with attorneys from both
13 sides through -- present when it's recorded. So, you should
14 treat this as if it were trial testimony and as if the doctor
15 was testifying from the witness stand.

16 Ms. White you can call your next witness.

17 MS. WHITE: Yes, at this time the video deposition of
18 Dr. Edward Brown of OrthoCarolina.

19 THE COURT: Thank you, ma'am.

20 MS. WHITE: We're going to display it over here. Yeah,
21 this might be the (inaudible).

22 (Video starts playing)

23 MS. WHITE: No, that's not it. Yeah. This might be
24 the (inaudible) representing the Plaintiff,
25 the Estate of Thomas Sullivan.

1 EDWARD BROWN,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. WHITE:

5 Q. (Inaudible). You have the opportunity to
6 (inaudible). And so, I'm going to kind of go through the
7 ground rules for you just to refresh. This is a video
8 deposition, but we are still asking verbal responses from
9 (inaudible). And as we go through, if you have any questions
10 or clarification, I can restate or try to clarify a question.
11 You know, if you can't understand exactly what it is that I'm
12 asking -- during the process of the deposition, you may hear
13 an objection either from Mr. Trask or myself (inaudible)
14 noted for the record. And you can ask -- you can answer the
15 question (inaudible).

16 A. Okay.

17 Q. And also if you have any -- you know, if you have
18 any request for clarification (inaudible).

19 A. May I interject one thing?

20 Q. Okay.

21 A. So at the time, our last deposition, you showed me
22 the video that was (inaudible). I would really like to be
23 able to (inaudible).

24 Q. No problem at all. We (inaudible).

25 THE COURT: Let's pause it for a moment. Okay.

1 BY MS. WHITE:

2 Q. Sir, can you state again your full name for the
3 record?

4 A. Sure. Edward Brown.

5 THE COURT: Let's pause it for a moment. Okay.

6 (Video paused)

7 Thank you, Ms. Love-Sloan.

8 Counsel, I just want to make sure for -- so the
9 record's clear this -- this witness is qualified as an expert
10 in orthopedic surgery by consent; is that correct?

11 From the Plaintiff?

12 MS. WHITE: Yes, Your Honor.

13 THE COURT: From the Defense?

14 MR. TRASK: Yes, Your Honor. And that'll be on the
15 video.

16 THE COURT: Okay. That -- that way we don't have to
17 stop when it comes up.

18 So, ladies and gentlemen, this witness has been
19 qualified as an expert witness in the field of orthopedic
20 surgery. What that means is normally witnesses are only
21 allowed to testify about what they saw or what they heard.
22 They're not allowed to give an opinion.

23 An expert witness is an exception to that rule. Expert
24 witnesses based on their training or their certification or
25 their education, they're allowed to give their opinion and

1 the reasons for it.

2 However, expert witnesses should be evaluated by you,
3 just like any other witness. Just because the witness is an
4 expert does not mean you need to believe their testimony.

5 Thank you. Ms. Love-Sloan.

6 (Video continues)

7 BY MS. WHITE:

8 Q. And what states are you licensed to practice in?

9 A. South Carolina (inaudible) moved on.

10 Q. And where do you primarily practice?

11 A. Here in South Carolina (inaudible).

12 Q. And the address place where you're currently --
13 you practicing?

14 A. We (inaudible) moved here just a few months ago,
15 so I don't write it down (inaudible), but it's, I believe
16 600, 660 South Seventh Road (inaudible).

17 Q. And how long have you practiced (inaudible)?

18 A. Six and a half years.

19 Q. Where did you attend undergraduate school?

20 A. At the Johns Hopkins University.

21 Q. And where did you attend medical school?

22 A. University Chapel Hill -- University Chapel Hill.

23 Q. (Inaudible) your -- your introduction indicated
24 that your undergraduate degree was a biomedical engineering?

25 A. Correct. And electrical engineering first science

1 (inaudible).

2 Q. Can you describe for me the difference between
3 biomedical engineering and biomechanical engineering?

4 A. So biomedical is more towards the electrical side
5 or the biological side of applications towards medicine or
6 biomechanical is more structural issues (inaudible).

7 Q. When you say structural issues, what specifically?

8 A. Just like (inaudible) applications (inaudible).

9 Q. Things like artificial (inaudible), that kind
10 (inaudible) category of biomechanical?

11 A. Yes. But I did not study that aspect of
12 biomedical engineering.

13 Q. You said -- again where did you attend medical
14 school?

15 A. It's (inaudible) Hill University (inaudible).

16 Q. Can you discuss the courses that you studied that
17 apply to your knowledge in this case?

18 A. I mean, I think the -- the curriculum there was,
19 you know, the basic curriculum that medical school students
20 receive, but I will say, the residency program at orthopedic
21 surgery, I mean, we have as part of that training in
22 understanding abnormalities of gaits and disorders the -- for
23 (inaudible) and how to prescribe (inaudible) in what
24 settings. That is part of the (inaudible) residency.

25 Q. (Inaudible) residency?

1 A. In -- in North Carolina (inaudible) hospitals.

2 Q. And can you explain what your medical specialty is
3 at this time?

4 A. So, I'm a board-certified orthopedic surgeon in
5 two areas of orthopedics: Orthopedic in general, and
6 specifically in orthopedic sports medicine as a sub-
7 specialty. The vast majority of my practice is towards total
8 joints, total (inaudible) knees, and total shoulders. Few
9 total joint doctors do all three areas, as well as sports
10 medicine in terms of managing disorder (inaudible) and in
11 addition to my general orthopedic surgery practice, which I
12 do as related to injuries and patients who come to the
13 emergency room at the Piedmont Medical hospital (inaudible).

14 Q. And how long have you practiced this particular
15 then to orthopedics?

16 A. Well, I did my fellowship over 20 years ago in
17 sports medicine and -- and joint replacement seniors. So, I
18 would say that it's been 22 years that I've been doing this
19 since I was in training.

20 Q. Can you describe again, the board of certification
21 which you possess?

22 A. So certification -- so once you (inaudible) cases
23 over a six month (inaudible) orthopedic surgeons from around
24 the country (inaudible) so that process for review -- your
25 cases (inaudible) standards of (inaudible) and to this case

1 (inaudible).

2 Q. (Inaudible) with regard to this case (inaudible)
3 you'll refer to these reference (inaudible) also to use those
4 records (inaudible).

5 A. (Inaudible) Mr. Sullivan (inaudible) operating
6 room (inaudible) so I was in the operating room and 1:30 in
7 the afternoon, and (inaudible) aware of Mr. Sullivan's injury
8 (inaudible).

9 Q. And what was the (inaudible)?

10 A. (Inaudible).

11 Q. Consulting physician role (inaudible) medical at
12 the time?

13 A. So, yes. So the (inaudible) reaches out to as a
14 (inaudible).

15 Q. (Inaudible) has Mr. Sullivan ever been treated at
16 OrthoCarolina (inaudible)?

17 A. Not that I know of.

18 Q. Look at Exhibit A medical records there. You
19 previously reviewed these medical records?

20 A. Yes.

21 Q. Can you describe what providers are in these
22 records?

23 A. So (inaudible) those people around (inaudible).

24 Q. So medical records before -- you include the
25 records from (inaudible), EMS?

1 A. Yes. EMS (inaudible).

2 Q. (Inaudible) Medical hospital?

3 A. (Inaudible).

4 Q. Does it also include the records from (inaudible)
5 rehabilitation?

6 A. (Inaudible).

7 Q. (Inaudible) all of these records (inaudible) the
8 records for made at (inaudible) of Mr. Sullivan (inaudible).

9 A. (Inaudible).

10 Q. Who -- go through the detail, the providers for
11 Piedmont Medical Center where the records that you reviewed
12 made at or your time (inaudible) treatment at Piedmont?

13 A. Yes.

14 Q. And then also for Piedmont EMS those are
15 (inaudible) make up or near the time of his treatment?

16 A. Yes.

17 Q. The ACS primary, which is the ER room that
18 would've been at over -- near the time his treatment --
19 there?

20 A. (Inaudible) but I thought it was under the
21 (inaudible) medical centers (inaudible).

22 Q. Also be true for Rock Hill Radiology?

23 A. Yes.

24 Q. And Anesthesia Associates?

25 A. Yes.

1 Q. And American TransMedic?

2 A. Yes.

3 Q. The purpose that each provider kept in the
4 ordinary course of business?

5 A. Yes.

6 Q. And are the records that each provider (inaudible)
7 Thomas Sullivan?

8 A. Yes.

9 Q. Are the records based upon the personal knowledge
10 of a doctor or a staff member at this facility or
11 (inaudible)?

12 A. I don't think so. (Inaudible).

13 Q. The records that you reviewed, we have as exhibit
14 (inaudible). Can you confirm that these records are in
15 complete duplicate of the original records that -- for these
16 facilities?

17 A. I can't say prepared (inaudible).

18 Q. Correct. This is a portion of the records those
19 facilities of (inaudible)?

20 A. Yes.

21 Q. (Inaudible) treatment. Did you review all of the
22 medical records at each facility where Mr. Sullivan was
23 treated?

24 A. No. I -- I reviewed these records and I went back
25 and I reviewed the records around the time of this

1 (inaudible) review (inaudible).

2 Q. Were all of the records that you reviewed relating
3 to how -- they all relate to treatment and Mr. Sullivan as a
4 result of the prior incident (inaudible)?

5 A. Yes.

6 Q. Were all of the services provided by each --
7 provided a reasonable and necessary or medical treatment?

8 A. Yes.

9 Q. Related to the fall? All of these records were
10 related to the fall?

11 A. (Inaudible).

12 Q. At the time when a -- when you see a patient, do
13 you generally take a history of these patients as when you
14 see them?

15 A. Yes.

16 Q. And requests entail that (inaudible)?

17 A. So, basically it involves having a conversation
18 with the patient (inaudible) conversation to (inaudible)
19 evaluate.

20 Q. (Inaudible).

21 A. (Inaudible) so I received Monday afternoon
22 (inaudible), I used X-rays, and (inaudible) had a past
23 history of a practice. Treated that and that (inaudible).

24 Q. Did Mr. Sullivan report also that he hit his head?

25 A. Correct, he did. And I personally looked that up.

1 And the CT (inaudible).

2 Q. Did he also report that he hit his chest at that
3 time?

4 A. (Inaudible).

5 Q. The (inaudible) number on the Rock Hill
6 (inaudible)?

7 A. (Inaudible).

8 Q. (Inaudible) on?

9 A. It does. (Inaudible).

10 Q. -- name in regard to Mr. Sullivan?

11 A. Yes.

12 Q. Have you previously reviewed the slip-and-fall
13 incident?

14 A. Yes. Just one time (inaudible). We reviewed it
15 again (inaudible).

16 Q. How long?

17 A. (Inaudible).

18 Q. (Inaudible) just with Mr. Sullivan (inaudible)
19 provided (inaudible)?

20 A. Yes. He stated that a drug (inaudible).

21 Q. Did you complete a physical examination of
22 Mr. Sullivan (inaudible)?

23 A. (Inaudible).

24 Q. And other than the (inaudible)?

25 A. Yes. (Inaudible).

1 Q. Do medical records as well as your records reflect
2 (inaudible) the diagnosis?

3 A. Yes. So the actual X-rays (inaudible).

4 Q. (Inaudible).

5 A. The surgery to (inaudible).

6 Q. And based upon your diagnosis and the testing that
7 you did (inaudible) the only reasonable option for
8 Mr. Sullivan?

9 A. Yes. (Inaudible)

10 Q. Do you have an opinion to (inaudible) medical
11 service see an orthopedic (inaudible) injury on
12 June 10, 2019?

13 A. Yes, (inaudible).

14 Q. Do you have an opinion based on (inaudible)
15 weakness?

16 A. Yes. (Inaudible) and at the time the was flat and
17 -- and it (inaudible).

18 Q. At your current deposition, did you testify that,
19 based on your viewing of the video -- that, "May have been in
20 despair, and it looked like (inaudible)?"

21 A. Yes, I said that, but that rug (inaudible) I was
22 specifically in charge (inaudible) flat was raised at the
23 time, (inaudible) and it was flat (inaudible) that caught the
24 edge of the rug. So, I would like to modify (inaudible).

25 Q. And as part of your practice as an

1 orthopedic specialist, do you do gait analysis as part of
2 your medical practice?

3 A. Yes.

4 Q. Can you describe the steps involved in gait
5 analysis?

6 A. Well, it can be fairly straightforward to
7 receiving price, but in the office setting, it's basically
8 asking the patient to walk and evaluate the pattern that
9 (inaudible) want as to qualify (inaudible).

10 Q. (Inaudible) are involved (inaudible)?

11 A. (Inaudible).

12 Q. Can you describe the time frame that it normally
13 takes in order to complete a gait analysis?

14 A. (Inaudible).

15 Q. Did you conduct any gait analysis of Mr. Sullivan
16 prior to the fall?

17 A. No.

18 Q. Can you describe what Mr. Sullivan was using to
19 emulate or assist him in walking prior to the fall?

20 A. The cane and (inaudible).

21 Q. And did you prescribe any or provide any medical
22 devices to assist him in walking prior to the fall?

23 A. No.

24 Q. And did you prescribe any, medical devices to
25 assist him in walking after the fall?

1 A. I did not.

2 Q. And did you do any gait analysis of Mr. Sullivan
3 before the fall?

4 A. I never met him until he came (inaudible).

5 Q. With the type of gait impairment that Mr. Sullivan
6 suffered from -- involuntary kicking action with his
7 (inaudible) his foot?

8 A. I do not think (inaudible).

9 Q. But according to the medical records that you
10 reviewed, was it approximately 20 years prior to this
11 incident that he had the stroke?

12 A. Yes, based on the screen and the reference.

13 Q. And so that would've been around 1999,
14 20 years ago when he had the stroke?

15 A. Yes, and would account for why it happened
16 (inaudible).

17 Q. After that stroke in 1999 -- that Mr. Sullivan had
18 been able to walk using just the cane?

19 A. (Inaudible) knowledge -- walk in prior to -- other
20 than physical (inaudible).

21 Q. The two video clips that he just watched show that
22 Mr. Sullivan was medically and physically capable of walking
23 without falling?

24 A. Well, he was apparently walking quite well with
25 just the cane until he had (inaudible) on that day.

1 Q. (Inaudible) show that Mr. Sullivan was medically
2 and physically capable of walking over (inaudible) without
3 harm?

4 A. He was able to walk over (inaudible) on the end
5 (inaudible) walking over the second rug was when he
6 (inaudible).

7 Q. And does the video show that he was able to do
8 these activities despite his legs --

9 (Video paused.)

10 THE COURT: Can you pause it for a second?

11 MS. WHITE: Yes.

12 THE COURT: Okay. Yes, sir. Was somebody raising
13 their hand? Okay.

14 (Video continues)

15 BY MS. WHITE:

16 Q. The video showed that he was able to do this
17 despite no brace or further devices?

18 A. Aside from the cane, he had enough strength to
19 bring up to a neutral position and help to change his --
20 slightly (inaudible) up and so that he could walk without --
21 with the -- with the weakness that he had. That type of
22 weakness, you know -- the type of braces that he -- the
23 candidate for -- or an (inaudible) is one that had been
24 previously prescribed to him, and like many patients who are
25 given (sic) braces -- it's a plastic brace, back of your leg

1 and goes underneath the heel and foot, and has a strap in the
2 front. It's very hot and uncomfortable, and many patients
3 (inaudible). And so they choose -- like he had chosen
4 (inaudible).

5 Q. Let's go back to Mr. Sullivan's medical treatment.
6 How did Mr. Sullivan arrive that he -- medically after the
7 (inaudible)?

8 A. (Inaudible).

9 Q. And how often did you see Mr. Sullivan
10 (inaudible)?

11 A. Well, the day -- the morning that I met him, which
12 was the 21st -- the afternoon for surgery and then the next
13 two mornings to check (inaudible).

14 Q. And was at the time the treatment rendered at
15 Piedmont. The result of the injuries that he suffered from
16 the fall, that (inaudible)?

17 A. Yes.

18 Q. Mr. Sullivan also received treatment in
19 Piedmont ER?

20 A. Yes.

21 Q. Can you describe the treatment that he received
22 there?

23 A. Yes. He came in by us in the emergency room --
24 the emergency room triage process. He was actually seen by
25 an emergency room physician to order some X-rays and CT scan,

1 and other studies without work -- standard work -- up for a
2 patient -- had injury because his other complaints. And then
3 he contacted me, once it was identified that he had a
4 fracture, he (inaudible) on the phone, the patient was
5 admitted to the hospital service as is typical for actual
6 patients.

7 He had surgery the next day, which is pretty standard.
8 We try to take care of all the (inaudible) within 24 hours of
9 injury. And then, he basically was on the medical service.
10 They just -- medical issues for him for the next four days.

11 And then, he made slow (inaudible) progress on physical
12 therapy notes. He was determined by therapy not to be the
13 candidate determined -- having some pain with -- while being
14 -- difficulty putting (inaudible).

15 Eventually, he reached a point where he was able to
16 make progress to go to a rehab center and he went to
17 Encompass. He was discharged on post-operative day. The
18 third post-operative -- day before was post-operative day,
19 and then he was at Encompass for (inaudible).

20 Q. And you -- did he also receive treatment through
21 Rock Hill Radiology and Anesthesia Associates?

22 A. Yes.

23 Q. Can you describe the type of the services that
24 were provided there?

25 A. So, those services including X-rays for

1 potentially the chest, the CT scan of his head -- as he --
2 had fallen in his complaint of that. And then the
3 anesthesia, the normal anesthesia (inaudible), and charts
4 from surgery.

5 Q. And did all of the medical treatment at these
6 facilities occur as a result of the fall at Dollar General?

7 A. Sorry?

8 Q. Did all of the medical treatment at these
9 facilities occur as a result of the fall at Dollar General?

10 A. Yes.

11 Q. And was all of the treatment received reasonable
12 and necessary?

13 A. Yes.

14 Q. Going back again to the treatment at
15 Encompass rehab, do you remember the date that Mr. Sullivan
16 was discharged and (inaudible)?

17 A. (Inaudible) I believe (inaudible).

18 Q. And that's a consulting position for Piedmont, did
19 you recommend we could -- rehabilitation treatment for
20 Mr. Sullivan?

21 A. So, the way that the recommendations for patients'
22 discharge typically go -- the actual patients -- is that
23 they're evaluated by a discharge planning nurse and the
24 therapist, physical therapist.

25 And so, the therapist is working hands on -- one-on-one

1 with the patient in the room of the therapy room. And then,
2 she interacts with the additional planning nurse, and then
3 they make a determination based on the patient progress or
4 lack of progress, what the next potential (inaudible).
5 Whether it's fall or an inpatient rehab, that requires a
6 patient to participate at least three hours in their therapy
7 sessions (inaudible) or get therapy, but it's not
8 (inaudible).

9 So, after reviewing the (inaudible) a determination
10 that the patient would be a good candidate -- some of -- with
11 (inaudible) to go to patient health center and he was
12 accepted at Encompass.

13 Q. And can you describe the type of services that --
14 or the type of medical treatment that he would've received at
15 Encompass?

16 A. So, there's an internal medicine doctor that
17 oversees sort of the medical care of those patients. I'm not
18 physically familiar with everything that goes on at the
19 Encompass center, but I know there's a physician that
20 oversees medical care, and then there's therapists there that
21 we -- do work -- patients at least three hours per day.

22 Q. Would have -- would he have received pain
23 medications while there at Encompass?

24 A. Yes. He lives on working medication, which is
25 (inaudible) medications from the hospital as a service

1 (inaudible).

2 Q. Would he have received balance training there?

3 A. Yes.

4 Q. Would he have received help with activities of
5 daily living?

6 A. Yes.

7 Q. And would there have been monitoring on his
8 (inaudible) object -- is more necessary?

9 A. Yes.

10 Q. Do you know how Mr. Sullivan was transported from
11 (inaudible) to Encompass?

12 A. Usually I do ask this (inaudible) understand.

13 Q. Are you familiar with the service called
14 American TransMedic?

15 A. (Inaudible).

16 Q. (Inaudible) necessary (inaudible)?

17 A. Yes.

18 Q. (Inaudible). Do you remember what date he was
19 discharged from Encompass?

20 A. No, I don't. (Inaudible).

21 Q. What was the (inaudible) of his post-visit to
22 OrthoCarolina?

23 A. (Inaudible).

24 Q. Is that unusual or is that (inaudible)?

25 A. (Inaudible) because it's usually (inaudible) 10

1 (inaudible).

2 Q. Did you examine Mr. Sullivan on that day?

3 A. I did.

4 Q. Can you tell me what your client (inaudible) of
5 that day?

6 A. So he (inaudible) decision (inaudible).

7 Q. And during that day, what (inaudible) report?

8 A. In this medical system we were using at the time,
9 it's been (inaudible), but you talked to (inaudible) and the
10 pain (inaudible) and the pain was on (inaudible).

11 Q. (Inaudible) that information. This was -- was
12 this ongoing pain that he was experiencing?

13 A. He was having post-operative pain from his
14 (inaudible), but didn't really initial (inaudible).

15 Q. What were his limitations on that date?

16 A. So basically after the recommendation of the
17 therapist, he was discharged (inaudible) therapist also
18 (inaudible).

19 Q. What recommendations did you make for (inaudible)
20 treatment?

21 A. So, continue physical therapy, home (inaudible).

22 Q. What was your next examination evaluation?

23 A. (Inaudible) and the patient (inaudible) 15 minutes
24 (inaudible).

25 Q. (Inaudible) did he report on that June 3rd?

1 A. At that time, he (inaudible).

2 Q. (Inaudible) based on the activity of the patient?

3 A. I can (inaudible) 50-plus rate based on the
4 (inaudible) level, certainly (inaudible).

5 Q. (Inaudible) the limitations that he was
6 experiencing on that day. What devices was he using on that
7 day for ambulation?

8 A. So, he was using a walker and occasionally a cane.
9 It says, as we noted, when someone has a hip fracture, we
10 talk about levels of independence and ambulation. He was
11 already at a level (inaudible) ambulation that was
12 independent (inaudible) fracture up to 50 percent of
13 ambulation. Somebody (inaudible) then achieved the
14 expectation of it (inaudible).

15 Q. July 31, 2019, had he regained his prior mobility?

16 A. No. He says he would like to transition to the
17 walker, which is why I prescribed additional therapy.

18 Q. Would the necessity of using a walker interfere
19 with his ordinary activities (inaudible) living?

20 A. It can have -- many patients who are very
21 (inaudible) obligations to do that (inaudible).

22 Q. You say that, "Up to one-half or 50 percent of
23 patients their level of mobility?"

24 A. (Inaudible).

25 Q. As result of the hip fracture based on what you

1 observed with Mr. Sullivan, would you -- would you agree that
2 he was in that 50 percent?

3 A. At the time, the 60 -- he was in that (inaudible)
4 too, yes.

5 Q. Would the change in mobility interfere with
6 activities of daily living like climbing steps?

7 A. It can, but there is some modification. There was
8 (inaudible) to use opportunity (inaudible).

9 Q. And would this decrease in mobility also interfere
10 with having life, walking pets, or gardening?

11 A. Actually, but then people can (inaudible).

12 Q. And would it be more difficult for him to engage
13 in those activities with the walker than it would've been
14 with the cane?

15 A. (Inaudible).

16 Q. In your opinion, based on the reason (inaudible)
17 Mr. Sullivan -- permanent impairment based on loss of
18 functionality?

19 A. So, the permanent impairment rating (inaudible).

20 Q. Based on your -- your examination and (inaudible)
21 did he experience (inaudible) mobility as a result?

22 A. (Inaudible).

23 Q. (Inaudible) that you never had an opportunity to
24 review any records regarding Mr. Sullivan's gait prior to the
25 accident?

1 A. Sure.

2 Q. Is it also true that you never prescribed any type
3 of brace for Mr. Sullivan prior to the accident?

4 A. Correct.

5 Q. And is it true that in order to determine if a
6 brace was necessary, that would require certain measurements
7 be taken?

8 A. I'm not sure I understand your question.

9 Q. (Inaudible) your current deposition (inaudible)
10 patient is able to bring the book to the -- what you referred
11 to as the (inaudible) position that you would not resolve --
12 brace?

13 A. Yes, that's true.

14 Q. And you never had an opportunity to determine --

15 A. Yes. I -- I would (inaudible) I -- I don't see
16 the need for a brace (inaudible) video also demonstrates the
17 (inaudible).

18 Q. (Inaudible) Carolina?

19 A. (Inaudible).

20 Q. (Inaudible) not reasonable and necessary for his
21 treatment?

22 A. (Inaudible).

23 Q. Reasonable based on (inaudible) he received?

24 A. Yes. (Inaudible).

25 Q. Were you aware that the (inaudible)

1 Medical Services (inaudible) Mr. Sullivan's treatment after
2 the fall was approximately 115,000?

3 A. No. I'm not aware of (inaudible) treatment
4 (inaudible).

5 Q. All the opinions that you've expressed today --
6 given reason (inaudible)?

7 A. Yes. (Inaudible).

8 Q. That you have no knowledge of (inaudible)?

9 A. No.

10 Q. And am I correct in assuming that you have no
11 knowledge of Dollar General's standard operating procedures
12 for rugs and mats?

13 A. Correct.

14 Q. And am I correct in assuming that you have no
15 knowledge of (inaudible) status relating to rug and mat
16 safety?

17 A. Correct.

18 Q. And am I correct in understanding that you have no
19 skills, expertise, or training in the inspection of rugs?

20 A. (Inaudible).

21 Q. (Inaudible) at this time, that you would not be
22 able to provide any form of expert opinion regarding any mat
23 or rug?

24 A. I would offer just what I saw on video
25 (inaudible).

1 Q. (Inaudible) that you had no expertise in assessing
2 whether then that was the condition of the mat?

3 A. Correct.

4 Q. And you have no expertise on assessing the role
5 that the condition of the mat (inaudible)?

6 A. No. (Inaudible) typically (inaudible).

7 Q. (Inaudible) you have no expertise with regard to
8 the video (inaudible)?

9 A. Yes.

10 Q. You had no knowledge of what angles the video were
11 taken, correct?

12 A. Correct.

13 Q. You did not have a full view of the rug from top
14 to bottom, correct?

15 A. I saw the entirety of the mat on video
16 (inaudible).

17 Q. (Inaudible) again, do you have any expertise in
18 assessing (inaudible)?

19 A. (Inaudible).

20 Q. And, Dr. Brown, again, your expertise is in
21 orthopedics, correct?

22 A. Correct.

23 Q. You have no expertise with inspecting mats or
24 rugs, correct?

25 A. Correct.

1 Q. You have no expertise with respect to any
2 standards regarding rugs and mats?

3 A. Correct.

4 Q. You have no expertise with respect to the physical
5 appearance of the mat, correct?

6 A. Correct.

7 Q. You've never seen this mat before, correct?

8 A. No.

9 Q. The video that you saw was not as close --

10 A. One time I saw video (inaudible).

11 Q. The video you saw -- that you saw, the mat -- was
12 not a close up shot of the mat or (inaudible)?

13 A. (Inaudible).

14 Q. Would you agree that even with the gait impairment
15 -- that Mr. Sullivan was successful in traversing or walking
16 over the rugs -- both on the way in and on the way out --
17 until the second rug?

18 A. (Inaudible).

19 Q. And that he was physically and medically able to
20 do that?

21 A. Yes. (Inaudible).

22 Q. Thank you.

23 (Video ends.)

24 THE COURT: All right. Ladies and gentlemen, that will
25 be our last evidence for today. So, we're done for the day.

1 I'm asking you to be back at 9:30 tomorrow morning. I'm
2 going to remind you, please don't do any outside research.
3 Don't read or watch any news reports and don't discuss the
4 case with anyone including each other. But that said, I
5 thank you very much for your attention today and I'll see you
6 back tomorrow morning at 9:30.

7 All right. Anything from the Plaintiff before we break
8 for the day?

9 MS. WHITE: Yes, Your Honor. With your permission, I'd
10 like to go ahead and admit the video deposition and the
11 medical records into evidence at this time.

12 THE COURT: They're already in, you mean to -- to mark
13 them with the court reporter?

14 MS. WHITE: They are already marked. I wanted to
15 submit them in to evidence to --

16 THE COURT: Sure. Just give them to the --

17 MS. WHITE: -- give to the court reporter.

18 THE COURT: Yes, ma'am.

19 MS. WHITE: Okay. Thank you, Your Honor.

20 THE COURT: Yes, ma'am.

21 Anything else?

22 MS. WHITE: No, Your Honor.

23 THE COURT: Anything from the Defense?

24 MR. TRASK: No, Your Honor.

25 THE COURT: See you all tomorrow morning. We've got a

1 settlement at 9:30, so probably start more like 9:45. We'll
2 see everybody tomorrow.

3 MR. TRASK: Judge?

4 THE COURT: Yes, sir.

5 MR. TRASK: Would it be possible to leave certain
6 things in the courtroom or should we take it all?

7 THE COURT: Yes, sir. Deputy Straume's nodding,
8 they're going -- they're going to lock it up.

9 MR. TRASK: Okay. Perfect. Thank you.

10 THE COURT: Yeah.

11 MR. BOINEAU: Perfect. Thank you, sir.

12 THE COURT: Thank you. All right. Thank you
13 everybody.

14 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT 4:55
15 P.M.)

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CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 16 of York County, South Carolina, on the 17th Day of June, 2024.

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

August 20, 2024

Natasha Barrientos

Transcriber

STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT
) 16
COUNTY OF YORK) DOCKET NO. 2022-CP-46-00085

ESTATE OF THOMAS SULLIVAN,)
Plaintiff,)
versus)
DOLGENCORP, LLC D/B/A DOLLAR GENERAL)
CORPORATION,)
Defendant.)

H E A R I N G
BEFORE THE HONORABLE WILLIAM MCKINNON

DATE: June 18, 2024
TIME: 09:50 a.m.
LOCATION: South Carolina Circuit Court 16

TRANSCRIBED BY: Natasha Barrientos

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1 MS. WHITE: Yes, Your Honor.

2 THE COURT: Defense ready to proceed?

3 MR. TRASK: Yes, Your Honor.

4 THE COURT: Let's bring them in.

5 (Jury enters courtroom)

6 THE COURT: Thanks. All right. Ladies and gentlemen,
7 welcome back. Thank you for your patience this morning.

8 Were we all able to follow the rules I gave you overnight?

9 Okay. Well, I appreciate that.

10 Ms. White, you may call your next witness.

11 MS. WHITE: Your Honor, I'd like to call as the next
12 witness, Robert McNeely.

13 THE COURT: Okay.

14 ROBERT MCNEELY,

15 having been duly sworn, testified as follows:

16 THE CLERK: Thank you. Please be seated. (Inaudible).

17 DIRECT EXAMINATION

18 BY MS. WHITE:

19 Q. Mr. McNeely, good morning.

20 A. Good morning.

21 Q. Can you please introduce yourself and describe
22 your qualifications and experience in the field of floor and
23 walkway safety?

24 A. Certainly. My name's Robert McNeely. I currently
25 live in Utah. I've been in the flooring industry for 19

1 years. I have an undergraduate degree in geography and
2 geographic information systems from Central Michigan
3 University. I also have a master's degree in business
4 administration from Colorado State University, and I've
5 worked 19 years in the flooring industry, and I've been a
6 flooring contractor.

7 And as a flooring contractor, I directly oversaw the
8 installation of about a half a million square feet of
9 flooring. I've also been a walkway auditor, and a walkway
10 auditor is a job that not a lot of people are familiar with,
11 but it's a person that's specially trained to inspect floors
12 for safety. As a walkway auditor, I've inspected over 200
13 floors for measuring traction levels on floors and how
14 slippery they might be.

15 As an -- a floor inspector, that's another job no one's
16 ever -- ever heard of, there's only about 500 people in the
17 country that would do what I do for a living. And a floor
18 inspector is kind of like a combination between a house
19 inspector and an engineer that just kind of looks at floor
20 problems. I've done over 1,000 floor inspections in my
21 career.

22 So a floor inspector might be called, say you hired
23 somebody to put in a floor for you and it didn't work out, or
24 maybe you needed a warranty claim and you put that in with
25 the manufacturer. The manufacturer might send a person like

1 me out to go inspect the floor to see what's wrong with it.

2 Q. And Mr. McNeely, does your experience in floors
3 and walkway safety include experience with mats?

4 A. Very much so. So being a walkway auditor, mats
5 are a big part of the safety spectrum when it comes to
6 floors. Mats are safety devices and we are absolutely
7 trained in how to properly inspect mats, place mats, maintain
8 mats. I also am an entrepreneur and I used to own a store,
9 so I've also physically owned mats and maintained mats myself
10 in my own store. So I'm very familiar with mats and mat
11 safety.

12 Q. And can you describe any certifications that you
13 have relevant to the opinions that you've provided in this
14 case?

15 A. In fact, I hold over 10 different certifications,
16 both in walkway auditing, which is (inaudible) and floor
17 inspecting at a deal directly with mats, one of one. I'm a
18 certified carpet inspector and a lot of mats have carpet
19 materials involved with them. And then I'm also what they
20 call a walkway auditor certificate holder which is a specific
21 certification for inspecting floors and mats.

22 Q. And are you a member of any professional
23 associations regarding walkway safety and flooring, including
24 mats and rugs?

25 A. Several. IICRC, don't ask me what the acronym

1 stands for, is an inspection of -- the Institute of
2 Inspection Cleaning and Restoration. I've been a member with
3 them for many years. I'm also a member of the National Floor
4 Safety Institute, which is a standards-writing body that --
5 that actually creates standards for walkway safety. And I've
6 been a member of the National Floor Safety Institute for, I
7 think, 11 years now.

8 Q. And have you given any speeches or presentations
9 regarding your areas of expertise in walkway safety and mats?

10 A. Yes. I've given multiple presentations at
11 conferences and symposiums over the last 10 years. The most
12 recent one was in Dallas last November at a slips, trips, and
13 falls symposium. And the actual subject of my presentation
14 was how -- how people clean and maintain floors can affect
15 safety.

16 Q. Okay. And in this particular case with Thomas
17 Sullivan, did you provide a written report in this case?

18 A. Yes.

19 Q. And can you describe the materials that you
20 reviewed in creating your report?

21 A. I reviewed CCTV footage, which is what we're
22 looking at right now on the monitor. I reviewed the initial
23 complaint. I reviewed multiple deposition transcripts from
24 witnesses that were interviewed. I reviewed several industry
25 standards, some of which I've referenced here. And I also

1 looked at some documents from Dollar General, in this case
2 regarding their internal policies for maintenance and
3 cleaning.

4 Q. And are the materials you relied upon and the
5 methods you use those that are commonly used by experts in
6 your field in analyzing the type of issues in this case?

7 A. Yes.

8 Q. And do you believe your testimony will assist the
9 judge and jury in understanding the facts of this case?

10 A. I certainly hope so.

11 MS. WHITE: Your Honor, at this time, I would like to
12 offer this witness as an expert in the field of flooring,
13 including mats and rugs and walkway safety.

14 THE COURT: Any objection?

15 MR. TRASK: Judge, and I -- I don't know. I think this
16 is the appropriate time just to renew the pretrial motion
17 that was made. Otherwise, there's no objection.

18 THE COURT: Counsel, can you all approach? Yeah.

19 (Bench conference.)

20 THE COURT: Is -- counsel asked his qualification as an
21 -- as an expert? No objection. Is that -- is that correct?

22 MR. TRASK: That's correct, Judge.

23 THE COURT: Okay. So ladies and gentlemen, this
24 witness has been qualified as an expert in the -- the field
25 is flooring?

1 MS. WHITE: Yes. Flooring, including mats and rugs and
2 walkway safety.

3 THE COURT: All right. So, ladies and gentlemen, like
4 the other expert in this case, what that means is this
5 witness is entitled to give his opinion, but doesn't mean you
6 have to believe it. You should evaluate his opinion just
7 like that of any other witness.

8 BY MS. WHITE:

9 Q. And Mr. McNeely, at this time, I know that you do
10 have a -- a CV. Can you identify this?

11 A. Yes, I can.

12 Q. And can you tell the jury what this is?

13 A. That is a copy of my resume.

14 MS. WHITE: Your Honor, I would like to move this into
15 evidence as further proof of the qualifications and expertise
16 of this particular expert.

17 (Plaintiff's Exhibit 7 admitted into evidence.)

18 BY MS. WHITE:

19 Q. And so, Mr. McNeely, what is the conclusion that
20 you have reached regarding the condition of the
21 Dollar General walk-off mat that's the subject of this case?

22 A. On a very general level, I believe that the mats
23 that were in place at the time of Mr. Sullivan's accident
24 were not in good form. They were not serviceable, they were
25 not well cleaned or maintained, and I believe they were the

1 cause of Mr. Sullivan's fall.

2 Q. And do you believe, in terms of the -- in simple
3 terms, you're saying that these rugs were in poor condition,
4 is that correct?

5 A. That is correct.

6 Q. And was the language that you used in your report
7 that they were in a severe state of disrepair?

8 MR. TRASK: Judge, leading.

9 THE COURT: Yes. Objection sustained.

10 BY MS. WHITE:

11 Q. Was there only one problem with the mat that
12 caused you to reach your conclusion regarding the condition
13 of the mat?

14 A. No, there were actually several issues
15 (inaudible).

16 Q. And based on your experience in walkway safety and
17 flooring, and viewing the Defendant's video surveillance, can
18 you explain exactly what happened that caused Mr. Sullivan's
19 trip-and-fall accident?

20 A. I believe the main concern that I have, based on
21 the evidence, is that when Mr. Sullivan was walking through,
22 he walked over a mat that had an edge that was slightly
23 lifted, and when his foot hit that he bunched up the mat and
24 the mat slid. The main issues with that, in the world of mat
25 safety, is mats should never slide when you're walking on

1 them. And there's a lot of industry standards about this.
2 It's well documented.

3 It's -- it's not even a gray area in the world of floor
4 safety, is that mats need to be able to be affixed or firm or
5 stable. And so, when Mr. Sullivan walked over this mat, not
6 only did it bunch up because it was, I believe that there was
7 a -- a leading edge there or lifted edge, curled edge, but
8 the mat also slid, which I think made the likelihood of him
9 not being able to recover from that edge being curled up and
10 lifted. And I believe that's what led to his fall.

11 MS. WHITE: And, Mr. McNeely, at this time, I'd like to
12 hand to you what has been marked as Plaintiff's Exhibit 8.

13 (Plaintiff's Exhibit 8 marked for identification.)

14 BY MS. WHITE:

15 Q. And once you've had a chance to look at that, I'm
16 going to have some follow-up questions for you.

17 A. Okay.

18 Q. And can you describe for the jury what this
19 document is?

20 A. So this is a document by a mat manufacturer about
21 the specifications and performance, or performance product
22 information for a mat.

23 Q. And does this document describe the type of rug
24 that was being used in the Dollar General in the year 2019?

25 A. I believe so.

1 Q. And are you familiar, as an expert, with these
2 types of rugs?

3 A. Not only as an expert, but someone who had a store
4 -- had this exact type of mat in my own store.

5 Q. And does this document include the manufacturer's
6 instructions for cleaning these types of rugs?

7 A. It does.

8 Q. And what are those instructions?

9 A. It says that the mats need to be vacuumed or hosed
10 off to be cleaned.

11 Q. And -- was according to the documents that you
12 reviewed from Dollar General, including the deposition
13 transcripts, was Dollar General following the instructions of
14 the manufacturer?

15 A. I don't believe so. Based on the deposition
16 transcript, I believe of Laura Myers, who I think was the
17 cashier at that time of the incident. They stated that they
18 swept the mats. And that doesn't follow the manufacturer's
19 instructions, nor does it follow industry standard for
20 maintaining these types of mats properly.

21 Q. And what problem does that create, in terms of not
22 cleaning the rugs according to manufacturer's instructions?

23 A. Well, it can create a couple issues. So
24 rubber-back mats, which you -- everyone here has probably
25 walked on them going into any store. These are very common.

1 The back is a -- has a rubber backing and that's designed to
2 grip the floor so it doesn't move when people are walking on
3 it or there's walking traffic on it. But what can happen is
4 if the bottom of the mat or the floor that that mat's placed
5 on are dusty or dirty, it -- we call it -- it contaminates
6 the back of the mat and it won't have a high traction level
7 and it's more likely to slip.

8 A great example of this is if you've ever had your oil
9 changed and you get those little stickers that you put in
10 your window to tell you when to get your next oil change, if
11 you've ever pulled one of those off and it fell onto your
12 floor and you try to stick it back up and it won't stick,
13 it's the same principle. The backing gets contaminated by
14 just a little bit of dust, and now that traction of holding,
15 or the ability for that little sticker to cling onto the
16 windshield goes away.

17 Well, the same kind of thing happens with these mats.
18 If the back rubber of the mat gets contaminated by dust, it's
19 going to slide real easily back and forth. And that and of
20 itself becomes a safety issue. And then if the top of the
21 mat also gets full of soil or moisture, that can create a
22 slip hazard on the top of the mat. And so maintenance on
23 mats are really important. I always like to say that mats
24 are safety tools.

25 We put mats out to make an area safer. But the problem

1 is, if a mat isn't properly maintained, it in and of itself
2 can become a safety hazard, all by itself. And so when
3 people are using mats, you have to have a -- a very good,
4 solid program of making sure that they're in good shape and
5 they're kept clean.

6 Q. And did Dollar General's failure to clean these
7 mats in accordance with manufacturer instructions have any
8 relevance in the Thomas Sullivan slip-and-fall event?

9 A. I believe so.

10 Q. And can you explain what that relevance is?

11 A. Well, the evidence shows that the mats in this
12 case were slipping around in slight, I think when
13 Mr. Sullivan impacted with the mat and he started lifting it
14 up, the mat also slid and bunched, and I think the bunching
15 is what made it so he was not able to recover from that --
16 that trip.

17 Sometimes we can recover from a trip, but I believe
18 when the mat kind of pulled together because it was sliding
19 as -- instead of just having, like, the corner flip over, it
20 actually bunched up. And that was because there was not
21 enough traction on the mat to hold part of the mat in place
22 while the corner itself just flips up. So I think that
23 sliding ability also made the accident more likely to happen.

24 Q. And does failure to clean contribute at all to
25 curling of mats?

1 A. Certainly can.

2 Q. And can you describe what curling is?

3 A. So curling on a mat there -- there's a lot of
4 descriptors that we use for mats. Usually, curling is more
5 with mats, usually means that the edge over time, if they're
6 not maintained well or they get worn out, the little rubber
7 edge around the mat can actually wrinkle, looks kind of like
8 a washboard.

9 And so when those little wrinkles or curls that we
10 have, they protrude and they stick up. Not everybody can
11 lift their feet the same height, and so they're more likely
12 to cause a trip hazard based on that.

13 Q. And are there any other safety issues that you
14 see, based on the video surveillance with the rugs that were
15 in the Dollar General store on that day?

16 A. Certainly. In the picture we see on the monitor
17 right now, there's -- there's two mats there. And by the
18 way, if I say mat and she says rug, we are talking about the
19 same thing. Where I -- where I live, we -- we call them
20 mats, but people call them rugs, too. So it's not, it's the
21 same thing. I just want to make sure everybody knows we're
22 talking about the same thing. So usually, we can see a
23 couple things wrong with the first mat that's in the picture.

24 The very bottom right hand corner, you can see very
25 clearly there's a curl in that mat. And then you can see

1 that the mat is askew. It's not squared with the door. It
2 looks like it's already slid out of place. So right out of
3 the gate, before we even get into the second mat, the first
4 mat here is already a safety hazard by all the definitions
5 that we have in the safety world about mats.

6 Q. And can you give information now regarding the
7 second rug that was also the rug that Mr. Sullivan tripped
8 over?

9 A. Certainly. well, the first mat too, also, I
10 wanted to point out that you can see that there's little, and
11 right here you can -- so in both mats -- right there. Yeah.
12 Thank you for freezing that. So in both mats, if you look,
13 there's these little reflections that look like little dots,
14 that almost look like little lights, on both mats. What that
15 is is that's a -- a reflection of debris.

16 So what we're seeing is that both mats have debris on
17 them, which also indicates that they're not cleaned. And
18 then the photo of the mat where Mr. Sullivan fell, you can
19 see the bottom right-hand corner where that edge is also
20 protruding a little bit.

21 Q. And in your analysis, is the condition of rug
22 number one, the inside rug that is in the store, is that
23 relevant at all with regard to assessing the risk on the
24 second mat?

25 A. I think so. As a walkway professional, or someone

1 that goes and actually consults with companies on their --
2 their walkway safety programs, we don't just look at one mat
3 or the whole mat. We look at -- we look at the entire
4 environment and identify safety issues. In this case, I see
5 safety issues with both these mats right out of the gate.
6 And -- and oftentimes companies will have a program regarding
7 their mat safety. They'll have policies and protocols on how
8 their employees are supposed to do inspections and -- and
9 clean these mats.

10 What I know, from doing this for a long time, is that
11 you don't see, typically, one mat that doesn't get any
12 attention, ignored while all the other mats are maintained
13 really well. Typically, if you see one mat that is not in
14 good repair or not being maintained or not positioned where
15 it needs to be, most of the mats are going to be, you know,
16 taken care of the same way.

17 Q. Is that based on the fact that these are the same
18 persons that inspect the mats, for instance, at
19 Dollar General, based on your -- what you know based on the
20 deposition, transcripts and so forth? Are the same persons
21 inspecting all of the mats?

22 A. My understanding is that the -- essentially, I
23 think the key holder on duty or the assistant manager on duty
24 is typically the one at Dollar General that would be
25 performing what they would call a morning inspection.

1 However, usually, the person who manages the mats manages all
2 the mats. So if one mat is not being maintained, usually all
3 of them are not being maintained the same way.

4 Q. So if it's a safety issue that the person doesn't
5 recognize on one mat, it's unlikely that they would recognize
6 it on an additional mat in the store. Is that what you're
7 saying?

8 A. I would say that that makes a lot of sense. It's
9 just -- if you think about it. If someone doesn't have
10 training in something, and in this case the training would be
11 identifying what a mat, a defective mat looks like. If no
12 one points out to you that a -- a mat that slides around is
13 dangerous, you wouldn't know that it's dangerous. If no one
14 points out to you that having dirt and debris stuck on the
15 top or bubble gum stuck on the top of a mat, might indicate
16 that it's dangerous.

17 If you're not trained to that, you're not going to
18 know. And I think that's been, I think that's what's
19 happened in this case. I think that they don't have someone,
20 or at least at the time of this incident, they didn't have
21 anyone that actually was trained in inspecting mats for all
22 the possible problems that can arise from a mat that's not
23 properly being maintained.

24 MR. WHITE: And Mr. McNeely, at this time, I'm going to
25 hand you the Plaintiff's Exhibit 9.

1 (Plaintiff's Exhibit 9 marked for identification.)

2 BY MS. WHITE:

3 Q. And if you can take a look at that, I have
4 follow-up questions for you regarding that.

5 A. Okay.

6 Q. And can you describe for the jury what the
7 document is that you're holding in your hand?

8 A. This appears to be an internal policy for floor
9 maintenance for Dollar General.

10 Q. And does this document state that maintaining a
11 clean floor surface is important to remove potential for
12 slips, trips, and falls?

13 A. (Inaudible).

14 Q. And so based on this document,
15 was Dollar General aware of the fact that failing to clean
16 the rugs properly created this potential for slips, trips,
17 and falls?

18 A. I would believe that's reasonable.

19 Q. And was Dollar General operating in conformity
20 with their own policies as stated on that -- on the document
21 that you have in your hand?

22 A. I don't believe so.

23 Q. And are there national standards for floor and mat
24 cleaning and safety?

25 A. There -- there's numerous. Not only are there

1 national standards, there's federal and state regulations.
2 So there's OSHA regulations that are for ensuring that
3 walkways are safe for employees and then there's Americans
4 with Disabilities Act, federal laws that make sure that
5 walkways are safe for people with disabilities. And then
6 there's industry standards that talk about, more
7 specifically, how to maintain floors.

8 And then there's what we call the standard of care.
9 All these things added together and all the best practices,
10 they have this term called standard of care. And in addition
11 to specifically how to maintain mats, the standard of care in
12 pretty much every retail environment requires that there's
13 going to be an hourly inspection, and in grocery stores, in
14 areas where they might have things that might fall on the
15 floor, those might even be half hour inspections. There's a
16 trade association for the cleaning industry called ISSA.

17 ISSA states that there's not a mandatory minimum
18 interval at how often you have to inspect a floor, but the
19 benchmark typically is an hour. And why they don't specify
20 is that all the things and the variables that could determine
21 how often you need to inspect a floor are going to change.

22 So, like, I'm from Michigan originally, and in the
23 wintertime, you know, people are tracking in snow and ice.
24 And so in an environment where you're tracking in snow and
25 ice, you might need to -- you might need to have someone

1 standing at the door or might need to do an inspection every
2 10, 15 minutes while people are bringing in the slush, places
3 that have a lot of people walking in.

4 So the more people traffic you have coming into your
5 building or your store, that's going to make sure that you
6 have to have more reasonable and more timely intervals for
7 inspection. And so since there's a lot of variables that go
8 into that, the default benchmark says every hour you should
9 be looking at your floors. But given certain circumstances
10 you might need to increase that interval.

11 Q. And based on your review of the Dollar General
12 documents as well as the depositions of their employees, how
13 often was Dollar General looking at their floors?

14 A. According to the deposition transcripts, they were
15 looking at it once in the morning and once in the evening.

16 Q. And is that sufficient, in accordance with the
17 national standards relating to rug safety?

18 A. No.

19 Q. And still looking at this same document,
20 Mr. McNeely, according to Dollar General's own policies
21 regarding curling, should either of the rugs pictured in the
22 video have been on the floor at this time?

23 A. (Inaudible).

24 Q. Is it proper -- is it consistent with national
25 industry standards and Dollar General's standards that these

1 mats should have been removed?

2 A. Yes.

3 Q. And does this document show that Dollar General
4 was aware of the proper thing to do to remove the danger to
5 their customers?

6 A. Yes.

7 Q. Thank you. One other issue with regard to rug
8 migration. Can you explain to the jury what rug migration
9 is?

10 A. Rug migration is -- and just in lay terms, it's --
11 is it -- is it easy to slide? Is -- is all that's saying.
12 So we use the term migration, big fancy word, it just means
13 how easy can that mat slide.

14 And so typically when a mat is sliding or you see a mat
15 not, you know, positioned correctly, when there's the
16 presence of migration, typically that indicates that there's
17 something wrong. Usually, that means that the backing of
18 that rug or mat is not properly affixed to the floor or it's
19 contaminated with dust.

20 Q. And in the picture that we have before us, are
21 there signs of rug migration in these pictures?

22 A. Yes.

23 Q. And can you explain to us what those signs are in
24 the picture?

25 A. So if you look at the -- the bottom mat, I -- I

1 call it the first mat. As you're walking out from the
2 building, you can see that it's -- it's not square or -- it's
3 not square. It's kind of off kilter. And then it's also not
4 pushed up against the threshold. The threshold is that
5 silver metal at the bottom of the door. And Dollar General
6 requires that their mats be pushed up against that. And in
7 this case, it's neither pushed up against it, but it's also
8 slightly moved or off kilter.

9 Q. And this problem with the sliding of the mats, is
10 there anything in the Dollar General policy other than the
11 pushing them against the thresholds that would address the
12 sliding of their mats?

13 A. Can you restate the question?

14 Q. For Dollar General, was the pushing of the rugs
15 against the threshold their method of trying to address the
16 issue of sliding mats?

17 A. I'm not sure if that was the -- the logic or
18 rationale behind there -- that rule, but I -- it could be,
19 but I just don't know.

20 Q. So what benefit would it have then if the rugs had
21 actually been against the threshold?

22 A. If it's -- so for instance, it might prevent
23 migration going forward. If there is something that it's
24 pushing against, it might be a barrier to migrating, at least
25 in one direction. However, that still wouldn't be adequate

1 to prevent it from sliding sideways or out of kilter.

2 It would only maybe present, it might only mitigate a
3 little bit of forward migration. So I think pressing it up
4 against the threshold probably would maybe help migration
5 while someone's exiting. But this is also an entrance, so I
6 don't think that it would prevent migration from traffic
7 going into the store.

8 Q. And, Mr. -- Mr. McNeely, you had stated that ADA
9 standards are applicable to mat safety. Is that correct?

10 A. Yes.

11 Q. And can you explain just a little further as to
12 how ADA standards would apply to this particular case?

13 A. Well, ADA, I -- well, I like to use the word --
14 they're law. So ADA is not a -- specifically a standard,
15 it's actually governmental regulation and law. It's a -- it
16 is a slight difference, but it -- it's law.

17 So it means that it's not optional, ever, for a store
18 to ignore ADA compliance. The ADA for all walkways states --
19 I'm paraphrasing, but states that the, "The -- the walkway
20 surface where people are" -- well, you know, "walking, needs
21 to be firm, fixed and stable." And so it's a very -- it --
22 it's general, but it's a very straightforward guideline. And
23 when it comes to mats, that would mean that the mat shouldn't
24 move when you walk on it.

25 Q. And based on the evidence that you reviewed, were

1 Dollar General's rugs in compliance with ADA?

2 A. I don't believe so.

3 Q. And did that contribute to the fall of Mr.
4 Sullivan in this particular case?

5 A. (Inaudible).

6 Q. And if a customer's foot or shoe hits a
7 well-maintained rug, what should happen with respect to that
8 rug? Should the rug remain in place?

9 A. (Inaudible).

10 Q. And what causes a well-maintained rug to remain in
11 place even if a customer's shoe or foot hits the rug?

12 A. So ideally, the backing is maintained in a clean
13 manner. So it's normal traction properties work. There's
14 other methods to -- to keep mats down. So they actually have
15 specific two-sided tape for a mat like this to stay on the
16 ground. Literally, you can tape them down. Other -- there's
17 other ways, there's other, better mat systems that don't
18 move. They're -- they're actually part of the construction
19 process and they're built in and they -- it's impossible for
20 them to move. So there's other systems out there besides
21 this specific type of mat that can act as a mat that doesn't
22 have this problem at all.

23 Q. And so, is your opinion that due to the failure to
24 clean, failure to maintain, that these rugs did not create a
25 secure walking surface for customers of Dollar General?

1 A. Yes.

2 Q. And at this time, I'd like to show you a series of
3 video clips and ask you to comment on any safety issue that
4 you see with respect to that. If we can move to 9.43. Okay.
5 And so we've talked about that particular situation. This --
6 this view of the rugs, with them being skewed and so forth.
7 This happened prior to our accident, correct?

8 A. Yes.

9 Q. If we can go to the next one which is 10.29.45.
10 And once we get that on the screen, I'm going to ask you to
11 comment on what you see there that validates the opinions
12 that you're providing in this case. And so, while we're
13 watching this, let me just get your opinion on this fact.
14 Does the fact that a number of people walked back and forth
15 over these rugs without falling, does that mean that there
16 was no safety risk?

17 A. No. That's -- that's actually kind of a common
18 defense argument, but I -- I think it's kind of bogus. And
19 this is why. Imagine 10 people walk through a minefield and
20 no one gets -- no one steps on a landmine. Is that minefield
21 less hazardous? No. That 11th person or the 12th person
22 could walk through that minefield and now they blow up, but
23 the minefield was hazardous the whole time.

24 And just by happenstance, the first 10 people didn't
25 stand on a landmine. And by the way, that actually happens

1 in the real world, too. And that happens a lot of times with
2 these -- these floor safety issues. It's very common that
3 someone may not trip on the same thing. And there's lots of
4 reasons for these things and -- and that gets into a really
5 big discussion.

6 But just to understand that not everyone is going to
7 fall on every single floor hazard, that doesn't mean there's
8 not a hazard present. It just means that sometimes somebody
9 is the unlucky person that slips, and sometimes that's your
10 friend. That sometimes that's your grandmother, sometimes
11 it's you. And -- and there's a lot of things that can go
12 into that, but.

13 Q. So would you agree that when rugs are in a state
14 of disrepair that it's an accident just waiting to happen?

15 A. Yes.

16 Q. If we can -- were we able to get that? In this
17 particular clip, can you tell us exactly why this is
18 significant in -- to you as a safety inspector?

19 A. So I -- when I was watching the video clip, it was
20 -- I found that it was interesting that when you could move
21 back and forth, the act of this gentleman's scooter driving
22 over this mat shifted the mat slightly. Now, you have to go
23 back and forth before and after he drives on it. And the mat
24 will -- and you can see it, but you have to, like, I wish I
25 had the -- the knob.

1 But there are -- you can see that the mat migrates just
2 from the gentleman rolling over it. And now this happened
3 before Mr. Thomas or Mr. Sullivan's trip-and-fall. But what
4 that tells me is the first mat here is clearly showing signs
5 of migration. And I also believe that the second mat later
6 also shows signs of migration.

7 Q. And can we go to the next clip, which is the
8 actual phone call. And I'm going to ask if you can provide
9 comments on that. You've explained to us how the accident
10 happened, if you can narrate exactly what it is that we're
11 looking at. We're at 10.44.20. If you can freeze there, can
12 you explain to us again, you said that there were a number of
13 issues that you saw at the point where the phone call takes
14 place. Can you narrate for us exactly what it is, again,
15 that occurred?

16 A. So obviously, we see that he walks over the first
17 mat. Now, if you look at the -- and he didn't trip on the
18 first mat yet. If you look at the bottom right hand corner,
19 you can see the first mat. And I think that's important.
20 There's obvious curling on that. But since he didn't trip or
21 catch that, he walked right over it fine. Because he was
22 walking on the left side of the mat.

23 This is kind of the landmine example, right? There's
24 clearly hazard there, but he didn't happen to step on that
25 hazard there. Had he walked on the right side of the first

1 mat, it very well may have tripped him there. And we also
2 know that the first mat, also, is sliding and migrating. So
3 depending how he may have walked on it another time, he could
4 have also created a hazard there. But that didn't happen
5 here. The landmine theory or analogy.

6 Now, the second one, he wasn't so lucky. It was curled
7 at the area where he walked. He caught that curl with his
8 foot. It lifted up. And then at the same time, a mat
9 bunched. And so some -- so if a mat is firmly affixed -- so
10 if a mat is -- I don't know if you can see this, but say a
11 mat is firmly affixed and you trip over this corner, the mat
12 should -- if it's properly cleaned and maintained, that
13 rubber backing should hold the mat in place.

14 And then this little corner is going to flip up. And
15 maybe he'll be able to just step over that and -- and not
16 trip and fall. But what happened in this case is he caught
17 that, it curled up and then it crumpled and it slid out of
18 the way a little bit. It's slightly, but it was slight. But
19 he did -- sorry, I ruined your Exhibit here. But what ended
20 up happening, the mat also shifted slightly to the right.
21 Now, it's very subtle. You have to flip back and forth in
22 the frames to kind of see it move.

23 But that's what happened. So I think the -- the fact
24 that you had a little bit of a lip that he caught with his
25 foot and then additionally, the mat slid. And so instead of

1 the mat holding itself with its own weight and traction, the
2 whole mat slid and bunched up because there was -- there was
3 contamination on the back of that mat and it allowed it to
4 bunch up, and he wasn't able to recover from that trip.

5 Q. And I'm going to grab my exhibit from you before
6 --

7 A. I destroy it.

8 Q. -- before it becomes -- before a demonstration.
9 Thank you, Mr. McNeely. We're going to go to the next frame.
10 10.45.48. So this frame is after the fall and we see it's --
11 can you freeze it there?

12 A. So if you back up a little bit there, it's
13 interesting to point out how easily you kind of pulled the
14 mat, just with one hand. Mats shouldn't so easily be able to
15 be slid like that. I think that's kind of important.

16 Q. And in this frame, that mat is still just kind of
17 laying crumpled there on the floor, like you said, it is kind
18 of folded over itself. Is that correct?

19 A. Correct.

20 Q. And here someone is actually pressing on the mat
21 with their foot to -- can you explain what was going on there
22 with --

23 A. For the gentleman in the black shirt?

24 Q. Yes.

25 A. Oh, well, he flipped it over, but he was able to

1 reposition the mat from the side just with one hand. And a
2 proper -- a properly clean mat has a lot of grip to it and --
3 and you need to kind of pick it all up at once from both
4 sides and properly place it. If a mat can slide like that
5 just with one hand or like one foot or something, imagine it
6 like a -- a magic carpet. It's kind of just floating there.
7 And -- and what happens is when I talk about contamination on
8 the back of a mat, dust on a dry hard surface, like on
9 concrete. So dry dust can act like a ball bearing. It
10 actually acts like a lubricant and that's why it makes things
11 slip.

12 So imagine little grains of dust, imagine little ball
13 bearings under that -- that mat. And so, if someone can just
14 position a rubber-back mat like this on a concrete like that,
15 it usually -- it's because it's contaminated. It -- it's not
16 gripping properly like it should be.

17 Q. And can we go to the next frame, which is
18 10.49.48? And if you can pause there. And can we play that
19 again? I think this is the store manager, Laura Myers. If
20 we can go back to just a couple of seconds before. So can
21 you explain what your concerns would be about what we just
22 saw happen?

23 A. Very similar principle. She was able just to
24 slide that mat with her foot, almost no pressure. It just
25 glided across. That mat is not firmly affixed. That mat is

1 sliding very easily. And think of it like this, if she can
2 move it with her foot, right? How is it -- and it moves
3 really easily when someone walks on it -- it's going to move
4 like that, too. It's the same concept. If that mat was
5 properly gripping to the concrete because it was cleaned, you
6 can't move a mat like that.

7 Q. And so in looking at this, the sliding, the way
8 that she was able to easily just kind of push that mat with
9 her rug -- with -- push that mat with her foot, is that an
10 indication of lack of traction on that mat?

11 A. (Inaudible).

12 Q. And is this one of the mats that Ms. Myers
13 would've inspected on coming into the store?

14 A. (Inaudible).

15 Q. And should that mat still even be on the floor
16 with that level of lack of traction?

17 A. No. Absolutely not. In fact, typically after --
18 in -- typically after an accident, especially where someone
19 gets taken to the hospital in an ambulance, there should be a
20 debrief. There should be an inspection to find out what led
21 to the accident. Think about a workplace injury, right? You
22 get hurt off the job, your boss is coming down, HR is getting
23 involved. But if it happened on a mat, you just don't put
24 the mat back.

25 You go figure out what happened with the mat and you're

1 going to -- you should -- let's just say if they inspect the
2 mat twice a day, which already doesn't meet industry standard
3 or the standard of care, you would think they would do a -- a
4 breakdown in an inspection after the fact -- after there's an
5 accident on the mat. But I don't believe that happened here.
6 They just took their foot and shoved it back in place. And I
7 think that shows a disregard for trying to figure out what
8 the root cause -- problem is.

9 Q. And if an unsafe condition exists on the premises,
10 is the store required to post a warning sign?

11 A. My understanding of the law, you would know more
12 than I do what their responsibility would be to notify people
13 of a hazard. But generally, if you have a known hazard, you
14 should notify people of it. But really, if you have a known
15 hazard, you either close the walkway or remedy the hassle or
16 remedy the hazard. So if you know there's a hazard, you
17 should do something about it. You don't just post it, you
18 shouldn't just post a sign.

19 But I think the law requires that they should notify if
20 there's a potential hazard. But in the walkway safety world
21 where I kind of live, you either close the walkway or you
22 remedy it. We call it guarding. In fact, a lot of times
23 what's supposed to happen, if there's, like, say someone
24 drops something in a big box store, like let's say a grocery
25 store.

1 What's supposed to happen is somebody's supposed to
2 guard it until someone else can go get something to clean it.
3 You shouldn't leave a hazard just sitting there waiting for
4 someone to go to. So generally, you should have -- you put
5 up a warning sign and guard it until you can get it remedied.
6 And that would be the ideal, you know, way that something
7 like this is addressed.

8 Q. And both of these rugs, in your opinion, presented
9 a hazard to customers?

10 A. Absolutely.

11 Q. And from your observation of the entire video
12 surveillance, we're just seeing bits and pieces of it here.
13 Were there ever any type of signs posted or any type of
14 warning of trip and fall, either before or after the
15 accident?

16 A. Not that I saw.

17 Q. Did Dollar General have any written records or
18 logs proving that they inspected or cleaned the mats at all?

19 A. I was not presented with any. So typically, when
20 I talk about an inspection that -- that hourly inspection, we
21 call that a sweep. So that's the common industry jargon is
22 that it's not sweeping the floor, but it means you've gone
23 through the area and I don't know if you've ever gone to a
24 store and on the back of the bathroom it says last cleaned
25 at, that's a sweep log.

1 So that means that someone inspected or cleaned that
2 area at a given time. So you're -- these -- all companies,
3 all stores are supposed to be doing these inspections and
4 documenting them. And it's not for our safety, really.
5 Well, it is for our safety, but really, it's for their own
6 protection, to demonstrate that documentation, that
7 (inaudible) creating a hazard here, sorry.

8 So they should not only be doing these hourly,
9 minimally, these hourly sweeps and inspections, but they
10 should also be documenting them. And that really is to
11 protect the store themselves. So they have a record that
12 they did their job. We always say if there's no
13 documentation, it never happened. But their own testimony
14 here is that it didn't happen.

15 They -- they only looked at the floor once in the
16 morning and once in the afternoon. And so if any hazard
17 happened during the day by their own -- their own admission
18 and their own testimony and stuff, they wouldn't have seen it
19 because they weren't looking for it. But I do find that -- I
20 find that a little interesting though. Because if you look
21 right to the left, that's the cash register.

22 And they're standing there all day long right next to
23 the mats. Mats are sliding around, the mats have dirt and
24 debris on them and they're not fixing it. They're standing
25 right there all day. So even if they weren't specifically

1 going around and doing a sweep, I find it hard that they
2 missed -- I find it hard to believe that they missed that if
3 they're really paying attention to it.

4 Q. And could Dollar General have prevented this
5 accident with Mr. Sullivan?

6 A. I think so.

7 Q. And can you explain what could have been done?

8 A. Lots of things could have been done. They could
9 have done their sweeps, they could have maintained their
10 floors in a better way. They could have maintained their
11 mats in a better way. In fact, in this case, since the mats
12 were a hazard, they could have just probably removed the mat
13 altogether and probably would've been safer if the mats
14 weren't there.

15 They could have put in a different mat system
16 altogether, one that's not going to slide around, or they
17 could have done something to make it so the mat doesn't slide
18 around. If they had a problem with mat slipping, they could
19 for instance put two-sided tape underneath. So I -- I think
20 there's a variety of things they could have done to mitigate
21 this.

22 Q. And are the multiple issues that you observed with
23 the rug that caused Mr. Sullivan's fall, are these things
24 that happen in one day?

25 A. Not usually. Wear and tear builds up and his

1 cumulative, so these mats get worn out over time. They --
2 they get worn out based on what types of chemicals and things
3 that are tracked on it, the dirt that's tracked on them, all
4 that -- all those different variables can affect how quickly
5 a mat's going to wear out. Exposure to direct sunlight.

6 So we see a lot of times mats that are right in front
7 of a door, and I believe this Dollar General door faces
8 south, so you're going to get a lot more direct sunlight.
9 The UV radiation from the sun degrades rubber faster. So I
10 think there's a lot of things that can go into this, but most
11 of the wear and tear on this is cumulative, takes time. This
12 is not something that generally happens overnight.

13 Q. And so does this mean that Dollar General knew or
14 should have known that the rug created a hazard for
15 Mr. Sullivan and other customers?

16 A. Yeah.

17 Q. And would proper inspections have revealed the
18 safety issues that you've explained in your testimony?

19 A. Yeah.

20 Q. And did Dollar General, in your opinion, based on
21 your review of the deposition transcripts and the other
22 documents that you reviewed, did they properly train their
23 employees to inspect and recognize these dangerous
24 conditions?

25 A. Based on the testimony of Laura Myers, I think

1 they were only looking for one of the potential problems,
2 which is whether or not the mat is flat or not. And there
3 are other issues with mats that can create a hazard. The
4 migration, unless you're picking up the bottom of the mat and
5 looking and inspecting how dirty that is and how dirty the
6 floor underneath it is, that's going to be an issue, a safety
7 issue.

8 But that's not part of their training that I saw.
9 Making sure that the top of the mat is clean is also a
10 factor. And I don't believe they viewed -- well, I don't
11 believe that they were doing that based on the fact that you
12 can see right in the video that there's all sorts of debris
13 on both mats.

14 Q. And is it the premises owner, in this case
15 Dollar General's, duty to inspect and remove rugs that are in
16 disrepair?

17 A. Yes.

18 Q. Does the customer have any responsibility or any
19 authority to inspect or remove?

20 A. I wish they did, but.

21 Q. Did Mr. Sullivan do anything to cause this slip
22 and fall accident?

23 A. (Inaudible).

24 Q. And based on your expert analysis, did Dollar
25 General fail to fulfill their duty of care to maintain a safe

1 walking environment for Mr. Sullivan and other customers?

2 A. (Inaudible).

3 Q. And did this failure cause his accident?

4 A. (Inaudible).

5 Q. And are all of the opinions and testimony that
6 you've given today based on your expertise in walkway safety
7 mats and flooring?

8 A. (Inaudible).

9 Q. And are all of your opinions and conclusions in
10 this testimony based on a reasonable degree of certainty?

11 A. Yes.

12 MS. WHITE: Thank you. I have no further questions at
13 this time.

14 THE COURT: Cross-examination?

15 MR. TRASK: Yes, Your Honor. May it please the Court.

16 CROSS-EXAMINATION

17 BY MR. TRASK:

18 Q. Mr. McNeely, did I hear the -- oh, I'll give you a
19 second there.

20 MS. WHITE: Oh, sorry.

21 MR. TRASK: No, you're fine -- you're fine.

22 BY MR. TRASK:

23 Q. Okay. Did I hear correctly that you came all the
24 way from Utah?

25 A. Yes, sir.

1 Q. You flew in?

2 A. I did.

3 Q. You're being paid \$2,500 to sit in that witness
4 stand today, aren't you?

5 A. I think it's \$2,000.

6 Q. 2000. Do you recall \$2,500 being what you
7 testified to at your deposition?

8 A. I think that's what's being paid to the -- I'm
9 kind of -- I was hired by a recruiting firm so they get a
10 little cut. So I think that's what they're getting.

11 Q. And of course, before you got here to testify
12 today, you did work, I think we referenced a report earlier,
13 correct?

14 A. Correct.

15 Q. And that was about \$3,000 worth of work, right?

16 A. No, actually to date I would say at this point my
17 entire billings to date on this case are right around \$6,000,
18 not including being here today.

19 Q. Now, you were first retained in 2023, correct?

20 A. Yes.

21 Q. And the incident happened in 2019?

22 A. Yes.

23 Q. Okay. You didn't speak to Mr. Sullivan at all
24 about the incident?

25 A. He was deceased before I got involved.

1 Q. So that's a yes. You didn't get to speak to him?

2 A. I did not get to speak to him.

3 Q. Okay. You didn't go to the Dollar General to look
4 at any mats, correct?

5 A. No. That's incorrect.

6 Q. You did. You went to the Dollar General?

7 A. I went to Dollar General last night.

8 Q. Last night? Okay. So in your deposition
9 testimony, when you said it wasn't relevant, now all of a
10 sudden when you're in front of this jury, it's relevant,
11 correct?

12 A. I didn't say it wasn't relevant until last night.

13 Q. Do you recall in the deposition where you said
14 going out to the -- to the Dollar General Store to inspect,
15 wouldn't be relevant to your opinions? Do you recall that?

16 A. I did.

17 Q. But now, suddenly, when you're in front of 12
18 people and you're getting paid 20 -- 2500 or \$2,000 to sit
19 there and testify, suddenly now you go to the Dollar General
20 to inspect mats, is that right?

21 A. Yes. You're asking me about relevancy and I did
22 go last night. I didn't say that it was relevant last night.
23 I said I went there last night.

24 Q. Okay. At the time when you gave your deposition,
25 you did your report, you had never been to a Dollar General

1 store, correct?

2 A. No, I've been to Dollar General -- dollar store
3 before.

4 Q. The Dollar General here at 1333 Main Street?

5 A. Not that particular Dollar General. No.

6 Q. Now, this video footage -- can we publish the
7 Defendant's screen -- Plaintiff's screen really quick and
8 it's already pulled up. Perfect. Let's just leave it there
9 for a second. All right. So you would agree with me that is
10 Mr. Sullivan, right? I think that's pretty much what we know
11 at this point, pushing the cart?

12 A. Correct.

13 Q. Correct? And I think in your deposition we
14 referenced the mats as mat one is on the inside, mat two is
15 on the outside, kind of in the foyer where he tripped and
16 fell, right?

17 A. Correct.

18 Q. Okay. Mat one, he does not trip over?

19 A. No.

20 Q. Okay. Mat two is the one he trips over?

21 A. Correct.

22 Q. It's not hidden from him in any way, correct? The
23 mat?

24 A. I don't think so.

25 Q. He had to walk over the mat to get into the store,

1 didn't he?

2 A. Yes.

3 Q. Okay. Did you review Dr. Brown's deposition
4 testimony?

5 A. No.

6 Q. You didn't. Were you aware that Dr. Brown, his
7 orthopedic hip surgeon, testified that it was Mr. Sullivan's
8 gait that caused the fall and the mat was flat? Were you
9 aware of that?

10 A. I don't know. I'm not aware of that.

11 Q. Okay. And I -- I just want to be clear because
12 we've talked a lot about the mats and I just -- I want to be
13 perfectly clear, I'm looking at this photo right here, right?
14 And it is your testimony, right? For \$6,000, that that mat
15 that he tripped and fell, over is a curled mat, correct?

16 A. Yes.

17 MR. TRASK: I beg the Court's indulgence. No further
18 questions.

19 THE COURT: Any re-direct?

20 MS. WHITE: Yes, Your Honor.

21 RE-DIRECT EXAMINATION

22 BY MS. WHITE:

23 Q. Mr. McNeely, in your work as a walkway safety
24 inspector and as part of this case, did you receive pictures
25 prior to forming your opinion of the layout of the Dollar

1 General Store?

2 A. (Inaudible).

3 Q. And prior to your opinion, did you also have an
4 opportunity to review the full surveillance that shows the
5 layout of the store?

6 A. (Inaudible).

7 Q. And was the mat the issue that was most
8 significant in this case, or the layout of the store?

9 MR. TRASK: (Inaudible) objection, Your Honor. I think
10 that's outside the scope.

11 THE COURT: Ask the question one more time.

12 BY MS. WHITE:

13 Q. Was the mat that is at issue in this case the
14 significant issue in your analysis, or the layout of the
15 store?

16 THE COURT: Objection sustained. Outside the scope of
17 cross.

18 BY MS. WHITE:

19 Q. Mr. Trask questioned you on payments regarding
20 expert testimony. Do all experts, including this expert,
21 receive payment for their services?

22 A. (Inaudible).

23 Q. And is that part of the standard practice in the
24 industry?

25 A. Yes. My rates are actually kind of below average

1 for most expert witnesses.

2 MS. WHITE: Thank you, Mr. McNeely.

3 THE COURT: Any recross?

4 MR. TRASK: No, your Honor.

5 THE COURT: All right. Thank you, sir. You can step
6 down.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Ms. White, you may call your next witness.

9 MS. WHITE: Your Honor, I was going to ask if the
10 witness can be excused at this time.

11 THE COURT: Any objection from the defense?

12 MR. TRASK: No, Your Honor.

13 THE COURT: Witness can be excused.

14 MS. WHITE: And at this time I would like to -- Your
15 Honor, that was my final witness on the Plaintiff's side.

16 THE COURT: Okay. Plaintiff rests?

17 MS. WHITE: Yes.

18 THE COURT: All right. Ladies and gentlemen, I'm going
19 to ask you all to step back to the jury room. It'd be a
20 great time for a restroom break, I need to talk to the
21 lawyers for a couple minutes.

22 (Jury exits courtroom.)

23 THE COURT: All right. Any motions from the defense?

24 MR. TRASK: Yes, Your Honor. We have a few. First is
25 we're going to move for a directed verdict. As to the issue

1 of liability, there has been no evidence, even viewing in the
2 light most favorable to the Plaintiff, that a reasonable jury
3 could conclude that there was any type of dangerous condition
4 on the premises. We have seen video footage that has shown a
5 flat mat. If you look at the case law, I believe it's
6 Cook v Food Lion. There has to be some evidence.

7 THE COURT: There's expert testimony. That's enough to
8 get it to the jury, isn't it?

9 MR. TRASK: I -- you know, I -- I disagree with the,
10 the idea that that was expert testimony. I -- I -- I think
11 that you've got to look at it from a reasonable jury,
12 Your Honor, and say, would somebody actually rely on that
13 when they've been shown real footage that shows what actually
14 happened?

15 And even excluding that, there's no evidence that there
16 was any type of notice to the Dollar General employees. And
17 quite frankly, it's open and obvious. More importantly, and
18 this is my fourth point, Judge, we listened to their own
19 expert come in here, Dr. Brown, and testify that it was his
20 gait that caused that incident to occur.

21 THE COURT: Yes. That's --

22 MR. TRASK: On a comparative call.

23 THE COURT: This sets up a -- a conflict between
24 experts. So there's -- there -- there's enough to send it to
25 the jury on. Okay.

1 MR. TRASK: We would also like to move for a motion for
2 directive verdict as to the issue of punitive damages. I
3 have not seen any evidence of heightened negligence, gross
4 negligence, recklessness, willful wanton conduct. And so --
5 especially when you look at it at a clear and convincing
6 style level, that they would have to get it to with the jury,
7 I just don't think it's there. I haven't seen that evidence.
8 And for that reason, Your Honor, I think that the issue of
9 punitive should at least be dismissed in this case.

10 THE COURT: Ms. White?

11 MS. WHITE: Your Honor, I think that we have presented
12 in this case evidence through Dollar General's SOPs that they
13 are -- were aware of the dangerous conditions that existed
14 based on the hazards -- based upon their own policy. We
15 would like to reserve the issue of punitive damages and
16 complete the case by --

17 THE COURT: I don't understand. What do you mean by
18 reserve the issue?

19 MS. WHITE: I'm saying that we feel that punitive
20 damages is still an issue in this case.

21 THE COURT: I -- I -- I don't recall any testimony from
22 your expert about that -- that said the Dollar General's
23 conduct rose to the level of gross negligence or anything
24 like that, or recklessness. Did I miss something?

25 MS. WHITE: No, Your Honor. You didn't miss anything

1 specifically, directly saying that. It's just that the
2 amount of time that the hazard was allowed to exist, their
3 actions before and after the accident, those were the items
4 that I was pointing to in this particular case.

5 THE COURT: Okay. I don't recall any testimony. But
6 how long the mat was like that, where -- where -- where was
7 that testimony?

8 MS. WHITE: Yes. We did provide testimony when I asked
9 Mr. McNeely, "How long does it take for these types of issues
10 to occur? Is this something that" --

11 THE COURT: Okay. But that's not the same thing. But
12 I don't -- what I -- I don't recall any testimony about how
13 long this mat was like that. Was there testimony like that?

14 MS. WHITE: No. There was testimony that these types
15 of issues that we see in the mats, it takes time for these
16 types of issues to occur, that they are not overnight issues,
17 rugs don't curl overnight, et cetera. And that was the
18 extent of it.

19 THE COURT: Yeah, I -- I found that there -- there has
20 not been clear and convincing evidence that Dollar General's
21 conduct rose to the level of negligence or gross negligence
22 or recklessness. So I'm going to grant the motion on
23 directive verdict on the issue of punitive damages.

24 MR. TRASK: Thank you, Your Honor.

25 MS. WHITE: Thank you, Your Honor.

1 MR. TRASK: And with that, we have no other mistrial
2 motions to make at this time.

3 THE COURT: All right. Ready to call your next? It
4 was only -- not even 11:00. So, Your Honor, ready to call
5 your next witness, or first witness, I should say?

6 MR. TRASK: We are, Your Honor.

7 THE COURT: Okay. If the jury still need restroom
8 time, that's okay, but if they're ready, let's -- let's bring
9 them back in. Actually, hold -- hold -- hold on -- hold on.
10 Let's come -- come back. Let -- let -- let -- let -- let's
11 give all I -- I -- sometimes I get carried away. We all
12 could use five minutes. Let -- let's take five minutes and
13 then we'll bring the jury back in. And your first one you
14 think will be very brief? 15 or 20 minutes?

15 MR. TRASK: 20 minutes, Your Honor. If we start back
16 right at 11:00, we'll be done with her by 11:20.

17 THE COURT: And who is the second -- who is the second
18 witness?

19 MR. TRASK: Brian Bogis, who's going to come in. He is
20 a bio-mechanical mechanical engineer. I think he's probably,
21 from my perspective, 10, 15 minutes. He's also going to be
22 very quick on that.

23 THE COURT: Oh, wow. Okay. So -- okay. So that's --
24 that's -- that -- that's -- shoot.

25 MR. BOINEAU: You want to see if we can get him here by

1 11:00?

2 THE COURT: Well, I'm just trying to say, I mean, I --
3 It might be worth ordering pizza for the jurors so we don't
4 have to take a long lunch break. Are you all -- are you all
5 okay? I mean, let -- let's -- okay. Hold on. So if we're
6 -- we're talking about possibly being done, but I said we'll
7 be generous and say 12:30?

8 Now, we're going to need a charge conference. And so I
9 -- I -- I think we just give the jurors a lunch break, so I
10 think, I think that actually works out really well. If -- if
11 you all rest your case between 12:00 and 12:30, we'll have
12 time for a charge conference and then we'll close after
13 lunch. Does that seem reasonable to both sides?

14 MR. TRASK: Yep.

15 THE COURT: Okay. Let's do that. I have actually not
16 looked at the charge yet, but my law clerk does a really good
17 job and he will send you the first draft and then -- and then
18 you all can take a look at it. If there's anything you want
19 to send, submit to me, go ahead and send it -- send an email.
20 My standard charge for this kind of case has a statement that
21 the parties have stipulated that the injured party was a
22 business invitee. And I -- we haven't actually talked to you
23 about that. Is there any argument this -- that -- that the
24 -- that he was not a business invitee?

25 MR. BOINEAU: He was.

1 MR. TRASK: He -- he went in there to purchase.

2 THE COURT: Okay. Any -- any objection from the
3 Plaintiff to having that in the charge?

4 MS. WHITE: No, Your Honor.

5 THE COURT: Okay. Perfect. Thank you, Counsel. All
6 right.

7 MS. WHITE: Defense.

8 THE COURT: All right. Defense counsel?

9 MR. BOINEAU: Yes, sir. Your Honor.

10 THE COURT: All right. Let's bring them in.

11 (Jury enters courtroom.)

12 THE COURT: All right. Ladies and gentlemen, as I
13 said, the Plaintiff has rested so the defense may call your
14 first witness.

15 MR. BOINEAU: Thank you, Your Honor. The defense calls
16 our first witness, Laura Myers.

17 THE COURT: All right.

18 THE CLERK: (Inaudible). Place your left hand on the
19 Bible and raise your right hand.

20 LAURA WILLIAMS MYERS,

21 having been duly sworn, testified as follows:

22 THE CLERK: Thank you. Please be seated. (Inaudible).

23 MR. BOINEAU: Madam Court Reporter, you good? Perfect.

24 DIRECT EXAMINATION

25 BY MR. BOINEAU:

1 Q. Good morning, Ms. Myers.

2 A. Good morning.

3 Q. Almost afternoon. Will you please introduce
4 yourself to the jury? Your full name?

5 A. Yes. My name is Laura Williams Myers.

6 Q. Ms. Myers, where do you live?

7 A. I live in Rock Hills, South Carolina.

8 Q. Okay. How long have you lived there?

9 A. Since 1997.

10 Q. All right. And are you married?

11 A. I am.

12 Q. Okay. You have any children?

13 A. I do. I have four children.

14 Q. Four children. All right. Are they -- they grown
15 now or are they still young children?

16 A. They're grown. I have grandchildren as well.

17 Q. Yes, ma'am. All right. Ms. Myers, if you will,
18 can you tell me where you currently work?

19 A. Yes, I work at Dollar General in Catawba, South
20 Carolina.

21 Q. Okay. And have you ever worked at any other
22 Dollar General?

23 A. Yes, I have.

24 Q. At which ones did you work?

25 A. I worked at East Maine in Rock Hill and also

1 worked at Shallow Road, and it's right down the road in
2 New York.

3 Q. Okay. How long have you been at Dollar General?

4 A. Since July of 2018.

5 Q. All right. And Ms. Myers, in 2000 -- what -- when
6 you started at Dollar General, what was your job?

7 A. I actually started out as a key carrier.

8 Q. Okay. What -- what does that mean?

9 A. As a manager on duty, we can open or close a
10 store.

11 Q. Okay. And in June of 2019, what was your role at
12 Dollar General?

13 A. I had been the assistant manager for a few months.

14 Q. You were promoted to assistant manager before
15 then?

16 A. Yes.

17 Q. Okay. And tell me generally what -- what is a --
18 with an assistant manager, do you still have a key?

19 A. We still have a key, but we can also do payroll
20 and scheduling.

21 Q. And currently, what is your role at Dollar
22 General?

23 A. I'm a store manager.

24 Q. Okay. And you manage the Catawba store?

25 A. Yes, I do.

1 Q. All right. I want to talk to you a little bit
2 about the daily routine at Dollar General. Tell me when you
3 get there, what do you do on a daily basis?

4 A. Well, the first thing that I do before I ever
5 enter the building, I call -- I have a security system in my
6 store. And I call them, especially if I'm entering alone,
7 and let them know that I'm about to enter the store and they
8 watch me as I walk in the store.

9 Q. Okay. And then when you get to the store, what do
10 you -- what do you do?

11 A. You look at your entrance on the way in, of
12 course, and then you deactivate your alarm system.

13 Q. Do you look for any issues that may exist in the
14 store?

15 A. Yes, I do. Once I deactivate the alarm system, I
16 walk around my store, but I usually go through and go to the
17 back and I turn my inside and outside lights on if it is dark
18 and I do what you call a store walk, so I'm making sure
19 there's nothing laying on my floor and make sure that my
20 night crew did their job correctly.

21 Q. Okay. And I want to talk to you a little bit,
22 obviously, you know, we're -- we're here about a rug.

23 A. Yes, we are.

24 Q. Or a mat. Whichever one you want to call it.
25 Tell me what, if anything, you do -- how -- how often you are

1 inspecting or looking at the rugs at Dollar General.

2 A. We see the rug every time we enter the building.
3 You see if the -- if there's something wrong with the rug,
4 has the rug been cleaned?

5 Q. And tell me -- you -- you mentioned the word
6 clean. Tell me a little bit about cleaning the rugs. What
7 -- what do you -- what do you do to clean the rugs? And,
8 well, before I even ask that, have you ever cleaned the rug?

9 A. Yes, I have.

10 Q. Okay. Many times?

11 A. Yes, sir.

12 Q. Okay. Tell me what you do to clean a rug.

13 A. We swept our rugs and you can also shake the rugs
14 out, because up underneath the rug there's a lot of dirt and
15 debris from people entering and exiting the building every
16 day.

17 Q. Do you move the rug and then sweep the area
18 underneath it?

19 A. Yes, sir.

20 Q. Okay. And then do you put the rug back down?

21 A. Yes, sir.

22 Q. And you -- you, at times worked the cash register?

23 A. Yes, sir, I still do.

24 Q. When you worked the cash register in this
25 particular -- at this particular store, were you able to see

1 the rug?

2 A. Yes, sir.

3 Q. Okay. And if there was anything that you saw that
4 was wrong with the rug, would you have moved the rug or fixed
5 the rug?

6 A. Yes, sir.

7 Q. And did -- let me ask you this, if -- if -- who is
8 in charge of ordering new rugs?

9 A. The store manager.

10 Q. Okay. And you're now a manager. Have you ordered
11 a new rug before?

12 A. Yes, sir. Since I've been a store manager.

13 Q. Okay -- and but if you see something wrong with
14 the rug, do you report it to someone?

15 A. I'd -- being a -- the store manager?

16 Q. No, ma'am. When you were an assistant manager or
17 just a key holder.

18 A. Yes. You would talk to the store manager.

19 Q. Okay. Perfect. And I want to talk to you a
20 little bit about the actual -- the date in question. Did you
21 know Mr. Sullivan?

22 A. I didn't know him personally, but I knew him from
23 coming in our store.

24 Q. Was he a regular in the store?

25 A. Yes, sir. We would see him periodically.

1 Q. Did you have a nice relationship with him?

2 A. He was a nice man who come in. Yes, sir.

3 Q. Okay. And on the -- on the day in question, did
4 you actually see this fall?

5 A. I did. I was on the cash register.

6 Q. Okay. From the cash register, could you see the
7 -- the door?

8 A. Yes, sir.

9 Q. Okay. And were you able to see the mat?

10 A. Yes, sir.

11 Q. Okay. Did -- Mr. Sullivan, had he -- he had been
12 in the store when he was leaving? That's correct?

13 A. Yes, he had checked out his purchases.

14 Q. Okay. And did Mr. Sullivan use a cane?

15 A. He did.

16 Q. Okay. But would -- would -- had you seen him in
17 the store with a cane before?

18 A. Yes, I had.

19 Q. Okay. And tell me with regards to -- you've seen
20 the video, did -- did you in any way believe the mat that
21 Mr. Sullivan fell on was crinkled up or curled in any way?

22 A. I do not. The mat was leaning flat.

23 Q. Okay. And if it had been crinkled up or curled,
24 is that something that, typically, as you walked by you
25 would've -- you would've fixed or?

1 A. We would've corrected that. Yes, sir.

2 Q. Okay. And with regards to people coming in and
3 out every day -- well, let me -- let me ask you this. With
4 -- with -- with Mr. Sullivan, when you saw him fall, that was
5 -- there's been a lot of questions about leaving him outside.
6 Somebody talked about that. Did you all bring him a chair?

7 A. I don't remember how we got the chair. A lot of
8 times our, like, patio furniture that we would sell, we would
9 have in the foyer where you saw the swimming pools outside.
10 And I believe that Judy, she was -- there were three of us
11 assistant managers there that day. I believe Judy is the one
12 who gave him the chair, if I recall correctly.

13 Q. And -- and is there a reason -- they -- they
14 talked a lot about leaving him outside. Is there a reason
15 that -- that he didn't -- you didn't bring him inside the
16 store?

17 A. Yes, sir. Because he fell and he was injured.
18 And what if we would've injured him further by picking him up
19 or touching him? I was also outside as well.

20 Q. Were you -- were you upset that he fell?

21 A. Yes, sir.

22 Q. As a -- as a manager, do you want -- tell me, do
23 you want anybody to get hurt?

24 A. You don't want anybody to get hurt.

25 Q. And in this case, were you able to do whatever you

1 thought you could to help Mr. Sullivan after his fall?

2 A. Yes, sir. The ambulance was called and the
3 incident report was wrote up as well.

4 Q. And that incident report, that's part of typical
5 policy, right? An incident report.

6 A. Yes, sir.

7 Q. Okay. And that's just so you -- the reason for
8 that is what?

9 A. Well, because he fell down in and went to the
10 hospital, our risk management, we didn't know anyone who fell
11 in our store or was injured in the store. Employee,
12 customer, vendor and, you know, anyone.

13 Q. Are you aware of anything you could have done to
14 prevent this fall?

15 A. No, sir, I'm not.

16 Q. And are you aware of anything that Dollar General,
17 any of its employees that were there with you on that date
18 could have done?

19 A. I'm not.

20 MR. BOINEAU: Ms. Myers, I appreciate your time. Thank
21 you very much.

22 THE COURT: Ms. White, cross? Ms. White,
23 cross-examination.

24 MS. WHITE: Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

1 CROSS-EXAMINATION

2 BY MS. WHITE:

3 Q. Good morning, Ms. Myers.

4 A. Good morning.

5 Q. And you've stated that you're a long-term employee
6 of Dollar General, correct?

7 A. Yes, ma'am.

8 Q. Over five years, correct?

9 A. Yes, ma'am.

10 Q. And you're here today as a representative of your
11 employer?

12 A. Yes, ma'am.

13 Q. And Dollar General is your only source of income,
14 correct?

15 A. Yes, ma'am.

16 Q. And in June of 2019, your duties included working
17 the cash register, customer service, stocking, ordering and
18 mat inspection, correct?

19 A. Yes, ma'am.

20 Q. You were busy with a lot of things, correct?

21 A. Yes, ma'am.

22 Q. And you had no prior experience in retail before
23 Dollar General, correct?

24 A. Not in -- I have worked at a vape store.

25 Q. And you had no prior experience with inspecting

1 mats before Dollar General, correct?

2 A. No, ma'am.

3 Q. And you had been working at Dollar General for one
4 -- for one year before this incident?

5 A. Yes, ma'am.

6 Q. And within that one year you became an assistant
7 manager, correct?

8 A. Yes, ma'am.

9 Q. And that inspection was just one of many, many
10 things you were required to do for the job, correct?

11 A. Yes, ma'am.

12 Q. And that inspection was not your primary task at
13 Dollar General, correct?

14 A. Not my sole primary task, no.

15 Q. Anyone with the key to the store was supposed to
16 do the mat inspection, correct?

17 A. Yes, ma'am.

18 Q. And the same person did not always do the
19 inspection, correct?

20 A. No, ma'am.

21 Q. And, Ms. Myers, did you testify that your method
22 of inspection was just simply to look at that mat on your way
23 in and see if it was flat?

24 A. To make sure there were no rips and tears and that
25 it was laying flat. Yes, ma'am.

1 Q. And Dollar General did not require people who
2 inspected a mat to fill out any checklist saying, "I did it"?

3 A. No, ma'am. We did not have a checklist.

4 Q. And you learned what you knew by just walking
5 behind another store manager, correct?

6 A. Yes, ma'am.

7 Q. Dollar General did not require you to take or pass
8 any type of written test or anything to show that you knew
9 what you were doing. Correct?

10 A. We have our training CBLs.

11 Q. But Dollar General --

12 A. And that goes from cashiers all the way to store
13 managers.

14 Q. Okay. Excuse me for interrupting you. And
15 Dollar General never required you to go to any meetings on
16 mat inspection, correct?

17 A. No, ma'am.

18 Q. And Dollar General never required you to watch any
19 videos on mat inspection, correct?

20 A. No, ma'am.

21 Q. You were simply told to look at the mats as you
22 came in and make sure it was flat, correct?

23 A. Yes, ma'am.

24 Q. And that's all you were looking for, correct?

25 A. Well, we would see if they were clean or dirty or

1 if they were dirty underneath because the mats, up
2 underneath, would collect debris from people walking in and
3 out of the store. They would be dirty and you would have to
4 sweep up underneath them as well.

5 Q. And you did this inspection quickly as you were
6 walking through the door to open up and get to your cash
7 register to do your other task, correct?

8 A. I'm sure I did, but I don't recall exactly that
9 morning.

10 Q. Okay. And you have no memory of whether you
11 inspected that morning or not. Correct?

12 A. The rug was laying flat when I walked in the door.

13 Q. But you have no independent memory of whether you
14 inspected the rug or not that day, correct?

15 A. I did not get on my hands and knees and inspect
16 that rug.

17 Q. And we have no video surveillance of you
18 inspecting the rug, correct?

19 A. Not that I'm aware of.

20 Q. We have no proof that you could -- that you
21 inspected the rug on that day or any day. Correct?

22 A. I don't know what you would have.

23 Q. There's no written paperwork, you know, like the
24 bathroom check-off. Mat inspected at such and such. Dollar
25 General didn't require you to do that, did they?

1 A. No, ma'am.

2 Q. And nobody was checking behind you to make sure
3 anything was done, correct?

4 A. No, ma'am.

5 Q. And the rugs that we saw that our expert has said
6 were in hazardous condition, those rugs were in the same
7 condition from the time you arrived to the time you left
8 work. Correct?

9 A. Those rugs were on the floor that day. Yes,
10 ma'am.

11 Q. And they were in the same condition that they were
12 when you first came in that morning, correct?

13 A. Yes, ma'am.

14 Q. And Dollar General has no way to show us that you
15 inspected the rug on that day or any day, correct?

16 A. No, ma'am.

17 Q. And Dollar General never required you or any other
18 employee to look for rug migration. Correct?

19 A. Until today, I didn't know what rug migration was.

20 Q. And Dollar General never required you or any other
21 employee to hose off those mats, correct?

22 A. I have seen one hosed off at a time, yes, ma'am.

23 Q. And there's no checklist for people cleaning those
24 mats or hosing them off that says, "I did this this day and I
25 did this the next day." Correct?

1 A. No, ma'am.

2 Q. And so there's no one checking to make sure, for
3 customer safety, that these rugs are inspected or cleaned.
4 Correct?

5 A. You would look at the edges of the rug to see if
6 there were rips and tears on the rugs. They would also be
7 swept off and cleaned and laying flat to where no one could
8 trip over them.

9 Q. But Dollar General didn't have any kind of log
10 sheet to say, "We did it." Correct?

11 A. No, ma'am.

12 Q. And Dollar General never gave you any manual
13 regarding rug inspection, correct?

14 A. No, ma'am.

15 Q. You just went right back to the cash register
16 after this accident, correct?

17 A. Well, there were probably several other things
18 that I was doing as well besides just being a cashier that
19 day.

20 Q. And you inspected all these mats the same way,
21 correct?

22 A. Yes, ma'am.

23 Q. So anything that you were not able to detect on
24 one mat you wouldn't have been unable to detect on any mat,
25 correct?

1 A. Well, depending on the mat.

2 Q. And so you said that Dollar General never even
3 trained you with respect to rug migration, correct?

4 A. No, ma'am. Not on rug migration.

5 Q. So if there was rug migration, you would have no
6 way of knowing that it even existed, correct?

7 A. I would not.

8 Q. So they did not train you in this issue of
9 customer safety, correct?

10 A. No, ma'am.

11 Q. And there were three store managers on that -- in
12 that store on that day, and you were all trained the same
13 way, correct?

14 A. Yes, ma'am.

15 Q. And all of you walked past these rugs and missed
16 it. Correct?

17 A. Ma'am, they were laying flat and they were not
18 ripped or torn.

19 Q. Do you agree that our expert has provided
20 testimony that the rug was not -- was curled?

21 MR. BOINEAU: Objection, Your Honor. The witness
22 (inaudible).

23 THE COURT: Sustained.

24 BY MS. WHITE:

25 Q. Okay. Did Dollar General ever train you as to how

1 to detect if a rug was curling?

2 A. The rug was not curled.

3 Q. Did Dollar General ever train you to -- they did
4 not train you as to -- to be able to inspect as to whether
5 the rug was curling or not, correct?

6 A. No, there was no training that was given on that.

7 Q. And you testified during your deposition that
8 during your employment from 2018 until 2023, you had never
9 seen Dollar General even replace a rug, correct?

10 A. Not to my knowledge. I had not seen one ordered
11 or replaced. I was not told if one was replaced.

12 Q. And you testified that with Dollar General, in
13 those five years, that you had never seen any rug frayed,
14 torn, or in any way defective, correct?

15 A. Not in that time. I have not.

16 Q. And would you agree that the rugs in this video,
17 according to the expert testimony, was curling, migrating and
18 also having other issues with traction?

19 A. No, ma'am.

20 Q. Dollar General ---

21 THE COURT: Okay. Hold -- hold -- hold on.

22 MR. BOINEAU: Same objection, Your Honor. Same thing.
23 She couldn't -- what she's asking, "Do you agree with the
24 expert?" With what their expert said.

25 THE COURT: That's phrased, I'll allow that question,

1 but it's been answered. So go ahead and move on. Yeah.

2 BY MS. WHITE:

3 Q. And one of these rugs was right in front of the
4 cash register where you were on the day of the accident,
5 correct?

6 A. Yes, ma'am.

7 Q. And you didn't even know that there was a
8 hazardous condition relating to that rug, did you?

9 A. Both rugs were laying flat, ma'am.

10 Q. And you never reported any deficiency with any of
11 these rugs to anyone, correct?

12 A. I did not see anything wrong with either rug.

13 Q. So Dollar General had not trained you to detect
14 anything other than whether the mat was laying flat when you
15 come in in the morning, correct?

16 A. No, ma'am. Can I speak? I'd already asked -- I
17 had already answered that question. And the rugs were not
18 torn or frayed in any way.

19 Q. And Dollar General did not require any records or
20 checklists for the inspection. So we have no way -- nothing
21 other than your word to say that, correct?

22 A. Well, you have video footage where the rugs were
23 laying flat.

24 Q. Do we have any video of the inspection of the
25 rugs?

1 A. No, ma'am.

2 Q. And you had not even thought about Mr. Sullivan or
3 this fall incident until Dollar General asked you to testify
4 in this case, correct?

5 A. I never saw Mr. Sullivan again after he fell that
6 day.

7 Q. And at your deposition testimony, you testified
8 that you had forgotten all about this fall incident, correct?

9 A. It was in 2019 and it is 2024.

10 Q. And Dollar General never held any meetings after
11 Mr. Sullivan's fall to talk about correcting any of the
12 issues that have been discussed in this case, correct?

13 A. I know it was reported to our manager and I never
14 heard anything else about what had happened.

15 Q. And at your deposition testimony you testified
16 that Mr. Sullivan couldn't walk, correct?

17 A. He had a hard time walking.

18 Q. But he walked into that Dollar General on the date
19 of the accident and purchased groceries. Correct?

20 A. He did come in the store that day and purchase
21 groceries.

22 Q. So your statement saying that he couldn't walk was
23 false, correct?

24 A. He had a hard time walking.

25 Q. He was walking just fine until he encountered the

1 second rug. Correct?

2 A. Mr. Sullivan dragged his leg when he come in the
3 store every time. I don't know -- did not know why until
4 testimonies here that he had had a stroke but he dragged his
5 leg.

6 Q. And Mr. Sullivan -- did Mr. Sullivan violate any
7 Dollar General policies by walking the way that he did?

8 A. No, ma'am.

9 Q. There were no signs that prohibited people with a
10 gait impairment from coming into your store?

11 A. No, ma'am.

12 Q. Correct? And he came into the store on a regular
13 basis as a loyal customer, correct?

14 A. Yes, he did.

15 Q. So Mr. Sullivan did not do anything wrong that
16 day, did he?

17 A. No, he did not.

18 Q. And you collected his money on that day for Dollar
19 General, correct?

20 A. Yes, ma'am, I did.

21 Q. And you did your inspection in the morning and
22 never did anything to correct any hazard, correct?

23 A. I did not see any hazard.

24 MS. WHITE: Thank you, Ms. Myers.

25 THE COURT: Any re-direct?

1 MR. BOINEAU: Nothing, Your Honor.

2 THE COURT: Okay. Thank you, ma'am. You can step
3 down.

4 MR. BOINEAU: Thank you, Myers.

5 THE COURT: Okay. Ladies and gentlemen, I think the
6 trial is moving a little faster than the attorneys thought
7 and we've tried to get the next witness here as quickly as
8 possible.

9 Counsel, do you know if your witness is -- is here?

10 MR. TRASK: He's not here yet. He's about five minutes
11 away, and he should be here at 11:40 is what we're being
12 told.

13 THE COURT: Ladies and gentlemen, so we'll give you all
14 a short break again (inaudible) as soon as the witness gets
15 here. Okay?

16 (Jury exits courtroom.)

17 THE COURT: First draft of the charge.

18 MR. BOINEAU: (Inaudible), Your Honor, during that
19 cross-exam. If you don't mind? At some point when it's
20 appropriate.

21 THE COURT: Plaintiff ready?

22 MS. WHITE: Yes, Your Honor.

23 THE COURT: Let's bring them in.

24 (Jury enters courtroom.)

25 THE COURT: Mr. Trask, you may call your next witness.

1 MR. TRASK: Thank you, Your Honor. At this time, the
2 defense calls Brian Bogis to the stand.

3 THE CLERK: (Inaudible) place your left hand on the
4 Bible and raise your right hand.

5 BRIAN MICHAEL BOGIS,
6 having been duly sworn, testified as follows:

7 THE CLERK: Thank you. Please be seated.

8 MR. TRASK: May it please the Court?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. TRASK:

12 Q. Can you please introduce yourself to the jury?

13 A. Sure. Brian Michael Bogis.

14 Q. Mr. Bogis, can you give the jury a little bit of
15 an overview of your educational background?

16 A. Sure. I hold a Bachelor's of Science in
17 mechanical engineering from the University of Virginia.
18 Continued on at the university, receiving a Master's of
19 Science in mechanical and aerospace engineering, specializing
20 in bio-mechanics.

21 Q. Where do you currently work?

22 A. I work for a company called S-E-A Limited, based
23 -- our headquarters is Columbus, Ohio, but I'm in our
24 Charlotte, North Carolina office.

25 Q. What type of professional certifications do you

1 possess?

2 A. I hold numerous professional engineering
3 certifications, including the state of South Carolina here as
4 well as 25 other states or so.

5 Q. What -- let me ask this. What are you typically
6 retained to do?

7 A. It varies a lot. But I mean, a lot of times it's
8 investigate an incident. An incident occurs, trying to
9 figure out what happened, put the pieces together, and it's
10 kind of a forensic evaluation.

11 Q. Do some of those incidents and investigations
12 involve trip-and-fall incidents?

13 A. Absolutely. All sorts of falls. But trip and
14 falls included.

15 Q. When you're investigating trip and fall incidents,
16 how does bio-mechanics or bio-mechanical engineering play
17 into that analysis?

18 A. So bio-mechanics is kind of a mechanical
19 evaluation of our bodies. Right? We've got structure, we've
20 got muscles, we have things that make us move. It's how do
21 we move, how do we ambulate, how do we walk, you know,
22 abnormalities with walk, things like that is part of it. How
23 do we become injured? Also, what does it take to break
24 something?

25 Q. What -- what type of documents or analysis have

1 you done in this case to reach any opinions, and don't tell
2 the jury any opinions yet. We're going to get there
3 eventually, but what -- what have you reviewed and what have
4 you done?

5 A. Sure. I mean, you provided me a lot of documents
6 or your office did, right? So you all exchange all sorts of
7 legal documents, fun to read through. Thanks. But, you
8 know, I mean, discovery information where you ask Plaintiff
9 questions, they ask you questions, you take depositions, so
10 kind of testimony in a -- in a room where you ask certain
11 parties, certain -- lots of questions, gets lots of
12 background information. Was provided video surveillance of
13 the incident, guessing everyone here has already seen that.

14 But, you know, video to kind of analyze the incident,
15 photographs that they are -- there are specs, information,
16 technical documents, you know, it's kind of the -- kind of
17 the background you provide me so I can do it. And then I
18 kind of analyze that. So I go to the -- I went to the store,
19 I looked at the layout. We did a bunch of documentation
20 there so we could kind of recreate what happened and kind of
21 study it in more detail.

22 Q. Without telling -- well, without telling the jury
23 what opinions they are, still. Have you formulated opinions
24 regarding the condition of the mat and the impact of
25 Mr. Sullivan's gait on this incident?

1 A. Sure did. Yes, sir.

2 Q. Did you apply scientific principles?

3 A. I did.

4 Q. Do you believe it would be helpful for the jury to
5 hear your opinion to help resolve the issues in this case?

6 A. I would think so. Yes, sir.

7 MR. TRASK: At this time, Your Honor, we would offer
8 Mr. Bogis as an expert in the field of bio -- bio-mechanical
9 engineering in mechanical engineering.

10 THE COURT: Any objection?

11 MS. WHITE: No, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen, as with the
13 other two experts, this witness has qualified as an expert in
14 bio-mechanical engineering, which means he's entitled to give
15 his opinion in this case, but it does not mean you need to
16 believe it and you should evaluate his testimony like that of
17 any other witness. Yes, sir.

18 BY MR. TRASK:

19 Q. Before we get into your opinions, and we're going
20 to watch the video in a second, I want to get ahead of one
21 thing. Are you being paid to be here today?

22 A. My company is, yes.

23 Q. Okay. And -- and do you know how much you have
24 charged Dollar General for your work in this case?

25 A. So I'm a fixed-salary employee, to be clear, so.

1 But by the time I've spent, I believe SCA, my company, has
2 billed you just over 12,000 over the course of this
3 investigation.

4 Q. Okay. And you talked about the documents review,
5 help the jury understand what -- what was the investigation
6 at the store? What did we do there?

7 A. We went to the store. I mean, I -- I took
8 photographs. I noted the mats that were there, how they were
9 laid out. The -- the -- I actually did what's called 3D
10 laser scanning. So I digitized and have a full 3D model,
11 millimeter accuracy of the -- entrance/exit from the store,
12 the mats, I weighed the mats, tested the mats that were
13 there, things like that to, again, just understand the
14 environment.

15 Q. Okay. And you've reviewed the video in this case?

16 A. Yes, sir.

17 Q. Could we publish to the jury the video that's on
18 the Defendant's monitor? All right. And we can pause it
19 right there. All right. Was that the video that you
20 reviewed?

21 A. Yes, sir.

22 Q. And -- and --

23 A. I reviewed that plus more footage. Yes, sir.

24 Q. And I will tell you that we have watched it a lot
25 in this courtroom, and so I have some condition -- or some

1 questions for you. What is the condition of the mat based on
2 your analysis in this case before Mr. Sullivan gets to it?

3 A. The subject mat is you know, by the -- would be
4 the entrance door in the vestibule. It's flat on the floor
5 and seems to be, you know, as I would expect to see it,
6 right. You know, positioned well, flat on the floor.

7 Q. What about, as we watch the video, what impact, if
8 any, does Mr. Sullivan's gait have on this incident?

9 A. So he has an abnormal gait. Medical records say
10 that he had a -- a prior stroke, but he has kind of what we
11 refer to bio-mechanically as like a hemiplegic gait or a drop
12 foot, kind of, simplistically. And so a lot of times that
13 can be due to lock -- lack of muscle tone in the leg. It
14 forces one to -- and if I can stand up, I can even
15 demonstrate it.

16 But again, kind of drag that foot where you can't
17 really get a good swing through with the foot in a normal
18 swing face and then go back to stance if you kind of lean to
19 your right and kind of get the foot to kind of swing out to
20 your side. It's got low foot clearance and almost like a
21 dragging action which is what he's exhibiting in this video.

22 Q. And -- and what impact did that foot dragging have
23 on causing the incident, do you believe?

24 A. I believe that his dragging of the foot, the low
25 foot clearance essentially kicked up and kind of made contact

1 to the leading edge of the mat, which is flat on the floor
2 and forced it to kind of basically buckle up and up heave
3 because of the force imparted by him and the dragging of the
4 foot.

5 Q. Now, I know you haven't, you -- you weren't in
6 here this morning, but there's been a lot of talk about
7 possibly the mat being dirty on top or something about mat
8 migration. Do either of those two things have any impact on
9 this incident?

10 A. No, sir. Not in my opinion.

11 Q. What is the most substantial part -- strike that.
12 What is -- what matters most in determining the cause
13 of this incident?

14 A. It's -- it's Mr. Sullivan's gait. Again, it's
15 that dragging of the foot. He kicks the mat, he causes the
16 mat to buckle up. You know, again, it -- that kicking, the
17 buckling of it disturbs the swing phase of his gait so that
18 he can't keep that foot or get that foot out in front of him
19 to maintain his balance and he ultimately falls as a result.

20 Q. And can we play the video one more time, please?
21 And if you'll watch it. And I'm going to talk while it's
22 going, what we see right here is his left foot, that's the
23 gait you're talking about, correct?

24 A. Yes, sir. He leans to his right and kind of
25 swings it out. You'll see the toe of the foot actually

1 dorsiflex out and, kind of kind of come around to the side.
2 But he's kind of drag -- again dragging that, that left side
3 or that left foot, rather, the leading edge of his foot and
4 -- and kind of even into the -- the arch area, kind of
5 walking.

6 Q. Did you review Dr. Brown's trial testimony in this
7 case?

8 A. I did.

9 Q. Okay. And -- and do you recall what Dr. Brown
10 thought the impact of the gait was?

11 A. Similar to what I said in that, you know, he felt
12 the mat was laying flat and that his gait essentially caused
13 -- caused the fall, or abnormal gait caused the fall.

14 Q. Now, you reviewed Robert McNealy's expert report,
15 correct?

16 A. I have.

17 Q. Okay. And he cites to a lot of standards in
18 there, is that fair?

19 A. Yes.

20 Q. Okay. Do you -- do you recall which ones those
21 were? Not the specific subsections, but just the type of
22 standards?

23 A. Yes.

24 Q. And what were those?

25 A. You refer -- refer to NFSI, National Floor Safety

1 Institute standard, OSHA, ADA, things like that. There's
2 maybe one other, ASTM 1637 or F1637.

3 Q. Based on -- or -- or based on your education
4 experience, do you believe any of those standards were
5 violated in regards to this incident?

6 A. No.

7 Q. And to a reasonable degree of bio-mechanical
8 engineering and mechanical engineering certainty, what was
9 the condition of the mat in the foyer/investable area before
10 Mr. Sullivan got to it?

11 A. Out on the floor, reasonably positioned. Typical
12 thickness, design, construction and not a -- not a factor
13 causing this incident.

14 Q. Okay. And -- and again, it is your opinion that
15 the gait was the significant factor that caused this fall,
16 correct?

17 A. It was. Yes, sir.

18 MR. TRASK: Let me beg the Court's indulgence. No
19 further questions, Your Honor.

20 THE COURT: All right. Ms. White?

21 MS. WHITE: Yes, Your Honor. Thank you.

22 CROSS-EXAMINATION

23 BY MS. WHITE:

24 Q. Mr. Bogis, you have a lengthy resume and I'm
25 holding it here in my hand. And as I read through it, isn't

1 it true that your specialty is vehicle accident
2 reconstruction?

3 A. (Inaudible). Yes, ma'am.

4 Q. And that would be autos, planes, trains, boats;
5 correct?

6 A. Typically, more auto and other types of
7 construction equipment if we're getting into the vehicle
8 types.

9 Q. And there is no motorized vehicle involved in this
10 case, correct?

11 A. That's correct.

12 Q. And this type of mat case makes up less than 10
13 percent of your practice. Correct?

14 A. When you say type of mat case, can you be more
15 specific?

16 Q. You testified that mat cases in general make up
17 less than 10 percent of your practice, correct?

18 A. I'd say less than 10 percent of my work involves a
19 -- something as simple as a mat. Yes.

20 Q. So this case in which you're providing an opinion
21 on a mat issue is outside the norm of what you really do,
22 isn't it?

23 A. I'd say it's outside the -- I mean, it's not more
24 than 50 percent of my work, that's correct. But it's
25 certainly cases I've testified on numerous times. In fact, I

1 testified in trial on a fall case last week.

2 Q. And you have no certifications for walkway audit
3 safety or flooring or mats, correct?

4 A. That's true.

5 Q. And you do not belong to any associations or
6 professional organizations relating to mats, rugs, or walkway
7 safety. Correct?

8 A. I mean, unless there's a subset of some of the
9 major engineering groups. I mean, again, I'm a member of
10 American Society of Mechanical Engineers, American Society of
11 Bio-mechanics, numerous organizations, but certainly not a
12 group dedicated to a sub-specialty of only mats.

13 Q. And you testified that you don't even have a
14 personal subscription to any magazines relating to walkway
15 safety, correct?

16 A. That's true. We also have a library and -- and a
17 full library in our facility that they maintain all our
18 subscriptions, frankly, so.

19 Q. And you've never owned a mat or flooring
20 inspection business, correct?

21 A. That's true.

22 Q. And you've never worked for a mat or flooring
23 inspection company, correct?

24 A. I mean, we -- S-E-A inspects -- I've inspected but
25 I don't work directly for an exclusive floor inspection

1 company.

2 Q. And you -- excuse me?

3 A. Just exclusively, that's not what we do. We do a
4 lot more than that.

5 Q. Okay. And you've worked for this defense firm on
6 other cases, haven't you?

7 A. Sure I have. Yes, ma'am.

8 Q. And those other cases have been within your
9 specialty area as a vehicle accident re-constructionist,
10 correct?

11 A. Some of them have been, some of them have been
12 slip and falls, trip and falls. Some of them certainly have
13 been due to accident.

14 Q. And you have an engineering degree, correct?

15 A. A couple, yes.

16 Q. But you are not a medical doctor?

17 A. That's correct.

18 Q. And you never met Mr. Sullivan, correct?

19 A. (Inaudible).

20 Q. You never saw him walk except in the video,
21 correct?

22 A. That's true.

23 Q. And you've never diagnosed any patient with regard
24 to gait analysis because you're not a doctor, are you?

25 A. I do not operate in a medical capacity. So I'm

1 not diagnosing a patient. That's correct.

2 Q. And in this particular case, you did not provide
3 any written report regarding your conclusions, correct?

4 A. That's true. I testified to you for several hours
5 explaining, and that's right, I did not offer a report.

6 Q. And you have no written report showing how you
7 reached these conclusions that you're stating in this case,
8 correct?

9 A. Not a written report. Again, I don't know how
10 many hours we sat there, but I articulated very detailed, the
11 methodology and the procedures.

12 Q. And you never saw in person any of the rugs in
13 this video, correct?

14 A. I believe that's true. I believe the mats had
15 been updated with new one -- new ones over time, just like
16 normal process would have them be.

17 Q. And your opinion, if we want to boil it down, is
18 that Mr. Sullivan kicked the rug, correct?

19 A. I say he kicked; he drags his foot in swing phase.
20 His minimum toe clearance was too low to clear the leading
21 edge of the mat. That induced a buckling of the mat, which
22 ultimately caused his fall.

23 Q. But in your deposition testimony, you stated
24 simply that he kicked the mat, correct?

25 A. I don't know if I use that exact word. I mean,

1 perhaps if you said it that way, I might have agreed to it.

2 I don't recall.

3 Q. And nobody goes around intentionally kicking mats,
4 do they?

5 A. I would say nobody. My kids probably have, but
6 not -- you know, but not typically.

7 Q. So you are claiming here that every person with a
8 gait issue or disability is at fault when an accident occurs
9 with a mat. Correct?

10 A. I don't get to assign fault. These ladies and
11 gentlemen right here to my right, get to assign fault. I'm
12 just providing the information from my technical analysis as
13 to why the fall happened. The mat is proper -- proper
14 height. It's pro -- it's flat on the floor, it's well
15 positioned. And it's my opinion that the gait disturbance or
16 gait issues with Mr. Sullivan is why he happened to fall on
17 this day.

18 Q. And you focused your opinion on Mr. Sullivan
19 because you're not a mat guy, are you?

20 A. No, I focused it because that's where the analysis
21 led me to. I looked at the mat, I studied the mat, I studied
22 the design requirements for mats. There are no issues with
23 the subject mat in terms of its overall placement and its
24 design that in my opinion caused or contributed to the
25 incident.

1 Q. And Mr. Sullivan walked into this store with no
2 problem, correct?

3 A. He did not fall, if that's your question.

4 Q. Yes, that was my question.

5 A. Yes. That's true.

6 Q. And he walked over several rugs without any
7 accident, correct?

8 A. He walked over at least a couple, yes.

9 Q. And he was physically and medically able to walk,
10 correct?

11 A. He was able to walk, apparently. Yes.

12 Q. And you didn't see him kick any rugs as he walked
13 by, did you?

14 A. I did not. He still has the same gait issue.
15 Doesn't mean we fall every time we swing our foot.

16 Q. But you have no written report or any documents
17 that validate what you're saying. Correct?

18 A. I have hundreds of files of analysis and hours of
19 testimony explaining it, but no, I do not have a written
20 report.

21 Q. And in your deposition prep, didn't you also
22 provide an article to me that stated that in these cases it's
23 normally environmental factors like the mat or the rug that
24 cause mechanical falls?

25 A. There was an article that I recall you citing that

1 you exerted one quote out of that said -- and again, can a
2 mat cause it? Sure. A mat can cause it -- it -- but in this
3 case it didn't.

4 Q. And do you agree that Dollar General's own policy
5 states that dirty mats reduce their effectiveness?

6 A. I believe it says something along those lines.
7 But again, that's effectiveness of what? I mean, the purpose
8 of a mat like this is when you're walking in to try to remove
9 foreign substances from your shoes, whether that be water,
10 whether that be dirt, grime, so you're not tracking in sand
11 and dirt or water that may become a slip hazard.

12 So if the mat's dirty, if it's saturated, it's not
13 going to do very well to take water off. But that's
14 completely irrelevant to this case and the circumstances of
15 today.

16 Q. And do you agree that Dollar General stated
17 policies that were -- that they were to replace four -- floor
18 mats when the edges begin to curl?

19 A. Something along those lines. Yes, ma'am.

20 Q. And in this case, Dollar General did not provide
21 you with any logs or written documentation that showed they
22 inspected their rugs, correct?

23 A. It's part of their procedures in their checks. I
24 don't believe they had a -- that I saw a checklist that said,
25 "Every day at this hour we're checking and documenting just

1 the rugs." No.

2 Q. So there's no written records or written proof
3 that they fulfill their duty to inspect or to replace,
4 correct?

5 A. I would have to defer to their testimony. I don't
6 have a log to say.

7 Q. Did they provide you with any logs?

8 A. I don't recall one, no.

9 Q. And the premises owner, Dollar General, had a duty
10 to Mr. Sullivan and all customers to inspect those rugs,
11 correct?

12 A. I don't know exactly what their legal duties would
13 be there. So I don't know that that would be within my --

14 Q. Because you're not a mat guy. Are you, Mr. Bogis?

15 A. Nothing to do with being a mat. It's more of a
16 legal opinion that you're asking me for, is what's their
17 legal duty. And I'm an engineer, so.

18 Q. Okay. Commercial rugs are designed -- you are an
19 engineer. Correct?

20 A. (Inaudible).

21 Q. And commercial rugs are designed to accommodate
22 persons with an impaired gait. Correct?

23 A. They're designed to meet requirements. They're
24 going to be designed with balance for performance, trying to
25 make them as safe and reasonable as possible, just like any

1 product. Right. You're trying to -- you're not trying to
2 make unsafe products, but there's a lot more to designing a
3 product than pure safety. So there's a balance there. And
4 these rugs are very common. They're very typical and seems
5 to be a good design.

6 Q. And you testified that in your opinion, about 100
7 percent of people on the planet have some form of gait
8 abnormality, correct?

9 A. Not that, I said that everyone's gait is slightly
10 different. There's averages, norms, there's certainly people
11 with more significant abnormalities than others or more on
12 the edges of -- of the average, if you will.

13 Q. And persons like Mr. Sullivan and other persons
14 are foreseeable users of commercial mats. Correct?

15 A. So what do you mean by foreseeable?

16 Q. I mean these mats should operate for any type of
17 user that comes into the store. Correct?

18 A. You can't design for any -- everyone. There's
19 going to be certain conditions, certain people that no
20 product can reasonably be designed for, so.

21 Q. And isn't it true that the ADA standards
22 applicable to mats and rugs would require that the mats be
23 safe for all users including persons with disability,
24 correct?

25 A. And they were, because again, based on the design,

1 the thickness, the -- the taper on the leading edge, the
2 overall thickness, they're designed in accordance with kind
3 of industry standard.

4 MS. WHITE: Thank you, Mr. Bogis. I have no further
5 questions for you.

6 THE WITNESS: Thank you.

7 THE COURT: Any re-direct?

8 MR. TRASK: No, Your Honor.

9 THE COURT: All right. Thank you, sir. You can step
10 down.

11 THE WITNESS: Thank you.

12 THE COURT: Any objection to excusing this witness?

13 MS. WHITE: No, Your Honor.

14 THE COURT: All right. Thank, you sir. You're
15 excused. All right.

16 Mr. Trask, you may call your next witness.

17 MR. TRASK: Your Honor, at this time the defense rests.

18 THE COURT: All right. Ladies and gentlemen, it's now
19 10 after 12:00. Both sides have rested, that means what
20 remains in the case is my explanation of the law to you,
21 what's called the charge of the law and the closing arguments
22 of the attorneys. At this point, I -- we need to take a
23 lunch break and I need to go over the charge and give the
24 attorneys a little bit of time to get their closing together.
25 So I'm going to ask you to be back at 2:00.

1 I know that seems like a long, long lunch break, but
2 that gives us time to do what we need to do and we -- we'll
3 be ready -- able to roll at 2:00. So we'll see you all back
4 then. Remember not to talk about the case or do any outside
5 research.

6

7 (Jury exits courtroom.)

8 THE COURT: All right. Counsel, let's take a look at
9 the proposed charge and verdict form. Let's start with
10 charge first. Anything from the Plaintiff on the proposed
11 charge?

12 MS. WHITE: No, Your Honor.

13 THE COURT: Okay. Thank you, ma'am. Anything from the
14 defense?

15 MR. TRASK: Your Honor, they look fine to me. Thank
16 you.

17 THE COURT: All right. Well, counsel -- that was the
18 best charge conference I ever had, so thank you very much.
19 Okay. Yeah. So now anything from the Plaintiff on the
20 verdict form?

21 MS. WHITE: Your Honor, can you give us a couple of
22 minutes to look at that?

23 THE COURT: Sure. This -- I think sometimes juries get
24 confused a little bit by Plaintiff and Defendant. So Chase,
25 you just go in, like, for number one, put Defendant;

1 Dolgencorp, and then number two, Plaintiff; Sullivan. And
2 then each time is put, so (inaudible).

3 MR. BOINEAU: Your Honor, my only question for the
4 Court is on number -- if the Court (inaudible).

5 THE COURT: Sure. Absolutely. Yeah.

6 MR. BOINEAU: Your Honor, my only question on number
7 two is it reads, "Was the Plaintiff negligent? So -- if so,
8 were his actions approximately the cause of his injuries?" I
9 -- I would just, because it's comparative fault versus a
10 negligent standard at the beginning, I would -- I would ask
11 the Court if we could change that. Just say, was the
12 Plaintiff comparatively at fault or did they have comparative
13 -- just use the word comparative in there. Only because I
14 think it's a -- the standard is a bit different and obviously
15 I --

16 THE COURT: What does that mean to a juror though? I
17 mean -- I -- I mean, so you want -- instead -- instead of
18 saying what? "Was the Plaintiff negligent?"

19 MR. BOINEAU: Yeah, Your Honor, I just think, you know,
20 what -- what I -- what my concern is in this case that's
21 quite hon -- quite frankly, is that from everybody, there's a
22 great deal of sympathy for Mr. Sullivan and the fact that he
23 does have a gait issue, that his own lawyers have
24 acknowledged it. And I think, you know, using the word
25 comparatively at fault or at fault.

1 I just -- I think it's going to be tough on a jury to,
2 to understand, you know, to -- to -- it -- it is his gait.
3 And so, you know, I -- I don't know that -- I think there may
4 be a difference between being comparatively at fault and
5 comparatively negligent. Is that negligent? Does that make
6 any sense at all? I mean, I -- I know it's a tough sell, but
7 I think that --

8 THE COURT: Does -- tell -- tell me exactly what you'd
9 like question two to say. How would -- how would you
10 rephrase it?

11 MR. BOINEAU: If I could say it any way, if I -- I was
12 -- you and I could say it any way I want, I would say, "Was
13 -- was the Plaintiff comparatively at fault? And if so, were
14 his actions the approximate cause of his injuries?"

15 THE COURT: I just think that, I mean, the legal --
16 it's legal. The word is negligence. I just -- I -- I -- I'm
17 very uncomfortable changing it from negligence to fault. I
18 mean, I -- Ms. White, do you want to chime in on that?

19 MS. WHITE: Your Honor, I -- I agree with you and I
20 think that the jury has a better chance of understanding with
21 it kept simply as it's stated here.

22 THE COURT: I mean, you'll have an opportunity in
23 closing to explain what it means and why, but I just -- I --
24 I -- I -- I don't like, I mean, it's, it's a negligence case.
25 I don't like changing the wording, so.

1 MR. BOINEAU: Thank you, Your Honor.

2 THE COURT: Any -- anything else from the defense?

3 MR. BOINEAU: Nothing else from us, Your Honor. I can
4 -- hold on.

5 MR. TRASK: Yeah, I think it's fine.

6 MS. WHITE: And Your Honor, we have no -- we have no
7 changes.

8 THE COURT: One -- one thing that's not in here on
9 question four, sometimes people like me to put a -- a -- in a
10 comparative negligence case. And the last question and
11 instruction to the jury is not reduce the damages. That the
12 -- the Court says something like, "Do not make any
13 mathematical reduction based on comparative negligence."
14 Would you all like that instruction?

15 MS. WHITE: Yes, Your Honor.

16 THE COURT: Okay. Any objection from the defense?

17 MR. BOINEAU: No, just to the extent it says like the
18 other, if -- if you get to this portion.

19 THE COURT: That's fine. Yeah.

20 MR. BOINEAU: Don't add any.

21 THE COURT: Okay.

22 MR. BOINEAU: And I agree, I don't -- it's only in
23 there I didn't see it.

24 THE COURT: Chase, will you just put something in --
25 but right here, and just say, "If the -- if" -- say, "Do not

1 make any mathematical adjustment to this number based on your
2 answer to question number three." That agreeable? So I just
3 -- Chase is going to put in, "Do not make any mathematical
4 adjustment to the damages based on your answer to question
5 number three." Is that agreeable to the Plaintiff?

6 MS. WHITE: Yes, Your Honor.

7 THE COURT: And that agreeable to defense?

8 MR. BOINEAU: Yes, sir.

9 THE COURT: Okay.

10 MR. BOINEAU: Thank you, Your Honor.

11 THE COURT: And say -- and then say the total amount of
12 damages, comma, if any. You don't have to -- you know.

13 MR. BOINEAU: All right.

14 THE COURT: Okay. All right. So counsel, that was
15 super smooth. So one last thing, counsel. My strong
16 preference is to charge prior to close. Okay. In criminal
17 cases, I do that in every case. In civil cases, I can only
18 do that if you both agree. Because the Rule 51 in a civil
19 case says it's closed, then charged. And my preference -- I
20 just -- I think it's boring for me to be the last thing the
21 jury hears.

22 I like to have already charged. And that way, you as
23 attorneys can say, the Judge already charged you on the law,
24 and then you can make an argument based on that. But you
25 have to both agree. So I don't want -- I don't want you --

1 and I don't want to put pressure on anyone. If you both
2 agree and come back to me, that's the way I'll do it.

3 Otherwise, we'll do what the Rule 51 says, which is the
4 normal way, you know. But you don't have to tell me that
5 now. It's that, you know, you can -- you know. Anything
6 else before our lunch break? I'll give you some time to work
7 on your closes. Any -- anything else from the Plaintiff
8 before our lunch break?

9 MS. WHITE: No, Your Honor.

10 THE COURT: Anything from the defense?

11 MR. TRASK: I do think, Your Honor, I might be
12 mistaken, but I think I just need to be on the record as to
13 renewing our directive verdict to get to close our
14 case-in-chief, and I'm sure it's denied, but under the same
15 grounds of what new evidence that's been presented. But just
16 so I don't go afoul of anything, I'd just like to put that on
17 the record.

18 THE COURT: And it is denied for the same reasons the
19 Court stated earlier.

20 MR. TRASK: Thank you, Judge.

21 THE COURT: Okay. All right. Counsel, I -- I give you
22 -- I don't see any reason for you to be back before 2:00. We
23 ready to rock and roll at 2:00? All right. Thanks,
24 everyone. We're in recess until 2:00.

25 (Off the record.)

1 THE COURT: All right. All set?

2 MS. WHITE: Yes, Your Honor.

3 THE COURT: All right. Mr. Trask all set?

4 MR. TRASK: Yes, Your Honor.

5 THE COURT: Okay. Chase is passing out the, you know,
6 copies of the charge on the verdict form, which you all are
7 welcome to refer to. In your closing, you can say, "The
8 judge will charge you if you want." You know.

9 MR. BOINEAU: (Inaudible).

10 THE COURT: Yeah.

11 MR. BOINEAU: Okay. Perfect.

12 THE COURT: Yeah.

13 MR. BOINEAU: (Inaudible) don't kill me.

14 THE COURT: It's okay.

15 MR. BOINEAU: I want you to --

16 THE COURT: It's okay. I -- I understand. Yeah. No.
17 But -- yeah, but that you'll -- you -- you -- you'll have it
18 in writing so you can say, "The judge will charge you." You
19 know.

20 MR. BOINEAU: I would like to see it in practice
21 sometime to see what it looks like. I'm just nervous about
22 not seeing it before.

23 THE COURT: I like it. I do it in all my criminal
24 cases because I feel like the -- it is just like those old
25 Charlie Brown cartoons with me and the (inaudible), you know,

1 and it's better for the attorneys to be the last people they
2 hear from, and not me. But no, I understand, so. But feel
3 free to refer to them in your close. All right. Court --
4 everybody's here. Let's -- let's bring them in.

5 (Jury enters courtroom.)

6 THE COURT: All right. Welcome back, ladies and
7 gentlemen. We were all able to follow the rules I've given
8 you over the break -- thank you very much. I appreciate
9 that. As I said, we've come to the end of the case. You've
10 heard all the evidence. What you're going to hear now is the
11 closing arguments of the attorneys.

12 The Plaintiff, the person who brings the lawsuit. They
13 have the burden of proof, so they get to go first and they
14 also get a reply argument to address points made by the
15 defense in their closing. Once that's done, I will explain
16 the law to you and then it will be in your hands to
17 deliberate.

18 Ms. White?

19 MS. WHITE: Thank you, Your Honor. I know that all of
20 you want to agree, the sigh of relief. I do, too. But I
21 want to thank you, I'm sure on behalf of all counsel here,
22 for your attention today during this trial. It was very
23 important that we bring the case to resolution for the
24 benefit of this family. And so this is a good day. This is
25 a good day.

1 Thomas Sullivan started this lawsuit before his death
2 to recover from Dollar General, and it's taken this long to
3 get to this point. It's taken a long time, but it was worth
4 it. It was worth it because we get a chance to come to
5 (inaudible). And Dollar General may say, "Let's -- let five
6 bucks be five bucks." Because after this accident, they went
7 back to their regular business. But that was not the
8 (inaudible) to what he was doing before. You heard the
9 testimony about the tremendous impact that this fall had upon
10 him and upon his life, his daily activities.

11 And so there's no way that we can take it back from him
12 or for his family. But at least we'll get some resolution
13 today. So I thank you, thank all of you for that. We
14 provided the jury with the evidence that we promised by a
15 preponderance of the evidence. And I think we've gone beyond
16 that. I'm just patting myself on the back. I hope that you
17 all will feel the same way because we did our very best to
18 provide you with everything that you need to make a decision
19 on the case.

20 The Judge will charge you that the premises owners,
21 like the Dollar General, have a duty to provide a reasonably
22 safe environment for their customers. And I'm sure that each
23 one of us, as customers, are glad that there are standards
24 and that when we go into a store, as Thomas Sullivan did,
25 that there are standards that determine that that premises

1 owner has to make sure that there are no hazards and
2 dangerous conditions that we're not warned of, so that we can
3 avoid the type of injury that Thomas Sullivan suffered.

4 When you think about it, we have shown that there was a
5 breach of that duty. And again, that burden was ours by a
6 preponderance of the evidence. And we did that by -- through
7 our expert testimony that was given this morning through our
8 fact witnesses. You remember the testimony of David Riley,
9 that gave the statement as an insider at the time that
10 Mr. Sullivan fell, stating that Mr. Sullivan said that that
11 rug caused his fall.

12 And we provided testimony regarding the condition of
13 the rug. You heard the testimony about the fact that
14 unfortunately, Laura Myers, very nice woman, but Dollar
15 General just did not train her or anyone else in the store to
16 properly inspect. They failed to train, they failed to clean
17 the rugs in accordance with the manufacturer's instructions.
18 They failed to remove damaged rugs, and they failed to warn
19 Thomas Sullivan or anyone else that there was a danger in
20 that store.

21 We could sum it all up by saying there was just a
22 failure to care. It was a failure to care. Their experts
23 stated that -- and I was shocked that safety isn't the main
24 thing, but for a customer, it is. It's important that when
25 we go to spend money in an establishment, that we're going

1 into a safe environment. Dollar General knew what to do, but
2 they did not do it.

3 We showed to the SOPs and so forth where they, through
4 those policies, they knew that clean floors were necessary,
5 that the rugs were curling, they needed to be removed. They
6 had the information, but they did not fulfill their duty to
7 their customer. We proved to you by a preponderance of the
8 evidence, and again, I'm stating my opinion, that the
9 condition of the rug caused the accident. We did that
10 through Thomas Sullivan's words, through David Riley.

11 I don't know whether you remember, but he said those
12 rugs were -- were -- those words were dirty and flimsy and
13 unsecured. And he was there, out of all of the people that
14 testified today, he was the one that was not a Dollar General
15 employee, but was the neighbor that brought Mr. Sullivan to
16 that store. And he was able to look at the actual mat, and
17 he says that that mat was dirty, it was flimsy, and it was
18 unsecured.

19 And he had 20 minutes -- 25 minutes in that store from
20 the time Mr. Sullivan fell to the time EMS came to get him to
21 formulate that opinion and to think about how this accident
22 had impacted his friend and his (inaudible). When we think
23 about the other things, we know that with damages, we had to
24 prove that Ms. Ballou (ph) came to the stand and basically
25 went through all of the billing as the PR.

1 Also, we had the video testimony of Dr. Brown stating
2 that all of the medical treatment that Mr. Sullivan received
3 was directly related to the fall at Dollar General and
4 necessary. And when we look at it, I would have to sum it up
5 by saying, customers are important, customers are important.
6 The Judge will charge you that the premises owner, like
7 Dollar General, has a duty to the customer, and that that
8 duty was breached.

9 The warning light was on, and we tried to illustrate to
10 you through the evidence that the warning light was there.
11 When you're not doing something that you know is necessary,
12 then the warning light is there, that someone is going to be
13 hurt and injured by that. And so those warning lights were
14 on. There was an accident waiting to happen, and they chose
15 to take Thomas Sullivan's money as a customer and then deny
16 any liability for the accident that was caused by their own
17 actions.

18 We hope you can address that today and send Dollar
19 General a message that customers are important and that
20 customer safety is important. I don't know about you, but I
21 was surprised when their expert, Brian Bogis, said today that
22 safety is not the main thing, that safety is not the main
23 thing. But safety is the main thing. Our expert stated for
24 you that when a rug is in good condition, it is a help.

25 When it is in bad condition, it is a hazard. And so

1 safety is a very important thing for our customers. Our
2 experts stated that the rug was in a severe state of
3 disrepair, and we took the time to go through the video to
4 show you all of the things that underlined his opinion.
5 Unfortunately, the other expert provided no written opinion
6 in this case. And so he was free to just state his opinion
7 without telling us, how did he get there?

8 How did he get there? When you think about it, I want
9 you to remember what -- what Robert McNeely, our -- our
10 expert testified. Do you remember the analogy he used about
11 the minefield? That if there's a mine out there and several
12 people are walking through that area and 20 people walk by,
13 that 21st person that gets blown up, that the danger was
14 there from the beginning.

15 You know, you may say in your mind, "Well, the other
16 people walking across the road didn't fall, so it must have
17 been safe." But think about what -- what Robert McNeely's
18 used as an analogy there, because it's very applicable. You
19 -- in -- in this case, he was able, Thomas Sullivan was able
20 to make it across the first rug because that's not the side
21 that he encountered with the curling, but that second rug got
22 him. You know, who gets the brunt of everything when there's
23 a safety issue?

24 Vulnerable people, young people, older people, disabled
25 people, because sometimes a person without a disability could

1 have perhaps jumped out of the way quickly. But in this
2 case, our client did have a gait impairment. And so when
3 that hazard was put in his -- in his path, he had no options.
4 And that is the same for anyone, any vulnerable person. And
5 so these commercial rugs that David Riley said were dirty,
6 flimsy, and unsecured, that grip mug -- rug moved across the
7 floor, no grip, no suction.

8 It was not one problem with the rug that caused the
9 accident. It was many. They failed to clean that rug,
10 failed to inspect that rug, failed to replace the rug, failed
11 to secure the rug, failed to replace the rug when it began
12 curling and deteriorating, and failed to warn their customer,
13 Thomas Sullivan, and other customers, of the dangerous
14 condition.

15 Laura Myer's testimony demonstrates that mat safe --
16 mat inspection, safety and training was not a priority for
17 Dollar General. She didn't even know what rug migration was,
18 and that's not her fault. It's her employer's fault for not
19 properly training her to be able to identify hazards that
20 were going to cause an issue for clients coming into the
21 store. You have to inspect what you expect from your
22 employees, and you have an obligation to train them so that
23 in safety issues, they are able to provide those things that
24 will allow for customer service safety.

25 Dollar General has denied all liability for the fall

1 and all liability for Mr. Sullivan's injuries. They denied
2 everything in this case. They denied that the rug caused the
3 accident. They denied that Mr. Sullivan's injuries resulted
4 from the fall, and they denied damages. If it were not for
5 the video surveillance that we obtained through this
6 litigation, they probably would've denied that the fall took
7 place. But thankfully, the best thing about this case is
8 that we do have the video footage and that's available to you
9 to use as evidence to decide in this case.

10 Dollar General has only one person they want to blame
11 for the accident, Thomas Sullivan, a 68-year-old Vietnam
12 veteran who was a loyal customer of Dollar General, that did
13 nothing wrong by their own admission. He did nothing wrong
14 that day. He simply walked into the store to get groceries.
15 In their eyes, a stroke from 20 years ago is more
16 consistently related to the injury than their failure
17 everyday to inspect their stores and provide a safe
18 environment for their customers that are spending money.

19 Dollar General breached their duty of care and violated
20 their own policies, violated national standards and federal
21 regulations. These standards are applicable to show what is
22 reasonable. There was a rug malfunction. Have you ever
23 looked at something and said, "How is this supposed to work?"
24 You know, sometimes if some -- you can see what happened, but
25 you don't understand, how did this happen.

1 But our expert, Robert McNeely, took the time because
2 he's a mat guy. He took the time to explain what a
3 well-maintained mat is supposed to do. It's not supposed to
4 do what this rug did, lift up off the floor, buckle, crumpled
5 together. It wasn't supposed to do that. It was -- you've
6 heard of wardrobe malfunction. This was a rug malfunction.
7 And in order to really understand that, you needed the -- the
8 expertise of someone that this is what he does, he was the
9 only mat guy in this case.

10 You notice that with the testimony of Mr. Bogis, his
11 testimony. He is an engineer, but he's not a mat guy. And
12 maybe if there was an airplane or a car or a train involved
13 in this case, I would say then, look to him. But in this
14 case, there was a mat, and you need a mat guy to give you
15 information about how a mat is supposed to function.

16 Also, according to the expert testimony, these things
17 don't happen overnight. It takes continuing failure to
18 maintain, clean, inspect, and replace. Dollar General had
19 noticed that red light was on. In their own policy, showed
20 that they knew what to do, but failed to do it. They knew
21 that the rugs were a safety issue, yet they did not train or
22 monitor their employees to do the things that Dollar General
23 knew to do. So they knew or should have known, which is the
24 equivalent of notice that these conditions existed.

25 And they knew for sure that someone, they didn't know

1 it would be Thomas Sullivan, but they knew that one of their
2 customers was going to get hurt as a result of their own
3 negligence. Their -- their operating standards that I showed
4 you as part of the exhibit showed that they knew that dirty
5 rugs, unsecured rugs, curled rugs, that all of these things
6 were a hazard.

7 Robert McNeely testified that a well-maintained rug is
8 not supposed to do what this rug did when Thomas Sullivan
9 stepped on it. When you think about it, the Defendant's
10 expert admitted that his primary expertise is not in this
11 area of mats. He admitted that he's never worked for --
12 owned -- for -- owned or inspected things for mats and never
13 joined any walkway or safety mat organizations, has no
14 certifications in that. So why? Why would he be chosen as
15 an expert in this case?

16 Because Thomas Sullivan had a gait issue, and because
17 he had a gait issue, they didn't feel like it was even
18 necessary to look beyond that. You know how you can be a
19 perfect victim? Is when you are in a situation where you are
20 the one that's supposed to be protected, and then someone
21 looks at you and says, "It was your fault." And so that's
22 the position that they are putting this man in, simply
23 because he had a gait issue.

24 This whole thing could have been avoided if
25 Dollar General had fulfilled their duties to their customer,

1 including Thomas Sullivan. When you look at it -- look at
2 the things that we were required to prove -- I hope that
3 you'll agree with me that we did our job today because we
4 wanted to -- we wanted to do that. You heard Ms. Ballou's
5 testimony that as she felt obligated to finish this out for
6 her (inaudible), and we felt that same obligation to finish
7 it out.

8 Your Plaintiff believes that we have proven our case
9 and we are asking the jury to award damages in this case. I
10 can't tell you how much to award in damages, but I can tell
11 you some things that we want you to consider. We want you to
12 consider the approximate \$115,000 in medicals that were
13 directly related to this fall. You know that based upon the
14 testimony of Dr. Brown, that all of that treatment was
15 directly related to this fall accident that took place at
16 Dollar General.

17 But we want you to go beyond that. We want you to
18 think about the severity of his injuries. That this wasn't a
19 sprain or a bump or contusion. This 68-year-old man broke
20 his hip as a result of the fall and it impacted his life from
21 that point. He went from a cane, you saw him walk into the
22 store, to having to use a walker, not able to use the front
23 door of his home anymore because he couldn't come down those
24 steps, having to give up his garden.

25 As a result of that, the garden that he had paid for

1 and that he spent time with every day watering, he had to
2 give that up. He had to give up walking his dog. All of
3 these things he had to give up. So we want you to go beyond
4 the medicals themselves and you have the power and the
5 authority as the juror to award additional damages. You can
6 triple the medicals.

7 You can do whatever you feel is fair in this case
8 because we have asked you, as the jury, to help us to bring a
9 resolution here, and you have the power to do that. And we
10 are just asking that you do that on behalf of Mr. Sullivan.
11 On behalf of his family. Again, I thank you and ask that you
12 resolve this case in favor of the Plaintiff. Thank you.

13 THE COURT: All right. Mr. Trask? Mr. --

14 MR. BOINEAU: Mr. Boineau.

15 THE COURT: Mr. Boineau. Okay. Yes -- yes.

16 MR. BOINEAU: (Inaudible), Your Honor. Ladies and
17 gentlemen, we met at the very beginning of this and it
18 started with us thanking you for your service. And I want to
19 finish with the same thing. I can't thank you enough for
20 your service. It's been said that, you know, serving on a
21 jury is -- is, it does, it keeps our court system going. It
22 keeps our country going.

23 And so we really do thank you for being here and for
24 your time and attention. You've been a very attentive jury
25 -- jury. Let me say this, this is a tough case emotionally.

1 Right? Dollar General doesn't want anybody to get hurt in
2 their store. You heard that. I don't want anybody to get
3 hurt anywhere. Right? Things happen, accidents happen.
4 It's hard for us to come in here and tell a jury to say that
5 somebody who had an impairment did something wrong.

6 That's a tough thing to say. But what the other side
7 wants you to do is not believe what your eyes tell you. They
8 want you to believe what some guy from Utah flew in to tell
9 you. They don't want you to believe what your eyes see in
10 the video, because I know that you all have watched this
11 video countless number of times. And what you see in the
12 video is a mat that looks like every other mat you've
13 probably ever seen when you walk into any store, almost in
14 the company. It's a black mat.

15 This mat was on the ground. There is -- and I -- and I
16 -- I don't think any evidence, even their own expert's
17 evidence. You -- you hear in his testimony that he talks
18 about curling, but he doesn't want you to focus on that.
19 Because that's a hard thing for you to see. And he talks
20 about when you really slow it down and he really looked well.
21 He didn't really slow it down or really show you any of that.
22 He just said, "If you did." Right?

23 Well, he's the expert, supposedly. Why didn't he do it
24 and show it to you? Well, he wants you to believe that
25 somehow this accident is caused because of the mat. I -- I

1 -- the migration. I've never heard the word migration until
2 the -- other than the birds and things of that nature. But
3 anyway, that migration somehow caused this accident. But
4 what I want you to do is look at what your eyes tell you.

5 What do your eyes tell you? This -- what -- what does
6 the video show you? Right. And unfortunately, it is hard to
7 talk about. It's hard to talk about the fact that there is
8 an individual whose leg, is at the time, dragging somewhat.
9 And you hear the doctors. This isn't from me. Doctors
10 testified, not me. The -- the Plaintiff's doctor, they
11 called Dr. Brown. Think about Dr. Brown.

12 They asked, we didn't ask the question of Dr. Brown
13 during their examination. They asked him to look at the
14 video, go kind of to what happened. It wasn't our doctor.
15 It's not our doctor, it's their doctor. You heard it from
16 him. You did not hear it from us. Sure did -- did Mr. Trask
17 follow up to say, "Did I hear this correctly of what you
18 said? That you said his foot kicked up the -- the rug? Did
19 I hear that correctly? That -- that's what you said?" And
20 he talked about things like the bracing and things of that
21 nature.

22 If you recall what Dr. Brown said, he -- again, we had
23 no relation with Dr. Brown at all. And I'll tell you,
24 there's no question in this case that -- that there --
25 there's been some nice people testifying for both sides,

1 right? I mean, we've had -- this isn't -- that's not what
2 juries are about and what cases are about. Because if they
3 were, we have very different results than typically what we
4 have.

5 And sometimes it's unfortunate. You hear somebody
6 who's very nice and likable, but just because you feel some
7 level of sympathy, our court system will tell you that if
8 it's a corporation or an individual, you're all looked at the
9 same in the eyes of our law. There's no difference between
10 Dollar General and me or Mr. Sullivan or anybody else. And
11 so while you may feel compelled to say, "Look, I -- I -- I
12 feel, I feel bad for this person." That's not the standard
13 in this case.

14 The standard in this case is -- is one of those
15 standards that the Judge will tell you about here in a
16 minute. And you'll see on a verdict form. And anything I
17 tell you that the judge tells you different, I would suggest
18 you listen to the judge. He's in -- he's in charge here, not
19 me. And -- but -- but what I will tell you, that part of
20 what you're going to have to do back there is -- the first
21 thing you're going to have to decide is, is this mat curled
22 up? Is there something wrong with this mat? Right?

23 And so you look at it and you say, "Well, it looks
24 like" -- probably most every other mat you've ever seen. And
25 the other thing I'll tell you when you -- when you analyze

1 that is I want you to think about what their expert focused
2 on. He focused on the first mat. He doesn't focus on the
3 mat Mr. Sullivan falls on, he is focused on the first mat and
4 talks about the issue with the first mat. He sees curling,
5 but on the second mat, he can't see it unless somehow we slow
6 it down, which he did not do.

7 And so you have to answer that question first. And if
8 you find that this mat is not curled or otherwise a trip
9 hazard, then you move on, then we're done. But if you find
10 that it is and you say, "Okay, there is something wrong with
11 this mat." Right? That's what you say, "Oh, some
12 something's wrong with the mat." I don't know what -- what
13 it is or I -- I don't think whether the mat has been swept
14 off or not makes any difference with somebody going to fall.

15 But if you find that it is, then you move on to part
16 two. And part two is, "Well, okay, there's something wrong
17 with it. Was there anything the Plaintiff did?" To -- the
18 word you're going to see on a verdict form is negligence,
19 just words that we use in the law. And you guys hear these
20 words all the time. It -- negligence means are, are you at
21 fault, did you do anything to contribute to this?

22 And so, you're going to see that word and you're going
23 to -- then you're going to get an answer. "Well, did he do
24 anything to contribute to this fall?" Or, "Was it all Dollar
25 General that contributed this fall?" And then probably even

1 before you get there, one of the things the judge will tell
2 you that you've got to look at is, "Did somebody from Dollar
3 General there, an employee? Did somebody have notice or
4 knowledge of an issue?"

5 I -- I -- I looked at rugs now over the last four
6 years, more than I ever did in my life. And I would submit
7 to you that there's nothing that stands out about this. They
8 had to bring a guy from Utah who calls himself a mat expert
9 to tell you something's wrong with it. So think about that.
10 They couldn't find somebody down the road who says, "Oh yeah,
11 this rug is defective." They had to -- had to come all the
12 way from there to do this.

13 And they want to say that our experts aren't qualified.
14 You heard our -- our experts -- and quite honestly, ladies
15 and gentlemen of the jury, why we need an expert in this case
16 either side, I don't know. We have video. It's one of the
17 very few cases I've ever tried where I can put it in front of
18 you and go, trust your eyes. Do what your eyes say. Don't
19 do what I tell you. Don't do what they tell you. Do what
20 your eyes and your common sense tells you to do in this case.

21 And you -- you know, you hear about warnings and oil
22 lights and things of that issue. But that -- that's --
23 that's not what this is about, ladies and gentlemen. That --
24 that -- that -- that is -- that is a red herring. So you
25 will not focus on the actual cause of the accident. And it's

1 as hard for me to tell it to you as it is anybody else.
2 Because I feel -- feel bad for -- for a gentleman who has a
3 -- who has a -- gait impairment. I do. I -- I naturally
4 would.

5 But it's not -- Dollar General didn't do anything to
6 cause the fall, the testimony from his own doctor was, he'd
7 been shopping on his leg. He may have gotten tired. And as
8 it does it -- it doesn't go up -- doesn't go as high. And it
9 caused him to fall in this case. And I'll submit to you that
10 there's -- while Dollar General, you -- you know, they try to
11 look out for their customers as they say they did. The Judge
12 will tell you they're not an insurer of somebody's safety.
13 There's no such thing as an insured company.

14 When you hear about, they could have made the product
15 more safer, everything could be -- we wouldn't drive cars
16 around if we wanted to be more safe. I promise you would not
17 drive. We can make them -- they can make a safer car, but
18 they make a car that's safe and functional and as safe as it
19 can be for what it is. It's the same way with every part
20 that's ever been made. This is no different.

21 Dollar General doesn't make this rug. But anyway, it
22 is in their store. So ladies and gentlemen, what -- what I
23 will tell you is this -- that's the burden of proof. It's
24 not our responsibility to prove it. It's not. That's a --
25 that's just the law. And that's what the judge will tell

1 you. It's their responsibility and they have that burden.
2 And I will submit to you that in this case, if you believe
3 what your eyes say, they have not met the responsibility.

4 They have not -- not met the burden. And you cannot
5 make a judgment based upon sympathy or feeling sorry for
6 someone. You've got to do it based on what the law and the
7 facts are. In this case, I will tell you that I hope when
8 you get back to your room, you will make a finding that
9 Dollar General didn't do anything to this case at all.
10 There's nothing -- we're going to start judging things that
11 -- that aren't there, that aren't real.

12 And so they -- they swept the rugs, they did what they
13 had to do, but that's not the cause of the fall, anyway. You
14 -- you know that, you see it with your own eyes. So I ask
15 you, trust your eyes, render a verdict for the defense in
16 this case. I thank you again, so much, for your time and
17 your patience.

18 THE COURT: Ms. White, reply?

19 MS. WHITE: Yes, Your Honor. Just want to clarify some
20 things and that is that Mr. -- Dr. Brown was not our doctor.
21 Dr. Brown was not Mr. Sullivan's doctor. He was the doctor
22 on (inaudible) emergency when -- when Thomas Sullivan was
23 transported by EMS on the accident site to (inaudible).
24 Thomas Sullivan didn't choose him. We did not choose him.
25 The only reason that he was in this case is because

1 Dollar General denied that that severe fall that you saw when
2 Thomas Sullivan fell onto the cement on the outside of the
3 floor.

4 Dollar General denied that his injuries were caused by
5 that fall. And so we had to present evidence to you by an
6 orthopedic surgeon that he had the surgery on his hip to
7 prove that his injuries were from the fall. And Dr. Brown
8 did confirm that on the videotape in many ways, that all of
9 his treatment as a result of that fall were directly related
10 to him falling on that cement outside the store.

11 That's why Dr. Brown was in the case. He did not know
12 Mr. Sullivan prior to the accident, and when he released
13 Thomas Sullivan from care, Thomas Sullivan was still on the
14 walker and Dr. Brown released him saying that he was good to
15 go. Dr. Brown was not our doctor. Dr. Brown was simply the
16 one that Mr. Sullivan was forced to use because of the
17 emergency situation created by Dollar General.

18 Also, when you look at -- defense counsel has stated
19 that Robert McNeely focused on only one mat. I want to
20 clarify that. When you go back and you remember the
21 testimony, you remember that you talked about both mats
22 because those mats were inspected by the same people in terms
23 of the same procedure. If a person cannot recognize curls on
24 one mat and they're using the same process to determine
25 what's there, how would they recognize curls on another one?

1 They were using the same people, the same process and
2 none of them were trained. You saw that through the
3 testimony of Laura Myers, that Dollar General had not trained
4 any of them to do anything that would indicate the -- and I
5 -- and identify and correct the safety hazard. I find it
6 very interesting that in this case the store manager and even
7 defense counsel had -- they never heard the word rug
8 migration before today.

9 And that's why -- that's why Robert McNeely needed to
10 be in this space, because when you have a situation, you need
11 an expert that knows what they're saying and is able to point
12 that out to you. We agree with co-counsel that yes, Rob is
13 from Utah. Hopefully we are not originally prejudiced to
14 where we feel like anybody that's from a state other than
15 South Carolina is bogus. But the reason we chose Rob, not --
16 not because he was from Utah, but because he's only one of
17 500 people in the entire country that does what he does.

18 He's inspected over a thousand floors. He has
19 certifications of walkway safety. If anybody is able to know
20 how that mat was supposed to function, we wanted to find the
21 expert that knew how to give a -- a fair and objective
22 opinion of was there a problem with this mat. We didn't
23 choose Rob because he was from Utah. We chose him because
24 he's the best of the best.

25 And he gave testimony and evidence to you today that

1 was not based upon his own subjective opinion, but upon
2 national standards, upon federal regulations, upon
3 Dollar General's own policy and upon what you can clearly see
4 in the video. I agree with co-counsel that we want you to
5 look at the evidence. We know that this is an emotional
6 case, but we want you to look at the evidence because by a
7 preponderance of the evidence you will see that there was
8 something wrong with those rugs.

9 It was not just the appearance of the rugs, but it was
10 the function of the rugs. The rugs slid with the slightest
11 movement. You saw on the video where Laura Myers took her
12 foot and she simply moved that rug across the floor and there
13 was nothing (inaudible) in place. You saw the way that that
14 rug slid forward and actually threw Mr. Sullivan from the
15 inside foyer to the outside cement.

16 Something is wrong with that rug. I mean, we might not
17 -- we are not experts so we don't know all of what's wrong
18 with it, but we can recognize a rug malfunction. And so we
19 gave you that evidence through Robert McNeely so that you
20 would be able to look beyond emotional issues and look at the
21 videotape and be able to see and to understand what happened
22 with that rug. A person that doesn't know anything about
23 rugs will look at it and blame one person who can't look and
24 see that a man is carrying a cane.

25 Doesn't take an expert to look at it and say, man is

1 carrying a cane, has the -- he has a gait impairment. That
2 was something that was obvious, but something with the rug
3 and if you don't know what the cause of something is, you'll
4 blame the victim.

5 And so, we provided evidence for you so that you would
6 not blame Thomas Sullivan for his own accident, but you would
7 look at the objective evidence in this case and the extra
8 testimony and be able to know that based upon the
9 preponderance of the evidence that this rug caused the fall,
10 caused the accident and caused the damages that Thomas
11 Sullivan suffered. Thank you.

12 THE COURT: All right. Ladies and gentlemen,
13 Mr. Foreperson, you've now heard the evidence and the
14 arguments of the attorneys. I'm now going to explain to you
15 the rules of law that you must follow and apply in deciding
16 this case. You're going to go to the jury room and begin
17 your discussion, which is sometimes called deliberations.
18 Your decision must be based only on the evidence presented in
19 Court. You must not be influenced in any way by either
20 sympathy for or prejudice against anyone.

21 You don't have to memorize what I'm saying. I'm going
22 to give you a copy of these instructions to take back with
23 you in the jury room. Please -- please pay attention.
24 During your deliberations, you should use the instructions to
25 guide your decision making. You must follow the law as I

1 explain it, even if you don't agree with, it and you must
2 consider my instructions as a whole and not follow some parts
3 and ignore others.

4 Duties of the jury and the judge. I'll remind you that
5 during this trial you and I have, had duties to perform as a
6 trial judge. It was and is my responsibility to preside over
7 the trial of the case and to rule on the admissibility of
8 evidence offered during the trial. You should consider only
9 the evidence before you. If I ordered any testimony stricken
10 from the record, you should disregard that testimony.

11 You should consider only the testimony that was
12 presented from the witness stand and any exhibits which have
13 been made part of the record and any agreements or
14 stipulations of the attorneys. I have the additional job to
15 charge you in the law which I'm doing now as presiding judge.
16 I'm the sole judge of the law and is your job as jurors to
17 accept and apply the law as I now explain it to you.

18 If you already have an idea as to what the law is or
19 what you think it ought to be and it does not agree with what
20 I'm now telling you, you must abandon your idea because
21 you're sworn to accept and apply the law exactly as I state
22 it to you.

23 If the attorneys have stated or argued that the law is
24 different from my instructions, you must disregard what they
25 have said and follow my instructions and, in every case,

1 tried in the Court before a jury. You the jury are the sole
2 and exclusive judge of the facts in the case. As a trial
3 judge, I cannot imitate or state or comment on or make any
4 suggestion to the trial jury about the facts in the case.

5 You the jury are the sole judge of the facts and please
6 do not infer from anything I've said during the trial on
7 issuing any of my rulings or anything else or anything. I'm
8 even now saying during my instructions that I have an opinion
9 about the facts. The law does not allow me to have an
10 opinion about the facts. That is a matter solely for you,
11 the jury, to determine and it's your job to determine the
12 effect, the value, the weight, and the truth of the evidence
13 you've heard during the trial.

14 Burden of proof. This is a civil lawsuit for money
15 damages and the Plaintiff has a responsibility to prove every
16 essential element of his claims by a preponderance of the
17 evidence. This is sometimes called the burden of proof or
18 burden of persuasion. The preponderance of the evidence
19 means an amount of evidence which is enough to persuade you
20 that the claim or contention is more likely true than not
21 true, such as by the greater weight of the evidence in
22 deciding whether any fact has been proved by preponderance of
23 the evidence.

24 You should consider witness testimony regardless of who
25 called them and all the exhibits and evidence regardless of

1 who produced them. If the proof fails to establish any
2 essential part of a claim or contention by preponderance of
3 the evidence, you should find against the party making that
4 claim or contention.

5 Evidence, as I said before, you must consider only the
6 evidence I admitted in this case. Evidence includes the
7 testimony of witnesses and the exhibits. Remember that
8 anything the lawyers say, although it's important, is not
9 evidence, it is not binding on you. You should not assume
10 from anything I've said that I have any opinion about any
11 factual issue. In fact, except for my instructions to you in
12 the law right now, you should disregard anything I've said
13 during the trial when you come to your own decision about the
14 facts. Your own recollection and interpretation of the
15 evidence is what matters. And in considering the evidence,
16 you may use reasoning and common sense to make deductions and
17 reach conclusions.

18 Direct and circumstantial evidence. There are two
19 types of evidence presented during a trial, direct and
20 circumstantial evidence. Direct evidence is a testimony of a
21 person who claims to have actual knowledge of a fact, like an
22 eyewitness. It's evidence which immediately establishes the
23 main fact to be proved.

24 Circumstantial evidence is proof of a chain of facts
25 and circumstances indicating the existence of some other

1 fact, is evidence which establishes additional facts from
2 which the main fact can be inferred. Circumstantial evidence
3 is based on inference and not on personal knowledge or
4 observation.

5 The law makes no distinction between the weight or value to
6 be given to either direct or circumstantial evidence, nor is
7 a greater degree of certainty required of circumstantial
8 evidence than of direct evidence. You should weigh all the
9 evidence in the case.

10 Believability or credibility of witnesses. When I say
11 that you must consider all the evidence, I do not mean you
12 must accept all the evidence as true or accurate. You should
13 decide whether you believe what each witness had to say and
14 how important their testimony was in making that decision.
15 You may believe or disbelieve any witness in whole or in
16 part.

17 The number of witnesses testifying about a particular
18 point does not necessarily matter. To decide whether to
19 believe a witness, I suggest you ask yourself a few
20 questions. Did they impress you as someone who was telling
21 the truth? Did they have a particular reason to not tell the
22 truth?

23 Did the witness have a personal interest in the outcome
24 of the case? Did they seem to have a good memory? Did they
25 have the opportunity and ability to accurately observe the

1 things they testified about? Did the witness appear to
2 understand the questions clearly and answer them directly?
3 Did their testimony differ from other witnesses?

4 But please keep in mind that a simple mistake by a
5 witness doesn't mean he or she wasn't telling the truth as
6 they remember it. People naturally tend to forget some
7 things or remember them inaccurately. If a witness misstated
8 something, you must decide whether it was because of an
9 innocent lapse in memory or an intentional deception. The
10 significance of your decision may depend on whether the
11 misstatement is about an important fact or an -- an important
12 detail.

13 Expert witnesses. The rules of evidence do not
14 normally allow a witness to give an opinion or a conclusion.
15 Normally a witness can only testify about what they themselves
16 saw or heard. An exception exists for expert witnesses.

17 A witness who by their education or experience has
18 become an expert in an art or science of profession or
19 calling may give their opinion on relevant and material
20 matters in which they're an expert and they also give the
21 reasons for that opinion.

22 You should consider any expert opinion received in this
23 case and like any other evidence, give it the weight you
24 think it deserves. If you decide the opinion of an expert is
25 not based on sufficient education or experience or if you

1 conclude the reasons given in support of an expert opinion
2 are not sound, or that an expert is outweighed by other
3 evidence, you may disregard an expert opinion entirely.

4 An expert witness's claim is not to be given greater
5 weight than that of other witnesses simply because the
6 witness's an expert. Further, you're not required to accept
7 an expert's opinion even if it's not contradicted.

8 Elements of -- of a claim. For negligence, this is a
9 negligence trial. The Plaintiff claims the Defendant was
10 negligent and should compensate him for the injury suffered
11 as a result of the negligence. In order to prove a claim for
12 negligence, the Plaintiff must prove by preponderance of the
13 evidence four things, the Defendant had a duty to the
14 Plaintiff. Second, the Defendant breached or violated that
15 duty. Three, the Plaintiff suffered damages and those
16 damages were approximately and actually caused by the
17 Defendant's negligence or breach of their duty.

18 Duty. The first element is the Defendant had a duty to
19 the Plaintiff. Generally speaking, everyone including
20 individuals and organizations or companies has a duty to use
21 a reasonable care to prevent their activities from harming
22 others.

23 Premises liability. Anyone who owns or occupies
24 premises owes a duty to the people who enter the premises.
25 This means land and improvements on the land, like a

1 building, improvements, or artificial conditions like
2 building sheds or parking pads.

3 The exact nature and scope of the duties is called the
4 standard of care. The standard of care owed by an
5 owner/occupier of the land to a person who enters the
6 premises depends on the status of the person who enters the
7 premises, who enters. The four types of status of people who
8 enter are invitees, licensees, trespassers, and children.

9 For a business invitee, a person -- excuse me, a
10 business invitee is a person who enters the premises of
11 another at the express implied invitation of owner of the
12 occupier of the property and -- and the -- excuse me, and --
13 and the property is directly or indirectly connected with
14 business dealings for the owner or occupier. It also
15 includes those coming on the premises for a purpose connected
16 with their own business, if the business is directly or
17 indirectly connected with a purpose for which the owner or
18 occupier uses land.

19 In this case, both parties agree the Plaintiff was a
20 business invitee of Dollar General when he was on
21 Dollar General's premises. To every business invitee, the
22 owner or occupier of the premises owes a duty to use
23 reasonable care to prevent the invitee from suffering bodily
24 injury. This is an -- this is an active or affirmative duty.
25 It includes refraining from any act which may make the

1 invitees' use of the premises dangerous or result in injury.

2 To prove negligence, the Plaintiff must show either the
3 Defendant or their employees created the condition, or they
4 had notice of it. It also includes a duty to warn the
5 invitee of latent or hidden dangers of which the owner or
6 occupier has knowledge or should have had knowledge. That is
7 to say, the Defendant must warn an invitee of any unsafe
8 condition of which they knew or should have known and of
9 which the invitee was reasonably unaware.

10 A Defendant owes a business invitee a duty of care to
11 discover risk and take safety precautions to warn or
12 eliminate unreasonable risk that are reasonably foreseeable
13 to the Defendant. An invitee is entitled to expect the owner
14 will take reasonable care to know the actual condition
15 prevailing at the time they're on the premises and either
16 make those conditions safe or to warn the invitee of the
17 dangerous condition.

18 The duty of care required is commensurate with
19 particular circumstances involved including the age,
20 disability, impairment or capacity of the invitee. A
21 merchant is not an insurer of the safety of his customers but
22 rather owes them the duty to exercise ordinary care to keep
23 the premises in a reasonably safe condition.

24 Open and obvious danger. An -- an owner or occupier of
25 land has no duty to warn an invitee of a danger which is open

1 and obvious to the invitee unless the owner/occupier should
2 reasonably anticipate that the harm will occur despite such
3 knowledge or that the invitee is likely to be distracted.

4 Breach. If you find there is a duty. The second
5 element is that the Defendant breached that duty. A breach
6 of duty is just that -- the Defendant had a duty to the
7 Plaintiff and did not fulfill that duty either because the
8 Defendant did nothing at all to fulfill the duty or the
9 Defendant took some steps but fell short of what the duty
10 required the Defendant to do.

11 The breach element of negligence is a failure to do
12 what an ordinary, careful, and prudent owner/occupier of the
13 premises would've done under the same or similar
14 circumstances or doing something that an ordinary, careful,
15 and prudent owner or occupier of the premises would not --
16 would have not have done during the same or similar
17 circumstances.

18 Causation. If you find the Defendant breached the duty
19 it owed to the Plaintiff, the third element is the
20 Defendant's breach of its duty caused the Plaintiff's
21 injuries. The element of causation and the element of
22 damages are closely connected. The law defines the proximate
23 cause of an injury to be something that produces a natural
24 chain of events which in the end brings about the injury.

25 In other words, proximate cause is a direct cause

1 without which the injury would not have occurred. To prove
2 the Defendant's negligence approximately caused the
3 Plaintiff's injuries, the Plaintiff must prove both actual
4 cause and legal cause. The Plaintiff must -- first prove the
5 causation in fact, which is proved by showing the injury
6 would not have occurred except for the Defendant's
7 negligence.

8 The Plaintiff must also prove legal cause. This is
9 proven by showing the injuries were reasonably foreseeable.
10 This means the injuries occurred as a natural and probable
11 consequence of the Defendant's negligence. The Plaintiff
12 must prove some injury from the Defendants. Negligence was
13 reasonably foreseeable but does not have to prove the
14 particular injury that occurred was reasonable.

15 Proximate cause does not mean the only cause. When
16 several causes have combined to produce an injury, the
17 Defendant is not relieved from liability because it is
18 responsible for only one of them. Simply put, the
19 Defendant's acts can be the approximate cause of the injuries
20 if they're at least one of the direct concurring causes of
21 the injury.

22 You may not award damages for any injury or condition
23 for which the Plaintiff may have suffered or may now be
24 suffering unless it's been established by the greater weight
25 of preponderance of the evidence that the injury or condition

1 was approximately caused by the accident or incident in
2 question.

3 Comparative negligence. The Defendant in this case
4 claims the Plaintiff's own negligence approximately caused
5 the Plaintiff's injuries. If you find the Defendant was
6 negligent, you must then decide whether the Plaintiff was
7 also negligent. The Defendant must prove by preponderance or
8 greater weight of the evidence that the Plaintiff breached a
9 duty of care which approximately caused the Plaintiff's
10 injuries.

11 The same law which I have told you to use in deciding
12 whether the Defendant was negligent, should be used in
13 deciding whether the Plaintiff was negligent. If you -- if
14 you find that the negligence of both the Plaintiff and the
15 Defendant approximately caused the injuries, you must then
16 decide how much the negligence of the Plaintiff contributed
17 to the injuries and how much the Defendant's negligence
18 contributed.

19 In deciding the percentages of negligence between the
20 Plaintiff and the Defendant, you may consider, among other
21 factors, the following: One, whether each party's conduct was
22 only inadvertent or whether it was engaged with -- with an --
23 with an awareness of the danger.

24 Two, the magnitude of the risk created by each party's
25 conduct, including the number of persons endangered and the

1 possible severity of the injury. Three, the significance of
2 the goal that each party was trying to reach and the need to
3 achieve that goal in that manner.

4 Four, each party's capabilities and abilities to reduce
5 or eliminate the risk. Five, the particular circumstances
6 confronting each party at the time the conduct occurred, such
7 as the existence of an emergency requiring a quick decision.
8 Six. The relative closeness of the relation -- causal
9 relationship between the negligent conduct and the harm. And
10 seven, whether the conduct of either party involved a
11 violation of a safety statute or regulation.

12 When the Plaintiff is injured or damaged by the
13 wrongful act of another person, it's the duty of the
14 Plaintiff to try to lessen and avoid the damages. The
15 damages which may be avoided by the use of reasonable effort,
16 care and prudence by the Plaintiff cannot be the approximate
17 result of the Defendant's wrongful act. Therefore, the
18 Plaintiff cannot recover for damages which might reasonably
19 have been avoided.

20 The efforts required by the Plaintiff must be
21 determined by the rules of common sense and fair dealing and
22 what a person of ordinary reason and prudence would do under
23 the same circumstances.

24 The Plaintiff is not required to use unreasonable
25 efforts or great expense to avoid and lessen the damages.

1 The Defendant has the burden of approving a failure to lessen
2 damages on the part of the Plaintiff, a preponderance or
3 greater weight of the evidence. I'll give you written
4 questions on a verdict form for you to reach your verdict.
5 It will have spaces for you to write your decisions about the
6 percentage of negligence, if any, of both parties, which
7 approximately caused the injuries.

8 The first question on the verdict form asks you to
9 decide whether the Defendant was negligent and if so, was the
10 negligence the proximate cause of the Plaintiff's injuries?
11 Question two asks the same thing about the Plaintiff.
12 Question three asks you to decide the -- asks you to decide
13 the percentage of each party's negligence which approximately
14 caused the Plaintiff's injuries. These percentages must add
15 up to 100 percent.

16 Question four asks you to determine the amount of
17 damages sustained by the Plaintiff if his negligence was
18 equal to or lesser than the Defendants. Do not reduce the
19 Plaintiff's total damages based on any percentage of
20 negligence. After you've answered the questions, I will
21 compute the amount of damages for which the Defendant is
22 responsible based on the percentages which you have decided
23 approximately caused the injuries. You're only to determine
24 the total amount of damages and write that figure on the
25 verdict form.

1 Damages, if you find the Defendant breached their duty
2 and that duty actually -- actually approximately caused the
3 injuries. The last element is damages. This element is
4 related to the third element. Causation. The Plaintiff must
5 prove the expenses he claims he incurred as a result of his
6 injuries were necessary and reasonable.

7 Actual damages, which are also called compensatory
8 damages, are designed to make the injured party whole. This
9 means the damages are an attempt to put the injured party in
10 the same position he was in prior to the accident, to the
11 extent this is possible with money. Actual damages include
12 compensation for all injuries that are of the approximate
13 result of the wrongful conduct of the Defendant. The
14 existence, causation, or amount of damages cannot be left to
15 conjecture or guess or speculation.

16 However, the law does not require proof of the amount
17 of loss to an absolute or mathematical certainty. It is
18 enough the damages be proved to a reasonable degree of
19 certainty. The evidence presented by the Plaintiff must
20 enable you, the jury, to determine what amount is fair, just
21 and reasonable.

22 The Plaintiff bears the burden of proving the
23 preponderance of the evidence, the -- that he's entitled to
24 compensatory damages. In determining the amount of the
25 compensation for injury suffered by the Plaintiff as a result

1 of the Defendant's actions, it's proper for you to consider
2 and award past, present, and future damages for out-of-pocket
3 expenses, medical expenses including physicians, hospitals,
4 medicines, physical therapy, rehabilitation, and transport
5 expenses connected with the medical treatment, psychological
6 trauma, mental anguish, psychological injury, depression,
7 pain and suffering, and the loss of enjoyment of life.

8 The Plaintiff bears the burden of proving these
9 elements by preponderance of the evidence. I will now
10 explain some of these categories in more detail. Medical
11 bills and personal injury actions: The general rule is the
12 Plaintiff may recover for the necessary and reasonable
13 expenses caused by the injury, such as amounts incurred for
14 medicine, medical services, hospital care and nursing care.

15 A person who suffers injuries because of the negligence
16 of someone else is entitled to recover the reasonable value
17 of the medical care and expenses incurred for the treatment
18 of the injuries to the time of trial. Accordingly, the
19 Plaintiff may recover amounts incurred for past medical and
20 other out-of-pocket anticipated expenses such as vocational,
21 physical, and other rehabilitation efforts.

22 Recovery for medical expenses is controlled by what the
23 services were reasonably worth and not by what was actually
24 paid or contracted to be paid. If you determine from the
25 evidence that under the laws I have instructed you, that the

1 Plaintiff is entitled to damages including medical or
2 healthcare costs, then the Plaintiff can only recover the
3 amounts you determine to be both reasonable and necessary
4 while the amount actually charged and incurred may be
5 considered. You are not bound by that amount. You must find
6 only the amount that is reasonable and necessary.

7 Pain and suffering. Pain and suffering is a material
8 amount of damages upon which a recovery can be based. The
9 Plaintiff is entitled to compensation for the pain and
10 suffering which he proves directly results from the wrongful
11 acts of the Defendant. An award for pain and suffering
12 compensates the injured person for the physical discomfort
13 and the emotional response to the pain caused by the injury.

14 In making an estimate of the damages to be awarded for
15 pain and suffering, you may -- may -- you may consider how
16 bad the injuries were, whether they caused the Plaintiff to
17 suffer, and how long the pain and suffering lasted or it's
18 expected to last. You may also consider the Plaintiff's age,
19 health habits and condition before the injury compared with
20 the condition after.

21 Pain and suffering does not have a market price and is
22 not capable of exact measurement and there is no fixed rule
23 or standard by which it can be measured. The amount of
24 damages to be awarded by pain and suffer -- for pain and
25 suffering, if any, is left to you. The judge -- excuse me,

1 is left to the judgment of you, the jury.

2 Loss of enjoyment of life. Loss of enjoyment of the
3 capacity to enjoy life resulting from injury is a proper
4 element of damages, damages for loss of enjoyment of life
5 compensate for the limitations resulting from the negligence,
6 on the injured person's ability to participate in and get
7 pleasure from the normal activities of life or for the
8 individual's inability to pursue -- pursue his talents,
9 recreational interests or hobbies.

10 Mr. Foreperson and ladies and gentleman on the jury, as
11 you retire to begin your deliberations, I wish to express the
12 hope that each of you will be mindful of the importance of
13 your responsibility. You're not called to serve as jurors
14 very often, and the proper performance of this job requires
15 each of you to reach the height of freeing your mind of any
16 improper influence.

17 As the presiding officer of this Court, I'm vitally
18 concerned that whatever verdict you find will be the result
19 of you going into the jury room and confining your
20 consideration to the evidence and the law you've heard in
21 Court, fairly and impartially and have -- and have every
22 confidence you will do so. Your verdict cannot be based on
23 sympathy or compassion or prejudice or emotion or any other
24 consideration not found in the evidence.

25 Remember, your verdict must be unanimous. I'm now

1 going to explain the possible verdicts in the verdict form.
2 There is no significance whatsoever in the order in which the
3 questions are listed, as simply one must be stated first.
4 All 12 of you must agree on the verdict. Your verdict, as I
5 said earlier, cannot be based on sympathy, passion,
6 prejudice, a motion, or any other consideration not in
7 evidence.

8 So ladies and gentlemen, this is the verdict form as
9 four questions. The first question is, "Was the Defendant,
10 Dolgencorp, negligent and if so, were its actions the
11 approximate cause of Plaintiff Thomas Sullivan's injuries?
12 Yes or no?" Second question, "Was Plaintiff Thomas Sullivan
13 negligent and if so, were his actions the approximate cause
14 of his injuries? Yes or no?"

15 And then question three says, "Decide the percentage of
16 each party's negligence which approximately caused the
17 injuries and the percentages must add up -- must add up to
18 100, there's a box for the Defendant in a box for the
19 Plaintiff."

20 And then the last question says, "If Plaintiff
21 Thomas Sullivan's negligence was equal or lesser than
22 Dolgencorp, answer the last question." Do not make any
23 mathematical adjustments to this number based on your answer
24 to question three, and give the total amount of damages, if
25 any, you believe to be suffered by Plaintiff Thomas Sullivan.

1 Has a blank for the amount of dollars. And then once
2 you have unanimously agreed on this, the foreperson will fill
3 it out, sign it, and date it, and then let the bailiff know
4 you've reached a verdict.

5 There are -- ladies and gentlemen, in just a second I'm
6 going to send you back to the jury room. Your signal to
7 begin deliberations will be when the bailiffs bring you the
8 verdict form and my explanation of the law and the exhibits.

9 Once you have that, that is your signal to begin
10 deliberations, you may begin talking about the case. You may
11 only deliberate when all 12 of you are in the room. So if
12 someone needs to go to the restroom or they want to take a
13 cigarette break that's completely fine, but while someone's
14 gone, you -- you have to talk about something else. And then
15 when all 12 of you're present, you can start deliberating
16 about the case again.

17 All right? It's now about 3:00. If we go long enough
18 to -- for it to be dinner time the county will order pizza
19 and pay for that for everybody so we don't have to leave the
20 Courtroom.

21 Is there anyone, and for health reasons, can't eat Papa
22 John's Pizza? Okay. Sir, what -- do you have an allergy or
23 what -- what would you like us to do for you? Like a -- can
24 you get -- can you get, I think they have salads. Can you --
25 can -- can you get a salad? Okay. We'll get you a salad.

1 All right. So ladies and gentlemen, that said, I'm going to
2 ask you to head back to the jury room and I need my two
3 alternates to stay.

4 (Jury exits courtroom.)

5 THE COURT: And any objections from the Plaintiff to
6 anything I said in my charge?

7 MS. WHITE: No, Your Honor.

8 THE COURT: Thank you. Anything from the defense?

9 MR. BOINEAU: Nothing, Your Honor.

10 THE COURT: Thank you, Counsel. Counsel, if you all
11 want to approach and take a look and make sure the exhibits,
12 the exhibits I have in evidence are one through five. That's
13 the three videos, the medical records and Dr. Brown's
14 deposition.

15 MR. BOINEAU: (Inaudible).

16 THE COURT: That's -- that's what I have. Yeah. Okay.
17 Counsel, if you can pass them up. Yeah.

18 MR. BOINEAU: Exhibit one through five?

19 THE COURT: Yes sir. One through five.

20 MS. WHITE: It was one through nine.

21 THE COURT: Only one through five were entered. That
22 was --

23 UNIDENTIFIED SPEAKER: (Inaudible) because (inaudible).

24 THE COURT: Exhibit one was all the medicals, like 1A,
25 1B-C that's in exhibits 2, 3, and 4 were the videos. Exhibit

1 5 was Dr. Brown's deposition. Nothing after five was
2 entered. Okay.

3 MS. LOVE: Six was the medical records.

4 MS. WHITE: Six were the medical records.

5 THE COURT: I have it down as number -- what's number
6 one?

7 MS. WHITE: Number one -- or it's the medical billing.

8 THE COURT: Okay. Medical bills are in. I don't -- I
9 don't have six as being entered in.

10 MS. WHITE: Yes. After Dr. Brown's video testimony, I
11 stood and requested the admission of both the medical --

12 THE COURT: Oh, I'm sorry, my notes are wrong. That's
13 exact -- okay. So six is in. Okay.

14 MR. TRASK: We're going to say it's okay.

15 THE COURT: Okay. So -- all right. So that's -- yep.
16 Thank you, Ms. White.

17 MS. WHITE: Exhibits 7, 8, and 9 during --

18 MR. TRASK: I don't think those were ever moved in.

19 THE COURT: I don't think they were in -- I'll confirm
20 that with my law clerk.

21 MS. WHITE: Please stipulate it to the admission of all
22 of these. They were pre-marked and provided to you.

23 MR. TRASK: Yeah, but they were never moved in. They
24 were never moved into evidence.

25 THE COURT: That -- that's what my notes reflect. They

1 were not, you know. Okay. Counsel, can you all pass up now?
2 How -- how can the jury view the video? Did they have the --
3 the clean laptop back there?

4 MS. WHITE: This is the clean laptop here.

5 THE COURT: Okay. That's the clean laptop. Okay. Are
6 the videos on that computer or is it on a flash drive or how
7 -- how is it? Okay. Okay.

8 MS. WHITE: And yeah, they're on the flash drive.

9 THE COURT: Ms. Love Sloan, can you pass it up so I can
10 just make sure that there's nothing else on there? I'm sure
11 you -- yeah, let me see. Okay, so --

12 MS. WHITE: This is actually the Court's computer.

13 THE COURT: Okay. So there -- Okay. Ms. Love Sloan.
14 Is Dr. Brown's video on that as well?

15 MS. LOVE: Dr. Brown's video? Exhibit Number 5?

16 THE COURT: Right. I just mean is it -- is it only
17 because I don't -- I needed to know whether to send them back
18 -- send. Okay. So I'll send them back to flash drive then.
19 Okay. All right. So medical records, verdict form. Okay.
20 All right. This looks -- this looks good. Okay. All right.
21 Looks good. Okay. Where did it -- now where did it go? Oh.
22 I got closer talking about the car (inaudible) close.

23 UNIDENTIFIED SPEAKER: I was disappointed.

24 THE COURT: All right. So -- all right. I -- here are
25 instructions for form. All right. Thank you, sir. All

1 right. Mr. Nyibur (ph) and Mr. Wilburn, we have reached the
2 end of the trial and I -- I really appreciate your service.
3 I know this is a bit frustrating because you paid attention
4 during the whole trial and you don't get to vote, but I
5 really appreciate your willingness to be here. If someone
6 had gotten sick or had something come up, you all could have
7 stepped in and we could have continued with the trial.

8 So, on behalf of the state of South Carolina and York
9 County and myself, thank you very much for your service.
10 Your jury service is complete. You're now released from any
11 restrictions in this case. You can discuss the case with
12 anyone if you choose. To the attorneys may want to talk to
13 you, you have no obligation whatsoever to talk to them, but
14 it's okay if you want to.

15 Okay. Do you all have any questions for me? All
16 right, thank you very much. If you would like to stay and
17 wait for the verdict, you're welcome to do that. And you can
18 get free pizza. You just can't eat it with the other jurors.
19 Okay? So that's -- but I totally understand if you're ready
20 to get out of here, so. Thank you. All right. We'll be at
21 ease. Counsel, if you could just make sure to give me a cell
22 phone number for each side. So if we -- if we -- if I need
23 you, I can reach out to you. Yes, sir.

24 MR. TRASK: (803) 447-6655.

25 THE COURT: Ms. White?

1 MS. WHITE: (858) 344-2301.

2 THE COURT: Okay. Let me make sure the two numbers I
3 have are (803) 447-6655 and (858) 344-2301?

4 MS. WHITE: That's correct.

5 THE COURT: Okay. Thank you, counsel. It's a
6 well-trying case on both sides. Try not to wander too far
7 because sometimes you only get questions, but thank you all
8 very much.

9 MR. BOINEAU: Thank you, Your Honor.

10 THE COURT: All right.

11 MR. TRASK: Obviously, not us, but so it has to
12 (inaudible) enough for them to be able to move the bar.

13 THE COURT: Okay. So if it's playing, you can't -- you
14 can't -- okay. All right. Okay. Let's -- let -- I mean --

15 MR. TRASK: Upload it again. It should be good.

16 THE COURT: Okay. All right. Thank you. See.

17 MR. TRASK: Should. Plus, hope.

18 THE COURT: She's about -- yeah, she's right. Yeah.

19 MS. WHITE: Yeah. But I hope you have (inaudible).

20 MR. TRASK: You know, I -- I got to be honest with you,
21 I don't even know. It's called backup player. And so
22 basically you got to get the player, extract it so that it
23 saves again on the desktop. Then you got to drag the clip
24 over, check the watermark, re-drag it over, and then finally
25 play. And it's just such a complicated (inaudible).

1 Well, it's funny that I think there was an IT guy in
2 here earlier who was like, "Maybe -- maybe I can convert it
3 for you." I was like, "Maybe, we have tried repeatedly at
4 our own office to try to convert this to VLC player, standard
5 media player." The Windows one comes from --

6 THE COURT: All right. Let's bring them in.

7 MS. WHITE: We tried VLC, something doesn't work.

8

9 (Jury enters courtroom.)

10 UNIDENTIFIED SPEAKER: Really? That's exciting. That
11 keeps it interesting.

12 THE COURT: All right. Ladies and gentlemen, I have a
13 note that says, "We need the full surveillance video." I
14 have worked with the lawyers in here and we have got it all
15 queued up for you all. It is a bit of an annoying program.
16 The one trick, is it will only let you move the slider to
17 fast-forward or rewind when it's paused.

18 If you're playing the video, the slider won't work, but
19 it is queued up. Mr. Foreperson, if you want to approach the
20 bench and just make sure it -- it is working to your
21 satisfaction. Yeah, it should be, but if you hit play it --
22 it -- okay.

23 UNIDENTIFIED JUROR: Is this -- are we allowed to take
24 this back?

25 THE COURT: Oh, absolutely. Absolutely. Yep.

1 UNIDENTIFIED JUROR: All right.

2 THE COURT: All right.

3 UNIDENTIFIED JUROR: Just not playing right now. Oh,
4 wait (inaudible).

5 THE COURT: All right. Thank you, ladies -- you're
6 good. Thank you, ladies and gentlemen. Yep. All right.
7 We'll be at ease. Thank you.

8 (Off the record.)

9 THE COURT: All right. Counsel, we have a note that
10 says, "How much of the medical bills are still outstanding?
11 If paid, was it paid by VA benefits or Medicare?" Obviously,
12 we can't answer that, so I propose to just tell that what
13 they have heard all the evidence in the case that -- that --
14 would that suit the Plaintiffs? Just for the record, does
15 Ms. White, out loud, is that -- is that okay with the
16 Plaintiff?

17 MS. WHITE: Yes, Your Honor.

18 THE COURT: Thank you. Defense?

19 MR. TRASK: Yes, Judge.

20 THE COURT: All right. Let's bring them in.

21 MS. WHITE: One (inaudible). Your Honor, can we also
22 provide further information that that is actually an
23 inadmissible consideration?

24 THE COURT: No, ma'am. I can't. Yeah. All right.
25 Ladies and gentlemen, I have a note which says, "How much of

1 the medical bills are still outstanding and if paid, was it
2 paid by VA benefits or Medicare?" Ladies and gentlemen, you
3 have heard all the evidence in the case. And so that's the
4 -- you've heard everything. Thank you very much. All right.
5 We'll be at ease.

6 (Off the record.)

7 THE COURT: It's about 5:15 and we have received a note
8 that we have a verdict. So let's -- let's bring them in.

9 (Jury enters courtroom.)

10 THE COURT: All right. Mr. Foreperson, I understand
11 the jury's reached a unanimous verdict.

12 UNIDENTIFIED JUROR: Yes, sir.

13 THE COURT: If you can hand it to the bailiff, please.
14 Mr. Foreperson, can you approach the bench, please? Okay.
15 Counsel, the issue was there -- Counsel the issue was there's
16 a -- a spot on the verdict form where the decimal point the
17 Court puts in, in the form and the -- it didn't match up with
18 the decimal point and it looked like there might be another
19 zero on the verdict. I just asked the foreperson to rewrite
20 -- to rewrite the number. Thank -- yes sir. All right.
21 Madam Foreperson -- Madam Clerk. You can publish the
22 verdict.

23 THE CLERK: In the state of South Carolina, county of
24 York, in the Court of common plea. Case Number
25 2022-CP-46-00085. Thomas Sullivan versus Dolgencorp, LLC.

1 Number one, "Was Defendant Dolgencorp, LLC, negligent? And
2 if so, were its actions the approximate cause of Plaintiff
3 Thomas Sullivan's injuries?" The jury finds, "Yes."

4 Number two, "Was Plaintiff Thomas Sullivan negligent,
5 and if so, were his actions the approximate cause of his
6 injuries?" Jury finds, "No." Number three, "Decide the
7 percentage of each party's negligence which approximately
8 caused Plaintiff Thomas Sullivan's injuries." (Inaudible)?

9 THE COURT: Yeah, let me see. Okay. It's 100 and
10 zero. Yeah, that's okay. Yeah.

11 THE CLERK: The jury finds Defendant 100 percent,
12 Plaintiff 0 percent. Number four, "Answer this question only
13 if Plaintiff Thomas Sullivan's negligence was equal to or
14 lesser than Defendant Dolgencorp, LLC's." (Inaudible)?

15 THE COURT: Keep -- keep -- keep reading.

16 THE CLERK: Do not make any mathematical adjust -- math
17 -- mathematical adjustments to this number based on your
18 answer to question number three. The total amount of
19 damages, if any, suffered by Plaintiff Thomas Sullivan is
20 \$296,000. Signed June 18, 2024 by foreperson, Ralph Norman.

21 THE COURT: All right. Counsel, would -- would anyone
22 like the jury individually polled?

23 MR. TRASK: No, Your Honor.

24 MS. WHITE: No, Your Honor.

25 THE COURT: Okay. All right. Any motions from the

1 Plaintiff before we release the jury?

2 MS. WHITE: No, Your Honor.

3 THE COURT: From the defense?

4 MR. TRASK: Your Honor, could we have 10 days to talk
5 with our client and then we'll expect to get back with you
6 and Plaintiff's counsel?

7 THE COURT: Certainly. I just mean before I release
8 the panel, any motion to ---

9 MR. TRASK: Oh (inaudible).

10 THE COURT: Okay. All right. Ladies and gentlemen,
11 thank you for your hard work these last couple of days. I
12 could tell you we paid close attention, you worked hard on
13 this verdict. So on behalf of the state of South Carolina,
14 York County, myself and all the folks here, I want to thank
15 you very much for your service. Your service is now
16 complete. You're released from all the restrictions that
17 I've talked to you about. You're free to discuss this case
18 with anyone if you choose to.

19 Lawyers like to get better at their jobs, like other
20 people, so the attorneys may contact you and ask you about
21 the case, you do not have to talk to them, but if you want
22 to, it's okay. All right. So ladies and gentlemen, thank
23 you very much. Your service is complete. You all have any
24 questions for me? All right. You all have a great evening.
25 Counsel, that was a very well-tried case on both sides. It's

1 been a pleasure. So 10 days for post-trial motions.

2 MR. TRASK: Thank you, Judge.

3 MR. BOINEAU: Thanks, Your Honor.

4 MS. WHITE: Thank you, Your Honor.

5 THE COURT: Thank you, Counsel.

6 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
7 5:21 P.M.)

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CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a Court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 16 of York County, South Carolina, on the 18th Day of June, 2024.

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

August 29, 2024



Natasha Barrientos

Transcriber

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