

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

The Honorable Perry M. Buckner, Circuit Court Judge

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Case No.: 2012-213713

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Emily Williams, Appellant,  
v.  
L'Oeral USA, Inc., Respondent.

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RECORD ON APPEAL

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OCT 22 2013

**SC Court of Appeals**

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STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

EMILY WILLIAMS,

Plaintiff,

v.

L'OREAL USA, INC.,

Defendant.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 2010-CP-15-0405

) ORDER GRANTING DEFENDANT'S  
) MOTION FOR SUMMARY JUDGMENT  
) IN PART AND DENYING IN PART

2011 DEC -7 PM 2:02  
SARICHA V. ORRANT  
COLLETON COUNTY  
COMMON PLEAS

This case came before me on November 10, 2011 on the Defendant L'Oreal USA, Inc.'s Motion for Summary Judgment. Present and appearing for the hearing were R. Clenten Campbell for the Plaintiff and Joseph D. Thompson, III for the Defendant. After consideration of the written submissions and the parties' oral arguments, the motion is granted as to the manufacturing defect claims and denied as to the defective or inadequate warnings or instructions claims.

#1  
PMB

FACTS

In April 2007, Plaintiff Emily Williams applied a home relaxer hair product that was manufactured and distributed by the Defendant L'Oreal USA, Inc. Plaintiff alleges that she suffered hair loss and/or scalp injury as a result of the April 2007 application of the L'Oreal product SoftSheen-Carson Optimum Care. Remarkably, Optimum Care, and only Optimum Care, had been used continuously by Plaintiff during the six to seven years prior to her alleged incident. [Williams dep. p. 28].

Plaintiff testified in her deposition that she was familiar with the product and the instructions for application of the product. [Williams dep. pp. 29-30, 31]. Plaintiff admitted that she has not reviewed the directions or warnings accompanying the product in the year or so prior to the subject incident. [Williams dep. pp. 40-41]. Plaintiff filed an affidavit in response to Defendant's Motion attesting that she followed the instructions for use of the product during the April 2007 use and that she was injured by the product despite following the application instructions. However, Plaintiff admitted that she did not follow the first instruction that directed the user to conduct a strand test prior to use. [Williams dep. pp. 58-59]. After her alleged injury,

Plaintiff claims that she was told by an agent of the Defendant that she received part of a "bad batch." [Williams dep. p. 73].

### LEGAL ANALYSIS

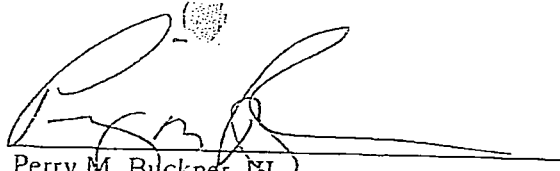
In a products liability case, the Plaintiff must prove the following three elements in order to recover for damages sustained by an allegedly defective product: 1) that she was injured by the product; 2) that the product, at the time of the incident, was in essentially the same condition as when it left the possession of the Defendant; and 3) that the injury occurred because the product was in a defective condition, unreasonably dangerous to the user. Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010). Defendant's Motion moves for summary judgment on the claims of: 1) manufacturing defect and 2) defective or inadequate warnings as alleged by the Plaintiff.

#2  
PMB  
In the South Carolina Rules of Civil Procedure, Rule 56(c) provides that a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The trial court must view the evidence in the light most favorable to the non-moving party when attempting to determine whether any triable issues of fact exist. Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 687 S.E.2d 29 (2009). In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only present a mere scintilla of evidence to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

The evidence presented as to the defective or inadequate warnings theory indicates that there is at least a "mere scintilla" of evidence. Plaintiff has testified that she had used the product for a number of years and was familiar with the instructions. She further testified that she had used the product in conformity with the instructions. Thus, a genuine issue of material fact exists as to this claim. To the contrary, there is not enough evidence to support Plaintiff's manufacturing defect claim.

### CONCLUSION

It is therefore ORDERED, ADJUDGED, and DECREED that Defendant's Motion for Summary Judgment is denied as to the defective or inadequate warnings or instructions claim and granted as to the manufacturing defect claim.



Perry M. Buckner, III  
Judge, Fourteenth Judicial Circuit

December 5, 2011  
Walterboro, SC

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2010CP1500405

Emily Williams vs. L'Oreal USA Inc

CHECK ONE:

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

2012 NOV 27 PM 4:31  
CATHOLINA J. GRAY  
COLLETON COUNTY  
COMMON PLEAS

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


IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

Jury Verdict in favor of Defendant L'Oreal USA, Inc

Dated at Walterboro, South Carolina, this .

November 27, 2012.

Court Reporter: Becky Hill

  
\_\_\_\_\_  
PRESIDING JUDGE - Honorable Perry M. Buckner

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

R. Clenten Campbell PO Box 230 Walterboro, SC 29488

Joseph DuRant Thompson III 134 Meeting St., 3rd Floor Charleston, SC 29401

---

ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

*Patricia C. Grant*

Patricia C Grant - Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )  
 )  
 Emily Williams )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 L'Oreal USA, Inc. )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2010-CP-15-405

VERDICT FORM

1. Was the defendant L'Oreal USA, Inc. negligent?  
 YES - Go to Question 2  
 NO - Stop deliberations
  
2. Was the defendant L'Oreal USA, Inc.'s negligence a proximate cause of the Plaintiff Emily Williams's injuries?  
 YES - Go to Question 3  
 NO - Stop deliberations
  
3. Was the Plaintiff Emily Williams negligent?  
 YES - Go to Question 4  
 NO - Go to Question 7
  
4. Was the Plaintiff Emily Williams's negligence a proximate cause of her injuries?  
 YES - Go to Question 5  
 NO - Go to Question 7
  
5. Using the combined negligence that proximately caused the plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the plaintiff and what percentage is attributable to the defendant? [The percentage must add up to 100%.]

Plaintiff	_____	%
Defendant	_____	%
Total	_____	%

PATRICIA C. GRANT  
 COLLETON COUNTY  
 COMMON PLEAS

2012 NOV 27 PM 4:00

6. Was the Plaintiff Emily Williams's negligence greater than fifty percent?

YES - Stop deliberations  
       NO - Go to Question 7

7. Please state the amount of damages, if any, sustained by the Plaintiff Emily Williams [Do not reduce the plaintiff's total damages based on the percentage of negligence by any party. After you have answered these questions, the judge will compute the amount of damages for which the defendant is responsible based on the percentage of the defendant's negligence which you have decided proximately caused the plaintiff's injuries. You are to determine only the total amount of the plaintiff's damages and enter that amount below.]

\$ \_\_\_\_\_ Actual Damages

Robert K. Reynolds  
FOREPERSON

November 27, 2012

Walterboro, South Carolina

*Please knock on the door and inform the bailiff when you have reached your verdict.*

STATE OF SOUTH CAROLINA )  
COUNTY OF COLLETON )  
Emily Williams, )  
Plaintiff, )  
vs. )  
L'Oreal USA, Inc., )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
C/A #: 2010-CP-15- 405

COMPLAINT  
(Jury Trial Demanded)

PATRICIA S. ORR  
COLLETON COUNTY  
COMMON PLEAS  
2010 APR 14 PM 2:21

FOR A FIRST CAUSE OF ACTION  
(Negligence and Recklessness)

1. Plaintiff is a resident of Colleton County, South Carolina.
2. Defendant L'Oreal USA, Inc. is, upon information and belief, a Delaware Corporation that does business in the State of South Carolina and specifically Colleton County.
3. This Court has Jurisdiction and venue is proper in Colleton County.
4. At some time in or before April of 2007, Defendant manufactured and sold a product identified as "Optimum Care Anti-Breakage Relaxer".
5. As manufactured, this product causes chemical burns and hair loss.
6. Defendants were negligent and reckless in one or more of the following ways:
  - (a) In failing to provide adequate warnings and instructions as to the application, and use of the product; and
  - (b) In failing to warn consumers of the dangers of the product.
7. As a proximate result of such negligence and recklessness, Plaintiff has suffered, and it is reasonably anticipated that he will continue to suffer in the future, injuries and damages as follows:
  - (a) Pain and suffering;
  - (b) Disfigurement;
  - (c) Loss of all of her hair;
  - (d) Medical and related expenses;
  - (e) Loss of income and earning capacity; and
  - (f) Loss of enjoyment of life.

FOR A SECOND CAUSE OF ACTION

8. Paragraphs 1 through 7 are incorporated by reference.

9. Defendant L'Oreal USA, Inc. is in the business of designing, manufacturing, and selling such products and did design, manufacture, and sell the product involved in this case with the expectation that it would reach the user without a substantial change in the condition in which it was sold.

10. At the time of its design, manufacture, and sale, this product was defective and unreasonably dangerous within the meaning of Section 15-73-10 of the *South Carolina Code* for the reasons set forth in paragraph 6 above and in such other particulars as the evidence may show.

11. Defendant L'Oreal USA, Inc. is liable to Plaintiff for the actual damages described in paragraph 7 above under *South Carolina Code* Section 15-73-10 because:

- (a) Defendant L'Oreal USA, Inc is engaged in the business of selling these products;
- (b) Such product was expected to, and did reach the Plaintiff without substantial change in the condition in which it was manufactured and sold;
- (c) The product was sold in a defective condition, unreasonably dangerous to the user; and
- (d) The defective and unreasonably dangerous product was a proximate cause of Plaintiff's damages.

FOR A THIRD CAUSE OF ACTION

12. Paragraphs 1 through 11 are incorporated by reference.

13. Arising out of the design, manufacture and sale of this product was an implied warranty that it was reasonably safe, merchantable and fit for the purposes for which it was intended, and for all its reasonably foreseeable uses.

14. This implied warranty was breached because the product was defective and unreasonably dangerous.

15. The breach of this implied warranty was proximate cause of those damages described in paragraph 7 above.

WHEREFORE, Plaintiff seeks judgment against the defendants for such actual and punitive damages as the Court and Jury may determine to be appropriate, with no such award to exceed the sum of seventy-five thousand dollars.

Walterboro, South Carolina  
14 April 2010

Respectfully submitted,

By: 

R. Clenten Campbell  
SC Bar No.: 70903  
Attorney for the Plaintiff

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )  
 )  
 Emily Williams, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 L'Oreal USA, Inc., )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT  
 C/A #: 2010-CP-15-405

AMENDED COMPLAINT

2010 AUG -6 PM 1:52

FOR A FIRST CAUSE OF ACTION  
 (Negligence and Recklessness)

1. Plaintiff is a resident of Colleton County, South Carolina.
2. Defendant L'Oreal USA, Inc. is, upon information and belief, a Delaware Corporation that does business in the State of South Carolina and specifically Colleton County.
3. This Court has Jurisdiction and venue is proper in Colleton County.
4. At some time in or before April of 2007, Defendant manufactured and sold a product identified as "Optimum Care Anti-Breakage Relaxer" which the Defendant purchased from IGA in Walterboro on April 14, 2007.
5. As manufactured, this product causes chemical burns and hair loss.
6. The Plaintiff used the product on April 14, 2007 as directed as a hair care product.
7. That immediately upon use of the product, the Plaintiff suffered severe chemical burns and hair loss.
8. Defendants were negligent and reckless in one or more of the following ways:
  - (a) In failing to provide adequate warnings and instructions as to the application, and use of the product; and
  - (b) In failing to warn consumers of the dangers of the product.
9. As a proximate result of such negligence and recklessness, Plaintiff has suffered, and it is reasonably anticipated that he will continue to suffer in the future, injuries and damages as follows:
  - (a) Pain and suffering;
  - (b) Disfigurement;

- (c) Loss of all of her hair;
- (d) Medical and related expenses;
- (e) Loss of income and earning capacity; and
- (f) Loss of enjoyment of life.

FOR A SECOND CAUSE OF ACTION

10. Paragraphs 1 through 9 are incorporated by reference.

11. Defendant L'Oreal USA, Inc. is in the business of designing, manufacturing, and selling such products and did design, manufacture, and sell the product involved in this case with the expectation that it would reach the user without a substantial change in the condition in which it was sold.

12. At the time of its design, manufacture, and sale, this product was defective and unreasonably dangerous within the meaning of Section 15-73-10 of the *South Carolina Code* for the reasons set forth in paragraph 8 above and in such other particulars as the evidence may show.

13. Defendant L'Oreal USA, Inc. is liable to Plaintiff for the actual damages described in paragraph 8 above under *South Carolina Code* Section 15-73-10 because:

- (a) Defendant L'Oreal USA, Inc. is engaged in the business of selling these products;
- (b) Such product was expected to, and did reach the Plaintiff without substantial change in the condition in which it was manufactured and sold;
- (c) The product was sold in a defective condition, unreasonably dangerous to the user; and
- (d) The defective and unreasonably dangerous product was a proximate cause of Plaintiff's damages.

FOR A THIRD CAUSE OF ACTION

14. Paragraphs 1 through 13 are incorporated by reference.

15. Arising out of the design, manufacture and sale of this product was an implied warranty that it was reasonably safe, merchantable and fit for the purposes for which it was intended, and for all its reasonably foreseeable uses.


16. This implied warranty was breached because the product was defective and unreasonably dangerous.

17. The breach of this implied warranty was proximate cause of those damages described in paragraph 8 above.

WHEREFORE, Plaintiff seeks judgment against the defendants for such actual and punitive damages as the Court and Jury may determine to be appropriate, with no such award to exceed the sum of seventy-five thousand dollars.

Respectfully submitted,

Walterboro, South Carolina  
5 August 2010

By:   
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SC Bar No.: 70903  
Attorney for the Plaintiff

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STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS

EMILY WILLIAMS,  
Plaintiff,

Case No. 10-CP-15-405

vs.

ANSWER  
(Jury Trial Demanded)

L'OREAL USA, INC.,  
Defendant.

PATRICIA D. GRAVE  
COLLETON COUNTY  
COMMON PLEAS  
2010 SEP -2 AM 11:00

Defendant L'Oreal USA, Inc., answering the Amended Complaint of the Plaintiff, alleges and says:

**AS TO THE FIRST CAUSE OF ACTION**

1. It admits, upon information and belief, the allegations contained in Paragraph 1.
2. It admits the allegations contained in Paragraph 2.
3. Paragraph 3 of Plaintiff's Amended Complaint contains conclusions of law to which the Defendant is required neither to admit nor to deny.
4. Answering the allegations contained in Paragraph 4, it admits that it manufactured a product labeled Optimum Care Anti-Breakage Therapy in or before April 2007. It denies the remaining allegations of the Paragraph and demands strict proof thereof.
5. Answering the allegations contained in Paragraph 5, it admits that the Instruction Sheet contained in the Optimum Care Anti-Breakage Therapy specifically states that failure to follow the directions or warnings can cause serious injuries to eyes or skin and can damage hair or result in permanent hair loss. It denies the remaining allegations of the Paragraph and demands strict proof thereof.

6. It lacks sufficient information to form a belief as to the allegations contained in Paragraphs 6 and 7 and, therefore, denies same and demands strict proof thereof.

7. It denies the allegations contained in Paragraph 8, including all sub-paragraphs thereto.

8. It lacks sufficient information to form a belief as to the allegations contained in Paragraph 9 and, therefore, denies same and demands strict proof thereof.

9. It denies each and every allegation of the Plaintiff's First Cause of Action not specifically admitted herein.

#### AS TO THE SECOND CAUSE OF ACTION

10. Answering the allegations contained in Paragraph 10, it reasserts its responses to the allegations contained in Paragraphs 1 through 9 of Plaintiff's Amended Complaint.

11. It admits the allegations contained in Paragraph 11.

12. It denies the allegations contained in Paragraphs 12 and 13, including all sub-paragraphs thereto.

13. It denies each and every allegation of the Plaintiff's Second Cause of Action not specifically admitted herein.

#### AS TO THE THIRD CAUSE OF ACTION

14. Answering the allegations contained in Paragraph 14, it reasserts its responses to the allegations contained in Paragraphs 1 through 13 of Plaintiff's Amended Complaint.

15. It denies the allegations contained in Paragraphs 15, 16, and 17, being all the remaining allegations of the Plaintiff's Third Cause of Action.

16. It denies each and every allegation of the Plaintiff's Third Cause of Action not specifically admitted herein.

17. It denies each and every allegation of Plaintiff's Amended Complaint not specifically admitted herein.

**FURTHER ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT AND AS AN  
ADDITIONAL AND AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES AND SAYS:**

18. Plaintiff's Amended Complaint fails to state facts sufficient to constitute any cause of action against the Defendant and, therefore, the case should be dismissed pursuant to SCRPC 12(b)(6).

**FURTHER ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT AND AS AN  
ADDITIONAL AND AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES AND SAYS:**

19. Plaintiff's contributory negligence, carelessness, recklessness, willfulness, and wantonness should reduce Plaintiff's recovery under the doctrine of comparative negligence should same be deemed to constitute 50% or less of the negligence which caused this accident or should bar Plaintiff's recovery in its entirety should it be deemed to constitute greater than 50% of the negligence which caused this accident.

**FURTHER ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT AND AS AN  
ADDITIONAL AND AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES AND SAYS:**

20. Upon information and belief, any damage sustained by Plaintiff as a result of the use of Defendant's product was proximately caused by Plaintiff's failure to follow the express instructions and/or abide by the express warnings included with the product. Accordingly, Defendant is entitled to judgment as a matter of law.

**FURTHER ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT AND AS AN  
ADDITIONAL AND AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES AND SAYS:**

21. Upon information and belief, Plaintiff's Amended Complaint is barred by the applicable statute of limitations and, therefore, the Plaintiff's Amended Complaint should be dismissed.

**FURTHER ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT AND AS AN  
ADDITIONAL AND AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES AND SAYS:**

22. The Plaintiff's Amended Complaint fails to state facts sufficient to constitute a cause of action for punitive damages and, therefore, the case should be dismissed pursuant to S.C.R.C.P. 12(b)(6).

**FURTHER ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT AND AS AN  
ADDITIONAL AND AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES AND SAYS:**

23. The Plaintiff's claim for punitive damages violates the South Carolina State Constitution and like portions of the United States Constitution and should be dismissed.

**FURTHER ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT AND AS AN  
ADDITIONAL AND AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES AND SAYS:**

24. The claim of Plaintiff for punitive damages against this Defendant cannot be sustained, because:

(a) An award of punitive damages under South Carolina law without bifurcating the trial of all punitive damages issues would violate this Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

(b) An award of punitive damages under South Carolina law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum

amount on the amount of punitive damages that a jury may impose would violate this Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

(c) An award of punitive damages under South Carolina law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of a punitive damages award; (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the alleged corporate status of this Defendant; (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible; and (5) is not subject to judicial review on the basis of objective standards, would violate this Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment and by the South Carolina Constitution's provisions providing due process, equal protection, and a guarantee against double jeopardy.

(d) An award of punitive damages under South Carolina law for the purpose of compensating Plaintiff for elements of damage not otherwise recognized by South Carolina law would violate this Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

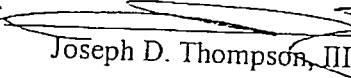
(e) An award of punitive damages under South Carolina law without proof of every element beyond a reasonable doubt would violate this Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

(f) An award of punitive damages under state law without the same protections that are accorded to all criminal defendants, including protection against unreasonable searches and seizures, double jeopardy and self-incrimination and the rights to confront adverse witnesses, a speedy trial and the effective assistance of counsel would violate this Defendant's rights under the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and the rights to confront witnesses, a speedy trial and effective assistance of counsel and protection against unreasonable searches and seizures, double jeopardy and compelled self-incrimination.

(g) An award of punitive damages based on anything other than this Defendant's conduct in connection with the specific incident that is the subject of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and a guaranty against double jeopardy, because any other judgment for punitive damages in this case cannot protect this Defendant against impermissible multiple punishment for the same wrong.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, the Defendant prays that the same be dismissed and that it be granted such other and further relief as this Court deems proper.

HAYNSWORTH SINKLER BOYD, P.A.  
134 Meeting Street, Third Floor (29401)  
P. O. Box 340  
Charleston, SC 29402-0340

By:   
Joseph D. Thompson, III

Attorneys for the Defendant

9-1, 2010  
Charleston, South Carolina

1 that's adequate. Did it warn this consumer of the danger?  
2 Did it warn about following the instructions? Did it warn  
3 about potential hair loss? It's going to be all there, and  
4 this is not a mystery, because all of these components will  
5 be there for you to look at in your jury room.

6 And the question at the end of the day is, was the  
7 warning there? Did it warn of the problems that she  
8 encountered? Did she actually follow the instructions in  
9 the first place? That's all this case is about. I  
10 appreciate your time. On behalf of L'Oreal and Ms. Stuckey,  
11 we appreciate your time and consideration and we look  
12 forward to working with you in this case. Thank you.

13 THE COURT: Call your first witness.

14 MR. CAMPBELL: I'm going to call Ms. Emily Williams.

15 THE COURT: Please come around and be sworn by the  
16 Clerk. (Whereupon, Ms. Emily Williams is duly sworn.)

17 THE COURT: Make yourself comfortable. Pull that chair  
18 up and adjust that microphone. It's going to amplify your  
19 voice. I'd like for you to state your full name and spell  
20 your last name for my court reporter.

21 MS. WILLIAMS: Emily H. Williams, W-I-L-L-I-A-M-S.

22 THE COURT: Your witness, counsel. Direct examination.

23 DIRECT EXAMINATION

24 BY MR. CAMPBELL:

25 Q Ms. Williams, where do you currently live?

1 A 62 Herndon Street, Walterboro.

2 Q Okay. And how long have you lived in Walterboro?

3 A All my life.

4 Q Okay. You are currently employed by the courthouse; is  
5 that correct?

6 A I am.

7 Q You work down in the Family Court system?

8 A Yes.

9 Q Okay. I want to show you what's been previously marked  
10 for identification, what we've marked as Plaintiff's Exhibit  
11 One.

12 MR. CAMPBELL: May I approach the witness?

13 THE COURT: You may.

14 Q And if you would, you can pick that up. Can you tell  
15 me what that is?

16 A Optimum Care Relaxer.

17 Q And specifically, is that the actual one that you  
18 purchased?

19 A It is.

20 Q Okay. That's the actual box?

21 A It is.

22 MR. CAMPBELL: And Judge, we would just move that into  
23 evidence as Plaintiff's Exhibit One.

24 THE COURT: Any objection?

25 MR. THOMPSON: No objection, Your Honor.

1 THE COURT: Plaintiff's Exhibit Number One will be  
2 admitted into evidence in the trial of this case without  
3 objection. Plaintiff's One is now in evidence. You may  
4 publish, counsel.

5 MR. CAMPBELL: Thank you, Your Honor.

6 (Whereupon, Plaintiff's Exhibit Number One, Optimum  
7 Care Relaxer container, is received into evidence.)

8 Q Ms. Williams, before I get that from you, I want to ask  
9 you a few more questions about it. How long have you been  
10 using that product?

11 A I've been using it at least six to seven years.

12 Q Okay. Six to seven years before April of 2007,  
13 correct?

14 A Right.

15 Q Why did you use that product?

16 A Because I've used it in the past and it did my hair  
17 well, and when I purchased it, it said "New anti-breakage";  
18 so that's good. When it says no lye, that's one of the  
19 reasons we buy this, because it says no lye, because we know  
20 that lye will damage your hair. So I purchased this because  
21 it did my hair well in the past. I never had a problem with  
22 it.

23 Q Okay. So the significant things, again, are -- tell me  
24 what they are one more time. That it does not have -- you  
25 just told me, I'm sorry. That it does not have lye in it,

1 correct?

2 A Right, no lye, and anti-breakage.

3 Q Okay. I'm going to grab that from you and put it up on  
4 the board. All right, we're looking at one of the slides of  
5 this box, and I'm going to actually shift it around a little  
6 bit here and show the jury all the sides of the box real  
7 quick, but this being the side of the box that has the  
8 warning, down in the bottom portion of it; is that correct,  
9 Ms. Williams?

10 A Yes.

11 Q Okay. (Picture of box up on the screen for the jury to  
12 see.) Do you ever recall having read the warning that is  
13 contained on the left side of this box? Do you ever recall  
14 having read that warning in the seven years that you have  
15 used this product?

16 A No.

17 Q Okay. And how about that one?

18 A No, not on the box, no.

19 Q All right. Turning it over; how about the front of the  
20 box? Have you ever read anything on the front of the box?

21 A Yes. On the front of the box, yes.

22 Q Okay. And you've seen, obviously, the side of the box.  
23 Is there anything that your attention was drawn to on the  
24 side of the box?

25 A Conditioning, no lye, yes.

1 Q And of course, the last side, you're familiar with the  
2 front side of the box?

3 A Right.

4 Q And so what we've looked at so far and all the volume  
5 that we've looked at, the only portion that has a warning on  
6 it is this bottom portion down at the very bottom of what we  
7 call the left side of the box; is that correct? Are there  
8 any other warnings contained anywhere else on the box to  
9 your understanding?

10 A No.

11 Q Okay. Let me show you ---

12 MR. CAMPBELL: Judge, may I approach one more time?

13 THE COURT: You may.

14 Q Let me show you what's been previously marked for  
15 identification as Plaintiff's Exhibit Number Nine. Can you  
16 tell me what that is?

17 A This is the preliminary steps for the relaxer and  
18 what's all in the box; how to use it.

19 Q Okay. So that document is actually contained inside  
20 the box of relaxer that you purchased?

21 A Yes, it is.

22 Q And that's the original? That's the one?

23 A Yes.

24 Q Okay. Now, have you ever read the instructions and  
25 warnings on that sheet?

- 1 A On this particular sheet?
- 2 Q Yes, ma'am.
- 3 A No, because I've used this before when I first started  
4 using it, I already know how to use it. It tells me what to  
5 do, what steps to take. I already knew how to use it, so I  
6 didn't read the instructions when I purchased this box,  
7 because it was no different than any others.
- 8 Q Okay. So at some point before, just so I understand  
9 your testimony, you didn't necessarily read that sheet, but  
10 you had read a version of that sheet previously?
- 11 A Right.
- 12 Q Okay. And was it the sheet that you had read  
13 previously, were they different than that or does the same  
14 sheet come in every single box?
- 15 A Basically, the same sheet comes in every box tells you  
16 the different steps, what to do, and how to fix it.
- 17 Q Okay. How often did you use this product?
- 18 A About every six to eight weeks.
- 19 Q Every six to eight weeks for seven years?
- 20 A Yes.
- 21 Q Okay. And you had -- when do you think was the last  
22 time you had read the instructions and warnings was before  
23 this time, this particular incident?
- 24 A It may have been maybe three years ago or so.
- 25 Q Okay. But you were familiar with the instructions?

1 A Like riding a bicycle.

2 Q You're familiar with the instructions and you're  
3 familiar with the warnings on that sheet?

4 A Yes, I am. But if it had told me that even if I  
5 followed the instructions, my hair was gonna come out, I  
6 would have never chose this.

7 Q Okay.

8 THE COURT: Just a second, counsel. As to this  
9 document? Are you moving its introduction?

10 MR. CAMPBELL: Yes, sir, I'm moving what's been marked  
11 ---

12 THE COURT: Any objection as to Plaintiff's Nine?

13 MR. THOMPSON: No, Your Honor.

14 THE COURT: Is it pre-marked?

15 MR. CAMPBELL: It is pre-marked, yes, sir.

16 THE COURT: Ladies and gentlemen of the jury,  
17 Plaintiff's Exhibit Number Nine will be admitted into  
18 evidence in the trial of this case, without objection.  
19 Plaintiff's Nine is in evidence.

20 (Whereupon, Plaintiff's Exhibit Number Nine, original  
21 instruction sheet, is received into evidence.)

22 THE COURT: You may approach and you may publish.

23 Q Okay. Ms. Williams, what I'm trying to figure out is  
24 on the evening that you applied this product to your hair,  
25 you are now alleging that something went wrong, I want to

1 know, I want to go through these steps and I want you to  
2 tell me what it was that you did that was inconsistent with  
3 these steps, okay?

4 A Okay.

5 Q First of all, it says "Do not mix until ready to use."  
6 Did you -- when did you mix it?

7 A Right before applying it.

8 Q Okay. It says, and I'm just going to read it. Did you  
9 have what is called, per the instructions, did you have what  
10 they call virgin hair or were you doing a retouch?

11 A A retouch.

12 Q Okay. And a retouch indicates that you should, I  
13 believe at some point it indicates that you should mix half  
14 of the formula with half of the other formula, mix up half  
15 of a batch, correct?

16 A Yes, that's what it says, but I only use it one time,  
17 so I mix everything at the same time. Whatever is not used,  
18 that goes in the trash. So I mix the whole contents.

19 Q Okay. So you didn't use all of what you mixed, but you  
20 mix the entire thing together?

21 A Correct.

22 Q Even though for a retouch, you only have to use half of  
23 the product; is that correct?

24 A Yes.

25 Q All right. So moving on next to the strand test, and

1 we know that it says, "Always do a strand test before  
2 relaxing." You did not do a strand test; is that correct?

3 A I did not do a strand test, because I already knew how  
4 long I could leave it in my hair, because I use this all the  
5 time. I just used the same type of perm, about six to seven  
6 weeks ago before I used this one. So I did not do a strand  
7 test because I knew what time to leave it in, how long to  
8 leave it in.

9 Q All right. I'm going to read you the instructions that  
10 say, "Snip a small section of hair from the back of your  
11 head. Glue, tape or tie one of the end of the hair strands  
12 together. Apply relaxer evenly. After eight minutes,  
13 smooth and check for straightness. If not straight enough,  
14 continue checking every one to two minutes until desired  
15 straightness is achieved." And then in very bold and  
16 capitalized letters, that you are to note the time; is that  
17 correct?

18 A Yes.

19 Q All right. What's your understanding of that, that  
20 paragraph?

21 A It would tell me how long I can leave that perm in my  
22 hair without damaging it.

23 Q Okay. On this particular evening, do you recall how  
24 long you left the product in?

25 A About eight to ten minutes.

1 Q Okay. So coming down now to the timing guide, which is  
2 the next section, it says "For color-treated hair" -- first  
3 of all, was your hair color treated?

4 A No.

5 Q "For color-treated hair, that eight to twelve minutes  
6 was the maximum time, and that you should only use regular  
7 strength." What strength of optimum care were you using?

8 A Regular.

9 Q Okay. You were using regular strength, not the super  
10 strength?

11 A Yes.

12 Q All right. It says for "fine hair, ten to fifteen  
13 minutes that you're supposed to use regular strength." Now,  
14 what you testified to is that you did eight to twelve  
15 minutes; is that right?

16 A Eight to ten.

17 Q Eight to ten, okay. Where does your hair fall in this  
18 timing guide? Is your hair fine? Is it normal or course?  
19 Is it course resistant? Is it color treated? Which one was  
20 yours?

21 A Normal, course.

22 Q Okay. Normal to course. And they have a suggested  
23 time or -- excuse me, a maximum time of fifteen to twenty  
24 minutes; is that correct?

25 A That's correct.

1 Q And you were in for -- your testimony was that you had  
2 it only in for eight to ten?

3 A Yes.

4 Q The next step, "Preparing" tell me what you did, first.  
5 I mean, to prepare your hair.

6 A First, I took the contents out of the box with that  
7 same paper right there because the gloves and the stick to  
8 mix it with is on this paperwork. And I took that out,  
9 placed it on the counter, mixed it, mixed the contents  
10 together that are supposed to go together. It has A, B  
11 selection, and I did that. Then, after mixing it, it set  
12 for a few minutes while I put the first treatment in which  
13 is the petroleum jelly around the edges and the four spots  
14 where you part it off at.

15 Q Okay. And I'm going to skip through this real quickly.  
16 You're going to comb your hair with a wide tooth comb and  
17 remove any tangles. Do not pull or stretch the scalp. Now  
18 apply protective base to the skin around the entire  
19 hairline.

20 A Right.

21 Q All right. That's the petroleum jelly base that you  
22 were talking about that you put on?

23 A Yes.

24 Q All right. Did you comb your hair and remove any  
25 tangles?

1 A I had no tangles.

2 Q Okay. Step two, part your hair into four sections from  
3 the front, center, front and the back, and near the crown.

4 A I did.

5 Q Okay. Step three, "Apply a quarter size or as needed  
6 of strengthening pre-treatment into hand, rub together, only  
7 distribute through strands of previously relaxed hair. This  
8 conditioning blend provides internal moisturization and  
9 reduces the possibility of damage to previously relaxed  
10 hair. Do not skip this step for optimum results." Did you  
11 skip Step three?

12 A No.

13 Q Okay. Step four, "Apply: Carefully review timing  
14 guide instructions at the top. Do not exceed the maximum  
15 time allowed for your hair type. Start timing. Put on  
16 protective gloves. Start applying cream relaxer mixtures  
17 items A and B." Did you do this?

18 A I did.

19 Q Okay. Make a small, parting beginning at the nape of  
20 neck and apply relaxer mixture approximately one-eighth  
21 inches away from the scalp to new growth only." Did you do  
22 that?

23 A Yes.

24 Q Be careful not to overlap onto previously relaxed hair.  
25 Apply generously, quickly and evenly. Work upward up toward

Direct Examination of Emily Williams by Mr. Campbell

1 the crown then apply to front section of hairline. Apply to  
2 hairline last." Did you do all of that?

3 A I did.

4 Q You didn't do it backwards or anything?

5 A I did not.

6 Q Okay. "When the application is complete, begin  
7 smoothing the hair in the same order as the relaxer was  
8 applied. Smooth it with short, firm strokes using the back  
9 of the comb or sides of fingers. Don't pull or stretch  
10 hair. Be careful not to overlap onto previously relaxed  
11 hair."

12 A Correct.

13 Q You did all of those things?

14 A I did all of that.

15 Q Okay. Number six, "At or near the time limit, check  
16 for straightness on a small section of the front area. If  
17 the hair is straight and does not return to its usual curl  
18 pattern when pushed in direction of the scalp, it is fully  
19 relaxed."

20 A It was nice and straight.

21 Q You followed step six?

22 A I did.

23 Q Okay. Step seven, "When time is up, rinse out all of  
24 relaxer with a steady stream of lukewarm water away from the  
25 face and the eyes. Check the nape, hairline and scalp to

1 make sure no traces of relaxer remains. Towel blot." Did  
2 you complete step seven?

3 A I washed it out first with lukewarm water. Then, I  
4 shampooed with the neutralizer.

5 Q All right. Did you finish completing step seven?

6 A Washing it, no, not right at that time, I did not.

7 Q Why not?

8 A Because I felt the water coming up on my feet in the  
9 shower and I don't know whether I was finished lathering it  
10 up or what, but there was no perm in there and I was doing  
11 the shampoo, and when all the water was coming around, I got  
12 the towel and wiped my eyes, I was like, why the water not  
13 going out? And I looked on the shower floor and all of my  
14 hair was stopping the water up. I was like, "Oh, my God."  
15 I stopped right there. I didn't know what was causing it.  
16 I didn't know whether it was the perm, the shampoo, or what,  
17 but I stopped, jumped out of the shower, put on my robe,  
18 went into the den where my sons and husband were, and said,  
19 "Oh, my God, all of my hair is coming out." I was actually  
20 in tears.

21 Q So you got as far as step seven and didn't get any  
22 further; is that correct?

23 A That's right.

24 MR. CAMPBELL: Judge, may I approach the witness?

25 THE COURT: You may.

1 Q Ms. Williams, I would like for you to take a look at  
2 what has been previously marked for identification,  
3 plaintiff's exhibits two, three, four, five, seven and  
4 eight. Can you tell me what those are?

5 A Yes. These are pictures of my hair after the permanent  
6 came out. These pictures were actually taken the next day.  
7 And I think I had just washed it again, rinsed it out with  
8 warm water, and it was still coming out; every time I combed  
9 it, it was still coming out. But the picture was taken on  
10 Sunday.

11 MR. CAMPBELL: Judge, I'm going to -- may I approach  
12 one more time.

13 THE COURT: Yes, you may.

14 Q Then, let me show you what's been previously marked for  
15 identification as Plaintiff's Exhibit Six. Can you tell me  
16 what that is a picture of?

17 A This is the hair after going to the hair dresser, which  
18 was Ms. Richardson at that time. She treated my hair and  
19 she finished cutting the strands out that were hanging.

20 Q All right. Do you know how long after the treatment  
21 that you had, Plaintiff's Exhibit Six, or what's been marked  
22 as Plaintiff's Exhibit Six, how long after that it was?

23 A It might have been about a week after, because I still  
24 had to work and then come home, and then you try to go into  
25 the hair dresser when there ain't too much people there.

1 Q So we have pictures of the day after and then we have  
2 pictures of after you went to the hair dresser to try and  
3 get some help; is that correct?

4 A Yes.

5 MR. CAMPBELL: Judge, I'd like to move Plaintiff's  
6 Exhibits Two through Eight into evidence.

7 THE COURT: Counsel, as to Plaintiff's Two through  
8 Eight, do you want to see them?

9 MR. THOMPSON: I've seen them, Your Honor, and no  
10 objection.

11 THE COURT: Ladies and gentlemen of the jury,  
12 Plaintiff's Exhibits Two, Three, Four, Five, Six, Seven and  
13 Eight will be admitted into evidence in the trial of this  
14 case without objection.

15 (Whereupon, Plaintiff's Exhibit Number Two, photo, is  
16 received into evidence.)

17 (Whereupon, Plaintiff's Exhibit Number Three, photo, is  
18 received into evidence.)

19 (Whereupon, Plaintiff's Exhibit Number Four, photo, is  
20 received into evidence.)

21 (Whereupon, Plaintiff's Exhibit Number Five, photo, is  
22 received into evidence.)

23 (Whereupon, Plaintiff's Exhibit Number Six, photo, is  
24 received into evidence.)

25 (Whereupon, Plaintiff's Exhibit Number Seven, photo, is

1 received into evidence.)

2 (Whereupon, Plaintiff's Exhibit Number Eight, photo, is  
3 received into evidence.)

4 THE COURT: Two through Eight are now in evidence. You  
5 may publish to the jury, counsel.

6 MR. CAMPBELL: Judge, may I approach one more time to  
7 give Ms. Williams ---

8 THE COURT: You may.

9 Q Ms. Williams, what are we looking at here?

10 THE COURT: Identify the exhibit number for the record.

11 Q This is Plaintiff's Exhibit Two; and Ms. Williams, more  
12 specifically, can you tell me what this is?

13 A That's the back of my hair, my head.

14 Q Okay. And this is on the day after?

15 A After the perm, yes.

16 Q Okay. With reference now to Plaintiff's Exhibit Eight,  
17 can you tell me what that is?

18 A That's the front of my hair.

19 Q And on what day?

20 A The day after, Sunday.

21 Q Plaintiff's Exhibit Seven?

22 A That's also the day after.

23 Q Okay. It's a shot of the front of your hair again,  
24 correct?

25 A Yes.

- 1 Q Plaintiff's Exhibit Five?
- 2 A The day after.
- 3 Q Okay. And that would be the left side?
- 4 A The right.
- 5 Q The right side. Okay. Plaintiff's Exhibit Four?
- 6 A That's the back of my head.
- 7 Q Plaintiff's Exhibit Three?
- 8 A That's sort of like the top part, up in the middle,
- 9 like.
- 10 Q Finally, Plaintiff's Exhibit Six?
- 11 A This is after going to the hair dresser and she cut the
- 12 hair down and she did put another treatment in for me.
- 13 Q Okay. So you actually didn't -- it didn't all fall
- 14 out; is that correct?
- 15 A No. It had strands.
- 16 Q You had hair loss the next day and spots that were
- 17 completely gone, correct?
- 18 A Right.
- 19 Q But you actually in this picture, Plaintiff's Exhibit
- 20 Six, this is what it looked like after she fixed it; is that
- 21 correct?
- 22 A That's correct.
- 23 Q And she actually did cut some out of your hair?
- 24 A She cut the strands out, yes.
- 25 Q Because there were some strands of hair left?

1 Q So we have pictures of the day after and then we have  
2 pictures of after you went to the hair dresser to try and  
3 get some help; is that correct?

4 A Yes.

5 MR. CAMPBELL: Judge, I'd like to move Plaintiff's  
6 Exhibits Two through Eight into evidence.

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8 Eight, do you want to see them?

9 MR. THOMPSON: I've seen them, Your Honor, and no  
10 objection.

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14 case without objection.

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22 received into evidence.)

23 (Whereupon, Plaintiff's Exhibit Number Six, photo, is  
24 received into evidence.)

25 (Whereupon, Plaintiff's Exhibit Number Seven, photo, is

1 received into evidence.)

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3 received into evidence.)

4 THE COURT: Two through Eight are now in evidence. You  
5 may publish to the jury, counsel.

6 MR. CAMPBELL: Judge, may I approach one more time to  
7 give Ms. Williams ---

8 THE COURT: You may.

9 Q Ms. Williams, what are we looking at here?

10 THE COURT: Identify the exhibit number for the record.

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15 A After the perm, yes.

16 Q Okay. With reference now to Plaintiff's Exhibit Eight,  
17 can you tell me what that is?

18 A That's the front of my hair.

19 Q And on what day?

20 A The day after, Sunday.

21 Q Plaintiff's Exhibit Seven?

22 A That's also the day after.

23 Q Okay. It's a shot of the front of your hair again,  
24 correct?

25 A Yes.

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- 1 Q Plaintiff's Exhibit Five?
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- 6 A That's the back of my head.
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- 9 like.
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- 12 hair down and she did put another treatment in for me.
- 13 Q Okay. So you actually didn't -- it didn't all fall
- 14 out; is that correct?
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- 16 Q You had hair loss the next day and spots that were
- 17 completely gone, correct?
- 18 A Right.
- 19 Q But you actually in this picture, Plaintiff's Exhibit
- 20 Six, this is what it looked like after she fixed it; is that
- 21 correct?
- 22 A That's correct.
- 23 Q And she actually did cut some out of your hair?
- 24 A She cut the strands out, yes.
- 25 Q Because there were some strands of hair left?

1 A Yes.

2 Q And this is, again, a week or two after the incident?

3 A Yes.

4 Q All right. So after this process is over with and you  
5 have this hair loss, did anything else happen?

6 A After I had the hair loss, I tried to contact the  
7 manufacturer of the product Saturday night. We retrieved it  
8 back out of the trash can and me and my son was trying to  
9 find a number or something. We were not able to reach  
10 anybody. We tried again on Sunday and we weren't able to  
11 reach anybody. So finally, Monday, I reached somebody and  
12 they said that they were actually the manufacturer. So they  
13 gave me a different number for me to contact, in which I did  
14 contact somebody at L'Oreal and I told her what was going on  
15 and she asked me all the same questions that you asked me,  
16 "Did I follow directions? Did I do this right?" I said,  
17 "Yes, I did." She said, "Well, I'm going to send you some  
18 products," which she did. I said, "Ma'am, you don't  
19 understand; I don't have any hair to try to save now. It's  
20 steady coming out. I don't need a treatment right now. I  
21 need to know what else can be done. What can I do? All my  
22 hair is coming out." She said, "Well, I'm going to send you  
23 this, and you go ahead and try to use it." I said, "Okay."  
24 And she said, "I'm going to give you another number to the  
25 sales guy from that area," and I contacted him.

1 Q Okay. So what she sent you was shampoo?

2 A Shampoo, conditioner, whatever product that they have,  
3 yes.

4 Q And you explained to her that that wasn't going to be  
5 effective at this point?

6 A Exactly.

7 Q Okay. Did anything else happen after that, not with  
8 relation to who you spoke to or what have you, but did you  
9 have any further damages afterwards?

10 A I went to the doctor. That Monday, I was at work, and  
11 it seemed like it was just throbbing, my head was throbbing.  
12 So I left work and I went to Doctor's Care, and she treated  
13 me and gave me some medication. She wanted me to follow up  
14 with a dermatologist, which I did. He gave me some cream to  
15 put on the scalp for the burns.

16 MR. CAMPBELL: Judge, may I approach one more time?

17 THE COURT: You may.

18 Q I'm going to show you what's been previously marked for  
19 identification as Plaintiff's Exhibits Ten, Eleven, Twelve  
20 and Thirteen. Are those the bills that you incurred for  
21 services of the doctors that you saw?

22 A Yes.

23 Q Okay. Tell me what Plaintiff's Exhibit Ten is.

24 A Ten is a receipt from the dermatologist's office.

25 Q Okay. And it indicates what your bill was at the

1 dermatologist's office, right?

2 A Yes.

3 Q What is Number Eleven?

4 A Number Eleven is where I picked up the prescription  
5 from Wal-mart.

6 Q Okay. Tell me about Number Twelve.

7 A Twelve is another prescription from Wal-mart.

8 Q Okay. And finally, Thirteen.

9 A Thirteen is another prescription from Wal-mart.

10 Q Okay. What is not in there is the bill for your  
11 Doctor's Care visit.

12 A Right.

13 Q Do you recall what you paid at Doctor's Care?

14 A I'm sorry; I really don't.

15 Q Okay. No problem.

16 MR. CAMPBELL: Judge, I'd like to move Plaintiff's  
17 Exhibits Ten through Thirteen into evidence.

18 THE COURT: As to Plaintiff's Ten through Thirteen?

19 MR. THOMPSON: No objection, Your Honor.

20 THE COURT: Ladies and gentlemen of the jury,  
21 Plaintiff's Exhibits Ten, Eleven, Twelve and Thirteen will  
22 be admitted into evidence in the trial of this case.

23 (Plaintiff's Exhibit Number Ten, dermatologist's office  
24 bill, is received into evidence in the trial of this case.)

25 (Plaintiff's Exhibit Number Eleven, Wal-Mart Rx

1 receipt, is received into evidence in the trial of this  
2 case.)

3 (Plaintiff's Exhibit Number Twelve, Wal-Mart Rx  
4 receipt, is received into evidence in the trial of this  
5 case.)

6 (Plaintiff's Exhibit Number Thirteen, Wal-Mart Rx  
7 receipt, is received into evidence in the trial of this  
8 case.)

9 THE COURT: Counsel, you may publish.

10 MR. CAMPBELL: Judge, if I may approach one more time.  
11 That's my last set of exhibits.

12 Q Okay. Ms. Williams, I need you to tell the jury how  
13 this has affected you.

14 A My hair is my glory. You stand in the mirror forever  
15 doing your hair, and when I could just go and put my hair in  
16 a ponytail, I like that. When I could fix my hair and it  
17 looked good and put on my makeup, it looks good. But with  
18 me having no hair -- I had spots in my hair like this. And  
19 when I had to go to the beauty salon and you're trying to  
20 sneak in so nobody else won't see your hair, and so when  
21 this was going on, Sunday, I knew I had to go to church, and  
22 I didn't have any wig. Never wore a wig before. I had to  
23 take a scarf and tie it on my head just to go to church.  
24 When I went to work, I had to have a scarf until I could get  
25 to the store and buy a wig. So I've been basically, more

1 likely in a way, sure, my hair is coming back now. Am I  
2 using a perm? No, I'm not using any perm. My hair is  
3 coming back. It's thinned out in different spots, but it is  
4 coming back. But that was a big loss for me. My hair don't  
5 grow overnight. It's been seven years and I still can't get  
6 a ponytail.

7 Q What was your hair like before this particular instance  
8 where you used this product? Just describe it very briefly.

9 A My hair was beautiful. I could wear it down. I could  
10 wear it up.

11 Q Lengthwise; how long was it?

12 A It was shoulder length; a little bit down the back just  
13 a little.

14 Q Okay. Ms. Williams, could you, for the jury, just show  
15 them what you're talking about with the hair not growing  
16 back like it should. Could you take your wig off for us and  
17 show them what it is that you're talking about. This is now  
18 seven years, six, almost seven years -- in April it will be  
19 seven years.

20 THE COURT: Counsel, ask a question. Don't make a  
21 statement.

22 MR. CAMPBELL: Yes, sir.

23 Q Could you take it off and let the jury see what you're  
24 talking about?

25 A (Witness complies.) This is my hair now. You can see

1 the spots under, on the edges, in the back like, but I still  
2 can't get a ponytail.

3 Q And I apologize for that, but I think it's important  
4 for them to understand. You can put your wig back on now.

5 A (Witness complies.)

6 Q Ms. Williams, you've alleged that this product -- that  
7 this warning that they have provided is ineffective. And  
8 I'm going to read it to you very quickly. "Warning: This  
9 product contains alkaline." Ms. Williams, do you know what  
10 alkaline is?

11 A I have no idea.

12 Q Okay. "You must follow all directions carefully to  
13 avoid skin and scalp burns, hair loss, and eye injury." Did  
14 you understand that, Ms. Williams?

15 A I did.

16 Q Do you have a proposal for what this thing should have  
17 told you? I mean, obviously, it tells you certain things  
18 that if you don't use it correctly, then it can cause  
19 injury. It can cause skin and scalp burns. It can cause  
20 hair loss, or what have you, if you don't use it correctly.  
21 And your understanding, what should it have said?

22 MR. THOMPSON: Objection, Your Honor.

23 THE COURT: Counsel approach.

24 (Whereupon, a brief conference is held at the bench out  
25 of the hearing of the jury.)

1 THE COURT: I understand that the objection is  
2 withdrawn. You may proceed, counsel.

3 Q Ms. Williams, I'll ask you that question again. You  
4 see what the warning says, or the jury is going to have an  
5 opportunity to read it in its completion. What is it that  
6 you propose that that warning should say?

7 A It should have said, even if you know how to use this  
8 product, you could have hair damage.

9 Q It is your understanding that you followed the gist of  
10 the directions in all of the times that you used it; is that  
11 right?

12 A I have.

13 Q Okay. And with the exception of the strand test, you  
14 followed all of the directions this particular time?

15 A Yes. I did not do a strand test.

16 Q Why didn't you do a strand test?

17 A Because I already knew how long I could leave it in my  
18 hair and I do my hair six to eight weeks apart every other  
19 month. Why would I do a strand test? I was not a virgin to  
20 it. I've been using this for a long time and never had a  
21 problem with it. My hair was beautiful, growing, long, no  
22 problems. I didn't feel I needed to do a strand test.

23 Q Had you colored your hair in the month before you did  
24 this particular application?

25 A No.

Cross-Examination of Emily Williams by Mr. Thompson

1 Q Had you cut it recently?

2 A No.

3 Q Two weeks before or anything like that?

4 A No.

5 Q Okay. Did you have any foreign chemical other than  
6 what you normally use, shampoos or otherwise, in your hair  
7 when you used this product?

8 A No, I did not.

9 Q Okay.

10 MR. CAMPBELL: I don't have any further questions.

11 THE COURT: Please return the exhibits to the court  
12 reporter. You also have one in the box.

13 Cross-examination.

14 MR. THOMPSON: May it please the Court, Your Honor?

15 CROSS-EXAMINATION

16 BY MR. THOMPSON:

17 Q Good morning, Ms. Williams.

18 A Good morning.

19 Q This is a product that you had used for six or seven  
20 years before 2007?

21 A Yes.

22 Q It's a product that you used every six to seven weeks?

23 A Six to eight, seven, yeah.

24 Q Is that right?

25 A Yes.

1 Q Okay. And this is a product that every time you  
2 received it had a set of instructions?

3 A It did.

4 Q And in those instructions, it included a preliminary  
5 step section, correct?

6 A It did.

7 Q And it included the idea that with every application  
8 you are always to conduct a strand test; you've read that  
9 before?

10 A And I've never done a strand test, except when I first  
11 started using it.

12 Q Okay. But you've read that instruction before?

13 A Only -- yes, I have. I have.

14 Q Okay. And you understand that the instructions include  
15 a warning about following the directions?

16 A Correct.

17 Q And that if you don't follow the directions in the  
18 instructions, that things could happen to you.

19 A Right.

20 Q Including hair loss, correct?

21 A Yes.

22 Q Scalp irritation, correct?

23 A Correct.

24 Q And those are the things that happened to you in this  
25 case when you did not follow the directions; isn't that

1 correct?

2 A Such is that, but if I had done a strand test, it  
3 wouldn't have give me the -- what it did to my hair at that  
4 time.

5 Q But we won't know that because you didn't conduct a  
6 strand test, did you?

7 A I did not; but it came from the scalp, not the end of  
8 the hair that I would have taken out.

9 Q Ms. Williams, this is -- because it's every six to  
10 seven weeks, it's a touch-up, if you will?

11 A Correct.

12 Q And you're supposed to relax only the new growth,  
13 correct?

14 A That's right.

15 Q Because the other growth, or the other part of your  
16 hair is ---

17 A --- is already relaxed ---

18 Q --- already been relaxed; you don't want to get relaxer  
19 on that, do you?

20 A That's right.

21 Q Because it becomes over-processed?

22 A Yes.

23 Q All right. And you knew that?

24 A I knew that.

25 Q You knew that was a potential problem if you put too

1 much of the relaxer in and it got into the part that had  
2 already been relaxed, correct?

3 A That's correct.

4 Q All right. And so when you're putting this product on  
5 as a retouch, you're only getting the very end growth ---

6 A The new growth, that's right.

7 Q Right near the scalp, correct?

8 A Correct.

9 Q All right. And in doing that, you have to pay  
10 particularly close attention to how you're putting it on,  
11 correct?

12 A That's right.

13 Q Now, as I understand it, in April 2007, you performed  
14 this application, you were sitting in your den?

15 A I was.

16 Q In front of the television?

17 A No, I had a mirror; but the television was in the den.

18 Q Television was on, you were sitting on a sofa or a  
19 chair, in front of the television, correct?

20 A Yes.

21 Q And then you had just a hand mirror?

22 A I had a tall mirror.

23 Q Okay. Was it a stationary mirror?

24 A Stationary, yes.

25 Q All right. In other words, you couldn't pick it up and

1 look at the back of your head and see what you were doing in  
2 the back of your head?

3 A I would never -- why would I put the perm on and stand  
4 there and look at the back of my head? I already know how  
5 to put the perm in.

6 Q Okay. But you're putting the perm in on the new growth  
7 only, right?

8 A The new growth only, yes.

9 Q And you're not using a mirror to see where you're  
10 putting the relaxer in?

11 A Not in the back of my hair. I use it for the front.

12 Q Okay. So in addition to, you were sitting there in the  
13 den with the television on; you're husband was there?

14 A Yes.

15 Q And one or two of your sons?

16 A Yes.

17 Q Okay. And this wasn't a situation where you were in  
18 the bathroom paying real close attention with the mirror and  
19 perhaps a mirror in the back so you could see what you were  
20 doing?

21 A Even if I was in my bathroom, I wouldn't have a mirror  
22 in the back. I only had one mirror in the bathroom and  
23 that's where I went to finish straightening it out before  
24 getting in the shower.

25 Q All right. Now, with regard to this product, you were

1 asked today about how you would change the wording or how  
2 you would -- what you would include. Do you remember when I  
3 took your deposition? I asked you this very same question  
4 or very similar questions about what you would do?

5 A No, sir, I don't recall. Can you read it for me?

6 Q All right. I'm going to first ask you this question.  
7 Do you know how these instructions are -- why these  
8 instructions are inadequate?

9 A Why these instructions are inadequate?

10 Q Yes, ma'am.

11 A How you mean inadequate? I'm sorry.

12 Q I was just trying to get the idea about you mentioned  
13 earlier that there should be something that should be  
14 additional; why are they, in their current format,  
15 inadequate?

16 A Because it didn't say if you follow the instructions,  
17 your hair still could come out. You still could get burned.  
18 You still could lose all of it. It didn't say that. It  
19 said if you don't use it correctly, you could lose your  
20 hair.

21 MR. THOMPSON: Your Honor, may I approach the witness  
22 with her deposition?

23 THE COURT: You may. Ladies and gentlemen of the jury,  
24 you've heard the term during this trial, the word  
25 "deposition." The testimony may be presented to you by way

1 of deposition. A deposition can be a document or a video  
2 containing sworn testimony given by a witness outside of the  
3 court in the presence of the lawyers for each of the parties  
4 whom they ask questions of the witness in the deposition.  
5 This deposition testimony is entitled to the same  
6 consideration and is to be judged by you as to credibility  
7 or believability and is to be weighed by you in the same way  
8 as if the witness were present and gave a testimony sitting  
9 on the witness stand. It is for you, the jury, to determine  
10 the effect, the value, the weight, and the truth of any  
11 testimony that may be offered during the trial of this case  
12 by way of deposition.

13 You may proceed, counsel. You're an officer of the  
14 Court. Open it. Give her the copy. If you have a copy for  
15 the Court, hand it up. Give the witness page and line  
16 number.

17 MR. THOMPSON: May I approach the witness?

18 THE COURT: You may.

19 Q Ms. Williams, first of all, do you remember giving your  
20 deposition?

21 A I remember doing the deposition, yes.

22 Q I was asking you questions and you were under oath  
23 about this case, correct?

24 A Correct.

25 Q And the date of that deposition was April 11, 2011; is

- 1 that correct?
- 2 A That's correct.
- 3 Q All right. If you would, please, turn to page 45.
- 4 A Okay.
- 5 Q I'm sorry; page 40.
- 6 A Okay.
- 7 Q I'm going to start at line 19, the very bottom line.
- 8 A I'm there.
- 9 Q My question, "In your lawsuit, it's alleged that the  
10 product did not have adequate instructions as to the  
11 application of the product. In your opinion, how are the  
12 instructions of the product not adequate?" And your answer?
- 13 A "I don't know."
- 14 Q All right. Going to page 41.
- 15 A I'm there.
- 16 Q And line 6, my question is, "How do you know if the  
17 instructions in the product were adequate or not when you  
18 haven't read them for the last several years before the  
19 product caused your problem. You wouldn't know, would you?"  
20 And your answer?
- 21 A "I wouldn't."
- 22 Q All right. Then page 87.
- 23 A I'm there.
- 24 Q Line 8, my question, "And it says the warnings were  
25 inadequate," I was referring to your complaint. "You know,

1 what should have the warning said?" And your answer?

2 A "I don't know what it should have said. Just as soon  
3 after more than using this over the years, what changed in  
4 the product, I don't know."

5 Q And my follow-up question, "I mean, as we sit here  
6 today," and that was in April of 2011, "can you think of  
7 anything that you would add to the warnings or the  
8 instructions?"

9 A "No," at that time, "No."

10 Q It was no, no?

11 A It was no, no.

12 Q Thank you.

13 MR. THOMPSON: May I approach, Your Honor?

14 THE COURT: You may. Give the original to the court  
15 reporter and I will give your copy back. Proceed.

16 Q All right. So in April of 2011, you didn't have any  
17 idea about how to change these warnings or instructions, did  
18 you?

19 A At that time, no.

20 Q And that was four years after you had used the product?

21 A Yes.

22 Q You didn't have an idea even then, did you?

23 A I didn't.

24 Q Okay.

25 MR. THOMPSON: Your Honor, I don't have any further

1 questions.

2 THE COURT: Very well. Redirect?

3 MR. CAMPBELL: None, Your Honor.

4 THE COURT: You may step down. Watch your step on  
5 those stairs for me.

6 MS. WILLIAMS: Thank you.

7 THE COURT: Call your next witness.

8 MR. CAMPBELL: Judge, Ms. Williams is our only witness.

9 THE COURT: Very well. The plaintiff rests. Are there  
10 any matters of law that I need to take up at this time?

11 MR. THOMPSON: Yes, Your Honor.

12 THE COURT: Mr. Foreman, ladies and gentlemen of the  
13 jury, I have to take up a quick matter of law. I'm going to  
14 ask you to step to your jury room. Do not discuss this  
15 case. I'll be back with you just as quickly as I can.  
16 Please retire to your jury room.

17 (Whereupon, the jury exits the courtroom and the  
18 following is held on the record.)

19 THE COURT: Yes, sir.

20 MR. THOMPSON: Your Honor, at this time, the defendant  
21 moves for a directed verdict on the grounds are that in this  
22 case, obviously, the plaintiff, with the burden of proof,  
23 hasn't demonstrated an inadequate warning provided in this  
24 product. The warnings from the box, the inside of the  
25 instructions, to the first contents which say to read the

1 THE COURT: Come around and please be sworn by the  
2 Clerk of Court.

3 (Whereupon, the witness, Ms. Tammy Stuckey, is duly  
4 sworn.)

5 MADAME CLERK: Please have a seat on the witness stand  
6 and state your full name for the record.

7 THE COURT: Watch your step. Adjust that chair and  
8 adjust that microphone. State your full name and spell your  
9 last name for my court reporter.

10 MS. STUCKEY: My full name is Tammy LaShaye Stewart  
11 Stuckey, S-T-U-C-K-E-Y.

12 THE COURT: Your witness, counsel.

13 MR. THOMPSON: Thank you, Your Honor. May it please  
14 the Court.

15 DIRECT EXAMINATION

16 BY MR. THOMPSON:

17 Q Ms. Stuckey, can you tell the jury where you're from?

18 A I live in Monique, Illinois.

19 Q And how long have you lived there?

20 A I've lived in Chicago for 40 years.

21 Q Okay. If you can tell the jury a little bit about your  
22 educational background.

23 A I graduated from Xavier University in Louisiana in 1990  
24 with a Bachelors Degree in Chemistry. Then, I graduated  
25 from Governor's State University in University Park,

1 Illinois, with a Masters in Analytical Chemistry.

2 Q Where are you currently employed?

3 A L'Oreal, USA.

4 Q Okay. And how long have you been with L'Oreal?

5 A Totally, twenty-two years.

6 Q All right. And what is your current position with  
7 L'Oreal?

8 A Research and Innovation Manager.

9 Q And can you tell the jury what you do as a Research and  
10 Development or Innovation Manager?

11 A As a Research Innovation Manager, I daily formulate new  
12 products for the market. We also troubleshoot existing  
13 products. We also come up with new innovative ideas for,  
14 basically, in my division for people with curly hair or  
15 African descent.

16 Q Now, how long have you been working in research and  
17 development or formulation of hair care products?

18 A For a total of 13 years.

19 Q And currently, you work in a lab or an office just  
20 outside of Chicago?

21 A Yes, I work in a laboratory.

22 Q And how many others work with you?

23 A There are a total of eight chemists.

24 Q All right. Can you describe to the jury what a daily  
25 and weekly routine is for you in your work?

1 A A daily routine would be actually formulating new  
2 products and they can range from anything to relaxers,  
3 shampoos, conditioners, spritz, styling lotion gels, but it  
4 would actually be taking the raw materials to make a recipe  
5 for hair care products. Taking those products, then if we  
6 have something that's viable, we would actually submit it to  
7 micro for microbiology testing, as far as toxicology so that  
8 they could look at each individual raw material and make  
9 sure that the levels they use and the concentration that  
10 they use are adequate. Then, from there, we would do  
11 anything from swatch testing to mannequin testing and then  
12 we also have a part evaluation center that we can do on-hair  
13 evaluations as well.

14 Q Okay. And so you develop an original product or a new  
15 formulation?

16 A Correct.

17 Q And then where does it go from there?

18 A It goes to the departments, the safety department, it  
19 goes to micro, toxicology, before it's actually evaluated on  
20 any human subjects.

21 Q Before it even hits a human head, is it applied or used  
22 on mannequins or anything like that?

23 A Yes, it's done on swatches, natural hair swatches and  
24 then it would also be used on natural hair mannequins.

25 Q And in your work with L'Oreal, have you worked on

1 formulations, instructions, that sort of thing, for relaxer  
2 products?

3 A Yes.

4 Q And how long have you done that?

5 A I've done that for the totality of my work with  
6 L'Oreal.

7 Q All right. And are you familiar with the product that  
8 we are talking about today?

9 A Yes, I am.

10 MR. THOMPSON: May I approach, Your Honor?

11 THE COURT: You may.

12 Q I'm going to hand you two exhibits. Can you describe  
13 for the jury what the box is, what product that is, that  
14 L'Oreal ---

15 THE COURT: Refer to the exhibit for the record for me.

16 MR. THOMPSON: I'm sorry. That's Plaintiff's Exhibit  
17 One, Your Honor.

18 Q Plaintiff's Exhibit One, can you describe for the jury  
19 what this product is?

20 A This product is a relaxer care kit. In the kit, it  
21 actually has a relaxer, a liquid activator, that will  
22 actually mix together to do the actual relaxer process. It  
23 also contains a pre-treatment that is used on the ends of  
24 the hair or the hair that's already been previously relaxed  
25 if someone had previously relaxed their hair. It contains a

1 shampoo that actually helps to stop the process so that the  
2 hair goes back to the normal pH of the hair. And then it  
3 has a reconstructive conditioner that actually helps to  
4 condition the hair after the processing and it has a leave-  
5 in conditioner for styling aid.

6 Q And what is the purpose of a relaxer?

7 A The purpose of a relaxer kit is for people that have  
8 naturally curly hair to actually keep their hair in the  
9 straightened pattern. It actually changes the actual  
10 internal bonds of your hair so your hair won't go back to  
11 the natural curly configuration; it will stay straight.

12 Q That's some kind of chemical analysis?

13 A Yes.

14 Q Okay. Now, in the box, are their components?

15 A Yes, there are.

16 Q I want to show you a couple of components. They've  
17 been previously marked as Defendant's Exhibits Three, five  
18 and six.

19 MR. THOMPSON: May I approach, Your Honor?

20 THE COURT: You may.

21 Q Are these components that would be involved as part of  
22 that kit?

23 A Yes, they are. They're partial.

24 Q There are other components involved with that kit,  
25 correct?

1 A Yes.

2 Q Now, if you could, if you could grab the instructions  
3 there for me.

4 THE COURT: As to Defendant's Three, Five and Six, do  
5 you wish to admit them?

6 MR. THOMPSON: Not yet.

7 THE COURT: All right. Then, please refer to the  
8 exhibit number he has asked you for the record.

9 A Plaintiff's Exhibit Nine.

10 Q Okay. In Plaintiff's Exhibit Nine, is that a soft-  
11 sheen Carson Optimum Care Instruction Sheet?

12 A Yes, it is.

13 Q And is that the sheet that would come in that kit?

14 A Yes, it would.

15 Q All right. Is there a copyright date on that  
16 instruction sheet?

17 A Yes, it is. It says 2002.

18 Q And so would that be the first time that these  
19 instructions would have been found in that kit?

20 A Correct.

21 Q Now, looking at the instruction sheet, and you have the  
22 original, is that correct?

23 A Yes, I do.

24 Q Can you describe for the jury, what is the purpose of  
25 the do's and don'ts and the warnings on the instruction

1 sheet?

2 A The do's and don'ts and warnings basically tell you how  
3 you should use the product. Things that you shouldn't do  
4 and things that if you do, you might not want to do before  
5 you apply this process to your hair, like, don't pre-shampoo  
6 your hair. They tell you that because the product has  
7 warnings for scalp irritation, so if you shampoo your hair,  
8 when you shampoo your hair, you actually work your hair into  
9 a lather and you are actually manipulating the scalp, so  
10 they don't want you doing things like that. So there are a  
11 lot of do's and don'ts to help minimize any adverse reaction  
12 that you might have to the process.

13 Q Is this product just like a shampoo that you just kind  
14 of throw on?

15 A No, it's not. It's multiple steps and because you have  
16 a product that contains alkaline and chemicals that alter  
17 your hair configurations, it's much different; much more  
18 weighed than a shampoo or a conditioner.

19 Q And do the instructions tell the user to follow the  
20 instructions?

21 A Yes, they do.

22 Q All right. Is that actually on the warning on the box,  
23 to start with?

24 A Yes.

25 Q And is it in the instruction sheet itself?

1 A Yes.

2 Q And then one of the components that I have in front of  
3 you.

4 MR. THOMPSON: May I approach, Your Honor?

5 THE COURT: Yes.

6 Q This is defendant's Exhibit Three. Is there also a  
7 warning or instruction on that component about reading the  
8 instructions?

9 A Yes. It says, "Warning: Please read carefully all  
10 directions on instruction sheet inside of kit box to avoid  
11 skin and scalp burns, hair loss, and eye injury."

12 Q And the purpose then of the instructions is to avoid  
13 hair loss and scalp injury?

14 A Yes.

15 Q And with regard to the directions and the instructions,  
16 there is a component on the second page there, the  
17 preliminary steps is a strand test; is that correct?

18 A Yes, it is.

19 Q And could you tell the jury the importance of the  
20 strand test?

21 A The strand test has two-fold meanings. One is that  
22 when you do a strand test, you can actually tell if your  
23 hair is in good condition, that you should be applying this  
24 process to your hair. Then, the other one is to actually  
25 give the timing that is actually required for your hair so

1 that you will do the process based off of your hair, your  
2 hair needs, your hair type.

3 Q And so there are actually two reasons for conducting  
4 the strand test?

5 A Yes.

6 Q And the first one you described was whether the hair  
7 was in a good condition to be relaxed; is that correct?

8 A Correct.

9 Q And what does that mean? Are we worried that a  
10 consumer has used some product before? I mean, what's the  
11 reason for the strand test in that situation? Why do we  
12 want to know the condition of the hair?

13 A Well, you want to know if the hair is in good condition  
14 because you have so many people, first of all, using the  
15 kit, and you can't tell from head to head what you might  
16 encounter. You also want to make sure that no one has any  
17 pre-existing issues that might cause this problem to cause  
18 more damage or that they have adverse reactions to it or  
19 that they don't get the results that they are looking for  
20 when they use the relaxer system, so you want to know that  
21 going in up front.

22 Q Is it also precaution, maybe, if a person has forgotten  
23 that they shampooed the night before or a few weeks before  
24 or done something that might interfere with the work of the  
25 relaxer?

1 A Yes.

2 Q Okay. And so the second component of the strand test  
3 is to figure out timing?

4 A Yes.

5 Q Okay. And why is timing critical in this product?

6 A Timing is critical because if you over process, or if  
7 you add too much time to it, then you might do damage, or if  
8 you don't use enough time then you might not get the hair in  
9 the straight configuration that you would like to.

10 Q And is that also contained in these instructions? This  
11 idea that you have to do the strand test to figure out if  
12 it's going to relax the hair or if it's not going to relax  
13 the hair and how much time is necessary, is that in there?

14 A Yes, it is.

15 Q Okay. And then when you get down to the application,  
16 the timing guide, does it reference the strand test?

17 A Yes, it does. It says that the timing guide is  
18 critical. Follow the timing guide closely or lesser time as  
19 indicated by strand test. The total time for application  
20 and smoothing must not exceed the maximum time allowed for  
21 your hair.

22 Q So the instructions actually have a maximum time limit;  
23 is that right?

24 A Yes.

25 Q And so, really, for determining for anybody's

1 particular hair situation, the strand test is going to tell  
2 them the time that it needs to be used?

3 A Yes. The strand test will tell the time to use, but  
4 then the maximum time tells them not to go over that amount  
5 of time.

6 Q Regardless?

7 A Regardless.

8 Q Okay.

9 MR. THOMPSON: Your Honor, I will move into evidence  
10 Defendant's Exhibit Number Three.

11 THE COURT: As to Defendant's Three?

12 MR. CAMPBELL: No objection, Your Honor.

13 THE COURT: Ladies and gentlemen of the jury,  
14 Defendant's Exhibit Three will be admitted into evidence in  
15 the trial of this case, without objection.

16 (Whereupon, Defendant's Exhibit Number Three,  
17 conditioning crème container, is received into evidence.)

18 THE COURT: You may publish, counsel.

19 MR. THOMPSON: Thank you, Your Honor.

20 Q Now, Ms. Williams, if you got a product and you've gone  
21 through the chemistry and you've got something you want to  
22 put out on the marketplace, who gets together to talk about  
23 the instructions and the warnings for the L'Oreal product?

24 A For the L'Oreal product, it's the Research and  
25 Innovation, it's the Claims Substantiation Department, as

1 well as Legal.

2 Q All right. And when we say claims, I always hear  
3 "claims substantiation," what does that mean?

4 A Claims substantiation is the department that actually  
5 allows you to make certain claims or certain benefits  
6 statements on your packaging. They actually want to make  
7 sure that what we're saying the product will do; those  
8 little adjectives or those flowery words that we use, are  
9 actually adequate and are actual benefit of the products.

10 Q And so, does every L'Oreal product go through this  
11 process of looking at the instructions and the warnings  
12 between legal R&I, research and innovation, and claims  
13 substantiation?

14 A Yes.

15 Q And that's been the way it's been ever since you've  
16 been in the department for the last 13 years?

17 A Yes.

18 MR. THOMPSON: Your Honor, I don't have any further  
19 questions for Ms. Stewart-Stuckey.

20 Q Thank you very much. If you'll answer any questions  
21 that Mr. Campbell has.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. CAMPBELL:

25 Q Ms. Stuckey, in your direct testimony, you talked a

1 little about the pH scale and what you referred to as a  
2 chemical analysis, what was going on when this product goes  
3 into your hair. Can you tell us what the pH scale is?

4 A A pH scale is the hydroxide levels that's going on in  
5 your hair. So you've got alkaline, you've got basic. So  
6 like lemon juice is kind of on the acid side, so that's the  
7 difference on the pH scales. It's like the hydroxide level.

8 Q That scale goes from zero to fourteen; is that correct?

9 A Correct.

10 Q Seven being neutral?

11 A Yes.

12 Q Above seven being an alkaline?

13 A Uh-huh (affirmative).

14 Q Below seven being an acid?

15 A Correct.

16 Q This product, you also mentioned that there is an agent  
17 in there that is designed to bring the hair back to its  
18 normal pH?

19 A Yes.

20 Q After this process is over with, correct?

21 A Yes.

22 Q How high does the pH go when you're putting this  
23 treatment in?

24 A Well, the pH of the relaxer, once it's combined with  
25 the liquid activator, is about thirteen.

1 Q So it's very high on the scale of pH's; is that  
2 correct?

3 A Yes.

4 Q And that's potassium -- is it potassium hydroxide that  
5 is used?

6 A No, it's guanidine hydroxide.

7 Q Okay. You represent on this box that this is a no-lye  
8 relaxer, correct?

9 A Correct.

10 Q Okay. And lye, to my understanding, is sodium  
11 hydroxide; isn't that correct?

12 A Correct.

13 Q Which is also just like -- what did you call it? What  
14 was the one that is actually in here?

15 A Calcium hydroxide.

16 Q Calcium hydroxide is the one that we use in this  
17 product, correct?

18 A Correct.

19 Q And sodium hydroxide being lye?

20 A Correct.

21 Q Does sodium hydroxide, when those treatments are being  
22 used, does it take the pH higher than thirteen?

23 A No.

24 Q Okay. So they are substantially similar, you would  
25 agree?

1 A Correct.

2 Q Lye relaxers act exactly the same way that this  
3 particular relaxer does?

4 A Correct.

5 Q As far as they both use soluble hydroxides to take the  
6 hair pH up to thirteen; is that correct?

7 A Correct.

8 Q And when it does take the hair up to pH thirteen, what  
9 actually happens?

10 A It actually reconfigures to bonds that are in your  
11 hair.

12 Q Okay. It actually destroys the bonds, does it not?

13 A Right.

14 Q It destroys them and because you only let it sit for a  
15 small amount of time, you stop that chemical reaction from  
16 destroying all the protein bonds in your hair; is that  
17 right?

18 A Correct.

19 Q So it's pretty much exactly the same process as a lye  
20 relaxer, it's just using a different chemical to do it; is  
21 that correct?

22 A Correct.

23 MR. CAMPBELL: No further questions, Your Honor.

24 THE COURT: Redirect?

25 MR. THOMPSON: Very short, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. THOMPSON:

3 Q Ms. Stuckey, Mr. Campbell took you through a chemistry  
4 class. Is that the reason why you have to be very careful  
5 about the timing is because of all these things that are  
6 going on with the hair chemically?

7 A Yes.

8 Q Thank you.

9 THE COURT: Recross, limited to redirect?

10 MR. CAMPBELL: None, Your Honor.

11 THE COURT: You may step down.

12 (Witness complies.)

13 THE COURT: Call your next witness.

14 MR. THOMPSON: The defense rests, Your Honor.

15 THE COURT: Is there any reply testimony from the  
16 plaintiff?

17 MR. CAMPBELL: No, Your Honor.

18 THE COURT: Ladies and gentlemen of the jury, I  
19 understand that your delicious lunch that you have ordered  
20 has arrived. We will conclude the case immediately after  
21 you have had your lunch. During the lunch break, I would  
22 ask that you not discuss the case. You have not heard the  
23 final arguments of the attorneys or received my charge on  
24 the law. If I have any smokers on the jury, smoking is  
25 not permitted in the courthouse, but the bailiffs will

1 MR. CAMPBELL: Nothing, Your Honor.

2 THE COURT: From the defendant?

3 MR. THOMPSON: No, Your Honor.

4 THE COURT: Mr. Grant, would you please bring us the  
5 jury?

6 (Whereupon, the jury enters the courtroom and the  
7 following is held on the record.)

8 THE COURT: You may publish the verdict.

9 MADAME CLERK: Case number 2010-CP-15-405, Emily  
10 Williams, Plaintiff, versus L'Oreal, USA, Inc. Was the  
11 defendant, L'Oreal, USA, Inc. negligent? No. Signed by  
12 Foreperson Robert K. Reynolds.

13 Is this your verdict?

14 MR. FOREMAN: Yes, ma'am, it is.

15 MADAME CLERK: Thank you. Is this the verdict of all?

16 THE COURT: Please indicate by raising your right hand.

17 (ALL JURORS RAISE THEIR RIGHT HANDS.)

18 MADAME CLERK: Thank you.

19 THE COURT: Let the record reflect that all twelve  
20 jurors raised their right hands. Anything further from the  
21 plaintiff for the jury before I excuse the jury?

22 MR. CAMPBELL: Nothing, Your Honor.

23 THE COURT: Very well. Mr. Foreman, ladies and  
24 gentlemen of the jury, on behalf of Colleton County and this  
25 Court, I want to thank you for your service this week. This

1 concludes your service for the week, and if you listened to  
2 my questions, you will know that you are now exempt if the  
3 computer were to select you on the next three years you are  
4 exempt from jury service.

5 All a judge can do is ask that a jury listen, and  
6 that's exactly what each of you did, and I want to thank you  
7 for your patience. I want to thank you for your service,  
8 your willingness to serve, for your service to Colleton  
9 County, and I do much appreciate that service.

10 Now, I'm going to return you to your families and your  
11 homes and your jobs. You are exempt from three years. We  
12 will provide a work excuse to you. We will mail you your  
13 check; it's not much. Pat, we're paying \$20 a day, right?

14 MADAME CLERK: Yes, sir.

15 THE COURT: I know it's not adequate, but that is what  
16 we have to pay our jurors. We will be mailing you your  
17 check to the address that you've provided us. Thank you for  
18 your service. You are now excused from the courtroom and  
19 from Court for the balance of this week. You may leave the  
20 courtroom at this time.

21 (Whereupon, the jury exits the courtroom and the  
22 following is held on the record.)

23 THE COURT: Are there any post-verdict motions from the  
24 plaintiff?

25 MR. CAMPBELL: None at this time, Your Honor.



SOFTSHEEN CARBON  
**OPTIMUM**  
*Care*

ADVANCED ANTI-BREAKAGE  
STRENGTH SYSTEM

Conditioning No Lye Relaxer

REGULAR

For Normal Hair

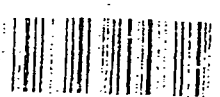
NEW!  
SOFTSHEEN CARBON  
**OPTIMUM**  
*Care*

ADVANCED ANTI-BREAKAGE  
STRENGTH SYSTEM

Conditioning No Lye Relaxer

REGULAR

For Normal Hair



DEFENDANT'S  
EXHIBIT  
2 William  
4111 MR

EXHIBIT  
A

*Optimum*

ADVANCED ANTI-BREAKAGE  
STRENGTH SYSTEM

Conditioning No Life Release

REGULAR

for Normal Hair

M



SOFSHEEN CARSON

OPTIMUM  
*Care*

ADVANCED  
ANTI-BREAKAGE  
STRENGTH SYSTEM

Conditioning  
No Life Release

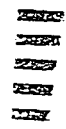
REGULAR

for Normal Hair



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OPTIMUM  
*care*

FOR SHIELDING CANNON



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SOFT SHEEN-CARSON

# OPTIMUM CARE

DEFENDANT'S EXHIBIT  
1. Williams  
4-11-11 MR

## INSTRUCTIONS

### New OPTIMUM CARE Advanced Technology

No-Lye Conditioning Relaxer like no other, you've never experienced. This state-of-the-art delivery system safeguards your natural hair strength to deliver the foundation for stronger, healthier looking beautiful hair. Every step in the relaxer system was designed to deliver greater, more effective conditioning during the relaxer process. You will notice a visible difference with just one trial.

**PRE-TREATMENT (STEP 1)** This Advanced formula is a state of the art protective complex designed to protect your previously relaxed hair during the relaxing process. This unique formulation with added conditioners and a strengthening agent safeguards your natural hair strength. **DO NOT SKIP THIS STEP for Optimum Results!**







**RELAXER CREME MIXTURE (RELAXER BASE ITEM A & COLOR-CUED® ACTIVATOR ITEM B)**  
State-of-the-art formulation is now richer with more effective conditioning.

**COLOR-CUED DECALCIFYING and NEUTRALIZING SHAMPOO (ITEM C)**  
An advanced enriched formulation that cleans, neutralizes and removes dulling residue leaving that every trace of relaxer has been removed from the hair.

**RECONSTRUCTOR (ITEM D) & LEAVE-IN CONDITIONER (ITEM E)**  
Moisturizer and helps protect against breakage. You'll see complete reconstructive conditioning help strengthen as it repairs, restores and rebuilds your hair.

### This Kit Contains:

#### OPTIMUM CARE®

-  Strengthening Pre-Treatment
-  NO-LYE Conditioning Creme Relaxer Base
-  Color-Cued® Relaxer Activator
-  Color-Cued® Decalifying and Neutralizing Shampoo
-  Reconstructor
-  Leave-In Conditioner
- Protective Gloves
- Wooden Spatula

**NOTE:** This is a completely new system. Every step in the relaxer system was designed to deliver greater, more effective conditioning during the relaxer process. Hair is stronger, healthier looking and easy to style.

**Before Use:** Check the kit carefully to ensure that all components are within this kit box.

### You Will Also Need:

- A clock or timer
- A wide-tooth comb (non-metal, please)
- A towel or two
- Protective base (Vaseline or other petroleum product)
- Scissors
- Styling tools (rollers, clips, dryer, etc.)

**CAUTION:** AS WITH SIMILAR PRODUCTS, KEEP HAIR AWAY FROM OPEN FLAME. FOR EXTERNAL USE ONLY. KEEP OUT OF REACH OF CHILDREN.

### DO'S AND DON'TS

- DO** READ ALL INSTRUCTIONS THOROUGHLY BEFORE STARTING.
- DON'T** skip any steps.
- DON'T** substitute any products.
- DO** apply protective base around hairline on ears and forehead.
- DO** a preliminary strand test before relaxing.
- DO** wear protective gloves during relaxing process.
- DON'T** pre-shampoo hair.
- DON'T** relax hair that has been shampooed within the last 48 hours.
- DON'T** comb, scratch or wet hair before relaxing.
- DON'T** relax if hair is brittle, splitting or breaking.
- DON'T** cut or shape hair before relaxing.
- DON'T** apply relaxer to scalp.
- DO** be careful not to overlap onto previously relaxed or permanently colored hair.
- DO** wait at least two weeks between relaxing and permanently coloring your hair. (We recommend that you relax first, then wait two weeks prior to permanently coloring your hair).
- DO** wait at least one week to relax your hair after removing braids.

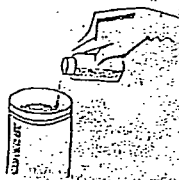
### WARNING:

1. THIS PRODUCT CONTAINS ALKALI. YOU MUST FOLLOW ALL DIRECTIONS CAREFULLY TO AVOID SKIN AND SCALP BURNS, HAIR LOSS AND EYE INJURY.
2. ALWAYS WEAR PROTECTIVE GLOVES WHEN IN CONTACT WITH RELAXER.
3. KEEP AWAY FROM EYES. CAN CAUSE BLINDNESS. IF THE RELAXER OR THE SHAMPOO GETS INTO YOUR EYES, FLUSH THEM IMMEDIATELY WITH WATER AND CONSULT A PHYSICIAN. DO NOT RUB EYES!
4. KEEP AWAY FROM MOUTH. SERIOUS INJURY MAY RESULT IF RELAXER OR ACTIVATOR IS SWALLOWED. SHOULD THIS OCCUR, CONTACT A PHYSICIAN IMMEDIATELY! DO NOT INDUCE VOMITING.
5. IF RELAXER CAUSES SKIN OR SCALP IRRITATION, RINSE IMMEDIATELY AND WASH AFFECTED AREA WITH NEUTRALIZING SHAMPOO FROM KIT. IF IRRITATION PERSISTS, CONSULT A PHYSICIAN.
6. DO NOT USE IF SCALP IS IRRITATED, INJURED OR SHOWS SIGNS OF ABNORMAL CONDITION.
7. IF HAIR PREVIOUSLY HAS BEEN RELAXED, RELAX ONLY NEW GROWTH AS DESCRIBED IN RETOUCH DIRECTIONS.
8. DO NOT APPLY OVER PERMANENT WAVE OR CURLY PERM.
9. DO NOT USE ON BLEACHED HAIR. DO NOT USE ON PERMANENTLY COLORED HAIR THAT IS BREAKING, SPLITTING OR OTHERWISE DAMAGED.
10. DO READ DO'S AND DON'TS SECTION ABOVE CAREFULLY.
11. KEEP OUT OF REACH OF CHILDREN.

# PRELIMINARY STEPS

## MIXING

DO NOT MIX UNTIL READY TO USE.



**VIRGIN HAIR** (Not Chemically Altered or Relaxed Hair)  
Pour all of Relaxer Activator (Item B) into jar containing Crème Relaxer Base (Item A). Using included Mixing Spatula, stir together until color is uniform, no light or dark streaks, and product is free of lumps. Stir at least one minute.

**RETOUCH** (For Already Relaxed Hair)  
Get separate, non-metal container. In this container, mix together half of Crème Relaxer Base (Item A) and half of Liquid Activator (Item B), using included Mixing Spatula. Stir together until color is uniform, no light or dark streaks, and product is free of lumps. Stir at least one minute. DO NOT return mixed product to unmix portions. Discard unused mixed product.

## STRAND TEST

ALWAYS DO A STRAND TEST BEFORE RELAXING.



Snip a small section of hair from the back of your head. Glue, tape or tie one end of hair strands together. Apply relaxer evenly. After eight (8) minutes, smooth and check for straightness. If not straight enough, continue checking every 1-2 minutes until desired straightness is achieved. **NOTE: TIMING**

Examine this section. If hair is in good condition (no breakage, splitting or sponginess) you're ready to relax. If not, do not proceed. Note your problem and call the **OPTIMUM CARE® CUSTOMER HELPLINE: 1-800-621-6143**, in Chicago, (773) 978-0700 for assistance. Hours: 9:00 a.m. through 4:00 p.m. (CST) Monday through Friday.

# APPLICATION

READ ALL STEPS BEFORE USING.

BE SURE THAT EVERYTHING YOU'LL NEED IS CLOSE AT HAND.

## TIMING GUIDE

TIMING GUIDE IS CRUCIAL. FOLLOW THE TIMING GUIDE CLOSELY, OR LESSER TIME AS INDICATED BY STRAND TEST. THE TOTAL TIME FOR APPLICATION AND SMOOTHING MUST NOT EXCEED THE MAXIMUM TIME ALLOWED FOR YOUR HAIR.

Hair Type	Maximum Time	Recommended Strength
Color-Treated or Porous Sea Warning	(Strand test first) 8-12 minutes	Regular Strength-Only Do Not Use Super Strength
Fine	10-15 minutes	Regular Strength
Normal to Coarse	15-20 minutes	Regular Strength
Coarse/Resistant	20-25 minutes	Super Strength

## 1 PREPARING

Gently comb through hair with a wide tooth comb to remove any tangles. Do not pull hair or scratch scalp. Now apply protective base to skin around the entire hairline. Be certain that the tops of the ears are covered.



**2** Part hair into four (4) sections from front center part to back and from ear to ear over crown.

**3** Apply a quarter size or as needed of Strengthening Pre-Treatment into hands; rub together and only distribute throughout strands of previously relaxed hair. This conditioning blend provides internal moisturization and reduces the possibility of damage to previously relaxed hair. [STEP 1 Do not skip this step for optimum results]

## 4 APPLYING

Carefully review timing guide to the instructions at the top. Do not exceed maximum time allowed for your hair type. Start timer. Put on **PROTECTIVE GLOVES**. Start applying **CREME RELAXER MIXTURE** (ITEMS A & B). See preliminary steps for mixing instructions. Make small parting beginning at the nape of the neck and apply relaxer mixture approximately 1/8" away from scalp to newly grown only. Be careful not to overlap onto previously relaxed hair. Apply generously, quickly and evenly. Work up toward the crown. Then apply to front sections. Apply to hairline last.

## 5 SMOOTHING

When application is complete, begin smoothing hair in the same order as relaxer was applied. Smooth with short firm strokes using the back of comb or sides of fingers. Don't pull or stretch hair. Be careful not to overlap onto previously relaxed hair.



## 6 TESTING

As you near the time limit, check for straightness on a small section of front crown area. If hair looks straight and does not return to its usual curl pattern when pushed in direction of the scalp, it is fully relaxed.



If additional straightening is desired, continue smoothing and testing every 1-2 minutes. **DO NOT EXCEED RECOMMENDED MAXIMUM TIME AS INDICATED IN THE TIMING GUIDE ON THE LEFT.** NOTE: Do not over-relax hair. When it is too straight, hair lacks the body to hold finished style.

## 7 RINSING

When time is up, rinse out all relaxer with a steady stream of lukewarm water away from the face and eyes. Check nape, hairline and scalp to make sure no traces of relaxer remains. Towel blot.



## 8 SHAMPOOING

Apply 1/2 bottle **COLOR-CUED® DECALCIFYING AND NEUTRALIZING SHAMPOO** (ITEM C) to hair. Work up lather. The

Color-Cued® shampoo will indicate where the creme relaxer is not completely out of the hair by producing a pink lather. Rinse well. Shampoo again until all of the creme relaxer is removed from the hair; the lather will be white. Be certain that all traces of relaxer are rinsed away. Rinse well. Towel blot.



## 9 RECONSTRUCTING

Apply **RECONSTRUCTOR** (ITEM D) conditioner evenly through hair and massage gently. Leave in 5-7 minutes, then rinse well with lukewarm water. For deeper conditioning leave in 10 minutes. Towel blot.



## 10 FINISHING

Apply **LEAVE-IN CONDITIONER** (ITEM E) evenly through hair. Do not rinse out. Comb through hair.



## 11 STYLING

Blow dry, roller set or wrap. Your **OPTIMUM CARE®** hairstyle will be soft, shiny and full of body.

**CUSTOMER HELPLINE** Hours: 9:00 a.m. through 4:00 p.m. (CST) Monday through Friday, 800-52-6143. In Chicago, call 773-978-0700

**SOFT SHEEN CARSON**  
USA: SOFT SHEEN/CARSON, INC., DIST. CHICAGO, IL 60620  
EUROPE: SOFT SHEEN/CARSON EUROPE  
52 RUE HENRI BARBUSSE - 92110 CLICHY - FRANCE

EXHIBIT

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800-52-6143

800 342 7661 22AC17

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

The Honorable Perry M. Buckner, Circuit Court Judge

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Case No.: 2012-213713

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Emily Williams,	v.	Appellant,
L'Oeral USA, Inc.,		Respondent.

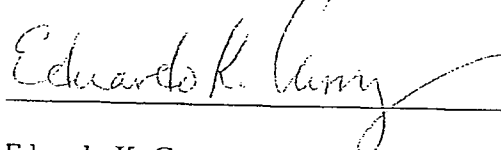
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CERTIFICATE OF COUNSEL

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The undersigned certifies that this Record on Appeal contains all material proposed to be included by all of the parties and not any other material.

September 24, 2013

  
\_\_\_\_\_  
Eduardo K. Curry  
Post Office Box 42270  
North Charleston, South Carolina 29423  
(864) 767-5284  
Attorney for Appellant

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

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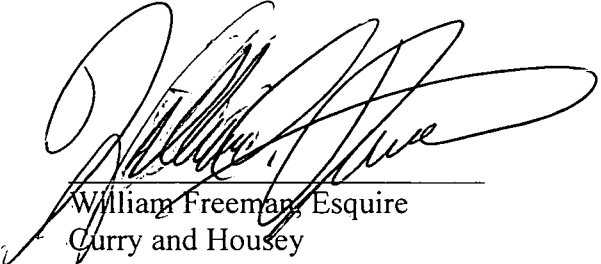
**PROOF OF SERVICE**

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I certify that I have served the **Appellant's Record On Appeal** has been served upon L'Oeral USA, Inc. by depositing copy of it in the United States Mail, postage prepaid, on September 26, 2013, addressed to his attorney of record, Joseph DuRant Thompson, III, Post Office Box 340, Charleston, SC 29402.

I certify that the Record on Appel contains no matter which is irrelevant to the appeal.

September 26, 2013



William Freeman, Esquire  
Curry and Housey  
Post Office Box 42270  
North Charleston, SC 29423  
(843) 767-5284

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SEP 30 2013

**SC Court of Appeals**