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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas, Twelfth Judicial Circuit

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2022-000303
Civil Action No. 2017-CP-21-01375

April Jones, ...Respondent,

v.

Tim Ringer, individually and as employee/agent of Wal-Mart Stores Inc. d/b/a Wal-Mart Store #630, Wal-Mart Stores, Inc, and Wal-Mart Stores East, L.P., ...Defendants,

of which

Walmart Stores, Inc. and Wal-Mart Stores East, L.P. are the.....Appellants.

RECORD ON APPEAL
VOLUME IV

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1 Q Okay. And would you agree with me
2 that exposure to rain and moisture degrades wood
3 over time?

4 A Very slowly.

5 Q Okay. Would you agree that exposure
6 to changes in temperature changes wood over time?

7 A Minimal.

8 Q Okay. Will you agree with me that
9 pallets with empty nail holes would be more likely
10 to change over time with exposure to rain and
11 moisture?

12 A A pallet that has a lower quality
13 connection, a missing nail, could change -- the
14 components of that missing connection of -- or
15 missing nail could change more over time than if
16 the -- than if the connection was -- was as
17 original.

18 Q Okay. How -- how do multiple unfilled
19 nail holes in a repaired pallet, for example, affect
20 the strength of the pallet?

21 A Okay. That depends on whether this is
22 a component that has been removed from a pallet in
23 which the nails were removed and then that was used
24 to repair a pallet or that was used to make what we
25 call a remanufactured pallet. Depending on the

1 location of those nail holes, they can change the
2 strength of that board. For example, if those nail
3 holes in -- in -- in a salvaged part were put back
4 into another pallet, if those nail holes were
5 between the stringer members, it would reduce the
6 bending strength of that component.

7 Q How many empty nail holes in a
8 stringer component would you say is too many, it's
9 time to throw out that component?

10 A Interesting question. Empty nail
11 holes. If you look at the standard -- you know, I'm
12 not sure of the answer to that question. I'd have
13 to do some research on that subject.

14 Q Okay. What -- what would a range be?
15 More than a hundred empty nail holes in a stringer
16 component would be too many, right?

17 A Well, I can only give you a comparison
18 that's in the standards. Okay? The ANSI Standard
19 says that if a nail is protruding and you're
20 repairing it, you put that nail back. You do
21 restore -- if you have the specification for that
22 pallet and a repair specification and, for example,
23 the connection requires three nails and there's one
24 missing, during repair, you should put that nail,
25 another nail in. Okay? That's fairly clear in all

1 of the repair standards.

2 In terms of open splits in which --
3 around a nail in which the integrity is compromised,
4 that's limited in each pallet. There's only so many
5 open splits permitted. So, with regard to missing
6 nails, that's where the standard plays in.

7 Q So, are you able to give me a range of
8 how many empty nail holes would be appropriate in a
9 single stringer component?

10 A If there's an empty nail hole, another
11 nail should be inserted to compensate for that. So,
12 no.

13 Q Okay. Aside from being less
14 expensive, is there any other reason to use a wood
15 pallet instead of a plastic pallet?

16 A Good question. Most -- under most
17 conditions, when the pallet is not to be reused, a
18 so-called one way pallet, the wood pallet will be
19 the less expensive. As far as a reusable pallet
20 like the CHEP, PECO, and IGPS plastic, there's no
21 particular reason. They both last the same length.

22 The cost to use them can be similar
23 per use. Some people prefer the plastic pallet
24 because of sanitary requirements in a manufacturing
25 environment because in certain environments, they

1 are cleaner if you clean them. But in terms of
2 reusable pallets, many of which, of course, Wal-Mart
3 uses, there's no particular reason. It's not
4 because they're less expensive.

5 Q Okay. With respect to the sanitary
6 situation that you just mentioned, you would agree
7 with me that in general, a plastic pallet is more
8 sanitary than a wooden pallet?

9 A If you clean it.

10 Q Would you agree with me that in
11 general, it is difficult to get a puncture injury
12 from a plastic pallet?

13 MS. BAGLEY: Object to the form.

14 A If the plastic pallet has no nails or
15 mechanical fasteners in it, they're certainly less
16 likely to have puncture from nails.

17 BY MR. WILLEY:

18 Q Okay. Does a wooden pallet perform
19 better than a plastic pallet in any respect?

20 A It is very hard to answer that
21 question because your question is so general. I
22 cannot answer it in just comparing all wood pallets
23 with all plastic pallets. Give me a situation, and
24 I will tell you which one is better for that
25 situation.

1 Q So, you -- we've compared two types
2 of -- I'll tell you what, give me the most similar
3 wood pallet to the most similar plastic pallet.

4 A Well, I think IGPS and the CHEP or
5 PECO pallets would be good examples.

6 Q Okay. And in that situation, does the
7 wooden CHEP pallet in any respect perform better
8 than the comparable plastic pallet?

9 A Yes, both from a strength point of
10 view, the CHEP pallet is stronger than the IGPS
11 pallet in load-bearing and very definitely from a
12 stiffness point of view. The deck of the CHEP
13 pallet has a transmissibility level of 1.4, the IGPS
14 pallet 2.6.

15 What that means is that due to
16 vibrations, the stresses that the plastic pallet
17 impose on the product is almost twice as much as the
18 stress on the wood pallet. And then finally, in
19 terms of coefficient of friction and load slip,
20 unfortunately plastic pallets tend to be slipperier
21 than a wood pallet.

22 Q So, with respect to the plastic
23 pallets and the vibration, the main benefit there is
24 to the product that they're holding, correct?

25 A And in terms of load stability or load

1 shift. They're much more stable, the wood pallet.

2 Q So, the vibration wouldn't be expected
3 to have any impact on the structure of the plastic
4 pallet itself, correct?

5 A Fatigue over time.

6 Q Right. Similar to the vibration on
7 the wooden pallet where it could impact the decking
8 or the nails, right?

9 A But, again, it doesn't vibrate as much
10 is my point just made before. It's stiffer.

11 Q Well, it doesn't vibrate as much or it
12 absorbs the vibration better? It absorbs the
13 vibration better is what I think you're trying to
14 say.

15 A All pallets are springs.

16 Q Right.

17 A The plastic pallet amplifies the input
18 accelerations to a far greater degree than a wood
19 pallet because in Hooke's Law. It's different.

20 Q Right. So, the wood and the nails in
21 that wooden pallet are actually absorbing the
22 vibration that the plastic pallet is passing along
23 to the load, correct?

24 A No, no. The deck is stiffer itself.
25 Forget about the fastenings or connections. In

1 fact, in a plastic pallet, because it's molded, you
2 have a stiff connection, if you will, infinitely
3 stiff. It's the way we model it using FEA models,
4 whereas we have semi rigid joints in wood pallets.
5 But that has nothing to do with it. The fact of the
6 matter is that wood has an MOE of 1.5 million PSI
7 and plastic an MOE of a hundred thousand PSI.

8 Q Right. But again, we're talking about
9 the passed-on impact to the product. For example,
10 two forklifts carrying the same load on a plastic
11 pallet versus a wooden pallet traveling down the
12 same aisle, the impact from the input on the
13 forklift arms to those two pallets is the same. You
14 would agree with that?

15 A Well, I didn't realize we were talking
16 about shocks. Shocks are very different. When an
17 impact -- when a forklift impacts a pallet moving it
18 a half a mile an hour, we have inertia in the
19 system. That's totally different.

20 Q Right. And my terminology was
21 inarticulate there. I am talking about carrying a
22 pallet. Okay? Carrying a pallet down an aisle,
23 same forklift, same load, the only distinction is we
24 have a plastic pallet and a wood pallet. You would
25 agree with me that the force and all of the inputs

1 on each of those pallets from that forklift are the
2 same. The difference is in how those pallets
3 interact with the load.

4 A The response is different. The
5 plastic pallet will deform much more than the wood
6 pallet.

7 Q Okay. Fair enough. I asked you about
8 the PDQ earlier; and you said it didn't have any
9 impact on your opinion, right?

10 A Correct.

11 Q Okay. What do you recall about the
12 PDQ? Was anything in there even relevant to you
13 with respect to this case and your opinion?

14 A Well, a couple of issues, and this
15 will come back to your question. First of all, your
16 display-ready packaging is not attached in any way
17 with mechanical fasteners or adhesives, and I've
18 been in Wal-Mart stores and actually observed that.

19 Number 2, they have a pallet standard
20 there, and I'm familiar with their pallet standard.
21 They accept IGPS and CHEP, and then they have a GMA
22 Grade I, which is pretty well known in the
23 marketplace in terms of pallet standard and quality.
24 Okay? So, that's what I remember.

25 Q Okay. Did it speak at all about

1 Wal-Mart's policy as to leaving wooden pallets on
2 the sales floor?

3 A Don't recall reading anything about
4 that.

5 Q Okay. Anything about whether wooden
6 pallets should be placed upon plastic bases, any
7 preference one way or the other?

8 A It seems like both occur. I don't
9 recall.

10 Q And, again, you don't have any
11 expertise in the retail environment as far as what
12 is preferred in terms of store displays; is that
13 fair?

14 A Well, I know about pallets and there
15 are pallets on the floor of a store.

16 Q Right, but you are not -- you are not
17 a store display expert as far as what to do if, you
18 know, there should be a plastic pallet here or a
19 wooden pallet there, what's better in this
20 particular aisle, anything along those lines?

21 A Well, as far as the graphics on
22 display-ready packaging, no, I am very familiar with
23 their corrugated standard and requirement and the
24 ECT requirements and burst strength requirements,
25 very well familiar with design of display-ready

1 corrugated containers. I teach it. And of course
2 very familiar with -- with the pallets that are
3 specified, the half and full pallet and the fact
4 that they don't use a quarter pallet.

5 Q Are you aware of what the standards
6 say about merchandise being placed on top of a
7 plastic -- strike that.

8 Are you aware of what the standards
9 say about wooden pallets being placed on top of
10 plastic bases in a retail environment?

11 A I just -- I know from the point of
12 view of the Wal-Mart PDQ, they do specify a 48-inch
13 height, and that includes the pallet. So, it's
14 possible that if you double-stacked, you might
15 exceed that height.

16 Q Is there anything that you're aware of
17 about whether or not the entirety of the wooden
18 pallet should be on the plastic base or whether it's
19 appropriate or allowable to have a hangover?

20 A Overhang? From a stability point of
21 view, you should always limit underhang and
22 overhang.

23 Q That's what the standard says?

24 A Actually, I believe in the PDQ, it
25 limits it to one inch.

1 Q And the PDQ is actually Wal-Mart's
2 internal policy, as you understand it, correct?

3 A Seems to be their publication. I
4 assume it's their internal.

5 Q So, would you expect an outfit that
6 doesn't follow its own internal publications to be
7 more or less likely to follow external standards and
8 publications?

9 MS. BAGLEY: Object to the form.

10 A Yeah, I'm not sure -- no, I don't
11 expect it to be more or less.

12 MR. WILLEY: Okay. What I'm going to
13 do -- Lee Ellen, are you there? Can you hear us?

14 MS. BAGLEY: Yes.

15 MR. WILLEY: Okay. I'm going to
16 e-mail the same photos that we sent to you to the
17 court reporter just so that she can mark the actual
18 originals in the same order. Okay?

19 MS. BAGLEY: Okay.

20 MR. WILLEY: I'm going to talk about
21 them in that order from the top so that you can
22 follow along since you can't see what we're looking
23 at. Okay?

24 MS. BAGLEY: Okay. Thank you.
25

1 BY MR. WILLEY:

2 Q So, the -- I'm actually going to come
3 to your side of the table so I can be sure we're
4 looking at the same thing. All right. So, Image
5 Number 1, which we'll mark as Plaintiff's Exhibit 1,
6 what is this an image of?

7 A Stacks of pallets.

8 Q All right. And do you know what types
9 of pallets are in this stack?

10 A Yes. I can see IGPS, PECO, and in the
11 image you're showing me now, they appear to be CHEP
12 pallets. And then over to the right here are some
13 what we call white wood pallets, GMA style.

14 Q All right. And these are, fair to
15 say, the mix of pallets that Wal-Mart typically
16 uses, as far as you know?

17 A And there are some half pallets as
18 well, which I don't see here.

19 Q All right. The second image, tell us
20 what you see.

21 A I see a white wood GMA style pallet
22 partial four-way. And it looks like one of the deck
23 boards -- I see an exposed nail. It appears that
24 the stringer has been split. And as a result, the
25 nail is exposed.

1 Q All right. And is this pallet on a
2 Wal-Mart sales floor?

3 A I have no idea.

4 Q Okay. You can't tell from looking at
5 this image whether or not this is a sales floor?

6 A It might be a sales floor but I can't
7 say and I have no idea whether it's Wal-Mart.

8 Q Okay. This particular pallet that
9 we're looking at, would this pallet be
10 ANSI-compliant?

11 A This pallet should be repaired,
12 removed from service, and repaired.

13 Q All right. So, this pallet would not
14 be ANSI-compliant?

15 A It -- that damage there would exceed
16 the allowable damage allowable in the ANSI Standard
17 or the industry standard.

18 Q Okay. So, with a yes or no, as this
19 pallet is in its current state, is it
20 ANSI-compliant?

21 A MH1 Part 4, it is not compliant.

22 Q Okay. What type of pallet is that an
23 Image 2, again?

24 A The generic name for it is GMA,
25 Grocery Manufacturers of America. It is now less a

1 technical name that's accurate and more a trade name
2 or a name used in the trade for this particular type
3 of pallet.

4 Q In other words, just so the jury
5 understands, in the past, we would have expected
6 these pallets primarily or singularly to have been
7 manufactured by the Grocery Manufacturers of
8 America, but no longer?

9 A No, no.

10 Q No? Okay. Tell us what you mean by
11 that then because I don't think I understand.

12 A Yeah. Okay. This goes back to the
13 early 1960s where the food industry was trying to
14 establish a standard wooden pallet specification.
15 And through the Grocery Manufacturers of America,
16 through that particular organization, they adopted a
17 pallet standard. Actually, it's called the GPC,
18 but -- Grocery Pallet Council standard. But because
19 the Grocery Manufacturers of America developed the
20 GPC standard, it was called the GMA pallet.

21 It has evolved. The original
22 specifications vary from this, but the overall three
23 stringers, 48 40, partial four-way design with the
24 top deck and the bottom deck is still affectionately
25 called a GMA pallet.

1 Q Image 3 is what?

2 A Stacks of pallets. Again, I see CHEP
3 pallets, PECO pallets, and I see a couple of GMA
4 pallets.

5 Q The Wal-Mart bin -- strike that.

6 The watermelon bin, do you see the
7 watermelon bin?

8 A I see a corrugated bulk container,
9 yes.

10 Q That says what?

11 A Says water --

12 Q It does say watermelons.

13 A Does it? Yes, it appears to say
14 watermelons, yeah.

15 Q Okay. On the pallet that this bin is
16 on, is there overhang or underhang?

17 A This is an octagonal bin. So, when
18 you look at it, if you look at the full width of the
19 pallet and -- of the box and the full length, it
20 would probably be close to 48 40. Don't be misled
21 by these walls. It's octagonal in shape.

22 Q Okay. And, so, there -- would there
23 or would there not be some overhang or underhang if
24 that bin were placed on that pallet?

25 A Well, that particular bin, I think,

1 would fit the pallet.

2 Q Okay. Image 4, do you know what this
3 is?

4 A Well, I -- looks like garbage, but I
5 do see three pallets at least.

6 Q Okay. And is there shrink wrap around
7 the product on those pallets, as best you can tell?

8 A There is -- I see some -- this is not
9 shrink. This is probably stretch film.

10 Q Okay. The red pallet that's on top of
11 the product here, would this be an ANSI-compliant
12 way to store product?

13 A Part 4 does not get into how pallets
14 are used. So, I can't answer that question, the
15 ANSI Standard.

16 Q All right. Photograph Number 5 is --
17 is this pallet ANSI-compliant?

18 A Appears to be the same pallet you
19 showed me before, which I said no.

20 Q All right. Photograph Number 6, I
21 will submit to you, is an up close photograph of a
22 bottom deck board and -- on a pallet. Okay. Does
23 it appear to be --

24 A I have no idea. There's a board
25 there, yes.

1 Q All right. Is it typical that pallets
2 would break apart in this manner when they're being
3 moved?

4 A I can't tell. I have no idea what the
5 orientation or components are except for that bottom
6 deck board. I have no idea how it's attached and to
7 what it's attached to.

8 Q Okay. What about the nail that's
9 sticking out, would you expect that to be in a store
10 where the public was visiting?

11 A Well, again, you don't want exposed
12 fasteners --

13 Q Right.

14 A -- in a new pallet, a used pallet, or
15 during their use. That appears to be a nail that's
16 bent and -- but I don't know how exposed it is
17 because I have no orientation within that
18 photograph.

19 Q Okay. The next photograph, do you
20 know what that -- is that a pallet in a store?

21 A Could be. Could be. It's -- it's a
22 pallet on a floor. I -- these are shelves. I see
23 some unit loads above.

24 Q Do the -- do the standards say
25 anything about whether or not wooden pallets should

1 be left in store aisles?

2 A You would have to go back to 1910.176
3 OSHA and look into it. That -- although I'm roughly
4 familiar with that document with regard to pallet
5 use, I don't know whether there's any reference in
6 that -- and that's Department of Labor -- standard
7 to this situation. So, I cannot answer.

8 Q Right. And the OSHA standard, as you
9 understand it, is the occupational safety standard
10 for employees, correct?

11 A That is really what it is for,
12 exactly.

13 Q Right. The ANSI Standards don't say
14 anything about how pallets are to be situated in a
15 retail store, correct?

16 A No, they don't discuss the issue of
17 where an empty pallet could be placed or not, no,
18 there's nothing from the ANSI Standards that
19 includes that.

20 Q The next image -- and I'm on
21 Exhibit --

22 MR. WILLEY: Take a break a moment,
23 tell me what exhibit I'm on.

24 (Brief discussion off the record)
25

1 BY MR. WILLEY:

2 Q Exhibit 8 and 9 go hand-in-hand. They
3 are the same pallet, okay, as is ten, as is 11. All
4 right?

5 A Okay.

6 Q Going back to eight, what -- what do
7 you see here?

8 A I see a nail.

9 Q Okay. What type of nail, if you know?

10 A Yeah, it is what is commonly called a
11 stub nail. This is a nail that CHEP used to use to
12 attach the top deck boards to the stringer board.
13 It's one-and-a-quarter inches long. It's annularly
14 threaded and placed through. When you recess the
15 head, it goes almost all the way through both
16 components.

17 Q Okay. And you would expect that this
18 nail came out of a pallet, right?

19 A I would say if that's a stub nail. It
20 looks like a stub nail. It may not be. But if it
21 did, it -- it could have come from a CHEP pallet
22 because that was a nail used in a CHEP pallet.

23 Q All right. The splitting of the deck
24 board in Exhibit 8, does that mean anything to you?

25 A Nothing. It's a -- it's a -- it's a

1 common occurrence in pallets. This is what we call
2 a hairline split in which you cannot see the shank
3 of the nail. You couldn't see it. So, therefore,
4 it's acceptable. The level or number of splits is
5 not limited in the ANSI or industry standard.

6 Q Okay. If that split went all the way
7 through the board, would that change your opinion?

8 A No.

9 Q Okay.

10 A No.

11 Q All right. The diagonal notch off the
12 end of this deck board, does that mean anything to
13 you?

14 A You can see there was a knot. There
15 was a branch in that tree when that board was cut.
16 And, so, one side of it has -- has come off.

17 Q And is that -- does the ANSI Standard
18 say anything about that?

19 A It does. That level would not -- how
20 do I say it? That's compliant with the ANSI
21 Standard, to use your terminology.

22 Q Okay. Looking at Exhibit 9, I'm going
23 to show you a nail in the kind of bottom right-hand
24 corner.

25 A Yes.

1 Q That nail is not going through a deck
2 board; is that correct?

3 A Correct.

4 Q And, so, that's a protruding nail.
5 Would you agree with that?

6 A Yes.

7 Q And that's not compliant with the ANSI
8 Standard, correct?

9 A Correct. There is -- how should I say
10 this? There is a limitation to the number of these
11 that can occur in a pallet structure in the ANSI or
12 industry standard.

13 Q All right. And also in Exhibit 9, on
14 the deck board just up from that, we're able to see
15 staples?

16 A Yes, I see staples.

17 Q And they're going through the top of
18 the deck board. Is that accurate?

19 A I would say so, yes.

20 Q Okay. Is it ANSI-compliant to use
21 staples to hold together pallets?

22 A Yes.

23 Q Do those appear to be the types of
24 staples that you might use in the repair or
25 construction of a pallet?

1 A It's hard to tell from just looking at
2 the crown of a staple. It's difficult to answer
3 that.

4 Q All right. You would agree with me
5 though that this pallet does, towards the northern
6 end, the top, appear to have empty nail holes,
7 correct?

8 A I cannot tell from that photograph.

9 Q Okay. Fair. The -- going to Exhibit
10 Number 12, we're looking at -- what are we looking
11 at? Algaecide Clarifier made by Clorox. Is -- what
12 do you see here with respect to the pallet display?

13 A Well, I see a display-ready corrugated
14 shelf rack sitting on top of -- I can't tell. It
15 could be a half pallet.

16 Q I'll show you 13. That's the side of
17 it?

18 A Sitting on top of what would be
19 equivalent to a half pallet.

20 Q And, so, in Photographs Exhibits 12
21 and 13, that pallet is experiencing some overhang on
22 the plastic base; is that correct?

23 A Well, there appears to be an inch or
24 so overhang on this corner facing us. Appears to be
25 twisted. The pallet appears to be twisted.

1 Q All right. And is that the safest way
2 to display a pallet on top of a plastic base in a
3 retail environment, or do you know?

4 A It's a little bit outside of my
5 expertise. I'm not a safety engineer.

6 Q Okay. Number 15 and 16 and 17, we're
7 looking at the same pallet, okay, which is --
8 appears to be kites. I'm going to show you 16,
9 which is a farther-out view of the photograph we
10 looked at earlier that you weren't able to get a
11 sense of. Let me count it. Six.

12 A Thank you. Thank you.

13 Q Okay. So, six is really a closeup of
14 these later views. And you're able to see the
15 pallet there. What -- I mean, first of all, what
16 kind of pallet is this?

17 A Well, this is a repaired GMA -- well,
18 I think. Is it a half pallet, or is it a full
19 pallet? No, it's a full pallet. So, it's a
20 repaired 48 40 pallet, and they've nailed a
21 companion component to the broken stringer.

22 Q Right. And that would have been done
23 prior to it being put on the sales floor most
24 likely, right?

25 A Quite certain.

1 Q All right. And the nail that's
2 sticking out of the side off the bottom deck board
3 of this pallet would not be ANSI-compliant, correct?

4 A Again, there are a certain number of
5 shiners. That's called a shiner, shiner being part
6 of the nail is sticking out. Okay? And, so, with
7 regard to the ANSI Standard, I think -- no. Shiners
8 to the outside of the pallet are not acceptable.

9 Q Okay. And this level of damage on a
10 pallet, I mean, do you have any opinion about that?
11 I mean, we can see wood chips over here.

12 A Well, again, what's happening here is
13 a standard repair practice for taking a broken
14 stringer, in this case, the foot of the stringer, we
15 call that portion around the notch, is gone, i.e.,
16 for one reason or another. They've put a companion
17 component adjacent to it.

18 What they will do, and I suppose they
19 did, is they nail the top deck and the bottom deck
20 to this companion since there's nothing to nail left
21 in the original stringer. And then they have
22 injected some side nails in there to further
23 stabilize this companion component. So, what you
24 see there is a standard repair procedure for broken
25 stringers.

1 Q And that would -- you would expect to
2 see a notch like that in the bottom of the pallet?

3 A Yes. You can see the original
4 stringer was, but the companion does not have that
5 notch.

6 Q So, on the center of this pallet,
7 looking at the last exhibit now, you're able to see
8 the deck boards. Do those -- do those appear to you
9 to be ANSI-compliant?

10 A I can't tell from the photograph.

11 Q Okay. Are you able to tell from any
12 of this photograph what types of nails were used in
13 the repair of this pallet?

14 A No.

15 Q Okay. What about in Exhibit 12, the
16 second-from-the-left deck board, are you able to
17 tell what kind of nail is holding that in just from
18 looking at this photograph?

19 A No.

20 Q Okay. And in Exhibit 12, commonsense,
21 but does it appear to you that the wood that fell
22 off of this fell off after it was placed on the
23 sales floor?

24 A I'm sorry, the end of the stringer
25 that is missing?

1 Q The wood that is separated entirely
2 from the stringer, you would have expected that to
3 have fallen off at the time it was placed on the
4 sales floor, correct?

5 A I don't have an image of what fell
6 off.

7 Q Just the chips I'm talking about here.

8 A That's a tiny chip. You're missing a
9 significant portion of that stringer.

10 Q Right.

11 A No, I -- that's the reason they
12 repaired it. So, that damage was long before it got
13 to whatever store it's in. I don't even know that.

14 Q Right. All right. Let's take a short
15 break just to make sure I didn't miss anything. You
16 can call home. They might be wondering where you
17 are.

18 (Recess, 5:35 p.m. to 5:39 p.m.)

19 BY MR. WILLEY:

20 Q Do you know how many pallets Wal-Mart
21 uses in the course of a year?

22 A No.

23 Q Okay. Do you have a round ballpark
24 estimate?

25 A I wouldn't even hazard a guess.

1 Q Okay. Your -- we talked about your
2 opinions and everything. And your methodology
3 basically for reaching those opinions has just been
4 your professional experience; is that fair?

5 A Well, no. It's the fastener
6 standards.

7 Q Right. The standards and your
8 familiarity with them, right?

9 A And my experience.

10 Q Right. But you did not --

11 A Yes.

12 Q Right. You did not use a similar nail
13 to see if a top deck board or bottom deck board
14 could be held on with that nail, fair?

15 A I have not done any tests.

16 Q Okay. With respect to a stub nail
17 that we talked about appearing in the photograph,
18 are you able to give me a full description of that?

19 A It's been a while, but I believe if
20 you get a copy of the CHEP specification, probably a
21 few years back -- their specification evolved -- I
22 believe it's a 135 wire diameter, one-and-a-quarter
23 annularly threaded nail. The head diameter's
24 probably 280/1000 on that nail, could be 300/1000.
25 That would be a close description of that

1 specification.

2 Q All right. And what type of --

3 A It's a no-point nail.

4 Q No-point nail? What type of metal
5 would it be made out of?

6 A They're all low carbon steels. So, in
7 terms of an SAE number, it's probably a ten -- a
8 1020 SAE alloy.

9 Q So, a nail that you would expect to
10 rust over time?

11 A Yes. These are not coated in any way.
12 They do rust.

13 Q If it were a galvanized nail, you
14 would expect no rusting over time?

15 A No, that's not correct. Galvanized is
16 a sacrificial coating. It will eventually degrade.

17 Q How long about would you say that
18 would generally take in a retail environment for a
19 galvanized nail to rust?

20 A If you're talking about a nail placed
21 in a pallet, it will depend on the wood species and
22 the moisture content of the pallet at the time of
23 assembly and how that moisture content changes over
24 time. So, you'll get varying degrees of corrosion,
25 iron oxide formation.

1 Q What about in a Wal-Mart pallet,
2 wooden pallet?

3 A Well, first of all, the CHEP pallets
4 are assembled with wood at about 22 percent maximum
5 moisture content. So, your corrosion in a CHEP
6 pallet's going to be quite low. Now, they are
7 stored outside. So, the head will rust, but the
8 shank will not in a CHEP pallet, a PECO pallet. And
9 a white wood pallet made of kiln dried wood, there
10 will be very little corrosion over time.

11 Q What about in a GMA pallet?

12 A Dense hardwood pallet manufactured
13 green out of oak, you get corrosion over time.

14 Q With respect to a stub nail, is there
15 anything else you could use it for other than a
16 pallet?

17 A I have never seen that nail used or
18 that type of a nail used in other applications. It
19 was something that was developed by CHEP.
20 Generally, if you look at the head on the nail, it
21 will have a C on it, and that indicates that it is a
22 CHEP specification nail.

23 Q Does it always have a C on it, or do
24 you know?

25 A That's a very good question. I think

1 most of the time, because of the vendors who supply
2 them, I think Bostitch was a big supplier, the C was
3 quite common.

4 Q Okay. And is it a raised C or an
5 engraved C?

6 A Very good question. Is it embossed or
7 is it raised? You see, what happens in a nail
8 machine is you have a header, you put the wire
9 through, and you head it. As I speak to you, I
10 cannot remember which way it goes.

11 Q Okay. Would it be possible to use a
12 stub nail to hang a photograph on the wall?

13 A Depending on what you're nailing into
14 and how much of the shank is penetrating, it could
15 be used for other purposes. The no-point nail
16 doesn't split. That's why you have a no-point nail.

17 Q Have you ever done any farming?

18 A Have I done any farming? Other than
19 my garden in the back of my house, no.

20 Q Okay. So, have you ever seen on a
21 farm kind of all the leftover nails from all the
22 projects that we have, you know, kind of go into a
23 coffee tin or whatever you have and there is this
24 process by which we decide which nail to use, which
25 is we just pull one out and we say, "Well, that will

1 do." Have you ever used that kind of process in
2 selecting what type of nail to use in a project?

3 A Not in a pallet.

4 Q Okay. In any project?

5 A I have a couple of coffee tins full of
6 nails, and I have gone through and selected nails of
7 different kinds for different uses.

8 Q All right. So, even you have not
9 always used the nail designed for the purpose that
10 you were using it for; is that fair?

11 A No, it's probably why I selected that
12 nail, because it would be useful for my intended
13 use, I think.

14 Q Right, but my point is we have
15 different types of nails. We have roofing nails, we
16 have stub nails, we have framing nails. You don't
17 always have to use a framing nail for framing,
18 correct?

19 A Well, we have to be careful of the
20 definition of a framing nail. I'm sorry. With
21 regard to roofing nails, I've done roof work, and I
22 use roofing nails in shingles.

23 Q And we talked about roofing nails. We
24 could use them to hang a picture on a wall or nail a
25 deck board to the wall. What I'm asking is with

1 respect to other types of nails, they could be used
2 for purposes other than their name might imply. You
3 would agree with that, right?

4 A I think if you got the right style of
5 nail of the right length, there are multiple uses
6 for that nail.

7 Q Okay. The final thing was you agreed
8 that you would send me a copy of your full file.
9 So, I'm just going to give you my e-mail address.
10 Can you just do that sometime tomorrow?

11 A Clarify what you mean by full file.

12 Q Full file is just anything that you
13 relied on in forming your opinions that I would not
14 already have unless you wrote notes on it. So, if
15 you wrote notes on the summons and complaint or the
16 depositions, then I would like those. If you wrote
17 notes on anything else, I would like those notes
18 along with any e-mail or letter correspondence that
19 you've had.

20 A Can you articulate to me in an e-mail
21 as to exactly what you want and I will supply it?

22 Q Yes. And in fact, I have -- it's
23 in -- yes, I will put it in an e-mail about that.
24 What I'm going to ask you for is just your e-mails
25 that you've had about this case, any correspondence

1 you've had related to this case, any notes you've
2 written related to this case, and anything that you
3 relied on related to this case.

4 A Copies of the standards?

5 Q Right. And if she, for example, if
6 Lee Ellen e-mailed you all of the photographs and
7 things and you printed them out and took notes on
8 them, I'd like that e-mail forwarded, but I would
9 also like copies of your notes.

10 A I have no notes on anything for this
11 case.

12 Q Perfect. If that's the case, then you
13 can just e-mail me what you relied on along with the
14 correspondence.

15 A Again, several correspondence are
16 verbal, but we do have e-mail.

17 Q Right.

18 A I can send you copies of the e-mails.

19 Q Yes.

20 A Obviously, if you are entitled to
21 them, I have no problem.

22 Q I am. I am. And then do you -- is
23 your agreement in this case -- do you have a
24 contract in this case?

25 A No contract. I have submitted my fee

1 schedule to counsel. And as I understand it, I've
2 been retained; but there is no contract.

3 Q Okay. Have you been paid anything in
4 this case?

5 A No.

6 Q Okay. Do you know how much you've
7 billed in this case so far?

8 A I've billed nothing except for the
9 retainer. It's not a bill. I merely stated that in
10 a letter that I do require a retainer.

11 Q Of what amount?

12 A One day's work, \$3,200.

13 Q And have you gone beyond that retainer
14 in your work on this case?

15 A To counsel, yes, I'm a little bit
16 beyond it. I believe the hours I spend with you is
17 billable to you, or am I wrong?

18 Q Do you expect to spend any more time
19 before trial outside of this deposition?

20 A I could do some more research on the
21 general subject, yes, I could spend more time.

22 Q Okay. And do you expect for any
23 reason that your opinions in this case would change
24 prior to trial?

25 A They could.

1 Q Under what circumstances would --
2 might they change?

3 A Really it depends on additional
4 information I would receive between now and then.

5 Q All right. And if your opinions do
6 change prior to trial, will you let me know through
7 counsel?

8 A I will certainly let counsel know. I
9 leave the disposition up to them.

10 Q That's perfectly all right. Is there
11 anything that you, having gone through the
12 deposition so far, would like to review that you
13 have not had the opportunity to review?

14 A Well, I'd like to see the nail.

15 Q Okay. All right. Anything other than
16 that?

17 A At this point, but -- right now,
18 nothing occurs to me, but that could change.

19 Q Okay. Great. All right. I think
20 that's all that I have for now.

21 MR. WILLEY: Lee Ellen, do you have
22 anything, or can we go for pizza and beer?

23 EXAMINATION

24 BY MS. BAGLEY:

25 Q Dr. White, you mentioned you would

1 like to see the nail.

2 MS. BAGLEY: Roy, do you have that
3 with you?

4 MR. WILLEY: I do not.

5 MS. BAGLEY: Why not?

6 MR. WILLEY: I forgot it, to be
7 completely honest with you. And when he just asked
8 me for it, I just remembered that I was going to
9 bring it and I did not. So, what I will agree to do
10 is make time prior to trial or his testimony that he
11 can see that and whatever we need to do, take a
12 break, do it in the evening, I'm fine. I don't know
13 when he plans to arrive, how far in advance, but I
14 promise you I'll work with you on that because I
15 honestly just forgot it.

16 MS. BAGLEY: Okay. Thanks.

17 MR. WILLEY: I meant to bring that for
18 you.

19 BY MS. BAGLEY:

20 Q Dr. White, can you hear me?

21 A Yes, I can.

22 Q Okay. Do you recall your testimony
23 earlier you were questioned whether it was possible
24 that a nail such as the one at issue in this case
25 could have come from a pallet in Wal-Mart? Do you

1 recall that?

2 A I remember the discussion.

3 Q Okay. And do you recall that you said
4 something to the effect of it could have happened,
5 that it was -- did you say it was possible?

6 A Yes.

7 Q Okay. What level of possibility are
8 we talking about when you say that?

9 A I can't give it to you statistically,
10 but it's a very remote situation that a nail like
11 this would end up in a pallet. It would likely
12 never be used for assembly. It would never be used
13 for repair.

14 Q And would you agree that pallet
15 manufacturers, suppliers, or repair personnel
16 working for these companies have an interest in
17 making sure that their pallets stay together and
18 don't fall apart?

19 MR. WILLEY: Object to the form.

20 A Absolutely agree. The cost to them of
21 pallet failures would be significant.

22 BY MS. BAGLEY:

23 Q And in what respect?

24 A Well, unfortunately, liability gets
25 moved around depending on the situation. But the

1 pallet manufacturers themselves are liable if
2 there's an injury associated with the use of their
3 pallet. So, best practices, they reduce that
4 possibility as much as possible.

5 Q Are you aware of anyone that could
6 speak to every pallet ever used by any retailer?

7 MR. WILLEY: Object to the form.

8 A Obviously, no one can.

9 BY MS. BAGLEY:

10 Q Based on your experience and
11 knowledge, does Wal-Mart's use of wooden pallets
12 comply with industry practice?

13 MR. WILLEY: Object to the form.

14 A Yes, I have observed their use of
15 pallets and they -- they are -- Wal-Mart's supply
16 chains are extremely efficient and well run. In
17 fact, they have become a model. And Sam's Club is
18 part of that model, and the distribution systems are
19 similar. They go to great pains in terms of
20 maintaining pallet quality. I use it as a model for
21 my students as a demonstration.

22 BY MS. BAGLEY:

23 Q And, so, then is it fair to say that
24 other retailers use wooden pallets on their sales
25 floors?

1 A Oh, yes, it's a common practice.

2 Q Do any of the nails depicted in the
3 photographs that you were shown at the end of your
4 most -- well, strike that.

5 Did any of the photos that you were
6 recently shown, I believe that was Exhibit 12
7 collectively, show any nail that resembles the nail
8 at issue in this case?

9 A No.

10 Q And do any of those -- does anything
11 in those photographs indicate to you the pallets or
12 the condition of those pallets that were in use in
13 the subject Wal-Mart store on April 26th, 2015,
14 almost four years ago?

15 MR. WILLEY: Object to the form.

16 A I have a very short video, and I can't
17 tell from the video whether there's any correlation
18 at all between what I saw in those exhibits and what
19 was being used in the store.

20 BY MS. BAGLEY:

21 Q Do you have any reason whatsoever to
22 expect that the nail at issue in this case came from
23 a wooden pallet inside the Wal-Mart store?

24 A No. It, in my opinion, did not come
25 from a wooden pallet.

1 Q All right. Those are all the
2 questions I have. Thank you.

3 EXAMINATION

4 BY MR. WILLEY:

5 Q All right. Just briefly, when you
6 talk about the supply chain being a model, you're
7 talking about what happens from the manufacturer
8 through the distribution through it getting through
9 the back door of the store, correct?

10 A Correct.

11 Q In other words, you have no expertise
12 on how Wal-Mart handles pallets on its sales floor
13 or whether what they do with pallets on the sales
14 floor is a leader or even meets the industry
15 standard; is that fair?

16 A I have not seen the in-store pallet
17 handling practices.

18 MR. WILLEY: That's all I have.

19 EXAMINATION

20 BY MS. BAGLEY:

21 Q Dr. White, to your knowledge or -- I
22 understood your testimony earlier to be that
23 Wal-Mart does not repair its pallets in-house. Is
24 that your understanding?

25 MR. WILLEY: I object to the form.

1 A Yes. Wal-Mart relies on third parties
2 to maintain their pallets.

3 MS. BAGLEY: Thank you.

4 (Off the record at 5:58 p.m.)

5 (Signature waived.)

6 * * * * *

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2
3 I, Renee A. McDermed, Registered
4 Professional Reporter and Notary Public in and for
5 the Commonwealth of Virginia at Large, and whose
6 commission expires December 31, 2021, do certify
7 that the aforementioned appeared before me, was
8 sworn by me, and was thereupon examined by counsel;
9 and that the foregoing is a true, correct, and full
10 transcript of the testimony adduced.

11 I further certify that I am neither
12 related to nor associated with any counsel or party
13 to this proceeding, nor otherwise interested in the
14 event thereof.

15 Given under my hand and notarial seal
16 at Floyd, Virginia, this 22nd day of May, 2019.

17
18
19
20 

21 Renee A. McDermed, Notary Public No. 7204975

22 Commonwealth of Virginia at Large

23 REGISTERED PROFESSIONAL REPORTER
24
25

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ELECTRONICALLY FILED - 2021 Nov 05 1:52 PM - FLORENCE - COMMON PLEAS - CASE#2013CP2101375

ELECTRONICALLY FILED - 2020 Aug 28 2:39 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375
ELECTRONICALLY FILED - 2021 Nov 05 1:52 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as
employee/agent of Wal-Mart Stores, Inc. d/b/a
Wal- Mart Store #630, and Wal-Mart Stores,
Inc.,

Defendants.

COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

Civil Action No. 2017-CP-21-1375

**DEFENDANT WAL-MART STORES,
INC.'S RESPONSES
TO PLAINTIFF'S FIRST
REQUESTS TO ADMIT**

TO: PLAINTIFF AND HER COUNSEL, ROY T. WILLEY, IV, ERIC POULIN, AND
SEAN TROPEA:

Defendant Wal-Mart Stores, Inc.¹ (hereinafter "Defendant" or "Walmart"), by and through undersigned counsel, hereby responds to Plaintiff's First Set of Requests for Admission, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, as follows:

PRELIMINARY RESPONSE

Defendant has not fully completed its investigation of the facts relating to this case, has not completed discovery, and has not completed its preparation for trial. All of the responses contained herein are based only upon such information and documents as are presently available to and specifically known to Defendant.

It is anticipated that further discovery, independent investigation, legal research, and analyses will supply additional facts and add new meaning to known facts, as well as establish new factual conclusions and legal contentions, all of which may lead to additions to, changes in and variations from the responses herein set forth.

¹ Wal-Mart Stores, Inc. is not a proper party to this action; Wal-Mart Stores East, L.P. is the sole proper corporate defendant.

The following responses are given without prejudice to Defendant's right to produce evidence and subsequently discovered documents. Defendant accordingly reserves the right to revise any and all responses herein as additional facts are ascertained and other factual and legal analyses are completed. The responses contained herein are made in a good faith effort to supply as much information and as much specification as is presently known, but should in no way be to the prejudice of Defendant in relation to further discovery research or analyses.

In the interest of cooperation in the discovery process, Defendant will voluntarily provide information as reasonably appropriate and will specifically or by reference to responses given by Defendant object where appropriate to discovery requests that are outside the scope of reasonable and permissible discovery under the applicable rules.

REQUEST TO ADMIT

1. Admit that by delivery of a copy of the Summons and Complaint to you or your agent, you have been properly served in this action.

RESPONSE: Defendant Walmart admits that it was properly served in this action.

2. Admit that you have no basis to assert lack of personal jurisdiction as a defense or affirmative defense to the subject of the action.

RESPONSE: Admitted upon information and belief. Defendant further responds that it does not assert lack of personal jurisdiction as a defense to this action at this time.

3. Admit that you have no evidence to support a defense or affirmative defense that Plaintiff's Complaint fails to state a claim upon which relief can be granted.

RESPONSE: Denied.

4. Admit that the incident which is the subject of this lawsuit occurred on June 26, 2015 at Wal-Mart Store #630, located at 230 North Beltline Drive, Florence, South Carolina 29501.

RESPONSE: Admitted; however, by way of such admission, Defendants do not admit that the subject incident occurred in the specific manner alleged by Plaintiff or admit any other allegations of Plaintiff.

5. Admit that Defendant is responsible for managing, maintaining, controlling, safeguarding, caring for, and inspecting Wal-Mart Store #630.

RESPONSE: Denied as stated. Defendant further responds that Wal-Mart Stores East, L.P., the sole proper corporate defendant, was responsible for operating and maintaining Wal-Mart Store #630 at the time of the alleged incident.

6. Admit that those responsible for maintenance and/or premise care have a duty to maintain a safe environment for invitees.

RESPONSE: Denied as stated. Defendant further responds that Walmart owed its customers the duty to exercise ordinary care to keep the premises in a reasonably safe condition.

7. Admit that Defendant knew or should have known that unmaintained wooden pallets with loose, rusty nails were being placed in areas where invitees passing through was or should have been foreseeable.

RESPONSE: Denied.

8. Admit that the placement of unmaintained wooden pallets with loose, rusty nails in areas where invitees passing through is or should be foreseeable presented a dangerous condition for those shopping on the premises.

RESPONSE: Denied as stated as, upon information and belief, no unmaintained wooden pallets with loose, rusty nails were present in the subject areas of the store at the time of the alleged incident.

9. Admit that on June 26, 2015, Defendant knew or should have known that unmaintained wooden pallets with loose, rusty nails were being placed in areas where invitees passing through was or should have been foreseeable of Wal-Mart #630.

RESPONSE: Denied.

10. Admit that Defendant had a duty to make regular inspections of the Wal-Mart #630 premises.

RESPONSE: Denied as stated. Defendant Walmart admits that it owes its customers the duty to exercise ordinary care to keep the premises in a reasonably safe condition.

11. Admit that Defendant failed to make regular inspections of the Wal-Mart #630 premises around the time and location of the incident which is the subject of this lawsuit.

RESPONSE: Denied.

12. Admit that Defendant knew or should have known that unmaintained property can present dangerous conditions and/or hazards to invitees.

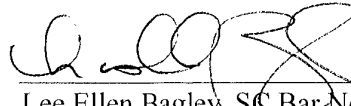
RESPONSE: Denied as stated as, upon information and belief, no unmaintained property was involved in the subject incident.

13. Admit that on June 16, 2015, Defendant failed to warn Plaintiff of the dangerous condition of the unmaintained wooden pallets and rusty nails.

RESPONSE: Denied. Defendant further specifically denies that any unmaintained wooden pallets with rusty nails were present in the subject area(s) of the store at the time of the alleged incident.

14. Admit that on June 26, 2015 Defendant did not follow internal safety policies and procedures that pertain to the incident which is the subject of this lawsuit.

RESPONSE: Denied.



Lee Ellen Bagley, SC Bar No. 77672
Nashiba Boyd, SC Bar No. 78376
GAFFNEY LEWIS & EDWARDS, LLC
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
803.790.8838 (office)
803.790.8841 (fax)

Attorneys for Defendants

December 6, 2017

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as
employee/agent Wal-Mart Stores, Inc. d/b/a
Wal-Mart Store #630, and Wal-Mart Stores,
Inc.,

Defendants.

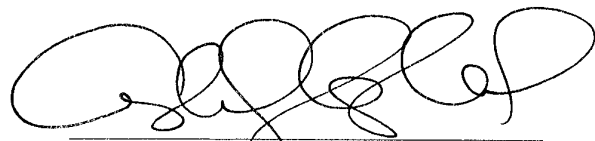
COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

Civil Action No. 2017-CP-21-1375

CERTIFICATE OF SERVICE

I do hereby certify, on this 6 day of December, 2017, that a copy of the foregoing
Defendant Walmart Stores, Inc.'s Responses to Plaintiff's First Requests to Admit were
served by depositing a copy of the same in the United States Mail, first-class, postage prepaid,
addressed to counsel of record as follows:

Sean M. Tropea, Esquire
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
Attorneys for Plaintiff



Ashley Cashdollar, Legal Assistant

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as
employee/agent of Wal-Mart Stores, Inc. d/b/a
Wal- Mart Store #630, and Wal-Mart Stores,
Inc.,

Defendants.

COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

Civil Action No. 2017-CP-21-1375

**DEFENDANTS' AMENDED
RESPONSES TO PLAINTIFF'S FIRST
REQUESTS TO ADMIT**

TO: PLAINTIFF AND HER COUNSEL OF RECORD:

Defendants Wal-Mart Stores, Inc.¹ ("Walmart") and Tim Ringer, by and through undersigned counsel, hereby respond to Plaintiff's First Set of Requests for Admission, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, as follows:

PRELIMINARY RESPONSE

Defendants have not fully completed their investigation of the facts relating to this case, have not completed discovery, and have not completed preparation for trial. All of the responses contained herein are based only upon such information and documents as are presently available to and specifically known to Defendants.

It is anticipated that further discovery, independent investigation, legal research, and analyses will supply additional facts and add new meaning to known facts, as well as establish new factual conclusions and legal contentions, all of which may lead to additions to, changes in and variations from the responses herein set forth.

¹ Wal-Mart Stores, Inc. is not a proper party to this action; Wal-Mart Stores East, L.P. is the sole proper corporate defendant.

The following responses are given without prejudice to Defendants' right to produce evidence and subsequently discovered documents. Defendants accordingly reserve the right to revise any and all responses herein as additional facts are ascertained and other factual and legal analyses are completed. The responses contained herein are made in a good faith effort to supply as much information and as much specification as is presently known, but should in no way be to the prejudice of Defendants in relation to further discovery research or analyses.

In the interest of cooperation in the discovery process, Defendants will voluntarily provide information as reasonably appropriate and will specifically or by reference to responses given by Defendants object where appropriate to discovery requests that are outside the scope of reasonable and permissible discovery under the applicable rules.

REQUEST TO ADMIT

1. Admit that by delivery of a copy of the Summons and Complaint to you or your agent, you have been properly served in this action.

RESPONSE: Defendants admit upon information and belief that they were properly served in this action with a copy of the Summons and Complaint.

2. Admit that you have no basis to assert lack of personal jurisdiction as a defense or affirmative defense to the subject of the action.

RESPONSE: Admitted upon information and belief. Defendants further respond that they do not assert lack of personal jurisdiction as a defense to this action at this time.

3. Admit that you have no evidence to support a defense or affirmative defense that Plaintiff's Complaint fails to state a claim upon which relief can be granted.

RESPONSE: Denied.

4. Admit that the incident which is the subject of this lawsuit occurred on June 26, 2015 at Wal-Mart Store #630, located at 230 North Beltline Drive, Florence, South Carolina 29501.

RESPONSE: Admitted; however, by way of such admission, Defendants do not admit that the subject incident occurred in the specific manner alleged by Plaintiff or admit any other allegations of Plaintiff.

5. Admit that Defendant is responsible for managing, maintaining, controlling, safeguarding, caring for, and inspecting Wal-Mart Store #630.

RESPONSE: Denied as stated. Defendants further respond that Wal-Mart Stores East, L.P., the sole proper corporate defendant, was responsible for operating and maintaining Wal-Mart Store #630 at the time of the alleged incident.

6. Admit that those responsible for maintenance and/or premise care have a duty to maintain a safe environment for invitees.

RESPONSE: Denied as stated. Defendants further respond that Walmart owed its customers the duty to exercise ordinary care to keep the premises in a reasonably safe condition.

7. Admit that Defendant knew or should have known that unmaintained wooden pallets with loose, rusty nails were being placed in areas where invitees passing through was or should have been foreseeable.

RESPONSE: Denied.

8. Admit that the placement of unmaintained wooden pallets with loose, rusty nails in areas where invitees passing through is or should be foreseeable presented a dangerous condition for those shopping on the premises.

RESPONSE: Denied as stated as, upon information and belief, no unmaintained wooden pallets with loose, rusty nails were present in the subject areas of the store at the time of the alleged incident.

9. Admit that on June 26, 2015, Defendant knew or should have known that unmaintained wooden pallets with loose, rusty nails were being placed in areas where invitees passing through was or should have been foreseeable of Wal-Mart #630.

RESPONSE: Denied.

10. Admit that Defendant had a duty to make regular inspections of the Wal-Mart #630 premises.

RESPONSE: Denied as stated. Defendants admit that Walmart owes its customers the duty to exercise ordinary care to keep the premises in a reasonably safe condition.

11. Admit that Defendant failed to make regular inspections of the Wal-Mart #630 premises around the time and location of the incident which is the subject of this lawsuit.

RESPONSE: Denied.

12. Admit that Defendant knew or should have known that unmaintained property can present dangerous conditions and/or hazards to invitees.

RESPONSE: Denied as stated as, upon information and belief, no unmaintained property was involved in the subject incident.

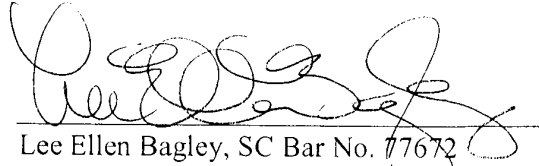
13. Admit that on June 16, 2015, Defendant failed to warn Plaintiff of the dangerous condition of the unmaintained wooden pallets and rusty nails.

RESPONSE: Denied. Defendants further specifically deny that any unmaintained wooden pallets with rusty nails were present in the subject area(s) of the store at the time of the alleged incident.

14. Admit that on June 26, 2015 Defendant did not follow internal safety policies and procedures that pertain to the incident which is the subject of this lawsuit.

RESPONSE: Denied.

[Signature page follows.]



Lee Ellen Bagley, SC Bar No. 77672
Nashiba Boyd, SC Bar No. 78376
GAFFNEY LEWIS & EDWARDS, LLC
3700 Forest Drive, Suite 400
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803.790.8841 (fax)

Attorneys for Defendants

November 29, 2018

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as
employee/agent Wal-Mart Stores, Inc. d/b/a
Wal-Mart Store #630, and Wal-Mart Stores,
Inc.,

Defendants.

COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

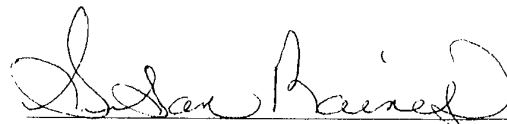
Civil Action No. 2017-CP-21-1375

CERTIFICATE OF SERVICE

I do hereby certify, on this 29th day of November, 2018, that a copy of the foregoing
Defendants' Amended Responses To Plaintiff's First Requests To Admit were served by
depositing a copy of the same in the United States Mail, first-class, postage prepaid, addressed to
counsels of record as follows:

Lane Jefferies, Esquire
Eric M. Poulin, Esquire
Sean M. Tropea, Esquire
Roy T. Willey, Esquire
Anastopoulos Law Firm, LLC
32 Ann Street
Charleston, SC 29403

Attorneys for Plaintiff


Susan Raines, Paralegal

Columbia, South Carolina

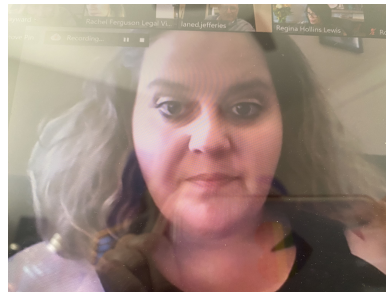
In The Matter Of:

Jones v.

Tim Ringer, et al.

Zoom Video Deposition

Virginia Wright
November 3, 2021



Janice D. Hayward, RMR
Independent Court Reporter
843.478.6756
JanHayward1@gmail.com

Original File 11-03-21 Virginia Wright.txt
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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF FLORENCE) CASE NO. 2017-CP-21-01375
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4
5 APRIL JONES,
6 Plaintiff,
7 vs.
8 TIM RINGER, INDIVIDUALLY AND AS
9 EMPLOYEE/AGENT OF WAL-MART
10 STORES INC. D/B/A WAL-MART STORE
11 #630; WAL-MART STORES INC.; AND
12 WAL-MART STORES EAST LP,
13 Defendants.
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ZOOM VIDEO DEPOSITION

16 WITNESS: VIRGINIA WRIGHT
17 DATE: Wednesday, November 3, 2021
18 TIME: 2:15 PM
19 LOCATION: Zoom Videoconference
20 REPORTED BY: Janice D. Hayward, RMR
21 NCRA Registered Merit Reporter
22 240 Oak View Way
23 Summerville, South Carolina 29483
24 843.478.6756
25 JanHayward1@gmail.com

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7 any other party or person.
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APPEARANCES

7 FOR THE PLAINTIFF

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17 Columbia, SC 29204

16 ALSO PRESENT

17 Rachel Ferguson, Videographer

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INDEX TO EXAMINATIONS

3 Examination By Mr. Jefferies
4 Examination By Ms. Lewis

INDEX TO EXHIBITS

8 Plaintiff's Exhibits
9 1 affidavit and 31 photos
10 2 screenshot of list of audio files

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1 (The deposition began at 2:15 PM.)
2 THE VIDEOGRAPHER: We are now on the
3 record at 2:18 PM on November 3rd, 2021.
4 This is the video deposition of Virginia
5 Wright.
6 The attorneys have agreed to
7 waive the reading of the caption.
8 Counsel, please state your
9 appearances for the record.
10 MR. JEFFERIES: Good afternoon. This
11 is Lane Jefferies and Roy Willey with the
12 Anastopoulo Law Firm for the plaintiff,
13 April Jones.
14 MS. LEWIS: Good afternoon. This is
15 Regina Hollins Lewis with Gaffney Lewis on
16 behalf of Defendant Walmart.
17 THE VIDEOGRAPHER: Court reporter,
18 will you please swear or affirm the
19 witness.
20 (VIRGINIA WRIGHT, after being
21 sworn/affirmed via Zoom, testified as
22 follows:)
23 EXAMINATION
24 BY MR. JEFFERIES:
25 Q Hello again. My name is Lane Jefferies.

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1 Again, I represent the plaintiff, April Jones, in a
2 lawsuit against Walmart and some others.
3 Let me ask you initially, would
4 you prefer that I call you Virginia or Miss Wright
5 or do you have a nickname? How would you prefer I
6 address you?
7 A Ginny is what I go by.
8 Q Ginny. Okay. Great.
9 Ginny, I tell you, I don't know
10 if you've had your deposition taken before. Have
11 you?
12 A No, sir.
13 Q All right. Well, I'll just tell you a
14 little bit about what it is. It's pretty
15 straightforward. It's a question-and-answer session
16 under oath. You know you've just been sworn in --
17 sworn to tell the truth and the whole truth and
18 nothing but the truth. Do you understand that?
19 A Yes, sir.
20 Q I'm going to ask questions. You're going
21 to answer them. I'm going to hope that my questions
22 are well-worded and perfectly intelligible.
23 Sometimes they might not be. If they're not, then
24 please ask me to rephrase or to explain or to
25 clarify. Just be sure to look only to me for

Page 6

1 clarification, not to anybody else or Miss Lewis or
2 anybody else on this call, okay?
3 A Um-hum.
4 Q If you would do something to make Jan's
5 life, our court reporter's life a little easier,
6 make sure that whenever you answer a question, that
7 you do it verbally, yes, no, et cetera, rather than
8 just with, you know, head shakes or nods.
9 A Yes, sir.
10 Q Okay. That makes it a lot easier for her
11 to write it down.
12 All right. So you've already
13 said you've understood you've been sworn in, you're
14 going to tell the truth.
15 A Yes, sir.
16 Q And you're going to ask me for
17 clarification if you don't understand any of my
18 questions?
19 A Yes, sir.
20 Q If you do answer a question, I'm going to
21 conclude two things from that. I'm going to
22 conclude, first, that you understood the question.
23 Fair?
24 A Yes.
25 Q All right. And the second thing I'm going

Page 6

1 to conclude is that you gave us a truthful answer
2 and a complete answer. Is that fair?
3 A Yes. Yes, sir.
4 Q All right. With that in mind, let's get
5 started. I don't anticipate this taking a long
6 time, but if you need a break at some point, that's
7 fine. When you finish giving an answer, just ask to
8 take a break. I would ask that we not take a break
9 when there is a question pending. Give your answer
10 and then say, Hey, I need a quick break, all right?
11 A Yes, sir.
12 Q You are familiar, I think, with an
13 affidavit that you signed, gosh, it looks back like
14 in May of 2019. Do you recall signing an affidavit
15 for Walmart back then?
16 A Yes, sir.
17 Q You don't happen to have a copy of that
18 affidavit with you, do you?
19 A No, but I believe it's in my email.
20 Q I can show it on the screen for you. Why
21 don't I -- why don't I do that just to make life
22 easy for us.
23 (Plaintiff's [Exhibit Number 1](#) was marked
24 for identification.)
25

Page 6

1 BY MR. JEFFERIES:
2 Q (Sharing screen.) For a moment we're
3 going to see all of us.
4 All right. Do you see now on
5 the screen what looks like the affidavit of Virginia
6 Wright?
7 A Yes, sir.
8 Q And do you recognize that to be the
9 document that you signed back on May 22nd of 2019?
10 A Yes, sir. That is my signature, yes.
11 Q Okay. And you signed it in front of a
12 notary sworn that it was true and all that?
13 A Yes.
14 Q So as I read this affidavit, I notice the
15 second sentence -- well, go ahead and read that
16 second sentence that begins with I am the asset.
17 A Yes. I am the asset protection
18 assistant manager of Walmart Store 630 in
19 Florence, South Carolina, where April Jones
20 alleges she stepped on a nail June 26th, 2015.
21 Q All right. Thank you.
22 Tell me, what is an asset
23 protection manager at Walmart?
24 A As the asset protection manager, I was
25 in charge of any kind of internal investigations

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1 with associates, theft of the store, or any kind
2 of accident footage or any kind of footage that
3 was requested of me by any member of management in
4 the store.
5 Q Okay.
6 A And securing that video, saving it, and
7 submitting it to whom it went to.
8 Q All right. And is that still your role at
9 Walmart? Are you still an asset protection
10 assistant manager?
11 A No, sir. I'm no longer with the
12 company.
13 Q Okay. When did you -- when was your last
14 day? If you don't remember exactly, roughly when
15 was your last day with Walmart?
16 A I don't remember a specific date but it
17 was February of this year, 2021.
18 Q Why did you leave your employment with
19 Walmart in February of 2021?
20 A I secured a better job with another
21 company.
22 Q What's that new company that you're at
23 now?
24 A Palmetto Moon.
25 Q Palmetto Moon.

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1 Is that a clothing company?
2 A Yes.
3 Q What kind of work do you do there at
4 Palmetto Moon?
5 A I'm the store manager.
6 Q Okay. And where is that store located?
7 A 2701 David H. McLeod Boulevard, Florence
8 South Carolina, Suite 1450.
9 Q Thank you.
10 When did you begin working with
11 Walmart?
12 A March 15th, 2007.
13 Q And when you began working with Walmart on
14 March 15th of 2007, what was your role there at
15 Walmart?
16 A I was a cashier.
17 Q And was that in the same Walmart store,
18 the Store Number 630?
19 A No, sir. That was in Store 1135 located
20 in Hartsville, South Carolina.
21 Q Besides Store 1135 in Hartsville and Store
22 630 in Florence, have you worked in any other
23 stores?
24 A Yes. Store 1392 located in Wilmington,
25 North Carolina, and several others to do several

Page 11

1 other projects, but permanent relocation was in
2 the three.
3 Q Okay. When did you become permanently
4 assigned to Store 630 in Florence?
5 A I don't remember a specific date. I
6 want to say it was in July. I don't remember the
7 year, to be honest. Let me think. Most likely
8 around 2014 --
9 Q Okay.
10 A -- if I had to speculate. I can't
11 remember.
12 Q Do you remember prior to the incident in
13 which Miss Jones stepped on a nail at Walmart on
14 June 26th of 2015?
15 A I'm sorry. Could you repeat that? You
16 cut out.
17 Q Yes. Do you remember -- do you recall if
18 your employment at Store 630 in Florence began
19 before or after Miss Jones stepped on the nail in
20 that store which was on June 26th of 2015?
21 A Oh, I would have been there prior, yes.
22 MS. LEWIS: Objection to the form.
23 But you can answer.
24 THE WITNESS: Oh, I'm sorry.
25

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1 BY MR. JEFFERIES:
2 Q You would have been there prior, so you
3 were at Store 630 during the time when Miss Jones
4 alleges she stepped on the nail?
5 A Correct, yes, of course.
6 Q What was your role at the Walmart Store
7 630 back in 2015 when Miss Jones stepped on the
8 nail?
9 A It would have been like it says in the
10 affidavit. I was the asset protection manager.
11 That's what I went to that store as when I was
12 hired there.
13 Q Okay. So your entire time at Store 630
14 you were an asset protection assistant manager?
15 A Not my entire time. At the end of my
16 duration, which is many years after this, a couple
17 years after this, I was the front-end coach.
18 Q Okay. And that would have been --
19 A 2018-2019.
20 Q Okay. Do you remember when in 2019 you
21 became the -- what did you call it? -- front-end
22 coach?
23 A I don't remember, no. I've taken many
24 promotions with the company, and I don't remember
25 specific dates. I apologize.

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1 Q All right. Do you remember whether you
2 became front-end coach before or after May 15, 2019?
3 A It would have been after that.
4 Q Okay. And during the two dates that are
5 really relevant to what we're going to talk about
6 today, which would be June 26th, 2015, and May 15,
7 2019, on both of those dates you were working as an
8 asset protection assistant manager at Store 630?
9 A Yes, sir. As the affidavit says, yes.
10 Q And so that's what, six years -- what, is
11 that four, five, six years, something like that you
12 worked as an asset protection manager?
13 A Yes.
14 Q And I think you said that that involves
15 kind of heavily monitoring videos. Is that, you
16 know, like internal theft, slip and falls, videos
17 for other purposes? Is that the thrust of the job?
18 A Yes.
19 Q And how do you do that? Like, is there
20 a -- a room or something with a lot of video
21 monitors? How does that work?
22 A Yes. I have my own office.
23 Q Okay. And one video monitor in there that
24 you kind of switched from camera to camera or a
25 whole bunch of them, or...

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1 A No, sir. There was more than one.
2 Q How many would you say roughly?
3 A There were three monitors in the room.
4 I'm sorry.
5 MS. LEWIS: Objection.
6 BY MR. JEFFERIES:
7 Q What Miss Lewis is doing is simply
8 objecting because she doesn't like the form of my
9 question. She's doing that to preserve her
10 objection for later if she wants to bring it in
11 front of the court. But unless she tells you not to
12 answer the question, you can just go ahead and
13 answer after she's made her objection.
14 So understanding that she
15 objected to my question, I'll ask it again. In your
16 office there were more than one monitor, is that
17 what you said?
18 MS. LEWIS: Are you talking about
19 2015 or 2019 or both?
20 MR. JEFFERIES: Let's talk about
21 both.
22 BY MR. JEFFERIES:
23 Q So in your office as asset protection
24 assistant manager, were there multiple monitors back
25 in 2015 and multiple monitors in 2019?

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1 A I can't be specific to answer that
2 because we did get an upgrade in camera systems,
3 and I can't be sure of when that date was or when
4 that happened.
5 Q Okay. In 2019, May 15th of 2019, how many
6 monitors were in your office at that time?
7 A There was the -- there were two. One
8 that we had PTZ live footage cameras on and one
9 that the stationary cameras were connected to, and
10 there was a third one on another desk off to the
11 right.
12 Q Tell me the difference between what you
13 described as live cameras and stationary cameras.
14 A Stationary cameras can only show you
15 what's recorded video, and PTZ live footage we can
16 turn the cameras, you know, 360 degrees on live
17 footage and record live feed.
18 Q Okay. So the stationary ones record
19 whatever they're pointed at?
20 A Correct.
21 Q And the live ones, well, they also record
22 whatever they're pointed at, but you can turn them
23 and make them point at different things?
24 A And zoom them in and out, yes.
25 Q Zoom them in and out. Okay.

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1 Is the entire, I'm going to call
2 this public area of Walmart, and what I mean by that
3 is there's a part of every retail store that the
4 public's not supposed to be in, like the stockroom
5 and the manager's office.
6 A Yes.
7 Q Okay. And then there's another part where
8 the merchandise is displayed and that's where the
9 public is allowed to go and they shop, right?
10 A Yes.
11 Q So I want to ask you about the public
12 area. I'm not -- I'm not asking you here about
13 private offices or the stockroom or anything like
14 that.
15 In the public area of that
16 Walmart, Store Number 630, is that entire public
17 area covered by video cameras or are there some
18 areas that are not?
19 A Of course there's some areas that are
20 not.
21 Q You say of course. Why would that be that
22 there would be some areas that are not?
23 A Because that store was massive square
24 footage. It would be almost impossible to cover
25 every square inch.

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1 Q Couldn't you just buy more cameras?
2 A Not necessarily.
3 Q So some of the store was covered, some of
4 it wasn't. Half and half?
5 A No. The majority of it was covered.
6 There are very few places where it's not.
7 Q Do you have any idea why Walmart decided
8 not to cover a minority of places within the store?
9 MS. LEWIS: Objection to the form.
10 A Yeah. That has nothing to do with me.
11 I don't have a say-so in where they get put or how
12 many.
13 BY MR. JEFFERIES:
14 Q To be clear, that was just my question,
15 whether you knew or had any idea why. And is your
16 answer, no, you don't know why?
17 MS. LEWIS: Objection to the form.
18 BY MR. JEFFERIES:
19 Q I'll ask it again. It's just a yes-or-no
20 question.
21 Do you know why Walmart decided
22 to cover some areas and not others?
23 MS. LEWIS: Objection to the form.
24 A No. You would have to ask Walmart.
25

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1 BY MR. JEFFERIES:
2 Q Okay. As asset protection assistant
3 manager of Store 630, were you aware of what areas
4 were covered by video or what areas were not covered
5 by video?
6 A Yes. That was my job.
7 Q Okay. All right. Take a look, if you
8 would, at the third sentence of your affidavit. It
9 begins with I was alerted.
10 A Yes.
11 Q Okay. Can you read that third sentence
12 aloud for us, please.
13 A Sure. I was alerted that on May 15th,
14 2019, Store Manager Tim Ringer observed
15 Mrs. Jones' attorney, Lane Jefferies, in the store
16 filming or taking photos.
17 Q Who alerted you on June 15th, 2019?
18 A Exactly who I said did, Timothy Ringer.
19 Q Okay. So Tim Ringer alerted you that he
20 had seen Miss Jones' attorney?
21 A Yes.
22 Q And how did Tim Ringer alert you of this?
23 A My cell phone.
24 Q Tim Ringer called your cell phone?
25 A Um-hum. Yes.

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1 Q And when he called your cell phone, what
2 did he say to you?
3 A He asked me to review video to see why
4 someone was in the store taking video or photos or
5 to see what I could see so he could come review
6 the footage.
7 Q And specifically, what did Mr. Ringer say
8 to you? I mean, like, how do you know what to look
9 for?
10 A Sir, this is several years ago. I can't
11 tell you what -- specifically what he said to me.
12 I don't know. But I know he would have described
13 in detail specifically what shirt, what pants,
14 where they were standing, what time.
15 But I know that he had just
16 walked by Mr. Lane Jefferies.
17 Q Okay.
18 A And saw him taking video or photos in
19 the store and that is in the video that I
20 provided. And he told me exactly where he was
21 standing, at what time, and what he was wearing so
22 that I could secure the video.
23 Q Okay. Mr. Ringer then called you very
24 shortly after he observed this, is that --
25 A Yes.

Page 20

1 Q Okay. And he said there's a person, he
2 described the person, he described what they were
3 wearing, he described where they were?
4 A Yes.
5 Q And then he asked you to pull that video?
6 A Yes.
7 Q Okay. Now, it looks like according to
8 your attorneys altogether you pulled 30 different
9 videos.
10 A If you say so, yes.
11 Q Okay. How did you know -- I mean,
12 obviously Mr. Ringer, you just said, described to
13 you a person standing in a particular place, wearing
14 particular clothes. That's one video, maybe two.
15 If another camera covered that area, maybe three,
16 right? You don't all -- you don't have 30 cameras
17 pointing all at one spot, do you?
18 A No. Of course not.
19 Q So how did you-all decide what additional
20 videos to pull?
21 A Same way we decided with any other case.
22 MS. LEWIS: Object to the form first.
23 Go ahead. You can answer.
24 THE WITNESS: Oh, I'm sorry.
25 MS. LEWIS: Go ahead.

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1 A The same way I do any other video in any
2 other situation in any other case. I would have
3 followed that person from the time he told me to
4 and followed them until they exited the store.
5 And then I would have backtracked -- the people
6 that were in that video that left out of the
7 store, I would have backtracked them the entire
8 time they were in the store until the time they
9 walked in the front door or possibly even into the
10 parking lot.
11 BY MR. JEFFERIES:
12 Q Okay. All right. That makes sense.
13 When you did that and you
14 obtained these 30 videos, is there any point within
15 the timeframe from when these three people entered
16 the store until they finally left the store when
17 they were not being recorded by one video camera or
18 another?
19 A I can't answer that. I don't know, sir.
20 It's been several years since I've seen this
21 footage. You can pull up a specific clip and ask
22 me questions, if you'd like.
23 Q Oh, I'd be glad to, yes. In fact, since
24 you don't know, it looks like we'll have to go
25 through all 30 of them and find out. So that's what

Page 22

1 I'm hoping to determine is whether there was any
2 point when these folks were in one of those dead
3 zones that's not covered by a camera.
4 MS. LEWIS: Objection to the form.
5 BY MR. JEFFERIES:
6 Q You don't know the answer to that off the
7 top of your head?
8 A No.
9 Q Okay. So let me ask you this. Generally
10 speaking, where would those dead zones be inside of
11 a store?
12 A I'm sorry. You're asking me information
13 I cannot recall. I do not know. I don't know
14 where cameras are currently pointed. I don't
15 remember where they were pointed that day.
16 Locations of cameras change at -- all the time.
17 If we need to move them for a specific reason,
18 then we go move them. So I could not tell you
19 where the cameras were pointed on this date.
20 Q Okay. Back on May 15th, 2019, you don't
21 know where the dead zones in the store were?
22 A No. They could have been many different
23 places.
24 Q Okay. Now, what else did Mr. Ringer tell
25 you? Did he tell you to look for one person or two

Page 23

1 people or three people? What did he say?
2 A He gave me the description of the person
3 that's in the video and asked me to watch them.
4 Q Okay. Now, did you at any point observe
5 directly, like personally, like out on the sales
6 floor with -- looking with your eyes any of this, or
7 were you strictly looking through video cameras?
8 A There would have been no reason to leave
9 my office. I could have seen everything that I
10 needed to see from right there.
11 Q So if I understand you correctly, that's
12 a, no, you didn't see any of it personally, you
13 observed it all through video camera.
14 A Yes, because I have PTZs that record
15 live footage as well as stationary cameras. There
16 would have been no need for me to have ever left
17 my office.
18 Q Well, except to, like, see what's in a
19 dead zone or see what's out of the camera angle or
20 something like that.
21 A No. PTZs cover dead zones. That's what
22 I don't think you get.
23 Q Okay. So PTZs cover dead zones. And from
24 the moment you started watching this attorney, you
25 would have had him in your sight the entire time?

Page 24

1 A No. I would not have start watching him
2 until I was alerted to watch him.
3 Q Right. Well, that was my question. From
4 the moment you started watching, you then had him in
5 your sight the entire time until he left?
6 A Most likely. I can't specifically
7 recall. Like I said, this is years ago. But any
8 other case in any other situation, there would not
9 have been a dead zone because the PTZs are
10 designed to not have them.
11 Q Now, the attorney, was he always with
12 these other two people? Were they moving together
13 lockstep as a group at all times, or did they split
14 up?
15 A You would have to ask me a question
16 about a specific clip, if you would like to.
17 Q All right. We'll do that. Let's assume
18 for a moment -- I'm going to represent to you that
19 they split up. And we'll watch the video of that.
20 If they split up could you simultaneously use the
21 PTZ to watch the attorney and watch the other folks
22 live, like, on two different monitors?
23 A Yes, you could.
24 Q Okay. Is that what you did?
25 A I don't recall.

Page 25

1 Q Do you recall what you -- what you saw the
2 attorney or these other folks doing?
3 A I do not recall. You can ask me a
4 specific question about a clip. If you want to
5 pull it up, I'll be glad to watch it and let you
6 know.
7 Q Okay. As I said, we'll do that. I
8 appreciate that offer. We will do that.
9 So just to make sure I'm clear,
10 then, everything that you saw, you saw on a video,
11 same video that we're going to be watching here in a
12 little bit, is that right?
13 A I can't -- I can't -- I can't answer
14 that question as a yes or no. I don't know. I
15 would have -- I don't remember. This was years
16 ago. I can't speak to what I don't know and I
17 won't -- I won't try to.
18 Q Well, see, what I'm asking, though, is you
19 didn't leave your office and observe anything with
20 your own eyes directly, you watched a video on the
21 video screen?
22 A I can't recall that specifically, sir.
23 I cannot answer that question.
24 Q You don't remember whether you left your
25 office and went down on the sales floor to look for

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1 Mr. Jefferies or these two other people?
2 A No. I do not recall that.
3 Q If you would have left your office, who
4 would have been there to run the PTZ video?
5 A I had two to three associates that would
6 have been there with me.
7 Q Okay. What are their names?
8 A Do I need to provide that information to
9 you?
10 Q Yes, you do.
11 A One would have -- I don't know at the
12 time who was working for me, sir. This was years
13 ago. Most likely it would have been a Joseph and
14 possibly an Anya. I don't remember who was
15 working for me at that time, but I've always had
16 two to three associates on staff.
17 Q Joseph, Anya.
18 And where would we be able to
19 determine who those folks were? Who would have
20 those records?
21 A Walmart.
22 Q Walmart.
23 But you don't remember whether
24 you left or not. So it's entirely possible that one
25 of these other people, Joseph or Anya, might have

Page 27

1 been making the videos while you were out on the
2 floor?
3 A No. They would not have done this video
4 for this situation, no.
5 Q Okay. Well, I'm a little confused, then.
6 My question is did you ever leave the office or did
7 you stay in the office and make the videos the whole
8 time?
9 A Sir, I cannot tell you what my every
10 move was from 2019. It is November 3rd, 2021.
11 Q Respectfully, I did not ask you what your
12 every move was in 2019. What I asked you was
13 whether you stayed in the office and made these
14 video recordings or whether you left and made
15 personal observations out on the sales floor.
16 That's all I'm asking.
17 MS. LEWIS: Objection to the form.
18 A Yeah, 'cause you're asking me to recall
19 my every move, which you're saying that's not what
20 you're asking, but that is what you're asking, and
21 I cannot tell you what my every move was on that
22 date at that time. But I would have most likely
23 sat there and pulled every single clip myself.
24 BY MR. JEFFERIES:
25 Q But you don't know that for sure?

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1 A In this case I do know that for sure
2 because my associates would not have been asked to
3 handle a situation like this because they were not
4 as good on the stationary cameras as I were. They
5 were trained on the PTZs. I'm the only one in
6 that store that knew where those stationary
7 cameras were.
8 Q I appreciate that. I appreciate the
9 candid answer.
10 So would you agree with me that
11 since you are certain that you stayed in the office
12 and made these videos, it would not be possible for
13 you also at the same time to have been out on the
14 floor personally observing these things?
15 MS. LEWIS: Objection to the form.
16 BY MR. JEFFERIES:
17 Q I mean, do you agree with me that you
18 can't be in two places at one time?
19 A Of course not, but the video doesn't
20 disappear. I could have stepped out on the floor,
21 and I could have observed with my eyes who maybe
22 he was talking about, and I could have stepped
23 right back in my office and proceeded to pull
24 video. Video does not disappear. It would have
25 still been there regardless if I was sitting in

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1 that office or not.
2 BY MR. JEFFERIES:
3 Q But you don't remember whether you were or
4 not? Is that right, you don't remember? Ma'am, the
5 question is, is that correct? You don't remember
6 whether you were in the office the whole time or
7 not?
8 A Of course I don't remember that.
9 Q You said the video doesn't disappear.
10 What do you mean by that?
11 A The video would have been recorded and
12 it would have stayed recorded for several months.
13 Q Several months?
14 A Yes.
15 Q What is the retention policy on video,
16 like, how many months?
17 MS. LEWIS: Objection to the form.
18 A Yes. That would be different for every
19 shot because different ones are connected to
20 different DVRs in the ceiling. So the retention
21 period is different for each shot.
22 BY MR. JEFFERIES:
23 Q And you don't know what that retention
24 period is?
25 A It's generally 90 days.

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1 Q If you'll take a look at the fourth
2 sentence in your affidavit. It begins, I reviewed.
3 A Yes. I see it.
4 Q Okay. Would you read that fourth sentence
5 in your affidavit aloud to us.
6 A I reviewed the store video surveillance
7 and observed Mr. Jefferies and two other people at
8 various locations in the store.
9 Q Now, tell us how you knew that one of the
10 people you observed was Mr. Jefferies.
11 A Timothy Ringer knew who he was.
12 Q Okay. So Timothy Ringer said, That's
13 Mr. Jefferies, and he described what the person was
14 wearing, what the person looked like, right?
15 A Correct.
16 Q If Timothy Ringer had said, That's
17 Mr. Jones and described exactly the same person,
18 you'd have written down Mr. Jones, right? I mean,
19 you hadn't met Jefferies before, had you?
20 A No.
21 Q Okay. So you didn't have any idea who it
22 was really, you just knew what Timothy Ringer told
23 you?
24 A Yes. He identified who the man was, I
25 believe, from a prior situation or deposition he

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1 had had with him from a previous case, so he knew
2 personally who he was.
3 Q Okay. What about the other two people?
4 Did Mr. Ringer know who they were?
5 A I don't know. You'd have to ask him
6 that.
7 Q Okay. He didn't tell you who they were?
8 A I don't know. You'd have to ask him
9 that. I don't know who the people were
10 personally.
11 Q Okay. In reading that sentence it says
12 you observed Mr. Jefferies and two other people at
13 various locations in the store. Did I read that
14 right?
15 A Yes.
16 Q So were there only three people besides
17 Mr. Ringer in the whole Walmart store?
18 A No.
19 Q Well, I'm having trouble understanding
20 your sentence, then. You observed Mr. Jefferies or
21 all these cameras, 30 cameras. The only thing you
22 saw was Mr. Jefferies and two other people?
23 MS. LEWIS: Objection to the form.
24 A Of course not. I observed who I was
25 asked to observe, followed them on every shot that

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1 was available, secured that video and sent it to
2 whoever it needed to be sent [sic] to that I was
3 directed to do so. So of course not. That is the
4 most ridiculous question I've ever heard.
5 Of course there were not only
6 three people in the video. It is Walmart, sir.
7 There are hundreds of thousands of people in that
8 video. The people that I was asked to observe are
9 who I was tracking in the video that I provided.
10 BY MR. JEFFERIES:
11 Q Okay. So the sentence that said you
12 observed Mr. Jefferies and two other people at
13 various locations in the store, you observed them in
14 addition to any number of other people at various
15 locations in the store. They were just some of the
16 people in the Walmart.
17 A The video clips that I secured were of
18 the three people that I was following in the store
19 that I was asked to follow by Timothy Ringer.
20 Q Okay. And other people, right? They're
21 not the only people in those video clips. There are
22 other people in the videos, right?
23 A Of course there are.
24 Q Okay. And I think you said you weren't
25 sure whether you were able to secure all of the

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1 video for the entire time these people were in the
2 store. They might have been in dead zones from time
3 to time, or do you know?
4 MS. LEWIS: Objection.
5 You can go ahead and answer.
6 A That is a possibility because a camera
7 could have been out or not working that day or, I
8 mean, there could have been a number of reasons.
9 BY MR. JEFFERIES:
10 Q Okay. Now, in the fifth sentence in
11 your -- your affidavit it says that you secured the
12 video, the surveillance video consisting of 30
13 clips, is that right? How about read that fifth
14 sentence for us.
15 A I secured the surveillance video
16 consisting of 30 clips and provided a copy to
17 Walmart's attorney, Lee Ellen Bagley.
18 Q Okay. What does that mean, like, I
19 secured the surveillance video? How does one --
20 'cause I'm not familiar with your system. How does
21 one do that?
22 A It would have been recorded onto a disc.
23 Q Okay. So you would have gone to the
24 machine, looked for the portions of the video that
25 had the people you were looking for and copied those

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1 portions onto a disc?
2 A Yes.
3 Q And did you copy any other portions that
4 wouldn't have shown these folks? I mean, I don't
5 know why you would but...
6 A There would have been no reason to
7 include video that wasn't important.
8 Q Okay. You copied it onto a disc. And
9 when did you do this?
10 A I don't recall, sir. I would have most
11 likely done it that day.
12 Q Okay. But you don't remember when for
13 sure, just probably that day?
14 A Most likely, yes.
15 Q And then once you had that disc with these
16 30 video clips on it, what did you do with the disc?
17 A I can't recall that, sir. I would have
18 said -- whatever this says, that is what I would
19 have done. I do not lie. I do not make a habit
20 of lying. I was in a position where my integrity
21 was of the highest standards, sir. So if I put
22 that in this affidavit that that is what I did,
23 then that is what I did.
24 Q Okay. Well, and that's just what I'm --
25 no one's calling you a liar. I'm just asking a

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1 question.
2 Says you provided a copy to
3 Walmart's Attorney, Lee Ellen Bagley, is that right?
4 A Yes.
5 Q Okay. And so what I'm asking is how did
6 you do that? Did you drive over to Lee Ellen
7 Bagley's office and hand it to her?
8 A No. It would have been mailed to her.
9 Q Okay. So you took the disc. Did you mail
10 it?
11 A I would have secured it into an envelope
12 with the address that it needed to go to, yes, and
13 I would have given it to most likely the FedEx
14 driver that picked up the mail.
15 Q Okay. So you would have put it in the
16 FedEx envelope, is that right?
17 A Or some kind of envelope with a FedEx
18 label because that's how we send out our mail.
19 Q And you gave it directly to the FedEx
20 driver?
21 A I would have put it at the back delivery
22 table where the FedEx driver would have picked it
23 up.
24 Q Tell me about this back delivery table.
25 A Yes. It's where we do our shipping and

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1 receiving.
2 Q Who all has access to that?
3 A The shipping and receiving people.
4 Q And you, right?
5 A Well, yes.
6 Q What about anyone else that needed to send
7 a FedEx? Would they be able to put a FedEx envelope
8 on this back delivery table?
9 MS. LEWIS: Objection.
10 A I can't remember -- back in 2015 or '19,
11 whenever this was, I can't remember what that
12 would have looked like. But there was a cage --
13 there is a cage where you can go and put items of
14 a high secure nature that need to be sent out.
15 And the only people that have access to that would
16 have been a member of management.
17 BY MR. JEFFERIES:
18 Q Okay. How many members of management,
19 round numbers, are there?
20 A I have no idea, sir. You would have to
21 ask Walmart how many managers they had in 2019.
22 Q Well, suffice it to say, it's obviously
23 not a few if you can't remember how many there are.
24 A Not every manager in that store would
25 have had access to that case. Only the person

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1 that was over that area, which would have been me
2 and the store manager and the people that worked
3 in that area.
4 Q So how many people would that be that had
5 access --
6 MS. HAYWARD: One second, please.
7 One second.
8 A Most likely three.
9 BY MR. JEFFERIES:
10 Q And who would those three people have been
11 back in May of 2019?
12 A I can't say specifically, but I know for
13 sure it would have been me, Timothy Ringer, and
14 the manager of that area, which I believe was
15 Marilyn Connor.
16 Q All right. So you put the disc into a
17 FedEx label, and you take it down to the back
18 delivery table that some number of people have
19 access to, and you drop it off. And do you ever see
20 it again?
21 A Well, it wasn't some number. I said
22 three. And, no, I would not have needed to see it
23 again because it has a tracking number on it.
24 Q Okay.
25 A I can know exactly where it was at, at

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1 what time, on what date.
2 Q All right. So are you now certain it was
3 three? Because before you said most likely three.
4 So is it three for sure or three most likely?
5 A I can't remember from back in 2019. I
6 don't know. But it would not have been very many
7 people, no. It might have been a comanager as
8 well, so it might have been four.
9 Q Did you check the tracking number to make
10 sure the disc had been delivered to Lee Ellen
11 Bagley?
12 A Of course. I always check tracking
13 numbers on shipments.
14 Q And you recall that this one was
15 delivered?
16 A I can't specifically recall something
17 from years ago, sorry, but I would have been
18 tracking the package.
19 Q Who signed for the package?
20 A I have no idea, sir. You are asking me
21 specific things from years ago. I was very
22 thorough and very good at my job, which is why I
23 held that position in that store for as long as I
24 did and which is why I received a promotion
25 afterwards.

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1 Q I'm sure you were. Nobody is doubting how
2 thorough you were and how good at your job you were
3 Just trying to find out what you know and what you
4 don't know.
5 You know, your lawyers have
6 moved to have some very serious sanctions applied to
7 April Jones and her attorneys in large part on the
8 basis of your affidavit. So we're just trying to
9 find out, you know, what you know and what you don't
10 know.
11 So I understand you FedEx'd this
12 to Lee Ellen Bagley --
13 MS. LEWIS: Objection to the
14 statement.
15 But go ahead.
16 BY MR. JEFFERIES:
17 Q You FedEx'd the disc to Lee Ellen Bagley,
18 but you don't know who signed for it?
19 A I would have followed the tracking to
20 make sure that it was received and made sure that
21 it made it there. I would have also most likely
22 been in contact with that attorney to make sure
23 she received it personally. Like I said, I was
24 very thorough at my job.
25 Q And do you have any kind of record of that

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1 or is that -- that's just your memory of being very
2 thorough at your job?
3 MS. LEWIS: Objection.
4 A Yeah. That was my memory of being very
5 thorough at my job, sir. You'd have to ask her
6 that.
7 BY MR. JEFFERIES:
8 Q And do you have any knowledge of whoever
9 received this disc in Lee Ellen Bagley's office --
10 whether it was her or some other attorney -- do you
11 have any knowledge what they would have done with
12 the disc?
13 MS. LEWIS: Objection to the form.
14 A Yeah. I didn't work in that office,
15 sir. You'd have to ask her that.
16 BY MR. JEFFERIES:
17 Q No, you do not have any knowledge of what
18 they would have done with the disc, is that --
19 MS. LEWIS: Objection to the form.
20 A Yeah. I didn't work there, sir. You'd
21 have to ask her that.
22 BY MR. JEFFERIES:
23 Q I'm just asking whether you knew. It's a
24 simple yes or no question.
25 MS. LEWIS: Object.

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1 BY MR. JEFFERIES:
2 Q Do you have any knowledge of what that
3 attorney or whoever received it did with the disc?
4 MS. LEWIS: Objection to the form.
5 A And I'm just saying there is no way
6 possible for me to have known that 'cause I was
7 never in that building.
8 Q Okay. Let's take a look at some
9 photographs that your attorney -- well, I guess
10 she's not really your attorney. You don't work for
11 Walmart -- but that Walmart's attorney provided.
12 Can you see my screen right there (sharing screen)?
13 A Yes.
14 Q Okay. Let me ask you this before we talk
15 about that particular photo. At any point did you,
16 using your video software or whatever, take the
17 video, the moving pictures, and take still shots of
18 those, convert those into still photographs?
19 A That looks -- appears to be what I'm
20 looking at right now.
21 Q Yes. And my question -- I agree with you.
22 That is a still photograph.
23 Is that something that you
24 created there at Walmart, this still photograph that
25 we're looking at?

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1 A That is available to anyone who has the
2 software that works for Walmart. It is a feature
3 that is built into the camera system.
4 Q Okay. So my question to you is I've been
5 provided by your attorneys with 31 different still
6 photos. And my question is did you create these
7 still photos or did somebody else do that?
8 A That would have been me.
9 Q Okay. And then did you apply these labels
10 kind of in the middle of the photos? Like this one
11 you see, it says 5-20-19.
12 A Yes. I would have applied them where I
13 thought they were best to go, yes.
14 Q And how did you know what to put in there?
15 A It automatically comes up, sir. When
16 you click the date and time, it automatically
17 comes up.
18 Q Okay. So you could click in the middle --
19 when you're using this software, you could click in
20 the middle of a photo and it automatically will put
21 in the date for you?
22 A And the time.
23 Q And the time.
24 What else would it automatically
25 put in for you?

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1 MS. LEWIS: Objection to the form.
2 A It wouldn't, not that I know of.
3 BY MR. JEFFERIES:
4 Q Okay. Take a look at this one here. This
5 one, looking at the bottom right now, it has a date,
6 May 15, 2019, is that right?
7 A Yes.
8 Q And that would have been an automatically
9 generated date and time?
10 A Yes. I think so.
11 Q You think or you know?
12 A I want to say there was a feature where
13 you clicked date and time and it would do it, but
14 there was also a feature where you could write it
15 in. And that's why I have that written above up
16 there, Individual has a hammer in his hand. I
17 would have typed that out.
18 Q Oh. Now, how did you determine that this
19 individual here in this, looks like a blue shirt, in
20 your opinion, had a hammer in his hand?
21 A Because you can see it from the picture,
22 sir.
23 Q Same picture I'm looking at?
24 A Yeah.
25 Q Okay. Do you have any special -- I'm just

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1 talking about you personally -- do you have any,
2 like, special powers of vision or anything? Can you
3 see this picture in some way that regular people
4 can't?
5 A I would have watched the video. I would
6 have seen what aisle he went on. I would have
7 seen what aisle he came off of, and I would have
8 seen this in a moving form to be able to make out
9 what was in his hand. That was what I was trying
10 to do.
11 Q Okay. So you would have been able to
12 observe the video, same video that's been produced
13 to us, right?
14 A Yes, but I have years more experience
15 looking at it than normal people.
16 Q Are you an expert in spotting hammers in
17 people's hands in videos?
18 MS. LEWIS: Objection.
19 A I'm an expert at identifying what items
20 are in videos, yes.
21 BY MR. JEFFERIES:
22 Q And how did you become an expert at
23 identifying items in people's hands in videos?
24 MS. LEWIS: Objection.
25 A Because I have been doing this for well

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1 over a decade, sir
2 BY MR. JEFFERIES:
3 Q Do you have any special training in
4 identifying objects in people's hands in videos?
5 MS. LEWIS: Objection.
6 A Of course. Walmart Incorporated trained
7 me to be able to identify items, yes. We do it in
8 every case that we have ever worked for.
9 BY MR. JEFFERIES:
10 Q And who gets this special training in
11 identifying items in people's hands in videos?
12 MS. LEWIS: Objection.
13 A Asset protection associates and asset
14 protection managers.
15 BY MR. JEFFERIES:
16 Q Well, you don't think regular people look
17 at a video and see a hammer in somebody's hand?
18 A Well, of course, but they haven't been
19 trained to be able to identify things like that.
20 Q Let's take a look. Continue looking at
21 this picture right here. And it appears that the --
22 the date and time stamp that you said most likely
23 was automatically generated down here in the bottom
24 right is May 15, 2019, 14:41:59. You agree with me
25 on that?

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1 A Yes. That's what it says.
2 Q Tell me what part of Store 630 we're
3 looking at here in this picture.
4 A That is the electronics action alley
5 facing towards TLE.
6 MS. HAYWARD: Wait a minute. Could
7 you repeat that? Action alley? Say that
8 again.
9 THE WITNESS: Yes. Yes. Action,
10 a-c-t-i-o-n, alley, a-l-l-e-y. That is
11 the electronics action alley facing
12 towards TLE, which is Tire Lube Express.
13 BY MR. JEFFERIES:
14 Q Okay. Is there a portion of the
15 electronics action alley that would then -- it's not
16 shown in this picture -- extend the other way, away
17 from Tire Lube Express?
18 A I'm sorry. Can you repeat that?
19 Q Yeah. So are we looking at all of the
20 action alley here or is there a portion that extends
21 essentially toward the bottom of the frame, out of
22 sight off the bottom of the frame of this picture?
23 A In this particular shot you can't see
24 the back left of that action alley, but there is
25 another shot that you can see the back left of

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1 that action alley.
2 Q Okay. And would that be a still shot or
3 a -- would we have to look at a video?
4 A There's actually a PTZ shot there as
5 well as a stationary camera there.
6 Q Okay. And would that that have been video
7 that you captured and provided to Lee Ellen Bagley?
8 A If -- I recorded whatever needed to be
9 recorded, and I provided whatever needed to be
10 provided, sir.
11 Q All right. So let's take a look, then. I
12 want to look through these still photos. And can
13 you tell me when you identify, if you identify, any
14 of these still photos that show the rest of that
15 action alley, the part that is out of the frame
16 toward the bottom of this picture. Can you do that
17 for me?
18 A I'm sorry. Can you repeat that?
19 Q Yeah. So I want to see if we have any
20 still pictures that show the portion of this action
21 alley that you can't see in this photograph. The
22 portion that would be out of the frame toward the
23 bottom.
24 A Okay.
25 Q So I'm going to go up here to the very

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1 beginning. I'll just go one by one, and you can
2 tell me that's not it or that is it. All right?
3 A Why do you need that that is it?
4 MS. LEWIS: Excuse me, Miss Wright.
5 Just answer the question. Don't ask any
6 questions. Just go ahead and answer
7 whatever counsel is asking, okay?
8 THE WITNESS: Gotcha.
9 BY MR. JEFFERIES:
10 Q All right. So this first one which is
11 outdoors I'm guessing is not it?
12 A No.
13 Q What about the second one?
14 A No.
15 Q The third one?
16 A No.
17 Q The fourth one?
18 A No.
19 Q The fifth one?
20 A No.
21 Q The sixth one?
22 A No.
23 Q The seventh one?
24 A No.
25 Q (Indicating.)

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1 A Yes.
2 Q Ah, the eighth one.
3 So this is the same action alley
4 here in this eighth picture but pointing the other
5 way away from Tire Lube Express?
6 A Yes.
7 Q Okay. And then we go to the ninth picture
8 which is looking toward Tire Lube Express.
9 A Yes.
10 Q Do you know -- you see the gentleman here
11 in the picture in the bottom left, the one who you
12 said has a hammer in his hand, what kind of display
13 is that gentleman looking at, if you know?
14 A Kites.
15 Q Kites. Okay.
16 And then we go back here to 8,
17 which is facing the other direction. Where in that
18 picture is the kite display?
19 A Down near that blue sign that's hanging
20 from the ceiling.
21 Q Oh, at the top of the frame?
22 A The top of the frame there is a blue
23 sign. It would have been close to that, down --
24 down to the left.
25 Q Okay.

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1 A Right in that area.
2 Q Right in this area.
3 And when you say right in this
4 area, I'm going to try to describe this since we
5 don't have an easy way to take a picture of it.
6 A Well, if you look to the right, you see
7 the black case right there on your right? That
8 would have been the end cap for the video games
9 that you're seeing in the other picture.
10 Q Can you see my cursor moving around?
11 A Yes.
12 Q And do you mean right there?
13 A Yes.
14 Q Okay. And so the kite display would have
15 been --
16 A Somewhere past that, yes.
17 Q Here. Okay.
18 A Yes.
19 Q Now I'm just going to take a little
20 screenshot of that. Well, maybe not. It's not the
21 easiest thing to do.
22 So that is -- in order to
23 describe this, if we're looking at this eighth
24 picture, there is hanging from the ceiling in the
25 top kind of left quadrant here a blue sign of some

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1 variety, right? That's this thing here, this blue
2 sign?
3 A Um-hum. You can see the white
4 underneath the sign in that area. Yep. That
5 would have been most likely that picture.
6 Q Are there any other cameras that would
7 have captured this kite display here in the action
8 alley?
9 A I have no idea, sir.
10 Q Okay. Well, we'll look through the video.
11 All right. So let's go through the rest of these
12 pictures and just see if there are any other still
13 photographs that would have captured the kite
14 display.
15 Obviously this one, Number 9,
16 right?
17 A Okay.
18 Q I mean, you agree with that?
19 A What is the question?
20 Q This Number 9 picture is a continuation of
21 the action alley that's shown in the Number 8
22 picture?
23 A Yes, sir.
24 Q All right. What about Picture Number 10?
25 A Yes, sir. That's the same area.

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1 Q And what about 11?
2 A That is facing to the right of that kite
3 picture, so the kite picture is not in there. It
4 would have been to the left of this picture.
5 Q So it's not -- you can't see it in here
6 anywhere, the kites?
7 A No.
8 Q What about 12?
9 A The kite picture's at the very back of
10 this action alley.
11 Q So toward the top and the center of the
12 photo?
13 A Yes, sir. It would have been to the
14 left of this.
15 Q All right. So not in this picture, not in
16 13?
17 A No, sir.
18 Q And is it in 14?
19 A No, sir.
20 Q Is it in 15?
21 A No, sir.
22 Q Is it in 16?
23 A No, sir.
24 Q Now, what is that in this gentleman's
25 hand?

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1 A It's a hammer, sir.
2 Q It looks like a hammer.
3 A Yes, sir.
4 Q Is it your belief that you -- that it
5 requires your special -- your special Walmart
6 training to determine that's a hammer in that man's
7 hand?
8 MS. LEWIS: Objection.
9 A I think anyone can see that for
10 themselves, sir.
11 BY MR. JEFFERIES:
12 Q You think anyone can see that for
13 themselves?
14 A Yes.
15 Q What about this 17th picture here? Is
16 there -- is this the action alley with the kite
17 display?
18 A No, sir.
19 Q What about 18?
20 A No, sir.
21 Q 19?
22 A No, sir.
23 Q 20?
24 A No, sir.
25 Q 21?

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1 A No, sir.
2 Q 22?
3 A No, sir.
4 Q 23?
5 A It's to the right of this picture but
6 it's not in this picture, no, sir. Excuse me, to
7 the left.
8 Q 24?
9 A No, sir.
10 Q 25?
11 A No, sir.
12 Q 26?
13 A No, sir.
14 Q What's that gentleman in the bottom right
15 down there doing?
16 A He appears to be taking a photo or a
17 video of some sort.
18 Q Do you think that is necessary to have
19 your Walmart special training to determine that?
20 A No, sir. Anybody can see that.
21 MS. LEWIS: Object to form.
22 BY MR. JEFFERIES:
23 Q I'm sorry. Miss Lewis objected.
24 Did you say that, no, anybody
25 could see that, you don't need special training?

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1 A No. Anybody can see that, yeah.
2 Q What about this 27th picture? Do we see
3 the kite display there?
4 A No, sir. That's a different action
5 alley.
6 Q Okay. Who are these two people kind of in
7 the middle? This person with a vest and kind of
8 white hair?
9 A That's the store manager, Timothy
10 Ringer.
11 Q And who is this to our right, Timothy
12 Ringer's left?
13 A Comanager, Michelle Willhoff.
14 Q Okay. And is this person over here on the
15 far left, is this the Attorney Jefferies they
16 instructed you to track throughout the store?
17 A Correct.
18 Q Are you-all's cameras really that good? I
19 mean, they're -- can you really, like, see that kind
20 of level of detail, like, the -- zoom in on exactly
21 what they got in their hands and all that?
22 A Yes, sir. I can't, of course, identify
23 who they are. That takes, you know, a
24 collective...
25 Q Wow. But they're really that -- I mean,

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1 I'm looking at this photo. It's kind of grainy, but
2 you're telling me they're actually very sharp, you
3 can see very clearly what's going on?
4 A This picture is from a stationary
5 camera. This is not from a PTZ camera. A PTZ
6 camera would have been able to zoom in on this to
7 the point where I can see freckles on your face,
8 sir, and I could have seen what is on that phone.
9 Q Seriously, it's that good you can see
10 freckles on my face?
11 A Correct. Absolutely.
12 Q Wow.
13 If I dropped -- hypothetically,
14 if I dropped my handful of change on the floor,
15 could you see that I dropped my handful of change on
16 the floor?
17 A And I would have been able to tell you
18 what each coin is.
19 Q Could you tell me whether it was heads or
20 tails?
21 A Yes.
22 Q Damn. That's better than I thought.
23 What about this 28th photo? Is
24 the kite display in there?
25 A Yes, it is.

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1 Q And the 29th photo?
2 A I'm sorry. What is the question?
3 Q Is the kite display in the 29th photo?
4 A No.
5 Q Or the 30th photo?
6 A No.
7 Q Or the 31st photo?
8 A No.
9 Q Okay. I made some notes on this. It
10 looks like as we went through these photos that the
11 kite display is shown at most in the 8th, 9th, 10th,
12 and 28th photos, is that correct?
13 A Okay.
14 Q All right. You didn't see -- I mean, we
15 can go back through them. Do you see it in any
16 other photo besides those four?
17 A If you say so, sir. I don't have them
18 in front of me.
19 Q Well, go back through them. Let's just go
20 back through them. I want to make sure we got them
21 all.
22 A So am I supposed to keep count of how
23 many times I see this kite display?
24 Q Well, I just want to make sure we got
25 them.

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1 A Okay.
2 Q It's not in 1. It's not in 2. You just
3 yell stop if you think you see it. It's not in 3 or
4 4.
5 A Um-hum.
6 Q Or 5.
7 A Um-hum.
8 Q Or 6.
9 A Um-hum.
10 Q It's there in 7.
11 A Okay.
12 Q So I just wrote that down, 7.
13 And it's way up at the top of 8,
14 right?
15 A Yes, sir.
16 Q And it's here in the bottom of 9?
17 A Yes, sir.
18 Q It's here in the bottom of 10?
19 A Yes, sir.
20 Q It's not in 11 or 12 or 13 or 14 or 15 or
21 16 or 17 or 18 or 19 or 20, 21, 22, 23, 24, 25, 26,
22 27, 28, 29, 30, or 31, is that right? Didn't you
23 say it was in 28?
24 Let's go back and look.
25 A There were -- I counted five total.

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1 Q Okay. Yeah. 7, 8, 9, 10, and 28. There
2 we go. All right. And those are all the still
3 photos that show that kite display?
4 A Yes, sir.
5 Q Let me ask you something. What's
6 Walmart's policy back then in May of 2019? If you
7 have been watching this video and you would have
8 seen somebody doing something illegal, what are you
9 supposed to do?
10 MS. LEWIS: Objection to the form.
11 A Yes. I need to know -- that is a broad
12 question, sir. A lot of things are illegal.
13 BY MR. JEFFERIES:
14 Q That's true. Do you have different
15 policies depending on the different illegal thing?
16 A Yes.
17 Q Okay. What if you saw somebody clearly
18 doing drugs in the Walmart? What are you supposed
19 to do?
20 A I would have to refer to that policy,
21 sir. I haven't been the asset protection manager
22 for many years.
23 Q Weren't you the asset protection manager
24 in May of 2019?
25 A Yes, but I can't tell you what our

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1 policy would have been for that situation back
2 then. I don't recall.
3 Q You think there would be policy? Like,
4 you don't just ignore it, right?
5 A Of course not.
6 Q What about somebody stealing? If someone
7 were stealing, what would have been the policy back
8 in May of 2019?
9 MS. LEWIS: Objection to the form.
10 A I need you to specify what you mean by
11 stealing.
12 BY MR. JEFFERIES:
13 Q Stealing. I didn't know that that was an
14 unknown term.
15 If you saw somebody take a piece
16 of merchandise and hide it in their pocket and make
17 for the exit looking like they were trying to steal
18 it, what was the policy back in May of 2019? What
19 were you supposed to do, if anything?
20 A Okay.
21 MS. LEWIS: Objection.
22 A Are you asking me what I do at the time
23 that somebody selects something and conceals it
24 either on their person or in their bags or some
25 form? Is that -- is that what you're asking me?

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1 BY MR. JEFFERIES:
2 Q Yeah. You see it right on the video,
3 there they are, they're hiding something right in
4 their pocket or in their bag, and they're, in your
5 opinion, heading for the door, they're planning to
6 steal it. What do you do?
7 A Well, there's a very specific policy
8 that we have to follow, sir, very specific
9 guidelines on that. And I'm not allowed to
10 discuss that with anyone because those are private
11 forms.
12 But I can to say if I see
13 somebody conceal into something a product that was
14 in our store that is our property, we continue to
15 watch them and we notify the police.
16 Q Okay. And you might do some other things,
17 but among those, you watch them and you notify the
18 police.
19 A Correct.
20 Q On May 15th, did you see anybody stealing
21 anything in any of these videos that you produced to
22 Lee Ellen Bagley?
23 A I don't recall that, sir, but if I had,
24 I would have probably reported it.
25 Q Because that would be the policy, right?

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1 A Correct.
2 Q What if you saw somebody vandalizing
3 something in the store? What if in this still
4 photograph we're looking at right here there's this
5 container full of balls, and what if somebody went
6 over there and pulled out their pocketknife and
7 started popping those inflatable balls? Is there a
8 policy as to what you do when vandalization occurs?
9 A That would be most likely left up to the
10 store manager.
11 Q All right. But would you report it to the
12 store manager?
13 A Of course.
14 Q Now, we've looked at all the still
15 photographs that have been produced to us by
16 Walmart. Are these all of the still photographs
17 that you took and provided to Walmart's attorneys on
18 that disc?
19 A To my knowledge.
20 Q As we've looked through these, do you see
21 anybody doing anything illegal in these photographs?
22 MS. LEWIS: Objection.
23 A Yeah. I need to know what you mean by
24 illegal, sir.
25

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1 BY MR. JEFFERIES:
2 Q Well, illegal means against the law. So
3 what I mean is do you see anybody doing anything in
4 these photographs that in your opinion is illegal?
5 Any kind of thing. Drunk driving? Murder? Theft?
6 Anything that looks illegal to you?
7 MS. LEWIS: Objection.
8 A I need you to ask me a specific illegal
9 action. What do I see in these photos...
10 MR. JEFFERIES: We can keep the
11 witness here for a little bit, but, you
12 know, at a certain point objections to
13 questions that there's nothing wrong with
14 become witness coaching, and so I'm going
15 to have to ask you to knock that off,
16 please.
17 MS. LEWIS: I'm not witness coaching.
18 I have a specific basis for each of my
19 objections.
20 MR. JEFFERIES: Oh, you do?
21 MS. LEWIS: I'm not attempting to
22 coach the witness at all.
23 MR. JEFFERIES: What's the basis for
24 me asking if she saw anything illegal?
25 What's the basis for your objection?

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1 MS. LEWIS: Well, it calls for her
2 def- -- it calls for her to understand and
3 know what is illegal. If she knows the
4 answer to the question, she's welcome to
5 answer it. My objection stands.
6 BY MR. JEFFERIES:
7 Q I'm going to make sure I'm clear 'cause
8 that's exactly what I'm intending to ask. I'm not
9 intending for you to render a legal opinion. I'm
10 asking whether based on your own personal
11 understanding of the word, whether you see anything
12 that you personally think is illegal in any of these
13 photos.
14 MS. LEWIS: Okay. Well, that's a
15 little different than the question you
16 just asked, but I'm fine with a more
17 specific question phrased as you just
18 phrased it.
19 MR. JEFFERIES: I'm so happy about
20 that. Thank you.
21 MS. LEWIS: You're welcome.
22 BY MR. JEFFERIES:
23 Q So can you tell me in your own personal
24 understanding of what the word illegal means, do you
25 see anything illegal happening in any of these

Page 65

1 photos?

2 A You would need to show me the specific

3 photo, and I can answer that. I can't answer a

4 broad question like that.

5 Q Well, we'll go through them. Well, see, I

6 got all day.

7 A Well, I don't, so...

8 Q Well, actually you have at least seven

9 hours with me, so we can go as slowly as you want

10 through this.

11 Do you see anything --

12 THE WITNESS: Is he kidding?

13 BY MR. JEFFERIES:

14 Q -- anything illegal going on in this first

15 photograph?

16 A I need to -- I need you to ask me a

17 specific question. What illegal action are you

18 asking me?

19 Q I'm asking you -- and this is going to be

20 the same question every time. And if you want to

21 spend the rest of your day having me define it

22 specifically every single time, I'm glad to do that.

23 I would think you might not want to do that. But if

24 that's the way you want to spend your afternoon, we

25 can do it that way.

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1 I'm asking you based on your own

2 personal understanding of what's illegal, whether in

3 your own personal opinion you see anything illegal

4 happening in this first photo?

5 A Not to my knowledge.

6 Q The exact same question about the second

7 photo.

8 A This is just a picture. This is not

9 video.

10 Q That's correct.

11 A So if you're asking me what I see in

12 this picture, no.

13 MS. LEWIS: That wasn't the question.

14 Just listen to the question and answer the

15 question.

16 BY MR. JEFFERIES:

17 Q So I'll say it again.

18 Based on your own personal

19 understanding of what's legal and illegal, do you in

20 your own personal opinion see anything illegal

21 happening in this second photograph?

22 A No.

23 Q What about in the third photograph?

24 A No.

25 Q What about in the fourth photograph?

Page 65

1 A No.

2 Q What about in the fifth photograph?

3 A No.

4 Q What about in the sixth photograph?

5 A No.

6 Q What about in the seventh photo?

7 A No.

8 Q What about in the eighth photograph?

9 A No.

10 Q What about in the ninth photograph?

11 A No.

12 Q What about in the tenth photograph?

13 A No.

14 Q What about in the eleventh photograph?

15 A Now, this isn't anything illegal, but

16 this is against Walmart policy.

17 Q What's that?

18 A To have people in the store taking

19 photos or videos.

20 Q Oh, it is? Interesting.

21 Are you aware Mr. Ringer

22 specifically told me it was not against Walmart

23 policy to take pictures and videos in the store?

24 A I know it used to be. I don't know if

25 it is to this day.

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1 Q And where would that policy be written

2 down?

3 A I don't know. I don't work for Walmart.

4 Q Well, you did work for Walmart, right?

5 A Yes.

6 Q Back in 2019, was it against Walmart

7 policy to take videos or pictures inside a Walmart

8 in 2019?

9 A I can't speak to that, sir. I don't

10 know what was a policy then or not. I don't

11 remember. But I know that if we saw people taking

12 pictures or videos, we were to investigate it.

13 Q Okay. Now, if Mr. Ringer had said it's

14 not against policy back in 2019, would you believe

15 him?

16 A Yes, I would. He would know more -- he

17 still works for the company. He would know more

18 back then than I would.

19 Q Okay. Sure. All right. So this picture

20 that we're looking at at 5-15-2019, 14:43:23,

21 nothing illegal in your opinion going on there, but

22 you don't like the fact that it looks like

23 somebody's taking a picture.

24 A It doesn't matter --

25 MS. LEWIS: Objection to the form.

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1 A Yeah. It doesn't matter what I like or
2 what I don't like. It's what I was trained to do,
3 which is if somebody is taking pictures or videos,
4 we are to investigate why.
5 BY MR. JEFFERIES:
6 Q Look at the twelfth photograph. Again,
7 same question about whether you see anything that is
8 in your opinion illegal.
9 A I'm not sure what this person is doing,
10 so I can't answer that.
11 Q I see a number of people. Which person
12 are you not sure about?
13 A The one in the middle of the picture
14 that's bending down by the pallet or by that --
15 what we call a stack base.
16 Q Okay. Do you see that person doing
17 something illegal or you can't tell?
18 A I would have to watch the live video.
19 Pictures don't tell the whole story.
20 Q We can watch the live video. That would
21 be fine too.
22 Do you remember ever calling the
23 police at all on May 15th of 2019?
24 A I'm sure I did at some point, but I
25 wouldn't know that specifically.

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1 Q Did you call the police to report any of
2 the three people that are the subject of these
3 photos or videos doing anything illegal on May 15th,
4 2019?
5 A I can't recall.
6 Q You don't remember either way whether you
7 called the cops to report something illegal?
8 A I don't -- I can't recall, no.
9 Q If any of these -- let me ask this another
10 way. You indicated you made the videos, you watched
11 the videos, and everything you saw these folks do
12 you saw on the video, is that right?
13 A I'm not sure. But to my knowledge, yes.
14 Q Okay. And all the videos that you secured
15 you provided to Lee Ellen Bagley, right?
16 A Yes. Yes.
17 Q And Lee Ellen's firm -- she's not there
18 anymore -- but Lee Ellen's firm, which is now
19 Miss Lewis' firm, provided those same videos to us,
20 right?
21 MS. LEWIS: Objection.
22 BY MR. JEFFERIES:
23 Q So would you agree with me that if any of
24 these three individuals that you were asked to
25 follow had been doing something illegal, it would

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1 necessarily have been captured in those videos?
2 A Most likely, yes.
3 Q 'Cause that's all you saw. You didn't go
4 down on the floor. You saw the video. So if you
5 could have seen it then, you could see it today if
6 you watched the video, right?
7 A Sir, I don't know whether I was out on
8 the floor or not, and you can't make that
9 assumption either.
10 Q Well, I guess we could ask the police
11 whether they got a police report. You don't know if
12 you got a police report, do you?
13 A I don't remember, sir. I really don't.
14 Q Let's go to Picture Number 13. Do you see
15 anybody doing anything illegal in your opinion in
16 Picture Number 13?
17 A Not to my knowledge.
18 Q 14?
19 A Not to my knowledge.
20 Q 15?
21 A Not to my knowledge.
22 Q 16?
23 A Not to my knowledge.
24 Q 17?
25 A Not to my knowledge.

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1 Q 18?
2 A Not to my knowledge.
3 Q 19?
4 A Not to my knowledge.
5 Q 20?
6 A Not to my knowledge.
7 Q 21?
8 A Not to my knowledge.
9 Q 22?
10 A Not to my knowledge.
11 Q 23?
12 A Not to my knowledge.
13 Q 24?
14 A Not to my knowledge.
15 Q 25?
16 A Not to my knowledge.
17 Q 26?
18 A Not to my knowledge. That would have
19 alarmed me with the pictures, but it's not illegal
20 that I know of.
21 Q 27?
22 A Again, the picture-taking, but not to my
23 knowledge as it being illegal, against the law,
24 no.
25 Q 28?

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1 A No.
2 Q 29?
3 A No.
4 Q 30?
5 A No.
6 Q Or 31?
7 A No.
8 Q All right. So we've been through all 31
9 still photographs, all the photographs that you
10 generated and provided to counsel that they then
11 provided to us, and not a one of them contains
12 something where you said, Ma'am, that's illegal. I
13 see illegal activity. Is that -- am I correct?
14 A I can't answer that specifically, sir,
15 but not to my knowledge.
16 Q Okay. You did not identify any illegal
17 activity in any of these photos, is that correct?
18 A There were things that were against our
19 policy, but was it against the law for the state
20 or federal government? Not to my knowledge.
21 Q Okay. And the things that you identified
22 that were against your policy were taking the
23 photographs and taking the videos?
24 A Yes. And there was the man bending down
25 by the pallet, that was kind of alarming, but I

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1 don't know what he was doing at the time.
2 Q Well, is it against policy to bend down by
3 a pallet?
4 A If there was -- I can't speculate what
5 he was doing, sir, and so I won't even go there.
6 Q And I tend to agree with you. I don't
7 think anyone can speculate as to what exactly he was
8 doing.
9 We can go back through the
10 pictures again if you want to.
11 A Nope, I'm good.
12 Q Well, I'm going to ask you a slightly
13 different question. In any of those pictures do you
14 see anybody vandalizing anything inside this
15 Walmart?
16 A That wouldn't necessarily be able to be
17 seen on the pictures. That would have to be seen
18 on videos.
19 Q Okay. So you don't see it on the picture,
20 but you're saying you might see it if you watch the
21 video, is that correct?
22 MS. LEWIS: Objection to the form.
23 A Yes. Pictures are just pictures. Video
24 is a lot different.
25

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1 BY MR. JEFFERIES:
2 Q Okay. If I understand -- I just want to
3 make sure I'm understanding you correctly. You're
4 saying that in these pictures you can't identify
5 anybody vandalizing anything but that might be
6 because they're just pictures and not video?
7 A Correct.
8 Q Okay. In terms of -- terms of offering
9 something into evidence to prove that vandals were
10 afoot in the Walmart, these pictures would be, what
11 of no use?
12 MS. LEWIS: Objection to the form.
13 BY MR. JEFFERIES:
14 Q I mean, isn't that right?
15 A I'm sorry. I didn't understand the
16 question.
17 Q Well, if you were looking for evidence
18 that somebody was vandalizing the Walmart, I think
19 you just told me that these pictures really wouldn't
20 help you with that, they wouldn't show you one way
21 or the other, is that right?
22 MS. LEWIS: Objection to the form.
23 A In order to see live actions and
24 movements you would need to watch videos, but
25 pictures do provide a certain evidence, yes, they

Page 76

1 do.
2 BY MR. JEFFERIES:
3 Q Okay.
4 A But it's just different, is what my
5 point was.
6 Q Okay. Well, can you tell me where in
7 these pictures you see evidence of somebody
8 vandalizing anything in the Walmart?
9 MS. LEWIS: Objection to the form.
10 A Sir, I'm not going to speculate about
11 what these people were doing. That's -- that's
12 not what my job was.
13 BY MR. JEFFERIES:
14 Q Understood. All right. So if I asked you
15 which of these pictures show somebody vandalizing
16 something, what would your answer to that be?
17 MS. LEWIS: Objection.
18 A That's -- that's not my job.
19 BY MR. JEFFERIES:
20 Q Okay. So you don't know?
21 A No. That's not what I said. I said
22 that's not -- that was not my job. My job was to
23 find these people, secure the video, and provide
24 it. That's all I did, sir. It is not my job to
25 make assumptions about what these people were in

Page 77

1 there doing.
2 Q Fair enough.
3 As you look at these pictures
4 now -- well, you don't work for Walmart so you don't
5 have a job for them anymore -- as you look at these
6 pictures now, do you see any one of these 31
7 pictures where you say, Ah, I see somebody
8 vandalizing something in the Walmart?
9 A I'm not making assumptions about what
10 these people were doing, sir. That -- again,
11 that's not my job.
12 Q Let's go through them. Do you see anybody
13 vandalizing anything in the first picture?
14 A Sir, my job was to take the pictures,
15 the video, and provide it to the people that were
16 requesting it. It is not my job to make my
17 personal opinions about these photos.
18 Q Whether or not it's your job, it is your
19 obligation to provide a truthful and complete answer
20 to me during this deposition, which is a formal
21 court proceeding.
22 A You're asking me for my opinion.
23 Q That is correct. Do you, in your opinion,
24 see anybody vandalizing anything in this first
25 photograph?

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1 A No. This picture would not show that.
2 Q Would any of these pictures show that, or
3 do we need to go through them one by one?
4 A I'm unsure. What the pictures provide
5 is what the people had in their hands, not
6 necessarily what they were doing with them.
7 Q Okay. Fair enough.
8 Let's take a little peek at a
9 video. Do you recognize the beginning of this
10 video?
11 A You would have to play it.
12 Q I'll play it. (Playing video.)
13 MS. LEWIS: Lane, can you tell me
14 which clip this is, if there's a number on
15 it?
16 MR. JEFFERIES: It's Number 11.
17 MS. LEWIS: Okay. Thank you.
18 BY MR. JEFFERIES:
19 Q (Playing video.) Well, it looks like
20 we've come to the end of that video. In that video,
21 which is Number 11 out of 30, did you see any of the
22 people that Mr. Tim Ringer had asked you to follow
23 with the video cameras throughout the store?
24 A Yes.
25 Q And do you know the names of any -- either

Page 79

1 of those people?
2 A It wasn't part of what I was asked to do
3 to identify people. It's just my job to retain
4 the video, sir.
5 Q As you watched that -- and we can watch it
6 again if you want to -- as you watched that video,
7 this Video Number 11.
8 A Um-hum.
9 Q And by the way, let's identify the people
10 here. Are we talking about -- are we talking about
11 those two? The lady in the green shirt and the guy
12 in the blue shirt in the bottom right?
13 A Correct.
14 Q Those are the two people. Okay.
15 As you watch this Video Number
16 11, do you see either of those two people do
17 anything that is in your opinion illegal?
18 A Suspicious, yes; illegal, no.
19 Q Okay. What did those two folks do that
20 was suspicious to you?
21 A The fact that he had a hammer in his
22 hand and she had gloves.
23 Q You-all sell hammers and gloves, right?
24 A Correct.
25 Q And I'm just guessing, I don't know

Page 80

1 another way, but if I wanted to buy a hammer and
2 gloves, I couldn't, like, levitate them up to the
3 front counter to pay for them, could I?
4 A No. Of course you'd have to carry them
5 through the store.
6 Q In your hands, right?
7 A Um-hum.
8 Q And is that what these people were doing?
9 Carrying the hammer and gloves in their hands
10 through the store?
11 A Yes, but they weren't headed to a
12 register. They were circling around a pallet. So
13 that to me is suspicious, yes.
14 Q It's suspicious if somebody comes into
15 your store and doesn't just grab one item and
16 proceed directly to the register? I mean,
17 don't -- isn't that what you-all want them to do, is
18 to walk around and buy things?
19 MS. LEWIS: Object to the form.
20 A Yes, sir.
21 BY MR. JEFFERIES:
22 Q I mean, I spend three hours in a Walmart
23 wandering around buying different things. That was
24 suspicious to you that people were shopping?
25 A No --

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1 MS. LEWIS: Objection.
2 A -- they weren't shopping.
3 BY MR. JEFFERIES:
4 Q How can you tell?
5 A Because they didn't purchase anything
6 that day, sir.
7 Q Well, they purchased at the end, right?
8 That's the last thing you do when you leave, right?
9 A Yes.
10 Q So how can you tell when somebody's
11 walking around the store whether they're shopping or
12 not shopping?
13 A Well, you can't. That's why you watch
14 them.
15 Q Okay. So you were watching these folks,
16 and you concluded later that they were suspicious
17 because they didn't buy the hammer and the gloves,
18 is that what I understand?
19 A Correct.
20 Q Anything other than the fact that they
21 were walking around with some merchandise in their
22 hands in the store that made you suspicious of them?
23 A Well, what the items were.
24 Q That was a hammer and gloves?
25 A The hammer, yeah.

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1 Q Are those, like, high value, high-
2 likelihood-of-theft kind of items?
3 A No. Those are items that can cause
4 damage inside of a store, sir. It would have been
5 normal for us to watch somebody with any kind of
6 item that would be considered a possible weapon,
7 yes.
8 Q I guess that would make sense.
9 Would you watch people that have
10 possible weapons very carefully?
11 A Yes.
12 Q And would you watch them very carefully
13 the entire time they were in the store?
14 A Absolutely.
15 Q And did you watch these people very
16 carefully the entire time they were in the store?
17 A To my knowledge, I didn't have -- I
18 don't remember the specifics of this day, but to
19 my knowledge, these people were not brought to my
20 attention until they were leaving the store.
21 Q And when you went back and reviewed the
22 video, captured these 30 video clips, did you see
23 these folks, either the attorney or these two people
24 in the green and blue shirts, did you see them use
25 that hammer or gloves to, you know, attack another

Page 83

1 human being?
2 A Not to attack anyone, no.
3 Q Did you see them use these hammer and
4 gloves to vandalize some portion of the store?
5 A I don't recall that, sir. I don't
6 remember everything, no.
7 Q Well, we just watched about four minutes
8 of Video 11. In Video 11, do you see either of
9 these individuals using a hammer, gloves, or
10 anything else to attack human beings or vandalize
11 the store?
12 A Well, I can't see everything that -- I
13 can't see every, you know, part of where they were
14 walking or what they were doing, so I can't make
15 assumptions about what they were doing.
16 Q Right. Well, and that's my question. I'm
17 not asking you to make assumptions. I'm asking you
18 if from what you can see in Video 11, do you see
19 anyplace where those two folks were attacking people
20 or vandalizing the store?
21 A My answer would be I cannot answer that,
22 sir, because there's a portion of this where they
23 were that is cut off. So I don't know what they
24 were doing in this video when this was cut off.
25 So I'm not here to make assumptions about what

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1 these people were in here doing. That is not my
2 job. And to my knowledge, that's not why I'm
3 here. I'm here to testify that I pulled this
4 video, I saved this video, and I sent it to
5 someone.
6 Q Well, respectfully, you're here to answer
7 my questions truthfully and completely.
8 A Okay.
9 Q You said there's a portion of this video
10 that is cut off. What do you mean by that?
11 A You can't see that entire pallet
12 underneath where the kites are. I can't see the
13 other side of it.
14 Q Okay. In the part of the kite pallet that
15 you can see --
16 A Yes.
17 Q -- in this Video Number 11, do you see
18 either of these individuals vandalizing the kite
19 pallet?
20 A No, sir.
21 Q And the part that's cut off that is
22 outside of the frame, well, they could be
23 vandalizing the kite pallet or eating breakfast or
24 reading a magazine or doing any number of things,
25 right, but nobody knows 'cause it's outside of the

Page 85

1 frame, right?

2 A Correct.

3 Q And is there any other video that would

4 capture what was going on at 2:41 in the afternoon

5 on that May 15th that's outside of the bottom part

6 of the frame of Video 11?

7 A I can't answer that. I don't know where

8 those video cameras would have been placed at that

9 time or what angles they would have been placed

10 at.

11 Q We'll take a look at some of these other

12 videos. We don't want to watch the whole thing.

13 You can just tell me whether they'll show it, and

14 then we'll move.

15 If Video 11 were the only video

16 that showed this portion of the store where the kite

17 display is, would there be any way to know from the

18 video what was going on outside the bottom of the

19 frame?

20 A To my knowledge, no.

21 Q We could speculate, right?

22 A Of course.

23 Q We could guess, right?

24 A Yes.

25 Q We could make up all manner of wild

Page 86

1 theories about what was going on but there's no way

2 to know, is there?

3 A Not from this clip, no.

4 Q Well, let's just take a look at these

5 other clips, see if there's any other clip that

6 might show us what was actually going down there in

7 the bottom of the -- well, Number 1's outside, so

8 I'm guessing that one's out. Is that going to show

9 us anything about the kite display?

10 A No.

11 Q And Number 2, would that show us anything

12 about the kite display?

13 A No.

14 Q Number 3, do you see the kite display

15 there?

16 A No.

17 Q Video 4, that shows the kite display?

18 A No.

19 Q Video 5, kite display in that video?

20 A No.

21 Q Video 6?

22 A No.

23 Q Video 7, is the kite display there?

24 A No, but it is directly behind that shot.

25 Q But not anywhere in plain where we could

Page 87

1 see what was happening?

2 A No.

3 Q Number 8, does that show the kite display?

4 A No.

5 Q I think that's the isle where she stepped

6 on the nail, it looks like.

7 How about Number 9? Can we see

8 the kite display?

9 A It's at the back of that action alley.

10 Q Is it here in the picture, like, toward

11 the top?

12 A It would be very hard to see, but, yes,

13 that is where it would be.

14 Q (Playing video.) Well, let's watch it. I

15 want to make sure. Just -- you watched this. It's

16 about eight minutes long. Just go ahead and watch

17 And you tell me the moment you see either that

18 attorney or either of those two folks he was with

19 come into the frame. And I'll pause it right there,

20 and then we'll watch real carefully to see what they

21 do.

22 A Can I be excused for a moment? I need

23 to go to the restroom.

24 Q Of course you may. Just remember this as

25 you go. Anybody you talk to, including Miss Lewis

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1 while we're on break, or send texts to or emails or

2 anything like that, that I get to ask you about that

3 'cause you're still under oath.

4 A Okay. Well, I'll put -- I'll put my

5 phone right there so you can see it.

6 Q That's fine. Thank you so much.

7 MS. HAYWARD: Rachel, do you want to

8 go off the record?

9 THE VIDEOGRAPHER: Off the record,

10 3:46.

11 (Recess.)

12 THE VIDEOGRAPHER: We're back on the

13 record at 3:53 PM.

14 BY MR. JEFFERIES:

15 Q All right. Ginny, we took a brief break

16 at your request. During that break did you have any

17 conversations on the phone? In person? By text?

18 Email? Video? Anything like that with anybody

19 else?

20 A In person with my boyfriend.

21 Q Okay. Did you-all talk about this case in

22 any way?

23 A He stated that he would have hung up

24 already.

25 Q All right. Did you state anything back to

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1 him?
2 A He said that I was better than he was
3 because he would have hung up already and that is
4 it.
5 Q Fair enough. All right.
6 So we were watching this video
7 which is Video Number 9, and you told me you thought
8 you might be able to see the kite display we've been
9 talking at -- about up toward the top center of this
10 video, is that correct?
11 A Yes, sir.
12 Q Okay. So I'm going to press play, and
13 what I want you to do is if you see Attorney
14 Jefferies or those two folks, the lady in the green
15 shirt, the guy in the blue shirt, you see them come
16 into the video, just let me know so I can pause it,
17 and we can start watching really carefully, all
18 right?
19 A Okay.
20 Q (Playing video.)
21 A That may have been her at the back
22 action alley to the left of that pallet and him to
23 the right.
24 Q You mean up here? This person maybe in
25 the green?

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1 A Yes. Yes, 'cause -- yes.
2 Q All right. Well, let's watch them real
3 carefully. And if you see them do anything illegal,
4 you see them vandalize anything, tell me and we'll
5 stop the video when you see them doing that,
6 whatever the wrong thing is they're doing. All
7 right. Here we go. Looks like we're about 50
8 seconds into this video. (Playing video.)
9 A They just walked out of the shot.
10 Q Okay. Let's watch and see if they come
11 back. Let me know when they come back. Walked out
12 at about a minute ten into the video. (Playing
13 video.)
14 A I think the video's stopped.
15 Q Okay. It appears to be still going here.
16 Let me pause it. Looks like it's at 2:40 in the
17 afternoon and 50 seconds, according to the time
18 stamp at the bottom of the video. This is one of
19 those fancy PTZ cameras, is that right?
20 A Yes.
21 Q What does PTZ stand for?
22 A Pan-tilt-zoom.
23 Q Pan-tilt-zoom. Okay.
24 Did you-all always have those at
25 the Walmart?

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1 A No, sir.
2 Q And you don't remember exactly when you
3 got them?
4 A No, sir.
5 Q But you thought you had them there at the
6 time when April Jones was in there back in 2015?
7 A I have no idea, sir. I don't remember.
8 Q All right. So let's keep on playing. You
9 can see the time going by now, 20 -- 2:40 in the
10 afternoon, 52 seconds. (Playing video.)
11 A That -- no, never mind. I can't tell if
12 that's them or not, but I think so.
13 Q Around 2:41 and 30 seconds in the
14 afternoon.
15 A Um-hum.
16 Q And do you see anybody up there? Is
17 anybody -- no matter who those people are, is
18 anybody up there vandalizing anything?
19 A It's not a close enough shot for me to
20 be able to make that out.
21 Q (Playing video.)
22 A Okay. What he's doing right there is
23 very suspicious.
24 Q What's he doing?
25 A I can't make out what he's doing, but

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1 he's bending down by a pallet. You know,
2 that's -- that's not normal. People don't
3 normally do that. When you're shopping on a stack
4 base like that, if you were purchasing an item or
5 looking at an item, you would have grabbed the
6 ones on the top. There would have been no reason
7 for him to have been down at the back -- on the
8 bottom of the stack base like that. Normal
9 shoppers don't do that.
10 Q Okay. Well, we're looking at 2:44 in the
11 afternoon and 41 seconds, is that right?
12 A Yes, sir.
13 Q Can you tell what that gentleman is doing?
14 A No.
15 Q Is it possible that he is bending down to
16 take a real close look at that pallet?
17 A It would have been possible for him to
18 have been doing anything at that moment. But is
19 that normal activity of a normal customer, no.
20 Q No. Okay. Fair enough. Yeah. People
21 don't want to take a real close look at the pallet.
22 A Right.
23 Q He could have been doing that. In fact,
24 he might have been taking an up-close picture of
25 that pallet, right?

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1 A I can't presume to what he was doing,
2 sir.
3 Q No way to know from this video, is there?
4 A (No response.)
5 Q Let me ask you this. You testified
6 earlier that you had special training, that you are
7 better than the average person at seeing what's
8 going on in these videos. Do you remember that?
9 A Yes, sir.
10 Q And you can't tell what this guy's doing
11 in this video, can you?
12 A I would have had to most likely catch
13 this live and zoom in to be able to see what he
14 was doing.
15 Q Okay. And you didn't do that?
16 A I wasn't alerted until after this video
17 was done.
18 Q So if you, with all your special training
19 and years of experience, can't tell what this guy is
20 doing looking at the video, how would regular people
21 ever be able to tell what he's doing looking at the
22 video?
23 A I'm not sure, sir.
24 Q Fair enough.
25 So if this guy said, Hey, I was

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1 bending down to get a good, close look at this
2 pallet, you couldn't say, no, sir, you're a liar. I
3 could see you were clearly doing something else.
4 You couldn't say that, could you?
5 MS. LEWIS: Objection to the form.
6 BY MR. JEFFERIES:
7 Q Could you?
8 A Again, I don't think that's what I'm
9 here to do, but based on this still frame, no, I
10 cannot say what he's doing.
11 Q Well, based on the whole video can you say
12 what he was doing?
13 A You would have to keep playing it. I'm
14 not sure.
15 Q Well, we'll keep playing it. (Playing
16 video.)
17 A His hand is stretched out. Looks like
18 he is trying to manipulate that pallet or pull on
19 it.
20 Q And then he walks away, huh?
21 A Yes.
22 Q Do you think he's touching the pallet?
23 A Yes. Possibly, yes.
24 Q Can you say for sure?
25 A You can see his hand reach out right

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1 there. It moves.
2 Q Yeah.
3 A And then he stands up.
4 Q So if you had to come to court next week,
5 put your hand on the Bible, swear to God to tell the
6 truth, look at 12 jurors, members of your community
7 and answer the question what is that man doing, what
8 answer --
9 A I don't know for sure.
10 Q You don't know.
11 Well, let's keep on watching the
12 video. (Playing video.)
13 All right. So it looks like
14 that video ended. Did you see anywhere in that
15 video where you could put your hand on the Bible and
16 say, I saw them vandalizing something in the
17 Walmart, here it is?
18 A Again, sir, I'm not here to make
19 presumptions about what somebody was doing.
20 Q That wasn't my question. My question was
21 is there anywhere in that Video Number 9 where you
22 could put your hand on the Bible and say, I saw that
23 man vandalizing something right here, right here in
24 this part of the video? Is there anywhere you could
25 do that?

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1 A Not to my knowledge, sir, but did I see
2 his hand move towards the pallet and was he
3 positioned in a unique way and was it
4 questionable? Yes.
5 Q Okay. Same thing we all saw, right? Is
6 that right?
7 A Yes, I'm sure.
8 Q And you didn't see it in person. You saw
9 it on the video?
10 A To my knowledge.
11 Q All right. Let's see how fast we can get
12 through this so we can get you done.
13 Does this Video Number 10 show
14 the kite display?
15 A At the very back, but that's probably
16 not why I retained it. I think they come into
17 this video at some point.
18 Q Okay. Is it close enough that we would be
19 able to tell anything about what they were doing?
20 A Just that they were looking at the
21 pallets in a suspicious way, bending down toward
22 the bottom of the pallets. That's not normal
23 behavior. You don't see any of these other people
24 doing that kind of thing.
25 Q Bending down looking at the pallets,

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1 that's what you see?
2 A Yes. Yes.
3 Q All right. Is there anything you see in
4 here in this video that tells you that they were
5 vandalizing or stealing the pallet or --
6 A It would have been very hard to steal a
7 whole pallet, sir.
8 Q Well, let me ask the question again. Is
9 there anything at all in this Video Number 10 where
10 you can say, Oh, I see them vandalizing or stealing
11 something?
12 A Not to my knowledge.
13 Q You want to -- is it good enough? You
14 want to watch the rest of it and see if you can see
15 that?
16 A I think it's -- yes. I would like to
17 watch the rest of it.
18 Q Great. We'll watch. (Playing video.)
19 About halfway through. Any vandalism or theft yet?
20 A I didn't see the hammer in their hands
21 other than this video.
22 Q Do you see them vandalizing or stealing
23 anything yet?
24 A No.
25 Q (Playing video.)

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1 A Okay. That's them back in the video.
2 Q 2:40 and 58 seconds, roughly?
3 A Um-hum.
4 Q All right.
5 A And that was the direction of the
6 hardware isle where they just came off at.
7 Q Okay. Can you see anything in their
8 hands?
9 A Not in this clip. That's why the other
10 clips were provided.
11 Q Okay. And this clip, do you see them
12 stealing or vandalizing anything?
13 A Not to my knowledge.
14 MS. LEWIS: I'm sorry. My plumber is
15 calling me. Hold on one second. Sorry,
16 you-all. I just got to step away for a
17 few seconds.
18 THE VIDEOGRAPHER: Do you want me to
19 go off the record?
20 MR. JEFFERIES: Yeah. You can go off
21 the record for one second.
22 MS. LEWIS: Yes, please. I'll be
23 right back.
24 THE VIDEOGRAPHER: Off the record,
25 4:11 PM.

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1 (Recess.)
2 THE VIDEOGRAPHER: We're back on the
3 record at 4:13.
4 BY MR. JEFFERIES:
5 Q All right. So we just finished watching
6 Video Number 10, and so far we're through 10 videos.
7 And my understanding is there's nowhere where you
8 Ginny, have identified a spot where you can say,
9 Aha, I see them stealing. I see them vandalizing.
10 Is that correct?
11 A Yes, but I don't feel like that's why
12 I'm supposed to be here today, so...
13 Q You do see where the people of interest
14 were bending down, perhaps looking really closely at
15 a pallet, maybe touching it, can't tell, maybe
16 taking pictures or videos. You saw that, right?
17 A Yes.
18 Q Now, we already looked at Video Number 11
19 and you indicated the same thing about Video Number
20 11. Didn't see any theft or vandalism there, but
21 you did see some up-close looking at things, right?
22 A Yes.
23 Q So we don't need to look at Video 11
24 again, do we?
25 A No.

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1 Q All right. So let's look at 12. It's
2 only 37 seconds long. Does it show the -- it
3 doesn't show the kite display, does it? (Playing
4 video.)
5 A Yes. At the very end of this to the far
6 right-hand corner, yep. Keep going. If you move
7 that cursor over. I don't know where it went. I
8 don't see it anymore. It's way up and at the very
9 end. Yep, right there. That is where it would
10 have been, yes.
11 Q So, like, maybe the corner of the kite
12 display?
13 A Yes.
14 Q All right. Well, let's watch the video,
15 then, and see what we see. (Playing video.) Right
16 where those people just passed by?
17 A Correct.
18 Q About 20 seconds in we see the lady in the
19 green shirt, guy in the blue shirt walking from the
20 bottom left to the top right.
21 A Yes.
22 Q Okay. Looks like they disappear out of
23 the frame.
24 A Okay.
25 Q All right. Did you see anybody in that

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1 video steal or vandalize anything?
2 A No.
3 Q Did you see them bend down to take a close
4 look or anything like that?
5 A No.
6 Q Let's go to Number 13. Is Number 13 one
7 that would show the kite display? (Playing video.)
8 A It's right behind that display of the
9 Glade right there, it would have been to the left.
10 So the kite display is not in this picture but
11 it's right out of this frame.
12 Q Okay. Do you know why you took this
13 video, captured this Video Number 13?
14 A I would imagine they walk in this frame
15 at some point.
16 Q We'll just take a little watch here and
17 see. (Playing video.)
18 A Yeah, there they go.
19 Q All right. There they're walking.
20 A And he appears to have the hammer in his
21 hand at this time and she has gloves.
22 Q Okay.
23 A Or a phone. That's a phone.
24 Q Okay.
25 A The gloves are under her left elbow.

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1 Q Gotcha.
2 A There, he's bent down to do something
3 there.
4 Q Okay. So far have you seen them steal or
5 vandalize anything?
6 A Not to my knowledge.
7 Q Now, at 2:44 and 49 seconds we're in the
8 video. Any theft or vandalism yet?
9 A No, just extremely suspicious behavior
10 with a -- with him, knowing that he had a hammer
11 in his hand and he was bending down by the pallet.
12 But, again, I'm not here to make assumptions about
13 what these people were doing.
14 Q Well, you didn't see him hit the pallet
15 with the hammer or anything like that, did you?
16 A No. No. But, I mean, this video isn't
17 that clear.
18 Q Is there a clearer one?
19 A If there were, it would have been
20 provided.
21 Q Okay. So using the best video that's
22 available, can't see anything, any theft, any
23 vandalism in this Video Number 13, right?
24 A In my opinion, that's not for me to
25 decide. I just provided the video, sir.

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1 Q Well, I'm just asking what you saw in it
2 'cause, you know, you're the only one that was
3 actually there at the Walmart. That's why this is
4 so important. You're authenticating these videos so
5 if you know something, you know, that's why we've
6 got to ask.
7 Let's look at Video Number 14.
8 Now, would that kite display be in Video 14?
9 (Playing video.)
10 A No, this is the GM action alley. It's
11 an action alley over to the right. This would
12 have been -- the hardware aisle would have been
13 located to the right and housewares would have
14 been located to the left.
15 Q And do you remember when you recorded this
16 video, do you remember seeing any acts of vandalism
17 or theft going on in this video?
18 A I have no idea, sir.
19 Q Okay. Well, we can watch it and tell me
20 if you see any. (Playing video.)
21 A That appears to be them.
22 Q There at the top?
23 A Yes.
24 Q Looks like they're just walking along,
25 right?

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1 A Yes.
2 Q 2:45 and 50 seconds?
3 A Yes.
4 Q And do you see them stealing or
5 vandalizing anything?
6 A Not to my knowledge.
7 Q Looks like they walk out of the bottom
8 frame about 2:46 and 7 seconds in the afternoon.
9 Now that Video Number 14 is
10 over, did you see any theft or vandalism in Video
11 14?
12 A Not to my knowledge.
13 Q Okay. So far now we're 14 videos into it,
14 no theft, no vandalism, just some, in your words,
15 suspicious kneeling down, looking at, maybe touching
16 a pallet, is that right?
17 A Yes, sir.
18 Q But no hitting the pallet, busting off a
19 part, or stealing anything, right?
20 A I can't make presumptions about what was
21 happening, sir.
22 Q But you didn't see that, you can't point
23 to a spot where you say, oh, there he is, he's
24 hitting the pallet, can you?
25 A Not to my knowledge, sir.

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1 Q All right. So here's a 58-second video,
2 Number 15, I think we're at. (Playing video.)
3 There they are, bottom left, going up toward the top
4 right.
5 Okay. Do you see any vandalism
6 or theft so far?
7 A Not to my knowledge.
8 Q We've seen that fellow with the blue shirt
9 with the hammer in his hand for a fair bit. What's
10 he been doing with it so far?
11 A I have no idea, sir. You'd have to ask
12 him.
13 Q What do you see him doing with it?
14 A I'm not sure.
15 Q Do you agree with me that we've seen him
16 carrying it around?
17 A Yes, sir.
18 Q Here's a 12-second video. Number 16.
19 (Playing video.) And there he is carrying that
20 hammer. Any acts of theft or vandalism there in
21 that Video Number 16?
22 A Not to my knowledge, sir.
23 Q All right. Number 17, that's ten seconds.
24 (Playing video.) Here they come again, he's
25 carrying that hammer. Any acts of vandalism or

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1 theft there?
2 A Not to my knowledge.
3 Q Take a look at 18. (Playing video.)
4 Have you ever -- you know, just
5 curious, have you ever gone in the store and wanted
6 to buy something and then changed your mind, not
7 bought it?
8 A I think every person has done that, sir,
9 but, yes.
10 Q Is there any way to tell whether that's
11 what happened with that fellow in the blue shirt and
12 that hammer, that he walked around with it for a
13 while and decided, nah, you know, I don't need a
14 hammer after all, put it back?
15 A I don't -- I'm not trying to make
16 assumptions.
17 Q No way to know, is there, from watching
18 the video?
19 A I have no idea what his intentions were.
20 You'd have to ask him, sir.
21 Q Here's another one, it's Video Number 18,
22 about two minutes long. Let me know if you see any
23 acts of theft or vandalism in it. (Playing video.)
24 While we're watching, I'll ask
25 you, do you know if Mr. Ringer has that special

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1 video watching training that the asset protection
2 folks like yourself have?
3 A You would have to ask him that question,
4 sir. I don't know.
5 MS. LEWIS: Object to the form.
6 BY MR. JEFFERIES:
7 Q You don't know. Okay.
8 We're about a minute into the
9 video. I haven't seen any of that. Have you?
10 Have you seen any people yet in
11 this video?
12 MS. HAYWARD: Lane, you're cutting
13 out. I didn't catch the last two
14 questions.
15 MR. JEFFERIES: Yeah. I'm just
16 curious if she's seen any people yet in
17 this video.
18 A I'm not sure.
19 BY MR. JEFFERIES:
20 Q Have you seen anybody vandalizing or
21 stealing in this video?
22 A The clip's not over yet, sir, so I'm not
23 sure.
24 Q But not so far, right?
25 A Not to my knowledge.

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1 Q Okay. Well, there they come. Carrying
2 that hammer. And they walk right through the frame
3 and out of the frame and the video ends, right?
4 A Yes, sir.
5 Q Did you see anybody stealing or
6 vandalizing anything in that Video Number 18?
7 A Not to my knowledge.
8 Q Okay. We'll look at 19. That's 40
9 seconds long. (Playing video.) While we're
10 watching this -- oh, there they go, walking along,
11 up in the top right. Is that maybe they stop?
12 Start walking again.
13 Have you seen them bend down or
14 anything yet?
15 A Not to my knowledge.
16 Q Now they're just a little itty bitty blur
17 at the top of the screen and out of sight and that
18 video is over. Did you see anybody stealing or
19 vandalizing anything in that Video Number 19?
20 A Not to my knowledge.
21 Q Video Number 20 is short, 29 seconds.
22 (Playing video.)
23 A They're in the frame, their feet.
24 Q All the way up there at the top?
25 A Um-hum.

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1 Q They walking towards us?
2 A Yeah.
3 Q Walking along. And then that Video 20,
4 did you see anybody stealing or vandalizing anything
5 in Video Number 20?
6 A No, sir, they no longer had the hammer
7 or gloves in that frame.
8 Q Oh. Maybe they decided they didn't want
9 to buy those after all, is that possible?
10 A I can't make assumptions, sir.
11 Q There's no way to know, is there, right?
12 A No, sir.
13 Q All right. Let's go to Video Number 21.
14 We're making good time, we're almost two-thirds of
15 the way there. Minute and 30 seconds. Let me know
16 if you see them. (Playing video.)
17 A Yes, right there, top left.
18 Q Okay. Walking towards the camera?
19 A Yes, in front of the pharmacy and home
20 action alley.
21 Q Okay. Now --
22 A Yes, sir.
23 MS. HAYWARD: I didn't catch that
24 question. You cut out, Lane.
25

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1 BY MR. JEFFERIES:
2 Q Oh, yeah. Then now it looks like at 2:50
3 in the afternoon and ten seconds, there's three
4 people standing together. Do you agree? (Playing
5 video.)
6 A Yes, sir.
7 Q And who's that third person?
8 A That's not for me to know, sir. I don't
9 know.
10 Q Is that the lawyer that Mr. Ringer
11 described to you or do you know?
12 A Yes, that fits his description, yes.
13 Q All right. So the three of them are now
14 standing together. Is this the first time we've
15 seen the lawyer come in? I guess probably he came
16 in the building in one of the earlier clips. But so
17 far we've just (Zoom interruption) -- blue shirt and
18 the lady in the green shirt, right?
19 A Right.
20 Q Okay. So let's start watching here and
21 let's see what they do. (Playing video.) Does it
22 look like they're talking to each other, maybe
23 looking at --
24 A He appears to have a telephone or cell
25 phone or she has a cell phone in her hand.

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1 Q Yeah. Maybe they're looking at a phone
2 together?
3 A Yes.
4 Q 2:59 in the afternoon in this video and
5 they're still looking at the phone together, right?
6 A Yes.
7 Q And then they walk away from each other?
8 A Yes.
9 Q Then the video ends. Do you see anybody
10 in that Video Number 21 stealing or vandalizing
11 anything?
12 A Not to my knowledge, sir.
13 Q And did anyone even bend over down low
14 near the ground or anything?
15 A No, sir.
16 Q Let's look at 22. That's just 38 seconds
17 long. (Playing video.) Looks like maybe the lawyer
18 walking towards the camera?
19 A Yes, sir.
20 Q Phone in his hand?
21 A Yes, sir.
22 Q What's he doing now?
23 A Appears to be taking either a photo or a
24 video, sir.
25 Q And then the video ends. Anybody stealing

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1 or vandalizing anything in that Video Number 22?
2 A Not to my knowledge, sir.
3 Q 23 mercifully is only 24 seconds long.
4 (Playing video.) There comes the blue shirt guy,
5 the green shirt girl walking away from the camera.
6 Just walking. Walking. And they walk out of sight
7 The video ends. Did they ever stop or bend over or
8 anything?
9 A No, not to my knowledge, sir.
10 Q Did you see them steal or vandalize
11 anything?
12 A Not to my knowledge.
13 Q Okay. Number 24, that's only four seconds
14 long. Watch carefully. There they go. (Playing
15 video.) Did you see them steal or vandalize
16 anything in 24?
17 A Not to my knowledge.
18 Q Okay. And they didn't even bend down,
19 they just walked across the screen, right?
20 A Yes.
21 Q All right. 25. (Playing video.) This
22 looks like one we've watched already. Oh, here they
23 come in, they come from the left to the right,
24 they're walking. And walking. And out they go out
25 of sight. Let's wait to see if they come back.

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1 While we're waiting on them to
2 come back, let me ask you something. Does Walmart
3 publish or put up on the wall or anything the
4 location of the cameras and where they're pointing
5 so people will know?
6 A No, not to my knowledge.
7 Q Is there any way to, like, find that out,
8 like for just for regular people going in the store?
9 A You would have to ask Walmart.
10 Q Reason I'm asking is this: Is there any
11 chance that people in the store could know where the
12 cameras were pointing and time their movements to
13 evade the cameras?
14 A Have people watched the cameras before?
15 Yes. And made moves around the cameras? Yes.
16 Q How could you tell they were -- those
17 people were doing that?
18 A Because you would see them look at the
19 cameras.
20 Q Okay. Have you seen in any of these
21 videos where any of the three people we're talking
22 about have looked up at the camera and then tried to
23 evade the camera?
24 A Not to my knowledge, sir.
25 Q Now, it seems like they're kind of like

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1 walking around oblivious to the fact that they're
2 being filmed.
3 MS. LEWIS: Objection. Was there a
4 question?
5 BY MR. JEFFERIES:
6 Q Yeah. Do you agree it looks like they're
7 just walking around completely oblivious to the fact
8 they're on camera?
9 MS. LEWIS: Object to the form.
10 BY MR. JEFFERIES:
11 Q Well, let me ask you this way. Do you see
12 them taking any actions that would indicate to you
13 that they're aware of where the cameras are and that
14 they're being watched?
15 A Their actions don't indicate that
16 they're looking for the cameras, if that's what
17 you're asking me.
18 Q Yeah. I was just curious if they were
19 doing any of that suspicious staring at the camera
20 then ducking out of sight kind of thing. I didn't
21 see it; I was just curious if you saw it.
22 A Not to my knowledge.
23 Q Good news is we're almost done.
24 (Playing video.) Here they come
25 again walking, right, 2:54 and 34 seconds, and they

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1 walk right across the screen and out of sight,
2 right?
3 A Yes, sir.
4 Q In that Video Number 25, do you see them
5 stealing or vandalizing anything?
6 A Not to my knowledge, sir.
7 Q Do you see them stopping and bending down
8 at all?
9 A Not to my knowledge, sir.
10 Q Number 26, 12 seconds long, so watch
11 carefully. (Playing video.) Looks like a lawyer in
12 the bottom left and then here comes, what, Ringer
13 and somebody else?
14 A Timothy Ringer, Michelle Willhoff.
15 Q And did you see anybody vandalizing or
16 stealing in that Video Number 26?
17 A No. I saw the lawyer taking what
18 appeared to be pictures or photos.
19 MS. HAYWARD: To be the pictures of
20 what?
21 A Pictures, photos, or videos.
22 BY MR. JEFFERIES:
23 Q All right. So we're near the end, we're
24 at Video Number 27. (Playing video.)
25 A That's them in the top.

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1 Q Coming toward the camera. Walking, right?
2 A Yes, sir.
3 Q Not stopping, just walking along, right?
4 A Yes, sir.
5 Q And out of the picture at the bottom. The
6 video is over.
7 All right. So in Video Number
8 27, did you see anybody stealing or vandalizing
9 anything?
10 A Not to my knowledge.
11 Q In fact, they didn't even stop or bend
12 over or anything like that, did they, they just
13 walked, right?
14 A Not to my knowledge.
15 Q No stopping or bending over to your
16 knowledge, far as you saw in that video?
17 A Yes, sir.
18 Q All right. 28. (Playing video.) 28 has
19 a picture of the kite display down at the bottom.
20 Now, do we see -- oh, there comes the lawyer. Looks
21 like he might bend over out of the frame, stand
22 right back up. Now, what's he got in his hand?
23 A A phone.
24 Q He didn't have a hammer or anything, does
25 he?

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1 A No. The people had already left prior
2 to that.
3 Q All right. Did you see in Video Number 28
4 anybody vandalizing or stealing anything?
5 A No, sir.
6 Q Number 29. (Playing video.)
7 A That's store manager, Tim, in the left,
8 and that's the lawyer and the other two in the
9 right.
10 Q And the lawyer and the other two are
11 walking toward the camera.
12 A Yes.
13 Q And they're just walking along, looks like
14 she stops to fix her shoe, then they keep on
15 walking, right? And they walk out of the bottom of
16 the frame.
17 A Yes, sir.
18 Q All right. In Video Number 29, did you
19 see anybody steal or vandalize anything?
20 A Not to my knowledge.
21 Q Okay. Video 30, the last one. Ten
22 seconds long. (Playing video.) Looks like the
23 front door.
24 A Yes. That is the general merchandise
25 exit.

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1 Q Three of them coming out of the exit,
2 right?
3 A Yes.
4 Q And were they stealing or vandalizing
5 anything when they came out of the exit?
6 A Not to my knowledge.
7 Q Okay. So we've looked at I believe 31
8 still photos, 30 videos, and not once have you been
9 able to point out where anybody was stealing
10 anything or vandalizing anything, is that correct?
11 A I'm not here to make presumptions about
12 what these people were doing, sir. I'm only here
13 to let you know that I obtained the video as
14 requested, provided it to the people that
15 requested it, and that's it.
16 Q Okay. Well, respectfully, once again,
17 your role here today is to answer the questions that
18 I ask you.
19 My question to you was, in the
20 30 videos and the 31 photographs that we looked at,
21 did you see anywhere where you could say somebody
22 was stealing or vandalizing something?
23 A Not 100 percent, no.
24 Q Oh. What percentage would you say?
25 A I won't give my personal opinion, sir.

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1 Q Well, I'm asking for that. You just said
2 not 100 percent. Something more than zero?
3 A I won't give my personal opinion, sir.
4 I only want to speak about the facts, please.
5 Q Well, that's what I'm asking you about.
6 All right. So where within these 30 videos and 31
7 photographs did you see something that looked like
8 stealing or vandalizing?
9 A I'm not here to make presumptions about
10 what these people were in here doing, sir. You
11 would need to ask them what they were in there
12 doing.
13 Q Well, I'm sorry, that's not my question.
14 We've been through these videos and each one I've
15 asked you was anybody stealing or vandalizing, and
16 you said not to my knowledge every single time,
17 isn't that right?
18 A Not to my knowledge. But everything I
19 saw -- there were some suspicious things that I
20 pointed out to you, sir, but I cannot make
21 presumptions about what these people were in here
22 doing. You would have to ask them.
23 Q Okay. And the suspicious things you saw
24 were people bending over and getting down real close
25 to the pallet, maybe even touching the pallet, is

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1 that right?
2 A Yes, and the fact that he had a hammer
3 much of the time, yes.
4 Q Okay. And you never saw him hit anything
5 with that hammer, did you?
6 A I can't make presumptions about what
7 they were doing, sir. You would have to ask him.
8 Q I'm not asking you to make presumptions.
9 Let me say it again. Did you see, in any of these
10 videos or still photographs, anybody hit anything
11 with a hammer?
12 A Not to my knowledge.
13 Q Okay. Did you see, in any of these 30
14 videos or 31 still photographs, anybody steal
15 anything?
16 A Not to my knowledge.
17 Q Did you see, in any one of these 30 videos
18 or 31 still photographs, anybody vandalize anything?
19 A I can't make that conclusion, sir, based
20 off what I've seen.
21 Q Okay. Well, I'm asking you -- and if you
22 say, yes, I saw it, I'm going to ask you where you
23 saw it. So that's my question. Did you see anybody
24 vandalize anything?
25 A I'm not here to make assumptions about

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1 what these people did, sir. I've said that 10,000
2 times. I am not here to make presumptions about
3 what these people were in here doing. You would
4 need to question them, please.
5 Q Ma'am, I'm not asking you to presume. I'm
6 going to say it again. I'm going to say it real
7 clearly. And if I can't get an answer from you,
8 what's going to happen is I'm going to send a
9 subpoena to you and you're going to come down to the
10 Florence County courthouse, you'll stand in front of
11 Judge Nettles and answer this question, which is --
12 MS. LEWIS: Objection.
13 BY MR. JEFFERIES:
14 Q -- in your opinion, do you see anywhere in
15 these 30 videos or 31 still photographs where you
16 think somebody was vandalizing something?
17 A I can't 100 percent answer that
18 question, sir.
19 Q Well, I guess you're going to have to tell
20 it to the judge, then.
21 Where do you think somebody
22 might have been vandalizing something?
23 A I pointed that out to you when we were
24 watching the video, sir, of where I thought what
25 was suspicious. I can't say what he was doing or

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1 when he was doing it because the video was not
2 clear enough for me to be able to see what he was
3 doing.
4 Q So that's my question, the real focus,
5 it's not whether it's suspicious. I understand you
6 think taking pictures and kneeling down is
7 suspicious. I got that and I made notes of those
8 things.
9 What I'm asking is where in
10 these videos or still photographs could you see
11 something that you think is somebody vandalizing
12 something?
13 A I just told you what I thought was
14 suspicious, sir.
15 MS. LEWIS: Object.
16 MS. HAYWARD: Did you object, Regina?
17 MS. LEWIS: Yes, I did.
18 BY MR. JEFFERIES:
19 Q We're going to go back to Video 11 here
20 now. You know, it's a simple question. And I get
21 that you're trying to do Walmart right by being
22 evasive but at some point --
23 MS. LEWIS: Objection to the
24 characterization. It's been asked and
25 answered several times.

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1 MR. JEFFERIES: Now, you know that
2 asked and answered is not an objection in
3 a deposition. Hasn't been for years now.
4 MS. LEWIS: I'm preserving my
5 objection. Go right ahead.
6 BY MR. JEFFERIES:
7 Q All right. We're going to watch Video
8 Number 11 here and --
9 A Yes, please do, because as you're
10 rewinding that, I could see that pallet of kites
11 moving.
12 Q Okay. Good. All right. So I'm going to
13 press play. And I want you to tell me when you see
14 somebody vandalizing something or stealing. You
15 just say whichever it is. I don't know which it is
16 but you just tell me, all right? So we're going to
17 start and I'm going to pause it as soon as you say,
18 right there. (Playing video.)
19 A The kites just moved.
20 Q Okay. So I'm going to stop. All right.
21 That's the first 11 seconds of this video. Let's
22 watch a few more seconds here. 14. (Playing
23 video.)
24 A It just moved again.
25 Q Okay. All right. Now, that's the

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1 first --
2 A Just moved -- yeah.
3 Q All right. I'm going to press play.
4 (Playing video.)
5 A I can't tell you what they're doing.
6 All I can tell you is the fact that I can see and
7 everybody else can see when they watch this
8 footage is those kites just moved.
9 Q I see that.
10 A So if somebody wasn't touching them then
11 they couldn't have moved. So it just moved and it
12 moved again.
13 Q Okay. Now, who moved them?
14 A Whoever I'm assuming pops up out of this
15 video in the next few seconds.
16 Q Oh. Oh, you're just assuming who it is?
17 A No, sir, you can clearly see the head of
18 the person in the video.
19 Q Well, let's go back. Let's see. (Playing
20 video.)
21 A Not right there, right after.
22 Q Tell me when.
23 A Right there.
24 Q Okay. So right there. Let's just go back
25 a touch. That's it. There's that head at the

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1 bottom, 9 seconds in. Is that somebody's head?
2 A To my knowledge, yes.
3 Q Who is that?
4 A Can't be identified yet, they haven't
5 walked into the full frame.
6 Q Well, that's at 2:38 and 33 seconds,
7 right?
8 A Yes.
9 Q Okay. And then what happens next?
10 Doesn't their head disappear out of the video?
11 Let's watch.
12 A I don't know.
13 Q There it goes. Now at 10 seconds there's
14 no person in the video, is there?
15 A Keep watching, sir.
16 Q All right. Well, and that wasn't my
17 question. At 10 seconds in, do you see any people
18 in this video?
19 A No.
20 Q Okay. And then we watch some more.
21 (Playing video.)
22 A And those kites are moving again.
23 Q Oh, they move, yeah. Now, we're 15
24 seconds in. Have we seen any more people?
25 A Not yet, sir, they're on the back side

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1 of the pallet out of the frame.
2 Q Well, how do you know that they're there?
3 A Because the other videos would
4 articulate that, you would be able to see.
5 Q Oh. Well, you're going to have to share
6 with me what other videos those are. Now, these
7 people have been accused of some really serious
8 stuff now so we can't just be guessing about what's
9 going on outside of the frame.
10 MS. LEWIS: Objection.
11 BY MR. JEFFERIES:
12 Q Do you agree with me that that would be
13 highly unfair to be guessing about what people were
14 doing outside of the frame?
15 A Sir, the video speaks for itself.
16 Please press play.
17 Q I tend to agree with you. I don't see
18 anybody in this video. Can you show me where on
19 this video somebody is vandalizing something?
20 MS. LEWIS: Objection.
21 A All I can tell you is the facts about
22 it, sir, which are pallets and displays do not
23 move on their own. So there was somebody pushing
24 this pallet and if you keep watching the video,
25 you will find out who that is. So keep pushing

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1 play, please.
2 BY MR. JEFFERIES:
3 Q We'll press play. (Playing video.) And
4 there's a head and a little bit of --
5 A And a green shirt, yes.
6 Q Okay. That's 25 seconds into the video.
7 A Yes.
8 Q And you think that's whoever was moving
9 this pallet earlier in the video, but of course we
10 couldn't see it?
11 A Only a couple seconds have passed, sir,
12 so yes, it was most likely this person.
13 Q How was she moving the video -- I mean,
14 moving the kite display?
15 A I can't tell you that because that was
16 out of frame. But it was being pushed forcefully
17 from the other side because it doesn't move just
18 by itself.
19 Q Could she have fallen down and stumbled
20 into it?
21 A That would have been seen on another
22 video, sir.
23 Q Well, let's go look at it.
24 A Why don't you finish playing this one
25 first?

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1 Q Well, my question is can you tell what
2 caused that pallet to move, whether she was -- what
3 was she doing to it?
4 A I cannot tell you that, sir. I can't
5 speak about things I don't know about.
6 Q I tend to agree.
7 She could have fallen into it,
8 right? According to -- just watching this video you
9 have no idea. She might have been kicking it,
10 beating it with a baseball bat. She might have
11 fallen into it. She might have been jerking a kite
12 out of there 'cause it wouldn't come. Right? She
13 could have been doing any of those things, right?
14 A I can't make assumptions, sir.
15 Q I agree.
16 And then she disappears and then
17 he shows up. Now, do you see him vandalizing the
18 display?
19 A Not right there.
20 Q Do you see him vandalizing the display
21 anywhere in this video?
22 A I'm still watching it.
23 Q Now, it looks like they've disappeared so
24 we're waiting for them to come back. Do you see
25 anywhere in this video where you saw either of those

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1 folks touching that display?

2 A All I can tell you is that it moved

3 forcefully from the other side and then those

4 people popped into the shot seconds later. That's

5 all I can tell you, sir.

6 Q That's right. So the answer to my

7 question is no, you don't see them touching the

8 display anywhere in this video, do you?

9 A You can put words in my mouth if you'd

10 like to.

11 Q No, I want to know the truth. Do you see

12 in this video those two people touch the kite

13 display?

14 A You cannot see that from this video.

15 Q Thank you.

16 And I think you identified one

17 other video where you could see the gentleman kneel

18 down and it appeared that he might have touched a

19 pallet, is that correct?

20 A Yes, sir.

21 Q You pointed that out to me when he got

22 there?

23 A Yes, sir.

24 Q That other video, do you see him touching

25 anything?

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1 A Not that I can recall.

2 Q And do you see him hitting anything with a

3 hammer?

4 A You wouldn't be able to make that out;

5 the video is too far away. But not to my

6 knowledge.

7 Q And you don't see him stealing anything,

8 right?

9 A No, sir.

10 Q Here they come back. And they walk out of

11 the frame. I don't know if they're coming back or

12 not. There they are, one of them anyway. Does he

13 touch the display?

14 Has he touched the display in

15 this video at all so far?

16 A I'm still watching but not so far, not

17 that I can see.

18 Q Okay.

19 Now they're back. Look at --

20 he disappears out of the bottom of the frame; so

21 does she. Now they're gone. 3 minutes, 50 seconds

22 in, they're gone, they're still gone. Gone.

23 They've been gone 12 seconds now, 13, 14, 15, 16.

24 All right. So we come to the

25 end of that video, Video Number 11, and I think you

Page 131

1 said nowhere in Video Number 11 do you see those two

2 people touch the kite display, is that correct?

3 A All I can speak about are the facts of

4 the video, sir.

5 Q Okay. And what you see there in the

6 entire video is nobody touches the kite display, is

7 that correct?

8 A You can't see who touched it but it was

9 touched because the pallet moved. That's all I

10 can speak about it.

11 Q That's right. Somebody touched it but you

12 can't see who it was?

13 A Correct.

14 Q So if I understand you right, there's one

15 other video -- and we don't have to go back to it

16 now. There's only -- out of all these videos,

17 there's only one where you identified one of these

18 folks even touching a pallet, isn't that right?

19 A Correct.

20 Q And there's none where you said, aha,

21 there he's hitting it with a hammer, isn't that

22 correct?

23 A I haven't seen him hit anything with a

24 hammer.

25 Q And there's none where you could point and

Page 132

1 say there he is, see him right there, he's

2 vandalizing something, is there?

3 A I'm not here to make assumptions about

4 what these people were doing, sir. I've said that

5 several times. My job was to secure the video,

6 send it to the people that were requesting it.

7 Q My question to you is, is there anywhere

8 in the videos where you can point and say there he

9 is vandalizing -- I see him right there in the video

10 vandalizing something. Is there any video where you

11 can say that?

12 A Not to my knowledge.

13 Q Is it illegal to drive behind a Walmart?

14 A No, but it is very suspicious.

15 Q Just to drive through?

16 A Yes. Most people do not exit that way

17 or go that way.

18 Q But if you just drive through and don't

19 even get out of the car, is that -- anything wrong

20 with that?

21 A No, but driving through and stopping is

22 extremely suspicious. Most people don't do that.

23 Q Okay. Now, if Walmart were really worried

24 about people going back there, I mean, they could

25 put up a gate or something, right?

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1 A There is a gate back there.
2 Q Oh, really?
3 A Yes.
4 Q So I guess people went back there in this
5 video and opened up a gate and drove through and
6 they closed it back behind themselves?
7 MS. LEWIS: Objection.
8 A No, sir. There is a gate back there
9 surrounding the cardboard pallets.
10 BY MR. JEFFERIES:
11 Q Okay. I mean, where you can drive? I
12 mean, you can drive through without having to get
13 out of your car and open a gate, right?
14 A Correct.
15 Q And there's no kind of sign that says
16 don't come back here, is there?
17 A No, sir.
18 Q Aside from looking at these cameras and in
19 your role as an asset protection person, you look at
20 these cameras I understand for, among other reasons,
21 to see if anyone's stealing or vandalizing Walmart
22 stuff, is that right?
23 A Those are two of a very long list of
24 reasons but, yes, sir.
25 Q What are the other reasons?

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1 A I would have to look at the binder for
2 all those reasons, sir. There are several
3 reasons.
4 Q Okay.
5 MS. HAYWARD: I would have to look at
6 what, did you say?
7 A The policy binder.
8 BY MR. JEFFERIES:
9 Q You don't remember any of the other
10 reasons other than making sure people weren't
11 stealing or vandalizing?
12 A My job was internal investigation, sir,
13 so that could -- that could be a number of things.
14 That could be cash theft. That could be item
15 theft. That could be any kind of -- any kind of
16 asset loss, I looked into it.
17 Q So your job was to protect Walmart's
18 stuff, its assets?
19 A Yes. Yes.
20 Q What about protecting the shoppers? Did
21 anyone ever tell you, hey, while you're zooming
22 around on these pan-tilt-zoom cameras, keep an eye
23 out for dangerous things? Anyone ever tell you
24 do that?
25 A Yes, all the time. I was the head of

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1 safety and security for the building.
2 Q What did they tell you to watch out for?
3 I mean, I'll give you an example. Did they tell
4 you, hey, keep an eye for puddles on the floor where
5 somebody might have spilled some water because
6 somebody might trip? Did they tell you that?
7 A All associates are told that upon
8 hiring, sir.
9 Q Did they tell you when you're watching
10 those videos, you know, look out for mats that have
11 upturned edges because people can trip over that?
12 A Everything like that is included in
13 orientation and in the weekly, monthly, quarterly
14 safety meetings.
15 Q That's a yes?
16 A Yes.
17 Q They tell you while you're looking around,
18 look and see if any of the associates have left
19 something in the aisle they shouldn't leave like an
20 empty pallet or a box or something like that 'cause
21 people could trip over it?
22 A Empty pallets are not --
23 MS. HAYWARD: I didn't hear your
24 objection. Wait a minute. I didn't hear
25 your objection.

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1 MS. LEWIS: No, I didn't. I'm sorry.
2 BY MR. JEFFERIES:
3 Q I asked you whether anyone told you to
4 keep an eye out for empty pallets that were left
5 laying around on the floor.
6 A It is against our policy to have empty
7 pallets out on the floor past 7:00 AM, sir.
8 Q Really? What -- why is that?
9 A Because third shift is supposed to clean
10 them off the floor.
11 Q Well, what's wrong with just leaving them
12 there? I mean, why couldn't you have them there?
13 A You don't have empty pallets on the
14 floor at all at any time. You know, they're --
15 that's not allowed. If there's an empty pallet on
16 the floor, it's supposed to be secured with an
17 item on every corner of the pallet to prevent
18 people from tripping over it.
19 Q Oh, that makes sense. So that's something
20 else that you'd watch out for?
21 A Everybody would be watching out for
22 that, yes.
23 Q What about if there were an area, you
24 know, certain parts of the store might have a
25 different kind of flooring, there'd be a little

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1 transition piece between one kind of flooring or
2 another? If that were upturned or something where
3 somebody might trip over it, would that be the sort
4 of thing that you'd say, hey, man, I saw this, we
5 need to do something, it's dangerous?
6 A That would have never happened because
7 if that floor changes to a different kind of
8 flooring there's some kind of border usually
9 around it to protect that from -- that sort of
10 thing from happening. Walmart goes to extreme
11 lengths for safety for customers and associates.
12 Q And why do they go to such extreme lengths
13 to make sure that border doesn't get turned up?
14 A So that -- to prevent accidents.
15 Q Okay. So if you saw something like that,
16 if that border got turned up somehow, you'd report
17 that immediately?
18 A Yes.
19 Q And that's the sort of thing you could
20 see, right, from your video cameras?
21 A Yes.
22 Q What about the things like a pallet that
23 had exposed nails sticking out, you know, where
24 somebody could walk by and puncture themselves or
25 scrape themselves, did anyone ever tell you, hey,

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1 you know, if you see that tell us?
2 A I've never seen that but if it happened
3 we would have been alerted.
4 Q And that's the sort of thing you could
5 see, right?
6 A I'm assuming maybe --
7 MS. LEWIS: Objection.
8 A In any kind of, you know, retail
9 location or any kind of location with pallets, I'm
10 assuming that that is a risk. But have I ever
11 seen it personally in my 14 years at Walmart? No.
12 BY MR. JEFFERIES:
13 Q And you would obviously, you'd report if
14 there was merchandise or some other kind of thing
15 just laying on the floor, you'd report that, right?
16 A No, I would pick it up.
17 Q Okay. Well, I'm saying you see it from
18 the video so it's going to be a while before you can
19 get there. You'd go down and pick it up yourself or
20 you'd make sure somebody else would do it, one,
21 right?
22 A Most of the time I would be out on the
23 floor, sir.
24 Q Tell me -- tell me, if you would, Ginny,
25 what is your home address?

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1 A Is there a reason you're asking me this,
2 sir?
3 Q Yeah, 'cause I want to know it.
4 A I need to know why you're asking me
5 this.
6 Q Well, no, actually you don't. What you
7 need to do is answer the questions I have truthfully
8 and completely. So if you could please tell me your
9 home address?
10 A The lawyers have it.
11 Q Well, you know it, right, you know where
12 you live, right?
13 A Of course I do.
14 Q Okay. Well, how about go ahead and tell
15 me where you live?
16 A I'm feeling very uncomfortable with that
17 question, sir.
18 Q Who is there in the room with you?
19 A My boyfriend is on the other couch.
20 This is his home too.
21 Q What is his name?
22 MR. ANDREW COX: Andrew Cox.
23 MR. JEFFERIES: Andrew Cox. All
24 right. Andrew Cox.
25

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1 BY MR. JEFFERIES:
2 Q How long has Andrew Cox been in the room?
3 A For about ten minutes. My children are
4 being kept quiet by him in another room. I have
5 three children also here.
6 Q Well, good. All right. So I'm going to
7 ask you again, and if you want to, you can turn
8 to -- you can turn to Miss Lewis and she'll confirm
9 to you that you need to answer my question, what
10 your address is.
11 A 1819 Carriage Oak Court.
12 Q Okay. And where is that?
13 A Hartsville, South Carolina 29550.
14 Q And do you have a home phone number?
15 A No, I do not.
16 Q Do you have a cell phone number?
17 A Yes, I do.
18 Q Please tell me what your cell phone number
19 is.
20 A 843-639-7343.
21 Q Do you have any plans to go out of South
22 Carolina next week?
23 A Sir, I'm medically unfit, I have not
24 been released by my doctor to go anywhere, to
25 drive, to do anything. I have nine incisions in

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1 my stomach. I am not going anywhere.
2 Q Okay. So you'll be right at home?
3 A Yes.
4 Q Okay. So if either Miss Lewis or I needed
5 you to testify at trial, you would be -- it would be
6 hard for you to come in and do that in person but
7 you could certainly do it by video?
8 A Yes.
9 Q Is that correct?
10 A Yes.
11 Q Okay. All right. Have you understood all
12 the questions I've asked you today?
13 A Mostly, yes.
14 Q Well, if there's any you haven't
15 completely understood we need to go back and get
16 that squared away now. So which ones have you not
17 understood?
18 A I just don't know why you needed my home
19 information and my personal -- I don't give that
20 information out to just anyone, sir. It made me
21 very uncomfortable. But I provided it to you
22 nonetheless.
23 Q Okay. Well, I'm not going to tell it to
24 anybody, anybody that doesn't need to know it.
25 So -- but you understood the question itself, you

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1 understood what I was asking, right, you just didn't
2 understand why?
3 A Correct.
4 Q Were there any questions where you
5 didn't -- by the time you answered, where you didn't
6 understand what it was I was asking?
7 A Not to my knowledge, no.
8 Q And were there any questions where you
9 didn't tell me the truth and the whole truth and
10 nothing but the truth?
11 A No, sir. I have been very truthful
12 about everything I've said.
13 Q Good. And I appreciate that very much.
14 Is there any reason that after
15 having given complete and truthful answers to
16 questions that you completely understood, that you
17 would change your answer later if somebody else
18 asked you the same question or if I asked it again?
19 A Not to my knowledge.
20 Q Okay. If that happens, would you let
21 Miss Lewis know so she can let us know that you want
22 to change your answers?
23 A Yes, sir.
24 Q Okay. All right.
25 MR. JEFFERIES: Well, listen, I

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1 appreciate it. I know this took a little
2 bit of time. And I appreciate you being
3 here. I hope Miss Lewis doesn't make it
4 necessary for you to actually come to
5 trial but she might.
6 And if she does, we'll get you
7 on the video assuming the judge will let
8 that. I don't think he's going to make
9 you come down there if you've had an
10 operation. But we can get you on the
11 video and do it that way, I'm sure.
12 That's the last of the questions
13 I have unless Miss Lewis has some and then
14 I've got to follow up and, you know, we'll
15 take that from there. But if she doesn't
16 have any, I'm finished.
17 MS. LEWIS: Thank you. Miss Wright,
18 thank you so much for your patience today,
19 and I know it's been long. I just have a
20 very couple -- a few questions that I need
21 to ask you, and then if Mr. Jefferies
22 doesn't have anything further, we'll be
23 able to let you get back to your family.
24 Lane, I'm going to share my
25 screen just so that I can pull up her

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1 affidavit. I think it'll put yours off.
2 EXAMINATION
3 BY MS. LEWIS:
4 Q Can you see the affidavit there,
5 Miss Wright?
6 A Yes, ma'am.
7 Q That's the affidavit that Mr. Jefferies
8 showed you earlier, is that correct?
9 A Yes, ma'am.
10 Q All right. That affidavit in no place
11 indicates that you observed anyone stealing, does
12 it?
13 A That's -- no, ma'am.
14 Q All right. It also doesn't indicate
15 anywhere that you saw anybody vandalizing anything,
16 does it?
17 A No, ma'am.
18 Q All right. And in the videos that you
19 captured, there was -- when you saw those three
20 individuals that you were watching exit the store,
21 they didn't have that hammer, did they?
22 A I'm sorry, can you repeat that?
23 Q When they exited the store, the three
24 people you were asked -- the people that you were --
25 pulled the surveillance video for, they didn't have

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1 the hammer when they exited the store, did they?
2 A No, ma'am, they did not.
3 Q Didn't have the gloves?
4 A No, ma'am.
5 Q And there was no video showing them go
6 through a checkout and paying for either of those
7 items, correct?
8 A No, ma'am.
9 Q All right. Thank you.
10 MS. LEWIS: I have nothing further.
11 MR. JEFFERIES: Neither do I. Thank
12 you very much for your time. I really
13 appreciate it.
14 MS. LEWIS: Thank you, Miss Wright.
15 Take care. I appreciate it.
16 You have a right to read your
17 deposition and to sign it to make sure
18 that the court reporter has correctly
19 recorded everything that you said. You
20 have the right to do that.
21 Generally speaking, you cannot
22 change the substance of your testimony,
23 but if she misheard a word or there's
24 something that was misspelled, you have a
25 right to read it and make sure that those

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1 things are correct and sign it.
2 You also may waive that right if
3 you choose to. In other words you can say
4 I don't wish to read it, I'll just let it
5 stand without reading it.
6 Would you like to read and sign
7 it or would you like to waive that?
8 THE WITNESS: I will waive that
9 right.
10 MS. LEWIS: All right. Well, thank
11 you again very much. And thank you-all,
12 Lane. I'll talk to you-all later.
13 THE WITNESS: Thank you.
14 MS. LEWIS: And you can leave now,
15 Miss Wright. Thank you.
16 THE VIDEOGRAPHER: This concludes the
17 videotape deposition of Virginia Wright.
18 We're off the record at 5:07 PM.
19 (Plaintiff's [Exhibit Number 2](#) was marked
20 for identification.)
21 (The deposition concluded at 5:07 PM.)
22
23 ---oOo---
24
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) CERTIFICATE
3 I, Janice D. Hayward, Registered Merit
4 Reporter and Notary Public, certify that I was
5 authorized to and did stenographically report the
6 foregoing deposition via Zoom, and that the
7 transcript is a true record of the testimony given
8 by the witness.
9 I further certify that the witness was
10 duly sworn/affirmed and cautioned by me via Zoom to
11 tell the truth, the whole truth, and nothing but the
12 truth. I certify that the same was reduced to
13 typewritten form from my original stenograph notes
14 by computer-aided transcription.
15 I further certify that I am not of
16 counsel or kin to any of the parties to this cause
17 of action nor am I interested in any manner in
18 its outcome.
19 IN WITNESS WHEREOF I have hereunto set
20 my hand and seal this the 4th day of November 2021
21
22
23 Janice D. Hayward, RMR
24 Notary Public, South Carolina
25 My Comm. Expires 10-10-22

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as employee/
agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart
Store #630, and Wal-Mart Stores, Inc., and
Wal-Mart Stores East, L.P.,

Defendants.

COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-21-1375

**WALMART'S MOTION FOR
JUDGMENT NOTWITHSTANDING
THE VERDICT AND MOTION FOR
NEW TRIAL**

Pursuant to Rules 50(b) and 59(a) of the South Carolina Rules of Civil Procedure, Defendants Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P. (hereinafter "Walmart"), by and through their undersigned counsel, hereby move this Court for a judgment notwithstanding the jury's verdict ("JNOV"); or, in the alternative, for a new trial absolute or a new trial *nisi remittitur*.

As a matter of law, Walmart is entitled to JNOV because Plaintiff did not introduce evidence that would allow the finder of fact to find in favor of Plaintiff. Specifically, as more fully discussed in the contemporaneously filed Memorandum of Law in Support of the Motion, judgment in favor of Walmart notwithstanding the jury's verdict is appropriate.

In the alternative, at a minimum, Walmart is entitled to a new trial absolute or a new trial *nisi remittitur*. Specifically, as more fully discussed in the contemporaneously filed Memorandum of Law in Support of the Motion, there were a number of errors and issues that warrant the granting of a new trial absolute or, in the alternative, a new trial *nisi remittitur*.

CONCLUSION

For the foregoing reasons stated herein and in the accompanying Memorandum of Law in Support of the Motion, which is incorporated as if set forth fully herein, as well as in any further memoranda to be filed, in counsel's arguments at any hearing on this Motion, and in such further material as the Court may deem appropriate, Walmart is entitled to JNOV; or, in the alternative, a new trial absolute or new trial *nisi remittitur*. As such, Walmart requests that this Court grant its Motion and award it such further relief, both general and special, legal or equitable, to which it may be entitled.

Respectfully submitted,

s/Robert C. Blain

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Inc., and Wal-Mart Stores East, L.P.*

November 22, 2021

STATE OF SOUTH CAROLINA

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COURT OF COMMON PLEAS

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**WALMART'S MEMORANDUM
IN SUPPORT OF
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT
AND MOTION FOR NEW TRIAL**

Pursuant to Rules 50(b) and 59(a) of the South Carolina Rules of Civil Procedure, Defendants Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P. (hereinafter "Walmart"), by and through their undersigned counsel, submit this Memorandum in Support of Walmart's Motion for judgment notwithstanding the jury's verdict ("JNOV"); or, in the alternative, for a new trial absolute or a new trial *nisi remittitur*.

INTRODUCTION AND PRAYER FOR RELIEF

These post-trial motions arise from the return of a grossly excessive verdict in a case that should have never proceeded to the jury. Even when the facts are viewed in a light most favorable to Plaintiff, as the Court must, the record clearly shows that Plaintiff failed to set forth a scintilla of evidence from which a reasonable jury could find in her favor. Specifically, Plaintiff, who alleged she stepped on a nail in Walmart that led to amputations of her leg, wholly failed to establish that Walmart placed the nail on the floor or that Walmart knew or reasonably should have known of the presence of the nail on the floor. Further, there was no evidence that Walmart breached any standard of care by violating any internal policies, thereby causing injury to Plaintiff.

Accordingly, Walmart is entitled to judgment as a matter of law, and Walmart's motion for JNOV should be granted.

Alternatively, multiple material and prejudicial errors and issues warrant the granting of a new trial. These include the following: (a) Plaintiff's incurably prejudicial (and false) testimony in violation of Rule 408, SCRE, that Walmart had supposedly made a settlement offer that effectively conceded liability; (b) this Court's refusal to give a curative instruction after Plaintiff's improper use of inadmissible and excluded photographs during opening statement; (c) this Court's refusal to charge the jury that Plaintiff cannot establish liability merely by showing a foreseeable risk; (d) the verdict was contrary to the evidence; and (e) the damages award was grossly excessive and clearly motivated by passion and prejudice. Accordingly, even if the Court does not grant Walmart's motion for JNOV, it should grant a new trial or, alternatively, a new trial *nisi remittitur*.

BACKGROUND AND EVIDENCE AT TRIAL

On June 26, 2015, Plaintiff was shopping at Walmart Store #630 in Florence when she heard the sound of metal on the floor as she walked through the Grocery Action Alley around 11:32:30 AM. She looked at her flip-flop and found a nail embedded in the sole of her sandal. It was a 7/8" roofing nail with visible rust. Plaintiff had no information about where the nail came from, how it came to be in her sandal, or how long it may have been in her sandal. No witness observed the nail at any time before Plaintiff found it in her sandal.

Despite finding a nail embedded in the sole of her sandal, Plaintiff did not immediately remove the nail or her sandal. She did not feel any immediate pain in her foot. Plaintiff continued on for at least one minute and thirty seconds, in which she stood talking with other customers and then walked to the Detergent aisle, before she removed her sandal and the nail around 11:34 AM. She alleges the nail punctured her foot and caused her to suffer personal injury and damages.

Thereafter, this lawsuit was filed. The trial court heard pre-trial motions on November 5, 2021, including a number of motions *in limine* on various evidentiary issues, including the admissibility of the photographs taken by Plaintiff's counsel and/or his agents in May 2019, nearly four years after the incident. The trial court ruled that photographs of a purportedly damaged pallet would be excluded from trial. Further, the Court indicated it would rule on the admissibility of other photographs taken during the improper May 2019 inspection at the time of their proffer. However, despite this ruling, during his opening statement Plaintiff's counsel presented the forbidden photographs to the jury as evidence of Walmart's liability. While the trial court sustained Walmart's objection to the reference to the photographs, the Court denied Walmart's request for a curative instruction. The denial of a curative instruction was unduly prejudicial to Walmart's case as the jury saw the inadmissible photographs, which bolstered Plaintiff's subsequent arguments that the store supposedly violated internal policy with regard to pallets on the sales floor.

Trial commenced on November 8, 2021 and continued until November 12, 2021. On the third day of trial, during Plaintiff's direct examination, she unexpectedly, abruptly, and falsely testified that Walmart offered to settle the case for the sum of Fifty-Thousand Dollars (\$50,000.00) some three days after the incident and before any of Plaintiff's amputations or significant medical treatment. Although the trial court issued a purportedly curative instruction to the jury, that bell had already been rung. Walmart was irreparably prejudiced, as Plaintiff's counsel acknowledged, by having the jury hear that a substantial sum of money was allegedly offered to Plaintiff before she underwent any treatment. This prejudicial testimony improperly raised the inference in the jury's mind that Walmart had conceded liability for Plaintiff's injury and it made the purported offer of settlement because of its knowledge of the liability. Such an inference is the very

circumstance that Rule 408, which precludes the admission of evidence of offers of settlement, is intended to prevent.¹ The trial court acknowledged the prejudice to Walmart and requested that Plaintiff's counsel stipulate to the fact that Walmart had not made the offer to compromise, but Plaintiff's counsel refused. Despite the irreparable prejudice to Walmart, Plaintiff counsel's acknowledgement of that prejudice, and Plaintiff's own subsequent motion for mistrial, the trial court inexplicably refused to grant the mistrial, thereby depriving Walmart of any meaningful opportunity for a fair trial or defense verdict.

Further, the trial court committed additional errors that warrant a new trial, including denying Walmart's request to charge *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 542 S.E.2d 728 (2001) for the proposition that a "foreseeable risk" of a hazard is insufficient to establish liability, and allowing the unusual and prejudicial circumstances surrounding jury deliberations. A juror was diagnosed with Covid-19 between the close of Plaintiff's case and the start of Walmart's case. Despite the fact the jury raised concerns about their own welfare due to close contact with their sick colleague, an alternate juror was randomly selected to continue forward with trial. Further, jury deliberations only commenced at the late hour of 5:45 PM on Friday evening, all of which created unusual circumstances for jury deliberations that unduly prejudiced Walmart.

The trial court denied Walmart's motion for directed verdict on Plaintiff's negligence claims both at the close of Plaintiff's case and at the close of all of the evidence. Throughout the

¹ Notably, there is no evidence in the record to support the existence of the purported offer of settlement described by Plaintiff in her testimony. Plaintiff was questioned extensively in deposition about communications with Walmart representatives. (Jones Dep. 38-39, 42, 97-98, Sept. 28, 2018, attached as Exhibit A). Further, Plaintiff provided no information about any alleged admission any against by Walmart in written discovery. (See Answer to Interrogatory #14, Plaintiff's Answers to Defendant's Interrogatories, attached as Exhibit B). Plaintiff never indicated at any time prior to trial that Walmart made any supposed offer of settlement that she intended to offer into evidence.

four-day trial, Plaintiff could not show any evidence that Walmart created the alleged hazardous condition of a roofing nail on the floor. Moreover, there was no evidence that Walmart had actual or constructive notice of a roofing nail on the floor at any time before Plaintiff discovered it in her sandal. Therefore, as Plaintiff failed to show any evidence of Walmart's negligence, the case was insufficient to create a jury issue.

The jury returned a verdict in favor of Plaintiff at approximately 7:45 PM and awarded Ten Million Dollars (\$10,000,000.00) in actual damages on submitted actual damages of approximately Five Hundred Forty-Two Thousand Dollars (\$542,000.00). Additional facts will be set forth in the argument below.² In short, the evidence did not justify the grossly excessive verdict that was clearly the result of passion, caprice, prejudice, partiality, corruption or other improper motive, and is contrary to the evidence and accordingly the court should grant a JNOV or, alternatively, grant a new trial.

STANDARD OF REVIEW

In ruling on a motion for JNOV, the trial judge must view the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party. JNOV should be granted when only one reasonable inference can be drawn from the evidence and no reasonable jury could have reached the challenged verdict. The trial judge does not have authority to decide credibility or resolve conflicts in the evidence. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003); *Welch v. Epstein*, 342 S.C. 379, 536 S.E.2d 408 (Ct. App. 2000). When a jury returns a verdict in plaintiff's favor despite the plaintiff's failure to introduce any evidence to establish a required element of her claim, JNOV must be granted. *Gadson ex rel. Gadson v. ECO Services of*

² Counsel for Defendants made an expedited request for the trial transcript, which has not yet been received. Walmart reserves the right to supplement this Motion and the arguments herein once there has been an appropriate opportunity to review the trial transcript.

South Carolina, Inc., 374 S.C. 171, 648 S.E.2d 585 (2007) (reversing the trial court’s denial of the defendant’s motion for a JNOV because the plaintiff had failed to submit any evidence establishing the necessary elements of the claim).

A trial court may “grant a new trial absolute when it finds the evidence does not justify the verdict. *Trivelas v. S.C.D.O.T.*, 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004). “The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict.” *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). Additionally, if the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive, the trial judge is required to grant a new trial absolute. *Cock-N-Bull Steak House v. Generali Ins. Co.*, 321 S.C. 1, 466, S.E.2d 727 (1996).

A trial court has wide discretion to reduce an excessive verdict by granting a new trial *nisi remittitur*. The reduced judgment is a suggested settlement figure, which the plaintiff may accept, or reject and request a new trial. Ruling on a new trial *nisi remittitur* “requires the court to consider the adequacy of the verdict in light of the evidence presented.” *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000). The touchstone for deciding whether to disturb a jury’s verdict by granting a *nisi* motion is whether the award excessively compensates the injured party. *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984).

ARGUMENT

I. Walmart is entitled to JNOV.

Pursuant to Rule 50(b), SCRCP, a court may grant a motion for JNOV if “no reasonable jury could have reached the challenged verdict.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399

S.C. 322, 332, 732 S.E.2d 166, 171 (2012) (internal citation omitted). The motion for JNOV is a renewal of the directed verdict motion. *Id.*, 399 S.C. at 331, 732 S.E.2d at 171. The trial court must “view[] the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” *Id.*, 339 S.C. at 331-32, 732 S.E.2d at 171. Based on the evidence identified above, no reasonable jury could have reached the verdict rendered, as the evidence, even when taken in the light most favorable to Plaintiff, does not support the jury’s verdict. As a result, Walmart is entitled to judgment as a matter of law, and Walmart’s Motion should be granted and JNOV entered in Walmart’s favor.

Specifically, this Court should grant Walmart’s Motion because: (1) Walmart did not create the alleged hazard or have actual or constructive notice; (2) Walmart did not breach its duty to exercise ordinary care to keep the premises reasonably safe; and (3) Walmart did not violate internal policies or industry standards. In the absence of any evidence to support these mandatory elements of Plaintiff’s negligence claim, Walmart is entitled to judgment notwithstanding the verdict.

A. Walmart is Entitled to JNOV because Walmart Did Not Create the Hazard, and Walmart Did Not Have Actual or Constructive Notice of the Hazard.

To recover damages for injuries caused by a dangerous condition in the store, Plaintiff was required to prove, by a preponderance of the evidence, “either (1) that the injury was caused by a specific act of the [defendant] which created the dangerous condition; or (2) that the [defendant] had actual or constructive knowledge of the dangerous condition and failed to remedy it.” *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). In the case of a foreign object on the floor of a retail store, the plaintiff must demonstrate either that the object was placed there by the defendant or its agents, or that the defendant had actual or constructive notice the object was on the floor at the time of the injury. *See Wintersteen*, 344 S.C. at 35, 542 S.E.2d at 729-30. The

mere existence of a dangerous foreign object on the floor, standing alone, is insufficient to support a finding of negligence. *See Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 77, 184 S.E.2d 77, 77 (1971).

1. Walmart Did Not Put the Roofing Nail on the Floor.

There was no evidence identifying the origin of the roofing nail or how it came to be in the sole of Plaintiff's sandal. It is pure conjecture to assume whether she even stepped on the nail inside the Walmart store or how long it had been in the sole of her sandal. Plaintiff contends her burden of proof was met by speculative inferences drawn from evidence that Walmart used wood pallets at the base of certain PDQ merchandise displays. Even viewing the evidence in the light most favorable to Plaintiff, the mere existence of wood pallets in displays is not evidence from which the jury could reasonably infer that Walmart created a hazardous condition of a roofing nail on the floor.

The mere presence of a wood pallet on the sales floor is not circumstantial evidence that Walmart put a roofing nail on the floor. Allen Pavlovich, who has worked in this industry for 22 years, testified that he has never seen this type of roofing nail used in pallets that pass through the Walmart Distribution Center. He explained that this type of roofing nail would not comply with Walmart standards governing pallet construction. The roofing nail was simply too short to properly fasten the deck boards to the stringer boards of a pallet. Tim Ringer also testified that he has never seen this type of roofing nail used in pallets that arrive at the Walmart store. Mr. Ringer explained Walmart's procedures for inspecting pallets before they go on the sales floor. Plaintiff offered no evidence to rebut the overwhelming evidence that proved a roofing nail would not be in a pallet on a Walmart sales floor.

Moreover, Walmart's liability may not be inferred from evidence merely indicating that it was foreseeable that a roofing nail could end up on the ground. The South Carolina Supreme Court explicitly rejected such a foreseeability test. In *Wintersteen*, the plaintiff argued that the store's soda fountain created a foreseeable risk that ice would fall onto the floor and create a dangerous condition. The court disagreed and adhered to "prior precedent that a storekeeper is liable only upon showing that it actually placed the foreign substance on the floor, or that it had actual or constructive notice thereof." 344 S.C. at 35-36, 542 S.E.2d at 730 (affirming appellate reversal of jury verdict and trial court's denial of directed verdict against store owner where plaintiff failed to present any evidence from which the jury could reasonably infer that store knew or should have known about water on the floor). The instant case is even more speculative than the soda fountain in *Wintersteen*. Plaintiff cannot establish Walmart's liability by merely arguing the presence of wood pallets create a foreseeable risk that nails could fall onto the floor and create a hazard. Furthermore, the roofing nail is even more speculative than ice from a soda fountain because there is no evidence to suggest a roofing nail could have come from a pallet.

In closing, Plaintiff's counsel offered the speculative argument that a vendor could have repaired a pallet using the roofing nail pulled from a coffee can in his garage. Plaintiff's wild speculation supposed that the roofing nail could have been introduced to the Walmart sales floor by this hypothetical nonconforming vendor without Walmart's knowledge. Plaintiff did not bother to speculate on how the hypothetical pallet repair could have caused the roofing nail to come loose and end up on the Walmart floor. It is just as likely, and speculative, that a customer dropped the nail on the floor seconds before Ms. Jones' heard the noise from her shoe. There is no evidence to prove either theory, highlighting the speculative nature of Plaintiff's counsel's improper

arguments. Accordingly, there was no evidence from which the jury could reasonably infer that Walmart created the hazardous condition of a roofing nail on the floor.

2. Walmart Did Not Have Actual or Constructive Notice of the Nail.

There was no evidence that any Walmart employee actually knew of the roofing nail on the floor of the store. Moreover, there was no evidence from which the jury could reasonably infer that Walmart had constructive notice of the nail on the sales floor.

Absent actual notice, a store owner's constructive knowledge of the foreign object may be established by showing that it was "on the floor for a sufficient time and that the storekeeper would have discovered and removed it had the storekeeper used ordinary care"; however, "[t]he mere fact the substance was on the floor is insufficient standing alone to charge the storekeeper with negligence." *Wintersteen*, 336 S.C. 132, 136, 518 S.E.2d 828, 830 (Ct. App. 1999) (*aff'd* 344 S.C. 32, 542 S.E.2d 728 (2001)). "The question of whether the [hazard] was on the floor for such a length of time as to infer that Wal-Mart was negligent in not discovering and removing it is not one that can be left to speculation." *Gillespie v. Wal-Mart Stores, Inc.*, 302 S.C. 90, 92, 394 S.E.2d 24, 25 (Ct. App. 1990).

There was no evidence from which the jury could have reasonably inferred that the nail was on Walmart's floor long enough to impute constructive knowledge. There was zero evidence about the length of time the nail may have been on the floor before Plaintiff discovered it in her sandal. It would be pure speculation to suggest whether the nail had been on the floor for any extended period of time or for only a moment before Plaintiff encountered it. *See Wintersteen*, 336 S.C. at 136-37, 518 S.E.2d at 831. Since the evidence before the jury was completely devoid of any indication that Walmart had actual or constructive notice that a roofing nail was on the floor,

there was simply no evidence from which the jury could reasonably infer that Walmart was negligent.

B. Walmart is Entitled to JNOV because Walmart Did Not Breach Its Duty of Care to Provide Reasonably Safe Premises.

For Walmart to be liable for negligence, Plaintiff was required to prove, by a preponderance of the evidence, three elements: “(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) damage proximately resulting from the breach of duty.” *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003). “If the plaintiff fails to prove any one of these elements, the action will fail.” *Vinson v. Hartley*, 324 S.C. 389, 400, 477 S.E.2d 715, 720 (Ct. App. 1996).

The parties agreed that Plaintiff was an invitee and Walmart owed her a duty of care. “It is established in South Carolina that a merchant is not an insurer of the safety of its customers but rather owes its customers the duty to exercise ordinary care to keep the premises in a reasonably safe condition.” *Felder v. K-Mart Corp.*, 297 S.C. 446, 450, 377 S.E.2d 332, 334 (1989). Further, “merchants are not required to continuously inspect their floors....” *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579, 629 S.E.2d 375, 377 (Ct. App. 2006). South Carolina courts have repeatedly declined to expand a merchant’s duty to find liability based merely upon a foreseeable risk that a foreign object may fall to the floor. *See, e.g. Simmons v. Winn-Dixie Greenville*, 318 S.C. 310, 457 S.E.2d 608 (1995); *Bessinger v. Bi-Lo, Inc.*, 329 S.C. 617, 496 S.E.2d 33 (Ct. App. 1998); *Wintersteen*, 344 S.C. at 36, 542 S.E.2d at 730 (“To date, we have not required storekeepers to prevent or minimize the foreseeable risk of a foreign substance on the floor of its premises.”).

Plaintiff failed to establish the Walmart store was not in reasonably safe condition at the time she was an invitee on the premises. Plaintiff testified the floors of the Walmart store were clean, and she did not observe any debris or trash as she walked through the store. Walmart

witnesses testified about floor cleaning and inspection procedures that were observed at the time of the incident. Surveillance video in evidence confirmed that despite heavy customer volume on a busy Friday morning, the Walmart sales floor was neat, orderly, and in such good condition that Mr. Ringer testified he was so proud of the store that he wanted to show it off to his boss. The only reasonable inference to be drawn from the evidence, even when taken in the light most favorable to Plaintiff, is that Walmart kept the store in a reasonably safe condition and Walmart did not breach its duty to exercise ordinary care.

There was simply no evidence there was a hazard on the floor of Walmart. There was no direct evidence as to how the roofing nail came to be in Plaintiff's sandal. There was no evidence that Walmart uses roofing nails for any purpose on the sales floor. No witness observed the nail on the floor at any time. In the absence of any evidence to support Plaintiff's claim or to show that Walmart failed to keep the store in reasonably safe condition, the jury's verdict rests solely on Plaintiff's unsupported speculation that because she was in Walmart when she discovered the nail in her sandal, it must have come from Walmart. In essence, Plaintiff argued that Walmart created a hazard simply because she noticed a nail in her sandal while in the store. This is contrary to South Carolina law. In fact, the doctrine of *res ipsa loquitur* has been consistently rejected in South Carolina, and the mere fact Plaintiff may have encountered a foreign object on the floor of the store is not evidence of Walmart's negligence. *See Crider v. Infinger Transp. Co.*, 248 S.C. 10, 17, 148 S.E.2d 732, 735 (1966).

Furthermore, there was no evidence from which the jury could reasonably infer Walmart violated internal policies or that any alleged violation caused Plaintiff's injuries. Evidence of two Walmart policies was presented to the jury: (1) Remove pallets from the sales floor; (2) Perform

safety sweeps every 1½ - 2 hours. There was no admissible evidence of any pallets left on the Walmart sales floor or of any Walmart associates failing to perform safety sweeps.

Plaintiff and Tim Ringer identified certain displays or PDQs on the sales floor that may have been designed to include a wooden base. The existence of such displays is not a violation of Walmart policy, as the evidence clearly demonstrated such displays were installed on the sales floor as intended. There is simply no evidence from which a jury could have inferred that Walmart negligently failed to remove any pallets from the sales floor that proximately caused Plaintiff's injury from a roofing nail.

There was no admissible evidence that Walmart failed to perform safety sweeps or otherwise conduct appropriate inspections of the sales floor. Specifically, Store Manager Tim Ringer explained that Walmart policy guided store associates to conduct safety sweeps every 1½ to 2 hours. Safety sweeps are visual inspections of an associate's assigned work area. In addition to periodic safety sweeps, Mr. Ringer testified that associates are extensively trained to constantly be on the lookout for potential hazards or debris on the floor as they regularly walk through the store. Walmart Assistant Manager Kevin Lane testified that he regularly inspects the sales floor every day as he is walking through the store. Mr. Lane was on duty at the time of Plaintiff's incident, and he testified he inspected the Grocery Action Alley prior to Plaintiff's incident at 11:30 AM. Mr. Lane testified that he had never found a loose nail on the sales floor and he was not aware of any report of a customer ever stepping on a nail. The undisputed evidence proved that Walmart conducted reasonable periodic inspections of the sales floor and followed its policy to conduct safety sweeps at least every two hours.

In closing, Plaintiff's counsel argued that because Walmart could not show safety sweeps actively being performed on surveillance video, the jury should infer that safety sweeps had not

been performed that morning and Walmart violated its internal policies. Plaintiff's counsel argued "When the cat's away, the mice will play" to suggest, without evidence, that store associates may not have followed Walmart policy without the supervision of Store Manager Ringer, who was not working at the time. There was no evidence that any associate failed to follow policy or conduct appropriate safety sweeps or visual inspections. Plaintiff's argument improperly shifted the burden of proof to Walmart, which is not consistent with South Carolina law. Based on the evidence, there was no indication that Walmart violated its internal safety and inspection policies. There was simply no evidence from which the jury could reasonably infer that Walmart breached its duty to exercise ordinary care to keep the store in reasonably safe condition.

II. Walmart is Entitled to a New Trial Absolute.

There are a number of reasons that this Court should grant a new trial absolute. The trial court may find that justice was not done by the jury's verdict, that the evidence did not justify the verdict, or that the amount of the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicated the amount was the result of passion, caprice, prejudice, partiality, corruption, or other improper motive. Here, Walmart is entitled to a new trial absolute for all of these reasons as outlined more fully below.

A. Walmart is Entitled to a New Trial because this Court's Denial of a Mistrial was an Error that Resulted in Prejudice to Walmart.

On the third day of trial, November 10, 2021, during direct examination of Plaintiff, Plaintiff's counsel elicited testimony that Walmart's claims agent supposedly offered Plaintiff \$50,000 for her alleged injuries. Plaintiff testified that this alleged settlement offer was made just three days after the incident at Walmart, well before any of Plaintiff's amputations or significant medical treatment. Defendants' counsel timely objected on the grounds that it was inadmissible testimony pursuant to Rule 408 of the South Carolina Rules of Evidence. Defendants' counsel

moved for a mistrial because Walmart's right to a fair trial had been irreparably compromised by Plaintiff's harmful testimony.³

Plaintiff's counsel did not set forth any arguments in opposition to Defendants' position and in fact agreed that a mistrial was appropriate based on Plaintiff's improper and totally unexpected testimony. While the trial court denied Defendants' motion for mistrial and instead offered a curative instruction, the court's initial response was to request that Plaintiff stipulate on the record that no such offer existed. This Court's initial reaction to propose the stipulation demonstrates the court knew that any curative instruction would not likely be sufficient to remedy the harm caused by Plaintiff's testimony. This is consistent with courts in other jurisdictions, which have found that the mere mention of an offer of compromise or settlement was such an egregious error that the only remedy would be to declare a mistrial. *See, Wal-Mart Stores, Inc. v. Londagin*, 344 Ark. 26, 32, 37 S.W.3d 620, 623-624 (Ark. 2001) (internal citations omitted) (strictly applying Rule 408 and holding that offers are inadmissible to prove a party's liability on the underlying claim). However, Plaintiff declined this Court's requested stipulation regarding the supposed offer. The trial court elected to only offer the curative instruction, which was insufficient to overcome the clear prejudice done to Defendants by Plaintiff's statements as demonstrated by the jury's exorbitant verdict.

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law; however, when a party shows error and resulting prejudice, declaring a mistrial is appropriate. *See*

³ Defendants moved for a mistrial contemporaneous with Plaintiff's inadmissible testimony. Defendants renewed their motion for mistrial at the conclusion of the evidence and submitted to the Court Defendants' Memorandum in Support of Defendants' Renewed Motion for New Trial, which is attached as Exhibit C and incorporated herein by reference.

State v. Council, 335 S.C. 1, 12-13, 515 S.E.2d 508, 514 (1999); *State v. Tenant*, 383 S.C. 254, 678 S.E.2d 816 (Ct. App. 2009). “To prove prejudice, the complaining party must show there is a reasonable probability that the jury’s verdict was influenced by the challenged evidence or lack thereof.” *Tenant*, 383 S.C. at 254, 678 S.E.2d at 817. In this case, despite the trial court’s curative instruction, the jury heard that Walmart offered to pay Ms. Jones’ immediately after the incident and ultimately assessed liability based on this alleged offer. Defendants were not allowed the opportunity to offer evidence to rebut Plaintiff’s assertion without placing the alleged offer squarely back into the jury’s minds and possibly waiving their claims of prejudice. Without such rebuttal evidence, the jurors believed that the alleged \$50,000 offer did in fact exist and that Defendants used legal rules and wrangling to keep the jury from considering it. Because Defendants did not have an opportunity to present contrary evidence, the jury only heard that Walmart offered to settle with Ms. Jones for a large amount very soon after her injury.

Rule 408 of the South Carolina Rules of Evidence seeks to prevent and protect parties from precisely these types of assumptions. Because the law favors compromises, South Carolina courts have long held that testimony as to negotiations and offers to compromise are inadmissible for proving liability. This principle is now codified in Rule 408 of the South Carolina Rules of Evidence:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

Rule 408, SCRE.

In the instant case, Plaintiff knowingly testified about an alleged settlement offer for the sole purpose of showing the jury that Walmart assumed responsibility and liability for her injuries

immediately after the incident. Plaintiff improperly stated a monetary settlement amount that, regardless of veracity, undoubtedly spoiled the minds of the fact finder and unfairly prejudiced Defendants. The Court of Appeals addressed a similar issue in *Fesmire v. Digh*, where it reversed a judgment entered by a special master and granted a mistrial, because the special master, as the factfinder, used settlement evidence as the basis of liability in violation of Rule 408. 385 S.C. 296, 309, 683 S.E.2d 803 (Ct. App. 2009). The court found that the admission of such Rule 408 evidence, demonstrated a clear prejudice to the non-offering party, as it undoubtedly affected the outcome of the case. *Id.* In the instant matter, Plaintiff's inadmissible testimony was "clearly prejudicial" as any reasonable juror, as factfinder, would consider such a large, unsolicited offer of settlement to be an admission of liability by Defendants. This was Plaintiff's intent. The jury could not simply forget this alleged settlement offer, especially when Plaintiff's counsel repeatedly told them that Walmart was currently "denying the undeniable and defending the indefensible", inferring that liability was a foregone conclusion. Like *Fesmire*, allowing this matter to proceed to a fact finder that had already heard about Walmart's alleged "admission" was clearly prejudicial and the only proper remedy was a mistrial of this matter.

In *Collins & Sons Fine Jewelry, Inc. v. Carolina Safety Sys., Inc.*, the Court of Appeals once again reiterated that the standard for granting a mistrial for a Rule 408 violation is prejudice to the non-offering party. 296 S.C. 219, 371 S.E.2d 539 (Ct. App. 1988). Here, the record is clear that Defendants were prejudiced by Plaintiff's conduct. First and foremost, Plaintiff's statement was fabricated. Walmart has no record of ever making any settlement offer to Plaintiff, let alone an offer for \$50,000 within three days of the alleged incident. Plaintiff's testimony elicited by her counsel is completely false and perjurious. Even her counsel admitted that they knew nothing about this alleged settlement offer prior to Plaintiff's testimony at trial. The trial court agreed that Ms.

Jones' statements were perjurious, prejudicial and not harmless as it directly contradicted Defendants' arguments regarding a lack of liability. Immediately after Plaintiff's testimony, the trial court advised that it did not believe that Walmart had ever made such an offer to Ms. Jones and took the unique step of asking that Plaintiff stipulate that no offer ever existed on the record in an effort to cure the profound harm of her statement. Of course, Plaintiff declined to do so. Yet, the jury never heard that Ms. Jones committed perjury about the alleged settlement offer and instead were only told to ignore what they heard, leaving this false settlement narrative in their minds for the remainder of trial.

Next and most importantly, Plaintiff's counsel agreed that Plaintiff's statements were clearly prejudicial to Defendants. Plaintiff's own counsel acknowledged and agreed with Defendants that her testimony was so prejudicial that it warranted a mistrial. Plaintiff's counsel not only agreed that Ms. Jones' statements were improper, they consented to Defendants' request for a mistrial, recognizing the reversible error her statements caused because there was no undoing of the harm that her statements had caused. And to no one's surprise, the jury found Walmart negligent, despite a complete lack of evidence as outlined above; because, the jury reasonably believed that Walmart had already admitted liability when they offered Ms. Jones' \$50,000 within days of her incident. Accordingly, the facts show that Defendants were so prejudiced by Ms. Jones' statements, that a mistrial should have been granted.

B. Walmart is Entitled to a New Trial because of Plaintiff's Improper Use of Excluded Photographs in Opening Statement.

During opening statement, Plaintiff's counsel showed excluded photographs of damaged pallets taken during the 2019 improper inspection of Walmart's Beltline Drive store. Defense counsel promptly objected to the use of the disputed photographs and the trial court sustained the objection, ruling at that time that all of the disputed photographs were excluded from evidence

based upon Plaintiff's counsel improper inspection of the subject store. However, the trial court refused to offer curative instruction regarding the excluded photos despite the fact that the "bell had already been rung" and the jury was allowed to view photographs of damaged pallets lying on the salesfloor of the subject store. These photographs were prejudicial to Defendants' case as they were in line with Plaintiff's later assertions of Walmart's failure to follow internal policies regarding leaving pallets on the salesfloor. Despite the prejudicial nature of the photographs, the trial court only asked that Plaintiff remove them from her opening presentation, without any instruction to the jury that they should disregard that photographs that had already been seen. While generally "[a] curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission", the failure of the trial court to offer any such instruction is reversible error. *State v. Wiley*, 387 S.C. 490, 498, 692 S.E.2d 560, 564 (Ct. App. 2010) (citation omitted).

The failure to offer a curative instruction was prejudicial to Walmart. As outlined in arguments above, Plaintiff presented no other evidence of an alleged policy violation by Walmart. Despite this lack of evidence, Plaintiff's counsel repeatedly stated in his closing arguments that the jury could find Walmart negligent by finding that it violated its own internal policies. The fact that the jury found Walmart negligent, despite a lack of evidence that it placed the roofing nail on the floor, or any evidence that Walmart had actual or constructive notice of the roofing nail prior to Plaintiff's incident, leads to only one conclusion. The jury found Walmart negligent because it violated its own internal policy regarding leaving pallets on the floor. The only evidence of such a violation were the photographs in Plaintiff's opening that they were never instructed to disregard. This led to justice being denied by the jury's verdict. Because the jury relied on excluded photographs to find Walmart liable to Ms. Jones, Walmart is entitled to a new trial absolute.

C. Walmart is Entitled to a New Trial because this Court Declined to Charge the Jury that Plaintiff cannot Establish Liability Merely by Showing a Foreseeable Risk.

“Ordinarily, a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence.” *Ross v. Paddy*, 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct. App. 2000). “A trial court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal.” *Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005). But if a trial court does not give a charge “contain[ing] controlling legal principles . . . confined to the pleadings and supported by the evidence,” the court commits reversible error. *Ellison v. Parts Distributors, Inc.*, 302 S.C. 299, 302, 395 S.E.2d 740, 741 (Ct. App. 1990) (holding that failure to give a general charge on circumstantial evidence and two other charges supported by the evidence was reversible error when payment was the issue and the evidence was circumstantial).

In this case, Walmart was prejudiced from the trial court’s refusal instruct the jury regarding “foreseeable risk” that the fact that a hazard is likely to end up on floor not sufficient for liability unless merchant placed the hazard on the floor, as outlined in *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 542 S.E.2d 728 (2000). Throughout the trial, Plaintiff maintained that the roofing nail must have come from a wooden pallet that Walmart had placed on the sales floor. Despite the complete lack of evidence that a roofing nail would originate in a wooden pallet, Plaintiff maintained that there was “no other source for the nail” as there was “no nail fairy sprinkling nails throughout the store.” Further, Plaintiff inferred that Walmart should have known that a nail would likely fall out of a wooden pallet onto the floor.

Because Plaintiff asserted that the nail was a “foreseeable risk”, Walmart was entitled to a jury instruction regarding the law of foreseeable risk as it pertains to foreign items on a floor. *Burns v. S.C. Comm'n for Blind*, 323 S.C. 77, 78–80, 448 S.E.2d 589, 590–91 (Ct. App. 1994)

(holding that failure to give charge that the Commission was not an “insurer of the safety of its clients” was reversible error because clients were akin to invitees and instruction was necessary for jury to understand the applicable legal framework). The Court’s failure to give the instruction was prejudicial because the jury was not told that foreseeability that a nail may fall from a wooden pallet was not sufficient to prove that Walmart created or had notice of the nail on the floor. *Wintersteen*, 344 S.C. 32, 542 S.E.2d 728 (2000). Walmart’s creation or notice of the hazard was a central issue in this case. *Cf. Horry Cnty. v. Laychur*, 315 S.C. 364, 369, 434 S.E.2d 259, 262 (1993) (holding that improper charge on law of dedication in which trial court discussed owner’s acquisition instead of acquiescence in the property use was prejudicial error requiring reversal because acquiescence is a crucial issue in determining dedication).

Because the jury was not given the proper legal framework by which to judge the case, the jury might have concluded that Walmart created the hazardous condition because it was foreseeable that the nail would fall from a wooden pallet placed on the sales floor. *Cf. Carroll v. Smith-Henry, Inc.*, 281 S.C. 104, 106–07, 313 S.E.2d 649, 651 (Ct. App. 1984) (holding that failure to give instruction regarding “the issue of a parent corporation's liability for a subsidiary's contract” was reversible error because “the jury might well have concluded that a parent corporation is always liable on its subsidiary's contracts”). Accordingly, the jury should have been instructed on the law of foreseeable risk as required by the facts of the case and the applicable law. The failure to give the requested instruction was reversible error requiring a new trial.

D. Walmart is Entitled to a New Trial because the Evidence is Insufficient to Support the Verdict.

The verdict in this case is unconscionable and unsupported by the evidence, necessitating that this Court exercise its authority as the thirteenth juror to direct a new trial. *See Trivelas v. South Carolina Dept. of Transp.*, 357 S.C. 545, 593 S.E.2d 504 (Ct. App. 2004) (affirming grant

of new trial absolute pursuant to thirteenth juror doctrine in a motor vehicle case); see also *South Carolina Dept. of Highways and Public Transp. v. Mooneyham*, 275 S.C. 205, 269 S.E.2d 329 (1980) (granting new trial absolute in condemnation case on the basis that the verdict was contrary to the fair preponderance of the evidence); *Ex parte Travelers Home and Marine Insurance Co. v. Stringfellow*, 427 S.C. 238, 830 S.E.2d 718 (Ct. App. 2019) (granting new trial in motor vehicle case where verdict was against the fair preponderance of the evidence); *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819 (Ct. App. 1996) (granting new trial absolute in action for breach of contract based on the thirteenth juror doctrine). As the thirteenth juror, the trial court may weigh the evidence as a juror and is not required to view it in the light most favorable to the non-moving party. *McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 633, 578 S.E.2d 746, 748 (Ct. App. 2003). Rather, the trial court should evaluate whether the fair preponderance of the evidence supports the verdict. *Id.* In fact, the trial court is not required to state the reasons for granting a new trial as the thirteenth juror. *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267. As long as there is conflicting evidence, a trial judge's grant of a new trial will not be disturbed. *Lane v. Gilbert Const. Co., Ltd.*, 383 S.C. 590, 597–98, 681 S.E.2d 879, 883 (2009).

1. No Reasonable Juror could have found Walmart Negligent.

The trial court should exercise its position as the thirteenth juror and order a new trial because the verdict, finding Walmart negligent, is not supported by the evidence. As outlined extensively in the JNOV section above, Plaintiff failed to present any evidence that Walmart created the hazardous condition or had any notice of its existence prior to Plaintiff's incident. The law is clear that Plaintiff had to prove that Walmart either placed the nail on the floor, or that it had actual or constructive notice that the nail was on the floor before Ms. Jones stepped on it. See *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001); *Wintersteen*, 344 S.C. at 35,

542 S.E.2d at 729-30. She failed to meet her burden of proof as there was no evidence that (1) Walmart placed the nail on the floor; (2) Walmart knew the nail was on the floor prior to Ms. Jones' incident; or (3) the nail was on the floor for so long that Walmart should have located it prior to Ms. Jones' incident– the only three possible avenues of liability in this matter. Because the evidence supports a finding that Walmart was not negligent, Walmart is entitled to a new trial.

2. The Damages Award was Improperly Motivated by Emotion and Prejudice towards Walmart.

The trial court should exercise its position as the thirteenth juror and order a new trial because the verdict of \$10,000,000.00 – ten million dollars – is not supported by the evidence. There is absolutely no evidence to support a verdict of that size against Walmart in this matter, and very little testimony to establish the nature and extent of any future economic or non-economic damages that Ms. Jones would realistically continue to suffer. At trial, Plaintiff introduced no evidence – not one single dollar – of any actual future monetary damages. There was no evidence of any lost future income as Ms. Jones had been deemed disabled well before the alleged incident at Walmart.

The jury's award of \$10,000,000 in actual damages is shockingly disproportionate to the injuries suffered and indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded. "[W]hen the verdict is so grossly excessive or inadequate that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge and this Court to set aside the verdict absolutely." *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015).

i. The jury was improperly swayed by passion for Ms. Jones and prejudice towards Walmart.

The Court should grant Defendant a new trial absolute because the jury's verdict was plainly the product of something other than proper deliberations and other than decision making based on the law that was charged to the jury. Plaintiff's counsel repeatedly encouraged the jury to punish Walmart for "denying the undeniable and defending the indefensible". Further, Plaintiff proffered passionate and emotional testimony from her children regarding her life as an amputee. Even though at least one juror was openly crying during this testimony, the trial court allowed four additional witnesses to testify in the same manner, over the objections of defense counsel. The jury's passion for Plaintiff was clear and was only amplified when coupled with Plaintiff's counsel's improper closing argument that asked them to spare the individually named defendant, but punish Walmart for its treatment of Ms. Jones. Specifically, Plaintiff's counsel improperly tasked the jury with punishing Walmart for delaying Ms. Jones' day in court for more than six years, including a visual countdown of the number of weeks and hours since her alleged injury, when in actuality, Plaintiff caused a two-year delay in these proceedings by inappropriately appealing an interlocutory order. Additionally, despite the trial court finding as a matter of law that punitive damages were not appropriate, Plaintiff's counsel asked the jury to punish Walmart and to "send a message" that would be heard in Arkansas. In other words, Plaintiff's counsel asked the jury to award punitive damages, despite the trial court's contrary ruling.

The evidence did not justify the result and the jury's verdict is contrary to the evidence. Absent passion and prejudice, no reasonable jury would have reached the results reached by the jury in this case. Therefore, Walmart is entitled to a new trial absolute.

ii. Walmart was prejudiced by outside influences on the jury.

At the start of Day 4, which would be the final day of trial, the trial court informed that jury that one of the previously paneled jurors had been diagnosed with COVID-19. As a result of this diagnosis, one of the alternate jurors was empaneled. During a later break, the jury foreman informed the bailiff that a number of the jurors had questions about this turn of events. Specifically, the jurors were concerned because they had been sitting in close proximity in the jury box since Monday afternoon. In response to the jurors' concerns, the trial court advised that they consult their medical providers if they began exhibiting any symptoms of COVID-19. But it was clear that the jurors were worried about this potential exposure.

To make matters worse, around 4:00 PM, the jurors were told that despite being exposed to COVID-19, they needed to make arrangements to be at the courthouse for an extended period of time to deliberate on a verdict. Ultimately, jury deliberations did not begin until 5:45 PM on Friday afternoon. The jurors returned a verdict, less than 2 hours later, demonstrating the jurors desire to be done with this entire matter. These factors negatively impacted Walmart as the jurors did not have an opportunity to assess the facts using sound judgment, dispassionate consideration and conscientious reflection. By no means does Walmart argue that a new trial is appropriate solely based on the amount of time of the jury deliberations; rather, it was the cumulation of the jurors' COVID-19 exposure and the deliberations beginning so late on a Friday evening that hurried the jury's deliberations and resulted in prejudice to Walmart. Had jurors had an opportunity to be tested for COVID-19 over the weekend and the ability to start fresh with deliberations on Monday morning, they would have been more likely to consider the evidence as required by the law. Instead, jurors relied on their passion and sympathy for Ms. Jones in rendering a verdict that was contrary to the facts presented in this case. Accordingly, Walmart is entitled to a new trial of this matter.

E. In the alternative, Walmart is Entitled to a New Trial *Nisi Remittitur*.

In the alternative to the previous relief requested, the Court should grant a new trial *nisi remittitur* because the damages awarded by the jury are clearly excessive compared to the evidence presented at trial. The Court “may grant a new trial *nisi remittitur* when it finds the verdict is merely inadequate or excessive.” *Howard v. Roberson*, 376 S.C. 143, 654 S.E. 2d 877, 883 (2007). “The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive.” *See, e.g., Rush v. Blanchard*, 310 S.C. 372, 381, 426 S.E.2d 802, 806 (1993) (affirming trial court’s remittitur); *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 637, 529 S.E.2d 758, 762 (Ct. App. 2000) (affirming trial court’s granting of motion for remittitur on grounds that amount awarded by jury was “merely excessive”). “The consideration of a motion for new trial *nisi remittitur* requires the court to consider the adequacy of the verdict in the light of the evidence presented.” *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000).

This Court should grant a new trial *nisi remittitur* due to the excessiveness of the jury verdict. It is beyond question that the jury’s damages award in this case was unduly liberal in light of the evidence presented at trial. After four days of trial, the jury rendered a verdict of \$10,000,000.00 in actual damages. *See* Verdict Form. However, the Plaintiff alleged just \$542,728.00 in medical bills related to various hospitalizations and surgeries, including her above-knee amputation of her right leg. The jury verdict of \$10 Million is approximately twenty (20) times Plaintiff’s claimed damages. Such a verdict is excessive and unbelievably disproportionate to Plaintiff’s actual damages, especially when considered in light of the lack of evidence of Walmart’s liability and the testimony from Dr. John Ross, who opined that Plaintiff’s above-knee amputation was due to Plaintiff’s poor healing and the progression of her vascular disease.

Additionally, the verdict amount is unreasonable as there was no evidence presented to the jury that would allow it to assess Plaintiff's future damages, let alone quantify it to the extent of \$10 Million. No witness, treating provider, or life care planner provided any testimony regarding future damages or the need for additional medical treatment or expenses related to the amputation. It is obvious that this excessive verdict result was solely based on emotion and sympathy for the Plaintiff and her family rather than Plaintiff's actual damages.

In *Becker v. Wal-Mart, Inc.*, the Court of Appeals affirmed the trial court's decision to grant Defendant's motion for new trial *nisi remittitur* and reduced the jury's verdict based on the amount of Plaintiff's medical expenses, her age, and her statutory life expectancy. 339 S.C. at 637-38, 529 S.E.2d at 762. Similar to the verdict in *Becker*, the jury verdict in the instant case is excessive. The jury verdict of \$10 million, which is approximately 20 times Plaintiff's claimed damages, is not rooted in evidence, as there was no indication that Plaintiff will have any future medical treatments or expenses related to the incident at Walmart. Additionally, the jury verdict did not include a punitive award, as the trial court found as a matter of law that punitive damages were not appropriate in this case. However, it is clear that the jury verdict was meant to punish Walmart as requested by Plaintiff's counsel, who argued in closing that the jury should "make sure they hear about it in Arkansas."

The verdict amount in this case is so high that it is a denial of justice to permit it to stand, especially given the lack of evidence to support it. Accordingly, should the Court decline to grant Walmart's Motion for JNOV or new trial absolute, Walmart respectfully requests that the Court grant a new trial *nisi* and reduce the excessive verdict.

CONCLUSION

For the foregoing reasons stated herein, Walmart is entitled to JNOV or, in the alternative, a new trial absolute or new trial *nisi remittitur*. As such, Walmart requests that this Court grant its Motion and award it such further relief, both general and special, legal or equitable, to which it may be entitled.

Respectfully submitted,

s/Robert C. Blain

Nashiba Boyd, SC Bar No. 78376

Robert C. Blain, SC Bar No. 100024

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Inc., and Wal-Mart Stores East, L.P.*

November 22, 2021

State of South Carolina

County of Florence

In Common Pleas Court
Twelfth Judicial Circuit

April Jones,

plaintiff,

V.

2017-CP-21-1375

Tim Ringer, individually and
as employee/agent of
Wal-Mart Stores, Inc. d/b/a
Wal-Mart Store #630,
and Wal-Mart Stores, Inc.,
and Wal-Mart Stores East, L.P.,

defendants.

Deposition of: April Jones

Location: 150 West Evans Street
Florence, South Carolina

Date: Friday, September 28, 2018

Time: 11:03 a.m. - 1:18 p.m.

Court Reporter: Erica Creel

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the South
Carolina Rules of Civil Procedure.

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I N D E X

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E X H I B I T S

pg/ln	ex.	description

DEFENDANT'S

96/11	1	- photo

96/11	2	- photo

** Uh-huh = Affirmative

Huh-uh = Negative

1 S T I P U L A T I O N S

2 It is stipulated between Counsel that this
3 deposition is being taken pursuant to the South
4 Carolina Rules of Civil Procedure; and that all
5 objections, except as to the form of the question,
6 are reserved until the time of trial.

7 It is also stipulated between Counsel for
8 the respective parties and the deponent that the
9 deponent will waive the right to read and sign
10 this transcript.

11 THEREUPON,

12 April Jones,
13 being first duly sworn by the court reporter, as
14 hereinafter certified, testified as follows:

15 E X A M I N A T I O N

16 By Ms. Boyd:

17 Q Good morning, Ms. Jones.

18 A Good morning.

19 Q And we just met a moment ago off record.

20 My name is Nas--- Nashiba Boyd. I'm the attorney
21 for Walmart. And here today about a case that
22 you've brought against the Florence Walmart.

23 Correct?

24 A Yes.

25 Q Okay. Have you ever given a deposition

1 before?

2 A No.

3 Q Okay. So I'm going to go over a couple
4 of ground rules with you. As you know, you were
5 just placed under oath by the court reporter.

6 A Yes.

7 Q And while we're not in a courtroom, you
8 have pledged to tell the truth just as if you were
9 in a court of law. Do you understand that?

10 A Yes. I do.

11 Q All right. I'm going to ask you a
12 series of questions. That's what a deposition is,
13 an opportunity for me to ask you questions about
14 what happened. So I'm going to ask you quite a bit
15 of questions. I may ask you a question and you
16 anticipate what I'm going to say. Just let me
17 finish my question so that the record reflects what
18 I'm asking you. Okay?

19 A Yes.

20 Q And the other thing is, it may get easy
21 for you to just say uh-huh or huh-uh just because
22 we're in a -- we're going in a role. If you'll give
23 verbal answers such as yes or no for the court
24 reporter because she is taking down everything we're
25 saying here today. Okay?

1 A Yes.

2 Q And if you forget, I may prompt you by
3 saying something like, did you mean yes or did you
4 mean no? And that's not me being mean to you.
5 That's just me clarifying for the court reporter.
6 Okay?

7 A Yes.

8 Q All right. If you have any questions
9 about the question that I'm asking you, you direct
10 those questions to me and not your attorney. Okay?

11 A Yes.

12 Q All right. And if you answer the
13 question that I've asked you, I'm going to assume
14 that you understood what I was asking you. Is that
15 fair?

16 A Yes.

17 Q Okay. If you need to take a break at
18 any break just let me know. Just say, Ms. Boyd, I
19 need a break and that's fine. You can have as many
20 as you want for as long as you want. Okay?

21 A Yes.

22 Q During the break, I ask that you not
23 talk about your testimony with your attorney.
24 Because while normally I can't ask you about what
25 you talked about with your attorney. Since you've

1 been sworn under oath today already, I can ask you
2 about those conversations when we are -- come back
3 together. So just avoid talking to him if possible.
4 Okay?

5 A Yes.

6 Q All right. Do you have any questions
7 before we begin?

8 A No, I don't.

9 Q Okay. Great. And first, let me say Ms.
10 Jones, I understand the grave nature of your
11 injuries that you've alleged here today. And I'm
12 going to ask you a lot of questions about your
13 treatment, your subsequent treatment. And when I
14 ask you questions, possibly, like, and so did it
15 heal or was it okay, I'm not trying to be funny or
16 facetious or mean to you. I'm just trying to get a
17 complete understanding of each treatment you
18 received as we go. Okay? But I do understand the
19 ultimate surgery that you had here. Okay?

20 A Yes.

21 Q So I just don't want to appear mean or
22 unsympathetic. I do understand. It's just I'm
23 trying to get a complete record. Okay?

24 A Yes.

25 Q All right. I just want to make sure I

1 tell you that. All right. Ms. Jones, can you state
2 your name and address for the record, please?

3 A April Jones, 1410 Trinity Court,
4 Florence, South Carolina 29506.

5 Q And how long have you lived at that
6 Trinity address?

7 A Ten years.

8 Q Who lives there with you at that
9 address?

10 A My daughter, Brooke Jones. My son,
11 Jason Jones and my daughter's children. Do you
12 need those names too?

13 Q No. Are they under 18?

14 A Yes.

15 Q Okay. No. That's it, your daughter and
16 son, Jason and Brooke?

17 A Yes.

18 Q Any other adults?

19 A No.

20 Q Okay. And prior to that address, where
21 did you live? Do you remember? Was it in Florence?

22 A It was in Florence.

23 Q Okay. So you've lived in Florence
24 county for longer than ten years?

25 A Yes.

1 Q Okay. And what's your date of birth?

2 A [REDACTED].

3 Q And where were you born, Ms. Jones?

4 A Bridgeton, New Jersey.

5 Q How did you end up in Florence?

6 A My sister was here before she passed
7 away.

8 Q Oh, okay. What year did you come down
9 here?

10 A 1996.

11 Q Okay. That's a big difference, huh?

12 A Yes.

13 Q Are you married?

14 A No.

15 Q Have you ever been married?

16 A No.

17 Q Okay. And I know you told me about your
18 daughter, Brooke and your son, Jason. Do you have
19 any other adult children?

20 A Yes, I do.

21 Q And what are their -- their names?

22 A Isaac Jones. Chelsea Riley. And
23 Christian Jones.

24 Q Are any of your children married?

25 A Yes.

1 Q Just Chelsea?

2 A Isaac.

3 Q Isaac's married.

4 A Uh-huh.

5 Q And what's his wife's name?

6 A Shameka Jones.

7 Q And do you remember what Shameka's
8 maiden name was?

9 A Williams.

10 Q Anybody else married?

11 A No.

12 Q Do any of your children live in Florence
13 county other than Brooke and Jason?

14 A Yes.

15 Q Which ones?

16 A Isaac Jones.

17 Q Okay. And so -- and his wife Shameka?

18 A Yes.

19 Q Okay. Where do Chelsea and Christian
20 live?

21 A Chelsea lives in Columbia, South
22 Carolina.

23 Q Okay.

24 A And Christian lives in Savannah,
25 Georgia.

1 Q Okay. Do you have any other family
2 members in Florence county with a last name other
3 than Jones?

4 A No. Yes, I do. I'm sorry.

5 Q All right. It's okay.

6 A My nephew.

7 Q Okay. What's your nephew's name?

8 A Michael Jones.

9 Q But he is a Jones?

10 A Yes, he is.

11 Q Okay. And Chelsea's a Riley. Is that,
12 like, her father's last name?

13 A Yes.

14 Q Okay. Is her father in -- in Florence
15 county?

16 A No.

17 Q Okay. Do any of your family members
18 work for Walmart?

19 A No.

20 Q Okay. Have any of your family members
21 previously filed a claim against Walmart or sued
22 Walmart?

23 A No.

24 Q Do you know anyone, whether family or
25 not, who has sued or filed a claim against Walmart?

1 A No, I don't.

2 Q Okay. Now, Ms. Jones, are you currently
3 employed?

4 A No.

5 Q Where were you last employed?

6 A Assurant Group in Florence.

7 Q And what did you do at Assurant Group?

8 A Insurance claims.

9 Q And when was that?

10 A October 2013.

11 Q Okay. And why did you stop working
12 there?

13 A Because I had disability.

14 Q Okay. And you were a claims adjustor?

15 A Well, I wasn't a claims adjustor. I
16 more so did -- wrote the claims up and turned them
17 in.

18 Q So just a claims agent?

19 A Yes.

20 Q And what was your salary there? Do you
21 remember?

22 A I think, 11 dollars an hour.

23 Q It was a while ago. I understand.

24 A Yes.

25 Q And did you graduate high school?

1 A No.

2 Q Did you get a G.E.D. or any type of
3 formalized education?

4 A No, I didn't.

5 Q Okay. And so prior to working for
6 Assurant Group, what did you do before then?

7 A I worked at Sykes.

8 Q Okay. And what did you do there?

9 A I did work for Bank of America.

10 Q What did you do for Bank of America?

11 A We approved loans. We adjusted
12 payments. We took information, you know, to
13 forward it to -- they had, you know, asked for the
14 loans. Just different things.

15 Q So, maybe like a customer service role?

16 A Customer service.

17 Q Okay. And you mentioned that you
18 stopped working because of disabilities. So have
19 you ever applied for disability benefits through
20 like the social security administration?

21 A Yes.

22 Q When was that?

23 A I believe it was in December of 2013.

24 Q And what was your disability?

25 A I had a -- my -- a right nephrectomy.

1 Q And that's a kidney removal?

2 A Yes.

3 Q Did you get a transplant as well or just

4 a --

5 A No, I didn't.

6 Q -- removal? And were you approved after
7 that initial application?

8 A Yes, I was.

9 Q Do you remember about when you were
10 approved?

11 A January of 2014.

12 Q Okay. And so is your -- you receive
13 disability benefits? Correct?

14 A Yes.

15 Q Is that your sole source of income at
16 this time?

17 A Yes.

18 Q Other than speak with your lawyer,
19 because I don't want you to tell me about anything
20 like that. Did you do anything to prepare for your
21 deposition today?

22 A No.

23 Q Okay. Did you look at any documents in
24 preparation for your deposition today?

25 A No, I didn't.

1 Q Did you discuss your testimony with
2 anyone other than your lawyer, such as a family
3 member or friend?

4 A No.

5 Q Ms. Jones, are you currently on any
6 medications?

7 A Yes.

8 Q Okay. Which ones?

9 A I'm on -- I'm on two blood pressure
10 medicines.

11 Q Okay.

12 A Nifedipine and Losartan.

13 Q Just those two blood pressure meds?

14 A No. I'm on a cholesterol medicine. I
15 can't remember the name right off.

16 Q Okay.

17 A And I take pain medication.

18 Q What type of pain medication do you
19 take?

20 A I take Oxycodone and I take -- oh,
21 god, I take a nerve medication.

22 Q Okay.

23 A I can't remember the name right now.

24 Q Okay. So we talked about two blood
25 pressure meds, a cholesterol med and two pain meds.

1 Do you have any other medication that you take?

2 A No, ma'am.

3 Q Okay. How often are you taking the pain
4 medication?

5 A Well, I actually take it when needed.

6 Q Okay. And so how often do you normally
7 take it?

8 A Sometimes four times a day.

9 Q And this -- is this for pain related to
10 your leg or any other type of pain you have in your
11 body?

12 A Well, the pain medication they
13 prescribe me for my leg was actually the nerve
14 medication.

15 Q Uh-huh.

16 A But that actually don't work without
17 the Oxycodone.

18 Q Oh, okay.

19 A It doesn't work.

20 Q And so, did they prescribe the Oxycodone
21 for your leg or did you already have a prescription
22 or --

23 A I had the prescription, but they said
24 I can also use it for my leg.

25 Q Okay. And what did you have the

1 prescription for originally?

2 A Kidney removal and dialysis.

3 Q Okay. So for pain related to your --

4 A Yes.

5 Q -- kidneys? And Ms. Jones, have you
6 ever been arrested?

7 A Years ago.

8 Q Okay. Do you remember about when it
9 was?

10 A No. It's been over 20 years ago.

11 Q It was over 20 years ago?

12 A Yes.

13 Q Do you remember what it was for?

14 A Fighting.

15 Q Oh, no, Ms. Jones. Okay. Did that
16 result in a conviction or a plea or it was tossed
17 out?

18 A No. It was just a misdemeanor.

19 Q Okay. And have you ever been convicted
20 of anything other than a minor traffic violation?

21 A No, ma'am.

22 Q Okay. All right. So we're here to talk
23 about an incident that happened on June 26th, 2016.

24 Correct? Do you remember the date?

25 A 2015.

1 Q Oh, I'm sorry. That's a typo on my
2 behalf. I apologize. I'm sure I have it right
3 somewhere in here. So, 2015. June 26th is the
4 right date though, right?

5 A Yes, ma'am.

6 Q Okay. And for purposes going forward,
7 when I refer to accident or incident, I'm talking
8 about this day and your time in Walmart. Okay?

9 A Yes, ma'am.

10 Q Okay. Which Walmart did you go into
11 that day?

12 A The Walmart on Beltline.

13 Q And had you ever shopped at that Walmart
14 before?

15 A Yes.

16 Q About how often?

17 A Well, I'd say at that particular one,
18 maybe once a month.

19 Q Okay. Did you frequent another one?

20 A Yes.

21 Q Okay. Which one was that?

22 A Walmart on Irby.

23 Q Okay. Is that one closer to you, the
24 one on --

25 A Yes.

1 Q -- Irby Street? So why did you go to
2 the Beltline Walmart on -- on June 26th, 2015? Do
3 you remember?

4 A No, I don't.

5 Q Okay. Had you ever had any complaints
6 about that store prior to this incident?

7 A No.

8 Q Do you remember why you went in there?
9 What you were going to purchase?

10 A Yes, I do.

11 Q Okay. And what -- what were you going
12 for?

13 A To purchase some Clorox.

14 Q Okay. And did you drive there that day?

15 A Yes, I did.

16 Q Was anyone with you?

17 A No, ma'am.

18 Q Do you remember about what time you
19 arrived at the store?

20 A No, I don't.

21 Q How was the weather that day?

22 A It was pretty hot.

23 Q Did the store appear to be busy when you
24 arrived on that day?

25 A Yes.

1 Q And what did you do when you first got
2 to the store?

3 A I walked in.

4 Q Okay. Did you get a cart?

5 A Yes.

6 Q Okay. So you -- you got a cart. And
7 you had your purse?

8 A Yes, ma'am.

9 Q Okay. And you placed it in the cart?

10 A Yes.

11 Q And then you walked into the store?
12 Correct?

13 A Yes.

14 Q What section did you go to?

15 A I walked in on the food section.

16 Q Okay. And what type of shoes were you
17 wearing that day?

18 A Flip flops.

19 Q And do you remember what kind of flip
20 flops they were?

21 A They were brown flip flops.

22 Q Were they rubber? Were they leather?

23 A They were rubber.

24 Q Okay. Do you remember if you had them
25 for a long time or if they were new?

1 A No. I actually bought them that
2 month.

3 Q Do you remember where you bought them?

4 A Walmart.

5 Q So you bought them sometime in June 2015
6 at Walmart?

7 A Yes, ma'am.

8 Q What size shoe do you wear?

9 A Eleven.

10 Q And do you remember if those flip flops
11 were sized or if they were just like general, like
12 large, medium, extra large?

13 A I don't remember.

14 Q Okay. Do you remember how much you paid
15 for them?

16 A No, ma'am.

17 Q And we -- we asked you to bring the
18 shoes, but your attorney explained to me that you
19 could not locate the shoe. Is that correct?

20 A Yes, ma'am. That's correct.

21 Q Okay. Please tell me what happened that
22 day.

23 A I walked in Walmart and I walked down
24 the center aisle, the aisle that separates the
25 clothing from the food. And as I was walking, I

1 heard a metal noise on the bottom of my shoe. So
2 I lift my foot up, I look back and I seen a nail
3 in my shoe. And I went to pull it out my shoe. I
4 pulled it out and I actually walked up some and I
5 threw the nail on the shelf. And so I looked down
6 and blood was in the shoe. And I turned around.
7 I said, oh, god. I turned around and got the nail
8 off the shelf. Grabbed the bleach and I walked
9 back. I went through the self checkout, paid for
10 the bleach. And then I walked over to customer
11 service and asked to speak with a manager.

12 Q Okay. Can you describe to me what the
13 nail looked like?

14 A It was rusty.

15 Q Okay. Was it like a long nail or short
16 nail?

17 A It wasn't real long.

18 Q Are you certain it was a nail and not a
19 screw?

20 A I'm certain it was a nail.

21 Q Was it -- I know you said it was -- was
22 the entire nail rusty or just parts?

23 A The entire nail.

24 Q And your attorney also told me that --
25 that they have the nail?

1 A Yes.

2 Q Okay. So you no longer have that in
3 your possession?

4 A Correct.

5 Q Okay. Do you have any photos of the
6 nail?

7 A I did, but they erased out my phone.

8 Q Okay. So you no longer have it. Okay.
9 About how long were you at that store before you
10 noticed the nail in your shoe?

11 A Not even three minutes. Not even
12 three minutes.

13 Q Okay. And did you feel pain? You
14 indicated you heard a sound, but did you feel the
15 pain when you stepped on it?

16 A No. I didn't at the time.

17 Q At what point did you feel pain?

18 A Once I took the nail out.

19 Q And can you describe the pain that you
20 felt?

21 A It was a throbbing pain.

22 Q Did you speak with anybody at the store
23 that day?

24 A Yes, I did.

25 Q Who did you speak with?

1 A I spoke to the manager.

2 Q Okay. And that was after you discovered
3 the nail. Did you talk to anybody before you
4 discovered the nail in your shoe?

5 A No, ma'am.

6 Q And you said that you had noticed the
7 blood in your shoe. Did you see any visible injury
8 to your foot?

9 A Well, once I went to the front and I
10 sat down, yes.

11 Q And can you describe the wound to your
12 foot?

13 A It was just basically a little hole.
14 It -- it was like the nail, excuse me, the nail
15 kind of made a little -- it was like a hole, but
16 then the nail kind of -- I can't explain it.

17 Q So was it, like, a puncture? So, like,
18 a small -- like something had punctured you?

19 A No.

20 Q No. It wasn't a puncture wound? Was it
21 --

22 A No.

23 Q -- a hole?

24 A Yes.

25 Q Can you give me an example of something

1 that was the size of the hole? Like a quarter?

2 A No. It was smaller than that.

3 Q A dime?

4 A It was a little smaller than a dime.

5 Q Okay. And the nail you stepped on was
6 like a standard size nail or was it -- or was it fat
7 or was it just a normal skinny little nail?

8 A It was a little thicker than a normal
9 nail.

10 Q But the hole in your foot was not the
11 same size as the nail?

12 A No.

13 Q Okay. Was it larger or smaller?

14 A It was a little larger.

15 Q Okay. And you told me that you noticed
16 the nail and then you continue on and -- and
17 purch--- and selected your item. So you continue
18 shopping after you noticed your foot bleeding?

19 Mr. Jefferies: Object to the form of
20 the question.

21 Ms. Boyd: Okay. You still have to
22 answer. I'm sorry.

23 Mr. Jefferies: Yeah. You can go ahead
24 and answer.

25 Ms. Boyd: So I will rephrase.

1 The Deponent: Can --

2 Ms. Boyd: I will restate it.

3 The Deponent: Okay.

4 By Ms. Boyd:

5 Q After you notice your foot was bleeding,
6 you continue to shop?

7 Mr. Jefferies: Object to the form of
8 the question.

9 By Ms. Boyd:

10 Q Did you continue to shop after you
11 noticed the nail?

12 Mr. Jefferies: Object to the form of
13 the question.

14 The Deponent: Yes.

15 By Ms. Boyd:

16 Q Okay. And you told me -- at some point
17 you told me, you had placed the nail on the shelf?

18 A Yes.

19 Q But you retrieved it off the shelf?

20 A Yes.

21 Q Did you notice anything on the -- on the
22 store's floor as you were walking in?

23 A No.

24 Q Did you see any Walmart associates
25 working in the area you were in?

1 A Yes.

2 Q Did you stop them to tell them about the
3 nail?

4 A No.

5 Q Why not?

6 A It just never occurred to me to tell
7 them.

8 Q Okay. And so you mentioned to me you
9 talked to a manager. Do you remember his name?

10 A I don't.

11 Q Can you describe him for me?

12 A I want to say he was a little -- about
13 my height.

14 Q How tall are you?

15 A I'm 5'5".

16 Q Okay.

17 A He might have been, maybe an inch
18 taller.

19 Q Okay.

20 A He was a white male. He had short
21 hair.

22 Q Do you remember the color of his hair?

23 A No, I don't.

24 Q Okay. What did you tell the manager?

25 A I told him that I stepped on a nail in

1 his store.

2 Q Okay. And what did he say?

3 A At first, he didn't say anything.

4 Q Okay.

5 A He just stood there and looked at me.

6 Q Okay.

7 A And I asked him was he going to offer
8 me some peroxide or something --

9 Q Okay.

10 A -- a paper towel to put -- you know,
11 to dap my feet with.

12 Q Okay. So you asked for, like, a first
13 aid --

14 A Yes.

15 Q -- kit? Okay. Did he give you some
16 first aid, a first aid kit or something?

17 A He actually said he didn't have a
18 first aid kit. He went and got some peroxide and
19 a roll of paper towels.

20 Q Okay. And then what happened after he
21 -- and so he went and got those and gave those items
22 to you?

23 A Yes.

24 Q All right. And you told me you sat down
25 at some point?

1 A Yes.

2 Q Is that in the customer service area?

3 A Yes, ma'am.

4 Q Okay. And did you apply the peroxide
5 and use the paper towels on your foot?

6 A Yes.

7 Q Okay. Did -- did the manager offer you
8 any assistance with that?

9 A As far as what?

10 Q Like, I don't know, helping you clean
11 off your foot or offering you any aid?

12 A No.

13 Q Did he just walk away?

14 A No. He actually stood there. And
15 then when I was cleaning the wound out and patting
16 it, he kind of stooped down, I guess to act like
17 he was helping me.

18 Q Okay. And do you know about how long
19 that interaction with the manager lasted?

20 A Not long.

21 Q Did you talk to anyone else?

22 A Yes.

23 Q Okay.

24 A He actually told one of his assistants
25 to write me out an accident report.

1 Q Okay. Did you get to see the accident
2 report?

3 A Yes.

4 Q Did the report look accurate?

5 A No.

6 Q Okay. Do you remember what it said?

7 A I can remember it had about six or
8 eight words on it.

9 Q Okay. Did you want it to say more?

10 A Yes.

11 Q Did you ask to write it yourself?

12 A No, I didn't.

13 Q Okay. Okay. What did you think it
14 should say?

15 A I thought it should have been a little
16 more detailed.

17 Q Okay. How so?

18 A As in my name and I stepped on a nail
19 in his store.

20 Q Okay. So did it have your name on the
21 report?

22 A Not that I can remember.

23 Q Okay. And you said it had a few words
24 on it. Do you recall what those words were?

25 A I know it stated such as I stepped on

1 a nail in the store. It might have had my name on
2 it. I'm just not sure --

3 Q Okay.

4 A -- in remembering. And it just had I
5 stepped on a nail in their store.

6 Q Okay. And what additional details would
7 you have added if you could have written it
8 yourself?

9 A I would have added my name and
10 customer stated that she stepped on a nail in our
11 store and I assisted her, you know, something like
12 that. Or I offered her -- I offered to call her
13 an ambulance or something like that.

14 Q Okay. Did you ask for an ambulance?

15 A I didn't.

16 Q Okay. Did you want them to call you an
17 ambulance?

18 A It would have been nice.

19 Q Okay. Well, why didn't you ask for one?

20 A I mean, at that time, I was frustrated
21 because I waited about 30 minutes to get eight
22 words on a -- on a --

23 Q Okay.

24 A -- piece of paper.

25 Q And during that 30 minute wait, were you

1 cleaning your wound or were you just sitting there
2 waiting?

3 A I was waiting for the report.

4 Q Do you know whether any Walmart
5 employees knew the nail was on the floor prior to
6 you stepping on it?

7 A I have no idea.

8 Q Do you know where the nail came from?

9 A I assume it came from one of the
10 pallets.

11 Q But do you have any knowledge that it
12 came from a pallet?

13 A I don't.

14 Q Do you know how long the nail had been
15 on the floor before you stepped on it?

16 A I don't.

17 Q Other than the statement that the
18 assistant manager completed on your behalf, do you
19 know if any other documents were written up that
20 day?

21 A I don't.

22 Q Okay. Did you take any photos of the
23 area where you think you stepped on the nail?

24 A I didn't.

25 Q Did you take any video of the area where

1 you think you stepped on the nail?

2 A No, I didn't.

3 Q Did anyone take any photos of that area
4 on your behalf?

5 A No.

6 Q Did anyone make any videos of that area
7 on your behalf?

8 A Not to my knowledge.

9 Q Did the store employees look at the
10 nail?

11 A Yes.

12 Q And they asked you to -- to hold the
13 nail?

14 A Yes.

15 Q And you declined?

16 A Yes.

17 Q Why?

18 A I mean, what's the difference in me
19 holding it and letting them see it then letting
20 them holding it? I didn't understand what would
21 make a difference.

22 Q Okay. So they were all--- allowed to
23 inspect the nail?

24 A Yes, they were.

25 Q Okay. And you told me that the

1 paramedics were not called?

2 A No.

3 Q Do you know about how long you were in
4 the store that day?

5 A Altogether?

6 Q Uh-huh. Yes, ma'am.

7 A About 40 minutes.

8 Q And it's your testimony that 30 of those
9 minutes were you waiting for assistance?

10 A Yes.

11 Q Is there anything else that you and that
12 manager or the assistant manager talked about that
13 we haven't talked about today?

14 A No.

15 Q Do you remember what that assistant -- I
16 know you said she. Was it a female assistant that
17 came and assisted with the report?

18 A Yes.

19 Q Do you remember what she looked like?

20 A She was a black lady. Medium build.

21 That's all I can basically remember.

22 Q And she just did the report. Did you
23 talk to her other than completing the report?

24 A No. He actually told her what to
25 write down.

1 Q Did you speak to any other Walmart
2 employees that day in the store?

3 A No.

4 Q Did you speak with any Walmart employees
5 of that store at any later date about this incident?

6 A No.

7 Q Did you speak with anyone else at the
8 store that day regardless of whether they were a
9 Walmart employee?

10 A No.

11 Q Did anyone witness you stepping on the
12 nail that day at Walmart?

13 A No.

14 Q And what injuries are you claiming as a
15 result of that incident that day in Walmart?

16 A What injuries?

17 Q Yes, ma'am.

18 A In all or --

19 Q Yes. You can give me everything.

20 A Well, I basically had -- that day I
21 went to the hospital. They treated me. They cut
22 a hole in my foot about the size of a 50 cent
23 piece. And it was very deep. Then that was on a
24 Friday. I remember that day. Monday, I went to
25 the foot -- I went to a doctor across the street

1 from McLeod that looked at my foot and said that
2 it was -- he said that it was, excuse me, he said
3 that I needed to have my big toe cut off.

4 Q And that was three days later?

5 A Yes. That was on that Monday. I
6 can't recall if I went into the hospital that day
7 or the next day.

8 Q We're going to go over your treatment in
9 sequence. I'm just asking you about your general
10 damages, like what all -- what are all the injuries
11 you suffered to date related to your leg, your foot,
12 any other injuries you're claiming. We're going to
13 start broad and then we're going to narrow it down.
14 Okay?

15 A I don't quite understand what you're
16 saying.

17 Q So are you claiming that -- I know
18 you're claiming you -- you injured your foot which
19 resulted in an injury to your leg?

20 A Okay.

21 Q Are you claiming any other injuries to
22 any other parts of your body as a result of this
23 incident?

24 A No.

25 Q Okay. Are you claiming any mental

1 health injuries, stress, pain and suffering?

2 A Yes.

3 Q Okay. So you're -- both -- to both of
4 those?

5 A Yes, ma'am.

6 Q Okay. Anything else?

7 A No.

8 Q Okay. And I'll ask you again in case
9 something pops up after we're talking.

10 A Okay.

11 Q Okay. All right. While you were in the
12 store with customer service, did you call anybody?

13 A Yes.

14 Q Who did you call?

15 A My daughter.

16 Q Was that Brooke?

17 A Yes.

18 Q What did you tell Brooke?

19 A I told her to come take me to the
20 hospital.

21 Q And did she come pick you up?

22 A Yes.

23 Q Did she come into the store?

24 A I believe so.

25 Q And she took you directly to the

1 hospital after the incident?

2 A Yes.

3 Q Did you talk to anybody else?

4 A Yes.

5 Q Who did you talk to?

6 A I called my pastor.

7 Q And what's your pastor's name?

8 A Joan Deese.

9 Q I'm sorry. Could you repeat that?

10 A Joan Deese.

11 Q Joan Deese?

12 A Uh-huh.

13 Q And is that a woman?

14 A Yes.

15 Q Okay. And did Ms. Deese also come to
16 give you assistance?

17 A No.

18 Q Okay. Do you remember what you told Ms.
19 Deese?

20 A I can't remember. I know I told her
21 that I stepped on a nail in Walmart.

22 Q And did she come to the hospital? Did
23 she meet you there?

24 A No. She didn't meet me there.

25 Q Okay. You just called her for support?

1 A Yes.

2 Q Anybody else?

3 A No.

4 Q All right. And what -- what's the name
5 of your church, Ms. Jones?

6 A Angels All Around Ministry.

7 Q And what's your denomination?

8 A None.

9 Q And other than Angels All Around
10 Ministries, do you have any affiliation with any
11 other type of church?

12 A No.

13 Q Any other type of civic group?

14 A No.

15 Q Okay. Did you speak with a Walmart
16 claims agent about your incident at Walmart that
17 day?

18 A Not that day.

19 Q Okay. Do you remember when you spoke
20 with them?

21 A Monday -- that Monday.

22 Q Okay. So the Monday afterwards. And
23 what did y'all talk about?

24 A Not much. I basically told them that
25 I was on medication and I wasn't able to really

1 talk to them. They can call me back.

2 Q Did you ever talk to them again?

3 A I did.

4 Q Do you remember when that was?

5 A Basically, a little later on that same
6 day.

7 Q What did you talk to them about that --
8 that time?

9 A Well, they actually called to see if I
10 can tell them what happened. I told them what
11 happened at the store. And that was about it.

12 Q So you gave a statement to the claims
13 representative?

14 A I did.

15 Q Did you give your permission for it to
16 be recorded? Do you recall?

17 A I did.

18 Q Did you give a truthful statement to the
19 claims agent that day?

20 A Yes, I did.

21 Q Did anyone else speak to that Walmart
22 claims agent on your behalf?

23 A That day?

24 Q Yes, ma'am.

25 A No.

1 Q Since that day, did anybody talk to the
2 claims agent on your behalf?

3 A No.

4 Q Okay. And I have a snippet of that.
5 I'm just going to verify that this is in fact your
6 recorded interview.

7 Mr. Jefferies: And is that the
8 recording you produced to us already?

9 Ms. Boyd: It is.

10 Mr. Jefferies: All right.

11 Ms. Boyd: Okay. Here it is. And I
12 apologize. This is a new laptop so I'm still
13 working my way through it. Okay.

14 (playing of recorded audio)

15 By Ms. Boyd:

16 Q And Ms. Jones, was that your voice?

17 A Yes, it is.

18 Q Is that the conversation you had
19 recorded with a claims agent?

20 A Yes, it is.

21 Q Okay. Did you have any other
22 conversations with that claim adjustor after that
23 day?

24 A I want to say I did, but I can't
25 remember if I just talked to them or -- well, I

1 knew one of my doctors talked to them.

2 Q Okay. So one of your doctors did talk
3 to them?

4 A Yes.

5 Q Do you remember which one?

6 A Dr. Govindappa.

7 Q Can you -- do -- do you know name -- the
8 spelling of that?

9 A G-O-V-I-D-A-P-P-E-R, I believe.

10 Q Okay. And what type of doctor is Dr.
11 Govindappa?

12 A He's a kidney doctor.

13 Q Okay. And do you remember what he
14 talked to them about?

15 A Yes.

16 Q What did he talk to them about?

17 A He told them don't call back.

18 Q Okay.

19 A That they'll hear from my lawyer.

20 Q And was this one day you were talking to
21 them while in his office?

22 A No. I was actually in the hospital
23 and they kept calling.

24 Q Did they know you were hospitalized?

25 A Yes.

1 Q And did they call you after that day
2 that he asked them not to call you?

3 A No, ma'am.

4 Q Okay. And did you speak to any other
5 Walmart employee or representative that we've not
6 talked about today?

7 A No, ma'am.

8 Q Okay. So prior to the incident at
9 Walmart, were you on any medication?

10 A No, ma'am.

11 Q So you didn't take any medication for
12 your -- your kidneys at that time?

13 A No. I don't drive when I'm on the
14 medication.

15 Q Okay. Did you have any medical
16 conditions at the time of this incident? Like, had
17 you been diagnosed with anything? I know you had --
18 had your kidney removed. Were you having -- were
19 you seeking active dialysis treatment at that time?

20 A Yes, I was.

21 Q Had you had any other type of medical
22 diagnoses at that time?

23 A No, ma'am.

24 Q Have you ever been diagnosed with
25 diabetes?

1 A Yes.

2 Q Do you know when you were diagnosed with
3 diabetes?

4 A Yes. I want to say, probably in 2010.

5 Q So at the time of this incident, did you
6 have an active diagnosis for diabetes?

7 A What do you mean by active?

8 Q Was it cured at that point?

9 A I won't say that it was cured, but at
10 that time, I was no longer taking medicine for
11 diabetes.

12 Q Okay. So your diabe--- diabetes was
13 controlled at that point?

14 A Yes, ma'am.

15 Q How were you controlling it?

16 A Basically, it was controlled after
17 they removed my kidney.

18 Q Were you diagnosed with congestive heart
19 failure at some point?

20 A In 2013.

21 Q Were you being treated for that?

22 A No.

23 Q Were you diagnosed with renal disease?

24 A Yes.

25 Q Were you being treated for that?

1 A Yes.

2 Q And that's the dialysis? Correct?

3 A Yes.

4 Q I'm going to go back to the day of the
5 incident. You -- you told me that you went to the
6 emergency room after you left Walmart that day?

7 A Yes.

8 Q And that you immediately went there?

9 A Yes.

10 Q What did you tell the hospital when you
11 got there?

12 A I basically told them I stepped on a
13 nail.

14 Q And you -- you told me that you had pain
15 in your foot. Correct?

16 A Yes.

17 Q Did your right foot bleed while you were
18 in Walmart?

19 A Yes.

20 Q Did it bleed profusely?

21 A Yes.

22 Q Was that bleeding controlled by the time
23 you got to the emergency room?

24 A Not really.

25 Q So it was still bleeding when you got

1 there?

2 A Yes.

3 Q And what did the E.R. do for your foot?

4 A They basically soaked it. Cleaned it
5 out. The soaked it in some I want to say,

6 Mercurochrome. I'm not sure. And they gave me
7 some antibiotic -- a prescription for antibiotic.

8 And they sent me home.

9 Q Did they do an x-ray?

10 A I can't remember.

11 Q Did they give you a tetanus shot?

12 A Yes. Yes, they did.

13 Q Did they -- did you have the nail on you
14 when you went to the emergency room?

15 A Yes, I did.

16 Q Did you show the nail to the doctor?

17 A Yes, I did.

18 Q Do you know if they took pictures of
19 your foot?

20 A They did.

21 Q Do you remember the name of the doctor
22 that saw you in the E.R. that day?

23 A I don't.

24 Q And what was your ultimate diagnosis
25 when you left the E.R.?

1 A They never really gave me a diagnosis.

2 Q Did they tell you to return for
3 treatment or seek alternate treatment somewhere?

4 A Yes.

5 Q What did they tell you to do?

6 A They told me to, you know, on Monday
7 come to go to a doctor -- find a doctor.

8 Q Did you have a primary doctor at that
9 time?

10 A No, I didn't.

11 Q Were you insured at that time?

12 A Yes.

13 Q Did you have medicare or --

14 A Yes.

15 Q -- medicaid? Was it medicare or
16 medicaid?

17 A Both.

18 Q Both. And they gave you a prescription
19 for an antibiotic you said?

20 A Yes.

21 Q Did you take it?

22 A Yes.

23 Q Do you remember what it was?

24 A I don't.

25 Q Do you remember how long you took it?

1 A No. Because after I went to the
2 doctors on that Monday, they told me to
3 discontinue it.

4 Q Okay. So you just took it over the
5 weekend?

6 A Yes.

7 Q And you went to the doctor on Monday.
8 Where do you -- do you remember the name of the
9 doctor you went to on Monday?

10 A I can't really -- I can't remember
11 right off.

12 Q Okay. And that was the doctor that told
13 you to stop taking the antibiotic?

14 A Yes.

15 Q Okay. And what else did he tell you?

16 A He told me that he needed to cut my
17 right toe off.

18 Q Your large toe?

19 A Yes.

20 Q Did he say why?

21 A He said it was infected.

22 Q And when you stepped on the nail in
23 Walmart, what -- what part of your foot was
24 punctured?

25 A It was towards the -- it was like in

1 the middle, but kind of towards the back. It was
2 like in the middle of the foot.

3 Q Okay.

4 A Uh-huh.

5 Q So, in the middle of the foot? So is
6 that kind of where your arch is, in that area?

7 A A little bit further back.

8 Q Further back towards your heel? I'm
9 going to pull my foot out because I'm a visual
10 person. I'm sorry. Sorry. And then -- this is my
11 feet according -- sorry. So this is my foot. So
12 are you saying it was here?

13 A Maybe a little bit up.

14 Q Here?

15 A Right there.

16 Q So right here. It kind of -- right
17 below the arch? Right below the arch? Yes?

18 A I guess so. I don't have a arch,
19 though.

20 Q Oh, okay. You've got a flat foot?

21 A Right.

22 Q So like, right below --

23 A Yeah.

24 Q -- slightly below the center --

25 A Yes.

1 Q -- of your foot?

2 A Yes.

3 Q Yes? And three days later, your large
4 toe was infected?

5 A Yes.

6 Q Was the area in between the -- the wound
7 and your toe also infected?

8 A No.

9 Q So it was just the toe?

10 A Yes.

11 Q Had the toe been punctured by the nail?

12 A No.

13 Q Did he indicate to you why the toe was
14 infected?

15 A Well, he said being so I had diabetes
16 and that kind of lead in on to that.

17 Q Oh, for the toe to be infected?

18 A Yes.

19 Q So was the infected toe related to the
20 wound?

21 A Yes.

22 Q Okay. And what kind of treatment did
23 you receive that day? Do you remember?

24 A I actually didn't receive any
25 treatment. He was -- I was -- I was -- believe

1 that day I was taken over to the hospital.

2 Q Okay.

3 A Yeah. That day right after I left his
4 office.

5 Q And then what -- what -- did you get any
6 treatment at the hospital?

7 A I can't remember.

8 Q Okay. Do you recall them doing a -- a
9 debridement of the wound or cleaning it out?

10 A Yes. They did that.

11 Q Okay. Was that at the hospital or in
12 the doctor's office?

13 A At the hospital.

14 Q Okay. Did they do anything to your toe?

15 A No.

16 Q Okay. Did they give you any antibiotics
17 for the infection in your toe?

18 A I believe so through a I.V.

19 Q Okay. So, I.V.?

20 A Uh-huh.

21 Q And while you're at the hospital, I -- I
22 looked at your medical records in this. It
23 indicated that a doctor suggested you have a
24 vascular study. Do you know if you had that done?

25 A Uh-huh.

1 Q And do you remember what they found?

2 A I don't.

3 Q Okay. And do you ever recall being told
4 that you had poor flow to your extremities?

5 A No.

6 Q Okay. Prior to the incident at Walmart,
7 had you ever had any blood flow issues?

8 A No.

9 Q After the de--- debridement or
10 debridement of your wound, did you heal at that
11 point?

12 A No.

13 Q Okay. Did you have any other treatment
14 done to that wound?

15 A Yes. Within a few days, he came back
16 and told me he needed to cut one, maybe two more
17 toes off.

18 Q Okay. And you said more. So on that
19 Monday, which was -- would have been the 29th of
20 June -- so that's three days later. Did they cut
21 off that toe that he wanted to cut off? Do you
22 remember?

23 A I'm having a loss.

24 Q It's okay. It's okay. I don't have any
25 record if they cut the toe that day. Do you believe

1 that they cut a toe that day?

2 A I can't remember.

3 Q Okay. So you came back later and they
4 told you they wanted to cut other toes. And that's
5 what you mean by more?

6 A Yes.

7 Q Okay. Was that in addition to or they
8 no longer wanted to cut the big toe? Or they wanted
9 to cut all of them? Do you recall if they wanted to
10 cut your big toe and these additional toes?

11 A No. The big toe was already off.

12 Q Okay. Do you remember when your big toe
13 was amputated?

14 A I want to say, but not certain that
15 when he put me in the hospital that time --

16 Q Okay.

17 A -- the big toe was amputated.

18 Q So on the 29th?

19 A I'm not sure what day.

20 Q Okay. And then later, you had
21 additional toes amputated?

22 A A few -- a few more days later. He
23 came back and told me he wanted to cut one, maybe
24 two more toes. And I refused.

25 Q Okay.

1 A So I kind of left there. I left
2 McLeod Hospital. And I got out of there. And I
3 went to Carolinas Hospital in another day or so.

4 Q Okay. But you had the initial toe
5 amputation done at McLeod?

6 A Yes.

7 Q Okay. And so the records that I have,
8 and again, I'm just going by the records and the
9 dates may not be right --

10 A Okay.

11 Q -- so I'm just going by what I have. I
12 have that your -- you had your toe amputated on or
13 about 07/14/15. About two weeks after the incident
14 at Walmart.

15 A Maybe that's so. I'm not sure.

16 Q Okay. Do you recall being told that
17 your -- your toe was mummified?

18 A What is mummified?

19 Q Like, it had completely shriveled down,
20 there was no tissue, it was just skin and bone?

21 A No. They didn't tell me that. I
22 can't recall.

23 Q Okay. Had you ever had blisters on your
24 foot before the incident at Walmart?

25 A No.

1 Q Do you recall being told that you had a
2 vascular disease in your extremities, in your arms
3 and legs?

4 A No.

5 Q Okay. In a few days after the 07/14
6 amputation, do you recall having a surgery to repair
7 the flow of your blood in your legs?

8 A I don't.

9 Q Okay. It was called a femoral
10 endarterectomy, where they fixed your arteries to
11 make your blood flow, to get a clot -- blood clots
12 out. Does that sound familiar?

13 A So they said I had blood clots?

14 Q Uh-huh. You had clots in your femoral
15 arteries.

16 A No. They never told me that.

17 Q Okay. Do you remember them telling you
18 they needed to restore blood flow to your foot?

19 A No, I don't.

20 Q Okay.

21 A That was McLeod?

22 Q Yes, ma'am.

23 A Oh, no. I didn't.

24 Q Okay. Do you recall whether the heel
25 where your toes were amputated, do you -- do you

1 recall if that wound healed? Like, once they were
2 amputated, did the wound ever heal?

3 A To my toe?

4 Q Uh-huh. When they amputated your toe?

5 A I can't recall.

6 Q Okay. And so then, you told me that you
7 remember like declining some treatment at McLeod and
8 went to Carolinas Hospital. Yes?

9 A Yes.

10 Q Okay. And what kind of treatment did
11 you get at Carolinas Hospital? Do you remember?

12 A Carolinas, basically just kept my foot
13 clean and -- they basically just kept it clean.

14 Q Okay. Do you remember them ever making
15 a recommendation that you have am--- your -- half of
16 your foot amputated?

17 A Yes. I do remember that.

18 Q Okay. And you declined that. Correct?

19 A Yes, I did.

20 Q All right. And did you leave after you
21 -- you declined that surgery?

22 A I did. Yes, I did.

23 Q Okay. And where did you go? Did you
24 get some alternate treatment after you left
25 Carolinas?

1 A I actually went home.

2 Q Okay.

3 A And at the time, I had a nurse that
4 would come in every day --

5 Q Okay.

6 A -- and clean my foot.

7 Q So a home health nurse?

8 A Yes, ma'am.

9 Q Do you know the name of the company?

10 A I don't, but her name was Ms. Mary. I
11 can't recall the company's name.

12 Q Okay. And she came in and -- and kept
13 your foot clean?

14 A Yes.

15 Q Okay. And do you remember how long you
16 saw Ms. Mary?

17 A I saw Ms. Mary up until after they cut
18 my leg off.

19 Q Okay. So you -- you saw her for quite
20 some time?

21 A Yes.

22 Q She continued to be your home health --
23 did you ever go back to Carolinas Hospital?

24 A No.

25 Q So you never sought any additional

1 treatment there?

2 A No. I actually was seeing a doctor
3 that was affiliated with Carolinas. I can't
4 remember his name right off. My memory is not
5 good for remembering what went on too much. But I
6 saw him for a while.

7 Q Okay.

8 A And once I -- excuse me. Once I left
9 Carolinas Hospital, I no longer saw him.

10 Q Do you remember what kind of doctor he
11 was?

12 A He was a foot doctor.

13 Q So a podiatrist?

14 A Yes.

15 Q Okay. And at some point, did you have
16 your forefoot, the -- the -- the front part of your
17 foot amputated?

18 A No.

19 Q You didn't? Okay. Did you have any
20 other amputations between the toes and your above
21 the knee amputation?

22 A No, ma'am.

23 Q Okay.

24 A Not that I can remember, no.

25 Q Okay. Do you remember being treated at

1 the wound care center?

2 A Yes. That's where the doctor was at.

3 Q Oh, okay.

4 A The wound care center.

5 Q Okay. So you saw --

6 A At Carolinas.

7 Q Do you remember how long you had -- you
8 were treated at the wound care center?

9 A I think for a few months.

10 Q Okay. Do you recall whether your wound
11 ever healed while you were being treated there?

12 A It was healing good for a while.

13 Q Then what happened?

14 A Then one day, I woke up and my foot
15 was black.

16 Q Your entire foot?

17 A Yes.

18 Q Do you remember about when that was?

19 A I don't.

20 Q Okay. And then, does February 2016
21 sound about right? Some time in that time is when
22 you began to have problems again?

23 A Yes.

24 Q Okay. Did you return to the hospital
25 when --

1 A McLeod.

2 Q You went to McLeod? Do you remember
3 what they told you about your -- about your foot?

4 A Yeah. They said it had turned into
5 gangrene.

6 Q And prior to your wound turning to
7 gangrene, were you still being treated at the wound
8 center?

9 A Once I left Carolinas, I no longer got
10 treated at the wound center.

11 Q Okay. Do you remember when your
12 treatment at the wound center ended?

13 A When I left Carolinas.

14 Q And you don't know about when that was?

15 A No.

16 Q Okay. So there was a time between you
17 getting the wound -- the treatment at the wound
18 center and when you woke up and your foot was black?
19 There was some time between that period?

20 A Not much time. Not much, but during
21 that I still had my nurse and she was still
22 getting orders from wound care.

23 Q Okay. So your home healthcare nurse --

24 A Yes.

25 Q -- was still coming? And she hadn't

1 noticed the onset of the gangrene before it turned
2 completely black?

3 A It -- one day it was brown, the next
4 day it was black when I woke up. So when I called
5 her and she came, she agreed that I needed to go
6 to the emergency room as soon as possible.

7 Q Okay. Was Ms. Mary coming to see you
8 every day?

9 A Every day.

10 Q And when you went to the hospital, do
11 you remember what they told you about the gangrene
12 and what was going to have to happen to your leg?

13 A They said that they was going to have
14 to amputate my leg.

15 Q Okay. Do you remember them telling you,
16 you had an artery disease in your legs?

17 A No.

18 Q Something called P.A.D.? Okay. So
19 they -- they told you, you were going to have the
20 above the knee amputation?

21 A Yes.

22 Q And did you go ahead and have it at that
23 time?

24 A Yes.

25 Q Okay. After the above the knee

1 amputation, did you continue to have wounds on your
2 leg, on your -- the remaining portion of your leg?
3 Did you have wounds there?

4 A Where they cut it at, yes.

5 Q Uh-huh. Did it heal at any point?

6 A Yes.

7 Q Okay. Do you remember about how long it
8 took to heal after the amputation?

9 A I don't remember.

10 Q How long were you hospitalized after the
11 amputation?

12 A Well, I stayed in the hospital a week
13 and then I went to rehab.

14 Q It was an inpatient rehab?

15 A Yes.

16 Q Where was that?

17 A HealthSouth.

18 Q And how long did you stay at
19 HealthSouth?

20 A About three weeks to a month.

21 Q And did you have any kind of physical
22 therapy while you were at HealthSouth?

23 A Yes.

24 Q What about occupational therapy?

25 A Yes.

1 Q Did you continue to experience pain in
2 that leg?

3 A Yes.

4 Q What kind of pain did you -- did you
5 have after the amputation?

6 A I had different kinds of pains. I had
7 phantom pains. I had throbbing pains.

8 Q Do you still have those pains?

9 A Yes, I do.

10 Q And the leg that was the amputated was
11 your right leg. Correct?

12 A Yes.

13 Q Have you ever had blisters or ulcers on
14 your left foot?

15 A No.

16 Q Did you have any surgeries that were
17 recommended since your amputation that you have not
18 had? Have they said you needed additional surgery
19 on your leg?

20 A No.

21 Q Okay. Between the time where you were
22 injured at Walmart and your leg being amputated, did
23 you ever visit any urgent care facilities, like a
24 doctor's care or --

25 A No.

1 Q Prior to the incident at Walmart, did
2 you go to any urgent care facilities?

3 A What, before?

4 Q Uh-huh. Before the incident?

5 A Yes.

6 Q Do you remember which ones you attended?

7 A I don't.

8 Q Okay. Do you remember who your primary
9 doctors were before the incident at Walmart?

10 A I didn't have a primary doctor.

11 Q Other than the wound care doctor, have
12 you ever seen any other podiatrist?

13 A No.

14 Q Have you ever seen an infectious disease
15 doctor?

16 A No.

17 Q Have you ever seen a cardiologist?

18 A A cardiologist. I seen one at McLeod.

19 Q While you were hospitalized?

20 A Yeah. He came up there.

21 Q So had you ever seen him in his office
22 for any outpatient, non inpatient?

23 A Yeah. I went to his office.

24 Q Oh, okay. Do you remember his name?

25 A Oh, God. I can't remember, but he

1 done moved from McLeod.

2 Q Do you know where he is now?

3 A I think he's in Marion.

4 Q Who's Dr. Locklear?

5 A I don't know.

6 Q He was referenced in your records. You
7 don't know who a Dr. Locklear is?

8 A No, I don't.

9 Q Have you ever been a patient of Hope
10 Health Clinic?

11 A Yes.

12 Q Okay. When did you go to the Hope
13 Health Clinic?

14 A The last time I've been to Hope Health
15 was in 2013.

16 Q Do you know who you saw over there?

17 A I saw a lady doctor. I'm not sure of
18 her name.

19 Q What kind of medical services do they
20 provide over at Hope Health Clinic?

21 A They're just regular physicians as far
22 as I know.

23 Q So like, primary health doctors?

24 A Yes.

25 Q Is that where you were seeking your

1 primary health at that time?

2 A Yes.

3 Q And we talked ext--- extensively about
4 the fact that you had a kidney doctor.

5 A Yes.

6 Q And -- and you also sought treatment at
7 Carolinas Hospital and McLeod Hospital?

8 A Yes.

9 Q We mentioned the -- the doctor with the
10 very weird name.

11 A Dr. Govindappa.

12 Q Yes. Are there any other doctors that
13 you saw for your treatment that we've not talked
14 about that you recall?

15 A Not that I recall.

16 Q Okay.

17 A Now, at my kidney doctor, it's quite a
18 few in there.

19 Q Okay. You have several different
20 doctors in there?

21 A It's different ones. And they let you
22 see different ones at times.

23 Q What's the name of the practice?

24 A It's called Pee Dee Nephrology.

25 Q How often do you go to the nephrologist?

1 A Well, now I don't go because they send
2 them over to dialysis.

3 Q Okay. Send them to the dialysis?

4 A And not unless I desperately need to
5 go in the office.

6 Q Okay. Prior to the incident at Walmart,
7 how often were you going to the nephrologist? Do
8 you remember?

9 A Probably sometimes once or twice a
10 month.

11 Q Are there any other providers or places
12 that you sought for your incident at Walmart that
13 we've not discussed today?

14 A Well, I went to -- I went to the limb
15 doctor. I can't remember the name of his office.

16 Q The limb doctor?

17 A Yeah. That do the prosthesis.

18 Q Oh, okay. And when -- do you have a
19 prosthesis?

20 A I don't.

21 Q Did you go for a consult?

22 A I did.

23 Q Do you remember when that was?

24 A That was in 2016. I was felt in, I
25 believe May of 2016.

1 Q Okay. And you decided not to go with
2 the pros---

3 A No. What it is, is basically I'm
4 having a hard time getting my leg to shrink. They
5 want it to shrink a certain size. With me gaining
6 weight and not being able to walk, it's kind of
7 hard.

8 Q Oh, okay. And so for the last ten year
9 period, you saw your nephrologist. You went to
10 dialysis. You went to several emergency rooms and
11 you saw a prosthetic doctor. Anybody else you've
12 seen for any type of medical treatment that we've
13 not talked about in the last ten years?

14 A Not that I can remember.

15 Q Okay. And so at the onset I asked you
16 about your injuries and damages as a result. And
17 we've talked pretty extensively about your leg. You
18 mentioned that you had some other mental issues and
19 stress. Have you gone to see anybody about that?

20 A No.

21 Q Okay. Have you talked any kind of
22 counselor, not a doctor, just like a private
23 counselor about it?

24 A No.

25 Q Your pastor?

1 A Yes.

2 Q Okay. Anybody else?

3 A No.

4 Q Are you under the care of a pain center?

5 A Yes.

6 Q What's the name of the pain center you
7 go to?

8 A It's called First Choice Pain Center.

9 Q How long have you been going to the pain
10 center?

11 A I think since November.

12 Q Of 2017?

13 A No, 2018.

14 Q Twenty-eight--- oh, it's -- it's not --

15 A No --

16 Q -- '18.

17 A -- well 2017. I'm sorry.

18 Q It's okay. It's okay. And what are you
19 being treated for at the pain center?

20 A Well, basically for my leg and stuff
21 you know.

22 Q They regulate your Oxycodone and the
23 nerve pain?

24 A Yes.

25 Q The -- the pain medicine? Other than

1 the oral medication, do you get any other type of
2 pain medicine there?

3 A No.

4 Q How often do you see the pain doctor?

5 A Once a month.

6 Q Are you still seeing any doctors other
7 than the pain doctor related to your leg?

8 A No.

9 Q Related to any other injuries you had
10 since the incident at Walmart?

11 A No, ma'am.

12 Q Do you remember the last time you
13 received treatment because of the incident at
14 Walmart?

15 A I don't recall.

16 Q Okay. That's fair. Prior to the
17 incident at Walmart, did you take -- did you have a
18 prescription or take pain medicine?

19 A Yes.

20 Q Okay. What pain medicine were you on
21 before?

22 A Oxycodone.

23 Q And why were you on Oxycodone?

24 A For my kidney.

25 Q And I'm sorry, I think you told me that.

1 A That's okay.

2 Q I'm just following some questions. I --
3 I do now recall that. I apologize. And you told me
4 you didn't take the pain medicine and drive. So you
5 hadn't taken any on that day?

6 A No, ma'am.

7 Q Have your -- has your pain medicine been
8 increased since the incident at Walmart?

9 A No.

10 Q Where do you get your prescriptions
11 filled?

12 A I get it mainly filled now at
13 Walgreen's.

14 Q Have you been getting it filled there
15 for the last five years?

16 A No.

17 Q Where did you get it filled?

18 A I was getting it filled at Rite Aid,
19 sometimes at C.V.S.

20 Q Rite Aid, C.V.S., Walgreen's, that's
21 about it?

22 A Uh-huh. And I think a couple of times
23 at Walmart.

24 Q Okay. And I apologize in advance for
25 this insensitive question, but I really do need the

1 answer. What are your limitations as a result of
2 this incident at Walmart?

3 A What do you mean? Things I can't do?

4 Q Yes, ma'am. I'm sorry. Do you need a
5 Kleenex, Ms. Jones?

6 A Uh-huh.

7 Q Okay.

8 (off the record.)

9 By Ms. Boyd:

10 Q All right. So Ms. Jones, I had asked
11 you what -- just to briefly describe some of the
12 things you can't do anymore.

13 A Well, I can't get into any of my
14 bedrooms at home. I can't play with my
15 grandchildren. There's a lot of places that I
16 used to go that I really can't go to now and enjoy
17 it. So there's no need in going. A lot of church
18 activities I can't go to that I used to go to.

19 Q Is it because of your -- your -- it's
20 restricted because of your wheelchair or just
21 because you don't have a desire because --

22 A Because of my --

23 Q -- you're sad?

24 A -- wheelchair. I can't clean my house
25 the way I want to, the way it needs to be cleaned.

1 Q Anything else you want to tell me about?

2 A Well, basically a lot of things that I
3 did, I can't do. And it's like my life now
4 depends on people and they don't have the
5 patience. I was supposed to actually go to Disney
6 World with my grandson with Make-a-Wish on October
7 the 6th, but I won't be going.

8 Q Why not?

9 A Well, basically that requires a lot of
10 people pushing me and I need an electric
11 wheelchair and I don't have one. It's kind of
12 hard getting one.

13 Q Because of costs or a lot of hoops to
14 jump through?

15 A Basically, if I feel it would more,
16 like, lessen the fun for everybody else and I
17 don't want that.

18 Q Anything else you want to tell me about?

19 A No, that's it.

20 Q Okay. Prior to June 26th, the incident
21 at Walmart, do you remember the last time you had
22 gone to the doctor?

23 A Probably beginning of that month. I'm
24 not sure.

25 Q And would that have been dialysis or

1 with your --

2 A It would have been to the regular
3 doctors too -- nephrologist.

4 Q You said neurologist or nephrologist?

5 A Nephrologist.

6 Q Prior to the incident at Walmart, did
7 you routinely check your glucose level?

8 A No. They checked it at dialysis.

9 Q Did you have a glucometer?

10 A No, I don't.

11 Q And I think you told me that prior to
12 the incident at Walmart, your diabetes was
13 controlled. Correct?

14 A Correct.

15 Q Prior to the incident at Walmart, had
16 you ever been diagnosed with diabetic neuropathy?

17 A No.

18 Q Prior to the incident at Walmart, had
19 your nephrologist or the doctors at dialysis ever
20 discussed proper foot care with you?

21 A Yes.

22 Q Do you remember what they told you?

23 A Well, basically to keep your foot
24 clean. Don't put lotion between your toes. Keep
25 a clean floor. Make sure you don't step on

1 anything that you shouldn't step on. And do a lot
2 of walking.

3 Q Did they also tell you to check your
4 feet for blisters and ulcers?

5 A Yes.

6 Q Did you?

7 A Yes.

8 Q How often did you check your feet?

9 A I check my feet every time I take a
10 bath.

11 Q And what was your normal every day,
12 like, skin routine for your feet? Do you remember?

13 A My skin?

14 Q Yes. How would you check your feet?
15 What was the process you -- you said when you took a
16 bath. Was --

17 A Yes.

18 Q -- it in the shower?

19 A Well, when I got out, I'm going to
20 automatically lotion and stuff. So I check and I
21 watch everything.

22 Q Had your doctor or -- or his staff ever
23 told you to wear diabetic shoes?

24 A No.

25 Q Did they ever tell you the importance of

1 wearing socks and shoes?

2 A Yes.

3 Q What did they tell you?

4 A Well, they told me to wear loose
5 fitting socks. And that I could basically buy the
6 diabetic, you know, socks for the diabetic people.
7 No tight shoes.

8 Q Did they tell you not to wear sandals
9 and flip flops?

10 A No.

11 Q Had you ever had a diabetic ulcer on
12 either of your feet prior to the incident at
13 Walmart?

14 A No.

15 Q And where did you get your dialysis
16 treatment?

17 A Church Street dialysis.

18 Q Is -- do you still go there?

19 A Yes.

20 Q How often did you go to dialysis?

21 A Three times a week.

22 Q Before the incident at Walmart, you were
23 going three times per week?

24 A Yes.

25 Q Did you go every time?

1 A As much as possible.

2 Q What would have kept you from going?

3 A Being sick.

4 Q Do you remember going the week of your
5 incident at Walmart?

6 A I can't recall.

7 Q Prior to the incident at Walmart, had
8 you experienced any leg weakness or pain?

9 A No.

10 Q Prior to the incident at Walmart, had
11 you experienced any recent infections?

12 A No.

13 Q Have you ever been treated for any
14 mental health condition, such as depression?

15 A No.

16 Q Anxiety?

17 A No.

18 Q Bipolar --

19 A No.

20 Q -- disorder? Did you experience any
21 accidents within the five years prior to your
22 incident at Walmart? So, like --

23 A No.

24 Q -- car accident, any falls?

25 A No.

1 Q Since the incident at Walmart, have you
2 been in any type of accident, like a car accident or
3 --

4 A No.

5 Q Have you experienced any other type of
6 accident since your incident at Walmart?

7 A Other than falls, no.

8 Q Have you suffered a lot of falls?

9 A Yes.

10 Q Is that because of your amputated --

11 A Yes.

12 Q -- leg? Are you making any type of
13 claim for lost wages?

14 A No.

15 Q Do you have any other prior claims or
16 litigation because of personal injury claims or --

17 A No.

18 Q -- accidents? Have you ever submitted a
19 claim for worker's comp or any other type of work
20 related accident?

21 A No.

22 Q Have you ever been diagnosed with
23 alcoholism?

24 A No.

25 Q Treated for alcohol abuse?

1 A No.

2 Q Ever been diagnosed with any type of
3 substance abuse problem?

4 A No.

5 Q Has a medical provider ever refused to
6 give you pain medicine?

7 A Yes.

8 Q Why?

9 A I don't know.

10 Mr. Jefferies: Object to the form of
11 the question. But you can answer.

12 The Deponent: I don't know.

13 By Ms. Boyd:

14 Q Okay. Do you know what provider it was?

15 A Yes.

16 Q Who was it?

17 A My nephrologist.

18 Q When did -- did that happen?

19 A When he referred me to the pain
20 center.

21 Q So prior to that time before your
22 referral to the pain center, he was giving you pain
23 medication?

24 A Yes.

25 Q Have you ever been dismissed from a

1 medical practice or had a doctor refuse to see you
2 for any reason?

3 A No.

4 Q Have you ever been employed by Walmart?

5 A No.

6 Q We submitted a list of questions to your
7 attorney about your incident, about your damages and
8 who you've seen. They're called interrogatories and
9 requests for productions. And your attorney gave us
10 some responses. Let me show them to you. There are
11 the ones they sent us. Let me just straighten --
12 have you ever seen these, Ms. Jones?

13 A No, I never seen this.

14 Q Okay. Are these people, family members
15 who have information about your injuries related to
16 your incident at Walmart?

17 A Yes.

18 Q So this information you would have
19 provided to your attorney?

20 A Yes.

21 Q Okay. Other than these people listed on
22 these two pages, do you know any other individuals
23 who may have information about your injuries at
24 Walmart that day?

25 A No.

1 Q Okay. Any of your doctors, your
2 physicians? Do you recall telling your attorney you
3 were in a car accident in 2000 -- the year 2000?

4 A Yes.

5 Q Okay. All right. So we're going to go
6 through this. Doctors, these are the doctors at
7 Carolinas Hospital System that you saw. And I'm not
8 saying that this is based in your medical records.
9 Kenneth Burns. Oh, God. Pitiranggon --

10 A Uh-huh.

11 Q -- Stonecreek -- crock.

12 A I don't know him.

13 Q But if they're in your medical records
14 they more than likely treated you for something?

15 A Right.

16 Q Is anybody, in addition to this list,
17 that you saw at Carolinas Hospital System --

18 A No.

19 Q -- that you're aware of? What about at
20 McLeod Medical -- Regional Medical Center, anybody
21 in addition to these providers that you remember
22 seeing that aren't listed?

23 A No.

24 Q Okay. Anybody in addition at Pee Dee
25 Surgical Group?

1 A No.

2 Q And is the home health company --
3 visiting nurse services that's --

4 A Yes.

5 Q And that's Ms. Mary?

6 A Yes.

7 Q And also, did you see Jonathan Jackson
8 Meekins?

9 A I don't remember Jonathan Jackson.

10 Q Just Ms. Mary?

11 A Uh-huh.

12 Q Was there any other medical providers
13 that we -- we didn't go over here that you recall
14 offhand, being treated by?

15 A No.

16 Q Okay. And Dr. Wetner is pain -- the
17 pain doctor?

18 A Yes.

19 Q And Doctor -- how do you say his name?

20 A Magsood.

21 Q Magsood, that's your nephrologist --

22 A Yes.

23 Q -- or the main one?

24 A Yes.

25 Q But you also see other doctors in Pee

1 Dee Nephrology you told me today?

2 A Yes.

3 Q Okay. Anybody else that we have not
4 talked about that --

5 A No.

6 Q -- you recall being treated by?

7 A No.

8 Q Okay. And prior to your incident at
9 Walmart, you were diagnosed with hypertension?

10 A Yes.

11 Q Type-two diabetes? End stage renal
12 disease?

13 A Yes.

14 Q All of these things are true and
15 accurate? I'm sorry, I -- I don't read them all.
16 Anything not true?

17 A Well, I see some new ones on there
18 that I wasn't aware of, but if they say so.

19 Q So which ones do you don't recall being
20 --

21 A The ventricular.

22 Q Oh. Okay.

23 A And --

24 Q Anything else?

25 A And that's about it.

1 Q Okay. But everything else, you -- you
2 know -- you're aware that you were diagnosed with?

3 A Yes.

4 Q Okay. And I know we've been here for a
5 while so I'm going to try to wrap it up. I just
6 want just to make sure I go over everything with
7 you.

8 A Okay.

9 Q Okay. I have videos of you walking
10 through the store that day. I just want you to
11 identify yourself.

12 A Okay.

13 Q Make sure that who I think it is, is --

14 A Uh-huh.

15 Q -- also in fact who it is. And these
16 were the videos that we already provided to you.
17 And I'll pull it up on the computer so you can see.
18 And is that you, Ms. Jones?

19 A Yes, it is.

20 Q Are you wearing a white tank top?

21 A Yes.

22 Q And some -- I can't tell what color,
23 they're culotte pants.

24 A Green.

25 Q Green culotte pants?

1 A Yes.

2 Q All right. That's you entering the
3 store that day. Correct?

4 A Yes.

5 Q Okay. And that's you walking on in?

6 A Right.

7 Q All right. I promise you're coming.

8 And is that you walking with a cart in the top of
9 the screen?

10 A Yes.

11 Q Yes. And did you go in the produce
12 section?

13 A No.

14 Q Let me jump all the way down here to 13.
15 You're going to be over here. And is that you right
16 there in the produce section?

17 A Yeah, that's me.

18 Q Okay.

19 A I can't even remember walking --

20 Q It's okay. I'm kind of tracking you in
21 time sequence. That's why I'm jumping around. Do
22 you see --

23 A Okay.

24 Q -- yourself right here?

25 A Yes.

1 Q And you exited produce and you're
2 walking down the action alley?

3 A Yes.

4 Q Okay. Do you see yourself stopping?

5 A Uh-huh.

6 Q Is this when you first heard the metal,
7 you say?

8 A I believe so.

9 Q Okay. And I'm going to give you another
10 view of that. It's around 11:32:39. And this time
11 it's a different angle from further to back of the
12 store so you're all the way at the top here. I know
13 it's kind of hard to see you. But you're a little
14 speck. You're going to come forward. You're right
15 there. It's kind of like you're bending to the
16 side. This isn't a really good view. And maybe
17 when you come on a little further you can see. Do
18 you know who those people are?

19 A Huh-uh.

20 Q Do you remember talking to two people in
21 the store?

22 A I don't.

23 Q Do you recall seeing this associate walk
24 past you?

25 A I don't.

1 Q Do you have any reason to believe that
2 that's not you?

3 A No.

4 Q Okay. I'm going to show you a different
5 angle. Is that you right there?

6 A Yes.

7 Q Did you pull the nail out at this point
8 after you already turned the aisle?

9 A On that aisle, I pulled it out.

10 Q Oh, okay. Can you see that you're
11 standing there talking to those two people?

12 A I see me standing there, but I don't
13 remember talking to them.

14 Q Okay. Let me show you another angle.
15 And this one is an hour early. So I'm going to jump
16 ahead a little bit. Okay. Because this was a whole
17 hour for some reason that, you know, saved earlier.
18 So I'm going to jump to the -- closer to the time.
19 Do you see that's your hair right there? Did you
20 see -- did you see yourself?

21 A Uh-huh. I do.

22 Q Can you see you're standing there
23 talking to somebody? The two people that were
24 standing on the aisle with you, you don't recall who
25 those people were? So you have no memory of

1 standing there having a conversation --

2 A I don't.

3 Q -- with people for about a minute?

4 A No. I see me talking, but I -- I
5 don't even remember that.

6 Q Okay. Is this when you pulled the nail,
7 actually pulled it out?

8 A No. I pulled the nail out on the
9 regular aisle.

10 Q Okay.

11 A That's me throwing the nail up there.

12 Q Okay. And you said you saw that your
13 foot was bleeding at this point?

14 A Uh-huh.

15 Q Okay. And that appears to be you
16 selecting bleach. Correct?

17 A Correct.

18 Q And at this point, you had already
19 pulled the nail out of your foot?

20 A Yes.

21 Q And that was you retrieving it?

22 A Getting the nail back.

23 Q Okay. Why did you throw it away
24 initially?

25 A Because I didn't know it was in my

1 foot and I was just, like, oh, well.

2 Q Okay. And at this point in time, your
3 foot was bleeding profusely?

4 A Uh-huh.

5 Court Reporter: Is that a yes?

6 The Deponent: Yes.

7 By Ms. Boyd:

8 Q I'm going to show you video 13. But you
9 told me you went to the self checkout?

10 A Yes.

11 Q That's not the right one. Sorry. There
12 must be a 14. Me and my typos today. And that's
13 you at the self checkout. Correct?

14 A Yes.

15 Q Had you put anything on your foot like a
16 bandage or a paper towel?

17 A No. Not at that point.

18 Q Do you see any blood on the floor near
19 where you're standing?

20 A No. It wasn't on the floor.

21 Q And you told me the hole was the size of
22 a -- of a small -- little smaller than a dime?

23 A Yes.

24 Q And it was bleeding profusely at this
25 point in time?

1 A Uh-huh.

2 Q Okay.

3 Court Reporter: Is that a yes?

4 The Deponent: Yes. I'm sorry.

5 Court Reporter: That's okay.

6 By Ms. Boyd:

7 Q And then you went up to the customer
8 service desk?

9 A Yes.

10 Q Did you leave a trail of blood anywhere?

11 A No. The blood was inside the flip
12 flop.

13 Q Okay. Do you recall talking to that
14 male associate right there --

15 A Yes.

16 Q -- that African American male? Is that
17 the manager that you were talking --

18 A No.

19 Q -- about?

20 A He's not the manager.

21 Q Did you tell him that you had stepped on
22 --

23 A That I -- yeah.

24 Q -- the nail?

25 A And I needed to see the manager.

1 Q Okay. And this man right here, that --
2 that white male --

3 A Yes.

4 Q -- in the blue shirt, is the one you're
5 talking --

6 A That's the manager.

7 Q -- about?

8 A Yes. Sorry.

9 Q It's okay. Prior to talking to you I,
10 know you told he had you waiting. Did you see that
11 he was helping another customer before walking over
12 to you?

13 A No. I didn't see that.

14 Q Okay. I'm going to just run this back a
15 little bit. Do you see him over here talking to
16 this other customer?

17 A I see him now.

18 Q Okay.

19 A But I had no idea he was the manager.

20 Q Oh, okay. I'm going to fast forward us
21 back to him talking to you. Are you're showing him
22 your injury to your foot at that time?

23 A Yes.

24 Q Did she bring over the first aid kit?

25 A No, that's not a first aid kit.

1 Q What is it?

2 A That's not a first aid kit.

3 Q It's some kind of white box.

4 A They never brought --

5 Mr. Jefferies: Object to the form of
6 the question.

7 By Ms. Boyd:

8 Q Okay. Do you know what that was?

9 A No, I don't.

10 Q Okay. Do you know what he was doing?
11 Do you remember what he was looking for?

12 A No, I don't.

13 Q Okay. It looks like it was somebody's
14 last day of work or something. Is that the
15 assistant manager that brought the form, that
16 African American lady that just walked to the back?
17 Do you recall?

18 A I'm not sure. I didn't really see
19 her.

20 Q Oh. I'm sorry, I'm just trying to
21 identify people. And you told me it took quite some
22 time so I'm going to make us --

23 A Uh-huh.

24 Q -- go faster so that way -- and is this
25 the point he gives you the peroxide and the --

1 A No. That's the point, when I told him
2 he can give me --

3 Q Okay.

4 A -- something for my foot.

5 Q Okay. Is this when he's giving it to
6 you at this point?

7 A Uh-huh. That looks like it.

8 Q Okay. Now, had she filled out the form
9 at this point or no?

10 A No.

11 Q Okay. Does she ever come to talk to
12 you?

13 A Yeah. She came and asked me for the
14 nail. He's wiping up the blood.

15 Q And you're cleaning the wound on your
16 foot?

17 A Yes.

18 Q Did you ever wrap your foot up or any
19 way to keep it from bleeding or did it just stop?

20 A I'm not sure. I believe I put some
21 paper towels on the bottom of it.

22 Q And do you remember if your daughter
23 came in and met you in the customer service area or
24 outside?

25 A I'm not sure.

1 Q Okay.

2 A I can't remember.

3 Q Okay. I just wanted to identify the --
4 the manager. All right. And this is you exiting
5 the store?

6 A Uh-huh.

7 Q Do you -- do you think your foot is
8 wrapped up at this point? Can you tell?

9 A I believe I've got a paper towel --

10 Q Just inside --

11 A -- between the foot and the flip flop.

12 Q Okay. And -- and your daughter wasn't
13 with you in that video?

14 A No.

15 Q Okay. And that's you walking out to the
16 parking lot. Correct?

17 A Uh-huh. Yes.

18 Q So your -- your daughter didn't meet you
19 in the store?

20 A She -- evidently she didn't.

21 Q Okay. And that's just you leaving the
22 store that day?

23 A Yes. But she's out there.

24 Q Oh, okay. And so y'all -- did she drive
25 you or did y'all just both go there? Do you recall

1 if you drove? If you left to take your car with
2 you?

3 A I believe I drove.

4 Q Okay.

5 A And she followed me.

6 Q Okay. But you don't recall leaving your
7 car at Walmart and having to go back and get it --

8 A No.

9 Q -- or anything like that? Okay. I
10 mean, I can fast forward and see -- I don't know if
11 they showed you backing out or anything. I believe
12 it just shows you --

13 A But I know she would --

14 Q -- driving off.

15 A -- be coming from this way.

16 Q Yeah. That's you in your car.

17 A That's me. And she will be coming
18 from the other end.

19 Q Oh, okay. You did a complete U, huh?
20 All right. And that's you exiting --

21 A Yeah.

22 Q -- the parking lot that day? Did you
23 take -- you -- I think you told me you didn't take
24 any photos that day?

25 A I took photos inside of the store.

1 Q You did take photos inside of the store?

2 A I did.

3 Q When did you take photos inside the
4 store?

5 A Right over -- right over there at --
6 where I was sitting at, I took pictures of my
7 foot, the blood and all of that.

8 Q Oh, you took pictures of your foot? Did
9 you --

10 A Uh-huh.

11 Q -- take pictures of the store itself?

12 A No, I didn't.

13 Q Oh, okay. And you said that you no
14 longer have those photos?

15 A No. I don't have them.

16 Q Okay. Did you turn them over to your
17 attorney before you got rid of them?

18 A I gave him copies of it in here. I
19 let him -- I transferred it to his phone.

20 Q Okay. So your attorney would have
21 copies of your --

22 A He should have them.

23 Q Okay. But did you take any photos
24 inside of the store of the -- of anything in the
25 store?

1 A No.

2 Q Okay. Have --

3 A Here's the sign Walmart, up under the
4 customer service.

5 Q Oh, okay. Have you ever seen this photo
6 before? This is a photo I got from your attorney.

7 A No. I didn't see that.

8 Q And that's where I got it, from y'all.

9 Court Reporter: Do you want to mark it?

10 Ms. Boyd: Uh-huh. Mark hers.

11 (Defendant's exhibits numbers 1 and 2
12 marked for identification.)

13 By Ms. Boyd:

14 Q So you didn't take this picture?

15 A Not that I recall.

16 Q Do you have any idea what this is a
17 picture of?

18 A It's looks like a picture of -- of the
19 what you call them, the -- what do you call it?

20 Q A pallet?

21 A Yeah. A picture of a pallet.

22 Q Did you -- you didn't take this picture
23 on the day of your incident did you?

24 A I can't remember. If I did, I don't
25 remember.

1 Q You don't remember. Do you remember
2 where this pallet -- where it may have been in the
3 store?

4 A The only thing I could think of is the
5 middle aisle that I walked down.

6 Q Okay. But this specific pallet, do you
7 have a recall -- a recollection of it being in that
8 aisle that day?

9 A I don't remember.

10 Q Okay. What about this picture? Did you
11 take this picture?

12 A Not that I remember.

13 Q Okay. And do you have a recollection of
14 this blue pallet being in that aisle that day?

15 A I can't remember.

16 Q Okay. In the video that we saw today,
17 do you recall seeing this blue pallet in that video?

18 A I can't remember.

19 Q Okay. Ms. Jones, is there any medical
20 treatment or any providers we have not talked about
21 today?

22 A Not that I remember.

23 Q Anybody else that may have information
24 about your incident at Walmart that we've not
25 discussed?

1 A No.

2 Q Okay. Other than the injuries to your
3 leg and the injuries related to stress and pain and
4 suffering, are you alleging any other injuries
5 related to the incident at Walmart?

6 A No.

7 Ms. Boyd: That's all I have.

8 E X A M I N A T I O N

9 By Mr. Jefferies:

10 Q Ms. Jones, if you would bear with me, I
11 might have a few more questions --

12 A Okay.

13 Q -- for you myself and Ms. Boyd might
14 have some follow-ups to that.

15 Mr. Jefferies: Ms. Boyd, can you pull
16 up that laundry detergent video?

17 Ms. Boyd: I think it was 14. Oh, no.
18 Sorry, wrong one. Let me go to my guide. This one.

19 Mr. Jefferies: This one. Okay.
20 Yeah.

21 Ms. Boyd: Okay. Do you want me to fast
22 forward to the time of --

23 Mr. Jefferies: Yeah, about 11:33 or 34,
24 thereabouts. Right in there is fine.

25 Ms. Boyd: Okay.

1 Mr. Jefferies: That looks like it.

2 Let's try to send this.

3 By Mr. Jefferies:

4 Q Ms. Jones, you remember watching this
5 video that says laundry detergent at the bottom?

6 A Yes.

7 Q All right. And it says -- now the time
8 looks like 11:32 a.m. In a little bit, you'll
9 appear in this picture. Let's wait until you do.
10 All right. And then about -- You appear in the
11 bottom of the picture. Right?

12 A Yes.

13 Q All right. Do you remember that when we
14 were watching this the first time, Ms. Boyd was
15 asking you questions about whether you remembered
16 speaking to people that were in the video?

17 A Yes.

18 Q All right. And right now do you see any
19 people aside from yourself in that video?

20 A No.

21 Q All right. Let me ask you one other
22 question. I'm holding a copy of our Plaintiff's
23 Answers to Defendant's Interrogatories. Does
24 everyone agree with me that this is a regular sheet
25 of paper, eight-and-a-half by eleven?

1 A Yes.

2 Q All right. I'm putting that in front of
3 the screen of this computer. Do you agree with me
4 that when I put it in front of the screen of this
5 computer it completely covers up the video except
6 for, maybe about half an inch on one side?

7 A Yes.

8 Q Okay. And what kind of machine are we
9 watching this video on? Is it a H.P. laptop?

10 A Yes.

11 Mr. Jefferies: Okay. That's all I
12 have. We can go off the record unless you have
13 more.

14 Ms. Boyd: Yeah, I'm done.

15 (Deponent excused.)

16 (Whereupon, at 1:18 p.m.,
17 the taking of the foregoing
18 deposition was concluded.)

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 State of South Carolina

3 County of Florence

4
5 I, Erica Creel, Court Reporter and Notary
6 Public for the State of South Carolina, do hereby
7 certify that the deponent in the foregoing
8 deposition was, by me, first duly sworn to testify
9 to the truth, the whole truth and nothing but the
10 truth; that said deposition transcript contains a
11 true record of the deposition of said deponent.

12 I further certify that I am neither attorney
13 nor Counsel for, nor related to or employed by any
14 of the parties connected to the action, nor am I
15 financially interested in the action.

16 Witness my hand at Florence, South Carolina,
17 this the 16th day of October, 2018.

18
19
20
21 _____
22 Erica Creel

23 MY COMMISSION EXPIRES:
24 March 2, 2022
25

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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-21-1375

APRIL JONES,

Plaintiff,

v.

TIM RINGER, Individually and as
employee/agent of WAL-MART STORES,
INC. d/b/a WAL-MART STORE # 630,
and WAL-MART STORES, INC.,

Defendants.

**PLAINTIFF'S ANSWER TO
DEFENDANT'S INTERROGATORIES**

TO DEFENDANTS AND ALL COUNSEL OF RECORD:

1. Give the names and addresses of persons known to Plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

**April Jones
c/o Anastopoulos Law Firm, LLC
1410 Trinidad Court
Florence, SC 29506**

Upon information and belief, no written or recorded statements.

**Tim Ringer
c/o Gaffney Lewis & Edwards, LLC
Address Unknown**

Upon information and belief, no written or recorded statements.

**Jason Albert Jones
843-632-1596
1410 Trinidad Court
Florence, SC 29506**

**Brooke Shaniece Jones
843-781-9385**

**1410 Trinidad Court
Florence, SC 29506**

**Chelsey Lynn Riley
843-230-2203
1520 Heritage Lane Apt H-3
Florence, SC 29505**

**Isaac Jerome Jones
843-624-8189
736 Coventry Lane Apt A
Florence, SC 29501**

**Christian Jamaal Jones
843-206-1228
1410 Trinidad Court
Florence, SC 29506**

**Joan Deas (Pastor)
843-669-0367
2513 Heathway Drive
Florence, SC 29505**

Upon information and belief, no written or recorded statements.

Medical providers listed in Answer to Interrogatory No. 8.

No written or recorded statements other than those included within the enclosed medical bills and medical records.

30(b)(6) Witness for Defendants

Any witnesses identified by Defendants.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

2. For each person known to Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Defendants of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: Upon information and belief, the parties to the action will be expected to be able to testify as to the circumstances and facts surrounding the incident in question. Treating physicians and other healthcare providers are expected to be able to testify as to the extent of Plaintiff's injuries, the treatment rendered, and the lasting effect of the severity of Plaintiff's injuries sustained in the incident in question. Additionally, witness are included who can specifically testify to Plaintiff's pain and suffering and changes in lifestyle resulting from the incident in question. Upon information and belief, no written or recorded statements are currently in possession of the Plaintiff or his attorneys. However, medical bills and records are enclosed which contain notes from treating physicians and healthcare providers.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

3. Please list the name, address, and telephone number as well as the employer's name, address, and telephone number of each expert witness retained by Plaintiff and, with respect to each expert whom you expect to call as a witness at trial, state:

- (a) The educational and occupational experience background of the expert;
- (b) All litigation in which each expert has been consulted, has given a deposition and/or has testified in trial, including the name and address of the court in which each case was pending, the names of the Plaintiff and Defendant in each case, the name and address of the person engaging the services of such expert, the name of the person on whose behalf the expert testified, and whether such person was a Plaintiff or Defendant in the case;
- (c) The subject matter or area on which each expert will testify;
- (d) The substance of the facts and opinions, and a summary of the grounds for each opinion, of each expert named by you in response to this interrogatory; and
- (e) Whether each identified expert has completed preparation for testifying and is ready to express final opinions in this case or, if the answer is to the contrary, the date by which each expert will have completed preparation and will be ready to express final opinions in this case.

ANSWER: At this time, Plaintiff has not retained an expert witness for use at trial but reserves the right to do so.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

4. Please identify each written or oral communication Plaintiff or any agent of Plaintiff has had with Defendants or any agent thereof concerning the allegations which are the subject of Plaintiff's Complaint, and for each such communication identifying the date of such communication; the full name of all parties to the communication; the complete identity of the person who initiated the communication; whether the communication was written or oral; if oral, whether any writing was made to record or memorialize the communication; the subject of the communication; if oral, whether the communication was recorded by audiotape or similar recording device; and a complete summary of the communication.

ANSWER: Plaintiff is not in possession of documents responsive to this Request.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

5. Please list the following information for the Plaintiff: current full name and any other names used, including nicknames; place of birth; date of birth; Social Security number; full name(s) of any spouse(s); and current employer, including full name and address, and each employer for the preceding ten years.

ANSWER:

Full name: April Michelle Jones

Nicknames: None

Place of Birth: Bridgeton, NJ

Date of Birth: January 4, 1969

Social Security Number: 148-54-5714

Full Name of Spouse: Not Married.

Current Employer: Plaintiff is not currently employed.

Each Employer in Preceding Ten Years:

- Petro (Truckstop) 2008-2011
- Sykes (Call Center) 2011-2013
- Assurance Insurance Company- Plaintiff was employed here for 2 months in 2013.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

6. Other than the subject lawsuit, has Plaintiff ever been a party to a lawsuit? If so, please state:

- (a) The full name of the lawsuit and the court in which the action was filed;
- (b) Whether Plaintiff was represented by counsel and, if so, whom;
- (c) The specific allegations made in the lawsuit; and
- (d) The ultimate disposition of the lawsuit, including the amount of all monies received by Plaintiff as a result of, or in resolution of, the lawsuit.

ANSWER: Upon information and belief, Plaintiff was involved in a motor vehicle accident in 2000 where she settled for \$50,000.00 before attorney's fees. Plaintiff does not remember the name of the attorney who represented her.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

7. Other than the subject lawsuit/claim, has Plaintiff ever made any claim for personal injuries, including, but not limited to, any claim for Worker's Compensation or Social Security benefits? If so, please state:

- (a) The date upon which the claim was filed or initiated;
- (b) The date of the incident giving rise to the claim;
- (c) Whether Plaintiff was represented by counsel and, if so, whom;
- (d) The exact nature of the injuries or damages alleged;
- (e) Whether Plaintiff was deposed and, if so, by whom;

- (f) The ultimate disposition of the claim, including the amount of all monies received by Plaintiff as a result of, or in resolution of, the claim.

ANSWER: Please see Answer to Interrogatory No. 6.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

8. Please set forth the names and addresses of all physicians and health care professionals who treated the Plaintiff for the injuries alleged in the Complaint, and all hospitals to which she was committed in connection with such injuries.

ANSWER:

The following medical providers treated Plaintiff at Carolina Hospital System of Florence located at 805 Pamplico Hwy, Florence, SC 29505:

- Kenneth S Burns, M.D.
- Pongstorn Pitiranggon, M.D.
- Charles Edward Stonerock, M.D.
- Karthik Karanam, M.D.
- Temujin Tom Chavez, M.D.
- Mark S. Pack, M.D.

The following medical providers treated Plaintiff at McLeod Regional Medical Center located at 555 E Cheves Street, Florence, SC 29506:

- John W. Sonfield, M.D.
- Keith C. Player, M.D.
- Venugopal S. Govindappa, M.D.
- Erik Dehlinger, M.D.
- Farhan Maqsood, M.D.

The following medical providers treated Plaintiff at Pee Dee Surgical Group located at 800 E Cheves Street, Suite 260, Florence, SC 29506:

- John W. Sonfield, M.D.
- Keith C. Player, M.D.

The following medical providers at Florence Visiting Nurses Services located at 1605-C West Palmetto Street, P.O. Box 4598, Florence, SC 29502 treated Plaintiff at her residence:

- Jonathan Jackson-Meekins, RN,
- Mary Altman, RN

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

9. Set forth a statement of all medical costs incurred for treatment of any injuries alleged in the Complaint. If any of the medical costs have been paid, in whole or in part, by Plaintiff or by some third party, please note the following: the expenses that have been paid; the amount paid; and whether the payment makes Plaintiff subject to any claim for subrogation and, if so, the amount which Plaintiff has been notified the subrogating party is requesting.

ANSWER: Plaintiffs object on the grounds this interrogatory is irrelevant. And further objects on the grounds that this information is likely to be deemed inadmissible in court and is protected by the Collateral Source Doctrine. Without waiving this objection, please see a current list of all medical costs incurred for treatment of the injuries alleged in the Complaint:

- Carolinas Hospital System of Florence: \$225,490.26
- McLeod Regional Medical Center: \$278,046.00
- McLeod Regional Medical Center Emergency: \$473.00
- Pee Dee Surgical Group: \$6,701.00
- Healthsouth Florence: \$31,178.27
- McLeod CRNA: \$840.00

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

10. Has Plaintiff ever been deemed or adjudged "disabled" by any tribunal or agency? If so, please note the exact nature of the disabilities and the date upon which each was determined or adjudged disabled.

ANSWER: Plaintiff's doctor placed her on disability in 2013 and the disability board declared her disabled as of 2014 with Renal disease.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

11. Has Plaintiff, suffered physical, mental, and/or emotional injuries at any time since the incident that is the subject of Plaintiff's Complaint, which are not related to the subject incident? If your answer is affirmative, please provide the details of the injuries, including

background facts, causation, injuries and damages, treatment, disability and impairment, and current effects.

ANSWER: None.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

12. Please describe in detail the nature of the injury or injuries alleged in the Complaint, including in your response:

- (a) A complete description of the symptoms experienced by the Plaintiff, including the onset and duration of the same;
- (b) Any restraint and/or limitation and the extent of restraint and/or limitation from normal activities;
- (c) Any diagnosis rendered and the extent of any disability; and
- (d) The date Plaintiff first sought medical treatment for the injuries allegedly relating to the incident that is the subject of Plaintiff's Complaint.

ANSWER: Plaintiff first sought medical treatment on the date of the incident, June 26, 2015. Plaintiff initially felt pain in her right foot as she was walking through Defendant's store and inspected her foot to find a rusty nail had pierced through her footwear. Plaintiff had a hole cut in her foot to treat the wound, which led to multiple surgical amputations, eventually resulting in the loss of her right leg just above her knee. Plaintiff is unable to enjoy normal activities as she is wheelchair bound.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

13. Please give the names and current addresses of each and every physician, chiropractor, psychiatrist, psychologist, medical professional or health care provider who has examined and/or treated the Plaintiff in the past ten years and the general purpose for such visits.

ANSWER:

**Dr. William Wagner (Pain Center First Choice Health Care)
1920 2nd Loop Road
Florence, SC 29501**

**Dr. Farhan Maqsood – Pee Dee Nephology
1100 Cheves Street
843-669-6694**

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

14. Does Plaintiff contend that any agent of Defendants has made an admission against interest? If so, please state the exact admission, the person making the admission, the person hearing the admission, and the date the admission was made. If Plaintiff contends the admission was written, please produce same pursuant to Rule 34, SCRPC.

ANSWER: None.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

15. Please describe the specific manner in which the alleged incident occurred, including the specific manner in which Plaintiff was injured and which part(s) of her body were injured.

ANSWER: Plaintiff craves reference to the Case Synopsis in the Filed Complaint.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

16. Please state whether Plaintiff still in possession of the “rusty nail” that allegedly pierced her foot. If Plaintiff is no longer in possession of the “rusty nail,” please explain each and every thing that was done with nail after the incident and why Plaintiff is no longer in possession of the same.

ANSWER: Plaintiff objects to this Interrogatory on the grounds that it is unduly burdensome and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

17. Please state whether Plaintiff is still in possession of the shoes she was wearing on the date of the alleged incident. If Plaintiff is no longer in possession of said shoes, please explain each and every thing that was done with the shoes after the incident and why Plaintiff is no longer in possession of the same.

ANSWER: Plaintiff objects to this Interrogatory on the grounds that it is unduly burdensome and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

18. Please describe with specificity any pre-existing medical condition suffered by Plaintiff, including the date of onset, cause, any diagnosis of such condition, any treatment undergone by Plaintiff for such condition and the names and addresses of all physicians and/or facilities that have treated the Plaintiff for such condition.

ANSWER: Plaintiff has hypertension, Type II Diabetes, End-stage renal disease, pulmonary hypertension, left ventricular hypertrophy, congestive heart failure, dyslipidemia, secondary hyperparathyroidism, chronic back pain, gastroesophageal reflux disease. Dr. Dr. Farhan Maqsood – Pee Dee Nephology located at 1100 E Cheves Street, Florence, SC 29506.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

19. If Plaintiff claims lost wages as a result of the incident alleged in Plaintiff's Complaint, set forth the basis for the lost wages claim, the total amount claimed and the manner in which the amount was calculated.

ANSWER: Plaintiff is not claiming loss of wages.

Plaintiff reserves the right to supplement this response as additional, relevant information becomes available during the discovery process.

[Signature on following page]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Roy T. Willey, IV, Esquire

S.C. Bar No.: 101010

Eric M. Poulin, Esquire

S.C. Bar No.: 100209

Sean M. Tropea, Esquire

S.C. Bar No.: 102385

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFY
THAT (S)HE SERVED A COPY OF THE
PLEADING OR FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 13th
DAY OF December, 2017


Dated at Charleston, SC

This 13th day of December, 2017.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as employee/
agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart
Store #630, and Wal-Mart Stores, Inc., and
Wal-Mart Stores East, L.P.,

Defendants.

COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-21-1375

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF DEFENDANTS'
RENEWED MOTION FOR NEW
TRIAL**

COME NOW Defendants Tim Ringer, Individually and as employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P. (hereinafter "Defendants"), by and through their undersigned counsel, file this Memorandum in Support of their renewed motion for a new trial. This Memorandum submits that Plaintiff proffered inadmissible testimony that is greatly prejudicial to Defendants and warrants a mistrial.

STATEMENT OF THE FACTS

This Court, having heard the testimony from the pertinent witnesses, is familiar with the facts of the case. Nevertheless, the Defendants would like to highlight the relevant portions of the facts that pertain to this Memorandum.

On June 26, 2015, Plaintiff visited Walmart Store #630 in Florence, South Carolina. She alleges that while walking through an area of the store that contained several pallets, she stepped on a rusty nail. *See* Pl.'s Am. Compl., ¶ 1. According to Plaintiff, as she walked down the main center aisle, she heard a "metal noise on the bottom of [her] shoe." Following the incident, Walmart Claim's Agent Claims Management Incorporated ("CMI") reached out to Plaintiff via letter on June 29, 2015. *See* Ex. B, Letter. Also on June 29, 2015, Plaintiff gave a recorded interview to

CMI. *See* Ex. C, Pl. Recorded Interview. In this interview, she discussed her alleged injuries and the alleged method of incident. *Id.* At no time during this conversation did anyone from CMI offer Plaintiff any compensation for her alleged incident. CMI further investigated this incident and came to a decision on July 8, 2015, to deny Plaintiff's claim entirely. *See* Ex. D. Letter July 8, 2015. Thereafter, Plaintiff filed this lawsuit.

On the afternoon of November 10, 2021, during direct examination of Plaintiff, Plaintiff's Counsel elicited testimony that CMI offered Plaintiff \$50,000 for her alleged injuries when questioning her about the June 29, 2015 conversation between herself and CMI. Defendants' Counsel timely objected to this testimony on the grounds that it is inadmissible testimony under Rule 408 of the South Carolina Rules of Evidence. Immediately after the elicited testimony, Defendants' Counsel asked this Court for a mistrial as Plaintiff testified to the jury on matters that the jury should not consider when reaching its verdict. Specifically, Defendants argued that once the jury heard the improper and highly prejudicial testimony, it could not be unheard or otherwise cured through an instruction given the nature of the inadmissible testimony. Defendants also argued that Plaintiff's testimony was unduly prejudicial to Defendants. Plaintiff's Counsel did not set forth any arguments in opposition to Defendants' position and in fact agreed that a mistrial was appropriate based on Plaintiff's improper testimony. Defendants' motion for mistrial was denied.

LEGAL STANDARD

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. *State v. Crim*, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997), *State v. Paterson*, 337 S.C. 215, 226 522 S.E.2d 845, 851 (Ct. App. 1999), *Creighton v. Coligny Plaza Ltd. Partnership*, 334 S.C.96, 118, 512 S.E.2d 510, 521 (Ct. App. 1998). "An abuse of discretion occurs when the conclusions

of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Tenant*, 383 S.C. 254, 678 S.E.2d 816 (Ct. App. 2009). “In order to receive a mistrial, the defendant must show error and resulting prejudice.” *State v. Council*, 335 S.C. 1, 12-13, 515 S.E.2d 508, 514 (1999). Whether a grant of a mistrial is manifestly necessary is a question that turns on the facts presented to the trial court. *Illinois v. Somerville*, 410 U.S. at 464, 461-66, 93, S.Ct. at 1070, 1069-71 (1973). It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge. *Id.* “To prove prejudice, the complaining party must show there is a reasonable probability that the jury’s verdict was influenced by the challenged evidence or lack thereof.” *Tennant*, 383 S.C. at 254, 678 S.E.2d at 817.

ARGUMENT

In the present matter, Defendants revive their motion for a mistrial on the grounds that Plaintiff testified to inadmissible evidence related to a purported offer to compromise claims in the presence of the jury that created the strong likelihood of improper prejudicial effects in the minds of the jurors. Further, the inadmissible evidence that Plaintiff proffered was new, albeit unsubstantiated, testimony that was never disclosed during discovery, despite the ample opportunity to provide it. Plaintiff denied Defendants the opportunity to prepare or respond to the improper and prejudicial evidence that Plaintiff offered in front of the jury. As such, there is an increased, reasonable probability that the inadmissible testimony will influence any jury verdict in this matter.

I. Plaintiff’s Testified to an Alleged Offer of Compromise That was Previously Concealed in Discovery

Not only was Plaintiff’s elicited trial testimony inadmissible and unfairly prejudicial, but Plaintiff also failed to previously disclose such information through the course of written

discovery. In doing so, Plaintiff deprived Defendants of the opportunity to address or anticipate this testimony or to seek the appropriate protections for such testimony via timely Motion in Limine. As such, it puts Defendants at a significant disadvantage to offer any impeachment witness or other evidence to refute Plaintiff's allegations. Defendants anticipate that the jury will use this alleged offer as an admission of wrongdoing or liability by Walmart. Therefore, Defendants have been unjustly prejudiced by Plaintiff's actions and a mistrial is warranted.

The entire thrust of all discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. *Samples v. Mitchell*, 329 S.C. 105, 113-114, 495 S.E.2d 213, 217 (Ct. App. 1997). Essentially, the rights of discovery provided by the rules give the trial lawyers the means to prepare for trial, and when these rights are not accorded, prejudice may be presumed. *Id.* In the current matter, Plaintiff testified that CMI offered her \$50,000, a statement that she never disclosed in her written discovery responses or during her deposition. Further, Defendants did not previously have any knowledge of this information as it is not present in any CMI record or testimony from any CMI agent whatsoever. As such, Defendants deny that such an offer actually existed and they were denied the opportunity to address this potential testimony by Motion in Limine or discuss this issue outside the presence of the jury or present a rebuttal witness from CMI to address this allegation.

The underlying incident of the instant matter occurred in 2015, and Plaintiff filed this suit in 2017. The parties have conducted extensive discovery in the four years since this suit was filed. Throughout the course of both written discovery and depositions, Defendants have inquired as to conversations between the Plaintiff and CMI. Specifically, in December 2017, Plaintiff responded to Defendants' initial interrogatories and responded that no Walmart agent ever made any admission against interest. Since that time, Plaintiff has neither supplemented that response nor

responded to any other written discovery in such a way as to suggest that any agent of Walmart has ever made such an offer despite the obligation to seasonably supplement her response with new or different information. Pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure, parties have a duty to supplement responses to Interrogatories and Requests for Production.

Defendants' Counsel deposed Plaintiff on September 28, 2018. At such time, Plaintiff testified that she understood she was under oath and further understood the role of a deposition. Plaintiff testified, under oath, that she did not speak with any Walmart claims agent about the incident at Walmart on the day of the incident, but the Monday afterwards. Ex. A, Pl's Dep., p. 38: 15-23. When questioned on what she spoke about with the Walmart claims agent, Plaintiff responded that she was on medication at the time and requested the claims agent call her back. Ex. A, Pl's Dep., p. 38: 22- 39:6. Plaintiff later spoke with the claims agent and testified that, "I told them what happened at the store. And that was about it." Ex. A, Pl's Dep., p. 39:7-14. The conversation that Plaintiff had with the claims agent was recorded with Plaintiff's permission, and Plaintiff testified that she gave a truthful statement to Walmart's claims agent on that date. She further testified that since that date she did not talk to any other Walmart claims agents. Finally, when asked if Plaintiff spoke to any other Walmart employee or representative that was not already discussed in the deposition, Plaintiff responded that she did not have any other conversations. Ex. A, Pl's Dep., p. 42:1-7. At the end of Plaintiff's deposition, Defendants asked if Plaintiff had any further information about her incident that had not already been discussed. Plaintiff testified that she did not have any further testimony regarding anyone else who may have information about her incident. Ex. A, Pl's Dep., p. 97:19- 98: 6.

Had Plaintiff testified or communicated at any time that this alleged offer had been made

by Walmart's claims agent, then Defendants would have had the opportunity to file a Motion in Limine as to this alleged offer or to object to the potential proffering of this testimony. However, Plaintiff purposely sidestepped the methods of discovery and chose to furnish this information impermissibly at trial, greatly prejudicing Defendants' case. As Defendants were taken by surprise by Plaintiff's testimony, Defendants are deprived of the right to fully respond to Plaintiff's testimony in such a way as to diminish the improper influence of the testimony on the jury.

II. Plaintiff's Inadmissible Testimony Is Prejudicial Enough to Warrant a Mistrial

A mistrial should only be declared in few instances. If during the trial, an occurrence in the presence of the jury, in form of conduct of any party, attorney or other, or by the exposure of otherwise inadmissible evidence, is determined by the judge to have created the likelihood of improper prejudicial effect on the minds of the jurors, a mistrial may be declared. Unfortunately, those are the facts in the present matter.

Because the law favors compromises, South Carolina courts have long held that testimony as to negotiations and offers to compromise are inadmissible for proving liability. This principle is now codified in Rule 408 of the South Carolina Rules of Evidence:

Rule 408 of the South Carolina Rules of Evidence states "evidence of furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay or proving an effort to obstruct criminal investigation or prosecution. SCORE 408.

In the instant case, Plaintiff knowingly testified that Walmart's claims agent offered her \$50,000 three days after her alleged incident at Walmart. This testimony was in the presence of the jury. Plaintiff testified to this for the purpose of showing the jury that Walmart allegedly assumed responsibility and liability and was willing to pay her to settle her claim. Plaintiff improperly stated a monetary settlement amount that, regardless of veracity, has undoubtedly spoiled the minds of the jury and unfairly prejudiced Defendants.

South Carolina case law regarding the issue at hand is scarce, and there is no case on point where the facts and issues can be compared. However, other states have the same evidentiary standard as to impermissible offers of compromise and have clearly addressed the impact of a Rule 408 violation. The Supreme Court of Arkansas ruled that the trial should have granted plaintiff's motion for a mistrial when the defendant's counsel elicited testimony from a witness regarding a settlement. *Elrod v. G & R Constr. Co.*, 275 Ark. 151, 156, 628 S.W.2d 17, 20 (1982). In *Elrod*, the defense attorney, while questioning a witness who a passenger in the plaintiff's car during a car accident stated; "I believe you settled your case for two thousand dollars." *Elrod v. G & R Constr. Co.*, 275 Ark. 151, 156, 628 S.W.2d 17, 19 (1982). Thereafter, the plaintiff moved for a mistrial. The trial Court denied the motion and, instead, admonished the jury to not consider the testimony. *Id.* The Arkansas Supreme Court ruled that the mistrial was warranted in this case. *Id.* Specifically, the Court reasoned that the mistrial was necessary because this particular type of inadmissible statement communicated to the jury the existence of the offer, but also the inference that the number would be enough or appropriate for the testifying Plaintiff. *Id.* The purpose of the witness' testimony was clear in that it was an offer of compromise or settlement that violated Rule 408. That was enough for the Court to find that no admonition of the jury by the Court would have been sufficient to eliminate any possible prejudice which may have resulted. *Id.*

Here, Plaintiff testified that right after her incident someone from Walmart sought her out and offered her \$50,000 for her injuries. This statement tells the jury that an offer was made, when it was made, who initiated the discussion about an offer, the reasoning for the offer, and most importantly the amount of the offer. It is only natural that a jury would improperly consider such a detailed statement to be an admission of guilt by Defendants, despite the fact that Defendants have argued a lack of liability during this entire trial. Such a prejudicial inference is not one that can be overcome by a curative instruction that the settlement offer, if made, is not admissible evidence in this matter.

Much like *Elrod*, the offer telegraphs to the jury not only the existence of an offer, but the parties' alleged valuation of the matter. Though in this case, that information is not factual. The jury have a very clear picture of this alleged and unsubstantiated offer. The offer, as described by Plaintiff's impermissible testimony tells a reasonable juror that even before seeing Plaintiff's claimed medical bills Walmart was willing to pay her the specific amount of \$50,000.00. The offer, as described by Plaintiff's testimony, incorrectly tells a reasonable juror that Walmart assessed that it was responsible. As a result of Plaintiff's testimony, when the jury listens to the Defendants' case, they will have this settlement offer in the back of their minds. Further, the jury will have the number of \$50,000.00 as floor in their minds. There is no curative instruction that can erase this number from the jury's minds. Even if a curative instruction is given, the information that Walmart was allegedly ready to pay that number will certainly influence any jury discussion and decision.

Defendants have not been allowed the opportunity to offer evidence to rebut Plaintiff's assertion without placing the alleged offer squarely back into the jury's minds. Without such rebuttal evidence, a juror is likely to believe that the alleged \$50,000 offer did in fact exist but Defendants are using legal rules and wrangling to keep the jury from considering it. Rule 408 of

the South Carolina Rules of Evidence seeks to prevent and protect parties from precisely these types of assumptions.

Further, this inadmissible testimony is so unsubstantiated that any curative instruction by this Court will only create more confusion for the jury and create more questions that Defendants are at a disadvantage in addressing, as this testimony was previously unknown. Further, any charge to the jury to “not consider any offer” cannot cure the prejudice to Defendants as this only serves to emphasize what should not have been injected in the first place. There is no way to cure this wholly purposeful testimony in such a way as to not prejudice the Defendants’ case.

Here, Plaintiff’s counsel solicited the testimony regarding an offer in order to speak to the Defendants’ view of their responsibility for Plaintiff’s alleged incident. A purpose that is that is central to the reason the testimony is excluded by the South Carolina Rules of Evidence and South Carolina case law. As such, this Court should not reward Plaintiff for intentionally spoiling the minds of the jurors by inserting prejudicial testimony that is clearly inadmissible. Declaring a mistrial is the only proper remedy as Plaintiff’s testimony was so egregious that there is no other way to remove the prejudicial effects of Plaintiff’s statement.

CONCLUSION

For the foregoing reasons Defendants' Motion for A Mistrial should be granted.

Respectfully submitted,

s/Robert C. Blain

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#630, and Wal-Mart Stores, Inc., and Wal-
Mart Stores East, L.P.*

November 11, 2021

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-21-01375

APRIL JONES,

Plaintiff,

v.

TIM RINGER, Individually and as
employee/agent of WAL-MART STORES,
INC. d/b/a WAL-MART STORE # 630;
WAL-MART STORES, INC.; and WAL-
MART STORES EAST, L.P.,

Defendants.

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT
AND MOTION FOR NEW TRIAL**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiff, April Jones, by and through undersigned counsel, and does submit this memorandum of law in opposition to Defendants Wal-Mart Stores, Inc. and Wal-Mart Stores East, L.P.'s (herein "Walmart") Motion for Judgment Notwithstanding the Verdict and Motion for New Trial.

I. Much of the purported basis for Walmart's motion does not appear in the record.

Walmart's Motion for JNOV and/or for a New Trial and Memorandum in support thereof are a combined total of thirty pages long. And yet, in all those pages of argument, there is nary a single citation to the record. Not one.

The parties have had the trial transcript since December of last year, so it is not as if Walmart has not had the opportunity to review it. However, as it turns out, there is a good reason for Walmart's complete lack of citation to the record – namely, that most of *what Walmart claims happened at trial is nowhere to be found in the record*. In other words, Walmart's

motion is largely without any evidentiary basis. Moreover, much of the rest of Walmart's motion is based on legal arguments that Walmart waived at trial or otherwise failed to preserve.

After the unsupported factual claims and unpreserved legal arguments are stripped away, there is very little left of Walmart's motion. As a result, even if this Court were to grant the relief Walmart seeks, there is almost zero chance that such a factually and legally unsupported decision would survive appeal.

Let's begin with Walmart's claims about what occurred at trial that are directly contradicted by the record.

Section II(D)(2)(i) of Walmart's memo. Walmart's statement highlighted below is false. Walmart never objected to any testimony from any of Plaintiff's children – at all.

to punish Walmart for “denying the undeniable and defending the indefensible”. Further, Plaintiff proffered passionate and emotional testimony from her children regarding her life as an amputee. Even though at least one juror was openly crying during this testimony, the trial court allowed four additional witnesses to testify in the same manner, over the objections of defense counsel. The jury's passion for Plaintiff was clear and was only amplified when coupled with

Walmart's memo, p. 24.

It is not clear why Walmart would make such an obviously false statement to this Court. But there it is. Testimony by Plaintiff's children occurs from page 319 to page 373 in the transcript, and not once during that testimony does Walmart raise any objection whatsoever.¹

¹In the interest of full candor, Plaintiff notes that there was a bench conference between the testimony of the third child and that of the last two children, but there is no record of what was

Likewise, Walmart's statement highlighted below is also without any support.

to punish Walmart for "denying the undeniable and defending the indefensible". Further, Plaintiff proffered passionate and emotional testimony from her children regarding her life as an amputee. Even though at least one juror was openly crying during this testimony, the trial court allowed four additional witnesses to testify in the same manner, over the objections of defense counsel. The jury's passion for Plaintiff was clear and was only amplified when coupled with

Walmart's memo, p. 24.

There is nothing in the record indicating that any juror was crying. Even if that were true, there is nothing in the record showing that such was brought to the Court's attention.

Walmart's highlighted statement below is also a red herring.

to punish Walmart for "denying the undeniable and defending the indefensible". Further, Plaintiff proffered passionate and emotional testimony from her children regarding her life as an amputee. Even though at least one juror was openly crying during this testimony, the trial court allowed four additional witnesses to testify in the same manner, over the objections of defense counsel. The jury's passion for Plaintiff was clear and was only amplified when coupled with

Walmart's memo, p. 24.

said. In any event, even if Walmart had made an informal objection at the bench (of which there is no evidence), off-the-record discussions at the bench or elsewhere preserve nothing for post-trial or appellate review. *York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) ("An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review.").

There is nothing improper about passionate or emotional testimony. But even if there were, Walmart never once objected to the testimony of any of Plaintiff's children. Plaintiff respectfully invites the Court to read the transcript – no objections to the “passionate and emotional” testimony appear.

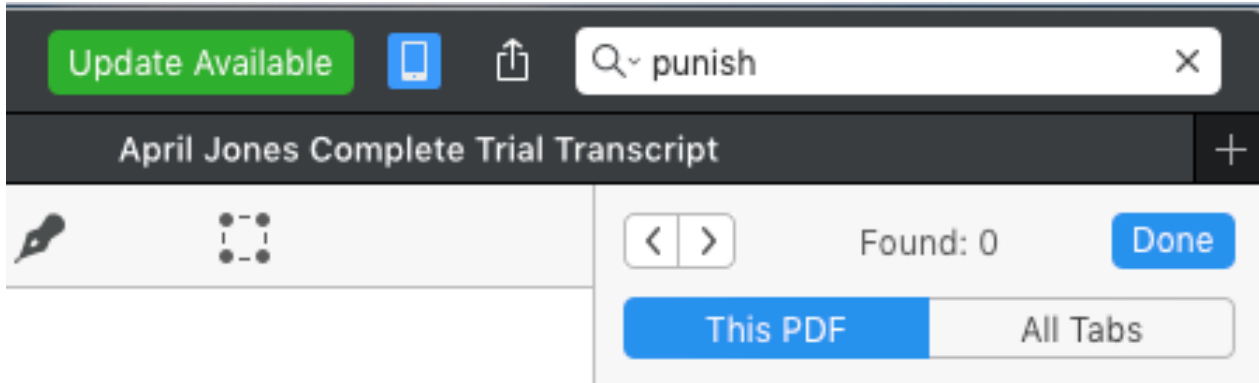
Walmarts' false and unsupported statements continue . . .

In its memo, Walmart goes on and on claiming that Plaintiff during her closing asked the jury to “punish” Walmart. However, the record reflects that Plaintiff said no such thing.

counsel. The jury's passion for Plaintiff was clear and was only amplified when coupled with Plaintiff's counsel's improper closing argument that asked them to spare the individually named defendant, but **punish** Walmart for its treatment of Ms. Jones. Specifically, Plaintiff's counsel improperly tasked the jury with **punishing** Walmart for delaying Ms. Jones' day in court for more than six years, including a visual countdown of the number of weeks and hours since her alleged injury, when in actuality, Plaintiff caused a two-year delay in these proceedings by inappropriately appealing an interlocutory order. Additionally, despite the trial court finding as a matter of law that punitive damages were not appropriate, Plaintiff's counsel asked the jury to **punish** Walmart and to “send a message” that would be heard in Arkansas. In other words, Plaintiff's counsel asked the jury to award punitive damages, despite the trial court's contrary ruling.

Walmart's memo, p. 24.

Once again, Walmart is just making things up. Not one single time in over 800 pages of transcript does the word “punish” appear.



The record reflects that Plaintiff never told anyone to punish Walmart. Walmart’s citation-free claims to the contrary are simply false.

Moreover, not one single time during all of Plaintiff’s closing did Walmart object. In its memo, Walmart complains extensively about Plaintiff’s purportedly “improper closing argument” (e.g., Walmart’s memo, p. 24). However, the record reflects that not once did Walmart raise that issue at the time, when this Court could have done something about it. Having failed to object at the time, it is too late now. *Dial v. Niggel Assocs., Inc.*, 333 S.C. 253, 256–57, 509 S.E.2d 269, 271 (1998).

Section II(D)(2)(ii) of Walmart’s memo. Walmart continues to speculate and to simply make things up. For example, there is zero evidence in the record that any of the highlighted items below actually occurred.

ii. Walmart was prejudiced by outside influences on the jury.

At the start of Day 4, which would be the final day of trial, the trial court informed that jury that one of the previously paneled jurors had been diagnosed with COVID-19. As a result of this diagnosis, one of the alternate jurors was empaneled. During a later break, the jury foreman informed the bailiff that a number of the jurors had questions about this turn of events. Specifically, the jurors were concerned because they had been sitting in close proximity in the jury box since Monday afternoon. In response to the jurors' concerns, the trial court advised that they consult their medical providers if they began exhibiting any symptoms of COVID-19. But it was clear that the jurors were worried about this potential exposure.

To make matters worse, around 4:00 PM, the jurors were told that despite being exposed to COVID-19, they needed to make arrangements to be at the courthouse for an extended period of time to deliberate on a verdict. Ultimately, jury deliberations did not begin until 5:45 PM on

Friday afternoon. The jurors returned a verdict, less than 2 hours later, demonstrating the jurors desire to be done with this entire matter. These factors negatively impacted Walmart as the jurors did not have an opportunity to assess the facts using sound judgment, dispassionate consideration and conscientious reflection. By no means does Walmart argue that a new trial is appropriate solely based on the amount of time of the jury deliberations; rather, it was the cumulation of the jurors' COVID-19 exposure and the deliberations beginning so late on a Friday evening that hurried the jury's deliberations and resulted in prejudice to Walmart. Had jurors had an opportunity to be tested for COVID-19 over the weekend and the ability to start fresh with deliberations on Monday morning, they would have been more likely to consider the evidence as required by the law. Instead, jurors relied on their passion and sympathy for Ms. Jones in rendering a verdict that was contrary to the facts presented in this case. Accordingly, Walmart is entitled to a new trial of this matter.

Once again, Plaintiff respectfully invites the court to read the transcript; Day 4 of the trial begin at page 579 and runs through page 829. What the Court will find is that none of the purported facts in the statements highlighted above actually appear in the transcript. Moreover, even if these things did occur, nowhere does the record show that Walmart ever raised them as issues so that this Court could deal with them at the time. If Walmart was concerned that sending the jury out at 5:45 p.m. on a Friday afternoon would prejudice Walmart, the time to raise that concern was at then, so the Court could consider Walmart's concerns and perhaps make a different decision.

II. Most of Walmart's arguments were conceded, waived, or otherwise not preserved.

In addition to simply making up things that appear nowhere in the record, Walmart also attempts to raise arguments post-trial that it conceded, waived, or otherwise failed to preserve during trial.

Section II(C) of Walmart's memo – Walmart's argument regarding failure to charge is not preserved. *McAlhaney v. McElveen*, 413 S.C. 299, 307–08, 775 S.E.2d 411, 416 (Ct. App. 2015) ("Rule 51, SCRPC ("No party may assign as error the giving or the failure to give an instruction unless he objects thereto *before the jury retires to consider its verdict*, stating distinctly the matter to which he objects and the grounds for his objection."); *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 308, 578 S.E.2d 16, 24 (Ct.App.2002) (finding a jury charge issue unpreserved because the appellant failed to object to the charge), *aff'd*, 362 S.C. 377, 608 S.E.2d 573 (2005).") (emphasis added).

This Court specifically asked Walmart if it had any objections to the jury charge as read. (824:6-10). Walmart said no (824:11). Having said "no" during trial, Walmart cannot now complain.

6 THE COURT: Is there any objection from the plaintiff
 7 with regard to the jury charge?
 8 MR. WILLEY: Just the objection previously made.
 9 THE COURT: Very good.
 10 Any from defense?
 11 MS. BOYD: No, Your Honor.

Section II(B) of Walmart’s memo – Walmart’s argument regarding allegedly improper use of a photo during Plaintiff’s opening is not preserved.

Walmart objected to Plaintiff showing and discussing a particular photo during opening (63:15 – 64:5). The Court sustained the objection (66:24-67:2), but declined to issue a curative instruction (67:7-11). Walmart then dropped this issue. Walmart did not move to strike the allegedly objectionable portion of Plaintiff’s opening. Walmart did not object to the Court not issuing a curative instruction. Walmart did not move for a mistrial based on the photo.

Instead, Walmart simply said “Thank you, Your Honor.” (67:12).

Having simply dropped the issue with a “Thank you,” Walmart cannot resurrect it now post-trial. *State v. Wilson*, 389 S.C. 579, 583, 698 S.E.2d 862, 864 (Ct.App.2010) (holding that after a success objection, without a motion to strike or motion for a mistrial, when the objecting party is sustained, he has received what he asked for and cannot be heard to complain about a favorable ruling on appeal); *State v. George*, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996) (no issue is preserved for appellate review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial).

If showing and discussing the photo in opening truly was prejudicial, then the time to deal with it was back then, contemporaneously with it being shown; not after a four-day trial and the return of a jury verdict.

Section II(D)(2) of Walmart’s memo – most of this argument is unpreserved as well, because Walmart never objected to it.

Walmart claims that:

based on the law that was charged to the jury. Plaintiff’s counsel repeatedly encouraged the jury to punish Walmart for “denying the undeniable and defending the indefensible”. Further, Plaintiff

Walmart’s memo, p. 23.

Actually, Plaintiff’s counsel mentioned Walmart’s denying the undeniable and defending the indefensible just four times during the entire four-day trial. (46:13-15; 53:17-19; 744:1-2; 804:3-5). Not once during the entire trial did Plaintiff or her counsel ever utter the word “punish” let alone encourage anyone to “punish” Walmart.

Moreover, and dispositive of this issue, *not once did Walmart object* to Plaintiff calling to the jury’s attention Walmar’s denial of the undeniable and defense of the indefensible. Having failed to contemporaneously object, Walmart cannot complain now. *Dial v. Niggel Assocs., Inc.*, 333 S.C. 253, 256–57, 509 S.E.2d 269, 271 (1998) (“a party must make a contemporaneous objection to improper argument or the objection is waived.”).²

² The *Toyota* exception does not apply here, as it applies “only where the challenged argument constitutes abuse of a party or witness.” *Dial v. Niggel Assocs., Inc.*, 333 S.C. 253, 259, 509 S.E.2d 269, 272 (1998).

Section II(A) of Walmart’s memo – Walmart’s argument that denial of mistrial was erroneous is waived because a curative instruction was issued and not objected to.

Curative instructions are presumed to work. “If the trial judge sustains a timely objection to testimony and gives the jury a curative instruction to disregard the testimony, the error is deemed to be cured.” *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129–30 (Ct. App. 2005); *State v. George*, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996) (no issue is preserved for appellate review without an objection to the curative charge). Here, not only did Walmart not object to the curative charge, Walmart *affirmatively agreed with it*.

The issue arose when, fifteen lines into a narrative answer to an open-ended question³, Plaintiff volunteered information about a settlement offer. (449:23-25). Walmart objected. (450:3). Walmart asked for a curative instruction (453:21-24) then changed its mind and moved for a mistrial. (456:1-2). This Court declined Walmart’s motion for a mistrial, opting instead to give a curative instruction as Walmart originally requested. (456:12-16). This Court then told the parties what the curative charge would be and invited input concerning the charge from the parties (457:1-9). Plaintiff raised a concern about a phrase in the charge. (456:10-20), but Walmart agreed with the charge as stated by the Court. (456:21-23).

21	THE COURT: I'll be glad to hear from you, Ms. Boyd.
22	MS. BOYD: One second, Your Honor. We're fine with the
23	charge as indicated by the Court.

That bears repeating. Not only did Walmart not object to any aspect of curative charge, but Walmart also affirmatively agreed with the curative charge. As a result, any argument that the curative charge was insufficient to cure the issue was waived.

³ The question was “And what did Walmart say?” (449:8).

Walmart talks as if the mere mention of settlement is an automatic death sentence for a trial. It's not. Indeed, Rule 408 specifically mentions numerous instances in which evidence of settlement discussion is admissible. Rule 408, SCRE ("This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution."). Plaintiff is not arguing that any of these exceptions apply here necessarily. However, the fact that the rules permit introduction of settlement discussions at trial at all indicates that such evidence is not *per se* fatally poisonous. As a result, the mere mention of settlement cannot form a basis for a mistrial on its own. Instead, Walmart would need to show some prejudicial effect. Absent showing of a prejudicial effect, denial of a mistrial (even if error) would be harmless error.

Walmart cannot show that Plaintiff's mention of settlement had any effect at all, let alone that it formed the basis of the jury's decision. There is zero evidence of this in the record. Moreover, this Court ordered the jury to disregard the testimony, and struck it from the record. (458:25-459:6). As noted elsewhere herein, Walmart did not object to the Court's instruction. Specifically, this Court said the following:

25	THE COURT: Mr. Foreman, at the break, each of you heard	
1	testimony about settlement negotiations. Whether or not there	
2	were such discussions is inadmissible. You are to disregard	
3	that testimony. It is stricken from the record. It shall not	
4	be discussed in the jury room.	
5	Mr. Foreman, you are to enforce this order. There is to	
6	be no discussion whatsoever about this matter.	

Jurors are presumed to follow the Court's instructions, absent evidence to the contrary. And there is no such evidence here. Indeed, the record reveals that Plaintiff's mention of settlement was never raised again, by either side, or by the Court, or by any juror. There is no evidence at all to rebut the presumption that the juror obeyed this Court's order to disregard the testimony.

Rather than pointing to evidence (because it cannot), Walmart instead speculates that the jury must have considered Plaintiff's statement in order to arrive at their verdict. This is a circular argument, and there's no evidence to support it. Indeed, the \$10,000,000 verdict is 18.69 times the admitted medical bills of \$534,935.70 (480:13). This multiplier of 18.69 barely differs at all from the 17.19 times medical bills multiplier that the Court of Appeals approved in *Becker* – a case with far less serious injuries, and moreover, a case cited with approval by Walmart. *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 634, 529 S.E.2d 758, 760 (Ct. App. 2000).

III. What is left.

Having thus shown that Sections II(A), II(B), II(C), II(D)(2)(i), II(D)(2)(ii) of Walmart's memo are each legally irrelevant because they are either unsupported by the record and/or waived, what then is left? Just two things. First, Walmart's argument in Section I (and repeated in Section II(D)(1)) that Plaintiff did not introduce evidence of duty or breach. Second, Walmart's Nisi Remittitur argument in Section II(E). Plaintiff addresses each of these in turn.

Section I of Walmart's memo (and repeated in Section II(D)(1)) argues that Plaintiff did not introduce any evidence that Walmart created the hazard, had actual or constructive notice of the hazard, breached its duty of care, or violated any internal policies. However, a review of the

transcript reveals Walmart's claim to be false – Plaintiff did, in fact, introduce such evidence⁴. How much of it does not matter, because in “considering a JNOV, the trial judge is concerned with the existence of evidence, not its weight. When considering a JNOV, ‘neither [an appellate] court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.’” *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003).

Contrary to Walmart's citation-free claim, Plaintiff did introduce such evidence including but not limited to the following:

- That there is no other place in the store where the nail could have come from except a pallet. (vol. 2, 271: 13-16).
- That Walmart does not sell individual nails. (vol. 2, 242:22-25, 271: 11-12).
- That the roof does not have shingles, the flooring is not wood, the cash registers and conveyor belts are made of metal. (vol. 2, 271: 2-10).
- That people can use nails for uses other than the use implied by the name of the nail. (Vol 2, 240: 4-13).
- That Walmart does not inspect every pallet coming through the distribution center or into the store. (Vol. 2, 242: 15-17; 246: 7-13; 314:25-315:3).
- That pallets are made of wood. (Vol. 2, 182: 23-25).
- That pallets contain nails. (Vol. 2, 182: 23-25).
- That that there are pallets on the sales floor. (Vol. 2, 181: 19-22, Vol. 3, 390: 24-25; 397:11-12).
- That "vendor display pallets" are on the sales floor. (Vol. 2, 181:19-24, 242:10-18).
- That vendor display pallets are inspected for stability and/or appearance, but not for nails. (Vol. 2, 242: 1-17, 306:3-9).
- That Walmart has policies that it did not follow. (Vol. 2, 160: 9-21, 180: 3-10, 181: 2-10, 252:14-18, 286: 15-19, 727: 1-18).
- That Walmart has cameras that they could utilize to look for things on the floor even as small as a nail on the floor if they were looking for it. (Vol. 2, 250: 19-23, 252:19-21, 275: 10-25).
- That pallets get damaged in transit. (Vol. 2, 316:23-25, 317:1-7).
- That “pallet guards” are commercially available. (Vol. 2, 202:23-25, 236:12-18).
- That Walmart has internal policies to conduct “safety sweeps” but does not keep records thereof (Vol. 2, 159:15-25, 160: 22-25, 161: 7-23, 208: 5-11, 208: 14-22).
- That Walmart had a duty to Plaintiff as an invitee. (Vol. 4, 815:1-5).

⁴ Entire trial transcript is attached hereto and incorporated herein by reference.

As noted above, in considering a JNOV motion, it is the existence of evidence that matters, not its weight. Here, as enumerated above (and as found elsewhere in the transcript), the evidence clearly exists, so JNOV must be denied.⁵

Finally, there is Section II(E) of Walmart's memo, in which Walmart asks this Court to follow *Becker v. Walmart*, and grant a new trial nisi remittitur. *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 634, 529 S.E.2d 758, 760 (Ct. App. 2000). Walmart states that "In *Becker v. Wal-Mart, Inc.*, the Court of Appeals affirmed the trial court's decision to grant Defendant's motion for new trial nisi remittitur and reduced the jury's verdict based on the amount of Plaintiff's medical expenses, her age, and her statutory life expectancy. Similar to the verdict in *Becker*, the jury verdict in the instant case is excessive." Walmart's Memo, p. 27.

In *Becker*, the Court of Appeals upheld a grant of nisi remittitur in which the verdict was reduced to 17.19 times the amount of the admitted medical bills.⁶ While Plaintiff does not agree that a new trial nisi remittitur is necessary here, Plaintiff does agree that *Becker* sets forth the appropriate standard and parameters for reduction in this case. In other words, if this Court were to grant Walmart's motion for new trial nisi remittitur based on the 17x meds multiple suggested by Walmart, then Plaintiff would accept that reduced verdict, and the case would be over.

[SIGNATURE ON FOLLOWING PAGE]

⁵ Walmart also rehashes this no-evidence argument in Section II(D)(1) in support of a new trial under the Thirteenth Juror Doctrine. However, the Thirteenth Juror Doctrine is an unconstitutional invasion of the province of the jury.

⁶ In *Becker*, the verdict was reduced to \$525,000.00 on \$30,538.44 in medical bills. That is a multiplier of 17.19 on far less serious injuries. Applying the same 17.19 multiplier that Walmart advocates to this Plaintiff's medical bills of \$534,935.70 yields a verdict of \$9,195,544.68.

Respectfully Submitted,

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s/Lane D. Jefferies

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Charleston, South Carolina
February 10, 2022

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF COMMON PLEAS

3 COUNTY OF FLORENCE

4 -----x

5 APRIL JONES,)

6 Plaintiff,)

7 vs.)

Transcript of Record
2017-CP-21-01375

8 TIM RINGER, WALMART STORE)

9 NO. 630, WALMART STORES,)

10 INC., and WALMART STORES)

EAST, LP,)

11 Defendants.)

-----x

12 Monday, November 8, 2021

13 JURY TRIAL - VOLUME 1 of 4

14 B E F O R E:

15 The Honorable Michael G. Nettles, Presiding Judge; and jury.

16 A P P E A R A N C E S:

17 Roy T. Willey, IV, Esq.

18 Lane Jefferies, Esq.

19 Kenneth Thomas, Esq.

Eric Poulin, Esq.

Vanisa Siler, Esq.

Attorneys for the Plaintiff

20 Nashiba Boyd, Esq.

21 Robert Blain, Esq.

22 Regina Lewis, Esq.

Attorneys for Defendants

23
24 Recorded by: Court Monitor/DCRP

25 Transcribed by: Bobbi Fisher, RPR

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18	Dash (--)	Indicates an interruption in speech
19	Ellipses (...)	Indicates trailing off in speech
20	(ph)	Indicates phonetic word
21	[Verbatim]	Indicates the word is said as written
22	(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:43 a.m.)

(Jury qualifications having been concluded, the following case was called and tried before a jury:)

JURY VOIR DIRE

THE COURT: Ladies and gentlemen of the jury, each of you are qualified. None of you have exercised an exemption, and I want to tell you a little bit about the facts of the first case to be tried. It's Civil Action 2017-CP-21-1375. The plaintiff is April Jones, and she's seated at the plaintiff's table in a black frock there. And the -- it's April Jones versus the defendants, Tim Ringer --

Mr. Ringer, please stand. Yes, sir.

-- and Walmart Stores. Is anybody related to April Jones or Tim Ringer? Do you have a close social, business, or personal relationship with these individuals? If so, please stand.

Yes, ma'am, if you could come forward.

THE BAILIFF: Juror 116.

BENCH CONFERENCE

(A bench conference was held off the record and outside of the hearing of the jury and others.)

THE COURT: Yes, ma'am, your full name.

JUROR NO. 116: Shenetha Pressley.

THE COURT: Ms. Pressley.

1 JUROR NO. 116: (Inaudible).

2 THE COURT: And you say April Jones?

3 JUROR NO. 116: Yes.

4 THE COURT: All right. And you say you have known them
5 your entire life?

6 JUROR NO. 116: Yes, (inaudible).

7 THE COURT: And tell me about a little bit about your
8 relationship. Y'all were --

9 JUROR NO. 116: (Inaudible).

10 THE COURT: Okay. And do you think that would be
11 difficult for you, if called upon to serve on this jury, and
12 to serve as a juror in this case?

13 JUROR NO. 116: Yes.

14 THE COURT: It would be?

15 JUROR NO. 116: Uh-huh.

16 THE COURT: Thank you so much were disclosing that to us.
17 When you said "uh-huh," that -- we have to take that down. It
18 has to be recorded. So that -- so it would be difficult for
19 you?

20 JUROR NO. 116: Yes, sir.

21 THE COURT: All right. Well, I'm going to excuse you
22 from this case. Thank you so much.

23 JUROR NO. 116: Mm-hmm

24 (Open court resumes as follows:)

25 THE COURT: She's excused.

1 (Juror No. 116 was excused from jury service.)

2 THE COURT: Is there any member of the jury panel, or
3 your immediate family, a stockholder or employee of Walmart?

4 JUROR NO. 85: My family used to manage a Walmart.

5 THE COURT: If you could come forward, please.

6 THE BAILIFF: Juror 85, David Kelly.

7 BENCH CONFERENCE

8 (A bench conference was held off the record and outside of
9 the hearing of the jury and others.)

10 THE COURT: Yes, sir.

11 JUROR NO. 85: (Inaudible) Neighborhood grocery.

12 THE COURT: All right, sir. Okay. This doesn't involve
13 a Walmart Neighborhood grocery. Walmart does indeed,
14 obviously, own those. If called upon to serve on this jury,
15 could you listen to the evidence in the case or the lack of
16 evidence and the law as I charge it to you and give both the
17 plaintiff and the defendant a fair and impartial trial?

18 JUROR NO. 85: (Inaudible).

19 THE COURT: Okay. In view of the fact that you are
20 somewhat hesitant in that regard, I'm going to excuse you.
21 Thank you.

22 (Open court resumes as follows:)

23 (Juror No. 85 was excused from jury service.)

24 THE COURT: Ladies and gentlemen of the jury, the
25 allegations that give rise to this civil action arise from

1 events that allegedly took place on June 26, 2015, at the
2 Florence Walmart Store No. 630, which is on North Beltline. I
3 have lived here my entire life, and I'm not a street person,
4 I'm a landmark person. This is one that is close to Sam's
5 Wholesale, Hobby Lobby, and across the street from West
6 Florence. It took place there, the allegations that give rise
7 to this cause of action.

8 Having been armed with this information, did anybody
9 witness the events that gave rise to this cause of action?

10 (No response given.)

11 The allegations are that Ms. Jones stepped on a nail in
12 Walmart. Has anybody heard anything, read anything about that
13 or know anything about this case? If so, please stand.

14 (No response given.)

15 No response.

16 I'm going to recognize the plaintiff at this time and ask
17 if you could list for the jury potential witnesses.

18 MR. WILLEY: Yes, Your Honor. We have with us here in
19 the courtroom, Isaac and Chelsea, who are Ms. Jones's
20 children. We also have Brooke Jones, Kristin Jones, and Jason
21 Jones. Joe Deas, who is her pastor. We, obviously, have
22 Mr. Ringer and Ms. Jones. We also have, from the Walmart
23 store, Ayesha Cooke-Simmons, Jenny Wright, Allen Pavlovich.
24 We have Ms. Jones's surgeon that did the amputation, Dr. Keith
25 Player. And in addition to that, we have Dr. Brian Durek.

1 And I think that's it.

2 THE COURT: Very good.

3 Is anyone related by blood or marriage or do you have a
4 close social, business, or personal relationship with any of
5 these potential witnesses? If so, please stand.

6 (No response given.)

7 No response.

8 Ms. Boyd, I'm going to ask if you could give us a list of
9 potential defense witnesses.

10 MS. BOYD: Yes, Your Honor.

11 Store employee Kevin Lane, Dr. Marshall White, Dr. John
12 Ross, and Sara Luftin (ph).

13 THE COURT: Very good.

14 Is anyone related by blood or marriage, do you have a
15 close social, business, or personal relationship with any of
16 these potential witnesses? If so, please stand.

17 (No response given.)

18 THE COURT: No response.

19 Does any member of the jury have an interest in the
20 outcome of this case? If so, please stand.

21 (No response given.)

22 THE COURT: No response.

23 Has anybody member expressed or formed an opinion about
24 this case? If so, please stand.

25 (No response given.)

1 THE COURT: Does any member of the jury have any bias or
2 prejudice for or against the plaintiff or the defendant in
3 this case? If so, please stand.

4 (No response given.)

5 THE COURT: No response.

6 Does any member of the jury panel know of any reason why
7 you cannot give both the plaintiff and the defendant a fair
8 and impartial trial? If so, please stand.

9 Yes, sir, if you could come forward.

10 THE BAILIFF: Juror 137.

11 BENCH CONFERENCE

12 (A bench conference was held off the record and outside of
13 the hearing of the jury and others.)

14 THE COURT: This is Mr. Taylor. And your number?

15 JUROR NO. 137: 137.

16 THE COURT: 137. Thank you.

17 JUROR NO. 137: (Inaudible).

18 THE COURT: All right. Very good. Thank you for being
19 forthright in that regard. You're free to leave. Thank you.

20 (Open court resumes as follows:)

21 THE COURT: He's excused.

22 (Juror No. 116 was excused from jury service.)

23 THE COURT: Mr. Willey, I'm going to ask if you could
24 stand and identify yourself and co-counsel.

25 MR. WILLEY: Yes, Your Honor. Roy Willey. Pleasure to

1 represent April Jones along with...

2 MR. POULIN: Good morning. My name is Eric Poulin.

3 MR. JEFFERIES: Good morning. My name is Lane Jefferies.

4 MR. WILLEY: And we also have from our office here in
5 Florence, Heather Honey (ph) and Adrienne Stuckey.

6 THE COURT: Thank you.

7 Is anyone related by blood or marriage; do you have a
8 close social, business, or personal relationship with any of
9 these lawyers; do they have an ongoing case with you as your
10 lawyer; or have you represented you in the past? If so,
11 please stand.

12 (No response given.)

13 THE COURT: No response.

14 Ms. Boyd, you're recognized. If you could identify
15 yourself and co-counsel.

16 MS. BOYD: Thank you, Your Honor.

17 Good afternoon. Nashiba Boyd of Gaffney Lewis Law Firm.
18 We represent the defendant, Tim Ringer and Walmart.

19 MR. BLAIN: Good morning. My name is Robert Blain. I'm
20 work with Ms. Boyd and Gaffney Lewis Law Firm.

21 THE COURT: Very good.

22 Is anyone related by blood or marriage; do you have a
23 close social, business, or personal relationship with Ms. Boyd
24 or Mr. Blain; have they ever represented you in the past; do
25 they have an ongoing case with you? If so, please stand.

1 (No response given.)

2 THE COURT: No response.

3 Is there any member of the jury panel who has been a
4 plaintiff or a defendant in a civil lawsuit other than family
5 court? If so, please stand.

6 (No response given.)

7 THE COURT: Have you ever been sued or have you ever sued
8 anyone? If so, please stand. It's a different way of saying
9 it.

10 (No response given.)

11 THE COURT: No response.

12 Is any member of the jury panel or your immediate family
13 a member of Angels All Around Ministry located in Florence?

14 (No response given.)

15 THE COURT: All right. No response.

16 All right. Any additional questions from the plaintiff
17 or the defense other than what's been submitted?

18 MR. WILLEY: Just the submission. Thank you.

19 THE COURT: All right. Anything further, Ms. Boyd?

20 MS. BOYD: Just what's been previously submitted, Your
21 Honor.

22 THE COURT: Very good. All right.

23 At this time, we're going to -- the clerk is going to go
24 ahead and do the struck list and then -- the strikes will be
25 four and four, and one on each alternate. And then those who

are in this panel will be instructed to be back at 2:00, and then we will select from the first panel at a later date and time.

MR. BLAIN: Your Honor, may I raise one issue?

THE COURT: Yes.

MR. BLAIN: May I approach?

THE COURT: Yes, sir.

BENCH CONFERENCE

(A bench conference was held off the record and outside of the hearing of the jury and others.)

(Open court resumes as follows:)

THE COURT: Ladies and gentlemen of the jury, what we're doing -- I don't want to leave you just sit here in suspense. The clerk is, from all the jurors who have shown up today, is going to randomly select through the computer a number of jurors, and from that list, we're going to select a jury. Usually, it's a pretty efficient process. It used to be, years ago, that you would take this jury list and the clerk would cut each name off and put it in a capsule and they'd put it in a rotating bin, and the statute required that a blind person pull the capsule out.

But, now, we have a true random selection through the computer, and sometimes the computer doesn't work and we have to pull out that bin again. I'm not even sure if there's one in this courtroom, but we have had occasion to do that.

1 But as soon as we get that, then the lawyers are going to
2 have an opportunity to look at the struck list and they're
3 going to go back in the conference room and confer with their
4 clients in their jury selection process, and that's going to
5 take them about 10 minutes. And y'all can retire to the
6 conference room to do that.

7 And while they're doing that, over the next ten minutes,
8 you can go, use the restroom, refresh yourself, but let's be
9 back in ten minutes so we can proceed forward.

10 (The prospective jurors exited the courtroom at 12:21 p.m.)

11 (A brief recess was taken.)

12 (The prospective jurors entered the courtroom at 12:40 p.m.)

13 THE COURT: -- names that were from the two different
14 panels that we have selected today. Each side has four
15 strikes on the original 12 jurors, and the one strike on each
16 of the alternates. And we're going to go through the jury
17 selection process, and then we're going to call the name of
18 the entire 12 jurors who are selected, some of which are in
19 the first panel. So they're going to call the entire list,
20 and if your name is called, stand up. We're going to ask that
21 you come and have a seat in the jury box.

22 Those of you who are selected from this panel, we're
23 going to ask that you come up here to the jury box. We're
24 going to go through the jury selection process at this time.
25 And strikes are four and four.

1 MR. WILLEY: Your Honor, may I approach?

2 THE COURT: Yes.

3 BENCH CONFERENCE

4 (A bench conference was held off the record and outside of
5 the hearing of the jury and others.)

6 (Open court resumes as follows:)

7 THE COURT: Ladies and gentlemen of the jury panel, we
8 have one -- it's a very unusual set of circumstances. We have
9 a legal matter that we need to resolve before we do the jury
10 selection or complete the jury selection process, and there's
11 not really a convenient way to do this, but we do have a big
12 hallway in this new courthouse. So I'm going to ask if y'all
13 could just go out there for a moment, and the bailiff will
14 tell you when to come back in. But -- thank you very much.

15 (The prospective jurors exited the courtroom at 12:44 p.m.)

16 UNIDENTIFIED SPEAKER: (Inaudible).

17 THE COURT: I tell you what we're going to do. That's
18 not even a concern because Court Administration will have to
19 make the accommodation. We'll come back on Saturday, Sunday,
20 or Monday.

21 UNIDENTIFIED SPEAKER: (Inaudible).

22 THE COURT: I don't know how that will -- I mean, how
23 does it not prejudice the defendant?

24 UNIDENTIFIED SPEAKER: (Inaudible).

25 THE COURT: Why would it not prejudice the defendant?

UNIDENTIFIED SPEAKER: (Inaudible).

THE COURT: I don't believe that's the case. That's pure conjecture. I have never -- the answer to that is no. I'll allow you to put all of that on the record.

UNIDENTIFIED SPEAKER: No, I'm not going to (inaudible).

THE COURT: All right. Very good.

All right. If we could shut the door.

All right. Be glad to hear from the plaintiff.

MR. WILLEY: Thank you, Your Honor, if it please the Court. As Your Honor knows, under Title 14, Chapter 7, the Court of Common Pleas is required to have 75 jurors summoned and appear for jury selection. There were 88 drawn on the list, and 22 of those were unable to locate, meaning that 66 were summoned, and there's some discrepancy about the exact count on our side, but only about 50 showed, and then, of course, fewer than that survived the strikes.

And so under the statutory law of South Carolina, 14-7-200, 260, 300, and 1140, the Court doesn't have jurisdiction to hold a jury trial in the Court of Common Pleas unless there are 75 jurors in the pool, and there were not today.

THE COURT: All right. Be glad to hear from defense.

MS. BOYD: Thank you, Your Honor. It's our argument that it's the Court's discretion, and in the interest of justice, we're here. There's enough people to impanel a 12-member jury

1 out of the two panels that we have here today, and we're just
2 asking the Court to go forward since we're all here and ready
3 to go forward, Your Honor.

4 THE COURT: All right.

5 MS. BOYD: In the interest of justice.

6 THE COURT: All right.

7 MS. BOYD: Oh, and this case has been pending since 2017.
8 It's 2021. And so we just believe, due to the old nature of
9 the case, it just needs to be heard.

10 THE COURT: All right. Do you say your name "Will-ee" or
11 "Wi-lee"?

12 MR. WILLEY: It's "Will-ee," Your Honor.

13 THE COURT: "Will-ee"?

14 MR. WILLEY: Yes.

15 THE COURT: All right.

16 MR. WILLEY: And I would note that the statute does
17 provide that the circuit judge can lower the number in advance
18 of the trial with notice of the parties, which didn't happen.

19 THE COURT: Very good. Thank you for the insight.

20 All right. I'm -- you know, this case is an older case,
21 and it was scheduled, I believe, for a date certain -- maybe
22 or maybe not. But there was an issue that was brought before
23 the Court, and I think there was a conflict between Florence
24 court and Waltherboro. And I think there was an indication
25 that counsel for the plaintiff was not available, that they

1 had to be in Walterboro County. And I denied the motion for
2 continuance, as I recall, and the issue was appealed to the
3 Court of Appeals. And that was remanded. I didn't even read
4 the opinion, but I assume they said that it was -- at any
5 rate, I don't know what they said about -- what did they say
6 about that appeal?

7 MR. WILLEY: It was mooted because the other case was no
8 longer pending, I believe, by the time it got there, so...

9 MS. BOYD: Actually, Your Honor, the holding was that it
10 was an interlocutory order that was not appealable at the
11 time.

12 THE COURT: I thought it was an interlocutory appeal.

13 MS. BOYD: That was the ruling of the court.

14 THE COURT: I felt that when it happened, but we have
15 that going on. We also have COVID going on, and that causes
16 difficulty for people coming in. We have had some difficulty
17 regard to the trial of the case. I think that no one has been
18 prejudiced. We have got a good cross-section of Florence
19 County. It very well might indeed be jurisdictional, but I
20 don't believe it is. And if it is, the Court of Appeals will
21 reverse me, and we'll come back and do it again. But we're
22 going to go forward with the case here today. Motion is
23 denied.

24 All right. We're ready for the jury.

25 (The prospective jurors entered the courtroom at 12:51

1 p.m.)

2 THE COURT: All right. We'll begin the jury selection
3 process. Strikes are four and four. Plaintiff goes first.

4 MR. WILLEY: Plaintiff strikes No. 6.

5 THE CLERK: I'm sorry. Could you...

6 MR. WILLEY: No. 6.

7 THE CLERK: No. 6. Plaintiff struck No. 6.

8 (Juror No. 8, a white male, was struck by the Plaintiff.)

9 Defendant?

10 MS. BOYD: Defendant strikes No. 27.

11 THE CLERK: No, use the margin one.

12 THE COURT: No, the --

13 MS. BOYD: Oh, I'm sorry.

14 THE COURT: No. 15.

15 MS. BOYD: No. 15. Okay.

16 THE CLERK: Defendant struck No. 15.

17 (Juror No. 27, a black male, was struck by the

18 Defendant.)

19 THE CLERK: Plaintiff?

20 MR. WILLEY: Plaintiff strikes No. 4.

21 THE CLERK: No. 4?

22 MR. WILLEY: Yes, ma'am.

23 THE CLERK: Plaintiff struck 4.

24 (Juror No. 101, a white female, was struck by the

25 Plaintiff.)

1 THE CLERK: Defendant?

2 MS. BOYD: No. 16.

3 THE CLERK: 16?

4 MS. BOYD: Yeah, 16.

5 THE CLERK: Defendant struck No. 16.

6 (Juror No. 83, a black male, was struck by the
7 Defendant.)

8 THE CLERK: Plaintiff?

9 MR. WILLEY: Plaintiff strikes No. 13.

10 THE CLERK: Plaintiff struck No. 13.

11 (Juror No. 66, a white female, was struck by the
12 Plaintiff.)

13 THE CLERK: Defendant?

14 MS. BOYD: No. 18.

15 THE CLERK: Defendant struck No. 18.

16 (Juror No. 147, a black male, was struck by the
17 Defendant.)

18 THE CLERK: Plaintiff?

19 MR. WILLEY: No. 12.

20 THE CLERK: Plaintiff struck No. 12.

21 (Juror No. 95, a white female, was struck by the
22 Plaintiff.)

23 THE CLERK: Defendant?

24 MS. BOYD: No. 11.

25 THE CLERK: Defendant struck No. 11.

(Juror No. 128, a black male, was struck by the Defendant.)

THE CLERK: For your first alternate?

MR. WILLEY: Plaintiff strikes 21.

THE CLERK: Plaintiff strikes 21.

(Juror No. 44, a white male, was struck by the Plaintiff.)

MS. BOYD: 23.

THE CLERK: Defendant struck 23.

(Juror No. 34, a white male, was struck by the Defendant.)

THE CLERK: For your second alternate?

MR. WILLEY: 26.

THE CLERK: Plaintiff struck 26.

(Juror No. 105, a white male, was struck by the Plaintiff.)

THE CLERK: Defendant?

MS. BOYD: 25.

THE CLERK: Defendant struck 25.

(Juror No. 18, a white female, was struck by the Defendant.)

THE CLERK: Please check your strikes.

Plaintiff struck 4, 6, 12, 13; 21 for the alternate and 26 for second alternate.

MR. WILLEY: Correct.

1 THE CLERK: Defendant struck 11, 15, 16, 18; 23 for the
2 first alternate and 25 for the second alternate.

3 THE COURT: Is that correct?

4 MS. BOYD: That's correct.

5 THE CLERK: As I call your name, please gather your
6 belongings and have a seat in the jury box.

7 THE COURT: And once again, there will be names that will
8 be called that are coming from the first panel, but if your
9 name is called, we want you in the jury box.

10 THE CLERK: Juror No. 57, Sheila Hanna. First panel.

11 (Juror No. 57, a white female, was seated.)

12 Juror No. 43, Dawnyelle Fulmore. First panel.

13 (Juror No. 43, a black female, was seated.)

14 Juror No. 93, Earl McFadden.

15 (Juror No. 93, a black male, was seated.)

16 Juror No. 11, Christopher Boswell. First panel.

17 (Juror No. 11, a white male, was seated.)

18 Juror 106, Preston Morrison.

19 (Juror No. 106, a white male, was seated.)

20 Juror No. 91, Carissa Little.

21 (Juror No. 91, a white female, was seated.)

22 Juror 108, Nalini Naraine.

23 (Juror No. 108, an Asian female, was seated.)

24 JUROR NO. 108: Yes, ma'am.

25 THE CLERK: Juror 15, Billy Brown. First panel.

1 (Juror No. 15, a black male, was seated.)

2 Juror 104, Marc Moore.

3 (Juror No. 104, a white male, was seated.)

4 Juror 65, Gary Hayes. First panel.

5 (Juror No. 65, a white male, was seated.)

6 Juror 78, Panzy Johnson.

7 (Juror No. 78, a black female, was seated.)

8 Juror 139, India Thompson.

9 (Juror No. 139, a black female, was seated.)

10 Juror 103, Antonio Montes.

11 (Juror No. 103, an Asian male, was seated.)

12 Juror 58, Gracie Hannah. First panel.

13 (Juror No. 58, a black female, was seated.)

14 THE COURT: That concludes the jury selection process.

15 As a practical matter, I think that's going to conclude your
16 jury service; however, there is a remote possibility that we
17 might have to select another jury. So I'm going to ask that
18 you call the clerk's office after 5:00 and follow the
19 instructions. Don't everybody call right at 5:00 because it
20 will be busy. Sometime before you lay your head down on the
21 pillow tonight, call and follow the instructions. And you're
22 free to leave.

23 (The remaining prospective jurors exited the courtroom at
24 12:58 p.m.)

25 THE COURT: Ladies and gentlemen of the jury panel, we're

1 going to ask that you be back at 2:00. When you come in,
2 there will be a bailiff at the elevator, and they're going to
3 carry you in through the back door, through the corridor --
4 the secure corridor. And it's going to be held in this
5 courtroom, and they're going to take you to the jury room. So
6 come to the third floor, and the bailiff will assist you in
7 going to the jury room.

8 I want to talk to you a little bit about -- give you some
9 admonitions before we begin. You have heard what the case is
10 about, and I have told you where the allegations took place
11 that give rise to this cause of action. Do not do any
12 independent investigation. Don't go out to Walmart trying to
13 look and investigate. Let's all stay away. There's a number
14 of Walmarts in Florence. Let's stay away from Walmart over
15 there across from West Florence, which is Florence Store No.
16 630 over there on North Beltline. Let's not go in there
17 during the -- hopefully that's not a hardship on you, but do
18 not go into that store and certainly do not do any independent
19 investigation.

20 There's not anything in the entire world that you can't
21 look up on the Google. Do not look up any particular
22 incident. Do not look up witnesses. Do not look up lawyers.
23 Do not do that. You need to base your decision on what
24 transpires here in this courtroom.

25 And I imagine when you leave this courtroom, when you go

1 back and start tending to your personal business in between
2 now and 2:00, some of your co-workers or family members are
3 going to say, "What's going on in -- on your jury service?"
4 Do not tell them about this case. I'm going to order that you
5 not do that because it might be that they have an opinion
6 about this particular type litigation. That would be
7 inappropriate and unfair for all parties concerned. Do not do
8 that.

9 Do not discuss the case amongst yourselves or with anyone
10 else. And I'm going to ask each of you, when you come back in
11 the jury room, don't talk about this case. Y'all can talk
12 about Carolina/Clemson football or how Carolina whipped up on
13 Florida this past weekend, you can talk about fishing, you can
14 talk about whatever you want to talk about, but do not talk
15 about this case. Don't talk about the lawyers. Don't talk
16 about anything having to do with this matter. You can discuss
17 anything you want to but not this case.

18 And I'm going to ask that you be back here at 2:00. 2:00
19 sharp.

20 Everyone remain seated as the jury exits the courtroom.

21 Just follow the bailiff; they'll assist you.

22 (The jury exited the courtroom at 1:02 p.m.)

23 THE COURT: One of the things I do want to put on the
24 record is that normally when we subpoena jurors -- as a matter
25 of fact, during COVID, we would subpoena 200 people and quite

1 often not get but 45. So -- and I have been practicing law
2 for 20 years and I have been on the bench for 17. I have
3 never heard that -- never heard that motion before.

4 You maintain it's jurisdiction. I don't think it is.
5 And if it is, in Florence County, I don't think we could ever
6 impanel a jury because, when we were doing 200, we were still
7 only getting about 50. For whatever that's worth, I think
8 it's important for the record to be clear in that regard. But
9 we shall see, as they say. We'll see.

10 All right. We'll see y'all back at 2:00. 2:00 sharp.

11 MR. WILLEY: I will have one matter of law, if you want
12 to take it up now.

13 THE COURT: Well, yes. How quickly -- you know, we have
14 got to get something to eat.

15 MR. WILLEY: Well, it's quick. It's quick.

16 THE COURT: All right.

17 PRE-TRIAL MATTERS

18 MR. WILLEY: So Ms. Jones, obviously, is
19 African-American, and all of the strikes of the main jury
20 panel were of African-Americans. So, under the *Batson* case
21 and *State v. Inman*, which is 409 S.C. 19, we believe that
22 demonstrates -- obviously, it's a prima facie showing that the
23 challenge was based on race, and no white jurors were struck
24 from the main panel. So, at this point --

25 THE COURT: What is -- before we do that, what is the

1 make-up of the jury as far as race goes?

2 MR. WILLEY: More white people than African -- I mean,
3 that's not part of the standard, but it's more white people
4 than African-Americans.

5 THE COURT: Well, I think --

6 MR. WILLEY: It's pretty close.

7 THE COURT: -- I tell you, to some extent it is relevant.
8 That's one of the first things you need to do is look at
9 whether or not -- well, let's look at that. Let's look and
10 see how many African-Americans are on the jury.

11 MR. WILLEY: There's six, by my count.

12 THE COURT: All right. Correct me if I'm wrong, I think
13 it's important for appellate purposes to -- for the appellate
14 entity to know what the jury panel actually was. And I
15 understand that there are six African-Americans and six
16 Caucasians and two Asians that were empanelled. Is that
17 correct, Madam Clerk?

18 THE CLERK: Yes, Your Honor.

19 THE COURT: That's 14. That's two alternates. All
20 right.

21 So there are just as many African-Americans as there are
22 white. Of course the main crux of the *Batson* is, is do they
23 have a racially mutual reason for the strikes? And I'm going
24 to allow Ms. Boyd an opportunity to gather her thoughts in
25 that regard, and we will hear from her and make a

1 determination as to whether or not -- as to whether or not --

2 MS. BOYD: May we have two minutes, Your Honor?

3 THE COURT: You sure may.

4 And the other thing that's somewhat troubling is that we
5 have already dismissed the panel, and it's somewhat troubling
6 in that regard.

7 (Pause in the proceedings.)

8 THE COURT: Ms. Boyd, you're recognized. Have you had an
9 opportunity to review your jury information and are you in a
10 position to do that now?

11 MS. BOYD: We are, Your Honor.

12 THE COURT: If not, we can put it off. Are you ready?

13 MS. BOYD: Yeah, we're ready, Your Honor.

14 THE COURT: All right. Very good.

15 MS. BOYD: Defense counsel relied on other
16 non-racial-based criteria in making its selection,
17 racial-neutral criteria.

18 For Juror No. 27, it was based on his political
19 affiliations, in our research.

20 THE COURT: All right.

21 MS. BOYD: The same is true for Juror No. 83.

22 147, it was based on age, as was 128.

23 We also struck Juror No. 34 as the alternate, who was a
24 white male, but we struck him because of his age, Your Honor.

25 And Juror No. 18 we also struck, who was a white female.

1 We'd also like to point out that all of Plaintiff's
2 strikes were against white jurors in an attempt to, we
3 believe, reverse-stack the jury.

4 So we did not base our -- we have racially neutral
5 reasons for our strikes.

6 THE COURT: Are you making a motion to disqualify this
7 jury because of --

8 MS. BOYD: I am not, but we're just pointing out that we
9 did not use racial reasons to strike our jury as evidenced by
10 the reasons we have proffered here today and evidence by the
11 alternates that we struck. We did strike two white
12 alternates.

13 THE COURT: Okay. Very good. All right.

14 Mr. Willey?

15 MR. WILLEY: Your Honor, under the *State v. Inman* case,
16 they have to show a race neutral explanation for each
17 challenge, and it's their burden to do so. And they have to
18 do so on a plausibility basis, and it has to be an actual
19 explanation.

20 For example, I'll give you this. So they indicated that
21 they struck 128 and 147 because of age. Okay? So let's look
22 at 128, was born in the year 2001. 147 was born in the year
23 2000. Okay?

24 Who did they not strike? Juror No. 106, for example, a
25 white male born in the year 2000.

1 Political affiliations. Several of these individuals
2 that are not struck share political affiliations.

3 Occupation, they didn't even use that one, but that
4 wouldn't be a good one either because they left white males
5 that had the same qualifying information that we know about
6 these African-Americans on the jury. They didn't strike a
7 single one of them.

8 And so, under *State v. Inman*, they haven't met their
9 burden to explain any racially neutral basis for the strikes.
10 The one they give for two is just patently provable that is
11 wrong. They came up with "political affiliation as part of
12 our research." Well, your political affiliation is one of two
13 things. Not everybody on the jury here is a republican or a
14 democrat that remains, so they didn't strike everybody because
15 of political affiliation. But age is the most obvious. They
16 left a white male born in 2000 and struck a black male born in
17 2000 and another black male struck born in 2001 and said,
18 well, it was because of the black male's age. Presumably they
19 didn't think they were old enough to be on a jury. But they
20 left the white male. They had a strike. If age was the
21 concern, they could have struck the white male.

22 THE COURT: Very good.

23 All right. I'm going to hold this matter in abeyance and
24 I'll allow you to reply at the conclusion of lunch. And we
25 will reconvene at 2:00. 2:00 sharp.

(A lunch recess was taken from 1:13 p.m. to 2:03 p.m.)

THE COURT: Madam Clerk, you're recognized.

THE CLERK: As I call your name, please gather your belongings and have a seat in the jury box.

Juror No. 57, Sheila Hanna.

(Juror No. 57, a white female, was seated.)

Juror No. 43, Dawnyelle Fulmore.

(Juror No. 43, a black female, was seated.)

Juror No. 96, Earl McFadden. From the first panel.

(Juror No. 96, a black male, was seated.)

Juror No. 11, Christopher Boswell.

(Juror No. 11, a white male, was seated.)

Juror No. 15, Billy Brown.

(Juror No. 15, a black male, was seated.)

Juror No. 104, Marc Moore. He's already in the back.

(Juror No. 104, a white male, was seated.)

Juror No. 65, Gary Hayes.

(Juror No. 65, a white male, was seated.)

Juror No. 78, Panzy Johnson. She's already in the back.

(Juror No. 78, a black female, was seated.)

Juror 139, India Thompson. She's already in the back.

(Juror No. 139, a black female, was seated.)

103, Antonio Montes. Already in the back.

(Juror No. 103, an Asian male, was seated.)

Juror 58, Gracie Hannah.

1 (Juror No. 58, a black female, was seated.)

2 Judge, I think that's all of them.

3 THE COURT: Very good.

4 I want to ask -- before we do that, ladies and gentlemen
 5 of the jury, I would like to say that you have completed your
 6 service for the balance of the week. There's a remote
 7 possibility that we might need to draw another jury. It's
 8 highly unlikely. I'm going to ask that you call the clerk's
 9 office after 5:00 and abide by the instructions given to you
 10 on that message. Once again, don't everybody call at 5:00 --
 11 at 6:00. 6:00. Once again, do not everybody call at 6:00
 12 because it will be busy. Sometime before you lay your head
 13 down on the pillow at night, call and get instructions and
 14 follow those instructions. And you're free to leave at this
 15 time.

16 (The unselected jurors exited the courtroom at 2:05 p.m.)

17 THE COURT: And we can get the remaining jury and bring
 18 them in here.

19 (The remaining jurors entered the courtroom at 2:08 p.m.)

20 THE CLERK: Please stand and raise your right hand.

21 (The jury panel was duly sworn.)

22 THE COURT: Mr. Gary Hayes, I'm going to ask that you
 23 serve as the foreman of this jury, and I'm going to ask if you
 24 could exchange chairs with this young lady here.

25 Mr. Hayes, you, like everyone else, when it comes time to

1 deliberate, you're going to have one vote, but you're going to
2 have additional responsibilities and duties, the first of
3 which is, if there are questions or concerns that develop
4 amongst the jury throughout the trial of this case, I'm going
5 to ask them to communicate that question or concern to you.
6 You reduce it to writing and give it to the bailiff. If it's
7 something I can assist you with, I'll be happy to do so.

8 And at the conclusion of the case, when it's time to
9 begin deliberations, you're going to be charged with the
10 responsibility of presiding over the deliberations, and that
11 essentially means that you are charged with the responsibility
12 of ensuring that everybody's voice is heard.

13 In addition to that, there are going to be times where
14 you're in the jury room outside of our presence. Quite often,
15 we're taking up matters of law. There will be periods of time
16 when you come in in the morning where you'll be in there by
17 yourself, and -- in the jury room, and when you come back for
18 lunch and during breaks. It's going to be your responsibility
19 to ensure that, during those periods of time, there's no
20 discussion whatsoever about this case. Do not talk about the
21 case amongst yourselves or with anyone else. And I'm going to
22 ask that you do that.

23 Can you do that?

24 JUROR NO. 65: Yes, sir.

25 THE COURT: All right. Very good.

1 All right. We have some legal matters that we need to
2 tend to, and I'm going to ask that each of you retire to the
3 jury room, but do not discuss the case. We'll begin shortly.

4 Everyone remain seated as the jury exits the courtroom.

5 (The jury exited the courtroom at 2:11 p.m.)

6 PRE-TRIAL MATTERS

7 THE COURT: All right. We were -- had to break for
8 lunch -- for a quick lunch, and Ms. Boyd, you have an
9 opportunity to reply to Mr. Willey's presentation.

10 MS. BOYD: Thank you, Your Honor.

11 Defense counsel had an opportunity to review its notes
12 specifically about the jurors, Jurors No. 106, 128, and 147,
13 who are all very young. And based on the notes that defense
14 counsel was able to review, all three were considered for
15 strike, but defense counsel decided to retain No. 106 based on
16 his social media posts where he describes himself as a hard
17 worker, and so we decided to keep him.

18 Juror No. 147 was unemployed, so we struck him.

19 Juror No. 128 was only 20 years old, and so based on his
20 age, we decided to strike him.

21 So those were the race-neutral reasons for retaining 106
22 over the other two.

23 THE COURT: All right. Very good.

24 And I'm going to make a part of the record the jury
25 struck list, which indicates the actual jury make-up of the

1 jury, and I think it's equally split amongst African-American
2 and Caucasians, and there are two Asians on there.

3 I'm also -- I'm going to make this a part of the record
4 as a Court's exhibit for appellate review.

5 (Court's Exhibit 1, Jury Strike Sheet, was marked for
6 identification and received into evidence for appellate review
7 only.)

8 THE COURT: And I thought it was important for the
9 appellate entity to know what the racial split is in Florence
10 County. And I was not exactly aware of this, but according to
11 the United States Census, white population at 47.7;
12 black/African-American is 47.6. So it's an equal split, and
13 we have got an equal split on the jury. I think that's
14 important for the appellate court to consider. And I'm going
15 to take judicial notice of the United States Census Bureau,
16 and make that a part of the record as well.

17 (Court's Exhibit No. 2, U.S. Census Bureau Information,
18 was marked for identification and received into evidence for
19 appellate review only.)

20 THE COURT: Anything before we move forward?

21 MR. WILLEY: Your Honor, the only thing that I would say
22 in response, I'd ask that we make this a part of the record,
23 which has their date of birth on it.

24 THE COURT: Yes, yes.

25 (Court's Exhibit No. 3, Jury Information Sheet, was

1 marked for identification and received into evidence for
2 appellate review only.)

3 MR. WILLEY: And I would note that it was there
4 subsequent race-neutral explanation given for the gentleman
5 with respect to age. The one that was given with respect to
6 unemployment, there are unemployed white male on the jury, and
7 so I don't think that that passes muster either under a
8 race-neutral explanation, so...

9 THE COURT: Thank you very much.

10 All right. Anything before we bring the jury out?

11 MR. WILLEY: If I can just get this going and we will be
12 ready to roll. May I approach?

13 THE COURT: Yes.

14 MR. WILLEY: I was hoping for some help with the Wi-Fi.

15 UNIDENTIFIED SPEAKER: Judgenet17, all lowercase.

16 MR. WILLEY: Pardon?

17 UNIDENTIFIED SPEAKER: Judgenet17, all lower case.

18 MR. WILLEY: Thank you very much. I appreciate it.

19 THE COURT: Is the plaintiff ready to proceed?

20 MR. WILLEY: We are, Your Honor.

21 THE COURT: Is the defense ready to proceed?

22 MS. BOYD: Yes, Your Honor.

23 THE COURT: All right. We're ready for the jury.

24 (The jury entered the courtroom at 2:17 p.m.)

25 THE COURT: One additional matter with regard to

1 housekeeping. Mr. Hayes, you're the foreman; I'm going to ask
2 that you remain in that chair the entire time. And
3 Mr. Antonio Montes and Ms. Gracie Hannah, y'all are the
4 alternates, and I'm going to ask that y'all remain in those
5 two chairs the entire time. The rest of you are general
6 admission. So I'm going to ask that, as a practical matter,
7 it's probably best for y'all to come in last -- y'all three to
8 come in last so people don't have to walk over you. The rest
9 of you just file on in.

10 JURY INSTRUCTIONS

11 THE COURT: All right. We are about to begin the trial
12 of April Jones versus Tim Ringer, individually and as an
13 employee of Walmart Stores, and Walmart Stores as defendants.
14 It's Civil Action 2019-002066.

15 I want to take just a brief moment to tell you about --
16 many of you have maybe not served on a jury before. I want to
17 tell you about what to expect. This is a civil case, and the
18 plaintiff, who is represented by Mr. Willey, has the burden of
19 proof. And we're going to start off the trial with what's
20 known as opening statements. He's going to have an
21 opportunity to stand up before you and, in a summary fashion,
22 sort of explain what this case is about, sort of give you a
23 roadmap and explain what the theories of the case are and sort
24 of orient you in that regard.

25 The defense, Ms. Boyd or Mr. Blain, are going to have an

1 opportunity to stand up and give their positions, any defenses
2 that they might have, and their perspective on the case.

3 And they're sort of summary in fashion. It will aid you
4 immensely as you begin this case, so pay very close to what
5 they have to say.

6 After that, once again, the plaintiff has the burden of
7 proof. They are going to be required at that stage in the
8 case to put up their evidence. The evidence takes a number of
9 different forms. Witnesses will be called to the witness
10 stand. They'll take an oath and have a seat in the witness
11 chair. And Mr. Willey, since he has the burden of proof, will
12 ask them direct questions about what they know about this
13 case. And the defense will have an opportunity to
14 cross-examine them, and Mr. Willey will have an opportunity to
15 ask some reply questions or redirect questions.

16 And pay very close attention. He'll call one witness
17 right after the other for his case in chief. And then we'll
18 take a break, take up some matters of law. And then the
19 defense will have an opportunity to present any evidence that
20 they have in this case. I'm going to ask that you pay very
21 close attention.

22 The presentation of evidence takes a number of different
23 forms. What the witness says is evidence for you to consider.
24 Pay very close attention. Documents that are introduced into
25 evidence, documentary evidence, that's evidence for you to

1 consider in your deliberations. Photographs, models,
2 stipulations where lawyers agree as to a certain fact, and
3 depositions, sworn testimony taken outside of this court prior
4 to this trial date. All of those things are things that you
5 can consider.

6 I'll reiterate: During the breaks, there is to be
7 absolutely no discussion about this case, no -- do not do any
8 deliberation until I give you instructions to do so. After
9 you have heard all the evidence and I will charge you the
10 relevant law and give you instructions as to when to begin
11 discussing the case, but do not do that at any point in time.

12 And, Mr. Foreman, I'm going to ask that you enforce that
13 rule.

14 Ladies and gentlemen of the jury, you and I have very
15 distinct and different roles in this case. My job is the
16 arbiter of the law, and I preside over this proceeding. I
17 determine what evidence you get to hear. And, at the
18 conclusion of the case, I will charge you the law. Those are
19 my functions.

20 You, on the other hand, are the arbiters of the facts.
21 You listen to all the evidence that's been presented here in
22 this courtroom to determine what the truth is and apply it to
23 the law. That's your job.

24 You are the sole and exclusive judges of the facts. As
25 we go throughout this process, every trial that I have ever

1 been involved in as a lawyer or judge -- or as a judge, you
2 will hear lawyers stand up and say, "I have an objection, I
3 have a matter of law to take up with the Court." And those
4 typically have to do with evidentiary matters. Those
5 conversations will take place outside of your earshot, either
6 up here at the bench or if it's a more involved question of
7 law, we'll send you back to the jury room. And we'll be
8 discussing those points of law, evidentiary matters, outside
9 of your presence.

10 And I want to let you know that in advance. It's not as
11 though we're trying to hide anything from you, but the Rules
12 of Evidence and the Rules of Civil Procedure require that only
13 admissible evidence come before you, and that's what these
14 issues are about. And at the conclusion of the case, if you
15 have a question about a particular point of law and if I can
16 remember what it was, I'd be happy to share it with you at
17 that time, but it would be inappropriate for you to do that
18 prior to deliberation and rendering a verdict.

19 Ladies and gentlemen of the jury, you are the sole and
20 exclusive judges of the facts. You need to pay very close
21 attention to the testimony as it comes from the witness stand.
22 And the law explains how you, as jurors, fulfill your duty as
23 the judges of fact -- as the judge of the facts. You need to
24 ask yourself what opportunity this witness had to observe the
25 things to which they're testifying to. Ask yourself whether

1 or not what they say is corroborated by other evidence or
2 whether or not it's in conflict with other evidence. You can
3 believe all of what a witness says, none of what a witness
4 says, or a portion thereof.

5 The law also says that you can take into consideration a
6 witness's demeanor, how they're acting on the witness stand.
7 We all, who have teenage children, know that it's important to
8 listen to what your teenage child tells you, but it's also
9 important to pay attention to how they're acting, their
10 demeanor. The law says that you can take that into
11 consideration.

12 The law also does not ask you to leave your good common
13 sense outside of the courtroom. We all, in our everyday
14 lives, have an opportunity to evaluate whether or not someone
15 is telling us the truth. It's that common sense that you
16 apply to this process, and I'm going to ask that you do that.

17 As far as the presentation of evidence, the plaintiff
18 goes first. The defense has an opportunity to present their
19 case, and then the plaintiff, since they have the burden of
20 proof, may have some issues on reply, and they're allowed in
21 the procedure -- the procedural rules allow them to do that.

22 At the conclusion of the presentation of evidence, these
23 lawyers are going to have an opportunity to stand up before
24 you and give closing arguments, and what they have to say in
25 closing arguments is not evidence but it will aid you

1 immensely in your deliberation process. And the closing
2 arguments is very similar in form to the opening statement,
3 but this presentation would be truly argumentative, because,
4 at that juncture, you'll have heard all of the evidence.
5 These very fine lawyers have an opportunity to point to the
6 evidence that supports their relative theory of the case. So
7 I implore you to pay very close attention during closing
8 arguments.

9 At the conclusion of that, I will charge you the
10 substantive law with regard to this case. The burden of proof
11 in a negligence case is by a preponderance of the evidence,
12 more likely than not. I will charge you in greater detail at
13 the conclusion of the case how to evaluate that.

14 Ladies and gentlemen of the jury, you are the triers of
15 fact, and I'm the arbiter of the law. You're participating in
16 a time-tested system. You have taken a solemn oath to fulfill
17 your duties as the triers of fact, and I'm confident that you
18 will do so. Given the nature of this case and the length of
19 this case, I'm going to ask that you not take notes. But this
20 is an important case. It's an important case to the
21 plaintiff, it's an important case to the defendant, and it's
22 also an important case for you because you have taken a solemn
23 oath, listened to the evidence, apply it to the law, and
24 render a verdict that speaks the truth. So pay very close
25 attention.

1 I also, in closing, want to say this: If I make an error
2 with regard to the law, those errors are easily corrected.
3 However, if you, as a jury -- as a jury panel make an error
4 with regard to the findings of fact, quite often, those errors
5 never can be corrected. So it's important for you to pay very
6 close attention to this case.

7 Mr. Willey, you're recognized.

8 MR. WILLEY: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes.

11 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

12 MR. WILLEY: Good afternoon. And, first, I want to thank
13 you all for your service. And as we started this morning, you
14 probably for hoping that you weren't chosen, but everything
15 happens for a reason, and you were chosen.

16 And this is a very important case, as Judge Nettles told
17 you, for my client, and it's a very important case for you and
18 for Florence County. And for the next little while, I'm going
19 to take you through the case and what the evidence in the case
20 is going to show you, and I think that what you'll see about
21 this case is that it's a relatively straightforward case.
22 This is not a complicated, complex case. This is a case that
23 is pretty simple, by all standards.

24 Ms. Jones was in Walmart. She stepped on a nail. The
25 nail punctured her foot. She immediately went to the hospital

1 to get a tetanus shot. The puncture wound became infected.
2 She ended up getting gangrene and ended up needing a series of
3 amputations, resulting in today she has no leg -- no right leg
4 below the knee.

5 That's what happened. Let's talk about why that matters.

6 The safety rules in this case are that Walmart has a
7 responsibility to keep its store reasonably safe for its
8 customers. Walmart has a responsibility to inspect its store
9 for unsafe conditions and to remedy them. If Walmart does not
10 do those two very basic things and, as a result, someone is
11 injured, then Walmart is responsible for the harm.

12 Straightforward. How we got here, what the evidence
13 shows. Well, we got here because, as you'll hear throughout
14 the course of this case, Walmart denies the undeniable, they
15 delay the inevitable, and they defend the indefensible. And
16 you're going to see the evidence in the case. And Walmart has
17 been doing this since June 26 of 2015. That is the day that
18 Ms. Jones stepped on that nail. It has been 2,327 days for
19 her to get her day in court. Six years, four months, and 13
20 days she has been living with this case. And she will live
21 with this case and with your verdict for the rest of her life
22 because she can't grow a leg back.

23 And you're going to hear testimony in this case that, for
24 2,437 [verbatim] days that she has lived with this case, she
25 has been injured. She has suffered tremendously. And you're

1 going to hear that she can't afford a prosthetic. You
2 probably had an opportunity to open her coming and going in a
3 wheelchair. That is how she comes and goes.

4 And you're going to hear all that evidence.

5 Well, before that, let me show you how clear it is what
6 happened on June 26, 2015, and when Walmart knew about it.
7 These are Walmart cameras, and you'll have the opportunity to
8 see these in more detail. But at 11:30, Ms. Jones enters the
9 Walmart. And you'll see her come this way and walk through
10 the doors.

11 At 11:31, in this video, you'll see her. There's
12 Ms. Jones, entering the Walmart, walking normally. At 11:31,
13 you'll see her enter the produce area. She'll come around
14 with her cart.

15 (Video plays.)

16 You'll notice that, by the door, there's an associate --
17 a Walmart associate to greet her, checking people out. Here
18 comes Ms. Jones coming into the produce area. There's the
19 greeter right by the produce area. And Ms. Jones turns right
20 into that produce area, past the watermelons.

21 At 11:31:46, you'll see Ms. Jones come around, and you'll
22 see her shop for some produce, and you'll get just barely a
23 glimpse of her. This will become important later, because
24 we'll learn about whether Walmart has cameras and what they're
25 able to show us if they want to.

1 There's Ms. Jones shopping for her produce.

2 And you'll see Ms. Jones here. When it gets to 46, here
3 she comes, leaving the produce area and entering what we call
4 the grocery action alley; that's what Walmart calls it.
5 You'll see her walk down. And when it gets to 11:32:37 when
6 Ms. Jones gets down here, you'll see her look down. And
7 she'll testify the evidence will show through her testimony
8 that she looked down because she heard a "tick tick" sound,
9 kind of like something was caught on her shoe.

10 (Video plays.)

11 You can see her look down. She pulls her foot up and
12 looks down.

13 Ms. Jones, at that point, stops and talks with an
14 acquaintance. You'll see her there and you'll see other shots
15 of that. There's a couple there that she knows at the
16 Walmart, and so she stops at that point and talks to them.

17 There's another shot of it. There's the two individuals
18 and Ms. Jones. And you'll notice the yellow. That will give
19 you a good idea where -- where you are.

20 And then watch Ms. Jones. She takes her flip-flop off,
21 and her foot's bloody. She notices there's a nail on the
22 bottom of her flip-flop that has punctured her foot that she
23 had picked up in that aisle. She takes it out of her
24 flip-flop. She wraps it up, puts her flip-flop back on. You
25 see the bloody foot. 11:34:11.

1 Ms. Jones had come that day to buy some bleach. That's
2 why she's gone to the laundry area, the evidence will show.
3 And you'll see that Ms. Jones eventually gets her bleach. At
4 11:37:20, she enters the register area. You'll notice she's
5 kind of favoring the left leg. She'll go over to the register
6 area and check out.

7 At 11:39:42, see Ms. Jones paid. She leaves the register
8 area. And she'll testify that her foot was giving her some
9 more pain, and so she stops here at the register area and
10 looks at it again. She realizes that perhaps it was a little
11 more punctured than she thought.

12 So what did Ms. Jones do? This is a picture which will
13 become important later. This shows you the point of sales
14 system, and this will show you Ms. Jones, as she pays for her
15 bleach. Because what you'll learn is that Walmart denies that
16 Ms. Jones was even a patron at the store. And you'll see her
17 put her five-dollar bill in. That's how good their camera is;
18 you can actually see what it says on it when she puts it in.
19 And leaves.

20 So after Ms. Jones leaves the register area, what does
21 she do? She enters customer service to tell them what had
22 happened, see if they have any first aid.

23 See her at 11:40:59, she'll come down here and she'll
24 enter the customer service area. You can see her now, she's
25 just coming into the frame. She's moving, you'll notice, a

1 little slower as she went into the store.

2 Another Walmart associate. And she rounds the bend and
3 enters customer service.

4 So what happens at customer service? Well, here's what
5 happens in customer service. Ms. Jones tells Ayesha Cooke,
6 who you'll hear from, a Walmart customer service
7 representative, that she stepped on a nail. And Ms. Cooke --
8 this is a customer incident report. Ms. Jones filled out the
9 top, and Ms. Cooke filled in the information:

10 African-American female, white tank top, green shorts and
11 flip-flops. On the laundry department aisle.

12 Now, notice that Ms. Jones wrote that it happened on the
13 main aisle of the grocery. That where she first noticed it;
14 remember the "tick tick" before it punctured her. And if
15 you've ever stepped on a nail, you probably had some
16 experience with that. But they were in the laundry department
17 aisle, so they knew where it happened -- whereabouts it
18 happened.

19 And then Ms. Cooke will testify, the evidence will show,
20 she put the information into the computer to go to the people
21 up in corporate, in charge. Right? And how long did that
22 take? An hour. Ms. Jones didn't get out of the customer
23 service until 12:35:52. And while she was in customer
24 service, you'll see her leave. Walmart asked for the nail, if
25 they could have the nail. Ms. Jones, intelligently said no,

1 and you'll see why that was an intelligent decision as we go
2 through the course of this trial.

3 And they never offered to call her an ambulance, medical
4 attention, or anything like that. And so Ms. Jones left. And
5 you'll see her walk out. Again, favoring that left leg.

6 So Walmart knew. Ms. Cooke then filled out a video
7 request form, which goes up to the folks in asset protection
8 at Walmart. And what that does is it triggers Walmart to go
9 ahead and pull all the video of that customer in the store.
10 And you will see that Ms. Cooke wrote "punctured by a nail" as
11 the type of accident. Ms. Cooke is going to testify that she
12 actually saw the nail, by the way, and she thinks she took a
13 picture of it, but she doesn't know what happened to the
14 picture.

15 And those videos were pulled. You have seen some of
16 these videos were pulled. And that was completed by Jenny
17 Wright, who you're also going to hear from, on 6/29 of '15, so
18 just three days later. Okay?

19 And Ms. Wright came up with a timeline of what she saw,
20 and she saw what we all just saw; that Ms. Jones checked her
21 left leg at 11:34:10; that she paid for her bleach; that she
22 went into customer service; that she talked to individuals in
23 customer service, filled out an accident report, and then she
24 left.

25 On 6/29/15, the asset protection manager of Walmart

1 chronicaled those series of events just the same way that you
2 and I just saw them. Okay?

3 So what did Ms. Jones do? She went to the hospital
4 immediately. 2:02 is when she's finally seen by a doctor.
5 See 1404. That's military time. And she reported to them
6 what happened: Stepped on a rusty nail with right foot prior
7 to arrival, bleeding controlled, and states she needs a
8 tetanus shot.

9 Immediately went for medical attention to get a tetanus
10 shot. Makes sense; right? Step on a rusty nail, you get cut
11 by something rusty, you go get a tetanus shot. She did that
12 immediately. Left -- again, left customer service at 12:35.
13 She was being seen by a doctor at 2:02 that same afternoon
14 over at McLeod.

15 And she actually reported to them that she was walking in
16 Walmart, whenever she stepped -- it says "stepping", it should
17 be "stepped" -- on a rusty nail with her right foot. Patient
18 has a puncture wound to the planar surface of the right foot
19 and bleeding controlled prior to arrival. Wearing flip-flops.

20 When you tell the truth, it's easy. Right? This is what
21 happened. It was seen on video. Walmart has reported it.
22 The doctor reported it.

23 And so what happened as a result of that? As a result of
24 the injury -- and the evidence will show and you'll have the
25 opportunity to see these in more detail -- once that infection

1 developed, Ms. Jones develops some complications. And, again,
2 you'll see these in more detail. But, initially, they had to
3 take off a couple of her toes as a result of the infection.
4 That happened 8/4/2015. And that left foot, by the way, they
5 had opened her up on 7/15 of 2015, just about two weeks after
6 this with the infection, to try to clean the infection out and
7 only take one toe, and the doctor will tell you why that's
8 important, why we start with the most conservative to try to
9 get rid of the infection. And they couldn't get rid of the
10 infection.

11 And then, after they had taken that and they had taken
12 more toes and that didn't work, by February, Ms. Jones was
13 having a right above-the-knee amputation by February of 2016.

14 I show you all that to say the timeline is very
15 straightforward. It's a very straightforward case.

16 So after all that and learning all that, Walmart, of
17 course, did the right thing; right? Wrong. Here's what
18 happened. Walmart continued to deny the undeniable, delay the
19 inevitable, and defend the indefensible. So Ms. Jones was
20 forced to file a lawsuit, and she did it on May 22nd of 2017,
21 more than a year after she lost her leg, trying to be
22 reasonable.

23 Walmart delayed the inevitable by filing notice of
24 removal, trying to take the case to federal court. That got
25 kicked back. And so we had to file an amended complaint. Our

1 amended complaint, we finally got back into this court so
2 y'all could hear it on January 16th of 2018. So this current
3 case's amended complaint has been pending now for coming up on
4 four years.

5 And, at the very beginning of this amended complaint, we
6 put the same synopsis that we did at the beginning of the
7 other complaint. And what does it say about that? On June
8 26, 2015, April Jones was a patron of Walmart Store No. 630 in
9 Florence, South Carolina. Ms. Jones passed through an area
10 where there were several pallets nearby in which she suddenly
11 felt a sharp pain in her foot. Ms. Jones inspected her foot
12 and observed that a rusty nail had pierced through her shoe
13 was and lodged into her foot. Ms. Jones visited the hospital
14 and subsequently had to have a hole cut in her foot to treat
15 the wound, which led to multiple surgical amputations,
16 eventually resulting in losing her right leg up to just above
17 her knee. That's what we just saw. We all just watched it
18 again.

19 So what did Walmart do? As to paragraph one, "Defendants
20 admit the allegations in paragraph 1 only to the extent they
21 allege that the plaintiff was present in the subject store in
22 Florence County, South Carolina, on June 26, 2015.

23 Defendants -- Mr. Ringer and Walmart -- deny all the remaining
24 allegations contained in paragraph 1." So they continue to
25 deny the undeniable, that we all just saw on video, and they

1 had an opportunity to see on video three days after it
2 happened.

3 So let's go through all the things they denied in number
4 one. In green is what they agreed to. Okay? They agree that
5 it happened on June 26, 2015, in Florence, South Carolina.
6 Okay. That's about as far as we got.

7 They deny that Ms. Jones visited the hospital. They deny
8 that Ms. Jones was a patron; they just say that she was
9 present. And you're going to learn, when the judge charges
10 you on the law, some of the importance of that, because a
11 shopkeeper has a duty to patrons to inspect their premises to
12 make sure that they're safe, and if they're not, to remedy it,
13 and they have a responsibility not to create a danger.

14 So Ms. Jones wins this case if you find that Walmart
15 brought the nail into the store, okay, on a pallet or
16 otherwise, or if you find that the nail was simply on the
17 store and that a reasonable inspection would have discovered
18 it and that that did not happen and she stepped on the nail.
19 But, again, they're not even willing to admit she was a
20 patron, despite the fact they have video of her putting five
21 dollars into their machine.

22 Ms. Jones passed through an area where there were several
23 pallets nearby. Okay? They deny that. And you'll see
24 evidence of that as we go through this.

25 They deny that she suddenly felt the sharp pain in her

1 foot. Well, that's exactly what she told Ayesha Cooke.
2 That's exactly what the video shows. She was bleeding. How
3 could it not have been a pain in her foot?

4 They deny that Ms. Jones inspected her foot despite the
5 fact that we have it on video -- their video that they had
6 given to us.

7 They deny that Ms. Jones observed a rusty nail that had
8 pierced through her shoe and was lodged into her foot, despite
9 the fact you'll hear from Ayesha Cooke, their own employee,
10 that that's what Ms. Jones said. She observed the nail. And
11 you'll have the opportunity to see the nail as well.

12 They deny that Ms. Jones subsequently had to have a hole
13 cut in her foot to treat the wound. You'll hear from the
14 doctor that that's what happened, and you'll hear from
15 Ms. Jones that that's what happened. You'll see the
16 information that's led to multiple surgical amputations,
17 eventually resulting in her losing her right leg.

18 So here's all the evidence again. There's her putting
19 five dollars into, as the evidence will show. There are
20 pallets in the area that she was passing through, grocery
21 action alley. Here she is where she felt the sharp pain in
22 her foot and inspected her foot and observed the rusty nail in
23 her foot.

24 Here's a picture of the nail, and you'll have the
25 opportunity to see it throughout the course of the trial. And

1 here's what Ms. Simmons said under oath: "She told me that
2 something went through her foot, a nail. She showed me the
3 nail. She would not give me the nail itself." Yet they still
4 deny that a nail went through her foot.

5 Ms. Cooke also says she believes she took a picture of it
6 but she can't be sure where that went.

7 They deny she went to the hospital. Again, you have seen
8 the record. And on and on.

9 And so after Walmart had the opportunity and their
10 counsel and defendants had the opportunity to review all the
11 videos, they didn't persist in the strike. I mean, they
12 didn't continue to deny what was so obvious and true.

13 December of 2018, here's what they say. This is the official
14 court document, Defendant's Amended and Supplemental Responses
15 to Plaintiff's Interrogatories, which Walmart and Mr. Ringer
16 verified, and you'll see that.

17 Defendant Walmart further responds that, "Wooden pallets
18 are occasionally used in seasonal displays, but upon
19 information and belief, no such displays were in place in the
20 subject store on the day of the incident." But we just saw
21 pallets in the picture on the day of the incident on the
22 video.

23 But it gets better because the evidence is going to show
24 that, when Mr. Ringer comes and testifies and we take him
25 through the videos, Mr. Ringer, the store manager, the

1 defendant in the case, who responded to these interrogatories,
2 we talked to him about wooden pallets, and we said, "Is there
3 an instance where a wooden pallet, instead of being unloaded,
4 gets onto the sales floor?" And he said, "Yes." And you'll
5 learn that that's against Walmart policy.

6 And we asked him, "What type of items go on the sales
7 floor on a wooden pallet? Just seasonal or --"

8 And what he says? "All over the map."

9 So we follow-up: "All right. It could be food. It
10 could be stereo equipment. Just whatever came on a wooden
11 pallet?"

12 "Yeah, whatever came on a wooden pallet goes on the sales
13 floor."

14 Common sense. We have all been to Walmart probably. But
15 we verified with Mr. Ringer just in case.

16 And we asked him if pallets would remain in the store. I
17 know you say you don't generally like that and you'll learn
18 that's against their policy, but if it were to remain in the
19 store, is that like, if you get a ton of watermelons sitting
20 on a pallet, is that probably the --

21 And his answer is: "I mean, if a watermelon bin comes in
22 and it's on the pallet, yes, it's going to stay on the
23 pallet."

24 Question: "Because it weighs a flipping (ph) ton?"

25 Answer: "Yes. It's made to ship that way."

1 "So if I understand you correctly with respect to wooden
2 pallets, what you said is you can't guarantee they never ended
3 up staying on the sales floor, but that's not what Walmart
4 wants to happen. That's not what you want to happen. If that
5 happens and you spot it or somebody else spots it, you say fix
6 it, get those wood pallets off the sales floor?"

7 Answer: "Yes."

8 And then we're going to look at a video of Mr. Ringer,
9 and Mr. Ringer is going to have the opportunity to see the
10 video of the store that day. And during his deposition under
11 oath, just like his court testimony will be, the evidence will
12 show he will point out to you at least one pallet. Okay?

13 And, again, remember, no such displays were on the floor
14 on the day of the incident. It's just not true. It's just
15 not true.

16 So, surely, after we pointed that out -- and the evidence
17 will show Walmart did the right thing; right? No.

18 Defendant's Amended Responses to Plaintiff's First
19 Request to Admit -- these are from 2018, I believe -- and
20 these are just basic -- it's where you just send them requests
21 to admit to try to narrow the issues. And we said, "Admit
22 that they're responsible for maintenance and/or premises care
23 and have a duty to maintain a safe environment for an
24 invitee," which is what a patron is, it's an invitee under the
25 law, as you'll learn.

"Denied as stated."

"Admit that the placement of unmaintained wooden pallets with loose rusty nails in the areas where invitees passing through is or should be foreseeable, presented a dangerous condition for those shopping on the premises."

"Denied as stated."

And upon information and belief, no unmaintained wooden pallets or loose rusty nails were present in the subject areas of the store at the time of the alleged incident.

And it goes on.

"Admit that Defendant knew or should have known unmaintained wooden pallets with loose, rusty nails were being placed in areas where invitees passing through was or should have been foreseeable at Walmart No. 630."

"Denied."

"Admit that the Defendants have a duty to make regular inspections of the Walmart premises."

"Denied as stated."

"Walmart owes its customers a duty to exercise ordinary care to keep the premises reasonably safe. Admit that Defendant failed to make regular inspections of the Walmart 630."

"Denied."

"Admit that Defendant knew or should have known unmaintained property could present dangerous conditions and

1 hazards to invitees."

2 "Denied as stated."

3 "Admit that, on June 16th, 2015, Defendant failed to
4 warn."

5 "Denied."

6 Okay? So these, again, were verified by a representative
7 of Walmart, okay, as under-oath statements, and by Mr. Ringer,
8 who is the defendant in the case, and you'll have those. You
9 can see those verifications.

10 And remember what he told us at his deposition when we
11 actually went through it. He told us that the policy of
12 Walmart is not to have wooden pallets on the sales floor, and
13 yet, when we had asked him prior to admit that, on June 26,
14 2015, Defendant did not follow internal safety policies and
15 procedures that became an incident, which (inaudible), and he
16 denied it. But he pointed out the pallet (inaudible).

17 Here's the policy. Remove pallets from the sales floor,
18 along with shrink wrap, cardboard, and other debris in a
19 timely manner, and their redaction (inaudible) that Walmart
20 did. They didn't want us to see the rest.

21 But remember what Mr. Ringer said. You can see that wood
22 (inaudible). That's wood. That's a pallet. And you'll hear
23 him testify to that, okay, during the course of this case.

24 And you'll see some other photographs, because surely,
25 after all of this, Walmart would have made sure that they

1 would not continue to leave unmaintained wooden pallets on the
2 sales floor and endanger people; right? No.

3 You'll see these photographs, and you'll hear expert
4 testimony that these pallets do not comply with ANSI
5 standards. You'll see missing nails. And those are the same
6 color, the Walmart sales floor on the videos. You'll see all
7 kinds of nails used to repair pallets that are on the sales
8 floor.

9 You'll see a photograph of a pallet with a nail sticking
10 out on the Walmart sales floor, and you'll see it in larger.
11 You'll notice the "Rollback" sign up there, just in case you
12 have any doubt.

13 MR. BLAIN: Your Honor --

14 MR. WILLEY: And you'll have the opportunity --

15 MR. BLAIN: I've got to make an objection.

16 THE COURT: Hold on. I'm going to ask, Mr. Foreman, if
17 you could retire to the jury room. Once again, do not discuss
18 the case.

19 (The jury exited the courtroom at 2:56 p.m.)

20 THE COURT: Yes, ma'am. Yes, sir.

21 MR. BLAIN: Thank you, Your Honor. I would make an
22 objection based on the defendant's motion in limine that we
23 argued and was decided by the Court on Friday of last week.
24 These photos are clearly photos that we discussed and was
25 excluded by Your Honor based on the improper inspection

1 conducted in 2019, and they're being used in opening --
2 opening statements. They're irrelevant. They are
3 prejudicial. They are not probative of any material issue in
4 the case, and they are simply not evidence and they have been
5 excluded as evidence by Your Honor a few days ago.

6 MS. BOYD: And, further, too --

7 MR. WILLEY: We can't have multiple people arguing
8 objections. Whoever is doing opening gets to argue.

9 With respect to these photos, they were not excluded.
10 Your Honor excluded photos that were part of the kite display
11 because Your Honor found that perhaps there was some
12 destructive testing done to it. And so you excluded the photo
13 with respect to the destructive pallet under the kite display.
14 That is not these photographs. These photographs are not
15 excluded by Your Honor, so...

16 THE COURT: Well, that was the reason why I excluded that
17 particular photograph.

18 When were these pictures taken?

19 MR. WILLEY: These pictures are taken subsequent, and
20 they are relevant in this case for two reasons.

21 THE COURT: When?

22 MR. WILLEY: These photos -- 2019. These photographs
23 were taken subsequent in the Walmart at issue, and you found
24 that you did not perhaps love the Rule 34 inspection, the way
25 it went, and the Court might rule on that, but that you were

1 not going to exclude the rest of the photographs.

2 And with respect to these, punitive damages are an issue
3 in this case, and this is on going conduct of the same type
4 that is alleged. They did not move to bifurcate punitive
5 damages; it's too late to do so now. And so this is what the
6 evidence is going to show with respect to that.

7 Still, Walmart, four years later, unmaintained pallets,
8 nails sticking out, in their store. And so it's directly
9 relevant to the issues in the case.

10 THE COURT: What do y'all have to say about that?

11 MR. BLAIN: Yes, Your Honor. These are photos -- at
12 least one of these photos was taken in 2019 during the
13 inspection that we all watched video of on Friday when
14 Mr. Jefferies and his companions were in the store without
15 prior notification, two defendant's counsel, doing an
16 inspection with gloves, with a hammer. You can clear as day
17 take a look at the center photo and see that that pallet has
18 been tampered with on some level, and I think that is at least
19 the circumstantial evidence that Your Honor cited on Friday as
20 the basis to exclude that evidence.

21 And I think, if I recall your ruling correctly, Your
22 Honor, what we decided is that, before these photos would be
23 even considered to be submitted into evidence, we'd be allowed
24 to make that objection. And now these photos are being
25 offered in opening statements.

1 THE COURT: In addition to that, the opening statement is
2 more like a closing argument. I mean, opening statements were
3 not designed to do what you're doing. And you're not giving
4 them the opportunity to object to pictures that are
5 objectionable.

6 MR. WILLEY: No, he has the opportunity. He just
7 objected.

8 THE COURT: Well, you have already shown it to them.

9 MR. WILLEY: Right, because I have a reasonable belief
10 they're coming into evidence. They were not excluded as part
11 of the motion in limine, and they're directly related to
12 punitive damages, which they could have moved to bifurcate and
13 they did not do so. And so that is what opening statement is.
14 It's an overview of what counsel believes the evidence will
15 show, and I believe that the evidence will show this.

16 And we have already had a preliminary ruling indicating
17 that the evidence will. And I believe, if you review the
18 transcript, your exact quote was, "I'm excluding the one
19 photo, and that's sanction enough -- and that sanction," I
20 think is actually what you said; I don't think you used the
21 word "enough." And so that's what we have.

22 And, in any event, they're not in evidence at this point.
23 It's an opening statement, so...

24 THE COURT: I'm going to sustain the objection with
25 regard to showing of any pictures of any pallets during the

1 opening, and we'll address the admissibility of each one of
2 them on the merits when it comes up.

3 MR. BLAIN: Your Honor, I would also ask for a curative
4 instruction to explain to the jury that these are photos from
5 2019 that have simply no connection to Ms. Jones's incident in
6 2015 beyond pure speculation from the plaintiff's counsel.

7 THE COURT: We -- I'm going to -- that's my ruling. I'm
8 not going to give a curative charge at this time. I am going
9 to -- and of course when and if they're introduced into
10 evidence, you can point out -- if they get into evidence, you
11 can point out when they were taken.

12 MR. BLAIN: Thank you, Your Honor.

13 THE COURT: So there will be no more pictures in opening
14 statement with regard to pictures that might or might not be
15 admissible.

16 MR. WILLEY: May I have a moment just to make sure I
17 don't have anymore in my presentation?

18 THE COURT: Yes.

19 (Pause in the proceedings.)

20 MR. WILLEY: Okay. I'm ready.

21 MR. BLAIN: Your Honor, if I may go ahead and ask for a
22 clarification on one item. I believe your ruling just
23 excluded photos of pallets. There's another photo that just
24 popped up of the nail that we have not seen, that has not been
25 produced, on a white background. I just saw it flash on your

1 screen.

2 MR. WILLEY: It's already been shown in opening, and you
3 didn't object.

4 MR. BLAIN: Well, I'm making an objection now. I just
5 saw it on your presentation.

6 MR. WILLEY: It's the nail at issue.

7 MR. BLAIN: Well, I don't know that. It hasn't been
8 produced.

9 MR. WILLEY: Well, you can object at the appropriate
10 time.

11 THE COURT: Well, it might be a little bit too late,
12 then, if it's inadmissible for you should have shown it to the
13 jury. If you're going to be showing pictures, let's go
14 through them.

15 MR. WILLEY: That's the -- it's the nail. I mean, do you
16 want me to show the actual nail instead?

17 MR. BLAIN: I mean, you're using photographs that are
18 enlarged and that haven't been produced. I just don't -- we
19 haven't seen that. That's the basis of my objection.

20 We have all agreed during the motions in limine not to --

21 MR. WILLEY: Okay. I'll take the photo of the nail out.
22 That's just the craziest thing I have ever heard, but that's
23 fine. Okay.

24 THE COURT: We're ready for the jury.

25 (The jury entered the courtroom at 3:06 p.m.)

1 THE COURT: You may proceed.

2 MR. WILLEY: Thank you, Your Honor.

3 So, as I was saying, the evidence will show that, to this
4 day, Walmart still uses wooden pallets on the sales floor
5 despite knowing that they can cause injury. And you'll
6 remember in the videos that there are two displays of
7 watermelons, the exact thing that Mr. Ringer indicated that
8 they come in on pallets and sit on pallets.

9 And, of course, you'll remember what Ms. Jones bought,
10 bleach. And you'll notice Clorox uses a pallet in its
11 display. And you'll remember that --

12 MS. BOYD: Objection, Your Honor. Objection, Your Honor.

13 THE COURT: Why don't you approach the bench.

14 BENCH CONFERENCE

15 (A bench conference was held off the record and outside of
16 the hearing of the jury and others.)

17 (Open court resumes as follows:)

18 MR. WILLEY: So, as I was saying, you'll remember that
19 Walmart denied they even used pallets on the sales floor. We
20 know that's not true.

21 And so you have heard the judge say that the plaintiff
22 has the burden of proving its case, and that's correct. So
23 what does Ms. Jones have to prove in order to recover for her
24 damages in this case? She does not actually have to prove
25 that the nail came from a pallet. Okay? You're going to hear

1 a lot of testimony about did the nail -- and, by the way,
2 here's the nail. Did the nail -- and you'll be able to see it
3 at the appropriate time, okay? Did the nail come from a
4 pallet? Where did the nail come from?

5 But the truth is, all she has to prove is that she
6 stepped on it in the Walmart, which we know is true, and that
7 a reasonable inspection would have detected it; that if a
8 Walmart associate had been walking around, looking for
9 dangerous things and had seen it, they would have been able to
10 see it; or that Walmart knew it was there, and that's the part
11 about bringing it in with a pallet, creating; or that Walmart
12 should have known it was there; or that Walmart created the
13 danger by bringing it into the store in some way other than a
14 pallet. So if there's some other way that Walmart could have
15 brought the nail into the store itself, then they would be
16 liable. And that's or, or, or. One of those things.

17 And she has to then, after that, which I would
18 demonstrate, it's fairly straightforward, she has to prove to
19 you her harms and losses. And what the judge will tell you is
20 that you are the finders of damages in this case. And so
21 you'll have some tools. You'll hear testimony about the
22 things that she could do before that she can't do now. Okay?
23 The things that you would expect that a person who has a leg
24 amputation that can't afford a prosthesis is unable to do.
25 Okay? You'll hear about those things.

1 You'll hear about the things that she would like to be
2 able to do now that she can't. You'll hear about her medical
3 bills. Okay? And you'll have those. You'll have the
4 opportunity to actually have those -- the actual medical bills
5 that go to the doctors that did a good job for her because,
6 let's be clear, as the evidence will show, this is the type of
7 infection that, if it's not stopped, it can lead to death.
8 And she didn't die. She's very thankful for that. She's
9 thankful for the treatment she got. So you'll see those
10 medical bills.

11 And you'll hear from people about those things. And
12 that's would you have to judge in this case. What are the
13 harms and losses? And we call that inside the box. Okay?
14 Everything else is outside the box.

15 So, you know, you can't consider sympathy for one party
16 or another or anything like that. You have to look right at
17 the damages and say, okay, this is what Ms. Jones went
18 through, this is all that we can do, this is what we'll award
19 money for. That's all we can do in our system. Believe me, I
20 wish we could put her right back, but we can't.

21 And so, at the end of this, we're going to ask for a
22 money verdict, and what the evidence is going to show in this
23 case is that Ms. Jones's harms and losses are significant.
24 Okay? You're going to see that. And so we're going to ask
25 you for a significant verdict. This is an important case for

1 Ms. Jones.

2 Now, this is the important part because this is --
3 everything you see, all the evidence in the case, everything I
4 have shown you, the evidence, is going to be in the case.
5 Here's how you are to judge it. The judge will instruct you
6 at the end it's simply more likely than not. And Ms. Jones's
7 burden is not beyond a reasonable doubt like in a criminal
8 case where somebody might go to jail and lose their freedom.
9 That's the highest burden. Okay?

10 This is simply a preponderance of the evidence, and so is
11 it more likely than not. And if you think of a set of scales,
12 a market scales -- you remember Lady Justice with the
13 blindfold and the sword and a set of scales? If -- at this
14 point, those scales are even when we started this case, and if
15 you find throughout the course of this case that those scales
16 tip ever so slightly in Ms. Jones's favor -- a feather, a
17 grain of sand, a grain of salt -- ever so slightly, then she
18 will have prevailed. She doesn't have to prove her case
19 beyond a reasonable doubt, simply a preponderance of the
20 evidence. And so that's important, as you watch the evidence
21 throughout the case, to understand that.

22 In just a moment, I'm going to sit down, and one of the
23 Walmart attorneys is going to stand up, and I don't know what
24 they're going to say. Okay? I have no idea because, as you
25 saw, they denied everything, the undeniable.

1 But I want you to remember this: I want you to remember
2 what I told you the evidence is going to show, what you saw
3 with your own eyes, and I want you to remember what they say,
4 because, at the close of the trial, I'll come back before you,
5 and I'm going to write this down, some of what they said, and
6 we'll have the opportunity to talk about that.

7 So just remember: This case, at the end of the day, for
8 us -- this case, we have a duty -- I have a duty to represent
9 Ms. Jones, you have a duty to serve as jurors. This is her
10 one opportunity in court. She doesn't get to come back.

11 And so thank you for your attention, thank you your time,
12 thank you for your service. I really mean that because, as
13 you'll see, Ms. Jones is a nice lady, the evidence will show
14 that. And she deserves it. So, thank you.

15 THE COURT: Defense is recognized, Ms. Boyd.

16 MS. BOYD: Thank you. Can my co-counsel again help me
17 turn the podium, Your Honor?

18 THE COURT: Yes.

19 OPENING STATEMENT ON BEHALF OF THE DEFENDANTS

20 MS. BOYD: Good afternoon, everyone. I don't a fancy
21 PowerPoint display. I'm just going to talk to you a little
22 bit about this case. First, I want to thank you-all for your
23 service this afternoon and for the next week. We do
24 appreciate your time, and we know what a burden these can be
25 sometimes, so we do appreciate you.

1 It's Walmart's and Mr. Ringer's position that this case
2 is about misplaced blame. Unfortunately, Ms. Jones had a long
3 history of health issues that resulted in the amputation of
4 her leg, and now, she's placing that blame on Mr. Ringer and
5 Walmart, and they did nothing wrong.

6 It's natural for us to want to place the blame on someone
7 to have done something, but, often, no one did anything wrong.
8 And that's why the law in South Carolina recognizes that you
9 must establish that the defendant caused the harm, that it
10 injured the party, and that that injury resulted in their
11 damages.

12 Here, Ms. Jones is asking for you to hold Mr. Ringer
13 personally responsible because he's an employee of Walmart,
14 and she's also asking you to hold Walmart responsible. But
15 the evidence will show that neither one of them did anything
16 wrong. And while Walmart always wants its customers to have a
17 satisfactory shopping experience, sometimes things happen in
18 the store, and they're sympathetic to those things, but it
19 doesn't mean that Walmart or any of its employees did anything
20 wrong.

21 At the time of this incident, Mr. Ringer was the store
22 manager of the Beltline Drive store. He isn't anymore, but
23 he's still employed with Walmart. He's a hard-working man
24 with a family. He's been with Walmart for 28 years.

25 And I want you guys to remember that this lawsuit is

1 suing Mr. Ringer personally, individually, not Walmart store
2 manager but Tim Ringer individually. So any judgment that you
3 render is personally against Mr. Ringer. And the evidence
4 will show that that's solely because he was the store manager
5 on the day that Ms. Jones came into Walmart on Beltline Drive.

6 I also want to point out to you that Ms. Jones had a long
7 history of issues when she came into the store that day. She
8 drove herself into Walmart on June 26, 2015, but at the time,
9 she was a diabetic, she had a kidney removed, and her own
10 testimony will tell you that she wasn't doing anything to
11 treat her diabetic condition. She's going to tell you that
12 her diabetes were under control, but her medical records will
13 show a different story, and, unfortunately, that just wasn't
14 the case.

15 Ms. Jones also was wearing flip-flops on the day of the
16 incident, and you will hear testimony that diabetics should
17 really protect their feet to prevent this type of incident,
18 injury to their feet.

19 Ms. Jones walks into the store. She's going to testify
20 that she was in that store less than three minutes before she
21 notices a clicking sound. In the video that you saw, it's
22 consistent with that testimony that she's going to proffer to
23 you. She heard a clicking noise, and so she looked at her
24 foot. She never felt anything. And she's going to testify,
25 she didn't feel pain. She just heard this noise and it

1 prompted her to stop. And she did. Then she looked at her
2 foot and she kept walking. And she continued to the bleach
3 aisle where she's going to take that nail out of her shoe and
4 place it on a shelf. And she's going to continue on to
5 purchase the bleach -- to get the bleach that she's there to
6 purchase. She walks on down the aisle.

7 And she's going to testify that she notices some blood in
8 her flip-flop, so she turns around, and she gets the nail off
9 of the shelf. And she goes to self-checkout, she uses a
10 coupon, and she does indeed pay for her bleach, and then she
11 goes to customer service.

12 And as the video will show, as her counsel showed you so
13 beautifully, that she passed several Walmart associates, and
14 she never said anything to anyone. She continued until she
15 got to customer service. She purchased her items first. She
16 took her time. She was in no immediate hurry.

17 Ms. Jones is also going to testify that, when she looked
18 at her foot, she saw a hole the size of a dime; that the wound
19 in her foot was larger than the nail itself. And she's also
20 going to tell you that that wound was in the middle, towards
21 the back of her foot, and that's going to be important because
22 you're going to hear other testimony about the wounds in her
23 foot.

24 Ms. Jones is also going to tell you that, three days
25 after this incident, her toes got infected, and so she went in

1 to get treatment, and ultimately, her toe was amputated. But
2 Ms. Jones is going to tell you, her own admission, that she
3 was she told it was because of her diabetes. And medical
4 professionals are going to testify. Walmart's expert is going
5 to also testify that that initial amputation was because of
6 her pre-existing diabetic condition.

7 Ms. Jones is asking you to hold Walmart and Mr. Ringer
8 responsible because she was simply in the store when she
9 noticed the nail in her shoe. And now, some of you, you may
10 think, if it happens in the store, the store is responsible,
11 but that's just not the law. And you-all have been sworn in
12 and taken an oath to follow and apply the law of South
13 Carolina.

14 So what is the law? The law says that, for a store to be
15 responsible, it must have created the condition or it knew
16 about the condition before the injury occurred or there is
17 evidence that the condition had been there for such a long
18 time that it reasonably should have been located and taken
19 care of.

20 Ms. Jones is going to tell you a lot of things, but she
21 is not going to show you any evidence that any of those three
22 things occurred in this case.

23 In addition to showing that Walmart's responsible for the
24 actual nail in her shoe, she must also show that Walmart's
25 responsible for her medical condition and damages that

1 occurred because of that nail injury. But she won't be able
2 to do that because her own testimony, her diabetic condition
3 is what causes that initial amputation that starts a cascade
4 of the additional amputations. It is not because of Walmart
5 but because of her pre-existing conditions.

6 But as you listen to the evidence, I want you guys to
7 remember a couple of things. First, when you think about
8 Walmart, it is a corporation, but the law makes no difference
9 between Mr. Ringer and Walmart, and you are to view Walmart
10 just as if you're viewing Mr. Ringer, and you must be fair and
11 apply the law and not just consider penalizing Walmart because
12 it's a corporation. It is just like a person (indiscernible).
13 Okay? So I need you guys to remember that.

14 The other thing is, there are a lot of surveillance
15 videos, and Plaintiff's counsel showed you but a bit of it.
16 And I want you to pay special attention to it, because it is
17 an unbiased witness. It recorded everything that happened in
18 the store that was captured. Ms. Jones walking, entering,
19 walking through the store, and exiting the store. The whole
20 time she was there in, there's camera footage. So I want you
21 guys to pay attention to the camera footage instead of what
22 the witnesses may say.

23 Lastly, I agree with Plaintiff's counsel, actually, in
24 something he said. He said this case is simple. And I agree.
25 Because you guys have to ask yourself three questions: Is

1 there evidence that Mr. Ringer or Walmart put a nail on the
2 floor? I say to you there won't be evidence of that.

3 The second question is: Is there evidence that
4 Mr. Ringer or Walmart knew the nail was on the floor before
5 Ms. Jones stepped on it or found it in her shoe? And I
6 believe there is no evidence of that. And I believe that the
7 evidence will show that as well to you.

8 And, third, you have to ask: Is there evidence that the
9 nail was on the floor for such a long time that Mr. Ringer or
10 Walmart should have found it before Ms. Jones stepped on it or
11 found it in her shoe?

12 So what's the evidence going to show? First, it's going
13 to show that she walked in and was only in the store three
14 minutes before hearing the "tick tick" noise. She didn't have
15 an opportunity to walk all over this 150,000 square foot
16 store. Her movements were limited to the grocery section of
17 this area. So the area of this incident is limited to the
18 grocery section of the store.

19 So I ask you: Let's not look at evidence of 150,000
20 square feet of what is happening in the Walmart. We have to
21 narrow it down to the grocery area where she walked.

22 Second, the evidence is going to show you that Ms. Jones
23 simply found a nail in her shoe. At no point do you see her
24 stepping on anything. And I'm not saying she did not step on
25 the nail. I am saying the evidence shows her discovering the

1 nail in her shoe. So she doesn't know the origin of the nail.
2 She doesn't know where it came from. She simply heard a
3 noise. She didn't feel a pain that would indicate it just
4 immediately happened. She heard a noise, and she stopped to
5 investigate a noise.

6 Ms. Jones doesn't know the source of the nail. She's
7 going to tell you she assumed it came from a pallet in the
8 store, but she's also going to tell you that she doesn't know
9 that. You're going to hear a lot of information about
10 pallets, but that's just smoke and mirrors, because Ms. Jones
11 is also going to tell you that, in the three minutes that she
12 walked in the store, that she walked down this main action
13 alley, she didn't see anything on the floor. She didn't see a
14 nail. She didn't see any pallet damage. She didn't see
15 anything. She's just making an assumption about where the
16 nail came from.

17 Plaintiff is making a big argument that Walmart is
18 denying the undeniable. Walmart and Mr. Ringer admit there
19 are wooden pallets in the store, and we're going to show you
20 that the evidence will show that having a palletized display
21 in Walmart does not violate Walmart policy; that there's a
22 misapplication of the policy that they showed you; that they
23 don't apply to palletized displays, which is what Mr. Ringer
24 will testify about. He will tell you the difference between a
25 pallet that merchandise is stocked from and brought into the

1 store and a palletized display that is set up by the vendor to
2 be displayed on a pallet. Those are different items.

3 But Walmart doesn't deny that there are pallets in the
4 store. The denial is that there were pallets in the area
5 where she walked. Just because there are pallets in a 150,000
6 square foot store doesn't put Walmart on notice that a nail
7 may fall out of a pallet as alleged by the plaintiff.

8 But I also want to talk to you about this nail. It's a
9 very (inaudible). Plaintiff counsel showed it for you
10 (inaudible). It's a small nail. Plaintiff's own expert is
11 going to testify and tell you that it's a roofing nail; that
12 it is not a nail that is commonly in a pallet. And Walmart's
13 expert is going to tell you the same thing. And he is an
14 expert on manufacturing and repairing pallets. And he's going
15 to tell you, you don't use a roofing nail to manufacture or
16 repair a pallet. You just don't. And this is not the nail
17 that you would find in a pallet.

18 And there's no evidence -- Ms. Jones won't produce any
19 evidence that anyone has identified the pallet with this
20 roofing nail in it. There just isn't any evidence of it.

21 And so, to us, it's misdirection. And Plaintiffs have
22 said, "We don't have to prove where it came from," well, you
23 have to show that we created it. They have to show that
24 Walmart and Mr. Ringer introduced it in some fashion. But you
25 have to do that by more than speculation and saying where it

1 could have come from, instead trying to say where it's likely
2 to come from or where it came from.

3 And the fact that a wooden pallet was in the store is not
4 evidence that it is the source of the nail. Period. But it's
5 definitely not evidence of the source of a wooden -- of a
6 roofing nail. I apologize. Of a roofing nail. I'm getting
7 all tongue-tied; I apologize.

8 Walmart's employees will also testify here today or this
9 week that they conducted an inspection of the store, and they
10 didn't see anything on the floor. They did not have any prior
11 notice of this nail prior to Ms. Jones coming into customer
12 service.

13 Ayesha Cooke will also testify. She's worked in that
14 store for years. She's never had a customer come and complain
15 of stepping on a nail. Mr. Ringer will tell you the same
16 thing. This isn't something that commonly happens in Walmart
17 or the Beltline Drive store.

18 Ms. Jones will tell you she had no idea whether Walmart
19 knew about the nail before she stepped on it. She also will
20 tell you she had no idea how long it had been on the floor
21 before she stepped on it. With that in mind, she can't tell
22 you that Walmart or Mr. Ringer created it or that they knew
23 about it or how long it had been there to establish that it
24 had been there long enough that they should have found it.

25 Therefore, we ask that you find that there is no

1 liability in this case; that Walmart and Mr. Ringer just
2 aren't responsible.

3 But I told you at the beginning, it's twofold. You have
4 to look at liability but also the causation of her damages.
5 And I want to talk to you a little bit about Ms. Jones's
6 damages. Ms. Jones is going to testify that she suffered this
7 large wound in her foot after -- immediately after stepping on
8 the nail that day in Walmart. In fact, she said it was as
9 large as a dime.

10 As store associate/manager, Kevin Lane, he's going to
11 testify because he saw her foot. He gave her first aid that
12 day, and he's going to say, "Yes, there was a wound on her
13 foot." And she said the wound was on the middle of her foot
14 towards the back, and he agreed that that's where her foot was
15 bleeding. But he also is going to testify that he saw other
16 sores on her foot.

17 And Ms. Jones's doctors are going to testify about her
18 infections, and they're going to tell you that her toe was
19 infected because of a wound that was at the base of her toe,
20 not near the bottom of her foot.

21 And so we're here to say that the evidence suggests that
22 Ms. Jones's injuries or her amputation were the result of her
23 diabetic condition and not by stepping on the nail in Walmart.
24 And Ms. Jones herself will tell you, would she have been
25 dealing with that infected toe three days after she stepped on

1 the nail at Walmart? Her doctor told her it was because of
2 her diabetic condition that toe was infected.

3 And she will also tell you that the wound itself was not
4 infected, the wound that she stepped on, the nail. That was a
5 different area. She will tell you that.

6 And so we believe that the evidence is going to show that
7 there's no causation between her stepping on that roofing nail
8 in Walmart and her subsequent amputations and that those
9 subsequent amputations were because of the initial toe
10 amputation and not her stepping on the nail in Walmart.

11 This is an unfortunate incident, and Walmart is so super
12 sympathetic to Ms. Jones in all that she's gone through, and
13 they don't deny that she's endured the amputation of her toe
14 and her foot and her leg, but it's just not their fault.
15 There's no evidence that Walmart or Tim Ringer caused to have
16 (inaudible) that injured Ms. Jones on June 26, 2015. So I ask
17 you to please return a verdict in Walmart and Mr. Ringer's
18 favor. Thank you so much.

19 THE COURT: Thank you, Ms. Boyd.

20 Mr. Willey, you may call your first witness.

21 MR. WILLEY: Thank you, Your Honor. May it please the
22 Court.

23 THE COURT: Yes, sir.

24 MR. WILLEY: Plaintiff April Jones would call her
25 treating physician, Dr. Keith Player.

1 THE COURT: Dr. Player, if you could come forward,
2 please, sir. I'm going to ask you if you could approach the
3 bailiff there and place your left hand on the Bible and raise
4 your right hand as the clerk administers the oath.

5 KEITH PLAYER, M.D.,
6 the witness, after having been duly sworn, was examined and
7 testified to as follows:

8 THE CLERK: Please be seated.

9 THE COURT: Watch your step; that's a slanted area there.
10 And have a seat in the witness chair. I'm going to ask if you
11 could pull up real close to that microphone. Speak loudly,
12 clearly, and slowly in order that we can hear everything that
13 you have to say.

14 THE WITNESS: Take the mask off?

15 THE COURT: If you feel comfortable taking your mask off,
16 we'd appreciate you doing that, and it might make it easier
17 for everybody to hear. Thank you.

18 And let's start with your full name, please, sir.

19 THE WITNESS: Keith Charles Player.

20 THE COURT: Thank you.

21 MR. WILLEY: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. WILLEY:

24 Q Dr. Player, we appreciate you coming over this afternoon.
25 I know you and I are familiar, but I'm sure the jury might not

1 be familiar with you. Can you just color in the picture about
2 yourself a little bit, a little bit of your background, where
3 you're from, that sort of thing?

4 **A** I was born in Florence. I graduated from West Florence
5 High School. I got a bachelor's of science in politics at
6 Princeton University. Went to medical school in Charleston at
7 the Medical University of South Carolina. Did my surgery
8 residency in Spartanburg. Finished there in 1999 and then
9 have been working here at McLeod since.

10 **Q** Hometown Florence guy off to Princeton and then MUSC.
11 Glad we got you back.

12 **A** I'm happy to be back.

13 **Q** Tell us what kind of work you do here.

14 **A** I'm a general surgeon.

15 **Q** Color in that picture a little bit. What is general
16 surgery? Is that everything like what you do with Ms. Jones,
17 or is it --

18 **A** General surgery is a -- it's -- you can think of it as
19 the family doctor of surgery where we handle pretty much
20 everything from -- from head to toe other than brains, bones,
21 hearts and lungs, for the most part.

22 **Q** And is that folks who are suffering from disease or folks
23 who have been accidents or folks who have -- what sort of
24 things would cause somebody to end up in your operating room?

25 **A** Both trauma -- it falls under general surgery.

1 Appendicitis, gallbladder disease, or cancer, thyroid disease,
2 breast disease, things like that.

3 Q How long have you been practicing as a general surgeon?

4 A I finished residency in 1999 and started practice
5 thereafter.

6 Q So that's -- do the math -- 20 years -- 20-something
7 years.

8 A Yes.

9 Q Any idea how many surgeries you have done in that period
10 of time?

11 A No.

12 Q Suffice it to say probably thousands?

13 A Yes, yes.

14 Q Tell us a little, in terms of your education. Any
15 specializations, certifications, that sort of that thing that
16 sets you apart from a lot of other physicians?

17 A Well, I'm board-certified in general surgery, which our
18 core of work encompasses all the areas that we just described.
19 I'm not fellowship-trained, but in -- we have a very
20 broad-based knowledge of varieties of disease processes.

21 Q So all types of surgeries for 20 years, too numerous to
22 count?

23 A Yes.

24 Q Amputations?

25 A Yes.

1 Q More than just on Ms. Jones?

2 A Yes.

3 Q What sort of conditions or injuries would have led to
4 those, just in general?

5 A Peripheral vascular disease, trauma, diabetes,
6 hypertension. Those are the primary causes of need for
7 amputation.

8 Q Understood.

9 MR. WILLEY: Your Honor, at this time, we would offer
10 Dr. Keith Player not only as, obviously, a percipient witness
11 who treated Ms. Jones but as an expert in the field of general
12 surgery.

13 THE COURT: Any query with regard to his qualifications?

14 MR. BLAIN: No objection.

15 THE COURT: Mr. Foreman, ladies and gentlemen of the
16 jury, normally a person cannot give opinion testimony.
17 Normally when a person testifies, they must testify as to what
18 they either saw, heard, or sensed by smell; however, there's
19 an exception when someone is qualified because of education or
20 experience. They're permitted to give their opinions in
21 certain areas if the Court qualifies them that way.

22 This witness will be qualified in the area of general
23 surgery to give opinion testimony in that area; however, that
24 does not mean that you must accept the opinion, but it is
25 evidence for you to use in any way you see fit and give the

1 weight and credibility you believe is appropriate. I'll
2 charge you in greater detail with regard to how to evaluate
3 expert testimony at the conclusion of the case.

4 MR. WILLEY: Thank you, Your Honor.

5 BY MR. WILLEY:

6 Q Dr. Player, so you treated April Jones back in 2015; is
7 that correct?

8 A I did, yes.

9 Q How long after the incident at Walmart on June 26 of 2015
10 was it before you first saw Ms. Jones?

11 A Three days, I believe.

12 Q So that would be the 29th?

13 A The 29th, yes.

14 Q All right. Can you describe for us and help us
15 understand the terminology and all that as you do it. You
16 know, I notice this is workday stuff for you, but it's new
17 stuff for a lot of us.

18 Describe for us your encounter with Ms. Jones, the
19 treatment you gave, the diagnoses you made, and let's just
20 kind of walk us through that, through each of those multiple
21 instances.

22 A Okay. So I believe she was admitted to the nephrology
23 service when she presented to the emergency department with
24 worsening foot infection. Her kidney doctors placed her in
25 the hospital, started her on antibiotics. She underwent

1 X-rays of her foot and what's called a bone scan, which looks
2 for infection in the bones.

3 She had a wound on the bottom of her foot, and her
4 nephrologist felt that that needed to be evaluated to
5 determine if we needed to operate on it to remove any
6 unhealthy tissue.

7 **Q** And that's how you became involved because you would make
8 that evaluation?

9 **A** Yes.

10 **Q** Okay. And her nephrologist referred Ms. Jones, then, to
11 you?

12 **A** Yes.

13 **Q** And you examined her. And tell us about what you found.

14 **A** So she had a wound on the bottom of her foot. I believe
15 it was at the base of her second toe. The foot has a variety
16 of bones, and I believe the wound was at the junction of the
17 toe bone and the -- what's called the metatarsal, which is in
18 the middle part of your foot. But it was on the foot -- on
19 the bottom part of her foot, what we call the plantar surface
20 of her foot.

21 The plantar surface is the bottom of the foot. The
22 dorsal surface is on the top of the foot. I guess I'll talk
23 about that later, but she had a wound on her foot which had
24 clearly unhealthy tissue, infected tissue, which was in need
25 of what's called debridement.

1 If you get tissue that is dying, infected, you must
2 remove it because the antibiotics can't treat tissue that
3 doesn't have blood flow to it or that has died.

4 So we took her to the operating room and did what's
5 called a debridement, which is where you cut back to what
6 appears to be healthy bleeding, live tissue to allow, then,
7 the antibiotics to take care of the rest of the infection in
8 her foot.

9 **Q** And did you make any conclusions about -- at that time
10 about what had caused that infection in Ms. Jones's toe or
11 anything about her history?

12 **A** The history that was given was that she had stepped on a
13 nail in Walmart three days previously.

14 **Q** Okay. And was the infection that you saw consistent with
15 what you expected Ms. Jones from --

16 **A** Yes, I did.

17 **Q** -- stepping on a nail?

18 **A** Yes.

19 **Q** Yes, it was? Okay.

20 So that was -- that would have been, what, June 29th?

21 **A** Yes.

22 **Q** Okay. What was your next encounter with Ms. Jones after
23 that debridement and the antibiotics?

24 **A** I believe she stayed in the hospital for a couple more
25 days and then was discharged by the nephrologist on

1 antibiotics at home. I believe I saw her back maybe a week or
2 so later in the office. She had a worsening foot infection,
3 and we admitted her directly from the office to start I.V.
4 antibiotics and re-evaluate her foot.

5 **Q** Let me ask you this about the infection. If you step on
6 a nail, say it's a rusty nail, dirty nail, something along
7 those lines, is it necessarily sure that the infection has to
8 start right where the nail went in the foot or could the blood
9 carry it elsewhere and present it elsewhere in the foot or
10 could either happen? Tell us a little bit about that.

11 **A** Generally speaking, the infection would begin where the
12 puncture is. We have bacteria on our feet or all over the
13 body. And a traumatic injury generally would introduce
14 bacteria at the site of the wound. It can then spread through
15 the adjacent tissue. But, generally speaking, the bacteria
16 would have been introduced at the puncture site.

17 **Q** When you saw Ms. Jones three days after the incident at
18 Walmart and you looked at her injuries, was that consistent
19 with the story that she told you, that she had stepped on a
20 nail?

21 **A** Yes.

22 **Q** So there wasn't anything about it where you would have
23 said, "Oh, my goodness, that couldn't be how that happened.
24 This clearly looks like" --

25 **A** No, it clearly fit her story, yes.

1 Q Okay. So you admit her -- you get her on I.V.
2 antibiotics, did you say?

3 A Yes.

4 Q Okay. What happens next?

5 A The second hospitalization?

6 Q I guess it would be the July hospitalization.

7 A Okay. So she came back into the hospital. We started
8 her back on antibiotics. We began some wound care to try to
9 clean her foot up to help debride any further non-healthy
10 tissue with just gauze and packing and things like that.

11 We then got more X-rays. I believe we had an MRI of the
12 foot to look for bone infection, but, at that point, she had
13 developed gangrene of the second toe, which clearly was not
14 going to survive and was in need of removal.

15 Q I want to show you a few graphics here, and I want to
16 show them to opposing counsel first.

17 MR. WILLEY: July, August, and February of 2016. Any
18 objection?

19 MS. BOYD: No objection.

20 MR. WILLEY: Thank you.

21 Your Honor, if it would be possible for Dr. Player to
22 leave the witness stand and come down so he can point this out
23 to the jury.

24 THE COURT: Certainly. Yes, sir.

25 BY MR. WILLEY:

1 Q Dr. Player, before you start talking about this, I want
2 to ask you first off if you have seen this before and if you
3 recognize what it is.

4 A I have seen this diagram.

5 Q And it looks the same as the first time you saw it
6 probably during your deposition?

7 A It does.

8 Q All right. Is it a true and accurate representation of
9 the medical care that was given to Ms. Jones?

10 A Yes.

11 Q Okay. If you would help the jury understand and kind of
12 walk us through this process of what we're seeing here, what
13 was done, and why.

14 A So, when she initially came to the hospital, she had a
15 wound on the bottom of her foot which had tissue which was
16 sort of that greenish-blackish appearing tissue. That is
17 basically gangrenous tissue, which is dying.

18 Her initial operation was to cut back to pinker,
19 healthier looking stuff. And an initial operation was an
20 attempt to try to save as much of her foot as possible. When
21 she went home, she began wound care at home, took antibiotics
22 at home. And when she returned to the office, she had
23 developed worsening appearance of this, and then the toe
24 itself actually had become black and leathery and gangrenous.

25 So the other images did not appear to demonstrate other

1 substantial infection further back towards her ankle. So we
2 took her to the operating room to remove this toe in an
3 attempt to salvage the rest of her foot. Removing a single
4 toe still allows people to ambulate properly, particularly
5 toes other than the big toe.

6 And so removal of the toe involves an incision. This is
7 the bone I was talking about, the metatarsal which goes back
8 towards the middle part of her foot. Toes have three bones,
9 you know, little bones like your fingers, and they go out to
10 the end. So you have three little bones here and then a
11 longer bone here. You separate the little bone to the toe
12 from the bigger bone going down this way and remove this.

13 And then, because of the infection, you can't put
14 stitches in. You have to leave it open so that you don't trap
15 infection in there and let anything else drain out.

16 So, at the conclusion of the case, the wound in the foot,
17 roughly like that, with an open wound that was impacted with
18 gauze and treated with antibiotics to try to treat infection.

19 **Q** And that was all on July -- July 15 of 2015?

20 **A** Yes.

21 **Q** Okay. At that time, other than the wounds you've
22 identified, did you see any other wounds on Ms. Jones's foot
23 when you examined her?

24 **A** I don't recall seeing other wounds, no.

25 **Q** And everything you're talking about was taking place on

1 the bottom of her foot; correct?

2 **A** Correct. The only difference on the picture is that this
3 is on the top of the foot and that's basically, if you, in
4 your mind, flip it around, this is my foot. On these
5 pictures, this is where the incision is. It's basically just
6 the bottom of your foot. It's right here on the bottom part
7 of your foot. Kind of the ball of your foot of the second
8 toe.

9 **Q** And when you examined Ms. Jones, you indicated that you
10 saw that wound up by the base of the toe?

11 **A** Yes.

12 **Q** And you indicated that was consistent with stepping on a
13 nail?

14 **A** Yes.

15 **Q** And it wasn't giant, that size, was it, at that time?

16 **A** The initial wound was not big, no.

17 **Q** Not dime sized?

18 **A** No.

19 **Q** And all this was up kind of toward the front of the foot,
20 not by the back of the foot or the top or the side?

21 **A** Well, it was at the ball of the foot.

22 **Q** Ball of the foot, okay.

23 **A** That would be -- you know, when you bear weight on your
24 foot, you land on your heel and on the ball of your feet. So,
25 generally speaking, that would be a common location for a

1 foreign body because that's where you're stepping down on the
2 floor.

3 Q And as that infection progressed, of course those wounds
4 would get larger, the initial wounds?

5 A Yeah, yeah.

6 Q All right. So that was in July. And you were hopeful
7 this would resolve the issue.

8 A Yes.

9 Q But did it?

10 A It did not, no.

11 Q It did not.

12 I want to show you another enlargement. And, again, if
13 you could just confirm that this also accurately represents
14 the care that Ms. Jones received. Well, does it accurately
15 represent it?

16 A Yes.

17 Q All right. Walk us through what happened in August of
18 2015.

19 A So her wound, apparently, did not heal properly. She
20 developed worsening, infected tissue involving her big toe and
21 her third toe, which then led to removal of those remaining
22 toes, leaving her fourth -- her pinky toe and her fourth toe.

23 Q What effect would that have? I know you indicated
24 losing, essentially, that second toe doesn't really affect
25 your ability to walk. Losing all but the piggy that got roast

1 beef and the piggy that got none, losing all but those two,
2 what effect did that have?

3 **A** You'd still be able to walk. If the wound healed
4 properly, you can actually get a small prothesis for your
5 shoe. The concerns you get when you remove your toes like
6 that is your shoes are not going to fit properly, so you'll
7 get rubbing and develop sores and wounds and things like that.

8 So once the wound heals, you can put something in your
9 shoe to stabilize your foot so that it doesn't rub back and
10 forth.

11 The key, from an ambulation standpoint, is keeping your
12 heel, because that's what we put most of our weight on when
13 we're walking. So you can -- you can lose your toes and still
14 ambulate because you still have basically a post to plant on
15 when you're walking.

16 The toes help you with balance, and the way the foot's --
17 you know, the bones and those things are designed, they bear
18 weight across the bottom of the foot in a way that, if you
19 remove a toe or two, you begin to change your weight bearing,
20 which does put you at higher risk for (indiscernible) and
21 things like that. But, by and large, you're still able to
22 walk because you have got your heel to put your weight on.

23 **Q** And these amputations, if I understand correctly,
24 essentially, you have to do this so that the gangrenous tissue
25 does not progress? I mean, could you die from this?

1 **A** Yes. When you have gangrenous tissue, the antibiotics
2 can't get to tissue that's not getting any blood to it. So
3 when the tissue dies, it's a nice place for bacteria to grow
4 and they can't get reached by the antibiotics. And so you
5 must remove the dead tissue and hope that the remaining live
6 tissue can be treated adequately with antibiotics.

7 **Q** And, obviously, you don't want to remove more than you
8 have to and that's why kind of do it in steps.

9 **A** Right, correct.

10 **Q** So, in August of 2015, so operation is done, and now,
11 Ms. Jones is down to just the two remaining smallest toes.
12 But that still does not solve the problem. The infection
13 continues?

14 **A** I believe so, yes.

15 **Q** And then you end up, in February of 2016, with a third
16 and final amputation.

17 **A** Yes.

18 **Q** Tell us a little bit -- and does this board accurately
19 represent that amputation?

20 **A** It does. Now, I did not do this operation; one of my
21 partners did. And so the reason for the amputation at this
22 level was a progression of her gangrene and non-healing wound
23 of her foot, which spread above the level of her ankle. She
24 had evaluations of her circulation, which did show vascular
25 disease.

1 And when you make decisions about where to amputate a
2 foot, we try -- we like to go below the knee because it's
3 easier to wear a prosthesis that way. Keeping your knee as the
4 knee joint allows you stability and balance better than if you
5 lose your knee.

6 But the blood supply to the foot, you have got one
7 primary big blood vessel that runs down your thigh. It gets
8 to the knee and it spreads out into three smaller blood
9 vessels. And then they go down to the ankle.

10 When they split into the three, they had a higher risk of
11 having vascular disease that decreases the flow further
12 downstream. You can think of blood vessels basically like
13 pipes, and if you start getting a bunch of crud in your pipes,
14 the bigger the pipe, the more fluid you can get through it.
15 When the pipes get smaller, you have a harder time getting the
16 fluid where it needs to go.

17 So an amputation below the knee, if you have got
18 reasonable blood flow, has a better functional outcome because
19 you save your knee from a stability standpoint, but it does
20 have a higher risk of not healing as well because the pipes
21 are bigger in the thigh than they are in the calf.

22 So I believe, in this situation, the decision was made
23 that her best shot at healing was to remove the leg above the
24 knee.

25 Q And it turned out now, we are five years later and no

1 more amputations, that that worked?

2 **A** Yes.

3 **Q** I have heard these medical terms -- you heard one from
4 opposing counsel earlier: Cascade. Heard another one:
5 Precipitating event. And my understanding is there's a
6 precipitating event that causes a cascade. Is this the
7 cascade of amputations?

8 **A** Yes.

9 **Q** What's the precipitating event that caused Ms. Jones's
10 amputations?

11 **A** In my opinion, the stepping on the nail fits her story as
12 a reasonable event that led to the beginning of the problems.

13 **Q** Was she, to your knowledge, having any -- any need of
14 amputation prior to stepping on this nail?

15 **A** Not to my knowledge, no.

16 **Q** Nobody in your practice, as far as you knew, had plans to
17 amputate any part of Ms. Jones's body until after she stepped
18 on this nail?

19 **A** Correct.

20 **Q** You heard here in opening statements, and you heard
21 counsel talk about Ms. Jones having health conditions, having
22 diabetes, having hypertension, poor vascular flow. Is that
23 something that you have seen before in other people?

24 **A** Yes, yes.

25 **Q** Does every single person with diabetes or hypertension or

1 poor vascular flow have an amputation?

2 **A** No.

3 **Q** Could you go your whole life with all the diabetes, poor
4 vascular flow, hypertension, and never have anything
5 amputated?

6 **A** Yes.

7 **Q** But if there were a precipitating event, then --

8 **A** Yes, yes.

9 **Q** You and I talked earlier, and we talked about an analogy
10 about a wine glass and a beer mug. And I was hoping -- I
11 found that really helped me, and I was hoping you could share
12 that with the jury.

13 **A** The analogy was basically if you have a fine glass --
14 thin wine glass that's sitting on a shelf next to a large beer
15 mug and they're both sitting on the shelf, the expectation
16 would be that, as long as they're sitting on the shelf,
17 neither one of them are going to break. If the glasses were
18 knocked from the shelf and hit the floor, they're probably
19 both going to have some trauma to it. The beer mug may get
20 chipped; the wine glass probably will shatter, depending on
21 the thickness of the glasses. But as long as there had been
22 no knocking the glass off the shelf, they would sit there fine
23 and not have a problem.

24 **Q** And that's the same thing we have here. Fragile woman.
25 If she gets knocked off the shelf, she might be hurt way more

1 than me.

2 **A** Correct.

3 **Q** But if she doesn't get knocked off the shelf, she could
4 sit there forever and be fine.

5 **A** That is -- that is a possibility, yes.

6 **Q** I appreciate you explaining those, if you want to have a
7 seat back in the jury box.

8 MR. WILLEY: Your Honor, we would like to move these
9 three panels into evidence as Plaintiff's Exhibit No. 1, if it
10 please the Court.

11 THE COURT: Any objection?

12 MR. BLAIN: No objection, Your Honor.

13 THE COURT: They're into evidence.

14 (Plaintiff's Exhibit No. 1, three panels, were marked for
15 identification and received into evidence.)

16 MR. WILLEY: Thank you.

17 BY MR. WILLEY:

18 **Q** Dr. Player, just a few more questions so I just want to
19 make sure that I understand this well. You heard earlier
20 during opening statements and argument from defense counsel
21 that Ms. Jones's diabetes was the precipitating cause of this
22 cascade. What you just told the Court -- told these jurors is
23 that, no, diabetes was a factor, but what caused this, the
24 precipitating event, was stepping on the nail; is that
25 correct?

1 **A** Yes, I would agree with that.

2 **Q** And you told us earlier that Ms. Jones's injuries, what
3 you saw on her foot, was consistent with stepping on a nail?

4 **A** Yes.

5 **Q** And you've expressed a lot of opinions here today. Have
6 you expressed all of those opinions to a reasonable degree of
7 medical certainty?

8 **A** Yes.

9 **Q** And it's your opinion, to a reasonable degree of medical
10 certainty, that it's more likely than not that Ms. Jones's
11 cascade of events was precipitated by stepping on a nail?

12 **A** I do.

13 **Q** And beyond that, not only is it more likely than not,
14 aren't you certain that stepping on the nail is what caused
15 this?

16 **A** Based on the history, that's the most likely source, yes.

17 **Q** I might have some follow-up questions for you, Doctor.
18 In the meantime, opposing counsel is going to ask a few
19 things; if you would please answer their questions as well.
20 Thank you.

21 THE COURT: Mr. Blain, cross-examination.

22 CROSS-EXAMINATION

23 BY MR. BLAIN:

24 **Q** Good afternoon, Dr. Player. I'm going to set Plaintiff's
25 exhibits over to the side so I can have a conversation with

1 you about Ms. Jones.

2 Dr. Player, the information -- your opinions, they're
3 only as reliable as the information that's given to you; is
4 that right?

5 **A** Yes.

6 **Q** The information that's given to you by Ms. Jones;
7 correct?

8 **A** Yes, mm-hmm.

9 **Q** The information that you have based on her prior medical
10 history?

11 **A** Correct, yes.

12 **Q** You rely on what Ms. Jones says, you rely on your prior
13 medical history to reach your opinions; is that fair?

14 **A** Yes.

15 **Q** You first saw Ms. Jones three days after her incident at
16 Walmart; correct?

17 **A** Yes.

18 **Q** And she told you that she stepped on a nail; correct?

19 **A** Yes.

20 **Q** You didn't see a nail in her foot when she showed up at
21 your office, did you?

22 **A** She was in the hospital, but no, I did not -- there was
23 not a foreign body in her foot, no.

24 **Q** Okay. But when you saw Ms. Jones, she brought something
25 for you to look at, didn't she?

1 **A** As I recall, yes.

2 **Q** And you looked at what she gave you. You looked at the
3 object that she brought to you in your office, and you wrote
4 down in your medical records that she gave you a screw and not
5 a nail?

6 **A** Yes.

7 **Q** Now, Dr. Player, do you have a garage or a workspace
8 where you can do some handy work around the house?

9 **A** I don't.

10 **Q** Okay. Okay. That's fair.

11 Let me ask a more simpler, straightforward question. Are
12 you familiar with what a screw looks like?

13 **A** Yes, I am.

14 **Q** And a screw has threads on them; isn't that correct?

15 **A** Correct, yes.

16 **Q** And a screw could be a flathead or a Phillips head screw?

17 **A** Correct.

18 **Q** So it would have some sort of indentation in the top to
19 twist the screw; is that fair?

20 **A** Yes.

21 **Q** So Ms. Jones came to your office, pulled something out of
22 her pocketbook, showed it to you, and you said, "Huh, that's a
23 screw." Is that correct? Is that right?

24 **A** Yes.

25 **Q** Dr. Player, I'd like to talk with you a little bit about

Ms. Jones's pre-existing health conditions. Most of the patients you see have some level of pre-existing disease; is that fair?

A That is very fair, yes.

Q So Ms. Jones is not unique in that regard?

A No, she's not.

Q Okay. We'll go through a list here. Ms. Jones had diabetes; correct?

A Yes.

Q She had non-insulin-dependent diabetes mellitus type 2?

A Yes.

Q Do you know what, if anything, Ms. Jones was doing to control that diabetes?

A I don't. I had not seen her before the admission to the hospital.

Q Okay. So you don't know if she was doing anything at all prior to her admission to the hospital to attempt to control her diabetes?

A I don't.

Q Does -- diabetes affects a diabetic's lower extremities; is that fair?

A Yes.

Q And one of the ways it affects a diabetic's lower extremity is something called neuropathy; is that fair?

A Yes.

1 Q Would you tell the ladies and gentlemen of the jury what
2 is neuropathy?

3 A So one of the problems that diabetes causes when your
4 sugars are high over a period of time, your nerves begin to
5 not work properly. You begin to lose the ability to sense
6 pain, you can lose the ability to sense temperature, you can
7 develop numbness and tingling and burning sensations in your
8 foot. You have a harder time sensing potentially when
9 something is wrong.

10 Q So some diabetes mellitus -- type 2 diabetes mellitus,
11 for an extended period of time, is likely to have neuropathy
12 in their lower extremities; is that fair?

13 A It is certainly possible. I don't know about likely, but
14 it certainly is a risk factor, yes.

15 Q Understood. And someone with diabetic neuropathy is
16 going to have limited sensation in their lower extremities
17 where they won't feel pain, they won't feel -- they won't feel
18 the same way as someone without that neuropathy in their feet
19 would; is that fair?

20 A Correct, yes.

21 Q That neuropathy is going to reduce sensation, in your
22 opinion?

23 A Yes.

24 Q It's going to reduce sensation on the soles of your feet?

25 A Yes.

1 Q Is it possible that you could -- that someone with
2 diabetic neuropathy could step on something and not realize
3 it?

4 A It is.

5 Q Is it possible that someone with diabetic neuropathy
6 could have something in their shoe, a pellet, for a long
7 period of time and just simply not know it because they can't
8 feel it?

9 A Yes.

10 Q If Ms. Jones has uncontrolled diabetes, diabetic
11 neuropathy, and she stepped on a screw, is it possible that it
12 was in her shoe for a significant period of time before she
13 realized it?

14 A That is a possibility.

15 Q Talking about diabetes, I want to hear from you, Doctor,
16 about how that affects a patient's risk of lower extremity
17 complications. You see a lot of patients with diabetes in
18 your practice; correct?

19 A I do.

20 Q And do those patients with diabetes, are they at
21 increased risk of lower extremity complications up to and
22 including foot amputations?

23 A They are.

24 Q Up to and including above-knee amputations?

25 A They are.

1 Q When you treated Ms. Jones, you also came to the
2 realization that she had vascular disease; isn't that right?

3 A Yes.

4 Q And vascular disease, I heard you explain to the jury a
5 moment ago, if you think about the blood vessels in the legs
6 as a series of pipes, is it fair to say that vascular disease
7 is when those pipes are filled with crud to the extent they
8 become occluded or blocked off?

9 A Yes.

10 Q So Ms. Jones's pipes in her legs were filled crud; is
11 that fair?

12 A Yes, that's -- that's fair, yes.

13 Q I know it's a little inartful, and I apologize.

14 A Yeah.

15 Q I apologize for that.

16 Ms. Jones's diagnosis of peripheral vascular disease,
17 does that indicate that the vessels in her legs are not
18 allowing sufficient blood to go from the heart to her lower
19 extremities?

20 A Yes.

21 Q And so the blood is not making it from her heart, down
22 her thigh, into her calf, and into her feet; is that right?

23 A It's not making it at the same rate that it would had she
24 not had the blockages, yes.

25 Q She's got limited perfusion; is that fair?

1 **A** Yes.

2 **Q** Perfusion meaning she's not getting the blood that should
3 get down to her feet. She's not getting that blood down there
4 because of her peripheral vascular disease?

5 **A** Correct.

6 **Q** And if a person's lower extremities are not getting the
7 blood that they need, they're not getting the oxygen and blood
8 they need in those lower extremities, does that increase the
9 risk of a patient to have a foot amputation?

10 **A** It does.

11 **Q** Does it increase the risk to have a toe amputation?

12 **A** It does.

13 **Q** Does it increase the risk of having an above-knee
14 amputation?

15 **A** It does.

16 **Q** Ms. Jones has pulmonary hypertension; is that correct?

17 **A** That, I don't know. I'd have to look at my notes.

18 **Q** Okay. I'm looking at -- well, I'll leave that for a
19 moment.

20 What is pulmonary hypertension, Dr. Player?

21 **A** Pulmonary hypertension is an elevation in the pressure
22 within the vessels that go from the right side of the heart to
23 the lungs. So if you think of the heart as having -- it's got
24 four chambers. It's basically two sides. The right side
25 pumps the blood to the lungs where you exchange your oxygen

1 and your carbon dioxide, and it diverts back to the left side
2 of the heart, which then pumps and pushes the blood to the
3 rest of the body.

4 So pulmonary hypertension would be an increase in blood
5 pressures on the right side of the heart.

6 Q Okay. If a patient is dealing with that condition, is
7 that going to affect the way blood is able to flow from the
8 essential vascular system to your extremities?

9 A No.

10 Q Okay. I'll leave that point there. Thank you.

11 Ms. Jones had, in her prior medical history, a
12 nephrectomy procedure; is that correct?

13 A I believe so, yes.

14 Q Okay. And what is a nephrectomy?

15 A It's when you take a kidney out.

16 Q Okay. So Ms. Jones's right kidney had been removed at
17 some point in the past; correct?

18 A Yes.

19 Q And as a result or, you know, perhaps that procedure was
20 necessary because of the fact that she had end stage renal
21 disease; is that right?

22 A I'm not sure that's why she had the nephrectomy.

23 Q Okay. Okay. Are you aware that Ms. Jones had end stage
24 renal disease?

25 A Yes.

1 Q And if you could, Dr. Player, explain to the ladies and
2 gentlemen of the jury what end stage renal disease is.

3 A So it's basically permanent kidney failure. It's -- the
4 kidneys filter your blood, remove the toxins from the blood,
5 and then you pee it out, basically. Over time, a variety of
6 conditions can cause your kidneys not to function as well and
7 they get to the point where they no longer will filter the
8 toxins in the blood. And then it can even proceed to the
9 point where you no longer make urine. That, therefore,
10 requires you to go on dialysis to purify your blood, since
11 your kidneys are no longer doing it on its own.

12 Q Thank you, Dr. Player.

13 And you're aware that Ms. Jones had been ordered by her
14 doctors to go to dialysis; correct?

15 A Yes.

16 Q Do you know how often Ms. Jones was going to dialysis?

17 A I believe it's three days a week.

18 Q Okay. Do you know if she was making those appointments
19 regularly?

20 A That, I don't know.

21 Q Ms. Jones also had hypertension, high blood pressure;
22 correct?

23 A Yes.

24 Q And if you could, just explain for all of us, what is
25 hypertension?

1 **A** Basically, it's a higher level of pressure within the
2 arteries in your body. It -- you know, normal blood pressure
3 is 120 over 80, I believe is what most people consider normal
4 blood pressure. Hypertension is anything significantly higher
5 than that, either the top number or the bottom number.

6 **Q** And if someone has uncontrolled hypertension, would that
7 affect their risk of lower extremity complications?

8 **A** Indirectly, yes.

9 **Q** Okay. Could you explain what you mean by indirectly?

10 **A** Well, the hypertension itself would not affect the flow
11 to the feet, but it does cause you to have higher risk of
12 development of peripheral vascular disease.

13 **Q** Understood.

14 We talked a lot about Ms. Jones's health challenges, the
15 diseases that she had been diagnosed with, the condition that
16 she was -- that she should have been treating back when you
17 saw her in 2015.

18 Do those health challenges work together and become
19 multipliers to exacerbate or worsen a person's health, the
20 risk of poor healing?

21 **A** Yes.

22 **Q** So we talked about diabetes, vascular disease, the
23 nephrectomy in the past, her end stage renal disease, her
24 hypertension. All of these conditions -- some more than
25 others -- worked as multipliers to make for problematic wound

1 healing in her lower extremities; is that fair?

2 **A** Yes.

3 **Q** When you have this multiplier going on, in any patient --
4 in Ms. Jones, in any patient, does that increase the patient's
5 risk of limb loss?

6 **A** Yes.

7 **Q** Limb loss being amputation.

8 **A** Yes.

9 **Q** Okay. Now, you examined Ms. Jones just three days after
10 the incident at Walmart; is that right?

11 **A** Yes.

12 **Q** And you found that she had an ulceration at the plantar
13 aspect of the base -- at the base of her second toe; is that
14 fair?

15 **A** Yes.

16 **Q** And also at the second metatarsal; is that right?

17 **A** Yes.

18 **Q** And, Dr. Player, how does a foot heal? You know,
19 metatarsal, I have heard the word before but I can certainly
20 use your expert advice here. Could you point to me -- point
21 to the ladies and gentlemen of the jury where the metatarsal
22 would be on this toy foot?

23 **A** Right there. Mid to end of the foot. Kind of just
24 beyond your arch.

25 **Q** Okay.

1 **A** The metatarsal joint, what's called the proximal phalanx,
2 and that joint is the ball of your foot -- is the ball of your
3 toe. So it's the junction where I was describing would be
4 right along here. The metatarsal runs from about here to
5 here, joining the toes there.

6 **Q** Thank you, Dr. Player.

7 And on this foot, could you show us -- this seems a
8 little more common sense, but could you show us where the arch
9 of the foot would be?

10 **A** Right there.

11 **Q** The arch would be --

12 **A** Closer to the ankle.

13 **Q** Closer to the ankle than the metatarsal?

14 **A** The met -- the first portion of the metatarsal joins what
15 are called the tarsal bones, which are the bones that form the
16 arch. So it's part of the arch. It would be the archway. It
17 would be the downward of the arch, heading towards the end of
18 the foot.

19 **Q** When you examined Ms. Jones's foot three days after she
20 was in Walmart, you also noted dorsal tenderness; is that
21 right?

22 **A** Mm-hmm.

23 **Q** Where is dorsal tenderness?

24 **A** Dorsal is on the top of your foot.

25 **Q** Okay.

1 A So she had pain on the top of the foot.

2 Q Okay. You also noted pain with tenderness.

3 A Mm-hmm.

4 Q That's pretty straightforward. So she's had pain on the
5 metatarsal below the second toe, she's got pain on the top of
6 her foot, and she's got pain in the ankle when you examined
7 her three days afterwards; is that right?

8 A I believe so. I'd have to look at my notes, but yes.

9 Q So when you examined her foot just three days after she
10 was in Walmart, you noted that there was necrotic appearing
11 skin and subcutaneous tissue on the foot; is that right?

12 A Yes.

13 Q So just three days after she was in Walmart, she had
14 necrotic skin and subcutaneous tissue on her foot?

15 A Yes.

16 Q As a result of the condition of her foot, you decided to
17 do a surgical debridement, operative procedure; is that right?

18 A Yes.

19 Q And the preoperative notes, we describe the size of the
20 wound on her foot as 1.8 centimeters by 1.0 centimeters.

21 A I believe that's correct.

22 Q And that wound was an ulceration on the plantar aspect at
23 the base of the second toe. I'd like you to put a sticker
24 where that ulcer was on here. Any color would be just fine.

25 A Any color?

1 Q I'll represent to you, Doctor, these stickers are about 2
2 centimeters in diameter. So I will ask you, you say the wound
3 was 1.8 centimeters. Is that measuring the width of the
4 wound?

5 A Well, I would have measured in two dimensions, so width
6 and length, yes.

7 Q Okay.

8 A So it was, obviously, a slightly oval-shaped wound based
9 on the measurements.

10 Q Slightly oval-shaped wound; that is, if this sticker is
11 on her foot, if you observed a 1.8 centimeter wound and this
12 is 2 centimeters, is that about the -- roughly the same as the
13 size of the ulcer that you debride?

14 A If the sticker is 2 centimeters, yes.

15 Q Okay. Now, when you did the debridement, that's a
16 surgical process; correct?

17 A Yes.

18 Q You noted that there was pretty limited bleeding in
19 Ms. Jones's foot when you did the procedure; correct?

20 A I would have to look at my note, but I would assume so.

21 Q Okay. If the notes describe limited bleeding, would that
22 be connected to vascular disease or -- let me state it another
23 way. Could vascular disease cause limited bleeding during a
24 surgical procedure on someone's foot?

25 A Yes.

1 Q And bleeding is necessary for the healing process?

2 A Correct.

3 Q So if there's limited bleeding, does that suggest to you,
4 Doctor, that we may have a problem healing this wound because
5 we're not getting sufficient blood flow from the heart down
6 through the leg to the area that you just operated on?

7 A Yes.

8 Q In fact, after you did the procedure, you brought in a
9 vascular specialist; right?

10 A Yes.

11 Q And you brought in a vascular specialist to see what
12 could be done to get more blood down Ms. Jones's leg, to her
13 foot, to help that healing process?

14 A Correct.

15 Q And she needed more blood than she was already getting
16 because she had vascular disease in her leg; right?

17 A Yes.

18 Q And the vascular specialist did an exam called an
19 arteriogram; is that right?

20 A He -- she had -- I believe she had a CT scan which was an
21 arteriogram that demonstrated blockages, and then the vascular
22 surgeon did an arteriogram and attempted to improve the blood
23 flow at the same time.

24 Q Thank you.

25 So that CT scan, that arteriogram, that found blockages

1 that were preventing blood to get down into her foot, down
2 into her extremity; right?

3 A Correct.

4 Q Now, the screw, the nail, that didn't cause the blockages
5 in her foot, did it?

6 A No.

7 Q That preexisted the screw, the nail, whatever happened.
8 Those blockages preexisted that, that incident; right?

9 A Yes, sir.

10 Q Now, when you did the debridement, you were debriding an
11 ulcer; correct?

12 A An ulcer or a wound, yes.

13 Q Okay. Now, a wound of this size, an ulcer of this size,
14 that -- an ulcer that size, that's bigger than you would
15 expect from a puncture wound; correct?

16 A From a puncture wound itself, yes.

17 Q You testified earlier that, typically, the infection
18 process begins -- if infection sets in, begins where the wound
19 is. Is that your testimony?

20 A Yes, yes.

21 Q Okay. And when you saw Ms. Jones, she had -- her toe,
22 her second toe was infected; correct?

23 A The foot was infected, not so much the toe.

24 Q Now, the first surgical procedure that she had in July
25 was an amputation of the second toe, the second metatarsal;

1 correct?

2 **A** Well, that was the second surgical procedure. The
3 debridement was first, and then the toe amputation was second.

4 **Q** I apologize. After the debridement, the first amputation
5 was of the second toe and the second metatarsal?

6 **A** Yes.

7 **Q** Okay. And that would have been right around where you
8 placed this green dot on her foot?

9 **A** Right. So the second toe would be removed, and the bone
10 would be cut probably a little bit towards the middle part of
11 the foot, beyond the dot.

12 **Q** Now, when that surgical procedure took place in mid July
13 of 2015, a few weeks after you first saw -- a couple of weeks
14 after you first saw Ms. Jones, her second toe was mummified at
15 that point; isn't that right?

16 **A** I believe that's how I described it, yes.

17 **Q** I don't know if mummification of a second toe is a
18 medical term or if that's -- I'm just picturing watching, you
19 know, movies, I have probably wasted a few hours watching, but
20 what does mummification mean in medical terms?

21 **A** Basically the alive soft tissue -- so say this is the
22 toe. The alive soft tissue shrinks down and becomes hard,
23 leathery, and black. You can actually thump it in areas,
24 thump it. It's got no blood flow to it at all. So the entire
25 digit is completely gangrenous and dead.

1 So you can picture it as if you see a mummy, basically,
2 pictures of a mummy where, basically, you're left with a
3 little bit of dead tissue on top of a bone -- on top of bones.

4 Q So you described her second toe as mummified on July 15,
5 less than three weeks after you first saw her.

6 A Yes.

7 Q We talked a lot about Ms. Jones's pre-existing diseases:
8 Diabetes, peripheral vascular disease, hypertension, her end
9 stage renal disease, and how those are multipliers and
10 complicating factors of her wound healing process; correct?

11 A Yes.

12 Q And I understand Ms. Jones has had this cascade of
13 amputations. She started with second toe, she had forefoot
14 amputation that healed quite nicely; right?

15 A I did not see her after that.

16 Q Okay. After the forefoot, she had a right above-knee
17 amputation. And, Doctor, in your professional opinion, to a
18 reasonable degree of medical certainty, Ms. Jones's
19 pre-existing disease -- the diseases we have talked about, the
20 diseases we have walked through here -- hypertension,
21 diabetes, the occlusion in her leg where she's not getting
22 blood flow down to her feet -- those pre-existing diseases,
23 those caused or contributed to cause the right second toe
24 amputation; isn't that right?

25 A Yes.

1 Q And those caused or contributed to cause the right
2 forefoot amputation; correct?

3 A Yes.

4 Q And those same pre-existing diseases caused or
5 contributed to cause the right above-knee amputation; correct?

6 A Yes.

7 Q You see a lot of diabetics in your practice, don't you,
8 Dr. Player?

9 A Yes.

10 Q And do diabetics often struggle to deal with trophic
11 ulcers on their feet?

12 A They do.

13 Q And what is a trophic ulcer?

14 A It's basically a pressure sore that you can develop.
15 Over time, in diabetics, the arch can begin to collapse and it
16 alters where you bear your weight on your foot. So the foot's
17 designed with the arch to distribute your weight equally
18 across your foot so no one site has more pressure than the
19 other. In diabetics in particular, the ligaments can begin to
20 collapse so you basically begin to develop, like, a flat foot,
21 and it alters where you normally are designed to bear your
22 weight. And so you can develop sores because of abnormal
23 weight-bearing than the way the foot was designed.

24 Q So if someone has flat feet, their arch is collapsed,
25 does that make them more prone to have trophic ulcers,

1 pressure ulcers on their feet?

2 **A** Yes.

3 **Q** And where is -- where do most people bear their weight on
4 their feet?

5 **A** Your heel and the balls of your feet.

6 **Q** Okay. The balls of your feet. Is more of the weight
7 borne on one side of the balls of the feet or on the big toe
8 side or on the little toe side?

9 **A** The big toe side carries more weight-bearing because it's
10 a bigger bone. So it's relatively eventually distributed but
11 because the big toe is bigger relative to the other toes, it
12 would individually carry more weight bearing than the other
13 toes.

14 **Q** So those weight-bearing areas, you know, the ball of the
15 foot up by the big toe near the second toe, is that more
16 likely to have a trophic ulcer, a pressure ulcer in somebody
17 who is diabetic with flat feet with a collapsed arch?

18 **A** You can see it over the entire foot. I mean, they get --
19 you see it sometimes by the pinky toe. Sometimes you see it
20 by the big toe. So it can be really at any point.

21 **Q** When you looked at Ms. Jones's foot, you saw ulceration;
22 correct?

23 **A** Yes.

24 **Q** And you can't rule out if that ulceration was simply a
25 pressure trophic ulcer, can you?

1 **A** Not knowing her history, no.

2 **Q** Okay. All you know is she came to your office and said,
3 "I stepped on a nail. Here's the screw. I got problems."

4 **A** Yes.

5 **Q** Thank you very much, Dr. Player.

6 THE COURT: Any redirect?

7 MR. WILLEY: Yes, if it pleases the Court, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WILEY:

10 **Q** Bad flashbacks of high school biology there. I
11 apologize.

12 I was not going to belabor how fragile Mrs. Jones is and
13 was, but we have heard in the past 38 minutes she had medical
14 issues; right?

15 **A** Yes, yes.

16 **Q** And you know about all that. You know about all of her
17 medical issues.

18 **A** Yes.

19 **Q** All right. I mean, you're here because you're her
20 treating physician. I mean, you examined her. You treated
21 her. You, quite intimately, removed a part of her body;
22 right?

23 **A** Yes.

24 **Q** You're not some doctor we brought in from out of town to
25 say what we wanted to say. You know this lady.

1 **A** Yes, yes.

2 **Q** Knowing all of this stuff that was wrong with her, you
3 considered all of that, didn't you, when you came to your
4 opinion about what caused the amputations?

5 **A** Yes.

6 **Q** I mean, you didn't leave any of that out; right?

7 **A** No.

8 **Q** And considering all that, you told us earlier that you
9 came to the conclusion that what caused this cascade of
10 events, what the precipitating event that caused these
11 amputations was, was stepping on a nail.

12 **A** Yes.

13 **Q** You heard opposing counsel ask you a bunch of times is
14 this possible, is that possible, all a manner of things that
15 might be possible, and you said, Yeah, sure, that's possible
16 over and over. And that makes sense; right? Lots of things
17 are possible. But not once did opposing counsel ask you,
18 correct me if I'm wrong, is it more likely than not that
19 diabetes caused the amputation.

20 **A** I'm sorry; could you repeat the question?

21 **Q** Did opposing counsel ever ask you whether it was your
22 opinion, more likely than not, that diabetes caused the
23 amputation?

24 **A** No.

25 **Q** In fact, didn't he use the lawyer's trick, caused or

1 contributed to cause? It's a compound question and I didn't
2 object because I hate to interrupt people, but I want to pin
3 you down on that for a second. He asked you if these
4 underlying conditions caused or contributed to cause the
5 amputations. You said that they contributed; right?

6 **A** Yes.

7 **Q** But you would not point to any one of these things and
8 say that caused -- the hypertension caused the amputation,
9 would you?

10 **A** No.

11 **Q** The wounds you saw three days after she stepped on the
12 nail, bigger; right? Bigger than just a pinprick? In fact --

13 MR. WILLEY: Where's the foot? Can I approach?

14 THE COURT: Yes, sir.

15 BY MR. WILLEY:

16 **Q** This does not look like your foot. So I'm looking at
17 this foot now. The wound, quite as big as the sticker. Isn't
18 that what you said? It's a small --

19 **A** Yeah, if the sticker is 2 centimeters, it was smaller.

20 **Q** It was smaller. All right.

21 **A** By about a third.

22 **Q** Yeah.

23 **A** I guess. Because if it was 1.8 by 1.0, then one of the
24 dimensions is going to be half as wide as the sticker, and one
25 of the dimensions is going to be a little shorter than the

1 sticker.

2 Q So a little smaller than the sticker, bigger than a
3 pinprick. You step on a nail, screw, railroad spike,
4 whatever, you get a wound, it gets infected, does the size of
5 that wound grow over time?

6 A It can if you're not going to heal properly, yes.

7 Q And she didn't heal properly, did she?

8 A No, she did not.

9 Q So it's no surprise at all to you that the wound, when
10 you saw it three days afterward, was bigger than it would have
11 been on day one?

12 A Correct.

13 Q So nothing unusual there; right?

14 A I don't think so, no.

15 Q All consistent with her stepping on a nail, just like you
16 said earlier and just like she said; right?

17 A Yes.

18 Q So considering everything you considered, you came to the
19 opinion that it's more likely than not that the nail -- the
20 puncture wound from the nail is what caused everything that
21 happened afterwards?

22 A It started the cascade, yes.

23 Q It started the cascade.

24 Without that, she would have been that fragile glass
25 sitting on the shelf for years to come, we can only speculate;

1 right?

2 **A** Yes.

3 **Q** But somebody knocked her off and she broke.

4 I want to talk about the screw for a second. You are a
5 doctor. I think you said you do not have a shop at your house
6 and that's not really, like, your thing.

7 **A** That's not my thing.

8 **Q** You were there to diagnose Ms. Jones; right?

9 **A** Yes.

10 **Q** Not to diagnose fasteners?

11 **A** Correct.

12 **Q** Did it matter to you whether it was a framing nail or a
13 pallet nail or a masonry nail or a Phillips head screw or a
14 straight blade -- what we caused to call a comet or a star
15 drive? Did you -- did it matter to your diagnosis what kind
16 of fastener it was?

17 **A** No.

18 **Q** She stepped on a piece of metal in her foot. You don't
19 actually write your medical records, like, by hand, do you?
20 You dictate them?

21 **A** I dictate them, yes, yes.

22 **Q** And you probably review them later.

23 **A** Yes, yes.

24 **Q** And you review them, I would hope, for those things that
25 matter; right?

1 **A** All things matter.

2 **Q** Well, if you write "hyperthermia" instead of
3 "hypothermia," that's a big difference; right?

4 **A** Yes, yeah.

5 **Q** In your medical records -- and I have been through
6 them -- you're welcome to look through them, if I may
7 approach -- I have seen the word "nail" hundreds of times. I
8 have seen the word "screw" once. I don't think I have seen it
9 another time.

10 If you want to look through and see if you can find it...

11 Is that the sort of thing, when you were reading your
12 dictated medical records, you would have said, "Oh, my God,
13 that wasn't a Phillips head screw; it was a straight blade
14 screw. Nurse, you better get this corrected because we have
15 the wrong kind of screw down"?

16 **A** No.

17 **Q** You didn't?

18 **A** No.

19 **Q** Because that wasn't what you were there to do. You were
20 there to take care of her wound and assess it, whether it was
21 a nail or right-handed thread, left-handed thread, or whatever
22 screw, it wasn't really relevant; was it?

23 **A** Correct.

24 **Q** I appreciate your time, Doctor.

25 THE COURT: All right. You may step down.

1 MR. WILLEY: Your Honor, if I may, I would love for the
2 doctor to be able to get back to his hospital, if we can --

3 THE COURT: Any objection to him being excused?

4 MS. BOYD: No objection, Your Honor.

5 Thank you, Dr. Player.

6 THE COURT: You're free to leave. Thank you.

7 THE WITNESS: Thank you.

8 MR. WILLEY: Thank you, Doctor.

9 Thank you, Your Honor.

10 THE COURT: All right. Might counsel approach the bench
11 for a moment.

12 BENCH CONFERENCE

13 (A bench conference was held off the record and outside of
14 the hearing of the jury and others.)

15 (Open court resumes as follows:)

16 THE COURT: Mr. Foreman, ladies and gentlemen of the
17 jury, thank you for being here and thank you for your time.
18 Once again, I'm going to reiterate: Do not do any independent
19 investigation. Don't go into Walmart trying to do
20 investigation about the facts of this matter. Do not look
21 on -- you can look up anything on the Google nowadays. Don't
22 do that. You can look up legal research, incidents,
23 personalities, don't do that. I'm going to order that you not
24 do that. That would be improper. Do not do that in any
25 respect.

1 If anybody were to try to contact you about this case --
2 and I don't anticipate under any circumstance that anybody
3 would ever do that -- that's improper, and I would ask you
4 report it to me if that took place.

5 Do not discuss the case amongst yourselves or with anyone
6 else, and I'll see you at 9:30 in the morning. And be here a
7 little bit early so we start right on time and get that matter
8 straight.

9 I know y'all aren't working tomorrow. It might be a
10 tendency to stay up and watch late night TV like David
11 Letterman or something -- he's not even on, but some
12 late-night show that comes on nowadays. But don't do that
13 because these are important matters. You need alert. You
14 need to be awake. And we'll see you in the morning bright and
15 early, 9:30. 9:30 sharp.

16 Everyone remain seated as the jury exits the courtroom.

17 (The jury exited the courtroom at 4:48 p.m.)

18 (At 4:50 p.m., the above trial adjourned until November
19 9, 2021, at 9:30 a.m.)
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CERTIFICATE OF TRANSCRIBER

CASE/NO.: April Jones v. Tim Ringer/Walmart

2017-CP-21-01375

DATE OF PROCEEDING: November 8, 2021 (Day 1 of 4)

I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; **that said proceedings were transcribed to the best of my ability from the audio recording and supporting information**, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.



____/s/ Bobbi Fisher_____

Bobbi J. Fisher, RPR

NCRA Registered Professional Reporter (RPR)

Prepared: December 31, 2021

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