

SUTHE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Civil Action No. 2012-CP-20-316

Appellate Case No. 2014-001153

Mary Wall Black, ... Plaintiff.

v.

BI-LO, LLC and UniFirst Corporation, ... Defendants,
of which BI-LO, LLC is the Appellant,
and UniFirst is the Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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SEP 30 2014

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**FOR A FIRST DEFENSE TO BI-LO'S SEVENTH DEFENSE AND
CROSSCLAIM AGAINST UNIFIRST CORPORATION**
(Equitable Indemnity)

4. Answering Paragraph 32, UniFirst incorporates by reference its answers to Paragraphs 29-31 of Bi-Lo's Cross Complaint as fully and effectively as if set forth verbatim herein.

5. UniFirst denies the allegations against UniFirst set forth in Paragraph 33 of Bi-Lo's Cross Complaint and demands strict proof thereof.

6. UniFirst denies the allegations against UniFirst set forth in Paragraph 34 of Bi-Lo's Cross Complaint and demands strict proof thereof.

**FOR A FIRST DEFENSE TO BI-LO'S EIGHTH DEFENSE AND
CROSSCLAIM AGAINST UNIFIRST CORPORATION**
(Contractual Indemnity)

7. Answering Paragraph 35, UniFirst incorporates by reference its answers to Paragraphs 29-34 of Bi-Lo's Cross Complaint as fully and effectively as if set forth verbatim herein.

8. UniFirst denies the allegations against UniFirst set forth in Paragraph 36 of Bi-Lo's Cross Complaint and demands strict proof thereof.

9. UniFirst denies the allegations against UniFirst set forth in Paragraph 37 of Bi-Lo's Cross Complaint, including the prayer for relief that follows, and demands strict proof thereof.

FOR A SECOND DEFENSE

10. UniFirst submits that Bi-Lo's Cross Complaint fails to state facts sufficient to constitute a cause of action under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

11. UniFirst pleads the doctrine of comparative negligence and alleges any damages or injuries sustained by the Plaintiff was due to and caused by the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of Plaintiff. UniFirst further alleges that the negligence and/or recklessness of Plaintiff was greater than any negligence, if any, which may be established against UniFirst, and, therefore, Plaintiff is barred from recovery. Alternatively, UniFirst alleges that any injury and damage sustained by Plaintiff were due to and caused by the negligence and/or willfulness of Plaintiff, combining, concurring and contributing with the negligence and/or willfulness, if any, on the part of UniFirst, and that any amount of recovery awarded to Plaintiff for the alleged injuries and damage shall be reduced by the Court based on the percentage of negligence and/or willfulness attributed to Plaintiff. UniFirst reserves the right to amend this defense and the particulars of negligence at the conclusion of discovery.

FOR A FOURTH DEFENSE

12. UniFirst submits that the damages for which Plaintiff seeks recovery were due to and proximately caused by the acts, omissions, negligence, recklessness, willfulness, wantonness, criminal acts, and/or fault of a party or parties other than UniFirst and for whom UniFirst is not liable. Such acts, omissions, negligence, recklessness, willfulness, wantonness, criminal acts, and/or fault of third parties is the sole proximate cause of the damages for which Plaintiff seeks recovery, and, therefore, Plaintiff may not recover against UniFirst.

FOR A FIFTH DEFENSE

13. UniFirst would show that the damages for which Plaintiff seeks recovery were due to and proximately caused by Plaintiff's voluntary actions taken in full knowledge of any associated risk, of which one, in the exercise of due care, should have known or appreciated and,

therefore, this voluntary assumption of risks is a complete bar to this action; or, in the alternative, a facet of comparative negligence or fault.

FOR A SIXTH DEFENSE

14. UniFirst submits that it is or may be entitled to a setoff or credit for any amount paid to Plaintiff by any third party as compensation for the injuries and damages for which Plaintiff seeks recovery herein.

FOR A SEVENTH DEFENSE

15. UniFirst pleads applicability of The Economic Development, Citizens and Small Business Protection Act of 2005, effective July 1, 2005, which amended S.C. Code Ann. §§ 15-38-15 [joint and several liability], 15-7-30 [venue], 15-7-100 [venue], 36-2-803(B) [jurisdiction], and other pertinent statutory sections, and invokes the remedies and procedures provided therein.

FOR AN EIGHTH DEFENSE

16. UniFirst submits that Plaintiff's claims are or may be barred by the equitable doctrines of laches, consent, waiver, and/or estoppel.

FOR A NINTH DEFENSE

17. UniFirst pleads insufficiency of service of process, and, therefore, this Court lacks jurisdiction over it pursuant to Rules 12(b)(2) and 12(b)(5) of the South Carolina Rules of Civil Procedure.

FOR A TENTH DEFENSE

18. To the extent Plaintiff seeks punitive damages against UniFirst, UniFirst denies such claim. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that:

- a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice or caprice is inconsistent with due process guarantees;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based upon the wealth of the defendant violates due process guarantees;
- d. The juror's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;
- f. Plaintiff's claims for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant; and
- g. Any award of punitive damages for conduct or activity of the defendant outside the State of South Carolina or otherwise directed to non-parties is inconsistent with the interest of federalism, and violates the governing authority of *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) and *Phillip Morris USA v. Williams*, 2007 WL 505781 (U.S. Sup. Ct. Feb. 20, 2007).

Furthermore, Plaintiff's claim for punitive damages violates the federal doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government, which invades the province of the legislative branch of government. UniFirst submits that like provisions of governing foreign law may likewise violate constitutional guarantees.

FOR AN ELEVENTH DEFENSE

19. UniFirst affirmatively pleads all defenses, which are or may become available to it under *Restatement (Second) of Torts* § 402A and the comments thereto, as codified by S.C. Code Ann. § 15-73-30 (Supp. 2005).

FOR A TWELFTH DEFENSE

20. UniFirst submits that it has not had an opportunity to conduct a complete investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. UniFirst intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported damage as alleged in Bi-Lo's Cross Complaint, and gives notice of its intent to assert any further defenses that its information gathering process may indicate are supported by fact and law. UniFirst thus reserves the right to amend this Answer and assert additional defenses.

FOR A THIRTEENTH DEFENSE AND
BY WAY OF CROSSCLAIM
(Spoliation)

21. UniFirst restates and incorporates Paragraphs 1-20 fully, as if repeated herein verbatim.

22. UniFirst hereby alleges that Defendant Bi-Lo was aware of Plaintiff's alleged injury and incident and failed to preserve any alleged UniFirst mat involved in the alleged incident or notify UniFirst personnel of the alleged incident to allow such personnel to preserved aforementioned mat as evidence.

23. UniFirst denies that any negligence was committed in this case other than by Plaintiff; however, to the extent UniFirst is held to be negligent, reckless, willful, or wanton, and said negligence proximately contributed to the Plaintiff's damages, which is specifically denied, Bi-Lo should be found to have committed spoliation, thereby greatly prejudicing UniFirst's defense.

FOR A FOURTEENTH DEFENSE AND
BY WAY OF CROSSCLAIM
(Contribution)

24. UniFirst restates and incorporates Paragraphs 1-23 fully, as if repeated herein verbatim.

25. The Plaintiff's complaint alleges specific acts of negligence in failing to properly supply mats and to properly change out mats in a timely fashion and/or when a dangerous condition existed. Defendant UniFirst denies that any negligence was committed in this case other than by the Plaintiff; however, to the extent that UniFirst is held to be negligent, reckless, willful, or wanton, and said negligence proximately contributed to the Plaintiff's damages, and said negligence was jointly committed with acts of negligence of Defendant Bi-Lo as alleged in the Plaintiff's complaint, under such findings and law Bi-Lo would be a joint tortfeasor with Defendant UniFirst, such that UniFirst is entitled to contribution from Defendant Bi-Lo under Section 15-38-20 of the S.C. Code.

FOR A FIFTEENTH DEFENSE AND
BY WAY OF CROSSCLAIM
(Equitable Indemnification)

26. UniFirst restates and incorporates Paragraphs 1-25 fully, as if repeated herein verbatim.

27. UniFirst alleges that, if it is liable to the Plaintiff in any way at all, which it specifically denies, such liability arises only because of the alleged negligence of Bi-Lo arising from Bi-Lo's special relationship with UniFirst under contract to provide mats which are allegedly at issue in this case, and in one or more of the manners alleged in the Complaint, and not because of any negligence on the part of UniFirst.

28. UniFirst alleges that, if it is liable to the Plaintiff in any way at all, which it specifically denies, such liability arises only because of the alleged negligence of Bi-Lo, which is

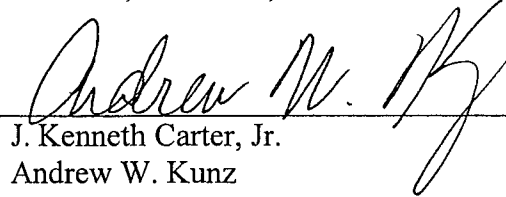
not admitted but is plead herein only as an alternative defense, arising from Bi-Lo's special relationship with UniFirst under contract to provide the mat which is in issue in this case, and in one or more of the manners alleged in the Complaint, and not because of any negligence on the part of UniFirst.

WHEREFORE, having fully answered the Crossclaims of Defendant Bi-Lo, and stating crossclaims against Defendant Bi-Lo, UniFirst prays that the Crossclaims be dismissed, with prejudice, and that judgment be awarded in its favor on the crossclaims stated herein, or in the alternative, for such other and further relief as the Court may deem just and proper.

TURNER, PADGET, GRAHAM & LANEY, P.A.

February 12, 2013

By:



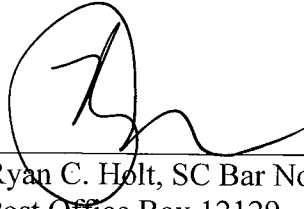
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included, and consented to by the opposing party, and not any other material.

September 30, 2014



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PROOF OF SERVICE

I certify that I have served the Supplemental Record on Appeal by depositing a copy of said document in the United States Mail, postage prepaid, on September 30, 2014 addressed to their attorney of record, Gray T. Culbreath, Esquire, Post Office Box 7368, Columbia, SC 29202.

September 30, 2014.



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