

THE 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.

AMENDED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Mary Wall Black,

Plaintiff,

v.

BI-LO, LLC and Unifirst Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

THE SIXTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-20-316

2014 APR 25 AM 10 35
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

**ORDER DENYING DEFENDANT BI-LO'S MOTION TO ALTER OR AMEND THE
COURT'S ORDER GRANTING UNIFIRST'S MOTION FOR SUMMARY JUDGMENT
AS TO BI-LO'S CROSS CLAIMS**

This matter is before the Court pursuant to Defendant BI-LO's Motion to Alter or Amend the Court's Order Granting Unifirst's Motion for Summary Judgment as to Bi-LO's Cross-Claims. The underlying matter came before the Court for hearing on Defendant Unifirst Corporation's Motion for Summary Judgment on the three cross-claims brought by co-Defendant BI-LO, LLC. On January 9, 2014, the Court heard arguments from counsel for both Unifirst and BI-LO. At the close of the hearing, the Court issued a bench ruling granting Unifirst's Motion for Summary Judgment as to all three cross-claims. The Court issued a written order on January 17, 2014, which was filed in Fairfield County on January 23, 2014. Defendant BI-LO's Motion to Reconsider was filed with the Fairfield County Clerk of Court on January 30, 2014 and timely submitted to counsel and the Court.

After reviewing Defendant's Motion, the Court finds that oral arguments would not assist in this matter and finds that any additional hearing would be unnecessary. Therefore, it is **ORDERED** that Defendant's Motion to Alter or Amend is **DENIED**, and the prior ruling is reaffirmed in toto.



R. Knox McMahon
Presiding Judge,
Sixth Judicial Circuit

Winnsboro, South Carolina
April 24, 2014

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-20-316

Mary Wall Black,

Plaintiff,

vs.

Bi-Lo, LLC & Unifirst Corporation,

Defendants.

2014 JAN 23 AM 11 10
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

**ORDER GRANTING
DEFENDANT/CROSS-CLAIM
DEFENDANT UNIFIRST
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT AS TO BI-
LO, LLC'S CROSS-CLAIMS**

This matter came before the Court on Defendant/Cross-claim Defendant Unifirst Corporation's ("Unifirst") Motion for Summary Judgment filed on October 22, 2013 and heard on January 9, 2014. Present at the hearing were Lindsay A. Joyner, counsel for Unifirst, and Ryan C. Holt, counsel for Bi-Lo, LLC ("Bi-Lo"). For the foregoing reasons, Unifirst's Motion is granted.

BACKGROUND

The underlying lawsuit arises from an alleged trip and fall in the Bi-Lo grocery store located in Winnsboro, South Carolina, wherein Plaintiff alleged negligence and gross negligence on the part of Bi-Lo, LLC ("Bi-Lo") and Unifirst. In addition to the underlying personal injury action, Bi-Lo and Unifirst each alleged cross-claims arising from this incident. Bi-Lo's cross-claims against Unifirst allege contribution and indemnification, based on both the agreement between Bi-Lo and Unifirst and the special relationship between the two, for any negligence found. Bi-Lo's cross-claims assert Unifirst is liable to it because any negligence found to be committed by Bi-Lo was jointly committed with acts of negligence of Unifirst; any liability for which Bi-Lo is found to have committed is due to Unifirst's negligence and arises from the special relationship between Bi-Lo and Unifirst; and the contract between Bi-Lo and Unifirst states that Unifirst must indemnify and

hold Bi-Lo harmless.

Unifirst first moved for summary judgment as to all of Plaintiff's claims against it pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, alleging there was no genuine issue as to any material fact. By Order dated October 14, 2013 ("October 14 Order"), Unifirst's Motion for Summary Judgment was granted, dismissing Plaintiff's claims against Unifirst as a matter of law.¹ Additionally, Bi-Lo's cross-claims were severed from the underlying action by the October 14 Order. Following the October 14 Order, Unifirst moved for summary judgment as to Bi-Lo's cross-claims against it pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure.

LEGAL ANALYSIS

Bi-Lo's cross-claims against Unifirst cannot be sustained because Unifirst cannot be found liable to Plaintiff. There is no genuine issue as to any material fact; therefore, Unifirst is entitled to judgment as a matter of law on all of Bi-Lo's cross-claims against it because: (1) the right of contribution does not exist under the facts of this case; (2) the elements necessary for equitable indemnity are not present in this case; and (3) the contract between Unifirst and Bi-Lo does not purport to indemnify and defend Bi-Lo for its own negligence.

When "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact," the moving party is entitled to summary judgment. *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004); see also Rule 56, SCRPC. If the moving party meets its initial burden

¹ The October 14 Order held the following: (1) Unifirst owed no duty to Plaintiff; (2) there was no evidence of a defective condition that was either created by the mat or by Unifirst or that Unifirst was on notice of a defective condition; (3) the testimony revealed there were no witnesses to the alleged incident who could speak to the cause of the fall or even that noticed anything suspicious about the mat before the fall; and (4) there was no evidence that there was anything unusual about the mat before the incident and no evidence the mat was in a defective condition, unreasonably dangerous to the user.

of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings; rather, the opponent must present specific facts which infer there is a genuine issue for trial. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568.

Moreover, if the plaintiff fails to establish a genuine issue of fact as to one essential element necessary to the cause of action, the existence of factual issues relating to other elements becomes immaterial and therefore subject to summary judgment. *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537, 545-46 (1991); *see also Rohrbough v. Wyeth Laboratories, Inc.*, 916 F.2d 970 (4th Cir. 1990) (finding a party "will not be permitted to manufacture a genuine issue of material fact to survive a motion for summary judgment").

There is no issue of material fact that Unifirst cannot be jointly and severally liable with Bi-Lo in this case; therefore, Bi-Lo cannot sustain its claim for contribution. "The basic premise of contribution is commonality." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 68, 518 S.E.2d 301, 309 (Ct. App. 1999) (holding there was no common liability among the defendants and contribution could not be found when the claims against one of the defendants had been dismissed). The right of contribution exists when two or more persons are jointly and severally liable in tort for the same personal injury, among other things. S.C. Code Ann. § 15-38-20 (B). Contribution may *only* exist for the tortfeasor who pays more than his pro rata share of the common liability, and recovery is limited to the excess amount paid by that tortfeasor. *Id.* Moreover, a court's judgment in "determining the liability of the several defendants to the claimant for an injury or wrongful death [is] binding as among such defendants in determining their right to contribution." S.C. Code Ann. 15-38-40 (F).

Like *Vermeer Carolina's, Inc.*, there is no common liability in this case. Plaintiff's causes of action against Unifirst were dismissed as a matter of law in the October 14 Order. Therefore,



Unifirst and Bi-Lo cannot be found to be joint tortfeasors. Moreover, if judged liable for negligence, Bi-Lo could not pay *more* than its pro rata share of the liability because, as the only tortfeasor, it would be responsible for all liability found. Accordingly, Bi-Lo cannot sustain a cause of action for contribution against Unifirst as a matter of law.

Further, Unifirst's motion for summary judgment is also granted as to Bi-Lo's cross-claims for equitable and contractual indemnity. The purpose of indemnity is to shift the entire loss from one party to another. *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F. Supp. 1027, 1063 (D.S.C. 1993). Indemnity may be based in contract or by operation of law in equity and is a type of "compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *Vermeer Carolina's, Inc.*, 336 S.C. at 60, 518 S.E.2d at 305; *see also Emerson Elec. Co.*, 843 F. Supp. at 1063.

As to its equitable indemnity cross-claim, Bi-Lo cannot meet all of the essential elements of equitable indemnity. To prove equitable indemnity, a claimant must show (1) the indemnitor is found liable for causing the plaintiff's damages; (2) the indemnitee was exonerated from liability; and (3) the indemnitee suffered damages as a result of the plaintiff's claims against it. *Vermeer Carolina's, Inc.*, 336 S.C. at 63, 518 S.E.2d at 307. Plaintiff's causes of action against Unifirst were dismissed as a matter of law by the Court when it granted Unifirst's motion for summary judgment. Without any surviving claims against Unifirst, Plaintiff's alleged injuries cannot be attributed to any fault of Unifirst. Consequently, Unifirst cannot be found liable for causing Plaintiff's damages. Since liability may not be found on the part of Unifirst, Bi-Lo fails to meet the first element of equitable indemnity, liability on the part of the indemnitor. Since there is no genuine issue of fact as to that essential element, whether there are factual issues relating to other

elements is immaterial. *Baughman*, 306 S.C. 101, 410 S.E.2d at 545-46. Accordingly, Bi-Lo's cross-claim for equitable indemnity is dismissed as a matter of law.

Finally, as to Bi-Lo's cross-claim for contractual indemnity, Unifirst cannot be found liable for indemnification to Bi-Lo under the agreement between the parties because the agreement creates an exception for indemnity of Bi-Lo's own negligence.² "A contract of indemnity [is] construed in accordance with the rules for the construction of contracts generally." *Fed. Pacific Elec. v. Carolina Production Enterprises*, 298 S.C. 23, 26, 378 S.E.2d 56, 57 (Ct. App. 1989) (construing the agreement that the indemnitor/lessee would "indemnify [the indemnitee/landlord]... against any damage suffered or liability incurred ... or any loss or damage of any kind in connection with the Leased Premises during the term of [the] lease" against the indemnitee/landlord since it did not "disclose an intention to indemnify for consequences arising from [the indemnitee/landlord's] own negligence"). Even without such an exception, courts strictly construe "a contract containing an indemnity provision that purports to relieve an indemnitee from the consequences of its own negligence," such that contracts will be construed to indemnify the indemnitee for its own negligent only if that "intention is expressed in clear and unequivocal terms." *Id.* (citing *Univ. Plaza Shopping Ctr., Inc. v. Stewart*, 272 So.2d 507 (Fla.1973); *Cox v. E.I. Du Pont de Nemours and Co.*, 39 F.R.D. 47 (W.D.S.C.1965); *Murray v. The Texas Co.*, 172 S.C. 399, 402, 174 S.E. 231, 232 (1934) ("[A] provision [in] a contract relieving one of the parties thereto from liability for ... its own negligence should be *clear and explicit*.")).

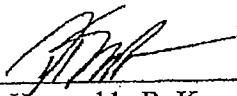
Since there is no act upon which Unifirst can be liable to Bi-Lo for contractual indemnity as Plaintiff's claims against Unifirst have been dismissed, the only party that can be found negligent in

² The agreement between Unifirst and Bi-Lo was provided as an exhibit in the parties' respective supporting and opposing memoranda to this Motion. In Paragraph 9 of the applicable agreement between Unifirst and Bi-Lo, there is the following exception: "Company [Unifirst] shall indemnify and defend Customer [Bi-Lo] against any liability arising out of any act of Company [Unifirst], its employees or agents in connection with this Agreement, *except to the extent caused by the negligence of Customer [Bi-Lo]*." (Emphasis added).

this matter is Bi-Lo. Even without the specific exception in the agreement, there is no "clear and unequivocal" intention to provide indemnification to Bi-Lo for its own negligence; therefore, the agreement is strictly construed *against* indemnification. *Fed. Pacific Elec.*, 298 S.C. at 26-27, 378 S.E.2d at 57-58. Accordingly, Bi-Lo's cross-claim for contractual indemnity cannot be sustained and is dismissed as a matter of law.

For all of the foregoing reasons, the Court hereby orders Unifirst's Motion for Summary Judgment is **GRANTED**, and Bi-Lo's cross-claims for contribution, equitable indemnity, and contractual indemnity against Unifirst are **DISMISSED, with prejudice**;

This, the 17th day of JAN, 2014.



The Honorable R. Knox McMahon
Presiding Judge, 6th Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

) IN THE COURT OF COMMON PLEAS

) Case No.: 2012-CP-20-316

Mary Wall Black,

) Plaintiff,

) vs.

Bi-Lo, LLC & Unifirst Corporation,

) Defendants.

)
) **ORDER GRANTING DEFENDANT**
) **UNIFIRST CORPORATION'S**
) **MOTION FOR SUMMARY**
) **JUDGMENT AND MOTION TO**
) **SEVER CROSS-CLAIMS**
)

This matter came before the Court on Defendant Unifirst Corporation's ("Unifirst") Motion for Summary Judgment and Motion to Sever Cross-claims filed on August 1, 2013 and August 13, 2013, respectively, and heard on September 26, 2013. Present at the hearing were Gray T. Culbreath, counsel for Unifirst; George W. Speedy, counsel for Plaintiff; and Ryan C. Holt, counsel for Bi-Lo, LLC ("Bi-Lo"). For the foregoing reasons, Unifirst's motions are granted.

BACKGROUND

This lawsuit arises from an alleged trip and fall in the Bi-Lo grocery store located in Winnsboro, South Carolina, wherein Plaintiff alleges negligence and gross negligence on the part of Bi-Lo, LLC ("Bi-Lo") and Unifirst. Plaintiff claims that while she was exiting the store she tripped and fell over the mat placed in front of the sliding door entrance/exit. Defendant Unifirst provided the mat to Bi-Lo. In addition to the underlying personal injury action, Bi-Lo and Unifirst each alleged cross-claims for contribution and indemnity arising from this incident.

Unifirst moved for summary judgment as to all of Plaintiff's claims against it pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, alleging there was no genuine issue

as to any material fact and that Unifirst is entitled to a judgment as a matter of law. In its supporting memorandum of law filed with the Court, and at the hearing, Unifirst argued that Plaintiff could not prove all of the necessary elements to sustain a premises liability/negligence cause of action against Unifirst. Specifically, Unifirst argued Plaintiff had (1) no evidence that Unifirst owed a duty to her; (2) no evidence that a dangerous condition existed; (3) no evidence that the mat at issue was defective or unreasonably dangerous; and (4) no evidence that she was entitled to punitive damages.

Additionally, Unifirst moved to sever Bi-Lo's cross-claims, which are comprised of causes of action for indemnification and contribution, from the underlying action pursuant to Rule 42(b), SCRCF, because Bi-Lo's cross-claims are separate and distinct from the negligence-based claims raised by Plaintiff and severance of the claims is conducive to the convenience of the parties and judicial economy.

LEGAL ANALYSIS

1. Unifirst's Summary Judgment Motion

When "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact," the moving party is entitled to summary judgment. *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004); *see also* Rule 56, SCRCF. If the moving party meets its initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings; rather, the opponent must present specific facts which infer there is a genuine issue for trial. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568. Moreover, if the plaintiff fails to establish a genuine issue of fact as to one

essential element necessary to the cause of action, the existence of factual issues relating to other elements becomes immaterial and therefore subject to summary judgment. *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537, 545-46 (1991); *see also Rohrbough v. Wyeth Laboratories, Inc.*, 916 F.2d 970 (4th Cir. 1990) (finding a party "will not be permitted to manufacture a genuine issue of material fact to survive a motion for summary judgment").

There is no issue of material fact regarding Plaintiff's claims against Unifirst. Unifirst does not owe a duty to Plaintiff. *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 200 (Ct. App. 2008) (stating that in a premises liability action, a plaintiff must prove three elements: "(1) a duty of care owed by defendant to plaintiff; (2) defendant's breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty," and if no duty exists, the defendant is entitled to summary judgment). As a business visitor at the Bi-Lo grocery store, Plaintiff was an invitee on the premises present for the purpose of patronizing Bi-Lo. *Sherer*, 377 S.C. at 199, 659 S.E.2d at 203; *see also Parker*, 245 S.C. at 280, 140 S.E.2d at 179. Unifirst neither owns the premises nor stood to receive any benefit from her presence at Bi-Lo, and Unifirst has no control over the premises. *Sherer* 377 S.C. at 199, 659 S.E.2d at 203; *see also Parker*, 245 S.C. at 280, 140 S.E.2d at 179. Since Unifirst owes no duty to Plaintiff, Plaintiff cannot sustain a premises liability negligence claim against Unifirst as a matter of law.

Further, there is no evidence in the record that there was either a defective condition created by the mat or that Unifirst created or had notice of a defective condition, and without such evidence, Plaintiff's claims against Unifirst fail as a matter of law. *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579, 629 S.E.2d 375, 376-77 (Ct. App. 2006); *Cook v. Food Lion, Inc.*, 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997) (stating that a plaintiff must show "either that the defendant or defendant's employee created the condition, or that the defendant

had 'notice' of the defective condition). Instead, Plaintiff's testimony revealed that she did not notice anything unusual about the mat before her fall and that she could not say for certain what made her trip. Plaintiff also had no knowledge of how long the mat had been there that particular day, when or who put the mat down initially, or whether the mat was placed properly before the fall. Additionally, Plaintiff's husband, Mr. Earl Black, did not notice anything about the mat when he walked over it before his wife did. Neither Mr. Black nor the other witness, Ms. Amy Johnson, actually observed the incident as it occurred; therefore, they could not speak to the cause of the fall.

Finally, Plaintiff cannot sustain a theory of negligence based upon products liability theory since Plaintiff's testimony was that she did not notice anything unusual about the mat before she fell, and she presented no evidence the mat was in a defective condition, unreasonably dangerous to the user. *See Bragg v. Hi-Ranger, Inc.*, 319 S.C. 531, 539, 462 S.E.2d 321, 326 (Ct. App. 1995) (stating that in order to prove negligence under products liability, a plaintiff must show "(1) he was injured by the product; (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user; and (3) that the product at the time of the accident was in essentially the same condition as when it left the hands of the defendant").

2. Unifirst's Motion to Sever Cross-claims

Parties are not entitled to a single proceeding trial of all issues as a matter of right. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 73, 533 S.E.2d 331, 333 (2000). The Court has discretion to order that the cross-claims be heard separately from the underlying action for convenience or to avoid prejudice, "or when separate trials will be conducive to expedition and economy." Rule 42(b), SCRCP; *see also Flagstar Corp.*, 341 S.C. at 72, 533 S.E.2d at 333; *Fortune v. Gibson*, 304 S.C. 279, 281, 403 S.E.2d 674, 675 (Ct. App. 1991) (finding to be

bifurcated, a trial should have issues that are "so distinct that a trial of each alone would not result in injustice"). To justify bifurcation, only one of the criteria under Rule 42(b) needs to be met. *See e.g., Brom v. Bozell, Jacobs, Kenyon & Eckhardt, Inc.*, 687 F. Supp. 686, 689 (8th Cir. 1994) (construing Rule 42(b) of the Federal Rules of Civil Procedure); *MCI Communications Corp. v. Amer. Tel. & Tel. Co.*, 708 F.2d 1081, 1166 (7th Cir. 1983); *U.S. v. Int'l Bus. Machines Corp.*, 60 F.R.D. 654, 655 (S.D.N.Y. 1973).

I find that Bi-Lo's cross-claims for indemnification and contribution should be severed from the underlying personal injury action. The cross-claims do not affect the underlying personal injury action in this matter and arise *after* liability has been found in the underlying action such that they do not need to be decided at the same time and would not have evidence that overlaps. *Fortune*, 304 S.C. at 281, 403 S.E.2d at 675. Moreover, any potential for prejudice to Unifirst is avoided by severing the cross-claims. Rule 42(b), SCRCPP; *Flagstar Corp.*, 341 S.C. at 72, 533 S.E.2d at 333. Finally, severing Bi-Lo's cross-claims is conducive to the parties' convenience and judicial economy. Specifically, the insurance issue between Bi-Lo and Unifirst is of no import to Plaintiff, especially given that Plaintiff's claims against Unifirst have been dismissed as a matter of law. Additionally, the liability issue could be decided in a much shorter period of time without the insurance coverage issues between Unifirst and Bi-Lo confusing the liability issue and lengthening the trial.

For all of the foregoing reasons, the Court hereby orders:

1. Defendant Unifirst's Motion for Summary Judgment is **GRANTED**, and Plaintiff's claims against Unifirst are **DISMISSED, with prejudice**;

2. Defendant Unifirst's Motion to Sever Cross-claims is **GRANTED**; therefore, Bi-Lo's cross-claims for indemnification and contribution are hereby severed from the underlying personal injury action.

This, the 10 day of Oct, 2013.


The Honorable J. Ernest Kinard, Jr.
Judge, 5th Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

MARY WALL BLACK,)

PLAINTIFF,)

VS.)

BI-LO, LLC &)
UNIFIRST CORPORATION,)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Civil Action No: 2012-CP-20- 316

**COMPLAINT
(JURY TRIAL DEMANDED)**

2012 JUL 31 P 1:13
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

The Plaintiff, complaining of the Defendants, would respectfully show unto this honorable Court as follows:

1. The Plaintiff is a citizen and resident of the County of Fairfield, State of South Carolina.
2. Upon information and belief, the Defendant, Bi-Lo, LLC is a corporation organized in the state of Delaware and existing under the laws of the State of South Carolina and doing business in South Carolina.
3. Upon information and belief, the Defendant Unifirst Corporation is a corporation organized in the state of Massachusetts and existing under the laws of the State of South Carolina and doing business in South Carolina.
4. The Defendant, Bi-Lo, LLC owns property and transacts significant business in the County of Fairfield, State of South Carolina, and that jurisdiction and venue are proper in said County.

5. The Defendant, Unifirst Corporation owns property and/or transacts significant business in the County of Fairfield, State of South Carolina, and that jurisdiction and venue are proper in said County.
6. That on or about October 4, 2010 while exiting the Defendant's store located at 1126 U.S. Highway 321 Business South; Winnsboro, in the County of Fairfield, State of South Carolina, the Plaintiff, through no fault of her own, tripped and fell on a defective and/or dry-rotted mat improperly and inappropriately placed at the entrance/exit-way area of the Defendant Bi-Lo, LLC's store.
7. That the Plaintiff entered into the premises with the express and/or implied permission of the Defendant Bi-Lo, LLC and for the purpose of benefiting the Defendant's business and therefore was an invitee of Defendant Bi-Lo, LLC.
8. That since the Plaintiff was an invitee, the Defendants owed the Plaintiff the duty to discover and warn of dangerous conditions on the premises and thereafter make them safe, which the Defendants failed to do.
9. That the Defendants, through its agents and/or servants, knew or should have known that a dangerous condition existed.
10. That the Defendants owed the Plaintiff a duty to exercise reasonable and ordinary care to discover risks and take safety precautions to warn and eliminate risks within the area of invitation on the premises.
11. Upon information and belief, the Defendants, through its agents and servants, were negligent, careless, wanton, and willful in the time and place above-mentioned, and acted with a reckless disregard for the rights and safety of the Plaintiff, in the following particulars:

AS TO DEFENDANT BI-LO, LLC

- (a) In placing and/or having a defective mat in the entrance/ exit-way area where invitees are expected to pass;
- (b) In failing to keep the entrance/ exit-way area safe for customers and/or invitees;
- (c) In failing to provide safe conditions for customers and/or invitees;
- (d) In failing to adequately discover and correct any dangerous conditions which existed;
- (e) In failing to adequately warn customers and/or invitees that a dangerous condition existed;
- (f) In failing to properly train or supervise their employees so as to prevent dangerous conditions from existing;
- (g) In failing to properly staff the store, and;
- (h) In such other and further particulars as the evidence at trial might show.

AS TO DEFENDANT UNIFIRST CORPORATION

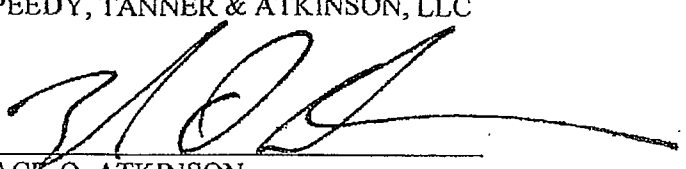
- (a) In failing to properly supply mats to Defendant Bi-Lo, LLC;
- (b) In failing to provide safe, intact and secure mats to Defendant Bi-Lo, LLC;
- (c) In failing to properly change out mats in a timely fashion and/or when a dangerous condition existed;
- (d) In failing to adequately discover and correct any dangerous conditions which existed;
- (e) In failing to adequately warn customers and/or invitees that a dangerous condition existed;
- (f) In failing to properly train or supervise their employees so as to prevent dangerous conditions from existing;

- (g) In failing to properly staff the providers/handlers/installers of the mats, and;
 - (h) In such other and further particulars as the evidence at trial might show.
12. All of which and/or in combination thereof were the proximate cause of the injuries and damages suffered by the Plaintiff herein and those same acts being in violation of the statutory and common law of the State of South Carolina.
 13. The Defendants knew of or should have known of the unsafe condition of its premises, which caused the Plaintiff's fall.
 14. The Defendants breached each of these duties set forth above in a negligent, grossly negligent, willful, wanton, careless, and reckless manner.
 15. The conduct of the Defendants, set forth above, was the proximate cause of the Plaintiff's severe and permanent injuries, resulting in injuries and damages including past, present, and future pain, medical expenses, suffering, lost wages, mental and emotional anguish and illness; impairments which affect her enjoyment of life.
 16. As a further result of the fall, the Plaintiff has had to and will have to spend money for medical services and treatment in the future.
 17. That as a result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness on the part of the Defendants, as aforesaid, the Plaintiff has been actually damaged and is entitled to actual and punitive damages.
 18. That the Plaintiff is informed and believes that she is entitled to a judgment in this matter against the Defendants jointly and severally in an amount to be determined to by a jury.

WHEREFORE, the Plaintiff prays for judgment for actual and punitive damages in an amount to be determined by a jury, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

SPEEDY, TANNER & ATKINSON, LLC

BY:


ZACK O. ATKINSON
ATTORNEY FOR THE PLAINTIFF
Post Office Drawer 100
Camden, South Carolina 29021
(803) 432-6034
(803) 425-1497(fax)

23rd day of July, 2012
Camden, South Carolina

State of South Carolina. UniFirst expressly denies any allegations of Paragraph 3 that are inconsistent with the same.

4. UniFirst submits that the allegations of Paragraph 4 of Plaintiff's Complaint are directed toward a defendant other than UniFirst and, therefore, no response is required. To the extent the Court may deem a response is required, UniFirst is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and, therefore, denies the allegations.

5. UniFirst denies the allegations of Paragraph 5 of Plaintiff's Complaint that allege UniFirst owns property in Fairfield County, South Carolina. UniFirst admits transacting business in Fairfield County, but denies the allegations regarding the significance of such business. UniFirst submits the remaining allegations constitute legal conclusions rather than averments of fact, and, therefore, no response of UniFirst is required. To the extent the Court may deem a response is required, UniFirst denies the remaining allegations of Paragraph 5 and demands strict proof thereof.

6. UniFirst lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of Plaintiff's Complaint, and, therefore, denies these allegations.

7. UniFirst submits that the allegations of Paragraph 7 of Plaintiff's Complaint are directed toward a defendant other than UniFirst and, therefore, no response is required. To the extent the Court may deem a response is required, UniFirst is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and, therefore, denies the allegations.

8. UniFirst submits that the allegations of Paragraph 8 of Plaintiff's Complaint constitute legal conclusions rather than averments of fact, and, therefore, no response of UniFirst is required. To the extent the Court may deem a response is required, UniFirst denies the allegations of Paragraph 8 and craves reference to the case law and statutory laws of the State of South Carolina.

9. Upon information and belief, UniFirst denies the allegations set forth in Paragraph 9 of Plaintiff's Complaint that allege or can be construed to allege UniFirst, through its agents and/or servants, knew or should have known that a dangerous condition existed. UniFirst submits the remaining allegations are directed towards a defendant other than UniFirst and, therefore, no response is required. To the extent the Court may deem a response is required, UniFirst is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9 and, therefore, denies the allegations.

10. UniFirst submits that the allegations of Paragraph 10 of Plaintiff's Complaint constitute legal conclusions rather than averments of fact, and, therefore, no response of UniFirst is required. To the extent the Court may deem a response is required, UniFirst denies the allegations of Paragraph 10 and craves reference to the case law and statutory laws of the State of South Carolina.

11. UniFirst submits that the allegations of Paragraph 11 of Plaintiff's Complaint constitute legal conclusions rather than averments of fact, and, therefore, no response of UniFirst is required. To the extent the Court may deem a response is required, UniFirst denies the allegations of Paragraph 11 that apply or can be construed to apply to UniFirst, including subparts (a) through (h). UniFirst submits the remaining allegations are directed towards a defendant other than UniFirst and, therefore, no response is required. To the extent the Court

may deem a response is required, UniFirst is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 11, including subparts, and, therefore, denies the allegations.

12. UniFirst submits that the allegations of Paragraph 12 of Plaintiff's Complaint constitute legal conclusions rather than averments of fact, and, therefore, no response of UniFirst is required. To the extent the Court may deem a response is required, UniFirst denies the allegations of Paragraph 12 and craves reference to the case law and statutory laws of the State of South Carolina.

13. UniFirst submits that the allegations of Paragraph 13 of Plaintiff's Complaint are directed toward a defendant other than UniFirst and, therefore, no response is required. To the extent the Court may deem a response is required, UniFirst denies the allegations of Paragraph 13 and demands strict proof thereof.

14. UniFirst submits that the allegations of Paragraph 14 of Plaintiff's Complaint constitute legal conclusions rather than averments of fact, and, therefore, no response of UniFirst is required. To the extent the Court may deem a response is required, UniFirst denies the allegations of Paragraph 14 and craves reference to the case law and statutory laws of the State of South Carolina.

15. UniFirst submits that the allegations of Paragraph 15 of Plaintiff's Complaint constitute legal conclusions rather than averments of fact, and, therefore, no response of UniFirst is required. To the extent the Court may deem a response is required, UniFirst denies the allegations of Paragraph 15 and craves reference to the case law and statutory laws of the State of South Carolina.

16. UniFirst submits that the allegations of Paragraph 16 of Plaintiff's Complaint constitute legal conclusions rather than averments of fact, and, therefore, no response of UniFirst is required. To the extent the Court may deem a response is required, UniFirst denies the allegations of Paragraph 16 and craves reference to the case law and statutory laws of the State of South Carolina.

17. UniFirst submits that the allegations of Paragraph 17 of Plaintiff's Complaint constitute legal conclusions rather than averments of fact, and, therefore, no response of UniFirst is required. To the extent the Court may deem a response is required, UniFirst denies the allegations of Paragraph 17 and craves reference to the case law and statutory laws of the State of South Carolina.

18. UniFirst denies the allegations set forth in Paragraph 18 of Plaintiff's Complaint, including the prayer for relief that follows.

FOR A SECOND DEFENSE

19. UniFirst submits that Plaintiff's 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

20. 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

21. 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

22. 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

23. 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

24. 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

25. 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

26. 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

27. 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

28. 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

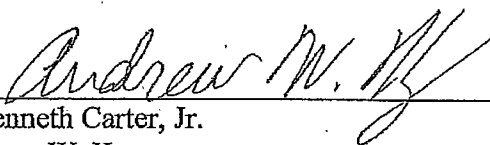
18. UniFirst submits that it has not had an opportunity to conduct a complete investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. UniFirst intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported damage as alleged in Plaintiff's 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.

WHEREFORE, having fully answered Plaintiff's Complaint, UniFirst prays that the Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

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

September 14, 2012

By:



J. Kenneth Carter, Jr.

Andrew W. Kunz

Post Office Box 1473

Columbia, SC 29202

Phone: (803) 254-2200

Fax: (803) 799-3957

**ATTORNEYS FOR DEFENDANT
UNIFIRST CORPORATION**

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Mary Black,

Plaintiff,

vs.

Bi-Lo, LLC, & Unifirst Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

**ANSWER OF DEFENDANT
BI-LO, LLC, AND CROSSCLAIMS
AGAINST UNIFIRST CORPORATION**

C.A. No.: 2012-CP-20-316

(Jury Trial Demanded)

2012 OCT 11 A 11:04
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Comes now the Defendant, Bi-Lo LLC (hereafter "Defendant Bi-Lo"), and in answering the Plaintiff's Complaint and stating crossclaims against Defendant Unifirst Corporation, hereby shows unto the Court as follows:

FOR A FIRST DEFENSE

1. Defendant Bi-Lo fails to have information sufficient to form a belief as to the residency of the Plaintiff and therefore denies same and demands strict proof thereof.
2. Defendant Bi-Lo admits the allegations of paragraph two of the complaint.
3. Defendant Bi-Lo fails to have information sufficient to form a belief as to the truth of the allegations of paragraph three of the complaint, and therefore denies same and demands strict proof thereof.
4. In response to paragraph four of the complaint, Defendant Bi-Lo admits that jurisdiction and venue are proper in Fairfield County.
5. In response to paragraph five of the complaint, Defendant Bi-Lo admits that jurisdiction and venue are proper in Fairfield County.
6. Defendant Bi-Lo admits that the Plaintiff was present in its store on the date alleged, but fails to have information sufficient to form a belief as to the truth of the remaining

allegations of paragraph six of the complaint and therefore denies same and demands strict proof thereof.

7. Defendant Bi-Lo admits that the Plaintiff was present in its store on the date alleged, but fails to have information sufficient to form a belief as to the truth of the remaining allegations of paragraph seven of the complaint and therefore denies same and demands strict proof thereof.

8. In response to paragraph eight of the complaint, Defendant Bi-Lo admits that it has a duty to keep its premises in a reasonably safe condition and other and further duties as are prescribed by the law of the state of South Carolina, and alleges that it did comply with said laws at all times relevant to this matter, but otherwise would refer to the law of the State of South Carolina for a description of these duties, and therefore denies all other or inconsistent allegations of paragraph eight of the complaint and demands strict proof thereof.

9. Defendant Bi-Lo denies the allegations of paragraph nine of the complaint and demands strict proof thereof.

10. In response to paragraph ten of the complaint, Defendant Bi-Lo admits that it has a duty to keep its premises in a reasonably safe condition and other and further duties as are prescribed by the law of the state of South Carolina, and alleges that it did comply with said laws at all times relevant to this matter, but otherwise would refer to the law of the State of South Carolina for a description of these duties, and therefore denies all other or inconsistent allegations of paragraph ten of the complaint and demands strict proof thereof.

11. Defendant Bi-Lo denies the allegations of paragraph eleven of the complaint and demands strict proof thereof.

12. Defendant Bi-Lo denies the allegations of paragraph twelve of the complaint and demands strict proof thereof.

13. Defendant Bi-Lo denies the allegations of paragraph thirteen of the complaint and demands strict proof thereof.

14. Defendant Bi-Lo denies the allegations of paragraph fourteen of the complaint and demands strict proof thereof.

15. Defendant Bi-Lo denies the allegations of paragraph fifteen of the complaint and demands strict proof thereof.

16. Defendant Bi-Lo denies the allegations of paragraph sixteen of the complaint and demands strict proof thereof.

17. Defendant Bi-Lo denies the allegations of paragraph seventeen of the complaint and demands strict proof thereof.

18. Defendant Bi-Lo denies the allegations of paragraph eighteen of the complaint and demands strict proof thereof.

19. Defendant Bi-Lo denies each and every allegation of the complaint not hereinbefore admitted, modified, or explained.

FOR A SECOND DEFENSE

(Failure to State Facts Sufficient To Constitute a Cause of Action)

20. Defendant Bi-Lo incorporates by reference the relevant and consistent allegations of the above paragraphs.

21. Defendant Bi-Lo alleges that the Plaintiff has failed to state facts sufficient to constitute a cause of action, and therefore the complaint should be dismissed in its entirety pursuant to S.C.R.C.P. 12(b)(6).

FOR A THIRD DEFENSE
(Sole Negligence of Plaintiff)

22. Defendant Bi-Lo incorporates by reference the relevant and consistent

allegations of the above paragraphs.

23. Defendant Bi-Lo alleges that the Plaintiff was solely responsible for her injuries and damages by failing to proceed carefully while walking, and by other acts or omissions as may be established by the evidence at trial, and that such negligent acts or omissions were the direct and proximate cause of any injuries and damages the Plaintiff may have sustained, for which reason Defendant Bi-Lo is not liable to the Plaintiff in any sum whatsoever.

FOR A FOURTH DEFENSE
(Intervening / Superseding Negligence)

24. Bi-Lo incorporates by reference the relevant and consistent allegations of the above paragraphs.

25. Bi-Lo alleges that any injuries suffered by the Plaintiff were the result of intervening negligence of a third party over whom Bi-Lo had no control, which negligence superseded any negligence committed by Bi-Lo, which is denied and referenced only in the alternative, for which reason the Plaintiff may not recover from Bi-Lo in any sum whatsoever.

FOR A FIFTH DEFENSE
(Comparative Negligence)

26. Defendant Bi-Lo incorporates by reference the relevant and consistent portions of the above paragraphs.

27. Defendant Bi-Lo alleges that the alleged accident and damages arising therefrom were the direct and proximate result of the negligence, recklessness, willfulness, and wantonness on the part of the Plaintiff in the following particulars:

- a. in failing to keep a proper lookout for hazards in her path;
- b. in failing to ensure that she had obtained a secure footing while walking;
- c. in failing to exercise that degree of care and prudence which a reasonable person would have exercised under the same or similar

circumstances,

and that such negligence, recklessness, willfulness, and wantonness on the part of the Plaintiff, being greater than any negligence or any recklessness on the part of the Defendants, which is otherwise denied but admitted solely for purposes of this defense, operated as a direct and proximate cause of the alleged accident and damages, for which reason the Plaintiff may not recover from this Defendant under principles of comparative negligence.

28. In the alternative, should it be determined that the degree of the Plaintiff's negligence was not the major cause of her accident and injuries, Defendant Bi-Lo is entitled to a reduction in any damage awarded to the Plaintiff under principles of comparative negligence.

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

29. Defendant Bi-Lo incorporates by reference the relevant and consistent portions of the above paragraphs.

30. Defendant Bi-Lo hereby alleges that Defendant Unifirst Corporation was retained by Bi-Lo to provide floor mats to Bi-Lo, and the floor mat complained of in this matter was supplied by Unifirst Corporation.

31. 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 Bi-Lo denies that any negligence was committed in this case other than by the Plaintiff; however, to the extent that Bi-Lo is held to be negligent, reckless, willful, or wanton, and said negligence proximately contributed to the Plaintiff's damages (which is, again, specifically denied and admitted solely for purposes of this Crossclaim), and said negligence was jointly committed with acts of negligence of Defendant Unifirst Corporation as alleged in the Plaintiff's complaint, under such findings and law Unifirst Corporation would be a joint tortfeasor

with Defendant Bi-Lo, such that Bi-Lo is entitled to contribution from Defendant Unifirst Corporation under Section 15-38-20 of the S.C. Code.

FOR A SEVENTH DEFENSE AND
BY WAY OF CROSSCLAIM
(Equitable Indemnity)

32. Defendant Bi-Lo incorporates by reference the relevant and consistent portions of the above paragraphs.

33. Defendant Bi-Lo 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 Unifirst Corporation (which is not admitted but is plead herein only as an alternative defense) arising from Unifirst Corporation's special relationship with Defendant Bi-Lo 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 Bi-Lo, LLC.

34. Defendant Bi-Lo therefore is entitled to equitable indemnity and therefore to judgment over and against Unifirst Corporation for all costs, attorneys' fees, and any judgment of any type awarded against Bi-Lo, LLC, in this matter.

FOR A EIGHTH DEFENSE
AND BY WAY OF CROSSCLAIM
(Contractual Indemnity)

35. Defendant Bi-Lo incorporates by reference the relevant and consistent portions of the above paragraphs.

36. Defendant Bi-Lo alleges that, as a condition of its employment of Unifirst Corporation to provide mats and other services to it, Unifirst Corporation agreed that it would provide reasonably safe materials and conduct its operations in a reasonably safe manner, that it would defend, indemnify and hold harmless Bi-Lo, LLC, for any breach of said agreement, and

that it would obtain insurance to guarantee the execution of said obligations.

37. Defendant Bi-Lo alleges that, if the Plaintiff is entitled to any recovery whatsoever in this action from Defendant Bi-Lo, said entitlement arises from breach of Unifirst Corporation's obligations to Bi-Lo in the conduct of its activities under the contract (which is not admitted but is pled herein only as an alternative defense), for which reason Defendant Bi-Lo is entitled to contractual indemnity over and against Defendant Unifirst Corporation for all costs, liability, and attorneys' fees arising from this matter.

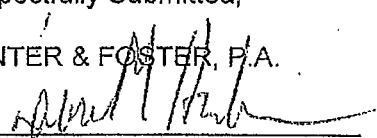
WHEREFORE, having fully answered the Plaintiff's Complaint, and stating crossclaims against Defendant Unifirst Corporation, Defendant Bi-Lo hereby prays that this case be dismissed against it with costs, and that judgment be awarded in its favor on the crossclaims stated herein, or in the alternative, that a jury be impaneled to hear this cause, and for such other and further relief as the Court deem just and proper.

JURY TRIAL DEMANDED

Dated: 10/8/12
Greenville, SC

Respectfully Submitted,

HUNTER & FOSTER, P.A.


Lawrence M. Hunter, Jr., Esq.
S.C. Bar # 011808
Post Office Box 10309
Greenville, South Carolina 29603
(864) 242-2111

Attorney for Defendant Bi-Lo, LLC

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

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FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

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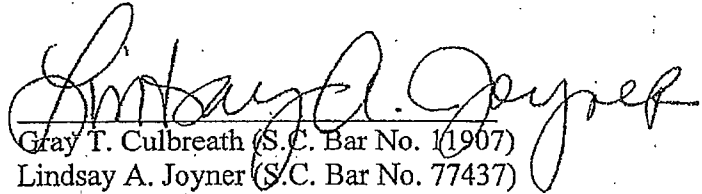
(D.S.C. 1993). Indemnity may be based in contract or by operation of law in equity and is a type of "compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999); see also *Emerson Elec. Co.*, 843 F. Supp. at 1063.

5. Equitable indemnity, which is alleged by Bi-Lo, exists only when (1) the indemnitor is found liable for causing the plaintiff's damages; (2) the indemnitee was exonerated from liability; and (3) the indemnitee suffered damages as a result of the plaintiff's claims against it. *Vermeer Carolina's, Inc.*, 336 S.C. at 63, 518 S.E.2d at 307;
6. Plaintiff's causes of action for negligence on the part of Unifirst have been dismissed as a matter of law; therefore, Unifirst cannot be found liable for causing Plaintiff's damages. Any negligence found would be found on the part of Bi-Lo. Accordingly, Bi-Lo cannot maintain a cause of action for equitable indemnity;
7. Contractual indemnity, which is alleged by Bi-Lo, is a form of indemnity based on a contract between two parties, and a contract of indemnity will be construed in accordance with the rules for the construction of contracts generally. *Federal Pacific Electric v. Carolina Production Enterprises*, 298 S.C. 23, 378 S.E.2d 56 (Ct.App.1989);
8. The contract between Unifirst and Bi-Lo does not purport to indemnify and defend Bi-Lo for its own negligence. Rather, it creates a specific exception to such liability;
9. There is no evidence Unifirst negligently created an alleged condition or negligently failed to correct any condition at Bi-Lo;
10. There is no evidence demonstrating the mat at issue was inherently or unreasonably dangerous;
11. There is no evidence demonstrating the mat at issue failed to meet required standards or certifications; and
12. Cross-claim Defendant Unifirst is entitled to summary judgment, as a matter of law.

This motion is based upon the pleadings and discovery in this case, Rule 56 of the South Carolina Rules of Civil Procedure, supporting memoranda to be filed, supporting affidavits filed or to be filed, and the applicable common and statutory laws of the State of South Carolina.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.



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Lindsay A. Joyner (S.C. Bar No. 77437)

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**ATTORNEYS FOR UNIFIRST
CORPORATION**

Columbia, South Carolina
October 18, 2013

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Mary Wall Black,

Plaintiff,

vs.

Bi-Lo, LLC & Unifirst Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-20-316

**CROSS-CLAIM DEFENDANT
UNIFIRST CORPORATION'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

**TO: MARK S. BARROW, ESQ. & RYAN C. HOLT, ESQ., JR., ESQ., ATTORNEYS FOR
BI-LO, LLC**

By and through its undersigned counsel, Cross-Claim Defendant Unifirst Corporation ("Unifirst"), has moved pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an order granting it summary judgment as to Cross-Claimant Bi-Lo, LLC's ("Bi-Lo") causes of action for contribution and indemnification against Unifirst. For all of the reasons outlined herein, Unifirst's motion should be granted.

I. INTRODUCTION

This matter arises from an alleged trip and fall in a Bi-Lo grocery store located in Winnsboro, South Carolina. Plaintiff claims that while she was exiting the store she tripped and fell over the mat placed in front of a sliding door which acts as both the entrance and exit to the store. Unifirst provided the mats to Bi-Lo and was alleged to have failed to properly supply mats, provide safe mats, replace the mats in a timely manner, and warn customers of the danger created by the mats. Bi-Lo asserts cross-claims against Unifirst alleging contribution and indemnification, based on both the contract between Bi-Lo and Unifirst and the special relationship between the two, for any negligence found.

II. NATURE OF THE CASE

Plaintiff filed this suit on July 31, 2012 in Fairfield County against Defendants Bi-Lo and Unifirst. Plaintiff alleges that on October 4, 2010, she was injured while leaving a Bi-Lo grocery store when she tripped and fell on “a defective and/or dry-rotted mat improperly and inappropriately placed at the entrance/exit-way area” of the store. (Compl., ¶¶ 6, 12). Plaintiff’s causes of action against Unifirst were based in negligence and gross negligence. *Id.* at ¶ 11. Plaintiff also alleged Unifirst knew or should have known of the unsafe condition of the premises. *Id.* at ¶ 13. Finally, Plaintiff claimed this conduct proximately caused her to suffer severe and permanent injuries, and the resulting damages include past, present, and future pain, medical expenses, suffering, lost wages, mental and emotional anguish and illness and loss of enjoyment of life. *Id.* at ¶ 16.

By Order, dated October 14, 2013, the Court granted Unifirst’s Motion for Summary Judgment as to Plaintiff’s claims against it. In granting Unifirst’s Motion for Summary Judgment, the Court found that there was no issue of material fact regarding Plaintiff’s claims against Unifirst. (Order, p. 3, attached hereto as **Exhibit A**). Specifically, the Court found Unifirst owed no duty to Plaintiff and therefore could not sustain a premises liability negligence claim against Unifirst. *Id.* Moreover, the Court determined there was no evidence “of a defective condition created by the mat or that Unifirst created or had notice of a defective condition, and without such evidence, Plaintiff’s claims against Unifirst fail[ed] as a matter of law.” *Id.* The Court found that the testimony only revealed that there were no witnesses to the alleged incident who could speak to the cause of the fall or that noticed anything suspicious about the mat before the fall. *Id.* at 4. Finally, the Court found that Plaintiff could not sustain a products liability cause of action against Unifirst because there was no evidence that there was anything unusual about the mat before the incident and no evidence the mat was in a defective condition, unreasonably dangerous to the user. *Id.*

Exhibit A at p. 3 of Record on Appeal

By way of cross-claims though, Bi-Lo asserts Unifirst is liable to it for contribution under S.C. Code Ann. § 15-38-20 because to the extent Bi-Lo is found negligent, the "said negligence was jointly committed with acts of negligence of" Unifirst. *Id.* at ¶¶ 29-31. Additionally, Bi-Lo claims any liability for which it is found is "only because of the alleged negligence of Unifirst . . . arising from [Unifirst's] special relationship with" Bi-Lo. *Id.* at ¶¶ 32-34. Finally, Bi-Lo alleges that its contract with Unifirst contained a an indemnification clause "for any breach of said agreement" and that any liability that arises on the part of Bi-Lo arises from Unifirst's conduct such that Unifirst must indemnify and hold Bi-Lo harmless. *Id.* at ¶¶ 35-37. Bi-Lo's cross-claims were severed from the underlying action by the Court's October 14 Order because the cross-claims arise after liability is found in the underlying action and severing such claims avoids prejudice to Unifirst and is conducive to the parties' convenience and judicial economy. (Ex. A at 5).

III. ARGUMENT

Bi-Lo's cross-claims against Unifirst cannot be sustained because Unifirst cannot be found liable to Plaintiff. Since there is no genuine issue as to any material fact, Unifirst is entitled to judgment as a matter of law on all of Bi-Lo's cross-claims against it on one or more of the following grounds: (1) the right of contribution does not exist under the facts of this case; (2) the elements necessary for equitable indemnity are not present in this case; and (3) the contract between Unifirst and Bi-Lo does not purport to indemnify and defend Bi-Lo for its own negligence. Accordingly, Unifirst's motion should be granted.

A. Summary Judgment Standard

When "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact," the moving party is entitled to summary judgment. *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363

S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004); *see also* Rule 56, SCRCRCP. If the moving party meets its initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings; rather, the opponent must present specific facts which infer there is a genuine issue for trial. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568. Moreover, if the plaintiff fails to establish a genuine issue of fact as to one essential element necessary to the cause of action, the existence of factual issues relating to other elements becomes immaterial and therefore subject to summary judgment. *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537, 545-46 (1991); *see also Rohrbough v. Wyeth Laboratories, Inc.*, 916 F.2d 970 (4th Cir. 1990) (finding a party "will not be permitted to manufacture a genuine issue of material fact to survive a motion for summary judgment").

B. There Is No Evidence To Support Bi-Lo's Contribution Cross-Claim Against Unifirst.

Bi-Lo cannot sustain its cross-claim for contribution against Unifirst; therefore, Unifirst's motion for summary judgment should be granted. Unifirst is not liable to Plaintiff, and accordingly, it cannot be jointly and severally liable. The right of contribution exists when two or more persons are jointly and severally liable in tort for the same personal injury, among other things. S.C. Code Ann. § 15-38-20 (B). Contribution may *only* exist for the tortfeasor who pays more than his pro rata share of the common liability, and recovery is limited to the excess amount paid by that tortfeasor. *Id.* Moreover, a court's judgment in "determining the liability of the several defendants to the claimant for an injury or wrongful death [is] binding as among such defendants in determining their right to contribution." S.C. Code Ann. 15-38-40 (F). Therefore, "[t]he basic premise of contribution is commonality." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 68, 518 S.E.2d 301, 309 (Ct. App. 1999) (holding there was no common liability

among the defendants and contribution could not be found when the claims against one of the defendants had been dismissed).

Like *Vermeer Carolina's, Inc.*, there can be no common liability in this case. Plaintiff's causes of action for negligence against Unifirst were dismissed as a matter of law by this Court on October 14, 2013. Therefore, Unifirst and Bi-Lo cannot be found to be joint tortfeasors. Moreover, if judged liable for negligence, Bi-Lo could not pay more than its pro rata share of the liability because it is the only tortfeasor. Accordingly, Bi-Lo cannot sustain a cause of action for contribution against Unifirst, and as such, the Court should grant Unifirst's motion for summary judgment.

C. Bi-Lo Cannot Meet The Elements To Sustain A Claim For Indemnification Against Unifirst.

Unifirst's motion for summary judgment should also be granted as to Bi-Lo's cross-claims for indemnification. The purpose of indemnity is to shift the entire loss from one party to another. *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F. Supp. 1027, 1063 (D.S.C. 1993). Indemnity may be based in contract or by operation of law in equity and is a type of "compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *Vermeer Carolina's, Inc.*, 336 S.C. at 60, 518 S.E.2d at 305; *see also Emerson Elec. Co.*, 843 F. Supp. at 1063.

1. There is no Evidence to Support Equitable Indemnity

Bi-Lo cannot meet the elements to maintain its cross-claim for equitable indemnity; therefore, the cause of action should be dismissed as a matter of law. Whether there is a contractual provision for indemnity does not matter to prove equitable indemnity. *Jourdan v. Boggs/Vaughn Contracting, Inc.*, 324 S.C. 309, 313, 476 S.E.2d 708, 710 (Ct. App. 1996). Rather, to prove equitable indemnity, a claimant must show (1) the indemnitor is found liable for causing the

plaintiff's damages; (2) the indemnitee was exonerated from liability; and (3) the indemnitee suffered damages as a result of the plaintiff's claims against it. *Vermeer Carolina's, Inc.*, 336 S.C. at 63, 518 S.E.2d at 307. A determination of equitable indemnity is "based on the evidence and the facts found by the fact finder." *Jourdan*, 324 S.C. at 313-14, 476 S.E.2d at 711.

Plaintiff's causes of action for negligence on the part of Unifirst were dismissed as a matter of law by the Court when it granted Unifirst's motion for summary judgment. Without any surviving claims against Unifirst, Plaintiff's alleged injuries cannot be attributed to any fault of Unifirst. Consequently, Unifirst cannot be found liable for causing Plaintiff's damages. Any negligence would therefore have to be found on the part of Bi-Lo. Since negligence may not be found on the part of Unifirst, Bi-Lo fails to meet the first element of equitable indemnity, liability on the part of the indemnitor. Since there is no genuine issue of fact as to that essential element necessary to the cause of action, whether there are factual issues relating to other elements is immaterial. *Baughman*, 306 S.C. 101, 410 S.E.2d at 545-46. Accordingly, Bi-Lo cannot maintain a cause of action for equitable indemnity, and Unifirst's motion for summary judgment should be granted.

2. There is no Evidence to Support Contractual Indemnity.

Unifirst is entitled to summary judgment as to Bi-Lo's cross-claim for contractual indemnity since Bi-Lo is not entitled to indemnity from Unifirst for Bi-Lo's own negligence under the applicable Agreement in this matter.

"A contract of indemnity [is] construed in accordance with the rules for the construction of contracts generally." *Fed. Pacific Elec. v. Carolina Production Enterprises*, 298 S.C. 23, 26, 378 S.E.2d 56, 57 (Ct. App. 1989) (construing the agreement that the indemnitor/lessee would "indemnify [the indemnitee/landlord]... against any damage suffered or liability incurred ... or any

loss or damage of any kind in connection with the Leased Premises during the term of [the] lease” against the indemnitee/landlord since it did not “disclose an intention to indemnify for consequences arising from [the indemnitee/landlord’s] own negligence”). Courts will strictly construe “a contract containing an indemnity provision that purports to relieve an indemnitee from the consequences of its own negligence” so that such contracts are not construed to indemnify “the indemnitee against losses resulting from its own negligent acts unless such intention is expressed in clear and unequivocal terms.” *Id.* (citing *Univ. Plaza Shopping Ctr., Inc. v. Stewart*, 272 So.2d 507 (Fla.1973); *Cox v. E.I. Du Pont de Nemours and Co.*, 39 F.R.D. 47 (W.D.S.C.1965); *Murray v. The Texas Co.*, 172 S.C. 399, 402, 174 S.E. 231, 232 (1934) (“[A] provision [in] a contract relieving one of the parties thereto from liability for ... its own negligence should be *clear and explicit*.”)).

Under the applicable agreement between Unifirst and Bi-Lo and the facts of this case, there is no act upon which Unifirst can be liable to Bi-Lo for contractual indemnity. The applicable agreement between Unifirst and Bi-Lo (“Agreement”) states the following as to indemnification: “Company [Unifirst] shall indemnify and defend Customer [Bi-Lo] against any liability arising out of any act of Company [Unifirst], its employees or agents in connection with this Agreement, *except to the extent caused by the negligence of Customer [Bi-Lo]*.” (Agreement, ¶ 9, attached hereto as **Exhibit B**) (emphasis added). Plaintiff’s claims against Unifirst have been dismissed; therefore, the only party that can be found negligent in this matter is Bi-Lo. Unlike *Fed. Pacific Elec.*, the Agreement specifically excepts indemnification for Bi-Lo’s own negligence. *Fed. Pacific Elec.*, 298 S.C. at 27, 378 S.E.2d at 58. Moreover, even without the exception, the Agreement does not actually state it will indemnify Bi-Lo’s own negligence; therefore, the Agreement would be strictly construed *against* indemnification. *Id.* at 26, 378 S.E.2d at 57. Given that the Agreement does not provide for indemnification of Bi-Lo’s own negligence and the Court has determined Unifirst is not

Exhibit B at p. 145, ROA

negligent as a matter of law, Bi-Lo cannot maintain its cross-claim for contractual indemnity. Accordingly, Unifirst's motion for summary judgment should be granted.

IV. CONCLUSION

For all of the aforementioned reasons, Unifirst is due judgment as a matter of law as to Bi-Lo's cross-claims against it. Therefore, Unifirst respectfully requests the Court enter an order granting it summary judgment.

Respectfully submitted,

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ATTORNEYS FOR UNIFIRST CORPORATION

Columbia, South Carolina
January 7, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) THE SIXTH JUDICIAL CIRCUIT

Mary Wall Black,

Plaintiff,

v.

BI-LO, LLC and Unifirst Corporation,

Defendant.

Civil Action No.: 2012-CP-20-316

**MEMORANDUM IN OPPOSITION TO
UNIFIRST'S MOTION FOR SUMMARY
JUDGMENT**

This matter comes before the Court for hearing on Defendant Unifirst Corporation's Motion for Summary Judgment on the cross-claims brought by co-Defendant BI-LO, LLC. For the following reasons, Defendant BI-LO requests that Unifirst's Motion be DENIED.

FACTS

Plaintiff alleges that while she was exiting the BI-LO store in Winnsboro, she "tripped and fell on a defective and/or dry-rotted mat improperly and inappropriately placed at the entrance/exit-way" (Compl. ¶6.) Defendant BI-LO operated the premises. Defendant Unifirst provided the mat to BI-LO pursuant to a textile services agreement (hereinafter "the Agreement," Exhibit A).

PROCEDURE

On October 10, 2013, the Honorable Ernest Kinard issued an order granting summary judgment to Unifirst on the Plaintiff's claim against it. The order was issued for three reasons: (1) Unifirst did not owe a duty to Plaintiff; (2) the record contained no evidence that the mat was defective or that Unifirst created or knew of any defect; and (3) Plaintiff presented no evidence Exhibit A at p. 145, ROA

that the mat was in a defective condition unreasonably dangerous to the user, evidence required for a products liability claim.

ARGUMENT

I. Contractual Indemnity

On October 11, 2012, BI-LO filed a cross-claim for contractual indemnification against Unifirst. See Ans./Cross-claim of BI-LO ¶35-37. “Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. A right of indemnity may arise by contract (express or implied) or by operation of law as a matter of equity. A contract of indemnity will be construed in accordance with the rules for the construction of contracts generally.” Campbell v. Beacon Mfg. Co., Inc., 313 S.C. 451, 453, 438 S.E.2d 271, 272 (Ct.App.1993) (internal citations omitted). “Contractual indemnity involves a transfer of risk for consideration, and the contract itself establishes the relationship between the parties.” Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), citing James C. Gray, Jr. and Lisa D. Catt, *The Law of Indemnity in South Carolina*, 41 S.C. L.Rev. 603, 604 (1990).

In April 2007, Unifirst and BI-LO¹ entered into an agreement governing the supply of mats, mops, uniforms, and other merchandise to BI-LO's stores. The Agreement provides that Unifirst “shall indemnify and defend [BI-LO] against any liability arising out of any act of [Unifirst], its employees or agents in connection with this Agreement, except to the extent caused by the negligence of [BI-LO].” See Agreement ¶9 (emphasis added). At this stage in the case, there has been no determination that BI-LO was negligent. Therefore, the operative language is contained in the first sentence of Paragraph 9.

¹ Although the Agreement was entered into by Defendant BI-LO's predecessor form, it is nevertheless “binding upon and shall inure to the benefit of the parties [t]hereto, their heirs, administrators, executors, successors or assigns.” Agreement ¶15.

Unifirst contends in its Motion for Summary Judgment that because it was deemed not to be negligent by virtue of Judge Kinard's summary judgment order of October 10, 2013, it should receive similar relief on BI-LO's cross-claim. This contention misconstrues the October Order, the language of the Agreement, and the prevailing case law in South Carolina.

The October Order concluded that Unifirst owed no duty to the Plaintiff and that there was no evidence that the mat was defective. These findings do not affect the contractual language governing the relationship between BI-LO and Unifirst. The Agreement clearly states that Unifirst's duty to indemnify is triggered by "any act," not simply those acts which are negligent or give rise to strict liability. See Agreement ¶9. The contractual duty created by the Agreement is much broader than the duties created by the cause(s) of action pled by Plaintiff.²

In Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc., the South Carolina Supreme Court construed "acts or omissions" language similar to that contained in the Agreement. 316 S.C. 292, 450 S.E.2d 41 (1994). In Otis, Otis Elevator sought indemnification from Hardin. The parties' indemnification agreement provided that Hardin would indemnify Otis except for liability resulting from Otis' "acts or omissions." Id., at 294, 450 S.E.2d at 43. At trial, the "court submitted a special interrogatory to the jury that inquired whether Smith's injuries were caused by the 'acts or omissions' of Otis Elevator." Id., at 299, 450 S.E.2d at 45. For purposes of the case *sub judice*, which concerns the indemnitor's "acts" rather than the indemnitee's acts (as in Otis), the case background matters less than the Supreme Court's recognition of the special interrogatory's breadth. Hardin complained that the jury should have been charged on

² Duties may be created by contract and reasonableness of the contractually-created duties should not be seen as a condition for enforcement. See Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 388, 520 S.E.2d 142, 149 (1999); C.A.N. Enterprises, Inc. v. S.C. Health & Human Serv. Finance Comm'n, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988).

negligence, strict liability, and breach of warranty, but the Supreme Court found Hardin's contention without merit:

Otis Elevator, as instructed by the trial court in its special interrogatory, faced liability for any loss or damage occasioned by Otis Elevator's acts or omissions. As thus defined, Otis Elevator's potential liability was significantly broader than its potential liability under theories of negligence, strict liability, and breach of warranty.

Id., at 299, 450 S.E.2d at 45.

The Supreme Court's analysis of "acts or omissions" language provides that under contractual agreements like the one between BI-LO and Unifirst, parties can contract for possible liability—and indemnification thereof—broader than traditional negligence. Because the October Order only addressed Plaintiff's negligence claims, there remains a genuine issue of material fact as to whether any act by Unifirst or its employees/agents caused BI-LO to incur loss or breach any duty to Plaintiff.

The scintilla of evidence which supports this genuine issue of material fact is contained in the deposition of Mary Black, who states that the mat was "brittle" and "[t]he rubber part of the rug was dry rotted and it was causing it to bow." Dep. Mary Black 57:16—58:6 (17 April 2013) (Exhibit B). As expected, BI-LO denies these allegations, but in the event Plaintiff is successful in proving her case and judgment is entered against BI-LO, Unifirst must indemnify BI-LO because its acts may be shown at trial to have caused the dry-rotting. The October Order simply concluded that the mat was not defective or unreasonably dangerous under a products liability/negligence framework. The contractual language of the Agreement is broad. Any act of Unifirst or its agents may have caused the dry rot—whether defective or not. The Agreement does not require that Unifirst's act(s) be negligent or that its products be defective or unreasonably dangerous to trigger indemnification. Even an act which might be innocent or

reasonable in everyday life would still trigger Unifirst's duty to indemnify if the act caused BI-LO to incur loss.

Unifirst's arguments against the breadth of the consequences of the "any act" language are unfounded. Trial courts "are without authority to alter a contract by construction or to make new contracts for the parties. [The Court's] duty is limited to the interpretation of the contract made by the parties themselves '... regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully.'" C.A.N. Enterprises, Inc., at 378, 373 S.E.2d at 587, citing Gilstrap v. Culpepper, 283 S.C. 83, 320 S.E.2d 445 (1984).

II. Equitable Indemnity

"Equitable indemnity cases involve a fact pattern in which the first party is at fault, but the second party is not." Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct.App.1999) (internal citation omitted). "For a party to recover under a theory of equitable indemnification, three things must be proven: (1) the indemnitor was liable for causing the Plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it which were eventually proven to be the fault of the indemnitor." Id. Unifirst contends that it has been adjudicated without fault, and is therefore not subject to equitable indemnification. The October Order suggests otherwise.

As indicated above, the October Order was limited in scope. Unifirst was simply adjudged to have no duty to Plaintiff and the Court ruled that the mat did not meet the defective/unreasonably dangerous standard of a products liability claim. At the trial of this case, it is entirely possible—and certainly likely—that a jury could find Unifirst to have contributed to Plaintiff's injuries. The October Order disposed only of the claims Plaintiff brought against

Unifirst—not all potential claims for all potential torts that might exist. It is worth noting that the very same Order severs the cross-claims from the personal injury claim and provides for a separate trial on the very cross-claims Unifirst is trying to dispose of in this Motion.

Indeed, Plaintiff's allegations against Unifirst are not identical to those against BI-LO. A jury could certainly find that an act alleged to have been committed by BI-LO was actually committed by Unifirst. Counsel for BI-LO has asked to take the depositions of a Unifirst corporate designee under Rule 30(b)(6), SCRCF as well as the depositions of Unifirst employees who serviced the Winnsboro store. What these individuals might have seen or done is entirely relevant and may give rise to evidence which suggests that wrongs attributed to BI-LO might have actually been committed by Unifirst or its employees. These depositions have not yet occurred.

..... This equitable indemnification claim is properly brought as a cross-claim under Rule 13(g) which contemplates the inclusion of "a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant."

III. Contribution

As mentioned throughout this memorandum, a jury may hold BI-LO liable for acts which were committed by Unifirst or its agents. BI-LO may therefore be forced to pay more than its pro-rata share. See Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. §15-38-10, *et seq.* It is certainly possible that by special interrogatory or otherwise, Unifirst can be found to be a joint tortfeasor for acts separate and distinct from those complained of by Plaintiff. Though victorious on the Plaintiff's claims, Unifirst may experience different results in the defense of the

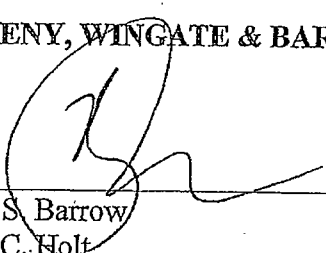
cross-claims levied against it. Pursuant to Rule 13(g), SCRC, *supra*, this contribution claim is properly made as a cross-claim.

CONCLUSION

For the foregoing reasons, and because depositions of Unifirst's employees have not yet been scheduled, Defendant BI-LO respectfully requests that Unifirst's Motion for Summary Judgment be DENIED.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

January 9, 2014

2014 JAN 9 AM 9 20
FAIRFIELD COUNTY
CLERK OF COURT
BETTY J. BECKHAM

1 Q Yes, ma'am.

2 A It was like --

3 Q Crinkled in the middle?

4 A Crinkled. The outside of the rug is hard
5 rubber.

6 Q Right.

7 A And the inside is carpeted.

8 Q Okay.

9 A And the outside of the rug was buckled up
10 like this..

11 Q You're pointing to what -- you're using a
12 napkin --

13 A Uh-huh.

14 Q -- as an illustration of the rug?

15 A Uh-huh.

16 Q And you're crinkling up the middle of the
17 napkin?

18 A Well, it's not -- well, the middle -- it was
19 the outside part. The rubber part of the rug was dry
20 rotted and it was causing it to bow.

21 Q How do you know it was dry rotted?

22 A Because the rest of it was flat. The rest
23 of it was hard. I don't know how to describe it.. Like
24 when you get a dry rotted tire? It kind of felt like
25 that. It was --

1 Q Brittle?

2 A Brittle.

3 Q And that was the outside of the rug, the
4 rubber part?

5 A Just the rubber part. The carpet part
6 itself looked okay.

7 Q All right. So you told me your foot caught
8 on something, but I take it --

9 A That's the only thing that was there.

10 Q All you know is what you saw when you looked
11 back?

12 A Right.

13 Q You don't know what you caught your foot on?

14 A That's the only thing that was there.

15 Q Right. My question is you don't know what
16 you caught your foot on --

17 A No.

18 Q Do you?

19 A No, but that's the only thing that was
20 there.

21 Q And you fell. And then you looked back, and
22 you saw a rug; correct?

23 A Well, I felt my foot when it caught.

24 Q Right. And you looked back, and you saw the
25 rug?

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

2014 JAN 30 PM 12:01
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

IN THE COURT OF COMMON PLEAS
THE SIXTH JUDICIAL CIRCUIT

Mary Wall Black,

Civil Action No.: 2012-CP-20-316

Plaintiff,

v.

BI-LO, LLC and Unifirst Corporation,

Defendant.

BI-LO'S MOTION TO ALTER OR AMEND
THE COURT'S ORDER GRANTING
UNIFIRST'S MOTION FOR SUMMARY
JUDGMENT AS TO BI-LO'S CROSS-
CLAIMS

TO: GRAY T. CULBREATH, ESQUIRE, ATTORNEY FOR UNIFIRST:

YOU WILL PLEASE TAKE NOTICE the undersigned, as attorney for BI-LO, will move before the presiding Judge of the Fairfield County Circuit Court, at the Fairfield County Courthouse on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order altering or amending the Court's prior Order of January 17, 2014.

This matter came before the Court for hearing on Defendant Unifirst Corporation's Motion for Summary Judgment on the three cross-claims brought by co-Defendant BI-LO, LLC. On January 9, 2014, the Court heard arguments from counsel for both Unifirst and BI-LO. At the close of the hearing, the Court issued a bench ruling granting Unifirst's Motion for Summary Judgment as to all three cross-claims. The Court issued a written order on January 17 which was filed in Fairfield County on January 23 and transmitted to Defense counsel's office, arriving there on January 24.

"The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (internal citations omitted). "If the losing party

has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.” I’On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (internal citations omitted).

Prior to the hearing on Unifirst’s Motion for Summary Judgment, BI-LO filed a Memorandum in Opposition to the Motion. See Exhibit A. Counsel for BI-LO provided arguments based in similar reasoning as those contained in the Memorandum. In the Memorandum, BI-LO argued that based on language in the merchandise contract between BI-LO and Unifirst, Unifirst was required to “indemnify and defend [BI-LO] against any liability arising out of any act of [Unifirst], its employees or agents in connection with this Agreement, except to the extent caused by the negligence of [BI-LO].” BI-LO cited to the case of Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc., which stands for the proposition that “acts or omissions” language is broader than merely negligent acts. 316 S.C. 292, 450 S.E.2d 41 (1994). BI-LO argued that even though an October 10 order of summary judgment held that Unifirst had not been negligent, the “any act” language of the BI-LO/Unifirst contract established that Unifirst could nevertheless be found by a jury or otherwise to have committed “any act” that would trigger the indemnification clause.

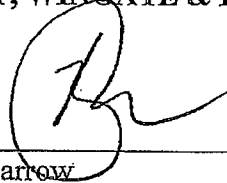
In its January 17 Order, the Court did not address the applicability of the “any act” language and whether it triggered any contractual duties of Unifirst which would have sustained BI-LO’s contractual indemnity claim. Rather the Court noted in its Order that “the agreement creates an exception for indemnity of Bi-Lo’s [*sic*] own negligence” and does not provide for “indemnification to Bi-Lo for its own negligence.” See Order of 17 January 2014, p. 5. Of course, at this stage in the litigation there has been no determination that BI-LO was negligent. Exhibit A at p. 49, ROA

Furthermore, BI-LO's cross-claim for contractual indemnification does not seek indemnification from Unifirst for BI-LO's own alleged negligence but rather for "any act" of Unifirst which resulted in liability. BI-LO's memorandum further cited to deposition testimony providing the scintilla of evidence which would suggest a genuine issue of material fact as to whether "any act" of Unifirst led to liability on the part of BI-LO.

Respectfully, BI-LO moves the Court to reconsider its Order of January 17 as concerns BI-LO's cross-claim for contractual indemnity. BI-LO respectfully requests the Court to alter or amend its ruling to decide on the effect of the "any act" language contained in the merchandise agreement which is broader than mere negligence as indicated in the Otis case.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

January 27, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	THE SIXTH JUDICIAL CIRCUIT
	)	
Mary Wall Black,	)	Civil Action No.: 2012-CP-20-316
	)	
	)	
Plaintiff,	)	
	)	
v.	)	BI-LO'S REPLY TO UNIFIRST'S
	)	MEMORANDUM IN OPPOSITION TO BI-
BI-LO, LLC and Unifirst Corporation,	)	LO'S MOTION TO ALTER OR AMEND
	)	
	)	
Defendants.	)	

Defendant BI-LO, LLC presents this Reply to Unifirst's Memorandum served in opposition to BI-LO's Motion to Alter or Amend the Court's Order granting summary judgment as to BI-LO's cross-claims against Unifirst. BI-LO filed its Motion to seek the Court's ruling on the issue of whether the "any act" language of the indemnification agreement between Defendants encompassed more than pure negligence. BI-LO submits that the "any act" language is broad enough to trigger Unifirst's liability to BI-LO under the indemnification agreement even in the absence of a *negligent* act by Unifirst against Plaintiff.

Unifirst initially critiques BI-LO's argument by criticizing its reliance on Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc., which stands for the proposition that "acts or omissions" language is broader than merely negligent acts. 316 S.C. 292, 450 S.E.2d 41 (1994). Unifirst's memorandum attempts to dismiss the merits of Otis by characterizing its holding as narrow and that its facts are distinguishable. The Otis Court gave significant discussion to the "act or omission" language and the case speaks for itself in that regard. Additionally, Unifirst contends that the "holding does not purport to define the terms 'acts or omissions' for all contracts . . ." This contention is an exaggeration, as it is well-established that Courts look to decisions of other

Courts—even foreign courts—in defining terms. See Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 407, 552 S.E.2d 42, 45 (Ct. App. 2001). Similarly, this Court should look to the appellate courts of this State when faced with questions concerning the definition of “any act.”

Unifirst appends its first critique of BI-LO’s argument by raising another case, Penton v. J.F. Cleckley & Co., 326 S.C. 275, 486 S.E.2d 742 (1997). The procedural posture of Penton makes it inapplicable to the case *sub judice*. In Penton, the jury does not appear to have addressed—either through special interrogatory, the verdict form, or otherwise—the issue of which acts or omissions might have led to the Plaintiff’s injuries. In its defense of Unifirst’s motion for summary judgment and in its motion to alter or amend, BI-LO has always noted that a jury may—unlike the Penton jury—find that some act of Unifirst contributed to the Plaintiff’s injury. Although it lost on the indemnification issue, the Department of Transportation in Penton at least had the opportunity to reach the jury. BI-LO only asks for the same opportunity.

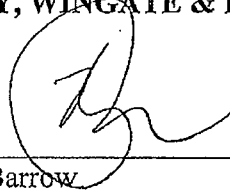
Unifirst’s second critique of BI-LO’s argument is that no evidence creates a genuine issue of material fact to sustain BI-LO’s cross-claims. BI-LO has already raised the testimony of Mary Black that the mat was brittle. Even if a brittle mat is insufficient to establish negligence on the part of Unifirst, it may nevertheless be an act which could trigger the indemnity provision. Perhaps more importantly is the fact that Unifirst has failed to make its employees available for deposition during the course of discovery and after repeated efforts by BI-LO to have these depositions scheduled. See Exhibit A. It is well-established “that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543-44 (1991), citing 10A Wright & Miller, FEDERAL PRACTICE AND PROCEDURE § 2741, p. 543 (1983); 6 MOORE’S

FEDERAL PRACTICE ¶ 56.02[6], p. 56-39 (2d ed. 1990); First Chicago Int'l v. United Exchange Co., 836 F.2d 1375 (D.C.Cir.1988); Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 756 F.2d 230 (2d Cir.1985); Tyler v. City of Enterprise, 521 So.2d 951 (Ala.1988); Gangadean v. Leumi Fin. Corp., 13 Ariz.App. 534, 478 P.2d 532 (1970); Commercial Bank of Kendall v. Heiman, 322 So.2d 564 (Fla.Dist.Ct.App.1975); Board of Education v. Van Buren & Firestone, Architects, Inc., 165 W.Va. 140, 267 S.E.2d 440 (1980); Rule 56(f), S.C.R.C.P.

Respectfully, BI-LO moves the Court to reconsider its Order of January 17 as concerns BI-LO's cross-claim for contractual indemnity. BI-LO respectfully requests the Court to alter or amend its ruling to decide on the effect of the "any act" language contained in the merchandise agreement which is broader than mere negligence as indicated in the Otis case.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
Ryan C. Holt
Sweeney, Wingate, & Barrow, P.A.
Post Office Box 12129
Columbia SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

January 28, 2014

EXHIBIT A

Ryan C. Holt

From: Lindsay Joyner <ljoyner@gwblawfirm.com>
Sent: Friday, February 14, 2014 11:39 AM
To: Cristal D. Strauser; Ryan C. Holt
Cc: 'tshuler@staclaw.com'
Subject: RE: Black v. BI-LO v. Unifirst

We have reached out to the client regarding dates and will let you know when we hear back. At least one of the designees is located in Massachusetts. Additionally, we are also waiting to hear on specific dates for the employee(s) who provided services to the Winnsboro store, but from previous conversations, it appears that as far as the day of the week goes, Friday would be the best day given work schedules.

We'll be in touch.

Thanks,
Lindsay



Gallivan, White & Boyd, P.A.
—ATTORNEYS AT LAW—

Lindsay Anne Joyner
Associate
ljoyner@GWBlawfirm.com

Gallivan, White & Boyd P.A.
Office 1201 Main Street | Suite 1200 | Columbia SC 29201
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From: Cristal D. Strauser [mailto:CDS@swblaw.com]
Sent: Friday, February 14, 2014 10:58 AM
To: Lindsay Joyner; Ryan C. Holt
Cc: 'tshuler@staclaw.com'
Subject: RE: Black v. BI-LO v. Unifirst

Lindsay,

Can you please provide dates for the depositions of Unifirst's 30(b)(6) designee as well as the employee(s) who serviced the Winnsboro store during the week of the incident?

Thanks,

EXHIBIT A

Cristal D. Strauser | *Paralegal*
Sweeny, Wingate & Barrow, P.A.



1515 Lady St. (29201) T § 803-256-2233
PO Box 12129 F § 803-256-9177
Columbia, SC 29211

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From: Lindsay Joyner [<mailto:ljoyner@gwblawfirm.com>]
Sent: Thursday, January 02, 2014 4:51 PM
To: Ryan C. Holt
Cc: 'Zack Atkinson (zatkinson@staclaw.com)'; Gray Culbreath; Cristal D. Strauser; Mark S. Barrow
Subject: RE: Black v. BI-LO v. Unifirst

Ryan,

Thanks for the follow up and for looking out for our availability. We are in the process of getting the designee and employees' availability together for you. I will be in touch as soon as we have it.

Thanks,

Lindsay

EXHIBIT A

Lindsay Anne Joyner

Associate

ljoyner@GWBlawfirm.com



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—ATTORNEYS AT LAW—

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From: Ryan C. Holt [<mailto:RCH@swblaw.com>]

Sent: Thursday, January 02, 2014 4:27 PM

To: Lindsay Joyner

Cc: 'Zack Atkinson (zatkinson@staclaw.com)'; Gray Culbreath; Cristal D. Strauser; Mark S. Barrow

Subject: RE: Black v. BI-LO v. Unifirst

Lindsay,

I wanted to follow up on the availability of these individuals for depositions. We want to be conscientious of your and your client's schedules before sending notices.



Ryan C. Holt | *Attorney*

Sweeny, Wingate & Barrow, P.A.

From: Ryan C. Holt

Sent: Thursday, December 19, 2013 2:12 PM

To: ljoyner@GWBlawfirm.com

EXHIBIT A

Cc: Zack Atkinson (zatkinson@staclaw.com); gculbreath@gwblawfirm.com; Cristal D. Strauser; Mark S. Barrow
Subject: Black v. BI-LO v. Unifirst

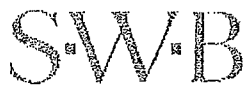
Lindsay,

We would like to take the deposition of Unifirst's 30(b)(6) designee as well as the employee(s) who serviced the Winnsboro store during the week of the incident, the week before, and the week afterward.

The 30(b)(6) topics of familiarity are tentatively as follows:

1. The BI-LO "account" with Unifirst
2. Mat collection, delivery, repurposing, manufacture, cleaning
3. Unifirst invoices to BI-LO
4. Knowledge of employees who served the BI-LO "account"
5. The textile rental service agreement between Unifirst and BI-LO
6. What insurance is maintained by Unifirst in compliance with the textile rental service agreement

I have copied Cristal in my office on this. Please have your staff get in touch with her for scheduling.



Ryan C. Holt | Attorney
Sweeny, Wingate & Barrow, P.A.

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EXHIBIT A

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STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Mary Wall Black,

Plaintiff,

vs.

Bi-Lo, LLC & Unifirst Corporation,

Defendants.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2012-CP-20-316

) **CROSS-CLAIM DEFENDANT**
) **UNIFIRST CORPORATION'S**
) **MEMORANDUM IN OPPOSITION TO**
) **CROSS-CLAIM PLAINTIFF BI-LO,**
) **LLC'S MOTION TO ALTER OR**
) **AMEND**

TO: MARK S. BARROW, ESQ. & RYAN C. HOLT, ESQ., JR., ESQ., ATTORNEYS
FOR BI-LO, LLC

Cross-Claim Defendant Unifirst Corporation ("Unifirst") submits the following memorandum of law in opposition to Cross-Claim Plaintiff Bi-Lo, LLC's ("Bi-Lo"), Motion to Alter or Amend The Court's Order Granting Unifirst's Motion for Summary Judgment As To Bi-Lo's Cross-Claims ("Motion to Alter or Amend").

I. INTRODUCTION

This matter arises from an alleged trip and fall in a Bi-Lo grocery store located in Winnsboro, South Carolina. Plaintiff claims that while she was exiting the store she tripped and fell over the mat placed in front of a sliding door which acts as both the entrance and exit to the store. Unifirst provided the mats to Bi-Lo and was alleged to have failed to properly supply mats, provide safe mats, replace the mats in a timely manner, and warn customers of the danger created by the mats. Bi-Lo asserted cross-claims against Unifirst alleging contribution and indemnification, based on both the contract between Bi-Lo and Unifirst and the special relationship between the two, for any negligence found. This Court found summary judgment was appropriate as to Bi-Lo's cross-claims against Unifirst.

II. NATURE OF THE CASE

Plaintiff filed this suit on July 31, 2012 in Fairfield County against Defendants Bi-Lo and Unifirst. Plaintiff alleges that on October 4, 2010, she was injured while leaving a Bi-Lo grocery store when she tripped and fell on “a defective and/or dry-rotted mat improperly and inappropriately placed at the entrance/exit-way area” of the store. (Compl., ¶¶ 6, 12). Plaintiff’s causes of action against Unifirst were based in negligence and gross negligence. *Id.* at ¶ 11. Plaintiff also alleged Unifirst knew or should have known of the unsafe condition of the premises. *Id.* at ¶ 13. Finally, Plaintiff claimed this conduct proximately caused her to suffer severe and permanent injuries, and the resulting damages include past, present, and future pain, medical expenses, suffering, lost wages, mental and emotional anguish and illness and loss of enjoyment of life. *Id.* at ¶ 16.

By Order dated October 14, 2013, the Court granted Unifirst’s Motion for Summary Judgment as to Plaintiff’s claims against it. In granting Unifirst’s Motion for Summary Judgment, the Court found that there was no issue of material fact regarding Plaintiff’s claims against Unifirst. (Order, p. 3, attached hereto as **Exhibit A**). Specifically, the Court found Unifirst owed no duty to Plaintiff and therefore could not sustain a premises liability negligence claim against Unifirst. *Id.* Moreover, the Court determined there was no evidence “of a defective condition created by the mat or that Unifirst created or had notice of a defective condition, and without such evidence, Plaintiff’s claims against Unifirst fail[ed] as a matter of law.” *Id.* The Court found that the testimony only revealed that there were no witnesses to the alleged incident who could speak to the cause of the fall or that noticed anything suspicious about the mat before the fall. *Id.* at 4. Finally, the Court found that Plaintiff could not sustain a products liability cause of action against Unifirst because there was no evidence that there was anything unusual

Exhibit A at p. 9, ROA

about the mat before the incident and no evidence the mat was in a defective condition, unreasonably dangerous to the user. *Id.*

By way of cross-claims though, Bi-Lo asserts Unifirst is liable to it for contribution under S.C. Code Ann. § 15-38-20 because to the extent Bi-Lo is found negligent, the “said negligence was jointly committed with acts of negligence of” Unifirst. *Id.* at ¶¶ 29-31. Additionally, Bi-Lo claims any liability for which it is found is “only because of the alleged negligence of Unifirst . . . arising from [Unifirst’s] special relationship with” Bi-Lo. *Id.* at ¶¶ 32-34. Finally, Bi-Lo alleges that its contract with Unifirst contained a an indemnification clause “for any breach of said agreement” and that any liability that arises on the part of Bi-Lo arises from Unifirst’s conduct such that Unifirst must indemnify and hold Bi-Lo harmless. *Id.* at ¶¶ 35-37. Bi-Lo’s cross-claims were severed from the underlying action by the Court’s October 14 Order because the cross-claims arise after liability is found in the underlying action and severing such claims avoids prejudice to Unifirst and is conducive to the parties’ convenience and judicial economy. (Ex. A at 5). On October 22, 2013, Unifirst filed a Motion for Summary Judgment as to Bi-Lo’s cross-claims, which was heard by the Court on January 9, 2014.¹

By Order filed dated January 17, 2014, the Court granted Unifirst’s Motion for Summary Judgment and found that Bi-Lo’s cross-claims against Unifirst cannot be sustained because Unifirst cannot be found liable to Plaintiff Mary Black. (Jan. Order, p.2, attached hereto as **Exhibit B**). Specifically, the Court found that the right of contribution does not exist under the facts of this case, that the elements necessary for equitable indemnity are not present, and that

¹ Additionally, on January 9, 2014, Bi-Lo, LLC filed an action styled as *BI-LO, LLC v. National Union Fire Insurance Co. of Pittsburgh, PA; Unifirst Corporation; and Mary Black*, Civil Action No. 2014-CP-20-011 in Court of Common Pleas of Fairfield County, South Carolina, seeking that the Court declare that Unifirst and National Union owe it a duty to defend and indemnify.

contractual indemnity does not lie because Unifirst does not have to indemnify Bi-Lo for its own negligence. *Id.* The Court determined that Bi-Lo and Unifirst could not be found to be joint tortfeasors; therefore, there was no common liability among Bi-Lo and Unifirst in this matter. *Id.* at p.3-4. Additionally, the Court found that equitable indemnity could not exist because Unifirst, who would be considered the indemnitor, could not be found liable for causing Plaintiff's damages since Unifirst had been dismissed as a matter of law from the underlying action such that all of the essential elements of equitable indemnity could not be met. *Id.* at 4. Finally, the Court found that an exception exists in the contract between Unifirst and Bi-Lo which provides that Unifirst does not have to indemnify Bi-Lo for Bi-Lo's own negligence. *Id.* at 5. Therefore, the Court determined that since there was no act upon which Unifirst could be found liable to Plaintiff, there was no act upon which Unifirst could be found liable to Bi-Lo for contractual indemnity since the only party that could be found liable to Plaintiff for negligence in the underlying lawsuit was Bi-Lo. *Id.* at 5-6.

On January 30, 2014, Bi-Lo filed its Motion to Alter or Amend, requesting that the Court amend its January Order granting summary judgment to Unifirst as to Bi-Lo's cross-claim for contractual indemnity. (Bi-Lo's Motion, p.2-3). Specifically, Bi-Lo argues the Court should alter its ruling as to Bi-Lo's contractual indemnity claim because the contract between Bi-Lo and Unifirst provides for indemnification as to "any act" of Unifirst which resulted in liability. *Id.*

III. ARGUMENT

Since Bi-Lo's Motion to Alter or Amend does not address the Court's dismissal of Bi-Lo's contribution and equitable indemnification claims, this memorandum is limited to its arguments that Bi-Lo should be able to sustain its claim for contractual indemnity due to the "any act" language in the provision for indemnification in the contract between Unifirst and Bi-

Lo. There is no act for which Unifirst may be found liable to Plaintiff in order to trigger the indemnification clause of the contract between Bi-Lo and Unifirst, and Bi-Lo has not presented any evidence of a genuine issue of material fact. Accordingly, Bi-Lo's Motion to Alter or Amend should be denied.

A. Motion to Alter or Amend Standard

Rule 59(e) of the South Carolina Rules of Civil Procedure provides a mechanism for parties to move the court to alter or amend a judgment within ten days following receipt of written notice of the entry of the order. The purpose of a motion to alter or amend is "to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999); *see also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004).

B. Unifirst Cannot Be Found Liable To Plaintiff For Any Act; Therefore, It Does Not Owe Contractual Indemnity To Bi-Lo.

Under the agreement between Unifirst and Bi-Lo and the facts of this case, there is no evidence of an act of Unifirst which could cause liability to Bi-Lo such that it should be liable for contractual indemnity. Unifirst cannot be found liable to Plaintiff for the claims Plaintiff made against it since the Court granted summary judgment to Unifirst as to Plaintiff's claims, and Plaintiff did not appeal that finding. Bi-Lo argues, however, that Unifirst may still be liable to Bi-Lo pursuant to the phrase "arising out of any act of Company [Unifirst]" which is found in Paragraph 9 of the agreement between Bi-Lo and Unifirst. Even assuming the "any act" language in the Agreement contemplates more than those acts complained of by Plaintiff as part of the "liability" that would give rise to the indemnification, there is no actual evidence from which it can be reasonably inferred that the liability complained of arose from an act of Unifirst.

The purpose of indemnity is to shift the entire loss from one party to another. *Myrtle*

Beach Pipeline Corp. v. Emerson Elec. Co., 843 F. Supp. 1027, 1063 (D.S.C. 1993). Indemnity may be based in contract and is a type of “compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party.” *Vermeer Carolina’s, Inc.*, 336 S.C. at 60, 518 S.E.2d at 305; *see also Emerson Elec. Co.*, 843 F. Supp. at 1063. Contractual indemnity contemplates “a transfer of risk for consideration” through an agreement between the parties. *Rock Hill Telephone Co, Inc. v. Globe Communications, Inc.*, 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005). “A contract of indemnity [is] construed in accordance with the rules for the construction of contracts generally.” *Fed. Pacific Elec. v. Carolina Production Enterprises*, 298 S.C. 23, 26, 378 S.E.2d 56, 57 (Ct. App. 1989). Therefore, if the contract is unambiguous, “the language alone determines the force and effect of the agreement.” *Campbell v. Beacon Manuf. Co., Inc.*, 313 S.C. 451, 453, 438 S.E.2d 271, 272 (Ct. App. 1993).

Paragraph 9 of the 2007 Rental Service Agreement (“Agreement”) between Unifirst and Bi-Lo, provides, in relevant part: “Company [Unifirst] shall indemnify and defend Customer [Bi-Lo] against any liability arising out of any act of Company [Unifirst], its employees or agents in connection with this Agreement, except to the extent caused by the negligence of Customer [Bi-Lo].” (Agreement, ¶ 9, attached hereto as **Exhibit C**). Bi-Lo relies on *Otis Elevator, Inc. v. Hardin Const. Co. Grp., Inc.*, 316 S.C. 292, 450 S.E.2d 41 (1994) for the proposition that when the phrase “acts or omissions,” which Bi-Lo argues is comparable to the “any act” language in the Agreement, is used in contracts, the possible liability and indemnification thereof is broader than negligence. (Motion to Alter or Amend, p.2; Ex. A to Motion to Alter or Amend, p.4). However, the Court in *Otis* did not specifically analyze the meaning of the terms but rather made the *narrow* holding that a jury instruction on the specific law applicable to negligence, strict liability, and breach of warranty was unnecessary given the special interrogatory, which

Exhibit C at p. 145 ROA

specifically asked whether the loss or damage was "occasioned by [Otis Elevator's] acts or omissions." *Id.* at 299, 450 S.E.2d at 45. In making that holding, the *Otis* Court commented that the language of the special interrogatory was broader than Otis' liability under theories of negligence, strict liability, and breach of warranty; however, its holding does not purport to define the terms "acts or omissions" for all contracts as suggested by Bi-Lo.² *Id.* Under the plain language of the Agreement, Unifirst owes Bi-Lo indemnification under the Agreement for liability which comes from an act of Unifirst and not from any negligence of Bi-Lo.³ Liability for Plaintiff Mary Black's injuries cannot come from an act of Unifirst because the Court dismissed Plaintiff's claims against Unifirst with prejudice, and Bi-Lo cannot point to another act of Unifirst which would cause it liability.

Rather, this case is more comparable to *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 486 S.E.2d 742 (1997), wherein the Supreme Court held that a contractor ("Cleckley") was not liable to the South Carolina Department of Transportation ("SCDOT") for indemnity under a

² Moreover, *Otis* is distinguishable from the facts of this case. In *Otis*, Otis, as the elevator subcontractor for general contractor Hardin Construction Company Group, Inc. ("Hardin"), signed an agreement upon the completion of the installation of the elevators on a project that permitted Hardin to use the elevators on a temporary basis. 316 S.C. at 294-95, 450 S.E.2d at 43. The agreement provided that Hardin would "indemnify and save [Otis Elevator] harmless against all loss, damage, claims, liability, or expenses arising therefrom, except such loss, damage, claims, liability or expenses as may be occasioned by [Otis Elevator's] acts or omissions." *Id.* at 294, 450 S.E.2d at 43. Therefore, Otis was the indemnitee and not the indemnitor, which is the position Bi-Lo is arguing Unifirst is in here. In *Otis*, another subcontractor was injured using the elevator. *Id.* at 295, 450 S.E.2d at 43. At trial, Otis settled with the plaintiff, and following the trial, Otis sought indemnification from Hardin. *Id.* In that action for indemnification, the jury found by special interrogatory that no act or omission of Otis caused the injuries to the plaintiff in the underlying action. *Id.* The Supreme Court found that the evidence supported that finding because by the jury because the evidence indicated that based on the plaintiff's allegations against Otis, it did not have the duty to the plaintiff; rather, Hardin had the duty to the plaintiff. *Id.* at 295-96, 450 S.E.2d at 43-44.

³ This Court held that an exception exists in the contract between Unifirst and Bi-Lo which provides that Unifirst does not have to indemnify Bi-Lo for Bi-Lo's own negligence. (Ex. B, Jan. Order, p.5).

resurfacing contract between the parties. The indemnification clause in *Penton* required Cleckley to indemnify the SCDOT "from all suits or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of ... *any act or omission*, neglect, or misconduct of" Cleckley. *Id.* at 282, 486 S.E.2d at 746 (emphasis added). The Court held Cleckley was not required to indemnify the SCDOT because under the contract terms the SCDOT could only seek indemnification when a claim is made for injury "on account of ... *any act or omission*, neglect, or misconduct" of Cleckley, and the jury did not find Cleckley liable. *Id.* at 283, 486 S.E.2d at 746. Like *Penton*, Unifirst cannot be found liable to Plaintiff; therefore, under the terms of the Agreement, no act of Unifirst could create liability for Bi-Lo in this case.

C. Even Under A Broad Reading Of Agreement, There Is No Evidence Which Creates A Genuine Issue of Material Fact

Even if Bi-Lo's argument that the "any act" language of the Agreement covers acts outside of those which were dismissed by the Court when it granted Unifirst's motion for summary judgment as to Plaintiff's claims, Bi-Lo cannot point to any evidence which creates a genuine issue of material fact that the liability of Bi-Lo is caused by an act of Unifirst. Bi-Lo points to the testimony of Plaintiff Mary Black which describes the rubber portion of the mat as "brittle" as evidence of "any act" by Unifirst such that a genuine issue of material fact is present. However, Plaintiff's testimony that the outside rubber part of the mat was "brittle" is not a *specific fact which infers there is a genuine issue for trial*. *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213-214, 609 S.E.2d 565, 568 (Ct. App. 2005) (stating that if the moving party meets its initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings; rather, the opponent must present specific facts which infer there is a genuine issue for trial)

(citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) (emphasis added); see also Rule 56, SCRPC; *Spencer v. Miller*, 259 S.C. 453, 455, 192 S.E.2d 863, 864 (1972) (stating that summary judgment is a “judicial determination that no factual issues need to be given to the finder of fact and that the case may be decided as a matter of law”). Rather, Plaintiff’s testimony about how the mat felt is solely an observation of the way the mat felt. (Depo. of Mary Black, pp.57:18-58:6, attached hereto as **Exhibit D**). Additionally, Plaintiff could not testify as to what actually made her trip, and no other witnesses saw Black trip. (Ex. D, Depo. of Mark Black, p.58:15-17; Depo. of Earl Black, p.21:20-22, attached hereto as **Exhibit E**, Depo. of Amy Johnson, pp.23:24-24:1; p.36:5-10; p.38:14-15; p.46:19-21, attached hereto as **Exhibit F**). Thus, it is not reasonable to infer that testimony that rubber felt “brittle” was in any way related to an act by Unifirst that caused liability for Plaintiff’s fall. Instead, the observation only infers how the rubber on the outside of the mat felt to Plaintiff. Accordingly, Bi-Lo has not presented any specific evidence of a genuine issue of material fact in this matter. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568.

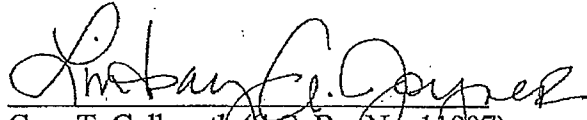
IV. CONCLUSION

For all of the foregoing reasons, Unifirst respectfully requests that Bi-Lo’s Motion to Alter or Amend be denied and the Court’s January Order granting Unifirst’s Motion for Summary Judgment be allowed to stand.

[Signature Page to Follow]

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.



Gray T. Culbreath (S.C. Bar No. 11907)

Lindsay A. Joyner (S.C. Bar No. 77437)

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**ATTORNEYS FOR UNIFIRST
CORPORATION**

Columbia, South Carolina
February 27, 2014

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT
3 MARY WALL BLACK, C/A No. 2012-CP-20-316
4 Plaintiff,
5 vs.
6 BI-LO, LLC and UNIFIRST
7 CORPORATION,
8 Defendants.
9
10
11
12
13

DEPOSITION OF
MARY WALL BLACK

14 DATE: April 17, 2013
15 TIME: 10:09 a.m. - 11:51 a.m.
16 LOCATION: Speedy, Tanner & Atkinson, LLC
17 708 Lafayette Avenue
Camden, South Carolina
18 REPORTED BY: Toby L. Davis
19
20
21
22
23
24
25

1 Q Yes, ma'am.

2 A It was like --

3 Q Crinkled in the middle?

4 A Crinkled. The outside of the rug is hard
5 rubber.

6 Q Right.

7 A And the inside is carpeted.

8 Q Okay.

9 A And the outside of the rug was buckled up
10 like this.

11 Q You're pointing to what -- you're using a
12 napkin --

13 A Uh-huh.

14 Q -- as an illustration of the rug?

15 A Uh-huh.

16 Q And you're crinkling up the middle of the
17 napkin?

18 A Well, it's not -- well, the middle -- it was
19 the outside part. The rubber part of the rug was dry
20 rotted and it was causing it to bow.

21 Q How do you know it was dry rotted?

22 A Because the rest of it was flat. The rest
23 of it was hard. I don't know how to describe it. Like
24 when you get a dry rotted tire? It kind of felt like
25 that. It was --

1 Q Brittle?

2 A Brittle.

3 Q And that was the outside of the rug, the
4 rubber part?

5 A Just the rubber part. The carpet part
6 itself looked okay.

7 Q All right. So you told me your foot caught
8 on something, but I take it --

9 A That's the only thing that was there.

10 Q All you know is what you saw when you looked
11 back?

12 A Right.

13 Q You don't know what you caught your foot on?

14 A That's the only thing that was there.

15 Q Right. My question is you don't know what
16 you caught your foot on --

17 A No.

18 Q Do you?

19 A No, but that's the only thing that was
20 there.

21 Q And you fell. And then you looked back, and
22 you saw a rug; correct?

23 A Well, I felt my foot when it caught.

24 Q Right. And you looked back, and you saw the
25 rug?

Exhibit E

April 17, 2013

1

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

3 MARY WALL BLACK, C/A No. 2012-CP-20-316

4 Plaintiff,

5 vs.

6 BI-LO, LLC and UNIFIRST
7 CORPORATION,

8 Defendants.
9
10

11 DEPOSITION OF
12 EARL JASPER BLACK
13

14 DATE: April 17, 2013

15 TIME: 12:03 p.m. - 12:47 p.m.

16 LOCATION: Speedy, Tanner & Atkinson, LLC
17 708 Lafayette Avenue
Camden, South Carolina

18 REPORTED BY: Toby L. Davis
19
20
21
22
23
24
25

1 A Staples.

2 Q Were you carrying groceries, too?

3 A Yes, sir.

4 Q Y'all didn't have your groceries in a buggy
5 and pushing your buggy cart out?

6 A No.

7 Q What time of day was it?

8 A It was afternoon.

9 Q What was the weather like outside?

10 A It was pretty. Nice. Nice weather.

11 Q Okay. Where had y'all been before you went
12 to Bi-Lo that day?

13 A I guess we came from home. I don't know. I
14 can't remember any other place where --

15 Q Anybody with you, or just you and your wife?

16 A No. Just me and the wife.

17 Q You didn't see her fall -- or did you see
18 her fall?

19 A I was ahead of her. In front of her.

20 Q So did you see her fall?

21 A No. I didn't see her fall, but I felt -- I
22 heard her when she hit there.

23 Q Okay. Where did she fall, Mr. Black?

24 A Coming out of the -- coming out of the door
25 at Bi-Lo.

Exhibit F

In the Matter Of:

Mary Wall Black vs. Bi-Lo

2012-CP-20-316

AMY JOHNSON

August 21, 2013



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1 remember if it was me that called 9-1-1. But I do
2 clearly remember when I was sitting there making sure
3 she was okay, the manager of the store -- white
4 shirt, tall, black gentleman -- not sure of his name,
5 just remember him at a glance, don't know if I could
6 remember his face if I seen him right now. He walked
7 over and straightened up the rubber matting on the
8 floor that was (gesturing) -- it was just bunched up
9 and he come over and flattened it out. And I know
10 that was before the ambulance and anybody even got
11 there, and it just surprised me when I seen that.

12 Q. Why did it surprise you?

13 A. Why do that, is the way I think. Why --
14 why are you straightening out that mat?

15 Q. Did this gentleman have a tie on?

16 A. Yeah -- yes.

17 Q. So when you say a white shirt -- a white
18 shirt like mine?

19 A. White -- white shirt like you, yeah; white
20 collared shirt.

21 Q. Now, you told me earlier you didn't see Ms.
22 Black's feet before she fell, right?

23 A. Correct.

24 Q. So you didn't see her trip on that mat, did
25 you?

1 A. I did not.

2 Q. What kind of mat was it?

3 A. Standard. If I could see one could --
4 black with grayish in it, the edges are rubbered
5 (gesturing), mat -- matting, I guess a slip and fall
6 mat is what I would call it. You see them most --
7 high traffic areas.

8 Q. And is this a grocery store that you had
9 been to before?

10 A. Oh, yes, many times.

11 Q. Would you say that it's your primary place
12 of grocery shopping?

13 A. Yes, it is.

14 Q. Had you seen these mats there before?

15 A. Yes, I have.

16 Q. Now, you don't know if this particular mat
17 that you remember seeing on that day was the same as
18 the mat you had seen on any other day, do you?

19 A. There's no way for me to know that.

20 Q. Did you notice anything particular about
21 the mat that you saw in October, 2010?

22 A. As far as?

23 Q. You tell me. Is there anything different
24 other than what you just described?

25 A. Other than that, other than when I noticed

1 Q. Do you remember, were you wearing a rain
2 coat that day? Was it raining hard enough that:--

3 A. I was not wearing a raincoat. I don't even
4 carry a umbrella.

5 Q. Good to know. So when you opened the door
6 to your truck, at that point, you saw Ms. Black
7 falling.

8 A. Falling, yes.

9 Q. But didn't see what precipitated the fall.

10 A. I did not.

11 Q. Did she fall forward?

12 A. Yes.

13 Q. And did you hear it first or see it first?

14 A. Seen it.

15 Q. And I know that you probably answered this
16 question, but you had not seen the mat before the
17 fall?

18 A. I did not.

19 Q. Let's see. When she fell forward, did she
20 move sideways at all --

21 A. I can't remember.

22 Q. -- that you noticed? Did she reach out
23 with her hands to break her fall?

24 A. I don't remember.

25 Q. How wide would you say that doorway is?

1 her?

2 A. Yes.

3 Q. At the time, was she moving around at all?
4 Was she moving limbs?

5 A. I mean, her arms and stuff, but she was on
6 the ground so I don't know if she was moving -- I
7 don't know what part wasn't moving, I don't remember
8 that.

9 Q. Did she get up immediately?

10 A. Oh, no. Oh, no.

11 Q. Did she try to get up on her own?

12 A. Not that I'm aware of, and I think I told
13 her to just stay where she was at.

14 Q. And did you see what caused the fall?

15 A. I did not.

16 Q. And did you notice anything on the ground
17 around the area where she fell?

18 A. After she fell, no. There was nothing
19 there.

20 Q. Did you notice anything on the ground
21 around the mat?

22 A. No.

23 Q. No, okay. Did you look around on the floor
24 inside the store?

25 A. I remember looking until the manager or --

1 take care of the mat?

2 A. The mat.

3 Q. And you said you found that odd.

4 A. Yes.

5 Q. Why is that?

6 A. The -- Ms. Black had just fallen. If -- I
7 can only tell you what -- if it was me, I wouldn't
8 care about the mat. I would care about the lady.
9 And so when we were there, it just caught my eye that
10 he was messing with the mat and then he should have
11 come over to her first, whether inside or outside the
12 store.

13 Q. And he didn't do that.

14 A. No. He did not.

15 Q. Did it appear to you that it was the mat
16 that caused her fall?

17 A. I can't --

18 MR. HOLT: Object to the form. Go ahead.

19 A. I can't say what caused her fall, because I
20 didn't see what caused her fall so I'm not gonna
21 suggest anything.

22 Q. Right. But the mat was definitely
23 straightened up by the manager.

24 A. Correct.

25 Q. Was it clear to you, Ms. Johnson, that she

State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2012-CP-20-00316

Mary Black,)
Plaintiff,)
Vs.) Transcript of Record
Bi-Lo, LLC, and UniFirst)
Corporation,)
Defendants.)
_____)

January 9, 2014
Columbia, South Carolina

B e f o r e:

The Honorable R. Knox McMahon, Judge

A p p e a r a n c e s:

Zack O. Atkinson, Esquire
Attorney for the Plaintiff

Ryan Holt, Esquire
Attorney for Defendant Bi-Lo
Lindsay Joyner, Esquire
Attorney for Defendant UniFirst

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/The Court	4
Motion/Ms. Joyner	4
Reply/Mr. Holt	7
Response/Ms. Joyner	10
Reply/Mr. Holt	11
Ruling by the Court	11
Certificate Page	13

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

THE COURT: All right. And this is Bi-Lo's motion, Mr. Holt.

MR. HOLT: Well, Your Honor, there was a motion to reconsider again. Judge Kinard's disposed of that. I believe that all that remains is a motion for summary judgement by UniFirst ---

THE COURT: I -- I see. All right.

MR. HOLT: --- on Bi-Lo's cross-claims.

THE COURT: I -- I'm with you. All right. So this is UniFirst's motion for summary judgement.

MS. JOYNER: Yes, sir, Your Honor.

THE COURT: All right.

MS. JOYNER: We provided you a memo in support of our motion, but I have a printed copy here, if you would ---

THE COURT: All right. Yes, ma'am.

(Ms. Joyner hands a document to the court clerk, who in turn hands the document to the Court.)

THE COURT: All right. Ms. Joyner.

MS. JOYNER: May it please the Court, Your Honor. We're here today on UniFirst's motion for summary judgement as to Bi-Lo's cross-claims. And this -- the underlying action in this case is a personal injury action, arising out of an alleged trip and fall in the Bi-Lo in Winnsboro.

And Bi-Lo asserted cross-claims against my client, UniFirst, for contribution, equitable indemnity, and

contractual indemnity. UniFirst provides mats to Bi-Lo, entry and exit mats, among other things.

On October 14, Judge Kinard dismissed my client, pursuant to our summary judgement action, in the underlying action. So plaintiff's claims for negligence can no longer exist as to my client.

Therefore, we're here today on our motion for summary judgement because we believe that there's no issue of material fact that the -- the cross-claims for contribution and indemnity, which all would have to arise out of there being some sort of negligence on the part of UniFirst, cannot be maintained, because UniFirst can no longer be liable to plaintiff in this matter.

To have -- therefore, Bi-Lo cannot maintain a cause of action for contribution, cannot maintain an action for equitable indemnity, and cannot maintain an action for contractual indemnity.

For contribution, the basis of contribution is common liability. Since UniFirst is no longer -- cannot be held liable to Plaintiff, there can be no common liability to Plaintiff; and therefore, Bi-Lo would not be paying more than its fair share if found negligent in that action.

THE COURT: Thank -- oh.

MS. JOYNER: And -- sorry.

THE COURT: Go right ahead. Go right ahead, Ms.

Joyner.

MS. JOYNER: And then as far as equitable indemnity goes, to have equitable indemnity, the indemnitor -- which would be UniFirst in this matter -- would have to -- it has to be found liable; the indemnitee has to be found not liable, and the indemnitee must have incurred cost.

To have -- there's no way for Bi-Lo to meet the first prong, and that's an essential prong in showing equitable indemnity. Therefore, you don't need to get to the later prongs of the action, because those are immaterial because there's no issue as to material fact for the first one.

As far as contractual indemnity goes, there is a contract -- an agreement between UniFirst and Bi-Lo, wherein UniFirst indemnifies Bi-Lo for certain things. It does not -- it specifically excepts -- indemnity for Bi-Lo's own negligence. Since UniFirst cannot be found liable to plaintiff in this matter, the only liability, if any, would be on the part of Bi-Lo; therefore, the contractual indemnification doesn't matter here, because our contract specifically excepts Bi-Lo's own negligence.

Even if we took that out, that specific exception isn't in it, indemnification contracts are strictly construed against providing an indemnity -- indemnification for its own negligence. Since there's nothing in the contract that does that, it would be strictly construed and

there'd be no way to get to the contractual indemnity for this case.

And that's pretty much our argument. If you have any questions --

THE COURT: Thank you. Thank you very much, Ms. Joyner.

Mr. Holt?

MR. HOLT: Your Honor, good morning. May it please the Court. I have part of the contract I'd like to hand to the Court so -- so that we can refer to it. If I might approach.

THE COURT: Yes, sir.

(Mr. Holt hands a document to the Court.)

MR. HOLT: And our -- this is part of our memorandum as well, for the Court's edification.

As Ms. Joyner stated, Bi-Lo, in its answer to the Plaintiff's claim, filed three cross-claims against UniFirst: contribution, equitable indemnity, contractual indemnification. I'll address contractual indemnification first.

I presented the Court with page 2. There's actually several more pages, but the operative text is on page 2 of that contract, which is entered in 2007, for the purpose of allowing UniFirst to provide mats and mops and other types of merchandise to Bi-Lo so that they could run the

business.

Section 9 provides indemnification provisions in that contract. And the word "company" here is referring to UniFirst, and "customer" refers to Bi-Lo, just for the Court's benefit. And of course, that's contained in the definition section earlier in the contract.

But Section 9 reads (as read): "Company shall indemnify and defend the customer against any liability arising out of any act of company, it's employees, or agents in connection with this agreement."

And those words "any act" are really the key here, Your Honor, because as Your Honor well knows, for time in memorial, parties have been allowed the freedom to contract duties and responsibilities, above which the common law would otherwise set up. So you can easily go and create a contract, and you can bind yourself to duties and things that the law wouldn't otherwise bind you.

So what's occurred here is the contract has set up a system in which UniFirst is liable for any act, not just negligent acts, not acts under a strict liability regime, but any act.

Of course, I'm not pulling that out of thin air. If you look at the case of *Otis Elevator vs. Harding Construction*, they address some of these language issues; and they address specifically an acts or omissions language

in an indemnification provision, which they say is broader than simple negligence.

So of course, some of these contracts, from time to time you'll read them, and they say that the company shall indemnify and defend customer against any liability arising out of its negligence. That's not how it is here. The party specifically stated that any act could give rise to the indemnification provision in this case.

Of course, Judge Kinard's order for summary judgement only addressed negligence. It only addressed the fact that the plaintiff had brought certain claims against UniFirst, and had granted summary judgement to UniFirst on those negligence-type claims.

Of course, it didn't address all acts that would have occurred. That's something that needs to come up at the trial of the case, which is imminent, Your Honor.

So for that reason, we submit that the motion for summary judgement on the contractual indemnity claims fail, because there's been no ruling to state that UniFirst has been deemed to not have acted in any way that would trigger the indemnification clause.

And as an added note, Your Honor, we're in the process of trying to schedule some depositions of UniFirst and their employees. It's very possible during those depositions we will learn some information, and there may

be some acts very clearly in the transcript that will trigger this indemnification clause.

As for contribution and equitable indemnity, Judge Kinard's order specifically dealt with only the claims that plaintiff had brought against UniFirst. It's possible that at the trial of this case, the jury, either through special interrogatory or otherwise, could determine that some other behavior by UniFirst caused Bi-Lo to incur a loss of some kind.

So again, Judge Kinard's order dealt only with the claims that the plaintiff specifically brought in its complaint and not with those others. And for those reasons, Judge, we ask that you deny UniFirst's motion for summary judgement.

THE COURT: Thank you, Mr. Holt.

MR. HOLT: Yes, sir.

THE COURT: Ms. -- Ms. Joyner?

MS. JOYNER: We would just maintain again that the only acts ever alleged were for negligence, and while, you know, there could in some outside realm of possibility be special interrogatories in a trial like -- on this, I don't believe that that -- I mean, to me, that is trying to manufacture an issue of material fact that just doesn't exist.

The only things alleged have always been negligence

since this was brought, and there are no claims against my client currently by Plaintiff; and therefore, we cannot be found liable to Plaintiff.

THE COURT: All right. Thank you. Thank you very much.

MR. HOLT: Your Honor, If I may just ---

THE COURT: Certainly.

MR. HOLT: We put this into the memorandum, we cite this in deposition testimony, which the plaintiff alleges that the particular mat that she confronted was dry-rotted, defective in some way.

Judge Kinard ruled that the plaintiff needed more to show that that was a product's liability issue. However, we believe that would constitute the "any act" that is in the contract, and would trigger the indemnification provision.

THE COURT: Thank you. All right. I -- of course, going on Paragraph 9 with the sentence it says (as read): "Except to the extent caused by the negligence of the customer," based on the standard that I apply in this type of a matter, in this type of motion, I'm going to grant UniFirst Corporation's motion for summary judgement.

Prepare an order, Ms. Joyner. Email it simultaneously to me and to Mr. Holt. All right. Thank you.

MS. JOYNER: Thank you.

MR. HOLT: Thank you, Your Honor.

THE COURT: Thank you. Thank you very much.

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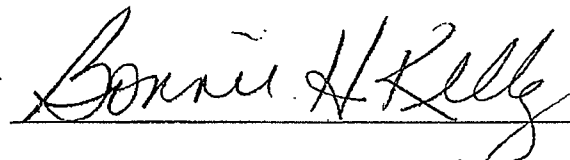
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-- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Sixth Circuit Court, for Winnsboro County, South Carolina, on the 9th day of January, 2014.

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

A handwritten signature in cursive script, reading "Bonnie H. Kelly", is written over a horizontal line.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

June 18, 2014

TEXTILE RENTAL SERVICE AGREEMENT

THIS AGREEMENT (the "Agreement"), is made this 30th day of April 2007, by and between BI-LO a South Carolina corporation, with offices at 208 BI-LO Blvd. Greenville, South Carolina, 29607 ("Customer"), and UniFirst Corporation, a Massachusetts corporation, with offices at 68 Jonspin Road, Wilmington, Massachusetts 01887, and its designated subsidiaries and affiliates (herein collectively referred to as "Company").

1. Company agrees to supply and Customer agrees to rent, consistent with the Scope of Service outlined on Schedule I attached hereto, garments and/or other items ("Merchandise") as described on Schedule II attached hereto and related services (the "Services") exclusively from Company. The rental/service charges (the "Charges") for such garments and other items and services are set forth on Schedule II attached hereto. The Merchandise and Services shall be provided at those Customer Locations identified on Schedule III attached hereto, and at all other additional locations where the decision has been made to utilize garments or other Merchandise rental services, (hereinafter, individually the "Location" and collectively, the "Locations"), all of which shall be in accordance with the terms, conditions and schedule of charges set forth herein.

2. All items of Merchandise delivered by Company will conform to the Customer's specifications set forth on Schedule II hereof and meet or exceed customary industry standards of quality, or non-conforming items will be replaced by Company by the following normal delivery at no cost to Customer. All of the Services performed hereunder shall be executed in a good and workmanlike manner by qualified and careful workers, in accordance with industry standards of care and diligence normally practiced by firms performing services of a similar nature and in accordance with this Agreement.

3. Company warrants to Customer that, so long as Customer shall not be in default of any of the provisions of this Agreement, Company shall provide Customer their Services as described, with Merchandise processed, mended and finished in accordance with generally accepted standards of the uniform rental industry. Company will replace Merchandise worn out through normal wear and tear that can no longer be rendered adequately serviceable. Company makes no other warranty including, without limitation, the design or condition of the Merchandise, its merchantability or its fitness or capacity or durability for any particular purpose, the quality of the material or workmanship of the Merchandise.

4. Once installed into service at any Location, the Merchandise and related Services described herein shall not thereafter be reduced, except that Customer may reduce the garments and services related thereto in the event an employee is no longer employed by Customer and is not replaced by another employee, subject to Customer's obligation to timely notify Company of the employee's termination and the immediate return of the standard garments issued to the employee. Notwithstanding the above, Customer shall have the right to cease Services at any of BI-LO's Locations that BI-LO closes or sells for any reason. In such an event, Customer shall immediately return all of the standard Merchandise earlier installed into service at any such affected Location or Locations in accordance with Paragraph [11] hereof. In any and all events, however, Customer shall also be obligated to purchase any Non-Standard Merchandise pursuant to and in accordance with Paragraph [6] hereof as a result of any such reduction in employees or Locations.

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5. If Customer believes that Company has breached or violated any representation, warranty, covenant or other obligation specified herein, Customer shall notify Company in writing specifying in detail the precise nature of the default. If such default is not remedied within thirty [30] days from the date of such notice, or in the event that such cure may not be reasonably completed within thirty [30] days, such cure shall have not been commenced within such thirty [30] day period and thereafter be diligently prosecuted to its completion, then Customer shall have the right to terminate this Agreement upon written notice to Company; providing however, that (a) all undisputed previous balances due Company have been paid in full, (b) all standard Merchandise items are returned to Company in a good and usable condition, normal wear and tear excepted, or are paid for at the rates listed on Schedule II hereto as loss/damage replacement charges, and (c) Customer pays the applicable loss/damage replacement charges then listed on Schedule II hereto for all Non-Standard Merchandise items pursuant to and in accordance with Paragraph (6) hereof. The provisions of this Paragraph (5) shall apply equally upon the natural expiration (by its terms) of this Agreement.

6. If any of the Merchandise in use by Customer hereunder either has direct embroidery unique to Customer or is Merchandise that Company normally does not stock ("Non-Standard Merchandise") then, upon the discontinuance of any service hereunder at any time for any reason whatsoever, including expiration, termination, or cancellation of this Agreement for any reason, with or without cause, deletion of any Non-Standard Merchandise items from its service program [or due to employee or Location reductions] (in each case a "Discontinuance of Service"), Customer will purchase at the time of such Discontinuance of Service all affected Non-Standard Merchandise items then in Company's inventory (in-service, shelf and manufacturer's supplies ordered by Company for Customer's use), paying for same the loss/damage replacement charges then listed on Schedule II hereof.

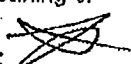
7. The garments supplied under this Agreement are not flame retardant or resistant to hazardous chemicals and contain no special flame retardant or hazardous chemical resistant features. They are not designed for use in areas of flammability risk or where contact with hazardous materials is possible. Flame retardant and acid resistant garments are available from Company on request. Customer warrants that none of the employees for whom garments are supplied pursuant to this Agreement require flame retardant clothing or clothing that is resistant to hazardous chemicals.

8. Customer warrants to Company that it will not contaminate any Merchandise with asbestos, heavy metals, blood-borne pathogens, solvents, or substances otherwise classified as either hazardous or toxic. Customer agrees to indemnify and hold harmless Company, its employees and agents from and against any losses, claims, expenses, damages, or liabilities, including reasonable attorneys' fees, incurred by Company as a result of a breach of the foregoing warranty. This Paragraph shall survive the expiration or termination of this Agreement.

9. Company shall indemnify and defend Customer against any liability arising out of any act of Company, its employees or agents in connection with this Agreement, except to the extent caused by the negligence of Customer. Company shall be solely responsible for, and shall indemnify and defend Customer against all claims arising out of property damage to any Location or personal injury or death to any employee of Company, its agents and subcontractors in connection with the provision of Services under this Agreement. Neither party shall be liable to the other party for any special, incidental or consequential damages, even if the other party shall have knowledge or been advised of the possibility of such potential damages or loss caused, directly or indirectly, by the Merchandise or Services or any inadequacy thereof for any purpose, or any deficiency or defect therein, or the use or maintenance thereof, or any repairs, cleaning or

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laundering, or any delay in providing or failure to provide any of the foregoing, or any interruption or loss of service or use thereof, or any loss of business, or any damage whatsoever and howsoever caused, provided that nothing in this sentence shall be deemed to limit one party's obligations to indemnify the other party in accordance with this Agreement. Company hereby appoints Customer as Company's agent to assert, during the term of this Agreement, any right Company may have to enforce the manufacturer's warranties, if any.

10. (a) In the event Customer should cancel, breach or otherwise terminate this Agreement, in whole or in part, at any time during the first three (3) years of the term of this Agreement, for any reason other than Company's breach hereunder ("Early Termination") Customer will be obligated to purchase, at the applicable loss/damage replacement rates then in effect, of all the standard Merchandise garment items then in service at any such affected Location as well as any Non-Standard (non garment items) Merchandise items pursuant to and in accordance with the provisions of Paragraph (6) hereof. These charges will be in addition to all other obligations of amounts owed by Customer to Company on the date of such Early Termination.

(b) In the event any such Early Termination occurs at any time following the first three (3) years of continuous service at any thus affected Location, Customer shall only be required to purchase the Non-Standard Merchandise items, if any, in accordance with and pursuant to the provisions of Paragraph (6) hereof; and, in addition, agrees to pay Company (in lieu of the requirement to purchase the standard Merchandise garment items), settlement charges (the "Settlement Charges") equal to the sum determined by application of the following formula:

- 1) If such Early Termination occurs at any time following three (3) years, but before four (4) years of service at any thus affected Location, the Settlement Charges shall be equal to five (5) times the average weekly rental dollars paid by Customer to Company during the preceding twenty-six (26) week period, or
- 2) two and one-half (2.5) times the average weekly rental dollars paid by Customer to Company during the preceding twenty-six weeks, in the event that any such Early Termination occurs at any time following the fourth anniversary of this Agreement, at any thus affected Location.

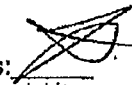
Customer agrees to pay Company all costs, including reasonable attorneys' fees, incurred by Company to enforce Customer's obligations under this Agreement.

11. Upon any Discontinuance of Service for any reason whatsoever, Customer must pay all undisputed invoices in full and either return to Company all standard Merchandise in good and usable condition or pay the applicable loss/damage replacement charges then listed on Schedule II hereto.

12. Company and Customer hereby waive all claims against each other for damages arising from interruption or postponement of service caused by reason of acts of God, strikes, lockouts or other industrial disturbances, wars, acts of terrorism, riots, arrests, explosions, fire, accidents or any other cause not within Company's or Customer's sole control. Upon discontinuance of the cause(s) of interruption or postponement of service, Company shall resume normal service and the then current term of this Agreement shall be extended by a period of time equal to the period of the interruption or postponement.

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13. It is agreed that Company, in rendering the Services, is an Independent contractor and that neither Company nor any officer, director or employee of Company is the legal representative of Customer for any purpose whatsoever. Neither Company, nor any officer, director or employee shall be considered by reason of this Agreement, or the Services performed hereunder, to be a partner, parent, subsidiary, joint venture, or employee of Customer nor shall Company hold itself out to third parties as such. Company agrees to bear sole responsibility for payment, to the appropriate taxing authority, of any and all applicable withholding obligations and taxes for its employees. Company shall indemnify and hold Customer harmless from any and all claims, demands or suits arising from any such withholding obligations.

14. For as long as this Agreement is in effect, Company shall maintain insurance for general liability (including products liability), auto liability, and employer's liability with coverage of a minimum of \$1,000,000 per occurrence, Excess Liability (umbrella form) of at least \$5,000,000 per occurrence and such workers' compensation insurance as is required by state or federal law. Company shall (i) add "LSF5 BI-LO Holdings, LLC" as additional insured, (ii) contemporaneously with executing this Agreement, provide a Certificate of Insurance evidencing the same and the above-referenced coverage, (iii) within five (5) calendar days following receipt of a request, provide a copy of the underlying policies to Customer, and (iv) provide Customer with 30 days advance written notice prior to any cancellation of or reduction in coverage. Company's liability is not limited to the amount insured. Company shall send the Certificate of Insurance and copy of the policy directly to the following:

BI-LO, LLC
Attn: Risk Management
208 BI-LO Boulevard
Greenville, SC 29607

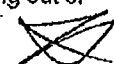
15. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, executors, successors or assigns. Customer may assign this Agreement in whole or in part, and/or any of its rights and obligations hereunder, without the consent of Company and without liability to Company, to any parent company, subsidiary or other entity controlling, controlled by or under common control with such party, or to a purchaser of all or substantially all of the assets or outstanding capital stock or other ownership interests of the assigning party (whether by merger, consolidation or otherwise), and Customer shall be released from any liability to the extent so assigned. Company may use one or more of its subsidiaries in satisfying its obligations hereunder. This Agreement and any and all identified Schedules incorporated by reference herein or physically attached hereto set forth the entire Agreement and understanding between the parties as to the subject matter set forth herein and supersede all prior discussions, agreements and understandings of any kind and every nature between them with respect to such subject matter (except to the extent specifically set forth in the first sentence of Paragraph [19] hereof). There are no separate contemporaneous agreements, either oral or written, which change, modify or contradict this Agreement. Customer acknowledges that it has not been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained in this Agreement. This Agreement may not be construed against any party by reason of its preparation.

16. This Agreement shall be governed by and construed in accordance with the laws of the state of South Carolina, without giving effect to the conflict of law principles thereof.

17. All controversies, claims or disputes of whatever kind between Company and Customer based upon past, present or future acts, whether known or unknown, and arising out of

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or relating to the negotiation, formation, or performance of this Agreement shall be resolved exclusively by final and binding arbitration. The arbitration shall be conducted in the capital city of the state where Customer has its principal place of business (or some other location mutually agreed to by Customer and Company) pursuant to the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association and shall be governed by the Federal Arbitration Act. Customer acknowledges, with respect to all such disputes, that it has voluntarily and knowingly waived any right it may have to a jury trial or to participate in a class action as representative of any other persons or class of persons or as a member of any class of persons, or to consolidate its claims with those of any other persons or class of persons. If this prohibition against class arbitration is ruled to be unenforceable for any reason in any proceeding, then the prohibition against class litigation shall be void and of no force and effect in that proceeding. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees and attorneys' fees.

18. Any notice, approval, consent or other communication under this Agreement shall be in writing and shall be considered given when [1] delivered personally [2] mailed by registered or certified mail, return receipt requested or [3] received by telecopy with a confirming copy sent by overnight mail or courier service, return receipt requested. Such notice, approval, consent or other communication shall be directed to the parties at the addresses indicated below (or at such other addresses as the parties may specify by notice to the other pursuant hereto).

If to Company, to it at:

UniFirst Corporation
National Accounts Department
68 Jonspin Road
Wilmington, MA 01887
Attn: Customer Service Manager
Fax: (978)-658-8769

If to Customer, to it at:

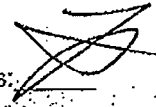
BI-LO, LLC
208 BI-LO Boulevard
Greenville, SC 29607
Attn: Fred Shropshier
Vice President of Operation Support
Fax: (864) 987-9049

19. The failure of either party to insist upon strict performance of the terms and provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue in and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

20. In the event that Company or its affiliates, pursuant to previous agreements with Customer, have purchased Non-Standard Merchandise for rental to Customer, such agreement shall remain in effect until its expiration date. In the event pursuant to a previous agreement, Company or its affiliates have purchased standard Merchandise, then such agreement shall be superseded by this Agreement pursuant to a conversion and amortization schedule approved by Company. Customer represents and warrants, as of the date of installation of Merchandise and

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commencement of Services hereunder, that Customer is not obligated to obtain the Merchandise or Services covered by this Agreement from any other person or entity, and that the execution of this Agreement by Customer does not and will not constitute a breach of any existing contract to which Customer is a party. Customer agrees to indemnify Company from and against any losses, claims, expenses, damages or liabilities, including reasonable attorneys' fees, incurred by Company as a result of a breach of the foregoing warranty; and, that if, at any Location Company must terminate service because of Customer's breach of this warranty, Customer further agrees to pay a restocking fee equal to twenty-five percent [25%] of the relevant loss/damage replacement charges then specified on Schedule II hereof for all standard Merchandise ordered by Company for service to any thus effected Location or Locations; and to purchase, at the relevant loss/damage replacement charges then specified on Schedule II hereto, any/all Non-Standard Merchandise purchased by Company for service to any thus effected Location or Locations.

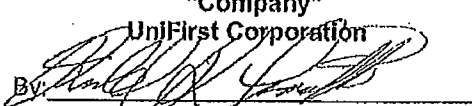
21. This Agreement shall be construed to be several in its nature, and as such, if for any reason any paragraph or portion of any paragraph is subsequently determined to be invalid or unenforceable, or in need of modification by any court or by the arbitrator for any reason, then and in that event, the rest of this Agreement shall stand and be in full force and effect as modified, except insofar as the invalid portion thereof shall be stricken.

22. Neither Company nor Customer shall make any public disclosure of the terms of this Agreement including, without limitation, the pricing set forth on Schedule II hereof, without the prior written consent of the other party.

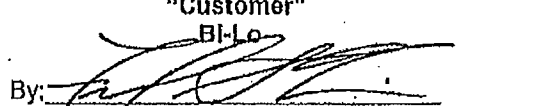
23. This Agreement may be executed by the parties hereto individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same Agreement.

24. Both parties have read the foregoing in its entirety and understand all of its terms and conditions, and the person signing on behalf of each party warrants to the other party that he/she has the authority and power to execute this Agreement on behalf of the party for which he/she is signing, and after the execution hereof each party shall be bound by all of the terms and conditions herein.

IN WITNESS WHEREOF, the undersigned by their duly authorized representatives have executed this Agreement as of the date set forth at its beginning.

"Company"
UniFirst Corporation
By: 
Ronald D. Croatti

Title: President and Chief Executive Officer

"Customer"
BI-Lo
By: 
Title: VP Sales Operations

**BI-LO, LLC
SCHEDULE I
SCOPE OF SERVICE**

For all Services procured under this Agreement the following additional terms and conditions apply:

1. Services. Schedule I details the Services Company will provide Customer. These include the following:
 - Uniform and garment rental (referred to as "Rented Uniforms").
 - Floor mats, floor mops and wiping cloth(s) (referred to as "Rented Items").
 - Water-wash of Rented Uniforms and Rented Items.
 - Personal name emblem and standard Customer Identity emblems (approved by Customer) on Rented Uniforms.
 - Delivery of clean Rented Uniforms and Rented Items, on a stated weekly schedule.
 - Removal of soiled Rented Uniforms and Rented Items, on a stated schedule.
2. Installation of Service. Customer Locations will typically be installed into service within six [6] to eight [8] weeks following the conclusion of Company's employee measurement sessions. This time frame assumes standard garments within normal size ranges.
3. Term. The term of this Agreement shall be for two hundred sixty [260] consecutive revenue weeks from the date Merchandise is first installed on the premises of each Location.
4. Merchandise. Company's Merchandise and Services are not interchangeable with that of other textile rental and maintenance companies and to avoid the intermixing of Merchandise and Services, Customer agrees to use only Company's Merchandise and Services for Customer's total requirements (including new additional Locations opened by Customer which can be serviced by Company) and will have Company's Merchandise processed only by Company. All Merchandise supplied to Customer under this Agreement is the property of Company and shall be promptly returned on demand.
5. New Employees. Customer can add new employees to the weekly rental/lease service at any time by notifying their local Route Sales Representative. New employees will receive new or like new garments. New employees will receive their garments within one [1] week of the request for standard garments in normal size ranges.
6. Size Exchanges. Existing garments will be exchanged due to an Employee's changing size requirements at no cost to the Customer, though the emblem and

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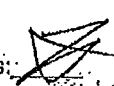
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**BI-LO, LLC
SCHEDULE I
SCOPE OF SERVICE**

garment preparation charges specified on Schedule II will apply. Size exchanges will be completed within one [1] week of the request for standard garments in normal size ranges.

7. Garment Repairs. Company will inspect all garments during the cleaning process. All repairs needed due to normal wear and tear will be done at no cost to the Customer.
8. Garment Replacements. Company will automatically replace garments before they become so worn as to impact either appearance or function. This replacement will be done at no charge to the Customer.
9. Lost & Damage. Customer agrees to be responsible for Merchandise lost or damaged except through normal wear and tear. Merchandise loss/damage replacement charges are set forth on the attached Schedule II.
10. Employee Termination. Customer is responsible for the rental/service charges applicable to each employee even if the employee is absent from work for any reason, other than termination of employment (in which case the provisions of Paragraph [4] of the Agreement shall govern).
11. Local Communication. The management of Customer shall designate specific personnel at each Location who shall have responsibility for notifying Company's Route Sales Representative, at the time of each delivery, of any personnel changes and of any new inventory requirements. The cooperation of Customer will ensure accurate weekly charges, the return of off-service garments and the prompt ordering of garments for new hires. Following each service, Company's Route Sales Representative shall furnish Customer a copy of the service invoice which, among other things, shall set forth each employee's name with the employee's individual laundry mark, and with the specific weekly charge for each employee.
12. Price Increases. The terms of this Agreement shall apply to all increases or additions in Merchandise and related Services. Since Company's costs of doing business, such as costs of labor, materials, utilities and supplies may fluctuate, Customer agrees that all charges may be adjusted annually to coincide with the average increase (if any) in the Revised Consumer Price Index Index for Urban Wage Earners and Clerical Workers, US City Average, All Items, published by the U. S. Department of Labor, Bureau of Labor Statistics ("CPIU"); such adjustments shall first be computed on a percentage basis one year from the date of this Agreement, and each year thereafter on such anniversary date, using the twelve

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**BI-LO, LLC
SCHEDULE I
SCOPE OF SERVICE**

[12] most recent months for which the CPIU is available, in order to calculate the charges for the ensuing twelve [12] month period.

13. Reporting. Company will provide, at Customer's option, one or more of the following reports.
- Rental Invoice Detail Report
 - Rental Invoice Summary Report
 - Direct Sale Detail Report
 - Direct Sale Summary Report
 - Lost & Damage Detail Report

These reports are available on-line via a Company created and supported web based Portal.

14. Billing. Company will provide a Corporate Invoice Summary that summarizes the local weekly invoices across all Locations. This monthly summary will be provided by the 10th of each following month.

15. Payment. All rental/service and other charges are due and payable Thirty [30] days from the date of each weekly service invoice or monthly summary invoice rendered by Company. Any invoice or charge not paid when due is subject to a late payment charge of one percent [1.0%] per month on any unpaid balance, but in no event shall such rate be in excess of the highest rate permitted by applicable law. No restrictions on a payment check from Customer, or in a letter accompanying a payment check, shall prohibit Company from negotiating such a check without regard to such restrictions. If Customer fails to make timely payment, Company may, in its sole discretion and at any time, terminate this Agreement by giving written notice to Customer. Customer shall pay, in addition to the Charges specified herein, all applicable sales, use and similar taxes arising out of this Agreement.

16. Pre-Existing Agreements. Nothing in this Agreement requires Company or Customer to breach an otherwise enforceable contract between either party and any third party. Customer is responsible for ensuring that Company will be given the opportunity to provide the Services to all Locations now or hereafter listed on the attached Schedule IV ("Locations with Pre-Existing Agreements"). The manager of each Location shall have the responsibility to timely notify (with a copy to Company) such other supplier(s) so that any automatic renewal clauses will not take effect; and Customer will, as early as possible, terminate all such pre-existing agreements with other suppliers so that it may contract for Services with Company.

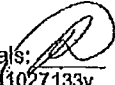
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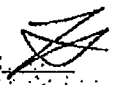
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**BI-LO, LLC
SCHEDULE I
SCOPE OF SERVICE**

17. Subcontracting. At Customer's request, and where reasonably possible, Company shall use its best efforts to obtain a supplier to provide Services on the same terms and conditions as are contained in this Agreement, at any Locations now or hereafter listed on Schedule III hereof, which are not within Company's rental/lease service area. It is understood between the parties that in some instances Company may be unable to obtain such a supplier, or may be unable to obtain such a supplier on the same terms and conditions as are contained herein. In such an event, Customer shall have the option to accept or reject the terms of service proposed by any such supplier.
18. National Account Management. Company will provide a Program Manager with responsibility for overall management of the Customer's program.

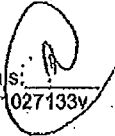
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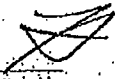
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**BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES**

Item Code	Description	Weekly Rental Rate	Lost Damage Charge
5033	100% Spun Poly Butcher Coat with inside chest pocket and 2 lower outside pockets. In standard UniFirst colors and sizes.	\$0.13	\$10.99
50AY	100% Spun Poly Butcher Coat with inside chest pocket. In standard UniFirst colors and sizes. (Cloth cuffs)	\$0.15	\$14.08
76AQ	U1st Great Impression 3x5 Mat	\$1.50	\$29.62
76AR	U1st Great Impression 4x6 Dust Control Mat	\$2.40	\$42.53
76AS	U1st Great Impression 3x10 Dust Control Mat	\$3.00	\$55.82
5388	Scraper Mat 3 x 5	\$1.50	\$36.40
5389	Scraper Mat 4 x 6	\$2.40	\$60.90
7752	2x3 Comfort-flow	\$0.60	\$39.27
76AG	3x5 Ultra-flow	\$1.50	\$55.67
TBD	*** Specialty Merchandise Custom Logo Mat 4x6	\$3.36	\$90.13
TBD	*** Specialty Merchandise Custom Logo Mat 3X10	\$4.20	\$116.03
8118	32 oz Wet Mop	\$0.64	\$9.91
8165	Wet Mop Handle	NC	\$7.06
8336	36" Dust mop	\$1.08	\$10.16
8133	36" Dust mop Frame	NC	\$9.95
8348	48" Dust Mop	\$1.44	\$12.19
8138	48" Dust Mop Frame	NC	\$11.10
8131	Dust Mop Handle	NC	\$2.87
8950	Soil Locker	NC	\$201.82
8951	8 Compartment	NC	\$409.00
8956	Bag Rack	NC	\$7.34
8957	Hanger Recovery Rack	NC	\$9.39
9075	Laundry Bag	NC	\$5.81

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**BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES**

SERVICE CHARGES:

1. Garment Preparation Charges
For Standard sizes only... waived for the first 30 days

Garment	Sizes	US Charge
All	Standard Sizes	\$0.50
Coats	Size 2XL - 5XL	\$2.65 each
	Size 6XL	\$5.00 each
	Size 7XL and up	\$7.00 each
Misc	Size 44 - 48	\$1.25 each
	Size 50 - 56	\$1.75 each
	Size 58 and up	\$2.25 each

*Includes hemming cost incurred on oversize garments

2. DEFE Surcharge (Delivery, Energy, Fuel, & Environmental Charge) \$6.50 per Wkly Service Invoice

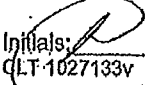
DEFE CHARGE. Customer's Invoices may include a DEFE CHARGE, that may vary for different customers, to cover all or only portions of certain expenses including:

- D = DELIVERY, or expenses associated with the actual delivery of services and products to customers' places of business, primarily Route Sales Representative commissions, managements salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.
- E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater testing, purification, effluent control, solids disposal, supplies and equipment for pollution controls an energy conservation and overall regulatory compliance.
- F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.
- E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

3. Minimum "stop the truck" charge \$25.00 per Stop

Notes:

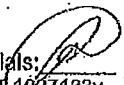
1. As a special concession to Customer, Company hereby agrees, upon the natural expiration (by its terms) of this Agreement, to limit Customer's total liability for damaged Merchandise (only) to not more than eight percent (8%) of the rental revenues received from Customer in the preceding year of the Agreement. Any charges for lost garments shall not be limited by the provisions of this special concession.

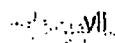
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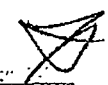
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**BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES**

2. ***Indicates an Item of "Non-Standard Merchandise" hereby expressly made subject to the buy-back provisions specified in our Agreement.

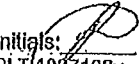
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**BI-LO, LLC
SCHEDULE III
LOCATIONS TO BE INSTALLED**

Store #	Street Address	City	State	ZIP	Office
6	2712 Anderson Rd.	Greenville	SC	29611	8642692410
10	504 W Main Street	Hasley	SC	29640	8648594166
11	245 Macon Plaza	Franklin	NC	28734	8283692970
12	505-A North Main Street	Greenville	SC	29601	8642717363
16	6 K-Mart Plaza	Greenville	SC	29602	8643702710
22	155 South Leroy St.	Metter	GA	30439	9126853005
26	595 Hwy 601 Bypass South	Concord	NC	28025	7047931331
31	540 East Winthrop Ave.	Millen	GA	30442	4789827737
32	819 West Carolina Ave.	Hartsville	SC	29550	8433321922
41	571 E Bypass 9	Lancaster	SC	29720	8032832130
42	351 South Main Street	Woodruff	SC	29388	8644767154
46	927 S Broad Street	Clinton	SC	29325	8648337339
57	2607 Woodruff Road	Simpsonville	SC	29681	8642880136
64	3315-B Broad River Rd.	Columbia	SC	29210	8037722795
65	7830 Gamers Ferry	Columbia	SC	29209	8036477114
74	1357 Remount Rd.	N Charleston	SC	29406	8437479147
85	1750 Hwy 14 East	Landrum	SC	29356	8644572121
89	11153 Asheville Hwy.	Junan	SC	29349	8644723311
92	3715 B. North St.	Greenville	SC	29615	8642687734
93	6507 Wilkinson Blvd.	Belmont	NC	28012	7048257054
94	330 Blowing Rock Blvd. NE	Lenoir	NC	28645	8287582106
96	18147 Heritage Hwy	Denmark	SC	29042	8037934929
97	191 BI-LO Plaza	Seneca	SC	29678	8648884405
99	9815 Rose Commons Drive	Huntersville	NC	28078	7049472240
101	1440 Ben Sawyer Blvd.	Mt. Pleasant	SC	29464	8433882504
103	500 Fury's Ferry Road	Martinez	GA	30907	7068630975
104	1610 Hwy. 17 South	Surfside Beach	SC	29575	8436504523
105	720 N Main Street	N Myrtle Beach	SC	29582	8432498553
107	5020 Dick Pond Road	Soenstee	SC	29588	8432936664
108	8120 S. Tryon Street	Charlotte	NC	28273	7045042346
110	302 Peannan Dairy Rd.	Anderson	SC	29625	8642262141
113	3720 Boiling Springs Road	Boiling Springs	SC	29316	8648143088
116	1241 38th Avenue North	Myrtle Beach	SC	29582	8436267400
135	421 Columbia Ave.	Lexington	SC	29072	8033597775
150	3619 Pelham Rd.	Greenville	SC	29615	8642884162
153	3125 Bees Ferry Road	Charleston	SC	29414	8437663360
156	8620 Camfield Street	Charlotte	NC	28277	7045423336
158	2127 Boundary St.	Beaufort	SC	29902	8435242771
161	1365 W. Wado Hampton Blvd.	Greer	SC	29650	8649688830
164	95 Mathews Drive	Hilton Head Island	SC	29928	8436815327
167	323 North Duncan Bypass	Union	SC	29379	8644270981

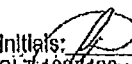
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**BI-LO, LLC
SCHEDULE III
LOCATIONS TO BE INSTALLED**

168	404 Russ Avenue	Waynesville	NC	28786	8284568222
172	500 East Greer St.	Honea Path	SC	29654	8643696806
173	1041 Franklin Springs Street	Royston	GA	30662	7062456345
178	712 S. Alabama Ave.	Chesnee	SC	29323	8644613141
181	1260 Hwy 9 Bypass	Lancaster	SC	29720	8032868843
182	2401 Reidville Rd.	Spartanburg	SC	29301	8645760401
185	1351 S. Cannon Blvd.	Kannapolis	NC	28081	7049336220
188	207 W. Butler Rd	Mauldin	SC	29662	8642973844
195	2435 East North Street	Greenville	SC	29615	8642922209
197	601 John B White Sr Blvd	Spartanburg	SC	29306	8645737114
199	5155 Calhoun Memorial Hwy	Fasley	SC	29640	8648555207
200	5336 Prosperity Church Road	Charlotte	NC	28269	7049477775
202	1735 Heekle Blvd.	Rock Hill	SC	29732	8033664130
206	2204 Union Rd.	Gastonia	NC	28054	7048644600
211	500 North Main St.	Marion	NC	28752	8286524926
214	1013 W. Floyd Baker Blvd.	Gaffney	SC	29340	8644892541
217	801 Fairview Rd.	Asheville	NC	28803	8282991400
218	9003 Two Notch Road	Columbia	SC	29223	8037360200
219	427 North Generals Blvd.	Lincolnton	NC	28093	7047359800
224	263 Liberty St.	Waynesboro	GA	30830	7065549300
228	975 Bacons Bridge Rd.	Summerville	SC	29485	8438710043
229	2725 E Northwest Blvd.	Newton	NC	28658	8284642006
230	7323 Independence Blvd.	Charlotte	NC	28212	7045679146
232	8 Chesterfield Rd.	Cheraw	SC	29520	8439210763
237	6320 Albemarle Road	Charlotte	NC	28212	7045682725
242	2226 Park Road	Charlotte	NC	28203	7043760334
246	142 E. St. James Avenue	Goose Creek	SC	29445	8435722442
256	330 Lebbey Street	Polzer	SC	29669	8649479214
258	35 West Bypass	Burnsville	NC	28714	8286822706
259	269 North Ron McNair Blvd.	Lake City	SC	29560	8433945135
262	1016 Pine Log Road	Alken	SC	29803	8036419019
263	630 Chesnee Highway	Spartanburg	SC	29303	8645422542
265	100 North Town Drive	Spartanburg	SC	29303	8645831351
266	4391 Dorchester Rd.	N Charleston	SC	29405	8435290615
267	1500 Western Square Drive	Laurens	SC	29360	8649842917
268	40 J.A. Cochran Bypass	Chester	SC	29706	8035816310
269	901 Church Street	Conway	SC	29527	8432483134
270	2901 South Main St.	Anderson	SC	29624	8642966536
271	2230 Decker Blvd.	Columbia	SC	29223	8036996609
272	494 South Pleasantburg Dr.	Greenville	SC	29607	8642501082
273	1818 Woodruff Rd.	Greenville	SC	29607	8642970646
274	2460 Hudson Rd.	Greer	SC	29651	8642689811
275	70 Pope Avenue	Hilton Head Island	SC	29928	8438428691

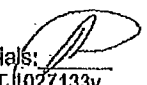
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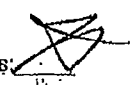
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**BI-LO, LLC
SCHEDULE III
LOCATIONS TO BE INSTALLED**

276	687 Main Street	Thomson	GA	30824	7065956098
277	1706 E. Greenville St.	Anderson	SC	29621	8643759401
279	9108 Lawyers Rd.	Charlotte	NC	28227	7045456501
280	809 W Greenwood Street	Abbeville	SC	29620	8644598611
282	4464 Devino St.	Columbia	SC	29205	8037381108
283	1021 S. Pendleton St.	Easley	SC	29642	8648554672
284	110 South Hwy. 52	Moncks Corner	SC	29461	8437616666
285	1937 Wilson Rd.	Newberry	SC	29108	8032761445
286	1909 US Hwy. 17 North Bypass	Mt. Pleasant	SC	29464	8438814042
287	717D East Liberty Street	York	SC	29745	8036281525
288	210 Forest Gate Center	Pisgah Forest	NC	28768	8288857907
289	3039 Wade Hampton Blvd.	Taylors	SC	29687	8643227315
290	3900-B N. Main St.	Columbia	SC	29203	8032529967
291	709 Lower Heard Street	Elberton	GA	30635	7062830061
292	2512 Tobacco Road	Hephzibah	GA	30815	7067900917
296	1452 Boone Hill Rd.	Sunnewville	SC	29483	8438752356
297	715 E. Wade Hampton Blvd.	Greer	SC	29651	8649689117
298	411 Sunset Drive	Manning	SC	29102	8034352804
301	7804 E. Brainerd Rd.	Chattanooga	TN	37421	4238553084
305	1600 E. 23rd St.	Chattanooga	TN	37403	4234934083
315	703 Signal Mountain Road	Chattanooga	TN	37405	4237574649
324	420 Market Street	Dayton	TN	37321	4237751837
326	3600 Hixson Pike	Chattanooga	TN	37415	4238740043
332	5424 Hwy. 153	Hixson	TN	37343	4238740049
333	112 Crimson Drive	Trenton	GA	30752	7066573747
335	6951 Leo Highway	Chattanooga	TN	37421	4238553072
343	2310 McGrady Drive	Cleveland	TN	37311	4233395451
346	1873 Battleground Pkwy.	Fl. Oglethorpe	GA	30742	7068618081
347	841 U.S. 411 North	Blowah	TN	37331	4232639417
349	531 Battleground Pkwy.	Fl. Oglethorpe	GA	30742	7068618094
352	311 North Main St.	Lafayette	GA	30728	7066387781
353	7342 State Route 28	Dunlap	TN	37327	4239494085
356	117 New Smithville Hwy.	McMinnville	TN	37110	9314731653
359	4011 Brainerd Rd.	Chattanooga	TN	37411	4234934046
373	9213 Leo Highway	Ooltowah	TN	37363	4232386366
406	319 Chickamauga Avenue	Rossville	GA	30741	7068662013
408	2199 Southport Road	Spartanburg	SC	29306	8643429558
409	1200 Sam Rittenburg Blvd.	Charleston	SC	29407	8435734776
410	774 S. Shelmore Blvd.	Mt Pleasant	SC	29464	8433881550
412	255 Ocoee Crossing NW	Cleveland	TN	37312	4234732066
413	2924 Mt. Holly - Huntersville Road	Charlotte	NC	28214	7043910354
415	342 Blue Ridge Street	Blairsville	GA	30512	7068352412
417	2055 Wedgefield Road	Sumter	SC	29150	8039389926

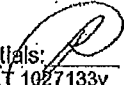
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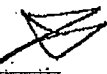
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**BI-LO, LLC
SCHEDULE III
LOCATIONS TO BE INSTALLED**

419	115 Rochester Hwy	Seneca	SC	29672	8648828420
420	1909 E. Broad Street	Statesville	NC	28677	7048733553
421	511 Smokey Park Hwy	Candler	NC	28715	8286701961
423	1149 York Street	Alken	SC	29801	803644665
427	3901 Dayton Blvd.	Red Bank	TN	37415	4238771515
430	502 G.I. Maddox Parkway	Chatsworth	GA	30705	7065175006
431	1109 W. Ogeeshee St.	Sylvania	GA	30467	9125647070
432	155 Carolina Square	Edgefield	SC	29824	8036379045
437	1555 E. Union Street	Morganton	NC	28655	8284384991
441	1319 N Long Street	Kingsree	SC	29556	8433547533
442	6021 St. Andrews Road	Columbia	SC	29212	8037982703
444	1620 Ashley Road	Charlotte	NC	28208	7043981321
445	4430 The Plaza	Charlotte	NC	28215	7045669975
446	12189 Greenville Hwy	Lyman	SC	29365	8649493420
460	401 Roper Mountain Road	Greenville	SC	29615	8649879103
461	14427 Ocean Hwy Unit 4301	Litchfield	SC	29585	8432378456
510	3715 Ringgold Rd.	East Ridge	TN	37412	4234934087
513	365 Riverside Drive SW	Orangeburg	SC	29115	8035350755
514	2803 Wrightsboro Rd.	Augusta	GA	30909	7067333355
519	140 Fernwood Glendale Dr.	Spartanburg	SC	29307	8645735358
520	1620 E. Roosevelt Blvd.	Monroe	NC	28112	7042922958
521	1126 US Hwy 321 Business South	Winnsboro	SC	29180	8037129776
522	111 Edgewood Avenue	N Augusta	SC	29841	8032791190
523	1815 Hendersonville Rd.	Ashville	NC	28803	8282746672
525	860 Paris Island Gateway	Beaufort	SC	29906	8435242300
526	200 Friarsgate Plaza	Irmo	SC	29063	8037320760
530	12810 York Road	Charlotte	NC	28273	7045832033
534	1101 East First Street	Vidalia	GA	30474	9125371131
536	413 Redford Rd	Dillon	SC	29536	8438411960
537	700 E. Shookley Ferry Rd.	Anderson	SC	29624	8642253345
538	10161 Old Dayton Pike	Soddy Daisy	TN	37379	4233323940
539	501 Old Greenville Hwy.	Clemson	SC	29631	8646537113
542	3457 Peach Orchard Road	Augusta	GA	30906	7065601075
547	205 NC Hwy #9	Black Mountain	NC	28711	8286692306
548	850 Folly Road	Charleston	SC	29412	8437959051
550	500 Pamlico Hwy.	Florence	SC	29501	8432921505
552	2700 Gentry Memorial Hwy	Pickens	SC	29671	8648789494
553	2010 Montague Avenue	Greenwood	SC	29646	8642291822
554	145 U.S. Hwy 74A By-Pass	Rutherfordton	NC	28139	8282870425
555	714 Bypass 25 NB	Greenwood	SC	29646	8642291957
556	225 Robertson Blvd.	Walterboro	SC	29488	8435491625
558	249 West Columbia Ave.	Batesburg	SC	29006	8035321068
559	429 West McIntyre Street	Mullins	SC	29574	8434642693

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**BI-LO, LLC
SCHEDULE III
LOCATIONS TO BE INSTALLED**

560	1631 Gordon Highway	Augusta	GA	30906	7067334003
563	1315 S. Pleasantburg	Greenville	SC	29605	8642771479
566	7709 Hwy. 76	Pondleton	SC	29670	8646467754
567	34 Statesboro Mall, Northside Dr. East	Statesboro	GA	30458	9124891465
568	3518 Hwy 153	Greenville	SC	29611	8642201380
574	377 West Jackson Suite 2	Cookeville	TN	38501	9315268472
577	136 Washington Plaza	Washington	GA	30673	7066784233
578	2453 Charleston Hwy.	Cayce	SC	29033	8037966759
580	2916 Emanuel Church Road	W Columbia	SC	29170	8033566040
581	3220 W. Blue Ridge Dr.	Greenville	SC	29611	8642209514
582	421 Hwy 27 South	Stanley	NC	28164	7042636230
587	508 Lamer Hwy.	Darlington	SC	29532	8433956206
593	2640 W Palmetto Street	Florence	SC	29501	8436698484
603	120 Henderson Crossing	Hendersonville	NC	28739	8286975307
604	4435 Jefferson Davis Hwy.	Clearwater	SC	29822	8035935142
605	1955 Davis Park Rd.	Gastonia	NC	28052	7048658391
606	4510 Highway 58	Chattanooga	TN	37416	4238553075
607	1642 Dickerson Blvd.	Monroe	NC	28110	7042832771
608	2111 North Pleasantburg Drive	Greenville	SC	29611	8642423851
612	1103 North Main St.	Fountain Inn	SC	29644	8648625585
613	7 Farris Bridge Road	Berea	SC	29617	8642461528
614	6723 Ringgold Rd.	East Ridge	TN	37412	4238553097
615	2349 Augusta Rd.	W Columbia	SC	29169	8037940062
616	2375 Cherry Rd.	Rook Hill	SC	29730	8033668127
617	820 Mission Ridge Rd.	Rossville	GA	30741	7068618097
620	651 W. Mills Street	Columbus	NC	28722	8288945145
623	1625 N. Main St.	Summerville	SC	29483	8438752880
624	699 Fairview Rd	Simpsonville	SC	29680	8649672660
625	4480 Columbia Rd.	Marlize	GA	30907	7068602317
626	3233 Mall Rd.	Anderson	SC	29621	8642264030
627	2121 East Walnut Street	Dalton	GA	30720	7062784522
630	5414 Hixson Pike	Hixson	TN	37343	4238434697
631	1085 Cottingham Blvd. N.	Bennettsville	SC	29512	8434790253
632	115 Browns Ferry Rd.	Chattanooga	TN	37419	4238212576
633	2601 South New Hope Road	Gastonia	NC	28056	7048544702
634	13709 E. Independence Blvd.	Indian Trail	NC	28079	7048821043
637	501 South Pearl Street	Pageland	SC	29728	8436725631
638	120 Forum Drive	Columbia	SC	29229	8036998332
639	1287 Cleveland Hwy.	Dalton	GA	30720	7062596421
640	9101 Pineville-Matthews Road	Pineville	NC	28134	7045425150
645	10150 Dorchester Road	Summerville	SC	29485	8438751460
651	1041 Patton Ave.	Asheville	NC	28806	8282810481
653	148 Walnut Lane	Travelers Rest	SC	29690	8648340575

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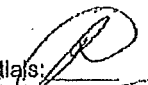
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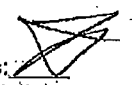
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**BI-LO, LLC
SCHEDULE III
LOCATIONS TO BE INSTALLED**

654	915 South St., Unit A	Simpsonville	SC	29681	8649672602
655	1370 Chestnut N.E.	Orangeburg	SC	29115	8035310670
662	3336 Hwy 17 South	N Myrtle Beach	SC	29582	8432728225
712	1703 Elm Street W.	Hampton	SC	29924	8039430483
713	8530 Hixson Pike	Hixson	TN	37343	4238439004
714	3801 Tennessee Ave.	Chattanooga	TN	37409	4238210023
715	8634 Highway 58	Harrison	TN	37341	4233446907
716	1401 E. Main St.	Rock Hill	SC	29730	8033666755
717	742 West Highway 27	Lincolnton	NC	28092	7047323462
718	158 Highway 274	Lake Wylie	SC	29710	8038318865
719	1131 North Highway 321	York	SC	29745	8036287806
720	1329 West Highway 160	Fort Mill	SC	29715	8035477144
721	525 Little Rook Road	Charlotte	NC	28214	7043998202
722	1419 Chapin Road	Chapin	SC	29036	8039459235
723	300 Knox Abbott Drive	Cayce	SC	29033	8039260312

Initials: 
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Initials: 

AMENDMENT TO TEXTILE RENTAL SERVICE AGREEMENT

This amendment (the "Amendment") dated as of September 24, 2007, (the "Effective Date") is entered into by BI-LO, a South Carolina corporation ("Customer") and UNIFIRST CORPORATION, a Massachusetts corporation ("Company")

PRELIMINARY STATEMENT

Customer and Company are parties to a Textile Rental Service Agreement dated April 30, 2007 (the "Agreement"). Customer and Company now desire to amend the Agreement on the terms set forth in this Amendment.

AGREEMENT

IT IS THEREFORE AGREED AS FOLLOWS:

1. Capitalized terms used, but not defined, herein shall have the same meanings as set forth in the Agreement.
2. Schedule II (Merchandise Rental/Service & Loss/Damage Replacement Charges) of the Agreement is hereby deleted in its entirety and replaced in its entirety by the new Schedule attached hereto.

Specifically: Items that have been Added.

1. Style 2531-12 Black Chef Coat (Super BI-LO stores only).
2. Style 7040-12 Black Bib Apron (Super BI-LO stores only).
3. Style 8942 Linen Control Locker.
4. Style 8554 BarTowel.
5. Style 0111 LS Men's Oxford Shirt.
6. Style 0112 LS Women's Oxford Shirt.
7. Style 0211 SS Men's Oxford Shirt.
8. Style 0422 SS Women's Oxford Shirt.
9. Personalization (Super BI-LO stores only).
10. Additional Notes.
11. Non-Standard Merchandise Buy-out Language

Specifically: Items that have been Deleted.

1. Style 8951 8/Compartment Locker.
2. Style 8956 Bag Rack.
3. Style 9075 Laundry Bag.
4. Style TBD "Specialty Merchandise" Custom Logo Mat 4x6.
5. Style TBD "Specialty Merchandise" Custom Logo Mat 3x10.

3. Except as modified by this Amendment, the Agreement shall remain in full force and effect.

By: _____

Title: _____

Customer

Company

By: _____

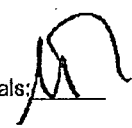
Michael E. Ruttner

Title: Vice President, National Accounts

BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES

	Merchandise	Style Code/ Color	Weekly Rental Rate Per Unit	Loss/ Damage Charge
1.	Chef Coat, 65/35 blend, LS, Plastic Buttons, Left Chest Pocket. In standard UniFirst sizes. *Black only. Super BI-LO Stores Only.	2531-12	\$0.25	\$9.85
2.	Bib Apron, no pockets, Emblem Applied. *Black only. Super BI-LO Stores Only.	7040-12	\$0.45	\$2.34
3.	100% Spun Poly Butcher Coat with inside chest pocket and 2 lower outside pockets. In standard UniFirst sizes. *White Only. No Personalization.	5033-07	\$0.13	\$10.99
4.	100% Spun Poly Butcher Coat with inside chest pocket and knit cuffs. In standard UniFirst sizes. *White Only. No Personalization.	50AY-07	\$0.15	\$14.08
5.	Men's LS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0111-07, 09, 03	\$0.20	\$12.03
6.	Women's LS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0112-07, 09, 03	\$0.19	\$11.84
7.	Men's SS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0211-07, 09, 03	\$0.19	\$10.96
8.	Women's SS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0422-07, 09, 03	\$0.18	\$10.77
9.	U1st Great Impression Mat 3x5	76AQ	\$1.50	\$29.62
10.	U1st Great Impression Mat 4x6	76AR	\$2.40	\$42.53
11.	U1st Great Impression Mat 3x10	76AS	\$3.00	\$55.82
12.	Scraper Mat 3 x 5	5388	\$1.50	\$36.40
13.	Scraper Mat 4 x 6	5389	\$2.40	\$60.90
14.	Comfort-flow Mat 2x3	7752	\$0.60	\$39.27
15.	Ultra-flow Mat 3x5	76AG	\$1.50	\$55.57
16.	Wet Mop 32 oz	8118	\$0.64	\$9.91
17.	Wet Mop Handle	8165	NC	\$7.06
18.	Dust Mop 36"	8336	\$1.08	\$10.16
19.	Dust Mop Frame 36"	8133	NC	\$9.95
20.	Dust Mop 48"	8348	\$1.44	\$12.19
21.	Dust Mop Frame 48"	8138	NC	\$11.10
22.	Dust Mop Handle	8131	NC	\$2.87
23.	Bar Towel	8554	.09	\$0.40
24.	Linen Locker	8942	NC	\$306.77
25.	Soil Locker	8950	NC	\$201.82
26.	Hanger Recovery Rack	8957	NC	\$9.39

Initials: _____
Revised 8-28-07

Initials: 

BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES

SERVICE CHARGES:

1. Garment Preparation Charges
 For Standard sizes only... waived for the first 30 days

Garment	Sizes	US Charge
All	Standard Sizes	\$0.50
Coats	Size 2XL - 5XL	\$2.65 each
	Size 6XL	\$5.00 each
	Size 7XL and up	\$7.00 each
Misc.	Size 44 - 48	\$1.25 each
	Size 50 - 56	\$1.75 each
	Size 58 and up	\$2.25 each

*Includes hemming cost incurred on oversize garments

2. DEFE Surcharge (Delivery, Energy, Fuel, & Environmental Charge) \$6.50 per Wkly Service Invoice

DEFE CHARGE. Customer's invoices may include a DEFE CHARGE, that may vary for different customers, to cover all or only portions of certain expenses including:

D = DELIVERY, or expenses associated with the actual delivery of services and products to customers' places of business, primarily Route Sales Representative commissions, managements salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.

E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater resting, purification, effluent control, solids disposal, supplies and equipment for pollution controls an energy conservation and overall regulatory compliance.

F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.

E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

3. Minimum "stop the truck" charge \$25.00 per Stop

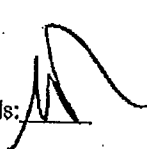
4. Personalization Charges - Emblems

Emblem fees waived for the Initial Installation of service at each location.

Company Name Emblems (graphic) \$2.00

Initials: _____
 Revised 8-28-07

II

Initials: 

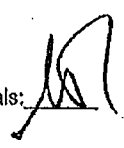
BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES

Notes:

1. As a special concession to Customer, Company hereby agrees, upon the natural expiration (by its terms) of this Agreement, to limit Customer's total liability for damaged Merchandise (only) to not more than eight percent (8%) of the rental revenues received from Customer in the preceding year of the Agreement. Any charges for lost garments shall not be limited by the provisions of this special concession.
2. All garment items are invoiced at 100% of issue.
3. All flat goods are invoiced at 50% of total issue.
4. The butcher coats are delivered in bulk, by size, as such, all inventories should be set at 2.2 times estimated weekly usage.

Initials: _____
Revised 8-28-07

III

Initials: 

SECOND AMENDMENT TO TEXTILE RENTAL SERVICE AGREEMENT

This second amendment (the "Second Amendment") entered into as of this 30th day of April, 2008, by and between BI-LO, a South Carolina corporation ("Customer") and UniFirst Corporation, a Massachusetts corporation ("Company")

PRELIMINARY STATEMENT

Customer and Company are each parties to that certain Textile Rental Service Agreement dated April 30, 2007, as earlier amended on September 24, 2007 (the "Agreement"). Customer and Company now desire to further amend the Agreement on the terms set forth in this Second Amendment.

AGREEMENT

IT IS THEREFORE AGREED AS FOLLOWS:

1. Capitalized terms used, but not defined, herein shall have the same meanings as set forth in the Agreement.
2. Customer has requested that a men's long sleeve oxford shirt (UniFirst Item # 0111), a woman's long sleeve oxford shirt (UniFirst Item #0112) and a women's ¾ sleeve poplin work shirt (UniFirst Item # 05AH) be added to its rental service program. Schedule II of the Agreement, "Merchandise Rental/Service & Loss/Damage Replacement Charges" is hereby amended to include these particular items; and a copy of the thus amended Schedule II, is attached hereto, in its entirety.
3. Except as modified by this Second Amendment, the Agreement shall remain in full force and effect.

Customer

Company

By: _____

By: _____

Michael E. Ruttner

Title: _____

Title: Vice President, National Accounts

BI-LO, LLC
Schedule II
Merchandise Rental/Service & Loss/Damage Replacement Charges
Amended March, 2008

	Merchandise	Style Code	Weekly Rental Rate Per Unit	Loss/ Damage Charge
1.	Men's LS Shirt-Oxford Button Down - 60/40 poly/cotton.	0111	.22	\$12.03
2.	Women's LS Shirt-Oxford Button Down - 60/40 poly/cotton.	0112	.22	\$12.03
3.	Women's shirt. ¾ sleeve. 65/35 poly/cotton.	05AH	.22	\$12.52
4.	100% Spun Poly Butcher Coat with inside chest pocket and 2 lower outside pockets. In standard UniFirst sizes. **White Only	5033-07	\$0.13	\$10.99
5.	100% Spun Poly Butcher Coat with inside chest pocket and knit cuffs. In standard UniFirst sizes. **White Only	50AY-07	\$0.15	\$14.08
6.	U1st Great Impression Mat 3x5	76AQ 7620	\$1.50	\$29.62
7.	U1st Great Impression Mat 4x6	76AR 7660	\$2.40	\$42.53
8.	U1st Great Impression Mat 3x10	76AS 7630	\$3.00	\$55.82
9.	Dust Mop 36"	8336	\$1.08	\$10.16
10.	Dust Mop Frame 36"	8133	NC	\$9.95
11.	Dust Mop 48"	8348	\$1.44	\$12.19
12.	Dust Mop Frame 48"	8138	NC	\$11.10
13.	Dust Mop Handle	8131	NC	\$2.87
14.	Bar Towel	8554	.09	\$0.40
15.	Bar Towels, Bagged	8581	.09	\$0.40
16.	Linen Locker	8942	NC	\$306.77
17.	Soil Locker	8950	NC	\$201.82
18.	Hanger Recovery Rack	8957	NC	\$9.39
19.	Bag Rack	8956	NC	\$7.34
20.	Laundry Bags - Special	9075	NC	\$5.81

Notes:

1. All garment items are Invoiced at 100% of Issue.
2. All flat goods are Invoiced at 50% of total Issue.
3. The butcher coats are delivered in bulk, by size, as such, all inventories should be set at 2.2 times estimated weekly usage.

Service Charges:

1. Garment Preparation Charges
For Standard sizes only... waived for the first 30 days

Initials: _____
Revised 3-06-08

Initials: _____

BI-LO, LLC
Schedule II
Merchandise Rental/Service & Loss/Damage Replacement Charges
Amended March, 2008

Garment	Sizes	US Charge
All	Standard Sizes	\$0.50
Coats	Size 2XL – 5XL	\$2.65 each
	Size 6XL	\$5.00 each
	Size 7XL and up	\$7.00 each
Misc.	Size 44 – 48	\$1.25 each
	Size 50 – 56	\$1.75 each
	Size 58 and up	\$2.25 each

*Includes hemming cost incurred on oversize garments

2. DEFE Surcharge (Delivery, Energy, Fuel, & Environmental Charge) \$6.50 per Wkly Service Invoice

DEFE CHARGE. Customer's invoices may include a DEFE CHARGE, that may vary for different customers, to cover all or only portions of certain expenses including:

- D = DELIVERY, or expenses associated with the actual delivery of services and products to customers' places of business, primarily Route Sales Representative commissions, managements salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.
- E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater resting, purification, effluent control, solids disposal, supplies and equipment for pollution controls an energy conservation and overall regulatory compliance.
- F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.
- E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

3. Minimum "stop the truck" charge \$25.00 per Stop
4. Personalization Charges – Emblems. Emblem fees waived for the initial installation of service at each location.
- Company Name Emblems (graphic) \$2.00 each

Initials: _____
Revised 3-06-08

II

Initials: _____

AMENDMENT TO TEXTILE RENTAL SERVICE AGREEMENT

This amendment (the "Amendment") dated as of September 24, 2007, (the "Effective Date") is entered into by BI-LO, a South Carolina corporation ("Customer") and UNIFIRST CORPORATION, a Massachusetts corporation ("Company")

PRELIMINARY STATEMENT

Customer and Company are parties to a Textile Rental Service Agreement dated April 30, 2007 (the "Agreement"). Customer and Company now desire to amend the Agreement on the terms set forth in this Amendment.

AGREEMENT

IT IS THEREFORE AGREED AS FOLLOWS:

1. Capitalized terms used, but not defined, herein shall have the same meanings as set forth in the Agreement.
2. Schedule II (Merchandise Rental/Service & Loss/Damage Replacement Charges) of the Agreement is hereby deleted in its entirety and replaced in its entirety by the new Schedule attached hereto.

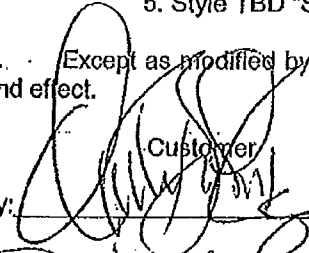
Specifically: Items that have been Added.

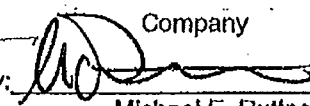
1. Style 2531-12 Black Chef Coat (Super BI-LO stores only).
2. Style 7040-12 Black Bib Apron (Super BI-LO stores only).
3. Style 8942 Linen Control Locker.
4. Style 8554 BarTowel.
5. Style 0111 LS Men's Oxford Shirt.
6. Style 0112 LS Women's Oxford Shirt.
7. Style 0211 SS Men's Oxford Shirt.
8. Style 0422 SS Women's Oxford Shirt.
9. Personalization (Super BI-LO stores only).
10. Additional Notes.
11. Non-Standard Merchandise Buy-out Language

Specifically: Items that have been Deleted.

1. Style 8951 8/Compartment Locker.
2. Style 8956 Bag Rack.
3. Style 9075 Laundry Bag.
4. Style TBD "Specialty Merchandise" Custom Logo Mat 4x6.
5. Style TBD "Specialty Merchandise" Custom Logo Mat 3x10.

3. Except as modified by this Amendment, the Agreement shall remain in full force and effect.

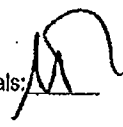
By: 
Title: Director of Support

By: 
Title: Vice President, National Accounts

BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES

	Merchandise	Style Code/ Color	Weekly Rental Rate Per Unit	Loss/ Damage Charge
1.	Chef Coat, 65/35 blend, LS, Plastic Buttons, Left Chest Pocket. In standard UniFirst sizes. *Black only. Super BI-LO Stores Only.	2531-12	\$0.25	\$9.85
2.	Bib Apron, no pockets, Emblem Applied. *Black only. Super BI-LO Stores Only.	7040-12	\$0.45	\$2.34
3.	100% Spun Poly Butcher Coat with inside chest pocket and 2 lower outside pockets. In standard UniFirst sizes. *White Only. No Personalization.	5033-07	\$0.13	\$10.99
4.	100% Spun Poly Butcher Coat with inside chest pocket and knit cuffs. In standard UniFirst sizes. *White Only. No Personalization.	50AY-07	\$0.15	\$14.08
5.	Men's LS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0111-07, 09, 03	\$0.20	\$12.03
6.	Women's LS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0112-07, 09, 03	\$0.19	\$11.84
7.	Men's SS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0211-07, 09, 03	\$0.19	\$10.96
8.	Women's SS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0422-07, 09, 03	\$0.18	\$10.77
9.	U1st Great Impression Mat 3x5	76AQ	\$1.50	\$29.62
10.	U1st Great Impression Mat 4x6	76AR	\$2.40	\$42.53
11.	U1st Great Impression Mat 3x10	76AS	\$3.00	\$55.82
12.	Scraper Mat 3 x 5	5388	\$1.50	\$36.40
13.	Scraper Mat 4 x 6	5389	\$2.40	\$60.90
14.	Comfort-flow Mat 2x3	7752	\$0.60	\$39.27
15.	Ultra-flow Mat 3x5	76AG	\$1.50	\$55.57
16.	Wet Mop 32 oz	8118	\$0.64	\$9.91
17.	Wet Mop Handle	8165	NC	\$7.06
18.	Dust Mop 36"	8336	\$1.08	\$10.16
19.	Dust Mop Frame 36"	8133	NC	\$9.95
20.	Dust Mop 48"	8348	\$1.44	\$12.19
21.	Dust Mop Frame 48"	8138	NC	\$11.10
22.	Dust Mop Handle	8131	NC	\$2.87
23.	Bar Towel	8554	.09	\$0.40
24.	Linen Locker	8942	NC	\$306.77
25.	Soil Locker	8950	NC	\$201.82
26.	Hanger Recovery Rack	8957	NC	\$9.39

Initials: _____
Revised 8-28-07

Initials: 

BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES

SERVICE CHARGES:

1. Garment Preparation Charges
 For Standard sizes only... waived for the first 30 days

Garment	Sizes	US Charge
All	Standard Sizes	\$0.50
Coats	Size 2XL - 5XL	\$2.65 each
	Size 6XL	\$5.00 each
	Size 7XL and up	\$7.00 each
Misc.	Size 44 - 48	\$1.25 each
	Size 50 - 56	\$1.75 each
	Size 58 and up	\$2.25 each

*Includes hemming cost incurred on oversize garments

2. DEFE Surcharge (Delivery, Energy, Fuel, & Environmental Charge) \$6.50 per Wkly Service Invoice

DEFE CHARGE. Customer's Invoices may include a DEFE CHARGE, that may vary for different customers, to cover all or only portions of certain expenses including:

- D = DELIVERY, or expenses associated with the actual delivery of services and products to customers' places of business, primarily Route Sales Representative commissions, managements salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.
- E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater testing, purification, effluent control, solids disposal, supplies and equipment for pollution controls and energy conservation and overall regulatory compliance.
- F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.
- E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

3. Minimum "stop the truck" charge \$25.00 per Stop

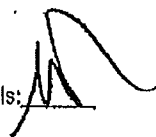
4. Personalization Charges - Emblems

Emblem fees waived for the initial installation of service at each location.

Company Name Emblems (graphic) \$2.00

Initials: _____
 Revised 8-28-07

II

Initials: 

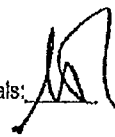
**BJ-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES**

Notes:

1. As a special concession to Customer, Company hereby agrees, upon the natural expiration (by its terms) of this Agreement, to limit Customer's total liability for damaged Merchandise (only) to not more than eight percent (8%) of the rental revenues received from Customer in the preceding year of the Agreement. Any charges for lost garments shall not be limited by the provisions of this special concession.
2. All garment items are invoiced at 100% of issue.
3. All flat goods are invoiced at 50% of total issue.
4. The butcher coats are delivered in bulk, by size, as such, all inventories should be set at 2.2 times estimated weekly usage.

Initials: _____
Revised 8-28-07

|||

Initials: 

AMENDMENT TO TEXTILE RENTAL SERVICE AGREEMENT

This amendment (the "Amendment") dated as of September 24, 2007, (the "Effective Date") is entered into by BI-LO, a South Carolina corporation ("Customer") and UNIFIRST CORPORATION, a Massachusetts corporation ("Company")

PRELIMINARY STATEMENT

Customer and Company are parties to a Textile Rental Service Agreement dated April 30, 2007 (the "Agreement"). Customer and Company now desire to amend the Agreement on the terms set forth in this Amendment.

AGREEMENT

IT IS THEREFORE AGREED AS FOLLOWS:

1. Capitalized terms used, but not defined, herein shall have the same meanings as set forth in the Agreement.
2. Schedule II (Merchandise Rental/Service & Loss/Damage Replacement Charges) of the Agreement is hereby deleted in its entirety and replaced in its entirety by the new Schedule attached hereto.

Specifically: Items that have been Added.

1. Style 2531-12 Black Chef Coat (Super BI-LO stores only).
2. Style 7040-12 Black Bib Apron (Super BI-LO stores only).
3. Style 8942 Linen Control Locker.
4. Style 8554 BarTowel.
5. Style 0111 LS Men's Oxford Shirt.
6. Style 0112 LS Women's Oxford Shirt.
7. Style 0211 SS Men's Oxford Shirt.
8. Style 0422 SS Women's Oxford Shirt.
9. Personalization (Super BI-LO stores only).
10. Additional Notes.
11. Non-Standard Merchandise Buy-out Language

Specifically: Items that have been Deleted.

1. Style 8951 8/Compartment Locker.
2. Style 8956 Bag Rack.
3. Style 9075 Laundry Bag.
4. Style TBD "Specially Merchandise" Custom Logo Mat 4x6.
5. Style TBD "Specially Merchandise" Custom Logo Mat 3x10.

3. Except as modified by this Amendment, the Agreement shall remain in full force and effect.

By: _____

Customer

Title: Director of Support

By: _____

Company

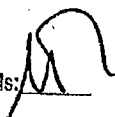
Michael E. Ruttner

Title: Vice President, National Accounts

BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES

	Merchandise	Style Code/ Color	Weekly Rental Rate Per Unit	Loss/ Damage Charge
1.	Chef Coat, 65/35 blend, LS, Plastic Buttons, Left Chest Pocket. In standard UniFirst sizes. *Black only. Super BI-LO Stores Only.	2531-12	\$0.25	\$9.86
2.	Bib Apron, no pockets, Emblem Applied. *Black only. Super BI-LO Stores Only.	7040-12	\$0.45	\$2.34
3.	100% Spun Poly Butcher Coat with inside chest pocket and 2 lower outside pockets. In standard UniFirst sizes. *White Only. No Personalization.	5033-07	\$0.13	\$10.99
4.	100% Spun Poly Butcher Coat with inside chest pocket and knit cuffs. In standard UniFirst sizes. *White Only. No Personalization.	50AY-07	\$0.15	\$14.08
5.	Men's LS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0111-07, 09, 03	\$0.20	\$12.03
6.	Women's LS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0112-07, 09, 03	\$0.19	\$11.84
7.	Men's SS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0211-07, 09, 03	\$0.19	\$10.96
8.	Women's SS 60/40 Cotton/Poly Oxford Shirt. In standard UniFirst sizes. Colors, white, lt. blue and grey.	0422-07, 09, 03	\$0.18	\$10.77
9.	U1st Great Impression Mat 3x5	76AQ	\$1.50	\$29.62
10.	U1st Great Impression Mat 4x6	76AR	\$2.40	\$42.53
11.	U1st Great Impression Mat 3x10	76AS	\$3.00	\$55.82
12.	Scraper Mat 3 x 5	5388	\$1.50	\$36.40
13.	Scraper Mat 4 x 6	5389	\$2.40	\$60.90
14.	Comfort-flow Mat 2x3	7752	\$0.60	\$39.27
15.	Ultra-flow Mat 3x5	76AG	\$1.50	\$55.57
16.	Wet Mop 32 oz	8118	\$0.64	\$9.91
17.	Wet Mop Handle	8165	NC	\$7.06
18.	Dust Mop 36"	8336	\$1.08	\$10.16
19.	Dust Mop Frame 36"	8133	NC	\$9.95
20.	Dust Mop 48"	8348	\$1.44	\$12.19
21.	Dust Mop Frame 48"	8138	NC	\$11.10
22.	Dust Mop Handle	8131	NC	\$2.87
23.	Bar Towel	8554	.09	\$0.40
24.	Linen Locker	8942	NC	\$306.77
25.	Soil Locker	8950	NC	\$201.82
26.	Hanger Recovery Rack	8957	NC	\$9.39

Initials: _____
Revised 8-28-07

Initials: 

BI-LO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES

SERVICE CHARGES:

1. Garment Preparation Charges
 For Standard sizes only... waived for the first 30 days

Garment	Sizes	US Charge
All	Standard Sizes	\$0.50
Coats	Size 2XL - 5XL	\$2.65 each
	Size 6XL	\$5.00 each
	Size 7XL and up	\$7.00 each
Misc.	Size 44 - 48	\$1.25 each
	Size 50 - 56	\$1.75 each
	Size 58 and up	\$2.25 each

*Includes hemming cost incurred on oversize garments

2. DEFE Surcharge (Delivery, Energy, Fuel, & Environmental Charge) \$6.50 per Wkly Service Invoice

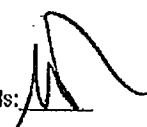
DEFE CHARGE. Customer's invoices may include a DEFE CHARGE, that may vary for different customers, to cover all or only portions of certain expenses including:

- D = DELIVERY, or expenses associated with the actual delivery of services and products to customers' places of business, primarily Route Sales Representative commissions, managements salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.
- E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater testing, purification, effluent control, solids disposal, supplies and equipment for pollution controls and energy conservation and overall regulatory compliance.
- F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.
- E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

3. Minimum "stop the truck" charge \$25.00 per Stop
4. Personalization Charges - Emblems
 Emblem fees waived for the initial installation of service at each location.
- Company Name Emblems (graphic) \$2.00

Initials: _____
 Revised 8-28-07

ii

Initials: 

**BELO, LLC
SCHEDULE II
MERCHANDISE
RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES**

Notes:

1. As a special concession to Customer, Company hereby agrees, upon the natural expiration (by its terms) of this Agreement, to limit Customer's total liability for damaged Merchandise (only) to not more than eight percent (8%) of the rental revenues received from Customer in the preceding year of the Agreement. Any charges for lost garments shall not be limited by the provisions of this special concession.
2. All garment items are invoiced at 100% of issue.
3. All flat goods are invoiced at 50% of total issue.
4. The butcher coats are delivered in bulk, by size, as such, all inventories should be set at 2.2 times estimated weekly usage.

Initials: _____
Revised 8-28-07

iii

Initials: 

SECOND AMENDMENT TO TEXTILE RENTAL SERVICE AGREEMENT

This second amendment (the "Second Amendment") entered into as of this 30th day of April, 2008, by and between BI-LO, a South Carolina corporation ("Customer") and UniFirst Corporation, a Massachusetts corporation ("Company")

PRELIMINARY STATEMENT

Customer and Company are each parties to that certain Textile Rental Service Agreement dated April 30, 2007, as earlier amended on September 24, 2007 (the "Agreement"). Customer and Company now desire to further amend the Agreement on the terms set forth in this Second Amendment.

AGREEMENT

IT IS THEREFORE AGREED AS FOLLOWS:

1. Capitalized terms used, but not defined, herein shall have the same meanings as set forth in the Agreement.
2. Customer has requested that a men's long sleeve oxford shirt (UniFirst Item # 0111), a woman's long sleeve oxford shirt (UniFirst Item #0112) and a women's ¾ sleeve poplin work shirt (UniFirst Item # 05AH) be added to its rental service program. Schedule II of the Agreement, "Merchandise Rental/Service & Loss/Damage Replacement Charges" is hereby amended to include these particular items; and a copy of the thus amended Schedule II, is attached hereto, in its entirety.
3. Except as modified by this Second Amendment, the Agreement shall remain in full force and effect.

Customer

Company

By: _____

By: _____

Michael E. Rutner

Title: _____

Title: Vice President, National Accounts

BI-LO, LLC
Schedule II
Merchandise Rental/Service & Loss/Damage Replacement Charges
Amended March, 2008

	Merchandise	Style Code	Weekly Rental Rate Per Unit	Loss/Damage Charge
1.	Men's LS Shirt-Oxford Button Down - 60/40 poly/cotton.	0111	.22	\$12.03
2.	Women's LS Shirt-Oxford Button Down - 60/40 poly/cotton.	0112	.22	\$12.03
3.	Women's shirt. ¾ sleeve. 65/35 poly/cotton.	05AH	.22	\$12.52
4.	100% Spun Poly Butcher Coat with inside chest pocket and 2 lower outside pockets. In standard UniFirst sizes. **White Only	5033-07	\$0.13	\$10.99
5.	100% Spun Poly Butcher Coat with inside chest pocket and knlt cuffs. In standard UniFirst sizes. **White Only	50AY-07	\$0.15	\$14.08
6.	U1st Great Impression Mat 3x5	76AQ 7620	\$1.50	\$29.62
7.	U1st Great Impression Mat 4x6	76AR 7660	\$2.40	\$42.53
8.	U1st Great Impression Mat 3x10	76AS 7630	\$3.00	\$55.82
9.	Dust Mop 36"	8338	\$1.08	\$10.16
10.	Dust Mop Frame 36"	8133	NC	\$9.95
11.	Dust Mop 48"	8348	\$1.44	\$12.19
12.	Dust Mop Frame 48"	8138	NC	\$11.10
13.	Dust Mop Handle	8131	NC	\$2.87
14.	Bar Towel	8554	.09	\$0.40
15.	Bar Towels, Bagged	8581	.09	\$0.40
16.	Linen Locker	8942	NC	\$306.77
17.	Soil Locker	8950	NC	\$201.82
18.	Hanger Recovery Rack	8957	NC	\$9.39
19.	Bag Rack	8956	NC	\$7.34
20.	Laundry Bags - Special	9075	NC	\$5.81

- Notes:**
1. All garment items are invoiced at 100% of issue.
 2. All flat goods are invoiced at 50% of total issue.
 3. The butcher coats are delivered in bulk, by size, as such, all inventories should be set at 2.2 times estimated weekly usage.

Service Charges:

1. Garment Preparation Charges
For Standard sizes only... waived for the first 30 days

Initials: _____
Revised 3-06-08

Initials: _____

BI-LO, LLC
Schedule II
Merchandise Rental/Service & Loss/Damage Replacement Charges
Amended March, 2008

Garment	Sizes	US Charge
All	Standard Sizes	\$0.50
Coats	Size 2XL - 5XL	\$2.65 each
	Size 6XL	\$5.00 each
	Size 7XL and up	\$7.00 each
Misc.	Size 44 - 48	\$1.25 each
	Size 50 - 56	\$1.75 each
	Size 58 and up	\$2.25 each

*Includes hemming cost incurred on oversize garments

2. DEFE Surcharge (Delivery, Energy, Fuel, & Environmental Charge) \$6.50 per Wkly Service Invoice

DEFE CHARGE. Customer's invoices may include a DEFE CHARGE, that may vary for different customers, to cover all or only portions of certain expenses including:

- D = DELIVERY, or expenses associated with the actual delivery of services and products to customers' places of business, primarily Route Sales Representative commissions, managements salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.
- E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater testing, purification, effluent control, solids disposal, supplies and equipment for pollution controls and energy conservation and overall regulatory compliance.
- F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.
- E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

3. Minimum "stop the truck" charge \$25.00 per Stop
4. Personalization Charges -- Emblems. - Emblem fees waived for the initial installation of service at each location.
- Company Name Emblems (graphic) \$2.00 each

Initials: _____
 Revised 3-06-08

II

Initials: _____

BI-I.O, LLC
Schedule II
Merchandise Rental/Service & Loss/Damage Replacement Charges
Amended March, 2008

	Merchandise	Style Code	Weekly Rental Rate Per Unit	Loss/Damage Charge
1.	Men's LS Shirt-Oxford Button Down - 60/40 poly/cotton	0111	.22	\$12.03
2.	Women's shirt, ¾ sleeve, 65/35 poly/cotton.	05AM	.22	\$12.52
3.	100% Spun Poly Butcher Coat with inside chest pocket and 2 lower outside pockets. In standard UniFirst sizes. **White Only	5033-07	\$0.13	\$10.99
4.	100% Spun Poly Butcher Coat with inside chest pocket and knit cuffs. In standard UniFirst sizes. **White Only	50AY-07	\$0.15	\$14.08
5.	U1st Great Impression Mat 3x5	76AQ 7620	\$1.50	\$29.62
6.	U1st Great Impression Mat 4x6	76AR 7660	\$2.40	\$42.53
7.	U1st Great Impression Mat 3x10	76AS 7630	\$3.00	\$55.82
8.	Dust Mop 36"	8336	\$1.08	\$10.16
9.	Dust Mop Frame 36"	8133	NC	\$9.95
10.	Dust Mop 48"	8348	\$1.44	\$12.19
11.	Dust Mop Frame 48"	8138	NC	\$11.10
12.	Dust Mop Handle	8131	NC	\$2.87
13.	Bar Towel	8554	.09	\$0.40
14.	Bar Towels, Bagged	8581	.09	\$0.40
15.	Linen Locker	8942	NC	\$306.77
16.	Soil Locker	8950	NC	\$201.82
17.	Hanger Recovery Rack	8957	NC	\$9.39
18.	Bag Rack	8956	NC	\$7.34
19.	Laundry Bags - Special	9075	NC	\$5.81

- Notes:**
1. All garment items are invoiced at 100% of issue.
 2. All flat goods are invoiced at 50% of total issue.
 3. The butcher coats are delivered in bulk, by size, as such, all inventories should be set at 2.2 times estimated weekly usage.

Service Charges:

1. Garment Preparation Charges
For Standard sizes only... waived for the first 30 days

Initials: _____
Revised 3-06-08

Initials: _____

BI-LO, LLC
Schedule II
Merchandise Rental/Service & Loss/Damage Replacement Charges
Amended March, 2008

Garment	Sizes	US Charge
All	Standard Sizes	\$0.50
Coats	Size 2XL - 5XL	\$2.65 each
	Size 6XL	\$5.00 each
	Size 7XL and up	\$7.00 each
Misc.	Size 44 - 48	\$1.25 each
	Size 50 - 56	\$1.75 each
	Size 58 and up	\$2.25 each

*Includes hemming cost incurred on oversize garments

2. DEFE Surcharge (Delivery, Energy, Fuel, & Environmental Charge) \$6.50 per Wkly Service Invoice

DEFE CHARGE. Customer's invoices may include a DEFE CHARGE, that may vary for different customers, to cover all or only portions of certain expenses including:

- D = DELIVERY, or expenses associated with the actual delivery of services and products to customers' places of business, primarily Route Sales Representative commissions, managements salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.
- E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater testing, purification, effluent control, solids disposal, supplies and equipment for pollution controls an energy conservation and overall regulatory compliance.
- F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.
- E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

3. Minimum "stop the truck" charge \$25.00 per Stop
4. Personalization Charges -- Emblems. Emblem fees waived for the initial installation of service at each location.
- Company Name Emblems (graphic) \$2.00 each

Initials: _____
Revised 3-06-08

II

Initials: _____



UniFirst Corporation
68 Jonsplin Road
Wilmington, MA 01887
Phone: 978-658-8888
Fax: 978-988-1600

April 19th, 2010

BI-Lo, LLC
c/o Michael Feder
208 BI-Lo Blvd.
Greenville, SC 29607

Dear Sir:

In the matter of *In re BI-LO, LLC*, Case No. 09-02140 (Bankr. D.S.C.) (EHB)(Jointly Administered), UniFirst Corporation filed Proof of Claim #693 in the amount of \$65,127.92 (the "Proof of Claim"). In exchange for BI-LO's assumption of the Textile Rental Service Agreement dated April 30, 2007, pursuant to 11 U.S.C. § 365, we have agreed to revise the Proof of Claim, with prejudice, to \$32,563.96, and further have agreed to waive and release all other claims of any kind we may hold against BI-LO or its affiliates that arose prior to March 23, 2009.

Please do not hesitate to contact me should you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Ruttner", with a long, horizontal flourish extending to the right.

Michael E. Ruttner
Vice President, National Accounts
UniFirst Corporation

THIRD AMENDMENT TO TEXTILE RENTAL SERVICE AGREEMENT

This third amendment (the "Third Amendment") dated as of April 19, 2010; (the "Effective Date") is entered into by BI-LO, a South Carolina corporation ("Customer") and UniFirst Corporation, a Massachusetts corporation ("Company")

PRELIMINARY STATEMENT

Customer and Company are parties to that certain Textile Rental Service Agreement dated April 30th, 2007, as previously Amended on September 24, 2007, and again on April 30th, 2008 (collectively, the "Agreement"). Customer and Company now desire to further amend the Agreement on the terms set forth in this Third Amendment.

AGREEMENT

IT IS THEREFORE AGREED AS FOLLOWS:

1. Capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Agreement.

2. Section 3, Schedule I, of the Agreement, is hereby amended, such that it now reads in its entirety, specifically:

Term. The term of this Agreement, notwithstanding earlier termination pursuant to the terms herein, shall be Location specific and shall expire the latter of (a) two hundred sixty (260) consecutive revenue weeks from the date the Merchandise is first installed at the Location; or, (b) April 30, 2014.

3. Schedule II (MERCHADISE RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT CHARGES) of the Agreement is hereby amended in order to properly reflect current program pricing levels. Schedule II, as thus amended, is attached hereto in its entirety.

4. It is mutually understood and agreed that the Agreement, as amended, shall be and remain in full force and effect and unmodified, except as the same is specifically modified and amended hereby. All covenants, terms, obligations and conditions of the Agreement, as previously amended, which are not modified or amended herein are hereby ratified and confirmed.

Customer
By: Dan Cradock

Company
By: Michael E. Ruttner

Title: Vice President, Operations Title: Vice President, National Accounts

Initials: DC

Initials: MR

**BI-LO, LLC
SCHEDULE II
MERCHANDISE RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT
CHARGES**

	Merchandise	Style Code	Weekly Rental Rate Per Unit	Loss/ Damage Charge
1.	Butcher Coat, 100% Spun Poly with inside chest pocket and 2 lower outside pockets. Standard UniFirst sizes. **White Only	5033-07	\$0.13	\$10.99
2.	Butcher Coat, 100% Spun Poly with inside chest pocket and knit cuffs. Standard UniFirst sizes. **White Only	50AY-07	\$0.15	\$14.08
3.	Chef Coat LS, 65/35 poly/cotton with left chest pocket, 10 button double breasted front. **Black Only	2531-12	\$0.25	\$9.85
4.	U1st Great Impression Mat 3x5	76AQ	\$1.50	\$29.62
5.	U1st Great Impression Mat 4x6	76AR	\$2.40	\$42.53
6.	U1st Great Impression Mat 3x10	76AS 7630*	\$3.00	\$55.82
7.	Dust Mop 36"	8336	\$1.08	\$10.16
8.	Dust Mop Frame 36"	8133	NC	\$9.95
9.	Dust Mop 48"	8348	\$1.44	\$12.19
10.	Dust Mop Frame 48"	8138	NC	\$11.10
11.	Dust Mop Handle	8131	NC	\$2.87
12.	Bar Towel	8554	\$0.09	\$0.40
13.	Bar Towels, Bagged	8581	\$0.09	\$0.40
14.	TCell Air Freshener Dispenser	8793	NC	\$4.21
15.	TCell Fragrance-Citrus	8794	\$1.25	NA
16.	Linen Locker	8942	NC	\$306.77
17.	Soil Locker	8950	NC	\$201.82
18.	8 Compartment Hanger	8951	\$1.00	\$409.00
19.	Hanger Recovery Rack	8957	NC	\$9.39
20.	Bag Rack	8956	NC	\$7.34
21.	Laundry Bags - Special	9075	NC	\$5.81

1. Transition to UniFirst Great Impression Mats.
2. All garment items are invoiced at 100% of issue.
3. All flat goods are invoiced at 50% of total issue.
4. The butcher coats are delivered in bulk, by size, as such, all inventories should be set at 2.2 times estimated weekly usage.

Initials: 

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Initials: 

**BI-LO, LLC
SCHEDULE II
MERCHANDISE RENTAL/SERVICE & LOSS/DAMAGE REPLACEMENT
CHARGES**

SERVICE CHARGES

1.) Garment Preparation Charges

For Standard sizes only... waived for the first 30 days

Garment	Sizes	Charge
All	Standard Sizes	\$0.50
Coats	Size 2XL - 5XL	\$2.65 each
	Size 6XL	\$5.00 each
	Size 7XL and up	\$7.00 each
Misc.	Size 44 - 48	\$1.25 each
	Size 50 - 56	\$1.75 each
	Size 58 and up	\$2.25 each

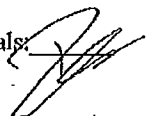
*includes hemming cost incurred on oversize items

- 2.) **DEFE Charge** \$2.00 per Wkly Service Invoice
DEFE CHARGE. Customer's Invoices may include a DEFE CHARGE, that may vary for different customers, to cover all or only portions of certain expenses including:
D = DELIVERY, or expenses associated with the actual delivery of services and products to customers' places of business, primarily Route Sales Representative commissions, managements salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.
E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater testing, purification, effluent control, solids disposal, supplies and equipment for pollution controls an energy conservation and overall regulatory compliance.
F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.
E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

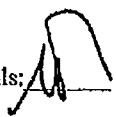
- 3.) **Minimum "stop the truck" Charge** \$20.00 per Stop

COMMENTS:

1. ***Indicates an Item of Merchandise, hereby made expressly subject to the buy-back provisions of Paragraph [6] of the Agreement.
2. The weekly rental rates listed above are quoted in individual units. The weekly rental charges associated with the utilization of each such item will be flat rated and invoiced based upon the "Billed Quantity" indicated on the service invoice, whether or not such quantity is actually delivered in a given week.

Initials: 

3

Initials: 

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) THE SIXTH JUDICIAL CIRCUIT

Mary Wall Black,) Civil Action No.: 2012-CP-20-316

Plaintiff,)

v.)

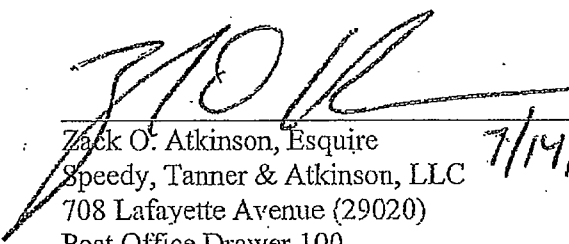
BI-LO, LLC and Unifirst Corporation,)

Defendant.)

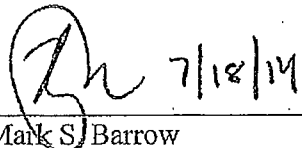
STIPULATION OF DISMISSAL OF
PLAINTIFF'S CLAIMS AGAINST BI-LO, LLC

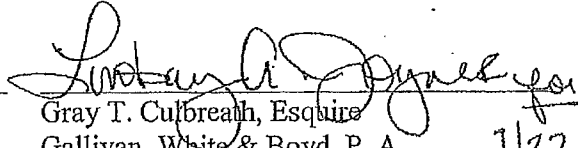
2014 JUL 25 PM 9 14
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

The above-referenced matter having been settled by the parties, the undersigned, attorneys for the parties herein, hereby stipulate that the Complaint against BI-LO, LLC be dismissed with prejudice and forever ended. The Crossclaims between Defendants have been severed and remain in suit.


Zack O. Atkinson, Esquire
Speedy, Tanner & Atkinson, LLC
708 Lafayette Avenue (29020)
Post Office Drawer 100
Camden, SC 29021
Attorney for Plaintiff

7/14/14


Mark S. Barrow
Ryan C. Holt
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
Attorneys for Defendant BI-LO, LLC


Gray T. Culbreath, Esquire
Gallivan, White & Boyd, P. A.
1201 Main Street
Columbia, SC 29201
Attorney for Unifirst Corporation

7/22/14

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

)

)

)

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-20-316

Mary Wall Black,

Plaintiff,

vs.

Bi-Lo, LLC and UniFirst Corporation,

Defendants.

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**ANSWER OF DEFENDANT
UNIFIRST CORPORATION TO THE
CROSSCLAIMS OF DEFENDANT BI-
LO, INC. AND CROSSCLAIMS
AGAINST BI-LO, LLC**

(Jury Trial Demanded)

Defendant UniFirst Corporation ("UniFirst") hereby answers the Crossclaims of Defendant Bi-Lo, Inc. ("Bi-Lo") as follows. Each and every allegation not hereinafter specifically admitted, qualified, or explained is expressly denied.

**FOR A FIRST DEFENSE TO BI-LO'S SIXTH DEFENSE AND
CROSSCLAIM AGAINST UNIFIRST CORPORATION**
(Contribution)

1. Paragraph 29 of Bi-Lo's Cross Complaint is an incorporation paragraph and, therefore, no response of UniFirst is required. To the extent the Court deems a response of UniFirst is required, UniFirst is without knowledge and therefore denies the allegations of Paragraph 29.

2. Answering Paragraph 30, UniFirst admits only so much of these allegations that allege or can be construed to allege that Bi-Lo contracted UniFirst to provide floor mats to its Bi-Lo location. Any allegations in addition to or inconsistent with the above response are denied.

3. UniFirst denies the allegations against UniFirst set forth in Paragraph 31 of Bi-Lo's Cross Complaint and demands strict proof thereof.

**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

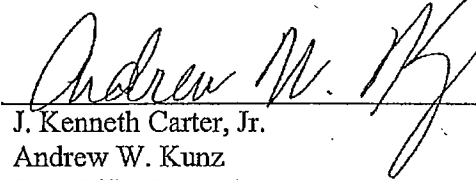
not admitted but is plead herein only as an alternative defense, arising from Bi-Lo's special relationship with UniFirst under contract to provide the mat which is in issue in this case, and in one or more of the manners alleged in the Complaint, and not because of any negligence on the part of UniFirst.

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:



J. Kenneth Carter, Jr.
Andrew W. Kunz
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

**ATTORNEYS FOR DEFENDANT
UNIFIRST CORPORATION**

1 A Staples.

2 Q Were you carrying groceries, too?

3 A Yes, sir.

4 Q Y'all didn't have your groceries in a buggy
5 and pushing your buggy cart out?

6 A No.

7 Q What time of day was it?

8 A It was afternoon.

9 Q What was the weather like outside?

10 A It was pretty. Nice. Nice weather.

11 Q Okay. Where had y'all been before you went
12 to Bi-Lo that day?

13 A I guess we came from home. I don't know. I
14 can't remember any other place where --

15 Q Anybody with you, or just you and your wife?

16 A No. Just me and the wife.

17 Q You didn't see her fall -- or did you see
18 her fall?

19 A I was ahead of her. In front of her.

20 Q So did you see her fall?

21 A No. I didn't see her fall, but I felt -- I
22 heard her when she hit there.

23 Q Okay. Where did she fall, Mr. Black?

24 A Coming out of the -- coming out of the door
25 at Bi-Lo.

1 remember if it was me that called 9-1-1. But I do
2 clearly remember when I was sitting there making sure
3 she was okay, the manager of the store -- white
4 shirt, tall, black gentleman -- not sure of his name,
5 just remember him at a glance, don't know if I could
6 remember his face if I seen him right now. He walked
7 over and straightened up the rubber matting on the
8 floor that was (gesturing) -- it was just bunched up
9 and he come over and flattened it out. And I know
10 that was before the ambulance and anybody even got
11 there, and it just surprised me when I seen that.

12 Q. Why did it surprise you?

13 A. Why do that, is the way I think. Why --
14 why are you straightening out that mat?

15 Q. Did this gentleman have a tie on?

16 A. Yeah -- yes.

17 Q. So when you say a white shirt -- a white
18 shirt like mine?

19 A. White -- white shirt like you, yeah; white
20 collared shirt.

21 Q. Now, you told me earlier you didn't see Ms.
22 Black's feet before she fell, right?

23 A. Correct.

24 Q. So you didn't see her trip on that mat, did
25 you?

1 A. I did not.

2 Q. What kind of mat was it?

3 A. Standard. If I could see one could --
4 black with grayish in it, the edges are rubbered
5 (gesturing), mat -- matting, I guess a slip and fall
6 mat is what I would call it. You see them most --
7 high traffic areas.

8 Q. And is this a grocery store that you had
9 been to before?

10 A. Oh, yes, many times.

11 Q. Would you say that it's your primary place
12 of grocery shopping?

13 A. Yes, it is.

14 Q. Had you seen these mats there before?

15 A. Yes, I have.

16 Q. Now, you don't know if this particular mat
17 that you remember seeing on that day was the same as
18 the mat you had seen on any other day, do you?

19 A. There's no way for me to know that.

20 Q. Did you notice anything particular about
21 the mat that you saw in October, 2010?

22 A. As far as?

23 Q. You tell me. Is there anything different
24 other than what you just described?

25 A. Other than that, other than when I noticed

1 Q. Do you remember, were you wearing a rain
2 coat that day? Was it raining hard enough that --

3 A. I was not wearing a raincoat. I don't even
4 carry a umbrella.

5 Q. Good to know. So when you opened the door
6 to your truck, at that point, you saw Ms. Black
7 falling.

8 A. Falling, yes.

9 Q. But didn't see what precipitated the fall.

10 A. I did not.

11 Q. Did she fall forward?

12 A. Yes.

13 Q. And did you hear it first or see it first?

14 A. Seen it.

15 Q. And I know that you probably answered this
16 question, but you had not seen the mat before the
17 fall?

18 A. I did not.

19 Q. Let's see. When she fell forward, did she
20 move sideways at all --

21 A. I can't remember.

22 Q. -- that you noticed? Did she reach out
23 with her hands to break her fall?

24 A. I don't remember.

25 Q. How wide would you say that doorway is?

1 her?

2 A. Yes.

3 Q. At the time, was she moving around at all?
4 Was she moving limbs?

5 A. I mean, her arms and stuff, but she was on
6 the ground so I don't know if she was moving -- I
7 don't know what part wasn't moving, I don't remember
8 that.

9 Q. Did she get up immediately?

10 A. Oh, no. Oh, no.

11 Q. Did she try to get up on her own?

12 A. Not that I'm aware of, and I think I told
13 her to just stay where she was at.

14 Q. And did you see what caused the fall?

15 A. I did not.

16 Q. And did you notice anything on the ground
17 around the area where she fell?

18 A. After she fell, no. There was nothing
19 there.

20 Q. Did you notice anything on the ground
21 around the mat?

22 A. No.

23 Q. No, okay. Did you look around on the floor
24 inside the store?

25 A. I remember looking until the manager or --

1 take care of the mat?

2 A. The mat.

3 Q. And you said you found that odd.

4 A. Yes.

5 Q. Why is that?

6 A. The -- Ms. Black had just fallen. If -- I
7 can only tell you what -- if it was me, I wouldn't
8 care about the mat. I would care about the lady.
9 And so when we were there, it just caught my eye that
10 he was messing with the mat and then he should have
11 come over to her first, whether inside or outside the
12 store.

13 Q. And he didn't do that.

14 A. No. He did not.

15 Q. Did it appear to you that it was the mat
16 that caused her fall?

17 A. I can't --

18 MR. HOLT: Object to the form. Go ahead.

19 A. I can't say what caused her fall, because I
20 didn't see what caused her fall so I'm not gonna
21 suggest anything.

22 Q. Right. But the mat was definitely
23 straightened up by the manager.

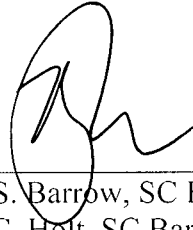
24 A. Correct.

25 Q. Was it clear to you, Ms. Johnson, that she

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Amended Record on Appeal contains all material proposed to be included, and consented to by the opposing party, and not any other material. The Amended Record includes all material in the original Record on Appeal, with the exception of the pages ordered redacted by the Court. This Amended Record also includes the contents of the supplemental records submitted by the parties, as well as the final page of the Textile Rental Services Agreement which was inadvertently left out of the original Record.

January 8, 2015



Mark S. Barrow, SC Bar No. 7821
Ryan C. Holt, SC Bar No. 78338
Post Office Box 12129
Columbia, S.C. 29211
(803) 256-2233
Email: msb@swblw.com; rch@swblaw.com
ATTORNEYS FOR APPELLANT

THE 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.

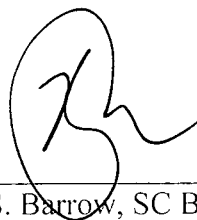
v.

BI-LO, LLC and Unifirst Corporation, ... Defendants,
Of which BI-LO, LLC is the Appellant,
and Unifirst is the Respondent.

PROOF OF SERVICE

I certify that I have served the Amended Record on Appeal by forwarding copies thereof to the Court of Appeals via courier for subsequent delivery of a stamped copy to Respondent at the office of its attorney of record Gray T. Culbreath, Esquire, 1201 Main Street, Columbia, South Carolina 29201.

January 9, 2015.



Mark S. Barrow, SC Bar No. 7821
Ryan C. Holt, SC Bar No. 78338
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