

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Brian M. Gibbons, Circuit Court Judge

Lower Court Case No. 2014-CP-10-0569
Appellate Case No. 2015-002025

RECEIVED
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SC Court of Appeals

William Huck and Dianne Huck..... Respondents,

v.

Oakland Wings, LLC d/b/a Wild Wing Cafe,
Civil Site Environmental, Inc., Oakland Properties,
LLC, Chandler Construction Services, Inc., Avtex
Commercial Properties, Inc..... Defendants,

Of Whom Avtex Commercial Properties, Inc. is the..... Appellant.

RECORD ON APPEAL

K. Michael Barfield, Esquire
S.C. State Bar No.: 69400
D. Summers Clarke, II, Esquire
S.C. State Bar No.: 74829
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Post Office Drawer H
Charleston, SC 29402
mbarfield@barnwell-whaley.com
sclarke@barnwell-whaley.com
(843) 577-7700 FAX (843) 577-7708
*Attorneys for Appellant Avtex
Commercial Properties, Inc.*

Edward K. Pritchard, III, Esquire
S.C. State Bar No.: 9710
Elizabeth F. Fulton, Esquire
S.C. State Bar No.: 100611
Pritchard Law Group, LLC
129 Broad Street (29401)
P. O. Box 630
Charleston, SC 29402
(843) 722-3300 FAX (843) 722-
3379

*Attorney for Respondents William
Huck and Dianne Huck*

INDEX

I. ORDERS

1. Order Denying the Motion of Defendant, Avtex Commercial Properties, Inc., for JNOV and Denying the Motion of Defendant, Avtex Commercial Properties, Inc., to Disclose Settlement and for Set-Off, July 27, 2015..... 4
2. Order Denying Motion to Alter or Amend Judgment Pursuant to SCRCF 59(e), August 18, 2015..... 16
3. Notice of Entry of Judgment/Order Pursuant to Rule 77 SCRCF Order/denying mot to alter or amend judg, August 18, 2015..... 17

II. PLEADINGS

1. Summons and Complaint, January 28, 2014..... 18
2. Amended Summons and Amended Complaint, February 20, 2014..... 29
3. Defendant Civil Site Environmental, Inc.'s Answer to the Plaintiffs' Amended Complaint, March 17, 2014..... 41
4. Answer of Defendant Oakland Wings, LLC d/b/a Wild Wing Café, March 19, 2014..... 50
5. Second Amended Summons and Second Amended Complaint, April 15, 2014..... 59
6. Answer of Defendant Oakland Wings, LLC d/b/a Wild Wing Café to Second Amended Complaint, April 17, 2014..... 74
7. Answer to Plaintiffs' Second Amended Complaint, April 18, 2014..... 83
8. Answer of Defendants Oakland Properties, LLC, and Avtex Commercial Properties, Inc., to Plaintiffs' Amended Complaint, April 22, 2014..... 92
9. Answer of Defendants Oakland Properties, LLC, and Avtex Commercial Properties, Inc. to Plaintiffs'

	Second Amended Complaint, May 1, 2014.....	99
10.	Defendant Chandler Construction Services, Inc.'s Answer to Plaintiffs' Second Amended Complaint, May 22, 2014.....	107
11.	Stipulation of Dismissal, May 20, 2015.....	114
12.	Stipulation of Dismissal With Prejudice, June 1, 2015.....	115
 III. DISCOVERY		
1.	Defendant Avtex Commercial Properties, Inc.'s First Set of Interrogatories to Plaintiff William Huck, May 19, 2014.....	117
2.	Defendant Avtex Commercial Properties, Inc.'s First Set of Requests for Production to Plaintiff Williams Huck, May 19, 2014.....	126
 IV. VERDICT AND POST-VERDICT MOTIONS		
1.	Notice of Entry of Judgment/Order Pursuant to Rule 77 SCRCP Order/Jury Verdict in favor of Pltff, May 22, 2015.....	132
2.	Form 4 – Judgment in a Civil Case and Verdict Form, May 22, 2015.....	133
3.	Defendant Avtex Commercial Properties, Inc.'s Motion for Judgment Notwithstanding the Verdict, June 3, 2015.....	138
4.	Defendant Avtex Commercial Properties, Inc.'s Memorandum in Support of its Motion for Judgment Notwithstanding the Verdict, June 3, 2015.....	140
5.	Defendant Avtex Commercial Properties, Inc.'s Motion for Disclosure of Settlement, Motion for Setoff, and in the Alternative, Motion to Determine whether Settlements with Chandler Construction Services and Civil Site Environmental, Inc. were made in Good Faith, June 3, 2015.....	144

6.	Defendant Avtex Commercial Properties, Inc.'s Memorandum in Support of Motion to Disclosure of Settlement, Memorandum in Support of Motion for Setoff, and in the Alternative, Memorandum in Support of Motion to Determine whether the Settlements with Chandler Construction Services and Civil Site Environmental, Inc. were made in Good Faith, June 3, 2015.....	146
7.	Defendant Avtex Commercial Properties, Inc.'s Motion to Alter or Amend Judgment Pursuant to SCRCF 59(e), August 7, 2015.....	156
8.	Notice of Appeal, September 21, 2015.....	160

V. MISCELLANEOUS

1.	Letter from D. Summers Clarke, II to Edward K. Pritchard, III, Esquire, October 19, 2015.....	177
2.	Mediation Agreement.....	179
3.	Proof of ADR Or Exemption, March 30, 2015.....	181
4.	Letter from Daniel E. Shearouse, Clerk of Court, The Supreme Court of South Carolina, to The Honorable Lisa A. Kinon, Chair ADR Commission, January 22, 2016.....	183
5.	Proposed Amended Rule 8, SCADR.....	185

VI.	CERTIFICATE OF COUNSEL.....	187
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-10-569

FILED
JUL 27 PM 3:08
J. ARMSTRONG
CLERK OF COURT

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

v.

OAKLAND WINGS, LLC d/b/a WILD
WING CAFÉ,
CIVIL SITE ENVIRONMENTAL, INC.,
OAKLAND PROPERTIES, LLC,
CHANDLER CONSTRUCTION SERVICES,
INC.,
AVTEX COMMERCIAL PROPERTIES, INC.,

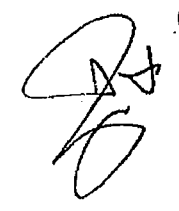
Defendants.

ORDER DENYING
THE MOTION OF
DEFENDANT, AVTEX
COMMERCIAL PROPERTIES,
INC., FOR JNOV AND
DENYING THE MOTION
OF DEFENDANT, AVTEX
COMMERCIAL PROPERTIES,
INC., TO DISCLOSE
SETTLEMENT AND FOR SET-
OFF

BACKGROUND

This is a premises liability action. This matter came before this court for a trial on the merits on May 19, 2015, May 20, 2015 and May 21, 2015. Prior to trial, Defendants, Civil Site Environmental, Inc., (hereinafter referred to "CSE") and Chandler Construction Services, Inc., (hereinafter referred to "CCS"), settled with either Plaintiff, William Huck, Plaintiff, Dianne Huck, or both; the terms of the settlement, including the amounts, are unknown to the court.

At the close of the plaintiffs' case, the remaining Defendants, Oakland Wings, LLC b/b/a Wild Wing Café (hereinafter referred to as "Wild Wing"), Oakland Properties, LLC, (hereinafter referred to as "Oakland") and Avtex Commercial Properties, Inc., (hereinafter referred to as "Avtex") moved for directed verdict pursuant to Rule 50(a), S.C.R.Civ.P. This



court granted the motion as to Mrs. Huck's consortium cause of action, but denied the motion as to Mr. Huck's negligence cause of action.

At the close of all evidence, Wild Wing, Oakland and Avtex renewed their Rule 50(a) directed verdict motion as to Mr. Huck's negligence cause of action, which the court denied. The matter was then submitted to the jury for determination, which returned a verdict in favor of Mr. Huck against Avtex only in the amount of \$97,640.00, but found that Mr. Huck was fifty percent negligent in bringing about his own injuries. Accordingly this court reduced the verdict by fifty percent to \$48,820.00 and entered judgment against Avtex in the amount of \$48,820.00. The jury also returned verdict in favor of Wild Wing and Oakland and judgment was, accordingly, entered in their favor dismissing them from this action.

On June 3, 2015, Avtex filed a motion for judgment notwithstanding the verdict pursuant to Rule 50(b), S.C.R.Civ.P., and a motion for disclosure of settlement, for set-off and, in the alternative, to determine whether the settlement with CSE and CCS were made in good faith. This matter is now before this court for a determination of Axtex's June 3 motions. For the reasons set forth hereinbelow, both motions are hereby denied.

DISCUSSION

A. RULE 50(B) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

As a preliminary matter, Mr. Huck takes the position that this court cannot consider Axtex's motion for judgment notwithstanding the verdict because it was not timely made. The court disagrees.

Rule 50(b), (e) and (f), S.C.R.Civ.P., respectively provide in relevant part:

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may

move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict.

* * * *

The motion for judgment n.o.v. shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.

A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

(emphasis added). Rule 6(b), S.C.R.Civ.P., provides in pertinent part:

When by these rules . . . or by order of court an act is required or allowed to be done at or within a specified time . . . the court for cause shown may at any time in its discretion . . . order the period enlarged if request therefor is made before the expiration of the period as originally prescribed or extended. . . . The time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them. The time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order.

The South Carolina Supreme Court held in *Citizens & S. Nat'l Bank of S.C. v. Easton*, 310 S.C. 458, 427 S.E.2d 640 (1993), the time for filing a motion under Rule 59(b) may not be enlarged or extended beyond the ten day period stated in Rule 59(b).

Mr. Huck takes the position that since Avtex's motion for judgment notwithstanding the verdict was not filed until June 3, 2015, it was not filed within the ten day period proscribed by Rule 50(e), and, as a consequence, Avtex's Rule 50(b) motion for judgment notwithstanding the verdict is untimely, and must be dismissed as the court now lacks jurisdiction to entertain it. However, the court finds that Avtex actually made its motion for judgment notwithstanding the verdict orally immediately following the reading of the verdict which it followed up with a memorandum filed June 3, 2015. Accordingly, in the court's

A handwritten signature in black ink, appearing to be 'JH' with a flourish and the number '3' written next to it.

view, Avtex timely made its motion for judgment notwithstanding the verdict and the court may now entertain it.

Nevertheless, in considering Avtex' motion for judgment notwithstanding the verdict on the merits, the court finds that the motion must be denied. When ruling on a motion for a directed verdict, this Court is concerned with the existence or non-existence of evidence, not its weight. *See Long v. Norris & Associates, Ltd.*, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000). If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury. *Id.* As the Court finds that there is ample evidence to support the jury's finding that Avtex was negligent, that its negligence brought about Mr. Huck's injuries and that Mr. Huck's damages are \$97,640.00, this court, as it must, hereby deny Avtex' motion for judgment notwithstanding the verdict.

B. MOTION FOR DISCLOSURE OF SETTLEMENT, FOR SET-OFF AND, IN THE ALTERNATIVE, TO DETERMINE WHETHER THE SETTLEMENTS WERE MADE IN GOOD FAITH.

Avtex seeks to have this court compel the production of the terms of the settlements between CSE and either Mr. Huck, Mrs. Huck, or both, and CCS and either Mr. Huck, Mrs. Huck, or both, have the court off-set the settlement amounts against the judgment and to review the settlements to determine if they were made in good faith, and if this court finds that they were not made in good faith, to reallocate the settlement funds between Mr. Huck and Mrs. Huck. For the reasons explained below this court must deny Avtex's motion.

First, this court, however, is not permitted to compel the disclosure of the terms of the settlements between CSE and either Mr. Huck, Mrs. Huck, or both, and CCS and either Mr. Huck, Mrs. Huck, or both as this is specifically prevented by the South Carolina Rules governing Alternative Dispute Resolution. Rule 2(a). SCADR, defines a mediation as "[a]n informal process in which a third-party mediator facilitates settlement discussions between parties." Rule



6(e), SCADR, provides that "Communications during the mediation settlement conference shall be confidential in accordance with Rule 8." Rule 8, SCADR, provides:

(a) Confidentiality. Communications during a mediation settlement conference shall be confidential. Additionally, the parties, their attorneys and any other person present must execute an Agreement to Mediate that protects the confidentiality of the process. To that end, the parties and any other person present shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:

- (1) Views expressed or suggestions made by another party or any other person present with respect to a possible settlement of the dispute;
- (2) Admissions made in the course of the mediation proceeding by another party or any other person present;
- (3) Proposals made or views expressed by the mediator;
- (4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; or
- (5) All records, reports or other documents created solely for use in the mediation.

(b) Limited Exceptions to Confidentiality. This rule does not prohibit:

- (1) Disclosures as may be stipulated by all parties;
- (2) A report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules;
- (3) The mediator or participants from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the ADR program;
- (4) Threats of harm or attempts to inflict physical harm made during the mediation sessions; and
- (5) Any disclosures required by law or a professional code of ethics.

(c) Private Consultation/Confidentiality. The mediator may meet and consult individually with any party or parties or their counsel during a mediation conference. The mediator without consent shall not divulge confidential information disclosed to a mediator in the course of a private consultation.

(d) No Waiver of Privilege. No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client privilege.

(e) Mediator Not to be Called as Witness. The mediator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and

other documents received by the mediator while serving in that capacity shall be confidential.

As required by Rule 2(a) the parties to this action -- Avtex and its attorneys included -- entered into an Agreement to Mediate designed to protect the confidentiality of the mediation process in this case. A copy of which is attached to this e-mail. The mediation agreement in this case specifically provides, among other things:

1. All statements made during the course of mediation are privileged, are made without prejudice to any party's legal position, and are non-discoverable and inadmissible for any purpose in any legal proceeding.

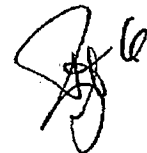
2. The privileged character of any information is not altered by disclosure to the mediator. Disclosure of any records, reports, or other documents received or prepared by the mediator cannot be compelled. The mediator shall not be compelled to disclose or to testify in any proceeding about (i) any records, reports, or other documents received or prepared by the mediator or (ii) information disclosed or representations made in the course of the mediation or otherwise communicated to the mediator in confidence.

3. Evidence of anything said or any admission made in the course of mediation is not admissible into evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

4. Unless a document provides otherwise, no document prepared for the purpose of, or in the course of, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

5. Nothing in this Agreement to Mediate shall limit the admissibility of any particular evidence if all persons who conducted or otherwise participated in the mediation consent to its disclosure.

The settlements with Civil Site and Chandler in this case, if any, were made during the course and scope of the mediation in this matter and are subject to the confidentiality provisions of Rule 6(e) and 8 of the SCADR. See Rule 1, Rule 3, Rule 23 and Rule 24, SCADR. The settlement with CSE was reached at the mediation site. The settlement with CCS was reached a few weeks later during the continuation of the mediation by agreement of Mr. and Mrs. Huck



and CCS; all discussions and negotiations were through the neutral/mediator, John H. Tiller, Esq., who remained involved and who facilitated the settlement negotiations.

What Avtex seeks to have this court do is to compel the production and disclosure of a settlement agreement, assuming there is a settlement agreement, prepared for the purpose of, or in the course of the mediation and then admit its terms into evidence in violation of Rule 6(e) and Rule 8, SCADR, and in violation of the mediation agreement. The Court is barred from inquiring into the confidential settlement discussions and negotiations between Mr. and Mrs. Huck and CSE and CCS or the settlement agreements, if any, consummated as a result or to compel the production of the same. Clearly the settlement agreements, if there are settlement agreements, do not fall within the limited – to use the word specifically set forth in the Rule 8(b), SCADR – exceptions to mediation confidentiality set forth in Rule 8(b). Further, even if the settlement agreements, if there are any settlement agreements, are produced or the terms of the settlements, if there were a settlement are disclosed, they cannot be introduced into evidence for consideration by the court. Consequently, the granting of the motion would be in blatant disregard of the Alternative Dispute Rules and must therefore be denied.

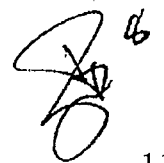
In arguing that it is entitled to the production of the settlement agreements, if there are settlement agreements, or the settlement terms, if there are settlement terms, not once does Avtex reference the Alternative Dispute Resolution Rules. This is telling as Avtex would have the Court ignore or overlook them. This the Court cannot do. Further, Avtex's offer of a protective order does not circumvent the Alternative Dispute Resolution Rules.

Avtex specifically agreed in the mediation agreement "[u]nless a document provides otherwise, no document prepared for the purpose of, or in the course of, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in



any civil action.” Avtex attended mediation. It had an opportunity to participate in any settlements arising out of the same, but elected not to. The time for addressing concerns about confidentiality and specifically what it was agreeing to in the mediation agreement, was at the time of the mediation. That Avtex failed to do so is no basis for requesting that court ignore the South Carolina rules relating to ADR. “South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution. . . .” *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013).

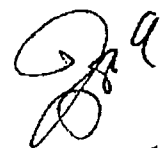
In order to compel the disclosure of a “document prepared for the purpose of, or in the course of, the mediation,” Avtex must demonstrate that a “‘manifest injustice’ will result from non-disclosure. Application of the manifest injustice standard requires the party seeking disclosure to demonstrate that the harm caused by non-disclosure will be manifestly greater than the harm caused by disclosure.” *In re Anonymous*, 283 F.3d 627 (4th Cir. 2002). As the negotiations with CCS continued through the mediator, those negotiations, and any agreement reached are subject to the South Carolina Rules of Alternative Dispute Resolution. *C.f. Id.* at 635 (“‘mediation’ is not limited to the mediation conference, but continues until the mediated dispute has been either dismissed or is otherwise removed from the OCM. This conception of the duration of mediation is a practical necessity of the process itself, in that the mediated dispute is rarely conclusively resolved during the mediation conference. Instead, the parties to the dispute often resume mediation, or refine aspects of the settlement agreement, subsequent to the mediation conference, and many times do so outside the presence of the mediator. These conversations and the information disclosed therein are entitled to the same degree of confidentiality as disclosures made during the mediation conference. Accordingly, until a mediated dispute is dismissed or is otherwise removed from the OCM, all ‘statements,

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documents, and discussions' relating to the mediation remain within the bailiwick of the OCM and, therefore, remain confidential."). Avtex, has failed to make a showing of manifest injustice. In fact, Avtex has failed to make any showing whatsoever.

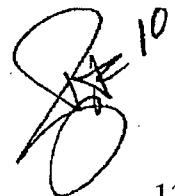
Further, even if the court were made aware of the terms of the settlement between Mr. and Mrs. Huck and CSE and/or the terms of the settlement agreement between Mr. and Mrs. Huck and CCS, assuming there are such settlement agreements, the court has no jurisdiction to evaluate the "fairness" or "reasonableness" of such settlement agreements or to reallocate the settlements, assuming there is anything to reallocate. Nothing in the law or at equity permits this court to conduct such an inquiry.

Avtex cites *Riley v. Ford Motor Co.*, 408 S.C. 1, 757 S.E.2d 422 (Ct. App. 2014), and *Welch v. Epstein*, 432 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000), in support of its motion for reallocation. Assuming there is even anything to reallocate, Avtex's reliance on *Riley v. Ford Motor Co.*, *supra*, and *Welch v. Epstein*, *supra*, is misplaced as both involve the reallocation of settlement funds between a survival action and a wrongful death action, not the reallocation of settlement funds between two separate living parties with distinct and separate claims. "Any settlement of a wrongful death or survival action must be approved by either a probate court, circuit court. . . ." Section 15-51-41, CODE OF LAWS OF SOUTH CAROLINA, 1976. In an action for approval of a wrongful death and/or survival action, "[t]he court shall schedule a hearing and receive into evidence those facts that the court considers necessary and proper to evaluate the settlement. After conducting this inquiry, the court shall issue its order either approving or disapproving the proposed settlement." Thus, in both *Riley v. Ford Motor Co.*, *supra*, and *Welch v. Epstein*, *supra*, the court was required by statute to evaluate the fairness and reasonableness of the survival and wrongful death settlements. No such requirement exists in the instant case and



there is nothing in the law which permits this court to conduct such an inquiry. Accordingly, Avtex's motion should be denied on this basis too.

Avtex argues that the Court's holding in *Riley v. Ford Motor Co.*, *supra*, "hinged on the Court's equitable powers to reallocate an apportionment of settlement money that was not supported by the record, which was clearly designed to achieve an unfair tactical advantage." This statement illustrates Avtex's misunderstanding of the court's holding in *Riley v. Ford Motor Co.*, *supra*, as the holding therein hinged not on the court's equitable powers but rather on the fact that the court was required by statute to approve the settlement. See Section 15-51-41, CODE OF LAWS OF SOUTH CAROLINA, 1976. In an action for approval of a wrongful death and/or survival action, "[t]he court shall schedule a hearing and receive into evidence those facts that the court considers necessary and proper to evaluate the settlement. After conducting this inquiry, the court shall issue its order either approving or disapproving the proposed settlement." There is no such statute giving the court the authority to approve the settlements between CCS and Mr. and Mrs. Huck, assuming such a settlement exists, and a settlement between CSE and Mr. and Mrs. Huck, assuming such settlement exists. Accordingly, even if the court had evidence before it that there is in fact a settlements agreement between CCS and Mr. and/or Mrs. Huck and a settlement agreement between CSE and Mr. and/or Mrs. Huck, and also had evidence as to what the terms of the settlement agreements are, the court has no mechanism for "receiv[ing] into evidence those facts that the court considers necessary and proper to evaluate the settlement[s]" and, therefore, unlike the court in *Riley v. Ford Motor Co.*, *supra*, this court has no basis on which to make a determination as to whether there should be a reallocation, assuming there is anything to reallocate.



Avex maintains that "that while Mr. and Mrs. Huck are certainly separate individuals, their financial existence is singular." Avtex's position in this regard hinges on the claim that "a family court would undoubtedly view those funds as marital assets." A family court will only apportion a personal injury settlement if it is unallocated. If allocated, a personal injury settlement is clearly non-marital property. Furthermore, this court, not being a family court, has no jurisdiction to determine what is or is not a marital asset of Mr. or Mrs. Huck or how to equitably apportion the same.

Finally, Avtex maintains it is entitled to contribution from the settling defendants. This position is without merit.

The jury found Avtex fifty percent responsible in bringing about Mr. Huck's injuries. Thus, since Avtex was fifty percent negligent, it is joint and severally liable for the verdict and is entitled to no contribution. *See* Section 15-38-15, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. Consequently, since it has no right of contribution, Atex motion should be denied on this basis too.

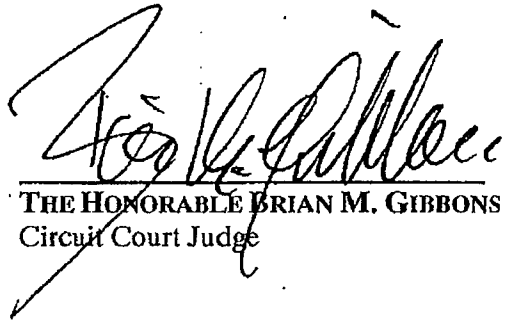
Accordingly, based on the forgoing, Avtex's motion to compel the production of the terms of the settlements between CSE and either Mr. Huck, Mrs. Huck, or both, and CCS and either Mr. Huck, Mrs. Huck, or both, have the court off-set the settlement amounts against the judgment and to review the settlements to determine if they were made in good faith, and if this court finds that they were not made in good faith, to reallocate the settlement funds between Mr. Huck and Mrs. Huck must be denied.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of Defendant, Avtex Commercial Properties, Inc., for judgment notwithstanding verdict is hereby **DENIED** and the motion of

Defendant, Avtex Commercial Properties, Inc., to compel the production of the terms of the settlements between CSE and either Mr. Huck, Mrs. Huck, or both, and CCS and either Mr. Huck, Mrs. Huck, or both, have the court off-set the settlement amounts against the judgment and to review the settlements to determine if they were made in good faith, and if this court finds that they were not made in good faith, to reallocate the settlement funds between Mr. Huck and Mrs. Huck is, likewise, hereby **DENIED!**

AND IT IS SO ORDERED!

July 23, 2015
Chester, South Carolina


THE HONORABLE BRIAN M. GIBBONS
Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

WILLIAM HUCK AND DIANE HUCK,

Plaintiff,

vs.

OAKLAND WINGS, LLC d/b/a WILD
WING CAFÉ, CIVIL SITE
ENVIRONMENTAL, INC., OAKLAND
PROPERTIES, LLC, CHANDLER
CONSTRUCTION SERVICES, INC.,
AVTEX COMMERCIAL PROPERTIES,
INC.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-569

**ORDER DENYING MOTION
TO ALTER OR AMEND
JUDGEMENT PURSUANT TO
SCRPC 59(e)**

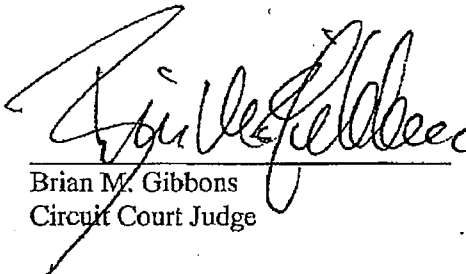
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2015 AUG 18 AM 9:47
JULIE J. ARMSTRONG
CLERK OF COURT

After having considered Defendant's motion to alter or amend judgement in this case and after reviewing the file and the Court's extensive notes, and considering the applicable statutory law, case law and evidence presented, I respectfully **deny** Defendant's motion. No further briefing or argument is necessary.

AND IT IS SO ORDERED.

Chester, SC

August 14, 2015


Brian M. Gibbons
Circuit Court Judge

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

28



KENNETH MICHAEL BARFIELD
BARNWELL, WHALEY, PATTERSON & HELMS, LLC
PO BOX H
CHARLESTON SC 29402-0197

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/denying mot to alter or amend judg

CASE NO: 2014CP1000569

William Huck , plaintiff, et al VS Wings Over America Inc , defendant, et al

This judgment was entered on the 18th day of August, 2015, and notice mailed first class on Wednesday, August 19, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

v.

WINGS OVER AMERICA, INC. d/b/a WILD
WING CAFÉ,
CIVIL SITE ENVIRONMENTAL, INC.,
OAKLAND PROPERTIES, LLC,
CHANDLER CONSTRUCTION SERVICES,
INC.,
AVTEX COMMERCIAL PROPERTIES, INC.,

Defendants.

CASE NO. 2014-CP-10-

569

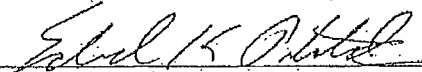
SUMMONS
(Jury Trial Demanded)

FILED
2014 JAN 28 AM 10:30
CLERK OF COURT

TO: DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 129 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

PRITCHARD LAW GROUP, LLC



Edward K. Pritchard, III
129 Broad Street
Charleston, SC 29401
(843) 722-3300 FAX (843) 722-3379
epritchard@pritchardlawgroup.com
ATTORNEY FOR PLAINTIFFS

January 27, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

v.

WINGS OVER AMERICA, INC. d/b/a WILD
WING CAFÉ,
CIVIL SITE ENVIRONMENTAL, INC.,
OAKLAND PROPERTIES, LLC,
CHANDLER CONSTRUCTION SERVICES,
INC.,
AVTEX COMMERCIAL PROPERTIES, INC.,

Defendants.

CASE NO. 2014-CP-10-

569

COMPLAINT
(Jury Trial Demanded)

FILED
2014 JAN 28 AM 10:31
CLERK OF COURT

PLAINTIFFS, William Huck and Dianne Huck (hereinafter collectively referred to as "Plaintiffs"), complaining of Defendants, Wings Over America, Inc. d/b/a Wild Wing Café (hereinafter referred to as "Wild Wing"), Civil Site Environmental, Inc. (hereinafter referred to as "Civil Site"), Oakland Properties, LLC (hereinafter referred to as "Oakland"), Chandler Construction Services, Inc. (hereinafter referred to as "Chandler") and Avtex Commercial Properties, Inc. (hereinafter referred to as "Avtex") (hereinafter collectively referred to as "Defendants" where applicable), would respectfully show unto the Court the following:

I. PARTIES

1. The Plaintiffs are husband and wife and are and at all times relative hereto were citizens and residents of the County of Charleston, State of South Carolina.
2. That, on information and belief, Wild Wing is a corporation duly organized and existing pursuant to the laws of the State of South Carolina and does and at all times relative hereto did business in County of Charleston, State of South Carolina.

3. That, on information and belief, Civil Site is a corporation organized and existing pursuant to the laws of the South Carolina and has, and at all times relative hereto had, its principle place of business in Charleston County, South Carolina.
4. That, on information and belief, Oakland is a corporation organized and existing pursuant to the laws of the State of South Carolina and has, and at all times relative hereto had, its principle place of business in Charleston County, South Carolina.
5. That, on information and belief, Chandler is a corporation organized and existing pursuant to the laws of the State of South Carolina and has, and at all times relative hereto had, its principle place of business in Charleston County, South Carolina.
6. That, on information and belief, Avtex is a corporation organized and existing pursuant to the laws of the State of South Carolina and does and at all times relative hereto did business in County of Charleston, State of South Carolina.

II. JURISDICTION AND VENUE

7. That, on information and belief, this Court has jurisdiction over the subject matter of this action.
8. That, on information and belief, this Court has personal jurisdiction over Wild Wing, Civil Site, Oakland, Chandler and Avtex.
9. That, on information and belief, venue in this matter is proper in this Court.

III. FACTUAL BACKGROUND

10. That on July 13, 2012, at 12:00 p.m., Plaintiff, William Huck (hereinafter "Huck"), went to Wild Wing Café located in The Market at Oakland, Mount Pleasant, South Carolina for the purpose of eating lunch.

11. That Huck, after parking in the parking lot on the south side of South Morgans Point Road, proceeded to the intersection of Oakland Market Road and South Morgans Point Road and entered the walkway into The Market at Oakland in front of Wild Wing Café and slipped and fell due to the un-level slippery surface, which was covered by heavy slimy ponding and accumulation of debris blocking normal passage.
12. That as a direct and proximate result, Huck suffered physical harm and bodily injury, all of which has caused him to undergo excruciating pain and suffering, along with surgery causing him to incur medical expenses and great financial loss.
13. That the Town of Mount Pleasant, a political subdivision of the State of South Carolina, issued an Encroachment Permit in July 2009, and amended it in October of 2009 for installation of paver crosswalks, which also included curb cuts and installation of pedestrian ramps.
14. That, on information and belief, Civil Site produced the construction plans in October of 2009, which failed to provide any details or notes for construction of the curb ramps adjacent to the roadway modifications.
15. That, on information and belief, Oakland is and at all times relative hereto was the property manager of The Market at Oakland, and the applicant for the encroachment permit.
16. That, on information and belief, Chandler performed the construction of the walkway in The Market at Oakland in front of Wild Wing Café located at the intersection of Oakland Market Road and South Morgans Point Road.
17. That, on information and belief, Wing Café, is a lessee at The Market at Oakland leasing property as a tenant of lessor Avtex is and was on July 13, 2012, at 12:00 p.m and at all

times relative hereto in possession and control of the walkway into The Market at Oakland in front of Wild Wing Café.

18. That, on information and belief, Avtex developed, owns and manages The Market at Oakland in Mount Pleasant, South Carolina, and is and was on July 13, 2012, at 12:00 p.m and at all times relative hereto in possession and control of the walkway into The Market at Oakland in front of Wild Wing Café.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

19. That each and every relevant and consistent allegation set forth in paragraph 1 through paragraph 18 hereinabove is incorporated herein as if fully set forth herein verbatim.
20. That at all times relative hereto, while at The Market at Oakland on July 13, 2012, Huck was an invitee on the premises.
21. That, on information and belief, Civil Site produced faulty construction plans in October of 2009, which failed to provide any details or notes for construction of the curb-ramps adjacent to the roadway modifications of the walkway into The Market at Oakland in front of Wild Wing Café.
22. That, on information and belief, Chandler negligently performed the construction of the curb ramps adjacent to the roadway modifications of the walkway into The Market at Oakland in front of Wild Wing Café, in that it failed to constructed the same in accordance with the requirements of the International Building Code (IBC), 2006, and in violation of ICC/ANSI requirements contributing to the dangerous construction deficiencies resulting in unstable walking conditions.

23. That, on information and belief, Avtex as the owner in possession of The Market at Oakland at all times relative hereto owed Huck, as an invitee, a non-delegable duty of due care to discover risks of harm to him and to take safety precautions to warn of or eliminate unreasonable risks of harm to him, on the premises.
24. That, on information and belief, Oakland, as property manager of The Market at Oakland, had a special relationship with Huck as an invitee on the premises, which gave rise to protect him against unreasonable risk of physical harm.
25. That, on information and belief, Wild Wing Café, as a lessee at The Market at Oakland leasing property as a tenant of lessor Avtex and in possession and control of the walkway into The Market at Oakland in front of Wild Wing Café at all times relative hereto owed Huck, as an invitee, a non-delegable duty of due care to discover risks of harm to him and to take safety precautions to warn of or eliminate unreasonable risks of harm to him, on the premises.
26. That all duties owed to Huck by Wild Wing Café, Oakland and Avtex arose by operation of law.
27. That on July 13, 2012, and at all times relative hereto, Wild Wing, Oakland and Avtex owed Huck a duty of due care to keep the walkway in a reasonably safe condition so that Huck could use it in the ordinary and reasonable way without danger.
28. That on July 13, 2012, and at all times relative hereto, Wild Wing, Oakland and Avtex owed Huck a duty to implement reasonable inspection procedures in order to protect him from foreseeable risks of harm.
29. That on July 13, 2012, and at all times relative hereto, Huck had a right to assume that the walkway would be free from defects or obstructions that might cause injury to him.

30. That Wild Wing, Oakland and Avtex expressly and/or impliedly represented to Huck at the time of entry into the walkway that it was and would be in a reasonably safe condition.
31. That Huck had a right to rely upon this representations of Wild Wing, Oakland and Avtex, as they owed Huck a duty to ensure that the walkway was in a reasonably safe condition.
32. That the un-level slippery surface of the walkway, which was covered by heavy slimy ponding and accumulation of debris was not an open or obvious condition.
33. That, on information and belief, Wild Wing, Oakland, Avtex, Chandler and Civil Site had actual and/or constructive notice of the hazard presented by the un-level walkway, which Huck encountered through no fault of his own and which was indeed an unavoidable latent hazard.
34. That Chandler owed Huck a duty not to created a dangerous condition in violation of the requirements of the International Building Code (IBC), 2006, and ICC/ANSI requirements contributing to the dangerous construction deficiencies resulting in unstable walking conditions in such an area of ingress and egress as to make stepping upon the hazardous condition unavoidable in that it was reasonably foreseeable that Huck and others similarly situated would use the sidewalk for normal pedestrian traffic and in that it was reasonably foreseeable that that breach of such duty would lead to the creation of a dangerous condition to Huck and others similarly situated.
35. That Civil Site owed Huck a duty not to produce construction plans which failed to provide any details or notes for construction of the curb ramps adjacent to the roadway modifications in that it was reasonably foreseeable that Huck and others similarly situated would use the sidewalk for normal pedestrian traffic and in that it was reasonably

foreseeable that that breach of such duty would lead to the creation of a dangerous condition to Huck and others similarly situated.

36. As a direct and proximate result of Wild Wing's, Oakland's, Avtex's, Chandler's and Civil Site's negligent, willful, wonton and reckless breach of the respective duty each owed Huck, Huck suffered severe and permanent physical harm and bodily injury including but not limited to significant left chest, shoulder, arm and hand injuries requiring hospitalization, all of which has caused him to undergo excruciating pain and suffering, surgery, therapy, and which injuries to this day cause Huck pain and restricted mobility and has caused him to incur medical expenses and great financial loss.
37. That the actions of Wild Wing, Civil Site, Oakland Chandler and Avtex complained of herein constitute negligence, gross negligence, recklessness, willfulness, and wantonness, in the following particulars, to-wit:
 - a. In failing to maintain the walkway in good order and repair and in a reasonably safe condition;
 - b. In failing to exercise due care under the circumstances;
 - c. In failing to exercise reasonable and ordinary care to guard Huck against foreseeable risks of physical harm to her person;
 - d. In failing to protect Huck against unreasonable risks of physical harm to her person;
 - e. In failing to do what a reasonable person or entity would have done under the circumstances;
 - f. In failing to exercise due care to discover risks and take safety precautions to warn of or eliminate foreseeable risks;

- g. In failing to post warning signs;
 - h. In failing to keep the walkway in a reasonably safe condition so that Huck could use it on the ordinary and reasonable manner without danger;
 - i. In failing to inspect the walkway or to implement regular maintenance procedures in order to protect the guests from foreseeable danger;
 - j. In failing to eliminate foreseeable risks of harm;
 - k. In failing to warn Huck of foreseeable danger; and,
 - l. In such other particulars as may be determined through discovery or trial.
38. That as a direct and proximate consequence of Wild Wing's, Civil Site's, Oakland's, Chandler's and Avtex's respective negligence, gross negligence, reckless, willfulness and wantonness complained of herein, Huck has been injured and damaged in the following particulars, to-wit:
- a. Physical pain;
 - b. Suffering;
 - c. Mental anguish;
 - d. Emotional distress;
 - e. Permanent impairment of health and bodily efficiency;
 - f. Loss of enjoyment of Huck's life;
 - g. Increased susceptibility to future injury of the shoulder injured in the fall giving rise to this action;
 - h. Substantial expenses for past and future medical services;
 - i. Expenses for transportation to and from medical services;
 - j. Such other particulars as may be found through discovery or trial; and,

k. Substantial past, present and future loss of earnings.

39. That Huck had no knowledge of or reason to suspect danger with regard to the defect contained in the walkway.
40. That Huck exercised ordinary and reasonable care for himself at all times while on the walkway.
41. That Wild Wing, Civil Site, Oakland, Chandler and Avtex each are liable to Huck and Huck is entitled to actual, consequential and punitive damages and all other relief as deemed proper by the Court.
42. That as a direct and proximate consequence of Wild Wing's, Civil Site's, Oakland's, Chandler's and Avtex's negligent, willful, wanton and gross negligent conduct complained of herein above, Huck is entitled to judgment against Wild Wing, Civil Site, Oakland, Chandler and Avtex in an amount equal to his actual damages as more particularly described herein above, and for punitive damages in an appropriate amount.

**FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)**

43. That each and every relevant and consistent allegation set forth in Paragraph 1 through Paragraph 42 hereinabove is incorporated herein as if fully set forth herein verbatim.
44. As a direct and proximate result of the negligence of Wild Wing, Civil Site, Oakland, Chandler and Avtex, Huck is and has been disabled due to his injuries which have caused him to be delinquent in his conjugal duties towards Plaintiff Dianne Huck.
45. As a further direct and proximate result of the injuries suffered by Huck, Plaintiffs have both suffered great and irreparable loss in the deprivation of society, companionship, consortium and services of each other as spouses, and will continue to be so deprived of the comfort and solace usually and ordinarily provided by a spouse of good health.

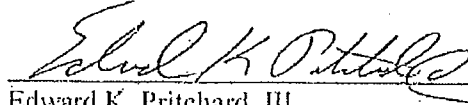
}

WHEREFORE, Plaintiffs, William Huck and Dianne Huck, having complained of Defendants, Wings Over America, Inc. d/b/a Wild Wing Café, Civil Site Environmental, Inc., Oakland Properties, LLC, Chandler Construction Services, Inc. and Avtex Commercial Properties, Inc., prays that they be awarded judgment against Defendants, as follows:

- A. In an amount sufficient to compensate Plaintiffs for their injuries and damages as described herein above;
- B. Punitive damages in an appropriate amount up to the amount permitted by law;
- C. In an amount equal to all costs and attorney fees incurred by Plaintiffs in connection with this action;
- D. For a trial before a jury on all issues; and,
- E. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

PRITCHARD LAW GROUP, LLC



Edward K. Pritchard, III
P. O. Box 630
Charleston, South Carolina 29402
129 Broad Street (29401)
(843) 722-3300 Telephone
(843) 722-3379 Facsimile
epritchard@pritchardlawgroup.com
Attorney for Plaintiffs

January 27, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

v.

OAKLAND WINGS, LLC d/b/a WILD
WING CAFÉ,
CIVIL SITE ENVIRONMENTAL, INC.,
OAKLAND PROPERTIES, LLC,
CHANDLER CONSTRUCTION SERVICES,
INC.,
AVTEX COMMERCIAL PROPERTIES, INC.,

Defendants.

CASE NO. 2014-CP-10-

369

AMENDED SUMMONS
(Jury Trial Demanded)

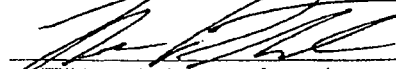
FILED
2014 FEB 20 PM 4:27
JULIE J. ARMSTRONG
CLERK OF COURT

TO: DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 129 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

~SIGNATURE ON NEXT PAGE~

PRITCHARD LAW GROUP, LLC



Edward K. Pritchard, III

Thomas B. Pritchard

129 Broad Street

Charleston, SC 29401

(843) 722-3300 FAX (843) 722-3379

epritchard@pritchardlawgroup.com

ATTORNEY FOR PLAINTIFFS

February 20, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

v.

OAKLAND WINGS, LLC. d/b/a WILD
WING CAFÉ,
CIVIL SITE ENVIRONMENTAL, INC.,
OAKLAND PROPERTIES, LLC,
CHANDLER CONSTRUCTION SERVICES,
INC.,
AVTEX COMMERCIAL PROPERTIES, INC.,

Defendants.

CASE NO. 2014-CP-10-569

AMENDED COMPLAINT
(Jury Trial Demanded)

FILED
2014 FEB 20 PM 4:28
JULIE J. ARBUSTROM
CLERK OF COURT

PLAINTIFFS, William Huck and Dianne Huck (hereinafter collectively referred to as "Plaintiffs"), complaining of Defendants, Oakland Wings, LLC d/b/a Wild Wing Café (hereinafter referred to as "Wild Wing"), Civil Site Environmental, Inc. (hereinafter referred to as "Civil Site"), Oakland Properties, LLC (hereinafter referred to as "Oakland"), Chandler Construction Services, Inc. (hereinafter referred to as "Chandler") and Avtex Commercial Properties, Inc. (hereinafter referred to as "Avtex") (hereinafter collectively referred to as "Defendants" where applicable), would respectfully show unto the Court the following:

I. PARTIES

1. The Plaintiffs are husband and wife and are and at all times relative hereto were citizens and residents of the County of Charleston, State of South Carolina.
2. That, on information and belief, Wild Wing is a corporation duly organized and existing pursuant to the laws of the State of South Carolina and does and at all times relative hereto did business in County of Charleston, State of South Carolina.

3. That, on information and belief, Civil Site is a corporation organized and existing pursuant to the laws of the South Carolina and has, and at all times relative hereto had, its principle place of business in Charleston County, South Carolina.
4. That, on information and belief, Oakland is a corporation organized and existing pursuant to the laws of the State of South Carolina and has, and at all times relative hereto had, its principle place of business in Charleston County, South Carolina.
5. That, on information and belief, Chandler is a corporation organized and existing pursuant to the laws of the State of South Carolina and has, and at all times relative hereto had, its principle place of business in Charleston County, South Carolina.
6. That, on information and belief, Avtex is a corporation organized and existing pursuant to the laws of the State of South Carolina and does and at all times relative hereto did business in County of Charleston, State of South Carolina.

II. JURISDICTION AND VENUE

7. That, on information and belief, this Court has jurisdiction over the subject matter of this action.
8. That, on information and belief, this Court has personal jurisdiction over Wild Wing, Civil Site, Oakland, Chandler and Avtex.
9. That, on information and belief, venue in this matter is proper in this Court.

III. FACTUAL BACKGROUND

10. That on July 13, 2012, at 12:00 p.m., Plaintiff, William Huck (hereinafter "Huck"), went to Wild Wing Café located in The Market at Oakland, Mount Pleasant, South Carolina for the purpose of eating lunch.

11. That Huck, after parking in the parking lot on the south side of South Morgans Point Road, proceeded to the intersection of Oakland Market Road and South Morgans Point Road and entered the walkway into The Market at Oakland in front of Wild Wing Café and slipped and fell due to the un-level slippery surface, which was covered by heavy slimy ponding and accumulation of debris blocking normal passage.
12. That as a direct and proximate result, Huck suffered physical harm and bodily injury, all of which has caused him to undergo excruciating pain and suffering, along with surgery causing him to incur medical expenses and great financial loss.
13. That the Town of Mount Pleasant, a political subdivision of the State of South Carolina, issued an Encroachment Permit in July 2009, and amended it in October of 2009 for installation of paver crosswalks, which also included curb cuts and installation of pedestrian ramps.
14. That, on information and belief, Civil Site produced the construction plans in October of 2009, which failed to provide any details or notes for construction of the curb ramps adjacent to the roadway modifications.
15. That, on information and belief, Oakland is and at all times relative hereto was the property manager of The Market at Oakland, and the applicant for the encroachment permit.
16. That, on information and belief, Chandler performed the construction of the walkway in The Market at Oakland in front of Wild Wing Café located at the intersection of Oakland Market Road and South Morgans Point Road.
17. That, on information and belief, Wing Café, is a lessee at The Market at Oakland leasing property as a tenant of lessor Avtex is and was on July 13, 2012, at 12:00 p.m and at all

times relative hereto in possession and control of the walkway into The Market at Oakland in front of Wild Wing Café.

18. That, on information and belief, Avtex developed, owns and manages The Market at Oakland in Mount Pleasant, South Carolina, and is and was on July 13, 2012, at 12:00 p.m and at all times relative hereto in possession and control of the walkway into The Market at Oakland in front of Wild Wing Café.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

19. That each and every relevant and consistent allegation set forth in paragraph 1 through paragraph 18 hereinabove is incorporated herein as if fully set forth herein verbatim.
20. That at all times relative hereto, while at The Market at Oakland on July 13, 2012, Huck was an invitee on the premises.
21. That, on information and belief, Civil Site produced faulty construction plans in October of 2009, which failed to provide any details or notes for construction of the curb ramps adjacent to the roadway modifications of the walkway into The Market at Oakland in front of Wild Wing Café.
22. That, on information and belief, Chandler negligently performed the construction of the curb ramps adjacent to the roadway modifications of the walkway into The Market at Oakland in front of Wild Wing Café, in that it failed to constructed the same in accordance with the requirements of the International Building Code (IBC), 2006, and in violation of ICC/ANSI requirements contributing to the dangerous construction deficiencies resulting in unstable walking conditions.

23. That, on information and belief, Avtex as the owner in possession of The Market at Oakland at all times relative hereto owed Huck, as an invitee, a non-delegable duty of due care to discover risks of harm to him and to take safety precautions to warn of or eliminate unreasonable risks of harm to him, on the premises.
24. That, on information and belief, Oakland, as property manager of The Market at Oakland, had a special relationship with Huck as an invitee on the premises, which gave rise to protect him against unreasonable risk of physical harm.
25. That, on information and belief, Wild Wing Café, as a lessee at The Market at Oakland leasing property as a tenant of lessor Avtex and in possession and control of the walkway into The Market at Oakland in front of Wild Wing Café at all times relative hereto owed Huck, as an invitee, a non-delegable duty of due care to discover risks of harm to him and to take safety precautions to warn of or eliminate unreasonable risks of harm to him, on the premises.
26. That all duties owed to Huck by Wild Wing Café, Oakland and Avtex arose by operation of law.
27. That on July 13, 2012, and at all times relative hereto, Wild Wing, Oakland and Avtex owed Huck a duty of due care to keep the walkway in a reasonably safe condition so that Huck could use it in the ordinary and reasonable way without danger.
28. That on July 13, 2012, and at all times relative hereto, Wild Wing, Oakland and Avtex owed Huck a duty to implement reasonable inspection procedures in order to protect him from foreseeable risks of harm.
29. That on July 13, 2012, and at all times relative hereto, Huck had a right to assume that the walkway would be free from defects or obstructions that might cause injury to him.

30. That Wild Wing, Oakland and Avtex expressly and/or impliedly represented to Huck at the time of entry into the walkway that it was and would be in a reasonably safe condition.
31. That Huck had a right to rely upon this representations of Wild Wing, Oakland and Avtex, as they owed Huck a duty to ensure that the walkway was in a reasonably safe condition.
32. That the un-level slippery surface of the walkway, which was covered by heavy slimy ponding and accumulation of debris was not an open or obvious condition.
33. That, on information and belief, Wild Wing, Oakland, Avtex, Chandler and Civil Site had actual and/or constructive notice of the hazard presented by the un-level walkway, which Huck encountered through no fault of his own and which was indeed an unavoidable latent hazard.
34. That Chandler owed Huck a duty not to created a dangerous condition in violation of the requirements of the International Building Code (IBC), 2006, and ICC/ANSI requirements contributing to the dangerous construction deficiencies resulting in unstable walking conditions in such an area of ingress and egress as to make stepping upon the hazardous condition unavoidable in that it was reasonably foreseeable that Huck and others similarly situated would use the sidewalk for normal pedestrian traffic and in that it was reasonably foreseeable that that breach of such duty would lead to the creation of a dangerous condition to Huck and others similarly situated.
35. That Civil Site owed Huck a duty not to produce construction plans which failed to provide any details or notes for construction of the curb ramps adjacent to the roadway modifications in that it was reasonably foreseeable that Huck and others similarly situated would use the sidewalk for normal pedestrian traffic and in that it was reasonably

foreseeable that that breach of such duty would lead to the creation of a dangerous condition to Huck and others similarly situated.

36. As a direct and proximate result of Wild Wing's, Oakland's, Avtex's, Chandler's and Civil Site's negligent, willful, wonton and reckless breach of the respective duty each owed Huck, Huck suffered severe and permanent physical harm and bodily injury including but not limited to significant left chest, shoulder, arm and hand injuries requiring hospitalization, all of which has caused him to undergo excruciating pain and suffering, surgery, therapy, and which injuries to this day cause Huck pain and restricted mobility and has caused him to incur medical expenses and great financial loss.
37. That the actions of Wild Wing, Civil Site, Oakland Chandler and Avtex complained of herein constitute negligence, gross negligence, recklessness, willfulness, and wantonness, in the following particulars, to-wit:
 - a. In failing to maintain the walkway in good order and repair and in a reasonably safe condition;
 - b. In failing to exercise due care under the circumstances;
 - c. In failing to exercise reasonable and ordinary care to guard Huck against foreseeable risks of physical harm to her person;
 - d. In failing to protect Huck against unreasonable risks of physical harm to her person;
 - e. In failing to do what a reasonable person or entity would have done under the circumstances;
 - f. In failing to exercise due care to discover risks and take safety precautions to warn of or eliminate foreseeable risks;

- g. In failing to post warning signs;
- h. In failing to keep the walkway in a reasonably safe condition so that Huck could use it on the ordinary and reasonable manner without danger;
- i. In failing to inspect the walkway or to implement regular maintenance procedures in order to protect the guests from foreseeable danger;
- j. In failing to eliminate foreseeable risks of harm;
- k. In failing to warn Huck of foreseeable danger; and,
- l. In such other particulars as may be determined through discovery or trial.

38. That as a direct and proximate consequence of Wild Wing's, Civil Site's, Oakland's, Chandler's and Avtex's respective negligence, gross negligence, reckless, willfulness and wantonness complained of herein, Huck has been injured and damaged in the following particulars, to-wit:

- a. Physical pain;
- b. Suffering;
- c. Mental anguish;
- d. Emotional distress;
- e. Permanent impairment of health and bodily efficiency;
- f. Loss of enjoyment of Huck's life;
- g. Increased susceptibility to future injury of the shoulder injured in the fall giving rise to this action;
- h. Substantial expenses for past and future medical services;
- i. Expenses for transportation to and from medical services;
- j. Such other particulars as may be found through discovery or trial; and,

k. Substantial past, present and future loss of earnings.

39. That Huck had no knowledge of or reason to suspect danger with regard to the defect contained in the walkway.
40. That Huck exercised ordinary and reasonable care for himself at all times while on the walkway.
41. That Wild Wing, Civil Site, Oakland, Chandler and Avtex each are liable to Huck and Huck is entitled to actual, consequential and punitive damages and all other relief as deemed proper by the Court.
42. That as a direct and proximate consequence of Wild Wing's, Civil Site's, Oakland's, Chandler's and Avtex's negligent, willful, wanton and gross negligent conduct complained of herein above, Huck is entitled to judgment against Wild Wing, Civil Site, Oakland, Chandler and Avtex in an amount equal to his actual damages as more particularly described herein above, and for punitive damages in an appropriate amount.

**FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)**

43. That each and every relevant and consistent allegation set forth in Paragraph 1 through Paragraph 42 hereinabove is incorporated herein as if fully set forth herein verbatim.
44. As a direct and proximate result of the negligence of Wild Wing, Civil Site, Oakland, Chandler and Avtex, Huck is and has been disabled due to his injuries which have caused him to be delinquent in his conjugal duties towards Plaintiff Dianne Huck.
45. As a further direct and proximate result of the injuries suffered by Huck, Plaintiffs have both suffered great and irreparable loss in the deprivation of society, companionship, consortium and services of each other as spouses, and will continue to be so deprived of the comfort and solace usually and ordinarily provided by a spouse of good health.

WHEREFORE, Plaintiffs, William Huck and Dianne Huck, having complained of Defendants, Oakland Wings, LLC d/b/a Wild Wing Café, Civil Site Environmental, Inc., Oakland Properties, LLC, Chandler Construction Services, Inc. and Avtex Commercial Properties, Inc., prays that they be awarded judgment against Defendants, as follows:

- A. In an amount sufficient to compensate Plaintiffs for their injuries and damages as described herein above;
- B. Punitive damages in an appropriate amount up to the amount permitted by law;
- C. In an amount equal to all costs and attorney fees incurred by Plaintiffs in connection with this action;
- D. For a trial before a jury on all issues; and,
- E. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

PRITCHARD LAW GROUP, LLC



Edward K. Pritchard, III
P. O. Box 630
Charleston, South Carolina 29402
129 Broad Street (29401)
(843) 722-3300 Telephone
(843) 722-3379 Facsimile
epritchard@pritchardlawgroup.com
Attorney for Plaintiffs

February 20, 2014
Charleston, South Carolina

5. Civil Site admits, upon information and belief, the allegations contained in Paragraph 5 of the Plaintiffs' Amended Complaint.

6. Civil Site admits, upon information and belief, the allegations contained in Paragraph 6 of the Plaintiffs' Amended Complaint.

7. Paragraphs 7, 8 and 9 of the Plaintiffs' Amended Complaint sets forth a legal conclusion to which no response is required. To the extent a response is required and to the extent Paragraphs 7, 8 and 9 state or imply liability on behalf of this Defendant, Civil Site denies the same.

8. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraphs 10, 11, 12 and 13 of the Plaintiffs' Amended Complaint, and to the extent a response is required, those allegations are denied.

9. Civil Site admits, upon information and belief, so much of the allegations contained in Paragraph 14 of the Plaintiffs' Amended Complaint which state that the construction plans were produced by Civil Site in October 2009. The remaining allegations contained in Paragraph 14 of the Plaintiffs' Amended Complaint are denied.

10. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraphs 15, 16, 17 and 18 of the Plaintiffs' Amended Complaint, and to the extent a response is required, those allegations are denied.

11. In response to Paragraph 19 of the Plaintiffs' Amended Complaint, Civil Site reasserts its answers to the previous paragraphs as if set forth verbatim herein.

12. Paragraph 20 of the Plaintiffs' Amended Complaint sets forth a legal conclusion to which no response is required. To the extent a response is required and to the extent Paragraph 20 states or implies liability on behalf of this Defendant, Civil Site denies the same.

13. Civil Site denies the allegations contained in Paragraph 21 of the Plaintiffs' Amended Complaint.

14. The allegations contained in Paragraphs 22, 23, 24, 25, 26, 27 and 28 of the Plaintiffs' Amended Complaint contain allegations which are not directed at Defendant Civil Site to which no response is required. To the extent a response is required and to the extent Paragraphs 22, 23, 24, 25, 26, 27 and 28 state or imply liability on behalf of this Defendant, Civil Site denies the same.

15. Paragraph 29 of the Plaintiffs' Amended Complaint sets forth a legal conclusion to which no response is required. To the extent a response is required and to the extent Paragraph 29 states or implies liability on behalf of this Defendant, Civil Site denies the same.

16. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraphs 30 and 31 of the Plaintiffs' Amended Complaint, and to the extent a response is required, those allegations are denied.

17. The allegations contained in Paragraph 32 of the Plaintiffs' Amended Complaint are denied.

18. The allegations contained in Paragraph 33 of the Plaintiffs' Amended Complaint are denied.

19. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraph 34 of the Plaintiffs' Amended Complaint, and to the extent a response is required, those allegations are denied.

20. The allegations contained in Paragraph 35 of the Plaintiffs' Amended Complaint are denied.

21. The allegations contained in Paragraph 36 of the Plaintiffs' Amended Complaint are denied.

22. The allegations contained in Paragraph 37 of the Plaintiffs' Amended Complaint are denied.

23. The allegations contained in Paragraph 35 of the Plaintiffs' Amended Complaint are denied, including all subparts.

24. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraphs 39 and 40 of the Plaintiffs' Amended Complaint, and to the extent a response is required, those allegations are denied.

25. The allegations contained in Paragraphs 41 and 42 of the Plaintiffs' Amended Complaint are denied.

26. In response to Paragraph 43 of the Plaintiffs' Amended Complaint, Civil Site reasserts its answers to the previous paragraphs as if set forth verbatim herein.

27. The allegations contained in Paragraphs 44 and 45 of the Plaintiffs' Amended Complaint are denied.

FOR A SECOND DEFENSE
(Rule 12(b)(6), SCRCP)

28. Plaintiffs' Amended Complaint fails to state a claim against Civil Site upon which relief can be granted.

FOR A THIRD DEFENSE
(Acts or Omissions of Third Parties)

29. Any injuries and damages sustained by Plaintiffs are or may have been the result of the negligent acts and omissions of a third party and/or the result of the concurrent acts and omissions of a third party.

FOR A FOURTH DEFENSE
(Unconstitutionality of Punitive Damages)

30. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I § 3 of the South Carolina Constitution in that:

The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantee;

Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

Any award of punitive damages based upon the wealth of Civil Site violates due process guarantees;

The jury'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;

Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

The Plaintiffs' claim for punitive damages violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, § 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Civil Site.

The Plaintiffs' claims for punitive damages violate the federal doctrine of separation of powers and Article I, § 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.

FOR A FIFTH DEFENSE

(Open and Obvious)

31. Civil Site asserts that the incident complained of in Plaintiffs' Amended Complaint was the result of an open and obvious condition.

FOR A SIXTH DEFENSE

(Intervening Negligence)

32. Plaintiffs' claims against Civil Site are barred, because even if Civil Site was negligent as alleged by Plaintiffs, which is specifically denied, the intervening and/or superseding negligence of others was the direct and proximate cause of the damages, if any, suffered by the Plaintiffs.

FOR A SEVENTH DEFENSE

(Comparative Negligence)

33. Plaintiffs' damages, if any, must be reduced because even if Civil Site was negligent as alleged by Plaintiffs, which is specifically denied, the alleged negligence of Civil Site must be measured against the negligence of Plaintiffs and/or their agents in failing or refusing to exercise reasonable care.

FOR AN EIGHTH DEFENSE

(Waiver, Estoppel, Laches)

34. Civil Site would allege that Plaintiffs' Amended Complaint is barred by the doctrine of waiver, laches and/or estoppel.

FOR A NINTH DEFENSE

(Unclean Hands)

35. Civil Site would allege that Plaintiffs' Amended Complaint is barred by the doctrine of unclean hands.

FOR A TENTH DEFENSE

(Setoff)

36. Civil Site is entitled to a setoff from any award of damages against it, the amount of any sums, damages or settlement amounts that Plaintiffs receives or is entitled to receive, with respect to the same alleged injuries.

FOR AN ELEVENTH DEFENSE

(Failure to Mitigate)

37. Plaintiffs' claims are or may be barred because they have failed to mitigate their damages as required by law.

FOR A TWELFTH DEFENSE

(Notice)

38. Plaintiffs either knew or should have known of any alleged deficiencies in the subject property and accepted the same with such knowledge. As a result, Plaintiffs' recovery should be barred by the doctrine of notice.

FOR A THIRTEENTH DEFENSE
(Plain View)

39. Civil Site would show Plaintiffs failed to observe objects/conditions in plain view in a location where they are customarily expected to be and his claims are, therefore, barred by the "plain view" doctrine.

FOR A FOURTEENTH DEFENSE
(Ordinary Care)

40. An invitee is charged with exercising ordinary care for personal safety and using ordinary care to avoid the effect of the owner/occupier's negligence after that negligence becomes apparent to the patron or in the exercise of ordinary care the invitee should have learned of it. In the exercise of ordinary care, the patron must use all senses to discover and avoid hurtful things. Assuming, arguendo, Civil Site created a negligent condition in the instant case – Plaintiffs nevertheless failed to exercise ordinary care to discovery and avoid hurtful things.

FOR A FIFTEENTH DEFENSE
(Unavoidable Accident)

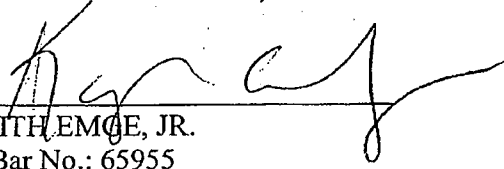
41. Plaintiffs' claims may be barred by the doctrine of unavoidable accident.

42. Civil Site does not waive, and specifically reserve its right to plead additional affirmative defenses.

WHEREFORE, having fully responded to the allegations of Plaintiffs' Amended Complaint, and fully incorporating all prior responses and affirmative defenses thereto, Civil Site respectfully requests that Plaintiffs' Amended Complaint be dismissed in its entirety, with all costs of this action to be cast upon Plaintiffs and that Civil Site be granted costs of defense in this matter and any such other relief the Court deems appropriate.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By: 

N. KEITH EMGE, JR.
State Bar No.: 65955

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

KATHY A. CARLSTEN
State Bar No.: 68265

Attorneys for Defendant Civil Site Environmental,
Inc.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO. 2014-CP-10-0569

WILLIAM HUCK AND DIANNE
HUCK,

PLAINTIFFS,

vs.

OAKLAND WINGS, LLC D/B/A WILD
WING CAFÉ; CIVIL SITE
ENVIRONMENTAL, INC.; OAKLAND
PROPERTIES, LLC; CHANDLER
CONSTRUCTION SERVICES, INC.;
AND AVTEX COMMERCIAL
PROPERTIES, INC.,

DEFENDANTS.

ANSWER OF DEFENDANT
OAKLAND WINGS, LLC D/B/A
WILD WING CAFÉ
(Jury Trial Requested)

FILED
2014 MAR 19 PM 3:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

The Defendant above-named, Oakland Wings, LLC d/b/a Wild Wing Café, hereby answers the Plaintiff's Amended Complaint as follows:

1. Each and every allegation of the Plaintiff's Amended Complaint not hereinafter expressly admitted, qualified and/or explained is denied.
2. The Defendant admits the allegations contained in Paragraphs 1 and 2 of the Plaintiff's Amended Complaint.
3. Paragraphs 3, 4, 5 and 6 of the Plaintiff's Amended Complaint are not directed to the Defendant; accordingly, no response is required. By way of further response, to the extent that Paragraphs 3, 4, 5 and 6 of the Plaintiff's Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

4. Paragraphs 7, 8 and 9 of the Plaintiff's Amended Complaint are statements and/or conclusions of law, and the Defendant is not required to admit or deny the same. By way of further response, to the extent that Paragraphs 7, 8 and 9 of the Plaintiff's Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

5. The Defendant lacks sufficient information with which to fully respond to the allegations contained in Paragraphs 10, 11, 12 and 13 of the Plaintiff's Amended Complaint; accordingly, these allegations are denied, and strict proof thereof is demanded.

6. Paragraphs 14, 15 and 16 of the Plaintiff's Amended Complaint are not directed to the Defendant; accordingly, no response is required. By way of further response, to the extent that Paragraphs 14, 15 and 16 of the Plaintiff's Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

7. In response to Paragraph 17 of the Plaintiff's Amended Complaint. The Defendant craves reference to the lease, and would deny any portion of Paragraph 17 of the Plaintiffs' Amended Complaint inconsistent therewith. By way of further response, to the extent that Paragraph 17 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

8. Paragraph 18 of the Plaintiff's Amended Complaint is not directed to the Defendant; accordingly, no response is required. By way of further response, to the extent that Paragraph 18 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of

action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

9. In response to Paragraph 19 of the Plaintiff's Amended Complaint, the Defendant reiterates each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

10. Paragraph 20 of the Plaintiff's Amended Complaint is a statement and/or conclusion of law, and the Defendant is not required to admit or deny the same. By way of further response, to the extent that Paragraph 20 of the Plaintiff's Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

11. Paragraphs 21, 22, 23 and 24 of the Plaintiff's Amended Complaint are not directed to the Defendant; accordingly, no response is required. By way of further response, to the extent that Paragraphs 21, 22, 23 and 24 of the Plaintiff's Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

12. Paragraphs 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the Plaintiff's Amended Complaint are statements and/or conclusions of law, and the Defendant is not required to admit or deny the same. By way of further response, to the extent that Paragraphs 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the Plaintiff's Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

13. Paragraphs 34 and 35 of the Plaintiff's Amended Complaint are not directed to the Defendant; accordingly, no response is required. By way of further response, to the extent that

Paragraphs 34 and 35 of the Plaintiff's Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

14. The Defendant denies the allegations contained in Paragraphs 36, 37, 38, 39, 40, 41 and 42 of the Plaintiff's Amended Complaint, and strict proof thereof is demanded.

15. In response to Paragraph 43 of the Plaintiff's Amended Complaint, the Defendant reiterates each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

16. The Defendant denies the allegations contained in Paragraphs 44 and 45 of the Plaintiff's Amended Complaint, and strict proof thereof is demanded.

17. The Defendant also denies the allegations contained in the "Wherefore" Paragraph of the Plaintiff's Amended Complaint, which is the remainder of the Plaintiff's Amended Complaint, and strict proof thereof is demanded.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE:
(Comparative Negligence)

18. The Defendant, on information and belief, would allege and show that any injuries and damages sustained by the Plaintiffs as alleged in the Amended Complaint, which are denied, were due to and were caused and occasioned by the Plaintiff's own acts of comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness, which acts on the part of the Plaintiff combined and contributed and concurred with any negligence, carelessness, recklessness, heedlessness, willfulness and wantonness on the part of the Defendant, which is denied, without which the alleged incident and resulting alleged damages would not have occurred or have been sustained, and the Defendant does plead such comparative

negligence, carelessness, recklessness, heedlessness, willfulness and wantonness on the part of the Plaintiff as the direct and proximate cause of the injuries and damages sustained by the Plaintiff as alleged in the Amended Complaint. Accordingly, the Defendant is entitled to a determination as to the percentage with which the Plaintiff's own comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness contributed to this incident and the Plaintiff's alleged injuries and damages and to the reduction of any sum awarded to the Plaintiff by an amount equal to the percentage of the Plaintiff's own comparative negligent, careless, reckless, heedless, willful and wanton conduct.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Unconstitutionality of Punitive Damages)

19. The Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, and Fourteenth Amendments of the Constitution of the United States in the following particulars:

- a. The Plaintiff's claim for punitive damages violates the Fifth Amendment for the following reasons:
 - i) The double-jeopardy clause is violated because multiple awards of punitive damages can be imposed upon the Defendant for the same act or omission, and because an award of punitive damages can be imposed upon the Defendant, even though the Defendant was convicted or acquitted of a factually related defense in an underlying criminal proceeding; and
 - ii) The self-incrimination clause is violated because Defendant can be compelled to give testimony against itself;
- b. The Plaintiff's claim for punitive damages violates the Sixth and Fourteenth Amendments because such damages may be imposed according to the lesser standard of proof applicable in civil cases, whereas punitive damages are a fine or penalty and are quasi-criminal in nature and, as such require the "beyond the reasonable doubt" standard of proof;
- c. The Plaintiff's claim for punitive damages violates the Defendant's right to access to the courts guaranteed by the Seventh and Fourteenth

Amendments because the threat of an award of unlimited punitive damages chills the Defendant's exercise of that right;

d. The Plaintiff's claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:

- i) The standard or test for determining the requisite mental state of Defendant for imposition of punitive damages is void for vagueness;
- ii) Insofar as punitive damages are not measured against actual injury to the Plaintiff and are left up to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damages that may be awarded is indeterminate at the time of Defendant's alleged egregious conduct;
- iii) In cases involving more than one Defendant, the evidence of the net worth of each is admissible, and the jury is permitted to award punitive damages in differing amounts based upon the affluence of a given Defendant;
- iv) The tests or standards for the imposition of punitive damages differ from state to state, such that a specific act or omission of a given Defendant may or may not result in the imposition of punitive damages, or may result in differing amounts of punitive damages, depending upon the state in which the suit is filed, such that the Defendant is denied equal protection of law; and
- v) Punitive damages may be imposed without a requisite showing of hatred, spite, ill will or wrongful motive.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Improper Claim for Punitive Damages)

20. Punitive damages are inappropriate in this case since the Defendant did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. 15-32-510 et. seq.)

21. The Defendant pleads the limitations on damage awards found in S.C. Code Ann. 15-32-510 et. seq., and requests bifurcation in accordance with these code sections.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(No Duty to Warn of the Unknowable)

22. The Defendant had no duty to warn about possible dangers or hazards, if any, which were not known or which were not capable of being known.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Assumption of the Risk)

23. The Plaintiff's claims are barred by the doctrine of assumption of the risk and/or applicable statutory law of the State of South Carolina in that assuming, but not admitting, the area in question was dangerous, the Plaintiff discovered and was aware of such, assumed such risk and proceeded unreasonably, thus resulting in the alleged injury.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE:
(Failure to State a Claim)

24. The Plaintiff's Amended Complaint fails to state any claims upon which relief can be granted as to the Defendant, and the Plaintiff's Amended Complaint should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRPC*.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Assumption of the Risk/Open and Obvious)

25. The Defendant would allege and show that the Plaintiff was, at all times, fully aware of the alleged dangers as set forth in the Amended Complaint, and that the Plaintiff was negligent

and careless in failing to take necessary precautions and that the Plaintiff assumed any alleged risk incident to the allegations set forth in the Amended Complaint, and that this negligent, careless, reckless, heedless, willful and wanton assumption of the risk was the proximate cause of the Plaintiff's alleged injuries and damages as set forth in the Amended Complaint; therefore, the Plaintiff is herein barred from recovery.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Intervening and Superseding Acts and/or Negligence)

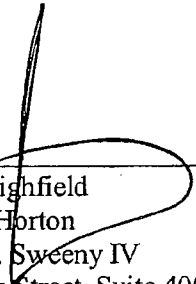
26. The Defendant would allege and show that any injuries and damages sustained by the Plaintiff as alleged in the Amended Complaint, which are denied, were due to and were caused and occasioned by the intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of some other party or parties, and the Defendant does plead such intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by the Plaintiff as alleged in the Amended Complaint.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Reliance on Additional Defenses)

27. The Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, the Defendant prays that the same be dismissed, together with the costs and disbursements of this action, and for such other and further relief as this Court deems proper. The Defendant also requests a trial by jury.

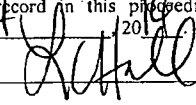
YOUNG CLEMENT RIVERS, LLP

By: 
Duke R. Highfield
Brandt R. Horton
William O. Sweeny IV
25 Calhoun Street, Suite 400
P. O. Box 993
Charleston, SC 29402
(843) 720-5456
dhighfield@ycrlaw.com
bhorton@ycrlaw.com
bsweeny@ycrlaw.com
Attorneys for the Defendant
Oakland Wings, LLC d/b/a Wild Wing Café

Charleston, South Carolina
3/19, 2014

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 19TH day of MARCH, 2014.



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

v.

OAKLAND WINGS, LLC d/b/a WILD
WING CAFÉ,
CIVIL SITE ENVIRONMENTAL, INC.,
OAKLAND PROPERTIES, LLC,
CHANDLER CONSTRUCTION SERVICES,
INC.,
AVTEX COMMERCIAL PROPERTIES, INC.,

Defendants.

CASE NO. 2014-CP-10-569

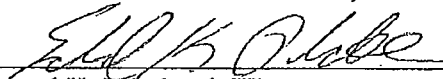
**SECOND AMENDED
SUMMONS
(Jury Trial Demanded)**

FILED
2014 APR 15 PM 10:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: DEFENDANTS

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Second Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 129 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Second Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Second Amended Complaint.

PRITCHARD LAW GROUP, LLC



Edward K. Pritchard, III

Thomas B. Pritchard

129 Broad Street

Charleston, SC 29401

(843) 722-3300 FAX (843) 722-3379

epritchard@pritchardlawgroup.com

tpritchard@pritchardlawgroup.com

Attorneys for Plaintiffs

April 15, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

v.

OAKLAND WINGS, LLC d/b/a WILD
WING CAFÉ,
CIVIL SITE ENVIRONMENTAL, INC.,
OAKLAND PROPERTIES, LLC,
CHANDLER CONSTRUCTION SERVICES,
INC.,
AVTEX COMMERCIAL PROPERTIES, INC.,

Defendants.

CASE NO. 2014-CP-10-569

SECOND AMENDED COMPLAINT
(Jury Trial Demanded)

FILED
2014 APR 15 AM 10:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PLAINTIFFS, William Huck and Dianne Huck (hereinafter collectively referred to as "Plaintiffs"), complaining of Defendants, Oakland Wings, LLC d/b/a Wild Wing Café (hereinafter referred to as "Wild Wing"), Civil Site Environmental, Inc. (hereinafter referred to as "Civil Site"), Oakland Properties, LLC (hereinafter referred to as "Oakland"), Chandler Construction Services, Inc. (hereinafter referred to as "Chandler") and Avtex Commercial Properties, Inc. (hereinafter referred to as "Avtex") (hereinafter collectively referred to as "Defendants" where applicable), would respectfully show unto the Court the following:

I. PARTIES

1. The Plaintiffs are husband and wife and are and at all times relative hereto were citizens and residents of the County of Charleston, State of South Carolina.
2. That, on information and belief, Wild Wing is a corporation duly organized and existing pursuant to the laws of the State of South Carolina and does and at all times relative hereto did business in County of Charleston, State of South Carolina.

3. That, on information and belief, Civil Site is a corporation organized and existing pursuant to the laws of the South Carolina and has, and at all times relative hereto had, its principle place of business in Charleston County, South Carolina.
4. That, on information and belief, Oakland is a corporation organized and existing pursuant to the laws of the State of South Carolina and has, and at all times relative hereto had, its principle place of business in Charleston County, South Carolina.
5. That, on information and belief, Chandler is a corporation organized and existing pursuant to the laws of the State of South Carolina and has, and at all times relative hereto had, its principle place of business in Charleston County, South Carolina.
6. That, on information and belief, Avtex is a corporation organized and existing pursuant to the laws of the State of South Carolina and does and at all times relative hereto did business in County of Charleston, State of South Carolina.

II. JURISDICTION AND VENUE

7. That, on information and belief, this Court has jurisdiction over the subject matter of this action.
8. That, on information and belief, this Court has personal jurisdiction over Wild Wing, Civil Site, Oakland, Chandler and Avtex.
9. That, on information and belief, venue in this matter is proper in this Court.

III. FACTUAL BACKGROUND

10. That on July 13, 2012, at 12:00 p.m., Plaintiff, William Huck (hereinafter "Huck"), went to Wild Wing Café located in The Market at Oakland, Mount Pleasant, South Carolina for the purpose of eating lunch.

11. That Huck, after parking in the parking lot on the south side of South Morgans Point Road, proceeded to the intersection of Oakland Market Road and South Morgans Point Road and entered the walkway into The Market at Oakland in front of Wild Wing Café and slipped and fell due to the un-level slippery surface, which was covered by heavy slimy ponding and accumulation of debris blocking normal passage.
12. That as a direct and proximate result, Huck suffered physical harm and bodily injury, all of which has caused him to undergo excruciating pain and suffering, along with surgery causing him to incur medical expenses and great financial loss.
13. That the Town of Mount Pleasant, a political subdivision of the State of South Carolina, issued an Encroachment Permit in July 2009, and amended it in October of 2009 for installation of paver crosswalks, which also included curb cuts and installation of pedestrian ramps.
14. That, on information and belief, Civil Site produced the construction plans in October of 2009, which failed to provide any details or notes for construction of the curb ramps adjacent to the roadway modifications pursuant to plaintiffs' expert Affidavit of Robert G. Sisnroy, P.E. attached hereto as Exhibit A.
15. That, on information and belief, Oakland is and at all times relative hereto was the property manager of The Market at Oakland, and the applicant for the encroachment permit.
16. That, on information and belief, Chandler performed the construction of the walkway in The Market at Oakland in front of Wild Wing Café located at the intersection of Oakland Market Road and South Morgans Point Road.

17. That, on information and belief, Wing Café, is a lessee at The Market at Oakland leasing property as a tenant of lessor Avtex is and was on July 13, 2012, at 12:00 p.m. and at all times relative hereto in possession and control of the walkway into The Market at Oakland in front of Wild Wing Café.
18. That, on information and belief, Avtex developed, owns and manages The Market at Oakland in Mount Pleasant, South Carolina, and is and was on July 13, 2012, at 12:00 p.m. and at all times relative hereto in possession and control of the walkway into The Market at Oakland in front of Wild Wing Café.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

19. That each and every relevant and consistent allegation set forth in paragraph 1 through paragraph 18 hereinabove is incorporated herein as if fully set forth herein verbatim.
20. That at all times relative hereto, while at The Market at Oakland on July 13, 2012, Huck was an invitee on the premises.
21. That, on information and belief, Civil Site produced faulty construction plans in October of 2009, which failed to provide any details or notes for construction of the curb ramps adjacent to the roadway modifications of the walkway into The Market at Oakland in front of Wild Wing Café pursuant to plaintiffs' expert Affidavit of Robert G. Sisnroy, P.E. attached hereto as Exhibit A..
22. That, on information and belief, Chandler negligently performed the construction of the curb ramps adjacent to the roadway modifications of the walkway into The Market at Oakland in front of Wild Wing Café, in that it failed to constructed the same in accordance with the requirements of the International Building Code (IBC), 2006, and in

violation of ICC/ANSI requirements contributing to the dangerous construction deficiencies resulting in unstable walking conditions.

23. That, on information and belief, Avtex as the owner in possession of The Market at Oakland at all times relative hereto owed Huck, as an invitee, a non-delegable duty of due care to discover risks of harm to him and to take safety precautions to warn of or eliminate unreasonable risks of harm to him, on the premises.
24. That, on information and belief, Oakland, as property manager of The Market at Oakland, had a special relationship with Huck as an invitee on the premises, which gave rise to protect him against unreasonable risk of physical harm.
25. That, on information and belief, Wild Wing Café, as a lessee at The Market at Oakland leasing property as a tenant of lessor Avtex and in possession and control of the walkway into The Market at Oakland in front of Wild Wing Café at all times relative hereto owed Huck, as an invitee, a non-delegable duty of due care to discover risks of harm to him and to take safety precautions to warn of or eliminate unreasonable risks of harm to him, on the premises.
26. That all duties owed to Huck by Wild Wing Café, Oakland and Avtex arose by operation of law.
27. That on July 13, 2012, and at all times relative hereto, Wild Wing, Oakland and Avtex owed Huck a duty of due care to keep the walkway in a reasonably safe condition so that Huck could use it in the ordinary and reasonable way without danger.
28. That on July 13, 2012, and at all times relative hereto, Wild Wing, Oakland and Avtex owed Huck a duty to implement reasonable inspection procedures in order to protect him from foreseeable risks of harm.

29. That on July 13, 2012, and at all times relative hereto, Huck had a right to assume that the walkway would be free from defects or obstructions that might cause injury to him.
30. That Wild Wing, Oakland and Avtex expressly and/or impliedly represented to Huck at the time of entry into the walkway that it was and would be in a reasonably safe condition.
31. That Huck had a right to rely upon this representations of Wild Wing, Oakland and Avtex, as they owed Huck a duty to ensure that the walkway was in a reasonably safe condition.
32. That the un-level slippery surface of the walkway, which was covered by heavy slimy ponding and accumulation of debris was not an open or obvious condition.
33. That, on information and belief, Wild Wing, Oakland, Avtex, Chandler and Civil Site had actual and/or constructive notice of the hazard presented by the un-level walkway, which Huck encountered through no fault of his own and which was indeed an unavoidable latent hazard.
34. That Chandler owed Huck a duty not to created a dangerous condition in violation of the requirements of the International Building Code (IBC), 2006, and ICC/ANSI requirements contributing to the dangerous construction deficiencies resulting in unstable walking conditions in such an area of ingress and egress as to make stepping upon the hazardous condition unavoidable in that it was reasonably foreseeable that Huck and others similarly situated would use the sidewalk for normal pedestrian traffic and in that it was reasonably foreseeable that that breach of such duty would lead to the creation of a dangerous condition to Huck and others similarly situated.
35. That Civil Site owed Huck a duty not to produce construction plans which failed to provide any details or notes for construction of the curb ramps adjacent to the roadway modifications in that it was reasonably foreseeable that Huck and others similarly situated

would use the sidewalk for normal pedestrian traffic and in that it was reasonably foreseeable that that breach of such duty would lead to the creation of a dangerous condition to Huck and others similarly situated pursuant to plaintiffs' expert Affidavit of Robert G. Sisnroy, P.E. attached hereto as Exhibit A..

36. As a direct and proximate result of Wild Wing's, Oakland's, Avtex's, Chandler's and Civil Site's negligent, willful, wonton and reckless breach of the respective duty each owed Huck, Huck suffered severe and permanent physical harm and bodily injury including but not limited to significant left chest, shoulder, arm and hand injuries requiring hospitalization, all of which has caused him to undergo excruciating pain and suffering, surgery, therapy, and which injuries to this day cause Huck pain and restricted mobility and has caused him to incur medical expenses and great financial loss.
37. That the actions of Wild Wing, Civil Site, Oakland Chandler and Avtex complained of herein constitute negligence, gross negligence, recklessness, willfulness, and wantonness, in the following particulars, to-wit:
 - a. In failing to maintain the walkway in good order and repair and in a reasonably safe condition;
 - b. In failing to exercise due care under the circumstances;
 - c. In failing to exercise reasonable and ordinary care to guard Huck against foreseeable risks of physical harm to her person;
 - d. In failing to protect Huck against unreasonable risks of physical harm to her person;
 - e. In failing to do what a reasonable person or entity would have done under the circumstances;

- f. In failing to exercise due care to discover risks and take safety precautions to warn of or eliminate foreseeable risks;
 - g. In failing to post warning signs;
 - h. In failing to keep the walkway in a reasonably safe condition so that Huck could use it on the ordinary and reasonable manner without danger;
 - i. In failing to inspect the walkway or to implement regular maintenance procedures in order to protect the guests from foreseeable danger;
 - j. In failing to eliminate foreseeable risks of harm;
 - k. In failing to warn Huck of foreseeable danger; and,
 - l. In such other particulars as may be determined through discovery or trial.
38. That as a direct and proximate consequence of Wild Wing's, Civil Site's, Oakland's, Chandler's and Avtex's respective negligence, gross negligence, reckless, willfulness and wantonness complained of herein, Huck has been injured and damaged in the following particulars, to-wit:
- a. Physical pain;
 - b. Suffering;
 - c. Mental anguish;
 - d. Emotional distress;
 - e. Permanent impairment of health and bodily efficiency;
 - f. Loss of enjoyment of Huck's life;
 - g. Increased susceptibility to future injury of the shoulder injured in the fall giving rise to this action;
 - h. Substantial expenses for past and future medical services;

- i. Expenses for transportation to and from medical services;
 - j. Such other particulars as may be found through discovery or trial; and,
 - k. Substantial past, present and future loss of earnings.
39. That Huck had no knowledge of or reason to suspect danger with regard to the defect contained in the walkway.
40. That Huck exercised ordinary and reasonable care for himself at all times while on the walkway.
41. That Wild Wing, Civil Site, Oakland, Chandler and Avtex each are liable to Huck and Huck is entitled to actual, consequential and punitive damages and all other relief as deemed proper by the Court.
42. That as a direct and proximate consequence of Wild Wing's, Civil Site's, Oakland's, Chandler's and Avtex's negligent, willful, wanton and gross negligent conduct complained of herein above, Huck is entitled to judgment against Wild Wing, Civil Site, Oakland, Chandler and Avtex in an amount equal to his actual damages as more particularly described herein above, and for punitive damages in an appropriate amount.

FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)

43. That each and every relevant and consistent allegation set forth in Paragraph 1 through Paragraph 42 hereinabove is incorporated herein as if fully set forth herein verbatim.
44. As a direct and proximate result of the negligence of Wild Wing, Civil Site, Oakland, Chandler and Avtex, Huck is and has been disabled due to his injuries which have caused him to be delinquent in his conjugal duties towards Plaintiff Dianne Huck.
45. As a further direct and proximate result of the injuries suffered by Huck, Plaintiffs have both suffered great and irreparable loss in the deprivation of society, companionship, consortium

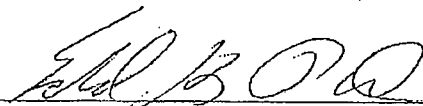
and services of each other as spouses, and will continue to be so deprived of the comfort and solace usually and ordinarily provided by a spouse of good health.

WHEREFORE, Plaintiffs, William Huck and Dianne Huck, having complained of Defendants, Oakland Wings, LLC d/b/a Wild Wing Café, Civil Site Environmental, Inc., Oakland Properties, LLC, Chandler Construction Services, Inc. and Avtex Commercial Properties, Inc., prays that they be awarded judgment against Defendants, as follows:

- A. In an amount sufficient to compensate Plaintiffs for their injuries and damages as described herein above;
- B. Punitive damages in an appropriate amount up to the amount permitted by law;
- C. In an amount equal to all costs and attorney fees incurred by Plaintiffs in connection with this action;
- D. For a trial before a jury on all issues; and,
- E. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

PRITCHARD LAW GROUP, LLC


Edward K. Pritchard, III
Thomas B. Pritchard
P. O. Box 630
Charleston, South Carolina 29402
129 Broad Street (29401)
(843) 722-3300 Telephone
(843) 722-3379 Facsimile
epritchard@pritchardlawgroup.com
tpritchard@pritchardlawgroup.com
Attorney for Plaintiffs

April 15, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

v.

OAKLAND WINGS, LLC d/b/a WILD
WING CAFÉ,
CIVIL SITE ENVIRONMENTAL, INC.,
OAKLAND PROPERTIES, LLC,
CHANDLER CONSTRUCTION SERVICES,
INC.,
AVTEX COMMERCIAL PROPERTIES, INC.,

Defendants.

CASE NO. 2014-CP-10-569

AFFIDAVIT OF
ROBERT G. SISNROY, P.E.

FILE
2014 APR -1 PM 4:36
JULIE A. SISNROY
CLERK OF COURT
BY _____

PERSONALLY APPEARED BEFORE ME, Robert G. Sisnroy,

Sisnroy Engineering LLC, whose offices are located at 714 Beauregard Street, Charleston, South Carolina 29412, who first being duly sworn, deposes and sayeth as follows:

1. That he is over the age of eighteen (18) years and mentally competent.
2. That he is, and at all times relative hereto was, retained as an expert to testify relative to the professional standard of care for an engineer in the above-captioned action.
3. That as requested, he completed an investigation of the pedestrian walkway adjacent to the intersection of Oakland Market Road and South Morgans Point Road to determine engineering and construction deficiencies.
4. That the investigation included observations of the pedestrian walkways, curb and gutter; and alignment with adjacent roadways, walkways and landscape.

RGS



5. That modifications to existing roadway and walkway elements were also documented with respects to compliance with the International Building Code (IBC).
6. That based on information provided by the Town of Mount Pleasant Legal Department and the Mount Pleasant Transportation Department, curb modifications were accomplished at this location in 2009. An Encroachment Permit 03555 was issued by the Town of Mount Pleasant, July 25, 2009 and amended October 7, 2009 for Installation of Paver Crosswalks, which also included curb cuts and installation of pedestrian ramps.
7. That construction plans produced by Civil, Site, Environmental (CSE), 668 Marina Drive, Charleston, SC are dated October 5, 2009 on last revision. Observations of the construction of the ramp configuration revealed it was not constructed in accordance with the requirements of IBC 2006.
8. That these engineering and construction deficiencies contributed to conditions resulting in unstable walking conditions.
9. According to IBC 2006, Section 1010.1, Ramps, curb ramps shall comply with International Code Council, Inc. (ICC)/American National Standards Institute (ANSI) A 117.1-03, Accessible and Usable Buildings and Facilities. Section 405 Ramps and Section 406 Curb Ramps were the applicable sections for requirements for construction of the ramp.
10. That observations of the ramp revealed the ramp construction did not comply with ICC/ANSI A117.1, particularly in areas that would contribute to unstable walking conditions.

RGS

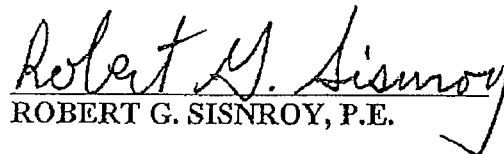
11. That review of the construction plans titled: Proposed Layout and Geometry for the projects: Oakland Market Road Parking Area, provided by Civil, Site, Environmental (CSE), 668 Marina Drive, Suite B-1, Charleston, SC revealed no details or notes for construction of the curb ramps adjacent to the roadway modifications. This does not meet the requirements for barrier free design of the encroachment permit of the Town of Mount Pleasant Permit Number 03555 amended 10/7/2009.
12. That observations of the ramp and flares revealed construction in violation of ICC/ANSI A 171-03 requirements with respect to the ramp slope and flare slopes. Measurement of ramp flares on the west side revealed 1-5/8" in 10" (1-5/8: 1 0) to 1-7/8: 10. On the east side, measurements showed 2-1/16:10 to 2-11/16:10. The flared side slopes were in violation of Section 406.3 which requires that ramp flares shall not be steeper than 1:10. Measurements indicated that slopes were as much as 2 and 3 times the maximum slope.
13. That the unacceptable cross slope was documented at the base of the ramp. Measurements indicated 1-15/16:48 nearly double the maximum allowable in violation of ICC/ANSI Section 405.3. Additionally, the top cross slope was also in violation measuring 1-5/8:48.
14. That the excessive slopes contributed to improper walking surfaces on the ramp and flared areas.
15. That observations revealed that the base of the ramp is directly adjacent to the path of curb and gutter drainage from pedestrian walking surfaces and roadway surfaces. The excessive cross slope and negative slope adjacent to the gutter results in ponding at the

RGS

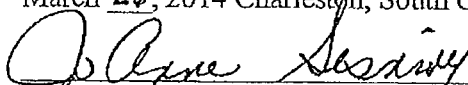
bottom of the ramp in violation of ICC/ANSI A117.1-03 Section 405.10 which requires landings subject to wet conditions shall be designed to prevent accumulation of water.

16. That observations of the base of the ramp revealed evidence of heavy ponding and accumulation of debris. Measurements of the slope of the ramp and curb cut revealed the area is negatively sloped approximately 1-1/8" in 24" or 9/16:12. This condition results in ponding at the base of the ramp during and after precipitation. Ponding and debris contribute to improper walking surfaces in the pedestrian walkway.
17. That all opinions expressed herein are to a reasonable degree of engineering certainty. In my opinion, a claim for professional negligence exists and the engineering and construction did not meet the standard of care according to my observations.

FURTHER DEPONENT SAYETH NOT!


ROBERT G. SISNROY, P.E.

SWORN to and SUBSCRIBED before me on
March 26, 2014 Charleston, South Carolina.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-25-23

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WILLIAM HUCK AND DIANNE
HUCK,

PLAINTIFFS,

vs.

OAKLAND WINGS, LLC D/B/A WILD
WING CAFÉ; CIVIL SITE
ENVIRONMENTAL, INC.; OAKLAND
PROPERTIES, LLC; CHANDLER
CONSTRUCTION SERVICES, INC.;
AND AVTEX COMMERCIAL
PROPERTIES, INC.,

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO. 2014-CP-10-0569

**ANSWER OF DEFENDANT
OAKLAND WINGS, LLC D/B/A
WILD WING CAFÉ TO SECOND
AMENDED COMPLAINT**
(Jury Trial Requested)

FILED
2014 APR 17 PM 4:33
JULIE J. AMSTUTZ
CLERK OF COURT
BY [Signature]

The Defendant above-named, Oakland Wings, LLC d/b/a Wild Wing Café, hereby answers
the Plaintiffs' Second Amended Complaint as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not hereinafter expressly admitted, qualified and/or explained is denied.
2. The Defendant admits the allegations contained in Paragraphs 1 and 2 of the Plaintiffs' Second Amended Complaint.
3. Paragraphs 3, 4, 5 and 6 of the Plaintiffs' Second Amended Complaint are not directed to the Defendant; accordingly, no response is required. By way of further response, to the extent that Paragraphs 3, 4, 5 and 6 of the Plaintiffs' Second Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

4. Paragraphs 7, 8 and 9 of the Plaintiffs' Second Amended Complaint are statements and/or conclusions of law, and the Defendant is not required to admit or deny the same. By way of further response, to the extent that Paragraphs 7, 8 and 9 of the Plaintiffs' Second Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

5. The Defendant lacks sufficient information with which to fully respond to the allegations contained in Paragraphs 10, 11, 12 and 13 of the Plaintiffs' Second Amended Complaint; accordingly, these allegations are denied, and strict proof thereof is demanded.

6. Paragraphs 14, 15 and 16 of the Plaintiffs' Second Amended Complaint are not directed to the Defendant; accordingly, no response is required. By way of further response, to the extent that Paragraphs 14, 15 and 16 of the Plaintiffs' Second Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

7. In response to Paragraph 17 of the Plaintiffs' Second Amended Complaint. The Defendant craves reference to the lease, and would deny any portion of Paragraph 17 of the Plaintiffs' Second Amended Complaint inconsistent therewith. By way of further response, to the extent that Paragraph 17 of the Plaintiffs' Second Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

8. Paragraph 18 of the Plaintiffs' Second Amended Complaint is not directed to the Defendant; accordingly, no response is required. By way of further response, to the extent that Paragraph 18 of the Plaintiffs' Second Amended Complaint attempts to allege or does allege any

cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

9. In response to Paragraph 19 of the Plaintiffs' Second Amended Complaint, the Defendant reiterates each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

10. Paragraph 20 of the Plaintiffs' Second Amended Complaint is a statement and/or conclusion of law, and the Defendant is not required to admit or deny the same. By way of further response, to the extent that Paragraph 20 of the Plaintiffs' Second Amended Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

11. Paragraphs 21, 22, 23 and 24 of the Plaintiffs' Second Amended Complaint are not directed to the Defendant; accordingly, no response is required. By way of further response, to the extent that Paragraphs 21, 22, 23 and 24 of the Plaintiffs' Second Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

12. Paragraphs 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the Plaintiffs' Second Amended Complaint are statements and/or conclusions of law, and the Defendant is not required to admit or deny the same. By way of further response, to the extent that Paragraphs 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the Plaintiffs' Second Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

13. Paragraphs 34 and 35 of the Plaintiffs' Second Amended Complaint are not directed to the Defendant; accordingly, no response is required. By way of further response, to

the extent that Paragraphs 34 and 35 of the Plaintiffs' Second Amended Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendant, those allegations are denied, and strict proof thereof is demanded.

14. The Defendant denies the allegations contained in Paragraphs 36, 37, 38, 39, 40, 41 and 42 of the Plaintiffs' Second Amended Complaint, and strict proof thereof is demanded.

15. In response to Paragraph 43 of the Plaintiffs' Second Amended Complaint, the Defendant reiterates each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

16. The Defendant denies the allegations contained in Paragraphs 44 and 45 of the Plaintiffs' Second Amended Complaint, and strict proof thereof is demanded.

17. The Defendant also denies the allegations contained in the "Wherefore" Paragraph of the Plaintiffs' Second Amended Complaint, which is the remainder of the Plaintiffs' Second Amended Complaint, and strict proof thereof is demanded.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE:
(Comparative Negligence)

18. The Defendant, on information and belief, would allege and show that any injuries and damages sustained by the Plaintiffs as alleged in the Second Amended Complaint, which are denied, were due to and were caused and occasioned by the Plaintiff William Huck's own acts of comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness, which acts on the part of the Plaintiff William Huck combined and contributed and concurred with any negligence, carelessness, recklessness, heedlessness, willfulness and wantonness on the part of the Defendant, which is denied, without which the alleged incident and resulting alleged damages would not have occurred or have been sustained, and the Defendant

does plead such comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness on the part of the Plaintiff William Huck as the direct and proximate cause of the injuries and damages sustained by the Plaintiff as alleged in the Second Amended Complaint. Accordingly, the Defendant is entitled to a determination as to the percentage with which the Plaintiff William Huck's own comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness contributed to this incident and the Plaintiffs' alleged injuries and damages and to the reduction of any sum awarded to the Plaintiffs by an amount equal to the percentage of the Plaintiff William Huck's own comparative negligent, careless, reckless, heedless, willful and wanton conduct.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Unconstitutionality of Punitive Damages)

19. The Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, and Fourteenth Amendments of the Constitution of the United States in the following particulars:

- a. The Plaintiffs' claim for punitive damages violates the Fifth Amendment for the following reasons:
 - i) The double-jeopardy clause is violated because multiple awards of punitive damages can be imposed upon the Defendant for the same act or omission, and because an award of punitive damages can be imposed upon the Defendant, even though the Defendant was convicted or acquitted of a factually related defense in an underlying criminal proceeding; and
 - ii) The self-incrimination clause is violated because Defendant can be compelled to give testimony against itself;
- b. The Plaintiffs' claim for punitive damages violates the Sixth and Fourteenth Amendments because such damages may be imposed according to the lesser standard of proof applicable in civil cases, whereas punitive damages are a fine or penalty and are quasi-criminal in nature and, as such require the "beyond the reasonable doubt" standard of proof;

- c. The Plaintiffs' claim for punitive damages violates the Defendant's right to access to the courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the Defendant's exercise of that right;
- d. The Plaintiffs' claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:
 - i) The standard or test for determining the requisite mental state of Defendant for imposition of punitive damages is void for vagueness;
 - ii) Insofar as punitive damages are not measured against actual injury to the Plaintiff and are left up to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damages that may be awarded is indeterminate at the time of Defendant's alleged egregious conduct;
 - iii) In cases involving more than one Defendant, the evidence of the net worth of each is admissible, and the jury is permitted to award punitive damages in differing amounts based upon the affluence of a given Defendant;
 - iv) The tests or standards for the imposition of punitive damages differ from state to state, such that a specific act or omission of a given Defendant may or may not result in the imposition of punitive damages, or may result in differing amounts of punitive damages, depending upon the state in which the suit is filed, such that the Defendant is denied equal protection of law; and
 - v) Punitive damages may be imposed without a requisite showing of hatred, spite, ill will or wrongful motive.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Improper Claim for Punitive Damages)

20. Punitive damages are inappropriate in this case since the Defendant did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. 15-32-510 et. seq.)

21. The Defendant pleads the limitations on damage awards found in S.C. Code Ann. 15-32-510 et. seq., and requests bifurcation in accordance with these code sections.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(No Duty to Warn of the Unknowable)

22. The Defendant had no duty to warn about possible dangers or hazards, if any, which were not known or which were not capable of being known.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Assumption of the Risk)

23. The Plaintiffs' claims are barred by the doctrine of assumption of the risk and/or applicable statutory law of the State of South Carolina in that assuming, but not admitting, the area in question was dangerous, the Plaintiff William Huck discovered and was aware of such, assumed such risk and proceeded unreasonably, thus resulting in the alleged injury.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE:
(Failure to State a Claim)

24. The Plaintiffs' Second Amended Complaint fails to state any claims upon which relief can be granted as to the Defendant, and the Plaintiffs' Second Amended Complaint should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRPC*.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE

(Assumption of the Risk/Open and Obvious)

25. The Defendant would allege and show that the Plaintiff William Huck was, at all times, fully aware of the alleged dangers as set forth in the Second Amended Complaint, and that the Plaintiff William Huck was negligent and careless in failing to take necessary precautions and that the Plaintiff William Huck assumed any alleged risk incident to the allegations set forth in the Second Amended Complaint, and that this negligent, careless, reckless, heedless, willful and wanton assumption of the risk was the proximate cause of the Plaintiffs' alleged injuries and damages as set forth in the Second Amended Complaint; therefore, the Plaintiffs are herein barred from recovery.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE

(Intervening and Superseding Acts and/or Negligence)

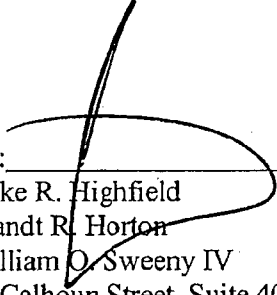
26. The Defendant would allege and show that any injuries and damages sustained by the Plaintiffs as alleged in the Second Amended Complaint, which are denied, were due to and were caused and occasioned by the intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of some other party or parties, and the Defendant does plead such intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by the Plaintiffs as alleged in the Second Amended Complaint.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Reliance on Additional Defenses)

27. The Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Plaintiffs' Second Amended Complaint, the Defendant prays that the same be dismissed, together with the costs and disbursements of this action, and for such other and further relief as this Court deems proper. The Defendant also requests a trial by jury.

YOUNG CLEMENT RIVERS, LLP

By: 
Duke R. Highfield
Brandt R. Horton
William O. Sweeny IV
25 Calhoun Street, Suite 400
P. O. Box 993
Charleston, SC 29402
(843) 720-5456
dhighfield@ycrlaw.com
bhorton@ycrlaw.com
bsweeny@ycrlaw.com
Attorneys for the Defendant
Oakland Wings, LLC d/b/a Wild Wing Café

Charleston, South Carolina

4/17, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

vs.

WINGS OVER AMERICA, INC. D/B/A
WILD WING CARE, CIVIL SITE
ENVIRONMENTAL, INC., OAKLAND
PROPERTIES, LLC, CHANDLER
CONSTRUCTION SERVICES, INC., AND
AVTEX COMMERCIAL PROPERTIES,
INC.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-10-569

**ANSWER TO PLAINTIFFS' SECOND
AMENDED COMPLAINT**

FILED
2014 APR 18 PM 3:01
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Defendant Civil Site Environmental, Inc. (hereinafter "Civil Site")
responding to Plaintiffs' Amended Complaint, and pleads as follows:

FOR A FIRST DEFENSE AND BY WAY OF AN ANSWER

1. Civil Site admits, upon information and belief, the allegations contained in
Paragraph 1 of the Plaintiffs' Second Amended Complaint.

2. Civil Site admits, upon information and belief, the allegations contained in
Paragraph 2 of the Plaintiffs' Second Amended Complaint.

3. The allegations contained in Paragraph 3 of the Plaintiffs' Second Amended
Complaint are admitted.

4. Civil Site admits, upon information and belief, the allegations contained in
Paragraph 4 of the Plaintiffs' Second Amended Complaint.

5. Civil Site admits, upon information and belief, the allegations contained in Paragraph 5 of the Plaintiffs' Second Amended Complaint.

6. Civil Site admits, upon information and belief, the allegations contained in Paragraph 6 of the Plaintiffs' Second Amended Complaint.

7. Paragraphs 7, 8 and 9 of the Plaintiffs' Second Amended Complaint sets forth a legal conclusion to which no response is required. To the extent a response is required and to the extent Paragraphs 7, 8 and 9 state or imply liability on behalf of this Defendant, Civil Site denies the same.

8. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraphs 10, 11, 12 and 13 of the Plaintiffs' Second Amended Complaint, and to the extent a response is required, those allegations are denied.

9. Civil Site admits, upon information and belief, so much of the allegations contained in Paragraph 14 of the Plaintiffs' Second Amended Complaint which state that the construction plans were produced by Civil Site in October 2009. The remaining allegations contained in Paragraph 14 of the Plaintiffs' Second Amended Complaint are denied.

10. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraphs 15, 16, 17 and 18 of the Plaintiffs' Second Amended Complaint, and to the extent a response is required, those allegations are denied.

11. In response to Paragraph 19 of the Plaintiffs' Second Amended Complaint, Civil Site reasserts its answers to the previous paragraphs as if set forth verbatim herein.

12. Paragraph 20 of the Plaintiffs' Second Amended Complaint sets forth a legal conclusion to which no response is required. To the extent a response is required and to the extent Paragraph 20 states or implies liability on behalf of this Defendant, Civil Site denies the same.

13. Civil Site denies the allegations contained in Paragraph 21 of the Plaintiffs' Second Amended Complaint.

14. The allegations contained in Paragraphs 22, 23, 24, 25, 26, 27 and 28 of the Plaintiffs' Second Amended Complaint contain allegations which are not directed at Defendant Civil Site to which no response is required. To the extent a response is required and to the extent Paragraphs 22, 23, 24, 25, 26, 27 and 28 state or imply liability on behalf of this Defendant, Civil Site denies the same.

15. Paragraph 29 of the Plaintiffs' Second Amended Complaint sets forth a legal conclusion to which no response is required. To the extent a response is required and to the extent Paragraph 29 states or implies liability on behalf of this Defendant, Civil Site denies the same.

16. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraphs 30 and 31 of the Plaintiffs' Second Amended Complaint, and to the extent a response is required, those allegations are denied.

17. The allegations contained in Paragraph 32 of the Plaintiffs' Second Amended Complaint are denied.

18. The allegations contained in Paragraph 33 of the Plaintiffs' Second Amended Complaint are denied.

19. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraph 34 of the Plaintiffs' Second Amended Complaint, and to the extent a response is required, those allegations are denied.

20. The allegations contained in Paragraph 35 of the Plaintiffs' Second Amended Complaint are denied.

21. The allegations contained in Paragraph 36 of the Plaintiffs' Amended Complaint are denied.

22. The allegations contained in Paragraph 37 of the Plaintiffs' Second Amended Complaint are denied.

23. The allegations contained in Paragraph 35 of the Plaintiffs' Second Amended Complaint are denied, including all subparts.

24. Civil Site is without sufficient knowledge and information to form an opinion as to the truth of the allegations contained in Paragraphs 39 and 40 of the Plaintiffs' Second Amended Complaint, and to the extent a response is required, those allegations are denied.

25. The allegations contained in Paragraphs 41 and 42 of the Plaintiffs' Second Amended Complaint are denied.

26. In response to Paragraph 43 of the Plaintiffs' Second Amended Complaint, Civil Site reasserts its answers to the previous paragraphs as if set forth verbatim herein.

27. The allegations contained in Paragraphs 44 and 45 of the Plaintiffs' Second Amended Complaint are denied.

FOR A SECOND DEFENSE
(Rule 12(b)(6), SCRPC)

28. Plaintiffs' Second Amended Complaint fails to state a claim against Civil Site upon which relief can be granted.

FOR A THIRD DEFENSE
(Acts or Omissions of Third Parties)

29. Any injuries and damages sustained by Plaintiffs are or may have been the result of the negligent acts and omissions of a third party and/or the result of the concurrent acts and omissions of a third party.

FOR A FOURTH DEFENSE
(Unconstitutionality of Punitive Damages)

30. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I § 3 of the South Carolina Constitution in that:

The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantee;

Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

Any award of punitive damages based upon the wealth of Civil Site violates due process guarantees;

The jury'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;

Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

The Plaintiffs' claim for punitive damages violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, § 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Civil Site.

The Plaintiffs' claims for punitive damages violate the federal doctrine of separation of powers and Article I, § 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.

FOR A FIFTH DEFENSE
(Open and Obvious)

31. Civil Site asserts that the incident complained of in Plaintiffs' Second Amended Complaint was the result of an open and obvious condition.

FOR A SIXTH DEFENSE
(Intervening Negligence)

32. Plaintiffs' claims against Civil Site are barred, because even if Civil Site was negligent as alleged by Plaintiffs, which is specifically denied, the intervening and/or superseding negligence of others was the direct and proximate cause of the damages, if any, suffered by the Plaintiffs.

FOR A SEVENTH DEFENSE
(Comparative Negligence)

33. Plaintiffs' damages, if any, must be reduced because even if Civil Site was negligent as alleged by Plaintiffs, which is specifically denied, the alleged negligence of Civil Site must be measured against the negligence of Plaintiffs and/or their agents in failing or refusing to exercise reasonable care.

FOR AN EIGHTH DEFENSE
(Waiver, Estoppel, Laches)

34. Civil Site would allege that Plaintiffs' Second Amended Complaint is barred by the doctrine of waiver, laches and/or estoppel.

FOR A NINTH DEFENSE
(Unclean Hands)

35. Civil Site would allege that Plaintiffs' Second Amended Complaint is barred by the doctrine of unclean hands.

FOR A TENTH DEFENSE
(Setoff)

36. Civil Site is entitled to a setoff from any award of damages against it, the amount of any sums, damages or settlement amounts that Plaintiffs receives or is entitled to receive, with respect to the same alleged injuries.

FOR AN ELEVENTH DEFENSE
(Failure to Mitigate)

37. Plaintiffs' claims are or may be barred because they have failed to mitigate their damages as required by law.

FOR A TWELFTH DEFENSE
(Notice)

38. Plaintiffs either knew or should have known of any alleged deficiencies in the subject property and accepted the same with such knowledge. As a result, Plaintiffs' recovery should be barred by the doctrine of notice.

FOR A THIRTEENTH DEFENSE
(Plain View)

39. Civil Site would show Plaintiffs failed to observe objects/conditions in plain view in a location where they are customarily expected to be and his claims are, therefore, barred by the "plain view" doctrine.

FOR A FOURTEENTH DEFENSE
(Ordinary Care)

40. An invitee is charged with exercising ordinary care for personal safety and using ordinary care to avoid the effect of the owner/occupier's negligence after that negligence becomes apparent to the patron or in the exercise of ordinary care the invitee should have learned of it. In the exercise of ordinary care, the patron must use all senses to discover and avoid hurtful things. Assuming, arguendo, Civil Site created a negligent condition in the instant case – Plaintiffs nevertheless failed to exercise ordinary care to discovery and avoid hurtful things.

FOR A FIFTEENTH DEFENSE
(Unavoidable Accident)

41. Plaintiffs' claims may be barred by the doctrine of unavoidable accident.

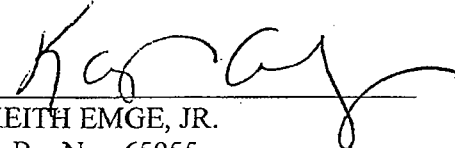
42. Civil Site does not waive, and specifically reserve its right to plead additional affirmative defenses.

WHEREFORE, having fully responded to the allegations of Plaintiffs' Second Amended Complaint, and fully incorporating all prior responses and affirmative defenses thereto, Civil Site respectfully requests that Plaintiffs' Second Amended Complaint be dismissed in its entirety, with all costs of this action to be cast upon Plaintiffs and that Civil Site be granted costs of defense in this matter and any such other relief the Court deems appropriate.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By:


N. KEITH EMGE, JR.
State Bar No.: 65955

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

KATHY A. CARLSTEN
State Bar No.: 68265

Attorneys for Defendant Civil Site Environmental,
Inc.

3. The allegations of paragraph 2 are hereby admitted upon information and belief.

4. The allegations of paragraph 3 are hereby admitted upon information and belief.

5. The allegations of paragraph 4 are hereby admitted.

6. The allegations of paragraph 5 are hereby admitted upon information and belief.

7. The allegations of paragraph 6 are hereby admitted upon information and belief.

8. The allegations of paragraph 7 are hereby admitted upon information and belief.

9. The allegations of paragraph 8 are hereby admitted upon information and belief.

10. The allegations of paragraph 9 are hereby admitted upon information and belief.

11. Defendants lack sufficient information with which to respond to the allegations of paragraph 10 and therefore deny the same and demand strict proof thereof.

12. Defendants lack sufficient information with which to respond to the allegations of paragraph 11 and therefore deny the same and demand strict proof thereof.

13. Defendants lack sufficient information with which to respond to the allegations of paragraph 12 and therefore deny the same and demand strict proof thereof.

14. The allegations of paragraph 13 are hereby admitted.

15. The allegations of paragraph 14 are hereby admitted.

16. The allegations of paragraph 15 are admitted only insofar as it alleges that defendant Oakland was the applicant for the encroachment permit for the subject premises. The remaining allegations of paragraph 15 are hereby denied.

17. The allegations of paragraph 16 are hereby admitted.

18. The allegations of paragraph 17 are admitted insofar as said paragraph alleges that defendant Wild Wing is a lessee at the Market at Oakland. Defendants deny that Avtex is the lessor of the property in question. These defendants admit that on or about July 13, 2012, defendant Wild Wing had possession and control of the walkway in question consistent with the terms of its lease with defendant Oakland.

19. The allegations of paragraph 18 are admitted insofar as defendant Avtex manages the Market at Oakland in Mount Pleasant, South Carolina and that it had control of the walkway in question consistent with the terms of its management agreement.

20. In response to paragraph 19 of the Complaint, defendants repeat and reallege their answers to paragraphs 1 through 18 above as if fully set forth herein verbatim.

21. The allegations of paragraph 20 state conclusions of law and therefore require no response. To the extent that a response may be required the allegations contained herein are hereby denied.

22. Defendants lack sufficient information with which to respond to the allegations of paragraphs 21 and therefore deny the same and demand strict proof thereof.

23. Defendants lack sufficient information with which to respond to the allegations of paragraphs 22 and therefore deny the same and demand strict proof thereof.

24. The allegations of paragraph 23 are hereby denied.

25. The allegations of paragraph 24 are hereby denied.

26. The allegations of paragraph 25 are denied insofar as said paragraph alleges that Avtex was the lessor of the subject property. The remaining allegations of paragraph 25 state conclusions of law therefore these defendants deny the same and demand strict proof thereof.

27. The allegations contained in paragraph 26 state conclusions of law and therefore require no response. To the extent that a response may be required these defendants deny the same and demand strict proof thereof.

28. The allegations contained in paragraph 27 state conclusions of law and therefore require no response. To the extent that a response may be required these defendants deny the same and demand strict proof thereof.

29. The allegations of paragraph 28 are hereby denied.

30. The allegations of paragraph 29 are hereby denied.

31. The allegations of paragraph 30 are hereby denied.

32. The allegations of paragraph 31 are hereby denied.

33. To the extent that the conditions alleged have been present at the time of the plaintiffs alleged fall actually existed, the allegations of paragraph 32 are hereby denied.

34. The allegations of paragraph 33 are denied as to defendants Oakland and Avtex.

35. The allegations of paragraph 34 state conclusions of law and therefore require no response. To the extent that a response may be required the allegations contained herein are hereby denied.

36. The allegations of paragraph 35 state conclusions of law and therefore require no response. To the extent that a response may be required the allegations contained herein are hereby denied.

37. The allegations of paragraph 36 are denied as to defendants Avtex and Oakland. To the extent that they are directed at other defendants, these defendants lack sufficient information with which to respond therefore deny the same and demand strict proof thereof.

38. The allegations of paragraph 37 are denied as to defendants Avtex and Oakland. To the extent that they are directed at other defendants, these defendants lack sufficient information with which to respond therefore deny the same and demand strict proof thereof.

39. The allegations of paragraph 38 are denied as to defendants Avtex and Oakland. To the extent that they are directed at other defendants, these defendants lack sufficient information with which to respond therefore deny the same and demand strict proof thereof.

40. The allegations of paragraph 39 are hereby denied.

41. The allegations of paragraph 40 are hereby denied.

42. The allegations of paragraph 41 are hereby denied.

43. The allegations of paragraph 42 are hereby denied.

44. In response to paragraph 43 of the Complaint, defendants repeat and reallege their answers to paragraphs 1 through 42 above as if fully set forth herein verbatim.

45. The allegations of paragraph 44 are hereby denied.

46. The allegations of paragraph 45 are hereby denied.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Comparative Negligence)

47. That, upon information and belief, even if the defendants were negligent as described in the Complaint, which is specifically denied, the plaintiffs' alleged injuries and damages, if any, resulted from, or were due to the negligence of the plaintiffs, which combined and concurred with any negligence on the part of the defendants, which is specifically denied, to bring about the said damages, if any, as a proximate cause thereof and without which the same would not have occurred.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

48. Plaintiffs have failed to mitigate their claimed damages and to protect themselves from avoidable consequences, thus barring or diminishing their recovery.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Sole Negligence of Third Parties)

49. Plaintiffs' damages, if any, are the direct and proximate result of sole negligence of third parties not affiliated with defendants and not under their domain or control.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Open and Obvious Danger)

50. That any and all claims of the plaintiffs are barred because all danger, if any, associated with the use of the product in question was at all times open and obvious to the plaintiffs.

FOR A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Superseding/Intervening Negligence)

51. Should it be determined that defendants were negligent, careless, reckless or grossly negligent, which allegations are expressly denied by defendants, then defendants would show this Court that the damages sustained by the plaintiffs, if any, were proximately caused by the intervening and superseding negligence of others, which intervening and superseding negligence proximately caused any damages alleged to have been suffered by the plaintiffs.

WHEREFORE, having fully answered the Amended Complaint of plaintiffs, said defendants pray that the same be dismissed with attorneys' fees, costs, and for such other relief as this Honorable Court deems just and proper.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: *D. Summers Clarke*
for K. Michael Barfield, Esquire
D. Summers Clarke, Esquire
288 Meeting St., Ste 200 (29401)
Post Office Drawer H
Charleston, SC 29402
(843) 577-7700 FAX (843) 577-7708
*Attorneys for Oakland Properties, LLC, and Aytex
Commercial Properties, Inc.*

Charleston, South Carolina

April 21, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

vs.

WINGS OVER AMERICA, INC., d/b/a
WILD WIND CAFÉ, CIVIL SITE
ENVIRONMENTAL, INC., OAKLAND
PROPERTIES, LLC, CHANDLER
CONSTRUCTION SERVICES, CIN.,
AVTEX COMMERCIAL PROPERTIES,
INC.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-10-569

)
)
) **ANSWER OF DEFENDANTS OAKLAND**
) **PROPERTIES, LLC, AND AVTEX**
) **COMMERCIAL PROPERTIES, INC., TO**
) **PLAINTIFFS' SECOND AMENDED**
) **COMPLAINT**
) **(JURY TRIAL DEMANDED)**

2014 MAY -1 PM 2:10
JULIE M. SMITH, CLERK OF COURT
BY

COME NOW Defendants Oakland Properties, LLC, and Avtex Commercial

Properties, Inc., (hereinafter referred to as "Defendants"), by and through their undersigned counsel, denying all allegations not hereinafter specifically or expressly admitted and reserving all rights to amend this pleading pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, hereby answering Plaintiffs', William Huck and Dianne Huck's (hereinafter referred to as "Plaintiffs") Second Amended Complaint as follows:

FOR A FIRST DEFENSE

1. All allegations of the Plaintiffs' Second Amended Complaint not specifically admitted herein are hereby denied.
2. The allegations of paragraph 1 are hereby admitted upon information and belief.

3. The allegations of paragraph 2 are hereby admitted upon information and belief.
4. The allegations of paragraph 3 are hereby admitted upon information and belief.
5. The allegations of paragraph 4 are hereby admitted.
6. The allegations of paragraph 5 are hereby admitted upon information and belief.
7. The allegations of paragraph 6 are hereby admitted upon information and belief.
8. The allegations of paragraph 7 are hereby admitted upon information and belief.
9. The allegations of paragraph 8 are hereby admitted upon information and belief.
10. The allegations of paragraph 9 are hereby admitted upon information and belief.
11. Defendants lack sufficient information with which to respond to the allegations of paragraph 10 and therefore deny the same and demand strict proof thereof.
12. Defendants lack sufficient information with which to respond to the allegations of paragraph 11 and therefore deny the same and demand strict proof thereof.
13. Defendants lack sufficient information with which to respond to the allegations of paragraph 12 and therefore deny the same and demand strict proof thereof.
14. The allegations of paragraph 13 are hereby admitted.
15. The allegations of paragraph 14 are hereby admitted.

16. The allegations of paragraph 15 are admitted only insofar as it alleges that defendant Oakland was the applicant for the encroachment permit for the subject premises. The remaining allegations of paragraph 15 are hereby denied.

17. The allegations of paragraph 16 are hereby admitted.

18. The allegations of paragraph 17 are admitted insofar as said paragraph alleges that defendant Wild Wing is a lessee at the Market at Oakland. Defendants deny that Avtex is the lessor of the property in question. These defendants admit that on or about July 13, 2012, defendant Wild Wing had possession and control of the walkway in question consistent with the terms of its lease with defendant Oakland.

19. The allegations of paragraph 18 are admitted insofar as defendant Avtex manages the Market at Oakland in Mount Pleasant, South Carolina and that it had control of the walkway in question consistent with the terms of its management agreement.

20. In response to paragraph 19 of the Second Amended Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 18 above as if fully set forth herein verbatim.

21. The allegations of paragraph 20 state conclusions of law and therefore require no response. To the extent that a response may be required the allegations contained herein are hereby denied.

22. Defendants lack sufficient information with which to respond to the allegations of paragraphs 21 and therefore deny the same and demand strict proof thereof.

23. Defendants lack sufficient information with which to respond to the allegations of paragraphs 22 and therefore deny the same and demand strict proof thereof.

24. The allegations of paragraph 23 are hereby denied.

25. The allegations of paragraph 24 are hereby denied.

26. The allegations of paragraph 25 are denied insofar as said paragraph alleges that Avtex was the lessor of the subject property. The remaining allegations of paragraph 25 state conclusions of law therefore these Defendants deny the same and demand strict proof thereof.

27. The allegations contained in paragraph 26 state conclusions of law and therefore require no response. To the extent that a response may be required these Defendants deny the same and demand strict proof thereof.

28. The allegations contained in paragraph 27 state conclusions of law and therefore require no response. To the extent that a response may be required these Defendants deny the same and demand strict proof thereof.

29. The allegations of paragraph 28 are hereby denied.

30. The allegations of paragraph 29 are hereby denied.

31. The allegations of paragraph 30 are hereby denied.

32. The allegations of paragraph 31 are hereby denied.

33. To the extent that the conditions alleged have been present at the time of the plaintiffs alleged fall actually existed, the allegations of paragraph 32 are hereby denied.

34. The allegations of paragraph 33 are denied as to Defendants Oakland and Avtex.

35. The allegations of paragraph 34 state conclusions of law and therefore require no response. To the extent that a response may be required the allegations contained herein are hereby denied.

36. The allegations of paragraph 35 state conclusions of law and therefore require no response. To the extent that a response may be required the allegations contained herein are hereby denied.

37. The allegations of paragraph 36 are denied as to Defendants Avtex and Oakland. To the extent that they are directed at other defendants, these Defendants lack sufficient information with which to respond therefore deny the same and demand strict proof thereof.

38. The allegations of paragraph 37 are denied as to Defendants Avtex and Oakland. To the extent that they are directed at other defendants, these Defendants lack sufficient information with which to respond therefore deny the same and demand strict proof thereof.

39. The allegations of paragraph 38 are denied as to Defendants Avtex and Oakland. To the extent that they are directed at other defendants, these Defendants lack sufficient information with which to respond therefore deny the same and demand strict proof thereof.

40. The allegations of paragraph 39 are hereby denied.

41. The allegations of paragraph 40 are hereby denied.

42. The allegations of paragraph 41 are hereby denied.

43. The allegations of paragraph 42 are hereby denied.

44. In response to paragraph 43 of the Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 42 above as if fully set forth herein verbatim.

45. The allegations of paragraph 44 are hereby denied.

46. The allegations of paragraph 45 are hereby denied.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Comparative Negligence)

47. That, upon information and belief, even if the Defendants were negligent as described in the Second Amended Complaint, which is specifically denied, the Plaintiffs' alleged injuries and damages, if any, resulted from, or were due to the negligence of the Plaintiffs, which combined and concurred with any negligence on the part of the Defendants, which is specifically denied, to bring about the said damages, if any, as a proximate cause thereof and without which the same would not have occurred.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

48. Plaintiffs have failed to mitigate their claimed damages and to protect themselves from avoidable consequences, thus barring or diminishing their recovery.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Sole Negligence of Third Parties)

49. Plaintiffs' damages, if any, are the direct and proximate result of sole negligence of third parties not affiliated with Defendants and not under their domain or control.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Open and Obvious Danger)

50. That any and all claims of the Plaintiffs are barred because all danger, if any, associated with the use of the product in question was at all times open and obvious to the plaintiffs.

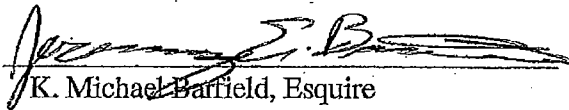
FOR A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Superseding/Intervening Negligence)

51. Should it be determined that Defendants were negligent, careless, reckless or grossly negligent, which allegations are expressly denied by Defendants, then Defendants would show this Court that the damages sustained by the Plaintiffs, if any, were proximately caused by the intervening and superseding negligence of others, which intervening and superseding negligence proximately caused any damages alleged to have been suffered by the Plaintiffs.

WHEREFORE, having fully answered the Second Amended Complaint of Plaintiffs, said Defendants pray that the same be dismissed with attorneys' fees, costs, and for such other relief as this Honorable Court deems just and proper.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY:

 KMB

K. Michael Barfield, Esquire

D. Summers Clarke, Esquire

288 Meeting St., Ste 200 (29401)

Post Office Drawer H

Charleston, SC 29402

(843) 577-7700 FAX (843) 577-7708

*Attorneys for Oakland Properties, LLC, and Avtex
Commercial Properties, Inc.*

Charleston, South Carolina
April 30, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

William Huck and Dianne Huck,

Plaintiffs,

vs.

Oakland Wings, LLC d/b/a Wild
Wing Café, Civil Site Environmental,
Inc., Oakland Properties, LLC,
Chandler Construction Services, Inc.,
Avtex Commercial Properties, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

**DEFENDANT CHANDLER
CONSTRUCTION SERVICES, INC.'S
ANSWER TO PLAINTIFFS' SECOND
AMENDED COMPLAINT**

C.A. No. 2014-CP-10-569

(JURY TRIAL DEMANDED)

2014 MAY 22 PM 3:17
J. ARMSTRONG
CLERK OF COURT

FILED

Defendant, Chandler Construction Services, Inc., answering the Second Amended Complaint of the Plaintiffs, would allege and show unto the Court as follows:

FIRST DEFENSE

1. Defendant, Chandler Constructive Services, Inc. ("Chandler"), admits the allegations of paragraph 1 on information and belief.
2. Chandler admits the allegations of paragraph 2 on information and belief.
3. Chandler admits the allegations of paragraph 3 on information and belief.
4. Chandler admits the allegations of paragraph 4 on information and belief.
5. Chandler denies that its principal place of business is in Charleston County, South Carolina. It maintains its principal place of business at 1511 Ninety Six Highway, Ninety Six, South Carolina 2966-9261. The remaining allegations of paragraph 5 are admitted.
6. Chandler admits the allegations of paragraph 6 on information and belief.

7. Chandler admits the allegations of paragraph 7 on information and belief.
8. Chandler admits the allegations of paragraph 8 on information and belief.
9. Chandler admits the allegations of paragraph 9 on information and belief.
10. Chandler is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and those allegations are therefore denied.
11. Chandler is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and those allegations are therefore denied.
12. Chandler is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and those allegations are therefore denied.
13. Chandler is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and those allegations are therefore denied due to the unknown location of the alleged incident.
14. Chandler is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14, and those allegations are therefore denied due to the unknown location of the alleged incident.
15. Chandler admits the allegations of paragraph 15 on information and belief.
16. Chandler admits the allegations of paragraph 16 on information and belief.
17. Chandler admits the allegations of paragraph 17 on information and belief.
18. Chandler is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18, and those allegations are therefore denied due to the unknown location of the alleged incident.
19. In response to the allegations of paragraph 19, Chandler repeats and realleges its responses contained in the preceding paragraphs as if fully set forth herein.

20. The allegations of paragraph 20 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

21. The allegations of paragraph 21 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

22. The allegations of paragraph 22 call for a legal conclusion to which no response is required. To the extent a response is required, Chandler denies that it negligently performed the construction of the curb ramps adjacent to the roadway modifications of the walkway into The Market at Oakland in front of Wild Wing Café. Chandler denies the remaining allegations in paragraph 22 for lack of sufficient information to form a belief as to the truth of the allegations.

23. The allegations of paragraph 23 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

24. The allegations of paragraph 24 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

25. The allegations of paragraph 25 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

26. The allegations of paragraph 26 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

27. The allegations of paragraph 27 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

28. The allegations of paragraph 28 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

29. The allegations of paragraph 29 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

30. The allegations of paragraph 30 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

31. The allegations of paragraph 31 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

32. The allegations of paragraph 32 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

33. The allegations of paragraph 33 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

34. The allegations of paragraph 34 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

35. The allegations of paragraph 35 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

36. The allegations of paragraph 36 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

37. The allegations of paragraph 37 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

38. The allegations of paragraph 38 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

39. The allegations of paragraph 39 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

40. The allegations of paragraph 40 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied for lack of sufficient information to form a belief as to the truth of the allegations.

41. The allegations of paragraph 41 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

42. The allegations of paragraph 42 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

43. In response to the allegations of paragraph 43, Chandler repeats and realleges its responses contained in the preceding paragraphs as if fully set forth herein.

44. The allegations of paragraph 44 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

45. The allegations of paragraph 45 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

46. Chandler denies each and every allegation of Plaintiffs' Second Amended Complaint not specifically explained, modified, or admitted hereinabove.

SECOND DEFENSE
(Failure to State a Claim)

47. Chandler alleges that the Complaint fails to state a claim against Chandler upon which relief can be granted and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

THIRD DEFENSE
(Comparative Negligence)

48. Chandler alleges that even if it was negligent as described in the Second Amended Complaint, which is specifically denied, the Plaintiffs' alleged injuries and damages, if any, resulted from or were due to the negligence of the Plaintiffs, which combined and concurred with any negligence on the part of Chandler, which is specifically denied, to bring about the said damages, if any, as a proximate cause thereof and without which the same would not have occurred.

FOURTH DEFENSE
(Superseding Negligence of Third Parties)

49. Chandler alleges that the damages alleged by the Plaintiffs, if any, were not proximately caused by any acts or omissions of Chandler. Instead, Plaintiffs' damages, if any, were directly and proximately caused and contributed to by actions of persons or entities other than Chandler over whom Chandler had no control or authority. If it is determined that Chandler was in any way negligent, which Chandler expressly denies, the intervening, supervening and

superseding negligence of such other third persons or entities insulates Chandler from any and all liability for damages and, further, acts as a bar to such claims.

FIFTH DEFENSE
(Failure to Mitigate Damages)

50. Chandler alleges that should it be determined that Plaintiffs failed to mitigate their alleged damages, Plaintiffs' Second Amended Complaint should be dismissed or, in the alternative, any judgment should be reduced by the amount in which Plaintiffs failed to mitigate their damages as required by law.



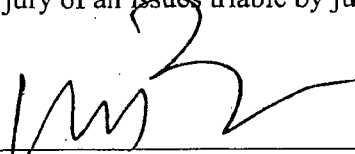
W. Howard Boyd, Jr. (S.C. Bar # 826)
Zachary L. Weaver (S.C. Bar # 101419)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200
P.O. Box 10589
Greenville, SC 29603
(864) 271-9580
(864) 271-7502 FAX
hboyd@gwblawfirm.com
zweaver@gwblawfirm.com

May 20, 2014

Greenville, SC

Attorneys for Defendant Chandler
Construction Services, Inc.

This Defendant hereby demands trial by jury of all issues triable by jury.



W. Howard Boyd, Jr. (S.C. Bar # 826)

Defendants.

STIPULATION OF DISMISSAL

FILED
2015 MAY 20 PM 3:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

114

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

WILLIAM HUCK AND DIANNE HUCK,)

Plaintiffs,)

vs.)

WINGS OVER AMERICA, INC. D/B/A)
WILD WING CAFE, CIVIL SITE)
ENVIRONMENTAL, INC., OAKLAND)
PROPERTIES, LLC, CHANDLER)
CONSTRUCTION SERVICES, INC., AND)
AVTEX COMMERCIAL PROPERTIES,)
INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

C.A. NO.: 2014-CP-10-569

BY

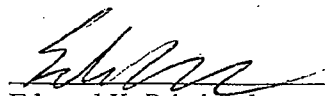
JULIE J. ARMSTRONG
CLERK OF COURT

2015 JUN - 1 PM 3:02

FILED

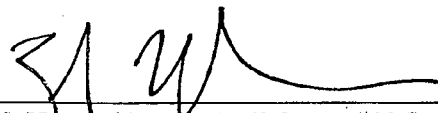
Pursuant to Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure, Plaintiffs William and Dianne Huck and Defendant, Chandler Construction Services, Inc. ("Chandler Construction"), through their undersigned counsel, enter into this stipulation of dismissal as to all claims asserted by Plaintiffs against Defendant, Chandler Construction Services, Inc. in the above-captioned action. The parties stipulate that all claims asserted in this action against Chandler Construction are hereby dismissed with prejudice, and are henceforth res judicata. Plaintiffs and Defendant, Chandler Construction, will each bear their own attorney's fees and costs.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]



Edward K. Pritchard
epritchard@pritchardlawgroup.com
Pritchard Law Group, LLC
129 Broad Street
Charleston, SC 29401
Telephone: (864) 261-3977

Attorney for Plaintiffs



W. Howard Boyd, Jr. (SC Bar #826)
hboyd@gwblawfirm.com
Zachary L. Weaver (SC Bar #101419)
zweaver@gwblawfirm.com
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, SC 29603
Telephone: 864-271-5343

Attorneys for Defendant, Chandler
Construction Services, Inc.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-569

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

vs.

OAKLAND WINGS, LLC d/b/a WILD
WIND CAFÉ, CIVIL SITE
ENVIRONMENTAL, INC., OAKLAND
PROPERTIES, LLC, CHANDLER
CONSTRUCTION SERVICES, INC.,
AVTEX COMMERCIAL PROPERTIES,
INC.,

Defendants.

**DEFENDANT AVTEX COMMERCIAL
PROPERTIES, INC.'S FIRST SET OF
INTERROGATORIES TO PLAINTIFF
WILLIAM HUCK**

**TO: EDWARD K. PRITCHARD, III, ESQUIRE AND THOMAS B.
PRITCHARD, ESQUIRE ATTORNEYS FOR PLAINTIFFS**

Defendant Avtex Commercial Properties, LLC requests that Plaintiff William Huck answer, under oath, separately and fully in writing the following interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure. These interrogatories are deemed to be continuing, and if complete answers to any of them are presently unavailable, supplemental answers are required at the time the information becomes available and prior to trial:

INSTRUCTIONS

A. Every Interrogatory herein shall be deemed a continuing Interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to, or in any way inconsistent with your initial answer to any such Interrogatory, in accordance with the Rule 33(b) of the South Carolina Rules of Civil Procedure.

B. Should privilege be claimed as to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the ground on which the claim or privilege is based. Should Plaintiff William Huck be unable, for reasons other than privilege, to provide the information requested, the answer must, in each instance indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which the information will be presented to the undersigned.

C. If you object to any portion of an Interrogatory on the ground it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

D. If you object to an Interrogatory on the ground that it is too broad, provide such information, which is concededly relevant and available.

E. If you object to an Interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking any undue burden. For those portions of any Interrogatory to which you object or otherwise decline to answer, state the reasons for such objection, declination, or burden.

F. When an Interrogatory requests the name of a natural person, the answer should contain the following:

1. The full name of the person.
2. The employer and job title of such person at the time of the event, transaction or occurrence to which the Interrogatory relates.
3. The present employer and job title of the person if known, and if not known, the answer shall so state and shall state in addition the last known address of such person and the last known date that such person resided at that address.

DEFINITIONS

A. The terms "Plaintiff," "You," and "Your" refer to William Huck, or other persons or entities acting, or purporting to act, on behalf of him.

B. The term "Parties" shall refer to the Plaintiffs and anyone acting on behalf of the Plaintiffs, and any of the Defendants, their respective officers, directors, agents, or employees, that are parties to this lawsuit.

C. As used in this request, the term "document" means any handwritten, typewritten, printed, recorded, or graphic matter, including all copies of the above, however produced or reproduced, in the possession, custody, or control of Plaintiffs and/or Plaintiffs' counsel and whether or not claimed to be privileged, including, but not limited to, correspondence, reports, e-mails, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of account, contracts, drawings, blueprints, checks and diaries.

D. "Identify" or "identity" when used in reference to a person, means state his full name, his present or last known address, telephone number, and his present or last known position or business affiliation.

E. "Describe" or "description," if used in reference to a person, means to identify each individual person and, when used in reference to a document, means to state the following as to each document:

1. Nature and contents.
2. Date.
3. Name, present address, and position of the author or signer.
4. The name, address, and position of the addressee, if any.
5. The present location, name, and present address and position of person or persons having custody.

F. "Electronically Stored Information" or "ESI" includes all information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software, including, but not limited to the following: accounting or bookkeeping information stored or accessed with QuickBooks or similar software; email of any type, category, or status, including incoming, outgoing, draft, or deleted email; Social Networking Website postings or commentary; chat room logs, transcripts, archives, or commentary; instant messaging logs, archives, or history files; internet

browser temporary files, cache files, cookies, or history information; online discussion group files; blog text, postings, or commentary; and any data stored on a computer network, servers, pop drives, disks, snap drives, flash drives, thumb drives, USB hard drive, cell phone, PDA, Blackberry, Treo, Palm device, iPod, MP3 player, or other electronic device capable of storing data.

INTERROGATORIES

1. If you or your attorneys know of any persons who are or might be witnesses to the facts of this case and allegations of the Plaintiffs' Second Amended Complaint, please give the following information:
 - (a) What are their names and addresses?
 - (b) Do you have either written or recorded statements from any of them?
 - (c) If you do, please state from whom you have such statements.
 - (d) If you have such statements, who is in possession of them?
2. For each person known to Plaintiff William Huck or to counsel to be a witness concerning the facts of the case or to have knowledge of the allegations of Plaintiffs' Second Amended Complaint, please:
 - (a) Set forth a summary of the important facts known to or observed by such witness; or
 - (b) Provide a copy of any written or recorded statements from such witness.
3. Please set forth a list of photographs, plats, sketches or other prepared documents that might be in your possession relating to your claim.
4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.
5. Is Plaintiff eligible for Medicare? If so, please provide the following:
 - a) Date of birth and gender.
 - b) Social security number.
 - c) Please list any other names Plaintiff has been known by.
 - d) Health Insurance Claim number (HICN).
 - e) Has Plaintiff received Medicare benefits? Start date?

f) Has Plaintiff received Medicare benefits for the injury in which Plaintiff is seeking compensation?

6. If not eligible for Medicare, provide the anticipated date Plaintiff will begin receiving Medicare benefits.
7. State your full name, present address, date of birth, place of birth, and Social Security Number.
8. Identify every person known by you to have been present at the scene of the incident at the time thereof or within one (1) hour before or after the incident.
9. Identify each person with name and address whom you expect to call as an expert witness at the trial of this lawsuit, and for each such expert, state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.
10. Identify all documents, including but not limited to invoices, receipts, medical bills, medical reports, expert reports, test results, articles, or texts relating to the claim or defense in this action.
11. Please list all of your occupations or jobs (full and/or part-time) and employer's name and address and reasons for termination starting with your present employer.
12. List all of the crimes of any nature, excluding minor traffic offenses, for which you have been arrested, by dates and offenses, the result of the arrest and, if sentenced, the sentence imposed.
13. If you have ever made a claim for personal injury or property damage or sued anyone before for personal injury or property damage or been sued for personal injury or property damage, please state the insurance carrier or carriers with whom you made the claim, the claim number, the full title of each suit, the court in which the action was instituted, the number of the action, the nature and extent of the injury or damage, and the disposition of the action or claim.

THE ACCIDENT

14. Describe with particularity exactly what occurred in the five minutes prior to the incident which is the subject of the above action (hereinafter referred to as "the accident"), what occurred during the accident, and what occurred during the ten minutes after the accident, including anything said by or to you.
 - (a) Five minutes prior to the accident.
 - (b) During the accident (including a description of how the accident occurred).
 - (c) Ten minutes after the accident.
15. Set forth, with particularity, the exact site where the alleged incident occurred, listing the address by street address, county, city/state, and the date of the alleged incident.

DAMAGES

16. (a) Please state, in chronological order the date, the name, address of each medical care provider (doctor, hospital, clinic, emergency room, therapist, chiropractor or any other) you have seen in the past 20 years and state the reason you sought treatment.
(b) Please state what, if any, problems you had (physical or mental) prior to the accident setting forth the name and address of the doctor from whom you sought treatment, and the date.
17. Please state all physical and/or mental injuries you claim as a result of the accident.
18. Please state the name and address of all medical care providers (doctor, hospital, clinic, emergency room, therapist, chiropractor or any other) who have rendered medical and/or ancillary care for you as a result of the accident.
19. Indicate all medical and/or ancillary expenses you incurred as a result of the accident, including, but not limited to, hospital and therapy costs. Indicate also

the names and addresses of those who provided the service and who made the payment for such services.

20. State whether you have ever, either before or after the incident, had any illness, impairment, condition, accident, or injury. If your answer is yes, please state the date of said illness, impairment, condition, accident, or injury, the nature thereof, and identify all doctors and/or hospitals involved with the examination or treatment thereof.
21. To the best of your knowledge or that of your attorney, has any doctor advised you or your attorney as to the diagnosis of any of your injuries? If so, state the diagnosis made of each injury and the name and address of the doctor making said diagnosis. (NOTE: A medical report may be submitted in lieu of a written answer to this question.)
22. To the best of your knowledge or that of your attorney, has any doctor advised you or your attorney as to the prognosis of any of your injuries?
If so, state:
 - (a) Which injuries you have been advised are probably temporary and the doctor making said statements and his/her address.
 - (b) Which injuries you have been advised are probably permanent the nature and location of such injury, and the doctor making said statement and his/her address.
23. State whether you claim to have sustained any loss of income or wages as a result of the incident, and if so, state the amount you are claiming, the name and address of the employer and all days on which you claim to have missed work due to the incident.
24. With respect to the injuries you received as a result of the accident herein, state the nature, extent and location of any cuts or lacerations, fractures, dislocations, bruises, and/or visible injuries and the date that each such injury first manifested itself.
25. If your activities, other than those involving your work, have been restricted as a result of the accident, please state what activities that have been or will be

restricted or curtailed as a result of the accident. (It should include hobbies, sports, recreation, household and yard activities, and other leisure activities.)

26. If you have been able to resume your normal schedule of activities since the date of the accident, please state the date.
27. If you are still suffering from any effects of the accident, please state the symptoms, complaints and/or other disabilities you claim resulted from the accident.
28. State the nature and amount of all future expenses you anticipate will be incurred as a result of the accident.
29. What loss of earnings, if any, do you believe you will incur in the future as a result of the accident.
30. If you claim any aggravation of a pre-existing condition as a result of the accident, please state:
 - (a) The nature of the pre-existing condition, and how long it had existed prior to the accident.
 - (b) The date, name, and address of all persons and institutions treating you for pre-existing conditions prior to the time of the accident.
31. State your general physical condition, including every physical or mental ailment, allergies and defects in vision or hearing, if any, immediately prior to the day of the accident.
32. Describe in detail all ailments from which you are now suffering which you do not believe resulted from the accident.
33. State whether you took any drugs or narcotics (including prescription drugs) within 24 hours prior to the accident and if so, specify:
 - (a) The type of each drug.
 - (b) The quantity of each.
 - (c) The time and place each drug was taken.
 - (d) The identity and location of each person known to you who was present when each drug was taken.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: D Summers Clarke

K. Michael Barfield, Esquire

D. Summers Clarke, II, Esquire

288 Meeting Street, Suite 200 (29401)

Post Office Drawer H

Charleston, SC 29402

843-577-7700 FAX 843-577-7708

mbarfield@barnwell-whaley.com

sclarke@barnwell-whaley.com

**ATTORNEYS FOR AVTEX COMMERCIAL
PROPERTIES, INC. AND OAKLAND
PROPERTIES, LLC**

May 19, 2014

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-569

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**DEFENDANT AVTEX COMMERCIAL
PROPERTIES, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
PLAINTIFF WILLIAM HUCK**

YOU WILL PLEASE TAKE NOTICE Defendant Avtex Commercial Properties, hereby request, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Plaintiff William Huck within thirty (30) days after the service hereof produce and this Defendant to inspect, copy, or photograph each of the following documents or which may be in the possession, custody or control of Plaintiff William Huck or orney that constitute or contain evidence relating to the claim or defense of this

A. The term "documents" is used in its broadest possible sense and includes, but is not limited to, final, preliminary, or draft records, reports, books, correspondence, drawings, diagrams, maps, data processing, storage units, tapes, moving pictures,

photographs, contracts, invoices, receipts, bills, orders, notes and other written communications, plus all other items identified as documents in Rule 34. This request seeks production of all original documents of any nature whatsoever and all non-identical copies thereof in the possession, custody or control of Plaintiffs or counsel plus identification of any other documents of which Plaintiffs or counsel has knowledge. In all cases where an original is unavailable, "document" also means copies thereof. In the event that any document or thing called for in any of these requests has been destroyed, lost, discarded or otherwise disposed of, identify as completely as possible each such document or thing, including without limitation, the following information: date of disposal, place and manner of disposal, reason for disposal, person authorizing the disposal, and persons disposing of the document or thing.

B. If you object to, or otherwise decline to respond any portion of a request, provide all information called for by that portion of the request to which you did not object or which you do not decline to respond. If you object to a request on the ground that it is too broad, provide such information which is concededly relevant. For those portions of any request to which you object or otherwise decline to respond, state the reason for such objection. If you do not respond to any request because of a claim of privilege, set forth the privilege claimed, the facts upon which you rely to support your claim of privilege, and identify all documents for which such privilege is claimed.

C. These requests shall be deemed continuing so as to require supplemental responses if Plaintiff or counsel obtains further information between the time answers are served and the time of trial.

DEFINITIONS

A. The terms "Plaintiff," "You," and "Your" refer to WILLIAM HUCK, or other persons or entities acting, or purporting to act, on behalf of him.

B. The term "Parties" shall refer to the Plaintiffs, anyone acting their behalf, and any of the Defendants, their respective officers, directors, agents, or employees, that are parties to this lawsuit.

C. In addition to the above instructions, the term "document" also means any handwritten, typewritten, printed, recorded, or graphic matter, including all copies of the above, however produced or reproduced, in the possession, custody, or control of Plaintiffs and/or their counsel and whether or not claimed to be privileged, including, but not limited to, correspondence, reports, e-mails, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of account, contracts, drawings, blueprints, checks and diaries.

D. "Identify" or "identity" when used in reference to a person, means state his full name, his present or last known address, telephone number, and his present or last known position or business affiliation.

E. "Describe" or "description," if used in reference to a person, means to identify each individual person and, when used in reference to a document, means to state the following as to each document:

1. Nature and contents.
2. Date.
3. Name, present address, and position of the author or signer.
4. The name, address, and position of the addressee, if any.
5. The present location, name, and present address and position of person or persons having custody.

F. "Electronically Stored Information" or "ESI" includes all information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software, including, but not limited to the following: accounting or bookkeeping information stored or accessed with QuickBooks or similar software; email of any type, category, or status, including incoming, outgoing, draft, or deleted email; Social Networking Website postings or commentary; chat room logs, transcripts, archives, or commentary; instant messaging logs, archives, or history files; internet browser temporary files, cache files, cookies, or history information; online discussion group files; blog text, postings, or commentary; and any data stored on a computer network, servers, pop drives, disks, snap drives, flash drives, thumb drives, USB hard

drive, cell phone, PDA, Blackberry, Treo, Palm device, iPod, MP3 player, or other electronic device capable of storing data.

REQUESTS FOR PRODUCTION

1. Any and all statements, whether written, recorded, or otherwise having any bearing upon the present litigation.

2. Any and all medical reports, correspondence, office notes, charts, diagrams, x-rays, x-ray reports, evaluations, doctor and hospital records, medical bills, hospital bills, skilled nursing facility records and bills, physical therapy records, discharge summaries, or any other medical information concerning the injuries claimed to have been sustained by Plaintiff William Huck and/or treatment of him by any therapist, physician, chiropractor, psychiatrist, psychologist, or other health care provider as a result of the incident with which this case is concerned.

3. Any and all photographs, slides, videotape, motion pictures, film, data compilations, plats, sketches, diagrams, reports by police or of any other public or private investigations, or other materials having to do with the present litigation.

4. If Plaintiff is making any claim for lost wages or earnings, produce:

- (a) any and all documentation of lost wages which Plaintiff claims to have arisen from this incident, including any lost wage verifications, and
- (b) copies of Plaintiff's state and federal tax returns, including W-2 forms, for the year of the incident, the year following the incident, and the two years before the incident.

5. Copies of any and all documents identified in response to all Interrogatories served on Plaintiff.

6. With regard to any expert witnesses identified in Answers to Interrogatories:

- (a) all documents prepared by the expert;
- (b) all documents sent to the expert by Plaintiffs' counsel;
- (c) all documents relied upon by the expert;
- (d) all documents used, consulted, or reviewed by the expert;
- (e) all documents setting forth the compensation agreement between Plaintiff and the expert;
- (f) all documents used, relied upon, consulted, or reviewed by the expert in answering expert witness interrogatories;
- (g) all documents that have been or will be shown to the expert prior to trial testimony; and
- (h) all documents, including a current curriculum vitae, used to establish the expert's qualifications for trial purposes.

7. Any other documents which may be used as exhibits in this litigation.

8. Any and all documents relating to claims for unemployment benefits.

9. Copies of any and all documents that support Plaintiffs' cause of action.

10. Any and all documents obtained by subpoena, FOIA request, or authorization issued by Plaintiffs through counsel.

Please produce for inspection and/or copying the above-listed documents to the undersigned, at the undersigned's address, within thirty (30) days of the date of this Request; in lieu of production of the originals for inspection and/or copying, please forward copies of the above-listed documents to the undersigned, at the undersigned's address.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: D Summers Clarke

K. Michael Barfield, Esquire

D. Summers Clarke, II, Esquire

288 Meeting Street, Suite 200 (29401)

Post Office Drawer H

Charleston, SC 29402

843-577-7700 FAX 843-577-7708

mbarfield@barnwell-whaley.com

sclarke@barnwell-whaley.com

**ATTORNEYS FOR AVTEX COMMERCIAL
PROPERTIES, INC. AND OAKLAND
PROPERTIES, LLC**

May 19, 2014

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

61



KENNETH MICHAEL BARFIELD
BARNWELL, WHALEY, PATTERSON & HELMS, LLC
PO BOX H
CHARLESTON SC 29402-0197

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Jury Verdict in favor of Pltff

CASE NO: 2014CP1000569

William Huck , plaintiff, et al VS Wings Over America Inc , defendant, et al

This judgment was entered on the 22nd day of May, 2015, and notice mailed first class on Friday, May 22, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-00569

William Huck & Dianne Huck

Wings Over America dba/ Wing Wings Café;
Oakland Properties LLC & Avtex Commercial
Properties

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Jury, unanimously, found in favor of the Plaintiff in the amount of 48,820.00 against AVTEX Commercial Properties LLC.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
William Huck & Dianne Huck	AVTEX Commercial Properties	48,820.00
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2168

Judge Code

05-21-2015

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Edward Pritchard & Liz Fulton

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kenneth Barfield & Summers Clarke

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Karen Andersen

2. A. Was WINGS OVER AMERICA, INC. d/b/a WILD WINGS CAFÉ negligence a proximate cause of the Plaintiff's injuries and damages?

 YES - Go to Question 3

 NO - Stop deliberations for WINGS OVER AMERICA, INC.

B. Was OAKLAND PROPERTIES, LLC'S negligence a proximate cause of the Plaintiff's injuries and damages?

 YES - Go to Question 3

 NO - Stop deliberations for OAKLAND PROPERTIES, LLC

C. Was AVTEX COMMERCIAL PROPERTIES, INC.'S negligence a proximate cause of the Plaintiff's injuries and damages?

 ✓ YES - Go to Question 3

 ~~NO~~ NO - Stop deliberations for AVTEX COMMERCIAL PROPERTIES, INC.

3. Did the Plaintiff, William Huck contribute to his injuries and damages by his own negligence?

 ✓ YES - Go to Question 5

 NO

4. State the amount of actual damages, if any, that the Plaintiff is entitled to. You are to determine only the TOTAL amount of the plaintiff's damages and enter that amount below.

\$ 97,640.00

5. What percentage of the injury did each party cause? (The percentages must add up to 100%.)

WINGS OVER AMERICA, INC. 0 %

OAKLAND PROPERTIES, LLC 0 %

AVTEX COMMERCIAL PROPERTIES, INC 50 %

WILLIAM HUCK 50 %

TOTAL 100%

I certify this decision was the unanimous decision of the jury.

Charles Welch
Foreman
May 21, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

vs.

OAKLAND WINGS, LLC d/b/a WILD
WIND CAFÉ, CIVIL SITE
ENVIRONMENTAL, INC., OAKLAND
PROPERTIES, LLC, CHANDLER
CONSTRUCTION SERVICES, INC.,
AVTEX COMMERCIAL PROPERTIES,
INC.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-10-569

2015 JUN -3 PM 4:57
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

**DEFENDANT AVTEX COMMERCIAL PROPERTIES, INC.'S MOTION FOR
JUDGMENT NOTWITHSTANDING THE VERDICT**

Defendant, Avtex Commercial Properties, LLC (hereinafter "Avtex"), by and through its undersigned counsel, hereby moved this Honorable Court, pursuant to Rule 50 of the South Carolina Rules of Civil Procedure for a Judgment Notwithstanding the Verdict.

Judgment Notwithstanding the Verdict (JNOV)

Defendants renew their motions for Directed Verdict as to the negligence cause of action, on the grounds that there is no legally sufficient basis for a jury to find for the Plaintiffs, as previously stated in Defendants' Motion for Directed Verdict at the close of all the evidence. The Motion for Judgment Notwithstanding the Verdict is based on the fact that Plaintiffs failed to introduce evidence sufficient to support a finding that Avtex breached its duty to Mr. Huck.

This Motion is supported by South Carolina statutory and case law and the South Carolina Rules of Civil Procedure, the South Carolina Rules of Evidence, as will be set forth in the Memorandum of Law filed herewith in this matter.

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: *D. Summers Clarke*
K. Michael Barfield, Esquire
D. Summers Clarke, Esquire
288 Meeting St., Ste 200 (29401)
Post Office Drawer H
Charleston, SC 29402
(843) 577-7700 FAX (843) 577-7708
Email: mbarfield@barnwell-whaley.com
Email: sclarke@barnwell-whaley.com

Attorney for Avtex Commercial Properties, Inc.

Charleston, South Carolina
June 3, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-10-569

WILLIAM HUCK AND DIANNE HUCK,
Plaintiffs,

vs.

OAKLAND WINGS, LLC d/b/a WILD
WIND CAFÉ, CIVIL SITE
ENVIRONMENTAL, INC., OAKLAND
PROPERTIES, LLC, CHANDLER
CONSTRUCTION SERVICES, INC.,
AVTEX COMMERCIAL PROPERTIES,
INC.,

Defendants.

2015 JUN -3 PM 4:57
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

DEFENDANT AVTEX COMMERCIAL PROPERTIES, INC.'S
MEMORANDUM IN SUPPORT OF ITS
MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

Defendant, Avtex Commercial Properties, LLC (hereinafter "Avtex"), by and through its undersigned counsel, submits this Memorandum in Support of Motion for Judgment Notwithstanding the Verdict.

INTRODUCTION

On July 13, 2012, Plaintiff, William Huck, went to eat lunch at the Wild Wing Café, which is located in The Market at Oakland in Mt. Pleasant, South Carolina. After parking in a lot adjacent to the restaurant, Mr. Huck proceeded to the intersection of Oakland Market Road and South Morgans Point Road and entered the walkway into The Market at Oakland in front of Wild Wing Café. Mr. Huck allegedly slipped and fell approximately where the crosswalk and the base of the ramp to the sidewalk intersect. It

had rained just prior to Mr. Huck's arrival, and he alleges that the ramp was defective because it was improperly sloped, a puddle of water had accumulated at its base and that debris was present in and around the puddle. Mr. and Mrs. Huck subsequently brought this suit for negligence and loss of consortium.

The Honorable Brian M. Gibbons presided over the jury trial for this matter beginning on May 18, 2015. Trial testimony and jury deliberations were concluded by May 21, 2015. The jury returned an award in favor of Plaintiff for \$97,640.00 and found that Mr. Huck was 50% comparatively negligent, which reduced the verdict against Avtex to \$48,820.00. Judge Gibbons allowed the parties ten business days after the conclusion of the trial to file post-trial motions.

ARGUMENTS

A. The Court Should Grant Judgment to Avtex Notwithstanding the Verdict

1. Governing Legal Standards

A motion for JNOV may be granted if no reasonable jury could have reached the challenged verdict. *See Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In deciding such motions, the court does not have the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *See Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000).

2. Plaintiff Failed to Establish that Avtex Breached its Duty

Plaintiff failed to introduce evidence sufficient to support a finding that Avtex breached its duty to Mr. Huck. In South Carolina, property owners generally have a duty to warn an invitee *only* of latent or hidden dangers of which they have or should have knowledge, not open and obvious hazards. *Larimore v. Carolina Power & Light*, 340 S.C.

438, 445, 531 S.E.2d 535, 538 (Ct. App. 2000) (emphasis added). Generally there is no duty to warn of natural weather-related conditions that are open and obvious hazards affecting walking surfaces. Rather, the invitee assumes the risk by choosing to walk on such surfaces, at least when alternative safe routes are available. See *Meadows v. Heritage Village Church & Missionary Fellowship, Inc.*, 305 S.C. 375, 409 S.E.2d 349 (1991) (landowner had no duty to warn its invitee about the wet grass because it was a natural condition, the peril of which was obvious); *Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524, 469 S.E.2d 630 (Ct. App. 1996) (owners could not foresee that tenant, on finding the sidewalk blocked, would choose to walk through the mud rather than take one of several alternate routes around the muddy area). A landowner, such as Avtex, should not be held liable for failing to warn of an open and obvious condition unless the invitee can show that the landowner should have anticipated, not only that the invitee would encounter the condition, but would do so even where reasonable alternatives were available.

First, the puddle near the sidewalk was not a latent or hidden danger. South Carolina law recognizes water on a sidewalk as patently dangerous, so it did not matter that there may have been mud or debris in the puddle. Second, Avtex was not aware that water had ponded near the sidewalk after the thunderstorm that morning. Regardless, within three hours of Mr. Huck's accident, the puddle had evaporated. There is nothing in the record to support that Avtex had any knowledge of any issues with the sidewalk. Finally, Plaintiff, Mr. Huck, admitted throughout the trial that he noticed the puddle before he stepped in it. He also admitted that there was another sidewalk adjacent to the crosswalk that he could have used. By Mr. Huck's own admission, the puddle was open and obvious. Therefore, Mr. Huck assumed the risk when he chose to step in the puddle instead of stepping over it or

taking a nearby alternate route. Under South Carolina law, Avtex had no duty to warn an invitee, such as Mr. Huck, about this open and obvious potential danger.

CONCLUSION

Because Avtex did not breach any duty it purportedly owed to Plaintiff, Plaintiff's claim must fail, and this Court should grant Avtex Judgment Notwithstanding the Verdict. For the foregoing reasons, this Court should grant Avtex's Motion for Judgment Notwithstanding the Verdict.

Respectfully submitted,

BARNWELL WHALEY PATTERSON &
HELMS, LLC

BY: *D. Summers Clarke*
K. Michael Barfield, Esquire
D. Summers Clarke, Esquire
288 Meeting St., Ste 200 (29401)
Post Office Drawer H
Charleston, SC 29402
(843) 577-7700 FAX (843) 577-7708
Email: mbarfield@barnwell-whaley.com
Email: sclarke@barnwell-whaley.com

*Attorney for Avtex Commercial Properties,
Inc.*

Charleston, South Carolina
June 3, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

vs.

OAKLAND WINGS, LLC d/b/a WILD
WIND CAFÉ, CIVIL SITE
ENVIRONMENTAL, INC., OAKLAND
PROPERTIES, LLC, CHANDLER
CONSTRUCTION SERVICES, INC.,
AVTEX COMMERCIAL PROPERTIES,
INC.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-10-569

2015 JUN -3 PM 4:53
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

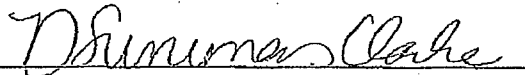
DEFENDANT AVTEX COMMERCIAL PROPERTIES, INC.'S
MOTION FOR DISCLOSURE OF SETTLEMENT, MOTION FOR SETOFF, AND IN
THE ALTERNATIVE, MOTION TO DETERMINE WHETHER SETTLEMENTS
WITH CHANDLER CONSTRUCTION SERVICES AND CIVIL SITE
ENVIRONMENTAL, INC. WERE MADE IN GOOD FAITH

Defendant, Avtex Commercial Properties, LLC (hereinafter "Avtex"), by and through its undersigned counsel, hereby moved this Honorable Court, for the following: (1) Motion to Disclose Settlement Terms with Chandler and Civil Site Engineering; (2) Motion for Setoff; and in the alternative, (3) Motion to Determine Whether the Settlements with Chandler and CSE were Made in Good Faith.

This Motion is supported by South Carolina statutory and case law and the South Carolina Rules of Civil Procedure, the South Carolina Rules of Evidence, as will be set forth in the Memorandum of Law filed herewith in this matter.

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

K. Michael Barfield, Esquire

D. Summers Clarke, Esquire

288 Meeting St., Ste 200 (29401)

Post Office Drawer H

Charleston, SC 29402

(843) 577-7700 FAX (843) 577-7708

Email: mbarfield@barnwell-whaley.com

Email: sclarke@barnwell-whaley.com

Attorney for Avtex Commercial Properties, Inc.

Charleston, South Carolina

June 3, 2015

INTRODUCTION

On July 13, 2012, Plaintiff, William Huck, went to eat lunch at the Wild Wing Café, which is located in The Market at Oakland in Mt. Pleasant, South Carolina. After parking in a lot adjacent to the restaurant, Mr. Huck proceeded to the intersection of Oakland Market Road and South Morgans Point Road and entered the walkway into The Market at Oakland in front of Wild Wing Café. Mr. Huck allegedly slipped and fell approximately where the crosswalk and the base of the ramp to the sidewalk intersect. It had rained just prior to Mr. Huck's arrival, and he alleged that the ramp was defective because it was improperly sloped, a puddle of water had accumulated at its base and that debris was present in and around the puddle. Mr. and Mrs. Huck subsequently brought this suit for negligence and loss of consortium.

The Honorable Brian M. Gibbons presided over the jury trial for this matter beginning on May 18, 2015. Trial testimony and jury deliberations were concluded by May 21, 2015. The jury returned an award in favor of Plaintiff for \$97,640.00 and found that Mr. Huck was 50% comparatively negligent, which reduced the verdict against Avtex to \$48,820.00. Judge Gibbons allowed the parties ten business days after the conclusion of the trial to file post-trial motions.

ARGUMENTS

A. Plaintiffs Must Disclose Settlement Amounts with Joint Tortfeasors

Avtex respectfully requests this Court to require Plaintiffs to disclose the terms of the releases between Plaintiffs and Civil Site Environmental ("CSE") and Plaintiffs and Chandler Construction Services ("Chandler"). Avtex is entitled to discover the terms of both releases to determine whether or not they were given in good faith and to what

extent Avtex is entitled to a setoff against the Plaintiffs' judgment. S.C. Code Ann. § 15-38-50 conditions extinguishment of potential contribution claims by Avtex on the terms of the settlements between Plaintiffs and CSE and Plaintiffs and Chandler both being made in "good faith." In the absence of a good faith settlement, Avtex could have a claim for contribution against Chandler and/or CSE. Further, Avtex is clearly entitled to a setoff at least in the amount of any such settlement funds specifically paid to Mr. Huck and possibly additional funds as argued in this memorandum.

If Plaintiffs object to the production of the settlement documents on the basis that they contain a confidentiality provision, any concerns regarding privacy or confidentiality over the discovery of the settlement agreement can be adequately addressed by a protective order. A confidentiality provision does not operate to shield a settlement agreement from being produced. As recognized by the Fourth Circuit Court of Appeals, "[t]here is an important distinction between privilege and protection of documents, the former acting to shield the documents from production in the first instance, with the latter operating to preserve confidentiality when produced. An appropriate protective order can alleviate problems and concerns regarding confidentiality." *Virami v. Novant Health, Inc.*, 259 F.3d 284, 288 n.4 (4th Cir. 2001). Avtex will consent to a protective order to protect disclosure of the settlement documents to parties outside this litigation.

B. Avtex is Entitled to a Setoff

Avtex is entitled to a setoff to account for the amount CSE and Chandler each paid Plaintiffs to settle the claims against them. Plaintiffs brought causes of action for negligence and loss of consortium against Defendants. Prior to the trial of this matter, CSE and Chandler reached settlements with Plaintiffs, the terms of which are unknown to

Avtex. It is Avtex's understanding based on representations by Plaintiffs' counsel that Plaintiffs may have allocated a substantial percentage of the settlements with CSE and Chandler to Mrs. Huck's loss of consortium claim in an effort to deprive Avtex of a setoff. If Plaintiffs allocated the majority of those settlement monies to the loss of consortium claim, that allocation would be unreasonable. *See Riley v. Ford Motor Co.*, 408 S.C. 1, 757 S.E.2d 422 (2014). "[I]n the context of a non-settling defendant's claim for setoff, the court should examine whether the percentages allocated to one claim or the other by the settling parties are reasonable. If the allocation is not reasonable, the court may reallocate the funds." *Riley*, 408 S.C. at 16 (internal citations omitted).

During the trial, Plaintiffs presented no evidence to support Mrs. Huck's loss of consortium claim. In fact, the Court granted Defendants' motion for directed verdict as to that claim due to the undisputed lack of evidence or testimony to support a loss of consortium cause of action. Furthermore, Plaintiffs' counsel did not object to or offer any argument opposing Defendants' directed verdict motion. Therefore, the record does not support any allocation of the settlement to either Plaintiff's loss of consortium claim. Moreover, Avtex was neither a party to the settlement negotiations between Plaintiffs and CSE nor Plaintiffs and Chandler, and thus is not bound by their agreements. *Riley v. Ford Motor Co.*, 408 S.C. 1, 757 S.E.2d 422 (2014) (citing *Welch v. Epstein*, 432 S.C. 279, 313, 536 S.E.2d 408, 426 (Ct. App. 2000) (holding a defendant who is "not a party to the settlement . . . is not bound by its terms" when requesting setoff)). When presented with this same issue, the South Carolina Court of Appeals recently held

Compensatory damages are intended to make the plaintiff whole. When an agreed-upon allocation of settlement proceeds is not reasonable under the evidence, that policy is not advanced because of the possibility of double recovery. Thus, when an agreed-upon allocation of settlement proceeds is

not reasonably based on the evidence and does not fairly advance the policy of preventing double-recovery, a non-settling defendant who is entitled to a setoff but was not involved in the settlement negotiation is entitled to have the court consider reallocating the proceeds.

Id. (internal citations omitted). The fact that the record is devoid of any evidence to support either Plaintiff's loss of consortium claim weighs in favor of allocating a majority of the proceeds to Mr. Huck's negligence claim. Moreover, based on the jury notes, it is evident that the jury considered Mr. Huck's medical expenses, lost wages, and pain & suffering in reaching a verdict on the negligence claim. See Exhibit A attached hereto. Therefore, Avtex respectfully requests this Court to reallocate the settlement proceeds paid to Plaintiffs by CSE and Chandler to give Avtex a setoff.

C. Plaintiff is Entitled to Contribution from the Settling Defendants

In the alternative, if the Court declines to reapportion the settlement proceeds, Avtex requests that this Court make a determination as to whether the settling parties' allocation of the settlement proceeds is in bad faith and in contravention of public policy. If it is true that the major portions of the settlements were allocated to Mrs. Huck's claim for loss of consortium, the settling parties have purposely structured a settlement to circumvent Avtex's right to a setoff.

According to the South Carolina Contribution Among Tortfeasors Act ("the Act"), where two or more persons become jointly or severally liable in tort for the same injury to property, a right of contribution arises among them, even if judgment has not been recovered against all or any of them. S.C. Code Ann. § 15-38-20(A) (Supp. 2003); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 68, 518 S.E.2d 301, 309 (Ct. App. 1999). In these situations, the right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability.

S.C. Code Ann. § 15-38-20(B) (Supp. 2003); *Vermeer*, 336 S.C. at 68, 518 S.E.2d at 309. This right to contribution is subject to certain limitations set forth in the Act. S.C. Code Ann. § 15-38-20(A) (Supp. 2003). One such limitation is laid out in section 15-38-50, which reads, “[w]hen a release . . . is given *in good faith* to one of two or more persons liable in tort for the same injury . . . (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.” S.C. Code Ann. § 15-38-50 (Supp. 2003) (emphasis added).

S.C. Code Ann. § 15-38-50 conditions extinguishment of potential contribution claims by Avtex on the terms of the settlements between Plaintiffs and CSE and Plaintiffs and Chandler both being made in “good faith.” See *South Carolina Nat’l Bank v. Stone*, 749 F. Supp. 1419, 1430 (D.S.C. 1990) (“[A] Settling Defendant is insulated from later contribution claims by co-tortfeasors if he obtains a good faith release . . . from the Plaintiff.”). In the absence of a good faith settlement, Avtex could have a claim for contribution against Chandler and/or CSE. Therefore, if the court declines to reallocate the settlement proceeds, Avtex requests the Court to make a determination as to whether Plaintiffs’ allocation is fair and reasonable in light of the total settlement.

Respectfully submitted,

BARNWELL WHALEY PATTERSON &
HELMS, LLC

BY: *D. Summers Clarke*
K. Michael Barfield, Esquire
D. Summers Clarke, Esquire
288 Meeting St., Ste 200 (29401)
Post Office Drawer H
Charleston, SC 29402
(843) 577-7700 FAX (843) 577-7708
Email: mbarfield@barnwell-whaley.com
Email: sclarke@barnwell-whaley.com

*Attorney for Aytex Commercial Properties,
Inc.*

Charleston, South Carolina
June 3, 2015

① We all agree that medical should be paid.

②

17 July
30 Aug
21 Sept

68 out days

~~\$12,500~~ \$13,914

9 ~~Sept~~
30 ~~Oct~~
30 Nov
31 Dec

100 days
12/31
168 days

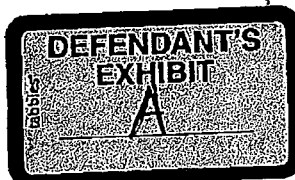
\$33,140

$$72,000 \div 365 = \$197.26$$

\$68

14,500 med
33,140 wage
50,000 PVS
50% Negl.
97
\$47,000
\$48,500

\$13,414



14,500

33,140

50,000

197,640

.58

148,820

64,000

14,100

62,000

~~38,100~~

140,100

247,900

Historical 64,000

Retire ~~248,000~~ →

No

Med 14,000 →

Yes

Future Med ~~62,000~~ →

No

64,000

14,000

78,000

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-10-569

WILLIAM HUCK AND DIANNE HUCK,
Plaintiffs,

vs.

OAKLAND WINGS, LLC d/b/a WILD
WIND CAFÉ, CIVIL SITE
ENVIRONMENTAL, INC., OAKLAND
PROPERTIES, LLC, CHANDLER
CONSTRUCTION SERVICES, INC.,
AVTEX COMMERCIAL PROPERTIES,
INC.,

Defendants.

FILED
2015 AUG -7 PM 4:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**DEFENDANT AVTEX COMMERCIAL PROPERTIES, INC.'S
MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO SCRCP 59(e)**

PLEASE TAKE NOTICE that Defendant, Avtex Commercial Properties, Inc. (hereinafter "Avtex"), moves pursuant to SCRCP Rule 59(e) for this Honorable Court to reconsider and amend its Order denying Avtex's Motion to Disclose Settlement and for Set-Off filed July 27, 2015.

Specifically, Avtex requests that this Honorable Court reconsider its Order with regard to the disclosure of Plaintiffs' pre-trial settlements with other defendant's and for a set-off of any money paid by those Defendants. Further, if it is found that the bulk of those settlement proceeds was paid to plaintiff, Diane Huck, for her loss of consortium claim that this Court use its equitable powers to reallocate those settlement proceeds to conform to the record at trial.

In the alternative, should the Court decline to reallocate those settlement funds, Avtex believes that it is fully entitled to pursue an action for contribution against the settling defendants.

Without completely rehashing its prior arguments, Avtex contends that extending the application of the confidentially rules that apply to mediations so far as to prevent non-settling defendants from knowing what settling defendants have paid to the plaintiff sets a dangerous precedent. If used strategically, such a broad interpretation of the ADR Rules will swallow defendants' statutory rights to set-off for sums paid to plaintiff by joint tort feasons. Avtex believes that some portion of the settling defendants' funds were allocated to Mr. Huck's negligence claim. The Court's Order operates to preclude Avtex from getting a setoff for even those amounts, regardless of whether a reallocation of these settlements is appropriate.

With regard to reallocation of inequitably applied settlement amount, Avtex still asserts that the holding of Riley v. Ford Motor Co., 408 S.C. 1, 757 S.E. 2nd 422 (Ct. of App. 2014) stands for the proposition that this Honorable Court has the equitable power to reallocate settlement funds to avoid gamesmanship by plaintiffs, this power must be applied on a case by case basis. To the extent that it is ultimately discovered that the settlement funds paid by settling defendants in this case were allocated to Mrs. Huck's loss of consortium claim, Avtex would again point out that plaintiffs elected not to put up this case at trial and defendant's Motion for Directed Verdict as to Mrs. Huck's consortium claim was granted. Thus, if it is found that the lion's share of these proceeds were allocated to Mrs. Huck, the Court can and should reallocate them to conform to the record.

Finally, in the alternative, Avtex believes that by allowing the settlement amounts to remain undisclosed, its right to seek contribution from the settling defendants has been

prejudiced. Avtex respectfully contends that the Court's final Order conflates two separate principals found Contribution Amongst Joint Tort Feasors Act, S.C. Code Ann. §15-38-15 (1976). It is true that a plaintiff may elect to elect 100% of a joint and several judgment against any single tort feisor who is found by the jury to have been at least 50% at fault for the plaintiff's injuries. However, that section does not stand for the proposition that a defendant found to be at least 50% at fault is foreclosed from seeking contribution from other tort feasors. The best practical example of this concept is that plaintiffs frequently elect to pursue litigation against a single tort feisor. As such, in the absence of comparative fault, any judgment against that tort feisor would appear to be on its face to be a finding of 100% liability. Nevertheless, it is undisputed that a defendant that finds itself in such a situation has the right to pursue any other tort feasors in a separate action for contribution and seek a pro-rata division of the judgment. Nowhere in the Act is there a provision that stands for the proposition that a finding of 50% fault leaves a defendant with no further recourse.

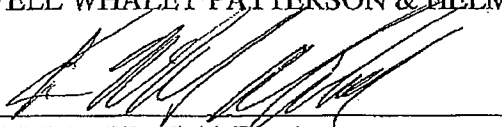
This Motion may be further supported by a Memorandum of Law South Carolina statutory and case law and the South Carolina Rules of Civil Procedure, the South Carolina Rules of Evidence, as will be set forth in the Memorandum of Law filed herewith in this matter.

IT IS SO MOVED.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

K. Michael Barfield, Esquire

D. Summers Clarke, Esquire

288 Meeting St., Ste 200 (29401)

Post Office Drawer H

Charleston, SC 29402

(843) 577-7700 FAX (843) 577-7708

Email: mbarfield@barnwell-whaley.com

Email: sclarke@barnwell-whaley.com

Attorneys for Avtex Commercial Properties, Inc.

Charleston, South Carolina
August 7, 2015

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2014-CP-10-569

FILED
2015 SEP 21 PM 3:08
JULIE J. ARMSTRONG
CLERK OF COURT

William Huck and Diane Huck.....Plaintiffs/Respondents,

v.

Oakland Wings, LLC d/b/a Wild Wing Café,
Civil Site Environmental, Inc., Oakland
Properties, LLC, Chandler Construction
Services, Inc., and Avtex Commercial Properties,
Inc.....Defendants.

Of whom Avtex Commercial Properties, Inc. is.....Appellant.

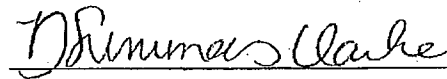
NOTICE OF APPEAL

Avtex Commercial Properties, Inc. ("Appellant") appeals the following Orders (1) Order of the Honorable Brian M. Gibbons dated July 23, 2015 and filed on July 27, 2015, in which he denies the Motion of Avtex Commercial Properties, Inc.'s Motion to Disclose Settlement and For Set-Off, to which Appellant timely filed a Motion to Alter or Amend Judgment Pursuant to SCRCP 59(e) on August 7, 2015; and (2) Order of the Honorable Brian M. Gibbons Denying Motion to Alter or Amend Judgment Pursuant to SCRCP 59(e) issued by Judge Gibbons on August 14, 2015 and filed with the Court on August 18, 2015. The Notice of Entry of Judgment of the Order Denying Appellant's Motion to Alter or Amend that Judgment was received by counsel for Appellant on August 24, 2015. Attached are the July 23, 2015 Order Denying Appellant's Motion to Disclose Settlement and For Set-Off, the

August 14, 2015 Order of the Honorable Brian M. Gibbons Denying Motion to Alter or Amend Judgment Pursuant to SCRCP 59(e) and the Notice of Entry of Judgment of the Order Denying Appellant's Motion to Alter or Amend Judgment. Counsel for Plaintiffs/Respondents are listed below.

Respectfully submitted,

BARNWELL WHALEY
PATTERSON & HELMS, LLC



K. Michael Barfield, Esquire
D. Summers Clarke, II, Esquire
288 Meeting Street, Suite 200 (Zip: 29401)
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700 Telephone
(843) 577-7708 Facsimile
*Attorneys for Defendants Oakland Wings,
LLC d/b/a Wild Wing Café and Oakland
Properties, LLC, and Appellant/Defendant
Avtex Commercial Properties, Inc.*

September 18, 2015

Other Counsel of Record:

Edward K. Pritchard, III, Esquire
Pritchard Law Group, LLC
129 Broad Street (29401)
P. O. Box 630
Charleston, SC 29402
(843) 722-3300
(843) 722-3379
Attorney for Plaintiffs/Respondents

W. Howard Boyd, Jr., Esquire
Gallivan, White & Boyd, P.A.
Post Office Box 10589 (29603)
55 Beattie Place, Suite 1200
Greenville, South Carolina 29601
(864) 271-9580 Telephone
(864) 271-7502 Facsimile
Attorney for Defendant Chandler Construction Services, LLC

N. Keith Emge, Jr., Esquire
Kathy A. Carlsten, Esquire
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307 Telephone
(843) 727-2995 Facsimile
Attorneys for Defendant Civil Site Environmental, Inc.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-10-569

FILED
JUL 27 PM 3:08
JULIE J. ARMSTRONG
CLERK OF COURT

WILLIAM HUCK AND DIANNE HUCK,

Plaintiffs,

v.

OAKLAND WINGS, LLC d/b/a WILD
WING CAFÉ,
CIVIL SITE ENVIRONMENTAL, INC.,
OAKLAND PROPERTIES, LLC,
CHANDLER CONSTRUCTION SERVICES,
INC.,
AVTEX COMMERCIAL PROPERTIES, INC.,

Defendants.

ORDER DENYING
THE MOTION OF
DEFENDANT, AVTEX
COMMERCIAL PROPERTIES,
INC., FOR JNOV AND
DENYING THE MOTION
OF DEFENDANT, AVTEX
COMMERCIAL PROPERTIES,
INC., TO DISCLOSE
SETTLEMENT AND FOR SET-
OFF

BACKGROUND

This is a premises liability action. This matter came before this court for a trial on the merits on May 19, 2015, May 20, 2015 and May 21, 2015. Prior to trial, Defendants, Civil Site Environmental, Inc., (hereinafter referred to "CSE") and Chandler Construction Services, Inc., (hereinafter referred to "CCS"), settled with either Plaintiff, William Huck, Plaintiff, Dianne Huck, or both; the terms of the settlement, including the amounts, are unknown to the court.

At the close of the plaintiffs' case, the remaining Defendants, Oakland Wings, LLC b/b/a Wild Wing Café (hereinafter referred to as "Wild Wing"), Oakland Properties, LLC, (hereinafter referred to as "Oakland") and Avtex Commercial Properties, Inc., (hereinafter referred to as "Avtex") moved for directed verdict pursuant to Rule 50(a), S.C.R.Civ.P. This



court granted the motion as to Mrs. Huck's consortium cause of action, but denied the motion as to Mr. Huck's negligence cause of action.

At the close of all evidence, Wild Wing, Oakland and Avtex renewed their Rule 50(a) directed verdict motion as to Mr. Huck's negligence cause of action, which the court denied. The matter was then submitted to the jury for determination, which returned a verdict in favor of Mr. Huck against Avtex only in the amount of \$97,640.00, but found that Mr. Huck was fifty percent negligent in bringing about his own injuries. Accordingly this court reduced the verdict by fifty percent to \$48,820.00 and entered judgment against Avtex in the amount of \$48,820.00. The jury also returned verdict in favor of Wild Wing and Oakland and judgment was, accordingly, entered in their favor dismissing them from this action.

On June 3, 2015, Avtex filed a motion for judgment notwithstanding the verdict pursuant to Rule 50(b), S.C.R.Civ.P., and a motion for disclosure of settlement, for set-off and, in the alternative, to determine whether the settlement with CSE and CCS were made in good faith. This matter is now before this court for a determination of Avtex's June 3 motions. For the reasons set forth hereinbelow, both motions are hereby denied.

DISCUSSION

A. RULE 50(B) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

As a preliminary matter, Mr. Huck takes the position that this court cannot consider Avtex's motion for judgment notwithstanding the verdict because it was not timely made. The court disagrees.

Rule 50(b), (e) and (f), S.C.R.Civ.P., respectively provide in relevant part:

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may

move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict.

* * * *

The motion for judgment n.o.v. shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.

A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

(emphasis added). Rule 6(b), S.C.R.Civ.P., provides in pertinent part:

When by these rules . . . or by order of court an act is required or allowed to be done at or within a specified time . . . the court for cause shown may at any time in its discretion . . . order the period enlarged if request therefor is made before the expiration of the period as originally prescribed or extended. . . . The time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them. The time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order.

The South Carolina Supreme Court held in *Citizens & S. Nat'l Bank of S.C. v. Easton*, 310 S.C. 458, 427 S.E.2d 640 (1993), the time for filing a motion under Rule 59(b) may not be enlarged or extended beyond the ten day period stated in Rule 59(b).

Mr. Huck takes the position that since Avtex's motion for judgment notwithstanding the verdict was not filed until June 3, 2015, it was not filed within the ten day period proscribed by Rule 50(e), and, as a consequence, Avtex's Rule 50(b) motion for judgment notwithstanding the verdict is untimely, and must be dismissed as the court now lacks jurisdiction to entertain it. However, the court finds that Avtex actually made its motion for judgment notwithstanding the verdict orally immediately following the reading of the verdict which it followed up with a memorandum filed June 3, 2015. Accordingly, in the court's

view, Avtex timely made its motion for judgment notwithstanding the verdict and the court may now entertain it.

Nevertheless, in considering Avtex' motion for judgment notwithstanding the verdict on the merits, the court finds that the motion must be denied. When ruling on a motion for a directed verdict, this Court is concerned with the existence or non-existence of evidence, not its weight. See *Long v. Norris & Associates, Ltd.*, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000). If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury. *Id.* As the Court finds that there is ample evidence to support the jury's finding that Avtex was negligent, that its negligence brought about Mr. Huck's injuries and that Mr. Huck's damages are \$97,640.00, this court, as it must, hereby deny Avtex' motion for judgment notwithstanding the verdict.

B. MOTION FOR DISCLOSURE OF SETTLEMENT, FOR SET-OFF AND, IN THE ALTERNATIVE, TO DETERMINE WHETHER THE SETTLEMENTS WERE MADE IN GOOD FAITH.

Avtex seeks to have this court compel the production of the terms of the settlements between CSE and either Mr. Huck, Mrs. Huck, or both, and CCS and either Mr. Huck, Mrs. Huck, or both, have the court off-set the settlement amounts against the judgment and to review the settlements to determine if they were made in good faith, and if this court finds that they were not made in good faith, to reallocate the settlement funds between Mr. Huck and Mrs. Huck. For the reasons explained below this court must deny Avtex's motion.

First, this court, however, is not permitted to compel the disclosure of the terms of the settlements between CSE and either Mr. Huck, Mrs. Huck, or both, and CCS and either Mr. Huck, Mrs. Huck, or both as this is specifically prevented by the South Carolina Rules governing Alternative Dispute Resolution. Rule 2(a). SCADR, defines a mediation as "[a]n informal process in which a third-party mediator facilitates settlement discussions between parties." Rule



6(e), SCADR, provides that "Communications during the mediation settlement conference shall be confidential in accordance with Rule 8." Rule 8, SCADR, provides:

(a) Confidentiality. Communications during a mediation settlement conference shall be confidential. Additionally, the parties, their attorneys and any other person present must execute an Agreement to Mediate that protects the confidentiality of the process. To that end, the parties and any other person present shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:

- (1) Views expressed or suggestions made by another party or any other person present with respect to a possible settlement of the dispute;
- (2) Admissions made in the course of the mediation proceeding by another party or any other person present;
- (3) Proposals made or views expressed by the mediator;
- (4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; or
- (5) All records, reports or other documents created solely for use in the mediation.

(b) Limited Exceptions to Confidentiality. This rule does not prohibit:

- (1) Disclosures as may be stipulated by all parties;
- (2) A report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules;
- (3) The mediator or participants from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the ADR program;
- (4) Threats of harm or attempts to inflict physical harm made during the mediation sessions; and
- (5) Any disclosures required by law or a professional code of ethics.

(c) Private Consultation/Confidentiality. The mediator may meet and consult individually with any party or parties or their counsel during a mediation conference. The mediator without consent shall not divulge confidential information disclosed to a mediator in the course of a private consultation.

(d) No Waiver of Privilege. No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client privilege.

(e) Mediator Not to be Called as Witness. The mediator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and

other documents received by the mediator while serving in that capacity shall be confidential.

As required by Rule 2(a) the parties to this action – Avtex and its attorneys included – entered into an Agreement to Mediate designed to protect the confidentiality of the mediation process in this case. A copy of which is attached to this e-mail. The mediation agreement in this case specifically provides, among other things:

1. All statements made during the course of mediation are privileged, are made without prejudice to any party's legal position, and are non-discoverable and inadmissible for any purpose in any legal proceeding.

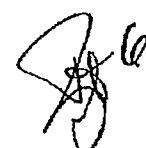
2. The privileged character of any information is not altered by disclosure to the mediator. Disclosure of any records, reports, or other documents received or prepared by the mediator cannot be compelled. The mediator shall not be compelled to disclose or to testify in any proceeding about (i) any records, reports, or other documents received or prepared by the mediator or (ii) information disclosed or representations made in the course of the mediation or otherwise communicated to the mediator in confidence.

3. Evidence of anything said or any admission made in the course of mediation is not admissible into evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

4. Unless a document provides otherwise, no document prepared for the purpose of, or in the course of, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

5. Nothing in this Agreement to Mediate shall limit the admissibility of any particular evidence if all persons who conducted or otherwise participated in the mediation consent to its disclosure.

The settlements with Civil Site and Chandler in this case, if any, were made during the course and scope of the mediation in this matter and are subject to the confidentiality provisions of Rule 6(e) and 8 of the SCADR. See Rule 1, Rule 3, Rule 23 and Rule 24, SCADR. The settlement with CSE was reached at the mediation site. The settlement with CCS was reached a few weeks later during the continuation of the mediation by agreement of Mr. and Mrs. Huck



and CCS; all discussions and negotiations were through the neutral/mediator, John H. Tiller, Esq., who remained involved and who facilitated the settlement negotiations.

What Avtex seeks to have this court do is to compel the production and disclosure of a settlement agreement, assuming there is a settlement agreement, prepared for the purpose of, or in the course of the mediation and then admit its terms into evidence in violation of Rule 6(e) and Rule 8, SCADR, and in violation of the mediation agreement. The Court is barred from inquiring into the confidential settlement discussions and negotiations between Mr. and Mrs. Huck and CSE and CCS or the settlement agreements, if any, consummated as a result or to compel the production of the same. Clearly the settlement agreements, if there are settlement agreements, do not fall within the limited — to use the word specifically set forth in the Rule 8(b), SCADR — exceptions to mediation confidentiality set forth in Rule 8(b). Further, even if the settlement agreements, if there are any settlement agreements, are produced or the terms of the settlements, if there were a settlement are disclosed, they cannot be introduced into evidence for consideration by the court. Consequently, the granting of the motion would be in blatant disregard of the Alternative Dispute Rules and must therefore be denied.

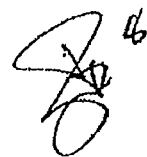
In arguing that it is entitled to the production of the settlement agreements, if there are settlement agreements, or the settlement terms, if there are settlement terms, not once does Avtex reference the Alternative Dispute Resolution Rules. This is telling as Avtex would have the Court ignore or overlook them. This the Court cannot do. Further, Avtex's offer of a protective order does not circumvent the Alternative Dispute Resolution Rules.

Avtex specifically agreed in the mediation agreement "[u]nless a document provides otherwise, no document prepared for the purpose of, or in the course of, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in



any civil action.” Avtex attended mediation. It had an opportunity to participate in any settlements arising out of the same, but elected not to. The time for addressing concerns about confidentiality and specifically what it was agreeing to in the mediation agreement, was at the time of the mediation. That Avtex failed to do so is no basis for requesting that court ignore the South Carolina rules relating to ADR. “South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution. . . .” *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013).

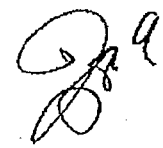
In order to compel the disclosure of a “document prepared for the purpose of, or in the course of, the mediation,” Avtex must demonstrate that a “‘manifest injustice’ will result from non-disclosure. Application of the manifest injustice standard requires the party seeking disclosure to demonstrate that the harm caused by non-disclosure will be manifestly greater than the harm caused by disclosure.” *In re Anonymous*, 283 F.3d 627 (4th Cir. 2002). As the negotiations with CCS continued through the mediator, those negotiations, and any agreement reached are subject to the South Carolina Rules of Alternative Dispute Resolution. *C.f. Id.* at 635 (“‘mediation’ is not limited to the mediation conference, but continues until the mediated dispute has been either dismissed or is otherwise removed from the OCM. This conception of the duration of mediation is a practical necessity of the process itself, in that the mediated dispute is rarely conclusively resolved during the mediation conference. Instead, the parties to the dispute often resume mediation, or refine aspects of the settlement agreement, subsequent to the mediation conference, and many times do so outside the presence of the mediator. These conversations and the information disclosed therein are entitled to the same degree of confidentiality as disclosures made during the mediation conference. Accordingly, until a mediated dispute is dismissed or is otherwise removed from the OCM, all ‘statements,

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documents, and discussions' relating to the mediation remain within the bailiwick of the OCM and, therefore, remain confidential."). Avtex, has failed to make a showing of manifest injustice. In fact, Avtex has failed to make any showing whatsoever.

Further, even if the court were made aware of the terms of the settlement between Mr. and Mrs. Huck and CSE and/or the terms of the settlement agreement between Mr. and Mrs. Huck and CCS, assuming there are such settlement agreements, the court has no jurisdiction to evaluate the "fairness" or "reasonableness" of such settlement agreements or to reallocate the settlements, assuming there is anything to reallocate. Nothing in the law or at equity permits this court to conduct such an inquiry.

Avtex cites *Riley v. Ford Motor Co.*, 408 S.C. 1, 757 S.E.2d 422 (Ct. App. 2014), and *Welch v. Epstein*, 432 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000), in support of its motion for reallocation. Assuming there is even anything to reallocate, Avtex's reliance on *Riley v. Ford Motor Co.*, *supra*, and *Welch v. Epstein*, *supra*, is misplaced as both involve the reallocation of settlement funds between a survival action and a wrongful death action, not the reallocation of settlement funds between two separate living parties with distinct and separate claims. "Any settlement of a wrongful death or survival action must be approved by either a probate court, circuit court. . . ." Section 15-51-41, CODE OF LAWS OF SOUTH CAROLINA, 1976. In an action for approval of a wrongful death and/or survival action, "[t]he court shall schedule a hearing and receive into evidence those facts that the court considers necessary and proper to evaluate the settlement. After conducting this inquiry, the court shall issue its order either approving or disapproving the proposed settlement." Thus, in both *Riley v. Ford Motor Co.*, *supra*, and *Welch v. Epstein*, *supra*, the court was required by statute to evaluate the fairness and reasonableness of the survival and wrongful death settlements. No such requirement exists in the instant case and



there is nothing in the law which permits this court to conduct such an inquiry. Accordingly, Avtex's motion should be denied on this basis too.

Avtex argues that the Court's holding in *Riley v. Ford Motor Co., supra*, "hinged on the Court's equitable powers to reallocate an apportionment of settlement money that was not supported by the record, which was clearly designed to achieve an unfair tactical advantage." This statement illustrates Avtex's misunderstanding of the court's holding in *Riley v. Ford Motor Co., supra*, as the holding therein hinged not on the court's equitable powers but rather on the fact that the court was required by statute to approve the settlement. See Section 15-51-41, CODE OF LAWS OF SOUTH CAROLINA, 1976. In an action for approval of a wrongful death and/or survival action, "[t]he court shall schedule a hearing and receive into evidence those facts that the court considers necessary and proper to evaluate the settlement. After conducting this inquiry, the court shall issue its order either approving or disapproving the proposed settlement." There is no such statute giving the court the authority to approve the settlements between CCS and Mr. and Mrs. Huck, assuming such a settlement exists, and a settlement between CSE and Mr. and Mrs. Huck, assuming such settlement exists. Accordingly, even if the court had evidence before it that there is in fact a settlements agreement between CCS and Mr. and/or Mrs. Huck and a settlement agreement between CSE and Mr. and/or Mrs. Huck, and also had evidence as to what the terms of the settlement agreements are, the court has no mechanism for "receiv[ing] into evidence those facts that the court considers necessary and proper to evaluate the settlement[s]" and, therefore, unlike the court in *Riley v. Ford Motor Co., supra*, this court has no basis on which to make a determination as to whether there should be a reallocation, assuming there is anything to reallocate.



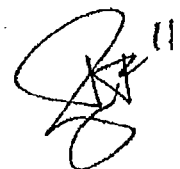
Avex maintains that "that while Mr. and Mrs. Huck are certainly separate individuals, their financial existence is singular." Avtex's position in this regard hinges on the claim that "a family court would undoubtedly view those funds as marital assets." A family court will only apportion a personal injury settlement if it is unallocated. If allocated, a personal injury settlement is clearly non-marital property. Furthermore, this court, not being a family court, has no jurisdiction to determine what is or is not a marital asset of Mr. or Mrs. Huck or how to equitably apportion the same.

Finally, Avtex maintains it is entitled to contribution from the settling defendants. This position is without merit.

The jury found Avtex fifty percent responsible in bringing about Mr. Huck's injuries. Thus, since Avtex was fifty percent negligent, it is joint and severally liable for the verdict and is entitled to no contribution. See Section 15-38-15, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. Consequently, since it has no right of contribution, Avtex motion should be denied on this basis too.

Accordingly, based on the forgoing, Avtex's motion to compel the production of the terms of the settlements between CSE and either Mr. Huck, Mrs. Huck, or both, and CCS and either Mr. Huck, Mrs. Huck, or both, have the court off-set the settlement amounts against the judgment and to review the settlements to determine if they were made in good faith, and if this court finds that they were not made in good faith, to reallocate the settlement funds between Mr. Huck and Mrs. Huck must be denied.

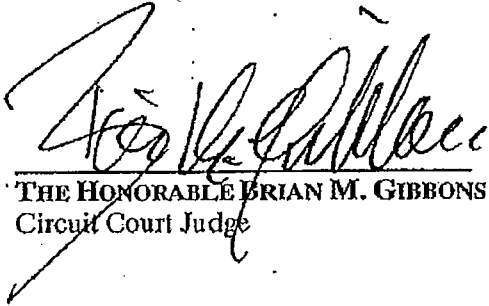
NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of Defendant, Avtex Commercial Properties, Inc., for judgment notwithstanding verdict is hereby **DENIED** and the motion of



Defendant, Avtex Commercial Properties, Inc., to compel the production of the terms of the settlements between CSE and either Mr. Huck, Mrs. Huck, or both, and CCS and either Mr. Huck, Mrs. Huck, or both, have the court off-set the settlement amounts against the judgment and to review the settlements to determine if they were made in good faith, and if this court finds that they were not made in good faith, to reallocate the settlement funds between Mr. Huck and Mrs. Huck is, likewise, hereby **DENIED!**

AND IT IS SO ORDERED!

July 23, 2015
Chester, South Carolina



THE HONORABLE BRIAN M. GIBBONS
Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

WILLIAM HUCK AND DIANE HUCK,

Plaintiff,

vs.

OAKLAND WINGS, LLC d/b/a WILD
WING CAFÉ, CIVIL SITE
ENVIRONMENTAL, INC., OAKLAND
PROPERTIES, LLC, CHANDLER
CONSTRUCTION SERVICES, INC.,
AVTEX COMMERCIAL PROPERTIES,
INC.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-569

ORDER DENYING MOTION
TO ALTER OR AMEND
JUDGEMENT PURSUANT TO
SCRCP 59(c)

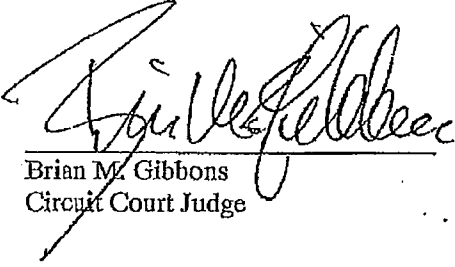
FILED
2015 AUG 18 AM 9:47
JULIE J. ARMSTRONG
CLERK OF COURT

After having considered Defendant's motion to alter or amend judgement in this case and after reviewing the file and the Court's extensive notes, and considering the applicable statutory law, case law and evidence presented, I respectfully deny Defendant's motion. No further briefing or argument is necessary.

AND IT IS SO ORDERED.

Chester, SC .

August 14, 2015



Brian M. Gibbons
Circuit Court Judge

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

28



KENNETH MICHAEL BARFIELD
BARNWELL, WHALEY, PATTERSON & HELMS, LLC
PO BOX H
CHARLESTON SC 29402-0197

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/denying mot to alter or amend judg

CASE NO: 2014CP1000569

William Huck , plaintiff, et al VS Wings Over America Inc , defendant, et al

This judgment was entered on the 18th day of August, 2015, and notice mailed first class on Wednesday, August 19, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.



D. Summers Clarke, II
sclarke@Barnwell-Whaley.com

October 19, 2015

Edward K. Pritchard, III, Esquire
Pritchard Law Group, LLC
129 Broad Street (29401)
P. O. Box 630
Charleston, SC 29402

**Re: William and Diane Huck v. Oakland Wings, LLC d/b/a Wild Wing Café, Civil
Site Environmental, Inc., Oakland Properties, LLC, Chandler Construction
Services, Inc. and Avtex Commercial Properties, Inc.
Lower Court Case No.: 2014-CP-10-569
Appellate Court Case No.: 2015-002025**

Dear Edward:

We do not intend to order the transcript of the trial proceedings in connection with the above matter. Please let us know immediately if you feel otherwise and believe that the transcript or any portion thereof is necessary for the appellate court proceedings. If you have no objection and do not need a copy of the trial transcript, please sign your signature on the second page of this letter, email a signed copy to us today, if at all possible, and return the original to us via US mail. Thank you for your attention to this matter.

Sincerely,

D. Summers Clarke, II

{00568916.DOC.1}

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield
David S. Cox

William C. Helms, III*

* Registered patent attorney
* Retired

Ernest B. Lipscomb, III*
J. Gall Rahn
John A. Jones
Alissa D. Fleming
Barbara J. Wagner, Ph.D.

Lucinda D. Gardner
John W. Fletcher
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Banias

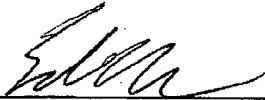
288 Meeting Street, Suite 200, Charleston, SC 29401
Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708
www.barnwell-whaley.com

Edward K. Pritchard, III, Esquire
Page Two
October 19, 2015

DSCII/sbh

c: W. Howard Boyd, Jr., Esquire
N. Keith Emge, Jr., Esquire
Kathy A. Carlsen, Esquire

I, Edward K. Pritchard, III, attorney for William and Diane Huck/Respondents, consent to and do not have any objection to counsel for Avtex Commercial Properties, Inc./Appellant's decision not to order the transcript of the trial proceedings that began May 18, 2015, before the Honorable Brian M. Gibbons, Circuit Court Judge, State of South Carolina, Charleston County, Court of Common Pleas with the lower court case number of 2014-CP-10-569 and Appellate Court Case Number of 2015-002025.



Edward K. Pritchard, III

MEDIATION AGREEMENT

William Huck and Dianne Huck

v.

**Oakland Wings, LLC d/b/a Wild Wings Café, Civil Site Environmental, Inc.,
Oakland Properties, LLC, Chandler Construction Services, Inc. and
Avtex Commercial Properties, Inc.**

THE UNDERSIGNED PARTIES and their attorneys hereby agree that the above matter shall be submitted to mediation pursuant to the applicable rules, guidelines, and Order of the Court having jurisdiction over this matter, and further agree that:

1. All statements made during the course of mediation are privileged, are made without prejudice to any party's legal position, and are non-discoverable and inadmissible for any purpose in any legal proceeding.

2. The privileged character of any information is not altered by disclosure to the mediator. Disclosure of any records, reports, or other documents received or prepared by the mediator cannot be compelled. The mediator shall not be compelled to disclose or to testify in any proceeding about (i) any records, reports, or other documents received or prepared by the mediator or (ii) information disclosed or representations made in the course of the mediation or otherwise communicated to the mediator in confidence.

3. Evidence of anything said or any admission made in the course of mediation is not admissible into evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

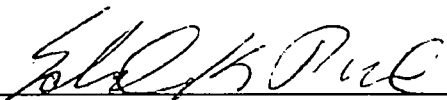
4. Unless a document provides otherwise, no document prepared for the purpose of, or in the course of, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

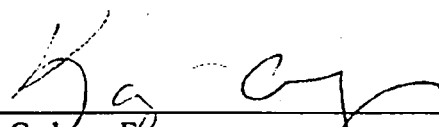
5. Nothing in this Agreement to Mediate shall limit the admissibility of any particular evidence if all persons who conducted or otherwise participated in the mediation consent to its

disclosure. The parties understand that the mediator does not represent any party, and does not provide legal or financial advice. Parties that are not represented understand that they are urged by the mediator to obtain legal and financial advice from an appropriate professional and the mediator is not responsible for failure to obtain such advice.

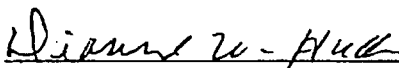
6. The parties agree that any agreements entered into by the parties are made wholly on a voluntary basis, free of any coercion on the part of the mediator. The parties agree that the mediator shall have no liability for any act or omission in connection with the mediation.

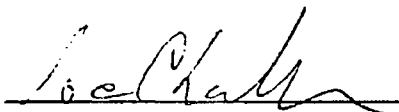
7. The mediator fee is \$350.00 per hour and is to be split between the parties.

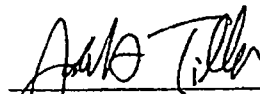

Edward Pritchard, Esq.
Attorney for Plaintiffs

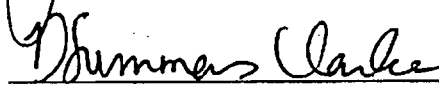

Kathy Carlsten, Esq.
Attorney for Civil Site Environmental

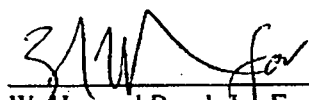

William McLeod

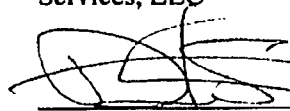

Diana W. Hudd

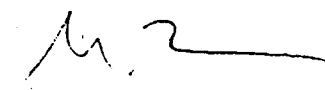

Joe Chalk


John H. Tiller


D. Summers Clarke, II, Esq.
Attorney for Oakland Wings, LLC d/b/a
Wild Wing Café, Oakland Properties, LLC
and Avtex Commercial Properties


W. Howard Boyd, Jr., Esq.
Attorney for Chandler Construction
Services, LLC


W. Howard Boyd, Jr., Esq.
Attorney for Chandler Construction
Services, LLC


M. 2

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Charleston)

PROOF OF ADR OR EXEMPTION

William Huck and Dianne Huck)

Plaintiff,)

vs.)

FILE NO.: 2014-CP-10-0568

Oakland Wings, LLC d/b/a Wild Wings)

Café, Civil Site Environmental, Inc.,)

Oakland Properties, LLC, Chandler)

Construction Services, Inc. and Avtex)

Commercial Properties)

Defendants.)

FILED
JUL 15 2014
CLERK OF COURT
J. ARMSTRONG
MAR 30 PM 4:18

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the Court's Standing Order for Alternative Dispute Resolution dated _____

A. _____ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

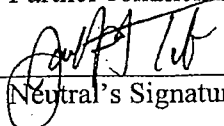
B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

 a mediation

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

 John H. Tiller

3. The ADR was conducted on March 27, 2015
4. As a result of ADR, this case should be considered (please check one);
- ☐ Fully Settled.
- ☐ by Consent Judgment, to be filed by _____
- or ☐ Voluntary Dismissal to be filed by _____
- ☒ Partially Settled. Only as to Civil Site Environmental Inc.
- ☐ At an Impasse.
- ☐ In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____
5. Plaintiff ☒ was present ☐ was not present
Defendant ☒ was present ☐ was not present
6. Other participants were:
- ☒ Lawyers for Defendant Kathy Carlsten, Summers
Clarke, II, Zack Weaver
- ☒ Lawyer for Plaintiff Edward Pritchard
- ☒ Representative for Insurance Carrier Via Telephone
- ☐ UIM _____
- ☐ Experts _____
- ☐ Others _____
7. Choice of the neutral was by:
- ☒ Stipulation
- ☐ Court Order
8. The total number of hours spent in the ADR 6.0 hours.
conference was: _____
9. Further comments of the neutral:
- 

Neutral's Signature
- Date: March 30, 2015



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

January 22, 2016

The Honorable Lisa A. Kinon
Chair, ADR Commission
714 Sweetbriar Lane
Conway, SC 29526

Re: Proposed Amendments to ADR Rule 8

Dear Judge Kinon:

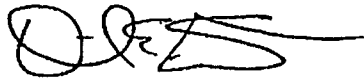
The Court has reviewed the ADR Commission's proposed amendments to Rule 8 of the ADR Rules governing confidentiality. Although the Court appreciates the work of the Commission in examining the current text of the rule, the Court has declined to submit the proposed changes to the General Assembly at this time. However, the Court invites the Commission to resubmit the proposal with a more thorough explanation of the need for the proposed changes and their intended effect.

The proposed changes are quite extensive in that they redefine confidentiality, expand the scope of confidentiality of communications, change the current exceptions for confidentiality, and create an admissibility exception to otherwise confidential information disclosed during a mediation conference. While you have indicated the Commission determined there was a need for clarification of Rule 8, there is no explanation concerning the nature of the questions the Commission received from mediators, or what concerns those questions raised amongst Commission Members. Moreover, while you indicated extensive research was performed on the issue, and that there was considerable discussion about the proposed changes, there is no information in the proposal concerning the nature of the research or the intended effect of the Commission's proposed changes.

Should the Commission elect to resubmit the proposed amendments, the Court would request that any new submission more completely explain the reason for each individual change, as well as the intended effect of each change.

Should you have any questions about the foregoing, please do not hesitate to contact me.

Very truly yours,



CLERK

/bs
CC: South Carolina Bar

Rule 8

Confidentiality

(a) Confidentiality. Any mediation communication disclosed during a mediation, including, but not limited to, oral, documentary, or electronic information, shall be confidential, and shall not be divulged by anyone in attendance at the mediation or participating in the mediation, except as permitted under this rule or by statute. Additionally, the parties, their attorneys and any other person present or participating in the mediation must execute an Agreement to Mediate that protects the confidentiality of the process. The parties and any other person present or participating shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any mediation communication disclosed in the course of a mediation, which shall include, but not be limited to:

(1) Views expressed or suggestions made by another party or any other person present with respect to a possible settlement of the dispute;

(2) Admissions made in the course of the mediation proceeding by another party or any other person present;

(3) Proposals made or views expressed by the mediator;

(4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; and

(5) All records, reports or other documents created solely for use in the mediation or received by a mediator while serving as a mediator.

(b) Waiver of Confidentiality. Upon the signing by the parties of an agreement reached during mediation, confidentiality is waived unless otherwise agreed to by the parties.

(c) Limited Exceptions to Confidentiality. There is no confidentiality attached to information that is disclosed during a mediation:

(1) for which the confidentiality against disclosure has been waived or stipulated to by all parties;

(2) that is wilfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;

(3) offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding;

(4) offered for the limited purpose of establishing, refuting, approving, voiding, or reforming a settlement agreement reached during a mediation; or

(5) offered to report, prove, or disprove professional misconduct occurring during the mediation, solely for the internal use of the body conducting the investigation of the conduct.

(d) **Limited disclosures.** A mediation communication disclosed under subsections (c)(3), (c)(4), and ~~(c)~~(5) remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this rule or by statute.

(e) **Private Consultation/Confidentiality.** The mediator may meet and consult individually with any party or parties or their counsel during a mediation conference. The mediator without consent shall not divulge confidential information disclosed to a mediator in the course of a private consultation.

(f) **No Waiver of Privilege.** No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client privilege.

(g) **Mediator Not to be Called as Witness.** The mediator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and other documents received by the mediator while serving in that capacity shall be confidential.

(h) **Admissible information.** Information that would be admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in a mediation.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Brian M. Gibbons, Circuit Court Judge

RECEIVED

MAR 31 2016

Lower Court Case No. 2014-CP-10-0569
Appellate Case No. 2015-002025

SC Court of Appeals

William Huck and Dianne Huck.....Respondents,

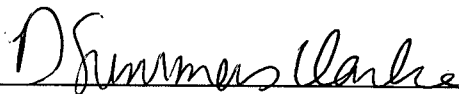
v.

Oakland Wings, LLC d/b/a Wild Wing Cafe,
Civil Site Environmental, Inc., Oakland Properties,
LLC, Chandler Construction Services, Inc., Avtex
Commercial Properties, Inc.....Defendants,

Of Whom Avtex Commercial Properties, Inc. is the.....Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Record on Appeal complies with Rule 210(g),
SCACR.



K. Michael Barfield, Esquire
S.C. State Bar No.: 69400
D. Summers Clarke, II, Esquire
S.C. State Bar No.: 74829
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Post Office Drawer H
Charleston, SC 29402
mbarfield@barnwell-whaley.com
sclarke@barnwell-whaley.com
(843) 577-7700 FAX (843) 577-7708
*Attorneys for Appellant Avtex Commercial
Properties, Inc.*

March 9, 2016

**BARNWELL
WHALEY**

PATTERSON & HELMS LLC

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YEARS
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Attorneys for businesses & professionals since 1938

D. Summers Clarke, II
sclarke@barnwell-whaley.com

March 29, 2016

RECEIVED
MAR 31 2016
SC Court of Appeals

187.108

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: William and Dianne Huck v. Oakland Wings, LLC d/b/a Wild Wing Café, Civil
Site Environmental, Inc., Oakland Properties, LLC, Chandler Construction
Services, Inc. and Avtex Commercial Properties, Inc.
Lower Court Case No.: 2014-CP-10-569
Appellate Court Case No.: 2015-002025**

Dear Madame Clerk:

Enclosed please find the original and sixteen (16) copies of Record on Appeal in the above-referenced matter. Please file the original of the same and return one (1) stamped "filed" copy to our office in the envelope provided.

By copy of this letter and enclosure to opposing counsel, I am serving the same.

Thank you for your assistance in this matter.

Very truly yours,



D. Summers Clarke, II

DSC, II/dly

Enclosures

cc: Edward K. Pritchard, Esquire
Elizabeth F. Fulton, Esquire

606236

www.barnwell-whaley.com

SOUTH CAROLINA OFFICE:

288 Meeting Street, Suite 200, Charleston, SC 29401
P 843.577.7700 F 843.577.7708

NORTH CAROLINA OFFICE:

1427 Military Cutoff Road, Suite 202, Wilmington, NC 28403
P 910.679.1388 F 910.679.4663

REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE