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THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2010-CP-14-362

Cynthia Richardson,.....Appellant,

v.

Piggly Wiggly Central, Inc.,.....Respondent.

RECORD ON APPEAL

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Sumter SC 29150
803-775-7004
Attorney for Appellant

Thomas E. Player, Jr.
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803-775-2306
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CLARENDON COUNTY
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Case No. 2010-CP-14-362

Cynthia Richardson,.....Appellant,
v.
Piggly Wiggly Central, Inc.,.....Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Cynthia Richardson,
PO Box 565
Manning, SC 29102 Plaintiff,

vs.

Piggly Wiggly Central, Inc.,
Sunset Dr. NW
Manning, SC 29102 Defendant.

IN THE SUMMARY COURT FOR THE

^{CV}
2009-MC-14-10100441

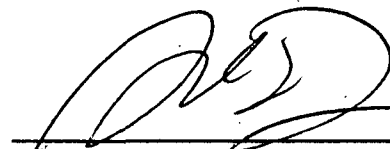
SUMMONS
(Jury Trial Requested)

2009 MAY 12 AM 11:12

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint of the Plaintiff(s) herein, a copy of which is herewith served upon you, by filing said Answer with the above named Court and to serve a copy of said Answer to the Complaint upon the undersigned Attorney for the Plaintiff(s) at his office located at 35 South Sumter Street, PO Box 370, Sumter, SC 29151-0370, within Thirty (30) days after the service hereof, exclusive of the date of service. If you fail to Answer the Complaint within the time aforesaid, the Plaintiff(s), by and through the undersigned attorney, will apply to the Court for an Order for the relief specified in the Complaint and a Judgment by Default will be rendered against you for the relief sought in the Complaint.

THE DEAS LAW FIRM



Garryl L. Deas, Esquire
Post Office Box 1211
201 N. Main Street
Sumter, SC 29151
(803) 775-7004
Attorney for the Plaintiff

Sumter, South Carolina

Date: May 6, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Cynthia Richardson,

Plaintiff,

vs.

Piggly Wiggly Central, Inc.,

Defendant.

IN THE SUMMARY COURT FOR THE

2009-MC-14-

COMPLAINT
(Jury Trial Requested)

THE PLAINTIFF, COMPLAINING OF THE DEFENDANT, would respectfully show
the Court:

1. The Plaintiff is a citizen and resident of Sumter County, South Carolina.
2. The Defendant is a business entity organized and existing under the laws of a State of the United States of America and owns property and/or does business in Sumter County, South Carolina.
3. At all relevant times, the Plaintiff was on the premises of the Defendant for the specific purpose of transacting business with the Defendant and, as such, was a business invitee of the Defendant.
4. At all relevant times herein, the knowledge of the Defendant was either obtained by the Defendant directly or through agents acting on behalf of the Defendant. Such knowledge came from either prior incidents of the same or similar nature and/or the common knowledge of a reasonable person. The Defendant had actual knowledge of the events and conditions alleged or should have had such knowledge.

5. On or about October 11, 2008, the Plaintiff was a customer shopping in the Defendant's store. While in the Defendant's store, the Plaintiff slipped and fell on a wet spot on the floor. The Defendant should have warned the customers of the hazard.

6. As a result of the Defendant's failure to warn the customers of the hazard, or provide a non-slippery surface for customers to walk upon, the Plaintiff fell. Given the design and color of the flooring, and the lighting in the store, the dangerous condition was not immediately obvious to the average person.

7. However, agents of the Defendant, positioned in the store had a clear and unobstructed view of the dangerous condition. Despite actual knowledge of the dangerous condition, the agents of the Defendant failed to take any corrective action to prevent harm to its business invitees.

8. The Plaintiff slipped on the wet flooring, causing her to fall onto the hard flooring, thereby injuring her body.

9. The Defendant was negligent, grossly negligent, willful and wanton in the above stated actions as follows:

- a) The Defendant failed to insure that non-slippery flooring was provided.
- b) The Defendant failed to post adequate warnings to alert the Plaintiff to the hazardous condition.
- c) The Defendant knew of the potential hazard. Despite this knowledge, the Defendant failed to take any remedial action to fix the problem.
- d) In such other and further particulars as the evidence at trial may show

WHEREFORE, having stated a cause of action upon which this Court may grant relief, the Plaintiff(s) pray the Court to enter verdict and judgment for the Plaintiff(s) in an amount sufficient to compensate them for the damages they sustained, such punitive damages as a jury might reasonably award, a reasonable attorney's fee, the costs of this action and such other and further relief as this Court deems in the interests of Justice.

THE DEAS LAW FIRM



Garryl L. Deas, Esquire
Post Office Box 1211
201 N. Main Street
Sumter, SC 29151
(803) 775-7004
Attorney for the Plaintiff

Sumter, South Carolina

Date: May 6, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Cynthia Richardson,

Plaintiff,

vs.

Piggly Wiggly Central,

Defendant.

IN THE SUMMARY COURT
C/A NO: 2009-Cv-14-10100441

ANSWER

The Defendant, answering the Complaint, alleges:

AS A FIRST DEFENSE

1. The Defendant denies each allegation of the Complaint not hereinafter specifically admitted.
2. Paragraph one 1 is admitted, upon information and belief.
3. Paragraph 2 is admitted.
4. The defendant lacks information sufficient to form a belief as to the allegations of paragraph 3 and therefore denies the same.
5. The defendant lacks information sufficient to form a belief as to the allegations of paragraph 4 and therefore denies the same.
6. Paragraphs 5, 6, 7, 8, and 9 are denied.

FOR A SECOND DEFENSE:

7. The allegations of the First Defense are incorporated herein by reference, the same as if set out verbatim;

8. If this Defendant was negligent, careless, reckless, willful, or wanton (which is denied), the Plaintiff was likewise negligent, careless, reckless, willful and wanton and such conduct was the proximate cause of the alleged injuries or damages sustained by the Plaintiff, and

and such conduct, in one or more of the following particulars, was greater than that of this Defendant and the Plaintiff, is, therefore, barred from recovering in this action;

- a. In failing to keep a proper lookout;
- b. In ignoring the condition of the surface upon which Plaintiff was walking.

FOR A THIRD DEFENSE:

9. The allegations of the preceding Defenses are incorporated herein by reference, the same as if set out verbatim.

10. If the negligence, carelessness, recklessness, willfulness, and wantonness of the Plaintiff as specified in the Second Defense was not greater than that of this Defendant (which is denied), the amount of Plaintiff's recovery should be reduced in proportion to her negligent, careless, reckless, willful, and wanton conduct.

FOR A FOURTH DEFENSE:

11. The allegations of the preceding Defenses are incorporated herein by reference, the same as if set out verbatim.

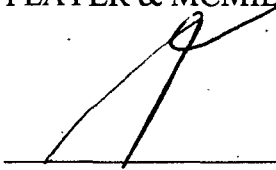
12. The Plaintiff assumed the risk when Plaintiff voluntarily walked upon the surface which Plaintiff alleges caused Plaintiff to fall.

FOR A FIFTH DEFENSE AND SET-OFF

13. The Defendant is entitled to set-off medical payment insurance benefits paid on behalf of the Defendant..

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendant prays that the Complaint be dismissed.

PLAYER & MCMILLAN, L.L.C.



THOMAS E. PLAYER, JR.
ATTORNEY FOR THE DEFENDANT
305 NORTH MAIN STREET
SUMTER, SC 29151-1242
(803) 775-2306

STATE OF SOUTH CAROLINA)

IN THE SUMMARY COURT

COUNTY OF CLARENDON)

C/A NUMBER: 2009-CV-14-10100441

Cynthia Richardson,)

Plaintiff,)

vs.)

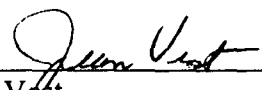
Piggly Wiggly Central, Inc.,)

Defendant.)

CERTIFICATE OF MAILING

This is to certify that a copy of the Defendant's Answer in the foregoing matter was deposited in the United States mail, with first class postage affixed thereto, addressed to the following attorney of record :

Mr. Garryl Deas, Esquire
Post Office Box 1211
Sumter, South Carolina 29151-1211



Jean Vest

Date: June 19, 2009

STATE OF SOUTH CAROLINA	)	IN THE SUMMARY COURT
	)	
COUNTY OF CLARENDON	)	2009-CV-14-10100411
	)	
Cynthia Richardson,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S REQUEST TO
	)	CHARGE
Piggly Wiggly Central,	)	
	)	
Defendants.	)	

I.

I charge you that in order for a Plaintiff to recover he must prove by a preponderance of evidence that the Defendant was negligent and the negligence of the Defendant was the proximate cause of the Plaintiff's injury.

II.

I charge you that a proximate cause of an injury is a cause which, in natural and continuous sequence, produces the injuries and damages, and without which the injuries and damages would not have occurred. Childers v. Gas Lines, Inc., 248 SC 316, 149 SE 2d 761 (1966).

III.

I charge you that when one person is injured by the negligent acts of another, the injured person shall be entitled to be fully compensated for all injuries directly or proximately resulting from any negligent acts or omissions. In determining the amount of compensation for injuries suffered by the Plaintiff, as a result of the Defendant's negligence, it is proper to consider:

1. The expenses incurred for all necessary medical treatment;
2. Lost Wages from work;

3. The character of the injury and the amount that would be necessary to make the injured person whole with respect to permanent injuries.
4. Past and future physical pain and suffering that results from the injuries sustained;
5. Loss of enjoyment of life;

Baldowski v. U.S., 111 F.Supp., 653 (D.S.C. 1953); McNeill v. U.S., 519 F. Supp. 283 (D.S.C. 1981).

IV.

I charge you that the injured party may recover for mental anguish brought about by bodily injury and suffering. If you find that the injured party is entitled to recover damages, you may consider as an element of those damages such pain and suffering and mental anguish that you find, to a reasonable certainty will occur in the future as a result of the injuries. In assessing mental anguish, you may take into account anxiety or worry about the possible future occurrence or condition resulting from the injuries that the Plaintiff received, if you are satisfied to a reasonable certainty that the Plaintiff will suffer such anxiety and worry.

Ford v. A.A.A. Highway Express, 204 S.C. 433, 29 S.E. 2d 760 (1944); 22 Am. Jur. 2d Damages § 119 (1965).

I charge you that pain and suffering is a material element of damages on which a recovery may be based. Pain and Suffering have no market price. They are not capable of exact measurement, and there is no fixed rule or standard whereby damages for them can be measured. Therefore, the amount of damages to be awarded for pain and suffering must be left to the judgment of you, the jury.

Edwards v. Lawton, 244 S.C. 276, 136 S.E. 2d 708 (1964); Mims, As Adm. v. Florence Co. Ambulance Service, 296 S.C. 4, 370 S.E. 2d 96 (CT. App. 1988).

V.

A person who has a physical or mental condition or disability existing at the time of injury is not entitled to recover damages for such condition. However, the person is entitled to recover damages for any aggravation, enhancement, or making worse of such condition proximately resulting from the injury caused by the Defendant. This is true even if the person's condition or disability made him more susceptible to injury and even if a normally healthy person would not have suffered any substantial injury. Where a pre-existing disability or condition is so aggravated, the Plaintiff is entitled to recover and the Defendant is liable for only those injuries that were caused by the aggravation and not for injuries that resulted from the original condition.

Tilley v. Delta Airlines, Inc., 249 F. Supp. 696 (D.S.C. 1966); Vaughn v. Southern Bakeries, Co., 247 F. Supp. 782 (D.S.C. 1965); 22 Am. Jur. 2d Damages, §122 (1965). Watson v. Wilkinson Trucking Co., 244 S.C. 217, 136 S.E. 2d 286 (1964).

VI.

I charge you that an owner/occupier owes an invitee a duty of due care to discover risks and to take safety precautions to warn of or eliminate unreasonable risks, including the foreseeable risk of criminal conduct by others within the area of invitation on the premises.

Shipes v. Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 238 S.E.2d 167 (1977).

The Deas Law Firm



Garryl L. Deas, Esquire
Attorney for Plaintiff
Post Office Box 1211
Sumter, SC 29151
(803) 775-7004

March 23, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Cynthia Richardson,

Plaintiff,

vs.

Piggly Wiggly Central, Inc.,

Defendant.

) IN THE SUMMARY COURT
) CIVIL ACTION NO.: 2009-CV-14-10100441
)

)
)
) **MOTION FOR JUDGMENT NOT**
) **WITHSTANDING THE VERDICT**
)
)
)
)

The Defendant hereby moves for Judgment Not Withstanding the Verdict at the conclusion of the trial rendered by the jury. The basis of the Motion is that the only reasonable inference from the evidence when taken as a whole and viewed in the light most favorable to the Plaintiff is that the Defendant was not guilty of negligence, gross negligence or recklessness and/or that any such negligence or recklessness was not the proximate cause of the Plaintiff's injuries. In addition the only reasonable inference to be drawn from the evidence is that the degree of Plaintiff's negligence greater than that of the Plaintiff and, consequently, the Defendant is entitled to Judgment as a matter of law.

More specifically, the evidence in this case was that the Plaintiff, after shopping in the defendant's grocery store slipped on the concrete sidewalk as she exited the store. It was raining, and had been raining when she entered the store and she knew that the sidewalk was wet. There was no evidence that the wet concrete sidewalk presented an unreasonably dangerous condition.

There was no evidence that the concrete sidewalk was unreasonably slippery. The mere fact that the Plaintiff slipped on the sidewalk is insufficient to create an inference that it was

unreasonably slippery. In addition, there was an absence of evidence that, if it were slippery, the Defendant was on notice of such condition.

While there was testimony that there were no warning signs present, the Plaintiff acknowledged that she was aware that it was raining outside, that the sidewalk was on the outside of the building and that it was raining on the sidewalk. It is elementary that it is unnecessary to warn someone of a condition of which they are aware. Consequently, any lack of warning cannot be said to be the proximate cause of Plaintiff's fall.

While there was evidence that there were no mats on the inside of the store. There was no evidence, however, as to how a mat would have prevented the Plaintiff from falling on the outside of the store on the concrete sidewalk.

In summary, there was no evidence from which a reasonable inference could be drawn that the Defendant did or failed to do anything relative to the concrete sidewalk which can be said to have been the proximate cause of the fall. Consequently, there was no breach of duty owed by the Defendant which resulted in her injury.

Respectfully submitted,
PLAYER & McMILLAN, L.L.C.



THOMAS E. PLAYER, JR.
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305 NORTH MAIN STREET
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(803) 775-2306
email: tomplayer@sc.rr.com

March 26, 2010
Sumter, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)
)
Cynthia Richardson,)
)
Plaintiff,)
vs.)
)
Piggly Wiggly Central,)
)
Defendant.)

IN THE SUMMARY COURT
C/A NO: 2009-CV-14-10100441

**MEMORANDUM OF DEFENDANT-
APPELLANT**

STATEMENT OF THE CASE

This is a slip and fall case which was tried in the Clarendon County Magistrate's Court before a jury on March 23, 2010. At the conclusion of the evidence, the Defendant-Appellant, moved for a Directed Verdict, which was denied. The jury returned a verdict for actual damages. With the permission of the Magistrate, the Defendant-Appellant filed a written Motion for Judgment Not-Withstanding the Verdict (Tab A) which was likewise denied. The Plaintiff-Respondent filed a return to the motion (Tab B).

FACTS

The un-contradicted testimony of the Plaintiff-Respondent was: that she fell at the Piggly Wiggly on a rainy day; it was raining when she entered and exited the store; that she slipped on the concrete sidewalk, just outside the door, as she exited the building; and, that the concrete sidewalk where she slipped was uncovered, and wet from the rain. There was no other evidence as to the condition of the concrete sidewalk.

ARGUMENT

Plaintiff-Respondent's testimony was that she slipped on the concrete sidewalk, outside the building, yet there was no evidence introduced as to any defect in the sidewalk, or any unreasonable risk of harm due to the condition of the sidewalk. The bare testimony that the Plaintiff-Respondent slipped thereon is insufficient to prove the existence of an unreasonably dangerous condition. The Magistrate's Order denying the Motion for Judgment Not Withstanding the Verdict (Tab C), and the Magistrate's "Answer to Appeal" (Tab D), suggest an incorrect recollection of the testimony. The trial transcript (Tab E) shows that the Plaintiff-Respondent slipped on the concrete sidewalk outside of the door. Plaintiff-Respondent's counsel and the presiding Magistrate incorrectly recalled that she testified that she slipped on the tile floor inside of the building. The transcript of testimony, page sixteen (Tab F), contains the following the testimony of the Plaintiff-Respondent upon examination by Mr. Deas:

Mr. D.: The flooring of the store, as you exit or enter, what's it made of?
Is it carpet? Is it tile, is it concrete floor? Do you know?

Ms. R.: Uhm. The flooring got tile on it, I believe. But on the outside it got concrete.

Mr. D.: Ok. The part, the part that you slipped on, was it the concrete part or the tile part?

Ms. R.: The concrete part.

This transcript shows that the Magistrate's recollection of the testimony was inaccurate. It could not be more specific that she slipped on the concrete sidewalk on the outside as opposed to the tile floor of the interior.

The fact that she slipped is insufficient to prove negligence. Howard v Kmart Discount Stores, 293 S.C. 134, 359 S.E. 2nd 81 (SC App. 1987) (Tab G). In Howard, the Plaintiff was awarded damages for injuries received when she slipped and fell in the Defendant's store. The claim was that the floor was unduly slippery because of the manner in which it was waxed. The court held that she could not establish that the

floor was unreasonably dangerous by showing nothing more than that she slipped on the floor.

While no South Carolina law addresses a set of facts like those in this case, a Georgia case, Cavin vs. Warehouse Home Furnishings Distributors, Inc., 209 GA App. 706, 434 S.E. 2nd 532 (1993) (Tab G), addresses a situation where a Plaintiff fell on a wet sidewalk, resulting in a leg fracture. Her theory of liability was that a portion of the concrete sidewalk upon which she fell was painted and the paint made it slick when wet. The court, in upholding a grant of Summary Judgment, held that the Plaintiff had the burden of showing that the paint was defective or unsuitable for the purpose or that the sidewalk was otherwise defective. The fall, in and of itself, was not sufficient evidence of a dangerous condition.

There was testimony from the Plaintiff-Respondent, the only witness who testified, that there were no wet floor signs or floor mats inside the building. Any absence of those items was not the proximate cause of the fall. In light of the testimony that she slipped on the outside, concrete sidewalk, the Defendant-Appellant elected not to put up any evidence to contradict the testimony concerning the wet floor signs and floor mats since any absence thereof could not possibly be the proximate cause of the fall. Additionally, the Plaintiff-Respondent acknowledged that she was aware of the wet condition of the sidewalk so wet floor signs were not needed to inform her of that condition.

CONCLUSION

The Magistrate Court should have granted the Defendant-Appellant's Motion for a Directed Verdict and having erred in failing to do so, should have granted the Motion for Judgment Not Withstanding the Verdict.

Respectfully Submitted,

PLAYER & MC MILLAN, L.L.C.



THOMAS E. PLAYER, JR.
ATTORNEY FOR THE DEFENDANT-
APPELLANT
305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SC 29151-3690
(803) 775-2306

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Cynthia Richardson,

Plaintiff,

vs.

Piggly Wiggly Central,

Defendants.

) IN THE SUMMARY COURT

)

) 2009-CV-14-10100411

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**RETURN TO MOTION FOR
JUDGMENT NOT WITHSTANDING
THE VERDICT**

Now comes Plaintiff, Cynthia Richardson, who submits this Return to Motion for Judgment Not Withstanding the Verdict. The basis of this Return is that there was sufficient evidence for reasonable inference to be drawn by the jury that the Defendant was negligent and the Defendant's negligence was the proximate cause of the Plaintiff's injuries and therefore, the Plaintiff was entitled to an award of damages.

More specifically, the Plaintiff testified that she slipped and fell on a wet area as she began to exit the store and the area was wet because it was raining on the day of the incident. The uncontroverted evidence established that the Defendant took no steps to address the wet flooring in its store by mopping the area or by warning customers that the flooring was wet by placing cones or caution signs in the area. Additionally, the Plaintiff testified that there were no floor mats placed in the area where the flooring was wet and the Defendant did not offer any evidence to the contrary. In fact, the Defendant offered no testimony or any other evidence to establish what, if any steps were taken to address the potential hazard created by the wet flooring.

Furthermore, the Plaintiff maintains that in considering a Defendant's motion for a Judgment Notwithstanding a Verdict, the trial court should view the evidence in the light most

favorable to the non-moving party, which in this matter would be the Plaintiff, Cynthia Richardson, and only disturb the jury's verdict, if there is no evidence to support the jury's findings. Milliken & Co. v. Morin, 685 S.E. 2d 828 (2009). In the case at hand, the Plaintiff presented unchallenged evidence from which a reasonable inference could be drawn by the jury that the Defendant was negligent and that the Defendant's negligence was the direct cause of the Plaintiff's injuries.

Accordingly, the Plaintiff requests that this Court deny the Defendant's Motion for a Judgment Notwithstanding the Verdict.

Respectfully submitted,
THE DEAS LAW FIRM



Garryl L. Deas, Esquire
Attorney for the Plaintiff
Post Office Box 1211
Sumter, SC 29151
(803) 775-7004

April 7, 2010
Sumter, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE SUMMARY COURT
	)	
COUNTY OF CLARENDON	)	2009-CV-14-10100411
	)	
Cynthia Richardson,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM OF PLAINTIFF-
	)	RESPONDENT
Piggly Wiggly Central,	)	
	)	
Defendants.	)	
	)	

STATEMENT OF CASE

The matter before the Court is a premises liability matter (slip and fall) that was tried in the Clarendon County Magistrate Court before a jury on March 23, 2010. At the conclusion of the evidence the Defendant-Appellant moved for a directed verdict which was denied. The jury rendered a verdict finding that the Defendant-Appellant was negligent and awarding damages to the Plaintiff-Respondent in the amount of \$3,870.00. With the permission of the magistrate, the Defendant-Appellant filed a written Motion for Judgment Not Withstanding the Verdict which was likewise denied. The Plaintiff-Respondent filed a Return to the Defendant-Appellant's Motion for a Judgment Not Withstanding the Verdict which is attached hereto as Exhibit A.

FACTS

On or about October 11, 2008, the Plaintiff-Respondent was a customer shopping in the Defendant-Appellant's store. While in the Defendant-Appellant's store, the Plaintiff-Respondent slipped and fell on a wet area as she exited the premises of the Defendant-Appellant. The Plaintiff-Respondent fell in a wet area that was located near the doorway of the Defendant-Appellant's store. When the Plaintiff-Respondent fell part of her body was in the Defendant-Appellant's store. The Plaintiff-Respondent did not fall on the sidewalk located outside of the

Defendant-Appellant's store. As a result of the fall, the Plaintiff-Respondent suffered serious injuries to her person which required her to receive medical treatment. As a consequence of the Defendant-Appellant's negligence, the Plaintiff-Respondent incurred medical bills and endured substantial pain and suffering.

ARGUMENT

The Plaintiff-Respondent maintains that the trial court did not err in denying the Defendant-Appellant's Motion for a Judgment Not Withstanding the Verdict. The Plaintiff-Respondent asserts that there was sufficient evidence for a reasonable inference to be drawn by the jury that the Defendant-Appellant was negligent and the Defendant-Appellant was the proximate cause of the Plaintiff-Respondent's injuries and therefore, the Plaintiff-Respondent was entitled to an award of damages by the jury.

The Plaintiff-Respondent testified at trial that she slipped and fell on a wet area as she began to exit the store and the area was wet because it was raining on the day of the incident (see Court transcript page 12, lines 7-14). The uncontroverted evidence established that the Defendant-Appellant took no steps to address the wet flooring in its store by mopping the area or by warning customers that the flooring was wet by placing cones or caution signs in the area. Additionally, the Plaintiff-Respondent testified that there were no floor mats placed in the area where the flooring was wet and the Defendant-Appellant did not offer any evidence to the contrary (see Court transcript page 16, line 3-4). In fact, the Defendant-Appellant did not call any witnesses in the trial of this case and provided no testimony or any other evidence to establish what, if any steps were taken to address the potential hazard created by the wet flooring.

Furthermore, the Plaintiff-Respondent maintains that the Court should view the evidence in the light most favorable to the non-moving party, which in this matter would be the Plaintiff-

Respondent, Cynthia Richardson, and only disturb the jury's verdict, if there is no evidence to support the jury's findings. **Milliken & Co. v. Morin**, 685 S.E. 2d 828 (2009). In the case at hand, the Plaintiff-Respondent presented unchallenged evidence from which a reasonable inference could be drawn by the jury that the Defendant-Appellant was negligent and that the Defendant-Appellant's negligence was the direct cause of the Plaintiff-Respondent's injuries.

CONCLUSION

Accordingly, the Plaintiff-Respondent contends that the trial court did not err in denying the Defendant-Appellant's Motion for a Judgment Not Withstanding the Verdict and therefore, the Defendant-Appellant's appeal should be denied and the verdict rendered at trial should be upheld.

Respectfully submitted,
THE DEAS LAW FIRM



Garryl L. Deas, Esquire
Attorney for the Plaintiff
Post Office Box 1211
Sumter, SC 29151
(803) 775-7004

March 25, 2011
Sumter, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)
)
Cynthia Richardson,)
)
Plaintiff,)
)
vs.)
)
Piggly Wiggly Central,)
)
Defendants.)
_____)

IN THE SUMMARY COURT

2009-CV-14-10100411

ORDER

Certified True Copy of Original
filed in this office.

Date: 6/14/2010
P.B. Harvin, Jr., Magistrate
Clarendon County, SC

This matter comes before the Court on April 22, 2010 for a hearing to address the Defendant's Motion for a Judgement Not Withstanding the Verdict. Present at the hearing were the attorney for the Plaintiff, Garryl L. Deas, Esquire and the attorney for the Defendant, Thomas E. Player, Jr., Esquire.

The record reflects that a jury trial was held on March 23, 2010 and a jury verdict in the amount of \$3,870.00 was awarded to the Plaintiff.

The attorney for the Defendant, Thomas E. Player, Jr., Esquire, filed a Notice of Motion for Judgment Not Withstanding the verdict on March 26, 2010. The attorney for the Plaintiff, Garryl L. Deas, Esquire filed a Return to Motion for Judgment Not Withstanding the Verdict on April 6, 2010.

Counsel for the parties had opposing views as to the specifics of the Plaintiff, Richardson's testimony regarding where she fell at the Defendant's store. Counsel for the Defendant argued that the Plaintiff testified that she fell on the concrete sidewalk as she exited the Defendant's grocery store. Accordingly, counsel for the Defendant maintained that no reasonable jury could find that the Defendant was negligent and therefore, liable for the Plaintiff's fall and ensuing injuries because she fell outside of the Defendant's premises.

Further, counsel for Defendant argued that the concrete sidewalk where the Plaintiff fell was wet from rainfall and that there was no evidence that the concrete sidewalk presented an unreasonably dangerous condition and there was no evidence that the Defendant, Piggly Wiggly was on notice of such a condition. Additionally, counsel for Defendant argued that Piggly Wiggly has no legal duty or ability to safeguard its patrons from a sidewalk that is wet from rain and is located on the outside of its store.

Counsel for the Plaintiff argued that Ms. Richardson did not testify that she fell outside of the store but that the Plaintiff testified that she slipped and fell on a wet area as she began to exit the store and the area was wet because it was raining on the day of the incident. Further, counsel for the Plaintiff maintained that the Plaintiff testified that the wet area that her foot slipped on was inside of the store and that when she fell, the top portion of her body was inside of the store and the bottom portion was in the doorway. Additionally, counsel for the Plaintiff asserted that the uncontroverted evidence established that the Defendant took no steps to address the wet flooring in its store by mopping the area or by warning customers that the flooring was wet by placing cones or caution signs in the area. Counsel for Plaintiff also noted that the Plaintiff testified that there were no floor mats placed in the area where the flooring was wet and that the Defendant did not offer any evidence to the contrary.

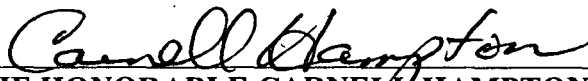
In ruling on a motion for Judgment Not Withstanding the Verdict, this court must view the evidence and the inferences that reasonably can be drawn therefrom, in the light most favorable to the non-moving party, which in the case at hand, is the Plaintiff. Law v. S.C. Dept. of Corrections, 629 S.E. 2d 642 (2006). With respect to the Plaintiff's testimony regarding where she fell and the parties' opposing views on this matter, the court finds no reason to draw any conclusion different than that reached by the jury on this issue, and further asserts that any factual dispute involving the Plaintiff's testimony was sufficiently addressed and resolved by

way of the jury's verdict. The Court notes that the jury is the finder of fact and there is evidence on record to support the verdict reached by the jury in this matter. Moreover, this Court notes that the Defendant did not offer any testimony or other evidence to establish what, if any steps were taken by Piggly Wiggly to address the potential hazard created by the wet flooring.

THEREFORE, IT IS HEREBY:

ORDERED that the verdict awarded by the jury in the above case for the amount of \$3,870.00 is upheld and the motion of the Defendant is denied.

AND IT IS SO ORDERED.


THE HONORABLE CARRELL HAMPTON
CLARENDON COUNTY MAGISTRATE

Dated: 6/4/10
Manning, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
DOCKET NO.:

Cynthia Richardson,

Plaintiff,

vs.

Piggly Wiggly Central, Inc.,

Defendant.

NOTICE OF APPEAL

The Defendant hereby gives Notice of Appeal from the Judgment of the Clarendon County Summary Court in Case 2009-CV-14-10100411, including the order dated June 4, 2010, the upon the following grounds:

1. The Magistrate Judge erred when he failed to direct a verdict and failed to grant the Defendant's Motion for Judgment Notwithstanding the Verdict when the only reasonable inference from the evidence when taken as a whole and viewed in the light most favorable to the Plaintiff was that the Plaintiff's foot slipped on the sidewalk on the exterior of the Defendant's store building and not on the tile surface of the interior of the store and, consequently the absence of any warning signs or floor mats were not the proximate cause of Plaintiff's injury.

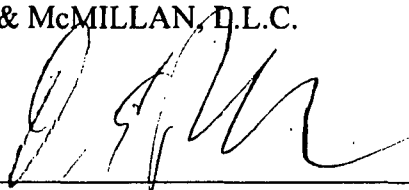
2. The Magistrate Judge erred when he failed to direct a verdict and failed to grant the Defendant's Motion for Judgment Notwithstanding the Verdict when no reasonable inference, from the evidence when taken as a whole and viewed in the light most favorable to the Plaintiff, could be drawn was that the Defendant created nor allowed to remain on its premises an unreasonably dangerous condition which resulted in the Plaintiff's fall.

3. The Magistrate Judge erred when he failed to direct a verdict and failed to grant the Defendant's Motion for Judgment Notwithstanding the Verdict when no reasonable inference, from the evidence when taken as a whole and viewed in the light most favorable to the Plaintiff, could be drawn that the sidewalk upon which the Plaintiff claims to have slipped was unreasonably slippery, defective or otherwise dangerous.

4. The Magistrate Judge erred when he failed to direct a verdict and failed to grant the Defendant's Motion for Judgment Notwithstanding the Verdict when the only reasonable inference, from the evidence when taken as a whole and viewed in the light most favorable to the Plaintiff, was that the wet condition of the sidewalk upon which the Plaintiff claims to have slipped was open and obvious.

5. The Magistrate Judge erred when he failed to direct a verdict and failed to grant the Defendant's Motion for Judgment Notwithstanding the Verdict when the mere evidence that Plaintiff slipped is insufficient proof that the surface of the sidewalk was unreasonably dangerous when wet.

Respectfully submitted,
PLAYER & McMILLAN, D.L.C.



THOMAS E. PLAYER, JR.
ATTORNEY FOR THE DEFENDANT
305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SC 29151-3690
(803) 775-2306
email: tomplayer@sc.rr.com

June 17, 2010
Sumter, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

CYNTHIA RICHARDSON

PLAINTIFF

VS.

PIGGLY WIGGLY CENTRAL, INC.

DEFENDANT

IN THE MAGISTRATE'S COURT

2009-CV-14-10100411

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 2010 AUG 6
CLERK OF COURT
CLARENDON COUNTY, SC

ANSWER TO AN APPEAL

2010 AUG -6 PM 10:19

TO THE CIRCUIT JUDGE OF THE THIRD JUDICIAL CIRCUIT:

This case was held on March 23, 2010 at the Clarendon County Magistrate's Court in the Judicial Building, 102 South Mill Street, Manning, South Carolina, with a Jury Trial being held by the Honorable Carnell Hampton.

Witnesses were sworn, testimony heard, evidence accepted, and record made as required by Section 22-3-790 by audio tape recorder.

FINDINGS OF FACT

Based on the evidence and testimony, the court finds the following facts credible:

That on October 11, 2008, the Plaintiff entered the Piggly Wiggly Store to shop. The Plaintiff testified that she slipped and fell on a wet area as she began to exit the store—that the area was wet because it was raining. The Plaintiff testified that the wet area on which she slipped was inside of the store, and that when she fell, part of her body was on the inside of the store and part of her body was on the outside in the doorway. The Plaintiff also testified that there was no caution signs to warn the customers that the floor was wet and that there were no floor mats placed in the area where the floor was wet. Even when the Plaintiff was questioned on cross-examination, the Plaintiff maintained that she slipped and fell as she exited the store, landing partially on the inside of the store and partially on the sidewalk in the doorway. The Plaintiff testified that she received medical treatments for her injuries which came to a total of \$3,870.00.

The Defendant did not not present any testimony nor any evidence in order to establish whether or not the Plaintiff slipped and fell on the inside of the store or on the outside of the store on the sidewalk. In addition, the Defendant did not present any testimony nor any evidence as to whether or not any steps were taken to address the potential hazard created by the wet flooring.

Even though the Defendant did not offer any testimony nor any evidence contrary to the testimony of the Plaintiff, the counsel for the Defendant argued that the Plaintiff had testified that she fell on the concrete sidewalk as she exited the Defendant's grocery store—that the Defendant was not negligent nor liable for the Plaintiff's fall and ensuing injuries because she fell outside of the Defendant's premises—that the concrete sidewalk where the Plaintiff fell was wet from the rainfall—that there was no evidence that the concrete presented an unreasonably dangerous condition and there was no evidence that the Defendant was on notice of such a condition—and that the Defendant had no legal duty or ability to safeguard its patrons from a sidewalk that was wet from rain and was located on the outside of its store.

The case was given to the jury. The jury found in favor of the Plaintiff and awarded the Plaintiff \$3,870.00 in damages.

At the conclusion of the trial, the counsel for the Defendant moved that a directed verdict be granted. The motion was denied.

On March 26, 2010, the counsel for the Defendant filed a motion for a Judgment Notwithstanding the Verdict. On April 6, 2010, a Return To Motion for Judgment Notwithstanding the Verdict was filed by counsel for the Plaintiff.

A hearing was held on April 22, 2010 to address the Defendant's Motion for a Judgment Notwithstanding the Verdict. The motion for a Judgment Notwithstanding the Verdict was denied because in the opinion of the court, there was enough evidence presented by the Plaintiff to support the verdict of the jury. "If there is enough evidence to make out a prima facie case against the moving party, or evidence tending to support the verdict, then the court must deny the motion for a Judgment Notwithstanding the Verdict....Courts approach motions for Judgment Notwithstanding the Verdict with extreme caution and generally will grant them only in clear cases in which the evidence overwhelmingly supports the moving party." West's Encyclopedia of American Law. The Defendant did not present any evidence that was overwhelming enough to over turn the verdict of the jury.

With respect to number one of the appeal, the Judge did not err when he failed to grant the Defendant's motion for Judgment Notwithstanding the Verdict in that there was no testimony nor any evidence presented to the court by the Defendant that the Plaintiff slipped on the sidewalk on the exterior of the Defendant's store, and not on the tile surface of the interior of the store. All the testimony and evidence that were presented in this case indicated that the Plaintiff slipped and fell inside of the store and that the hazardous condition that caused her to fall existed on the inside of the store and not on the outside of the store.

With respect to number two of the appeal, the Judge did not err when he failed to grant the Defendant's motion for Judgment Notwithstanding the Verdict because in the opinion of the court, the evidence presented by the Plaintiff was sufficient evidence for a reasonable inference to be drawn by the jury that the Defendant's

negligence was the proximate cause of the Plaintiff's fall. In granting a Judgment Notwithstanding the Verdict, the court must consider only the evidence and any inferences therefrom, and must do so in the light most favorable to the non-moving party, which in this case is the Plaintiff. Law V. SC Department of Correction, 629 S.E. 2d 642 (2006).

With respect to number three, four, and five of the appeal, the Judge did not err in that there was no testimony nor any evidence presented that the Plaintiff slipped and fell on the wet sidewalk. Even though there were opposing views between the Plaintiff and Defendant as to where the Plaintiff slipped and fell, the court found no reason to draw any conclusion different than that reached by the jury on the issue. It was the opinion of the court that any factual dispute involving the Plaintiff's testimony was sufficiently addressed and resolved by way of the jury's verdict. Further, it is stated in the West's Encyclopedia of American Law that when there is a conflict, "The court must resolve any conflict in favor of the party resisting the motion."

The court believes that the jury is the finder of fact and that there was enough evidence in this case to support the verdict reached by the jury in this matter. Therefore, in the opinion of the court, the verdict awarded by the jury in this case for the amount of \$3,870.00 should be upheld and the motion of the Defendant be denied.


Honorable Candell Hampton
Magistrate for Clarendon County

Manning, South Carolina

August 5, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
2010-CP-14-362

ORDER

Cynthia Richardson,
Plaintiff,
vs.

Piggly Wiggly Central,
Defendant.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 6/14/14

Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

2011 JUN 14 PM 4:11

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

STATEMENT OF THE CASE

This is a slip and fall case which was tried in the Clarendon County Magistrate's Court before a jury on March 23, 2010. At the conclusion of the evidence, Defendant-Appellant (PW), moved for a directed verdict, which was denied. The jury returned a verdict for actual damages. PW filed a written motion for judgment notwithstanding the verdict which was likewise denied. The Plaintiff-Respondent (Richardson) filed a return to the motion.

FACTS

The un-contradicted testimony of the Plaintiff-Respondent was: that she fell at the Piggly Wiggly on a rainy day; it was raining when she entered and exited the store; that she slipped on the concrete sidewalk, just outside the door, as she exited the building; and, that the concrete sidewalk where she slipped was uncovered, and wet from the rain. There was no other evidence as to the condition of the concrete sidewalk.

STANDARD OF REVIEW

The standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment is prescribed by S.C.Code Ann. § 18-7-170 (1976):

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

DISCUSSION

To avoid a directed verdict in a slip and fall case, the plaintiff has the burden of presenting evidence from which a reasonable inference can be drawn that the storekeeper was responsible for creating the hazard which caused the fall or that he or she had actual or constructive knowledge of the existence of the hazard.

Smith v. Wal-Mart Stores, Inc. 311 S.C. 122, 126, 427 S.E.2d 712, 714 (S.C.App., 1993)

Richardson's testimony was that she slipped on the concrete sidewalk, outside the building, yet there was no evidence as to any defect in the sidewalk, or any unreasonable risk of harm due to the condition of the sidewalk. The fact that Richardson slipped thereon is insufficient to prove the existence of an unreasonably dangerous condition.

The magistrate's order denying the motion for judgment notwithstanding the verdict and the magistrate's "Answer to Appeal", suggest an incorrect recollection of the testimony. The trial transcript shows that Richardson slipped on the concrete



sidewalk outside the door. Richardson's counsel and the Magistrate incorrectly recalled that she testified that she slipped on the tile floor inside the building. The transcript of testimony, page sixteen, contains the following the testimony of Richardson upon examination by her counsel, Mr. Deas:

Mr. D.: The flooring of the store, as you exit or enter, what's it made of?
Is it carpet? Is it tile, is it concrete floor? Do you know?

Ms. R.: Uhm. The flooring got tile on it, I believe. But on the outside it got concrete.

Mr. D.: Ok. The part, the part that you slipped on, was it the concrete part or the tile part?

Ms. R.: The concrete part.

The fact that she slipped is insufficient to prove negligence. Howard v Kmart Discount Stores, 293 S.C. 134, 359 S.E. 2nd 81 (SC App. 1987). In Howard, the plaintiff was awarded damages for injuries received when she slipped and fell in the defendant's store. The claim was that the floor was unduly slippery because of the manner in which it was waxed. The court held that she could not establish that the floor was unreasonably dangerous by showing nothing more than that she slipped on the floor.

While no South Carolina case law contains a set of facts identical those in this case, a Georgia case, Cavin vs. Warehouse Home Furnishings Distributors, Inc. 209 GA App. 706, 434 S.E. 2nd 532 (1993), addresses a situation where a plaintiff fell on a wet sidewalk, resulting in a leg fracture. Her theory of liability was that a portion of the concrete sidewalk upon which she fell was painted and the paint made it slick when wet. The court, in upholding a grant of summary judgment, held that the plaintiff had the burden of showing that the paint was defective or unsuitable for the purpose to which it was applied or that the sidewalk was otherwise defective.

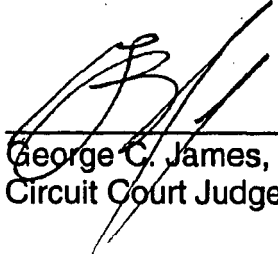
There was testimony from Richardson, the only witness who testified, that there were no wet floor signs or floor mats inside the building. Any absence of those items could not be reasonably foreseen as a cause of a slip and fall on the concrete sidewalk outside the building. Additionally, Richardson acknowledged that she was aware of the

wet condition of the sidewalk so wet floor signs would have provided no additional information regarding the condition of the sidewalk.

ORDER

It is hereby ordered that the magistrate court judgment denying the motion for judgment not withstanding the verdict is reversed.

June 6, 2011
Sumter, SC


George C. James, Jr.
Circuit Court Judge

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

Cynthia Ricahrdson,)

Plaintiff,)

vs.)

Piggly Wiggly Central,)

Defendant.)

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

CASE NO.: 2010-CP-14-362

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Garryl L. Deas, Bar No. 12475

Address:

PO Box 1211, Sumter, SC 29151

Phone: 803-775-7004 Fax 803-773-9037

E-mail: deaslawfirm@yahoo.com Other: _____

Defendant's Attorney:

Thomas E. Player, Jr., Esquire, Bar No. _____

Address:

PO Drawer 3690, Sumter, SC 29151

Phone: 803-775-2306 Fax 803-436-5960

E-mail: tomplayer@sc.rr.com Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Reconsideration

Estimated Time Needed: 30 mins

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

6/21/2011

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
Date: 6/23/11

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

2011 JUN 23 PM 4:33
BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)
)
Cynthia Richardson,)
)
Plaintiff,)
)
vs.)
)
Piggly Wiggly Central,)
)
Defendant.)
_____)

IN THE FAMILY COURT OF THE
THIRD JUDICIAL CIRCUIT
DOCKET NO.: 2010-CP-14-362

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION**

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2011 JUN 23 PM 4:33

**TO: THE PLAINTIFF NAMED ABOVE AND HER COUNSEL, GARRYL L. DEAS,
ESQUIRE**

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel, will on the tenth day after date of this motion or as soon thereafter as counsel may be heard, move before the Presiding Judge of the Clarendon County Common Pleas for reconsideration of the Court's ruling on June 14, 2011 to reverse the Magistrate Court's judgment denying the Defendant's Motion for Judgment Notwithstanding Verdict.

This motion will be based upon the pleadings in this action, such affidavits, the applicable laws of the State of South Carolina, the arguments of counsel, or other evidence as may be taken or served upon you prior to the hearing of the motion.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 6/23/11
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

THE DEAS LAW FIRM


GARRYL L. DEAS, ESQUIRE
201 NORTH MAIN STREET
POST OFFICE BOX 1211
SUMTER, SOUTH CAROLINA 29151
(803) 775-7004
ATTORNEY FOR DEFENDANT

Sumter, South Carolina
June 21, 2011

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 -CP-14-362

Cynthia Richardson

Piggly Wiggly Central, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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, TRIBUNAL, 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 Plaintiff's Motion for Reconsideration is denied.

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)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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 GEORGE C. JAMES, JR.

2143
Judge Code

RECEIVED
1/18/08 2012
Date

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 1/19/2012

Beulah H. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

☐
☐
☐
☐
☐

BEULAH H. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

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 18th day of January, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Harrel L. Deas
P.O. Box 1211
Sumter, S.C. 29151
ATTORNEY(S) FOR THE PLAINTIFF(S)

James E. Player, Jr.
P.O. Drawer 13690
Sumter, SC 29151
ATTORNEY(S) FOR THE DEFENDANT(S)
Beulah B. Roberts
CLERK OF COURT

Court Reporter: _____

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2010-CP-14-362

Cynthia Richardson,.....Respondents,
v.
Piggly Wiggly Central,.....Appellant.

CERTIFICATE OF MAILING

I, Dunneah K. Kruger, an employee of the Deas Law Firm do hereby certify that I have
this ____ day of January, 2012, have deposited a copy of the Notice of Appeal by depositing a
copy of the same in the United States Mail with proper postage affixed to:

The Honorable George C. James, Jr.
Sumter County Courthouse
141 N. Main Street
Sumter, SC 29150

Thomas E. Player, Jr., Esquire
Player and McMillan
Post Office Drawer 13690
Sumter, SC 29151

February 6, 2012

Dunneah K. Kruger
Dunneah K. Kruger

RECEIVED

FEB 08 2012

SC Court of Appeals

Richardson vs. Piggly Wiggly

Judge: Okay, your attorney is not present?

Ms. R.: He's supposed to be here.

Judge: He's supposed to be here?

Ms. R.: Yeah.

Judge: And he's not here?

Ms. R.: He know he's supposed to be here at 2:00.

Judge: at 2:00... uh.... You're Attorney Player?

Mr. Player: Yes sir.

Judge: I recognized you.

Mr. Player: Good to see you, Judge.

Judge: uh, Piggly Wiggly... Yeah .. I wanted to know whether you had any pre, uh...
You want to go on without your attorney? We have it set up to go on. I'm sure
the Defendant is ready.

Ms. R.: I would like to wait a few minutes if I can. He should be up in a minute.

Judge: Okay.

Mr. Player: Judge, I have no objection...

Judge: Yeah...

Mr. Player: ... whatever pleases the court is fine with me.

Judge: I'm going to give him another, uh, another five minutes. If he's not here within
that time, we're going to go on, okay?

Ms. R.: Ok.

Judge: Ok, we sent the jurors out and I wanted to know whether you had any pre-trial
Motion or anything before we, uh, begin the trial, before we call the jurors in,
before we begin the trial.

Mr. Deas: Nothing planned.

Mr. Player: No sir.

Judge: Go ahead and uh, get the jurors.

Judge: This courtroom is a place of honor. Dedicated to the protection and preservation
of citizen's right to what may have called.., to what many have called the

Greatest Justice System Ever Created. The attorneys appearing before you are advocates for the parties they represent. First and foremost they are officers of the Court, Sworn to uphold the integrity and fairness of our Judicial System, and to help you in the search for the truth. You should expect them to be professional, competent and ethical in the representation of their clients and their clients' interest. Remember that you have taken an oath to try this case and reach a fair and just verdict. I also expect you to be professional, reasonable and ethical. Again, we thank you for taking the time and coming to serve as jurors today. What I would now say is meant to serve as an introduction to the trial of this case. These remarks are not a charge on the law on this case. I will instruct you on the law at the end of the trial before you retire to decide the case. Before the trial begins I want to expand the procedure we will follow so that you can better understand what is happening today. You have been selected as fair and impartial jurors, whose purpose is to find and determine the facts. You are the sole judge of the facts. If at any time I make any comments regarding the facts you must disregard it. You are to determine the facts on the testimony you hear and on any other evidence that is presented in this court. You should not be influenced by any other statements you may have heard outside this courtroom. It is especially important that you perform your duty of determining the facts diligently, and conscientiously, because ordinarily there is no way to direct an erroneous determination of the facts by a jury. When you comply with your oaths to impartially determine the facts of this case, you will have fulfilled your duties, or your duty as jurors. And no one will have the right to criticize your verdict. On the other hand, and with equal emphasis, the same law that makes you the judge of the facts makes me the Judge of the law. Law as given by the court is the only law you may consider. You must accept and follow it even though you may disagree with it. I cannot tell you what the facts are, and you cannot disagree, you cannot disagree with me about what the law is or should be. Your job is take the law as I give it to you and apply it to the facts as you find them from the testimony of the witness in this case and any other evidence that is presented. After doing that, you will render your verdict, a true and just verdict, under the

solemn oath that you just took as jurors. Until I advise you to begin your deliberation you will not discuss this case with anyone including your fellow jurors, friends, family members and any one else. Attorneys and the parties in this case have been advised that they are not to talk to you at all, so if you see anyone involved in the case and they do not even say hello, they are not being unfriendly, they are just following my instructions. During the trial do not really listen to anything other than the testimony that will be given to you during this trial. It is important that you keep an open mind and not decide any issue in the case until all of the evidence has been presented. Parties have made uh.., will make their closing arguments and I will instruct you on the law of this case. Blank air.....

The attorney's will explain to you the issues in the case or at least what the attorney thinks the issues might be. The attorney for the Defendant will also make an opening statement. What the attorney tells you during the opening statement is not evidence in the case. It is only their contention as to what the issues are. The evidence in this case will be presented to you by the testimony of sworn witnesses from this witness stand or by exhibits that may be introduced as evidence. From time to time during the trial you may hear one of the attorneys say something like "Your Honor, I believe we have a question of law or a matter of law to discuss with you", or "Your Honor, May we approach the Bench?" or sometimes I might myself find it necessary to excuse you from the courtroom for a short while so that an attorney and I can discuss a matter of the law. The reason for this is because you are the judges of the facts of this case and sometimes when I am discussing the matters of the law with the attorneys, it may be necessary for me to make some comments as to the facts in connection with ruling whether or not a particular law applies and I am not supposed to tell you what I think. The facts are the one to tell you about the case. So I will excuse you from the courtroom while these discussions take place so that you will not be influenced by anything that I might say or do in connection with the facts of this case. In determining what the true facts are in this case, you must decide whether or not the testimony of the witness is

believable. It will be my responsibility to rule as a matter of law as to whether certain testimony is admissible at all or not. Deciding if testimony is admissible. Whether or not you believe it is solely for you to determine. In deciding whether to believe a witness, you have the right to consider whether the witness has an interest in the result of the trial, whether the witness is prejudice toward either the Plaintiff or the Defendant, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way the witness acts on the stand. You have the right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means it is your duty to pay close attention to the witness, to observe the witnesses, to listen to the witnesses and to pay close attention to the attorneys and to the court. Don't let your thoughts wander, but pay attention to the testimony so that at the end of the trial you will be able to determine what the facts are in this case. You will be able to apply those facts to the law, apply the law to those facts and render a true and just verdict. Mr. Foreman, It is your additional duty to, preside in the courtroom and to make sure that things will go right and be the spokesperson for the jurors. In order to reserve everyone's right, I will give the parties an opportunity to object to anything I say, any exception to anything that I might say and then you will be able as jurors, to determine the facts of the case. At this time we will begin this trial. Do we have an opening statement, by the Plaintiff?

Mr. Deas: Yes sir, Your Honor. May it please the Court?

Judge: You may go...

Mr. Deas: Mr. Player, Mr. Foreman, Ladies & Gentlemen of the Jury, My name is Garryl Deas and I represent the Plaintiff in this matter, Miss Cynthia Richardson. I'm an attorney. I work out of Sumter and we are here today simply to address the matter between Ms. Richardson, my client and the Defendant in this case, Piggly Wiggly. Now we are going to be in Magistrate's Court. Magistrate's Court has a unique tribunal where both criminal cases and civil cases are heard. Today we are here to address a civil case. What that means is simply this is a dispute that has arisen between these two parties, a civil suit, that could not be resolved between them and as a result we are here today, in this court, where you the jury

will help these parties resolve their dispute. And, ultimately, you as the fact finder, as the jury, will be your responsibility and task today to essentially render a verdict which will ultimately resolve the civil dispute between the two parties. Now in the civil court when a party is aggrieved, the way in which they can be made whole again is through civil judgment, a money judgment, a money award. Unfortunately none of here has the power to go back to the day of this incident which I believe was October 11, 2008 and wave a magic wand and make it all go away. So the only way a person who has been injured due to the negligence of another and be made whole through our judicial system is to be compensated through money damages. And that is the purpose of why we are here today so far as the Plaintiff is concerned. And that is to establish that Ms. Richardson was injured due to the negligence of the Defendant, Piggly Wiggly and as a result she is entitled to money damages to address her medical expenses, address her pain and suffering and in her situation, some lost wages that she sustained because she was out of work due to her injuries. Now, as I said earlier, this incident happened back on October 11, of 2008. So that was quite some time ago. Of course, the wheels of justice turn slowly and sometimes it takes a while for these matters to come to court, but regardless of the time that's passed, you know none of us is going to be written about in the newspapers or any other mobile front page tomorrow about this incident and we are not going to certainly make the seven o'clock or the eleven o'clock report. This is still a relatively, this is still a very important matter for both of Ms. Richardson and Piggly Wiggly alike. I will ask that you, as jurors, pay close attention to the facts as they come to you today by way of testimony and by way of documentary evidence. Pay close attention to it and give it your full thought and attention as you begin to look, as the facts of the case begin to flesh out for you, as you begin to hear more about what actually happened back on October 11, 2008. I just ask that you pay attention, listen to the testimony that you will hear. View and peruse the documentary evidence very carefully and base your judgment and your final verdict on your own common sense and good judgment. Don't base it on bias or pre-disposed notions or preconceived dispositions but simply just rely on your own good

judgment and your own common sense in rendering your verdict. I don't think, I believe the judge mentioned earlier that our judicial system is the envy of the world and the reason why it is is because most countries and other nationalities in other areas of the world, justice is often decided by one individual or justice is decided by a panel or commission, but in our country justice is often found, or often handed down by people just like you. Regular people who have given up their own time, their own leisure time to come into courtrooms just like this across the country to help lawyers and judges and the parties involved come to some resolution, to establish the truth, to find justice. And again I commend you for your service. I thank you and again it is people like you that make our judicial system the envy of the world, because it's the people that ultimately decide what's right and what's just. Now let me tell you a little bit about the facts. Back on this date, October 11, 2008, my client, Ms. Richardson, was coming into the Piggly Wiggly, and it was raining. She headed into the store. The floor was wet. There were no precautionary measures taken by the Piggly Wiggly to warn their customers of the wet floor. There were no mats down, no signs saying "Wet Floor" or "Caution". She slipped as she entered the store and fell on her right leg and hip and back. When she fell, Ms. Richardson injured herself severely. She hurt her right knee, she hurt her right leg, she hurt her shoulder and she hurt her back. Now, ladies and gentlemen, Mrs. Richardson, who at the age of 59 years old, I'm sure was probably a little more spry in her younger years, in her younger days. Um, when she slipped and fell at Piggly Wiggly she already had some pre-existing injuries. She already had a hurt knee from a previous incident. She already had some back injuries that she sustained from the kind of work she used to do. She was a Nurse's Aide and she used to lift patients, sometimes having to move patients from wheelchairs to bed. So when she fell that day on October 11, when she slipped on that wet floor in Piggly Wiggly, she already had problems but that fall, uh, that fall on that hard concrete floor, it made those injuries worse. It exasperated, it exasperated them. It, it, it worsened her already bad condition and uh, its oppositional, ladies and gentlemen, that the negligence of another worsened or excessively enhances the injuries that you

already have, they are just as responsible as if they'd caused them themselves. So, you'll see and you'll hear, as this case moves forward that Ms. Richardson without question already had issues. She was already dealing with kneel problems and real pain and back problems. The kind of problems that now require her at times to use a cane to assist her in walking. At the time of this incident, those problems she had were made worse by this fall and she had to seek medical treatment and as a result of the medical treatment she received, she incurred expenses. And in civil court, where we are today, what she is asking and what she is seeking, is that she be compensated for the medical expenses she incurred which were the result of Piggly Wiggly's negligence. I am certain there were some steps that could have been taken to address that issue with the wet floor. Customers could have been warned properly, mats could have been put down, or even perhaps the water just removed by mopping. But that wasn't done and as a result she came in, slipped and fell and injured herself. She's asking or seeking, compensation for her medical expenses which I'll get into later. She's asking for compensation for her pain and suffering that she endured during the time that she had to deal with the pain and discomfort of her injuries. And she's asking for compensation for her lost wages for the time period she was placed out of work by her doctor while she recovered from her injuries. Now, as the Plaintiff, it is our burden to establish by preponderance of the evidence that she is entitled to these, or to this compensation or to these damages. In civil court, the burden of proof is preponderance of the evidence. In criminal court you may hear the term reasonable doubt, beyond a reasonable doubt. Well, in criminal court that is the burden of proof that rests with the State in order for the prosecution to find that person guilty, in order for the prosecution to establish the defendant's guilt, they must prove that guilt beyond a reasonable doubt. Well that's not the burden of proof here in civil court. In civil court, the burden of proof is the preponderance of law. And what we have to establish under the preponderance of evidence, ladies and gentlemen, is that indeed Piggly Wiggly owed a duty of care to Ms. Richardson. That as a customer visiting their store, coming onto their premises they had a duty to safeguard her

and prevent her from injury and to take necessary steps, precautionary steps to ensure she wasn't injured. So we have to prove by preponderance of evidence that Piggly Wiggly owed her duty of care. To ensure that safety precautions were taken to protect her. I assert you, ladies and gentlemen, that indeed Piggly Wiggly owes a duty of care, not just to Ms. Richardson, but to any customer that comes onto their premises. The other thing that we must establish by preponderance of the evidence is that Piggly Wiggly breached this duty of care or that they were negligent. And that's essentially what negligence means. That means that Piggly Wiggly had a duty of care but they breached that duty. I submit to you, ladies and gentlemen, that the evidence will show a view or establish that indeed Piggly Wiggly did breach their duty of care to Ms. Richardson on that day and therefore, and I pray we'll establish that Piggly Wiggly owes her a duty of care and be able to establish that Piggly Wiggly was negligent and we also have to show that as a result of that negligence Ms. Richardson suffered damages. And as I said, I believe the evidence will show and the testimony will reveal that indeed she did suffer damages to the extent, in the form of medical expenses and in the form of pain and suffering she endured, and in lost wages. Ladies and Gentlemen, if we establish all those things by preponderance of evidence, then we will have met our burden. Then it will be your legal obligation to return a verdict in favor of the Plaintiff. But on the same token, if we do not establish those things I just outlined for you by preponderance of the evidence, it will be equally your legal obligation to return a verdict in favor of the Defendant Piggly Wiggly. In reaching that conclusion, ladies and gentlemen, all I ask you to do is what I said earlier, pay close attention to the evidence, listen to what's being said in the testimony from the witness stand and look at the documentary evidence, rely on your own good judgment and common sense, render a verdict that is fair and that speaks the truth. And if you do that, ladies and gentlemen, I'm confident that you'll return a verdict in favor of the Plaintiff, Ms. Richardson. Thank you.

Mr. Player: If it please the Court, Your Honor. Good afternoon. I'm happy to be with you all this afternoon and appreciate your service to your community I'm not going to

repeat everything that Mr. Deas said, he's summarized the law, but I want to point out a couple of things that he may have said or say it differently. One is that just because Ms. Richardson fell on our premises does not make Piggly Wiggly responsible for paying her hospital bills or anything of that nature. Some people have that misconception and the reason I say that is during the last 35 years I have been practicing law, people have come into my office and say "I fell in the store and I want you to sue them". I have to tell them, you can't just sue somebody because you fell in their store. Just like you can't sue somebody if you happen to fall in your neighbor's house, you have to establish that you fell because that person who owned that property or premises, did something to cause you to fall. They were negligent, and Mr. Deas used that term. And there is a particular law concerning what we call premises liability and applies to Merchants, such as the Piggly Wiggly that says that you must not create a hazard, an unreasonably dangerous situation for your patrons. And if you, that is the duty that you owe to your patrons and if you breach that duty, yes, they can sue you for their damages. And that's what Mr. Deas is talking about when he talks about his burden of proof. He has to prove that Piggly Wiggly caused essentially caused Mrs. Richardson's injuries. And were that the case, we wouldn't be here taking up your time, I can tell you that. We would just honor her claim and not go to court. But in this situation we don't think that Piggly Wiggly did anything wrong. This was a rainy day. Now, Piggly Wiggly can keep their stores open on a rainy day or they can close the store. But if they choose to keep them open and I think everybody would like to have grocery stores open even if its raining and not close for the rain. You can't keep the floor from getting wet. People walking in, going in and out, it is impossible to keep the floor dry when it's raining outside. So Piggly Wiggly and other grocery stores and other merchants have the option of either closing the store or keeping them open and doing the best they can. Now, I tell you in this situation Piggly Wiggly do the best they can, put mats out, mop periodically. Particularly when they do all that, they put cones out put the wet floor signs out. They were out. Mrs. Richardson may not have seen them but they were there. They do it every time it rains. And

that's all they can do. And once they do that, then they are not responsible if somebody forgets that they got moisture on their shoes, forget that the floor may get a little bit slippery when it's wet. Piggly Wiggly is not responsible under those circumstances. And when the Judge gets ready to charge for law, he will go into more detail about what the law is. But in any event, that's why we're here before Court this time. Piggly Wiggly does not feel that they were responsible for Ms. Richardson's injuries on this occasion and that's why we're here at your hands, asking you to render a verdict for the Defendant in this case. And again, thank you for being here to help us decide.

Judge: Ok, Mr. Deas, you may present your case.

Mr. Deas: Thank you, Your Honor. May it please the Court, we now call Mrs. Cynthia Richardson.

Judge: Do you have any other witness, other than Mrs. Richardson?

Mr. Deas: Uh, we may have an additional witness, by way of her sister, but that is, uh, speculative at this point.

Judge: Ok. Ms. Richardson, you can come on up.

Ms. Richardson, would you raise your right hand? Do you swear to tell the truth, nothing but the truth, so help you God?

Ms. R.: I do.

Judge: Ok, you may be seated.

Judge: You want to put it down so you can talk into it.

Mr. Deas: Ms. Richardson, before we get started, I'm uh, going to instruct you to speak Loudly. And as clearly as you can because, of course, we have a court reporter. Uh, I believe this proceeding is being recorded so we want to make sure your voice is heard and we want to also make sure that the members of the jury who are seated here, to my left, your right, can hear you. Ok?

Ms. R.: Ok.

Mr. Deas: Ok. Now could you state your name Ms. Richardson? Your full name, please.

Ms. R.: Cynthia M. Richardson.

Mr. Deas: And Ms. Richardson, where do you, where do you live?

Ms. R.: 109 Major Drive, Manning, South Carolina

Mr. Deas: How long have you lived in Manning, SC?

Ms. R.: All my life.

Mr. Deas: And, uh, are you married, Ms. Richardson?

Ms. R.: Widow.

Mr. D.: And, uh do you have children?

Ms. R.: Four. Had four, I got three living kids, now.

Mr. D.: One of your children passed away?

Ms. R.: Yes.

Mr. D.: Ok. And do you have any grandchildren?

Ms. R.: Yes.

Mr. D.: Thank you. How many grandchildren? We're putting you to the test here. How many grandchildren do you have?

Ms. R.: 13.

Mr. D.: 13 grandchildren.. Now where are you, where are you employed Ms. Richardson?

Ms. R.: Uh, right now I'm unemployed. The job that I had, I work for the state, and they closed the, um, job down here in Manning. As of February 28. I used to work for Mental Health.

Mr. D.: You used to work for the South Carolina Department of Mental Health?

Ms. R.: Yes.

Mr. D.: Ok, What did you do for them?

Ms. R.: Um, I was, um, a Medical Assistant for the Mental Health. We work in group homes, work in the group home.

Mr. D.: What did your job involve when you worked for the Dept. of Mental Health?

Ms. R.: Um. I used to wash the clients, we have to take the clients out, um, sometimes fix meals, and uh, just oversee the clients. Do a lot of people work and stuff. .

Mr. D.: So your last time on that job was back in February of '09?

Ms. R.: '09. Yes.

Mr. D.: And uh, is that essentially the type of work you did for, uh, for most of your adult life, is essentially nursing type work?

Ms. R. Yes. I work at McLeod Hospital for 9 years and Clarendon Memorial for 10.

Mr. D. Ok. Now lets turn to the date in question. Do you recall what happened out at Piggly Wiggly on October 11, 2008?

Ms. R. Yes. I got off from work at 7:30 in the morning and I went by Piggly Wiggly to pick up a loaf of bread.

Mr. D. Where were you working then?

Ms. R. At mental health. Um, I went by Piggly Wiggly to pick up a loaf of bread. I got the bread and was on my way out of the store. Just as I, they didn't have any mats down. No mats at.. it just was, it was raining but they didn't have any mats down. Inside neither outside of the store. Um, as I, as the door opened and I went to put my foot out, I just start sliding, and sliding and fell and my leg went all the way back behind me. I just had had my left knee done had a knee replacement on my left knee, so I try to baby that. But this leg just went all the way back and seemed like something pulled in it. Um.

Mr. D. By this knee, which knee are you referring to?

Ms. R. My right knee.

Mr. D. Ok.

Ms. R. That's the one that got hurt.

Mr. D. When you fell, what part of your body hit the ground first?

Ms. R. um,

Mr. D. In other words, did you fall backwards or forwards.?

Ms. R. Backwards.

Mr. D. You fell backwards. So the back part of your body hit first?

Ms. R. Right. My leg went under me.

Mr. D. Ok. Now right after, were you with anyone?

Ms. R. No. I was by myself.

Mr. D. You were by yourself.

Ms. R. Right.

Mr. D. Ok, right after.. when you fell, um, what happened immediately after the fall, if anything?

Ms. R. Oh, one of the Piggly Wiggly bag boys came out, running, and asked me was I alright. And he asked can I help you get up? I said I'm going to try to get up. And he tried to help me get up. And um, when I finally got up off the ground, um, two of the managers was standing up in the door. One of them asked me Was I alright. And I told 'em , I, I don't know. , just like that, and he said "Well, do you want to make out a report?" And um. First he asked me did I want the rescue squad. And I told him no, I didn't think so. Then um, he asked me, he said "Do you want to make out a report", and I told him, I said Yes.

Mr. D. At this time you were having the conversation, were you still laying on the ground or had someone already assisted you to your feet?

Ms. R. They had, picked me up, helped me get up, get to my feet.

Mr. D. Let me ask you, what kind of shoes were you wearing that day?

Ms. R. Um. I like to wear those little type of , they call them "jelly shoes" I call them jelly shoes, don't know what they are really called. But they are kinda like scrub shoes, you wear. Um,

Mr. D. Is it similar to the type of shoe you see nurses wear?

Ms. R. Yeah.

Mr. D. With, with their scrubs?

Ms. R. Yeah..

Mr. D. Ok, And uh those are the type of shoes you had on that day?

Ms. R. Yeah.

Mr. D. Are they, are they basically rubber soled shoes?

Ms. R. Yeah , they have rubber soles on them. They are kind of rubbery all over really.

Mr. D. And, uh, also, were you dressed in your work clothes?

Ms. R. Yes.

Mr. D. So you basically had on scrubs?

Ms. R. Right .

Mr. D. Now, after you made it to your feet and they asked you if you wanted the rescue squad, did you dot he report like they suggested to you?

Ms. R. Yeah, the manager asked one of the girls to go in the back and get me a chair and I set down in the chair and then we did the report, and then he asked me did

I wanted him to help me to the car and um, since I said, I told him no, I'm going to try to go to the car on my own, but my cousin came in at the same time and I asked him to help me to my car because I didn't want to fall going out the door again because there wasn't any mats. And so he helped me to my car and um, he said why you didn't let them get somebody to help you, get a rescue squad? I said I'm going to try to make it to the house, but on the way goin' I couldn't hardly mash the pedal with my right foot, so I had to drive with my left foot. I called my sister and told her to please slip on something so she could take me to the emergency room. And when I got to her house, she got, got me and took me on to the emergency room.

Mr. D.: Ok, now, when you're saying your sister took you, you're referring to Patricia McFadden.

Ms. R.: Right.

Mr. D.: Your sister that's here in the courtroom?

Ms. R.: Yes.

Mr. D.: Ok. And so she ultimately drove you to the emergency room?

Ms. R.: Yes.

Mr. D.: And you went to Clarendon Memorial Hospital?

Ms. R.: Yes.

Mr. D.: Once you got, uh reached, Clarendon Memorial, what, if any, treatment did they administer to you?

Ms. R.: Um. They did, um, a x-ray of my knee. And um.

Mr. D.: Which knee?

Ms. R.: Of my right knee. And they put a splint on me and said they thought a piece of the bone had chipped.

Mr. Player: Your Honor, please. I'm going to object to the hearsay.

Judge: Sustained.

Mr. D.: And Ms. Richardson let me, let me just instruct you. You can't testify to what someone else said to you, because that's hearsay, so Don't talk about what the doctors told you.

Ms. R.: Ok. Ok.

Mr. D.: You talk about what they DID for you,

Ms. R.: Ok.

Mr. D.: But you can't say what they told you.

Ms. R.: Ok.

Mr. D.: Ok?

Ms. R.: Ok,

Mr. D.: So I'll ask again, Other than the x-ray, or I'll follow up from my last question. What, if anything else, did the doctors do for you?

Ms. R.: Well, they gave me a shot and some medication and they put a splint on my leg. And uh, advised me to see my, uh,

Mr. D.: Family doctor?

Ms. R.: My family doctor.

Mr. D.: Uhuh, Now, At the time of this, at the time you got hurt there at the Piggly Wiggly, uh, on this particular day, I believe you stated earlier, it was raining?

Ms. R.: Yes.

Mr. D.: How long had it been raining that day?

Ms. R.: Um, I know when I got off of work it was raining when I got work.

Mr. D.: What time did you get off of work that day?

Ms. R.: At 7:30 in the morning.

Mr. D.: Ok. What's the shift you normally work?

Ms. R.: 11 -7..

Mr. D.: So 11:00 at night to 7:00 in the morning?

Ms. R.: Yes.

Mr. D.: And so when you got off work that morning, it was raining?

Ms. R.: Right.

Mr. D.: Was it a pretty heavy, steady rain?

Ms. R.: No, it was just misty like, um, just,... it wasn't really pouring down rain. It just was a light rain.

Mr. D.: Ok. And, uh, when you walked, when you first entered the Piggly Wiggly, did you get, did you complete your shopping, and do the things you wanted to do?

Ms. R.: Yes, I got loaf of the bread. I got the loaf of bread and was walking out the store.

Mr. D.: Ok. You had already checked out and everything?

Ms. R.: Yeah. Um Hm..

Mr. D.: Alright. As you were walking in the store, did you notice any cones, caution cones or mats out?

Ms. R.: None. None at all. Even after I went to the emergency room, I came back by there to get the report, and there wasn't any out.

Mr. D.: So, and so as you were walking out of the store, right before the fall, were there any mats down at the exit, entryway and exit way of the store?

Ms. R.: No.

Mr. D.: The flooring of the store, as you exit or enter, what's it made of? Is it carpet? Is it tile, is it concrete floor? Do you know?

Ms. R.: Uhm. The flooring got tile on it, I believe. But on the outside it got concrete.

Mr. D.: Ok. The part, the part that you slipped on, was it the concrete part or the tile part?

Ms. R.: The concrete part.

Mr. D.: ok. Now when you fell, was your body laying inside the store or were you out of it?

Ms. R.: Jus' about. 'Cause the door was open. They couldn't close.

Mr. D.: Ok, so you were kinda laying, part of you was in the store and part of you was out of the store?

Ms. R.: Almost. Yeah.

Mr. D.: Now once you went to uh., When you filled out.. Who, who assisted you with filling out the report that you did? Do you remember the name?

Ms. R.: I don't, I don't remember the name of the um the manager that came. There was two of them, I don't remember the name of the one that did the report.

Mr. D.: But they were with you when you filled out the report?

Ms. R.: Yeah, they, they the one who filled out the report.

Mr. D.: You just told them what happened.

Ms. R.: Yes.

Mr. D.: Ok. Now after you went to Clarendon Memorial and they released you, uh, did you at that time, just on home or did you go get your medicine, what did you do?

Ms. R.: I got my medicine, um, um, I sent my sister in the store to get the report and she came back out and she told me, cause we were parked in front of the store, that they wouldn't give her the report. They said they had to send it off.

Mr. D.: Ok. Now you mentioned earlier at some point, that you went back and got that, you went back to the store to get that report.

Ms. R.: Yeah. But I didn't go in, my sister went.

Mr. D.: ok. Alright. Were you with her?

Ms. R.: Yeah, I was with her. Because I was in the car, we just came from the emergency room.

Mr. D.: Now, h, about what time was that?

Ms. R.: Oh, uh, I say around about 11, something like that.

Mr. D.: So, roughly maybe three or four hours after the fall?

Ms. R.: Yeah.

Mr. D.: And at, at, some three or four hours later based on your observation, there were still no mats down or any caution cones?

Ms. R.: Still no mats, no caution cones.

Mr. D.: Ok. Now once you left, once you were home and you had had your medicines. At some point did you seek some follow up treatment? Well, let me just ask you this, when you first went to Clarendon Memorial, what did you tell them was bothering you? Wh, what parts of your body were hurting?

Ms. R.: My knee was hurting real bad, and um, that mostly what I told them, and my hip. But then I found out later, it wasn't my hip it was my back.

Mr. D.: Ok. And when, when you presented to Clarendon Memorial, did you indicate to them that you had any other problems, like with your shoulder, or your leg or your back or anything?

Ms. R.: That came a little bit later, it wasn't hurting at the time I went to Clarendon Memorial.

Mr. D.: The main thing that you were complaining of at that time was your knee? Your right knee?

Ms. R.: Yes.

Mr. D.: Ok. Now at some point did other areas begin to give you problems?

Ms. R.: Yeah.

Mr. D.: And what would those areas be?

Ms. R.: Um. Because I try to baby this, my left knee, my left shoulder started hurting, my back started hurting and, um, my knee was continuing to hurt, so...

Mr. D.: And did you, at some point, seek some additional medical treatment?

Ms. R.: Yeah.

Mr. D.: And where did you get treatment?

Ms. R.: I went to Dr. Demos, my Orthopedist, in Charleston.

Mr. D.: He's your orthopedic doctor?

Ms. R.: Yeah.

Mr. D.: He was already treating you for another condition you had?

Ms. R.: For my, for my ,um, he, the, who did my surgery.

Mr. D.: Ok. On your other...

Ms. R.: On my left knee.

Mr. D.: On your left knee?

Ms. R.: Right.

Mr. D.: And so, when you went to him regarding the right knee after the fall at the Piggly Wiggly, what if anything, did he do for the right knee?

Ms. R.: He, uh, he did x-rays of it. And he, um, he told me to keep the splint on for two more weeks and then come back to him, because it di..oh well, I can't say that. Well, he said to come back to him in two more weeks and that's what I did.

Mr. D.: Ok. So essentially, did he do any follow-up x-rays or MRI's or anything like that? To your right knee?

Ms. R.: Yeah, I did have a MRI done on my right knee.

Mr. D.: And was that the instruction of Dr. Demos,

Ms. R.: Yeah, and I started complaining.. At the same time I was complaining about my hip, so he did an MRI on that too. That was my um, He say it wasn't my hip, it was my back.

Mr. D.: Alright. Now did you tell him, when you when to Dr. Demos did you indicate to him that you were having any back pain?

Ms. R.: Yes.

Mr. D.: Ok, so you advised him of that?

Ms. R.: I told him I had hip pain and he told me it was my back it's not my hip. 'Cause my back, my hip was all right. On that side.

Mr. D.: Alright. Now at some point did you actually develop discomfort in your back?

Ms. R.: Yes.

Mr. D.: Ok. And who would, who would have been the first person you told about your back?

Ms. R.: I went, I went to my medical doctor, Dr. Hylar.

Mr. D.: Ok. Did you, did you tell Dr. Hylar that you were having problems with your back?

Ms. R.: Yes, and I told Dr. Hylar that I fell.

Mr. D.: Ok. And what if anything, did Dr. Hylar do to address those issues that you said you were having with your back?

Ms. R.: He gave me pain, he gave me a shot, for the pain. And um, he was settin' up an appointment with me for another orthopedic in Florence.

Mr. D.: Ok. Now did you ever, did you ever go to that other orthopedic doctor?

Ms. R.: I went to Dr. Alexander, in Florence.

Mr. D.: Ok,.

Ms. R.: But that was in 2009.

Mr. D.: Ok, so that was, about a year after this incident?

Ms. R.: Almost, yeah.

Mr. D.: Now let's go back a little bit. You mentioned that Dr. Demos, who was your orthopedic doctor in Charleston, had already treated you for a left knee injury.

Ms. R.: Right.

Mr. D.: Alright. And that surgery was done on that knee.

Ms. R.: Right.

Mr. D.: Was that surgery performed by Dr. Demos?

Ms. R.: Yes.

Mr. D.: Ok. But that's completely un-related to th, to this fall on October 11, '08. In other words, you're not saying that your left knee and the injuries that were sustained to it had anything to do with this fall at Piggly Wiggly are you?

Ms. R.: No. No.

Mr. D.: Ok. But the right knee is the one that you injured in the fall, correct?

Ms. R.: Yes.

Mr. D.: Now, uh, after you. This incident happened on October 11, of '08. When was it that you had the surgery on your left knee that was done by Dr. Demos?

Ms. R.: Um. 2005.

Mr. D.: So it was about three years before this incident?

Ms. R.: Mm hm.

Mr. D.: And what, what, what did you have done to the knee?

Ms. R.: I got a total replacement.

Mr. D.: Total knee replacement?

Ms. R.: Yes.

Mr. D.: Now, after you went to Clarendon Memorial and were released, after you saw your orthopedic doctor, Dr. Demos, and after you saw your family doctor, Dr. Hyler, What steps were you taking at that time, after seeing these three medical advisors. What were you doing to manage your pain? So far as this injury.

Ms. R.: Well, um, I have my, um. Well you know I have arthritis. And um, my arthritis specialist and um, I was taking medication for that.

Mr. D.: Right. So, you have osteo-arthritis?

Ms. R.: Yes.

Mr. D.: So when were you diagnosed with that?

Ms. R.: Um... Really I was diagnosed with arthritis from a child but, um, the osteo, must be about, um, is must be about ten years or so.

Mr. D.: Ok. And which doctor treats you for your osteo-arthritic condition?

Ms. R.: Dr. um, Edwin Smith.

Mr. D.: And, that osteo-arthritic condition that you had. You had that before you fell at Piggly Wiggly on October 11, correct?

Ms. R.: Right.

Mr. D.: And you're not, in any way, alleging that your osteo-arthritic condition has anything to do with your fall on October 11, 2008 are you?

Ms. R.: No.

Mr. D.: That, that was a pre-existing condition.

Ms. R.: Right.

Mr. D.: And , so. Prior to this fall on October 11, 08, you were taking medication for your osteo-arthritis condition?

Ms. R.: Yes. I take Celebrex. And I take, um, Percocet. and I take Oxycoten.

Mr. D.: Ok. And uhm, that's to treat the osteo-arthritis?

Ms. R.: Yeah. That's for the pain. The um. Oxycoten and the Percocet's are for my pain. And the Celebrex is the, um, to ease down the um, inflammation.

Mr. D.: It's an anti-inflammatory?

Ms. R.: Yes.

Mr. D.: And, and um, when , you were also at that time,. Prior to this fall, were you also taking (end of tape 1 side 1)...

Mr. D.: tion. Correct?

Ms. R.: Right.

Mr. D.: That osteo-arthritis condition, what areas of your body did it affect?

Ms. R.: Just about all over.

Mr. D.: So you would pretty much have pain in your joints all over?

Ms. R.: yeah.

Mr. D.: Now, after the fall, after October 11, 2008, when you fell at the Piggly Wiggly, What parts of your body, if any, began to hurt or started to hurt worse?

Ms. R.: My knee, my right knee and my back. My shoulder don't worry me that much anymore, but my back worry's me all the time and my and my knee.

Mr. D.: Ok. So your back and your right knee are the two new problems you had after you fell on October 11 of '08?

Ms. R.: Now my knee, I was having a little bit of problem with, before the accident, but it, since the accident, it gotten worse.

Mr. D.: Ok, and you're talking about your right knee?

Ms. R.: Right.

Mr. D.: Now, did you have any kind of back problems before you fell on October 11 of '08?

Ms. R.: Yes. Um, I was in a car accident, and then, um, prior before that,

Mr. D.: When you say before that, you talking about before the fall at Piggly Wiggly?

Ms. R.: Yes.

Mr. D.: Ok.

Ms. R.: Some years before I had the fall at Piggly Wiggly. And then I also hurt my back, lifting patients. At the hospital.

Mr. D.: So, before October 11 of '08, you already had some back issues?

Ms. R.: Right.

Mr. D.: After the fall of October 11 of '08 did the back injury get better or worse?

Ms. R.: After the fall, oh, it got Worse.

Mr. D.: Ok. Now how old are you, Ms. Richardson?

Ms. R.: I'll soon be 60. I'm 59.

Mr. D.: Ok. And so this incident happened about two years ago. So at the time you were roughly about 57

Ms. R.: Yeah.

Mr. D.: Years old?

Mr. D.: Now, now when you were being treated by these various doctors and after this fall occurred, you were still employed by the SC Department of Mental Health, is that correct?

Ms. R.: Yeah.

Mr. D.: Did you miss any time from work as a result of your, of the injuries you sustained,

Ms. R.: Yeah, almost four

Mr. D.: after the fall?

Ms. R.: almost four weeks.

Mr. D.: Ok. And, um, what was your pay rate at the time?

Ms. R.: uh, 10. I think it was \$10.60 something, an hour.

Mr. D.: ok. It was something like \$10.60 an hour?

Ms. R.: Yeah.

Mr. D.: Ok. And you said you missed approximately four weeks of work?

Ms. R.: Yes.

Mr. D.: Ok. And how many hours per week did you work?

Ms. R.: I worked 40 hours a week.

Mr. D.: And, did you miss this time because you put yourself out of work or you were placed out of work by the doctor?

Ms. R.: Placed out of work by my doctor.

Mr. D.: Do you know which doctor placed you out of work?

Ms. R.: Before I got in touch with Dr. Demos, um, they told me not to go back to work, Clarendon Memorial did. And when I went to Dr. Demos, he took me out of work.

Mr. D.: Ok. Now did you ever return to work at SC Department of Mental Health after this incident?

Ms. R.: Yes.

Mr. D.: Ok. So at some point, you returned back to your job?

Ms. R.: Right.

Mr. D.: Ok, was that after the four week period?

Ms. R.: Yes.

Mr. D.: And you then continued to work there until the job shut down in February of '09?

Ms. R.: Right.

Mr. D.: Did, did the job just shut down due to economic reasons or do you know?

Ms. R.: Cut-backs.

Mr. D.: Ok. Alright, Ms. Richardson. May I approach, Your Honor? Ms. Richardson, I'm going to hand you a document which I believe Mr. Player has a copy of. And that is your Clarendon Memorial bill, is it not?

Ms. R.: Yeah.

Mr. D.: Ok. And based on that bill you received from Clarendon Memorial, um, you were charged \$1,389.00 for the services they provided to you?

Ms. R.: Yes.

Mr. D.: That's for the treatment you received from Clarendon Memorial after the fall?

Ms. R.: Yes.

Mr. D.: I'm offering this in evidence as Plaintiff's Exhibit #1.

Mr. P.: No objection.

Mr. D.: Now, Miss uh, Ms. Richardson, you also had treatment by MUSC, is that correct, ma'am?

Ms. R.: Yes.

Mr. D.: Now, is that the MUSC in Charleston?

Ms. R.: Yes.

Mr. D.: And that's the, that's the treatment you received from Dr. Demos? Is that correct?

Ms. R.: Yes.

Mr. D.: And, court's indulgence... Just take a look at that, for me, Ms. Richardson. Is that a copy of your bill from MUSC for the treatment you received from Dr. Demos?

Ms. R.: Yes.

Mr. D.: And is that a bill for \$340.00?

Ms. R.: Yes.

Mr. D.: And that's for the treatment you received from Dr. Demos after the fall on October 11 of '08?

Ms. R.: Right.

Mr. D.: I offer that into evidence as Plaintiff's Exhibit #2.

Now, um, Ms. Richardson, I know that you also sought treatment from your family doctor, Dr. Hyler.

Ms. R.: Right.

Mr. D.: In addition to the treatment you received from Dr. Demos, as well as that treatment you received from Clarendon Memorial. Dr. Hyler, he is your family doctor?

Ms. R.: Right.

Mr. D.: How many times did you see Dr. Hyler about your, your issues that happened after the fall on October 11, 2008?

Ms. R.: Thinking about three times.

Mr. D.: Ok. And, did he ever send you a bill for that treatment?

Ms. R.: Uh, I think he did..

Mr. D.: Specifically for that?

Ms. R.: I don't.. I don't, I can't place, I can't...

Mr. D.: Ok. But you know you saw him at least three times in relation to the fall?

Ms. R.: Right.

Mr. D.: Now, other than the medical expenses that we just talked about and the four weeks in lost wages that you incurred due to the uh, due to the time that you were out of work, based on your injuries, um, were there any other out of pocket that you incurred due to this fall that happened at Piggly Wiggly?

Ms. R.: Yeah, when I have to drive to the doctor, put gas and stuff in. I had to pay my co-pay and stuff, yeah.

Mr. D.: Now, um, but I'm talking about, from the standpoint of actual, like, bills from a medical provider.. Other doctors that we have not talked about at this point. Or that I may not know about.

Ms. R.: Um, well, like I went to Dr. Alexander. I had to pay him.

Mr. D.: Ok. Now, did Dr. Alexander, was that the doctor in Florence?

Ms. R.: Yes.

Mr. D.: Was he treating you for..?

Ms. R.: My back.

Mr. D.: Was that in relation to what happened on October 11?

Ms. R.: That, afterwards, yes.

Mr. D.: Ok. And is he an orthopedic doctor?

Ms. R.: Yes.

Mr. D.: Who referred you to him?

Ms. R.: Dr, Hyler.

Mr. D.: Ok. And that would have been Dr. Alexander? That's the Florence Family Medicine?

Ms. R.: The Florence Family Medicine is Dr. Hyler.

Mr. D.: Ok. Florence Family Medicine is Dr. Hyler?

Ms. R.: Yes, Pee Dee Orthopedics is where Dr. Alexander is. Yeah.

Mr. D.: Ok. I'm going to hand you this document, here. Is that your invoice from Florence Family Medicine?

Ms. R.: Yes.

Mr. D.: And is that for the treatment you received from Dr. Hyler?

Ms. R.: Yes.

Mr. D.: And that was in relation to the injuries you sustained after the fall on October 11 of '08?

Ms. R.: Yes.

Mr. D.: It wasn't in relation to your osteo-arthritic condition?

Ms. R.: No.

Mr. D.: Was it in relation to your, uh, to your left knee issue?

Ms. R.: No, uh uh.

Mr. D.: It was only dealing with whatever your problems were after the fall?

Ms. R.: Right.

Mr. D.: I'd like to offer this as Plaintiff's Exhibit #3.

Mr. P.: No Objection.

Mr. D.: Ok. Let me ask you, Ms. Richardson, How are you feelin' today? I mean, are you still having problems with your right knee? Or your back? Or any other body part that began to hurt or began to hurt worse after you fell on October 11 of '08?

Ms. R.: I still having problems with my knee and my back, every day I hurt. But my medication kinda keep me ..

Mr. D.: Alright.. Now you just said "every day you hurt". Now some of that, and you correct me if I'm wrong, some of that is just because you have an osteo-arthritic condition, correct?

Ms. R.: Yes, but not my back.

Mr. D.: And some of, some of your problems you may be having in your Left knee is because you had a total knee replacement ?

Ms. R.: Oh, the left knee is not the one I'm talking about. I'm talking about my right knee and my back.

Mr. D.: Well that's what I want you to do. I want you to make sure this is clear.

Ms. R.: Yeah. It's my right knee and my back.

Mr. D.: So ,when you say you're still hurting, you are essentially referencing your right knee..

Ms. R.: Yeah.

Mr. D.: And your back.

Ms. R.: Right.

Mr. D.: Ok. Do you have any pain in your left knee still?

Ms. R.: No, my left kn..

Mr. D.: The one that was replaced?

Ms. R.: No.

Mr. D.: Ok. And do you still have pain due to the osteo-arthritis condition?

Ms. R.: Yeah. It hurts a little bit. Yeah. It.. sometimes in my shoulder, sometime, you know, it run down my legs and in my foot. Oh, I have a lot of sometime, pains in that too.

Mr. D.: Now, how often today, do you still have back pain? Is it once a week? Once a month? How often do you have back pain?

Ms. R.: Just about every day.

Mr. D.: Ok. And how often do you have pain in your right knee?

Ms. R.: Just about every day.

Mr. D.: Ok. And when you say "Just about every day", could you be a little more specific about that? Do you mean that every day it hurts, or every other day or could you be a little more specific?

Ms. R.: Every day.

Mr. D.: Is it, is it the type of pain that prevents you from doing the things you want to do?

Ms. R.: Yes.

Mr. D.: Ok.

Ms. R.: Cause sometimes I can't get out of my bed. Some days I can't walk at all, and I don't think it just because of the, um, my arthritis, um, sometime I have so much of pain in my back I can't move. Sometime I have so much pain in my knee I have to get my son to help me sometime to go to the bathroom.

Mr. D.: Ok. And when you're in that kind of pain, what do you do to deal with it?

Ms. R.: I take my medication or either call my doctor to see if I can get in to see someone. Most of the time they give me a shot in my knee. For my knee pain and my back which is most of the time.

Mr. D.: Ok. Alright. Do you do anything on your own, like put heat, use heat...

Ms. R.: Heat.

Mr. D.: Or anything like that?

Ms. R.: I keep rub all the time. Some kind of rub to put on my knee and my back.

Mr. D.: Ok, when you say rub, you mean, like Icy Hot...

Ms. R.: Rub, like Icy Hot, or stuff like that. I keep that by my bed at all times.

Mr. D.: Ok. Do you believe how you feel now is, do you feel better today than you did before the fall on October 11, '08?

Ms. R.: No.

Mr. D.: Do you feel worse?

Ms. R.: I feel worse. Yes. Because before then I could have walked straight, you know. I, I had a little problem with my knee but, that that day I did not have any problem with my knee. I can remember real good about that, that day. Um, I didn't have any problems. It was hurtin', I mean you know, I had some problems before, but it didn't. That day, after that day, it just constantly. I constantly have something going on. My knee or my back.

Mr. D.: Ok. Now, um, so far as, like you just talked about, using the products like Icy Hot, using the heat, taking your meds, Is there anything else you're doing to help, to help...

Ms. R.: Trying, just tryin...

Mr. D.: To help deal with this pain?

Ms. R.: They tell me I need to exercise. I try to exercise to help some. And I'm trying to do that. But with pain, you can't exercise that much when you got pain.

Mr. D.: Now, um, so far as the day of the fall, do you have any recollection as to whether or not there had been other incidents that day?

Ms. R.: I was told so.

Mr. P.: Your Honor, Please. I'm going to object to that.

Judge: I, I'm going to grant it. Hearsay.

Mr. D.: Ok. Uh, just disregard that question, Ms. Richardson. Um, as to your current, as to your current condition, have your doctors instructed or advised you about follow treatment or essentially, you have already been released from everybody and you are just simply on a pain management schedule?

Ms. R.: Um, I'm going to have to have a knee replacement.

Mr. D.: On, on which knee?

Ms. R.: On my right knee.

Mr. D.: Ok.

Mr. P.: Your Honor, Please, I'm going to object to that as well. That could be hear say from somebody who told her she had to have knee replacement. I'm going to object to that. In addition, no medical testimony will relate the need for knee placement to this particular incident.

Judge: Alright, I'm going to

Mr. D.: Ok. Actually I'll withdraw the question. And, and Ms. Richardson, just, with regards to uh, your medical treatment, and I'm not asking you to talk about what somebody told you, but, other than, and I believe I may have already covered this, but other than taking your pain meds and doing the things that you do on your own, is that pretty much what you are doing at this point to address your issues?

Ms. R.: Yes.

Mr. D.: Ok, Thank you ma'am. I have no further questions. Answer any questions Mr. Player might have for you.

Mr. P.: If it please the court, Your Honor.

Judge: Go ahead.

Mr. P.: Ms. Richardson.

Ms. R.: Yeah.

Mr. P.: I'm sorry you got hurt at the Piggly Wiggly, but I've got a job to do and I'm going to ask you some questions.

Ms> R.: I understand.

Mr. P.: And I just want you to know I'm just doing my job.

Ms. R.: I understand.

Mr. P.: Alright. Now, you heard Mr. Deas, when he made his opening statement, tell the jury that you fell when you were going into the Piggly Wiggly. Did you ever tell Mr. Deas that? Did you tell him that you fell as you were going into the Piggly Wiggly as opposed to going out?

Ms. R.: No, I told him I was going out.

Mr. Pl.: Beg your pardon?

Ms. R.: I told him I was going out.

Mr. P.: You didn't ever tell him that you fell when you were going into the Piggly Wiggly?

Ms. R.: No.

Mr. P.: Now, you testified that it was raining when you went into the store.

Ms. R.: Right.

Mr. P.: Did you go into the same store that you went out of when you exited the Piggly Wiggly?

Ms. R.: You mean the same door?

Mr. P.: Yes ma'am.

Ms. R.: Yes.

Mr. P.: Alright. And so you knew it was raining.

Ms. R.: Right.

Mr. P.: And when you fell, you fell on the concrete outside the door.

Ms. R.: Right. Right in the door.

Mr. P.: And this is outside?

Ms. R.: Right IN the door.

Mr. P.: I beg your pardon?

Ms. R.: Just as I walk out, I start to slide, right in the door.

Mr. P.: But on the concrete?

Ms. R.: On the concrete. Yes.

Mr. P.: Of course, outside the door, its open to the weather out there. Right?

Ms. R.: Right.

Mr. P.: And the rain falls on the concrete,

Ms. R.: Right.

Mr. P.: And you knew it was raining outside. Right?

Ms. R.: Right.

Mr. P.: And you knew it was raining when you went in and you knew it was raining when you went out.

Ms. R.: Right.

Mr. P.: So you knew the concrete outside was wet.

Ms. R.: Right.

Mr. P.: You knew that, didn't you?

Ms. R.: Right.

Mr. P.: So you didn't need a warning sign or something to tell you that the concrete was going to be wet when you went outside. Would you agree with that?

Ms. R.: I agree.

Mr. P.: Ok. And since the concrete, and it's a sidewalk right there in front of the Piggly Wiggly?

Ms. R.: Right.

Mr. P.: And let me ask you about this Ms. Richardson. You talk about having your left knee replaced by Dr. Demos,

Ms. R.: Yes.

Mr. P.: You had seen him just two weeks before you fell.

Ms. R.: Right.

Mr. P.: And you all talked about having knee replacement on your right knee.

Ms. R.: Right.

Mr. P.: So you were having problems, already had your left knee replaced, and you were having problems with your right knee,

Ms. R.: I said that.

Mr. P.: Now were you using a cane or a crutch or anything such as that?

Ms. R.: No, because my knee wasn't hurtin' that day I went into Piggly Wiggly.

Mr. P.: It wasn't hurting that day?

Ms. R.: No.

Mr. P.: But two weeks before that you talked to an orthopedic doctor about replacing that right knee.

Ms. R.: I went for my, Excuse me, can I... What I did, I went for appointment with my knee, my left knee. And he also told me, he said Well you know um, you, about time for you to have your right knee done. And I said, No. But, um, he said you want to set up and appointment for it?

Mr. P.: You mean he asked you about replacing the right knee, and....?

Ms. R.: I didn't say that my right knee was not... I say it was not hurtin' that day I went to the Piggly Wiggly.

Mr. P.: I understand. But I'm going to go back to Dr. Demos. When you all talked about, when you and he talked about replacing your right knee, he brought that up without you mentioning any problems with your right knee?

Ms. R.: No, No. When I had my left knee done, all both my knees, he had did x-rays of both of my knees and he told me, say look like your right knee going to need some replacement soon. I said well, my left knee is what I worryin' about, not my right knee. Because my left knee was hurting. And not my right.

Mr. P.: Well, lets go back. You had your left knee replaced in 2005, you testified.

Ms. R.: Right..

Mr. P.: And this two weeks before the accident, that happened in 2008, some three years later, you're still seeing him about your left knee?

Ms. R.: Yes. Because he always give me appointments to come in. And I go to my appointments. My doctor's appointments.

Mr. P.: Where you having problems with your left knee?

Ms. R.: Well I., Yeah, they keep checking my left knee because I had fluid on my left knee, after they did the surgery and stuff.

Mr. P.: Alright, so you were still having problems with it.

Ms. R.: With my left knee.

Mr. P.: You actually were having problems with both knees, then, at that time, Is that correct?

Ms. R.: Both my knees?

Mr. P.: Yes.

Ms. R.: A little bit, yeah.

Mr. P.: Ok. Now you testified that when you went to Dr. Demos, he told you to stay out of work for, I believe you said four weeks.

Ms. R.: No, I didn't say He told me to stay out of work. I said I stayed out of work four weeks. He didn't tell me to stay out of work four weeks. I said that I, the week that I went to Clarendon Memorial that I had to go to Dr. Demos the next week cause Dr. Demos was not. I had to get an appointment to see him. So he told

me to come the next week in to see him. And he took me out of work. And then I had to go back to him two weeks later after he took me out of work.

Mr. P.: Ok. And so you were saying that you went to Dr. Demos

Ms. R.: First week, the hospital had me out. When I went to Dr. Demos the Next week, Dr. Demos took me out of work. And then he told me to stay out a week after I had done the, after I went to him the second week. And then go back. That four weeks.

Mr. P.: When did you first see Dr. Demos after the fall at the Piggly Wiggly?

Ms. R.: The Next week.

Mr. P.: Alright. Do you know how many days it was?

Ms. R.: I think it was about four or five days, because this happen like on a Friday.

Mr. P.: Alright. And when you went to see him that four or five days later, he told you to stay out of work two weeks.

Ms. R.: Yeah, because he, I still had the splint on my leg. He told me to keep that on and to come on back to him in two more weeks and I went back to him in two more weeks.

Mr. P.: And he told you the first time you went there, went to see him on October 13.

Ms. R.: On whatever day it was.

Mr. P.: Two days after the accident.

Ms. R.: Ok. Whatever.

Mr. P.: And he at that time told you to stay out of work, for two weeks.

Ms. R.: He told me to come back to him in two weeks. He told me to come back to him in two weeks, yeah.

Mr. P.: Uh, that...

Ms. R.: For the next two weeks, yeah.

Mr. P.: ...Alright, and....

Ms. R.: And then when I went back to him, since then..

Mr. P.: Ok, I want you to look at that,

Ms. R.: Yeah I see that.

Mr. P.: Is that the written statement from Dr. Demos, about your being out of work?

Ms. R.: For two weeks, yeah.

Mr. P.: What's the date of that?

Ms. R.: On the 13th.

Mr. P.: 13th of October?

Ms. R.: 13th yeah.

Mr. P.: Two days after the fall. Right?

Ms. R.: Well, I thought sure this happen on a Friday.

Mr. P.: And is there any other,... Have an objection?

Mr. D.: No.

Mr. P.: Do you have any other written statement or excuse from Dr. Demos or any one else about staying out of work?

Ms. R.: Oh.. All the paperwork I got was from, I thought I gave it to him for, um, for..

Mr. P.: I believe that's all I have. Thank you ma'am.

Mr. D.: Just very briefly, uh,

Judge:

Mr. D.: Just very briefly, just very briefly.. Ms. Richardson, um, when you first fell back on October 11 of '08, you said you went to Clarendon Memorial, correct?

Ms. R.: Right.

Mr. D.: Did, and you were placed out of work by the doctors at Clarendon Memorial?

Ms. R.: Yeah. They told me to stay out of work,. Go and see my family doctor. And...

Mr. D.: Ok, how long did they tell you to stay out of work?

Ms. R.: They told me to stay out of work for a week. But then, so he said, well, the thing say I went there on the 13th, so Dr. Demos told me to stay out for two weeks and come back to him and that's what I did. He just got a part of the report, he don't have the whole report.

Mr. D.: Ok, so after you stayed out for the two weeks, because Dr. Demos instructed you to stay out of work...

Mr. P.: I'm going to object to the leading question. Direct Examinations..

Mr. D.: I haven't even finished the question...I don't know if I'm leading or not.

Mr. P.: I believe it was already, uh, a leading question.

Judge: Let's let him ask the question, and ...t here's a problem with the question and he hadn't finished the question,... let's give him a chance to finish the question, and if you have a problem then you can object.

Mr. D.: Thank you Your Honor. After you finished the, after the two weeks went by, Dr. Demos placed you out of work.

Ms. R.: Mmhm.

Mr. D.: Did you go back to him at any point?

Ms. R.: Yes, I went back to him because he told me to come back to him in two weeks.

Mr. D.: Ok. And you did?

Ms. R.: I did. I went back to him and he told me to stay out another week, and then go back to work.

Mr. P.: I'm going to object to that. Object to what the doctor told her.

Mr. D.: My position is that he kind of opened the doors in this, uh, when he started addressing how long Dr. Demos had put her out of work. Now I understand that's essentially still hear say but, my position would be, you know, he started dredging this ground so perhaps he should be given the opportunity to expound on it.

Mr. P.: Judge, I have a written, the only written record I have, I put into evidence and I asked Ms. Richardson if she had any other written excuse from the doctor and gave her the opportunity to present that. I didn't ask about any oral representation about a doctor, any hear say ...

Mr. D.: Well...

Judge: Mr. Deas.

Mr. D.: I'll rephrase the question, uh , with the court's permission.

Mr. P.: Your Honor, I'll, I'll withdraw my objection, I'm sorry. Go ahead..

Judge: I'll thank both of you to make your mind. One ofasked what you thought you wanted to ask and you did, you did ask her about the doctor, and you did present your statement. And he is going to rephrase, I'm going to give the opportunity to rephrase the question, and, and....

Mr. D.: Yes, sir. Thank you Your Honor. Ms. Richardson, after you were out of work for two weeks, based on Dr. Demos' instructions, you came back to him.

Ms. R.: Yes.

Mr. D.: Ok. And, were you, did you continue to, were you out of work for any period after you went back to Dr. Demos?

Ms. R.: He told me to stay out of work for another week and then go back, and that's what I did.

Mr. D.: Ok, and so when you add all of those weeks up, what does it total?

Ms. R.: About Four weeks, I was out of work four weeks.

Mr. D.: And then after that four week period you went on back to work?

Ms. R.: Yes.

Mr. D.: Ok, alright. Your, when you first, when you had your left knee replacement back in 2005,

Ms. R.: Yes.

Mr. D.: Were you also supposed to have a right knee replacement at that time?

Ms. R.: No, not at the same time. No. He told, he say it look kind of bad, but I told him my left knee the one that worry me, my right knee wasn't worryin' me at the time.

Mr. D.: Ok. Was there a time at some point when you were being informed that your right knee needed to be replaced?

Ms. R.: Yes.

Mr. D.: Ok. Was that before October 11 of 08?

Ms. R.: Uh, we talked about it, yeah.

Mr. D.: Ok, so you talked to Dr. Demos about your right knee being replaced?

Ms. R.: Yeah, he said it need to be replaced, but I told him it wasn't bothering me so I wasn't goin' to bother it.

Mr. D.: Ok. Now, the b, just to kind of clarify, so you had some issues with your right knee before you fell at the Piggly Wiggly on October 11? You had already,

Ms. R.: Yes.

Mr. D.: You were already having problems with your right knee?

Ms. R.: Right.

Mr. D.: Ok, how long had you been having problems with your right knee before you fell on October 11?

Ms. R.: Um,

Mr. D.: Of '08.

Ms. R.: Umm, well we talked about that when I had the x-ray done in 2005, and he said your right knee going soon need to be replaced and I told him my right knee wasn't bothering me. My Left knee the one that botherin me, and that's the one that need to be replaced.

Mr. D.: Ok. So they replaced the left knee.

Ms. R.: Right.

Mr. D.: But they didn't bother your right knee.

Ms. R.: No.

Mr. D.: Ok. But, but you were having difficulties with it.

Ms. R.: Yeah, but.

Mr. D.: Is that fair to say?

Ms. R.: Yes.

Mr. D.: Ok.

Ms. R.: yes.

Mr. D.: And whatever difficulties you were having with that right knee, did it get better or worse after October 11 of '08.

Ms. R.: It got WORSE.

Mr. D.: Ok.

Ms. R.: Now he really want to go in and do something.

Mr. D.: Alright. So with regards to your right knee problem, are you saying that the reason why you, you're not saying that the reason why you may have to have a right knee replacement is because of what happened on October 11th

Ms. R.: Oh no. No, No.

Mr. D.: So you're not saying that your right knee may have to have surgery because something that happened

Ms. R.: No, No.

Mr. D.: something that happened at Piggly Wiggly?

Ms. R.: No, No.

Mr. D.: You're not saying that, are you?

Ms. R.: No, No, no.

Mr. D.: Ok, Thank you ma'am. I have no further questions.

Judge: ???

Mr. P.: Nothing further, Judge.

Judge: Ok.

Mr. D.: Nothing further from this witness.

Judge: Mrs. Uh, Mrs. , you may step down.

Ms. D.: Thank you.

Judge: And thank you. Ok, Mr. Player, Are you ready to present your case? Do you have anything else?

Mr. D.: No, that's the Plaintiff's case. Nothing further.

Mr. P.: Judge, I have a matter of law I'd like to take up with the court.

Judge: We're going to ask the jurors to please excuse yourselves.

Mr. P.: Judge the Defendant will move for a Directed Verdict at this time in that the Plaintiff has failed to present any evidence that the Piggly Wiggly store created a unreasonably dangerous condition or that any such unreasonably dangerous condition caused Ms. Richardson's fall. The testimony is that she fell on the outside of the store, on the concrete sidewalk, exposed to the elements, raining, she knew it was raining, nothing, no evidence at all that there was anything defective about that sidewalk, Piggly Wiggly can't keep it from raining. They've got to have an outside of the store someplace. And if she fell walking out the store and if the rain contributed to that, that's not something Piggly Wiggly caused. They can't cover up the whole parking lot and keep it, put a tent over it and keep it from raining. There has been a total lack of evidence that Piggly Wiggly did anything wrong to cause her fall. Now they mentioned they didn't have any warning signs up. Warning signs are to give notice of a condition. And the only condition that we could have given notice of was that the sidewalk was wet. She knew it was wet, so you don't have to warn somebody about something they already know about. Now Judge, I uh, I have some authority. The closest case we have to this, is a case called, it's a Piggly Wiggly case by the way, Meeting Street Piggly Wiggly, down in Charleston. And I want to tell you some of

the things that that case held and in that case, the Lower Court granted a Directed Verdict such as I am making at this point in time.

Judge: Do you have...

Mr. P.: I beg your pardon?

Judge: Do you have a copy of that?

Mr. P.: Yes, sir.

Judge: Can I have it to look at?

Mr. P.: Yes, sir. The injury in that case happened inside the store, but the point I want to make, Judge, is that that the court in that case, the Supreme Court, said in that case that a Merchant can't ensure the safety of its patrons. In particular on rainy days the fact that a surface is moist is not sufficient to prove negligence on the part of the store.

Judge: Ok. Mr. Deas. You..

Mr. D.: Ok. Thank you your Honor. I believe that through the testimony of the Plaintiff there has certainly been an issue raised as to whether or not Piggly Wiggly breached their duty of care. She pointed out in fact that she wasn't all the way outside of the store when she fell. She indicated that she started to slip as she was inside the store and when she fell, part of her body was out and part of her body was in. I believe that's the irrefutable testimony of the Plaintiff. So um, it would appear that the hazardous condition that existed, existed inside the store and that's where the slip began and just carried her halfway out of the store and halfway in the store. So there's no question that they had just as much notice as Ms. Richardson did that it was raining. And of course, when it is raining, and you have traffic coming in and out, it would certainly be a breach of their duty of care, not to have mats not to have caution cones. And there has been no testimony presented by the Defendant that they had, that took any type of measures to address the rain water that was coming, that was, that existed in the store due to the fact that you had customers trafficking inside and out of the store. So if indeed they did not have mats, which according to Ms. Richardson's, uh, irref, which according to her undisputed testimony that they didn't. I mean there has been no testimony to the contrary, there is nothing on the record to the contrary.

If they did not have mats and they did not have caution cones up or warning signs up, that certainly would be a failure on their part to adhere to their duty of care. And there has been no testimony to the contrary or to any way refute what she said about them not having mats and not having caution cones or warning signs. Uh, uh, certainly Piggly Wiggly can't be expected to uh, to, to address rainy weather, they can't, that's something that is obviously out of their control, but what is clearly in their control, is that if it is raining outside and you have traffic coming in and out, that you can put down the appropriate mats, caution cones, warning signs, have employees stationed at the entrance to mop up the wet floor and that would certainly be steps in the right direction to safeguard those customers. None of those things were done, none of those things have been testified to by the Defendant. So, it is our position that this is an issue as to whether or not Piggly Wiggly was negligent, it's an issue to be determined by the jury, and therefore their Motion for Directed Verdict should be denied.

Judge: Ok..... uh, uh, Go ahead,

Mr. P.: I'm sorry, I didn't understand...

Judge: If you want to say anything to the court, in response to Mr. Deas.

Mr. P.: Yes, sir. What I wanted to say was this, My recollection of testimony is that Ms. Richardson clearly said that she fell outside on the concrete. If she did that, then the presence of mats inside is not going to keep her from falling outside. So how can that be the proximate cause of her fall? She clearly said that she fell outside on the concrete.

Judge: I'm going to deny the Motion of Directed Verdict and hear from ...

Mr. P.: Judge, We don't plan to put up any testimony.

Judge:

Mr. P.: We're not going to put up any testimony.

Judge: But we still need to

Mr. P.: Judge,

Judge: Hold, Hold on just minute...

Mr. P.: I'm sorry... I do have some Requests for Charge, do you want to consider those before you bring the jury back in?

Judge: Ok.

Mr. D.: Also, before we bring the jury in, since we're taking up Charges, the exhibits that, could I take a look at them?

Judge: You didn't see the one for the Defense?

Mr. D.: Correct. Actually if I could take a look at all of them, because some of those medical bills, exhibits, may have references to insurance, and we probably need to black them out.

Judge: ?? (can't understand what he is saying, Not included with this, then I use part of your Charge, is that ok with you?

Mr. D.: That's fine with me.

Mr. P.: Yes, sir, I do, I do have a objection as to one of Mr. Deas' requests. And that's number 4.

Judge: Ok.

Mr. P.: I object to that portion that says "In assessing Mental anguish may take in account anxiety or worry about the possible future.

Judge: On what line are you reading?

Mr. P.: I'm sorry,

Judge: What line?

Mr. P.: Num, its roman numeral 4 about the middle of that paragraph, starting "In assessing mental anguish "

Judge: Ok.

Mr. P.: You may take into account anxiety or worry about the possible future occurrence or condition resulting from the injuries that the Plaintiff received.

Mr. D.: Your Honor, I'll consent to that being removed. The only part that I would ask that the court charge is the part referring to pain and suffering. The part regarding mental anguish, I'll consent to having that withdrawn.

Judge: I'm going to give the charge that I have, if you object to it, then we'll deal with that, is that ok?

Mr. D.: That's fine.

Mr. P.: Ok. Judge let me, may I, for the record, make sure my Motion for Directed Verdict is properly in the record, again. Since I'm not putting up any testimony. Are we on the record now?

Judge: We are on the record. We were on the record then and we are still on the record.

Mr. P.: Alright, sir. Now, Judge, an additional ground for my Directed Verdict is that as a matter of law, we feel that the Plaintiff was guilty of contributory negligence that exceeded 50 % of the total negligence. And that is an addition ground for my Directed Verdict.

Judge: At this time I am denying the Directed Verdict.

Mr. P.: Thank you, Your Honor.

Judge: In addition to the charge that I gave you, I have some charge from the Defense that I want to share with you as well. I charge you that it does not follow that one party must respond in damages to another merely because of an injury has been sustained. The fact that a person received an injury or the fact that an accident occurred, is insufficient to prove negligence. A person has a duty to use reasonable care for his own safety, and if he fails to do so, he is guilty of contributory negligence. The owner or possessor of property has no duty to warn of a danger when an ordinary person of reason or prudence, would reasonably be expected to see and avoid and cannot be held liable for damages resulting from the failure to see and avoid such danger. A merchant's liability, when it is raining, for any customer to slip and fall on a wet floor, may not be based on the presence of moisture and that it is impossible to keep commercial premises entirely free of tracking in rain during bad weather. And the risk of harm created by such accumulation of water on the floor of business premises, during rainy days, is not unusual and unreasonable in itself.. But it is to which will, which all who go out on a rainy day may be exposed and which all may expect or anticipate. These are the other charge that we have and at this time I am going to send you back into the jury room to discuss the evidence which has been presented to you. And remember the law that I gave in the charge that I gave. Mr. Foreman, when you have a unanimous verdict that mean that everybody has

to vote on the verdict, when you have that, we want you to knock on the door and let us know and we'll let you come back in and give us your verdict.

Judge: They have a question here that they want to ask, Can you provide a sub-total of cost for the doctor and hospital bills.

Mr. D.: Yeah, we can do that.

Mr. P.: What's that?

Mr. D.: They want us to total the bills.

Mr. P.: Don't you have a summary?

Mr. D.: Yeah.

Mr. P.: Well, just write it out, I think some of that stuff is explained.

Mr. D.: ok.

Mr. P.: They got

Mr. D.: You want me to, let's do this, How about I just half this, tear this in half and only submit this portion?

Mr. P.: That's fine, that's fine.

Mr. D.: Judge, this gives a sub-total.

Judge: Ok, Mr. Foreman, did everybody, um,

Foreman: Yes sir. Unanimous decision.

Judge: agree with this verdict. Ok, the verdict is "We the jury in the above captioned case, find in favor of the Plaintiff and award an actual damage in the amount of \$3, 870.00." And this is your verdict?

Foreman: Yes.

Judge: Ok. All of you agree with the verdict?

Foreman: Yes, sir.

Judge: We thank you so much for your time today. Guess I should have had you all to stand. So for your time today. And you will be compensated for the day. And they going to give you a whole lot of money. It'll come out to the amount of

\$10.00. And so we hope that you don't go out and, and uh, spend that before you get home. But anyway, we really thank you so much for coming out today and sharing and we thank you for the time. And you may be excused.

Judge: And here,

Mr. D.: That, That's my understanding.

Judge: And so then that comes, its subtracted from the total,

Mr. D.: From the

Judge: from the amount, from the judgment.

Mr. D.: Yes, sir.

Judge: What, 30, 38..

Mr. D.: 3870., was the verdict.

Judge: Ok,

Mr. D.: You subtract that, what is it, 1729?

Judge: I went ahead and subtracted it, but they subtracted it already so...that's, that's what the total will be.

Mr. D.: Ok. So what do you have, 2141?

Clerk: 2141.

Mr. D.: Yeah, that's what I got.

Mr. P.: yeah, that's right.

Judge: Ok,

Mr. P.: Judge I have some Motions...

Judge: But you've given this for the record, right?

Mr. P.: Yes, sir, you can have those.

Judge: Ok.

Mr. P.: Judge, the Defendant would move for a Judgment Not Withstanding the Verdict on the basis that from the evidence when taken as a whole and viewed in the light most favorable to the Plaintiff, there's no evidence from which the negligence of the Defendant could be reasonably inferred. In addition, Judge, we think that it was error for the Judge to fail to charge Contributory Negligence as requested and we therefore ask for Judgment Not Withstanding the Verdict or a

new trial. And the alternative on both those grounds. And Judge, what I'd like to do is to be able to submit a written Motion to you with more detail in it if I could, do that within ten days.

Judge: Anything from the Plaintiff?

Mr. D.: Judge, I would respectfully request that the court deny both his Motion for a new trial and his Motion for a Judgment Not Withstanding the Verdict. I believe there was sufficient evidence in the record for the jury to reach the conclusion that it did, particularly when you consider there was no evidence presented by the Defendant. Certainly I believe that Ms. Richardson adequately represented to the jury sufficient facts to support their verdict. And on that basis, we would ask for both Motions to be denied. I don't have an objection to him submitting anything, submitting something in writing, if that's what he chooses to do at a later date. I don't have an objection to that.

Mr. P.: That's what my request is.

Judge: Ok, I think I will consider allowing you to do that. I will look at the Motion and at that time make a decision.

Mr. P.: Thank you Judge.

Mr. D.: Thank you.

Mr. P.: Appreciate the way you handled the Court.

Judge: Thank you sir. Appreciate the comment.

FORM 14
CERTIFICATE OF COUNSEL IN RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2010-CP-14-362

Cynthia Richardson,

Respondent,

v.

Piggly Wiggly Central, Inc.,

Appellant.

CERTIFICATE OF COUNSEL

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

August 8, 2012



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