

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No.: 2019-000152

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SC Court of Appeals

Vanessa Wiggins,.....Appellant,

v.

ALDI, Inc.,.....Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

VANESSA WIGGINS,
Plaintiff,

Civil Action No. 2017-CP-40-05549

v.

**ORDER GRANTING DIRECTED
VERDICT**

ALDI, INC.,

Defendant.

Procedural History

Plaintiff filed suit against Defendant on September 14, 2017 for alleged injuries arising out of a fall on June 17, 2017. On November 20, 2018 the parties agreed to a Consent Scheduling Order to place this matter on the Richland County Trial Roster for the week of December 10, 2018. On December 10, 2018, Plaintiff requested a one week continuance due to illness. This matter was set for trial the week of December 17, 2018. On December 14, 2018, Plaintiff moved to continue and/or dismiss the suit without prejudice. Plaintiff's motions were heard and denied on December 17, 2018. Plaintiff made the decision at that time to proceed with trial. The undersigned conducted a hearing on all motions in limine on December 19, 2018. Trial in this matter was commenced on December 20, 2018. Present at the trial were Plaintiff and her counsel Kelly Burnside and Frank Barton, a representative of Defendant (Kingsley Spiller), and counsel for Defendant Brett Bayne. At the close of Plaintiff's case, Defendant moved for a directed verdict pursuant to SCRCF Rule 50 on all causes of action. Following arguments of the parties, a review of the evidence and testimony, and a review of pertinent case law, the undersigned orally GRANTED the Directed Verdict Motion in favor of Defendant. This Order memorializes the

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oral ruling in this case.

Factual Background

Plaintiff was a customer at an ALDI store on June 17, 2017. During the course of checking out, Plaintiff requested a chair to sit in. An ALDI employee brought a chair to Plaintiff. The chair was a standard office style chair with wheels and no arms. The chair was not defective and no allegation was made by Plaintiff that the chair was defective in any way. The ALDI employee wheeled the chair to Plaintiff. Video surveillance and testimony by Plaintiff revealed Plaintiff observed the employee wheel the chair to and bring the chair behind Plaintiff. Video surveillance revealed Plaintiff observed the employee walk away from the chair. Thereafter, approximately 3-5 seconds later, Plaintiff attempted to sit down, missed the chair, and fell to the ground. In the process of falling to the ground, Plaintiff grabbed her shopping cart and pulled it down on top of herself. Plaintiff filed this suit on September 14, 2017 alleging Defendant ALDI was "negligent, willful, wanton, and grossly negligent" in one or more of nine (9) ways enumerated in the Complaint.

Legal Standard

Rule 50 states: "The motion for directed verdict may be made at the close of plaintiff's evidence, as well as at the close of all the evidence." Estate of Haley v. Brown, 370 S.C. 240, 251, 634 S.E.2d 62, 68 (Ct. App. 2006). "In ruling on a motion for a directed verdict, the trial court must view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion." Id. "In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence." Id. "This court is not concerned with the weight of the evidence, but whether there is any evidence from which the jury is warranted in making a finding." Id. "When the evidence

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yields only one inference, a directed verdict in favor of the moving party is proper." *Id.* "A directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." Fletcher v. Med. Univ., 390 S.C. 458, 462, 702 S.E.2d 372, 374 (Ct. App. 2010).

Legal Analysis

The undersigned surveyed both South Carolina and other state law to find the most applicable cases to this type of accident. The most specific case on point comes from Georgia. In Ford v. Bank of America 627 S.E.2d 376, 277 Ga.App. 708 (2006), the plaintiff (Hazel Ford) fell in a Bank of America when trying to sit down. The facts of that case are *identical* to this case. The court stated "Construing the evidence in the light most favorable to Ford, the record reveals that Ford entered the bank, located inside a grocery store...She had been in the bank many times, and it was not configured any differently that day. She backed up to an office chair with wheels, and as she started to sit down, the chair "just went out from under" her. She fell to the floor..." *Id.* In this case, Plaintiff did exactly what the plaintiff in Ford did—backed up to sit in a chair with wheels, failed to properly sit down, and the chair went out from under plaintiff causing a fall.

Ford has even more identical similarities to this case. The court notes the following facts which are present in this case: "...she admitted that she had sat in 'those chairs before in the banking center,' that she had sat in chairs with wheels before, and that nothing obstructed the chair wheels from her view. When asked if there was anything on the floor that caused the chair to slip out from under her, Ford responded, 'I didn't see it.' Finally, when asked if the chair was defective, she said, 'I don't know. Not to my knowledge. I did not examine it.'" *Id.* In this case, Plaintiff admitted she had sat in similar chairs before, testified there was nothing on the floor,

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and had no knowledge of any defect in the chair.

The Ford court relied on a Georgia appellate case related to invitee and slip and fall. However, the standard in Georgia is the same as it is in South Carolina for the elements of proof required. Specifically, the court stated:

"Proof of an injury, without more, is not enough to establish a proprietor's liability. Sams v. Wal-Mart Stores, 228 Ga.App. 314, 316, 491 S.E.2d 517 (1997). "[T]o recover for injuries sustained in a slip and fall action, an invitee must prove (1) that the defendant had actual or constructive knowledge of the hazard; and (2) that the plaintiff lacked knowledge of the hazard despite the exercise of ordinary care due to actions or conditions within the control of the owner or occupier." Hudson v. J.H. Harvey Co., 244 Ga.App. 479, 480, 536 S.E.2d 172 (2000). Without first establishing that a dangerous condition existed, the plaintiff cannot establish that the defendant knew about the danger and therefore cannot recover. Metts v. Wal-Mart Stores, 269 Ga.App. 366, 367, 604 S.E.2d 235 (2004); Cohen v. Target Corp., 256 Ga.App. 91, 92-93, 567 S.E.2d 733 (2002)."

This is exact same standard is applied to invitee injury cases in South Carolina. Therefore, this court can apply the same rationale to a case which is factually identical.

Additionally, Ford advanced nearly identical arguments as Plaintiff in this case. Specifically, Ford alleged that "a chair with wheels on a slick, tile floor can certainly be a dangerous condition, and sub judice, did constitute a dangerous condition when [Ford] attempted to negotiate sitting in the chair." Id. The court rejected this argument and held "[m]erely stating that a condition is dangerous does not constitute evidence that it is so. Carroll v. Ga. Power Co., 240 Ga.App. 442, 443(1), 523 S.E.2d 896 (1999)." Id. The court noted the evidence was insufficient because the plaintiff "...proffered no expert testimony that the chair was hazardous, nor did she point to any rule or regulation allegedly violated by the chair, but simply testified that the chair was defective because it slid out from under her." Id. In the present case, Plaintiff has attempted to advance the same argument—that a fall while sitting de facto makes the chair

dangerous—and Plaintiff similarly failed to present any expert testimony that the chair or floor were hazardous, defective, or dangerous.

In sum, in Ford, the plaintiff attempted to sit down in a rolling style office chair and the chair merely came out from under her. The plaintiff could not identify any defect in the chair or the surface. The plaintiff could not point to any rule or regulation which was allegedly violated by the chair. The plaintiff's argument was merely "I fell, so it was dangerous." This is squarely within all four corners of this case. Plaintiff in this case has not identified a dangerous condition, has not identified any issues with the chair, and has done nothing more than show that she fell and as the Ford court succinctly stated—proof of an injury without more is not enough.

Another Georgia case which Ford relied upon is Weldon v. Del Taco Corp., 390 S.E.2d 87, 194 Ga.App. 174 (1990). In Weldon, the plaintiff received injuries when the chair she was occupying slipped out beneath her and dropped her to the floor. The court made the same holding as to "proof of nothing more than a fall" is insufficient to maintain a claim and establish negligence. Specifically, the court held

"...according to the deposition testimony, there was no evidence of the presence of excessive wax or of any foreign substance on the floor; according to witnesses and appellant herself, the chair in which appellant was sitting appeared to be no different in design, construction, or condition from the other chairs in the restaurant; by her own admission, appellant had been in that restaurant many times and therefore could be presumed to be acquainted with and to have used its furnishings on previous occasions; she offered no reason for the chair's toppling other than that she was reaching to her left at the time. "[P]roof of nothing more than the occurrence of the fall is insufficient to establish the proprietor's negligence." J.C. Penney Co. v. Smith, 173 Ga.App. 612, 613, 327 S.E.2d 574 (1985); *cited in* Harmon v. Reames, 188 Ga.App. 812, 374 S.E.2d 539 (1988)."

This case is similarly analogous as it was to Ford. Plaintiff cannot present a *reason* why she fell or attribute the fall to any defect in the chair or the floor. Rather, Plaintiff fell and is attempting

to argue that the mere presence of a fall is proof of a dangerous condition. Simply put, it is not. Absent *proof* of more—not just assertion—Plaintiff's claim fails.

This issue has been taken up in numerous other venues as well. Each and every court which has addressed this specific type of fall—falling out of/while sitting down in a rolling chair—has determined that a chair with wheels is not a dangerous or defective condition of a premises.

In Jones v. United States, 194 F.Supp.3d 849, the United States District Court, E.D., Wisconsin, the plaintiff alleged the defendant was negligent when it allowed a rolling chair to be present in the waiting room of a clinic. The court stated "...wheeled chairs are in homes and offices everywhere and yet nowhere are they considered hazardous, particularly if they are on a carpeted surface. Because rolling chairs are so ubiquitous in society, the clinic was entitled to expect that patients and visitors alike would understand that the chair was mobile and that some modicum of extra care would be required with their use." The court went on to find "...any 'danger' arising out of the fact that the chair had wheels was an obvious one."

In Smith v. Marks Isaacs Co., 147 So. 118, 119 (La.Ct.App.1933), the plaintiff alleged negligence on the part of a beauty salon when it used a rolling chair "on a hard marble floor on which it could so easily roll." The court rejected that argument, concluding that "we cannot believe that such a chair if safe on a linoleum floor could be said to be unsafe just because of its use on a marble floor."

In Granison v. Builders Square, Inc., 266 A.D.2d 922, 922, 697 N.Y.S.2d 800, 801 (1999), the court of appeals reversed and found that the trial court should have granted summary judgment holding "neither the chair nor the manner of its placement amounted to a dangerous or defective condition, and plaintiffs failed to raise an issue of fact. Contrary to plaintiffs'

contention, defendant had no duty to lock or otherwise fix the wheels of the chair to prevent it from moving; mobility is the very function of the wheels. There is no evidence in the record that the chair 'constituted a hidden danger to plaintiff so as to require defendant [] to give her special notice or warning with respect to said object. * * * Furthermore, there is no duty to warn against a condition that can be readily observed by the use of one's senses.'"

Similarly, a court in Ohio appears to have recognized that the law does not treat persons as helpless infants, but instead as individuals with a duty to exercise ordinary care for their own safety. In Streets v. Chesrown Enterprises, the court of appeals cited the "open and obvious" doctrine to preclude liability when a wheeled chair slipped out from a customer at a car dealership: "appellant's claim fails under the open and obvious doctrine. It is clear that even an invitee has a duty to exercise care for his or her own safety.... It is also clear that in this case, appellant did not exercise care for her own safety. Appellant simply failed to look at the legs of the chair, misjudged the location of the chair, and did not grab onto the chair as she went to sit down." Streets v. Chesrown Enterprises, Inc., 2004 WL 235198, *3 (Ohio Ct.App.2004). The court stated "Appellant points to no specific evidence that Chesrown was unreasonable in any way, that the chair at issue was defective in any way, that having chairs with wheels on a hard linoleum type floor is unreasonably dangerous, or that Chesrown had notice of any defective condition. There is no evidence that any customers or employees fell from that chair or any other chair within the showroom. Therefore, we find the legs of the chair were an open and obvious condition appellant could have discovered upon reasonable inspection." Id. at *4.

In a Virginia case, a trial court overturned a jury verdict, recognizing the problem present here, which is that the Plaintiff simply has no idea what happened when she fell. The court stated "In the case-at-bar, plaintiff failed to prove even 'a probability of negligence.' At most, she

proved that she was directed to sit in a chair by an MCV employee in a position of authority, that the chair was on wheels, that it was on a linoleum floor, that it was designed to roll freely, that it had a relatively small back, that it had no arms, and that plaintiff was a relatively large woman. She did not prove how and why the accident happened. All she said was that the chair went out from under her when her buttocks contacted it. She did not say whether her buttocks made contact with the entire seat of the chair or whether, like the overwhelming majority of people have done at least once in their lives, she simply 'missed' the seat." Williams v. Com., 53 Va. Cir. 399, 2000 WL 1618010 (2000).

Also ruling as a matter of law, a federal district court in Mississippi rejected a claim that a chair was more dangerous because it was situated on a concrete floor, rather than on carpeting. "Plaintiff claims, however, that the removal of the carpet created a hazard because Piccadilly placed chairs with rollers on the bare concrete floor. Plaintiff has not offered any admissible evidence that a rolling chair on a concrete floor constitutes an unreasonable dangerous condition or hidden peril. Nor has plaintiff presented any other evidence that some other unreasonably dangerous condition existed which caused the chair to move from underneath her when she attempted to sit on it." Chapman v. Piccadilly Restaurants, Inc., No. CIV 305CV354 HTWLRA, 2007 WL 2872417, at *2-3 (S.D.Miss. Sept. 26, 2007).

The Court of Appeals of Arizona also weighed in in the case of Castro v. J.K. House, Inc., No. 1 CA-CV 10-0467, 2011 WL 2176154, at *1 (Ariz. Ct. App. May 24, 2011). Mrs. Castro, a 73-year-old woman, was injured when she fell while having her fingernails done at Total Concept. At the time of the accident, she had been having her nails professionally done twice per month for approximately five years. Each time she had her nails done, Mrs. Castro followed the same routine. She sat on a rolling chair at a table where Corral filed, filled, and

buffed her nails. Mrs. Castro would get up from the rolling chair, go to the bathroom to wash her hands, return to the rolling chair at the table, and sit down to complete the process. On the day of the accident, Mrs. Castro returned from washing her hands in the bathroom, began to sit down on the rolling chair, and the chair rolled out from under her. As she fell, she grabbed the table in front of her, which was also on rollers, and the table fell on top of her. The Castro court stated "A business owner has an affirmative duty to maintain the premises in a reasonably safe condition. Tribe v. Shell Oil Co., 133 Ariz. 517, 519, 652 P.2d 1040, 1042 (1982). This standard of reasonable care requires the owner "to discover and correct or warn of hazards" that present a reasonably foreseeable danger to the invitee. Markowitz v. Ariz. Parks Bd., 146 Ariz. 352, 355, 706 P.2d 364, 367 (1985). The business owner is generally not liable for injuries to invitees from dangerous conditions that are open and obvious or are as well known to the invitee as to the owner. Tribe, 133 Ariz. at 519, 652 P.2d at 1042." In finding against the plaintiff, the court held "Here, the record demonstrates Mrs. Castro was fully aware of the conditions at the salon; indeed, the conditions at the salon were as open and obvious to her as they were to Total Concept."

"The cases cited above are all variations on the same theme. What emerges from this line of cases is that rolling chairs are not considered dangerous even when they are on smooth floors, and even when they involve less-than-steady plaintiffs. In addition, the courts cited above were ruling as a matter of law, either on summary judgment or in post-trial rulings. These courts have sensibly concluded that rolling chairs simply are not hazardous, and, to the extent they pose even a minuscule danger, that danger is an obvious one." Jones v. United States, 194 F. Supp. 3d 849, 855 (E.D. Wis. 2016).

Turning to South Carolina case law on similar issues, in Pringle v. SLR, Inc. of

Summerton, 382 S.C. 397, 675 S.E.2d 783 (2009), a restaurant patron filed suit when the chair patron occupied collapsed underneath patron. The Honorable George C. James granted Directed Verdict in the case.

In Pringle, the plaintiff was seated in a chair at a buffet when the chair suddenly collapsed underneath her causing her to fall for the floor. During the deposition, the plaintiff testified she did not notice anything wrong with the chair before it collapsed and that the chair was not "rickety," "wobbly," or otherwise unstable. She also admitted no prior issues with the chairs in prior visits or any knowledge of any prior issues with chairs for any other customers. Directed Verdict was granted because the plaintiffs "...failed to offer any evidence that Knights Inn knew the subject chair was defective or in a dangerous condition." Id. The Court of Appeals noted "[t]o recover damages for injuries caused by a dangerous or defective condition on a defendant's premises, a plaintiff "must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it." Anderson v. Racetrac Petroleum, Inc., 296 S.C. 204, 205, 371 S.E.2d 530, 531 (1988)." Id. Further, the court noted that even if the defendants *did* create the condition it was not sufficient to survive Directed Verdict "...unless there is evidence that in creating the condition, the defendant acted negligently. See Shain v. Leiserv, Inc., 328 S.C. 574, 576, 493 S.E.2d 111, 112 (Ct.App.1997) (stating the evidence required to show a condition created by the defendant was indeed hazardous must show the defendant was negligent either in the choice of materials used to create the condition or in the manner of their application)." Id. The Court of Appeals affirmed Directed Verdict stating "[t]o hold otherwise would be directly at odds with the applicable standard of care that "[a] merchant is not an insurer of the safety of his customer but owes only the duty of

exercising ordinary care to keep the premises in a reasonably safe condition.” Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001).” Id.

Plaintiff did not—and cannot—show in the present case that there 1) was a dangerous or defective condition, 2) even if there were a dangerous or defective condition that Defendant knew about any dangerous or defective condition, 3) Defendant did anything to create a dangerous or defective condition, and/or 4) even if there were a dangerous or defective condition that Defendant acted negligently to create the condition. Plaintiff’s claim(s) must fail.

Another South Carolina case touches on premises liability issues, albeit with a door instead of a chair. In McElmurray v. The Cato Corporation, 2011 WL 13175156 (June 13, 2011, Judge Doyet A. Early, Aiken County Common Pleas), the plaintiff alleged she was injured when a dressing room door fell and caused her injuries. The defendants denied having any knowledge of a defective or dangerous condition and there was no evidence presented by plaintiff to suggest otherwise. The court held “...[defendant] had no notice of any defect in the dressing room door that allegedly fell on the plaintiff. If [defendant] had no notice, the plaintiff’s case must fail. To recover damages for injuries caused by a dangerous or defective condition on a defendant’s premises, a plaintiff must show that either the injury was caused by a specific act of the defendant which created the dangerous condition, or that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it. Pringle v. SLR, Inc. of Summerton, 382 S.C. 397, 675 S.E.2d 783 (Ct. App. 2009).” Id.

As in Pringle above, Plaintiff’s case fails under the McElmurray case as well. Plaintiff has presented no evidence of a defective or dangerous condition nor that Defendant had notice of any defective or dangerous condition. Because of that, Plaintiff’s claim fails and Directed Verdict is proper.

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Garvin v. BI-LO, Inc., 343 S.C. 625, 541 S.E.2d 831 (2001) is the seminal case dealing with the duties of a shopkeeper and the genesis of the jurisprudence which states that a shopkeeper is not the insurer of a customer's safety. In Garvin, a customer was injured when a display of canned items fell onto her as she reached up and took cans off the top of the stack. Garvin filed suit against Bi-Lo alleging, *inter alia*, Bi-Lo had negligently created a condition which was dangerous to its invitees. Bi-Lo was granted Directed Verdict on the ground that a) Bi-Lo had no notice of a problem with cans falling, and b) there was no evidence Bi-Lo committed a negligent act which caused the cans to fall.

The court held "[a] merchant is not an insurer of the safety of his customer but owes only the duty of exercising ordinary care to keep the premises in reasonably safe condition. Pennington v. Zayre Corp., 252 S.C. 176, 165 S.E.2d 695 (1969)." *Id.* The court further explained, as also noted throughout this memorandum, that "[t]o recover damages for injuries caused by a dangerous or defective condition on a storekeeper's premises, the plaintiff must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it. Anderson v. Racetrac Petroleum Inc., 296 S.C. 204, 371 S.E.2d 530 (1988); Pennington v. Zayre Corp., 252 S.C. 176, 165 S.E.2d 695 (1969); Hunter v. Dixie Home Stores, 232 S.C. 139, 101 S.E.2d 262 (1957); Cook v. Food Lion, Inc., 328 S.C. 324, 491 S.E.2d 690 (Ct.App.1998)." *Id.*

In granting Directed Verdict, the court noted "[t]his evidence is insufficient, as a matter of law, to demonstrate the store created a dangerous condition. Absent evidence of some defective manner of stacking the boxes, or that Bi-Lo was on notice that the stacked cans had become rickety, there is simply no evidence from which a jury could find a dangerous condition

was created by Bi-Lo...To accept Garvin's contention would render Bi-Lo an insurer of its customers' safety. This is simply not the law in South Carolina." Id.

Plaintiff's contentions are the same in this case—she seeks to have ALDI held responsible as the insurer of her safety. Plaintiff simply failed to properly sit down in a chair. ALDI undertook no duty to assist her or insure that she was properly seated. Plaintiff has not—and cannot—point to a single legal duty ALDI owed or breached in the process of Plaintiff sitting in a chair. Further, Plaintiff has not—and cannot—show any evidence that ALDI was aware of any dangerous or defective condition with the chair, cart, and/or floor or that ALDI did anything negligently to create a dangerous or defective condition with the chair, cart, and/or floor. Directed Verdict is required.

Conclusion

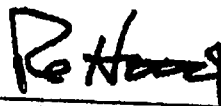
Based on the foregoing, Directed Verdict is proper for Defendant. Plaintiff fell because she missed the chair and sat down "short" of the chair. Plaintiff did not ask for assistance in sitting down and has testified she did not need assistance in sitting down. As Plaintiff missed the chair and fell, she grabbed her shopping cart and pulled it down on top of herself. Plaintiff has not alleged the chair was dangerous or defective, the shopping cart was dangerous or defective, or the flooring surfaces were dangerous or defective. Plaintiff did not call any experts to testify to any issues relating to the chair, cart, and/or floor. Even if such allegations were made, Plaintiff has not made any showing of any dangerous or defective condition of the chair, cart, and/or floor—let alone a showing sufficient to survive Directed Verdict.

Plaintiff has admitted she is not aware of any dangerous condition. Plaintiff has admitted she did not need assistance. Plaintiff has admitted she observed the chair prior to sitting. Plaintiff has admitted she did not look back at the chair prior to sitting down. Plaintiff has admitted there

was nothing that prevented her from sitting in the chair properly. Plaintiff has admitted she was not instructed to sit nor was she given an "all clear" type signal to sit down. Plaintiff admits it is "prudent" to look before you sit but admits she did not do so. Plaintiff admitted she was aware that rolling chairs may move before or while sitting down. Plaintiff went so far as to admit it was "common sense" that chairs with wheels may move.

Further, even if there was a showing that the chair constituted a danger—and none was made—any danger alleged by Plaintiff would constitute an open and obvious condition where Plaintiff admits she was aware the chair had wheels, observed the chair being rolled on wheels, and admits she knew chairs with wheels could move when sitting.

Plaintiff has not advanced a single viable theory of recovery or negligence. Further, case law both in South Carolina and in other states make it clear there is no liability for the exact type of fall suffered by Plaintiff. The Ford case cited herein is an identical fall to the fall suffered by Plaintiff—down to the exact same argument advanced by Plaintiff. The court in Ford affirmed a grant of summary judgment against the plaintiff. Other cases cited herein (Weldon, Pringle, McElmurray, Garvin, etc.) related to falls, chairs, and other conditions also support a grant of Directed Verdict for Defendant. The entire progeny of cases on this issue reveal that the mere fact of a fall involving a chair, absent more, is insufficient to impute a legal duty or to survive Directed Verdict.



Robert E. Hood, Judge

January 25, 2019

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Vanessa Wiggins,

Plaintiff,

vs.

Aldi, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. : 2017-CP-40-05549

**ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

This matter came before me on October 9, 2018, for a hearing on the Motion for Summary Judgment filed by the Defendant on April 16, 2018. Plaintiff was represented by Kelly Burnside and Defendant was represented by Brett Bayne. After careful review of pleadings, memoranda presented, arguments of counsel, the applicable South Carolina Statutes and Rules of Civil Procedure, and the applicable case law, the Defendant's Motion for Summary Judgment is **DENIED**, as set forth more fully below. When taken in the light most favorable to Plaintiff, the evidence creates a genuine issue of material fact that should be left to the jury as the fact finder.

LEGAL STANDARD

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. South Carolina courts consider summary judgment to be a "drastic remedy" that should be "cautiously invoked." *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008). For summary judgment to be granted, it must be "perfectly clear" that no issue of fact is involved. *Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp.*, 278 S.C. 195, 293 S.E.2d 706 (1982).

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The party seeking summary judgment bears the burden of clearly establishing the absence of a genuine issue of material fact. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991). In a negligence case, such as this, "applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla of evidence* in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (emphasis added); see Rule 56, SCRCP.

When the question of fact is one of whether the defendant has provided reasonably safe premises, then that is a question of fact for the jury. *Henderson v. St. Francis Cmty. Hosp.*, 303 S.C. 177, 180, 399 S.E.2d 767, 769 (1990). Further, "[t]he determination of the respective degrees of negligence attributable to the plaintiff and the defendant is a question of fact for the jury, at least where conflicting inferences may arise." *Ross v. Paddy*, 340 S.C. 428, 433, 532 S.E.2d 612, 615 (Ct. App. 2000)

EVIDENCE PRESENTED

This case arises out of a slip and fall type incident that occurred on June 17, 2017. The Plaintiff, Vanessa Wiggins, was shopping at the Aldi store located at 1240 Longreen Parkway, Columbia, SC 29229. At the hearing, Defendant entered into evidence a surveillance video from the Aldi store, which captured the incident as it occurred. While in the check-out line, Plaintiff can be seen communicating with an employee¹. The employee returned with an office style, wheeled chair, and pushed the chair around to Plaintiff. As the employee stepped away, Plaintiff went to sit down, and the chair slid out from behind her. Plaintiff grabbed the grocery cart in front of her in attempt to break her fall, but the cart came down on top her.²

¹ Plaintiff requested a chair. P. Depo. Tr. 33:7-18

² This video alone creates questions of fact that are for the jury, as different factual conclusions could be reached by a reasonable jury. See *Henderson v. St. Francis Cmty. Hosp.*, 303 SC 177, 180, 399 S.E.2d 767, 769 (1990).

A witness, Vivian Ashford, standing in the check-out line behind Plaintiff, described the incident as occurring so fast that she couldn't react.³ The video presented by Defendant supports the witness's recollection in her Affidavit, and shows that the chair was rolled over to Plaintiff on a surface that appears to be hard and slick. Plaintiff alleges in her Complaint that Defendant was negligent in breaching its duty of care when it provided her a chair and did not take the same care and caution that a reasonably prudent person would have under the circumstances then and there prevailing. Plaintiff's deposition testimony is that it would have been "common sense" for Defendant to ensure the stability of the chair it provided her.⁴ Further, counsel for Plaintiff conducted a site inspection and has photographs submitted in Discovery that will be presented at trial to a jury to determine whether Defendant had actual or constructive knowledge of a dangerous condition that it failed to remedy.

LEGAL ANALYSIS

Despite numerous arguments submitted by Defendant, the granting of summary judgment is inappropriate where the non-moving party has presented even a "*mere scintilla of evidence*," as is the case here. *Hancock v. Mid-South Mgt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (emphasis added). In *Pringle v. SLR, Inc. of Summerton*, a restaurant patron filed suit when the chair the patron occupied collapsed underneath the patron. *Pringle*, 382 S.C. 397, 675 S.E.2d 783 (2009). The Court of Appeals upheld the trial court's conclusion that "the [the patron] did not present a genuine issue of material fact as to whether the use of a residential chair in a commercial establishment, without more, constitutes evidence of negligence on the part of the owner of the establishment." *Id.* at 406, 675 S.E.2d 788. The facts at issue here are distinguishable from

³ P. Aff. Witness Vivian Ashford, P. 6, 7

⁴ See P. Depo. Tr. 58:24-59:24

act proximately caused the injury complained of, namely Plaintiff's fall and ensuing injuries and therefore the case is one that must be submitted to a jury.

In its Answer, Defendant asserted the affirmative defense of comparative negligence⁷. "In a comparative negligence case, the trial court should *only* determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." *Bloom v. Ravoir*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000) (emphasis added). Here, the evidence presented does not lead to one sole reasonable inference; specifically, it does not lead to the sole inference that Plaintiff's negligence exceeded fifty percent. *Id.* Rather, the pleadings and evidence presented do not lead to a finding that Plaintiff was more negligent than the Defendant.

Defendant submitted argument that this case is analogous in terms of both fact and application of the law to Ford v. Bank of America 627 S.E.2d 376, 277 Ga.App.708 (2006). In *Ford*, the court granted summary judgement to the defendant "Since the customer could not establish that a dangerous condition existed, she could not establish that the bank knew about the danger." This holding directly contradicts the facts of the present case. Pictures admitted into evidence through discovery show that Defendant, Aldi Inc., is aware that the chairs provided should not be used on the floor surface that they were provided to Plaintiff to be used on. Every chair in the store is on an elevated carpet surface above the sales floor with railings and other safety measures to ensure that the chairs are not used on the slick surface that Ms. Wiggins was on when she was provided a chair to use. This shows that not only should the Defendant have been aware of the dangerous condition created by using that type of chair on a surface such as the one Ms. Wiggins was on, but that the Defendant, was aware of the dangerous condition and had taken measures to prevent the chairs from

⁷ Answer, P.2, pp. 12.

Pringle, because Plaintiff does not argue that the chair itself or the premises were defective, but that in providing a chair to Plaintiff, Defendant acted *negligently*.⁵

"To recover damages for injuries caused by a dangerous or defective condition on a storekeeper's premises, the plaintiff must show *either* (1) that the injury was caused by a specific act of the defendant which created the dangerous condition, *or* (2) that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it." *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 542 S.E.2d 728 (2001) (emphasis added). The case at hand is distinguishable from many South Carolina slip and fall cases in that it does not concern a substance on the floor; rather Plaintiff alleges that Defendant acted in a way to create a dangerous condition when it provided her a rolling chair, without arms, on a hard, slick surface. "Whether a defendant provided reasonably safe premises is a question for the jury." *Pinckney v. Winn-Dixie Stores, Inc.*, 311 S.C. 1, 426 S.E.2d 327 (Ct. App. 1992). Here, the question is whether the act of the Defendant in providing the chair to Plaintiff created a dangerous situation and/or whether Defendant was negligent when it undertook to provide Plaintiff a chair on its premises. These questions are for the jury to decide.

Defendant submitted argument that Plaintiff never asked for assistance and thus Defendant never undertook a duty to assist her or ensure her safety. However, Plaintiff testified in her deposition that she requested that Defendant provide her chair.⁶ "If inferences properly deducible from controverted evidence are doubtful, or tend to show both parties guilty of negligence, and there may be fair difference of opinion as to whose act proximately caused injury complained of, question must be submitted to jury." *Anderson v. South Carolina Dept. of Highways and Public Transp.*, 472 S.E.2d 253 (S.C. 1996). Here, there may be "fair differences of opinion" as to whose

⁵ Complaint, P.2, pp(7)(h)(i)

⁶ P. Depo. Tr. 32:24-34:4

being used in that manner. Defendant, Aldi Inc., was aware of the dangers and took steps to ensure that a chair would not be used on the sales floor, but acted negligently when it, through its agents and employees, provided a chair to Ms. Wiggins on the crowded sales floor. This shows the vast difference between the present case and the case in Ford.

CONCLUSION

When examined in the light most favorable to the Plaintiff, the facts show that the Defendant acted negligently in the present case. The question of how negligently the Defendant acted providing a chair for Ms. Wiggins on a surface they are not intended to be used on is a question for a jury to decide. Summary judgment is appropriate only in cases where no genuine issue as to any material fact exists for a jury to decide. As outlined herein, Plaintiff avers that Defendant owed Plaintiff a duty of care as a business invitee of the premises, that Defendant breached its duty of care in failing to properly provide a chair in a safe and reasonable manner for the Plaintiff to sit upon and lastly that Defendant's breach caused Plaintiff substantial injury and damages. Furthermore, the Defendant has not proven that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts, therefore leaving the question as to whether the Defendant acted in a negligent manner to be left up for a jury to decide. Therefore, summary judgment is not proper and must be DENIED.

L. Casey Manning, Judge

November __, 2018



Richland Common Pleas

Case Caption: Vanessa Wiggins vs ALDI Inc

Case Number: 2017CP4005549

Type: Order/Other

So Ordered

s/L. Casey Manning, 2061

Electronically signed on 2018-11-20 11:52:15 page 8 of 8

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

VANESSA WIGGINS,

Plaintiff,

vs.

ALDI, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-40-05549

CONSENT SCHEDULING ORDER

This matter appears before me on request of parties to amend the previously submitted Scheduling Conference Form. The parties request this matter be placed on the trial roster for December 10, 2018 and continued thereafter.

Now, therefore, **IT IS ORDERED** that this case be placed on the jury roster for the December 10, 2018, term of Common Pleas Court for Richland County, South Carolina.

AND IT IS SO ORDERED

The Honorable Robert E. Hood
Chief Administrative Judge, Fifth Judicial Circuit

Richland, South Carolina

November ____, 2018

I CONSENT:

s/ Kelly L. Burnside

Kelly L. Burnside, Bar No. 101514
Oswald and Burnside, LLC
Attorney for Plaintiff

I SO MOVE AND CONSENT:

s/ Brett H. Bayne

Brett H. Bayne, Bar No. 100018
McAngus Goudelock & Courie, LLC
Attorney for Defendant

000022



Richland Common Pleas

Case Caption: Vanessa Wiggins vs ALDI Inc
Case Number: 2017CP4005549
Type: Order/Scheduling Order

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2018-11-20 11:48:25 page 2 of 2

000023

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Vanessa Wiggins,

Plaintiff(s)

vs.

ALDI, Inc.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017 - CP - 40- 05549

(Please Print)

Submitted By: Kelly Burnside

Address: 1031 Center Street

West Columbia, SC 29169

SC Bar #: 101514

Telephone #: (803) 796-7260

Fax #: (803) 796-1055

Other:

E-mail: kburnside@oswaldlawfirm.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check one box below)

☒ JURY TRIAL demanded in complaint.

☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.

☒ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR (certificate attached).

**NATURE OF ACTION
(Check One Box Below)**

Contracts
☐ Construction (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Wrongful Breach (140)
☐ Other (199)

Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other Malpractice (299)

Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☒ Premises Liability (330)
☐ Products Liability (340)
☐ Other (399)

Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Other (499)

Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)**
☐ Other (799)

Administrative Law/Relief
☐ Driver License Reinstatement (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDCOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Other (999)

Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699)

** Check only if Summons & Complaint to follow in 20 days

Submitting Party Signature: Kelly Burnside

Date: September 12, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (3/04)

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Page 1 of 2

***FOR MANDATED ADR COUNTIES ONLY**

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

* Florence, Horry, Lexington, Richland, Greenville, and Anderson

SCCA / 234 (3/04)

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Page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Vanessa Wiggins,

Plaintiff,

vs.

ALDI, Inc.,

Defendant.

IN THE COMMON PLEAS COURT
FIFTH JUDICIAL CIRCUIT

C.A. No: 2017-CP-40-

SUMMONS

Slip and Fall

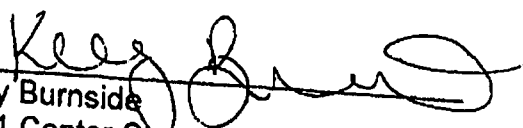
Jury Trial Requested

2017 SEP 14 PM 2:11
JANET L. RICHARDS
CLERK OF COURT
C.P.C.S.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your Answer to Said Complaint upon the Subscriber at his office, 1031 Center Street, West Columbia, South Carolina within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, then the Plaintiff will apply to the Court for default judgment for the relief demanded in the Complaint.

Oswald and Burnside, LLC

By: 
Kelly Burnside
1031 Center Street
West Columbia, SC 29169
(803) 796-7260; (803) 796-1055 (fax)

September 14, 2017

ATTORNEYS FOR PLAINTIFF

000026

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Vanessa Wiggins,

Plaintiff,

vs.

ALDI, Inc.,

Defendant.

IN THE COMMON PLEAS COURT
FIFTH JUDICIAL CIRCUIT

C.A. No: 2017-CP-40-

COMPLAINT

Slip and Fall

Jury Trial Requested

2017 SEP 14 PM 2:11
JEROME T. HOGAN
C.C.P. & G.S.

The Plaintiff appearing before this Court, alleging of the Defendant would respectfully show this Court as follows:

1. The Plaintiff is currently a citizen and resident of Richland County, South Carolina.
2. Upon information and belief, the Defendant is a foreign corporation licensed to do business in Richland County, South Carolina.
3. That on or about June 17, 2017, Plaintiff, was shopping at the ALDI store located at 1240 Longgreen Parkway, Columbia, SC 29229.
4. Plaintiff was waiting for service at a register and an employee of Defendant provided a chair to Plaintiff.
5. Plaintiff attempted to take a seat on the chair provided, but the chair came from beneath Plaintiff, causing Plaintiff to fall to the ground hitting her head, back, and right side of her body.
6. As a result of Defendant's negligence, the Plaintiff has suffered injuries and damages as follows:
 - a. Medical care and bills since the fall;
 - b. Pain and suffering since the fall;
 - c. Lost wages; and

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d. Loss of enjoyment of life.

7. Defendant, ALDI, Inc., was negligent, willful, wanton, and grossly negligent in one or more of the following particulars:

a. In failing to warn the Plaintiff of the danger:

b. In failing to maintain safe premises for customers:

c. In failing to properly train its staff:

d. In failing to discover the danger:

e. In failing to prevent the danger:

f. In failing to correct the danger.

g. In failing to inspect its premises for hazards:

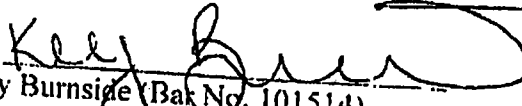
h. In breaching its duty to Plaintiff; and

i. In not taking the same care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing, any or all of which were the proximate cause of the injuries suffered by the Plaintiff.

8. Plaintiff has been injured in an amount in excess of \$25,000.00 actual damages and requests such punitive damages as the Court may determine.

THEREFORE, Plaintiff requests that this court award her damages in an amount in excess of \$25,000.00 actual damages plus punitive damages as the Court in its discretion may determine.

Oswald and Burnside, LLC

BY: 
Kelly Burnside (Bak No. 101514)
1031 Center Street;
West Columbia, South Carolina 29169

000028

September 12, 2017

1031 Center Street:
West Columbia, South Carolina 29169
(803) 796-7260; (803) 796-1055 (fax)
ATTORNEYS FOR PLAINTIFF

000029

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

VANESSA WIGGINS,

Civil Action No. 2017-CP-40-05549

Plaintiff,

vs.

ALDI, INC.,

Defendant.

ANSWER
(Jury Trial Demand)

RICHLAND COUNTY
FILED
2017 OCT 20 AM 10:55
JEANETTE W. MCBRIDE
Clerk & G.S.

Defendant, Aldi, Inc., answers the Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint unless not specifically admitted herein.
2. Defendant admits the allegations of Paragraph 1 of the Complaint upon information and belief.
3. Defendant admits the allegations of Paragraph 2 of the Complaint.
4. Defendant admits the allegations of Paragraph 3 of the Complaint upon information and belief.
5. Defendant admits the allegations of Paragraph 4 of the Complaint.
6. Defendant is without sufficient information to admit or deny the allegations of Paragraph 5 of the Complaint.
7. Defendant denies the allegations of Paragraph 6 of the Complaint including all subparts (a) through (d).

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8. Defendant denies the allegations of Paragraph 7 of the Complaint including all subparts (a) through (i).

9. Defendant denies the allegations of Paragraph 8 of the Complaint.

10. Defendant denies the remaining allegations of the Complaint including the Plaintiff's prayer for relief.

FOR A SECOND DEFENSE

11. Plaintiff is not entitled to an award of punitive damages on the grounds that such an award would be a violation of the Due Process and Equal Protection Clauses of the United States and South Carolina Constitutions.

FOR A THIRD DEFENSE

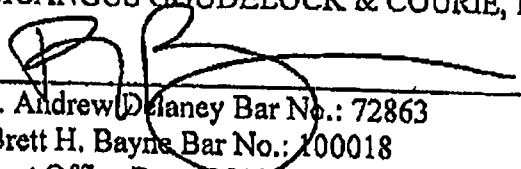
12. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff were greater than the negligence, if any, which might be established against Defendant and, therefore, Plaintiff is barred from any recovery in this action. Defendant further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR A FOURTH DEFENSE

13. Defendant alleges any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.


J. Andrew Delaney Bar No.: 72863

Brett H. Bayne Bar No.: 100018

Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR DEFENDANT, ALDI, INC.

October 18 2017

000032

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Vanessa Wiggins,)
Plaintiff,)
vs.)
ALDI, Inc.)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action: 2017-CP-40-05549

NOTICE OF MOTION AND MOTION
TO CONTINUE

**TO: BRETT BAYNE, ESQUIRE, AND J. ANDREW DELANEY, ESQUIRE,
ATTORNEYS FOR DEFENDANT:**

PLEASE TAKE NOTICE that the Plaintiff, Vanessa Wiggins, will move before the presiding Judge for the Court of Common Pleas, Richland County, South Carolina, on the tenth (10th) day after the service hereof, or at such other time and place as is convenient to the Court, as follows:

That pursuant to Rule 40(i), South Carolina Rules of Civil Procedure, this Court continue the jury trial scheduled for the week of November 17, 2018, due to the following:

1. Attorney S. Jahue Moore, Sr. has been retained as co-counsel in this matter as of December 14, 2018. Mr. Moore and Plaintiff request he be given time to review the case and become acquainted with Plaintiff.
2. One or more of Plaintiff's treating physicians is unable to testify at trial for the scheduled period due to last minute scheduling changes and pre-existing scheduling conflicts. Such scheduling was delayed pending the hearing and ruling on Defendant's Motion for Summary Judgment heard on October 9, 2018 and ruled upon on November 20, 2018. Defendant filed a Motion to Reconsider [the Order] and Memorandum in Support. This

Motion has yet to be scheduled for a hearing and Plaintiff still wishes to schedule the appearance of these treating physicians.

3. Plaintiff requires further time to take the depositions of medical witnesses. Such depositions were delayed pending the hearing and ruling on the Defendant's Motion for Summary Judgment, heard on October 9, 2018. An Order Denying Defendant's Motion for Summary Judgment was filed on November 20, 2018. On November 21, 2018, Defendant filed a Motion to Reconsider [the Order] and Memorandum in Support. This Motion has yet to be scheduled for a hearing and Plaintiff still wishes to schedule further depositions.
4. Medical providers for Plaintiff have recently advised her that she may require another surgical procedure and physical therapy due to the injury underlying this case. As such, Plaintiff may sustain further damages relevant to this matter.
5. Plaintiff believes that a good faith effort to mediate this case has yet to take place and requests an opportunity to schedule a mediation suitable for all parties.

Due to the foregoing reasons and concerns, Plaintiff requests that this Court GRANT this Motion for Continuance and place the case on the jury trial roster for a date not less than five (5) months from the date of the filing of an Order on this Motion.

In the alternative, Plaintiff requests a continuance pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. Undersigned counsel for Plaintiff has contacted counsel for Defendant and attempted to resolve this Motion, however, counsel for Defendant has stated that he is unwilling to consent to either continuance or dismissal (with leave to restore).

WHEREFORE, Plaintiff respectfully requests that this Court GRANT her motion for a continuance and for any other relief as this Court deems just and proper. Undersigned counsel

certifies that this Motion is not made to cause any hassle, prejudice, or undue delay to Defendants or this Court.

Respectfully Submitted,

OSWALD & BURNSIDE, LLC,

By: /s/ Kelly Burnside
S.C. Bar No.: 101519
1031 Center St.
West Columbia, SC 29169
(803) 796-7260; (803) 796-1055 (fax)
ATTORNEYS FOR PLAINTIFF

December 14, 2018
West Columbia, SC

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

VANESSA WIGGINS,

Plaintiff,

vs.

ALDI, INC.,

Defendant.

Civil Action No. 2017-CP-40-05549

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

TO: VANESSA WIGGINS, PLAINTIFF, AND KELLY L. BURNSIDE, ATTORNEY FOR
PLAINTIFF

The Defendant, Aldi, Inc., hereby moves the Court for an Order granting it summary judgment in the above-referenced case on the grounds that there exists no genuine issue of material fact and that the Defendant, Aldi, Inc. is entitled to judgment as a matter of law. Specifically, there is no evidence of any negligence by Defendant. A memorandum will be submitted in advance of hearing.

This motion will be based on the South Carolina Rules of Civil Procedure, common and statutory law of South Carolina, affidavits, depositions and any other evidence which may be admissible by the Court.

McANGUS GOUDELOCK & COURIE, L.L.C.

s/ Brett H. Bayne

Brett H. Bayne, Bar No.: 100018

J. Andrew Delaney, Bar No.: 72863

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211-2519

(803) 779-2300

ATTORNEYS FOR DEFENDANT, ALDI, INC.

April 16, 2018

000036

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Vanessa Wiggins,)

Plaintiff,)

vs.)

ALDI, Inc.,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

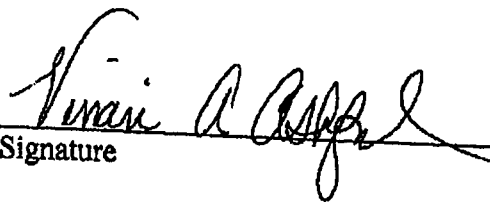
CA#: 2017-CP-40-05549

AFFIDAVIT OF WITNESS
VIVIAN ASHFORD

1. My name is Vivian Ashford. I have known of the Plaintiff, Vanessa Wiggins, since prior to 2006, when we attended the same church. We were not personal friends or more than acquaintances at the time of the incident I witnessed.
2. On June 17, 2017, I was shopping at the Aldi store located at 1240 Longreen Parkway, Columbia, SC 29229.
3. I was in the checkout line, approximately 2 or 3 people behind Ms. Wiggins.
4. I looked up when I noticed the cashier interacting with Ms. Wiggins, and saw the cashier walk away from the register.
5. The cashier came back with a rolling chair, which she rolled up behind Ms. Wiggins.
6. I saw the cashier push the chair up behind Ms. Wiggin's legs and I saw the chair roll back, away from Ms. Wiggins, and the cashier did not push the chair back underneath her. Within seconds, Ms. Wiggins tried to sit down, and the chair came right out from underneath her and she hit the ground.
7. I wanted to yell, but it happened to fast for me to react.

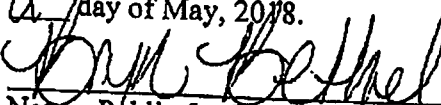
8. If I were the cashier, I would have held the rolling chair a few seconds to make sure it was secure while Ms. Wiggins sat down or would have gotten a chair without wheels. The floor was dry but was still slick and a rolling chair will slide on that type of floor.
9. Two other male customers in the checkout line helped pick Ms. Wiggins up off the floor, held the chair, and assisted her to sit down.
10. A wife of one of the men who assisted Ms. Wiggins went to the cashier and said something along the lines that the cashier needed to get the manager.
11. I spoke to Ms. Wiggins to check on her, as I recognized her from our prior church association, which was many years ago.
12. I stayed at the store for approximately 45 minutes to an hour while Ms. Wiggins waited on a ride but had to leave so my daughter could get to work.
13. I was disappointed in how Aldi, Inc. treated Ms. Wiggins.

FURTHER AFFIANT SAYETH NOT!


Signature

SWORN TO BEFORE ME THIS


Day of May, 2018.


Notary Public for South Carolina
My Commission Expires: 02/01/2026

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

VANESSA WIGGINS,
Plaintiff,

Civil Action No. 2017-CP-40-05549

vs.

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

ALDI, INC.,

Defendant.

TO: VANESSA WIGGINS, PLAINTIFF, AND KELLY L. BURNSIDE, ATTORNEY FOR PLAINTIFF

The Defendant, Aldi, Inc., hereby moves the Court for an Order granting it summary judgment in the above-referenced case on the grounds that there exists no genuine issue of material fact and that the Defendant, Aldi, Inc. is entitled to judgment as a matter of law. Specifically, there is no evidence of any negligence by Defendant. A memorandum will be submitted in advance of hearing.

This motion will be based on the South Carolina Rules of Civil Procedure, common and statutory law of South Carolina, affidavits, depositions and any other evidence which may be admissible by the Court.

McANGUS GOUDELOCK & COURIE, L.L.C.

s/ Brett H. Bayne

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ATTORNEYS FOR DEFENDANT, ALDI, INC.

June 29, 2018

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

VANESSA WIGGINS,

Plaintiff,

v.

ALDI, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-40-05549

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

This matter comes before this Court on Defendant's Motion for Summary Judgment as there is no genuine issue of material fact and Plaintiff has failed to articulate an actual legal duty recognized under South Carolina law that applies to Defendant. Essentially, Defendant is entitled to summary judgment because the undisputed facts do not give rise to any liability under South Carolina law. Even when taken in the light most favorable to Plaintiff, the evidence simply does not support a finding that Defendant breached any legal duty owed to Plaintiff. Therefore, the Plaintiff's claims fail as a matter of law.

Brief Overview Summary of Motion and Memorandum

Given the length of the legal arguments articulated herein due to the voluminous case law cited for the court due to the vague legal arguments advanced by Plaintiff in the Complaint, the undersigned is providing a brief summary of all issues in short form for ease of reference by the court.

Plaintiff was shopping at an ALDI store on June 17, 2017. While checking out, Plaintiff asked an employee for a chair to sit down in. An ALDI employee retrieved an office style rolling chair for Plaintiff. Plaintiff watched employee bring her the chair and watched employee walk

away. Plaintiff fell as she attempted to sit down in the chair. Plaintiff did not ask for assistance in sitting down and has testified she did not need assistance in sitting down. Plaintiff fell because she simply missed the chair and sat down "short" of the chair. As Plaintiff missed the chair and fell, she grabbed her shopping cart and pulled it down on top of herself. Plaintiff has not alleged the chair was dangerous or defective, the shopping cart was dangerous or defective, or the flooring surfaces were dangerous or defective. Plaintiff has not identified any experts who will testify to any issues relating to the chair, cart, and/or floor.

Plaintiff has admitted she is not aware of any dangerous conditions that existed. Plaintiff has admitted she did not need assistance. Plaintiff has admitted she observed the chair prior to sitting. Plaintiff has admitted she did not look back prior to sitting down. Plaintiff has admitted there was nothing that prevented her from sitting in the chair properly if the chair had been underneath her when she sat. Plaintiff has admitted she was not instructed to sit nor was she given an "all clear" type signal to sit down. Plaintiff admits it is "prudent" to look before you sit but admits she did not do so. Plaintiff admitted she was aware that rolling chairs may move before or while sitting down.

Plaintiff has not advanced a single viable theory of recovery or negligence. Further, case law both in South Carolina and in other states make it clear there is no liability for the exact type of fall suffered by Plaintiff. The Ford case cited herein is an identical fall to the fall suffered by Plaintiff—down to the exact same argument advanced by Plaintiff. The court in Ford affirmed a grant of summary judgment against the plaintiff. Other cases cited herein (Weldon, Pringle, McElmurray, Garvin, etc.) related to falls and chairs also support a grant of summary judgment for Defendant. The entire progeny of cases on this issue reveal that the mere fact of a fall involving a chair, absent more, is insufficient to impute a legal duty or to survive summary

judgment. Summary judgment is proper because Plaintiff has not—and cannot—present a single legally viable theory of recovery, cannot show there was a defective and/or dangerous condition, and even assuming *arguendo* there was a dangerous and/or defective condition cannot show that Defendant was aware of the dangerous and/or defective condition or acted in a negligent manner to create the dangerous and/or defective condition—all showings required in South Carolina jurisprudence. Therefore, summary judgment is proper.

Factual Background

Plaintiff was a customer at an ALDI store on June 17, 2017. During the course of checking out, Plaintiff requested a chair to sit in. An ALDI employee brought a chair to Plaintiff. The chair was a standard office style chair with wheels and no arms. The chair was not defective and no allegation has been made by Plaintiff that the chair was defective in any way. The ALDI employee wheeled the chair to Plaintiff. Plaintiff observed the employee wheel the chair and bring the chair behind Plaintiff. Plaintiff observed the employee walk away from the chair. Thereafter, approximately 3-5 seconds later, Plaintiff attempted to sit down, missed the chair, and fell to the ground. In the process of falling to the ground, Plaintiff grabbed her shopping cart and pulled it down on top of herself. Plaintiff filed this suit on September 12, 2017 alleging Defendant ALDI was “negligent, willful, wanton, and grossly negligent” in one or more of nine (9) ways enumerated in the Complaint.

Legal Standard

Under Rule 56, SCRPC, summary judgment is appropriate when it is clear from the record that there is no genuine issue of material fact, and the conclusions and inferences to be drawn from the facts are undisputed. SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990).

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On those issues where the nonmoving party will have the burden of proof, it is that party's obligation to confront the motion for summary judgment with specific facts demonstrating all elements of the claim. Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991). The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case. Id. In such a situation, the moving party is entitled to judgment as a matter of law because the nonmoving party has failed to demonstrate a genuine issue of material fact as to a necessary part of that party's claim. Id. The non-moving party must then "do more than simply show that there is some metaphysical doubt as to the materials facts[,] but "must come forward with specific facts showing that there is a genuine issue for trial." Hedgepath v. AT&T, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001).

Nonetheless, a court "cannot ignore facts unfavorable to [the non-moving] party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Accordingly, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory or shadowy one. Saluda Motor lines v. Crouch, 300 S.C. 43, 46, 386 S.E. 2d 290, 292 (Ct. App. 1989).

Additionally, the non-moving party may not circumvent the grant of summary judgment through the argument of counsel alone. See Ex Parte Morris, 367 S.C. 56, 624 S.E.2d 649 (2006) ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence."); McManus v. Bank of Greenwood, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (appellate courts repeatedly have held "that statements of fact appearing only in arguments of counsel will not be considered"); South Carolina Dep't of Transp.

v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (“[a]rguments made by counsel are not evidence”); Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991) (“Arguments of counsel are also not evidence.”); Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (the trial court properly disregarded the statements of counsel that he claimed reflected testimony appearing in depositions not otherwise entered into evidence).

Evidence in Case

Plaintiff filed her Complaint, responded to discovery, and has given a deposition. Plaintiff has not taken any depositions in the year since this case was filed. Defendant has produced the reports and statements from the day of the fall as well as a surveillance video of the fall which contradicts Plaintiff’s Complaint, responses to discovery, and her sworn testimony. The only “disputed” issue of fact by Plaintiff is directly contradicted by the store surveillance footage.

Plaintiff has alleged Defendant was “negligent, willful, wanton, and grossly negligent” in one or more of the following ways:

- “a. In failing to warn the Plaintiff of the danger;
- b. In failing to maintain safe premises for customers;
- c. In failing to properly train its staff;
- d. In failing to discover the danger;
- e. In failing to prevent the danger;
- f. In failing to correct the danger.
- g. In failing to inspect its premises for hazards;
- h. In breaching its duty to Plaintiff; and
- i. In not taking the same care and caution that a reasonably prudent

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person would have used under the circumstances then and there prevailing, any or all of which were the proximate cause of the injuries suffered by the Plaintiff."

Plaintiff's Complaint further describes the fall as follows "Plaintiff attempted to take a seat on the chair provided, but the chair came from beneath Plaintiff, causing Plaintiff to fall to the ground hitting her head, back, and right side of her body." Plaintiff's only factual allegation related to the fall in the Complaint is that the chair "came from beneath Plaintiff."

In responses to discovery, Plaintiff changed the allegations to "the cashier...was not holding [the chair] steady" and the chair "flew out from under Plaintiff." Specifically, Plaintiff states:

"Cashier brought over a wheeled, office-style chair without arms. Wheeling the chair up to the Plaintiff on her right, rear side, the cashier brought the chair up behind Plaintiff. Plaintiff lowered herself to take a seat in the chair, but the cashier had moved away from chair and was not holding it steady. As Plaintiff touched down on the chair, it flew out from under Plaintiff."

Plaintiff's allegations were further whittled down to "Defendant failed to maintain safe premises and failed to exercise the proper care in providing Plaintiff a chair that was not steady, and further failed to ensure the chair was safe for Plaintiffs use." Essentially, by January 17, 2018, Plaintiff is alleging only that Defendant 1) failed to maintain a safe premises, 2) failed to hold the chair for Plaintiff to sit, and 3) failed to ensure the chair was safe.

In her deposition on March 5, 2018, Plaintiff further changed her story and allegations about what happened to her in the store. At this point, Plaintiff now alleges the ALDI employee actively "pulled the chair back" when she went to sit down. Some selected excerpts used throughout this memorandum include:

Q: So you had asked somebody to bring you a chair --

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A: Uh-huh.

Q: -- to sit in? When they brought the chair, did you see them bringing you the chair? In other words, did you turn and see somebody carrying or wheeling over the chair that you were going to be sitting in?

A: Yes, yes.

Q: After they brought the chair behind you, do you remember if you looked at the chair or saw if the chair was behind you?

A: No, I didn't look.

P. Depo. Tr. 33:7-18

Q: So you didn't look to see if the chair was actually there or where it was behind you?

A: Yes, she was behind me, but once she was behind me, I didn't look again.

P. Depo. Tr. 33:25-34:1

Q: Once the chair was behind you, you didn't look back at the chair or look at the chair before you sat down in it at that point; is that right?

A: Right.

P. Depo. Tr. 34:19-24

Q: So going back to the store that day, to the ALDI and the chair, was there anything about the chair that you saw that was broken or that was not properly working?

A: I noticed they didn't have no arms and it was on rollers.

Q: But other than -- You've seen rolling chairs without arms before, correct?

A: Rarely, because office chairs usually have arms.

Q: But as far as it actually being in what I'll call good working order, there wasn't anything that was actually broken about the chair that you observed; is that fair?

A: Well, I don't know because I wasn't looking for that.

Q: Was the chair itself dangerous? Do you believe the chair was dangerous?

A: I wouldn't even know how to answer that.

Q: Do you feel like there was something about the chair that you needed to know before you sat down in it?

A: Um...

Q: Let me put it this way: Did you need any warnings from the ALDI employees about the chair itself?

A: If something was wrong, yeah.

Q: If nothing was wrong with the chair, though, did you need them to warn you about anything about the chair?

A: If there was something wrong about the chair, they needed to warn me. I mean I don't understand that question. When you see a chair, you assume that you're going to be able to sit in it.

P. Depo. Tr. 55:12-56:20

Q: Sure. Had the chair been underneath you, would you have been able to sit in it?

A: Yes.

Q: So there wasn't anything you observed that would keep you from actually sitting in the chair; is that fair?

A: If the chair was under me, yeah, I would have been able to have sat in it.

P. Depo. Tr. 56:21-57:3

Q: Did you need employees of the store to instruct you how to sit in the chair?

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A: No.

P. Depo. Tr. 57:4-6

Q: Did the ALDI employee tell you to sit down?

A: She just said, I have the chair.

Q: But she didn't instruct you at that point to sit?

A: No, she didn't.

P. Depo. Tr. 57:15-19

Q: And you -- When she brought the chair over you had seen that it was on rollers, correct?

A: Yeah, I saw the chair when she was bringing it.

Q: And you know that chairs that are on rollers, they can move depending on which position or which way you push them, right?

A: Yes.

P. Depo. Tr. 58:7-14

Q: Okay. What did she do, though, specifically to cause you to fall down?

A: She didn't hold the chair

P. Depo. Tr. 58:24-59:1

Q: So your testimony would be that you weren't able to sit down in a chair without somebody holding it?

A: Yes, because it was on rollers.

Q: You didn't ask her to stay there behind you, did you?

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A: Well, you would think a person would have common sense to.

Q: But you didn't turn around and ask her to remain there and hold the chair in place, did you?

A: No.

Q: And you didn't turn around to make sure that she was still there holding the chair before you sat down; is that right?

A: No.

P. Depo. Tr. 59:6-20

Q: But she never said, I'm still here behind you, did she?

A: No.

Q: She didn't instruct you to sit down at that point, did she?

A: No.

P. Depo. Tr. 60:19-24

Q: And I know I've asked this a couple of times, but you didn't at that point turn around and look to make sure that she was still there, did you?

A: I didn't look behind me once she brought the chair to me.

P. Depo. Tr. 60:25-61:4

Q: Okay. And at no point had she instructed you to sit down at that point; is that right?

A: No. No, she didn't say that.

Q: You don't feel like you needed her or any staff to help you in actually sitting down in that chair, do you? When I say that, I mean assist you in sitting in the chair.

A: Yeah, she should have held that chair until I sat down.

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Q: But as far as actually physically assisting you into the chair, you don't feel like you needed somebody to do that, do you?

A: No.

P. Depo. Tr. 62:2-14

Q Have you ever sat in a rolling chair before that day anywhere?

A Yes, at work.

Q Had any of the chairs you'd ever sat in at work been one of the rolling chairs that didn't have arms on it?

A No, they had arms on it.

Q But you have seen rolling chairs without arms before? You have seen rolling chairs that don't have arms on them before?

A Yes.

Q And you're aware that rolling chairs, like I said, they move depending on which direction you push them?

A (Deponent nods head.)

Q You're aware that they can move as you're sitting down in them as well?

A Yes.

P. Depo. Tr. 63:8-25

Q: Would you agree with me that it's a prudent decision to look where you're sitting before you sit down?

A: Yes.

Q: Would you agree with me it's a prudent decision to make sure that the chair is underneath you before you sit down in it?

A: Well, I felt the chair with my hands, so I had no reason to look back.

Q: So you actually felt the chair before you sat down in it or attempted to sit down in it?

A: I felt the sides of it.

Q: And then when you sat down is when the chair moved out from underneath you?

A: Yes.

Q: Nobody to your knowledge pulled the chair out from underneath you, correct?

A: She had to have pulled that chair back, all I know.

Q: So you think she pulled the chair back before you sat down?

A: Yes.

Q: Do you think she did that -- She came over, said she had the chair. Do you think she then pulled it back before you had the chance to sit?

A: Yes.

Q: Do you think she pulled it back after you put your hands on it as far as at that point you started to sit down and she pulled the chair back or was it before that?

A: When I put my hands on it.

Q: So what you think is you went to put your hands on it and then you pulled the chair back from you at that point causing you to fall down?

A: Yes.

P. Depo. Tr. 64:1-65:10

Plaintiff's deposition testimony reveals several key issues for resolution of this Motion and this case. First, Plaintiff admits she is aware of chairs with wheels, she is aware they roll, and she is aware they will roll away or move when attempting to sit. Second, Plaintiff admits that she was not instructed to sit, that the ALDI employee never stated she was behind Plaintiff, and she was not given verbal commands to sit. Third, Plaintiff admits she did not look behind her or verify

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that the chair was beneath her prior to sitting (instead, she just assumed it was). Fourth, Plaintiff admits she is not aware of any defect or issue with the chair. Fifth, the only issue Plaintiff asserts with the ALDI employee is "she didn't hold the chair"—a duty not required or recognized by South Carolina law. Sixth, Plaintiff admits it is "prudent" to look before sitting—something she did not do. Seventh, Plaintiff asserts she reached back and felt the chair prior to sitting—something which would indicate she was aware of her surroundings. And eighth, Plaintiff admits she did not need assistance sitting in the chair and did not request assistance in sitting in the chair.

But more important than what her testimony confirms is what is contradicted within her testimony as compared to the uncontradicted evidence—the surveillance video. On the video, Plaintiff is seen watching the chair be moved to her location, the employee is seen pushing the chair to Plaintiff and walking away, and then Plaintiff watches the employee walk away. Following this, approximately 5-6 seconds later, Plaintiff simply begins to sit down, shorts the seating position, and misses the chair. The chair does not move after the employee touches it and leaves the area (observed by Plaintiff). The chair doesn't roll, it doesn't slide...it is stationary until the moment Plaintiff begins to sit down and makes contact with the chair. Plaintiff merely falls while sitting.

The video clearly contradicts Plaintiff's sworn testimony about allegations that the ALDI employee pulled the chair out from under her (*See* Pl. Depo. Tr. 64:23-65:10). It further contradicts Plaintiff's assertions the chair started rolling away prior to sitting. The video further contradicts Plaintiff's friend Vivian Ashford's sham affidavit that states "I saw the chair roll back, away from Mrs. Wiggins...within seconds Ms. Wiggins tried to sit down." The chair quite clearly does not move, slide, or roll away prior to Ms. Wiggins making contact while trying to sit

down.

Legal Analysis

The analysis in this case starts with the negligence allegations and then will address the generalized scope of case law dealing with sitting in chairs. There is little case law in South Carolina on this issue but it has been resolved in Georgia on prior occasions and there is no legal duty which attaches to shopkeepers relating to sitting in chairs.

I. Negligence Claims

Plaintiff alleges the following nine (9) "negligence" claims that Defendant was "negligent, willful, wanton, and grossly negligent" in one or more of nine (9) ways enumerated in the Complaint:

- a. In failing to warn the Plaintiff of the danger;
- b. In failing to maintain safe premises for customers;
- c. In failing to properly train its staff;
- d. In failing to discover the danger;
- e. In failing to prevent the danger;
- f. In failing to correct the danger.
- g. In failing to inspect its premises for hazards;
- h. In breaching its duty to Plaintiff; and
- i. In not taking the same care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing, any or all of which were the proximate cause of the injuries suffered by the Plaintiff."

Each of these will be addressed separately.

a. "In failing to warn the Plaintiff of the danger"

Plaintiff first raises a nebulous "danger" element of negligence without identifying the danger alleged. It can be presumed the "danger" alleged in 7(a) of the Complaint refers to the chair. There is no cognizable theory under which a "chair" can be presumed to be a danger. In fact, Plaintiff affirms exactly the opposite in her deposition. Specifically, Plaintiff stated "...When you see a chair, you assume that you're going to be able to sit in it." Pl. Depo. Tr. 56:19-20. Having established through Plaintiff's own testimony chairs are not an inherent danger, we are left attempting to presume what the specific danger is. In reviewing Plaintiff's deposition, it appears her main complaint is that the ALDI employee did not hold the chair for her. For example:

Q: You didn't ask her to stay there behind you, did you?

A: Well, you would think a person would have common sense to

Pl. Depo. Tr. 59-10-13

Q: You don't feel like you needed her or any staff to help you in actually sitting down in that chair, do you? When I say that, I mean assist you in sitting in the chair.

A: Yeah, she should have held that chair until I sat down.

Pl. Depo. Tr. 62:5-10

Plaintiff readily admits throughout she did not ask for assistance in sitting and she did not need assistance in sitting. She further admits that chairs are not inherently dangerous. Plaintiff merely wishes the ALDI employee had remained and held the chair for her—something she did not ask the ALDI employee to do. Further, Plaintiff admits the ALDI employee did not instruct her to sit in the chair or did not give her an "all clear" to sit. For example:

Q: But she never said, I'm still here behind you, did she?

A: No.

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Q: She didn't instruct you to sit down at that point, did she?

A: No.

P. Depo. Tr. 60:19-24

Q: Okay. And at no point had she instructed you to sit down at that point; is that right?

A: No. No, she didn't say that.

Pl. Depo. Tr. 62:2-4

In sum, there was no "danger" to warn Plaintiff of. Plaintiff has failed to allege a legally cognizable danger sufficient to support her Complaint and summary judgment is proper as to Paragraph 7(a) of the Complaint.

b. "In failing to maintain safe premises for customers"

Paragraph 7(b) of the Complaint alleges that ALDI failed to maintain a safe premises for customers. Plaintiff fails to assert in what ways the premises was not safely maintained. Plaintiff has not made any allegations about defective design, dangerous conditions of the floors or chair, or any other unsafe premises issues. Further, Plaintiff has not retained any premises liability expert to establish any premises issues with the store. Plaintiff has conducted a site visit and used the time merely to take photographs and observe the store. Plaintiff did not bring any surface expert, premises expert, or other expert to examine or opine about the condition of the store. Further, no complaint about the condition of the floor or chair is raised by Plaintiff. In fact, Plaintiff testified she was not aware of any dangerous condition existing with the chair. For example:

Q: So going back to the store that day, to the ALDI and the chair, **was there anything about the chair that you saw that was broken or that was not properly working?**

A: I noticed they didn't have no arms and it was on rollers.

Q: But other than -- You've seen rolling chairs without arms before, correct?

A: Rarely, because office chairs usually have arms.

Q: But as far as it actually being in what I'll call good working order, there wasn't anything that was actually broken about the chair that you observed; is that fair?

A: Well, I don't know because I wasn't looking for that.

Q: Was the chair itself dangerous? Do you believe the chair was dangerous?

A: I wouldn't even know how to answer that.

Q: Do you feel like there was something about the chair that you needed to know before you sat down in it?

A: Um...

Q: Let me put it this way: Did you need any warnings from the ALDI employees about the chair itself?

A: If something was wrong, yeah.

Q: If nothing was wrong with the chair, though, did you need them to warn you about anything about the chair?

A: If there was something wrong about the chair, they needed to warn me. I mean I don't understand that question. When you see a chair, you assume that you're going to be able to sit in it.

P. Depo. Tr. 55:12-56:20

Q: Sure. Had the chair been underneath you, would you have been able to sit in it?

A: Yes.

Q: So there wasn't anything you observed that would keep you from actually sitting in the chair; is that fair?

A: If the chair was under me, yeah, I would have been able to have sat in it.

P. Depo. Tr. 56:21-57:3

Plaintiff admits she is not aware of any design or defect issues with the chair. Further, Plaintiff admits that there was nothing that kept her from being able to sit in the chair except for actually properly sitting down in the chair.

In sum, there has been no allegation, let alone any showing, of any dangerous condition or unsafe premises sufficient to survive summary judgment. Summary judgement is proper as to Paragraph 7(b) of the Complaint.

c. "In failing to properly train its staff"

Plaintiff next alleges ALDI failed to properly train its staff. Plaintiff has presented no further argument on this issue and no discovery on this issue. Plaintiff has not sought any training records, training manuals, or depositions of ALDI employees. In discovery, Plaintiff's responses are devoid of any allegation of improper or deficient training. Plaintiff fails to even allege *what* training was improper or deficient.

In reviewing all of the materials to date, the only inference that can be draw as to this allegation in Paragraph 7(c) of the Complaint is some allegation that ALDI should have trained its employees in how to properly wheel a chair to a customer and/or that ALDI had a duty to train its employees in how to properly instruct a customer how to sit in a chair—neither of these duties exist under South Carolina law (or any law). Further, Plaintiff has not made any complaint about the way the chair was obtained or brought to her and she has expressly admitted she did not need instruction in how to sit in a chair or help in sitting in a chair. For example:

Q: You don't feel like you needed her or any staff to help you in actually sitting down in that chair, do you? When I say that, I mean assist you in sitting in the chair.

A: Yeah, she should have held that chair until I sat down.

Pl. Depo. Tr. 62:5-10

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Q: Let me put it this way: Did you need any warnings from the ALDI employees about the chair itself?

A: If something was wrong, yeah.

Q: If nothing was wrong with the chair, though, did you need them to warn you about anything about the chair?

A If there was something wrong about the chair,

Pl. Depo. Tr. 56:10-18

Q: Did you need employees of the store to instruct you how to sit in the chair?

A: No.

P. Depo. Tr. 57:4-6

Plaintiff admits she didn't need help sitting and that she didn't need instructions in how to sit. The only scenario Plaintiff asserts she would need any assistance or instruction is if the chair was defective—something Plaintiff admits is not the case.

In fact, Plaintiff admits she did not even bother to look at the chair behind her prior to sitting down (something we know is not accurate from the video, but using the testimony of Plaintiff in the light most favorable):

Q: So you had asked somebody to bring you a chair --

A: Uh-huh.

Q: -- to sit in? When they brought the chair, did you see them bringing you the chair? In other words, did you turn and see somebody carrying or wheeling over the chair that you were going to be sitting in?

A: Yes, yes.

Q: After they brought the chair behind you, do you remember if you looked at the chair or saw if the chair was behind you?

A: No, I didn't look.

P. Depo. Tr. 33:7-18

Q: So you didn't look to see if the chair was actually there or where it was behind you?

A: Yes, she was behind me, but once she was behind me, I didn't look again.

P. Depo. Tr. 33:25-34:1

Q: Once the chair was behind you, you didn't look back at the chair or look at the chair before you sat down in it at that point; is that right?

A: Right.

P. Depo. Tr. 34:19-24

In sum, Plaintiff cannot present any evidence of improper or deficient training. She has failed to show any duty to train related to sitting in chairs let alone any deficient training. Plaintiff has admitted she didn't need assistance with sitting and didn't need warnings related to sitting. Plaintiff's Paragraph 7(c) of the Complaint fails and summary judgment is proper as to this allegation.

d. **"In failing to discover the danger"**

Plaintiff again raises a nebulous "danger" element of negligence without identifying the danger alleged. It can be presumed the "danger" alleged in 7(d) of the Complaint refers to the chair. There is no cognizable theory under which a "chair" can be presumed to be a danger. In fact, Plaintiff affirms exactly the opposite in her deposition. Specifically, Plaintiff stated "...When you see a chair, you assume that you're going to be able to sit in it." Pl. Depo. Tr. 56:19-20. Having established through Plaintiff's own testimony chairs are not an inherent danger, we are left attempting to presume what the specific danger is. In reviewing Plaintiff's deposition, it

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appears her main complaint is that the ALDI employee did not hold the chair for her. For example:

Q: You didn't ask her to stay there behind you, did you?

A: Well, you would think a person would have common sense to

Pl. Depo. Tr. 59-10-13

Q: You don't feel like you needed her or any staff to help you in actually sitting down in that chair, do you? When I say that, I mean assist you in sitting in the chair.

A: Yeah, she should have held that chair until I sat down.

Pl. Depo. Tr. 62:5-10

Plaintiff readily admits throughout she did not ask for assistance in sitting and she did not need assistance in sitting. She further admits that chairs are not inherently dangerous. Plaintiff merely wishes the ALDI employee had remained and held the chair for her—something she did not ask the ALDI employee to do. Further, Plaintiff admits the ALDI employee did not instruct her to sit in the chair or did not give her an “all clear” to sit. For example:

Q: But she never said, I'm still here behind you, did she?

A: No.

Q: She didn't instruct you to sit down at that point, did she?

A: No.

P. Depo. Tr. 60:19-24

Q: Okay. And at no point had she instructed you to sit down at that point; is that right?

A: No. No, she didn't say that.

Pl. Depo. Tr. 62:2-4

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To the extent "discovery" implied or infers that there was a danger beyond "sitting in a chair," Plaintiff has admitted she is not aware of any dangerous condition of the floor, chair, or store. In order to allege there was a danger to discover, Plaintiff has to actually allege there was a legally cognizable danger. In sum, there was no "danger" to discover. Plaintiff has failed to allege a legally cognizable danger sufficient to support her Complaint and summary judgment is proper as to Paragraph 7(d) of the Complaint.

e. "In failing to prevent the danger"

Plaintiff again raises a nebulous "danger" element of negligence without identifying the danger alleged. It can be presumed the "danger" alleged in 7(e) of the Complaint refers to the chair. There is no cognizable theory under which a "chair" can be presumed to be a danger. In fact, Plaintiff affirms exactly the opposite in her deposition. Specifically, Plaintiff stated "...When you see a chair, you assume that you're going to be able to sit in it." Pl. Depo. Tr. 56:19-20. Having established through Plaintiff's own testimony chairs are not an inherent danger, we are left attempting to presume what the specific danger is. In reviewing Plaintiff's deposition, it appears her main complaint is that the ALDI employee did not hold the chair for her. For example:

Q: You didn't ask her to stay there behind you, did you?

A: Well, you would think a person would have common sense to

Pl. Depo. Tr. 59-10-13

Q: You don't feel like you needed her or any staff to help you in actually sitting down in that chair, do you? When I say that, I mean assist you in sitting in the chair.

A: Yeah, she should have held that chair until I sat down.

Pl. Depo. Tr. 62:5-10

Plaintiff readily admits throughout she did not ask for assistance in sitting and she did not need

assistance in sitting. She further admits that chairs are not inherently dangerous. Plaintiff merely wishes the ALDI employee had remained and held the chair for her—something she did not ask the ALDI employee to do. Further, Plaintiff admits the ALDI employee did not instruct her to sit in the chair or did not give her an “all clear” to sit. For example:

Q: But she never said, I'm still here behind you, did she?

A: No.

Q: She didn't instruct you to sit down at that point, did she?

A: No.

P. Depo. Tr. 60:19-24

Q: Okay. And at no point had she instructed you to sit down at that point; is that right?

A: No. No, she didn't say that.

Pl. Depo. Tr. 62:2-4

In the event Paragraph 7(e) has further implication relating to “preventing” the “danger,” Plaintiff has presented no evidence that ALDI could have prevented her fall, should have prevented her fall, or even should have *anticipated* her fall. Plaintiff admits that she did not need assistance in sitting and did not ask for assistance in sitting. How, then, would ALDI assume any duty to help Plaintiff sit? In sum, there was no “danger” to prevent. Plaintiff has failed to allege a legally cognizable danger sufficient to support her Complaint and summary judgment is proper as to Paragraph 7(e) of the Complaint.

f. “In failing to correct the danger”

Plaintiff again raises a nebulous “danger” element of negligence without identifying the danger alleged. It can be presumed the “danger” alleged in 7(f) of the Complaint refers to the

chair. There is no cognizable theory under which a "chair" can be presumed to be a danger. In fact, Plaintiff affirms exactly the opposite in her deposition. Specifically, Plaintiff stated "...When you see a chair, you assume that you're going to be able to sit in it." Pl. Depo. Tr. 56:19-20. Having established through Plaintiff's own testimony chairs are not an inherent danger, we are left attempting to presume what the specific danger is. In reviewing Plaintiff's deposition, it appears her main complaint is that the ALDI employee did not hold the chair for her. For example:

Q: You didn't ask her to stay there behind you, did you?

A: Well, you would think a person would have common sense to

Pl. Depo. Tr. 59-10-13

Q: You don't feel like you needed her or any staff to help you in actually sitting down in that chair, do you? When I say that, I mean assist you in sitting in the chair.

A: Yeah, she should have held that chair until I sat down.

Pl. Depo. Tr. 62:5-10

Plaintiff readily admits throughout she did not ask for assistance in sitting and she did not need assistance in sitting. She further admits that chairs are not inherently dangerous. Plaintiff merely wishes the ALDI employee had remained and held the chair for her—something she did not ask the ALDI employee to do. Further, Plaintiff admits the ALDI employee did not instruct her to sit in the chair or did not give her an "all clear" to sit. For example:

Q: But she never said, I'm still here behind you, did she?

A: No.

Q: She didn't instruct you to sit down at that point, did she?

A: No.

P. Depo. Tr. 60:19-24

Q: Okay. And at no point had she instructed you to sit down at that point; is that right?

A: No. No, she didn't say that.

Pl. Depo. Tr. 62:2-4

To the extent "correcting" implied or infers that there was a danger beyond "sitting in a chair," Plaintiff has admitted she is not aware of any dangerous condition of the floor, chair, or store. In order to allege there was a danger to correct, Plaintiff has to actually allege there was a legally cognizable danger. In sum, there was no "danger" to correct. Plaintiff has failed to allege a legally cognizable danger sufficient to support her Complaint and summary judgment is proper as to Paragraph 7(f) of the Complaint.

g. "In failing to inspect its premises for hazards"

Paragraph 7(g) of the Complaint alleges that ALDI failed to inspect its premises for hazards. Plaintiff fails to assert in what ways the premises was not safely maintained. Plaintiff further fails to allege what hazards existed which injured Plaintiff. Plaintiff has not made any allegations about defective design, dangerous conditions of the floors or chair, or any other unsafe premises issues. Further, Plaintiff has not retained any premises liability expert to establish any premises issues with the store. Plaintiff has conducted a site visit and used the time merely to take photographs and observe the store. Plaintiff did not bring any surface expert, premises expert, or other expert to examine or opine about the condition of the store. Further, no complaint about the condition of the floor or chair is raised by Plaintiff. In fact, Plaintiff testified she was not aware of any dangerous condition existing with the chair. For example:

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Q: So going back to the store that day, to the ALDI and the chair, was there anything about the chair that you saw that was broken or that was not properly working?

A: I noticed they didn't have no arms and it was on rollers.

Q: But other than -- You've seen rolling chairs without arms before, correct?

A: Rarely, because office chairs usually have arms.

Q: But as far as it actually being in what I'll call good working order, there wasn't anything that was actually broken about the chair that you observed; is that fair?

A: Well, I don't know because I wasn't looking for that.

Q: Was the chair itself dangerous? Do you believe the chair was dangerous?

A: I wouldn't even know how to answer that.

Q: Do you feel like there was something about the chair that you needed to know before you sat down in it?

A: Um...

Q: Let me put it this way: Did you need any warnings from the ALDI employees about the chair itself?

A: If something was wrong, yeah.

Q: If nothing was wrong with the chair, though, did you need them to warn you about anything about the chair?

A: If there was something wrong about the chair, they needed to warn me. I mean I don't understand that question. When you see a chair, you assume that you're going to be able to sit in it.

P. Depo. Tr. 55:12-56:20

Q: Sure. Had the chair been underneath you, would you have been able to sit in it?

A: Yes.

Q: So there wasn't anything you observed that would keep you from actually sitting in the chair; is that fair?

A: If the chair was under me, yeah, I would have been able to have sat in it.

P. Depo. Tr. 56:21-57:3

Plaintiff admits she is not aware of any design or defect issues with the chair. Further, Plaintiff admits that there was nothing that kept her from being able to sit in the chair except for actually properly sitting down in the chair.

In sum, there has been no allegation, let alone any showing, of any hazard or dangerous condition or unsafe premises sufficient to survive summary judgment. Summary judgement is proper as to Paragraph 7(g) of the Complaint.

h. "In breaching its duty to Plaintiff"

Paragraph 7(h) is the most generic of all of the allegations. It merely alleges a "duty" that was "breached." Nothing more. Again inferring what this could refer to, Defendant is left presuming this refers to the invitee duty as Plaintiff was a customer in Defendant's store.

In South Carolina, a merchant owes a customer a duty of ordinary care to keep his premises in a reasonably safe condition. Wimberley v. Winn-Dixie Greenville, Inc., 252 S.C. 117, 120-21, 165 S.E.2d 627, 628 (1969) ("[O]ne who operates a store is not an **860 insurer of the safety of its customers, the duty owed them is rather the duty of exercising ordinary care to keep parts of the store as are ordinarily used by customers in a reasonably safe condition."). Richardson v. Piggly Wiggly Cent., Inc., 404 S.C. 231, 234, 743 S.E.2d 858, 859-60 (Ct. App. 2013).

A landowner owes a duty to warn an invitee only of latent or hidden dangers on the premises of which the owner is aware. Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000). However, this duty to warn does not extend to open and obvious

conditions on the premises, unless the landowner has some reason to anticipate the specific harm. Callander v. Charleston Doughnut Corp., 305 S.C. 123, 406 S.E.2d 361 (1991).

In Richardson, the plaintiff brought a slip and fall claim against Piggly Wiggly. Plaintiff admitted she knew it was raining when she entered the store and admitted she knew the sidewalk was wet and slippery. The court held that the owner did not have a duty to warn of dangers which were obvious or known. Rather the only duty relates to dangers of which the invitee is *reasonably unaware* which was defined as *one which a reasonably careful inspection will not reveal*. (citing to Meadows v. Heritage Vill. Church & Missionary Fellowship, Inc., 305 S.C. 375, 378, 409 S.E.2d 349, 351 (1991)).

The court in Richardson held "Piggly Wiggly did not breach its duty to provide reasonably safe premises. Furthermore, Richardson's testimony conclusively shows she slipped on the ground outside of the store and she knew it was raining and the sidewalk was uncovered. When viewed in a light most favorable to Richardson, she presented no evidence Piggly Wiggly was negligent" (emphasis added). Id. at 235, 743 S.E.2d at 860.

Another case which touches on these issues is Peterson v Porter, No. 2005-CP-40-4263, 2008 WL 8182278 (S.C.Com.Pl. June 02, 2008). In Peterson, the plaintiff was asserting a premises liability/invitee claim relating to injuries suffered from equipment used to pressure wash a home and roof of the home. The court stated "...it is clear the defendants did not breach any duty owed to the plaintiff. Although the defendants supplied the equipment the plaintiff used to pressure-wash the house, there is no evidence that any of that equipment was defective, or that it caused the plaintiff to fall. In the absence of such evidence, there is obviously no basis for any conclusion that the defendants negligently failed to warn the plaintiff about the equipment." (emphasis added). The court further noted there was "no evidence of any defect

existing on the premises [itself]." Id.

The plaintiff in Peterson asserted the roof had a "dangerous slope" and that the defendant should have "anticipated the harm" related to the premises and equipment. The court unequivocally held that "...even if it could somehow be construed as a "defect," the slope of the roof was an open and obvious condition, and the plaintiff has admitted he was aware of it. Thus, the defendants owed no duty to warn the plaintiff about the roofs slope. *See Shelton v. LS & L, Inc.*, 374 S.C. 294, 648 S.E.2d 307 (Ct. App. 2007) (landowners generally do not have a duty to warn others of an open and obvious condition on the premises)." Id. The court further opined on "anticipated harm" and held "...the record does not support a finding that the defendants should have reasonably anticipated this specific harm. There is no evidence anyone had ever fallen from the roof before, or that the defendants had any other reason to believe a fall was likely." Id. (emphasis added).

The mere existence of an open and obvious defect, without more, does not trigger the exception to the general rule. Id. As the Court of Appeals has noted, "[t]o impose liability under such a theory would make landowners insurers of their invitees' safety; it is well-established in South Carolina that they are not." Larimore, 340 S.C. at 447, 531 S.E.2d 539.

The Peterson court concluded "...the record fails to demonstrate any actionable negligence on the part of the defendants. There is no evidence of any defective equipment or dangerous conditions on the premises, and, thus, the defendants could not possibly have warned the plaintiff of any." The court went further as it related to the alleged requirement to "instruct or supervise." The court stated "...[the duty to instruct or supervise] presupposes the existence of a legal duty to provide those instructions -- a duty that the plaintiff has failed to establish." The court ultimately ruled as follows "[t]he plaintiff's arguments do not change the fact that there is

no evidence of any actionable negligence on the part of the defendants. The defendants did not provide unsafe equipment to the plaintiff, nor did they fail to warn him of any hidden dangers on the premises. Furthermore, the record fails to demonstrate any basis for the defendants to have reasonably anticipated the specific harm involved in this case. Accordingly, even when viewed in the light most favorable to the plaintiff, the undisputed facts fail to support the plaintiff's negligence claim. That claim fails as a matter of law, therefore, and the defendants are entitled to summary judgment." Id.

When comparing the present case to the general legal theories in Richardson and Peterson, Plaintiff admits she was aware of the nature of chairs, how to sit in chairs, and that she was aware chairs rolled. Even assuming *arguendo* a chair is a danger—which Plaintiff expressly denies in her testimony—Plaintiff admits she was fully aware of the exact thing that happened—namely that the chair could roll away even while sitting. For example, Plaintiff stated:

Q Have you ever sat in a rolling chair before that day anywhere?

A Yes, at work.

Q Had any of the chairs you'd ever sat in at work been one of the rolling chairs that didn't have arms on it?

A No, they had arms on it.

Q But you have seen rolling chairs without arms before? You have seen rolling chairs that don't have arms on them before?

A Yes.

Q And you're aware that rolling chairs, like I said, they move depending on which direction you push them?

A (Deponent nods head.)

Q You're aware that they can move as you're sitting down in them as well?

A Yes.

P. Depo. Tr. 63:8-25

Plaintiff further admits (again) that she is not aware of any danger or defect in the chair of which she should have been warned:

Q: So going back to the store that day, to the ALDI and the chair, was there anything about the chair that you saw that was broken or that was not properly working?

A: I noticed they didn't have no arms and it was on rollers.

Q: But other than -- You've seen rolling chairs without arms before, correct?

A: Rarely, because office chairs usually have arms.

Q: But as far as it actually being in what I'll call good working order, there wasn't anything that was actually broken about the chair that you observed; is that fair?

A: Well, I don't know because I wasn't looking for that.

Q: Was the chair itself dangerous? Do you believe the chair was dangerous?

A: I wouldn't even know how to answer that.

Q: Do you feel like there was something about the chair that you needed to know before you sat down in it?

A: Um...

Q: Let me put it this way: Did you need any warnings from the ALDI employees about the chair itself?

A: If something was wrong, yeah.

Q: If nothing was wrong with the chair, though, did you need them to warn you about anything about the chair?

A: If there was something wrong about the chair, they needed to warn me. I mean I don't understand that question. When you see a chair, you assume that you're going to be able to sit in it.

P. Depo. Tr. 55:12-56:20

In sum, the very thing Plaintiff complains about is something she admits she was aware of. And

the very duty to warn that could be owed to Plaintiff is something she admits she was aware of. Given that, there was no duty to warn or protect Plaintiff from the dangers of a chair. There has been no specific allegation of any duty owed, let alone any proof of a breach of any duty that could be owed to invitees sufficient to survive summary judgment. Summary judgment is proper as to Paragraph 7(h) of the Complaint.

- i. “In not taking the same care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing, any or all of which were the proximate cause of the injuries suffered by the Plaintiff”

Plaintiff finally alleges a generic “lack of care” allegation. Plaintiff fails to assert what specific action a “reasonably prudent person” would have used under the circumstances in the Complaint. However, in her deposition there is only one assertion made—that the ALDI employee should have held the chair for Plaintiff. Plaintiff states “it would be common sense” to hold the chair. Assuming this is the “care and caution” asserted by Plaintiff in the Complaint, it fails as a matter of law and summary judgment is proper.

Plaintiff admits that 1) she did not look behind her to confirm the chair was present or the employee remained (the video contradicts this, but either way the claim fails—either she did look and was aware or she didn’t look and failed to take caution); 2) Plaintiff did not ask for assistance in sitting, 3) the ALDI employee never told Plaintiff to sit down; 4) Plaintiff did not need assistance in sitting; 5) she knew the chair could and would roll away as she sat in it. All of these taken together fail to show any failure of “care and caution that a reasonably prudent person would have used under the circumstances.” Because of that, summary judgment is proper on Paragraph 7(i) of the Complaint.

II. Legal Duties of Defendant

Having addressed all of the factual reasons why Plaintiff's allegations fail, we turn to the legal reasons and discussion of the complete lack of duty owed by ALDI to Plaintiff for the process of Plaintiff sitting in a chair.

The undersigned surveyed both South Carolina and other state law to find the most applicable cases to this accident. The most specific case on point comes from Georgia. In Ford v. Bank of America 627 S.E.2d 376, 277 Ga.App. 708 (2006), the plaintiff (Hazel Ford) fell in a Bank of America when trying to sit down. The facts of that case are *identical* to this case. The court stated "Construing the evidence in the light most favorable to Ford, the record reveals that Ford entered the bank, located inside a grocery store...She had been in the bank many times, and it was not configured any differently that day. She backed up to an office chair with wheels, and as she started to sit down, the chair "just went out from under" her. She fell to the floor..." *Id.* (emphasis added). In this case, Plaintiff did exactly what the plaintiff in Ford did—backed up to sit in a chair with wheels, failed to properly sit down, and the chair went out from under plaintiff causing a fall.

But Ford has even more identical similarities to this case. The court notes the following facts which are present in this case: "...she admitted that she had sat in "those chairs before in the banking center," that she had sat in chairs with wheels before, and that nothing obstructed the chair wheels from her view. When asked if there was anything on the floor that caused the chair to slip out from under her, Ford responded, "I didn't see it." Finally, when asked if the chair was defective, she said, "I don't know. Not to my knowledge. I did not examine it."'" *Id.* In this case, Plaintiff admitted she had sat in similar chairs before, cannot state if there was anything on the floor, and has no knowledge of any defect in the chair.

The Ford court relied on a Georgia appellate cases related to invitee and slip and fall. However, the standard in Georgia is the same as it is in South Carolina for the elements of proof. Specifically, the court stated:

“Proof of an injury, without more, is not enough to establish a proprietor’s liability. Sams v. Wal-Mart Stores, 228 Ga.App. 314, 316, 491 S.E.2d 517 (1997). “[T]o recover for injuries sustained in a slip and fall action, an invitee must prove (1) that the defendant had actual or constructive knowledge of the hazard; and (2) that the plaintiff lacked knowledge of the hazard despite the exercise of ordinary care due to actions or conditions within the control of the owner or occupier.” Hudson v. J.H. Harvey Co., 244 Ga.App. 479, 480, 536 S.E.2d 172 (2000). Without first establishing that a dangerous condition existed, the plaintiff cannot establish that the defendant knew about the danger and therefore cannot recover. Metts v. Wal-Mart Stores, 269 Ga.App. 366, 367, 604 S.E.2d 235 (2004); Cohen v. Target Corp., 256 Ga.App. 91, 92-93, 567 S.E.2d 733 (2002).”

This is exact same standard applied to invitee injury cases in South Carolina. Therefore, this court can apply the same rationale to a case which is factually identical.

But even more than the factual specifics, Ford advanced nearly identical arguments as Plaintiff in this case. Specifically, Ford alleged that “a chair with wheels on a slick, tile floor can certainly be a dangerous condition, and sub judice, did constitute a dangerous condition when [Ford] attempted to negotiate sitting in the chair.” Id. The court rejected this argument and held “[m]erely stating that a condition is dangerous does not constitute evidence that it is so. Carroll v. Ga. Power Co., 240 Ga.App. 442, 443(1), 523 S.E.2d 896 (1999).” Id. The court noted the evidence was insufficient because the plaintiff “...proffered no expert testimony that the chair was hazardous, nor did she point to any rule or regulation allegedly violated by the chair, but simply testified that the chair was defective because it slid out from under her.” Id.

In sum, in Ford, the plaintiff attempted to sit down in a rolling style office chair and the chair merely came out from under her. The plaintiff could not identify any defect in the chair or

the surface. The plaintiff could not point to any rule or regulation which was allegedly violated by the chair. The plaintiff's argument was merely "I fell, so it was dangerous." This is squarely within all four corners of this case. Plaintiff in this case has not identified a dangerous condition, has not identified any issues with the chair, and has done nothing more than show that she fell and as the Ford court succinctly stated—proof of an injury without more is not enough.

Another Georgia case which Ford relied upon is Weldon v. Del Taco Corp., 390 S.E.2d 87, 194 Ga.App. 174 (1990). In Weldon, the plaintiff received injuries when the chair she was occupying slipped out beneath her and dropped her to the floor. The court made the same holding as to "proof of nothing more than a fall" is insufficient to maintain a claim and establish negligence. Specifically, the court held

"...according to the deposition testimony, there was no evidence of the presence of excessive wax or of any foreign substance on the floor; according to witnesses and appellant herself, the chair in which appellant was sitting appeared to be no different in design, construction, or condition from the other chairs in the restaurant; by her own admission, appellant had been in that restaurant many times and therefore could be presumed to be acquainted with and to have used its furnishings on previous occasions; she offered no reason for the chair's toppling other than that she was reaching to her left at the time. "[P]roof of nothing more than the occurrence of the fall is insufficient to establish the proprietor's negligence." J.C. Penney Co. v. Smith, 173 Ga.App. 612, 613, 327 S.E.2d 574 (1985); *cited in* Harmon v. Reames, 188 Ga.App. 812, 374 S.E.2d 539 (1988)."

This case is similarly analogous as it was to Ford. Plaintiff cannot present a *reason* why she fell or attribute the fall to any defect in the chair or the floor. Rather, Plaintiff fell and is attempting to argue that the mere presence of a fall is proof of a dangerous condition. Simply put, it is not. Absent *proof* of more—not just assertion—Plaintiff's claim fails.

Turning to South Carolina case law on similar issues, in Pringle v. SLR, Inc. of Summerton, 382 S.C. 397, 675 S.E.2d 783 (2009), a restaurant patron filed suit when the chair

patron occupied collapsed underneath patron. The Honorable George C. James granted summary judgment in the case.

In Pringle, the plaintiff was seated in a chair at a buffet when the chair suddenly collapsed underneath her causing her to fall for the floor. During the deposition, the plaintiff testified she did not notice anything wrong with the chair before it collapsed and that the chair was not "rickety," "wobbly," or otherwise unstable. She also admitted no prior issues with the chairs in prior visits or any knowledge of any prior issues with chairs for any other customers. Summary judgment was granted because the plaintiffs "...failed to offer any evidence that Knights Inn knew the subject chair was defective or in a dangerous condition." Id. The Court of Appeals noted "[t]o recover damages for injuries caused by a dangerous or defective condition on a defendant's premises, a plaintiff "must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it." Anderson v. Racetrac Petroleum, Inc., 296 S.C. 204, 205, 371 S.E.2d 530, 531 (1988)." Id. Further, the court noted that even if the defendants *did* create the condition it was not sufficient to survive summary judgment "...unless there is evidence that in creating the condition, the defendant acted negligently. See Shain v. Leiserv, Inc., 328 S.C. 574, 576, 493 S.E.2d 111, 112 (Ct.App.1997) (stating the evidence required to show a condition created by the defendant was indeed hazardous must show the defendant was negligent either in the choice of materials used to create the condition or in the manner of their application)." Id. The Court of Appeals affirmed summary judgment stating "[t]o hold otherwise would be directly at odds with the applicable standard of care that "[a] merchant is not an insurer of the safety of his customer but owes only the duty of exercising ordinary care to keep the premises in a reasonably safe condition."

Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001).” Id. (emphasis added).

Plaintiff cannot show in the present case that there 1) was a dangerous or defective condition, 2) even if there were a dangerous or defective condition that Defendant knew about any dangerous or defective condition, 3) Defendant did anything to create a dangerous or defective condition, and 4) even if there were a dangerous or defective condition that Defendant acted negligently to create the condition. Plaintiff’s claim must fail.

Another South Carolina case touches on premises liability issues, albeit with a door instead of a chair. In McElmurray v. The Cato Corporation, 2011 WL 13175156 (June 13, 2011, Judge Doyet A. Early, Aiken County Common Pleas), the plaintiff alleged she was injured when a dressing room door fell and caused her injuries. The defendants denied having any knowledge of a defective or dangerous condition and there was no evidence presented by plaintiff to suggest otherwise. The court held “[defendant] had no notice of any defect in the dressing room door that allegedly fell on the plaintiff. If [defendant] had no notice, the plaintiff’s case must fail. To recover damages for injuries caused by a dangerous or defective condition on a defendant’s premises, a plaintiff must show that either the injury was caused by a specific act of the defendant which created the dangerous condition, or that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it. Pringle v. SLR, Inc. of Summerton, 382 S.C. 397, 675 S.E.2d 783 (Ct. App. 2009).” Id.

As in Pringle above, Plaintiff’s case fails under the McElmurray case as well. Plaintiff has presented no evidence of a defective or dangerous condition nor that Defendant had notice of any defective or dangerous condition. Because of that, Plaintiff’s claim fails and summary judgment is proper.

Garvin v. BI-LO, Inc., 343 S.C. 625, 541 S.E.2d 831 (2001) is the penultimate case

dealing with the duties of a shopkeeper and the genesis of the jurisprudence which states that a shopkeeper is not the insurer of a customer's safety. In Garvin, a customer was injured when a display of canned items fell onto her as she reached up and took cans off the top of the stack. Garvin filed suit against Bi-Lo alleging, *inter alia*, Bi-Lo had negligently created a condition which was dangerous to its invitees. Bi-Lo was granted summary judgment on the ground that a) Bi-Lo had no notice of a problem with cans falling, and b) there was no evidence Bi-Lo committed a negligent act which caused the cans to fall.

The court held "[a] merchant is not an insurer of the safety of his customer but owes only the duty of exercising ordinary care to keep the premises in reasonably safe condition. Pennington v. Zayre Corp., 252 S.C. 176, 165 S.E.2d 695 (1969)." Id. The court further explained, as also noted throughout this memorandum, that "[t]o recover damages for injuries caused by a dangerous or defective condition on a storekeeper's premises, the plaintiff must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it. Anderson v. Racetrac Petroleum Inc., 296 S.C. 204, 371 S.E.2d 530 (1988); Pennington v. Zayre Corp., 252 S.C. 176, 165 S.E.2d 695 (1969); Hunter v. Dixie Home Stores, 232 S.C. 139, 101 S.E.2d 262 (1957); Cook v. Food Lion, Inc., 328 S.C. 324, 491 S.E.2d 690 (Ct.App.1998)." Id.

In granting summary judgment, the court noted "[t]his evidence is insufficient, as a matter of law, to demonstrate the store created a dangerous condition. Absent evidence of some defective manner of stacking the boxes, or that Bi-Lo was on notice that the stacked cans had become rickety, there is simply no evidence from which a jury could find a dangerous condition was created by Bi-Lo...To accept Garvin's contention would render Bi-Lo an insurer of its

customers' safety. This is simply not the law in South Carolina." *Id.* (emphasis added).

Plaintiff's contentions are the same in this case—she seeks to have ALDI held responsible as the insurer of her safety. Plaintiff simply failed to properly sit down in a chair. ALDI undertook no duty to assist her or insure that she was properly seated. Plaintiff cannot point to a single legal duty ALDI owed or breached in the process of Plaintiff sitting in a chair. Further, Plaintiff cannot show any evidence that ALDI was aware of any dangerous or defective condition with the chair, cart, and/or floor or that ALDI did anything negligently to create a dangerous or defective condition with the chair, cart, and/or floor. Summary judgment is required.

Conclusion

Based on the foregoing, summary judgment is proper for Defendant. Plaintiff fell because missed the chair and sat down "short" of the chair. Plaintiff did not ask for assistance in sitting down and has testified she did not need assistance in sitting down. As Plaintiff missed the chair and fell, she grabbed her shopping cart and pulled it down on top of herself. Plaintiff has not alleged the chair was dangerous or defective, the shopping cart was dangerous or defective, or the flooring surfaces were dangerous or defective. Plaintiff has not identified any experts who will testify to any issues relating to the chair, cart, and/or floor. Even if such allegations were made, Plaintiff has not made any showing of any dangerous or defective condition of the chair, cart, and/or floor—let alone a showing sufficient to survive summary judgment.

Plaintiff has admitted she is not aware of any dangerous condition. Plaintiff has admitted she did not need assistance. Plaintiff has admitted she observed the chair prior to sitting. Plaintiff has admitted she did not look back at the chair prior to sitting down. Plaintiff has admitted there was nothing that prevented her from sitting in the chair properly. Plaintiff has admitted she was

not instructed to sit nor was she given an "all clear" type signal to sit down. Plaintiff admits it is "prudent" to look before you sit but admits she did not do so. Plaintiff admitted she was aware that rolling chairs may move before or while sitting down.

Plaintiff has not advanced a single viable theory of recovery or negligence. Further, case law both in South Carolina and in other states make it clear there is no liability for the exact type of fall suffered by Plaintiff. The Ford case cited herein is an identical fall to the fall suffered by Plaintiff—down to the exact same argument advanced by Plaintiff. The court in Ford affirmed a grant of summary judgment against the plaintiff. Other cases cited herein (Weldon, Pringle, McElmurray, Garvin, etc.) related to falls, chairs, and other conditions also support a grant of summary judgment for Defendant. The entire progeny of cases on this issue reveal that the mere fact of a fall involving a chair, absent more, is insufficient to impute a legal duty or to survive summary judgment.

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ATTORNEYS FOR DEFENDANT, ALDI, INC.

October 2, 2018

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Vanessa Wiggins,

Plaintiff,

vs.

Aldi, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C.A. #: 2017-CP-40-05549

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGEMENT

Plaintiff, Vanessa Wiggins, by and through her attorney, Kelly Burnside, respectfully request that his Honorable Court deny Defendant, Aldi, Inc.'s Motion for Summary Judgment. In support, Plaintiff states as follows:

LEGAL AUTHORITY

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). "(W)e hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Id.*

When the question is one of whether the defendant has provided reasonably safe premises, then that is a question of fact for the jury. *Henderson v. St. Francis Cmty. Hosp.*, 303 S.C. 177, 180, 399 S.E.2d 767, 769 (1990).

ARGUMENT

- I. The danger posed by the provided chair in the Aldi store was not open and obvious to the Plaintiff. Defendant, Aldi, Inc., through its agents and employees, provided a chair to the

Plaintiff which caused her to reasonably believe that it was safe for her to sit down. Plaintiff began to sit down under the reasonable belief that the agent of Aldi, Inc. was still behind her as she had requested assistance in sitting down multiple times and had positioned the chair underneath her so that she could sit down, as evidenced by the surveillance video and reaffirmed through affidavit. Because the chair was not properly positioned and the agent of ALDI Inc., did not remain behind the Plaintiff, it caused her to fall when she began to sit down. This creates a genuine issue of material fact as the Defendant Determining the negligence of the agent of ALDI, Inc., not properly positioning the chair underneath the Plaintiff or remaining behind the Plaintiff while she was in the process of sitting down is a question for a jury to consider.

- II. In *Ford v. Bank of Am. Corp.*, the court granted summary judgement to the defendant "Since the customer could not establish that a dangerous condition existed, she could not establish that the bank knew about the danger." *Ford v. Bank of Am. Corp.*, 277 Ga. App. 708, 708, 627 S.E.2d 376, 377 (2006). This holding directly contradicts the facts of the present case. Pictures admitted into evidence through discovery show that Defendant, Aldi Inc., is aware that the chairs provided should not be used on the floor surface that they were provided to Plaintiff to be used on. Every chair in the store is on an elevated carpet surface above the sales floor with railings and other safety measures to ensure that the chairs are not used on the slick surface that Ms. Wiggins was on when she was provided a chair to use. This shows that not only should the Defendant have been aware of the dangerous condition created by using that type of chair on a surface such as the one Ms. Wiggins was on, but that the Defendant, was aware of the dangerous condition and had taken measures to prevent the chairs from being used in that manner. In *Ford* the chair provided was inside a bank. This is grossly different from the regular shopping conditions inside a busy grocery store, as evidenced by the surveillance video. A dangerous condition is created by a chair being on the main sales floor within Aldi, Inc., as there are shopping

carts, customers, displays, endcaps, and a high probability of food waste, spills, trash and flyers to be laying on the floor. Defendant, Aldi Inc., was aware of the dangers and took steps to ensure that a chair would not be used on the sales floor, but acted negligently when it, through its agents and employees, provided a chair to Ms. Wiggins on the crowded sales floor. This shows the vast difference between the present case and the case in Ford. When examined in the light most favorable to the Plaintiff, the facts show that the Defendant acted negligently in the present case. The question of how negligently the Defendant acted providing a chair for Ms. Wiggins on a surface they are not intended to be used on is a question for a jury to decide.

- III. In Plaintiff's deposition on March 5, 2018, Plaintiff affirms the allegations of the Complaint about what happened to her at the store. Defendant contends that Plaintiff now alleges the ALDI employee actively "pulled the chair back" when she went to sit down whereas the Plaintiff contends that the chair had either been previously pushed back or that the ALDI employee did not assist her in sitting down on the chair even though the employee reasonably should have known that Ms. Wiggins would require assistance sitting down on a chair not intended to be used on the surface Ms. Wiggins was on at the time the chair was provided to her. Some selected excerpts used throughout this memorandum include:

Q: So you had asked somebody to bring you a chair –

A: Uh-huh.

Q: -- to sit in? When they brought the chair, did you see them bringing you the chair? In other words, did you turn and see somebody carrying or wheeling over the chair that you were going to be sitting in?

A: Yes, yes.

Q: After they brought the chair behind you, do you remember if you

looked at the chair or saw if the chair was behind you?

A: No, I didn't look.

P. Depo. Tr. 33:7-18

Q: So you didn't look to see if the chair was actually there or where it was behind you?

A: Yes, she was behind me, but once she was behind me, I didn't look again.

P. Depo. Tr. 33:25-34:1

Q: Once the chair was behind you, you didn't look back at the chair or look at the chair before you sat down in it at that point; is that right?

A: Right.

P. Depo. Tr. 34:19-24

Q: So going back to the store that day, to the ALDI and the chair, was there anything about the chair that you saw that was broken or that was not properly working?

A: I noticed they didn't have no arms and it was on rollers.

Q: But other than -- You've seen rolling chairs without arms before, correct?

A: Rarely, because office chairs usually have arms.

Q: But as far as it actually being in what I'll call good working order, there wasn't anything that was actually broken about the chair that you observed; is that fair?

A: Well, I don't know because I wasn't looking for that.

Q: Was the chair itself dangerous? Do you believe the chair was dangerous?

A: I wouldn't even know how to answer that.

Q: Do you feel like there was something about the chair that you needed to know before you sat down in it?

A: Um...

Q: Let me put it this way: Did you need any warnings from the ALDI employees about the chair itself?

A: If something was wrong, yeah.

Q: If nothing was wrong with the chair, though, did you need them to warn you about anything about the chair?

A: If there was something wrong about the chair, they needed to warn me. I mean I don't understand that question. When you see a chair, you assume that you're going to be able to sit in it.

P. Depo. Tr. 55:12-56:20

Q: Sure. Had the chair been underneath you, would you have been able to sit in it?

A: Yes.

Q: So there wasn't anything you observed that would keep you from actually sitting in the chair; is that fair?

A: If the chair was under me, yeah, I would have been able to have sat in it.

P. Depo. Tr. 56:21-57:3

Q: Did you need employees of the store to instruct you how to sit in the chair?

A: No.

P. Depo. Tr. 57:4-6

Q: Did the ALDI employee tell you to sit down?

A: She just said, I have the chair.

P. Depo. Tr. 57:15-17

Q: And you -- When she brought the chair over you had seen that it was on rollers, correct?

A: Yeah, I saw the chair when she was bringing it.

Q: And you know that chairs that are on rollers, they can move depending on which position or which way you push them, right?

A: Yes.

P. Depo. Tr. 58:7-14

Q: Okay. What did she do, though, specifically to cause you to fall down?

A: She didn't hold the chair

P. Depo. Tr. 58:24-59:1

Q: So your testimony would be that you weren't able to sit down in a chair without somebody holding it?

A: Yes, because it was on rollers.

Q: You didn't ask her to stay there behind you, did you?

A: Well, you would think a person would have common sense to.

Q: But you didn't turn around and ask her to remain there and hold the chair in place, did you?

A: No.

Q: And you didn't turn around to make sure that she was still there holding the chair before you sat down; is that right?

A: No.

P. Depo. Tr. 59:6-20

Q: But she never said, I'm still here behind you, did she?

A: No.

Q: She didn't instruct you to sit down at that point, did she?

A: No.

P. Depo. Tr. 60:19-24

Q: And I know I've asked this a couple of times, but you didn't at that point turn around and look to make sure that she was still there, did you?

A: I didn't look behind me once she brought the chair to me.

P. Depo. Tr. 60:25-61:4

Q: Okay. And at no point had she instructed you to sit down at that point; is that right?

A: No. No, she didn't say that.

Q: You don't feel like you needed her or any staff to help you in actually sitting down in that chair, do you? When I say that, I mean assist you in sitting in the chair.

A: Yeah, she should have held that chair until I sat down.

Q: But as far as actually physically assisting you into the chair, you don't feel like you needed somebody to do that, do you?

A: No.

P. Depo. Tr. 62:2-14

Q Have you ever sat in a rolling chair before that day anywhere? A

Yes, at work.

Q Had any of the chairs you'd ever sat in at work been one of the rolling chairs that didn't have arms on it?

A No, they had arms on it.

Q But you have seen rolling chairs without arms before? You have seen rolling chairs that don't have arms on them before?

A Yes.

Q And you're aware that rolling chairs, like I said, they move depending on which direction you push them?

A (Deponent nods head.)

Q You're aware that they can move as you're sitting down in them as well?

A Yes.

P. Depo. Tr. 63:8-25

Q: Would you agree with me that it's a prudent decision to look where you're sitting before you sit down?

A: Yes.

Q: Would you agree with me it's a prudent decision to make sure that the chair is underneath you before you sit down in it?

A: Well, I felt the chair with my hands, so I had no reason to look back.

Q: So you actually felt the chair before you sat down in it or attempted to sit down in it?

A: I felt the sides of it.

Q: And then when you sat down is when the chair moved out from underneath you?

A: Yes.

Q: Nobody to your knowledge pulled the chair out from underneath you, correct?

A: She had to have pulled that chair back, all I know.

Q: So you think she pulled the chair back before you sat down?

A: Yes.

Q: Do you think she did that -- She came over, said she had the chair. Do you think she then pulled it back before you had the chance to sit?

A: Yes.

Q: Do you think she pulled it back after you put your hands on it as far as at that point you started to sit down and she pulled the chair back or was it before that?

A: When I put my hands on it.

Q: So what you think is you went to put your hands on it and then you pulled the chair back from you at that point causing you to fall down?

A: Yes.

P. Depo. Tr. 64:1-65:10

Plaintiff's deposition testimony shows several key issues showing why the Motion for summary judgement should be denied. First, Plaintiff states that she is aware of chairs with wheels but had not used on without armrests on a surface as the one Defendant provided her a chair with wheels to sit on. Second, Defendant contends that the plaintiff admitted that she was not instructed to sit whereas the Plaintiff states that she believed it was reasonable to sit down as per the statement from the Defendant's employee. Third, Defendant contends that Plaintiff did not look behind her or verify that the chair was beneath her prior to sitting, whereas the Plaintiff states that she did look behind her and before sitting. This claim is further evidenced by the store's surveillance video and Plaintiff's affidavit. Fourth, Plaintiff states that she is not aware of any defect or issue with the chair, satisfying the requirement that the dangerous condition not be open and obvious to the Plaintiff. Fifth, Plaintiff asserts that the ALDI employee did not hold the chair, whereas a reasonable person would believe that after asking for assistance and explaining that the first chair was too small to sit on, as evidenced by surveillance video and affirmed by affidavit, that the employee would assist Plaintiff in the process of sitting down. It is reasonable for a person to believe that asking for assistance in sitting down, that they would be assisted in the process of sitting down. Sixth, Defendant contends that the Plaintiff stated that she did not look before sitting whereas the deposition transcript shows as well as the video surveillance and affidavit that Ms. Wiggins did look to make sure the chair was behind her before she began to sit down. Furthermore, when Ms. Wiggins checked to see if the chair was behind her before she began to sit down, the employee of ALDI, Inc., was also behind her. Seventh, Plaintiff asserts that she reached back and felt the chair prior to sitting which would indicate that she was no longer attempting to verify that the employee was still behind the chair because she was under the reasonable belief that the employee was still behind the chair keeping it steady. And eighth, Plaintiff states that she asked for assistance in sitting down multiple times and that the employee of ALDI,

Inc., did not provide adequate assistance after creating a dangerous condition in providing a chair for Plaintiff on a surface ALDI Inc., has taken measures to ensure that the chair provided would not be used on.

But more important than what her testimony confirms is what is evidenced by the surveillance video. On the video, Plaintiff is seen watching a second chair be moved to her location after explaining she did not feel comfortable sitting on the first chair provided, and then Plaintiff looks back to confirm the chair and employee are behind her and then Plaintiff looks forward to prepare herself to sit down in the chair still under the reasonable belief that the employee of ALDI Inc., is behind her. Following this, approximately 5-6 seconds later, Plaintiff begins to sit down, and falls because the chair is no longer being held by the employee of ALDI, Inc., even though the employee was put on notice that Ms. Wiggins would require assistance sitting down.

The video clearly confirms Plaintiff's sworn testimony that she was under the reasonable belief that the ALDI employee was assisting her in sitting down after she requested help sitting down multiple times. (See Pl. Depo. Tr. 32:21-33:8) The video further confirms the witness Vivian Ashford's affidavit that states "I saw the chair roll back, away from Ms. Wiggins... within seconds Ms. Wiggins tried to sit down." The video quite clearly moves as Ms. Wiggins begins the process of sitting down under the reasonable believe that the employee is holding the chair behind her. The video also clearly shows the employee of ALDI Inc., removing the chair from the surface fit to use it on and bringing it to Ms. Wiggins who would have no reason to know about the danger of using the chair on a surface ALDI Inc., never intended it to be used on as it was not open and obvious nor was she warned.

IV. Defendant, ALDI Inc., breached its duty to Plaintiff.

In South Carolina case law on similar issues, in Pringle v. SLR, Inc. of Summerton, 382 S.C. 397, 675 S.E.2d 783 (2009), a restaurant patron filed suit when the chair patron occupied collapsed underneath patron. The Honorable George C. James granted summary judgment in the case. In

Pringle, the plaintiff was seated in a chair at a buffet when the chair suddenly collapsed underneath her causing her to fall for the floor. She also admitted no prior issues with the chairs in prior visits or any knowledge of any prior issues with chairs for any other customers. Summary judgment was granted because the plaintiffs "...failed to offer any evidence that Knights Inn knew the subject chair was defective or in a dangerous condition." Id. The Court of Appeals noted "[t]o recover damages for injuries caused by a dangerous or defective condition on a defendant's premises, a plaintiff 'must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it.'" Anderson v. Racetrac Petroleum, Inc., 296 S.C. 204, 205, 371 S.E.2d 530, 531 (1988)." The facts of the present case meet both requirements from Anderson. The facts in the present case show (1) that the injury was caused by a specific act of the respondent which created the dangerous condition (removing the chair from the platform it was safe to use it on and providing it to Ms. Wiggins on the slick surface it was not intended to be used on) and (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it. In the present case, ALDI Inc. was aware of the dangers of using the chair on a slick surface and had taken many safety measures to ensure that it would not be used on a surface such as the one Ms. Wiggins was on when she was provided the chair. South Carolina Case law requires that only one of these two prongs be met to establish a claim for negligence. The present case satisfies both prongs and therefore, Defendant's Motion for Summary Judgment should be denied.

- V. Defendant, ALDI Inc., should have anticipated the Plaintiff would encounter the condition.

In *Callander v. Charleston Doughnut Corp.*, the supreme court noted: "The traditional 'no duty to warn of the obvious' rule has been modified in many jurisdictions to hold that an owner is liable for injuries to an invitee, despite an open and obvious defect, if the owner should anticipate that the invitee will nevertheless encounter the

condition, or that the invitee is likely to be distracted.” *Callander*, 305 S.C. at 126, 406 S.E.2d at 363. Here the agent of Defendant, Aldi, Inc., reasonably should have known that the Plaintiff was going to sit down in the chair provided to her. The agent of Aldi, Inc., should also have known either that the chair was not properly placed underneath the Plaintiff, or that the chair would come out from underneath the Plaintiff on the slick floor which the chair is not intended to be used on. Just like the case in *Callander*, the Plaintiff in the present case was likely to be distracted by the great amount of business and commotion inside the store. In the present case the ALDI employee should have anticipated that Ms. Wiggins, the invitee, would attempt to sit on the chair provided to her where she was when the chair was brought to her which is a surface the chair was not intended to be used on and therefore encounter the dangerous condition created by the Defendant. Determining whether the danger was open and obvious and whether or not Defendant, Aldi Inc., should have been aware of the dangerous condition created is a question for a jury to consider.

CONCLUSION

Summary judgment is appropriate only in cases where no genuine issue as to any material fact exists for a jury to decide. As outlined herein, Plaintiff avers that Defendant owed Plaintiff a duty of care as a business invitee of the premises, that Defendant breached its duty of care in failing to properly provide a chair in a safe and reasonable manner for the Plaintiff to sit upon and lastly that Defendant's breach caused Plaintiff substantial injury and damages. Plaintiff further alleges that the Defendant created the dangerous condition, and that the Defendant acted negligently in doing so. Defendant was well aware that the chair provided to Ms. Wiggins was dangerous on the surface Ms. Wiggins was on when she requested a chair as evidenced by the fact that Defendant had taken numerous measures to ensure that the chair not be used on the surface Ms. Wiggins was on when she requested assistance sitting down. In the alternative, Plaintiff

contends that the existence of a duty is a question of fact which should be reserved for a jury Furthermore, the Defendant has not proven that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts, therefore leaving the question as to whether or not Defendant acted in a negligent manner to be left up for a jury to decide.

WHEREFORE, it is respectfully requested that this Honorable Court deny Defendant's Motion for Summary Judgment.

OSWALD & BURNSIDE, LLC,

By: /s/ Kelly Burnside
Kelly Burnside, Bar No.: 101519
1031 Center St.
West Columbia, SC 29169
(803) 796-7260; (803) 796-1055 (fax)
ATTORNEYS FOR PLAINTIFF

October 5, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Civil Action No. 2017-CP-40-05549

VANESSA WIGGINS,

Plaintiff,

v.

ALDI, INC.

Defendant.

**AFFIDAVIT OF VANESSA
WIGGINS**

Personally appeared before the undersigned officer duly authorized to administer oaths, Vanessa Wiggins who being duly sworn, deposes and says as follows:

My name is Vanessa Wiggins. I have reviewed the video supplied to my attorney in discovery. After reviewing the video, it has refreshed my memory. I recall asking for a chair after being in line for about 20-25 minutes and was feeling discomfort. The cashier went and got me a chair. However, I noticed that the chair was too high. She tried to adjust it but realized the chair was broke. The cashier said that she would go and find me another one. The cashier brought back another chair that was lower in height. She said, "I got you another chair" and I glanced at her to confirm that her and the chair were behind me. I then proceeded to sit down, using my hands to ease myself down and keep balance. I believed that the woman would hold the chair while I sat because that is what a reasonable person would do. She knew I needed a chair because of my discomfort from standing, therefore she should have known assistance was needed if the chair wasn't safe.

In my deposition on, on page 63, I was asked the question:

Q Have you ever sat in a rolling chair before that day anywhere?
A Yes, at work.

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- Q Had any of the chairs you'd ever sat in at work been one of the rolling chairs that didn't have arms on it?
- A No, they had arms on it.

I want to let the court know that I have never sat in a rolling chair before that was on tile and not carpet. The chair moved so quickly that, at the time, I believed it could have only moved that quick if someone had pulled it from under me. I am now aware it is very dangerous to have rolling chairs on tile or any floor other than carpet.

FURTHER AFFLIANT SAYETH NOT

Signature:

Vanessa Wiggins
Print name vanessa wiggins
West Columbia, SC 29169

SWORN TO BEFORE ME

This 4th day of October, 2018

Quiana Doble
Notary Public for South Carolina

My Commission Expires: 06/24/25

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

VANESSA WIGGINS,

Plaintiff,

v.

ALDI, INC.,

Defendant.

Civil Action No. 2017-CP-40-05549

**MOTION TO RECONSIDER AND
MEMORANDUM IN SUPPORT**

COMES NOW Defendant, by and through undersigned counsel, and moves this court for an Order vacating its Order Denying Summary Judgment or, in the alternative, substituting the Order with a general Form 4 denial of summary judgment. This motion is made pursuant to the South Carolina Rules of Civil Procedure including Rule 59. The basis for this Motion is that this court's Order—drafted by counsel for Plaintiff—contains numerous factual findings which do not exist anywhere in the record and makes legal conclusions which are improper for an Order *denying* Defendant's Motion for Summary Judgment.

By way of background, this is a slip and fall case. Plaintiff fell down while she attempted to sit down and failed to properly sit. She has sued ALDI for her own failures in properly sitting down. Plaintiff alleges the floor/chair was a dangerous condition which ALDI was aware of and/or created and that this dangerous condition is the proximate cause of her alleged injuries. In order to prevail in this matter, Plaintiff has to show several things 1) that there was a dangerous condition; 2) ALDI knew about the dangerous condition; 3) her injuries were caused by the dangerous condition. If there is a disputed issue of fact—as alleged here—these are questions for a jury not to be resolved in a *denial* of summary judgment.

Nevertheless, Plaintiff submitted—and this court signed—an Order which makes specific findings of fact and conclusions of law which go well beyond the evidence, the record, and resolve issues which specifically are for a jury to resolve.

I. Dangerous Condition

The Order signed by this court makes actual findings of fact and conclusions of law that the floor/chair *was* a dangerous condition. If summary judgment is denied for Defendant on this issue, then it is solely a question of fact for the jury—not this court. For example:

1. "...whether Defendant had actual or constructive knowledge of a dangerous condition that it failed to remedy." *See* p. 3, Order Denying Summary Judgment (this makes the assumption that the floor is a dangerous condition)
2. "...ALDI, Inc., is aware that the chairs provided should not be used on the floor surface that they were provided to Plaintiff to be used on." *See* p. 5, Order Denying summary Judgment (this makes the assumption of a dangerous condition by finding that ALDI was "aware.")
3. "Every chair in the store is on an elevated carpet surface...to ensure that the chairs on not used on the slick surface..." *Id.* (this makes the assumption the floor is slick and the chairs were placed to avoid a danger).
4. "This shows not only should the Defendant have been aware of **THE** dangerous condition..." *Id.* (emphasis added) (this finding quite literally states the floor is a dangerous condition).
5. "...but that the Defendant, was aware of **THE** dangerous condition..." *Id.* (emphasis added) (this finding, again, quite literally states the floor is dangerous condition).
6. "Defendant, Aldi, Inc., was aware of the dangers..." *See* p. 6, Order Denying

summary Judgment (this finding, again, quite literally states the floor is dangerous condition).

7. "Defendant, Aldi, Inc...acted negligently when it...provided a chair to Ms. Wiggins on the crowded sales floor." *Id.* (this both assumes a danger and makes a finding of negligence, which will be further addresses in part II below).

Each and every one of these quotations from the Order are specific findings of fact and/or conclusions of law that the floor/chair actually was dangerous. This is a clear issue for the jury to determine—not this court. The Order should be vacated accordingly and either reissued or a generic Form 4 denial issued in substitution.

II. Negligence

The Order signed by this court makes actual findings of fact and conclusions of law that Defendant *was* negligent. If summary judgment is denied for Defendant on this issue, then it is solely a question for the jury—not this court. It is improper to put specific findings and conclusions that Defendant was negligent in an Order Denying Defendant's Motion for Summary Judgment. For example:

1. "Defendant, Aldi, Inc...acted negligently when it...provided a chair to Ms. Wiggins on the crowded sales floor." *Id.* (this both assumes a danger and makes a finding of negligence).
2. "...the facts show that the Defendant acted negligently..." *Id.* (this is quite literally a legal conclusion as to negligence).
3. "The question of *how negligently* the Defendant acted..." *Id.* (this assumes negligence in the conclusion)

Each and every one of these quotations from the Order are specific findings of fact and/or

conclusions of law that Defendant *was* negligent. This is the sole issue for the jury. To permit this to exist in an Order which may become the law of the case—on a denial of Defendant's Motion for Summary Judgment—is improper and impermissible. This is a clear issue for the jury to determine—not this court. The Order should be vacated accordingly and either reissued or a generic Form 4 denial issued in substitution.

III. Factual Findings Without Any Record Support

The Order signed by this court makes actual findings of fact that exist nowhere in the record except purely in the argument of Plaintiff's counsel. They do not appear in any deposition, discovery record, discovery response, report, manual, etc. If summary judgment is denied for Defendant on this issue, then factual allegations and findings are solely a question for the jury—not this court. It is improper to put specific findings not located anywhere in the record. For example:

1. "Defendant, Aldi, Inc., is aware the chairs provided should not be used on the floor surface that they were provided to Plaintiff to be used on." *See* p. 5, Order Denying Summary Judgment (this "finding" is contained nowhere in the record).
2. "Every chair in the store is on an elevated carpet surface above the sales floor with railing and other safety measures to ensure that the chairs are not used on the slick surface that Ms. Wiggins was on when she was provided a chair to use." *See* p. 5, Order Denying Summary Judgment (the record is wholly devoid of 1) any evidence or testimony that every chair is on an elevated or carpeted surface, 2) there are safety measures for the chairs, 3) the floor is a slick surface—Plaintiff cannot point to anywhere in the record this assertion exists).
3. "This shows...that the Defendant was aware of the dangerous condition and had

taken measures to prevent the chairs from being used in that manner.” *Id.* (the record is wholly devoid of 1) any evidence Aldi knew of a dangerous condition or 2) Aldi had taken measures to prevent chairs from being used—Plaintiff cannot point to anywhere in the record where this assertion exists).

Each and every one of these quotations from the Order are specific findings of fact which cannot be cited to anywhere in the record—because they do not exist in the record. This is a clear issue for the jury to determine—not this court. The Order should be vacated accordingly and either reissued or a generic Form 4 denial issued in substitution.

Based on the foregoing, the undersigned respectfully requests this court vacate its Order dated November 20, 2018 and either reissue an order without the improper findings of fact and conclusions of law or issue a generic Form 4 denial of summary judgment.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Brett H. Bayne

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ATTORNEYS FOR DEFENDANT, ALDI, INC.

November 21, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Vanessa Wiggins,)
Plaintiff,)
vs.)
ALDI, Inc.)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action: 2017-CP-40-05549

NOTICE OF MOTION AND MOTION
TO CONTINUE

TO: BRETT BAYNE, ESQUIRE, AND J. ANDREW DELANEY, ESQUIRE,
ATTORNEYS FOR DEFENDANT:

PLEASE TAKE NOTICE that the Plaintiff, Vanessa Wiggins, will move before the presiding Judge for the Court of Common Pleas, Richland County, South Carolina, on the tenth (10th) day after the service hereof, or at such other time and place as is convenient to the Court, as follows:

That pursuant to Rule 40(i), South Carolina Rules of Civil Procedure, this Court continue the jury trial scheduled for the week of November 17, 2018, due to the following:

1. Attorney S. Jahue Moore, Sr. has been retained as co-counsel in this matter as of December 14, 2018. Mr. Moore and Plaintiff request he be given time to review the case and become acquainted with Plaintiff.
2. One or more of Plaintiff's treating physicians is unable to testify at trial for the scheduled period due to last minute scheduling changes and pre-existing scheduling conflicts. Such scheduling was delayed pending the hearing and ruling on Defendant's Motion for Summary Judgment heard on October 9, 2018 and ruled upon on November 20, 2018. Defendant filed a Motion to Reconsider [the Order] and Memorandum in Support. This

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Motion has yet to be scheduled for a hearing and Plaintiff still wishes to schedule the appearance of these treating physicians.

3. Plaintiff requires further time to take the depositions of medical witnesses. Such depositions were delayed pending the hearing and ruling on the Defendant's Motion for Summary Judgment, heard on October 9, 2018. An Order Denying Defendant's Motion for Summary Judgment was filed on November 20, 2018. On November 21, 2018, Defendant filed a Motion to Reconsider [the Order] and Memorandum in Support. This Motion has yet to be scheduled for a hearing and Plaintiff still wishes to schedule further depositions.
4. Medical providers for Plaintiff have recently advised her that she may require another surgical procedure and physical therapy due to the injury underlying this case. As such, Plaintiff may sustain further damages relevant to this matter.
5. Plaintiff believes that a good faith effort to mediate this case has yet to take place and requests an opportunity to schedule a mediation suitable for all parties.

Due to the foregoing reasons and concerns, Plaintiff requests that this Court GRANT this Motion for Continuance and place the case on the jury trial roster for a date not less than five (5) months from the date of the filing of an Order on this Motion.

In the alternative, Plaintiff requests a continuance pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. Undersigned counsel for Plaintiff has contacted counsel for Defendant and attempted to resolve this Motion, however, counsel for Defendant has stated that he is unwilling to consent to either continuance or dismissal (with leave to restore).

WHEREFORE, Plaintiff respectfully requests that this Court GRANT her motion for a continuance and for any other relief as this Court deems just and proper. Undersigned counsel

certifies that this Motion is not made to cause any hassle, prejudice, or undue delay to Defendants or this Court.

Respectfully Submitted,

OSWALD & BURNSIDE, LLC,

By: /s/ Kelly Burnside
S.C. Bar No.: 101519
1031 Center St.
West Columbia, SC 29169
(803) 796-7260; (803) 796-1055 (fax)
ATTORNEYS FOR PLAINTIFF

December 14, 2018
West Columbia, SC

000103

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Vanessa Wiggins,)
Plaintiff,)
vs.)
ALDI, Inc.)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action: 2017-CP-40-05549

**Plaintiff's Motion to Dismiss without
Prejudice Pursuant to Rule 41(a)(2)**

Plaintiff moves to dismiss this action without prejudice pursuant to Rule 41(a)(2) of the South Carolina Rules of Civil Procedure, due to the following:

1. Ordinarily, a plaintiff is entitled to a voluntary dismissal without prejudice as a matter of right, unless there is a showing of legal prejudice to the defendant. Knight v. Waggoner, 359 S.C. 492, 495, 597 S.E.2d (2004) (citing Moore v. Berkeley County, 290 S.C. 43, 44, 348 S.E.2d 174, 175 (1986); Gulledge v. Young, 242 S.C. 287, 291, 130 S.E.2d 695, 697 (1963)).
2. If no legal prejudice is shown, the trial judge has no discretion with respect to granting a dismissal without prejudice: but if prejudice to the other party is shown, the matter becomes one of discretion for the trial judge. *Id.* (citing Moore, 290 S.C. at 44, 348 S.E.2d at 175 (1986); Ralston Purina Co. V. O'Dell, 248 S.C. 37, 41-42, 148 S.E.2d 736, 737 (1966)).
3. Legal prejudice exists if the defendant can show that discontinuance of an action would deprive the defendant of a just defense. The prejudice must be of a character that would deprive the defendant of some substantive rights concerning defenses not available in a second suit or that may be endangered by the dismissal. The mere ordinary inconveniences

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of double litigation which in the eyes of the law would be compensated by costs does not constitute legal prejudice.

4. In the current case, the defendant stands to lose no rights or defenses by grant of this dismissal and would therefore incur no legal prejudice.

Due to the foregoing reasons, Plaintiff requests that this Court GRANT this Motion for Dismissal without Prejudice pursuant to Rule 41(a)(2) of the South Carolina Rules of Civil Procedure. Undersigned counsel for Plaintiff has contacted counsel for Defendant and attempted to resolve this Motion, however, counsel for Defendant has stated that he is unwilling to consent to dismissal (with leave to restore).

WHEREFORE, Plaintiff respectfully requests that this Court GRANT her motion for a dismissal without prejudice pursuant to Rule 41(a)(2) of the South Carolina Rules of Civil Procedure and for any other relief as this Court deems just and proper. Undersigned counsel certifies that this Motion is not made to cause any hassle, prejudice, or undue delay to Defendants or this Court.

Respectfully Submitted,

OSWALD & BURNSIDE, LLC,

By: /s/ Kelly Burnside
S.C. Bar No.: 101519
1031 Center St.
West Columbia, SC 29169
(803) 796-7260; (803) 796-1055 (fax)
ATTORNEYS FOR PLAINTIFF

December 19, 2018
West Columbia, SC

000105

STATE OF SOUTH CAROLINA

County of Richland

VANESSA WIGGINS,

PLAINTIFF,

vs.

ALDI, INC.,

DEFENDANT,

COURT OF COMMON PLEAS
2017-CP-40-05549

TRANSCRIPT OF RECORD

December 17, 2018
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

KELLY BURNSIDE, ESQ.
Attorney for the Plaintiff

BRETT BAYNE, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Okay. We're on the record in
2 2017-CP-40-5549. This is Vanessa Wiggins vs. Aldi,
3 Incorporated.

4 The plaintiff is represent by Kelly Burnside. The
5 defendant is represented by Brett Bayne, and so we called
6 the case for the docket this morning, got an email from
7 Ms. Burnside, I believe this morning, saying that she was
8 requesting a voluntary dismissal without prejudice which
9 at this point in time the defendant is not consenting to.

10 The defendant does not -- also does not consent to
11 40(J) the case, and the case was on the docket last week.
12 The case was continued until this week. The case is on
13 the docket this week, and so Ms. Burnside, I'll let you
14 put your positions on the record.

15 MS. BURNSIDE: Yes, Your Honor. We would like to
16 move to voluntarily dismiss this case for multiple
17 reasons: One, the case -- we do not believe that the case
18 has had a good faith mediation. It was canceled by the
19 defense.

20 We also -- Ms. Wiggins, my client, has advised me
21 that she is supposed to undergo another surgery, as well
22 which should take place in the spring. So we do not
23 believe the case is ready for trial because of those
24 medical damages.

25 Furthermore, my -- one of my expert witnesses,

1 treating physicians, is unable to testify due to
2 scheduling conflicts at this time for this week. Also --

3 THE COURT: And what are those scheduling conflicts?

4 MS. BURNSIDE: I'm sorry, Your Honor?

5 THE COURT: What are those scheduling conflicts?

6 MS. BURNSIDE: For this week, he has just not
7 responded to me from the last week.

8 THE COURT: Okay.

9 MS. BURNSIDE: Also, Your Honor, my plaintiff
10 Ms. Wiggins, has retained co-counsel, Mr. Jake Moore in
11 this matter, and he would request time to review the case.

12 THE COURT: Has he filed a Notice of Appearance?

13 MS. BURNSIDE: I believe so, Your Honor. He told me
14 he has a mediation all day today and tomorrow, but I
15 haven't had my computer with me to check if he filed it
16 today. He was retained on Friday.

17 THE COURT: Have you seen a Notice of Appearance,
18 Mr. Bayne?

19 MR. BAYNE: Your Honor, no. As far as I'm aware, no
20 Notice of Appearance has been filed.

21 THE COURT: Okay. We'll check.

22 MR. BAYNE: If it's been filed, it hasn't been
23 accepted. I'll put it that way. I don't know if it's
24 been filed or not.

25 THE COURT: Okay. Go ahead, Ms. Burnside.

1 MS. BURNSIDE: Furthermore, we -- we needed more time
2 for medical -- depositions for medical witnesses. I
3 requested with counsel to set up those depositions for
4 dates.

5 However, he never provided me with dates on that.
6 Furthermore, we have received -- we have sent and also
7 received discovery as of this morning. I think it was
8 done December 13th, and we've not had time to review that
9 discovery.

10 Furthermore, my client, Ms. Vanessa Wiggins, would
11 like to use her rights to voluntarily dismiss the action
12 at this time.

13 THE COURT: All right. Mr. Bayne?

14 MR. BAYNE: Yes, Your Honor. I'll kind of go through
15 just the brief background.

16 THE COURT: For the record, there has been no Notice
17 of Appearance filed by Mr. Moore as of our checking in the
18 computer right now at 11:11 a.m.

19 MR. BAYNE: And, Judge, on that point, as well, Mr.
20 Moore is not here. He has not signed a motion that was
21 filed in this case dealing with his representation.

22 If he asks for a continuance, he has not signed that
23 motion. He is, obviously, not present here today. I'll
24 represent to the Court he has not reached out to me or
25 contacted myself or Mr. DeLaney who is co-counsel on this

1 matter about anything related to this case.

2 But Your Honor, by way of background, this case was
3 actually originally set for trial the week of
4 November 26th by virtue of a scheduling status conference
5 forum the court used to use in terms of requesting dates
6 for trial.

7 That form was filled out by Ms. Burnside and
8 submitted. Following the time that was filled out and
9 submitted, my wife had scheduled a trip to Disney World
10 following Thanksgiving.

11 I requested on November 15th -- I'm going to go
12 through just a series of emails. I'd be happy to make
13 them part of the record as an exhibit once we're done
14 here.

15 November 15th I emailed Ms. Burnside a request -- I m
16 sorry, November 14th, I emailed and requested that we move
17 the case to a trial date the week of December 10th.

18 So that was November 14th, we asked to move it back
19 to December 10th. She had consented to that. She said
20 yes, moving the week -- the trial the week of 12/10 is
21 fine with me.

22 Following that, later that day, I emailed Catherine,
23 your law clerk, informing her that we had reached an
24 agreement to move the trial to 12/10 and asking if we
25 needed to submit a new form or submit an order.

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1 She asked that we submit a consent scheduling order
2 which we did. That scheduling order was signed by both
3 parties and submitted to your court, Your Honor. You
4 signed that order on November 20th, 2018 scheduling the
5 trial for the week of December 10th.

6 One thing that was brought up was mediation. That's
7 one of the bases of the motion. We had some brief
8 settlement discussions prior to moving the trial date for
9 purposes of December 10th.

10 We were very far apart. Following that, counsel
11 agreed between the two of them not to have a mediation as
12 it would be a waste of resources.

13 On November 20th, Ms. Burnside emailed me and said,
14 "I agree. No need for mediation. Thank you." That
15 resulted in the cancellation of the mediation scheduled
16 for November 29th in this case.

17 So it was Ms. Burnside's agreement to not do a
18 mediation based on the gulf in the settlement value that
19 existed at that time.

20 Following that, there were no additional discussions
21 about the trial date or the trial date was not doable or
22 we were not ready for trial. There were some additional
23 medical records that went back and forth in the next week
24 or two between the parties.

25 So the subsequent records that had never been

1 disclosed were produced to us, arguably would be a basis
2 for us asking for a continuance. We don't need it. We're
3 fine moving forward even though those records were not
4 disclosed until the end of November.

5 On November 28th, we disclosed our expert for
6 liability and flooring safety. There's been no objection
7 to him. There has been no attempt to take his deposition
8 or any request for additional information.

9 The discovery that Ms. Burnside references arriving
10 yesterday was photographs. It was photographs that were
11 taken of the floor at the Aldi where this occurred. She
12 has also conducted a site visit and taken similar
13 photographs of the floor. Photographs are not a reason to
14 continue a trial. They are not a reason to need more time
15 to review them.

16 THE COURT: Is the incident on video?

17 MR. BAYNE: The incident is on video.

18 THE COURT: Has the video been turned over?

19 MR. BAYNE: The video was turned over roughly six,
20 seven months ago.

21 THE COURT: Okay.

22 MR. BAYNE: They requested it in discovery.

23 THE COURT: So these pictures would be pictures of
24 the same floor that's in the video?

25 MR. BAYNE: Correct.

1 THE COURT: Okay.

2 MR. BAYNE: And they're pictures of the same video
3 that has already been produced by the plaintiff to us when
4 they did their site visit --

5 THE COURT: Okay.

6 MR. BAYNE: -- so it was just additional photographs
7 that were taken.

8 Last week we were scheduled for trial on
9 December 10th.

10 THE COURT: Okay.

11 MR. BAYNE: On Sunday evening, December 9th,
12 Ms. Burnside reached out to me and indicated that her
13 client was not feeling well, and she believed she might
14 have the flu and asked if we would agree to 40(J) the
15 case.

16 I have clients who are actually here today. We have
17 three of them, two are from Illinois. One is the District
18 Manager for Aldi local to South Carolina.

19 They were in the process of flying out. They had --
20 we had discussed it. They were booking their flights to
21 come out. When that happened, we held them off because
22 the discussion at that time was this case probably
23 wouldn't start until Wednesday because there was a trial
24 in front of us on the roster.

25 So they had not yet flown out here but were in the

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1 process of scheduling that travel. I asked Ms. Burnside
2 if we're not sure what the sickness is, what the disease
3 is, can we wait and see what occurs on Monday? If she is
4 feeling better, then we can proceed on Wednesday.

5 When we got to the roster meeting on the 10th, Ms.
6 Burnside's clerk came in her place. She was, I believe,
7 in a Social Security hearing that day, informed me that
8 Ms. Wiggins was still not feeling well.

9 During that hearing, we addressed that with the
10 court, I believe with your law clerk who is here and
11 indicated that since there were two trials on the roster
12 that week and since Ms. Wiggins was not feeling well, that
13 we would agree to move it to the week of the 17th to have
14 that case heard.

15 There was no objection from the plaintiff. The
16 plaintiff did not indicate there was anything additional
17 they needed to do with the exception of making sure
18 Ms. Wiggins felt better for the purpose of trial.

19 On Thursday night, the -- that would be 13th, I
20 received a phone call from Ms. Burnside who at that time
21 stated that she just realized that they had not deposed
22 any of the doctors in the case and that they needed to do
23 that before they could proceed to trial. Would I agree to
24 a continuance.

25 At that time, because again, we had started the

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1 process of rebooking our clients from Illinois to come in.
2 We had already started the process of rescheduling the
3 work shift at Aldi which the week before Christmas, Your
4 Honor can probably imagine, is not an easy feat.

5 We had gotten through two weeks of trial preparation,
6 beginning to start trial, putting it off for a week, and
7 then getting ready to start again. So I declined,
8 indicated I could not agree to a continuance. On Friday
9 the motion is filed which is the motion that's being
10 referenced seeking a continuance or seeking a voluntary
11 dismissal.

12 The bases that were stated within that motion is they
13 hired co-counsel as of Friday, December 14th. That is not
14 a good faith reason to continue the trial. It is also not
15 a good faith reason to dismiss the case.

16 The second version was there were several all into
17 one which is that the plaintiff still has discovery it
18 wants to do. It wants to go take depositions of doctors.
19 It wants to go hire experts, whatever it is they need to
20 go do. They've had 18 months to do that.

21 The only reason they haven't done -- I don't know why
22 they haven't done it, but they haven't done it and
23 allowing it now serves no purpose other than delay.

24 The final was that there was no attempt or effort at
25 mediation, as I addressed with Your Honor. Plaintiff's

1 counsel agreed on November 20th that there was no need to
2 conduct a mediation in this case.

3 Following that roster meeting on Monday the 10th, I
4 sent an email, I believe, out that day or the next day on
5 the 11th to your law clerk addressing -- following up with
6 what occurred at the roster meeting, addressing that we
7 would need one to one-and-a-half days scheduled to try
8 this case and addressing potential scheduling whether we
9 can start Monday, start Tuesday so that I could inform my
10 clients who are flying in from Illinois what they needed
11 to do.

12 There was no objection at that time from the
13 plaintiff to starting the case the following week. What
14 occurred on Tuesday the 11th was a request from
15 Ms. Burnside that we start the case on Tuesday the 18th
16 because she had a witness who was unavailable on the 11th.

17 The alternative would be we start Monday and continue
18 it until Tuesday morning when that witness can be here,
19 but on Tuesday the 11th, there was a request made that we
20 go ahead and start Tuesday. At that time again, their
21 request for a continuance.

22 On the 12th of December, that would be Wednesday,
23 Ms. Burnside sent out trial subpoenas. She subpoenaed
24 Ms. Vivian Ashford who is the witness she was referring
25 to, and she subpoenaed Ms. Carol Rice who is one of our

1 employees at the store to come to trial.

2 So as of December 12th, that's Wednesday of last
3 week, Ms. Burnside represented she was ready for trial,
4 and there was nothing additional that needed to be done.
5 Then the motion for continuance was filed.

6 And I know we're kind of discussing more of a
7 dismissal rather than a continuance, but I'd like to point
8 out that Rule 40 has pretty clear guidelines for
9 continuances based on unavailability of witnesses. It's
10 Rule 40(i), and under Rule 40(i)(2) when you're seeking a
11 continuance -- and I would argue that it applies, as well,
12 if we're going to dismiss this case for nonsuit following
13 over a year, 18 months of preparation, you have to show
14 that you've made some effort to get these witnesses here
15 or to obtain the witnesses.

16 Ms. Burnside did not subpoena the witnesses she
17 claims she needs to appear. It says, "No motion for a
18 continuance at trial shall be granted on account of the
19 absence of a witness without oath of the party, his
20 counsel or agent, to the following effect: That the
21 testimony of the witness is material to the support of the
22 action or defense of the party moving. The motion is not
23 intended for delay, but is made solely because the party
24 cannot go safely to trial without such testimony; That
25 there has been due diligence to procure the testimony of

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1 the witness or other such circumstances that will satisfy
2 the Court that the motion is not intended for delay."

3 In all such cases -- and it goes on, but what we have
4 here are some requirements: That it be material to the
5 case; that it be so essential to the case that the party
6 cannot go safely to trial without it, and that there has
7 been due diligence to procure that testimony.

8 First, the witness that was disclosed or discussed
9 when we met in chambers earlier was Mr. Stewart Darby.
10 That's the only witness they would identify as somebody
11 they would like to have here at trial.

12 Mr. Darby is a physician's assistant with Grace
13 Family Provider Medical Care. He is not a medical doctor.
14 He is not an orthopedist. He is not a neurologist, a
15 neurosurgeon. He is a physician's assistant. He was not
16 identified by any of the parties as a provider until late
17 November in this case.

18 If he was essential to go safely to trial, in other
19 words, that prong that they need his testimony in order to
20 preserve rights in this case, first he would have been
21 identified before late November after scheduling orders
22 were signed relating to the trial of this case, and they
23 would have made an attempt to get him here which would
24 include serving a trial subpoena.

25 We know they served trial subpoenas because they

1 served them on Vivian Ashford and Carol Rice. There's
2 been no evidence that a subpaona was served on Mr. Darby
3 to testify here.

4 As I mentioned in chambers, Your Honor, my motion in
5 limine is to exclude Mr. Stewart Darby should he be here
6 at trial. The basis of his testimony or the conclusion I
7 believe he's going to give -- and I'll admit I didn't know
8 who he was until the end of November, but my understanding
9 is that they are going to call him in an effort to try to
10 link causation between the fall in the Aldi and a
11 five-level cervical fusion that occurred three to four
12 months later.

13 As a physician's assistant, he is not going to be
14 qualified to give that opinion. He lacks the requisite
15 knowledge, training and skill in all of the factors that
16 we get into in that motion in limine to do that.

17 So to the extent that the basis of a witness
18 exclusion is that we continue or grant a dismissal -- for
19 Mr. Darby, that's not a reason that we need to continue or
20 grant a dismissal in this case.

21 While we were doing jury qualifications, I pulled up
22 a couple of cases because there was question about what
23 the standard is for the prejudice relating to a voluntary
24 non-suit or the court granting a nonsuit.

25 This case is Burgess v. Atlantic CLR Co. It is 39

1 FRD 588, and it states: "In exercising its discretion as
2 to motions for dismissal, the Court will consider the
3 expense and inconvenience to the defendant.

4 Other prejudicial consequences and what are
5 reasonable terms and conditions can make the defendant
6 reasonably whole." It cites Colonial Oil vs. American Oil
7 which was a 1943 case. There's a second case, Romanus v.
8 Biggs, B-I-G-G-S 217 SC 77.

9 This was a nonsuit that was denied, and it was -- it
10 was granted. It was appealed from. Respondent has stated
11 no reason for the discontinuance of this suit, and so far
12 as the record discloses, he has presented nothing to show
13 that a discontinuance is necessary to the protection of
14 any right he may have.

15 He should not be permitted, thus, to hail Appellant's
16 report and have him dismissed and then hail him again at
17 the Court's pleasure.

18 As it was said in State v. Southern Railroad Company,
19 the reason for dissatisfaction with the rule is that one
20 man should be allowed to draw another into litigation and
21 drop out at pleasure without a decision of the issue
22 tendered is much stronger now that costs have been
23 abolished and the penalty of having to pay them no longer
24 deters the plaintiffs from seeking unfair discontinuances.

25 It appears that large losses have already occurred on

1 account of bringing this suit and that further losses are
2 likely to occur. These are of the utmost importance to
3 appellants as some find settlement and disposition of the
4 affairs. In this case it was a liquor business but of the
5 liquor business.

6 So in that case, it's a South Carolina case dealing
7 with the request of a court over the objection of a
8 defendant to grant a nonsuit, and the Court said one of
9 the considerations is the costs that have been expended to
10 date and the significant cost that would be required to be
11 expended later.

12 One of the questions was when we're talking about
13 prejudice, what is that prejudice, and it's simply that.
14 We have spent 18 months -- well, a little over a year, 18
15 months is the date of accident, working towards this
16 point.

17 We agreed to this trial date. We have flown people
18 in. We prepared for trial. Either a continuance or a
19 dismissal and refiling -- and as Your Honor noted, they
20 can refile it tomorrow, reset the clock for a year.

21 It would expose the defendants to an extreme amount
22 of costs relating to any type of depositions, any type of
23 experts the plaintiff wishes to go see that in 18 months
24 they haven't sought.

25 Because of that, the prejudice is clear as to why the

1 motion for nonsuit or the motion for dismissal without
2 prejudice should be denied. This case should go forward
3 to trial this week pending the availability of a trial
4 judge.

5 The plaintiff should be required to come to court and
6 present her evidence and allow the jury to determine
7 whether or not there is liability that attaches to the
8 actions of the defendant.

9 THE COURT: In explaining what the -- I understand
10 the cost prong of the prejudice. Explain the legal
11 prejudice that you believe that the defendant is under --

12 MR. BAYNE: Sure.

13 THE COURT: -- under this scenario.

14 MR. BAYNE: As this case -- to give you background in
15 the case, this is a situation where the plaintiff at the
16 Aldi store located at Killian Road over by the Lowe's,
17 Lowe's Home Improvement store on Killian, was shopping
18 back in June of 2017.

19 During the course of her shopping trip, she requested
20 a chair be brought to her so that she could sit down while
21 she was waiting in line. When she went to go sit down,
22 she missed the chair. She sat down short of it, and it
23 rolled out from underneath her. She fell to the ground.

24 Following that, about three months later, the
25 plaintiff had a surgery on her neck. It was a five-level

1 cervical fusion. To prevail in this case, the plaintiff
2 has to establish first that a chair on a floor is a
3 dangerous condition.

4 That is the condition precedent to getting to any
5 knowledge of the shopkeeper to the store and then getting
6 to a causation of damages, so they have to establish that.
7 And they don't have an expert that they have named to this
8 point to establish that fact.

9 If the plaintiff is permitted to testify to that, we
10 have a motion dealing with that. But if the court were to
11 allow the plaintiff to testify that a chair on the floor
12 is a dangerous condition, then the plaintiff by virtue of
13 that testimony has admitted that it was either open and
14 obvious or that she assumed the risk.

15 So without that expert to testify to that which they
16 now ostensibly want to go either five months or a year or
17 18 months down the road, you know, fine. That prejudices
18 the defense in their defense of this case.

19 The second part of that is once you establish it's a
20 dangerous condition if we get that point, it is obviously
21 that either the defendant, the shopkeeper, knew of the
22 dangerous condition or negligently acted to create that
23 condition.

24 Our opinion is that that also goes back to needing
25 expert testimony about the actions of the employer. The

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1 plaintiff in all of his time has not deposed a single
2 employee at all.

3 They did ask very recently within the last couple of
4 weeks for dates in late December or in January for
5 deposition. My response, I believe, was if you can get it
6 done before trial, let me know. We heard nothing else
7 about the dates or about the ability to do that.

8 Then we get to causation. Even if the plaintiff can
9 show the chair on the floor is a dangerous condition, they
10 can show Aldi knew or negligently created the dangerous
11 condition, they still have to get proximate causation that
12 that fall is what caused the five-level cervical fusion.

13 They haven't deposed a single doctor. They haven't
14 retained a single medical expert. A cervical fusion is a
15 complex medical condition that would require expert
16 medical testimony in order to main obtain their cause of
17 action to get to the jury.

18 So even if the jury decided that yeah, chair on the
19 floor, dangerous condition. Yes, Aldi knew about it or
20 yes, Aldi created it. There's no evidence in the record,
21 and there will be no evidence in the record. We have no
22 testimony from any medical expert in the record that
23 establishes a link between the fall in the store and a
24 five-level cervical fusion three to four months later.

25 Allowing them to go get that also prejudices the

1 defendant for two reasons: One, it changes the face of
2 the defense. Two, it requires the defendant to then go
3 depose additional doctors, potentially hire additional
4 medical experts and incur a significant amount of cost
5 relating to meeting a plaintiff's case with their own
6 evidence that to this date 18 months into -- since the
7 accident has not been required.

8 Certainly if that existed, we would have done that by
9 now. We would have been ready for trial today with that
10 evidence, but that has never been done. It was the
11 plaintiff's burden to do that.

12 Because of that, we haven't done those steps in the
13 process, and requiring allowing continuance or allowing
14 this voluntary dismissal is going to require that from
15 them.

16 So because of that, it's law, and this all rolls in
17 together but it materially changes the outcome of the
18 case, requires basically a restarting of this case from
19 the beginning in revamping the entire strategy, mitigation
20 and posture of the case. That would be woefully unfair to
21 the defendants or prejudice the defendants.

22 THE COURT: All right.

23 Anything further, Ms. Burnside?

24 MS. BURNSIDE: Yes, Your Honor. Ordinarily, a
25 plaintiff is entitled to voluntary nonsuit without

1 prejudice as a matter of right unless there's a showing of
2 legal prejudice.

3 This case is from 1963. I believe the cases -- this
4 supersedes any of the cases that Mr. Bayne has brought up.
5 Furthermore, in the Goldridge (phonetic) vs. Young case in
6 1963, it says the material or legal prejudice may not be
7 deduced from the fact that the granting of the motion was
8 imposed.

9 The defendants -- the necessity of defending another
10 suit, so that should not even become -- that should not
11 even be part of your decision for it. Furthermore, to
12 have a legal -- to have a legal prejudice, it must have a
13 substantial effect on the litigant's right that they are no
14 longer allowed to bring up if the case is refiled.

15 The only examples I could find of this would be like
16 sovereign immunity, actual legal defenses. If we do
17 decide to get an expert, if we do decide to bring this
18 case back, those defenses are still going to be available
19 to counsel.

20 He has not done those expenses because he has not had
21 to depose any of those experts. However, a legal defense
22 is not that I just win the case because I hired an expert.
23 He still is not losing his right to have his day in court
24 either.

25 Furthermore, we did win on summary judgment, and it

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1 was made aware to Judge Manning that we did not have a
2 legal expert. So I believe that is against -- it is for
3 my -- my plaintiff's right that they are entitled to a
4 voluntary nonsuit without prejudice as a matter of right,
5 and that there is case law further from his from 1960 up.

6 That states that just having to retry the case is not
7 meant to solve a legal prejudice, and also the witnesses
8 are out of state. They're not witness. They're his
9 clients. The witnesses are here in the State of South
10 Carolina, as well.

11 Any -- any prejudice that he may suffer from refiling
12 this, I would also suffer. I would also suffer the cost,
13 as well.

14 THE COURT: All right. Do you want respond?

15 MR. BAYNE: Briefly. Ms. Burnside brings up a good
16 point for summary judgment which is part of the
17 cornerstone of that argument was there are no medical
18 experts, and there are no safety experts.

19 THE COURT: Right.

20 MR. BAYNE: That was back in October 2018, early
21 October. So at that time I made it very clear in this --
22 I think we were either in this courtroom or one over, but
23 our theory and part of our defense in this case was there
24 is nobody that's going to come in and testify to these
25 things. And then Ms. Burnside waited until Thursday

1 before trial to ostensibly realize that she may need a
2 medical expert or may need a flooring safety expert.

3 This isn't a new situation. This is something that
4 from the day this happened until -- up until Wednesday
5 December 12th, there was never a mention of needing
6 medical experts or needing safety board experts or needing
7 deposed doctors, any of that.

8 The witnesses that are out of state, it's not my
9 clients. One of the surgeons that has treated Ms. Wiggins
10 is now in Atlanta, and there is another one that I'll
11 represent I believe is in Texas. We've been trying to
12 locate, track him down. There is a doctor in Texas with a
13 similar name we think may be that. We're not sure. We
14 may not need to go to Texas but we might. A neurosurgeon
15 in Georgia is not -- you know, is in Georgia.

16 It becomes a question, too, of when you can get in to
17 depose all of those doctors.

18 MS. BURNSIDE: And, Your Honor, those doctors have
19 been out of state this whole time. That's been a lot of
20 my problem, as well. That's not a new part.

21 This motion was not filed until November 20th, 2018
22 denying summary judgment. At that time I asked him,
23 counsel, to set some of these depositions up.

24 MR. BAYNE: Which is the same day we signed the
25 consent order setting trial for December 10th, and

1 that's -- that's really where it comes back to is up until
2 Thursday at 5:00 p.m., you know, three days ago. This
3 case was ready for trial, represented to this Court by the
4 plaintiff it was ready for trial.

5 There was nothing else that needed to be done in this
6 case, and now we're here today discussing whether or not
7 this case would be tried in 2019 or 2020 or 2021 depending
8 on when it's refiled and how long it takes to then go do
9 various sorts of discovery which hamstrings and prejudices
10 the defendants.

11 You know, it's rare, I guess, the defendant is the
12 one trying to try this case. Usually it's the other way
13 around, but we're ready to go. We are here, cleared the
14 scales for the second week in a row. The evidence is
15 ready, and that's where we stand, Your Honor.

16 MS. BURNSIDE: Your Honor, my client is disabled from
17 this event from -- under Social Security, so it's -- it's
18 been a struggle for me to communicate, some, with her.

19 She has let me know as of two weeks ago that she
20 would have to have another independent surgery, and that's
21 in my motion, and that is one of our biggest concerns that
22 we don't have a full scope of the damages.

23 THE COURT: Okay. All right. Your motion to
24 continue the case is hereby denied.

25 Your motion for voluntary nonsuit or voluntary



1 dismissal is hereby denied.

2 This trial will start as soon as I finish the first
3 one that I'm going to do. If you don't want to wait all
4 of that time, then I can dismiss it with prejudice on the
5 record now, and you can appeal it. It doesn't matter to
6 me. Let me know.

7 Otherwise, you all will be first up as soon as I
8 finish this trial. If you want to save all of that time,
9 I can do an order dismissing the case with prejudice. You
10 have a right to appeal it, obviously.

11 Do you want to talk to your client about that, Ms.
12 Burnside?

13 MS. BURNSIDE: Yes, I would, Your Honor.

14 THE COURT: Okay. Just let me know.

15 Thank you very much.

16 MR. BAYNE: Judge, if we do the route of going to
17 trial this week, do you have an estimate on what day we
18 would start?

19 THE COURT: I would say we would be starting
20 Wednesday.

21 MR. BAYNE: Wednesday.

22 THE COURT: Yes.

23 MR. BAYNE: Thank you, Judge.

24 (Whereupon, the proceedings were concluded.)
25

State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2017-CP-40-5549

Vanessa Wiggins,
Plaintiff,

vs.

ALDI, Inc.,
Defendant.

Transcript of Record

December 20, 2018
Columbia, South Carolina

B e f o r e:

The Honorable Robert E. Hood, Judge; and a jury

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

Frank A. Barton, Esquire
Kelly L. Burnside, Assistant Solicitor
Attorneys for the Plaintiff

Brett H. Bayne, Esquire
Attorney for the Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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TRANSCRIPT OF RECORD

TRIAL DAY 2 - 12/20/18

(Whereupon, the proceedings resumed at 9:14 a.m.)

THE COURT: All right. Good morning. We're on the record in 2017-CP-40-5549. This is Vanessa Wiggins against ALDI, Inc. Ms. Wiggins is present, represented by Frank Barton and Kelly Burnside of the private bar. And ALDI is presented and represented by Brett Bayne of McAngus, Goudelock & Courie.

We're here this morning to finish some pretrial matters and then to start jury selection for the trial of the case. And what issues -- Mr. Barton -- I asked yesterday afternoon if he could make an -- have some time to do some research on the issue of the fact that Dr. -- how do you say the name? Ogaburu?

MR. BARTON: It says Ogburu-Ogbonnaya.

THE COURT: Yeah. Who was never identified as a witness in any way, shape, or form, but was apparently subpoenaed Tuesday night after five o'clock, now appears on the witness list.

MR. BARTON: Yes, sir.

THE COURT: And I don't know that he actually appears on the witness list. But go ahead.

MR. BARTON: Your Honor, a couple things. And I'm not -- I'm not going to take a bunch of time. I think he

1 is available for tomorrow morning, if the Court will let
2 us call him. But I don't know absolutely positively that
3 he will come. I will find out. I'm not going to force
4 him to come over for a subpoena if -- obviously, that
5 creates some real problems for us. But we will let the
6 Court know as -- as the day progresses.

7 Your Honor, I -- let -- in -- in -- so I'm -- I'm
8 not going to take a bunch of time with this. But what we
9 got is a situation -- and we'll back up and say this. I
10 looked -- and opposing counsel can correct me if I'm
11 wrong. But we were asked about why we didn't go by all
12 this expert -- like, C.V.s and that sort of thing.

13 I looked through their discovery requests. I don't
14 see any requests for any expert information at all in
15 their interrogatories or requests to produce. I might be
16 wrong. And they can -- they can point that out to the
17 Court if I am.

18 But there's no requests for any expert information
19 at all. I mean, you know, they -- usually, it's, like,
20 the eighth or ninth question. But it -- it wasn't in --
21 it wasn't in these interrogatories.

22 Now, this isn't a case where the plaintiff has
23 simply refused to cooperate with discovery. I believe
24 that -- that -- this stack of medicals was submitted in
25 response to their initial interrogatories. And there

1 were supplements as we went along.

2 Judge, I remember a case -- and this is after --
3 after the discovery rules went into effect. It came out
4 that -- came to trial; plaintiff had named a few
5 witnesses. They decided they -- they needed a couple of
6 others. And it might've been for -- because the first
7 couple weren't available.

8 The defense objected, obviously. But the witnesses
9 were allowed because the defendants didn't depose anybody
10 anyway. I mean, they -- they can't claim surprise or
11 prejudice if -- if -- you know, they couldn't say, "Well,
12 we could've deposed these people." We didn't depose
13 anybody. He did depose the first couple witnesses.

14 They're basically the same thing. And the -- the
15 problem I see on this case -- and -- and I use this as a
16 -- as a ---

17 (Off the record briefly.)

18 MR. BARTON: --- catchall -- as a catchall clause,
19 any and all medical providers whose bills or records are
20 -- are provided may be called as witnesses. That is not
21 in these answers.

22 But they were made well aware of all of the medical
23 providers -- of the medical providers, including the --
24 the fact that she had surgery with about \$98,000 in -- in
25 -- in bills. And none of them were deposed.

1 This isn't a case where they're saying, "Oh, we're
2 surprised and we didn't know that this could be a
3 possible witness." This is a case where they're trying
4 to say, "Well, we're at this stage; these depositions
5 haven't been done. So we're going to try to limit who
6 you're able to produce."

7 Now, I mean, they haven't requested a continuance to
8 depose them. They're trying to use this as an excuse to
9 not allow the actual facts to come out.

10 THE COURT: Well, I mean, what ---

11 MR. BARTON: And ---

12 THE COURT: --- what I -- the information I was
13 provided yesterday is that the medical records in
14 reference to Midlands Neurology weren't turned over till
15 December the 5th of 2018.

16 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

17 MR. BARTON: They were -- they were subpoenaed back
18 in -- in November by the other side. I'm not sure when
19 they actually got them. But Dr. Ogburu's name was
20 mentioned in the deposition as her -- as -- as her
21 treating neurologist. And I think Dr. Ogburu is the one
22 that referred her to Dr. Grabowski, who'd performed the
23 surgery. And they knew that back at the time when the
24 deposition, which I believe was in March of -- May of --
25 I'm not going to pull it out.

1 But it -- you know, it was a long time ago. So
2 they're just trying to use it as a shield. They're not
3 -- they really can't claim that they're surprised by it.
4 I mean, if we're ---

5 THE COURT: Yeah. The ---

6 MR. BARTON: --- able to get ---

7 THE COURT: --- the -- the ---

8 MR. BARTON: --- Dr. Grabowski ---

9 THE COURT: --- the -- the --- the doctor has never
10 been named as a witness by the plaintiff.

11 MR. BARTON: Yes, sir.

12 THE COURT: Ever. In any discovery response in any
13 way, shape, or form.

14 MR. BARTON: He was named in the deposition, Your
15 Honor.

16 THE COURT: Well -- well ---

17 MR. BARTON: My ---

18 THE COURT: --- I ---

19 MR. BARTON: --- my point is ---

20 THE COURT: I mean, what if someone said Santa Claus
21 was in a deposition? You have to name your witnesses in
22 your discovery response. This is civil court. This is
23 ---

24 MR. BARTON: Yes, sir.

25 THE COURT: --- not criminal court. This isn't, you

1 know, go read the discovery and figure out who we're
2 going to call. I guarantee you that one of the discovery
3 questions sent -- and sent by -- by ALDI was: Tell me
4 who all your witnesses are ---

5 MR. BARTON: Yes, sir.

6 THE COURT: --- which ---

7 MR. BARTON: I agree.

8 THE COURT: And -- and this doctor is nowhere on
9 that -- or in those discovery responses as named as a
10 witness or is named as an expert. He's not her current
11 treating physician in any way, shape, or form. He's not
12 the physician who did the doctor. And the only
13 explanation that the plaintiff has as to why this
14 information was not turned over in a timely fashion is:
15 Somebody said his name in their deposition.

16 MR. BARTON: Yes, sir. Your Honor, he is -- he --
17 she does still see -- and I'm just going to say Ogburu.
18 I'm not going to go through the whole thing. But it goes
19 back to the case where ---

20 THE COURT: She does still see him?

21 MR. BARTON: Yes, sir.

22 THE COURT: And when's the last time she saw him?

23 MR. BARTON: Yesterday afternoon.

24 THE COURT: Well, where is that medical record?

25 MR. BARTON: Your Honor, we don't -- obviously, we

1 don't have the record from yesterday afternoon yet.

2 THE COURT: Oh, when -- when were you going to tell
3 us that she just saw a potential witness in the case
4 yesterday afternoon? Have you told Mr. Bayne that yet?

5 MR. BARTON: No, sir.

6 THE COURT: You -- you -- you just hit the nail on
7 the head with the problem in this scenario. You just hit
8 the nail on the head with a direct hammer strike.
9 Because now here we are, 12 hours before trial. She's
10 going and -- and -- and when was the last time she saw
11 him before that?

12 MR. BARTON: Your Honor, I'm not -- I ---

13 THE COURT: Well, ask her.

14 MR. BARTON: I will ask her.

15 THE COURT: Ask her.

16 (Whereupon, Mr. Barton and the plaintiff conferred.)

17 MR. BARTON: It was back in January, Your Honor.

18 THE COURT: Okay. And the records that Dr. Ogburu
19 turned over or the plaintiff turned over says that she
20 stopped seeing him in December.

21 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

22 MR. BARTON: Your Honor, I'm sorry. We're off by a
23 month.

24 THE COURT: But these things matter.

25 MR. BARTON: Yes, sir. I guess ---

1 THE COURT: I mean, these ---

2 MR. BARTON: --- I would ---

3 THE COURT: --- things matter. I mean, and -- and
4 -- and we're going to parlay right into this -- this
5 Stewart Darby issue. The physicians-assistant statute
6 could not be any clearer.

7 MR. BARTON: Your -- Your Honor, may I interrupt?
8 Darby cannot be here. So there's no need to discuss ---

9 THE COURT: Okay.

10 MR. BARTON: --- Mr. Darby.

11 THE COURT: All right. Good. Okay.

12 MR. BARTON: And that'll cut that ---

13 THE COURT: But ---

14 MR. BARTON: --- cut down ---

15 THE COURT: --- I mean ---

16 MR. BARTON: --- on that.

17 THE COURT: Dr. Ogburu -- mine -- from the
18 information that I was provided yesterday, saw this lady
19 for three months in -- from September to December of
20 2017. When did she have her major surgery?

21 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

22 MR. BARTON: September of 2017.

23 THE COURT: September of 2017.

24 MR. BARTON: Yes, sir.

25 THE COURT: So he ---

1 MR. BARTON: He is -- he's the one that actually
2 referred her to Grabowski first.

3 THE COURT: And he didn't do the surgery?

4 MR. BARTON: He did not do the surgery.

5 THE COURT: Okay. And then she doesn't see him
6 again until yesterday.

7 (Whereupon, Ms. Burnside and Mr. Barton and the
8 plaintiff conferred.)

9 MR. BARTON: She did see him after the surgery
10 before ---

11 THE COURT: Right. She sees him from September to
12 December of 2017.

13 MR. BARTON: Okay. Yes, sir.

14 THE COURT: Yeah. That's after the surgery. She
15 doesn't see him again until yesterday. And, I mean, this
16 case was on the trial docket for the last week. He got
17 subpoenaed Tuesday night.

18 MR. BARTON: Yeah. Yes. Your Honor, in -- in all
19 honesty, I -- I believe what happened is there was a
20 motion for summary judgment. I think there was some --
21 there was one or two e-mails back and forth between the
22 parties about scheduling depositions.

23 But they -- in -- in all honesty -- and -- and, of
24 course, they were waiting to -- to see what happened with
25 this motion for summary judgment. Whether that's right

1 or wrong, that's something that happens frequently.

2 So I -- I guess I'm pointing out, this isn't a case
3 where plaintiff has simply totally refused to cooperate.

4 THE COURT: I didn't say she's totally refused to
5 cooperate. I'm just saying, as to Dr. -- whatever --
6 Ogburu, the medical records were provided in December.
7 The medical records were provided 15 days ago for a trial
8 that was supposed to start on December the 10th, which
9 would've been five days prior to trial.

10 And he's never been named as a witness. He's never
11 been named as an expert. He's never been named as, you
12 know, this is the expert that we're going to rely on, and
13 these are the reason -- this is what we're going to rely
14 on him for. And, you know, basically, less than 48 hours
15 ago, he -- poof -- becomes a witness.

16 MR. BARTON: Your -- Your Honor, I believe, in his
17 -- I don't think we have to call him as an expert. I
18 think we can call him as a treating physician. Because
19 in his records from past, he actually -- he actually
20 opined that -- that the -- the neck surgery was related
21 to this accident.

22 THE COURT: He didn't even do the neck surgery.

23 MR. BARTON: No, sir. But -- but a doctor that
24 doesn't do the surgery can still give an opinion as to
25 whether or not it's related. But this isn't an expert

1 ----

2 THE COURT: So ---

3 MR. BARTON: --- opinion. This is his opinion as a
4 treating physician.

5 THE COURT: That's an expert opinion.

6 MR. BARTON: Your Honor, I guess I view treating
7 physicians as being different from an expert opinion.

8 THE COURT: I -- under what theory of law do you
9 view those as being different?

10 MR. BARTON: An expert is one that you hire
11 independently of treating the -- treating the plaintiff
12 in order to give an opinion. That -- that's how I would
13 differ ---

14 THE COURT: He's still got to be an expert to be
15 qualified to give an opinion.

16 MR. BARTON: Yes, sir. Well ---

17 THE COURT: And he's ---

18 MR. BARTON: --- yeah ---

19 THE COURT: --- still got ---

20 MR. BARTON: --- yeah, if ---

21 THE COURT: --- to be identified as a witness. I
22 mean, Ms. Wiggins knew last September that she was seeing
23 Dr. Ogburu. I assume that she told her attorney that she
24 was seeing Dr. Ogburu. And instead of subpoenaing his --
25 subpoenaing his records and getting his records and, from

1 January of 2018 till December of 2018, scheduling his
2 deposition ---

3 MR. BARTON: Yes, sir.

4 THE COURT: --- they did nothing.

5 MR. BARTON: Yes, sir. And -- and I don't want to
6 belabor this.

7 THE COURT: Well, I'm ---

8 MR. BARTON: But ---

9 THE COURT: --- and I want to either. I'm just -- I
10 mean ---

11 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

12 THE COURT: I mean, and -- and -- and, I mean, it
13 all goes back to the central point that, you know, the
14 trial date on this case was consented to. This isn't
15 y'all showed up on the docket and no one told you about
16 it. I mean, I created a system over this past year in
17 this county, which has never been done before that
18 anybody alive can remember, where the judge essentially
19 was letting the parties pick the weeks they wanted to go
20 to court.

21 MR. BARTON: Yes, sir.

22 THE COURT: And last week was picked. And all these
23 issues were known or, to the defense, unknown. But, I
24 mean, so it's not like this is you just randomly showed
25 up on the docket. I mean, this was -- I mean, there's an

1 order in the file, signed, that says everybody consents
2 to the case going forward last week. We're here a whole
3 week later.

4 And still -- I just -- I'm -- I just don't -- I
5 mean, I'm just -- I'm baffled by -- by the -- the whole
6 situation. I'm -- I'm truly just -- and I'm truly just
7 baffled.

8 But you want to be heard on that issue, Mr. Bayne?

9 MR. BAYNE: Judge, just very briefly, I -- and I
10 wanted to correct one point you made.

11 THE COURT: I'm sorry if I said something ---

12 MR. BAYNE: No.

13 THE COURT: --- wrong.

14 MR. BAYNE: No. You're fine. Dr. Ogburu had never
15 been listed in discovery until Tuesday. So on Tuesday
16 ---

17 THE COURT: Right. Tuesday ---

18 MR. BAYNE: --- late ---

19 THE COURT: --- was the fourth supplemental ---

20 MR. BAYNE: Correct.

21 THE COURT: --- discovery ---

22 MR. BAYNE: That's the ---

23 THE COURT: --- responses.

24 MR. BAYNE: So there has been a discovery response
25 where he has been listed. And then, the subpoena was

1 served right after that. I just wanted to -- the record
2 to be clear there was, in ---

3 THE COURT: Right.

4 MR. BAYNE: --- fact, a ---

5 THE COURT: I'm sorry.

6 MR. BAYNE: --- discovery response to that effect.

7 The Midlands Neurology records were produced in a
8 third supplemental response to requests for production on
9 December 5th, which is the date that we've been talking
10 about. This is a copy of those records that were
11 produced. I'd be happy to show them to you.

12 But they end in December of 2017. There is no
13 January 2018 appointment in these records. If she saw
14 him in 2018, they have not produced that. Obviously, we
15 don't have yesterday's report either.

16 And if -- we talked about this yesterday. But if
17 Your Honor recalls, on Monday when we were in here, there
18 were two issues dealing with experts. The first was Ms.
19 Burnside represented at that time she had one potential
20 expert; that was Mr. Stewart Darby. Dr. Ogburu was not
21 referenced at that time to the Court.

22 The second was, at that time, there was at least a
23 representation made that sometime in the last three or
24 four weeks, Ms. Wiggins had gone and gotten some type of
25 surgical recommendation. We presumed yesterday that that

1 must be Dr. Ogburu, based on the -- the listing of him as
2 a witness on Tuesday night.

3 But if she didn't go see Dr. Ogburu in the last
4 three to four weeks, I'm not sure who that would be. And
5 we don't have that record either. So I don't know where
6 that would've come from, but neither here nor there.

7 It goes back to simply, as Your Honor touched on, we
8 selected the trial date for December 10th. Dr. Ogburu
9 was not listed as a witness in any of this discovery. On
10 December 5th, five days before we were set for trial, we
11 received these records for the first time.

12 We didn't ask for a continuance. We didn't even ask
13 at that time to strike the records. We were prepared to
14 go to trial on December 10th, and we would take that
15 matter up with the Court when the time came.

16 The fact that the records exist doesn't mean that
17 that is a listing of a witness that intends to be called.
18 Our interrogatories call, as you said, for all witnesses.
19 It also calls for all medical providers that have treated
20 the -- the claim -- or the plaintiff in this case.

21 Midlands Neurology and Dr. Ogburu were never listed in
22 either of those responses, until Midlands Neurology was
23 listed on December 5. Dr. Ogburu was listed on Tuesday.

24 If I was in here complaining about Dr. Grabowski at
25 USC Orthopaedics, who was disclosed in the original

1 discovery, I wouldn't have a leg to stand on. Because I
2 would've had every right, in 14 months or 12 months or
3 whenever he was named, to go depose him if I wanted to.

4 If I would've wanted to complain about Dr. Noojin at
5 Palmetto Orthopaedics now, who's someone who treated her,
6 I wouldn't have a leg to stand on. If I wanted to
7 complain about the ER doctors at Lexington Medical Center
8 or Palmetto Health Richland, I've known about those.

9 The plaintiff hasn't deposed them. It's not my job
10 to depose them. But I wouldn't have too much of a
11 complaint if they had listed them in discovery a year ago
12 and I said, "I'm not going to depose those people."

13 But when we get a doctor on Tuesday afternoon for
14 the first time, listed as somebody they want to come
15 testify, there's nothing I can do about that. I can
16 simply show up and either let him testify and wing a
17 cross-examination or we can move to exclude him, based on
18 later-arriving notice in this case.

19 And -- and Your Honor touched on the final point,
20 which is it's not that he was noticed a day before trial.
21 He was noticed almost nine days after we were set to
22 start trial. He was noticed the day before, about 16
23 hours before, we were set to start trial again on
24 Wednesday. And now we're starting on Thursday.

25 But this isn't a situation where, five days before

1 we were set to start trial, even that would be too soon.
2 But at least there would be some ability to try to work a
3 situation there.

4 We're talking about somebody who's been noticed as a
5 potential witness -- and it sounds like he may not even
6 be able to be here at this point to testify -- but
7 somebody who they want to call to give causation opinions
8 that was never noticed. And so that's the basis of our
9 motion, Judge.

10 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

11 THE COURT: Yes, sir.

12 MR. BARTON: Judge, I would love to have video
13 depositions able to present. But I don't. But opposing
14 counsel just admitted that if we were going to call any
15 -- any other medical providers, he wouldn't have a basis
16 to complain, which puts us -- puts us right back into the
17 situation that I mentioned earlier, that if they weren't
18 taking the depositions of the witnesses, they can't
19 really complain about a witness that is used later on.

20 In other words, there were -- they were just late
21 witnesses mentioned. When it came to trial, they had to
22 -- they wanted to use somebody else. That went up on
23 appeal and -- and the Court said that -- the appellate
24 court said that that's okay. You know, they can't claim
25 prejudice because they didn't depose of the people

1 anyway.

2 It's -- they're not -- they're not really surprised
3 by this. They're just trying to use it to exclude the
4 witness. I -- and I'm not going to say anything else. I
5 understand everything else the Court has said.

6 THE COURT: Okay.

7 MR. BARTON: And I -- and I will sit down.

8 THE COURT: Okay. All right. What other issues do
9 we need to take up before we bring the panel up?

10 MR. BAYNE: Judge, if -- if Mr. Darby is not going
11 to testify, I think that moots that issue relating to Mr.
12 Darby.

13 There's only one other issue that came up through
14 the voir dire that was received from the plaintiff.
15 Question No. 7, which I think is actually the sixth voir
16 dire question -- it looks like it skipped No. 6. But No.
17 7 asks a question about a licensed practical nurse or a
18 practitioner nurse. I would just ask for clarification
19 on who they're referring to.

20 Because I don't -- I looked at the records, and I
21 don't see anywhere in the records where an L.P.N. has
22 been providing pain-management care to the plaintiff. If
23 there is a L.P.N. that they plan to produce records from,
24 I just would like -- I would request who that is before
25 we get into voir dire on issues that may not come up

1 before the Court.

2 MR. BARTON: Your Honor, we'll -- Your Honor, we'll
3 make it easy. We'll withdraw that ---

4 MR. BAYNE: That ---

5 MR. BARTON: --- that -- that request.

6 MR. BAYNE: --- solves that problem.

7 THE COURT: Okay.

8 MR. BARTON: You know ---

9 MR. BAYNE: And I -- I submitted a subsequent voir
10 dire last night to add and in the event that we needed
11 those on there.

12 THE COURT: Now, the ---

13 MR. BAYNE: But everything ---

14 THE COURT: --- the plaintiff has listed as its
15 witness in its voir dire as Vanessa Wiggins, Carol Rice,
16 Vivian Ashford, and Sydney Lee -- Lee. Is that correct?

17 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

18 MR. BARTON: Yes.

19 THE COURT: Okay. All right. And then, the defense
20 has listed -- where did their voir dire go? -- the same
21 names, plus Bryan Durig; is that correct?

22 MR. BAYNE: Correct, Judge.

23 THE COURT: Okay.

24 All right. How many jurors do we have here now,
25 Pat?

1 DEPUTY CLERK OF COURT: I'm going to call and check
2 and see right now.

3 THE COURT: Okay. We only had about 22 about --
4 when we started this, so -- or 25. So we're going to go
5 make sure.

6 MR. BARTON: Your Honor, you're going to bring the
7 jury right here, right?

8 THE COURT: Yes, sir.

9 MR. BARTON: Okay.

10 THE COURT: I am, yeah.

11 (Off the record briefly.)

12 DEPUTY CLERK OF COURT: Your Honor, we -- we have --
13 still have 25.

14 THE COURT: Twenty-five?

15 DEPUTY CLERK OF COURT: Twenty-five.

16 THE COURT: Okay. Let's -- all right. Let's go
17 ahead and get those 25 up here.

18 MR. BAYNE: And, Judge, just -- are we deferring on
19 Dr. Ogburu at this time or is -- are we -- how are we
20 proceeding with that matter, just ---

21 THE COURT: I mean, at this point in time, Dr.
22 Ogburu is out.

23 MR. BAYNE: Thank you, Judge.

24 (Off the record from 9:38 a.m. until 9:48 a.m.)

25 (Whereupon, the jury panel entered the courtroom at

1 9:48 a.m.)

2 THE COURT: Okay. All right, ladies and gentlemen.
3 Good morning. My name is Robert Hood. Thank you for
4 coming back this morning.

5 There are a few of you that are not here. And don't
6 worry about those people. I'll have them visited by
7 somebody in a black-and-silver car today as to why they
8 didn't bother to follow my instructions. And I'll
9 consider whether or not they get to spend Christmas with
10 their family once I finally deal with them. Okay?

11 All right. So good morning. All right. We are
12 going -- the first thing I'm going to do is take the roll
13 to make sure I know who's here and who's not here. You
14 have been put into a completely and totally randomly
15 generated list. So you are no longer in order.

16 So when I call your name or if I call your name, if
17 you would please just say "here" or "hey" or something
18 like that so I know that you're here so we can figure out
19 who is not here so we can get right into this process.
20 Okay?

21 All right. Jason Burkett?

22 POTENTIAL JUROR: Here.

23 THE COURT: Thank you.

24 Veronica Bushnell?

25 POTENTIAL JUROR: Here.

1 THE COURT: Jeffrey Okeke?
2 (No audible response.)
3 THE COURT: Jeffrey Okeke?
4 (No audible response.)
5 THE COURT: Chandler Herring?
6 POTENTIAL JUROR: Here.
7 THE COURT: Taelore Hicks?
8 (No audible response.)
9 THE COURT: Taelore Hicks.
10 (No audible response.)
11 THE COURT: Angriss Brooks?
12 POTENTIAL JUROR: Here.
13 THE COURT: Gregory Belden?
14 POTENTIAL JUROR: Here.
15 THE COURT: Steven Colwell?
16 POTENTIAL JUROR: Here.
17 THE COURT: Jenna Kessler?
18 POTENTIAL JUROR: Here.
19 THE COURT: Shaianthony Huff?
20 POTENTIAL JUROR: Here.
21 THE COURT: Caroline Scoggins?
22 (No audible response.)
23 THE COURT: Caroline Scoggins?
24 (No audible response.)
25 THE COURT: Delexis Osborne?

1 POTENTIAL JUROR: Here.
2 THE COURT: Debra Tucker?
3 POTENTIAL JUROR: Here.
4 THE COURT: Susan Yeargin?
5 POTENTIAL JUROR: Here.
6 THE COURT: Melissa Denner?
7 (No audible response.)
8 THE COURT: Melissa Denner?
9 (No audible response.)
10 THE COURT: Cassidy Green?
11 POTENTIAL JUROR: Here.
12 THE COURT: David Coulter?
13 POTENTIAL JUROR: Here.
14 THE COURT: Alfredrick Simmons?
15 POTENTIAL JUROR: Here.
16 THE COURT: Charles Ruth?
17 POTENTIAL JUROR: Here.
18 THE COURT: Alyssa Sakara?
19 POTENTIAL JUROR: Here.
20 THE COURT: William Andrews?
21 POTENTIAL JUROR: Here.
22 THE COURT: Billy Key?
23 POTENTIAL JUROR: Here.
24 THE COURT: Felecia Heggie?
25 POTENTIAL JUROR: Here.

1 THE COURT: Danna Misenheimer?
2 POTENTIAL JUROR: Here.
3 THE COURT: Julia Reitz -- or Reitz?
4 POTENTIAL JUROR: Here.
5 THE COURT: Viola Harris?
6 POTENTIAL JUROR: Here.
7 THE COURT: Jason Hubbs?
8 POTENTIAL JUROR: Here.
9 THE COURT: Kenneth Emerson?
10 POTENTIAL JUROR: Here.
11 THE COURT: Nicholas Sims?
12 POTENTIAL JUROR: Here.
13 THE COURT: Joshua Jeffrey?
14 (No audible response.)
15 THE COURT: Joshua Jeffrey?
16 (No audible response.)
17 THE COURT: Lisa Ritchie?
18 POTENTIAL JUROR: Here.
19 THE COURT: Immanuel Goodwin?
20 POTENTIAL JUROR: Here.
21 THE COURT: Kevin Cleary?
22 POTENTIAL JUROR: Here.
23 THE COURT: Tawana Folston?
24 (No audible response.)
25 THE COURT: Tawana Folston?

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1 (No audible response.)

2 THE COURT: Kathleen Suggs?

3 POTENTIAL JUROR: Here.

4 THE COURT: I got one, two -- hold on one second.

5 Let me do some math. One, two, three, four, five, six --
6 so I got 29.

7 Okay. So attorneys, using the numbers on the left,
8 3, 5, 11, 15, 30, and 34 are not present. Okay.

9 All right. Ladies and gentlemen, we are about to
10 begin jury selection in the case that is on the docket
11 for this morning. This is Case No. 2017-CP-40-5549.

12 The plaintiff in the case is Vanessa Wiggins. Now,
13 what a plaintiff is, is a plaintiff is the party who is
14 bringing the case. Okay?

15 And then, the defendant in the case is ALDI,
16 Incorporated. Okay? And the defendant is the party upon
17 whom which the complaint or cause of action has been
18 brought. All right?

19 Now, this incident allegedly occurred on or about
20 June 17th of 2017 at 1240 Longreen Parkway here in
21 Columbia, South Carolina. The incident allegedly
22 occurred at the ALDI grocery store that is at that
23 location. Can somebody tell me kind of what part of town
24 that's in?

25 MS. BURNSIDE: Northeast.

1 THE COURT: The ---

2 MR. BAYNE: Judge, that is on Killian Road next to
3 the Lowe's ---

4 THE COURT: Oh.

5 MR. BAYNE: --- home-improvement store at Killian
6 and ---

7 THE COURT: In ---

8 MR. BAYNE: --- 77.

9 THE COURT: --- in the northeast?

10 MR. BAYNE: Yes, sir.

11 THE COURT: Okay. So if you're familiar with the
12 northeast part of Columbia, kind of the Killian Road
13 area, where there's a Lowe's. I don't live on that part
14 of town. But apparently, there's an ALDI out there. And
15 that's where the incident allegedly occurred. Okay?

16 All right. So what we're going to do this morning
17 is we're going to determine a bunch of different things,
18 a little -- and just a little bit of information about
19 you. Okay?

20 And as I told you on Monday, I think -- I don't
21 remember if I told you this or the group whose trial I
22 finished yesterday this. But in South Carolina, we're
23 able to do jury selection very efficiently. If you watch
24 TV or watch the news, or read books or see movies, you see
25 where it sometimes takes days to pick juries. Okay?

1 We're going to do this all in about an hour. Okay?
2 And the reason we're able to do it so efficiently is
3 because we believe you are going to tell me the truth.
4 Okay?

5 And so imagine if you were connected to this case in
6 some way, shape, or form, on either side of the case or
7 just one of your friends was involved in the case or
8 something like that. You would want to go into this week
9 believing that the jurors are going to answer the judge's
10 questions truthfully. Right? I mean, that's just a
11 fundamental part of this working.

12 So today, as I go through these questions with you,
13 there are no wrong answers and there are no right
14 answers. I just want you to be truthful with us. And I
15 want you to err on the side of giving me too much
16 information, as opposed to too little information. Okay?

17 So one of the questions I'll ask you in just a
18 moment is: Do you know anybody involved in the case,
19 whether it be a witness or a lawyer or any of the parties
20 in the case. All right?

21 And what I have found over my years as practicing as
22 a lawyer and being a judge is that people interpret that
23 word "know" differently. Like when I say, "Do you know
24 someone?"

25 All right? So I'm going to use somebody in the

1 group as an example. Okay? And she doesn't even know
2 that I know her. Okay?

3 Ms. -- but Ms. Yeargin -- right? Your husband's
4 name is Brad; is that right? And he's a physical
5 therapist or something like that, right? And so he and I
6 used to work out together in the mornings. Now,
7 apparently, as you can tell, I do not do that anymore.
8 And I'm auditioning for the part of Santa Claus here
9 soon.

10 But we used to work out together in the morning. So
11 at that point in time, you know, I knew who he was. I
12 didn't have his phone number. I had never -- I've never
13 been to their house.

14 I've never met Ms. Yeargin before. But I know who
15 she is, just because, for a few months of my life, in a
16 moment of insanity, I chose to go work out at five
17 o'clock in the morning.

18 And so I -- I -- what I -- I tell you that story not
19 to be funny. But I tell you that story to say, don't
20 apply your own kind of standard of "know" to do you know
21 these people. If you've heard of these people or you
22 think you know these people or if their name is John
23 Smith and you know three John Smiths, just stand up and
24 tell me that. We'll try to figure out if it's who you
25 think it is or not. Okay?

1 There -- so there's no wrong answers or no right
2 answers. But we're just trying to gather as much
3 information as we can in as short a period of time as we
4 can. Okay?

5 All right. Now, to do that, we need to swear you
6 in. So if you will please stand up, and the clerk will
7 swear you in.

8 (Whereupon, the jury panel was duly sworn at 9:56
9 a.m.)

10 DEPUTY CLERK OF COURT: Thank you. You may be
11 seated.

12 THE COURT: Okay. Great. So the first thing we're
13 going to do is I'm going to let the attorneys introduce
14 themselves to you and introduce their clients or their
15 potential witnesses to you.

16 And so, Ms. Burnside and Mr. Barton, you all may go
17 first. Tell us who you are and -- and who everybody is
18 with you, please.

19 MR. BARTON: Yeah. Ladies and gentlemen, I'm Frank
20 Barton. I practice with Wayne Floyd over in West
21 Columbia. And this is Colin Spangler, who will be --
22 who's helping. And he's also an attorney with Wayne
23 Floyd's office.

24 We're assisting Ms. Burnside in trying the case.
25 This is Ms. Wiggins.

1 Are you -- are you able -- can you stand up, just so
2 they can see you.

3 THE COURT: Can you -- can you ---

4 THE PLAINTIFF: Oh.

5 THE COURT: --- wave at them, Ms. Wiggins?

6 MR. BARTON: Just kind of turn around.

7 THE PLAINTIFF: Good morning.

8 MR. BARTON: This is Ms. Wiggins, who is the
9 plaintiff in the case.

10 And there are a couple other witnesses that -- and
11 this is Ms. Ashford, who is seated back here, just so you
12 know who she is.

13 And, Ms. Burnside, can you ---

14 MS. BURNSIDE: Hi. Good morning. Thank you for
15 being here. I'm Kelly Burnside. I'm with Oswald
16 Burnside Law Firm. We're located on Center Street, kind
17 of near the Zesto's in West Columbia. And this is my law
18 clerk, Bryn Bethel. Thank you.

19 THE COURT: All right. So the question is: Is
20 anybody related by blood or marriage; close, personal
21 friends with; have any connection to, business, personal,
22 social, or otherwise; any of the attorneys or their staff
23 or any of those two witnesses in the case or,
24 specifically, Ms. Wiggins, have any connection to them in
25 any way, shape, or form?

1 As to the attorneys, have you ever been represented
2 by them or on the other side of a case from them? If so,
3 please stand.

4 (Whereupon, a potential juror stood.)

5 POTENTIAL JUROR: I know ---

6 THE COURT: Okay. Whoa ---

7 POTENTIAL JUROR: I'm sorry.

8 THE COURT: Tell me your name, sir.

9 POTENTIAL JUROR: Chandler Herring.

10 THE COURT: Okay. Let -- now, y'all all are all out
11 of order. So let me find you, okay? Give me just one
12 second, Mr. Herring.

13 Okay. Go ahead, Mr. Herring.

14 POTENTIAL JUROR: I know a lot of Burnside's: Mary
15 Burnside. I -- and I have no idea of it's of any
16 relation. Mary Grace ---

17 THE COURT: Okay.

18 POTENTIAL JUROR: --- Burnside ---

19 MS. BURNSIDE: They are.

20 POTENTIAL JUROR: --- Bernie Burnside.

21 THE COURT: Do you know Ms. -- Ms. Kelly Burnside?

22 POTENTIAL JUROR: I do not.

23 THE COURT: Okay. And would that affect your
24 ability to fair and impartial?

25 POTENTIAL JUROR: I don't believe it would.

1 THE COURT: And are you willing other than base your
2 decision off the evidence and the law?

3 POTENTIAL JUROR: Sure, absolutely.

4 THE COURT: Thank you.

5 POTENTIAL JUROR: Uh-huh.

6 THE COURT: All right. Anybody else?

7 (Whereupon, no potential juror stood.)

8 THE COURT: All right. Mr. Bayne, if you would
9 please introduce yourself and tell them where you work
10 and all that good stuff.

11 MR. BAYNE: Yes, sir.

12 Good morning, members of the jury. My name is Brett
13 Bayne. I am an attorney with McAngus, Goudelock & Courie
14 here in Columbia, South Carolina.

15 Sitting next to me is Mr. Kingsley Spiller. He is a
16 district manager with ALDI. He is here on behalf of
17 ALDI. He will not be testifying here today. But he's
18 here on behalf of the company.

19 There are two additional employees of ALDI who may
20 testify here today. Ms. Carol Rice is a cashier at the
21 ALDI. And Ms. Sydney Lee is a store manager at the ALDI.
22 Thank you.

23 THE COURT: All right. Thank you, Mr. Bayne.

24 So is anybody related by blood or marriage; close,
25 personal friends with; have any connection to, business,

1 personal, social, or otherwise; either Mr. Bayne or any
2 of the ALDI employees that he mentioned or do you have
3 any connection to ALDI, Incorporated, at all? Do you
4 work there? Do you own stock there? Do you have any,
5 you know, business connection with them? Are you a
6 banker that does all their banking or anything like that?

7 As to Mr. Bayne, have you ever been represented by
8 him or on the other side of a case from him, or have any
9 connection to McAngus, Goudelock & Courie, which is a law
10 firm here in Columbia, South Carolina? If so, please
11 stand.

12 (Whereupon, potential jurors stood.)

13 THE COURT: Okay. All right. And we'll start in
14 the back-left corner. Yes, ma'am, your name?

15 POTENTIAL JUROR: I am Kathleen Suggs.

16 THE COURT: Ms. Suggs, hold one second, okay?

17 All right. I found you, Ms. Suggs. Go ahead.

18 POTENTIAL JUROR: Just with McAngus, I work at --
19 for Bluestein Attorneys. And they've been on the other
20 side of ---

21 THE COURT: Okay.

22 POTENTIAL JUROR: --- several of our cases.

23 THE COURT: Would that affect your ability to be
24 fair and impartial?

25 POTENTIAL JUROR: No, Your Honor.

1 THE COURT: And are you willing to base your
2 decision off the evidence and the law?

3 POTENTIAL JUROR: Yes, Your Honor.

4 THE COURT: Thank you, ma'am.

5 All right. Coming across right here, yes, ma'am.
6 Tell me your name.

7 POTENTIAL JUROR: Debra Tucker-Brown. It's under
8 Debra Tucker.

9 THE COURT: Debra Tucker?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: Okay. Ms. Tucker, go right ahead.

12 POTENTIAL JUROR: Mr. Bayne -- I work with his wife,
13 Lori.

14 THE COURT: Okay. You work with her currently?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Okay. Would that affect your ability to
17 be fair and impartial?

18 POTENTIAL JUROR: No, sir.

19 THE COURT: And are you willing to base your
20 decision off the evidence and the law?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: And will you do so?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Thank you.

25 All right. Yes, sir. Your name?

1 POTENTIAL JUROR: Steven Colwell.

2 THE COURT: Okay. All right. Mr. Colwell, go
3 ahead.

4 POTENTIAL JUROR: Just a minor thing here: I know
5 the -- the law firm McAngus. They do some banking with
6 Wells Fargo. I work for Wells Fargo. I see a lot of
7 their ---

8 THE COURT: Okay. And ---

9 POTENTIAL JUROR: --- checks just ---

10 THE COURT: --- would that -- would that affect your
11 ability to be fair and impartial?

12 POTENTIAL JUROR: I don't believe so.

13 THE COURT: Are you willing to base your decision
14 off the evidence and the law?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: And will you do so?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Thank you.

19 All right. Ladies and gentlemen, the potential
20 witnesses in the case are Vanessa Wiggins, Carolyn Rice,
21 Vivian Ashford, and the -- are you Ms. Ashford?

22 MS. ASHFORD: Yes.

23 THE COURT: Okay. That's Ms. Ashford right there.

24 Sydney Lee and Bryan Durig. And the question is:
25 Is anybody related by blood or marriage; close, personal

1 friends with; have any connection to, business, personal,
2 social, or otherwise; any of the potential witnesses in
3 the case?

4 (Whereupon, no potential juror stood.)

5 THE COURT: Okay. All right. Now, ladies and
6 gentlemen, I -- one of the things that if you actually
7 make it on this jury you will hear me say is that there's
8 kind of this imaginary line in the courtroom. And on my
9 side of the line sits the law. And what that means is
10 you can't tell me what the law is. You have to take the
11 law as I give it to you.

12 And on your side of the line is the facts. Okay?
13 And I can't tell you what the facts are, unless the
14 parties all agree that -- about -- about some facts. But
15 I have to tell you a little bit about what the
16 allegations are, okay, to see if you know anything about
17 the case. All right?

18 So again, this is an incident which allegedly
19 occurred at the ALDI store on Longgreen Parkway here in
20 Columbia, out off Killian Road, on or about June the 17th
21 of 2017. And does anybody know anything about the case?
22 Have you heard anything about the case? read anything
23 about the case? have any knowledge about the case in any
24 way, shape, or form?

25 (Whereupon, no potential juror stood.)

1 THE COURT: Okay. Is there anyone who routinely
2 shops at that ALDI? Not like have you been in there
3 once, but like, you know, that's the main grocery store
4 that I go to, to buy groceries?

5 (Whereupon, potential jurors stood.)

6 POTENTIAL JUROR: Not ---

7 THE COURT: Okay. Well, just -- let's -- let's
8 stand up and take the information so we know. All right.

9 So yes, ma'am, on the far left. Tell me your name.

10 POTENTIAL JUROR: Viola Harris.

11 THE COURT: Ms. Harris, all right. And do you live
12 out in that part of town?

13 POTENTIAL JUROR: Yes, sir. I live off North
14 Brickyard Road. And that's ---

15 THE COURT: Okay. And how many times do you think
16 you've been to that ALDI?

17 POTENTIAL JUROR: Probably about a hundred.

18 THE COURT: Okay. All right. And but you have no
19 information about this incident?

20 POTENTIAL JUROR: Yes, sir, I don't.

21 THE COURT: Okay. And have you formed or expressed
22 any opinion, negative or positive, about ALDI?

23 POTENTIAL JUROR: No, sir.

24 THE COURT: Okay. All right. And are you willing
25 to be fair and impartial?

1 POTENTIAL JUROR: Yes, sir, absolutely.

2 THE COURT: All right. Thank you.

3 All right. Come right across to this young lady.
4 Tell me your name, ma'am.

5 POTENTIAL JUROR: Felecia Heggie.

6 THE COURT: Ms. -- hold on; let me find you --
7 Heggie. Ms. Heggie.

8 POTENTIAL JUROR: Yes, sir.

9 THE COURT: Okay. And you live out that way, Ms.
10 Heggie?

11 POTENTIAL JUROR: No. I honestly used to work that
12 way for, like, six years and ---

13 THE COURT: Okay.

14 POTENTIAL JUROR: --- just coming from work,
15 multiple times I would stop ---

16 THE COURT: Just ---

17 POTENTIAL JUROR: --- there ---

18 THE COURT: --- stop in and get some ---

19 POTENTIAL JUROR: Yeah.

20 THE COURT: --- things you needed on the way home?

21 POTENTIAL JUROR: Yeah.

22 THE COURT: Okay.

23 POTENTIAL JUROR: They have ---

24 THE COURT: And ---

25 POTENTIAL JUROR: --- good prices.

1 THE COURT: Go ahead.

2 POTENTIAL JUROR: They have good prices.

3 THE COURT: Okay. And do you know anything about
4 this incident?

5 POTENTIAL JUROR: Not at all, no.

6 THE COURT: And have you formed any opinion for or
7 against ALDI in any way, shape, or form that would keep
8 you from being fair and impartial?

9 POTENTIAL JUROR: No.

10 THE COURT: Okay. All right.

11 And, yes, ma'am. You are Ms. Tucker?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: And do you live out that way?

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: Okay. And how many times do you think
16 you've been there?

17 POTENTIAL JUROR: Too many to count. Almost
18 probably at least once a week. Well, I ---

19 THE COURT: Okay.

20 POTENTIAL JUROR: --- pass by going and coming from
21 work every day.

22 THE COURT: All right. And would that affect your
23 ability to be fair and impartial?

24 POTENTIAL JUROR: No, sir.

25 THE COURT: Have you formed any opinion about ALDI

1 based upon that experience that would keep you from being
2 fair and impartial to both sides?

3 POTENTIAL JUROR: No, sir.

4 THE COURT: And are you willing to base your
5 decision off the evidence and the law?

6 POTENTIAL JUROR: Yes, sir.

7 THE COURT: Okay. Thank you.

8 Yes, sir. Your name?

9 POTENTIAL JUROR: Alfredrick Simmons.

10 THE COURT: Mr. Simmons, let me find you, okay?

11 All right. And do you live out that way?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: And how many times do you think you've
14 been to that ALDI?

15 POTENTIAL JUROR: About eight or nine.

16 THE COURT: Okay. And has anything happened that --
17 or -- first, do you know anything about this incident?

18 POTENTIAL JUROR: No, sir.

19 THE COURT: Okay. And would any -- has anything
20 happened that would make -- would -- that would keep you
21 from being fair and impartial towards ALDI or towards the
22 plaintiff?

23 POTENTIAL JUROR: No, sir.

24 THE COURT: Are you willing to base your decision
25 off the evidence and the law?

1 POTENTIAL JUROR: Yes, sir.

2 THE COURT: And will you do that?

3 POTENTIAL JUROR: Yes, sir.

4 THE COURT: Okay. All right.

5 Ladies and gentlemen, what we are looking for is 12
6 people who are fair and impartial, 12 people who come
7 into this courtroom today with no one to reward and no
8 one to punish; bring with them their good common sense;
9 and they sit there, almost like a blank slate. Because
10 you've all told me you don't know anything about the
11 case. Ready to hear the evidence in the case, determine
12 what the facts are, and then apply those facts to the law
13 that I will give you.

14 Is there anyone in the room who believes they cannot
15 do that fairly and impartially?

16 (Whereupon, no potential juror stood.)

17 THE COURT: All right. Now, I got a few extra
18 questions to ask you. So bear with me just one second.

19 (Off the record briefly.)

20 THE COURT: All right. So the next question is
21 this, ladies and gentlemen. What I want to know is:
22 Have you or a member of your immediate family ever been
23 involved in a civil lawsuit that arises out of a personal
24 injury?

25 Okay? Now, so let me give you a little explanation.

1 So up here at the courthouse, we have family court, which
2 is like divorce, child custody. That's over there.

3 Okay?

4 Then, over here on this side, we have civil court
5 and criminal court. And criminal court is illegal drugs,
6 rape, kidnapping, murder, burglary, things like that.

7 Okay?

8 So we're in civil court. Okay? This is where
9 parties resolve their disputes in between each other.
10 This is not criminal court. This is civil court.

11 So what I want to know is: Have you or a member of
12 your immediate family ever been involved in a civil
13 lawsuit that arises out of a personal injury? Okay?

14 Now, let me give you some examples. You're not
15 limited to -- to these. I'm just giving you an example.

16 So if you were involved in a motor vehicle accident
17 -- a wreck is what I like to call them -- and somebody
18 filed a lawsuit you -- or against you or one of your
19 family members, you would need to stand up.

20 If you were involved in an accident at work that
21 caused you to be injured and you went and hired an
22 attorney and filed a workers' comp case against your
23 employer, you would -- or somebody in your family did
24 that, you would need to stand up.

25 Those are just kind of two basic examples of civil

1 cases. I'm not really look for, like, real estate cases
2 or contract disputes or things like that. But I -- what
3 I'm looking for is the underlying incident alleged was
4 some form of a personal injury, where the person was
5 physically or emotionally damaged.

6 All right. So anybody been involved in any of those
7 kind of cases? If so, please stand.

8 (Whereupon, potential jurors stood.)

9 THE COURT: All right. And let's see. On the far
10 left, that's Ms. Harris; is that right?

11 POTENTIAL JUROR: That's correct.

12 THE COURT: Okay. Let me find you again, Ms.
13 Harris. There you are.

14 Okay. And was this you or a family member?

15 POTENTIAL JUROR: A family member. But I also was
16 on a jury trial with -- with this as well.

17 THE COURT: Okay. And how long ago was that?

18 POTENTIAL JUROR: Probably about three years ago.

19 THE COURT: Okay. And in the family-member case,
20 were they the plaintiff or the defendant?

21 POTENTIAL JUROR: The plaintiff.

22 THE COURT: The plaintiff. Okay.

23 And would that affect your ability to be fair and
24 impartial?

25 POTENTIAL JUROR: No, sir.

1 THE COURT: Okay. Thank you.

2 All right. Ms. Yeargin?

3 POTENTIAL JUROR: So I haven't been involved
4 directly of any cases. But I serve as an academic expert
5 in several, where I review records having to do with
6 heatstroke cases.

7 THE COURT: Okay.

8 POTENTIAL JUROR: So ---

9 THE COURT: And would that affect your ability to be
10 fair and impartial?

11 POTENTIAL JUROR: No, sir.

12 THE COURT: All right.

13 Ms. Tucker?

14 POTENTIAL JUROR: Yes.

15 THE COURT: Go ahead.

16 POTENTIAL JUROR: My sister was in a car accident
17 about -- this has probably been about four years ago.
18 And she had to get an attorney for that.

19 THE COURT: Okay. And would that affect your
20 ability to be fair and impartial?

21 POTENTIAL JUROR: No, sir.

22 THE COURT: Okay.

23 And, yes, sir. Your name?

24 POTENTIAL JUROR: Good morning. Angriss Brooks.

25 THE COURT: Okay. Let me find you. One second,

1 okay?

2 POTENTIAL JUROR: Yes, sir.

3 THE COURT: Number 6. Okay. Go ahead, Mr. Brooks.

4 POTENTIAL JUROR: Yes, sir. My daughter is
5 presently involved in a lawsuit. She was rear-ended by a
6 semi truck.

7 THE COURT: Okay.

8 POTENTIAL JUROR: But they are settling out of
9 court.

10 THE COURT: Okay.

11 POTENTIAL JUROR: That's the only ---

12 THE COURT: And would that affect your ability to be
13 fair and impartial?

14 POTENTIAL JUROR: Oh, no, sir.

15 THE COURT: Are you willing to base your decision
16 off the evidence and the law?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: And will you do so?

19 POTENTIAL JUROR: I will.

20 THE COURT: Okay.

21 POTENTIAL JUROR: Thank you.

22 THE COURT: All right. Has any member of the jury
23 panel or a member of your immediate family ever been
24 involved in an incident which involved a neck injury that
25 required medical care or intervention? Specifically

1 looking for a neck injury.

2 (Whereupon, a potential juror stood.)

3 THE COURT: All right. And Mr. -- where did he go?
4 Mr. Brooks, is that your same daughter?

5 POTENTIAL JUROR: Yes, sir.

6 THE COURT: Okay. And would that affect your
7 ability to be fair and impartial?

8 POTENTIAL JUROR: No, sir.

9 THE COURT: Okay.

10 (Whereupon, a potential juror gestured.)

11 THE COURT: All right. Don't wave at me, now.
12 Stand up.

13 (Whereupon, a potential juror stood.)

14 THE COURT: Okay. Tell me your name again, ma'am.

15 POTENTIAL JUROR: Felecia Heggie.

16 THE COURT: Ms. Heggie, go ahead.

17 POTENTIAL JUROR: It's personal. So I would have to
18 tell you. It's, like, very serious ---

19 THE COURT: Does it -- did -- does it deal with you
20 personally?

21 POTENTIAL JUROR: Yes.

22 THE COURT: Okay. And would that affect your
23 ability to be fair and impartial if a neck injury was
24 alleged?

25 POTENTIAL JUROR: Yes.

1 THE COURT: Okay. All right.

2 POTENTIAL JUROR: I can ---

3 THE COURT: Thank you.

4 POTENTIAL JUROR: --- explain it to you personally.

5 THE COURT: Okay. No. Would that affect your
6 ability to be fair and impartial in this case?

7 POTENTIAL JUROR: It probably would. I -- I would
8 -- because I ---

9 THE COURT: Okay.

10 POTENTIAL JUROR: --- would have to explain it.

11 THE COURT: Okay. Just have a seat.

12 POTENTIAL JUROR: (Complied.)

13 THE COURT: Anybody else?

14 (Whereupon, no potential juror stood.)

15 THE COURT: All right. Does anybody else know of
16 any reason whatsoever why they could not be fair and
17 impartial in this case? I promise you, what everybody
18 wants is 12 people with -- with no one to reward and no
19 one to punish.

20 (Whereupon, no potential juror stood.)

21 THE COURT: Okay. All right. Let me see the
22 attorneys up here real quick.

23 (Whereupon, a bench conference was held off the
24 record in the presence of the jury, but out of the
25 hearing of the jury.)

1 THE COURT: Okay. All right. So, ladies and
2 gentlemen, here's what we're going to do: Because some
3 people didn't show up, everybody kind of got renumbered
4 differently. So to give the attorneys a time to look at
5 the new listed based upon who showed up, we're going to
6 take a quick, ten-minute break.

7 All right. So you're allowed to go out in the
8 hallway. You're allowed to use the restroom, get a drink
9 of water, whatever you need to.

10 Here are things you're not allowed to do, okay?
11 You're not allowed to discuss this case in any way,
12 shape, or form with anybody or anything about it. Every
13 single one of you has told me you don't know anything
14 about the case. That's how I want you when you come back
15 in here, the exact same way.

16 You're also not allowed to let anybody talk to you
17 about the case. So if somebody walks up to you and tries
18 to talk to you while we take this short, little break,
19 you need to come -- come back in here and report it to
20 me. Okay?

21 And then, you're not allowed to have any contact
22 with anybody involved in the case. Okay? So you're not
23 going to see my court-staff people out in the hallway.
24 But basically, everybody else out in the hallway, you
25 just need to ignore them and go to the restroom or get a

1 drink of water or stretch your legs or whatever you want
2 to do.

3 Okay? So we're going to take a short, ten-minute
4 break so the attorneys have an opportunity to go through
5 the list. I want you all back in here at 10:25 -- 10:25.

6 POTENTIAL JUROR: Your Honor?

7 THE COURT: Sir?

8 POTENTIAL JUROR: Something I -- an afterthought, I
9 was wondering if I could ---

10 THE COURT: Okay. All right. Come on up here, and
11 the attorneys come on up.

12 POTENTIAL JUROR: Can I talk to you also about what
13 I was explaining?

14 THE COURT: You don't need to, ma'am. Just -- you
15 -- just enjoy the break.

16 POTENTIAL JUROR: Okay.

17 THE COURT: Come on up here.

18 POTENTIAL JUROR: I'm ---

19 THE COURT: Hold -- shh, shh.

20 POTENTIAL JUROR: I'm sorry.

21 THE COURT: Come on up here.

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: Don't say anything yet.

24 POTENTIAL JUROR: Yes, sir.

25 (Whereupon, the jury panel exited the courtroom at

1 10:16 a.m.)

2 THE COURT: All right. Now I want you to talk. You
3 have a very loud, booming voice ---

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: --- which I appreciate most of the time.
6 I need you to talk loud enough -- Maryann, can you put
7 this on the record?

8 THE COURT REPORTER: Okay. We're going to wait till
9 they -- they're all out?

10 THE COURT: No. We're going to start.

11 THE COURT REPORTER: Okay.

12 THE COURT: I want -- so I want you to talk loud
13 enough for her to hear, but don't shout it out, I mean.
14 Go ahead.

15 Number -- this is Mr. ---

16 POTENTIAL JUROR: --- Herring, Chandler Herring.

17 THE COURT: --- Herring. Okay.

18 POTENTIAL JUROR: Yes, sir. My father is a
19 potentially going to be tied up in a pretty big civil
20 lawsuit. And it was regarding personal injury.

21 THE COURT: Okay.

22 POTENTIAL JUROR: And it's -- it goes -- and I
23 didn't -- and I did not want to say out ---

24 THE COURT: That's fine.

25 POTENTIAL JUROR: --- out there. But it's something

1 -- it was an afterthought. I -- my ---

2 THE COURT: Okay.

3 POTENTIAL JUROR: --- father is in prison, actually.

4 He's ---

5 THE COURT: Okay.

6 POTENTIAL JUROR: --- an attorney.

7 THE COURT: All right.

8 POTENTIAL JUROR: And ---

9 THE COURT: And -- and ---

10 POTENTIAL JUROR: It's a civil suit but ---

11 THE COURT: And does it have anything to do with

12 ALDI?

13 POTENTIAL JUROR: Absolutely not, no. It has ---

14 THE COURT: Okay.

15 POTENTIAL JUROR: --- to do with the -- the family
16 that -- the -- the -- the person that was killed ---

17 THE COURT: Okay. All right.

18 POTENTIAL JUROR: --- suing my father.

19 THE COURT: And would that affect your ability to be
20 fair and impartial in this case?

21 POTENTIAL JUROR: I would not think so. No, sir.

22 THE COURT: Okay. All right. Thank you for letting
23 us know that. You ---

24 POTENTIAL JUROR: I just ---

25 THE COURT: --- did the ---

1 POTENTIAL JUROR: --- wanted to ---

2 THE COURT: --- right thing by telling us.

3 POTENTIAL JUROR: I just wanted to be honest and ---

4 THE COURT: Okay.

5 POTENTIAL JUROR: --- up front.

6 THE COURT: No. I appreciate that. You did the --
7 exactly the right thing.

8 POTENTIAL JUROR: Yes, sir.

9 THE COURT: Thank you.

10 Got it? Okay. Thanks, guys.

11 And for the record, all the attorneys were present
12 and able to hear that information.

13 (Off the record from 10:16 a.m. until 10:26 a.m.)

14 THE COURT: All right. Is plaintiff -- you good?

15 THE COURT REPORTER: Yes, sir.

16 THE COURT: Plaintiff ready to proceed with
17 striking?

18 MR. BARTON: Yes, sir.

19 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

20 MR. BARTON: Yes, sir. You ready?

21 THE COURT: Yes, sir.

22 Mr. Bayne, are you ready to proceed with ---

23 MR. BAYNE: Yes ---

24 THE COURT: --- striking?

25 MR. BAYNE: --- Your Honor.

1 THE COURT: All right. Ladies and gentlemen, we are
2 going to call out a bunch of numbers. None of these
3 numbers are your numbers. So don't be listening for your
4 own number. We're literally all going to call out a
5 bunch of numbers.

6 Just stay seated; stay quiet. Then, once we get --
7 we're going to get 12 jurors. And then, we're just going
8 to get one alternate. Normally, I get two. But we're
9 going to get one.

10 And so just listen -- I mean, there's no point in
11 listening. You don't know who we're calling out and who
12 we're not. So -- all right.

13 And we'll do -- using the numbers on the left,
14 keeping in mind who we've taken out, which are 3, 5, 11,
15 15, and 23, we will strike using the numbers on the left.
16 Four strikes each between the Numbers 1 and 25.
17 Plaintiff will strike first.

18 MS. BURNSIDE: The plaintiff would strike Number 21.

19 THE COURT: Number 21. Plaintiff strikes No. 21.

20 Mr. Bayne?

21 MR. BAYNE: Defense strikes No. 12.

22 THE COURT: Defense strikes No. 12.

23 MS. BURNSIDE: Plaintiff strikes No. 4.

24 THE COURT: Plaintiff strikes No. 4.

25 MR. BAYNE: Defense strikes No. 8.

1 THE COURT: Defense strikes No. 8.

2 MS. BURNSIDE: Plaintiff strikes No. 11.

3 THE COURT: Plaintiff -- No. 11 is already out.

4 MS. BURNSIDE: Oh.

5 MR. BARTON: Oh. That was my fault, Your Honor.

6 I'm sorry.

7 THE COURT: Number 11 is not present.

8 MS. BURNSIDE: Plaintiff strikes No. 20.

9 THE COURT: Plaintiff strikes No. 20.

10 MR. BAYNE: Defense strikes No. 14.

11 THE COURT: Defense strikes No. 14.

12 MS. BURNSIDE: Plaintiff strikes No. 16.

13 THE COURT: Plaintiff strikes No. 16.

14 MR. BAYNE: Defense strikes No. 6.

15 THE COURT: Defense strikes No. 6.

16 I'm going to review your strikes with you to make
17 sure so we all agree on the numbers. I'll do them in
18 order. Plaintiff strike -- using the numbers on the
19 left, No. 21, No. 4, No. 20, and No. 16. Is that
20 correct?

21 MR. BARTON: Yes, sir.

22 THE COURT: Okay. Defense -- using the numbers on
23 the left, No. 12, No. 8, No. 14, and No. 6. Is that
24 correct?

25 MR. BAYNE: That is correct, Judge.

1 THE COURT: Okay. Now using the Numbers 26, 27, and
2 28, you each have one strike. Plaintiff will strike
3 first.

4 MS. BURNSIDE: Plaintiff strikes No. 27.

5 THE COURT: Plaintiff strikes No. 27.

6 MR. BAYNE: Defense strikes No. 26.

7 THE COURT: Defense strikes No. 26. That will leave
8 Alternate No. 1 as No. 28.

9 Is that correct, Ms. Burnside?

10 MS. BURNSIDE: Yes, Your Honor.

11 THE COURT: And is that correct, Mr. Bayne?

12 MR. BAYNE: That is correct, Your Honor.

13 THE COURT: Okay. Ladies and gentlemen, if your
14 name is called, if you will gather all of your belongings
15 and come forward and come right over here to where Mr.
16 Tolbert is, and they'll show you where to sit.

17 DEPUTY CLERK OF COURT: Number 30, Jason Burkett.

18 (Whereupon, the juror came forward into the jury
19 box.)

20 DEPUTY CLERK OF COURT: Number 33, Veronica
21 Bushnell.

22 (Whereupon, the juror came forward into the jury
23 box.)

24 DEPUTY CLERK OF COURT: Number 14, Gregory Belden.

25 (Whereupon, the juror came forward into the jury

1 box.)

2 DEPUTY CLERK OF COURT: Number 142, Jenna Kessler.

3 (Whereupon, the juror came forward into the jury

4 box.)

5 DEPUTY CLERK OF COURT: Number 123, Shaianthony

6 Huff.

7 THE BAILIFF: Watch your step, all the way down.

8 (Whereupon, the juror came forward into the jury

9 box.)

10 DEPUTY CLERK OF COURT: Number 310, Debra Tucker.

11 (Whereupon, the juror came forward into the jury

12 box.)

13 DEPUTY CLERK OF COURT: Number 51, David Coulter.

14 (Whereupon, the juror came forward into the jury

15 box.)

16 DEPUTY CLERK OF COURT: Number 239, Alfredrick

17 Simmons.

18 THE BAILIFF: Watch your step.

19 (Whereupon, the juror came forward into the jury

20 box.)

21 DEPUTY CLERK OF COURT: Number 227, Charles Ruth.

22 (Whereupon, the juror came forward into the jury

23 box.)

24 DEPUTY CLERK OF COURT: Number 143, Billy Key.

25 (Whereupon, the juror came forward into the jury

1 box.)

2 DEPUTY CLERK OF COURT: Number 171, Danna
3 Misenheimer.

4 THE BAILIFF: Watch your step.

5 (Whereupon, the juror came forward into the jury
6 box.)

7 DEPUTY CLERK OF COURT: Number 216, Julia Reitz --
8 or Reitz.

9 THE BAILIFF: Watch your step.

10 (Whereupon, the juror came forward into the jury
11 box.)

12 DEPUTY CLERK OF COURT: Number 79, Kenneth Emerson.

13 THE BAILIFF: Watch your step.

14 (Whereupon, the juror came forward into the jury
15 box.)

16 THE COURT: All right. Any exception to the jury-
17 selection process from the plaintiff?

18 MR. BARTON: No, sir.

19 MS. BURNSIDE: No, sir. No, Your Honor.

20 THE COURT: Okay. From the defense?

21 MR. BAYNE: None. None, Your Honor.

22 THE COURT: Okay. All right. Ladies and gentlemen,
23 if you did not make it on this jury, congratulations.

24 All right.

25 I do want to say this to you, though. I want to say

1 thank you very much for your service this week. You all
2 came back today.

3 In the old days -- and when I say old days, I mean,
4 like, last year -- we just made jurors sit up here. You
5 would've normally been sitting up here all day Monday,
6 all day Tuesday, and all day Wednesday to wait for this,
7 this morning. Okay?

8 And so I've tried to shift that a little bit, number
9 one, because it saves the county a bunch of money to just
10 have you come back today. But it -- that is all premised
11 upon the system that the people who come back are
12 supposed to come back, which some of them didn't.

13 And so that's -- that's kind of the risk that --
14 that I take in doing it that way. But I would rather
15 have you back with your families Tuesday and Wednesday,
16 if possible, than just to bring you -- and to bring you
17 back in this morning, as opposed to just making you sit
18 up here, which a lot of places still do that.

19 And I understand why they do that. I'm not faulting
20 them for that. But it costs the county a lot of money.
21 And it takes you away in a very, very busy week of life
22 this week. And, you know, it's just crazy, if you --
23 especially if you have children and school is out and all
24 those kind of different things coming up.

25 So I want to say thank you very much for your being

1 here this week, for your willingness to serve. We cannot
2 do what we do at the courthouse without really good
3 citizens like you all being willing to serve.

4 You are completely and totally done. You do not
5 need to call back. You do not need to come back. If you
6 need a work excuse, we can get one for you.

7 You also have a jury exemption for the calendar year
8 of 2019 and for 2020. So if you get called in either one
9 of those years, you can take your exemption. Okay?

10 Thank you all very much. Merry Christmas to you
11 all. Have a great holiday.

12 (Whereupon, the unselected jury panel exited the
13 courtroom at 10:34 a.m.)

14 THE COURT: All right, ladies and gentlemen. Good
15 morning again. And thank you very much for your
16 willingness to serve. Let me give you kind of an outline
17 of what we're going to do.

18 I'm going to give you some brief opening remarks and
19 give you some very basic duties and responsibilities.
20 And then we'll probably take just a little bit of a break
21 after that to kind of let the attorneys regather their
22 thoughts and think about things. And then after that,
23 we'll come back and jump right into the trial. Okay?

24 All right. So as you know and as I've told you, my
25 name is Robert Hood. I'm one of your resident circuit

1 court judges. Circuit court judges travel the state.
2 And so I could be assigned to any county in the state.
3 But this county is my home county and where my office is.

4 And it is my pleasure to be with you this week.
5 Seated in the very -- well, we'll wait. Did we lose Mr.
6 Tolbert?

7 CLERK OF COURT: He went downstairs, Your Honor.

8 THE COURT: He went downstairs?

9 CLERK OF COURT: Yes.

10 THE COURT: Okay. So seated in the very back of
11 your jury box is Mr. Dye.

12 Wave your hand, Mr. Dye.

13 THE BAILIFF: (Complied.)

14 THE COURT: He will be one of your bailiffs. You
15 also have Mr. Tolbert, who ran downstairs real quick.
16 But he'll be back too. And they'll take very good care
17 of you during this trial.

18 They'll show you how to come in. They'll show you
19 how to go out. They'll give you everything that you need
20 to know. Okay?

21 Seated over here to my left is Ms. Maryann Nevers.
22 And she is our court reporter. And she is literally
23 taking down every single word that we say in this
24 courtroom. Okay?

25 So if you hear me tell people to stop talking or

1 time out or if you hear me go, "Sh," okay, that's because
2 Maryann can only take down one voice at a time. So
3 sometimes in trials, attorneys or witnesses kind of talk
4 over each other. I'll do my best to eliminate that so
5 that Maryann can have an accurate recording and
6 transcription of what actually occurs here in court. All
7 right?

8 Seated down below me is Ms. Pat. She's with the
9 clerk's office. She'll be swearing in witnesses and
10 handling exhibits and things of that nature. Okay?

11 This young man seated next to my left is Dylan,
12 whose name I can't say because it's some French-Cajun
13 town, which he swears to me is somewhere in France. But
14 I'm not really sure I believe him. He is -- he is a
15 student at River Bluff High School over in Lexington.
16 They actually have, like, a whole law-related-class kind
17 of thing you can take.

18 And so as part of that class, he comes up here and
19 hangs out here with me, regardless of what I'm doing. So
20 sometimes we're in trial. Sometimes we're sitting in the
21 office, meeting with attorneys. Sometimes we're doing
22 all kinds of different things. So he's been with me for
23 -- for the better part of the fall.

24 And so you'll -- Dylan may need to leave in a little
25 bit and go to class. But if that happens, that's just

1 what he's doing. Okay?

2 Seated to my right is Catherine. And Catherine is
3 my law clerk. That means she has graduated from law
4 school; she has taken the bar exam; she has passed the
5 bar exam. She actually got married. And now here she is
6 as my law clerk. So she will spend her first year of
7 practicing law working for me.

8 While this case is going on, I'm the chief
9 administrative judge of the entire circuit, which means
10 there's somewhere close to 10,000 cases that are under my
11 control and responsibility. And there's literally
12 probably two or three hundred other things going on in
13 other cases right now.

14 So you will see Catherine working on those things.
15 You will see her coming in and going out. All that's
16 perfectly normal. That's just kind of par for the
17 course. Okay?

18 Now, before we begin the actual trial of this case,
19 the first thing we need to do is swear you in. Okay? So
20 you have taken oaths before in this courtroom. And those
21 were to tell the truth.

22 This oath that you are about to take is different.
23 This oath is an oath that you take to me, to the parties,
24 to the lawyers, to yourselves, and to each other that you
25 will fair -- fairly and impartially try this case,

1 without any bias or any prejudice. You will listen to
2 the evidence. You will determine what the facts are.
3 And you will apply those facts to the law that I will
4 give you.

5 This oath has been used in this country for more
6 than a hundred years. Okay? And it truly embodies the
7 duties and the responsibilities that we place upon our
8 jurors during jury trials.

9 So if you will please stand, and Ms. Pat will swear
10 you in.

11 (Whereupon, the jurors stood.)

12 (Whereupon, the jury was duly sworn at 10:39 a.m.)

13 DEPUTY CLERK OF COURT: Thank you. You may be
14 seated.

15 (Whereupon, the jurors were seated.)

16 THE COURT: Okay. Now, let's talk about seating.
17 All right. So, Mr. Burkett, you're in the front seat.
18 So you're going to be the foreman of this jury. Okay?

19 That doesn't mean you get paid any extra. And that
20 doesn't mean your vote counts any more. Okay? But
21 somebody's got to be in charge of communications with me.
22 That's going to be you. Okay?

23 All right. And my alternate on the back row, Mr.
24 Emerson? All right. You can -- the whole back row is
25 yours. Sit wherever you want to. But you -- you need to

1 sit on the back row. Okay? Everybody else can sit
2 wherever they like to. All right?

3 INTRODUCTION BY THE COURT

4 Now, before we begin the actual trial of this case,
5 I thought it might be helpful to explain to you how a
6 trial will work. You may have seen movies or TV or read
7 in books or things of that nature, but this is real.
8 Okay?

9 We're -- we're not in a movie. This is not for
10 entertainment. We're not in a book. This is not for
11 pleasure-reading. This is court. And this is real.

12 Okay?

13 And so I'm going to explain to you how a trial will
14 work. So the first thing that's going to happen after I
15 finish talking is the parties will be allowed to make
16 opening statements. Okay?

17 Now, opening statements are not evidence. They're
18 simply outlines to help show you what that side expects
19 the evidence will show.

20 Now, the plaintiff will be allowed to make an
21 opening statement first. Okay? And the defense will be
22 allowed to go second. But the defense does not have to
23 make an opening statement, for reasons that I will
24 explain to you in just a moment.

25 Following the opening statements, you will hear

1 testimony and evidence in the case. This will consist of
2 testimony from the plaintiff's witnesses, as well as any
3 physical exhibits which will be introduced into evidence.
4 Following the completion of the testimony, the attorneys
5 will again have an opportunity to come before you and
6 make what are known as closing arguments.

7 Again, this is an opportunity for the attorneys to
8 summarize the case from their respective points of view.
9 Again, the opening statements and the closing arguments
10 of the attorneys are not evidence.

11 So as I go through this, I want you to listen for
12 this word evidence that I use. Okay? Because I'm going
13 to tell you what is evidence and what is not evidence.
14 All right? So keep your ears up for that word.

15 Once all the closing arguments have been made, I
16 will then instruct you on what the law is in this state
17 as it pertains to the issues that have arisen during this
18 case. Once I have done that, you will then be permitted
19 at the very end of the case to discuss the case and
20 deliberate on the case.

21 Now, let's talk about your duty. And I'm going to
22 try to make it as -- as concise as possible. It is --
23 basically, it's this: It is your duty and responsibility
24 to decide from the evidence what the facts are. As I
25 told you earlier, there's like an imaginary line in this

1 courtroom. Okay?

2 On your side of the line sits the facts. On my side
3 of the line sits the law. You have to take the law as I
4 give it to you. Okay? You can't decide for yourself,
5 this is what I think the law is, or this is what I think
6 the law should be. You are sworn, under your oath, to
7 take the law as I give it to you. Okay?

8 Likewise, I can't tell you what the facts are,
9 unless all of the parties agree. Okay? So sometimes in
10 cases -- and I'm going to use a silly example to -- to
11 reinforce my point that this is an example.

12 But sometimes all the parties will say, "On the day
13 in question, the sky was blue." Okay? And I'll tell
14 you, you must accept that as a fact: "On the day in
15 question, the -- all the parties agree that the sky was
16 blue."

17 Okay? Other than that, you won't hear me talk about
18 the facts. Okay? Because the facts belong to you, and
19 the law belongs to me. All right?

20 Now, so you'll hear the evidence, determine what the
21 facts are, and then you apply those facts to the law that
22 I will give you at the end of the case. All right?
23 That's how you'll reach a verdict. In doing so, you must
24 follow the law that I give you, whether you agree with it
25 or not.

1 So what is evidence? So evidence will consist of
2 the testimony of the witnesses, documents, and other
3 things received into evidence as an exhibits, and any
4 facts on which the lawyers agree, or anything that I tell
5 you, you must accept.

6 Now, do not take anything that I do or say as
7 indicating what I think of the evidence or what I think
8 your verdict should be. Okay?

9 Now, some things you are going to hear are not
10 evidence, and you cannot consider them as evidence: (1)
11 the statements and the arguments of the attorneys are not
12 evidence; (2) the questions and the objections of the
13 attorneys are not evidence; (3) anything that I tell you
14 to disregard.

15 So in almost every single trial, somebody says
16 something they shouldn't say. Okay? And I will tell
17 you, you must disregard that. And I know you can't put
18 that out of your mind.

19 But when it comes time to go through the evidence
20 and talk about it, that's not something that you can
21 consider if I tell you to disregard it. Okay?

22 Now, in this rule -- in this Court -- excuse me --
23 and throughout this case, there are rules that control
24 everything that happens, down to who gets to speak first
25 and who gets to speak second. Okay? Those rules are

1 called the Rules of Evidence and the Rules of Procedure.
2 Okay?

3 So with me, here you have -- this my handy-dandy
4 rules book. Okay? This is my own personal one that has
5 all of my notes all over it from all of my cases. And
6 that is what I will use to decide and determine legal
7 issues in this case.

8 So here's what happens. When an attorney asks a
9 question or they offer an exhibit and an attorney on the
10 other side of the case says, "That may be a rule
11 violation," the other attorney will stand up and say,
12 "Objection." They may say, "Objection: hearsay.
13 Objection: relevance. Objection: 403." Okay?

14 So if I sustain the objection, then that means the
15 question cannot be answered or the exhibit cannot be
16 received. If I overrule the objection, then the question
17 can be answered or the exhibit can be received.

18 Now, whenever I sustain an objection to a question
19 or refuse to admit an exhibit into evidence, you can't
20 guess as to what that answer would've been or what that
21 exhibit would've shown. Okay?

22 Now, in every single trial, regardless of if it's a
23 one-day case or a one-month case, all right, there are
24 times when certain legal issues come up and I have to ask
25 you to leave the room for me to decide those issues.

1 When that happens, don't think anybody is trying to
2 keep anything from you. The law requires that for
3 certain legal issues, you have to be outside of the room
4 for me to decide. Okay? So no one's trying to keep
5 anything from you or hide anything from you.

6 Sometimes the attorneys will say, "Can we approach?"
7 And they'll come up here. And usually when they come up
8 here, I'll tell you to stand up, stretch, twist -- you
9 know, just kind of wake up just a little bit.

10 And so when they come up here, I'm deciding legal
11 issues too. And they will come up to the bench to keep
12 you from going in and out and in and out and back and
13 forth. Okay? Again, these are rules used by every
14 single court throughout the entire county to determine
15 and decide legal issues.

16 Now, to decide this case, you have to decide which
17 witnesses to believe and which witnesses not to believe.
18 We call this the credibility of the witnesses.

19 Here are the rules: You may believe every single
20 thing a witness says. You may believe none of what a
21 witness says. You may believe part of what a witness
22 says. All right?

23 So in determining the credibility of the witnesses,
24 you can consider, but you're not limited to, what was the
25 witness's ability to hear, see, or know what he or she

1 testified to? How good was the witness's memory? What
2 was the witness's demeanor or behavior like on the
3 witness stand? Does the witness have an interest in the
4 outcome of the case or any motive or any bias or any
5 prejudice? Was the witness contradicted by anything they
6 said or wrote before or -- before the trial or by other
7 evidence you believe? How reasonable was the witness's
8 testimony, when considered in light of the other evidence
9 you believe?

10 Now, the bottom line is this: We judge people's
11 credibility every single day and all day long. And we do
12 it so much that you don't even really realize you're
13 doing it anymore. Okay?

14 The most common example in my house is: Did you do
15 your homework? Right? Okay. And then, that child, in
16 that moment, you know, I make a credibility decision on
17 that child based upon past history with the child, based
18 upon the fact that I saw the child playing outside for
19 four hours, and it would've been impossible to do your
20 homework.

21 But we all make credibility decisions every single
22 day. Okay? And we make them with our common sense. And
23 when you came in this morning, you didn't check your
24 common sense at the metal detector. Okay?

25 All right. So you bring it with you. That's why

1 they picked you. So use your common sense. All right?

2 Now, so I've told you this is a civil case. It's
3 not a criminal case. All right? So in a civil -- I
4 mean, excuse me. In a criminal case, the burden of proof
5 is proof beyond a reasonable doubt. Y'all have heard
6 that term before, right? Okay.

7 All right. So we're not in criminal court. This is
8 not criminal court. That is not the burden of proof.

9 We are in civil court. Okay? And in civil court,
10 the plaintiff -- that is the person bringing the action
11 -- the plaintiff bears the burden of proof. Okay? And
12 that proof is by a preponderance of the evidence.

13 So what is a preponderance of the evidence? The
14 preponderance of the evidence simply means the greater
15 weight of the evidence. It is evidence which, as a
16 whole, shows that the fact sought to be proved is more
17 likely true than not true.

18 This can be illustrated by imagining a set of
19 scales. Right now the scales are even. When the case is
20 over, if the scales remain even or if they tip even
21 slightly in favor of the defendant, then the plaintiff
22 has failed to meet her burden of proof and she would not
23 be entitled to recover.

24 If, on the other hand, the scales tip even slightly
25 in favor of the plaintiff, then she will have met her

1 burden of proof and she would be entitled to recover
2 damages. The burden of proof -- excuse me. The
3 preponderance of the evidence is not determined by the
4 number of the witnesses. Instead, it must be determined
5 by the greater weight of all of the evidence.

6 Now, here are some basic rules. Rule No. 1, the
7 most important thing I'm going to tell you -- if you
8 haven't been listening, it's time to start. You are not
9 allowed to discuss this case with anyone, including each
10 other, in any way, shape, or form. Okay?

11 So when y'all go back in your jury room in just a
12 minute, you can talk about how bad the Gamecocks got beat
13 last night on national television. You can talk about
14 how good the Gamecock football recruiting class is. You
15 can talk about how we all hope Clemson loses to Notre
16 Dame or whoever they're playing.

17 You can talk about the weather. You can talk about
18 what you got your children for Christmas. You can talk
19 about your vacation plans.

20 You cannot talk about this case. Okay? Nor can you
21 allow anybody to talk to you about the case. All right?
22 So no communication with anybody, including each other,
23 about the case.

24 Number 2, you're not allowed to do any research
25 about the case. All right? So you can't go -- anybody

1 burden of proof and she would be entitled to recover
2 damages. The burden of proof -- excuse me. The
3 preponderance of the evidence is not determined by the
4 number of the witnesses. Instead, it must be determined
5 by the greater weight of all of the evidence.

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16 Dame or whoever they're playing.

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18 what you got your children for Christmas. You can talk
19 about your vacation plans.

20 You cannot talk about this case. Okay? Nor can you
21 allow anybody to talk to you about the case. All right?
22 So no communication with anybody, including each other,
23 about the case.

24 Number 2, you're not allowed to do any research
25 about the case. All right? So you can't go -- anybody

1 that shops at ALDI or has ever thought about shopping at
2 ALDI, if this case goes into tomorrow, you're not going
3 to ALDI tonight. Okay?

4 And here's why: Because you don't know what -- all
5 -- that what ALDI looks like tonight is what ALDI looked
6 like back in June of 2017. Okay?

7 Imagine a car wreck at an intersection. And you --
8 you say, "I'm going to go check that intersection out."
9 And there's this huge tree that wasn't there when the
10 wreck happened three years go. So you would be
11 influenced by something from the outside. We can't allow
12 that. Okay?

13 So no talking to anybody about the case; no
14 independent research on the case. You can't go look up
15 lawyers. You can't go look up witnesses. You can't go
16 Google me and see what you can figure out. It's not that
17 exciting, I promise you.

18 Okay. Now, there will come a point in time when you
19 are allowed to talk about the case. I will give you a
20 very specific time and a very specific sign of when that
21 is. Until then, you're not to talk about the case. And
22 you're not to allow anyone to talk to you. And if
23 somebody tries to talk to you about the case, you need to
24 report it to me.

25 Likewise, all the parties have been told to ignore

1 you. Okay? So if you -- coming back in the building
2 this afternoon for lunch and you see one of the attorneys
3 and they don't even say hello or good morning or good
4 afternoon, they're not being rude. They're just
5 following my instructions. Okay? I promise you, an
6 innocent good afternoon, seen by the other side, is
7 always misconstrued.

8 It's important that you keep an open mind and not
9 decide any issue in the case until all of the evidence
10 has been presented, the parties have made their closing
11 arguments, and I have instructed you on the law in this
12 case.

13 All right. Now, the attorneys and I have been on
14 the record and working on this case since about nine
15 o'clock this morning. So they've been going -- and the
16 court reporter has been going for about two hours.

17 All right. So we're going to take a break. I'm
18 going to send you back to your jury room for your first
19 break. Do not discuss the case. Keep an open mind.
20 When you come back in here, I want you just like you are
21 right now.

22 We'll be back in about ten minutes. Okay? Just
23 follow Mr. Dye right there out of the room.

24 (Whereupon, the jury exited the courtroom at 10:55
25 a.m.)

1 THE COURT: All right. Anything we need to take up
2 before the break?

3 MR. BARTON: No, sir. Now, I -- I got a couple of
4 housekeeping things, just real quick ---

5 THE COURT: Let ---

6 MR. BARTON: --- things.

7 THE COURT: --- let's ---

8 MR. BARTON: But ---

9 THE COURT: --- do it.

10 MR. BARTON: --- as far as the jury is concerned,
11 there's no motions in -- in regard to the jury.

12 THE COURT: Okay. Go ahead. Let's do the
13 housekeeping.

14 MR. BAYNE: No -- no jury issues ---

15 MR. BARTON: Okay.

16 MR. BAYNE: --- from our end.

17 THE COURT: Okay.

18 MR. BARTON: Great. Your Honor, there's a motion
19 for reconsideration in regards to the denial of summary
20 judgment. I assume that's being withdrawn.

21 MR. BAYNE: That has been withdrawn.

22 MR. BARTON: Okay.

23 THE COURT: That's being ---

24 MR. BARTON: And ---

25 THE COURT: --- withdrawn.

1 MR. BARTON: That takes care of that. Judge, I got
2 to run to the bathroom and stuff. I got a couple of
3 cases that I want to hand up -- hand up. But I can do
4 that when we get back.

5 THE COURT: Well, if you got a case you want me
6 read, go ahead and give it to me now so I can read them.

7 MR. BARTON: Yes, sir.

8 THE COURT: And tell -- and tell Mr. Bayne what they
9 are.

10 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

11 MR. BARTON: Yeah. I should've gone earlier.

12 Your Honor, the first -- first two cases are going
13 to be related to duty of care. And -- and I've got --
14 I'm handing up copies. The first case is *Russell v. City*
15 *of Columbia*. The second case is *Vaughan v.* -- let me
16 make sure I'm getting this right. The second case is
17 *Vaughan v. Lyman* -- *Town of Lyman*.

18 THE COURT: All right. Let's take a break, and
19 that'll give me a chance to read all that. Go ahead and
20 give them to me so I can ---

21 MR. BARTON: I ---

22 THE COURT: --- read them.

23 MR. BARTON: Okay. There's two other cases in
24 regard to ---

25 THE COURT: Okay. Just make sure ---

1 MR. BARTON: --- for ---

2 THE COURT: --- you give Mr. -- yeah. You got a
3 copy for Mr. Bayne?

4 MR. BARTON: Yes, sir. Those ---

5 THE COURT: Okay. All right. Let's take a little
6 break, and everybody can ---

7 MR. BARTON: Judge, let's see. The other case is
8 *Carter v. Anderson Hospital*. And I'm not even going to
9 hand up -- well, I guess I ought to hand *Carter* up.

10 And there -- there's another case. I only have one
11 copy of it. It's *Miller v. Atlantic Bottling Corp.* But
12 that's cited in ---

13 THE COURT: Okay.

14 MR. BARTON: --- that's cited in the case I just
15 handed up. And it has to do with lay witness testimony
16 and to medical -- with ---

17 THE COURT: All right.

18 MR. BARTON: --- regard to medical causation.

19 THE COURT: I'll go read those right now. Let's
20 take a little break.

21 (Off the record from 10:17 a.m. until 10:26 a.m.)

22 THE COURT: All right. What do we need to take up,
23 Mr. Barton?

24 MR. BARTON: I'm -- I'm sorry, Your Honor?

25 THE COURT: Do we need to take up anything before we

1 get started?

2 MR. BARTON: I don't believe so, Your Honor.

3 THE COURT: All right. Mr. Bayne?

4 MR. BAYNE: Judge, I -- I know the law ultimately is
5 going to be decided by you as to what's charged. The
6 cases handed up, I -- I just -- I guess I'm not sure what
7 the -- other than a plaintiff -- one of them says a
8 plaintiff can testify to what injuries she suffered in a
9 ---

10 THE COURT: Right.

11 MR. BAYNE: --- in -- in an accident. The other
12 two, one deals with municipal liability for sidewalks.

13 THE COURT: Right.

14 MR. BAYNE: And one deals with the undertaking of a
15 duty for a disabled ---

16 THE COURT: Right.

17 MR. BAYNE: --- person. I -- I don't -- those are
18 not the standards in this case. The standard is a
19 shopkeeper does not owe a duty of safety to its
20 customers, with the exception of creating an unreasonably
21 dangerous condition. That's set out pretty clearly by
22 our laws. So I just -- I want to make sure we don't
23 delve into, I guess, in opening, getting into the wrong
24 statement of the law on this case.

25 MR. BARTON: Your Honor, I think, if they undertake

1 to -- to -- if they undertake a duty, then they've got to
2 do it carefully. They can't be negligent in doing it.

3 MR. BAYNE: I -- I don't -- what -- I don't know
4 what duty we're talking about. They -- she asked for a
5 chair; they got her a chair. I -- I don't think that
6 that imputes a heightened duty on the cashier at the ALDI
7 to safely seat her in a chair.

8 She asked for a chair; they -- they brought her a
9 chair. I'm not -- I'm not sure sidewalk liability has
10 anything to do with could the -- did the plaintiff
11 properly sit down in a chair.

12 MR. BARTON: Correct. She didn't fall on a
13 sidewalk. But if they undertake a duty to assist a
14 customer, they've got to do it carefully.

15 And I don't know what -- what -- I don't know if you
16 had any -- how much exposure you've had in this. But
17 what happened is she's sitting in line. I'm not going to
18 go into this a long time. She's sitting in line.

19 There is something going on with the cashier, and
20 it's taking longer than it should. So she's been there
21 for about 20 minutes. She asks for a chair because she's
22 starting to have problems. So they go get her a chair.
23 And -- and you'll be able to see the video yourself.

24 Anyway, it -- they get her one chair. It's a
25 rolling chair. And it's too high for her. They try to

1 adjust it for her. They finally decide that's not going
2 to work. They go get her another chair.

3 And what happens is it's -- it just like -- it's
4 just like -- this might be chauvinistic. But if you got
5 a date or you're helping your wife sit down at a table,
6 they bring the chair up to her. And instead of holding
7 it and helping her with it, they walk off.

8 Now, she's not looking at the time. And we've got a
9 witness to testify. So the chair isn't pushed under her.
10 She thinks that the cashier is assisting her, holding it.
11 And obviously, the chair rolls out. And that's what
12 caused her to fall -- to fall.

13 THE COURT: But how does that change the duty of
14 care under the shopkeeper law?

15 MR. BARTON: They undertook to assist her and get
16 her the chair and help her get -- they weren't helping
17 her get seated. They didn't just say, "Well, there's a
18 chair over there. You can go sit down." They were
19 giving her a chair. And that's it, in a nutshell.

20 MR. BAYNE: I -- I mean, I -- Judge, I've searched
21 the case law on this before we ever got to this point.
22 There's not a single case that states that a shopkeeper
23 has a duty to seat a customer into a chair or to assist a
24 customer into a chair.

25 And I'll represent -- I know we're kind of getting

1 afield here. Ms. Wiggins is going to testify she didn't
2 ask for help sitting down in the chair and she didn't
3 need help sitting down in the chair. That's straight
4 from her deposition testimony.

5 So I'm not sure where we get into -- I mean, I
6 guess, if -- if she wants to change that testimony here
7 today, we can deal with that on cross-examination. But
8 there -- there is no duty of an employee of a store to
9 hold a chair in place for a customer.

10 That duty does not exist in South Carolina law. The
11 duty is don't create a dangerous condition. Don't
12 negligently create a dangerous condition. Or if you know
13 of a dangerous condition, warn the customer of it.
14 Beyond that, there are no duties that exist to the
15 shopkeepers in this state under our state law.

16 So, you know, we've kind of gone through that
17 repeatedly that they have to show dangerous condition and
18 they have to show either a negligent creation or failure
19 to warn. There is no duty to hold a chair in place while
20 a customer sits down in it.

21 MR. BARTON: There might not be -- okay. If a
22 customer is sitting down and across the store, there is
23 no duty for a cashier to go up and hold it for her. But
24 if a cashier is furnishing her with a rolling chair
25 because she's in distress from having to stand so long,

1 which is another problem they've created because of their
2 cashier system, if they go to offer her a chair, then
3 they need to be reasonable in how they -- how they do
4 that. I don't think take the rolling chair, sit it
5 behind her, and then, without any further warning,
6 walking off, that's what the whole case ---

7 THE COURT: Well ---

8 MR. BARTON: --- is about.

9 THE COURT: --- I'm just telling you, if you tell
10 the jury that and that's not what I've charged the jury,
11 then that's on you.

12 MR. BARTON: Yes, sir. I understand.

13 THE COURT: Okay. All right.

14 MR. BAYNE: And -- and, Judge, final issue, I -- I'm
15 -- I plan to show the video of the fall during opening
16 statement. Obviously, it's not in evidence ---

17 THE COURT: Is there ---

18 MR. BAYNE: --- yet. But ---

19 THE COURT: --- objection ---

20 MR. BAYNE: --- it -- it ---

21 THE COURT: --- to that?

22 MR. BAYNE: --- it will be entered into evidence
23 here today.

24 MR. BARTON: Okay. This is the -- just the video of
25 the fall?

1 MR. BAYNE: Yes.
2 MR. BARTON: Do -- are ---
3 MR. BAYNE: It's about ---
4 MR. BARTON: --- how much ---
5 MR. BAYNE: --- 30 -- it's about 30 seconds. I'll
6 show them the whole hour if you want. But ---
7 MR. BARTON: No. I ---
8 MR. BAYNE: --- I mean ---
9 MR. BARTON: --- didn't ---
10 MR. BAYNE: --- what's ---
11 MR. BARTON: --- want that. But I would've -- I
12 would've thought it was at least 60 seconds. And so --
13 but it ---
14 MR. BAYNE: It's ---
15 MR. BARTON: --- you're showing ---
16 MR. BAYNE: --- I'll tell ---
17 MR. BARTON: --- showing a ---
18 MR. BAYNE: --- you ---
19 THE COURT: Whoa ---
20 MR. BAYNE: --- it's ---
21 THE COURT: --- whoa.
22 MR. BAYNE: --- it's 46 seconds.
23 THE COURT: The video is going to come into
24 evidence, I assume?
25 MR. BARTON: Yes, sir.

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1 THE COURT: So yeah. That's fine.

2 MR. BAYNE: Thank you, Judge.

3 THE COURT: Okay. Let's bring them back.

4 (Off the record briefly.)

5 (Whereupon, the jury entered the courtroom at 11:22
6 a.m.)

7 THE BAILIFF: Jury is seated, Your Honor.

8 THE COURT: All right. Welcome back, ladies and
9 gentlemen. I hope you enjoyed your break. And we will
10 start the trial now with opening statements. And the
11 plaintiff may make an opening statement.

12 MR. BARTON: Yes, sir. Thank you, Your Honor.

13 OPENING STATEMENT BY MR. BARTON

14 MR. BARTON: As y'all heard earlier, I'm Frank
15 Barton. And -- and I am assisting Ms. Kelly Burnside in
16 this case. And we're representing Vanessa Wiggins, who's
17 sitting back here. As you can see, she's -- she's got
18 some problems right now. She has to use the walker.

19 But this case is about ALDI -- ALDI is a grocery
20 store -- and what they did on June 17th of 2017. Now,
21 you've all heard about slip-and-falls in grocery stores
22 and that sort of thing. And that's not what this case is
23 about.

24 And -- and you need to understand -- and I think
25 you're going to hear -- that a grocery store, a -- you

1 know, your -- premises keeper, premises owner -- they're
2 not -- they're not an insurer of every customer that
3 comes into their store, okay? I'm sure you're going to
4 hear that.

5 But what that means is they're not responsible for
6 every medical condition that occurs in a store. Somebody
7 is walking down the aisle and has a heart attack; it has
8 nothing to do with the store. Grocery store is not
9 liable.

10 If they walk in and they have a brain aneurysm, it
11 has nothing to do with the store. They're not liable for
12 that. They're not an insurer of everybody that comes in
13 the store and has a problem.

14 But they are responsible for maintaining a safe --
15 reasonably safe premises. And they're responsible for
16 not creating a dangerous situation.

17 Now, luckily, you don't have to take the words of
18 Ms. Wiggins. We have another witness that actually saw
19 it. You'll have some witnesses from ALDI's. You don't
20 have to take their word for it as to what happened.
21 Because I believe, in a little bit, you're going to see a
22 video of what happened. Okay? They actually have it on
23 video.

24 Now, the video isn't the greatest in the world. But
25 you can -- you can see a little bit about what happened.

1 And basically, I think the testimony is going to show Ms.
2 Wiggins was getting ready to check out. For some reason,
3 there was a problem in the checkout, so it was taking
4 longer than it should have.

5 And after 20 minutes or so, she needed -- she just
6 couldn't stand any longer. So one of the cashiers got
7 her a chair. Now, even if there -- even if they didn't
8 have any responsibility up to that point, they went to
9 get her a chair. And they attempted to help her.

10 And when they do that, they need do it properly.
11 And they need to do it carefully. And what -- what
12 happened that day is they brought one chair. And it's a
13 rolling chair.

14 They brought one chair for her. It was too high. I
15 think they tried to adjust it a little bit; couldn't get
16 it just right. So they went and got another chair. The
17 cashiers got the chair behind Ms. Wiggins. Unbeknownst
18 to Ms. Wiggins, the cashier just left.

19 Ms. Wiggins thought she was behind her, holding the
20 chair. And this might be a little bit chauvinistic. I
21 -- I -- I have some age on me. But, I mean, we all have
22 situations where in if -- if you're out on a date or if
23 you're out with your wife -- I mean, this isn't hard.

24 And -- and in your common sense, you know it's not hard.

25 You go up to the table. You pull out the chair.

1 When they get ready to sit down, you push it in just like
2 that. Everybody knows -- every one of y'all know this.

3 And that's what this case is about. Now, you have
4 to take it one step further. It wasn't this type of
5 chair. It's this type of chair, with rollers on it.

6 I -- I think common sense tells you, if you're
7 assisting somebody, especially somebody that's in a
8 little bit of distress because they're tired, you're
9 going to assist them with it and you're going to do it
10 right. And -- and you're going to see what happens on
11 the video.

12 And you'll see Ms. Wiggins fall. And unfortunately,
13 this isn't her first fall. And I think the testimony is
14 going to show that she -- in this particular fall, one of
15 her main injuries was her neck. Okay?

16 She'd had a fall a week or two before this, where
17 she hurt her lower back. But that doesn't have anything
18 to do with this accident. She didn't complain about it.
19 It -- it's not her back that she's -- lower back she's
20 complaining about. It's her neck.

21 And the reason she's complaining about her neck is
22 because within about -- within a few months or so -- I
23 had to think and count it up -- she had surgery on her
24 neck. And -- and it's a serious injury and substantial
25 bill for that.

1 Now, what -- what I plan to do -- and -- and -- and
2 -- and also, we -- we've got -- we've got a -- an
3 eyewitness that was there, an eyewitness that is an old
4 acquaintance of Ms. Wiggins' that saw what happened. And
5 what she is going to testify and help you with is she can
6 testify that she saw what was going on and she was
7 looking because as Ms. Wiggins -- and Ms. Wiggins was
8 looking down. Ms. Wiggins will tell you, she did not
9 realize that the cashier had left and was not holding the
10 chair.

11 And again, I -- I'm not going over the demonstration
12 again. Because in my mind, that's common sense. She
13 fell. She had to go -- it wasn't an emergency room; it
14 was an urgent care. She had a number of other doctors
15 appointments after that, leading up to the surgery, which
16 we believe was in September of 2017.

17 And honestly, she had some problems other than just
18 this accident. So what we're requesting help with or --
19 you're going to have to -- for us to win, we -- you got
20 to believe that they were negligent in some way. You got
21 to believe that she was injured as a result of the fall.
22 And then, there's certain damages she's entitled to. And
23 the judge will tell you about that.

24 But what we're requesting is that you find them
25 negligent. It's possibly that it was reckless, in -- in

1 -- in my mind. But we're going to ask you that you find
2 them negligent and liable for the injuries she's suffered
3 as a result of this accident.

4 We're only going to -- I'm only going to put in some
5 medical bills that are clearly related to this accident
6 and her neck because she had treatment by a number of
7 medical providers that treated her for some other issues.
8 And honestly, they're not related. It's the neck that
9 was hurt in this case.

10 And we'll put in -- we're -- we'll have the -- the
11 surgical bill. And we're going to ask you to return a
12 verdict for us for the -- the -- the pain and suffering
13 she had because of this, for the medical bills, and for
14 what she's going to go through for the rest of her life.

15 And I think the evidence will speak for itself. And
16 we get to talk to you again at the end of the -- at the
17 end of the trial. And hopefully, this trial is not going
18 to -- it -- this isn't a two-week trial. So I know y'all
19 are going to be here, but at least it's not a long one.
20 Thank you.

21 THE COURT: Thank you very much, Mr. Barton.

22 Mr. Bayne, would you like to make an opening
23 statement?

24 MR. BAYNE: Yes, Judge. May I have just a moment to
25 move ---

1 THE COURT: Yes, sir.

2 MR. BAYNE: --- and -- move and plug in the
3 television?

4 THE COURT: You may.

5 MR. BAYNE: Thank you, sir.

6 (Off the record briefly.)

7 MR. BARTON: Judge, can I -- is it okay just to move
8 around here to ---

9 THE COURT: Of course.

10 MR. BARTON: --- see this?

11 THE COURT: Yes. You move as you need to move to be
12 able to see it. You ---

13 MR. BARTON: Thank you.

14 THE COURT: You don't need to -- just -- you just
15 move. You'll be fine with me.

16 MR. BAYNE: And, Judge, are you able, from here ---

17 THE COURT: Make sure the jury can see.

18 MR. BAYNE: Members of the jury can you see this
19 television? All right. Give me just one second.

20 (Off the record briefly.)

21 OPENING STATEMENT BY MR. BAYNE

22 MR. BAYNE: Good morning, members of the jury. I --
23 as I mentioned earlier, my name is Brett Bayne. I
24 represent ALDI, who is a grocery store that Ms. Wiggins
25 was a customer in back in June of 2017.

1 While Ms. Wiggins was shopping that day -- I want to
2 clarify something that happened. Mr. Barton stood up
3 here and said she was standing in line; she was tired;
4 the cashier went to go get her a chair. The cashier went
5 to go get her a chair because she asked the cashier to
6 get her a chair.

7 She didn't tell the cashier that she was having
8 trouble with her legs. She didn't tell the cashier that
9 she was tired and she needed somewhere to sit. She was
10 annoying with how long the shopping process was taking.
11 And she said, "Can I get a chair to sit in?"

12 And Ms. Carol Rice, who was the cashier, complied
13 with that. She provided her with a chair to sit in.
14 What you're going to see in a moment when we watch this
15 video is that Ms. Wiggins, standing at the end of that
16 checkout line, watches this first chair roll up. She
17 sees it has wheels. She's going to tell you she knows
18 that it's a tile floor.

19 As Mr. Barton said, they couldn't get the chair to
20 lower so she could sit in it. So the cashier went and
21 got another chair and brought it back.

22 When you watch this video, what you're going to see
23 is Ms. Wiggins turn and watch that chair roll up to her
24 from about 20 feet away. You're going to watch the
25 cashier bring the chair behind her. You're going to

1 watch Ms. Wiggins turn to her right; watch the cashier
2 walk away. She's going to say something to the cashier.

3 And you're going to know that because on the video,
4 the cashier turns around and looks at Ms. Wiggins. This
5 isn't a situation where now, after the fact, Ms. Wiggins
6 wants to say, "I thought someone was back there." She
7 knew nobody was back there. You're going to see it.

8 In this case Ms. Wiggins has filed a lawsuit because
9 she missed the chair. She didn't fall out of it as she
10 was sitting in it. She missed it. She sat down short of
11 the chair, and she fell to the ground.

12 And this is what you're going to see. And we're
13 going to see this a few times here today.

14 (Whereupon, a portion of video was published in open
15 court.)

16 The person carrying the chair over, that's Ms. Carol
17 Rice. That's the cashier. And this is the first chair
18 that was brought to Ms. Wiggins.

19 As I said, she turns and she looks at the other
20 chair. And then, watch Ms. Wiggins as she turns and
21 watches the cashier walk away. Watch the cashier turn
22 around and talk to Ms. Wiggins.

23 She misses the chair. She falls to the ground.
24 Now, as I said, Ms. Wiggins is going to get on the stand
25 and she's going to testify that she thought someone was

1 behind her, holding the chair.

2 But what you're going to hear is that there is no
3 duty of cashier in a store to hold that chair in place.
4 There's a duty of common sense that applies to the
5 plaintiff.

6 In the course of this case, we have taken the
7 plaintiff's deposition. And that's going to be a lot
8 like you see here today, when she takes the stand. It
9 was an opportunity to ask her questions about what
10 happened, to get her answers.

11 In that deposition Ms. Wiggins told us she saw the
12 chair had wheels on it. She knew it was a tile floor.
13 There were no substances on the floor -- no liquids, no
14 grease, no oil, nothing that made the floor slick.

15 She's going to tell you that she's seen these type
16 of office chairs before. She's going to tell you that
17 she knows these type of office chairs, when you go to sit
18 in them, they can move.

19 She's going to tell you she didn't look at the
20 chair. After that chair was brought behind her, she
21 never turned around to look and see where that chair was.
22 She just started to sit.

23 She's going to tell you that she should've done it.
24 She admits that that's something somebody should do
25 before they go to sit down in a chair. She didn't do it.

1 She's also going to tell you today about her medical
2 treatment. But what you're going to hear is not only did
3 she have medical treatment for this, that she had
4 multiple other falls before this fall. She had multiple
5 falls after this fall.

6 You're going to hear about her prior neck injuries.
7 You're going to hear about her prior back injuries.
8 You're going to hear about all of the times she has
9 sought treatment for injuries to her body due to falls,
10 due to injuries, due to accidents.

11 But the focus here today is a very simple question:
12 Is a office chair dangerous? That's the threshold of
13 this case.

14 The plaintiff has to prove to you that an office-
15 style chair with wheels on it is a dangerous condition.
16 And they are going to assert that when you put a chair
17 like that on a tile floor, it's dangerous.

18 But using that common sense the judge talks about, I
19 want you to think, if any of you ever bought one of these
20 chairs or you have an office that has one of these
21 chairs, what is the second thing that you buy? It's a
22 big, hard, plastic mat to put down on the carpet so that
23 that chair will roll.

24 That is what these chairs are designed to do. They
25 are designed to be put on these surfaces. They are

1 designed to roll.

2 And the plaintiff admits that. She will admit to
3 you she knew this chair could roll and she didn't look.

4 At the end of the trial today once you've seen all
5 the evidence, once you have heard all of the testimony
6 that you're going to hear, we're going to ask that you
7 return a verdict in favor of ALDI. Because ALDI didn't
8 do anything wrong in this situation. The plaintiff
9 missed the chair. Thank you very much.

10 THE COURT: Thank you very much, Mr. Bayne.

11 All right. You may call your first witness.

12 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

13 MS. BURNSIDE: Your Honor, I'd like to call Ms.
14 Vivian Ashford.

15 THE COURT: All right. Ms. Ashford, please come
16 forward and be sworn.

17 (Whereupon, the witness came forward.)

18 VIVIAN ASHFORD, having been first duly sworn,
19 testified as follows:

20 DEPUTY CLERK OF COURT: Thank you. Please have a
21 seat in the witness stand and state your full name for
22 the record.

23 (Whereupon, the witness was seated in the witness
24 stand.)

25 DEPUTY CLERK OF COURT: State your full name.

1 THE WITNESS: Vivian A. Ashford.

2 DIRECT EXAMINATION

3 BY MS. BURNSIDE:

4 Q Good morning, Ms. Ashford. Thank you for being
5 here.

6 Do you live in Richland County?

7 A Yes, I do.

8 Q Do you also work in Richland County?

9 A Yes, I do.

10 Q Where do you work?

11 A Service Solutions.

12 Q All right. What part of town do you live in?

13 A Northeast.

14 Q In northeast.

15 Are you familiar with the ALDI that's the defendant
16 in the case, the location that -- the northeast Columbia
17 off of Longreen Parkway?

18 A Yes, I am.

19 Q All right. How often do you shop there?

20 A Every chance I get.

21 Q Were you at the ALDI on June 17th, 2017?

22 A Yes.

23 Q Okay. This might be a silly question, but what were
24 you doing there that day?

25 A Shopping for groceries ---

DIRECT EXAMINATION BY MS. BURNSIDE - VIVIAN ASHFORD 100

1 Q All right.

2 A --- fruits and vegetables.

3 Q Was the store busy?

4 A Yes.

5 Q All right. When did you first notice the plaintiff
6 in the case, Ms. Wiggins?

7 A Standing in line ---

8 Q Okay.

9 A --- behind -- three person behind her.

10 Q And have you ever met Ms. Wiggins before?

11 A Twenty years ago.

12 Q All right. Is -- and this was the first time you'd
13 seen her in twenty years?

14 A Twenty years.

15 Q And how had -- how had you known her, or where did
16 you know her from?

17 A Church.

18 Q And can you please describe for the jury what you
19 saw when you were standing in line at the cashier
20 station?

21 A Ms. Wiggins was leaning over the -- the counter to
22 -- for groceries. But it looked like she was just
23 standing there. And how you're getting your money out,
24 getting ready to pay for your groceries and stuff, she
25 was just standing there. But I couldn't hear any of the

1 conversation that was going on at that time.

2 Q All right. Did you see the cashier walk away?

3 A Yes.

4 Q And what did she go get?

5 A A chair.

6 Q Okay. Can you describe that chair?

7 A A rolling chair. It was blue.

8 Q Okay.

9 A I didn't see the first chair.

10 Q Okay.

11 A I saw the second chair.

12 Q Okay. And you saw her wheel over a chair?

13 A Yes.

14 Q Okay. Did it have arms on that?

15 A No.

16 Q Okay. And what did you see after that?

17 A She proceed to give -- push the chair under Ms.
18 Wiggins. But as she did that and proceeded, she walked
19 away from the chair. She didn't hold it or anything,
20 from my knowledge. From the way I was looking, it wasn't
21 held for five -- a couple of minutes before it just slid
22 and she just, boom, hit the floor.

23 Q Okay. Did you -- did you notice -- did she walk
24 back to the cashier station?

25 A Say that again?

DIRECT EXAMINATION BY MS. BURNSIDE - VIVIAN ASHFORD 102

1 Q Did -- was she walking back to the cashier station,
2 the cashier?

3 A No.

4 Q Okay. Can you kind of describe what had happened
5 after she brought Ms. Wiggins the chair?

6 A Ms. Wiggins proceeded to sit. And as she began to
7 sit, the chair began to roll. And she just hit back and
8 fell sideward. And she hit her head.

9 Q Okay. She hit her head?

10 A (No audible response.)

11 Q Did she hit -- what side of the body did she fall
12 on?

13 A The right side.

14 Q Her right side?

15 A (No audible response.)

16 Q Did you hear anything?

17 A We just heard that she hit the floor. And everybody
18 was looking and they started panicking. The people in
19 front of me started to rush forward. And me and my
20 daughter decide to rush forward to go see what was wrong;
21 was everything okay. And we didn't know whether to move
22 her or not or call an ambulance to come and get her
23 because she had hit that floor so hard.

24 Q Okay. Where were you exactly -- were you in the
25 middle aisle? Were you in the same aisle as Ms. Wiggins?

DIRECT EXAMINATION BY MS. BURNSIDE - VIVIAN ASHFORD 103

1 A I was in the same aisle. Because the store was
2 packed. Sometime it's just only one cashier in there and
3 it's real busy.

4 Q Uh-huh. And what was your view like? Could you --
5 could you see Ms. Wiggins?

6 A As though you're standing right here in front of me,
7 I could see that much.

8 Q About how many feet do you think you were from her,
9 about the distance that we are from each other?

10 A A little bit closer.

11 Q Okay.

12 A Because it was a couple in front of me and another
13 gentleman in front of me.

14 Q Okay. And did you see Ms. Wiggins' face right
15 before she fell?

16 A She was down -- looking downward.

17 Q But could you see her face?

18 A On the side of it.

19 Q Okay. And what angle was her head facing?

20 A Downward.

21 Q Okay. Towards the ground?

22 A Towards the ground.

23 Q Okay. Did she look -- did you -- did you see her
24 talking to the cashier when she walked away?

25 A Not really. Because like I said, the store was

1 crowded.

2 Q Okay.

3 A And everybody was trying to get in and get out.

4 Q But you -- the whole time during the fall, you saw
5 her looking towards the ground?

6 A Looking towards the ground.

7 Q Okay. How long was Ms. Wiggins on the floor?

8 A About 15/20 minutes.

9 Q Okay. Do you know -- who -- who came to help her
10 get up?

11 A The husband and wife started to attend. But the
12 other gentleman that was in line -- in front of me, he
13 helped her to get up ---

14 Q Okay.

15 A --- to get up. After they got appropriate chair for
16 her to sit in.

17 Q They got an appropriate chair for her?

18 A Yeah.

19 Q And describe that chair that they now brought over.

20 A It was more stable than the first two.

21 Q Okay. Was it on wheels?

22 A No, ma'am.

23 Q Did it have arm rests?

24 A (No audible response.)

25 Q If you can't remember, that's okay.

1 A I'm not sure.

2 Q Okay. And can you describe the floor that you were
3 standing on and the same floor that Ms. Wiggins fell on?

4 A It wasn't linoleum or anything like that. It was
5 hard, granite rock, like.

6 Q Okay. How long did you stay with Ms. Wiggins after
7 she fell?

8 A Maybe about an hour.

9 Q All right. Why'd you stay so long?

10 A Anybody fall like that, I would stay and check -- I
11 don't care who it was.

12 Q Can you describe anything that Ms. Wiggins
13 complained about?

14 A Mostly, she was just in pain.

15 Q Okay. And what kind of condition was she in?

16 A Just out of it.

17 Q Okay. Did you talk to any of the ALDI employees?

18 A No, ma'am.

19 Q Okay.

20 MS. BURNSIDE: I don't have any other questions,
21 Your Honor.

22 THE COURT: Okay. Cross-examination?

23 CROSS-EXAMINATION

24 BY MR. BAYNE:

25 Q Ms. Ashford, how are you today?

1 A All right. How are you?

2 Q Good.

3 I want to talk about some of the things you -- you
4 just discussed with ---

5 A Uh-huh.

6 Q --- the jury. One of the first things you talked
7 about was you didn't hear any of the conversation that
8 Ms. Wiggins had with the cashier, right?

9 A Right.

10 Q So you didn't hear Ms. Wiggins say, "I am feeling
11 bad; I need a chair," did you?

12 A No, sir.

13 Q You didn't hear her say, "I need help sitting down,"
14 did you?

15 A No.

16 Q You didn't hear her say, "I really don't know how to
17 sit in the chair; I need you to assist me," did you?

18 A I can't recall.

19 Q Do you think Ms. Wiggins knows how to sit in a
20 chair?

21 A I can't answer that.

22 Q You know her, though, right?

23 A Of her.

24 Q In the time you've ever seen her, did she ever sit
25 down in a chair?

1 A In church.

2 Q Okay. You mentioned a minute ago that as you saw
3 this fall happening, the way you phrased it was: "The
4 char was behind her. And she began to sit, the chair
5 rolled away." Correct?

6 A I said that the cashier did not hold the chair as
7 she began to sit because she had walked away.

8 Q Correct. And the statement you gave was: "The
9 chair began to roll away when she sat down in it."
10 Correct?

11 A Because the cashier didn't hold the chair.

12 Q Right. You, prior to today, gave a sworn affidavit
13 in this case, didn't you?

14 A Yes.

15 Q And you filled that out at the request of Ms.
16 Wiggins' attorneys?

17 A Yes.

18 Q And you understood that that affidavit was sworn
19 testimony that you were going to be telling the truth
20 about what you saw that day ---

21 A Yes.

22 Q --- correct?

23 And you -- did you write that, or did Ms. Wiggins'
24 write that?

25 A I wrote that.

1 Q You wrote that.

2 And then, you took it to them and signed it,
3 correct?

4 A Yes.

5 Q Okay. Do you remember what you wrote in that
6 affidavit?

7 A (No audible response.)

8 Q Well, we'll ---

9 A Yes.

10 Q Okay.

11 A Some ---

12 Q Let's ---

13 A --- of it.

14 Q --- just look at it real quick. You said that you
15 saw the cashier push the chair up. And after pushing the
16 chair up ---

17 A Uh-huh.

18 Q --- then you saw the chair roll away, correct?

19 A Yes.

20 Q She didn't push the chair back underneath her at
21 that point, correct?

22 A No. He -- no. She ---

23 Q Okay.

24 A --- didn't because ---

25 Q And then ---

- 1 A --- she went ---
- 2 Q --- she sat down and fell ---
- 3 A Because she ---
- 4 Q --- right?
- 5 A --- didn't have a chance to.
- 6 Q Okay. So your recollection back when you wrote this
- 7 was you actually saw that chair roll away after the
- 8 cashier let go of it, correct?
- 9 A Right.
- 10 Q And that was before Ms. Wiggins began to sit down?
- 11 A She had walked away before Ms. Wiggins sat down.
- 12 Q Right. So before Ms. Wiggins made contact with that
- 13 chair in this affidavit, you said that chair started to
- 14 roll away and the cashier didn't put it back, correct?
- 15 A No.
- 16 Q No.
- 17 That's not what this says?
- 18 A That's what that says.
- 19 Q Okay. You wrote this?
- 20 A Yes.
- 21 Q And you signed it?
- 22 A Yes.
- 23 Q It's a sworn affidavit?
- 24 A Yes.
- 25 Q And it's truthful?

1 A Yes.

2 Q But it's not correct?

3 A It's correct. That's ---

4 Q Okay.

5 A --- what I saw.

6 Q Okay. Well, let's look at the video real quick.

7 And I'm going to go ahead and get to this part that we're
8 talking about with the chair.

9 (Whereupon, a portion of video was published in open
10 court.)

11 Q Now, what I want you to do I want you tell me,
12 before Ms. Wiggins sits down, when you see that chair
13 rolled away from Ms. Wiggins.

14 (Whereupon, a portion of video was published in open
15 court.)

16 Q Is that chair rolling?

17 A Not yet. But ---

18 Q Okay.

19 A --- it's rolling now.

20 Q When she sat down in it; is that correct?

21 A (No audible response.)

22 Q That chair didn't roll on its own, did it?

23 A No.

24 Q Okay.

25 A But she didn't hold it either.

1 Q You also testified that Ms. Wiggins was looking down
2 the entire time ---

3 A Yes.

4 Q --- correct?

5 Okay. Let's look at that one more time.

6 (Whereupon, a portion of video was published in open
7 court.)

8 Q Are you able to see it from where you are? Do you
9 need to bring it closer?

10 A Unh-unh.

11 Q Okay.

12 A No. I can see.

13 Q Tell me what this cashier does as she walks away.

14 A She pushing the other chair.

15 Q Does she stop and turn around and look at Ms.
16 Wiggins?

17 A No. After the fact. She was walking away to -- to
18 do something else.

19 Q So your -- your testimony, in looking at this, is
20 she didn't stop, turn, and look at Ms. Wiggins before Ms.
21 Wiggins fell; is that correct? I want you to pay close
22 attention to her.

23 (Whereupon, a portion of video was published in open
24 court.)

25 A That's a different cashier.

REDIRECT EXAMINATION BY MS. BURNSIDE - VIVIAN ASHFORD 112

1 Q Okay. Well, let's look at a still frame of that
2 shot. And I know this is blurry. We don't have high-
3 def. This is Ms. Wiggins right here, correct?

4 A Yes.

5 Q And it's your testimony, at that moment in that
6 frame, she's looking down at the ground; is that right?

7 A Yes.

8 Q Okay.

9 MR. BAYNE: Your Honor, I have no further questions.

10 THE COURT: Redirect?

11 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

12 MS. BURNSIDE: Just a couple.

13 REDIRECT EXAMINATION

14 BY MS. BURNSIDE:

15 Q Ms. Ashford, the -- to you, is the video a little
16 blurry?

17 A Yes.

18 Q Is it your testimony today that Ms. Wiggins would --
19 was looking down?

20 A She was looking down.

21 Q At the floor?

22 A At the floor. She -- from where I was standing.

23 Q And your view ---

24 MS. BURNSIDE: Can you pull that back up?

25 MR. BAYNE: Sure. The video or the photo?

1 MS. BURNSIDE: Either one. The still one.

2 Q Do you see -- do you know where you are in this
3 video or is it too blurry to tell?

4 A Too blurry ---

5 Q You can't ---

6 A --- to tell.

7 Q --- even recognize your own ---

8 A No.

9 Q --- self?

10 Okay. But you're in the middle lane -- I don't want
11 to tell you where you're at. You're around here; is --
12 is -- am I correct?

13 A One, two -- two over.

14 Q Okay. So you're looking at -- at exactly ---

15 A I'm in the ---

16 Q --- the face ---

17 A --- same aisle that she's in.

18 Q Okay. And you can see her face?

19 A On the side.

20 Q Okay. And she was looking down?

21 A Yes.

22 Q All right.

23 MS. BURNSIDE: I have no further questions, Your
24 Honor.

25 MR. BAYNE: No recross.

1 THE COURT: All right. Thank you, ma'am. Have a
2 nice day.

3 THE WITNESS: Thank you, sir.

4 (Whereupon, the witness exited the witness stand.)

5 THE COURT: All right. Call your next witness.

6 MR. BARTON: Your Honor, may we approach real quick?

7 THE COURT: Sure.

8 (Whereupon, a bench conference was held off the
9 record in the presence of the jury, but out of the
10 hearing of the jury.)

11 MR. BARTON: Your Honor, we would -- we'd call the
12 plaintiff, Ms. Vanessa Wiggins -- Wiggins to the stand.

13 THE COURT: All right.

14 MR. BARTON: You ready?

15 THE PLAINTIFF: Yes.

16 MR. BARTON: Okay. Just take your time.

17 (Whereupon, the witness came forward.)

18 THE COURT REPORTER: Your Honor, may I approach?

25 -- we need to change
or anything, just stop me and let me know.

1 THE COURT: Okay.

2 DIRECT EXAMINATION

3 BY MR. BARTON:

4 Q Tell the jury your name.

5 A Vanessa Wiggins.

6 THE COURT: Okay. She's going to have to speak up a
7 whole lot or we're going to have to move the microphone
8 closer to her and ---

9 THE WITNESS: Uh-huh.

10 THE COURT: --- move her further back.

11 (Off the record briefly.)

12 A Vanessa Wiggins.

13 Q Okay.

14 THE COURT: And, Ms. Wiggins -- Ms. Wiggins, you
15 hear me?

16 THE WITNESS: Yes, sir.

17 THE COURT: Could you say, like, "Test, 1, 2, 3, 4,
18 5," for me?

19 THE WITNESS: Test, 1, 2, 3, 4, 5.

20 THE COURT: Okay. Right there.

21 THE WITNESS: Okay.

22 Q Okay. And, Ms. ---

23 THE COURT: Hold on. Let -- let's make sure the
24 court reporter is straight.

25 THE COURT REPORTER: Yes, Your Honor. - Thank you.

1 THE COURT: You good? Okay. All right.

2 Can -- can everybody -- say, "Test, 1, 2, 3, 4, 5,"
3 for me again.

4 THE WITNESS: Test, 1, 2, 3, 4, 5.

5 THE COURT: Everybody hear? Okay. Okay. We -- we
6 do this with every witness. Some people are soft-spoken.
7 Some people are extremely loud. So it's -- it's a
8 constant monitoring, trying to get people to the right
9 level.

10 So all right. Thank you, Mr. Barton. And I ---

11 MR. BARTON: Yes, sir. No, sir. And I have a habit
12 of trying to drift that way, to go -- going that way. So
13 if I do that, just make us come back.

14 THE COURT: No problem. Thank you.

15 Q I hate to ask you this, but what's your date of
16 birth?

17 A January 7th, 1957.

18 Q So how old does that make you?

19 A I'm 61.

20 Q Okay. You still need to try and talk up a little
21 bit louder.

22 A I'm 61.

23 Q Okay. Now, as you sit here this morning, are you in
24 pain?

25 A Yes.

1 Q Would you normally be taking some pain medication?

2 A Yes.

3 Q And are you laying off that because you know you
4 have to testify right now?

5 A Yes.

6 Q At -- but you're not telling the jury all of your
7 problems are solely because of -- because of this
8 accident, correct?

9 A Right.

10 Q Okay. All right. Where do you live, Ms. Wiggins?

11 A I live on Rosewood in Columbia.

12 Q All right. How long have you lived in the Columbia
13 area?

14 A All my life.

15 Q Okay. What kind of educational background do you
16 have, or what is your educational background?

17 A I have two years of college.

18 Q Okay. And what -- what were you going to college
19 for?

20 A First, I was going for nursing. But I decided that
21 was not for me. So I took up some legal classes.

22 Q Okay. Is that for paralegal -- paralegal-type
23 studies?

24 A Yes.

25 Q All right. Do you have any children?

1 A Yes, I do.

2 Q How many children do you have?

3 A I have four girls.

4 Q Okay. All right. Are they -- how old are -- are
5 they all over 18 now?

6 A Yes.

7 Q Okay. What type of work have you done in the past?

8 A Medical service representative, customer service,
9 shipping relay -- golly, it's so much -- carpentry,
10 machinist. It's a bit -- a bit much.

11 Q When did you -- when did you last work?

12 A At Amazon.

13 Q And can -- can -- what -- can you tell the jury --
14 jury: What year would you have last worked?

15 A The last position I had, though, with Amazon, was a
16 light-duty one. I was working at a thrift shop.

17 Q Okay. And so can you just give us the year that you
18 last worked? Do you know that?

19 A That was 2017, I believe -- no -- 2016. I'm sorry.
20 2016.

21 Q Okay. Now, were you -- were you working at the time
22 that this accident happened at ALDI's?

23 A No.

24 Q Okay. How long had it been since you -- since you'd
25 been -- how long had you been out of work before this

1 accident happened?

2 A About maybe six months.

3 Q Okay. Did you go to ALDI's in northeast Columbia on
4 June 17th of 2017?

5 A Yes, I did.

6 Q All right. Why'd you go?

7 A I was going grocery-shopping.

8 Q Okay. How long were you in the store before you
9 went to the cashier?

10 A Maybe an hour.

11 Q Okay. Did you shop at ALDI's often?

12 A Maybe once a month.

13 Q Okay.

14 A I usually shopped at Wal-Mart. But sometime I go to
15 ALDI's to pick up certain items that they have on sale or
16 have a lower price.

17 Q Okay. When you went to check out, you know, when
18 you went ---

19 A Uh-huh.

20 Q --- to the cashier in the cashier aisle, did you
21 think -- did anything unusual happen in the checkout
22 process?

23 A Well, the cashier wasn't able to complete the
24 transaction.

25 Q Okay. So how long were you -- how long were you

1 there, waiting for her to complete the transaction?

2 A At least 20/25 minutes.

3 Q Okay. Now, did that cause you some problems with
4 standing there?

5 A Yes.

6 Q Did you have physical problems that made it hard to
7 stand for that long?

8 A Yes.

9 Q Okay. That -- but that's before this accident even
10 happened, correct?

11 A That's correct.

12 Q All right. After standing there for approximately
13 20 minutes, what did you do?

14 A I asked the cashier to get me a chair because my
15 knees was hurting.

16 Q Okay. Did the cashier get you a chair?

17 A Yes, she did.

18 Q Now, I know that you weren't up here to actually see
19 the video that was being played for the jury, but have
20 you seen this video before?

21 A I don't know what was on there.

22 Q Have -- have you seen a video of the fall at ALDI's
23 -- of your fall ---

24 A Yeah.

25 Q --- at ALDI's?

1 A Yes, I have.

2 Q Okay. All right. You -- you initially asked for a
3 chair. Did the cashier bring you a chair?

4 A Yes, she did.

5 Q What type of chair did she bring you?

6 A One of those office chairs on wheels.

7 Q Okay. Now, were you able to sit down in that first
8 chair that she brought you?

9 A No.

10 Q Why not?

11 A Because she wasn't able to adjust it. It was too
12 high. She was holding it for me to sit down. But it was
13 too high, so she couldn't adjust it. It was broke. She
14 ---

15 Q Okay.

16 A --- said, "It was broke and it's not going to
17 adjust, so I'll get you another chair."

18 Q Okay. Did she get you another chair?

19 A Yes.

20 Q What type of chair was that?

21 A That was a -- a -- one of those office chairs also.

22 Q Okay. What kind of legs did it have on it?

23 A It was on wheels.

24 Q Okay. Did you attempt to sit down in that chair?

25 A Yes.

1 Q Tell the jury what happened.

2 A I fell.

3 Q What happened to cause you to fall?

4 A Well, when she brought the chair over to me, I felt
5 the chair hit the back of my leg. She brought it from my
6 right side and came -- was coming behind. So when I felt
7 the chair hit, I thought she was standing there with the
8 chair.

9 And so I proceeded to sit down. And when I
10 proceeded to sit down, I ended up hitting the floor.

11 Q Okay. As you were attempting to sit down, what did
12 you think the cashier was doing?

13 A I thought she was holding -- standing behind me,
14 holding the chair.

15 Q Okay. Now, the -- the cashier that -- this was a
16 cashier at ALDI's, correct?

17 A Yes. The same ---

18 Q Okay.

19 A --- cashier.

20 Q Okay. What happened after you fell down?

21 A I remember some people talking to me. It was -- I
22 hit my head, so I was hurting.

23 Q Yeah. And you can say what happened, but you can't
24 tell what people said, okay?

25 A Okay.

DIRECT EXAMINATION BY MR. BARTON - VANESSA WIGGINS 123

1 Q So I just wanted to make sure you -- okay. So go
2 ahead.

3 A They were asking me -- well, they were checking me
4 to see was I okay. And they was having a discussion over
5 me.

6 Q Were you in any pain after you fell?

7 A Yes.

8 Q What -- what parts of your body were hurting
9 immediately after the fall?

10 A My head, my shoulder, my neck, my hip -- my --
11 practically my whole right side.

12 Q Was an ambulance called?

13 A No.

14 Q Did you seek medical attention after this accident?

15 A Yes, I did.

16 Q Did you seek it on the same day?

17 A Yes, I did.

18 Q How -- tell us -- tell the jury how you managed to
19 get medical attention that day.

20 A My sister came and took me to Lexington Medical
21 Center.

22 Q Okay.

23 A And I sought attention there.

24 Q What'd they do for you at Lexington Medical Center?

25 A To be honest, the doctor seemed a little busy to me.

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1 So he really didn't do much of anything.

2 Q Okay. All right.

3 (Whereupon, Mr. Barton and Mr. Bayne conferred.)

4 Q Let me hand you this. Is this -- is this your bill
5 for that first visit?

6 A Yes, it is.

7 MR. BARTON: Your Honor, I'd have this -- I'd move
8 to have this introduced as Plaintiff's Exhibit 1.

9 MR. BAYNE: No objection, Judge.

10 THE COURT: Plaintiff's Exhibit No. 1 without
11 objection.

12 (Whereupon, Plaintiff's Exhibit 1 was marked and
13 entered into evidence.)

14 Q Now, what is the amount of that bill?

15 A \$219.

16 Q What was the primary injury that you suffered as a
17 result of this fall?

18 A I had to have a spinal injury.

19 Q Just what part of your body was hurt, the main part?

20 A My neck.

21 Q Okay. Now, had you -- had you had any treatment for
22 your neck or any problems with your neck before?

23 A Years ago.

24 Q Approximately how many years, would you ---

25 A Oh, goodness.

1 Q --- would you say?

2 A It's way over ten. At least, I thought it was my
3 neck. But actually, because of where the pain was, it
4 was coming up this way from my back and going down the
5 side. But after I sought medical attention and had some
6 adjustments done, I never had that pain anymore.

7 Q Okay. So what -- how long would it have been that
8 you hadn't had any neck problems before this accident?

9 A Oh, wow.

10 Q Give me your best estimate.

11 A At least 12 years ago.

12 Q Okay. Now, from the time -- let me change that.
13 Let me go back and ask you some other things. Had you
14 had others -- slip-and-fall injuries or injuries that you
15 suffered as a result of falling?

16 A Will you repeat that, please?

17 Q Sure. Have you had -- have you sustained injuries
18 from falling before, to any part of your body?

19 A Yes.

20 Q All right. Prior to this accident, this accident at
21 ALDI's ---

22 A Uh-huh.

23 Q --- were you having any problems with your neck?

24 A No.

25 Q Okay. Now, I think -- did you have a fall shortly

1 before this ALDI's accident?

2 A Yes.

3 Q Just very briefly, describe what happened in that
4 accident.

5 A I don't know how to describe it. It's another piece
6 that was in the door. And it had a hole in it. I guess
7 it -- I saw this later.

8 Well, anyway, it caught hold to my sandal and
9 flipped me over.

10 Q Okay. Did you have to seek medical treatment for
11 that -- for that fall?

12 A Yes.

13 Q Did you seek any medical treatment for your neck as
14 a result of that fall?

15 A No.

16 Q Okay. Now, after this fall at ALDI's ---

17 A Uh-huh.

18 Q --- did you have some problems with some other
19 falls?

20 A Yes.

21 Q What -- explain to the jury kind of what would
22 happen that would cause you to fall.

23 A I didn't trip over anything. I was just -- be
24 walking along and drop to the floor.

25 Q What -- and what would cause you to drop to the

1 floor?

2 A Because of the injury from my neck.

3 Q Okay. In any of those situations, did you fall to
4 the standpoint that you actually hit your back, neck, or
5 head on the floor?

6 A No. I didn't hit -- I didn't hit my head no more

7 ---

8 Q From the ---

9 A --- when I ---

10 Q --- time that -- from the time of this accident at
11 ALDI's up until today, have you suffered any other injury
12 to your neck, other than this one at ALDI's?

13 A No. No.

14 Q Okay. What treatment did you have for this accident
15 after you went to Lexington Medical -- after you went to
16 Lexington Medical Center on the date of this accident?

17 A You mean as far as my ---

18 Q Just as ---

19 A --- surgery?

20 Q Well, no. Let's go just as far as what -- who did
21 you go to after this accident for -- let's say for any
22 problems with your neck and that ---

23 A Oh.

24 Q --- sort of ---

25 A Okay.

- 1 Q --- thing?
- 2 A I went to Dr. Hutchison.
- 3 Q And what kind of doctor is Dr. Hutchison?
- 4 A He's a specialist -- pain-management specialist.
- 5 Q Okay. Now, were you having problems other than just
- 6 with your neck at that -- at this time?
- 7 A My back.
- 8 Q Okay.
- 9 A Yeah.
- 10 Q And ---
- 11 A My back.
- 12 Q --- what part of your back would that have been?
- 13 A The lower part.
- 14 Q All right. After seeing the pain-management doctor,
- 15 did you go to another doctor for -- for your neck
- 16 problems?
- 17 A Yes.
- 18 Q And what doctor would that have been?
- 19 A Dr. Hall at Lexington Hospital.
- 20 Q Okay. All right. Were you also seen at Lexington
- 21 Hospital for -- for problems with your lower back?
- 22 A On previous occasions.
- 23 Q All right.
- 24 A Yes.
- 25 Q Okay. Did you -- did -- some point for this

1 accident, did you see a -- a neurologist?

2 A Yes, I did.

3 Q And who was that?

4 A Dr. Ogburu.

5 Q Okay. How many times would you say you saw Dr.
6 Ogburu after this accident? Like, say, in -- after this
7 accident and before you saw, I believe, Grabowski. So
8 let's put it this way. How many times did you see Ogburu
9 before September of 2017?

10 A Before -- I never -- before 2017?

11 Q Before September of 2017. I'm sorry.

12 A I only saw him one time before that.

13 Q All right. After seeing Dr. Ogburu -- and he's got
14 a longer name than that. But I -- I have a hard time
15 pronouncing it, so we're going to say Ogburu. Did he ---

16 A Okay.

17 Q --- refer you to somebody else?

18 A Yes, he did.

19 Q And who would that have been?

20 A Dr. Grabowski.

21 Q Grabowski?

22 A (No audible response.)

23 Q What treatment did Dr. Grabowski -- Grabowski
24 perform on your neck?

25 A He did a spinal infusion.

1 Q Okay.

2 A He put rods in my neck.

3 Q Okay. Did he actually perform surgery on you?

4 A Yes, he did.

5 Q All right.

6 (Whereupon, Mr. Barton and Mr. Bayne conferred.)

7 MR. BAYNE: And, Judge, I have no objection to the
8 bill.

9 THE COURT: Okay.

10 A Could I get some water, please?

11 Q Yes, ma'am.

12 (Off the record briefly.)

13 Q Ms. Wiggins ---

14 A Uh-huh.

15 Q --- did you have surgery at Palmetto Health
16 Richland?

17 A Yes.

18 Q Okay. Now, is this a copy of the bill for that
19 surgery?

20 A Yes, it is.

21 MR. BARTON: Your Honor, this would Plaintiff's
22 Exhibit 2. And I think it was without objection.

23 MR. BAYNE: No objection, Your Honor.

24 THE COURT: Plaintiff's Exhibit No. 2 admitted
25 without objection.

1 (Whereupon, Plaintiff's Exhibit 2 was marked and
2 entered into evidence.)

3 Q Can you see this okay? I'm getting to the point
4 where I got to wear my glasses for everything. But can
5 you see that okay?

6 A Yes.

7 Q Can you tell the jury what the cost of this surgery
8 was?

9 A \$98,767.13.

10 Q Okay. Was your back hurting prior -- was your neck
11 hurting prior to this fall at ALDI's?

12 A No.

13 Q Is it still hurting today?

14 A Yes.

15 Q How often does it hurt you?

16 A All the time. That's why I take pain medication for
17 it.

18 Q Okay. And you've got some other health issues,
19 other than just what were caused by this fall, correct?

20 A Yes.

21 Q Okay. And you're not claiming ALDI's responsible
22 for all the problems in the world that you have, are you?

23 A Oh. Unh-unh.

24 Q As you were sitting down on that chair, did you --
25 what -- where were you looking as you were sitting down?

1 A Toward the floor. Because I'm -- I was bent over.

2 Q Where did you think the cashier was as you were
3 sitting down?

4 A Behind me.

5 MR. BARTON: Your Honor, excuse me one minute.

6 THE COURT: Yes, sir.

7 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

8 MR. BARTON: Nothing further, Your Honor.

9 THE COURT: All right. Cross-examination?

10 MR. BAYNE: Yes, Judge. Just one second, Your
11 Honor.

12 THE COURT: Sure.

13 (Whereupon, Mr. Bayne, Ms. Burnside, and Mr. Barton
14 conferred.)

15 MR. BAYNE: Just one second, Judge.

16 THE COURT: Okay.

17 MR. BARTON: Your Honor, we're not going to object
18 to this.

19 THE COURT: Okay.

20 MR. BARTON: Brett, do you have an extra copy?

21 MR. BAYNE: Yes, I do.

22 MR. BARTON: And I'm going to walk up here and get
23 some water, because mine's ---

24 THE COURT: Of course.

25 MR. BARTON: You want some more water?

1 THE WITNESS: Thank you.

2 MR. BARTON: Sure.

3 CROSS-EXAMINATION

4 BY MR. BAYNE:

5 Q Ms. Wiggins, throughout the course of, say, the last
6 10 or 12 or 15 years, you've treated with multiple
7 different providers, correct?

8 A Pardon?

9 Q Multiple different medical providers you have been
10 to; is that right?

11 A (No audible response.)

12 Q You have seen multiple doctors over the course of
13 the last 10 or 15 years; is that correct?

14 A Over the past couple years, I've seen ---

15 Q Okay.

16 A --- quite a few doctors.

17 Q You ---

18 A Yeah.

19 Q You saw -- we talked about Dr. Hutchison at Carolina
20 Center for Pain, correct?

21 A Yes.

22 Q You went to Grace Medical Group?

23 A Yes.

24 Q You went to Lexington Irmo Urgent Care, correct?

25 A Yes.

1 Q You went to Lexington Medical Center?

2 A Yes.

3 Q You went to Midlands Neurology. We talked about
4 that at one point.

5 A Yes.

6 Q You went to Palmetto Health Richland?

7 A Yes.

8 Q And you've also treated in Sunset Family Practice;
9 is that correct?

10 A Yes.

11 Q Okay.

12 MR. BAYNE: Your Honor, I spoke with opposing
13 counsel. I have the original affidavits for each of
14 those provider, as well as a set of those medical
15 records, that I would move into evidence as Defense
16 Exhibit 1.

17 THE COURT: All right. Defense No. 1 without
18 objection.

19 MR. BAYNE: And probably, I guess we should make the
20 affidavits 1 and records 2 ---

21 THE COURT: That's fine.

22 MR. BAYNE: --- for ease of reference.

23 MR. BARTON: Judge, I'm going to move down here so I
24 can hear.

25 THE COURT: You move wherever you need to be able to

1 hear, Mr. Barton.

2 MR. BARTON: Thank you.

3 THE COURT: You won't bother me at all.

4 (Whereupon, Defendant's Exhibit 1 and 2 were marked
5 and entered into evidence.)

6 MR. BAYNE: Thank you.

7 Q Ms. Wiggins, one of the first questions you were
8 asked was had you seen this video before that we showed
9 to the jury, in opening and with Ms. Ashford. Did you
10 say you had seen that video before?

11 A Well, at first I told him I didn't see that because
12 I was sitting over there.

13 Q Okay.

14 A But when he referred to the one at ALDI's, yes.
15 I've seen it ---

16 Q You've seen it before, correct?

17 A Yes.

18 Q And does that video fairly and accurately reflect
19 what happened in the store that day?

20 A Yes.

21 Q Okay.

22 MR. BAYNE: Your Honor, I would move the ALDI video
23 into evidence as Defense Exhibit 3.

24 MR. BARTON: Quick question: Does that have ---

25 MR. BAYNE: It's ---

1 MR. BARTON: How far -- how long ---

2 MR. BAYNE: It's the entire disc.

3 MR. BARTON: Yeah. Your Honor, we have -- that's --
4 it's a little bit longer than what's been shown. But we
5 have no objection to it.

6 THE COURT: All right.

7 MR. BAYNE: All right.

8 THE COURT: Defendant's No. 3 admitted without
9 objection.

10 (Whereupon, Defendant's Exhibit 3 was marked and
11 entered into evidence.)

12 Q Ms. Wiggins, on direct examination and when we spoke
13 to you previously in the deposition you did, you told us
14 that you had never suffered an injury to your neck before
15 the fall at the ALDI; is that correct?

16 A I've never fallen and suffered an injury to my neck.
17 No.

18 Q Have you ever suffered an injury to your neck before
19 you fell at the ALDI?

20 A No. I've never fell and -- and hurt my ---

21 Q Ms. Wiggins, my question wasn't whether you fell.
22 My question was: At any time before you fell at the ALDI
23 and injured your neck, have you injured your neck before?

24 A (No audible response.)

25 Q And if it would help, I can show you the deposition

1 you gave in this case, where you testified you had never
2 injured your neck before. Would it help to look at that?

3 A Yeah.

4 Q Okay. Give me just one second. We'll make that
5 one. And I'll represent to you, this is a copy of the
6 deposition that you gave when I was there, asking you
7 questions and your attorney, Ms. Wiggins, was there.

8 A Okay.

9 Q And that question was: "Prior to June fall at ALDI,
10 have you ever had an injury to your neck, that you know
11 of?"

12 And your answer was: "No."

13 Correct?

14 A Right.

15 Q Okay. Is that a truthful answer that you had never
16 had an injury to your neck prior to the fall at the ALDI?

17 A Okay.

18 Q Is that true?

19 A Yes, it's true.

20 Q Okay.

21 MR. BAYNE: Your Honor, I have a -- oh, let me back
22 up.

23 Q Prior to falling at the ALDI, you fell at a Kroger,
24 correct?

25 A Yes.

1 Q And that was back sometime in 2016, give or take --
2 or 2015, I believe?

3 A I believe it was in 2015.

4 Q And you filed a lawsuit after you fell at the
5 Kroger, correct?

6 A Well, yeah. Well ---

7 Q And ---

8 A --- my attorney did.

9 Q Okay. Your attorney did.

10 A It was ---

11 Q And ---

12 A --- years later.

13 Q And in that case, you gave a deposition, just like
14 you did in this case, correct? You showed up and
15 attorneys were there and they asked you questions and you
16 gave them answers, right?

17 A I believe so.

18 Q Okay. And before both of those depositions, the
19 court reporter made you raise your right and said, "Do
20 you swear to tell the truth, the whole truth, and nothing
21 but the truth, so help you God." Do you remember that?

22 A Okay.

23 Q Do you ---

24 A Yes.

25 Q --- remember doing that, just like you did here

1 today?

2 A Yes, I believe so.

3 Q And in -- in both of those depositions, the one for
4 Kroger and the one for this case and ALDI, you did tell
5 the truth, didn't you?

6 A Yes.

7 Q Okay.

8 MR. BAYNE: Your Honor, I have a sealed deposition
9 that I need to open for purposes of impeachment.

10 THE COURT: All right. Ladies and gentlemen, what a
11 deposition is, is the deposition is a lot like being in
12 court.

13 THE WITNESS: Uh-huh.

14 THE COURT: What happens is the witnesses come
15 forward. The attorneys are allowed to be present, just
16 like they are here in court. There is an official court
17 reporter, just like we have here in court.

18 A witness comes in. They're sworn in, sworn to tell
19 the truth, just like we do here in court. And then,
20 there becomes an official transcript of that deposition
21 that's done.

22 So once that deposition is made official, then it's
23 wrapped up in something. It depends on who the court
24 reporter is in how it comes wrapped up to me. But what
25 I'm now doing is opening the official deposition of Ms.

1 Wiggins that was given on June the 22nd of 2016. And Mr.
2 Bayne may use that ---

3 MR. BAYNE: Thank you, Your Honor.

4 THE COURT: --- to cross-examination the witness.

5 Q Ms. Wiggins, I'm going to ---

6 MR. BARTON: Your Honor, may I ask for a copy of
7 that? I don't believe we have one.

8 (Whereupon, Mr. Bayne and Mr. Barton conferred.)

9 Q Ms. Wiggins, I'm going to give you a copy of this
10 deposition that you gave in this case -- or not in this
11 case -- in the Kroger-fall case. I'm going to turn you
12 to page 27. I'm going to hand a copy to you. And you
13 just hold onto that for me, okay?

14 A Okay.

15 Q And I'm going to -- we're going to look at that, and
16 we're going to see what that document says. Do you see
17 this up here on the right-hand side, Ms. Wiggins, on the
18 screen?

19 A (No audible response.)

20 Q Up here on the right, you see we have this same
21 language that you're looking at in that document? Do you
22 see that?

23 A (No audible response.)

24 Q You see it ---

25 A It's turned ---

1 Q --- says page 27. And right there on line 2, it
2 starts with the word "Okay." Is that what your document
3 also shows there?

4 A I can't see that from here. It's ---

5 Q Okay.

6 A --- very blurry.

7 Q I understand. Here, let's -- let's make it a single
8 page.

9 MR. BARTON: Your Honor, can we stipulate to the
10 admissibility of those two pages?

11 THE COURT: He gets to ask her these questions.

12 MR. BARTON: Okay.

13 Q We'll work our way down, Ms. Wiggins. Can you see
14 that now?

15 A Uh-huh.

16 Q Okay. So in this deposition back in 2016, before we
17 had the fall at the ALDI, you were asked a question about
18 a car accident you had been in. And the answer you gave
19 was (as read): "I had an accident where a truck had hit
20 the backside of my car. It only affected my neck,
21 though. That was in 2010 -- wait a minute -- 2011 --
22 '10/'11, one of the two. I don't remember."

23 Do you see that?

24 A Yes, I see it.

25 Q Okay. There's an additional point here. We'll move

1 down to line 12 and 13. We're right at the top there.

2 (As read): "You hurt your neck in that accident in 2010;
3 is that what you think -- or 2011? Is that when you had
4 these pinched nerves started?"

5 And you told the attorney at that time that the
6 pinched nerves actually started before that, correct?

7 A Right.

8 Q Okay. So the injury that you had in the automobile
9 accident, that was a new injury to your neck that you
10 were reporting to that attorney in 2016, correct?

11 A Wait a minute. Slow down, now.

12 Q Sure.

13 A Because ---

14 Q I'll back up.

15 A --- I'm trying to remember that accident.

16 Q In -- let me -- let me -- we'll break it down. In
17 2008 ---

18 A Right.

19 Q --- you had pinched nerves in your neck, correct?

20 A Yes ---

21 Q And ---

22 A --- I did.

23 Q --- and that required medical treatment?

24 A Well, that wasn't from an accident.

25 Q I'm -- I didn't ---

1 A You said ---

2 Q --- ask if it was ---

3 A --- injury ---

4 Q --- from an accident. I asked: Did you have
5 pinched nerves in your neck in 2008?

6 A Yes.

7 Q Okay. And then, in 2010 or '11, you were in an
8 accident where you had a neck injury, correct?

9 A I think it was in 2010 when the truck hit the ---

10 Q And -- truck hit your car, right?

11 A Yeah. It hit the ---

12 Q And you slammed your head into the glass?

13 A No. I didn't slam my head in the glass.

14 Q If we look right here at line 19, it says (As read):
15 "Because of the shift when the truck hit us, my head
16 slammed against the glass."

17 Is that not true?

18 A No. I hit my head on the side glass ---

19 Q Okay.

20 A --- on my side.

21 Q And you ---

22 A My ---

23 Q --- injured your neck in that accident, didn't you?

24 A Well, it was hurting. Yes.

25 Q Okay. So ---

1 A Along with my head and my left shoulder. I mean, I
2 remember that now. It was a ---

3 Q So in ---

4 A But it ---

5 Q --- our case ---

6 A --- didn't hurt for long.

7 Q --- that's -- so in our case, when I asked you,
8 prior to the June fall at the ALDI, had you ever had an
9 injury to your neck and you said "no," that wasn't true,
10 was it?

11 A I forgot about that accident. But I -- you asked me
12 did -- had I had any other injuries. In 2008 that was
13 not from a accident.

14 Q I wasn't ---

15 A That ---

16 Q --- ma'am, I wasn't asking about 2008. I ---

17 A Well ---

18 Q --- was asking ---

19 A --- that's the ---

20 Q --- about ---

21 A --- way I understood ---

22 Q Well ---

23 A --- your question, sir.

24 Q So you do agree with me that you had actually had an
25 injury to your neck before the fall at the ALDI; is that

1 correct?

2 A Well, yes, when you put it that way. I mean, it --
3 it affected my neck.

4 Q Is there another way I could put it where you
5 wouldn't have had an injury to your in an automobile
6 accident where your head slammed into the glass?

7 A Well, it -- you keep saying it slammed into the
8 glass, like my head went through it.

9 Q Well, ma'am, if I may, you see on the far-left side
10 there, it says "A," the letter "A" is right there at line
11 18?

12 A Okay.

13 Q Do you see that?

14 And do you know what the -- the letter "A" means in
15 this context?

16 A Yes.

17 Q Is that an answer?

18 A Yes.

19 Q And that's an answer you gave, correct?

20 A Is it -- I guess so.

21 Q Read what you said on line 18, 19, and 20 in that
22 deposition.

23 A 19 and 20?

24 Q 18, 19, and 20. Read that answer to the jury.

25 A (As read): "And it kept progressing with the

1 incident because of the shift when the truck hit us. My
2 head slammed up against the glass" ---

3 Q Okay. So a minute ago when ---

4 A --- "this way."

5 Q --- you said -- okay. So the word "slammed" is a
6 word you used during that deposition, correct?

7 A Well, this says I said that. But ---

8 Q And would you agree with me --- I'll take that back
9 ---

10 A That's ---

11 Q --- from you -- that this ---

12 A Okay.

13 Q --- was an injury to your neck that you had prior to
14 the fall at the ALDI, correct?

15 A Well, yeah.

16 Q Okay. Due to some of the neck pain and complaints
17 you were having prior to your fall at the ALDI, one of
18 your neurosurgeons actually recommended you have neck
19 surgery back in 2014, didn't he?

20 A Say what, now?

21 Q Due to complaints of neck pain you were having
22 before the fall at the ALDI, one of your neurosurgeons
23 you had seen actually recommended you get a neck surgery
24 back in 2014, didn't he?

25 A What neurosurgeon was that?

1 Q Well, ma'am, I'm asking you if you ever testified
2 that a neurosurgeon told you, you needed a neck surgery
3 prior to the fall at the ALDI. Did you do that?

4 A I wasn't see no neurosurgeon then. I ---

5 Q And in ---

6 A --- didn't have no problems with my neck in 2014.

7 Q Okay. In addition to the fall at the Kroger, you
8 had a fall in Wal-Mart as well, correct?

9 A Yes.

10 Q And you also had a fall at Amazon, where you were
11 working part-time, correct?

12 A No.

13 Q You had a fall in the parking lot of SMX Staffing,
14 didn't you?

15 A No.

16 Q Didn't you file a workers' compensation claim over a
17 fall you had while you were working for SMX Staffing?

18 A Yes, I did.

19 Q Okay. And so you had a fall, before the fall at the
20 ALDI, where you filed a claim, correct?

21 A I filed a claim. But it had nothing to do with a
22 fall. I did not fall there.

23 Q Okay. My question was -- where I was going to with
24 this was: In that case, just like in the Kroger case and
25 just like in this case, you gave a deposition in that

1 case as well, didn't you?

2 A Yes, I did.

3 Q You did. And ---

4 A I'm trying ---

5 Q --- there were ---

6 A --- to remember. I'm -- yes, but ---

7 Q And ---

8 A --- I -- I remember I did.

9 Q Just like the ALDI deposition where I was there,
10 just like the Kroger deposition where those attorneys
11 were there, there were attorneys present at this case for
12 SMX Staffing when you had an injury at work, correct?

13 A Yes.

14 Q And just like the ALDI and the Kroger case, you put
15 your right hand you and you swore to tell the whole truth
16 during that deposition, didn't you?

17 A Yes.

18 Q And you did that during that deposition, didn't you?

19 A Yes, to the best of my knowledge.

20 MR. BAYNE: Judge, one more transcript to deal with.

21 MR. BARTON: Judge, can I approach?

22 THE COURT: Sure.

23 (Whereupon, a bench conference was held off the
24 record in the presence of the jury, but out of the
25 hearing of the jury.)

1 THE COURT: All right. Ladies and gentlemen, I am
2 opening the original transcript of a deposition taken by
3 -- of Ms. Wiggins on September the 2nd of 2014.

4 I'm sorry.

5 MR. BAYNE: It's okay.

6 THE COURT: I'm just making sure of that. Go ahead.

7 MR. BAYNE: Thank you, Judge.

8 Q And, Ms. Wiggins, as -- as Judge Hood just said,
9 this deposition occurred on September 2nd, 2014, which,
10 you would agree with me, is back before you fell at the
11 ALDI in June of 2016, correct?

12 A (No audible response.)

13 Q 2014 is before 2016, isn't it?

14 A Well, like -- what -- what are you saying that
15 happened in 2016?

16 Q Well, you fell at the -- or -- sorry -- 2017. It's
17 before 2017, isn't it?

18 A (No audible response.)

19 Q So what ---

20 A Okay.

21 Q --- I'm asking is: When you gave this deposition in
22 2014, you hadn't yet fallen at ALDI; is that right?

23 A Right.

24 Q You hadn't yet claimed a neck injury from the fall
25 at the ALDI; is that correct?

1 A Right.

2 Q Okay. And this was 2014; it was before we did the
3 Kroger deposition, where you said you had a neck injury
4 in a car accident, correct?

5 A Repeat that?

6 Q Sure. 2014 is before 2016, when you gave that
7 Kroger deposition we just talked about, right?

8 A Okay.

9 Q Okay. And when you told me in the deposition and
10 you told the Court here today that you never had an
11 injury to your neck before the fall at the ALDI, 2014,
12 that's before you made that statement, correct?

13 A I don't understand the question ---

14 Q Okay.

15 A --- you're asking.

16 Q I'll break it -- I'll make it real simple. 2014 is
17 before 2016, isn't it?

18 A Yes, it is.

19 Q Okay. So anything you said in 2014 would've been
20 said before you said something else in 2016 or 2017; is
21 that right?

22 A Something I said ---

23 Q Sure.

24 A --- in '14?

25 Q We'll -- we'll move on, Ms. Wiggins, to that. The

1 testimony you just gave was that nobody had never
2 recommended a neck surgery to you; is that correct?

3 A Let me see that.

4 Q Sure. It's page 17.

5 A I think I wasn't seeing a neurosurgeon in 2014.
6 That's what I said. Okay. Where is this at?

7 Q Page 17, Ms. Wiggins.

8 A Okay. Okay. Where on ---

9 Q We're going to start right at the top. And this is
10 discussing that 18-wheeler car accident that you
11 mentioned in that 2016 deposition.

12 And the question was (As read): "You mentioned an
13 18-wheeler hit your car?"

14 "Yeah."

15 "Were you driving?"

16 "Yes, I was."

17 "Did you go to the hospital?"

18 "Yes."

19 "What did you hurt?"

20 Do you see this, Question No. 10.

21 A Uh-huh.

22 Q Okay. (As read): "I was already having problem
23 with my neck."

24 A Uh-huh.

25 Q And we skip down to 15, because there was some --

1 some talking over there.

2 "From the pinched nerve?"

3 "Yes."

4 "What happened?"

5 Your answer you gave then, in 2014: "It made it
6 worse. And that was before it was healed."

7 There, you say it got healed. But you went to a
8 chiropractor. You saw a primary-care doctor. You went
9 to USC Clinic, a speciality clinic. You were seen by a
10 neurosurgeon.

11 And the question that was asked: "What was the
12 recommendation -- what did the neurosurgeon tell you?"

13 And the answer was -- this is 2014 when you said
14 this -- "They wanted to do two surgeries, one in my neck
15 and one in my back."

16 Do you see that?

17 A Okay. In 2014 is when I made this statement. But

18 ---

19 Q I ---

20 A --- this ---

21 Q I understand.

22 A But when the chiropractor was talking about this,
23 this was all the way back in 2009.

24 Q Okay. But in 2009 a neurosurgeon said you needed a
25 neck surgery, didn't he?

- 1 A Well, I had another one saying I didn't.
- 2 Q Okay.
- 3 A So ---
- 4 Q But one did.
- 5 A And I didn't have no more problems with it either.
- 6 Q Sure. Well, the reason that that neurosurgeon
- 7 recommended that you have a surgery -- and this is
- 8 Palmetto Health 100 that is in the record -- is that you
- 9 had a CT scan done in 2009. Do you see that?
- 10 A (No audible response.)
- 11 Q Looking for the date here. 11/23/2009. Do you see
- 12 this right here?
- 13 A (No audible response.)
- 14 Q I can zoom it even further, Ms. Wiggins.
- 15 11/23/2009, do you see that?
- 16 A Yes.
- 17 Q Okay. And it's a CT cervical spine. Do you see
- 18 that?
- 19 A Yes.
- 20 Q And cervical means neck, correct?
- 21 A Yes.
- 22 Q Okay. So in 2009, when this doctor recommended
- 23 surgery, you had a CT scan ---
- 24 A Okay.
- 25 Q --- that listed you had disc protrusions; you had a

1 severely flattened spinal cord; you had joint
2 degenerative changes; you had foraminal stenosis. And
3 you had these protrusions and stenosis at C2-3, C3-4, C4-
4 5, C5-6, C6-7, and C7-T1, correct?

5 A That's what it says.

6 Q That's what it says.

7 Following that CT scan, that's when a doctor said
8 you need a neck surgery, right?

9 A Yes.

10 Q Okay. After the Wal-Mart -- I'll take that. I'll
11 place it with the Court, Ms. Wiggins. Hand me that back.
12 Just let me know when you're finished reading it.

13 MR. BARTON: Ms. Wiggins, go ahead and give him the
14 deposition.

15 THE WITNESS: Oh, okay. Okay. I was looking at
16 something else. Okay.

17 MR. BAYNE: That's fine.

18 Q In addition to the fall at the Wal-Mart and the fall
19 at SMX Staffing, the fall at the Kroger, 12 days before
20 you fell at ALDI, you fell at the State Health Agency,
21 correct?

22 A Yes.

23 Q Okay. And that was on June 5th, 2017, wasn't it?

24 A I believe -- yeah.

25 Q Okay.

1 A Yeah, it was. Yes.

2 Q And after that fall on June 5th, 2017, you went and
3 hired Ms. Burnside to represent you in that fall,
4 correct?

5 A Pardon me?

6 Q After you fell at the State Health Agency on June
7 5th, you ---

8 A Okay.

9 Q --- went and hired Ms. Burnside to represent you in
10 that fall, correct?

11 A Yes.

12 Q And she sent you to Sunset Family Practice and Dr.
13 Gal Margalit, correct?

14 MR. BARTON: Objection, Your Honor. I -- I don't
15 believe that's a correct characterization of -- of what
16 happened.

17 MR. BAYNE: Well, let's look at the medical records
18 from Sunset Family Practice.

19 THE COURT: That objection is overruled, and you may
20 ask the question.

21 Q Ms. Wiggins, this is a copy of that record, which is
22 in evidence. And you see right up here at the top, it
23 says "Sunset Primary Care." Do you see that?

24 A Uh-huh.

25 Q It says "Gal Margalit." That's the doctor you saw.

1 A Uh-huh.

2 Q And then, down here it says "date of accident, June
3 5th" ---

4 A Uh-huh.

5 THE COURT: And you need to say "yes" or "no,"
6 ma'am. Don't ---

7 THE WITNESS: Oh.

8 THE COURT: --- say "uh-huh."

9 THE WITNESS: Oh.

10 THE COURT: Thank you.

11 A Yes, I see.

12 Q And then, "date of" -- "DOS," that's date of service
13 -- is June 8th, 2017, correct?

14 A (No audible response.)

15 Q Do you see that?

16 A Yes.

17 Q And right above that it says "Attorney, Oswald &
18 Burnside"; is that right?

19 A Yes.

20 Q And that's because you went to Oswald & Burnside and
21 they sent you to Sunset Family Practice to get care with
22 Dr. Margalit; is that right?

23 A Actually, he was referred by somebody else ---

24 Q Okay.

25 A --- to me.

- 1 Q Who was he referred by?
- 2 A An associate of mine.
- 3 Q Who is your associate?
- 4 A Edith.
- 5 Q Okay. Well, let's talk about that associate.
- 6 Because in the deposition that you gave in this case, in
- 7 the ALDI case, you said the same thing. You remember
- 8 saying that?
- 9 A Yes.
- 10 Q , But what you said was -- the question I asked (As
- 11 read): "Prior to the fall at the ALDI, had you ever been
- 12 to Sunset Family Practice?"
- 13 Do you remember that question?
- 14 A Prior to the fall?
- 15 Q Yes, ma'am.
- 16 A Okay. Yes.
- 17 Q And prior to the fall ---
- 18 A Prior ---
- 19 Q --- at the ALDI ---
- 20 A --- prior to the fall ---
- 21 Q --- at the ALDI?
- 22 A --- at the ALDI.
- 23 Q Yes, ma'am.
- 24 A Yes.
- 25 Q I asked you that question. Do you remember that?

1 A Yeah.

2 Q And your answer was (As read): "I had never been to
3 Sunset Family Practice before I fell at the ALDI."

4 Do you remember saying that?

5 A No. I don't remember saying that.

6 Q Well, let's -- let's look at it real quick. This is
7 from page 44 of your deposition. I quoted almost
8 verbatim.

9 (As read): "Let me ask this. Had you ever seen Dr.
10 Margolit before the fall at the ALDI? Had you ever
11 treated with him?"

12 What'd you say?

13 A (No audible response.)

14 Q You see the ---

15 A It says ---

16 Q --- "A" right there.

17 A --- "No."

18 Q It says "No." Okay.

19 That's not true, is it?

20 A No. I saw him when I first fell at ---

21 Q That's right. You saw him ---

22 A When I fell at ---

23 Q --- on June 8th, 2017, correct?

24 A Yes.

25 Q And that's ---

- 1 A According ---
- 2 Q --- not ---
- 3 A --- to that.
- 4 Q That's nine days before the fall at the ALDI; is
- 5 that right?
- 6 A Yes.
- 7 Q So you had seen Dr. Margolit before you ever fell at
- 8 the ALDI; is that correct?
- 9 A Yes.
- 10 Q Okay. And this was a fall where you fell at the
- 11 State Health Finance Department, and you said you tripped
- 12 over a threshold and fell onto your left side; is that
- 13 correct?
- 14 A Yes.
- 15 Q Okay. When you fell at the ALDI, following that
- 16 fall, you went to Lexington Medical Care in Irmo,
- 17 correct?
- 18 A Yes.
- 19 Q And that was an urgent-care center out in Irmo,
- 20 wasn't it?
- 21 A Yes.
- 22 Q And when you went out there -- look at this record
- 23 from LMC Irmo -- the date of service, June 17th, 2017.
- 24 Do you see that?
- 25 A Yes.

1 Q That's the same day you fell at the ALDI, correct?

2 A Yes.

3 Q And down under this history of present illness, it
4 says (As read): "She has had several recent falls and
5 was seen in ED on 6/5/17; received dilaudid 2 mg and
6 further oxycodone." Correct?

7 A Yes.

8 Q Okay.

9 A I see that.

10 Q So the doctor, based on your visit on June 17th,
11 noted that you had had several recent falls, correct?

12 A (No audible response.)

13 Q That's what ---

14 A Yes.

15 Q --- this record says.

16 A Yes.

17 Q Now, I want to go back a step and talk about other
18 prior neck pain. Because something you said on direct
19 examination was that it had been at least 12 years since
20 you had had any type of pain in your neck. Do you
21 remember saying that?

22 A Yes.

23 Q Okay. Back in 2013 -- in fact, it was about three
24 years to the day before the fall at the ALDI -- and this
25 is LMC 060 -- you went to Lexington Medical Center. And

1 do you see up here at the top, it says 6/9/2013?

2 A Yes.

3 Q Okay. So that would be June 9th, 2013, basically
4 three years before the fall at the ALDI; is that right?

5 A Yes.

6 Q Three years is less than twelve years, isn't it?

7 A Yes.

8 Q All right. The HPI comments, that the history-of-
9 present-illness comments. It states (as read): "Patient
10 seen 5/20 for cervical radiculopathy." Do you know what
11 cervical radiculopathy is?

12 A No.

13 Q Okay. Cervical is neck, right?

14 A I guess it is.

15 Q Okay.

16 A Yeah.

17 Q So you were seen for neck radiculopathy. You were
18 given steroids and perc. (As read): "Pain resolved
19 until last p.m., when she nodded off while sitting up.
20 Neck was at an odd angle, and she felt a pop when she sat
21 up. Now pain from right neck, radiating down right arm
22 to ulnar right side of hand, down right back to buttock
23 and right leg."

24 Do you see that?

25 A Yes.

1 Q Okay. So in June of 2013, you went to the emergency
2 room at Lexington Medical Center because you had felt a
3 pop in your neck that caused radiating pain into your
4 arms and your legs, correct?

5 A Yes.

6 Q So when you told us earlier that in the past 12
7 years you had never had neck pain, that was not true; is
8 that right?

9 A I said I didn't have no more problems. But I don't
10 -- I don't -- I don't even remember this.

11 Q Well, would you agree that a pop that was so severe,
12 it caused radiating pain into your arms and legs and sent
13 you to the emergency room was a problem?

14 A Well, yes, it is.

15 Q Okay.

16 A But I've had numerous ---

17 Q Well, my question was very to the point, Ms.
18 Wiggins, which was: When you said, in 12 years you've
19 never had any neck pain, in June of 2013, you had a neck
20 pain, didn't you?

21 A I said -- you asked me have I had any more neck
22 injuries, and I told you no.

23 Q No, ma'am. My question ---

24 A At ---

25 Q --- was: On direct examination Mr. Barton asked you

1 the question: "When was the last time you had had neck
2 pain?"

3 And your answer was: "Twelve years ago."

4 Do you remember saying that?

5 A Well, it was around 2010 ---

6 Q Okay.

7 A --- I guess.

8 Q This is 2013. That's not 12 years ago.

9 A Okay. So it came back, then.

10 Q Okay. So it came ---

11 A And then ---

12 Q --- back in 2013?

13 A Obviously ---

14 Q And it was ---

15 A --- so.

16 Q And it was so severe that you had to the go to the
17 emergency room for it, correct?

18 A Yes.

19 Q Right below that where it says "neck pain," it says
20 (As read): "This is a recurrent problem."

21 Do you see that?

22 A Yes.

23 Q Do you know what the word "recurrent" means?

24 A Yes.

25 Q Does that mean it keeps coming back?

1 A Yes.

2 Q So in 2013 when you went to the emergency room at
3 Lexington Medical Center with a pop in your neck that
4 sent radiating pain into your arms and leg, you told the
5 doctor it was a recurrent problem you were having.

6 A This is what the doctor state ---

7 Q Well, did you ---

8 A --- that it's ---

9 Q --- tell the ---

10 A --- a recurrent ---

11 Q --- doctor that?

12 A --- problem.

13 Q Did you tell the doctor that?

14 A That's -- this is what the doctor is saying, right?

15 Q I understand that. But did you tell the doctor that
16 it was a recurrent problem that occurs constantly?

17 A I don't recall. All I know is whatever I went to
18 the emergency room for, I told him what my symptoms were.

19 Q You went to the emergency room because you had a pop
20 in your neck, right?

21 A Yes, according to your -- according to this, yes.

22 Q Well, do you think that's wrong?

23 A No.

24 Q Do you think the doctor made that up?

25 A No. Because they've seen me there before for it in

1 the past. But you asked me did I state that. And I told
2 you I don't remember what I said there.

3 Q Well, here's ---

4 A I just know, when I go ever I go to the doctor or to
5 a hospital, I let the doctor know what my symptoms are
6 ---

7 Q You let ---

8 A --- what ---

9 Q --- him know ---

10 A --- my ---

11 Q You let him know what your symptoms are?

12 A I -- you know, where -- where I'm hurting at ---

13 Q Right.

14 A --- what I'm coming there for.

15 Q And when you went on June 9th, 2013, it was because
16 you had neck pain?

17 A Yes.

18 Q And you had neck pain so severe that it popped and
19 it was radiating into your arms, your butt, and your
20 legs, correct?

21 A Right.

22 Q And it was a recurrent problem that had occurred
23 constantly. That's what you let them know at that time;
24 is that correct?

25 A I'm not -- like I said, I don't recall whether I

1 told him that or not. Because according to this, this is
2 what the doctor is saying ---

3 Q Okay. Well ---

4 A --- not ---

5 Q --- do you think ---

6 A --- me.

7 Q Do you think the doctor got it wrong?

8 A (No audible response.)

9 Q Do you think the doctor made that up?

10 A No. I think that was the doctor's opinion,
11 according to my past.

12 Q Your past of neck pain and neck injury, correct?

13 A You did go back to 2008, right?

14 Q Yeah.

15 A Okay.

16 Q And your ---

17 A Yeah.

18 Q --- past of surgical recommendation for your neck,
19 correct?

20 A I didn't have surgery.

21 Q I didn't say you had surgery. I said a doctor, a
22 neurologist -- remember, we went through that ---

23 A Right.

24 Q --- said you needed a surgery on your neck. Do you
25 remember that?

- 1 A I had one that said I did and one that didn't.
- 2 Q Okay. And ---
- 3 A So ---
- 4 Q --- that was ---
- 5 A --- I didn't ---
- 6 Q --- that was 2009 or '10, right?
- 7 A Yes.
- 8 Q And then you had the automobile accident where you
- 9 said you slammed your head?
- 10 A Yeah.
- 11 Q You had a neck injury in that accident?
- 12 A Uh-huh.
- 13 Q And then in 2013 ---
- 14 A Yes.
- 15 Q --- you're back in the Lexington Medical Center with
- 16 a neck pop and radiating pain in your neck, correct?
- 17 A Yes.
- 18 Q Okay.
- 19 A I don't understand something, sir. What that has to
- 20 do with this one?
- 21 Q Well, ma'am, I'll ---
- 22 MR. BARTON: May ---
- 23 Q --- I'll be happy ---
- 24 MR. BARTON: Your Honor ---
- 25 Q --- to answer it ---

1 MR. BARTON: --- I'd just like to caution Ms.
2 Wiggins. All you can do is answer ---

3 THE COURT: Ma'am -- Mr. Barton ---

4 THE WITNESS: Okay.

5 MR. BARTON: --- for the ---

6 THE COURT: --- you don't give ---

7 THE WITNESS: Okay.

8 THE COURT: --- that witness instructions.

9 THE WITNESS: I -- I was ---

10 MR. BARTON: Oh.

11 THE WITNESS: --- I was just ---

12 MR. BARTON: I'm sorry.

13 THE WITNESS: --- trying to get an understanding.

14 THE COURT: You don't talk to that witness until
15 it's ---

16 MR. BARTON: Yes, sir.

17 THE COURT: --- your turn to talk.

18 MR. BARTON: Yes, sir.

19 MR. BAYNE: Ms. Wiggins ---

20 THE COURT: Ma'am, you ---

21 MR. BAYNE: --- normally, I won't ---

22 THE COURT: --- Ms. Wiggins, you don't get to ask
23 question, okay? You get to answer them. Thank you.

24 THE WITNESS: Okay.

25 THE COURT: Go ahead, Mr. Bayne.

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1 MR. BAYNE: Thank you, sir.

2 THE WITNESS: All right.

3 Q This is LMC 853. You see the date up there at the
4 top right, 2/25/2010?

5 A Yes.

6 Q Okay. So that's sometime between the CT scan we saw
7 that had all those herniated, bulging discs and between
8 2013 where you had the neck pop, correct, 2010?

9 A Yes.

10 Q Okay. Neck pain and cervical radiculopathy was your
11 diagnosis in 2010, correct?

12 A Yes.

13 Q That's less than 12 years ago?

14 A Well, this is 2018 -- well, yeah. That's ---

15 Q Okay.

16 A --- eight years.

17 Q This is 5/7/2010. Neck pain and cervical
18 radiculopathy again, correct?

19 A Yes.

20 Q This is 7/18/2010. And that's back pain. That's
21 different from a neck pain. 9/7/2010, we have back pain
22 and chronic pain. And then, we get to 10/20/2010 and
23 you're back having neck pain, correct?

24 A Yes.

25 Q 11/15/2010, neck pain, cervical radiculopathy. You

1 see that?

2 A Yes.

3 Q 12/1/2010, that's the motor vehicle accident where
4 you had back strain and muscle spasms, correct?

5 A Pardon me?

6 Q That's the motor vehicle accident you told us about
7 in 2010, right, where the 18-wheeler hit you?

8 A I don't know whether it's that one or not. I just
9 know that ---

10 Q There's too -- there's too many of them to remember
11 which one was which, correct?

12 A Well, I -- I don't see it on there.

13 Q After you had the fall at the ALDI, you treated with
14 -- we talked about Sunset Family Practice. You also went
15 to Grace Medical Center for some of your treatment,
16 correct?

17 A Yes.

18 Q And at times during that treatment, you also went to
19 Lexington Medical Center for some care, correct?

20 A Yes.

21 Q And on July 20th, 2017 -- do you see the date up
22 there?

23 A Yes.

24 Q That is about a month after the fall at the ALDI,
25 correct?

1 A Yes.

2 Q And you went to Lexington Medical Center, claiming
3 that you had been poisoned by the maintenance man because
4 he didn't want you to testify against him in some form or
5 fashion, correct?

6 A Yes.

7 MR. BARTON: Your Honor ---

8 A That ---

9 MR. BARTON: --- I'm going ---

10 A --- was because ---

11 MR. BARTON: --- to object.

12 A --- I was falling ---

13 MR. BARTON: Excuse ---

14 A --- all ---

15 THE COURT: Hold -- hold on ---

16 A --- the time.

17 THE COURT: --- hold on, Ms. Wiggins.

18 MR. BARTON: I'm going ---

19 THE COURT: Go ahead.

20 MR. BARTON: --- to object ---

21 THE WITNESS: Okay.

22 MR. BARTON: --- on the grounds of relevancy at this
23 point.

24 MR. BAYNE: I'll tie up the relevancy in a second,
25 Judge.

1 THE COURT: Okay. I'll ---

2 MR. BAYNE: It's ---

3 THE COURT: --- give you a little bit of leeway.

4 MR. BAYNE: It'll be the next record.

5 Q You went to Lexington Medical Center, complaining of
6 poisoning by your maintenance man, correct?

7 A Yes.

8 Q And then you went to Grace Medical Center for
9 treatment following that, due to possible poisoning. And
10 Grace Medical Center is where you saw Stewart Darby,
11 correct?

12 A Yes.

13 Q And Stewart Darby is who saw you -- actually, this
14 looks like it was Cynthia Betts. You talk about the
15 poisoning. You talk about coordinating and balance. And
16 then she says that she had falls, correct?

17 A Yes.

18 Q And that's following a sentence, which is (As read):
19 "One week later, she ate some chicken. She started
20 swelling in her legs and feet. She has painful arms,
21 hips, leg, and feet. Her coordination and balance was
22 off. She had falls."

23 Correct? That's what it says?

24 MR. BARTON: Your -- Your Honor -- Your Honor, I'm
25 going to renew my objection. It still hadn't been tied

1 into anything related to this accident.

2 THE COURT: Mr. Bayne?

3 MR. BAYNE: Your Honor, the record states that she
4 ate chicken that was poisoned; it resulted in swelling in
5 her legs; and then she had falls. She is alleging that
6 the falls she claims she had after the fall at the ALDI
7 were relating to her neck. This record says it's
8 relating to chicken that she ate that was poisoned by her
9 maintenance man.

10 THE COURT: I'll allow it.

11 Q Ms. Wiggins, did you tell Grace Medical Center that
12 you had had falls following eating poisoned chicken?

13 A Yes.

14 Q Okay.

15 A But let me explain why.

16 Q Sure.

17 A The falls -- when I -- after I fell at ALDI is when
18 I started having the falls. I didn't know what was wrong
19 with me. I had some other issues also going on where the
20 maintenance was coming into my home. And he was not
21 authorized to do that and -- at all. He was just
22 constantly coming into my house.

23 So I assumed that he had done something. I didn't
24 know what was wrong with me or why I was falling at the
25 time. But it was cleared up later by my neurologist why

1 I was falling.

2 Q And what you told ---

3 A And it ---

4 Q --- Grace ---

5 A --- was due to the fall at ALDI's.

6 Q What you told Grace Medical Center in that July
7 visit was your past medical history at that time was knee
8 pain, shoulder pain, and back pain, correct?

9 A (No audible response.)

10 Q You see that?

11 A Yes.

12 Q It doesn't say neck pain, does it?

13 A No, it doesn't.

14 Q This is a month after the fall at the ALDI where you
15 say you injured your neck, correct?

16 A Yes. At Grace Medical?

17 Q This is Grace Medical, that same poisoning visit
18 that we're talking about. You see right here? I'll
19 highlight it for you. You see right there?

20 A Yes.

21 Q Okay.

22 A I see ---

23 Q So it ---

24 A --- that.

25 Q --- doesn't mention neck pain in that visit, does

1 it?

2 A No.

3 Q And what you told me in our deposition that we did
4 was you had had nine falls after you fell at the ALDI,
5 correct?

6 A Yes, that's ---

7 Q Okay.

8 A --- about right.

9 Q Let's talk about the actual fall at the ALDI, Ms.
10 Wiggins. In the store that day, you had actually
11 returned some items in one lane and then you went over to
12 another lane to finish checking out; is that correct?

13 A Yes.

14 Q Okay. And you were in that lane when you asked the
15 cashier to get you a chair, correct?

16 A Yes. I was in her lane.

17 Q At the time you asked her to get you a chair, you
18 didn't say, "I need a chair because my legs hurt," did
19 you?

20 A I said, "My knees hurt."

21 Q You said your knees hurt?

22 All right. You remember giving a deposition in this
23 case, don't you?

24 A Yes.

25 Q Would it help you to refresh your recollection and

1 look at what you said, specifically about when you asked
2 for the chair from ALDI?

3 A After I had been standing in that line so long.

4 Q Well, let's look at it real quick. This is page 32
5 of your deposition. The question was (As read): "Tell
6 me what happened in the fall. Walk me through what you
7 were doing, how the situation came about, and how you
8 fell down."

9 Answer you gave me was: "I was standing in line. I
10 asked the cashier to get me a chair to sit in."

11 Do you see that?

12 A Okay.

13 Q You didn't say, "I asked the cashier to get me a
14 chair to sit in because my knees hurt," did you?

15 A I did say that.

16 Q I'm not asking about at the store. I'm saying when
17 you were under oath and I asked you what you -- what you
18 did, you didn't say anything about your knees, did you?

19 A Well, no. It's not mentioned there. But ---

20 Q And ---

21 A --- you didn't ---

22 Q --- and you were ---

23 A --- ask me that.

24 Q Well, I asked you what you -- what you did, didn't
25 I?

1 A Yeah. I asked her for a chair to sit in.

2 Q You -- you asked for a chair to sit in, not because
3 -- you didn't say you asked her about your knees or about
4 your legs or -- or that you were tired, correct?

5 A I asked her for a chair to sit in because my knees
6 was hurting.

7 Q The ---

8 A But ---

9 Q Let me back up. The reason you asked is because
10 your knees were hurting. You did not tell the employee
11 that your knees were hurting, did you?

12 A Yes, I did.

13 Q Okay. That's your testimony today, that you did
14 that?

15 A Yes. I did.

16 Q Okay. In the fall in the ALDI, when you asked for
17 that chair, the employee went and got one of those
18 office-style rolling chairs for you from your right side,
19 correct?

20 A Yes.

21 Q And she brought that over to you?

22 A Yes.

23 Q And when she did that, you watched her do it, didn't
24 you?

25 A The first chair?

- 1 Q Yes, ma'am. You ---
- 2 A Yeah.
- 3 Q --- watched her do that. You ---
- 4 A Yeah.
- 5 Q --- saw it was on wheels?
- 6 A Yeah.
- 7 Q You know chairs on wheels, they roll, don't you?
- 8 A I would assume so.
- 9 Q Well, you testified that you know, not only do they
- 10 roll, but they roll when you try to sit down in them,
- 11 didn't you?
- 12 A Yes.
- 13 Q So you were aware, on that day in the ALDI, that if
- 14 you tried to sit in a chair with wheels on it, it would
- 15 move as you tried to sit down, weren't you?
- 16 A Yes. It -- it has wheels. It will ---
- 17 Q It's ---
- 18 A --- move.
- 19 Q It's common sense, isn't it?
- 20 A Yes.
- 21 Q Yeah. That first chair she brought, it wouldn't
- 22 lower any further and it was too high for you to sit in,
- 23 correct?
- 24 A Right.
- 25 Q So you asked her to get you a different chair?

1 A Well, she said it was broke.

2 Q You asked for another chair, though, didn't you?
3 You didn't want to sit in a broken chair?

4 A Well, I didn't have to ask her for another chair.
5 She just said, "I'm going to get you another chair."

6 Q So she recognized there was a problem with the first
7 chair and went and got you a second chair you could sit
8 in?

9 A Yes.

10 Q Okay. And when she went to go get that second
11 chair, you watched her wheel that chair back to you as
12 well, didn't you?

13 A Well, for a minute. When she said, "I got you a
14 chair," I turned around. And then I turned back around.

15 Q But you did see her wheel that second chair up to
16 you?

17 A Well, when she got closer, but I felt the chair hit
18 the back of my leg. That's how I -- I assumed she was
19 back there with the chair. Because I ---

20 Q I didn't ---

21 A --- felt it.

22 Q --- I -- I wasn't asking about that moment. I'm
23 asking: When she gets that second chair, you saw it and
24 knew that that chair as well had wheels on it, didn't
25 you?

1 A Yeah. When she pulled it out from the cashier
2 stand, then yes.

3 Q And that chair was no different from the first
4 chair, except it was lower to the ground so that you
5 could sit in it, wasn't it? In

6 A (No audible response.)

7 Q In fact ---

8 A I was ---

9 Q --- it wasn't -- it wasn't broken like the first
10 chair, right?

11 A Far as I know, it wasn't.

12 Q Okay. And that's when the cashier takes that other
13 chair away and walks back over and puts it back where the
14 first chair came from, correct?

15 A She put the other chair back, and then she got the
16 other one.

17 Q Right. When you -- when she brought you that chair,
18 you didn't ask her for help sitting down in the chair,
19 did you?

20 A No.

21 Q You didn't tell her you needed help with sitting
22 down in the chair, did you?

23 A No.

24 Q You didn't need help sitting down in a chair at that
25 time, did you?

1 A In my opinion, it's a chair with wheels on it that
2 has no arms. I personally, with common sense, would
3 stand there and hold a chair for a person until they sat
4 down.

5 Q Were you physically able to sit down in a chair with
6 wheels on in June of 2017?

7 A Yes.

8 Q Okay. You never told the employee at ALDI, "I can't
9 sit in the chair," did you?

10 A I told her, on the first chair, it was too high.

11 Q Right. And they got you a second one?

12 A Yes.

13 Q And at no time during that process did you say,
14 "Hey, miss cashier, I have trouble sitting down; I need
15 you to help me." You never said that, did you?

16 A No.

17 Q Because you didn't need help.

18 A No. I didn't ask her for help to sit down.

19 Q When the cashier brought that second chair to you,
20 she didn't give you an instruction to sit down at that
21 time, did she?

22 A She just -- she -- she just said, "Here is your
23 chair."

24 Q Right. She ---

25 A Okay.

1 Q --- didn't say, "Ms. Wiggins, you can sit now."

2 A No.

3 Q She didn't say, "Ms. Wiggins, it's safe to sit
4 down."

5 A No.

6 Q You didn't turn around and say, "Hey, hold the chair
7 for me; I need help sitting down in this chair."

8 A No.

9 Q You didn't turn and look at the chair, did you?

10 A Well, how I know that she was -- yes, I did see her
11 bring the chair.

12 Q I'm not asking if you saw her bring the chair. I'm
13 asking: Once she brought the chair and it was behind
14 you, you never once turned to look and verify that chair
15 was behind you, did you?

16 A No.

17 Q You never once turned around to make sure it was in
18 the right spot so that you could sit down, did you?

19 A No. I didn't turn to look. I felt it.

20 Q And in your deposition one of the things you said
21 was that it was prudent for somebody to look and make
22 sure that a chair was there before they sat down,
23 correct?

24 A Pardon me?

25 Q You agree that it's prudent -- it's wise; it's

1 something you should do. You should look before you sit
2 to make sure that chair is there, correct?

3 A (No audible response.)

4 Q It's common ---

5 A Well ---

6 Q --- sense -- well, let me ask it. It's common sense
7 that you look before you sit, right?

8 A Just like when I sat here?

9 Q Yes, ma'am.

10 A I bent over. I put my arms on here. And I sat
11 down, because I knew the chair was there.

12 Q And you looked before you sat, didn't you?

13 A Well, from here, I can't see the chair ---

14 Q Okay.

15 A --- looking down. But I can feel it.

16 Q You also walked right up to it, looking at it as you
17 got there, didn't you?

18 A I was facing it ---

19 Q Sure.

20 A --- at that time, not this chair, though.

21 Q You don't have any reason to believe that the chair
22 you sat in was defective in any way, do you?

23 A No.

24 Q The chair itself wasn't dangerous on its own, was
25 it?

1 A Which chair?

2 Q The chair you sat in -- or tried ---

3 A You talking ---

4 Q --- to sit ---

5 A --- about this one?

6 Q No, ma'am. The chair All at the ALDI that you --
7 that you missed when you fell to the floor, there was
8 nothing dangerous about that chair that you observed, was
9 there?

10 A I don't understand the question on that.

11 Q Well, when you looked at the chair, did you say,
12 "Hey, this chair is dangerous," or did it look like ---

13 A It was ---

14 Q --- a normal ---

15 A --- was nothing -- it was nothing that I could see
16 that was dangerous ---

17 Q Right.

18 A --- except for the fact, since you're asking that,
19 that when -- like I said before, if a chair have wheels
20 on it, you should hold it for a person.

21 Q That's what you believe, correct?

22 A Well, any reasonable person would.

23 Q But you didn't ask for that.

24 A I shouldn't have to.

25 Q Okay. There were no damage to the wheels that you

1 saw?

2 A I -- I didn't examine the chair.

3 Q The floor wasn't damaged.

4 A I didn't examine the floor either. But ---

5 Q You ---

6 A --- far as I know, the floor was not damaged.

7 Q You testified previously there were no liquid or
8 oils or spills on the floor where you were trying to sit
9 down ---

10 A Oh.

11 Q --- correct?

12 A Far as I know, no.

13 Q When you ---

14 A I didn't see any.

15 Q When you fell, you grabbed your shopping cart and
16 pulled it down on top of yourself, correct?

17 A Yes.

18 Q And as far as you know ---

19 A I was ---

20 Q --- there was no ---

21 A --- trying to break my fall.

22 Q As far as you know, there was nothing wrong with the
23 shopping cart; is that right?

24 A No.

25 Q Ms. Wiggins, when we took your deposition the first

1 time -- or the only time we took it, one of the questions
2 I asked you at the very end was: How do you believe this
3 fall happened. Do you remember that series of questions
4 at the end of your deposition?

5 A You asked me a lot of questions.

6 Q I know ---

7 A I don't ---

8 Q --- I did.

9 A You asked me a lot.

10 Q I've asked you a lot today too. We'll look at it

11 ---

12 A Yeah.

13 Q --- real quick.

14 A Okay.

15 Q What you said at that time, when I deposed you, was
16 that you believe the employee pulled that chair out from
17 underneath you as you sat down. Do you remember saying
18 that?

19 A Yes, I do remember saying that.

20 Q And that's ---

21 A I ---

22 Q --- what you ---

23 A --- I said that's what I believe.

24 Q That's what you believed happened, correct?

25 A Yes.

1 Q That's not what happened, is it?

2 A Well, I didn't find out till -- how it actually
3 happened till I saw the video.

4 Q So when you saw the video, you changed that story
5 from ---

6 A No. I ---

7 Q --- the employee ---

8 A --- didn't ---

9 Q --- pulled ---

10 A --- change ---

11 Q --- the chair ---

12 A --- my ---

13 Q --- out ---

14 A --- story.

15 Q Okay. Your original story you gave was that the
16 employee must have pulled that chair out from underneath
17 me as I sat down, correct?

18 A That's the way I felt. Yes. I'm just being honest.

19 MR. BAYNE: Your Honor, that's all the questions I
20 have at this time.

21 THE COURT: All right. Redirect?

22 MR. BARTON: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. BARTON:

25 Q You were asked about a CAT scan from 2009.

1 A Yes.

2 Q At that point was any surgery scheduled for your
3 neck?

4 A No.

5 Q All right. I think the last thing you were asked
6 about, in reference to your neck, was June of 2013.

7 A Okay.

8 Q Okay?

9 When did this accident happen?

10 A When did the accident happen?

11 Q Well, is it correct that this accident happened, the
12 ALDI's accident, happened in June of 2017?

13 A Yes.

14 Q That would be four years, wouldn't it?

15 A Yes.

16 Q All right. In the four years before this accident
17 happened, were you receiving any treatment for your neck?

18 A No.

19 Q Before this accident happened at ALDI's, did you
20 have any doctors appointments scheduled for them to see
21 you about your neck?

22 A No.

23 Q Did you have any surgery planned on your neck before
24 this accident happened?

25 A No.

1 Q And you admit that you've had a number of accidents,
2 correct?

3 A Yes.

4 Q Okay. The bill for Lexington Medical Center for
5 \$200 and -- let me make sure I do this right.

6 A Uh-huh.

7 Q The bill for Lexington Medical Center for \$219 and
8 the bill from Palmetto Health for \$98,767, were those
9 related solely to treatment for your neck?

10 A Yes.

11 Q And that was after the fall at ALDI's, correct?

12 A Yes.

13 Q And this -- this bill from Lexington Medical Center
14 shows an admission date of June 17th of 2017. Is that
15 the date of this accident?

16 A Yes.

17 MR. BARTON: Your Honor, if I can have just a
18 second.

19 THE COURT: Okay.

20 (Whereupon, Ms. Burnside and Mr. Barton conferred.)

21 Q Immediately before this fall happened at ALDI's and
22 you were getting ready to sit down, what was -- what was
23 your understanding of what the cashier was doing?

24 A Will you repeat it, please?

25 Q Yes, ma'am. That's okay.

1 A All right.

2 Q When you were getting ready to sit down on this
3 chair before the fall, what did you think the ALDI's was
4 doing?

5 A You talking about while I was standing in line?

6 Q No, ma'am.

7 MR. BARTON: Your Honor ---

8 A I ---

9 MR. BARTON: --- I ---

10 A --- I'm sorry.

11 Q Okay. I'll ---

12 A I'm in ---

13 Q --- withdraw ---

14 A --- just in a ---

15 Q --- the question.

16 A --- lot of pain right now. I'm sorry.

17 Q No. That's fine. I'll withdraw the question.

18 MR. BARTON: Your Honor, I have no further
19 questions.

20 THE COURT: Recross?

21 MR. BAYNE: No recross, Your Honor.

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

23 Ladies and gentlemen, we're going to go ahead and
24 take our lunch break. It's ---

25 THE WITNESS: Uh-huh.

1 THE COURT: --- about 1:15. Y'all have been going
2 since early this morning. So I want to say thank you
3 very much for paying attention and staying with us.

4 Now, as we are about to take our lunch break, I will
5 remind you of your oath, your oath that you made to me,
6 to the parties, to the lawyers, to each other, and to
7 yourselves that you will not discuss this case in any
8 way, shape, or form. You will keep an open mind about
9 this case. You will not have any contact with any of the
10 parties, witnesses, lawyers, or anybody involved in the
11 case.

12 It is 1:15. We will start back at 2:30. We will
13 start back at 2:30.

14 Do not discuss the case. Keep an open mind. Thank
15 you very much. Mr. Dye will show you to your jury room
16 and then excuse you for lunch.

17 (Whereupon, the jury exited the courtroom at 1:18
18 p.m.)

19 (Off the record briefly.)

20 THE COURT: All right. Who will be next?

21 (Whereupon, the witness and the bailiff conferred.)

22 (Whereupon, the witness returned to counsel table.)

23 MR. BARTON: Your Honor, plaintiff rests. And I
24 apologize. I wasn't trying to be a smart Alec.

25 THE COURT: I didn't think you were.

1 MR. BARTON: And I ---

2 THE COURT: No.

3 MR. BARTON: Yeah.

4 THE COURT: Well ---

5 MR. BARTON: I'd use a different word, but we're on

6 ---

7 THE COURT: No.

8 MR. BARTON: --- the record.

9 THE COURT: No. You're fine.

10 So let's come -- I told them 2:30. So let's come
11 back at about 2:15, and we'll do directed-verdict motions
12 at that time.

13 And anything we need to take up before we leave, Mr.
14 Bayne?

15 MR. BAYNE: Judge, I have case law that I'll
16 reference in the directed verdict that I would pass up

17 ---

18 THE COURT: If you'd ---

19 MR. BAYNE: --- if you ---

20 THE COURT: --- like to me ---

21 MR. BAYNE: --- would like ---

22 THE COURT: --- to read it ---

23 MR. BAYNE: --- if you'd like to review it ---

24 THE COURT: --- over lunch ---

25 MR. BAYNE: I have ---

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1 THE COURT: --- go ahead ---

2 MR. BAYNE: --- I only ---

3 THE COURT: --- and give it ---

4 MR. BAYNE: --- have ---

5 THE COURT: --- to me now.

6 MR. BAYNE: --- two copies. So I'll just give one
7 and ---

8 MR. BARTON: That ---

9 MR. BAYNE: --- one and ---

10 MR. BARTON: --- that's ----

11 MR. BAYNE: --- I can ---

12 MR. BARTON: --- that's fine. I ---

13 MR. BAYNE: Okay.

14 THE COURT: Okay.

15 MR. BARTON: --- I don't need one.

16 THE COURT: Gracias. All right. 2:15, 2:15, 2:15.
17 Thank you very much.

18 MR. BARTON: Yes, sir.

19 (Off the record from 1:19 until 2:19 p.m.)

20 THE COURT: All right. We're back on the record in
21 2017-CP-40-5549. The plaintiff has rested its case. And
22 we are here for directed-verdict motions.

23 Mr. Bayne, I assume you want to talk?

24 MR. BAYNE: I would love to, Your Honor.

25 THE COURT: Okay.

MOTION BY DEFENDANT

1
2 MR. BAYNE: Your Honor, the -- at this time
3 defendant ALDI would make a motion for a directed verdict
4 in this case, as we have discussed repeatedly both in
5 pretrial and today. We had some discussion about it.

6 This is a fall that occurred at a grocery store here
7 in South Carolina. The legal standard that exists is
8 that there has to be -- a -- a shopkeeper has to keep a
9 store in a reasonably safe condition. The only time a
10 plaintiff may recover under that scenario is if there is
11 some form of dangerous condition.

12 That dangerous condition has to meet one of two
13 prongs: either that the plaintiff -- or not -- I'm sorry
14 -- the plaintiff -- the defendant negligently created
15 that condition; or the defendant was aware of the
16 condition and failed to warn the employee -- or the
17 plaintiff of that condition. The condition precedent to
18 that is that there be a dangerous condition. That has to
19 be shown before you can warn or fix or notify of a
20 dangerous condition.

21 So the threshold issue that we face is: Is a
22 office-style rolling chair on a tile floor a dangerous
23 condition in this store? And it's not. We have heard no
24 testimony that it is.

25 What we have heard, from the plaintiff and from the

1 plaintiff's witness, is that this was a tile floor and a
2 wheeled chair. There was no substance on the floor.
3 There was no spill, no grease, no oil, nothing that
4 created any type of slippery or otherwise dangerous
5 condition on the floor.

6 We've heard no testimony that the chair itself was
7 defective in any way; that it was broken. In fact, we
8 heard the first chair that was brought was broken in some
9 form that it wouldn't lower, so the employee went and got
10 another chair that would be able to fit the plaintiff in
11 this case.

12 The plaintiff, on the stand, testified that she saw
13 that the chair had wheels; she saw it would roll. She
14 said she knew that a chair with wheels could move. She
15 said she knew a chair with wheels, when you sat in it,
16 could move.

17 And the question, I said, was: "That's common
18 sense."

19 And she said, "Yes, it is."

20 So she admits to the knowledge that she has a chair
21 with wheels on it; that when she goes to sit in it, that
22 chair may move out from underneath her. She admitted on
23 the stand that she didn't look back at that chair to make
24 sure it was there. She admitted she didn't ask for help
25 sitting down.

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1 She admitted that she didn't need help sitting down;
2 that she didn't tell any employee, "Hey, I need you to
3 help me sit in this chair."

4 She asked for a chair; they brought her a chair.
5 What we saw in the video is the employee walks away. And
6 there's actually some form of interaction there, because
7 the employee turns around and looks right at Ms. Wiggins
8 before this chair fall happens. Ms. Wiggins denies that
9 that occurred. The video speaks for itself in that
10 scenario.

11 But the question then becomes: Is a chair on a tile
12 floor a dangerous condition? I submitted a series of
13 cases. Believe it or not, I'm sure Your Honor will be
14 shocked that South Carolina has not spoken on that issue,
15 as we tend to not speak on many issues that -- that occur
16 until they actually reach this point in the case.

17 But a lot of other jurisdictions have across the
18 country, both federal courts and state courts. And it is
19 unanimous that a chair on a floor is not a dangerous
20 condition.

21 In the packet that I provided, the first case is a
22 federal court case out of Wisconsin, *Jones v. United*
23 *States*. The reason I included this case first is because
24 it's actually a survey of a lot of other cases that are
25 included in this packet. So the Court in that case sort

1 of went through a number of other cases.

2 In that case, *Jones v. United States*, the plaintiff,
3 at a Department of Veterans Affairs, went to sit on a
4 rolling chair and it went out from underneath her. She
5 alleged that a rolling chair on a waiting-room floor in
6 the -- in the VA was a dangerous condition.

7 What the Court did is it went through and looked at
8 several of the other cases. On page -- if you look at
9 the bottom-right -- because I reorganized these after
10 printing -- page 26, which is actually the third page
11 into the packet, it cites a case, *Smith v. Marks Isaacs*
12 *Company* out of Louisiana. (As read): "The plaintiff
13 alleged negligence of the part of the beauty salon when
14 it used a rolling chair on a hard, marble floor on which
15 it could so easily roll. The Court rejected that
16 argument, concluding: 'We cannot believe that such a
17 chair, if safe on a linoleum floor, could be said to be
18 unsafe for its use on a marble floor.'"

19 The next page over, citing *Granison v. Builders*
20 *Square*, which is a New York State case (as read): "There
21 is no evidence in the record that the chair constituted a
22 hidden danger to plaintiff so as to require defendant to
23 give her special notice or warning with respect to said
24 object. Furthermore, there is no duty to warn against a
25 condition that can be readily observed by the use of

1 one's senses."

2 And while these are all out-of-state cases, the
3 principles are the same here in South Carolina, because
4 we all follow the restatement relating to a shopkeeper's
5 duty: that a shopkeeper is not an insurer of its
6 customers' safety. And its requirement is to make sure
7 that they don't create a dangerous condition. And if
8 they do, they don't do it negligently or they warn of
9 that condition.

10 But they've got to get past the threshold, which is
11 chair is a dangerous condition. The case I cited to Your
12 Honor on -- I believe it was on Monday is the next case
13 in this packet. It's *Ford v. Bank of America*
14 *Corporation*. This is a Court of Appeals case out of
15 Georgia.

16 And this case, I rely on fairly heavily because the
17 Georgia law is identical to the South Carolina law when
18 it comes to this concept of a shopkeeper. And the facts
19 in that case -- the other reason I -- I'd rely on this
20 case is it is identical to what happened here. (As
21 read): ". . . Ford entered the bank, located inside of a
22 grocery store, to order some new checks. She had been in
23 the bank many times and it was not configured any
24 differently that day.

25 "She backed up to an office chair with wheels. And

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1 as she started to sit down, the chair just went out from
2 under her. She fell to the floor, suffered a broken
3 wrist, vertebral compression fracture, and a chipped
4 tooth.

5 "When asked if she realized the chair had wheels on
6 it before she sat down, Ford responded, 'I don't know if
7 I did or not,' but admitted that she had sat in those
8 chairs before."

9 Here, the plaintiff admits she knew it had wheels.
10 (As read): "When asked if there was anything on the
11 floor that caused the chair to slip out from under her,
12 Ford responded, 'I didn't see it'" -- meaning she didn't
13 see anything. The plaintiff here admits there was
14 nothing on the floor.

15 (As read): "Finally, when asked if the chair was
16 defective, she said, 'I don't know. Not to my knowledge.
17 I did not examine it.'"

18 The plaintiff in this case stated she was not aware
19 of any defective condition of the second chair that was
20 brought to her. The Court then goes on to cite a case
21 from Georgia, which is a general principle (As read):
22 "Proof of an injury, without more, is not enough to
23 establish proprietor's liability." That goes directly to
24 the principle of ensuring the safety of customers. The
25 fact that an injury occurs in a store is not sufficient

1 to establish liability. There has to be something more
2 shown.

3 You move down in that opinion, and it says -- it
4 cites the *Metts v. Wal-Mart Stores* case. (As read):
5 "Without first establishing that a dangerous condition
6 existed, the plaintiff cannot establish that the
7 defendant knew about the danger and therefore cannot
8 recover."

9 "In this case, Ford has failed to establish the
10 existence of a dangerous condition, but merely asserts
11 that a chair with wheels on a slick, tile floor can
12 certainly be a dangerous condition, and *sub judice*, did
13 constitute a dangerous condition where Ford attempted to
14 negotiate sitting in the chair. Merely stating that a
15 condition is dangerous is evidence that it is so.

16 ". . . Ford did not submit competent evidence that
17 the chair was defective or hazardous. She proffered no
18 expert testimony that the chair was hazardous, nor did
19 she point to any rule or regulation violated by the
20 chair, but simply testified that the chair was defective
21 because it slid out from under her."

22 In this case the plaintiff hasn't even testified
23 that the chair itself was defective. (As read): "Proof
24 of nothing more than the occurrence of a fall is
25 insufficient to establish a proprietor's negligence."

1 I could go on through those cases and -- and -- and
2 read through them. But the -- the takeaway from every
3 single one of them is the same: that a chair is not
4 dangerous; and that a fall from a chair is not an
5 unreasonable danger in a store; and there is no duty to
6 warn of the chair, unless there is a defective condition
7 or some kind of danger that the store is aware of that
8 that chair poses.

9 In this case the plaintiff has not presented any
10 evidence, as I said, to establish any issue or condition
11 of the chair; has only stated that she believes there is
12 a duty of an employee to hold the chair for her. In a
13 review of South Carolina law that I am aware of, there is
14 no such duty that attaches to a shopkeeper to ensure that
15 a customer can safely sit in a chair. The plaintiff
16 admits she didn't ask for assistance; she didn't need
17 assistance; she didn't tell them she needed assistance.

18 She admitted she was not given the go-ahead to sit
19 down. In other words, the employee didn't come behind
20 her, bring the chair, and say, "All right. You're safe
21 to sit down now."

22 None of that occurred. What she admits is the chair
23 came behind her; the employee walked away. She didn't
24 look at the chair. And then she just went to sit down,
25 and that's when she fell.

000333

1 Ms. Vivian Ashford, who testified today, changed her
2 testimony from her affidavit. In the affidavit she said
3 the chair started to roll away. We put that up on the
4 screen there. The chair started to roll away, and no one
5 put it back.

6 We showed the video. That didn't occur. And then,
7 today, she said, "Well, no. The chair didn't start
8 rolling away; it -- the employee just didn't hold it
9 there in place."

10 Further, we heard -- as to a causation issue, even
11 if we get past dangerous condition, we get past knowledge
12 of a dangerous condition. We get past open and obvious,
13 which the plaintiff admits she saw the chair was on
14 wheels; she saw the chair was on tile; she admits she
15 could negotiate that.

16 We get past assumption of the risk, that we assume
17 -- we take an assumption the plaintiff can testify to a
18 dangerous condition; that she assumed that risk by
19 sitting in it.

20 We get to causation. The plaintiff took the stand
21 and she said that she fell in the ALDI; suffered pain in
22 her neck; several months later, had a neck surgery. She
23 said that she had not had pain in her neck for a period
24 of 12 years and that that's why this accident is what
25 caused her neck pain.

1 Without going back through all of that, Your Honor
2 was in the courtroom repeatedly when she had to admit
3 that there were numerous, repeated times within that
4 period of 12 years where she had multiple complaints of
5 neck pain. She had a CT/MRI done that she admitted was
6 done on her that showed multiple disc protrusions,
7 foraminal stenosis, and flattening of the spinal cord.

8 She admitted that a neurosurgeon did recommend that
9 she have a neck surgery before this fall at the ALDI.
10 She admitted that in 2013, she went to the emergency room
11 after her neck popped and caused severe, radiating pain
12 into her arms, her buttocks, and into her leg. Those
13 statements are directly contradicted when she says, "I
14 haven't had neck pain in 12 years."

15 Causation hasn't been shown. Even in the light most
16 favorable to the plaintiff, if we get past all of the
17 dangerous-condition issues, all of the premises-liability
18 issues, she hasn't presented competent medical evidence
19 to establish causation in this case. Because of that,
20 directed verdict should be granted in this matter.

21 THE COURT: All right.

22 Mr. Barton?

23 MR. BARTON: Your Honor, if this was a case where
24 Ms. Wiggins was in line and said, "I'm getting tired; I
25 need to sit down," and they pointed her to this -- to the

1 very same chair they pointed her to a chair -- chair
2 against the wall and said, "There's a chair there; you
3 can go sit down," the cases he's cited -- is citing might
4 be right. Because in that case, she's going on her own
5 and she's going to sit in the chair. And then, you know,
6 she's got to exercise her own due care in doing that.

7 But in this case, you had the cashier attempting to
8 help her. And it wasn't just -- it -- she brings the
9 first chair, and she's trying to help her adjust it. But
10 it's broken, so she gets a second chair.

11 And the important part of the testimony, in my mind,
12 is the cashier actually pushes the chair up to Ms.
13 Wiggins. And Ms. Wiggins said she felt it hit her legs,
14 and that's when she sat down -- attempted to sit down and
15 the -- the chair -- obviously, it -- the chair rolled out
16 from her and she injured herself.

17 So this isn't a per-se defective-chair case. It's a
18 negligence of the employee in furnishing the chair to her
19 and how it -- and how it -- and how it was used at the
20 time. And I think you got to look at all of the facts,
21 all of the circumstances, and would -- and would Ms.
22 Wiggins be reasonable in thinking that she was pushing
23 the chair up to her to sit down and just -- and just
24 didn't do it and was she negligent in -- in not holding
25 the chair.

1 And -- and the Court saw what I was talking about in
2 opening argument. I -- the way it -- the way it normally
3 happens is you hold a chair for somebody and you kind of
4 push it till they sit down. That's what she thought was
5 happening when she was trying to sit down. And I think
6 there's enough evidence for a jury to decide whether or
7 not she was reasonable in -- in thinking that as this
8 whole thing happened.

9 So I don't think they're entitled to directed
10 verdict at this point.

11 On causation she's had a lot of medical treatment.
12 I mean, obviously, a lot. There's a CAT scan in 2009 and
13 a -- a recommendation for surgery right after that.
14 Never was scheduled.

15 I think the last thing they put in was that in June
16 of 2013 -- 2013, she had some complaints of neck pain.
17 But so there -- there -- she was wrong. It -- it wasn't
18 -- I think at one in a deposition, she might've said 8
19 years; on the stand, she said 12.

20 So it wasn't 12 years; it was 4 years that she
21 wasn't having problems. And she -- she says she hadn't
22 done anything else to hurt her neck since that time and
23 they didn't -- since 2013. And she hasn't had any --
24 done anything to hurt her neck since this accident,
25 insofar as the continuing treatment of her neck.

1 And the medical went in without objection. I mean,
2 I don't think -- I don't think causation even comes up at
3 this point. She testified that it was related to the
4 accident and her injuries. And I think that's sufficient
5 in and of itself to go forward, insofar as the causation
6 is concerned.

7 And I'll be -- be glad to answer any other questions
8 the Court might have or any other -- address any other
9 concerns the Court might have.

10 THE COURT: Okay.

11 Any response, Mr. Bayne?

12 MR. BAYNE: Other than rehashing what we have
13 already addressed, Judge, I think my argument is -- is in
14 the record and it's clear that directed verdict is
15 proper, based on the evidence presented at this time.

16 THE COURT: The standard in this state is that a
17 merchant -- or, in this case, a shopkeeper -- I guess
18 ALDI could be considered a merchant -- is not an insurer
19 of the safety of his customer, but owes only the duty of
20 exercising ordinary care to keep the premises in a
21 reasonably safe condition. The standard is further that
22 to recover damages for injuries caused by a dangerous or
23 defective condition, there is no evidence that the chair
24 was defective in any way, shape, or form in the record.

25 The record is void of any evidence in any way,

1 shape, or form that the chair was defective. So we're
2 going to remove defective condition.

3 The standard then becomes to recover damages for
4 injuries caused by a dangerous condition on a
5 storekeeper's premises, the plaintiff must show either:
6 (1) that the injury was caused by a specific act of the
7 defendant which created the dangerous condition; or (2)
8 the defendant had actual or constructive knowledge of the
9 dangerous condition and failed to remedy it.

10 Now, in this scenario, the only evidence in the
11 record is that she was given a chair, which she knew was
12 rolling, which she attempted to sit down on and fell and
13 that she was given that chair by an employee of ALDI.
14 There is no evidence that there was a defective condition
15 -- that the chair was defective. There is no evidence
16 that the floor was defective.

17 There is no evidence that the chair was dangerous in
18 any way, shape, or form. Furthermore, there is direct
19 evidence by the plaintiff's own words that she knew she
20 was on a tile floor; that she knew that the chair was a
21 rolling chair; and that she knew that the chair could
22 roll.

23 And when you take that, coupled with the federal
24 court in Wisconsin, coupled with the Court of Appeals of
25 Georgia, the Court of Appeals of Louisiana, the Court of

1 Appeals of Arizona, the Federal United States District
2 Court in Mississippi, the Court of Appeals of Tennessee,
3 the Court of Appeals of Mississippi, the Court -- the
4 Circuit Court of Virginia, the Court of Appeals of
5 Louisiana, the Supreme Court Appellate Division of the
6 State of New York, and the Court of Appeals of Ohio, who
7 have all held, in one way, shape, or form, that rolling
8 chairs are common -- they are common -- and any danger
9 that exists with a rolling chair is an open and obvious
10 danger, in the fact that the chair rolls.

11 There is no duty to warn of the condition that can
12 be readily observed, which, in this case, Ms. Wiggins has
13 actually testified that she knew that the chair was a
14 rolling chair; that she knew that she was on a tile
15 floor. And it was an open and obvious issue if it -- a
16 rolling chair can even be, in its most exacerbating
17 condition, to be dangerous. She completely and totally
18 knew of it. She has her own duty to exercise care for
19 her own safety.

20 Merely stating that a condition is dangerous does
21 not constitute evidence that it is. But even in that
22 scenario, she does not testify, nor is there any proof --
23 the record is completely and totally void of any evidence
24 that this chair, in the condition it was in, in the
25 location that it was in, was -- was a dangerous condition

1 at all.

2 The record is completely devoid of any evidence that
3 says a shopkeeper has any form of duty or it should be in
4 their training or their materials or in their handbook
5 that you should not give any employee a rolling chair.
6 The record is completely and totally devoid of any
7 evidence to that.

8 The fact that Ms. Wiggins is advanced in age does
9 not mean that she is entitled to any different standard
10 of care than anybody else. There has been no evidence
11 presented that any danger that may exist in a rolling
12 chair was not an open and obvious danger -- condition
13 under the circumstances.

14 The bottom line is this: We don't need special
15 knowledge to take a seat in a rolling chair, period,
16 regardless of the condition of the floor, especially
17 wherein a floor -- where there was nothing wrong with the
18 floor in any way, shape, or form.

19 There has been no proof of a defective chair. There
20 has been no expert testimony that this chair in this
21 condition was dangerous in any way, shape, or form. They
22 have a reasonable -- a duty to keep a reasonable care to
23 keep the premises in a reasonably safe condition.

24 She asked for the chair. She asked for the chair.
25 And they provided her with not one, but two chairs.

000341

1 There is no evidence that the employee did anything to
2 make a rolling chair more dangerous than it was.

3 There is no duty in the law, in any stretch of the
4 imagination of the law, that you have an obligation to
5 hold a chair for someone who is about to sit down. That
6 is simply not the law in any way, shape, or form.

7 RULING BY THE COURT

8 I can count on my hands, in the hundreds and
9 hundreds of cases that I have tried in my life, where I
10 have ever granted a directed verdict. But in this case,
11 I believe a directed verdict is appropriate for the
12 defense. I am granting verdict for the defendant in this
13 matter.

14 Mr. Bayne, I want a written order to the effect,
15 quoting all the appropriate law that I have cited and
16 gone over today. And I will need that by January the
17 4th.

18 MR. BAYNE: Yes, sir.

19 THE COURT: Okay. Thank you all very much, and have
20 a nice day.

21 (Whereupon, the proceeding was concluded at 2:42 p.m.)

22 --- END OF TRANSCRIPT OF RECORD ---
23
24
25

From: Brett Bayne <brett.bayne@mgclaw.com>
Sent: Monday, December 10, 2018 11:10 AM
To: rhodlc@sccourts.org
Cc: kburnside@oswaldlawfirm.net
Subject: Vanessa Wiggins v ALDI

Catherine,

Thank you for accommodating us today. As you'll recall from the roster meeting, Plaintiff is not feeling well this week and we got rolled over to next week. My understating was that Judge Sprouse will be taking the day certain for his first up and Judge Hood will be taking our case as his first up.

I just wanted to touch base to coordinate trial and logistics. From our email last week, we expect trial to take 1-1.5 days. There will be a total of 5 witnesses that I am aware of between the two sides. Testimony overall should be pretty brief.

I am having people fly in from Colorado and Illinois so if it possible this week to confirm our start day as Monday with Judge Hood (or Tuesday or another day), that would be awesome.

If possible, looking ahead, I would request that we select the jury on Monday and handle any pretrial matters during lunch. One of my witnesses is out of town on Monday and can't be there until Tuesday. Given that, I would propose two solutions 1) We could start Monday after lunch with the opening and if we get to my case in chief Monday, argue mid trials and then recess til Tuesday to have the witness there or 2) we can just start Tuesday morning. My expectation with timing is that even if we start Monday I wouldn't get to the unavailable witness til Tuesday anyway so it shouldn't be an issue but I wanted to alert you to it.

Thank you,

Brett H. Bayne
Attorney
McAngus, Goudelock & Courie
O: 803-227-2281
C: 214-405-8175

Sent from my iPhone

000343

From: Kelly Burnside <Kburnside@oswaldlawfirm.net>
Sent: Monday, December 17, 2018 12:52 PM
To: 'Hood, Robert E. Law Clerk (Catherine Ortmann)' <rhoodlc@sccourts.org>
Cc: 'Bryn Bethel' <brynbethel@gmail.com>; 'Brett Bayne' <brett.bayne@mgclaw.com>
Subject: RE: Vanessa Wiggins v ALDI

Catherine,

My client has decided she does want to move forward with trial on Wednesday, December 19, 2018 because her motion for voluntary dismissal has been denied. Does Judge Hood want us back Wednesday morning to select the Jury?

Thank you!

Kelly Burnside | Attorney
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000344

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No.: 2019-000152

RECEIVED
FEB 19 2020
SC Court of Appeals

Vanessa Wiggins,.....Appellant,

v.

ALDI, Inc.,.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel does hereby certify the Record on Appeal contains all
material designated by both parties and no other materials.

West Columbia, South Carolina
February 19, 2020



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