

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**MAR 28 2022**

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Dennis Markley, Circuit Judge

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Case No. 2019-CP-10-4310

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Treca DeShields.....Appellant,

v.

JHM Enterprises, Inc., d/b/a Marriott in Charleston County, S.C.....Respondent.

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INITIAL REPLY BRIEF OF APPELLANT

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Jon E. Newlon  
McCrary, Newlon, Sturkie & Clardy  
Law Firm, P.A.  
1629 ByPass 72 NE  
Greenwood, S.C. 29649  
864/388-9100, 9104 (fax)  
[jnewlon@mccrarylaw.com](mailto:jnewlon@mccrarylaw.com)  
Attorney for Appellant

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## REPLY ARGUMENT

- I. Respondent incorrectly argues Trustees of Erskine College v. Central Mut. Ins. Co. supports the trial court's determination Appellant's deposition testimony containing Mr. Fargis's admission was not evidence of actual or constructive knowledge of a dangerous condition.

First, the Trial Court in Appellant's case never even acknowledged, discussed or considered Appellant's deposition excerpts wherein she testified to Mr. Fargis's admission that this problem had occurred before. Further, despite Appellant's Motion for Consideration wherein she asked the Trial Court to reconsider and clarify why Appellant's testimony was not considered or even discussed in its Order denying Appellant's motion, the Trial Court again did not address Appellant's aforementioned testimony. Therefore, Respondent's assertion the Trial Court considered this testimony when issuing its Orders is without merit.

Second, Respondent's citation to Trustees of Erskine College v. Central Mut. Ins. Co. is misplaced. That case is distinguishable on its facts and does not provide any holding that sworn deposition testimony cannot be considered as evidence.

That case concerned the interpretation of written information in an insurance policy and alleged violation of a "vacancy" clause. The central issue involved whether Erskine College was using a building as an insured dormitory or as an uninsured and vacant storage facility. The issue of constructive or actual knowledge concerned testimony as to whether there were any contents in the storage facility at the time of its destruction by fire:

The appellants argue that the record does not show that they had any actual or constructive knowledge that Wylie Home was being used for storage or that such use was "contemplated," which term, they argue, signifies not only knowledge, but also an understanding or accord. The answer to this contention is that the insurers' knowledge is irrelevant to the present determination as "contemplated" use is determined by the terms expressed in the contract.

...

The appellants also maintain that depositions by various insurance company representatives raise a genuine issue as to actual storage in that they relate statements made by the Vice President for Business Affairs of Erskine, Dr. Carlisle, tending to prove actual vacancy. An examination of the record however, reveals that these statements may not be reasonably interpreted as proof that Wylie was devoid of contents.

Trustees of Erskine College v. Central Mut. Ins. Co., 270 S.C. 118, 123-124, 241 S.E.2d 160, 162-163 (S.C. 1978) (my emphasis).

The trial court actually discussed and considered testimony (unlike the Trial Court in Appellant's case) and held that Dr. Carlisle's statement that the storage facility was devoid of contents "may not be reasonably interpreted as proof" that there was nothing in the storage facility when it burned down. Therefore, this case does not support Respondent's contention that the sworn testimony in Appellant's case cannot be considered proof and her testimony does not provide a scintilla of evidence Respondent had actual or constructive knowledge of a dangerous condition.

- II. Respondent incorrectly argues that evidence presented by Appellant and her counsel are "speculative" and "creative" because the evidence presented by Appellant, in a light most favorable to her, establishes a question of fact on the issue of actual or constructive notice of a dangerous condition.

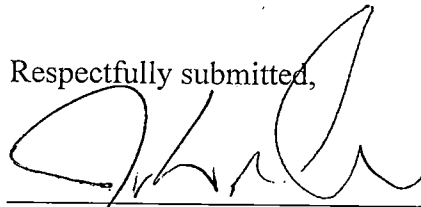
There is other evidence supporting Appellant's position that is not speculative or creative. The meta data evidence is capture in the deposition testimony along with the pictures even though a printout of the meta data page was not included with the deposition. The photograph showing Mr. Fargis with the panel all the way against the legs is an exhibit which directly contradicts Mr. Fargis's testimony that he found the panel 6-7 inches from the wall and simply pushed it back up is in his deposition is contradicted by the photograph

showing him holding the panel all the way against the back of the legs of the desk. The remainder of Respondent's brief are simply argumentative as to questions of fact which should be presented at a trial.

#### CONCLUSION

For the reasons stated, this Court should reverse the Trial Court's decision and remand this case for trial.

Respectfully submitted,



March 24, 2022

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Jon E. Newlon  
1629 By-Pass 72 NE  
Greenwood, S.C. 29649  
864/388-9100, 9104 (fax)  
Attorney for Appellant

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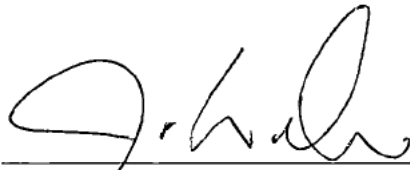
JHM Enterprises, Inc., d/b/a Marriott in Charleston County, S.C.....Respondent.

**CERTIFICATE OF MAILING**

I certify that I have served the Appellant's Initial Reply Brief and Designation of Matters on Helen Hiser, Esq., and Danielle F. Payne, Esq., by electronic means and by depositing a copy of the same in the United State Mail, postage prepaid, on March 24, 2022, addressed to the attorney at the address indicated below and by email to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org):

Helen Hiser (SC Bar # 76124)  
Danielle F. Payne (SC Bar #73142)  
McAngus Goudelock & Courie, L.L.C.  
Post Office Box 650007  
Mt. Pleasant, South Carolina 29465  
Telephone: (843) 576-2900  
Facsimile: (843) 534-0605  
[danielle.payne@mgclaw](mailto:danielle.payne@mgclaw)  
[helen.hiser@mgclaw](mailto:helen.hiser@mgclaw)  
Attorney for Respondent

March 24, 2022



Jon E. Newlon (SC Bar #15617)  
McCrary, Newlon, Sturkie & Clardy Law Firm, P.A.  
1629 ByPass 72 NE  
Greenwood, S.C. 29649  
864/388-9100, 9104 (fax)  
[jnewlon@mccravyllaw.com](mailto:jnewlon@mccravyllaw.com)  
Attorney for Appellant



Jon E. Newlon

e-mail: [jnewlon@mccravylaw.com](mailto:jnewlon@mccravylaw.com)

Respond to: ■ Greenwood Office:  
1629 Bypass 72 N.E.  
Greenwood, SC 29649  
(864)388-9100  
(864)388-9104 - Facsimile

March 24, 2022

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

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**SC Court of Appeals**

**RE: Treca Deshields, Appellant v. JHM Enterprises, Inc., d/b/a Marriott in Charleston County, S.C., Respondent.**  
**Case No. 2019-CP-10-4310.**

Dear Ms. Kitchings:

Enclosed for filing is Appellant's Initial Reply Brief, Designation of Matter and Proof of Service.

By copy of this letter I am serving the same on the Appellee.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Newlon", is written over a horizontal line.

Jon E. Newlon  
McCraVY, Newlon & Sturkie Law Firm, P.A.  
1629 ByPass 72 NE  
Greenwood, S.C. 29649  
864/388-9100, 9104 (fax)  
[jnewlon@mccravylaw.com](mailto:jnewlon@mccravylaw.com)  
Attorney for Appellant

cc: Helen Hiser (SC Bar # 76124)  
Danielle F. Payne (SC Bar #73142)  
McAngus Goudelock & Courie, L.L.C.  
Post Office Box 650007  
Mt. Pleasant, South Carolina 29465  
Telephone: (843) 576-2900  
Facsimile: (843) 534-0605  
[danielle.payne@mgclaw](mailto:danielle.payne@mgclaw)  
[helen.hiser@mgclaw](mailto:helen.hiser@mgclaw)  
Attorney for Respondent



**McCRAVY  
NEWLON  
STURKIE  
CLARDY**

**LAW FIRM P.A.**

1629 By-Pass 72 NE  
GREENWOOD, SC 29649

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