

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Mar 29 2022

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Dennis Markley, Circuit Judge

Case No. 2019-CP-10-4310

Treca DeShields.....Appellant,

v.

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

RECORD ON APPEAL

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

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
helen.hiser@mgclaw
danielle.payne@mgclaw
Attorney for Respondent

INDEX

Orders:

Order of February 10, 2021, Form IV Order Granting Summary Judgment . . . 2-5
Order of June 16, 2021, Formal Order Granting Summary Judgment 6-13
Order of December 10, 2021, Order Denying Motion to Reconsider 14-16

Pleadings:

Summons and Complaint of August 16, 2019 17-20
Answer of November 13, 2019 21-24
Motion for Summary Judgment of August 6, 2020 25-26
Memo in Support of Motion for Summary Judgment of October 7, 2020 . . 27-78
Return and Memo in Opposition to Defendant's Motion for Summary Judgment
of December 11, 2020 79-121
Motion to Reconsider, Alter or Amend of June 17, 2021 122-123

Certificate of Appellant 124

Jon Newlon

From: <efiledonotreply@sccourts.org>
Date: Wednesday, February 10, 2021 2:09 PM
To: <jnewlon@mccravylaw.com>
Subject: Courtesy NEF RE: 2019CP1004310

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2019CP1004310

Official File Stamp: 02-10-2021 02:08:50 PM
Court: CIRCUIT COURT
Common Pleas
Charleston
Case Caption: Treca DeShields VS JHM Enterprises Inc
Document(s) Submitted: Order/Defendant's Motion for Summary Judgment Granted
Order/Electronic Form 4
Filed by or on behalf of: R. Markley Dennis, Jr.

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Danielle F. Payne for JHM Enterprises Inc et al
Jon Eric Newlon for Treca DeShields
Max Capper Sparwasser

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Lee J. Bell

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



Order of February 10, 2021

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---

ELECTRONICALLY FILED - 2021 Feb 10 2:08 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

Order of February 10, 2021



Charleston Common Pleas

**Case Caption:** Trecia DeShields VS JHM Enterprises Inc

**Case Number:** 2019CP1004310

**Type:** Order/Electronic Form 4

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

Electronically signed on 2021-02-10 11:40:52 page 3 of 3

ELECTRONICALLY FILED - 2021 Feb 10 2:08 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

|                              |   |                                   |
|------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA      | ) |                                   |
|                              | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF CHARLESTON         | ) |                                   |
|                              | ) |                                   |
| TRECA DESHIELDS,             | ) | Civil Action No. 2019CP1004310    |
|                              | ) |                                   |
| Plaintiff,                   | ) |                                   |
|                              | ) |                                   |
| v.                           | ) | <b>ORDER GRANTING DEFENDANT'S</b> |
|                              | ) | <b>MOTION FOR SUMMARY</b>         |
| JHM ENTERPRISES, INC., D/B/A | ) | <b>JUDGMENT</b>                   |
| MARRIOTT IN CHARLESTON       | ) |                                   |
| COUNTY, S.C.,                | ) |                                   |
|                              | ) |                                   |
| Defendant.                   | ) |                                   |

This matter came before the Court on February 10, 2021, on Defendant JHM Enterprises, Inc. d/b/a Marriott in Charleston County, S.C.'s Motion for Summary Judgment, filed August 6, 2020. After reviewing all evidence presented to this Court, including briefs submitted by both parties with corresponding exhibits, this Court hereby grants Defendant's Motion for Summary Judgment as no question of material fact exists and the Defendant is entitled to judgment as a matter of law.

**STANDARD OF REVIEW**

Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. Although the burden is on the party seeking summary judgment, the non-moving party must point to specific facts showing that there is a genuine issue for trial, rather than resting on the assertions of its pleadings. Rule 56(c), SCRPC.

When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Hansson v.

Scalise Builders of S.C., 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007). However, summary judgment should be granted when it is clear that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. United States Leasing Corp. v. Janicare, Inc., 294 S.C. 312 (Ct. App. 1988).

**FACTUAL ANALYSIS**

An in-depth review of the pleadings reveals that this case arises from alleged injuries sustained to the Plaintiff while staying at the Defendant's hotel, the Marriott, located at 4770 Goer Drive in North Charleston, South Carolina. The Complaint, filed on August 16, 2019, states that on November 30, 2017, Plaintiff checked into the Marriott Hotel with her mother. On December 1, 2017, Plaintiff alleges that she was in her room and prepared to perform work at the desk. Plaintiff states that after sitting down at the desk, the back of the desk fell and struck her right knee and thereafter struck her left knee. Plaintiff alleges that the back of the desk was not properly secured to the wall, that Defendant was aware of this problem, and that the desk panel fell from the wall thereby causing her injury.

The desk panel that is the subject of this litigation is a wooden panel that is placed in front of wires and outlets to create a more streamlined look to the hotel room. In order for the panel to be opened, it must be manually removed. However, the panel, is on a track that physically stops it from opening more than a few inches absent manual removal. This is due to the tongue and groove hinge system at the lower face of the panel. Similarly, the upper face of the panel is secured by magnetic attachments. If one wanted to remove the entire panel from the wall, they would have to first pull back and separate the upper face from the magnets and thereafter use physical force to lift the lower face of the panel up and remove it from its track.

For the panel to open more than six inches, manual removal through physical force would be required.

Against Defendant, Plaintiff alleges negligence/gross negligence and generally pleads that Defendant had actual or constructive knowledge of the alleged defective condition pertaining to the desk panel and thereafter failed to timely take action, warn the Plaintiff of such dangers, or properly remediate such hazard.

For the reasons stated herein, this Court hereby grants Defendant's Motion for Summary Judgment as there exists no question of material fact exists and Defendant is entitled to judgment as a matter of law. This Court would also note that ample discovery has taken place prior to this hearing therefore making this matter ripe for summary judgment.

**LEGAL ANALYSIS**

In order to recover under a negligence cause of action, Plaintiff must prove, by a preponderance of the evidence, that the Defendant owed her a duty of care, that Defendant breached that duty of care by a negligent act or omission, and that she suffered damages proximately caused by the breach of duty. *See, e.g., Snow v. Columbia*, 305 S.C. 544, 554, 409 S.E.2d 797, 803 (Ct. App. 1991) (elements a plaintiff must prove in a negligence cause of action); *Grier v. Cornelius*, 247 S.C. 521, 534, 148 S.E.2d 338, 344 (1966) (a plaintiff bears the burden of proving he or she "was injured as a proximate result of negligent acts or omissions of the" defendant).

Plaintiff bears the burden of proving each and every element of negligence, including Defendant's alleged lack of due care and proximate cause. *See, e.g., Snow*, 305 S.C. at 555, 409 S.E.2d at 803 (explaining that, "[n]o inference of negligence arise[s] from the mere fact of injury," because South Carolina does not recognize the rule of *res ipsa loquitur*); *Fowler v.*

Coastal Coca-Cola Bottling Co., 252 S.C. 579, 584, 167 S.E.2d 572, 575 (1969) (“where the cause of plaintiff’s injury may be as reasonably attributed to an act for which the defendant is not liable as to one for which he is liable, the plaintiff has failed to carry the burden of establishing that his injury was the proximate result of defendant’s negligence”).

With respect to premises liability cases, South Carolina adheres to the long-standing rule that a property owner owes its invitees “the duty of exercising ordinary care to keep the premises in a reasonably safe condition.” Pennington v. Zayre Corp., 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969). However, a property owner is “not required to maintain the premises in such condition that no accident could happen to a patron using them.” Denton v. Winn-Dixie Greenville, 312 S.C. 119, 120, 439 S.E.2d 292, 293 (Ct. App. 1993). In other words, a property owner is not an insurer of its patrons’ safety, “but rather owes them the duty to exercise ordinary care to keep the premises in a reasonably safe condition.” Cook v. Food Lion, 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997). In addition, a landowner generally does not owe a duty to warn others of open and obvious conditions on the property.” Larimore v. Carolina Power & Light, 340 S.C. 438, 445, 531 S.E.2d 535, 539 (Ct. App. 2000).

In Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001), the plaintiff alleged that the store had created a dangerous condition by stacking cans of goods in their original shipping boxes. The Supreme Court held that the store was entitled to summary judgment because the evidence in the case was “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.” 343 S.C. at 628-629, 541 S.E.2d at 833.

In the present instance, despite ample discovery, there has been no evidence that Defendant was placed on actual or constructive notice of the alleged hazardous condition pled by Plaintiff. Specifically, there has been no evidence provided to date that the Defendant had actual or constructive notice that the entire desk panel could come off the wall thereby causing injury to patrons. This lack of evidence to prove the essential element of notice by Plaintiff is the basis for this Court's grant of summary judgment. In order for an invitee to recover damages for injuries caused by an alleged dangerous or defective condition on a defendant's premises, a plaintiff must show, "that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it." Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001); *see also* Wintersteen v. Food Lion, Inc., 344 S.C. 32, 35, 542 S.E.2d 728, 729-30 (2001).

A linchpin in succeeding on a premises liability cause of action is proving that Defendant had actual or constructive notice of the dangerous condition. In the present case, there is no evidence of actual notice. Specifically, Defendant's 30(b)(6) witness testified in his deposition that prior to this alleged incident, there had been no incidents of a similar nature that had occurred at the premises. Specifically, there had been no prior incidents where an entire wall panel came off the wall thereby causing injury to patrons. Accordingly, this Court finds that there are no questions of material fact that the Defendant had no actual notice of a possible alleged deficiency with respect to the wall panel.

Similarly, there also is no evidence to conclude that the Defendant had constructive notice. Constructive notice of a dangerous condition may be established by showing that the condition existed for a sufficient length of time that the storekeeper would or should have discovered and removed it had they used ordinary care. Gillespie v. Wal-Mart Stores, Inc., 302 S.C. 90, 91, 394 S.E.2d 24, 24-25 (Ct. App. 1990). Applying these principles to the facts at hand

would require a showing that the dangerous condition, that being the allegedly loose desk panel, had been occurring for a sufficient amount of time that it should have been discovered by the Defendant. However, constructive notice cannot be proven by mere allegations or speculation. It is well-established in South Carolina that a “jury should not be permitted to speculate that [the dangerous condition existed] for such a length of time as to infer that defendant was negligent in failing to detect and remove it.” Wimberley v. Winn-Dixie Greenville, Inc., 252 S.C. 117, 122, 165 S.E.2d 627, 629 (1969); *see also* Pennington, 252 S.C. at 178, 165 S.E.2d at 696 (without specific evidence of how long plastic bags had been on the floor, inferring the merchant had constructive notice “would be pure speculation”).

As there have been no similar incidents pertaining to the complete removal of the desk panel and injuries resulting therefrom, Defendant could not possibly have been placed on constructive notice. Indeed, numerous guests have undoubtedly stayed in the room where the desk is alleged to have malfunctioned with no complaints or evidence of incident. Accordingly, this Court finds that there is no questions of material fact that the Defendant had no constructive notice of a possible alleged deficiency with respect to the wall panel.

While an issue “must be submitted to a jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror . . . this rule does not authorize submission of speculative, theoretical and hypothetical views to the jury . . . as verdicts may not be permitted to rest upon surmise, conjecture or speculation.” Hanahan v. Simpson, 326 SC 140,149, 485 SE2d 903, 908 (1997); *see also* Small v. Pioneer Machinery, 329 SC 448, 494 SE2d 835 (Ct. App. 1997) (although disputed issues should be submitted to a jury, “this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury”).

Order of June 16, 2021

Since Plaintiff cannot prove that Defendant breached any duty of care owed to her, she cannot meet an essential prong of her claim and Defendant is entitled as a matter of law to summary judgment. Indeed, this Court finds that there exists no question of material fact that Defendant had neither actual nor constructive notice of any possible hazardous conditions with respect to the wall panel. As such, Defendant is entitled to judgment as a matter of law.

CONCLUSION

Accordingly, this Court hereby finds that no question of material fact exists and that the Defendant is entitled to judgment as a matter of law. As such, this Court hereby GRANTS Defendant's Motion for Summary Judgment and dismisses this case with prejudice.

**AND IT IS SO ORDERED.**

---

The Honorable R. Markley Dennis  
Judge of the Ninth Judicial Circuit

Charleston, South Carolina

\_\_\_\_\_, 2021



Charleston Common Pleas

**Case Caption:** Treca DeShields VS JHM Enterprises Inc  
**Case Number:** 2019CP1004310  
**Type:** Order/Summary Judgment

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

Electronically signed on 2021-06-16 12:54:05 page 8 of 8

|                              |   |                                   |
|------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA      | ) |                                   |
|                              | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF CHARLESTON         | ) |                                   |
|                              | ) |                                   |
| TRECA DESHIELDS,             | ) | Civil Action No. 2019CP1004310    |
|                              | ) |                                   |
| Plaintiff,                   | ) |                                   |
|                              | ) |                                   |
| v.                           | ) | <b>ORDER DENYING PLAINTIFF'S</b>  |
|                              | ) | <b>MOTION TO RECONSIDER ALTER</b> |
|                              | ) | <b>OR AMEND</b>                   |
| JHM ENTERPRISES, INC., D/B/A | ) |                                   |
| MARRIOTT IN CHARLESTON       | ) |                                   |
| COUNTY, S.C.,                | ) |                                   |
|                              | ) |                                   |
| Defendant.                   | ) |                                   |

This matter originally appeared before the Court on Defendant’s Motion for Summary Judgment, filed August 6, 2020. After a review of all materials presented, this Court issued an Order, dated June 6, 2021, granting Defendant’s Motion for Summary Judgment. Thereafter, on June 17, 2021, Plaintiff filed her Motion to Reconsider, Alter or Amend the Court’s Order pursuant to Rule 59 of the *South Carolina Rules of Civil Procedure*. For the reasons stated herein, Plaintiff’s Motion is respectfully denied.<sup>1</sup>

**STANDARD OF REVIEW**

“The power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment.” *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). A Rule 59(e) motion is the proper “vehicle to request the trial court alter or amend the judgment” and “to seek reconsideration of issues and arguments.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 21, 361 S.E.2d 772, 778 (2004). The purpose of Rule 59(e), SCRCF, to alter or amend the judgment[,] is to request the trial judge to ‘reconsider matters properly encompassed in a

---

<sup>1</sup> The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(i), *SCRCF*.

ELECTRONICALLY FILED - 2021 Nov 23 9:51 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310  
 ELECTRONICALLY FILED - 2021 Dec 10 3:33 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

decision on the merits.’ *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988)). Rule 59(e) motions serve a vital purpose for proper issue preservation. *Home Medical Systems, Inc. v. Dept. of Rev.*, 382 S.C. 556, 677 S.E.2d 382 (2009).

**CONCLUSION**

This Court, having considered the arguments, supporting and opposing documents, and filings to date finds no discernable reason, based on the above factors, to warrant overturning its judgment. Accordingly, Plaintiff’s Motion to Reconsider, Alter or Amend is hereby denied.

**AND IT IS SO ORDERED.**

---

The Honorable R. Markley Dennis  
Judge of the Ninth Judicial Circuit

Charleston, South Carolina

\_\_\_\_\_, 2021



Charleston Common Pleas

**Case Caption:** Treca DeShields VS JHM Enterprises Inc  
**Case Number:** 2019CP1004310  
**Type:** Order/Other

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

Electronically signed on 2021-11-23 09:16:43 page 3 of 3

ELECTRONICALLY FILED - 2021 Nov 23 9:51 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310  
ELECTRONICALLY FILED - 2021 Dec 10 3:33 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

Summons and Complaint of August 17, 2019

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

Treca DeShields, )  
 )  
Plaintiff, )

vs. )

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

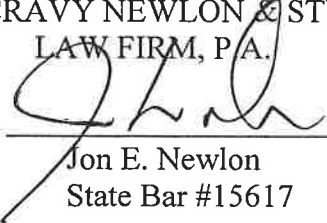
**SUMMONS**

**2019 - CP - 10 - \_\_\_\_\_**

TO: THE DEFENDANT:

THIS SUMMONS requires you to answer the attached Complaint and to serve a copy of your Answer on Plaintiff's attorneys at their office, 1629 ByPass 72 NE, Greenwood, S.C., 29649, within THIRTY (30) DAYS after service of this Summons, excluding the date of service, and if you fail to answer the Complaint within this time, judgment by default will be rendered against you for relief demanded in the Complaint.

McCRAVY NEWLON & STURKIE  
LAW FIRM, P.A.

BY:   
Jon E. Newlon  
State Bar #15617

Attorney for the Plaintiff  
1629 ByPass 72 NE  
Greenwood, S.C. 29649  
864-388-9100 (FAX 9104)  
[jnewlon@mccravylaw.com](mailto:jnewlon@mccravylaw.com)

Greenwood, South Carolina  
August 14, 2019

FILED  
2019 AUG 16 AM 11:52  
JULIE J. ARMSTRONG  
CLERK OF COURT

|                                            |                              |
|--------------------------------------------|------------------------------|
| STATE OF SOUTH CAROLINA )                  | IN THE COURT OF COMMON PLEAS |
| )                                          |                              |
| COUNTY OF CHARLESTON )                     | NINTH JUDICIAL CIRCUIT       |
| Treca DeShields, )                         |                              |
| )                                          |                              |
| Plaintiff, )                               |                              |
| )                                          |                              |
| vs. )                                      | <b>COMPLAINT</b>             |
| )                                          |                              |
| JHM Enterprises, Inc., d/b/a Marriott in ) | <b>2019 - CP - 10</b>        |
| Charleston County, S.C., )                 |                              |
| )                                          |                              |
| Defendant. )                               |                              |
| )                                          |                              |

FILED  
 2019 AUG 16 AM 11:52  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

Plaintiff respectfully alleges:

1. Plaintiff is a citizen and resident of Anderson County, South Carolina.
2. Defendant is a domestic, for profit corporation in good standing, is doing business as Marriott in Charleston, S.C., is organized and existing under the laws of South Carolina, and maintains a principle place of business in Charleston County, South Carolina. Further, Defendant regularly transacts business in Charleston County, South Carolina, and committed tortious acts through its agents and/or employees in Charleston County, S.C.
3. At all relevant times, Defendant was responsible for making its premises safe for its guests and/or occupants lawfully on its premises.
4. On November 30, 2017, Plaintiff lawfully entered Defendant's premises with her mother and acquired a room. On December 1, 2017, Plaintiff was in her room and was preparing to do some work at a desk in the room. Unbeknownst to her, the back of the desk was not properly secured and could fall. Defendant was aware that this was a common problem with this desk and/or similar desks throughout the rooms on its property. After Plaintiff had sat down at the subject desk to do some work, the back of the desk fell and hit her right knee. When she pivoted to get up, her left knee struck the fallen back of the desk. As a result, Plaintiff suffered personal injury and other damages.

5. At all times herein, Defendant, through its agents and/or employees, had a duty to prevent guests and/or occupants from being injured by defective and/or unsafe desks.

6. At the time and place of the accident referred to above, Defendant had actual notice or was charged with notice of the unsafe event and/or condition, but was negligent, grossly negligent and reckless for:

- a. Allowing the unsafe condition to occur;
- b. Allowing the unsafe condition to evolve into a dangerous and unsafe condition for Plaintiff;
- c. Failing to correct the dangerous condition;
- d. Failing to properly monitor the dangerous condition;
- e. Failing to follow applicable protocols and procedures;
- f. Failing to provide adequate warnings;
- g. Failing to use due care to inspect and repair the dangerous desk; and
- h. Failing to act as a reasonable person would under the same or similar circumstances.

7. As a direct and proximate result of Defendant's negligence, gross negligence and recklessness, Plaintiff was injured by the falling back of its desk, thereby causing Plaintiff to receive personal injuries, emotional stress secondary to the accident, physical pain and suffering, mental anguish and impairment of health and bodily efficiency, and caused travel and medical expenses when treated by medical doctors.

8. As a further result, Plaintiff suffered lost wages.

9. Based on the above, Plaintiff believe she is entitled to judgment for actual damages and punitive damages.

Summons and Complaint of August 17, 2019

**WHEREFORE**, Plaintiff prays for judgment for negligence along with judgment for actual and punitive damages, costs of the action, post judgment interest and any other right of recovery in law or equity.

McCRAVY NEWLON & STURKIE  
LAW FIRM, P.A.

BY: 

Jon E. Newlon  
State Bar #15617

Attorney for the Plaintiff  
1629 ByPass 72 NE  
Greenwood, S.C. 29649  
864-388-9100 (FAX 9104)  
[jnewlon@mccravylaw.com](mailto:jnewlon@mccravylaw.com)

Greenwood, South Carolina  
August 14, 2019

|                              |   |                                  |
|------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA      | ) |                                  |
|                              | ) | IN THE COURT OF COMMON PLEAS     |
| COUNTY OF CHARLESTON         | ) |                                  |
|                              | ) |                                  |
| TRECA DESHIELDS,             | ) | Civil Action No. 2019-CP-10-4310 |
|                              | ) |                                  |
| Plaintiff,                   | ) |                                  |
|                              | ) |                                  |
| vs.                          | ) | <b>DEFENDANT’S ANSWER TO</b>     |
|                              | ) | <b>PLAINTIFF’S COMPLAINT</b>     |
| JHM ENTERPRISES, INC., D/B/A | ) | <b>(Jury Trial Demanded)</b>     |
| MARRIOTT IN CHARLESTON       | ) |                                  |
| COUNTY, S.C.,                | ) |                                  |
|                              | ) |                                  |
| Defendant.                   | ) |                                  |

JHM Enterprises, Inc., d/b/a Marriott in Charleston County, S.C., (hereinafter “Defendant”), answers the Complaint of Plaintiff and respectfully asserts the following:

**FOR A FIRST DEFENSE**

1. Each and every allegation of the Complaint not specifically admitted is denied.
2. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 1 of the Complaint, and demands strict proof thereof.
3. Answering Paragraph 2 of the Complaint, Defendant admits only that it is a domestic corporation doing business as Marriott in Charleston, South Carolina. It is also organized and existing under the laws of the state of South Carolina and maintains a principal place of business in Charleston County, South Carolina. Defendant denies the remaining allegations contained in said Paragraph and demands strict proof thereof.
4. Answering Paragraph 3 of the Complaint, said Paragraph forms legal conclusions, characterizations, and allegations that require no response from Defendant, however, to the extent a response is required, Defendant denies the allegations contained therein and demands strict proof thereof.

5. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 4 of the Complaint, and demands strict proof thereof.

6. Answering Paragraph 5 of the Complaint, said Paragraph forms legal conclusions, characterizations, and allegations that require no response from Defendant, however, to the extent a response is required, Defendant denies the allegations contained therein and demands strict proof thereof.

7. Defendant denies the allegations contained in Paragraphs 6, including (a) through (h), and 7 of the Complaint and demands strict proof thereof.

8. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 8 of the Complaint, and demands strict proof thereof.

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint and demands strict proof thereof.

10. Defendant denies the allegations in the "Wherefore" paragraph of the Complaint which constitutes the remainder of the Complaint and strict proof thereof is demanded.

**FOR A SECOND DEFENSE**

11. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

**FOR A THIRD DEFENSE**

12. Defendant alleges any injury and damage sustained by Plaintiff was 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.

**FOR A FOURTH DEFENSE**

13. Defendants plead the law and doctrine of comparative negligence and allege 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 that any injury or 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 the 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 FIFTH DEFENSE**

14. Plaintiff's injuries, if any, were due to the intervening and/or superseding acts of negligence, carelessness or willfulness of another, and the intervening and/or superseding acts were a direct and proximate cause of any injuries or damages Plaintiff may have sustained.

**FOR A SIXTH DEFENSE**

15. Defendant would show the claims of the Plaintiff for punitive damages against the Defendant cannot be sustained, because any award of punitive damages under South Carolina law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of the punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the resident, wealth, and corporate status of Defendant,

(4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards, would violate Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the South Carolina constitutional provisions providing for due process and equal protection, and would be improper under the common law and public policies of the State of South Carolina.

**FOR A SEVENTH DEFENSE**

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

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.

s/ Danielle F. Payne

DANIELLE F. PAYNE (SC Bar No. 73142)  
danielle.payne@mgclaw.com  
Post Office Box 650007  
735 Johnnie Dodds Blvd., Suite 200 (29464)  
Mt. Pleasant, South Carolina 29465  
Telephone: (843) 576-2900  
Facsimile: (843) 534-0605

ATTORNEY FOR JHM ENTERPRISES, INC.,  
D/B/A MARRIOTT IN CHARLESTON COUNTY,  
S.C.

November 13, 2019

|                             |   |                                  |
|-----------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA     | ) |                                  |
|                             | ) | IN THE COURT OF COMMON PLEAS     |
| COUNTY OF CHARLESTON        | ) |                                  |
|                             | ) |                                  |
| TRECA DESHIELDS,            | ) | Civil Action No. 2019-CP-10-4310 |
|                             | ) |                                  |
| Plaintiff,                  | ) |                                  |
|                             | ) |                                  |
| vs.                         | ) | <b>DEFENDANT'S MOTION FOR</b>    |
|                             | ) | <b>SUMMARY JUDGMENT</b>          |
|                             | ) |                                  |
| JHM ENTERPRISES, INC. D/B/A | ) |                                  |
| MARRIOTT IN CHARLESTON      | ) |                                  |
| COUNTY, S.C.,               | ) |                                  |
|                             | ) |                                  |
| Defendant.                  | ) |                                  |

**TO: PLAINTIFF AND JOHN E. NEWLON, COUNSEL FOR PLAINTIFF:**

The Defendant, JHM Enterprises, Inc., d/b/a Marriott in Charleston County, S.C., 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, JHM Enterprises, Inc., d/b/a Marriott in Charleston County, S.C. is entitled to judgment as a matter of law. Specifically, there is no evidence of any negligence by Defendant.

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.

**[Signature Page to Follow]**

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Danielle F. Payne

DANIELLE F. PAYNE (SC Bar No. 73142)

danielle.payne@mgclaw.com

MARY K. LINTON (SC Bar No. 102815)

mary.linton@mgclaw.com

Post Office Box 650007

735 Johnnie Dodds Blvd., Suite 200 (29464)

Mt. Pleasant, South Carolina 29465

Telephone: (843) 576-2900

Facsimile: (843) 534-0605

ATTORNEYS FOR DEFENDANT

August 6, 2020

|                              |   |                                  |
|------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA      | ) |                                  |
|                              | ) | IN THE COURT OF COMMON PLEAS     |
| COUNTY OF CHARLESTON         | ) |                                  |
|                              | ) |                                  |
| TRECA DESHIELDS,             | ) | Civil Action No. 2019-CP-10-4310 |
|                              | ) |                                  |
| Plaintiff,                   | ) |                                  |
|                              | ) |                                  |
| v.                           | ) | <b>DEFENDANT'S MEMORANDUM IN</b> |
|                              | ) | <b>SUPPORT OF ITS MOTION FOR</b> |
| JHM ENTERPRISES, INC., D/B/A | ) | <b>SUMMARY JUDGMENT</b>          |
| MARRIOTT IN CHARLESTON       | ) |                                  |
| COUNTY, S.C.,                | ) |                                  |
|                              | ) |                                  |
| Defendant.                   | ) |                                  |

TO: PLAINTIFF AND JOHN C. NEWLON, COUNSEL FOR PLAINTIFF:

Defendant JHM Enterprises, Inc. d/b/a Marriott in Charleston County, S.C. hereby submits the following Memorandum of Law in support of its Motion for Summary Judgment.

**STATEMENT OF THE CASE**

This case arises from alleged injuries sustained to the Plaintiff while staying at the Defendant's hotel, the Marriott, located at 4770 Goer Drive in North Charleston, South Carolina. The Complaint, filed on August 16, 2019, states that on November 30, 2017, Plaintiff checked into the Marriott Hotel with her mother. On December 1, 2017, Plaintiff alleges that she was in her room and prepared to perform work at the desk. Plaintiff states that after sitting down at the desk, the back of the desk fell and struck her right knee. Plaintiff alleges that the back of the desk was not properly secured to the wall. When she pivoted to the side to get up, her left knee thereafter struck the fallen back portion of the desk. Specifically, during her deposition, when asked about the accident, Plaintiff exclaimed as follows:

After it hit me, it hit the right knee, then it hit the left, I pulled back, and I'm like, oh, the whole board is – the board is down, and I was just like in shock, because I'm like, what in the world, you know. And at that point, I'm just like – I call my

mom, and I'm taking pictures, cause I'm like, this is crazy, and I noticed my knee is swelling, that I have a knot on my right knee, and its swelling, and its hurting.

T. DeShields Dep. p. 51, lines 11 – 19. Photographs taken by Plaintiff purporting to show the panel as it existed at the time of the alleged fall are included herein and incorporated hereto as Exhibit A. As shown in the photographs, Plaintiff testified that the entire panel of the back of the desk came off the wall thereby causing her alleged injuries.

The desk panel that is the subject of this litigation is a wooden panel that is placed in front of wires and outlets to create a more streamlined and tidy look to the hotel room. Photographs of the desk and the panel purporting to show the condition at issue in this litigation are include herein and incorporated hereto as Exhibit B. In order for the panel to be opened, it must be manually removed. However, the panel is on a track that physically stops it from opening more than a few inches absent manual removal. Another safeguard included in the panel is a cord that is attached to the panel and wall and further forces the panel to only open a few inches. If one wanted to remove the entire panel from the wall, they would have to use physical force to lift the panel up and remove it from its track. For it to open more than a mere few inches, would require physical force by someone to manually remove the panel. The panel or “whole board” as it is referred by Plaintiff can only come apart from the desk via manual removal.

Against Defendant, Plaintiff alleges negligence/gross negligence and generally pleads that Defendant had actual or constructive knowledge of the alleged defective condition pertaining to the desk panel and thereafter failed to timely take action, warn the Plaintiff of such dangers, or properly remediate such hazard. In response, Defendant filed its Answer on November 13, 2019 and asserted all relevant affirmative defenses and denied that it had either actual or constructive notice of this alleged condition.

Since the inception of this case, written discovery has been exchanged and both the Plaintiff and a 30(b)(6) representative of the Defendant have been deposed. Additionally, Plaintiff's counsel has had the opportunity to inspect the desk and panel. As such, this matter is ripe for summary judgment. Accordingly, for the reasons stated herein, Defendant respectfully requests that this Court grant its Motion for Summary Judgment as no question of fact exists and the Defendant is entitled to summary judgment as a matter of law.

**STANDARD OF REVIEW**

Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. S.C R. Civ. Proc. 56(c). Although the burden is on the party seeking summary judgment, the non-moving party must point to specific facts showing that there is a genuine issue for trial, rather than resting on the assertions of its pleadings. S.C. R. Civ. Proc. 56(e).

When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007). However, summary judgment should be granted when it is clear that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *United States Leasing Corp. v. Janicare, Inc.*, 294 S.C. 312 (Ct. App. 1988).

**ARGUMENT**

The Court should grant Defendant's Motion for Summary Judgment as no question of fact exists and the Defendant is entitled to judgment as a matter of law.

In order to recover under a negligence cause of action, Plaintiff must prove, by a preponderance of the evidence, that the Defendant owed her a duty of care, that Defendant breached that duty of care by a negligent act or omission, and that she suffered damages proximately caused by the breach of duty. *See, e.g., Snow v. Columbia*, 305 S.C. 544, 554, 409 S.E.2d 797, 803 (Ct. App. 1991) (elements a plaintiff must prove in a negligence cause of action); *Grier v. Cornelius*, 247 S.C. 521, 534, 148 S.E.2d 338, 344 (1966) (a plaintiff bears the burden of proving he or she “was injured as a proximate result of negligent acts or omissions of the” defendant).

Plaintiff bears the burden of proving each and every element of negligence, including Defendant’s alleged lack of due care and proximate cause. *See, e.g., Snow*, 305 S.C. at 555, 409 S.E.2d at 803 (explaining that, “[n]o inference of negligence arise[s] from the mere fact of injury,” because South Carolina does not recognize the rule of *res ipsa loquitur*); *Fowler v. Coastal Coca-Cola Bottling Co.*, 252 S.C. 579, 584, 167 S.E.2d 572, 575 (1969) (“where the cause of plaintiff’s injury may be as reasonably attributed to an act for which the defendant is not liable as to one for which he is liable, the plaintiff has failed to carry the burden of establishing that his injury was the proximate result of defendant’s negligence”).

With respect to premises liability cases, South Carolina adheres to the long-standing rule that a property owner owes its invitees “the duty of exercising ordinary care to keep the premises in a reasonably safe condition.” *Pennington v. Zayre Corp.*, 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969). However, a property owner is “not required to maintain the premises in such condition that no accident could happen to a patron using them.” *Denton v. Winn-Dixie Greenville*, 312 S.C. 119, 120, 439 S.E.2d 292, 293 (Ct. App. 1993). In other words, a property owner is not an insurer of its patrons’ safety, “but rather owes them the duty to exercise ordinary

care to keep the premises in a reasonably safe condition.” Cook v. Food Lion, 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997). In addition, a landowner generally does not owe a duty to warn others of open and obvious conditions on the property.” Larimore v. Carolina Power & Light, 340 S.C. 438, 445, 531 S.E.2d 535, 539 (Ct. App. 2000).

In Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001), the plaintiff alleged that the store had created a dangerous condition by stacking cans of goods in their original shipping boxes. The Supreme Court held that the store was entitled to summary judgment because the evidence in the case was “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.” 343 S.C. at 628-629, 541 S.E.2d at 833. The same is true here. There simply is no evidence that Defendant either created a dangerous condition or that the desk panel constituted a dangerous condition.

In the present instance, Defendant has retained an expert who, after an in-depth investigation, opines that the description Plaintiff gave during her deposition, and relating to the alleged incident, could not have occurred from an engineering and human factors perspective. Specifically, Defendant’s expert, Brian Boggess, P.E., has offered a sworn affidavit, attached hereto and incorporated herein as Exhibit C, that an inspection of the desk revealed that the facts, as pled by Plaintiff, are not consistent with biomechanical and human factors principles. Further, an in-depth analysis and recreation of the alleged events as described by the Plaintiff yielded the opinion that it was not reasonable that the desk panel rotated forward and contacted the Plaintiff in one and/or both knees as alleged.

Notwithstanding, assuming solely for the sake of argument that a dangerous condition existed, which Defendant expressly denies, there is no evidence that Defendant had notice of the condition. In order for an invitee to recover damages for injuries caused by an alleged dangerous or defective condition on a defendant's premises, a plaintiff must show, "that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it." Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001); *see also* Wintersteen v. Food Lion, Inc., 344 S.C. 32, 35, 542 S.E.2d 728, 729-30 (2001).

As stated above, a linchpin in succeeding on a premises liability cause of action is proving that Defendant had actual or constructive notice of the dangerous condition. In the present case, there is no evidence of such notice. Defendant's 30(b)(6) witness testified in his deposition that prior to this alleged incident, there had been no incidents of a similar nature that had occurred at the premises. P. Rogers Dep. p. 15, lines 7 – 17.

Similarly, there also is no evidence of constructive notice. Constructive notice of a dangerous condition may be established by "showing that the foreign substance had been on the floor for a sufficient length of time that the storekeeper would or should have discovered and removed it had the storekeeper used ordinary care." Gillespie v. Wal-Mart Stores, Inc., 302 S.C. 90, 91, 394 S.E.2d 24, 24-25 (Ct. App. 1990). Applying these principles to the facts at hand would require a showing that the dangerous condition, that being the allegedly loose desk panel, had been occurring for a sufficient amount of time that it should have been discovered by the Defendant. However, constructive notice cannot be proven by mere allegations or speculation. It is well-established in South Carolina that a "jury should not be permitted to speculate that [the dangerous condition existed] for such a length of time as to infer that defendant was negligent in failing to detect and remove it." Wimberley v. Winn-Dixie Greenville, Inc., 252 S.C. 117,

122, 165 S.E.2d 627, 629 (1969); *see also Pennington*, 252 S.C. at 178, 165 S.E.2d at 696 (without specific evidence of how long plastic bags had been on the floor, inferring the merchant had constructive notice “would be pure speculation”). As there have been no similar incidences pertaining to the desk panel or injuries, Defendant could not possibly have been placed on constructive notice as numerous guests have undoubtedly stayed in the room where the desk is alleged to have malfunctioned with no complaints or evidence of incident.

It is anticipated that Plaintiff will attempt to defeat summary judgment by arguing that a question of fact of constructive or actual notice exists as Plaintiff testified that the Defendant’s Chief Engineer, Bryan Fargis, came to her room after the incident and exclaimed that the desk panel had come loose “again.” However, to ensure no question of fact with respect to such statement exists, Defendant has produced a sworn affidavit executed by Chief Engineer Fargis, included hereto and incorporated herein as Exhibit D, which affirms that he has no knowledge of any loose desk panels that have come off the wall injuring patrons prior to this incident. In his affidavit, Chief Engineer Fargis affirms that he attended to the Plaintiff’s complaint and that upon arrival, the desk panel was only slightly ajar. Upon finding the desk panel open a mere few inches, Chief Engineer Fargis visually inspected it and thereafter manually closed it, finding no defects.

To ensure complete thoroughness, likewise attached to this Motion as Exhibit E, is an affidavit executed by Marriott employee, Jere Allen, who attended to the Plaintiff’s room alongside Brian Fargis to inspect the desk panel. As expounded upon in his affidavit, Allen likewise echoes Fargis’ sentiments that the desk panel was open only a mere few inches and was not completely removed from the wall, as exclaimed by the Plaintiff. Specifically, both Brian Fargis and Jere Allen state that the photographs taken by Plaintiff to show the condition as it

existed at the time of her alleged injuries is not an accurate representation of the condition in the Plaintiff's room as the desk panel was only open a mere few inches, and not completely removed from the wall, as has been testified to by the Plaintiff.

While an issue "must be submitted to a jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror . . . this rule does not authorize submission of speculative, theoretical and hypothetical views to the jury . . . as verdicts may not be permitted to rest upon surmise, conjecture or speculation." Hanahan v. Simpson, 326 SC 140,149, 485 SE2d 903, 908 (1997); *see also* Small v. Pioneer Machinery, 329 SC 448, 494 SE2d 835 (Ct. App. 1997) (although disputed issues should be submitted to a jury, "this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury").

Since Plaintiff cannot prove that Defendant breached any duty of care owed to her, she cannot meet an essential prong of her claim and Defendant is entitled as a matter of law to summary judgment. Furthermore, Plaintiff cannot prove that Defendant had notice either actual or constructive, Defendant is entitled as a matter of law to summary judgment. Accordingly, this Court should grant Defendant's Motion for Summary Judgment and dismiss this case with prejudice.

**CONCLUSION**

For the foregoing reasons, Defendant respectfully requests that the Court grant its Motion for Summary Judgment as there exists no genuine issue of material fact and the Defendant is entitled to judgment as a matter of law.

[Signature Page to Follow]

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Danielle F. Payne

DANIELLE F. PAYNE (SC Bar No. 73142)

danielle.payne@mgclaw.com

MARY K. LINTON (SC Bar No. 102815)

mary.linton@mgclaw.com

Post Office Box 650007

735 Johnnie Dodds Blvd., Suite 200 (29464)

Mt. Pleasant, South Carolina 29465

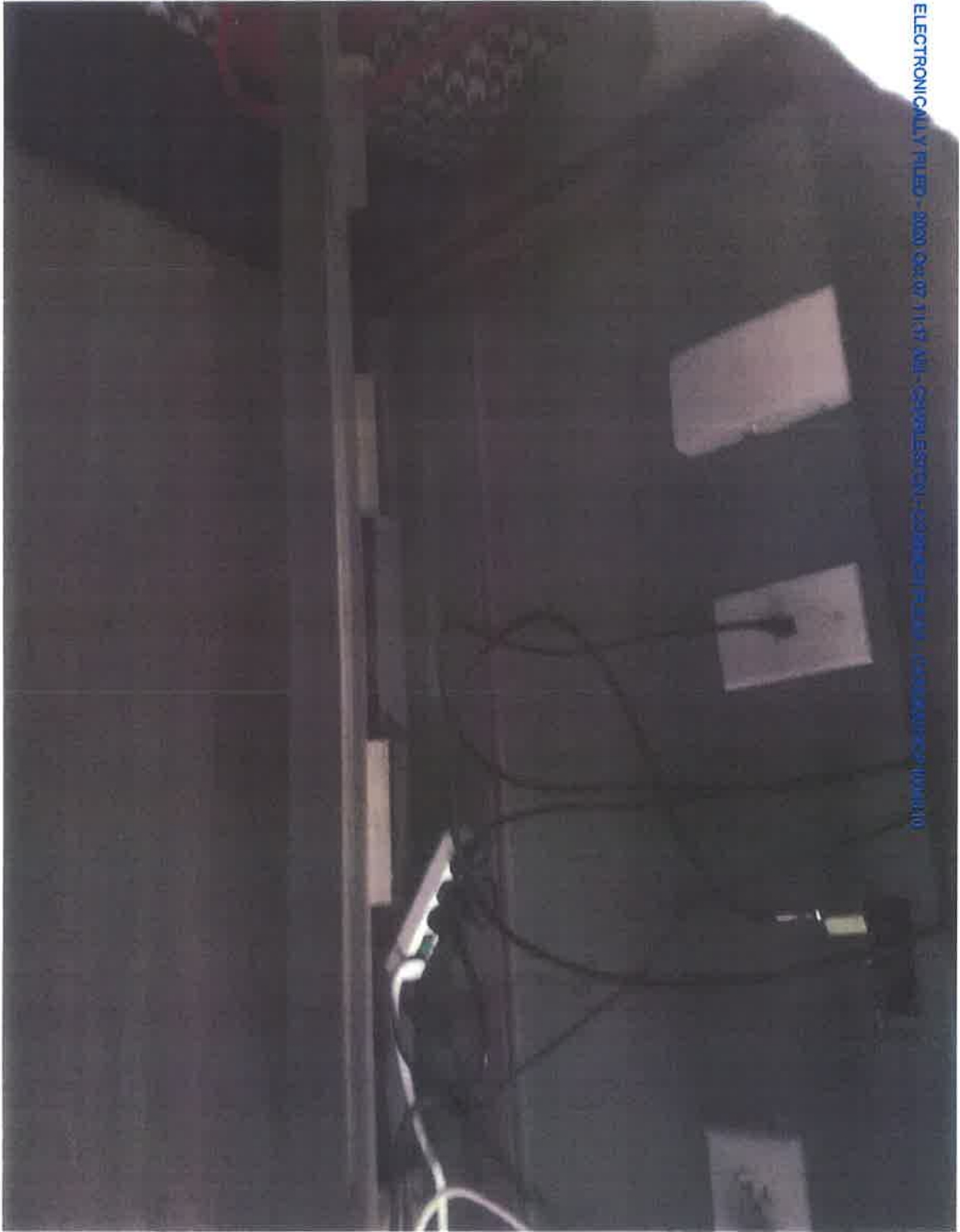
Telephone: (843) 576-2900

Facsimile: (843) 534-0605

ATTORNEYS FOR DEFENDANT

October 7, 2020











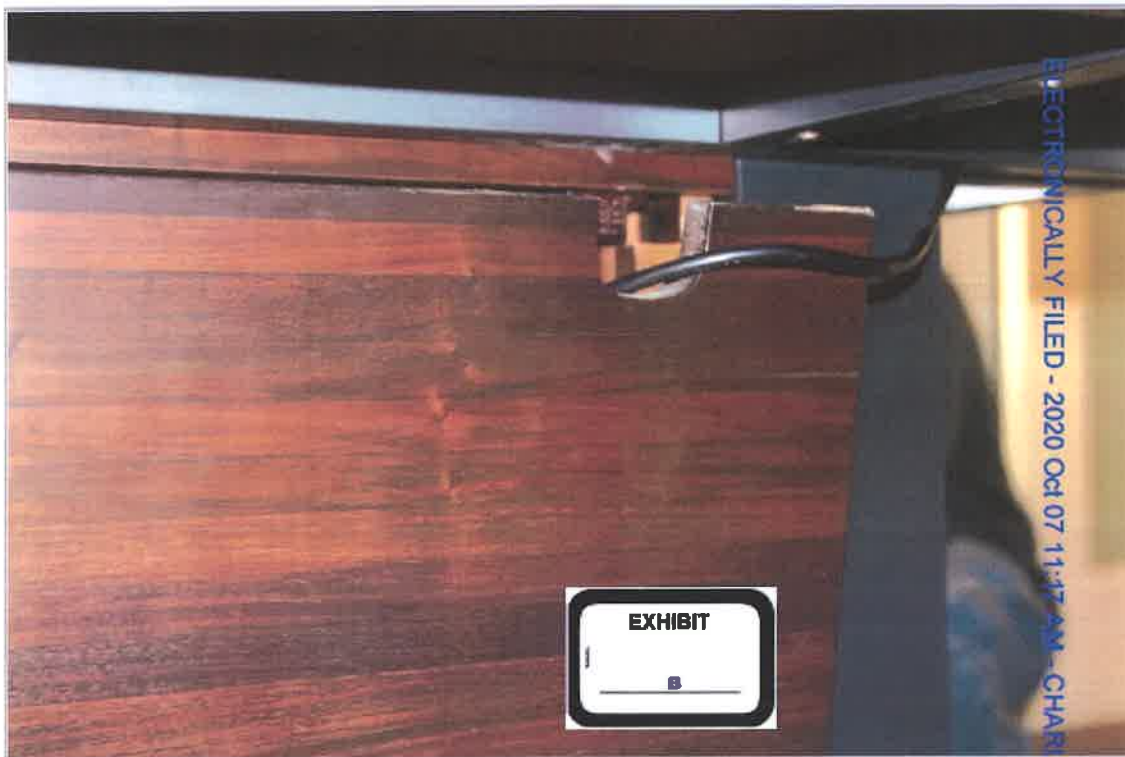












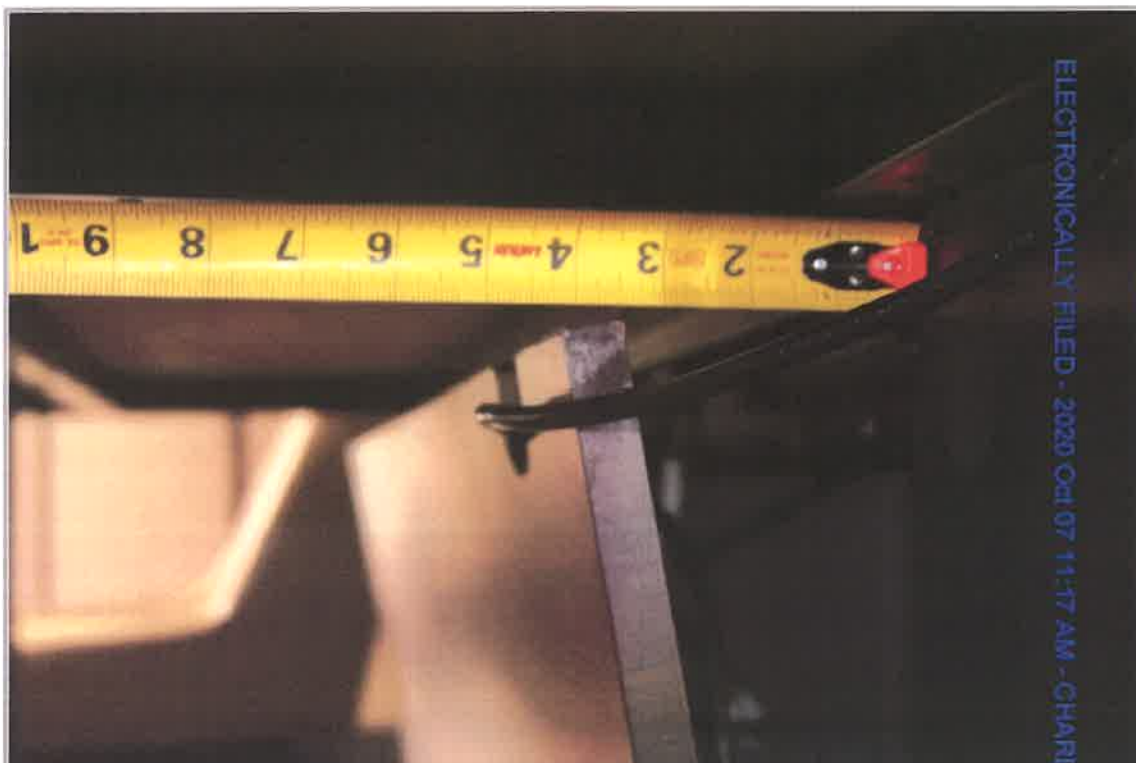


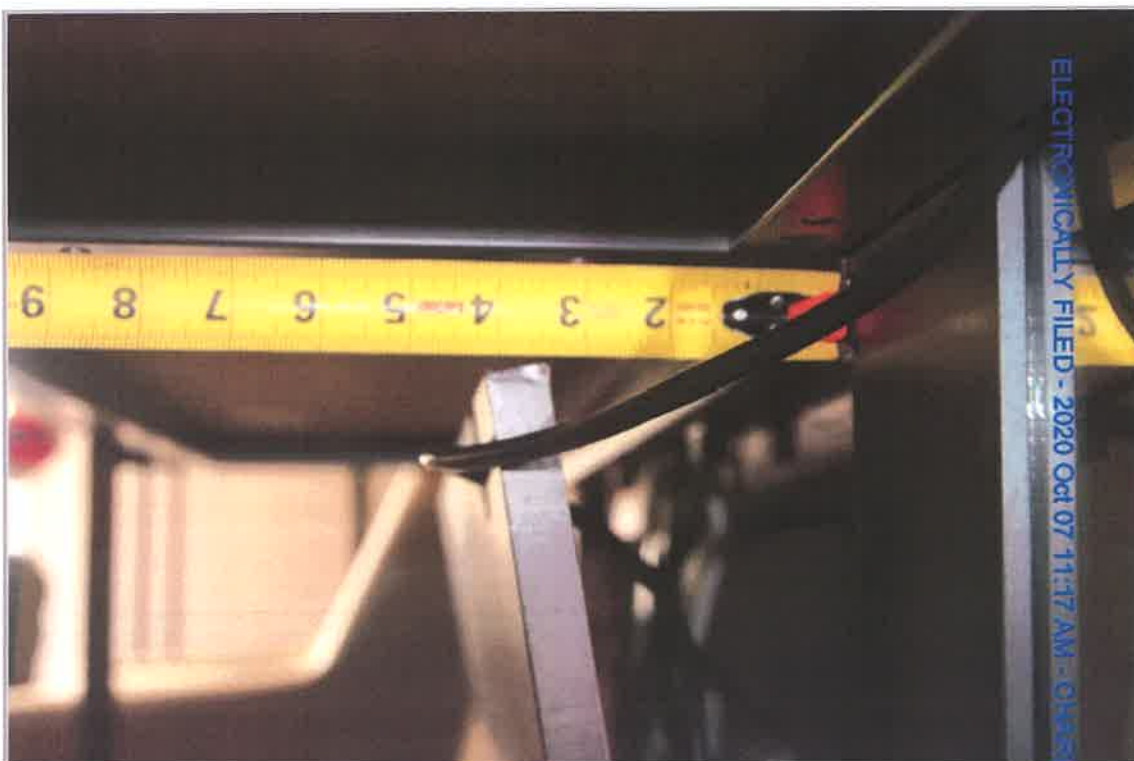


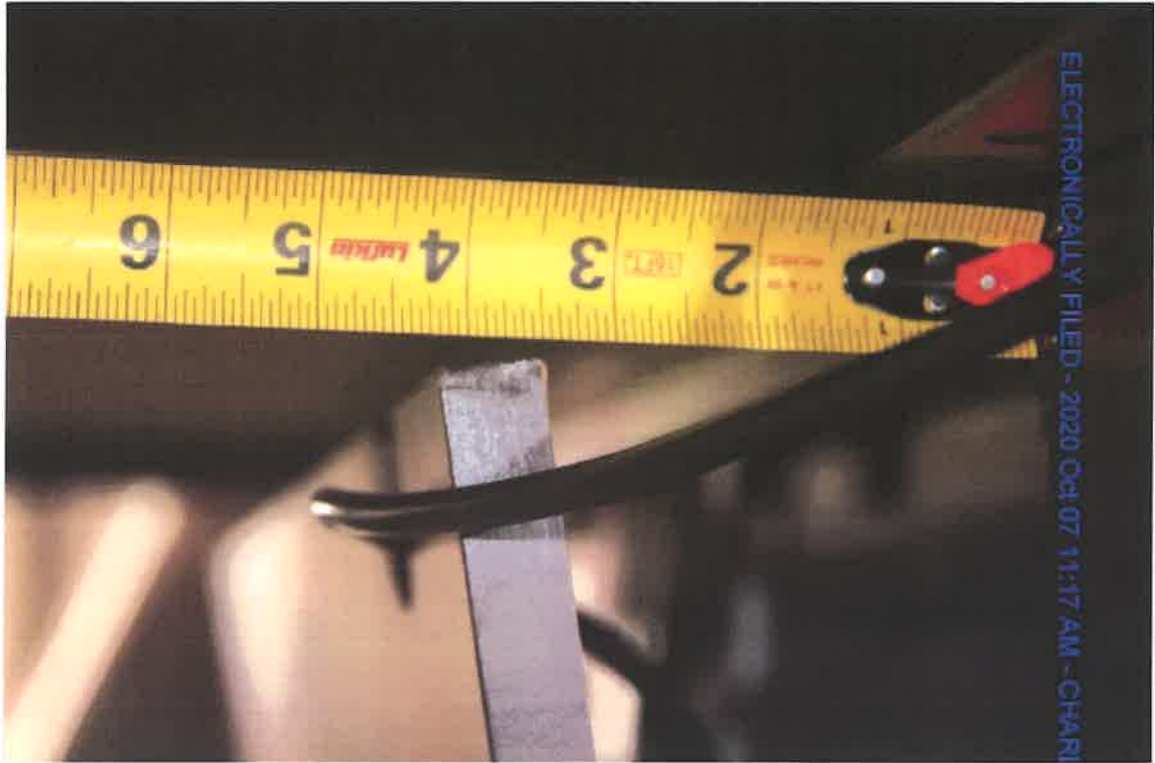








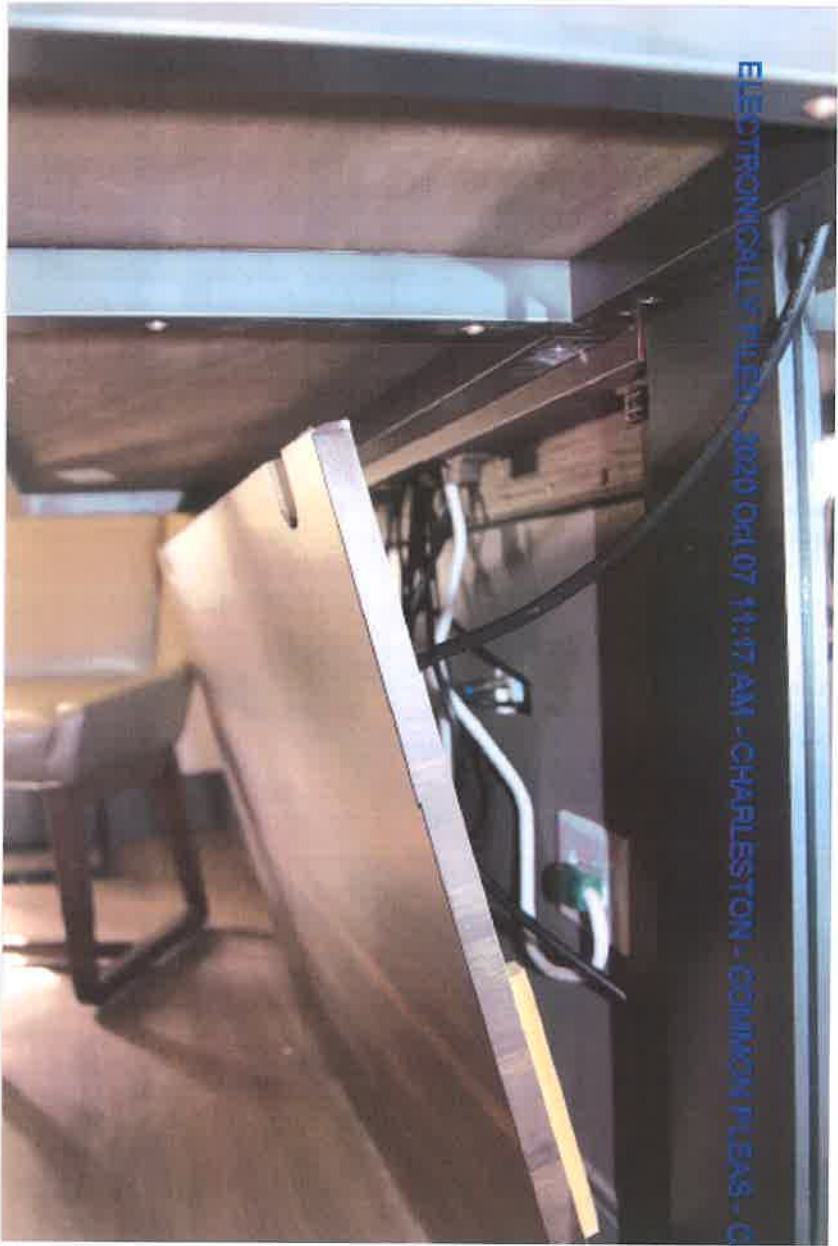






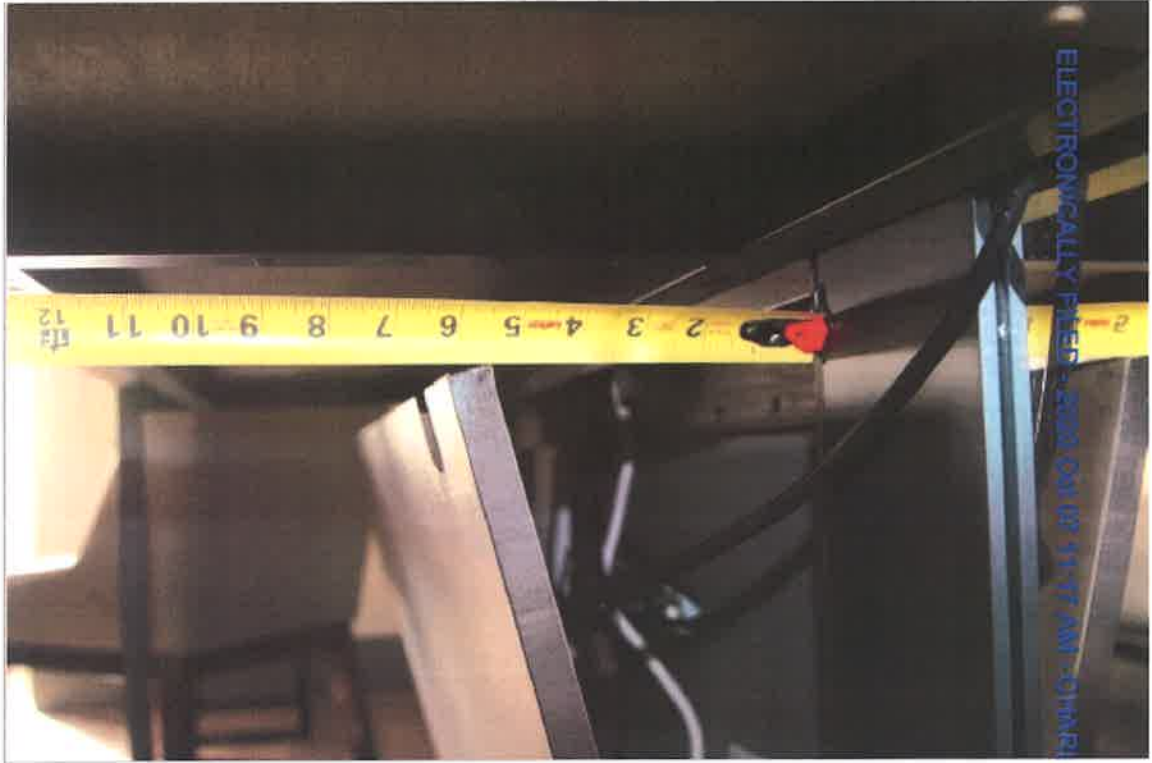
























|                                          |   |                                    |
|------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                  | ) | IN THE COURT OF COMMON PLEAS       |
|                                          | ) |                                    |
| COUNTY OF CHARLESTON                     | ) | NINTH JUDICIAL CIRCUIT             |
|                                          | ) |                                    |
| Treca DeShields,                         | ) | Case No. 2019-CP-10-04310          |
|                                          | ) |                                    |
| Plaintiff,                               | ) |                                    |
|                                          | ) |                                    |
| vs.                                      | ) | <b>AFFIDAVIT OF BRIAN BOGGESS,</b> |
|                                          | ) | <b>P.E.</b>                        |
| JHM Enterprises, Inc., d/b/a Marriott in | ) |                                    |
| Charleston, S.C.,                        | ) |                                    |
|                                          | ) |                                    |
| Defendant.                               | ) |                                    |
|                                          | ) |                                    |

PERSONALLY APPEARED BEFORE ME, the undersigned, Brian Boggress, P.E., who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and I am competent to give this affidavit.
2. I am a licensed professional engineer in multiple states, including the State of South Carolina.
3. I am employed by S-E-A, Ltd., as a Discipline Lead, Mechanical Engineering/Vehicle Accident Reconstruction and Senior Mechanical Engineer/Biomechanics. A true and correct copy of my curriculum vitae is attached as Exhibit 1. I received my B.S. in Mechanical Engineering and M.S. in Mechanical and Aerospace Engineering from the University of Virginia.
4. I have extensive education, experience and training in accident reconstruction, human factors and biomechanics and have been qualified as an expert in accident reconstruction, human factors and biomechanics in courts in multiple states, including the State of South Carolina.
5. According to the Complaint, on November 30, 2017, Plaintiff, Ms. DeShields,



was in her room at the Marriott Hotel, located at 4770 Goer Drive, North Charleston, South Carolina (the Hotel). It is alleged that Plaintiff sat down at the desk in the room, and the back of said desk fell and hit her right knee, causing injury.

6. With respect to the above-captioned litigation, I have reviewed the following documents:

- Summons and Complaint.
- Defendant's Answer to Plaintiff's Complaint.
- Plaintiff's Answers to Interrogatories.
- Deposition transcript of Ms. Treca DeShields, taken March 16, 2020.
- Statement of Ms. DeShields.
- Photographs produced by Ms. DeShields.
- Medical records of Ms. DeShields.

7. On January 22, 2020, S-E-A completed an inspection of the subject desk and chair, as well as an exemplar desk and chair, including taking photographs, measurements, and notes. Testing with the desk was also completed, including utilizing an interactive fit study of a seated person and the desk layout.

8. Ms. DeShields testified to have been sitting at the desk to work and watch the television directly above the desk. She described her positioning as "kind of turned sideways with my right leg more under the table." She testified that the board from the wall of the desk fell, striking the top of her right knee. She then "turned, and it hit the other leg" and allegedly "pulled the chair back to see what was going on," and observed the board "just hanging." Copies of photographs reportedly taken by Ms. DeShields depict a back panel of the desk rotated slightly forward from vertical, pivoting from its base. Ms. DeShields testified that maintenance came to the room and pushed the board back into place.

9. Ms. DeShields' medical records report that she was a 46-year-old female, 5'9" tall, and weighed approximately 301 pounds at or around the time of the alleged incident. She reported to Trident Health Systems the following day with reported pain to the anterior aspect of her right and left knees. X-ray imaging was reported to have revealed advanced degenerative osteoarthropathy of both knees with probable partially calcified loose bodies in the suprapatellar bursal regions. She was diagnosed with a contusion and discharged. Subsequently, a magnetic resonance imaging (MRI) study was completed for the left reportedly finding degenerative joint disease as well as a prior medial meniscectomy and what appears to be possible posterior horn medial meniscus tearing.

10. Based on my investigation, utilizing my education, experience, and training, I have analyzed the evidence and have subsequently formulated several opinions with respect to the incident at issue in the present litigation.

11. The overall construction of the desk is approximately 30" tall and 18" deep. The desk was manufactured by Thomasville Furniture Industries in September 2015. The desk is affixed to the wall, and beneath the desk against the wall face is a manufactured wood panel that acts as a decorative cover (the Panel), behind which cables are routed. The Panel uses a tongue and groove hinge system at the lower face, and the upper edge is secured by magnetic attachments. The Panel hinge system limits the forward rotation of the Panel to less than 15 degrees and approximately 6" at its upper edge. The Panels' weight is 24.5 pounds and is supported by its lower edge. The cable routing observed limits the Panel rotation from even reaching this minimal rotation.

12. Ms. DeShields claims that she was seated both working at the desk and watching television on the television mounted over the desk. Computer-aided design (CAD)

drawings were created and studied to analyze the alleged incident. A scaled human model was placed in the chair according to her testimony, taking into account the geometry of the desk, chair, and Ms. DeShields' anthropometry. Such analysis established that **it is not reasonable that the Panel rotated forward and contacted Ms. DeShields in one and/or both knees as alleged.**

13. Ms. DeShields testified that she was seated, turned sideways, with her right knee further under the desk than her left knee. After contact occurred to her right knee by the Panel, she claims that she "turned," striking her left knee. The physics and human factors perception-reaction elements of this alleged incident sequence were analyzed. A force applied to a mass will induce kinematics whereby the body would necessarily accelerate away from the input force. Additionally, the reactive response would be a flee response, whereby the reasonably expected response would be such that Ms. Deshields would reactively move farther from the Panel. Thus, **Ms. DeShields' testimony regarding being struck first in the right knee and then turning and being struck in the left knee is not consistent with biomechanical and human factors principles.**

14. The medical conditions reported for Ms. DeShields include a "possible posterior horn medial meniscus tearing." The accepted mechanism for such an injury is a torsional load applied to the knee under axial loading. A misstep in walking/jogging can lead to such a mechanism. However, **the subject incident is not consistent with providing the mechanisms to reasonably cause the injuries or aggravate pre-existing injuries to a person, such as Ms. DeShields, as alleged.**

15. For the sake of argument, the possibility of contact was considered to assess the kinetic response of such contact. In a vertical orientation, the Panel would sit vertically,

with the gravity vector directly toward the hinge, and thus, no rotational acceleration would occur. Assuming some disturbing force caused the Panel to start to tip toward a seated person, the Panel would accelerate under gravity, but only as a function of its increasing angle. Given the maximum allowable rotation of the Panel by its construction, **the maximum speed the Panel's top edge would achieve under the limited tip forward would be less than 1.5 miles per hour. The static force necessary at the top edge of the Panel to counteract the tip forward position of the panel would be approximately half of the weight of the Panel, or about 12.25 pounds.**


16. The input force to the knee was compared against biomechanically accepted injury criteria and exposures of activities of daily living. In addition, the left knee of Ms. DeShields would only experience contact forces after the right knee dissipated the initial input forces, as Ms. DeShields testified the right knee was initially contacted before she turned toward the desk. Additionally, this Affiant, as part of the inspection, placed himself in position whereby the Panel was freely released and allowed to "impact" his knees. Despite repeated contacts to this Affiant in this manner, no injury or even discomfort was experienced. From a biomechanical standpoint, **the subject incident is not consistent with providing the kinetics to reasonably cause the injuries or aggravate pre-existing injuries to a person, such as Ms. DeShields, as alleged.**

FURTHER, AFFIANT SAYETH NAUGHT.

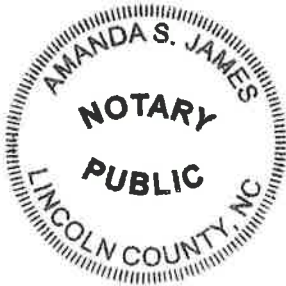
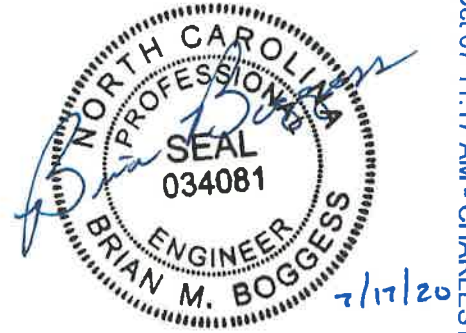
  
\_\_\_\_\_  
Brian Boggress, P.E.

SWORN TO AND SUBSCRIBED BEFORE ME

This 17 day of July, 2020.

  
\_\_\_\_\_  
Notary Public for North Carolina

My Commission Expires: 4-19-2021

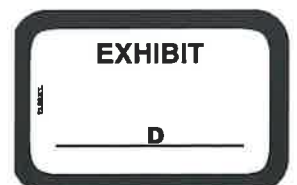


|                              |   |                                  |
|------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA      | ) |                                  |
|                              | ) | IN THE COURT OF COMMON PLEAS     |
| COUNTY OF CHARLESTON         | ) |                                  |
|                              | ) |                                  |
| TRECA DESHIELDS,             | ) | Civil Action No. 2019-CP-10-4310 |
|                              | ) |                                  |
| Plaintiff,                   | ) |                                  |
|                              | ) |                                  |
| v.                           | ) | <b>AFFIDAVIT OF BRYAN FARGIS</b> |
|                              | ) |                                  |
| JHM ENTERPRISES, INC., D/B/A | ) |                                  |
| MARRIOTT IN CHARLESTON       | ) |                                  |
| COUNTY, S.C.,                | ) |                                  |
|                              | ) |                                  |
| Defendant.                   | ) |                                  |

---

**PERSONALLY APPEARED BEFORE ME**, the undersigned, Bryan Fargis, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen and competent to testify about the matters contained in this Affidavit.
2. I currently am employed as the Chief Engineer at the Marriott Hotel, located at 4770 Goer Drive, North Charleston, South Carolina (hereinafter referred to as the "Marriott").
3. I have been continuously employed in this role since 2013.
4. In my role as Chief Engineer, I am responsible for all maintenance related activities at the Marriott.
5. On December 1, 2017, I responded to a call from Plaintiff, Treca DeShields, that the desk panel located in the room she was residing in as a hotel guest was leaning off the wall approximately six inches with the bottom portion of the panel still fully intact and secured to the wall.



6. Upon entering the room, I noticed that the desk panel was slightly leaning off the wall a mere few inches. The remainder of the panel was affixed to the wall as the panel is held in place by tracks which prevent it from being removed without manual assistance.
7. Nonetheless, I visually inspected the panel and, when I found no defects with the panel, manually pushed it back in place ensuring it was secured by the magnets.
8. In the years I have been employed with the Marriott, I have no knowledge of complaints or incidents where a desk panel was completely removed from the wall causing injury to any guest or employee.
9. Further, in the years I have been employed with the Marriott, I have never responded to a call, work order, or request to repair, fix, replace, or investigate a panel that had completely come off the wall as they cannot be removed from the wall or otherwise absent manual removal.
10. I have reviewed the photographs produced by the Plaintiff in this case, attached hereto and incorporated herein as Exhibit 1, and attest that this condition was not present in Plaintiff's hotel room when Jere Allen and I entered to inspect the panel.
11. The panel was not removed from the wall but instead was slightly ajar, no more than a few inches.
12. Nonetheless, I visually inspected the panel and, when I found no defects with the panel, I manually pushed it back in place ensuring it was secured by the magnets.
13. When the panel was shut the few inches it had been open, Jere Allen and I left Plaintiff's hotel room.

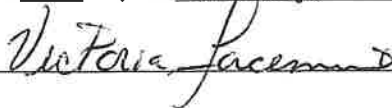
14. While attending to the desk panel in Treca DeShields' hotel room, I never exclaimed or otherwise informed anyone that there had been instances of prior desk panels completely falling off the wall as it would have been an inaccurate statement.

**FURTHER, AFFIANT SAYETH NAUGHT.**

  
Bryan Fargis

**SWORN TO AND SUBSCRIBED BEFORE ME**

This 1<sup>st</sup> day of October, 2020.

  
\_\_\_\_\_

Notary Public for South Carolina

My Commission Expires: 9/6/2026



STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
  
TRECA DESHIELDS, )  
Plaintiff, )  
v. )  
JHM ENTERPRISES, INC., D/B/A )  
MARRIOTT IN CHARLESTON )  
COUNTY, S.C., )  
Defendant. )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2019-CP-10-4310

**AFFIDAVIT OF JERE ALLEN**

**PERSONALLY APPEARED BEFORE ME**, the undersigned, Jere Allen, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen and competent to testify about the matters contained in this Affidavit.
2. I currently am employed as the Director of Operations at the Marriott Hotel, located at 4770 Goer Drive, North Charleston, South Carolina (hereinafter referred to as the "Marriott"). In addition, my previous role was Rooms Division Manager in 2017.
3. In my role as Director of Operations and my previous role as Room Division Manager, I am responsible for providing assistance to all maintenance related activities at the Marriott.
4. On December 1, 2017, I responded to a call, alongside Bryan Fargis, from Plaintiff, Treca DeShields, that the desk panel located in the room she was residing in as a hotel guest was leaning off the wall approximately six inches with the bottom portion of the panel still fully intact and secured to the wall.



- 5. Upon entering the room, I noticed that the desk panel was leaning off the wall a few inches. The remainder of the panel was affixed to the wall as the panel is held in place by tracks which prevent it from being removed without manual assistance.
- 6. I have reviewed the photographs produced by the Plaintiff in this case, attached hereto and incorporated herein as Exhibit 1, and attest that this condition was not present in Plaintiff's hotel room when Bryan Fargis and I entered to inspect the panel.
- 7. The panel was not removed from the wall but instead was slightly ajar, no more than a few inches.
- 8. Nonetheless, I witnessed Bryan Fargis visually inspect the panel and, when he found no defects with the panel, he manually pushed it back in place ensuring it was secured by the magnets.
- 9. When the panel was shut the few inches it had been open, we left Plaintiff's hotel room.

**FURTHER, AFFIANT SAYETH NAUGHT.**

Jere Allen *Jere Allen*

**SWORN TO AND SUBSCRIBED BEFORE ME**

This 1<sup>st</sup> day of October, 2020.

*Victoria Faceire*

Notary Public for South Carolina

My Commission Expires: 9/26/2024





Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

Defendant's engineer, Mr. Fargis, to inspect and fix the desk. Plaintiff took a series of pictures within minutes prior to Fargis's arrival. (Ex. 1-4). She also took a picture of him fixing the desk. (Ex. 5). During Fargis's presence in the room, Plaintiff heard Mr. Fargis say that the wall panel had come loose again. (Ex. 8, Dep. Deshields; pp. 53, 55) (my emphasis).

Defendant denied liability. Plaintiff filed the lawsuit in December of 2019. Relevant depositions on the issues of breach of duty and causation have been completed.

**STANDARD OF REVIEW**

While viewing the evidence in a light most favorable to the nonmoving party, summary judgment should not be granted unless there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Dowling v. Home Buyers Warranty Corp., II, 400 S.E.2d 143, 303 S.C. 295 (1991).

Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Watson v. Southern Ry. Co., 420 F.Supp. 483, 486 (D.S.C.1975); see also Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked").

Even if there is no dispute regarding the facts, summary judgment should be denied if there is a dispute as to the conclusions to be drawn therefrom. Gilliland v. Elmwood Properties, \_\_\_ S.C. \_\_\_, 391 S.E.2d 577 (1990).

**DISCUSSION**

**Dispute of Material Fact as Breach of Duty and Causation of Injury**

Defendant argues there is no material fact in dispute as to whether the wall panel was defective, whether the wall panel was not properly placed at the time of this incident and

whether Defendant had notice of a dangerous condition or defect. Defendant further argues that because the panel can only move 6-7 inches from the wall, the panel did not cause Plaintiff's injuries. Defendant's argument ignores relevant and admissible material evidence which creates a question of fact regarding the issues of breach of duty and causation.

A. Law:

In South Carolina an innkeeper "is under a duty to its guests to take reasonable action to protect them against unreasonable risk of physical harm." Allen v. Greenville Hotel Partners, Inc., 405 F.Supp.2d 653, 659 (D.S.C.2005) (quoting Courtney v. Remler, 566 F.Supp. 1225, 1231 (D.S.C.1983)). As a guest at the motel, the innkeeper undoubtedly has a duty to protect a guest from harms of which the innkeeper knew or had reason to know. Daniel v. Days Inn of America, Inc., 292 S.C. 291, 296, 356 S.E.2d 129, 132 (S.C. App. 1987) (citing Courtney, 566 F.Supp. at 1232).

Deposition testimony concerning what a defendant's agent said is admissible and relevant. See e.g., Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 105, 410 S.E.2d 537,540 (1990); Murr v. Nationwide Mut. Ins. Co., 389 S.C. 170, \_\_\_, 697 S.E.2d 660, 662 (Ct.App.2010) ("statements in [a] deposition constitute the scintilla of evidence needed to survive a summary judgment motion").

B. Argument:

In a light most favorable to Plaintiff, there is a material question of fact as to breach of duty and causation. Plaintiff testified Defendant's employee, Mr. Fargis, stated as he responded to Plaintiff's situation in the room, the wall panel had come loose again. (Ex. 8; pp. 53, 55). Plaintiff's own testimony provides evidence that Defendant's engineer, Fargis,

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

was aware of a defect with the panel as it had come down on other occasions. This evidence alone creates questions of material fact on the issue of breach of duty. Nevertheless, Defendants own employees provide further evidence of a defective panel and knowledge of the same.

Mr. Fargis testified:

1. He never saw a fallen panel pull a power strip out of the wall. (Ex. 9; p. 17).
2. He claims when he came into room, he saw panel 7 inches from wall (Ex. 6) and not all way against the back of the front legs. (Ex. 3) (Ex. 9; p. 21).
3. He moved panel back up to connect to the magnets. (Ex. 5) (Ex. 9; p. 22).
4. He could not explain, according to metadata for pictures of desk (Exs. 1-4), why he claimed the panel was only six to seven inches away from the wall when the pictures showing the panel against the back legs of the desk were taken within minutes of his arrival. (Ex. 9; p. 22).
5. He could not explain how the power strip would have been pulled from the hole if the panel only fell six to seven inches. (Ex. 9; p. 25).
6. He did not have evidence, other than his own testimony, to suggest that what is depicted in Ex. 3 was not the condition that Plaintiff experienced on the day of this incident. (Ex. 9; p. 29).
7. He agreed that it was possible his recollection could be wrong after showing him the red, white and black plaid bag in all the desk pictures and the timing of the pictures, including the picture of him pushing the panel back up. (Exs. 1-5) (Ex. 9; pg. 30).

Mr. Dickerson testified:

1. If the power strip with cords plugged in was not inside the cutout, it would cause a problem with the panel being able to close. (Ex. 10; pp. 19-20).
2. Sometimes the power strip would get knocked loose and keep the paneling from closing. (Ex. 10; p. 23).
3. Defendant had other incidents where the panel separated from wall and was found in the position in Ex. 6. (Ex. 10; pp. 24-25).

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

4. If the panel separated from wall and ended up against back legs of desk, he doesn't think the pulling of the cables would cause the power strip to be pulled from the hole along the drywall. (Exs. 1, 2) (Ex. 10; pp. 28-29).

Mr. Martin testified:

1. Guests will kick the panel and cause it to fall. (Ex.11; pp. 7-8).
2. Power strips are tucked away in a hole and not seen. (Ex. 11; p. 11).
3. Power strips are not secured. (Ex. 11; p. 12).
4. Opening the panel does not cause power strip to fall out of hole. (Ex. 11; pp. 14, 18-19).

Regarding breach of duty, this testimony shows Defendant's employees were aware of the ability of the panel to fall away from the wall as well as other incidents where the panel actually had fallen away from the wall. That being said, there is a question of fact as to who is accurately describing the position of the wall panel at the time of the incident (Exs. 1-4) and before Mr. Fargis initiated repair. (Ex. 5). Defendant, knowing the wall panel could be dislodged and fall and knowing of other actual incidents where the panel had fallen, did not take any steps to prevent the panels from falling or warn its guests, like Plaintiff, of this potential problem. Therefore, there is some evidence of breach of duty.

Further, Defendant's employees' testimony shows that the power strip, when stowed, would not fall out if the top of the panel was pulled away from the wall. Assuming that Defendant's employees testimony is true, then there would not be any reason for the power strip to have been pulled out of the wall after this incident as seen in Ex. 3. This photo, coupled with Defendant's employees' testimony, creates an inference that the panel was put in place without the power strip being properly stowed. As a result, the power strip was at the bottom of the panel and prevented the bottom brackets from engaging. This would

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

explain how the panel could fall away from the wall and why the top of the panel ended up against the back of the front legs of the table and making contact with Plaintiff's knees.

Regarding causation, Plaintiff testified to the mechanics of how the panel fell against her right knee and how she struck her left knee when she turned to her right. (Ex. 8; pp. 46-47). In addition, the photographs provide evidence of the position of the wall panel at the time of the incident and explain how the panel could injure Plaintiff's knees. These pictures, taken minutes before Fargis's arrival to the room, are consistent with Plaintiff's version of events and provide evidence of causation. Exs. 1-5, were taken on the day of the incident at different and sequential times according to the metadata: Ex. 1 - 10:02 am; Ex. 2 - 9:54 am; Ex. 3 - 10:08 am; Ex. 4 - 9:54 am and Ex. 5 - 10:22 am. Ex. 5 is the photo of Mr. Fargis putting the panel back up (a) after Plaintiff called the front desk, (b) after the front desk contacted Mr. Fargis and (c) after Mr. Fargis and the employee at the front desk traveled to Plaintiff's room and (d) after Mr. Fargis got down and started to resecure the panel. There is fourteen minutes between the last photograph and Mr. Fargis's resecuring of the panel. This photographic evidence, in a light most favorable to the Plaintiff, shows there is a causal connection between the panel's falling away from the wall and the injury to Plaintiff's knees causing some injury.

It is also important to note Fargis, when presented with the timing of the photographs, admitted at the conclusion of his deposition that it was possible that the panel had fallen as shown in Exs. 1-4 and up against the back of the front legs of the desk.

Regarding Defendant's expert's opinion, this opinion does not foreclose a breach of duty or causation. Defendant's biomechanical expert did not witness the salient events or

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

contemporaneously inspect the desk and panel. Further, Defendant’s expert has solely relied on non-testimonial information provided by Defendant and its employees. The opinion does not take into account statements and admissions by Defendant’s employees in their sworn testimony or consider the series and timing of the photographs. Defendant’s expert assumes the panel could not have fallen and did not fall more than 6-7 inches. Based on this assumption, Defendant’s expert opines that the panel could not have made contact with Plaintiff’s knees. However, the aforementioned testimonial and physical evidence presents a viable theory consistent with Plaintiff’s allegations and, therefore, creates a question of fact despite Defendant’s expert’s assumptions and opinion. In addition, as a biomechanical expert, Defendant’s expert is not qualified to provide an opinion on medical causation.

**CONCLUSION**

**WHEREFORE**, Plaintiff prays for an order from the Court dismissing Defendant’s motion for summary judgment.

McCRAVY NEWLON STURKIE & CLARDY  
LAW FIRM, P.A.

BY: s/Jon E. Newlon  
Jon E. Newlon  
State Bar #15617

Attorney for the Plaintiff  
1629 ByPass 72 NE  
Greenwood, S.C. 29649  
864-388-9100 (FAX 9104)  
[jnewlon@mccravylaw.com](mailto:jnewlon@mccravylaw.com)

Greenwood, South Carolina  
December 11, 2020



Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

46

1 ~~--- A. --- Yeah, it is a regular room chair. ---~~

2 Q. Okay.

3 A. On a wood floor.

4 Q. Okay. If you will, just walk me through the -- the  
5 fall -- the falling board again. Did it ---

6 A. Okay.

7 Q. It doesn't look like there's anything above the  
8 T.V., above the desk that's fallen. Well ---

9 A. Uh-huh.

10 Q. What was it specifically that -- that fell?

11 A. It was the bottom of the desk.

12 Q. The bottom of the ---

13 A. There was a board at the bottom of the desk.

14 Q. Okay.

15 A. Yeah. That fell -- that -- that fell back.

16 Q. Into the room towards you?

17 A. In towards me.

18 Q. Okay.

19 A. So from the wall, towards me.

20 Q. Okay. Prior to that, I mean, were you -- When you  
21 were sitting in the chair, how were you sitting?

22 Were you swinging your legs; are you leaning back?

23 A. I wasn't leaning back, 'cause it wasn't a rolling  
24 chair; it was a just chair that you sit up in. So I  
25 was sitting sideways, 'cause I was looking at the

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

47

1 T.V., and I was writing too, and so I was kind of  
2 turned sideways with my right leg more under the  
3 table.

4 Q. Okay. So -- and when it fell, it hit your right leg  
5 first?

6 A. It hit my right leg first.

7 Q. Okay. And had you moved and then it hit your left  
8 leg?

9 A. When it hit my right leg first, I didn't quite know  
10 what was going on, because I heard a noise first.

11 Q. Okay.

12 A. And then -- then I turned, and it hit the other leg,  
13 and then I pull -- I pulled the chair back to see  
14 what was going on, because at that time I'm feeling  
15 it.

16 Q. Yeah.

17 A. I'm not just hearing a sound, I'm feeling it now.

18 Q. So it hit your right leg on the initial fall.

19 A. Uh-huh.

20 Q. Did your -- was it still moving when you turned into  
21 it?

22 A. It hit the right leg, and then when I turned it hit  
23 the left. I'm not sure if it was moving or not.

24 Q. Okay.

25 A. Yeah. I just know it hit both legs.

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

53

1           said, "I will be up." She came up. I think she was  
2           expecting it to be something small, like just a  
3           piece of something. She was like, "Oh, the whole  
4           board came off," and I was like, "Yes, it did, and  
5           it -- it hit my knee," and I said, "You see my knee  
6           is swoll." She said, "You got -- I'm going to need  
7           you to write me a statement." And at that point she  
8           called head of maintenance, who sent the guy up to  
9           fix it.

10          Q.    Okay.

11          A.    And when he came up, he said that, "Oh, it came a  
12               loose. It come -- it come loose again." And that  
13               was it. And they asked me to write the statement  
14               and asked me was I going to go seek medical  
15               treatment, and I told them that I would.

16          Q.    Do you remember who came up from housekeeping, who  
17               the initial, the -- the she was?

18          A.    It was a female. She was the head of housekeeping  
19               that day. I'm sure their records would determine  
20               it, but it was a female that came up first.

21          Q.    Do you remember what ---

22          A.    And they said it was the head of household, and I  
23               cannot -- I -- I don't remember.

24          Q.    Do you remember what she looked like?

25          A.    No. I -- I really, uh-uh. I can't remember.

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

55

1 did he say?

2 A. It's loose, it came loose.

3 Q. Okay. Did he mention that it had ever happened  
4 before?

5 A. He said it came loose, it came loose again. So I  
6 didn't know whether he was referring to that one, or  
7 this is something that they've dealt with before.

8 Q. Okay. And was he able to do anything while he was  
9 in there?

10 A. He pushed it back. He did something to it. He had  
11 some tools and did something to put it back up.

12 Q. Okay. And I'm going to -- this is the third picture  
13 from the end, I think that makes it the ninth  
14 picture.

15 A. Is that the one you have?

16 Q. Is that a picture of the man that came up?

17 A. Uh-huh.

18 Q. From head of engineering?

19 A. Yes.

20 Q. Okay. Is that him pushing it back in?

21 A. Yes.

22 Q. Okay. And are -- are you standing while you're  
23 taking this picture?

24 A. I'm sitting -- I'm stand -- I think I'm sitting on  
25 the bed, because that's, well, like either that's my

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

**Bryan Fargis**  
**Deshields v. JHM Enterprises, Inc.**

11/3/2020

Page 1

State of South Carolina )  
County of Charleston )  
Trecia Deshields, )  
Plaintiff, )  
v. )  
JHM Enterprises, Inc., )  
d/b/a Marriott in )  
Charleston County, S.C., )  
Defendant. )

19-CP-10-04310

Deposition

Of

Bryan Fargis

Date: November 3, 2020

Time: 1:08 p.m.

Location: Via Remote Teleconference for All Parties

Reported by

Diane M. Hendricks



ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Bryan Fargis  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 11

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1094310

1 with your job?

2 A Yes, sir.

3 Q That's fine. Okay. Is it -- is it safe to say  
4 that for most of your professional career you've  
5 been doing either basic or upper-level  
6 engineering work for hotels and motels?

7 A For the last 20 years.

8 Q Okay. Fair enough. That's all I need to know.  
9 All right. Excluding any attorney that you may  
10 have talked to, have you -- today have you spoken  
11 to anyone about your deposition?

12 A No, sir.

13 Q Okay. You haven't talked to Dickerson or the  
14 other fellow I've talked to? I can't remember  
15 his name off the top of my head. I think it was  
16 Martin.

17 A I have not today, no, sir.

18 Q No. Fair enough. Has the -- let's talk about  
19 the desk that was in this room where this  
20 incident happened, and just in general desks in  
21 the hotel where it happened, the Marriott, the  
22 North Charleston Marriott. Are all the desks  
23 pretty much the same, or are there any  
24 significant differences?

25 A They're identical, sir.

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Bryan Fargis  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 17

1 Q All right. Have you ever seen a situation where  
2 the panel dropped any amount and caused the power  
3 strip to come out of the 5x2 space?

4 A Not that I recall, sir.

5 Q Okay. All right. And just so I -- just so I can  
6 close the loop on this, you say not that you  
7 recall. Are you telling me you don't know either  
8 way?

9 A I -- not that I can recall seeing that incident  
10 which that panel is completely off of the  
11 railing. So I can't say.

12 Q Yeah. No. But I'm -- I'm not talking about this  
13 particular incident. I'm -- I'm talking about  
14 any incident where you've ever seen a panel drop  
15 however far, six-seven inches, or all the way  
16 from the back of the legs. Have you -- have you  
17 ever seen a situation where the -- that would  
18 have pulled the power strip out of its space?

19 A I do not recall seeing -- ever seeing that. It  
20 may have been there, but I do not recall seeing  
21 that.

22 Q Okay. All right. Let's stop "share" for a  
23 moment. As far as the -- the type of power  
24 strip, make, model, that kind of thing, were they  
25 pretty much the same in every room, or is there

ELECTRONICALLY FILED - 2020-Dec-11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Bryan Fargis  
Desheids v. JHM Enterprises, Inc.

11/3/2020

Page 18

1 some variation?

2 A They're pretty much the same. They were all  
3 bought in bulk during the renovation.

4 Q All right. And, just so I can show you, I'm not  
5 marking this. I'm just showing this for -- so  
6 you can see. Do you see that box right there  
7 (indicating)?

8 A Yes, sir.

9 Q That's a -- that's a plan, a parallel view of the  
10 power strip. This is the edge of it. Is it  
11 possible for you to measure the width of it  
12 across and the height of it for me? I don't need  
13 the length.

14 A The thickness and -- oh, I can -- I can -- I can  
15 do that, yeah.

16 Q All right. I'll send something to your attorney  
17 and let her -- you can do that pursuant to my  
18 request, okay? Has -- have you ever encountered  
19 a -- a common problem of power strips falling out  
20 of the 5x2 space?

21 A No, sir.

22 Q Okay. I'll share with you real quick. Let me  
23 get it turned. We're looking at Dickerson 7.  
24 This was, again, a picture that I took when I  
25 came that day. And what I'm looking at is down

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Bryan Fargis  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 21

1 I'm showing you what's marked Exhibit 1 to the  
2 Dickerson deposition. When you came in after  
3 this incident, do you have any recollection of  
4 whether this was what you saw or did you see  
5 something different?

6 A I saw something different.

7 Q You did? What did you see different?

8 A The board was not down that far. It was down,  
9 and the state that you had it in when you did it,  
10 it was like six inches off. And I reached down  
11 and pushed it in.

12 Q Okay. And when -- just to clarify for you,  
13 you're saying it was in the state as depicted by  
14 Exhibit 6 to the Dickerson deposition, this one  
15 (indicating)?

16 A Yes, sir.

17 Q Okay. All right. Were you there when Ms. Shield  
18 [sic] or her mother took -- took pictures?

19 A Not these pictures.

20 Q Okay.

21 A I was there in the picture that you saw me in.  
22 But that was it.

23 Q Okay. All right. And then we'll flip to this  
24 Dickerson 5.

25 A Uh-huh.

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004210

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Bryan Fargis  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 22

1 Q So what I'm seeing here is your hands on  
2 the -- the board that looks like you're -- I  
3 can't tell exactly where in this -- where exactly  
4 what phase you were in, but you at that point  
5 pressing it to connect the magnets; is that  
6 right?

7 A Yes, sir. Yes, sir.

8 Q Okay.

9 A That's what that appears.

10 Q Okay. All right. So you never saw what's  
11 depicted in Exhibit 3. When you came in, you  
12 never saw anything like this?

13 A No, sir.

14 Q What I'm trying to figure out, Mr. Fargis, is the  
15 timestamp on these photographs that I'm showing  
16 you in 1, 2, 3, 4 all precede the timestamp of  
17 this photograph, which is Exhibit 5. Do you have  
18 any explanation for that?

19 A No, sir.

20 Q Did they -- did Ms. Deshields or her mother  
21 indicate that they tried to push it back up  
22 before you got there?

23 A I did not have communication with the -- your  
24 clients.

25 Q Okay. You didn't talk to them at all?

ELECTRONICALLY FILED - 2020-Dec-14 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Bryan Fargis  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 25

1 A Your client's statement.

2 Q Oh, okay. No. That's all I wanted to know.

3 A Yeah.

4 Q Let me ask you, share something else with you  
5 real quick. Looking at Exhibit 3 to the  
6 Dickerson deposition, and what I'm really trying  
7 to -- looking at -- I don't have the benefits of  
8 the measurements, but nevertheless, most of the  
9 time -- as I understand it, the power strip in  
10 the case -- or excuse me.

11 MR. NEWLON: Strike that.

12 Q As I understand it, generally if this setup is  
13 correct, the power strip will not be at the base  
14 of the wooden panel, would it?

15 A You're correct.

16 Q All right. The -- looking at Exhibit 3, you have  
17 any idea, or explanation, or can offer anything  
18 as to how this power strip got in this position?

19 MS. LINTON: Object to the form.

20 THE WITNESS: Excuse me?

21 Q No. She's just --

22 MS. LINTON: I just objected to the form. Go ahead  
23 and answer.

24 Q Yeah. Subject to objection, my question is, do  
25 you have any idea how this power strip got in

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CF1001310

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Bryan Fargis  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 29

1 strip, why is it that -- why is it that the  
2 engineering department puts the power strip back  
3 in the space?

4 A Put it back where you found it.

5 Q Okay. Do you have any information or knowledge,  
6 other than that what may be shown in these  
7 pictures, do you have any information or  
8 knowledge to suggest that what is depicted in  
9 Exhibit 3 was not the condition that Ms.  
10 Deshields experienced on the day of this  
11 incident?

12 A No, sir.

13 Q So, with regard to what the actual position of  
14 the panelboard was at the time of this incident,  
15 the only information we have is from Ms.  
16 Deshields and her mother, and then your  
17 observations and potentially Jerry Allen's  
18 observations when y'all came to the room?

19 A Yes, sir.

20 Q You can't think of anything else? Any other  
21 sources of information?

22 A No, sir.

23 Q Bear with me; bear with me just a second. I -- I  
24 just want to point something out to you, see if  
25 you can explain it to me real quick. And then

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Bryan Fargis  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 30

1 I'm going to be done if you can find the -- what  
2 did I do with it? Here we go. I'm looking at  
3 Exhibit 1 to the Dickerson deposition. Do you  
4 see this bag right here?

5 A Yes, sir.

6 Q Okay. Now I'm looking at Dickerson 3. Do you  
7 also see the bag in the same position?

8 A Yes, sir.

9 Q And, in Dickerson 4, do you see that same bag in  
10 the same position?

11 A Yes, sir.

12 Q And, in Exhibit 5, where you're sitting down and  
13 pushing up the panel board, do you see that bag  
14 in the same position?

15 A Yes, sir.

16 Q So it's your testimony that the condition that we  
17 see in Exhibit 1, 2, and 3 did not -- and 4, did  
18 not exist on your arrival and Jerry Allen's  
19 arrival in the room; is that correct?

20 A That's my recollection. Yes, sir.

21 Q Could your recollection be wrong?

22 A Anything's possible.

23 MR. NEWLON: I have no further questions.

24 MS. LINTON: I don't have any questions.

25 FURTHER DEPONENT SAYETH NAUGHT

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Travis Dickerson  
Deshields v. JHM Enterprises, Inc.

11/3/2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

Page 1

|                          |   |                  |
|--------------------------|---|------------------|
| State of South Carolina  | ) |                  |
|                          | ) |                  |
| County of Charleston     | ) |                  |
| Treca Deshields,         | ) | 19-CP-10-04310   |
|                          | ) |                  |
| Plaintiff,               | ) |                  |
|                          | ) |                  |
| v.                       | ) | Deposition       |
|                          | ) |                  |
| JHM Enterprises, Inc.,   | ) | Of               |
| d/b/a Marriott in        | ) |                  |
| Charleston County, S.C., | ) | Travis Dickerson |
|                          | ) |                  |
| Defendant.               | ) |                  |

Date: November 3, 2020

Time: 9:57 a.m.

Location: Via Remote Teleconference for All Parties

Reported by  
Diane M. Hendricks



Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Travis Dickerson  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 19

1 wood --

2 A Right.

3 Q -- you see and part of it would have been hanging  
4 down?

5 A Right. There's a little cutout, like I said,  
6 that cables can run through.

7 Q Have y'all always used that cutout?

8 A Yes, sir.

9 Q Okay. And that cutout would be typically, you  
10 said, for running cords and also for --

11 A The power cord for the TV --

12 Q I gotcha.

13 A -- HDMI cable.

14 Q All right.

15 A Things of that nature.

16 Q And -- and also, would it be used to use with the  
17 power strip up there?

18 A Yes, sir.

19 Q Is there any particular reason why y'all put the  
20 power strip at least partially up in that space?

21 A Just to keep the -- the knotted mess  
22 of -- of -- because you got like three power  
23 supplies that are plugged in right there, you  
24 know? And, if it gets down behind there, it  
25 could cause an issue with that closing all the

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE# 2019CP1004310

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Travis Dickerson  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 20

1 way.

2 Q I gotcha. Going back to this exhibit -- let me  
3 get it swung around for you. Okay. We're -- no.  
4 Let me get the -- hit "visible." No. Hit -- hit  
5 "width." No. Hit -- ah. There we go. All  
6 right. So we're looking back again at Exhibit 6,  
7 and, as you've identified, in this area right  
8 here, as I understand it, and what I'm going to  
9 do -- let's see if I can move this out of the  
10 way. There we go. I'm taking this picture, and  
11 all I'm going to do is take a highlighter and  
12 go --

13 A Right.

14 Q -- kind of right there just to indicate the -- so  
15 it will be easier for us to see this strip  
16 hanging down. Is that about -- it's in that box  
17 somewhere?

18 A Yes, sir. That's correct.

19 Q All right. Good. All right. And -- all right.  
20 All right. Let me stop "share" real quick, if I  
21 can get to it. There we go. All right. I think  
22 I stopped "share." Well, maybe not.

23 MS. LINTON: Are you talking about sharing your  
24 screen?

25 MR. NEWLON: No, no. I think -- have I stopped

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004340

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Travis Dickerson  
Desheids v. JHM Enterprises, Inc.

11/3/2020

Page 23

1 A That's correct. Yes, sir.

2 Q Would it have been the same day or days later?

3 A It would have been the same day.

4 Q Okay. All right. And, when you came in later  
5 on, the wall panel was in place?

6 A It was. Yes, sir.

7 Q Okay. As I understand, the wall panel hangs or  
8 is affixed to the wall using what I call  
9 in -- in-and-out wood brackets and magnets at the  
10 top to hold it in place? Well, let me -- let me  
11 ask this, a better -- a better question. Let me  
12 do this: I'm looking at Exhibit 6, these down,  
13 here. Can you see my little --

14 A Yes, sir. I can.

15 Q All right. These little items right there,  
16 there's three of them. Did you have a name for  
17 those?

18 A No. No.

19 Q All right. All right. But, as I understand the  
20 way this thing functions, this desk would drop  
21 down to where the upper -- upper brackets would  
22 overlock the lower brackets, and the weight of  
23 the wall -- a wallboard would basically keep it  
24 in place along with the magnets holding it  
25 against the wall. Am I understanding that?

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON COMMON PLEAS CASE#2019CGP1004310

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Travis Dickerson  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 24

1 A Yes, sir. That's correct.

2 Q All right. Did you yourself ever go in and  
3 observe and investigate the condition of this  
4 desk after this incident?

5 A No until it -- it -- my chief engineer had -- had  
6 already addressed the issue and left the room.

7 Q I gotcha. So as far as what -- how it appeared  
8 or anything like that at the time of the  
9 incident, you don't have any firsthand knowledge?

10 A No, sir. I do not.

11 Q Okay. Have you ever -- do you have any  
12 information about any another incidents or  
13 circumstances like this where the wall panel had  
14 come loose and had to be reset?

15 A No, sir.

16 Q Okay. And I'm not talking about a case where  
17 somebody gets injured. I just mean somebody  
18 going in there and reports the wall panel not  
19 being all the way in place, and then having to  
20 come back and reset it?

21 A Normally, the picture that's in front of us,  
22 Exhibit 6 --

23 Q Yeah.

24 A -- if -- if we have an incident where the wall  
25 panel has come open, it looks like what you see

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Travis Dickerson  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 25

1 in Exhibit 6, and you just push it back in place.

2 Q I gotcha. And -- and it like looks like in this  
3 particular picture, and you can verify it for me.

4 But when the -- if you do have a power strip  
5 that's up inside this space like that, and the  
6 wall panel is open just to this extent, which I'm  
7 not exactly sure how far that is, but --

8 A Right.

9 Q -- being open to this extent, looking at all the  
10 cords, that does not -- that would not force or  
11 pull the power strip down, would it?

12 A No, sir.

13 Q Okay. All right. All right. All right. All  
14 right. Okay. I'm just looking for something.  
15 Let me try to -- so I'm looking at Exhibit 7. In  
16 looking at Exhibit 7, if you look at this far end  
17 down here where this bracket is, if this  
18 over-bracket was affixed to this other bracket  
19 right here, if -- it appears to me that the  
20 space -- well, wait. Let me get rid of something  
21 real quick. I'm sorry. There. Looking at  
22 Exhibit 7, when I'm looking at this far brackets,  
23 and -- and then actually looking at any one of  
24 them, but these brackets are properly in place  
25 and these are placed over the tap and matched up,

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Travis Dickerson  
Desields v. JHM Enterprises, Inc.

11/3/2020

Page 28

1 the back of the front legs --

2 A Uh-huh.

3 Q -- can -- can the -- if that happens and the  
4 wall -- and the power strip is up inside the  
5 space, would that cause the power strip to come  
6 down?

7 A I would not think so --

8 Q No?

9 A -- but I'm -- I'm not sure.

10 Q Okay. This cable that's right here that's going  
11 through this hole (demonstrating) --

12 A Yes, sir.

13 Q -- right there in the right, upper top of the  
14 wall panel, there's a black cable coming out. Do  
15 you know what that goes to?

16 A Yes, sir.

17 Q What does it go to?

18 A A desk lamp.

19 Q Okay. And that cable would come in this hole,  
20 and come down, and be plugged into the power  
21 strip?

22 A That's correct.

23 Q Okay. So if this cable right here that goes to  
24 the lamp, if the length of that cable as it's  
25 plugged into the strip, when this thing comes all

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

Travis Dickerson  
Desheids v. JHM Enterprises, Inc.

11/3/2020

Page 29

1 the way down, if there's not enough length to  
2 this cable, this cable could -- would pull the  
3 power strip down?

4 A I -- I don't think so.

5 Q Okay.

6 A The cables are pretty long and they're standard  
7 on all of their lamps.

8 Q Okay. And now we're looking at Exhibit 3, which  
9 is little better view. Now you can see the plug,  
10 you see the white cable, the power strip.

11 A Yep.

12 Q It's down. And you see this -- the cable for the  
13 lamp running around. This cable comes down and  
14 the -- would -- and it's hard for me to tell, but  
15 is it -- does it run -- and is it plugged into  
16 the power strip?

17 A It does plug into the power strip. If you plug  
18 it in to the wall, the panel will not shut.

19 Q Yeah. I understand. All right. And just  
20 showing you what's marked as Exhibit 4, a little  
21 different --

22 A Okay.

23 Q -- view with the power strip. And I -- this  
24 cable that's coming from this lamp, it's just  
25 hard for me to see it. Do you know which one of

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

David Martin  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 1

|                          |   |                |
|--------------------------|---|----------------|
| State of South Carolina  | ) |                |
|                          | ) |                |
| County of Charleston     | ) |                |
| Treca Deshields,         | ) | 19-CP-10-04310 |
|                          | ) |                |
| Plaintiff,               | ) |                |
|                          | ) |                |
| v.                       | ) | Deposition     |
|                          | ) |                |
| JHM Enterprises, Inc.,   | ) | Of             |
| d/b/a Marriott in        | ) |                |
| Charleston County, S.C., | ) | David Martin   |
|                          | ) |                |
| Defendant.               | ) |                |

Date: November 3, 2020

Time: 10:40 a.m.

Location: Via Remote Teleconference for All Parties

Reported by  
Diane M. Hendricks



ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

David Martin  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 11

1 sideways, but there's this outlet right here, and  
2 that's where the power strip plugs in?

3 A Yes, sir.

4 Q Is that pretty much uniform with all of the  
5 desks?

6 A Yes, sir.

7 Q Okay. All right. And then it appears that the  
8 power strip itself, the box where everything  
9 plugs in, is out of view in Exhibit 6. Do you  
10 where it is?

11 A Yes, sir.

12 Q Where is it?

13 A It's tucked inside the -- the flap at the top.

14 Q Okay.

15 A There's -- there are small -- yeah, there are I  
16 guess five-inch holes lengthwise, like five inch  
17 by maybe two inch that we can tuck the electrical  
18 cord into that. That's where all your cables  
19 will -- can pass from the top to the bottom.

20 Q I gotcha. Okay. And, when we're looking at this  
21 right here, it's really kind of hard to see, but  
22 this space you talk about, this 5x2 space would  
23 be somewhere back up in here where these cords  
24 are going? The power strip would be placed up  
25 inside this space as well?

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

David Martin  
Desheids v. JHM Enterprises, Inc.

11/3/2020

Page 12

1 A Yes, sir.

2 Q Is there anything, you know, like a lot of times  
3 power strip's on one end or the other, they got a  
4 hole where you can put a screw in and screw it or  
5 hang it or affix it to something. Are these  
6 power strips kind of free-floating or are they  
7 screwed down?

8 A Could -- could you --

9 Q Yeah. I mean, are they screwed down when they're  
10 stuck up in this space or --

11 A No, sir. No, sir.

12 Q Oh, okay. All right. And is there any  
13 particular reason why these power strips are  
14 placed up in that space as opposed to just  
15 allowed to rest at the bottom of this space  
16 between the wall panel and the wall?

17 A I mean, there's -- I guess it depends on  
18 preference of the engineer who worked on it last.  
19 I -- I mean, that's just -- I mean, I can only  
20 speak for myself, so...

21 Q That's fine. You're here for yourself, you know?  
22 I'm not really into what other people think. I  
23 just want to know what you think.

24 A So you just want to know -- can you rephrase  
25 that? I'm sorry.

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

David Martin  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 14

1 A Are you talking about moving the door?

2 Q Yeah. Like when you go in and -- and when you  
3 see this condition right here, would you say is  
4 the typical event when someone kicks the bottom  
5 of the panel, when you come in and see this  
6 condition --

7 A Uh-huh.

8 Q -- is it just a case where you go in there and  
9 push it back up where the magnets --

10 A Yeah.

11 Q -- reconnect, or do you have -- or is  
12 the -- would this type of movement always cause  
13 the power strip to fall out of the space?

14 A Not usually.

15 Q Okay. I mean, I'm just look -- the reason I ask  
16 that is the -- whatever length of the cords'  
17 connection, you got the plug, the cords are up in  
18 here. When this things moves this much, does it  
19 pull any of the cables taut enough to pull the  
20 circuit breaker out of the wall?

21 A No, sir.

22 Q Okay. All right. I'm looking at Exhibit 5, that  
23 fellow right there sitting on the ground with the  
24 black shirt, is that -- is that Mr. Fargis?

25 A Yes, sir.

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004340

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

David Martin  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 18

1           this accident -- well, that's a good question.  
2           Has this -- to your knowledge has this, the  
3           existence or nonexistence of this 5x2 space or  
4           anything about that, to your knowledge has it  
5           been modified in this room?

6    A       To my knowledge, no.

7    Q       Okay.

8    A       I've -- I -- I'm not even sure what room this is.

9    Q       Okay. Well, this is where the incident took  
10           place and the -- quite frankly, I don't remember  
11           the number of the room. But, at any rate, this  
12           picture depicts a -- a setup where the -- where  
13           the power strip would be in the 5x2 space. Am I  
14           understanding that correctly?

15   A       Yes.

16   Q       So, if this is the same desk that is depicted in  
17           Exhibit 3, then there would be a place up here,  
18           but the power strip is not in there anymore.

19   A       Right.

20   Q       Okay. And I was just trying to figure out what,  
21           if anything, what movement in the panel, the wall  
22           panel --

23   A       So basically you're asking if -- what movement  
24           would -- would possibly jerk it from that area?

25   Q       Yes.

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019GP1004240

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

David Martin  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 19

1 A From -- remove it for the area?

2 Q Yes, sir.

3 A You would have to physically do it.

4 Q You mean reach up with your hand and pull it out?

5 A Yes. You would grab the cord and pull.

6 Q Okay. All right. Makes sense.

7 A I mean, if you're -- if you're here, I can show  
8 you but it's --

9 Q Oh, no. I -- no. I understand. I understand.

10 I appreciate that. The power strips that  
11 are -- that you see in this Exhibit 3 to the  
12 Dickerson deposition, are those power strips  
13 uniform amongst the rooms?

14 A All the ones that I've been and -- and personally  
15 seen, yes. Those are all -- those are all the  
16 ones that I've seen.

17 Q Okay. Looking at Exhibit 7 to the Dickerson  
18 deposition, looking down here, just so I got the  
19 parts, this appears to be -- this at the bottom  
20 along the wall, that's a kickboard. Do you know  
21 if that's a kickboard or not that runs the length  
22 of the --

23 A That's your wall base.

24 Q Wall base. I call it a kickboard.

25 A No.

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019GP1004310

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

David Martin  
Deshields v. JHM Enterprises, Inc.

11/3/2020

Page 19

1 A From -- remove it for the area?  
2 Q Yes, sir.  
3 A You would have to physically do it.  
4 Q You mean reach up with your hand and pull it out?  
5 A Yes. You would grab the cord and pull.  
6 Q Okay. All right. Makes sense.  
7 A I mean, if you're -- if you're here, I can show  
8 you but it's --  
9 Q Oh, no. I -- no. I understand. I understand.  
10 I appreciate that. The power strips that  
11 are -- that you see in this Exhibit 3 to the  
12 Dickerson deposition, are those power strips  
13 uniform amongst the rooms?  
14 A All the ones that I've been and -- and personally  
15 seen, yes. Those are all -- those are all the  
16 ones that I've seen.  
17 Q Okay. Looking at Exhibit 7 to the Dickerson  
18 deposition, looking down here, just so I got the  
19 parts, this appears to be -- this at the bottom  
20 along the wall, that's a kickboard. Do you know  
21 if that's a kickboard or not that runs the length  
22 of the --  
23 A That's your wall base.  
24 Q Wall base. I call it a kickboard.  
25 A No.

ELECTRONICALLY FILED - 2020-Dec-14 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CF1004310

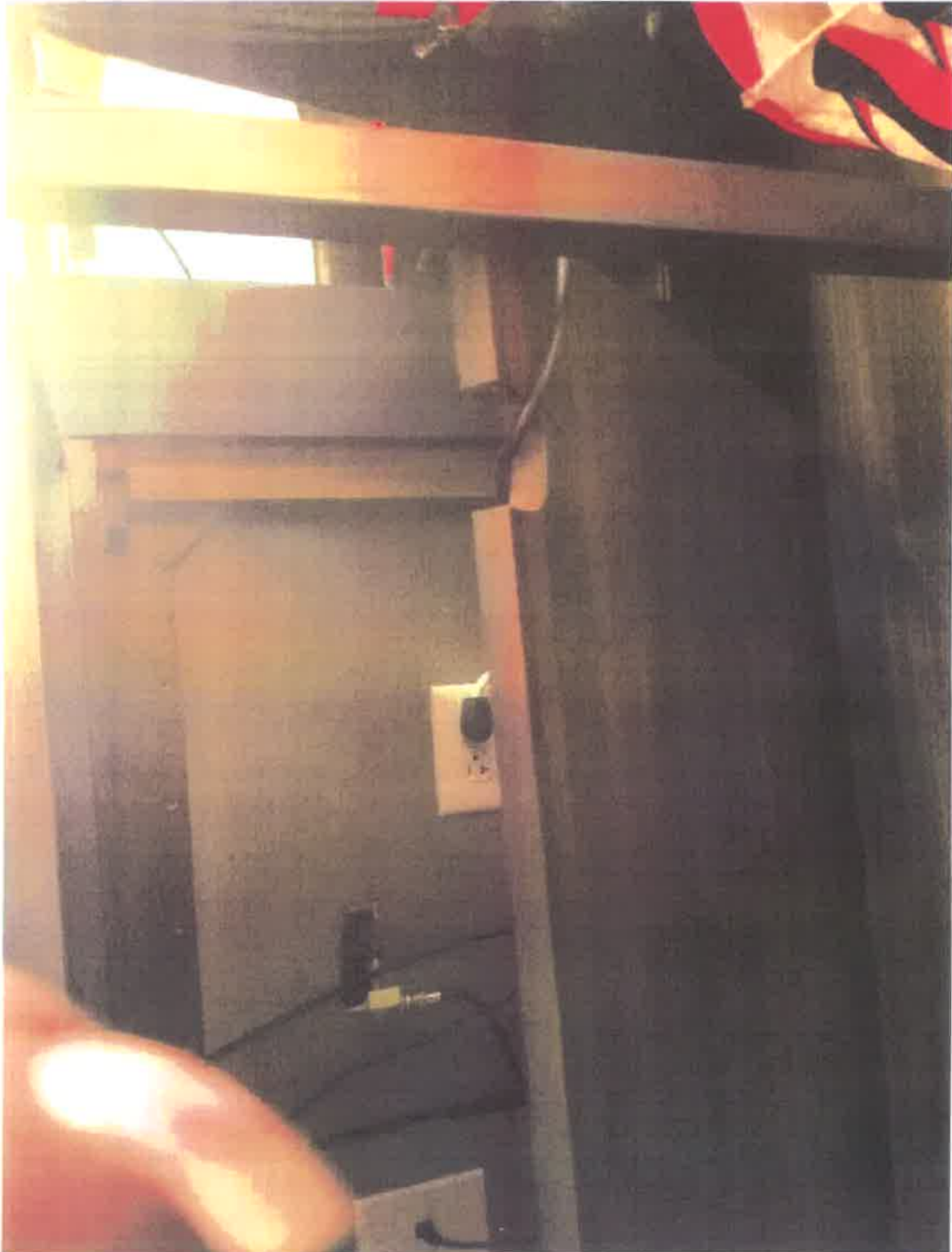
Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310



Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310



Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310



EXHIBIT  
3

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020



ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004310

EXHIBIT  
4

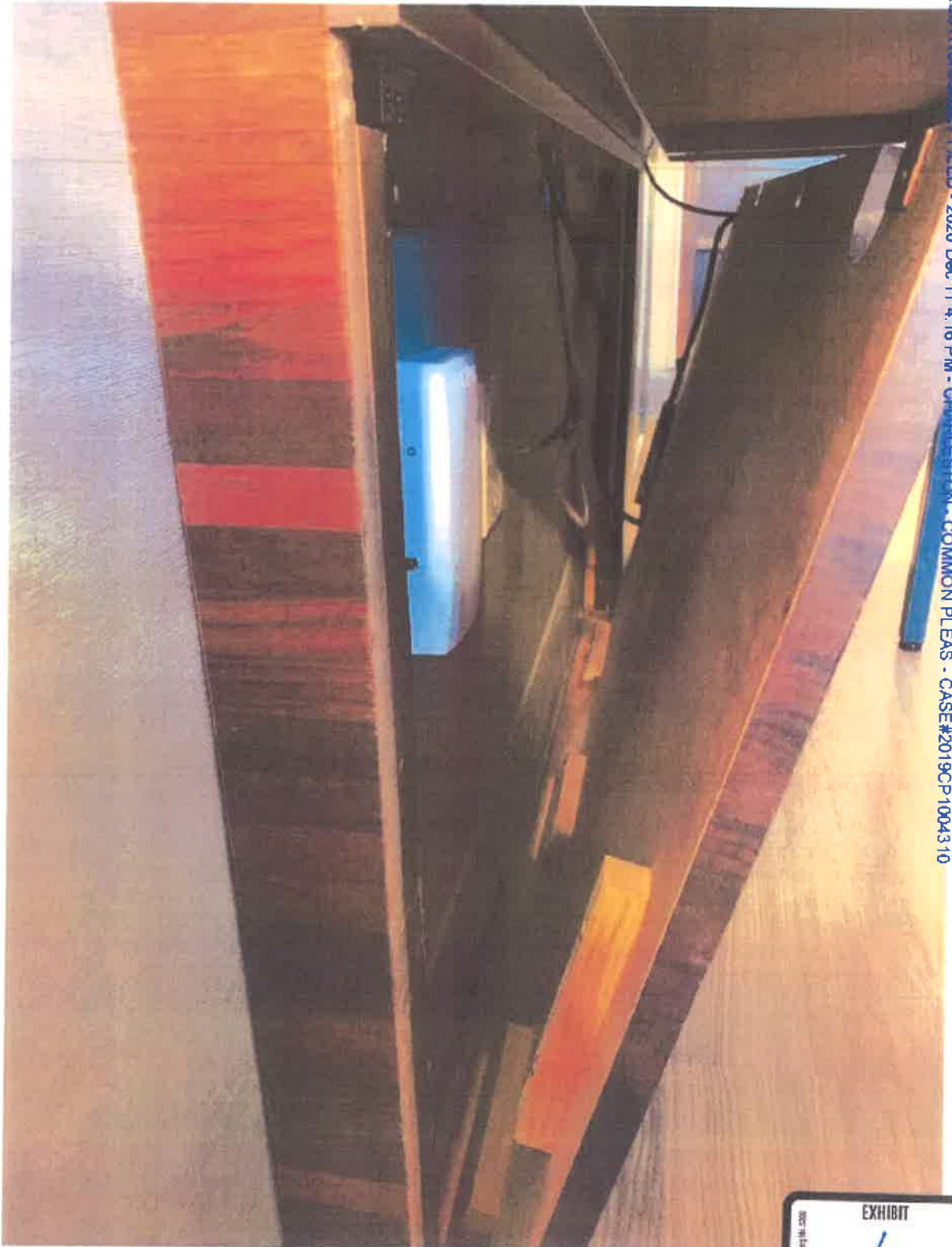
Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment of December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP-10043 10



EXHIBIT  
5

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment of December 11, 2020



ELECTRONICALLY FILED - 2020 Dec 11 4:16 PM - CHAMBERSTON, COMMON PLEAS - CASE#2019CP1004310

EXHIBIT  
6

Return and Memo in Support of Return to Deny Defendant's Motion for Summary Judgment  
of December 11, 2020



EL ELECTRONICALLY FILED - 2020 Dec 11 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2019021004310

EXHIBIT  
7

|                                          |   |                              |
|------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                  | ) | IN THE COURT OF COMMON PLEAS |
|                                          | ) |                              |
| COUNTY OF CHARLESTON                     | ) | NINTH JUDICIAL CIRCUIT       |
| Treca DeShields,                         | ) |                              |
|                                          | ) |                              |
| Plaintiff,                               | ) |                              |
|                                          | ) |                              |
| vs.                                      | ) | <b>MOTION TO RECONSIDER,</b> |
|                                          | ) | <b>ALTER OR AMEND</b>        |
| JHM Enterprises, Inc., d/b/a Marriott in | ) |                              |
| Charleston County, S.C.,                 | ) | <b>19 - CP - 10 - 4310</b>   |
|                                          | ) |                              |
| Defendant.                               | ) |                              |
| _____                                    | ) |                              |

TO: THE COURT:

Plaintiff, through her undersigned attorney, moves before the Court, pursuant to Rule 59, SCRCF, and asks the Court to alter, amend and/or reconsider it's order dated June 16, 2021. Plaintiff respectfully presents the following legal and factual matters for reconsideration, clarification and/or correction.

- 1. Issues of Notice and Defective Condition.
  - A. Why doesn't Plaintiff's testimony about Defendant's employee's statement (not hearsay), "The panel came loose again", constitute a scintilla of evidence of notice of an ongoing defect?
  - B. Why the above testimonial evidence was not considered or even discussed in the Court's order?
  - C. Why doesn't Defendant's employee's own testimony (that (1) If the power strip with cords plugged in was not inside the cutout, it would cause a problem with the panel being able to close; sometimes the power strip would get knocked loose and keep the paneling from closing; and there were other incidents where the panel separated from wall and was found in the position in Ex. 6), provide a scintilla of evidence of notice of an ongoing defect?

2. Factual Findings.
  - A. Why did the Court find the power strip cable was another “safeguard” to the desk panel falling when Defendant did not produce any evidence of the same, i.e., cord prevented the desk panel from falling?
  - B. Why did the Court find the desk panel could only fall 6-7 inches from the wall when the metadata of the pictures clearly show the desk panel in this incident fell all the way against the back legs of the desk and Defendant’s employee testified this happened before when the power strip was not in the proper position and prevented the wooden leafs<sup>1</sup> from engaging?
  - C. Why did the Court find that there were no incidents of a similar nature that had occurred on the premises when Defendant’s own employees stated the panel came loose again, sometimes the power strip would get knocked loose and keep the paneling from closing, and there were other incidents where the panel separated from wall and was found in the position in Ex. 6.<sup>2</sup>

**WHEREFORE**, Plaintiff asks the Court to reconsider, alter or amend its factual findings and legal conclusions given that there was at least a scintilla of evidence of notice of a defective condition and rule on those matters raised and not ruled upon in its Order.

McCRAVY NEWLON STURKIE & CLARDY  
LAW FIRM, P.A.

BY: s/Jon E. Newlon  
Jon E. Newlon  
State Bar #15617

Attorney for the Plaintiff  
1629 ByPass 72 NE  
Greenwood, S.C. 29649  
864-388-9100 (FAX 9104  
[jnewlon@mccravylaw.com](mailto:jnewlon@mccravylaw.com)

Greenwood, South Carolina  
June 18, 2021

---

<sup>1</sup> Not hinges. Wooden leafs overlaid each other and were not affixed with screws and pins.

<sup>2</sup> Even if it occurred in a different room.

**RECEIVED**

**Mar 29 2022**

Certificate of Counsel

**SC Court of Appeals**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 25, 2022



---

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