IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMYA WHITSEY,

Plaintiff,

v.

CITY OF MCKEESPORT

Defendant.

CIVIL DIVISION

NO.: GD 17-012175

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO PA. R.C.P. 1035.2 AND BRIEF IN SUPPORT

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant, City of McKeesport

Counsel of Record for this Party:

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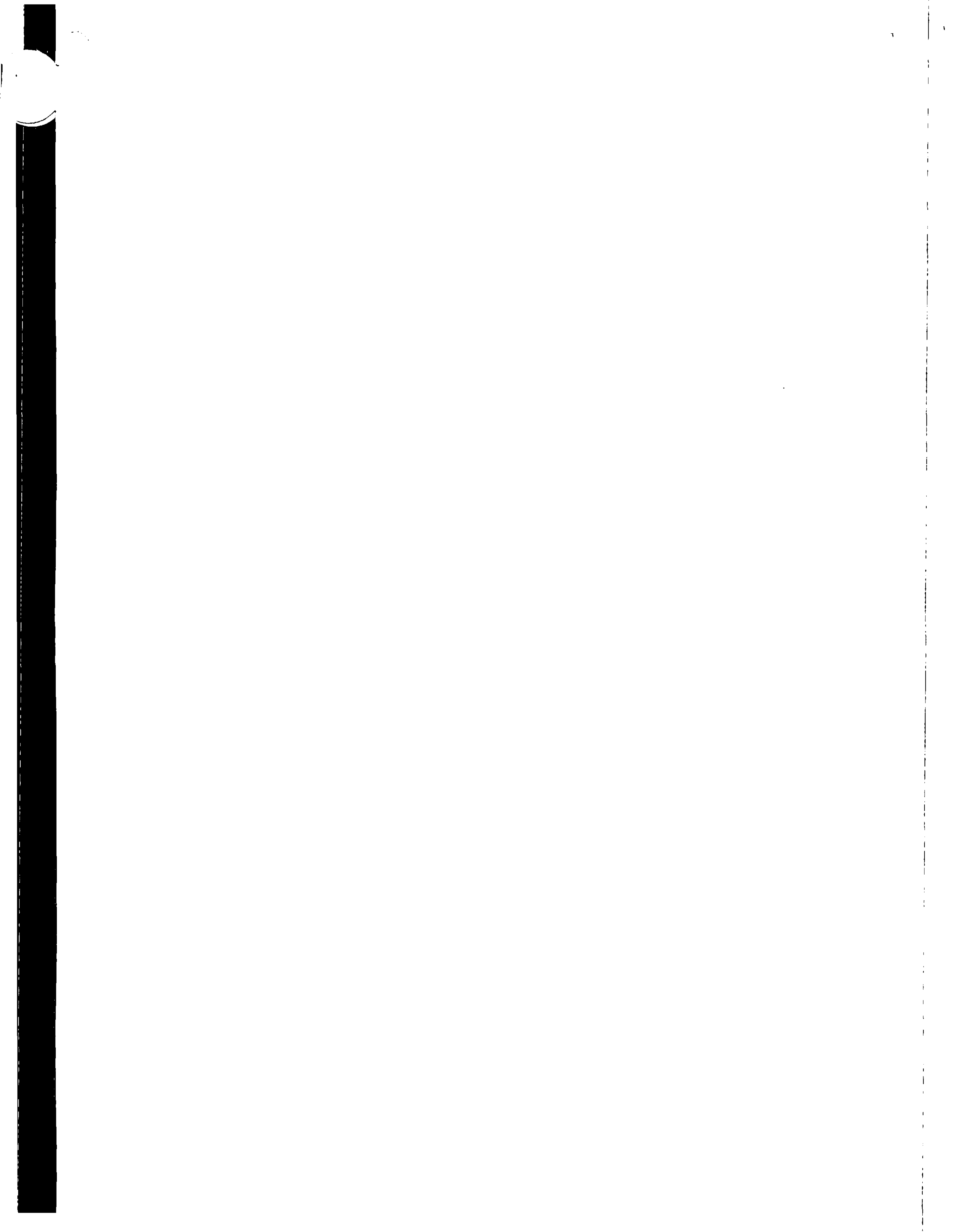
JAMYA WHITSEY,	CIVIL DIVISION
Plaintiff,	NO.: GD 17-012175
v.	
CITY OF MCKEESPORT	
Defendant.	

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO PA. R.C.P. 1035.2

Defendant, the City of McKeesport, by its attorneys, Gregg A. Guthrie, Esquire and Summers, McDonnell, Hudock, Guthrie & Rauch, P.C., files the following Motion for Summary Judgment Pursuant to Pa. R.C.P. 1035.2:

1. Plaintiff, Jamya Whitsey, filed suit at the above term and number against the above-captioned defendant, the City of McKeesport, to recover money damages for personal injuries allegedly caused by a slip and fall accident that occurred on **January 28, 2015** on a snow-covered, paved pathway located on a hill between N. Grandview Avenue and Porter Street in the City of McKeesport. (**See generally:** Plaintiff's Complaint attached hereto as **Exhibit "A")**.

2. In the Complaint, plaintiff alleges that a "dangerous, unsafe and hazardous condition" existed on the pathway which consisted of "hills and ridges of ice and snow, several inches in height, created by the defendant's failure to remove and/or otherwise treat the ice and snow with and/or salt or use anti-skid material on the same, barricade the area and/or give warning of its dangerous condition." (**Complaint** at ¶ 6).



3. Plaintiff further alleges in the Complaint that, inter alia, the area where the accident occurred was "unlit and/or poorly lit" and that the defendant failed to "properly construct, design and/or maintain the property." (**Complaint** at ¶¶ 7 and 11(a-p)).

4. Plaintiff also alleges in the Complaint that the "snow and/or ice was an artificial condition created through defendant's failure to maintain, repair and/or negligently maintain and/or repair the premises, resulting in a dangerous condition to the real property, which created a reasonably foreseeable risk of the kind of injury which was incurred by the plaintiff. . . ." (**Complaint** at ¶ 12).

5. Lastly, plaintiff alleges in the Complaint that "the defendant had actual and/or constructive notice of the aforesaid dangerous condition at a time sufficiently prior to the event to take appropriate measures to protect against this dangerous condition." (**Complaint** at ¶ 13).

6. Defendant, the City of McKeesport filed an Answer and New Matter to the plaintiff's Complaint denying any and all liability to the plaintiff and raising numerous affirmative defenses including, inter alia, the "hills and ridges" doctrine, assumption of the risk and governmental immunity pursuant the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, et seq. (A copy of defendant's Answer and New Matter is attached hereto as **Exhibit "B"**).

7. Defendant files the present Motion for Summary Judgment because relevant discovery taken to date, including the plaintiff's own sworn deposition testimony, reveals that the plaintiff cannot, as a matter of law, produce evidence essential to establishing a *prima facie* cause of action against the City of McKeesport.

8. The deposition of the plaintiff, Jamya Whitsey, was completed on January 31, 2018. (A copy of the deposition transcript of plaintiff, Jamya Whitsey, is attached hereto as **Exhibit "C")**.

9. At her deposition, Ms. Whitsey testified that at the time of the accident on January 28, 2015, she was a 16-year-old sophomore at McKeesport Area High School. (**Whitsey depo.** at pp. 4 and 15).

10. Ms. Whitsey testified that on the morning of the accident, she was using the paved pathway as a short-cut to walk from her home to school. (**Whitsey depo.** at pp. 4, 15 and 31-33).

11. Ms. Whitsey testified that she had to be at school before school started at 7:30 a.m. (**Whitsey depo.** at p. 16).

12. Ms. Whitsey testified that she left her home on the morning of the accident at approximately 6:55 a.m. to walk to school. The accident happened at approximately 7:15 a.m. (**Whitsey depo.** at p. 16).

13. Ms. Whitsey testified that when she left her home on the morning of the accident it was still "a little bit dark"; however, Ms. Whitsey testified that it was light out when the accident happened at 7:15 a.m. and that she had no difficulty seeing where she was going. (**Whitsey depo.** at pp. 21-22).

14. Ms. Whitsey testified that when she left her home on the morning of the accident there was snow on the ground and snow on the sidewalks but the streets were clear. (**Whitsey depo.** at pp. 20-21, 25-26, 31, 34, 61-62).

15. Ms. Whitsey testified that it did not snow on the morning of the accident from the time she left her home at 6:55 a.m. up until the time of the accident at 7:15 a.m. (**Whitsey depo.** at pp. 20-21).

16. Ms. Whitsey testified that she did not know or remember when it last snowed before the day of the accident but that the snow conditions were "probably the same" on the day before the accident. (**Whitsey depo.** at pp. 20-21);

17. Ms. Whitsey testified that the paved pathway that she was using when she fell was located on property between N. Grandview Avenue and Porter Street; Ms. Whitsey identified photographs of the paved pathway where she fell which were marked as **Exhibits "1-3"** at her deposition. (**Whitsey depo.** at pp. 22-24).

18. Ms. Whitsey testified that before the date of the accident, she walked to school five (5) days per week; she initially testified that she used the pathway on a daily basis to walk to school. (**Whitsey depo.** at p. 26). Ms. Whitsey later testified that she used the pathway before the accident to walk to *and* from school approximately three (3) times per week or less during her 9th and 10th grade school years; Ms. Whitsey testified that she sometimes used different routes to walk to school. (**Whitsey depo.** at pp. 27-30).

19. Ms. Whitsey testified that she "probably did" use the pathway on the day before the accident; however, she could not remember whether there was any snow on the pathway on the day before the accident but she did not think so. (**Whitsey depo.** at pp. 26-27).

20. Ms. Whitsey later testified that she could not remember one way or another whether she used the same pathway on the day before the accident and that

she did not know whether or not there was snow on the pathway on the day before the accident. (**Whitsey depo.** at pp. 45-46).

21. Regardless, Ms. Whitsey admitted that she never encountered any problems using the pathway at any time before the date of the accident of January 28, 2015. (**Whitsey depo.** at pp. 48-49).

22. Ms. Whitsey testified that at the time of the accident, she had a backpack strapped to her back and she was carrying a purse that was strapped over her shoulder; she also testified that she had earbuds in her ears and was listening to music at the time of the accident; Ms. Whitsey testified that she was using her cell phone to text a friend while she was walking to school but that she was not using her cell phone when she fell. (**Whitsey depo.** at pp. 16-19).

23. Ms. Whitsey was wearing "UGGs" boots at the time of the accident. (**Whitsey depo.** at pp. 19-20).

24. Ms. Whitsey circled the area where she fell on the paved pathway with a blue pen on a photograph marked as **Exhibit "2"** at her deposition. (**Whitsey depo.** at p. 25)(**see also**: **Exhibit "2"** attached to the deposition transcript of Jamya Whitsey).[1]

25. Ms. Whitsey testified that she was walking **down the hill** when the accident took place; she testified that the accident occurred "more towards, like, the beginning of the hill, but a little bit more in the middle;" Ms. Whitsey testified that she got approximately ¼ of the way down the hill when she fell. (**Whitsey depo.** at pp. 22-25).

[1] The three (3) accident scene photographs that were marked and attached as **Exhibits 1-3** to Ms. Whitsey's deposition transcript were taken by Ms. Whitsey's mother "months" after the accident of January 28, 2015 (**Whitsey depo.** at pp. 46-47). The photographs depict the paved pathway where Ms. Whitsey fell with patches of snow on the paved pathway. The photographs do **not** depict the amount of snow that existed on the pathway at the time of the accident. Rather, Ms. Whitsey testified that at the time of the accident, no part of the paved pathway was visible because the pathway was completely covered with snow. (**Whitsey depo.** at pp. 25-26).

26. Ms. Whitsey testified that before she attempted to walk down the pathway on the date of the accident, she stopped at the top of the hill, assessed the situation, observed that the pathway was completely covered with snow, thought about whether or not she should risk attempting to walk down the hill but nevertheless decided to walk down the snow-covered pathway because she "had to get to school." (**Whitsey depo.** at pp. 30- 34).

27. Ms. Whitsey testified that the pathway was completely covered with snow (i.e., there was no pavement visible and no isolated patches of snow or ice); she did not notice any ice. (**Whitsey depo.** at pp. 25-26).

28. Ms. Whitsey testified that the snow on the pathway was compressed and "smooth." When asked whether there were any footmarks or treads in the snow, Ms. Whitsey replied "there was, but it wasn't, like, visible. . .." (**Whitsey depo.** at p. 26).

29. Ms. Whitsey testified that the area where she fell was "smooth" with "some little footprints in it." Ms. Whitsey also testified that there was no ice but only compacted snow. (**Whitsey depo.** at pp. 33-34).

30. Ms. Whitsey testified that after she stopped at the top of the hill, assessed the situation and thought about whether or not she should risk attempting to walk down the snow-covered pathway, she decided to walk down the snow-covered pathway instead of taking an alternative route because she "had to get to school" and that taking an alternative route would have taken longer. (**Whitsey depo.** at pp. 30-34).

31. Ms. Whitsey testified that she could have taken a different, alternative route without walking down the snow-covered pathway but she chose not to take another path because "she had to get to school." (**Whitsey depo.** at pp. 31-33).

32. Ms. Whitsey testified that as she began walking down the hill, she "started speed walking" because of the steepness of the hill; her feet then started sliding on the pathway, she then lost her balance and her feet then slipped out from under her. (**Whitsey depo.** at pp. 30, 34-36).

33. Ms. Whitsey again testified that as she was "starting to get more down the hill, it seemed like I couldn't get a balance, because of how the hill was, and because it's steep, that going down a steep hill makes you walk a little bit faster" and as a result she started to lose her balance, then she started sliding down the hill and then her feet slipped out from under her. (**Whitsey depo.** at pp. 34-35).

34. When asked what caused her to fall, Ms. Whitsey testified that it was her "boots" which did not have a good tread or good traction and also the steepness of "the hill too." (**Whitsey depo.** at pp. 33-34).

35. Ms. Whitsey specifically testified that nothing tripped her causing her to fall; rather, she simply lost her balance and fell from the momentum of going forward down the hill and slipping on the snow. (**Whitsey depo.** at pp. 35-36).

36. Ms. Whitsey testified that after she fell, she could **not** see or identify anything in the snow that indicated where she fell and she could **not** see or identify any defects or anything else that caused her to trip; again, she testified that she slipped on the snow. (**Whitsey depo.** at p. 37).

37. Ms. Whitsey later testified in response to questioning from her own counsel that the snow on the pathway was "a little bit lumpy" on the "sides" of the pathway; Ms. Whitsey did not describe the size of the lumps other than to say that it was "a little bit lumpy" on the "sides;" Ms. Whitsey did **not** claim that the "sides" where it

was "a little bit lumpy" caused her to fall; to the contrary, Ms. Whitsey specifically testified that she did **not** walk on the "sides" where it was "a little bit lumpy" at the time of her fall; (**Whitsey depo.** at p. 63).

38. Ms. Whitsey testified that neither she nor her mother ever notified or placed the City of McKeesport on notice of any problem with the walkway or pathway at any time before she fell. (**Whitsey depo.** at p. 45).

39. Based upon relevant discovery completed to date, and based upon the plaintiff's own sworn deposition testimony, the plaintiff cannot, as a matter of law, produce evidence essential to establishing a *prima facie* cause of action against defendant, the City of McKeesport. More specifically, the plaintiff's claims fail, as a matter of law, because:

A. Hills and Ridges Doctrine

The plaintiff cannot, as a matter of law, produce evidence essential to establishing a *prima facie* cause of action against the defendant under the "hills and ridges" doctrine;

- Under Pennsylvania law, the "hills and ridges" doctrine provides that an owner or occupier of land is not liable for general slippery conditions. Under the "hills and ridges" doctrine, in order to recover for a slip and fall on a snow or ice-covered surface, a plaintiff must prove **all** of the following three (3) elements: **(1)** that snow and ice accumulated on the walking surface in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon; **(2)** that the property owner had **notice**, either actual or constructive, of the existence of such condition; and **(3)** that it was the dangerous accumulation of snow and ice which ***caused*** the plaintiff's fall. Absent proof of ***all*** three (3) elements, the plaintiff cannot recover. Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962); Wentz v. Pennwoods Apartments, 518 A.2d 314 (Pa. Super.

1986); Harmotta v. Bender, 601 A.2d 837 (Pa. Super. 1992); Morin v. Travelers Rest Motel, Inc., 704 A.2d 1085 (Pa. Super. 1997).

In the present case, the plaintiff is unable, as a matter of law, to produce evidence that satisfies ***any*** of the three (3) elements necessary to establish a *prima facie* cause of action against the defendant under the "hills and ridges" doctrine;

B. Assumption of the Risk Doctrine

Plaintiff's claims are barred, as a matter of law, because the plaintiff knowingly, voluntarily and deliberately proceeded to encounter a known and obvious danger by consciously deciding to walk down the snow-covered pathway after observing and fully appreciating the snow-covered condition of the pathway and after deliberating upon whether or not she should risk attempting to walk down the snow-covered pathway.

(i) Defendant had no Duty to the Plaintiff

The plaintiff's claims are barred, as a matter of law, because the defendant was relieved of any duty of care to the plaintiff.

- Under the doctrine of assumption of the risk, a defendant is relieved of its duty to protect a plaintiff if the plaintiff voluntarily and deliberately proceeds to encounter a known and obvious risk. Under such circumstances, the plaintiff is deemed to have assumed liability for her own injuries. Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996).

- Whether the assumption of the risk doctrine applies is typically a question for the jury, but the court may resolve the issue **as a matter of law** where reasonable minds could not differ. Howell v. Clyde, 620 A.2d 1107 (Pa. 1993); Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996).

In the present case, because the plaintiff knowingly and voluntarily encountered a known and obvious

risk (i.e., by consciously deciding to walk down a snow-covered hill after observing and fully appreciating the snowy condition of the pathway and after deliberating upon whether she should risk attempting to walk down the snow-covered pathway), the defendant is *relieved*, as a matter of law, of any duty of care to the plaintiff.

(ii) Open and Obvious Condition

- Plaintiff's claims are barred, as a matter of law, because the snow-covered condition of the pathway was an *open and obvious condition* that the plaintiff observed and fully appreciated before she decided to walk down the pathway.

- Under Pennsylvania law, no liability attaches to a possessor of land for injuries caused by a dangerous condition on the possessor's land which is open and obvious to a person who uses ordinary care for herself. A danger is deemed to be "obvious" when "both the condition and the risk are apparent to and would be recognized by a reasonable man, in the position of the visitor, exercising normal perception, intelligence and judgment." Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983).

- Under Pennsylvania law, "there are some dangers that are so obvious that they will be held to have been assumed **as a matter of law** despite assertions of *ignorance to the contrary*." Howell v. Clyde, 620 A.2d 1107 (Pa. 1993); Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996)("ice is always slippery and a person walking on ice always runs the risk of slipping and falling").

- "Common sense dictates that walking on snow and ice bears the risk of slipping, falling and possibly injuring oneself. Moreover, as our Superior Court observed early last century, it is well known that rain or snow falling upon the sidewalks of a town or city will render them slippery and consequently more difficult to walk upon." Denzel v. Fed. Cleaning Contrs., Inc., 2015 Pa. Dist. & Cnty. Dec. LEXIS 154 (Lehigh Cnty. 2015) citing Wilson v. Reading Co., 95 Pa. Super. 570 (1929). A person who appreciates

snow and/or ice upon a walkway or parking lot and, nonetheless, voluntarily chooses to traverse the walkway or parking lot assumes a risk that he/she may fall upon the snow and/or ice thereon. Id.; Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983).

In the present case, the plaintiff's claims are barred, as a matter of law, because the allegedly dangerous condition on the defendant's property (i.e., the snow-covered pathway) was an open and obvious condition that was observed and fully appreciated by the plaintiff and the risk of traversing down the snow-covered pathway was deliberated upon by the plaintiff before she voluntarily decided to walk down the pathway.

(iii) Choice-of-Ways Doctrine

- Plaintiff's claims are barred, as a matter of law, because the plaintiff knowingly and consciously chose to walk down the snow-covered pathway instead of taking a safer alternative route because she "had to get to school."

- Under Pennsylvania law, the "choice-of-ways" doctrine has been defined as "where a person, having a choice of two ways, one of which is perfectly safe, and the other of which is subject to risks and dangers, voluntarily chooses the latter and is injured, he is guilty of contributory negligence and cannot recover." Downing v. Shaffer, 371 A.2d 953 (Pa. Super. 1977).

- Under the choice of ways doctrine, a plaintiff cannot recover if reasonable minds could not disagree that there was "**(1)** a safe course, **(2)** a dangerous course, **(3)** facts which would put a reasonable person on notice of the danger or actual knowledge of the danger." Updike v. BP Oil Co., 717 A.2d 546 (Pa. Super. 1998).

- The choice of ways doctrine "still exists in Pennsylvania despite the substitution of comparative negligence for contributory negligence." Mirabel v. Morales, 57 A.3d 144 (Pa. Super. 2012).

In the present case, the plaintiff testified that she could have taken a different route to school but she consciously decided to take the snow-covered pathway because taking a different route would have taken longer and she did not want to be late for school. Accordingly, the plaintiff's claims are barred, as a matter of law, under the "choice-of-ways" doctrine.

C. Governmental Immunity Under The Political Subdivision Tort Claims Act

Plaintiff's claims are barred, as a matter of law, as defendant, the City of McKeesport, is entitled to governmental immunity under the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, et seq.

- Under § 8541 of the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, local agencies, such as cities, boroughs and municipalities and their officials, are immune from tort liability. Section 8542(a) of the Tort Claims Act provides that liability for injury to person or property may be imposed upon a local agency if two (2) threshold conditions are met: **(1)** the damages would be recoverable under common law or by statute against a non-immune party; and **(2)** the injury was caused by a negligent act of the local agency that falls within one (1) of the eight (8) exceptions to governmental immunity enumerated under § 8542(b)(1)-(8) of the Tort Claims Act.

In the present case, the plaintiff is unable to produce evidence that satisfies either one (1) of the two (2) threshold conditions set forth under 42 Pa. C.S.A. § 8542(a), which conditions are prerequisites to imposing liability against a local governmental agency under the Tort Claims Act. Accordingly, the City of McKeesport is entitled to governmental immunity as a matter of law.

40. For all of the above reasons, which reasons will be more fully discussed hereafter in the defendant's supporting brief, and because there are no genuine issues

of material fact to be decided by a factfinder, defendant, the City of McKeesport, is entitled to summary judgment as a matter of law.

41. Accordingly, defendant, the City of McKeesport, respectfully requests that this Honorable Court enter an Order granting defendant's Motion for Summary Judgment and dismissing the plaintiff's Complaint in its entirety with prejudice.

WHEREFORE, defendant, the City of McKeesport, respectfully requests that this Honorable Court enter an Order granting defendant's Motion for Summary Judgment and dismissing the plaintiff's Complaint in its entirety with prejudice.

Respectfully submitted,

SUMMERS, MCDONNELL, HUDOCK, GUTHRIE & RAUCH, P.C.

Gregg A. Guthrie, Esquire
Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMYA WHITSEY,	CIVIL DIVISION
Plaintiff,	NO.: GD 17-012175
v.	
CITY OF MCKEESPORT	
Defendant.	

DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT PURSUANT TO PA. R.C.P. 1035.2

Defendant, the City of McKeesport, by its attorneys, Gregg A. Guthrie, Esquire and Summers, McDonnell, Hudock, Guthrie & Rauch, P.C., files the following Brief in Support of Motion for Summary Judgment Pursuant to Pa. R.C.P. 1035.2:

I. FACTS

Plaintiff, Jamya Whitsey, filed suit at the above term and number against the above-captioned defendant, the City of McKeesport, to recover money damages for personal injuries allegedly caused by a slip and fall accident that occurred on **January 28, 2015** on a snow-covered, paved pathway located on a hill between N. Grandview Avenue and Porter Street in the City of McKeesport. (**See generally:** Plaintiff's Complaint attached hereto as **Exhibit "A")**.

In the complaint, plaintiff alleges that a "dangerous, unsafe and hazardous condition" existed on the pathway which consisted of "hills and ridges of ice and snow, several inches in height, created by the defendant's failure to remove and/or otherwise treat the ice and snow with and/or salt or use anti-skid material on the same, barricade the area and/or give warning of its dangerous condition." (**Complaint** at ¶ 6).

Plaintiff further alleges in the complaint that, inter alia, the area where the accident occurred was "unlit and/or poorly lit" and that the defendant failed to "properly construct, design and/or maintain the property." (**Complaint** at ¶¶ 7 and 11(a-p)). Plaintiff also alleges in the complaint that the "snow and/or ice was an artificial condition created through defendant's failure to maintain, repair and/or negligently maintain and/or repair the premises, resulting in a dangerous condition to the real property, which created a reasonably foreseeable risk of the kind of injury which was incurred by the plaintiff. . .." (**Complaint** at ¶ 12). Lastly, plaintiff alleges in the complaint that "the defendant had actual and/or constructive notice of the aforesaid dangerous condition at a time sufficiently prior to the event to take appropriate measures to protect against this dangerous condition." (**Complaint** at ¶ 13).

Defendant, the City of McKeesport, filed an Answer and New Matter to the plaintiff's complaint denying any and all liability to the plaintiff and raising numerous affirmative defenses including, inter alia, the "hills and ridges" doctrine, assumption of the risk and governmental immunity pursuant to the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, et seq. (A copy of Defendant's Answer and New Matter is attached hereto as **Exhibit "B"**).

Defendant files the present Motion for Summary Judgment because relevant discovery completed to date, including the plaintiff's own sworn deposition testimony, reveals that the plaintiff cannot, as a matter of law, produce evidence essential to establishing a *prima facie* cause of action against defendant, the City of McKeesport. More specifically, the plaintiff's claims fail, as a matter of law, because:

A. <u>Hills and Ridges Doctrine</u>

The plaintiff cannot, as a matter of law, produce evidence essential to establishing a *prima facie* cause of action against the defendant under the "hills and ridges" doctrine;

- Under Pennsylvania law, the "hills and ridges" doctrine provides that an owner or occupier of land is not liable for general slippery conditions. Under the "hills and ridges" doctrine, in order to recover for a slip and fall on a snow or ice-covered surface, a plaintiff must prove **<u>all</u>** of the following three (3) elements: **(1)** that snow and ice accumulated on the walking surface in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon; **(2)** that the property owner had **<u>notice</u>**, either actual or constructive, of the existence of such condition; and **(3)** that it was the dangerous accumulation of snow and ice which ***<u>caused</u>*** the plaintiff's fall. Absent proof of ***<u>all</u>*** three (3) elements, the plaintiff cannot recover. <u>Rinaldi v. Levine</u>, 176 A.2d 623 (Pa. 1962); <u>Wentz v. Pennwoods Apartments</u>, 518 A.2d 314 (Pa. Super. 1986); <u>Harmotta v. Bender</u>, 601 A.2d 837 (Pa. Super. 1992); <u>Morin v. Travelers Rest Motel, Inc.</u>, 704 A.2d 1085 (Pa. Super. 1997).

In the present case, the plaintiff is unable, as a matter of law, to produce evidence that satisfies ***<u>any</u>*** of the three (3) elements necessary to establish a *prima facie* cause of action against the defendant under the "hills and ridges" doctrine;

B. <u>Assumption of the Risk Doctrine</u>

Plaintiff's claims are barred, as a matter of law, because the plaintiff knowingly, voluntarily and deliberately proceeded to encounter a known and obvious danger by consciously deciding to walk down the snow-covered pathway after observing and fully appreciating the snow-covered condition of the pathway and after deliberating upon whether or not she should risk attempting to walk down the snow-covered pathway.

(i) Defendant had no Duty to the Plaintiff

The plaintiff's claims are barred, as a matter of law, because the defendant was relieved of any duty of care to the plaintiff.

- Under the doctrine of assumption of the risk, a defendant is relieved of its duty to protect a plaintiff if the plaintiff voluntarily and deliberately proceeds to encounter a known and obvious risk. Under such circumstances, the plaintiff is deemed to have assumed liability for her own injuries. Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996).

- Whether the assumption of the risk doctrine applies is typically a question for the jury, but the court may resolve the issue **as a matter of law** where reasonable minds could not differ. Howell v. Clyde, 620 A.2d 1107 (Pa. 1993); Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996).

In the present case, because the plaintiff knowingly and voluntarily encountered a known and obvious risk (i.e., by consciously deciding to walk down a snow-covered hill after observing and fully appreciating the snowy condition of the pathway and after deliberating upon whether she should risk attempting to walk down the snow-covered pathway), the defendant is relieved, as a matter of law, of any duty of care to the plaintiff.

(ii) Open and Obvious Condition

- Plaintiff's claims are barred, as a matter of law, because the snow-covered condition of the pathway was an open and obvious condition that the plaintiff observed and fully appreciated before she decided to walk down the pathway.

- Under Pennsylvania law, no liability attaches to a possessor of land for injuries caused by a dangerous condition on the possessor's land which is open and obvious to a person who uses ordinary care for herself. A danger is deemed to be "obvious" when "both the condition and the risk are apparent to and would be recognized by a reasonable man, in the

position of the visitor, exercising normal perception, intelligence and judgment." Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983).

- Under Pennsylvania law, "there are some dangers that are so obvious that they will be held to have been assumed as **a matter of law** despite assertions of ignorance to the contrary." Howell v. Clyde, 620 A.2d 1107 (Pa. 1993); Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996)("ice is always slippery and a person walking on ice always runs the risk of slipping and falling").

- "Common sense dictates that walking on snow and ice bears the risk of slipping, falling and possibly injuring oneself. Moreover, as our Superior Court had occasion to observe early last century, it is well known that rain or snow falling upon the sidewalks of a town or city will render them slippery and consequently more difficult to walk upon." Denzel v. Fed. Cleaning Contrs., Inc., 2015 Pa. Dist. & Cnty. Dec. LEXIS 154 (Lehigh Cnty. 2015) citing Wilson v. Reading Co., 95 Pa. Super. 570 (1929). A person who appreciates snow and/or ice upon a walkway or parking lot and, nonetheless, voluntarily chooses to traverse the walkway or parking lot assumes a risk that he/she may fall upon the snow and/or ice thereon. Id.; Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983).

In the present case, the plaintiff's claims are barred, as a matter of law, because the allegedly dangerous condition on the defendant's property (i.e., the snow-covered pathway) was an open and obvious condition that was observed and fully appreciated by the plaintiff and the risk of traversing down the snow-covered pathway was deliberated upon by the plaintiff before she voluntarily decided to walk down the pathway.

(iii) Choice-of-Ways Doctrine

- Plaintiff's claims are barred, as a matter of law, because the plaintiff knowingly chose to walk down the snow-covered pathway instead of taking a safer alternative route because she "had to get to school."

- Under Pennsylvania law, the "choice-of-ways" doctrine has been defined as "where a person, having a choice of two ways, one of which is perfectly safe, and the other of which is subject to risks and dangers, voluntarily chooses the latter and is injured, he is guilty of contributory negligence and cannot recover." Downing v. Shaffer, 371 A.2d 953 (Pa. Super. 1977).

- Under the choice-of-ways doctrine, a plaintiff cannot recover if reasonable minds could not disagree that there was "**(1)** a safe course, **(2)** a dangerous course, **(3)** facts which would put a reasonable person on notice of the danger or actual knowledge of the danger." Updike v. BP Oil Co., 717 A.2d 546 (Pa. Super. 1998).

- The choice-of-ways doctrine "still exists in Pennsylvania despite the substitution of comparative negligence for contributory negligence." Mirabel v. Morales, 57 A.3d 144 (Pa. Super. 2012).

  In the present case, the plaintiff testified that she could have taken a different route to school but decided to take the snow-covered pathway because taking a different route would have taken longer and she did not want to be late for school. Accordingly, the plaintiff's claims are barred, as a matter of law, under the "choice-of-ways" doctrine.

C. Governmental Immunity Under The Political Subdivision Tort Claims Act

- Plaintiff's claims are barred, as a matter of law, as defendant, the City of McKeesport, is entitled to governmental immunity under the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, et seq.

- Under § 8541 of the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, local agencies, such as cities, boroughs and municipalities and their officials, are immune from tort liability. Section 8542(a) of the Tort Claims Act provides that liability for injury to person or property may be imposed upon a local agency if two (2) threshold conditions are met: **(1)** the damages would be recoverable under common law or by statute against a non-immune party; and **(2)** the injury was caused by a negligent act of the local

agency that falls within one (1) of the eight (8) exceptions to governmental immunity enumerated under § 8542(b)(1)-(8) of the Tort Claims Act.

In the present case, the plaintiff is unable to produce evidence that satisfies either one (1) of the two (2) threshold conditions set forth under 42 Pa. C.S.A. § 8542(a), which conditions are prerequisites to imposing liability against a local governmental agency under the Tort Claims Act. Accordingly, the City of McKeesport is entitled to governmental immunity as a matter of law.

For all of the above reasons, which reasons will be discussed in detail immediately hereafter, and because there are no genuine issues of material fact to be decided by a factfinder, defendant, the City of McKeesport, is entitled to summary judgment as a matter of law.

II. STANDARD FOR SUMMARY JUDGMENT

Pursuant to Pa. R.C.P. Rule 1035.2, after the relevant pleadings are closed, any party may move for summary judgment in whole or in part as a matter of law:

1. Whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report; or

2. If, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R.C.P. 1035.2.

Under Pennsylvania law, summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. In considering a motion for summary judgment, the record must be viewed in the

light most favorable to the non-moving party, and all doubts as to whether there exists a genuine issue of material fact must be resolved against the moving party. The question of whether there are material facts at issue and whether the moving party is entitled to summary judgment are matters of law to be determined by the trial court. Bailet v. Pa. TPK. Comm'n, 123 A.3d 300 (Pa. 2015).

Motions for summary judgment necessarily and directly implicate the plaintiff's proof of the elements of their cause of action. Summary judgment is proper if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury. Thus, a record that supports summary judgment will either (1) show that the material facts are undisputed or (2) contain insufficient evidence of facts to make out a *prima facie* cause of action or defense and, therefore, there is no issue to be submitted to the jury. Alexander v. City of Meadville, 61 A.3d 218 (Pa. Super. 2012).

III. ARGUMENT

A. Defendant, the City of McKeesport, is entitled to judgment as a matter of law because the plaintiff cannot produce evidence essential to establishing a *prima facie* cause of action against the defendant under the "hills and ridges" doctrine.

Under the "hills and ridges" doctrine, in order for a plaintiff to recover for a fall on ice or snow, a plaintiff must prove the following three (3) elements:

1. That snow and ice accumulated on the walking surface in ridges or elevations of such size and character as to **unreasonably obstruct travel** and constitute a danger to pedestrians traveling thereon;

2. That the property owner had **notice**, either actual or constructive, of the existence of such a condition; and

3. That it was the dangerous accumulation of snow and ice which **caused** the plaintiff to fall. Absent proof of ***all*** such facts, the plaintiff has no basis for recovery.

Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962).

Under Pennsylvania law, the "hills and ridges" doctrine provides that an owner or occupier of land is not liable for general slippery conditions "for to require that one's walks be always free of ice and snow would be to impose an impossible burden in view of the climatic conditions in this hemisphere". Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962); Wentz v. Pennswood Apartments, 518 A.2d 314 (Pa. Super. 1986). Snow and ice upon a pavement merely creates a transient danger and the only duty upon the property owner or tenant is to act within a reasonable time after notice to remove it when it is a dangerous condition. Alexander v. City of Meadville, 61 A.3d 218 (Pa. Super. 2012).

The "hills and ridges" doctrine as defined and applied by the courts in Pennsylvania is a refinement or clarification of the duty owed by a possessor of land and is applicable to a single type of dangerous condition, i.e., ice and snow. Morin v. Travelers' Rest Motel, Inc., 704 A.2d 1085 (Pa. Super. 1997); Wentz v. Pennswood Apartments, 518 A.2d 314 (Pa. Super. 1986). The "hills and ridges" doctrine has always been deemed a principle of law intended to protect possessors of land by increasing, not decreasing, the proof required before a plaintiff can recover for injuries sustained as a result of a fall on an ice or snow-covered surface. Wentz v. Pennswood Apartments, 518 A.2d 314 (Pa. Super. 1986).

The "hills and ridges" doctrine applies to "generally slippery conditions" as opposed to isolated icy patches. Miller v. City Ice & Fuel Co., 69 A.2d 140 (Pa. 1949); Solinsky v. Wilkes-Barre, 99 A.2d 570 (Pa. 1953); Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962); Kohler v. Penn Twp., 157 A. 681 (Pa. 1931); Roland v. Kravco, Inc., 513 A.2d 1029 (Pa. 1986); Harmotta v. Bender, 601 A.2d 837 (Pa. Super. 1992); Harmotta v. Bender, 601 A.2d 837 (Pa. Super. 1992); Morin v. Travelers' Rest Motel, Inc., 704 A.2d 1085 (Pa. Super. 1997); Knight v. Pocmont Lodge, 37 D&C 4th 353 (CCP Pike Co. 1998); Saris v. Charles, 67 D&C 4th 545 (CCP Lanc. Co. 2004); Mack v. AAA Mid-Atlantic, Inc., 511 F. Supp. 2d 539 (E.D. Pa. 2007); Beck v. Holly Tree Homeowners Ass'n., 689 F. Supp. 2d 756 (E.D. Pa. 2010). The "hills and ridges" doctrine is a "long-standing and well entrenched legal principle that protects an owner or occupier of land from liability for generally slippery conditions resulting from ice and snow where the owner has not permitted the ice and snow to unreasonably accumulate in ridges or elevations." Morin v. Travelers' Rest Motel, Inc., 704 A.2d 1085 (Pa. Super. 1997); Heichel v. Smith Paving & Constr. Co., 136 A.3d 1037 (Pa. Super. 2016); Collins v. Phila. Suburban Dev. Corp., 2018 Pa. Super. LEXIS 72 (Pa. Super. January 31, 2018)(superior court affirmed the trial court's entry of summary judgment in favor of the defendant under the "hills and ridges" doctrine because the plaintiff slipped and fell on ice / snow under generally slippery conditions prevailing in the community; plaintiff failed to meet an exception to the "hills and ridges" doctrine)).[1]

In Wentz v. Pennswood Apartments, 518 A.2d 314 (Pa. Super. 1986), the Pennsylvania Superior Court affirmed the trial court's order denying plaintiff's post-trial

[1] The "hills and ridges" doctrine applies with equal force to both public and private spaces. Morin v. Travelers' Rest Motel, Inc., 704 A.2d 1085 (Pa. Super. 1997); Wentz v. Pennswood Apartments, 518 A.2d 314 (Pa. Super. 1986).

motions following a jury verdict in favor of the defendant where the plaintiff slipped and fell on a snow and ice-covered walkway. In affirming the trial court's order, the Superior Court stated:

> The doctrine of "hills and ridges" is not an extension or expansion of duty which the law imposes upon an owner or occupier of land. It is, rather, a limitation on the liability of such persons for conditions which are caused generally by climatic conditions in this hemisphere. The doctrine of "hills and ridges" has always been deemed a principle of law intended to protect possessors of land by increasing, not decreasing, the proof required before a plaintiff can recover for injuries sustained as a result of a fall on an ice or snow-covered surface.

518 A.2d at 316; (**see also**: Roland v. Kravco, Inc., 513 A.2d 1029 (1986)(in Pennsylvania, there is no liability created by a general slippery condition on the surface of a parking lot; it must appear that there were dangerous conditions due to ridges or elevations and that the ridges or elevations were the cause of the fall; in the absence of such proof, the plaintiff has no basis for recovery); Vitelli v. City of Chester, 545 A.2d 1011 (Pa. Cmwlth. 1988)(no liability for the City of Chester for plaintiff's slip and fall caused by ruts formed in the accumulated snow and ice by vehicular and pedestrian traffic); Harmotta v. Bender, 601 A.2d 837 (Pa. Super. 1992)(plaintiff's claim was barred by the hills and ridges doctrine; there is no indication in the case law that our supreme court has abandoned the long-standing "hills and ridges" doctrine); Morin v. Travelers Rest Motel, Inc., 704 A.2d 1085 (Pa. Super. 1997)(superior court affirmed the trial court's grant of summary judgment based upon the "hills and ridges" doctrine; in a concurring opinion, Judge Olszewski noted that the "hills and ridges" doctrine was developed to protect municipalities from unreasonable exposure to liability for injuries caused by climatic conditions); Knight v. Pocmont Lodge, 37 D&C 4th 353 (CCP Pike Co. 1998)(plaintiff failed to establish a *prima facie* case under the "hills and ridges" doctrine for a slip and fall on snow and ice on a pathway on the defendant's property); Biernacki v. Presque Isle Condos. Unit Owners Ass'n., 828 A.2d 1114 (Pa. Super. 2003)(superior court affirmed the trial court's grant of summary judgment in favor of the defendant based upon the plaintiff's failure to establish a claim under the "hills and ridges" doctrine based upon plaintiff's slip and fall on an ice and snow-covered parking lot); Saris v. Charles, 67 D&C 4th 545 (CCP Lanc. Co., 2004)(trial court granted defendant's motion for summary judgment based upon the "hills and ridges" doctrine where plaintiff sought to recover for injuries suffered when she slipped and fell on ice on the defendant's property); Coudriet v. Inserra, 77 D&C 4th 141 (CCP Center Co., 2005)(trial court granted defendant's motion for summary judgment based upon plaintiff's failure to satisfy the "hills and ridges" doctrine based upon a slip and fall on a thin layer of snow); Beck v. Holly Tree Homeowner's Ass'n., 689 F. Supp. 2d 756 (E.D. Pa. 2010)(federal district court granted defendant's motion for summary judgment as

the "hills and ridges" doctrine precluded plaintiff's slip and fall claim; plaintiff presented no evidence that the snow and ice accumulated in dangerous ridges or elevations)).

In the present case, it is clear that "general slippery conditions" existed at the time of the plaintiff's accident on January 28, 2015. The plaintiff testified at her deposition that when she left her home on the morning of the accident there was snow on the ground and snow on the sidewalks but the streets were clear. (**Whitsey depo.** at pp. 20-21, 25-26, 31, 34, 61-62). The plaintiff also testified that the paved pathway where she allegedly fell was "completely" covered with snow and there was no pavement visible and no isolated patches of snow or ice. (**Whitsey depo.** at pp. 25-26). Accordingly, based upon the plaintiff's own sworn testimony, the facts are undisputed that "general slippery conditions" existed at the time of the accident on January 28, 2015. Therefore, the "hills and ridges" doctrine applies in the present case.

(i) Plaintiff has failed to produce evidence that satisfies the first element of the "hills and ridges" doctrine which requires proof that snow and ice accumulated in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon.

As above stated, under the "hills and ridges" doctrine, the plaintiff must not only prove that there was an accumulation of snow and ice on the pavement, but that the accumulation, whether in the forms of ridges or other elevations, was of such size and character as to constitute a ***substantial*** obstruction to travel. Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962). A mere uneven and/or rough surface caused by footprints due to pedestrian traffic and "little ridges or bumps" does not meet the plaintiff's burden of proof, *as a matter of law*, under the "hill and ridges" doctrine. (**See also:** Bailey v. City of Oil City, 157 A. 486 (Pa. 1931)(a ridge is an elevation, not a mere uneven surface

caused by footprints; a mere uneven surface, caused by walking upon ice as it freezes, does not constitute such an obstruction as the law condemns); Kohler v. Penn Twp., 157 A. 681 (Pa. 1931)(plaintiff does not meet the burden of proof by showing that the surface consisted of little ridges or bumps); Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962)(plaintiff's testimony that the sidewalk was icy and in places was "bumpy," "lumpy" or "hilly" and covered with a layer of snow was insufficient)). As the United States District Court for the Eastern District of Pennsylvania stated in Mack v. AAA Mid-Atlantic, Inc., 511 F. Supp. 2d 539 (E.D. Pa. 2007), the plaintiff's "mention of ice as one (1) inch thick and "a little bumpy in some parts" does not, *as a matter of law*, satisfy Pennsylvania's "hills and ridges" standard."

The Pennsylvania Supreme Court, in Kohler v. Penn Twp., supra., discussed the proof necessary for a plaintiff to establish liability for a slip and fall on ice or snow. In denying liability against Penn Township, the Pennsylvania Supreme Court stated:

> **That a municipality is not liable for the general icy condition of its cartways and walks is well-settled**. . .. This is so because of the practicable impossibility of keeping the cartways and walks free from ice in this climate. By change of temperature, ice will form over an entire city or township in a few hours and if its removal was possible, might form again in the next few hours. Hence, the non-liability for its presence follows. **A municipality is not liable merely because ice upon its cartways and walks renders travel thereon unsafe**. The question is not one of safety but of negligence.
>
> It is also true that ice when in the process of formation or when softened by a rise in the temperature will show **footprints** of the pedestrians who walked thereon and thereby its surface will become uneven and rough. This is characteristic of all walks and is as impossible to prevent as is the presence of the ice. **Hence, a municipality is not liable for the mere rough condition of the ice upon its walks**, and this case presents nothing more.

> Of course, where ice is suffered to remain upon a walk in **substantial** ridges that constitute an obstruction to travel, the municipality may be liable. **The ridge must be shown to be of such substantial size and character as to be a danger to the public, not a mere uneven surface caused by walking upon the ice. The proof must describe the alleged ridge as to size and character and be such as to support a finding that it was a substantial obstruction to travel. Plaintiff does not meet the burden of proof by showing such surface even though a witness may refer to it as consisting of little ridges or bumps. Neither is the existence of a ridge shown by the fact, as here, that plaintiff's fall was caused by tripping upon something, which doubtless was the uneven surface.**

157 A. at 681 (emphasis added) (**see also**: Bailey v. Oil City, 157 A. 486 (Pa. 1931)(it would place an unreasonable and practically impossible burden upon a city to require the maintaining of its streets free from ice and snow; this the law does not require); Miller v. City Ice & Fuel Co., 69 A.2d 140 (Pa. 1949)(mere proof of an accumulation of ice and snow on the sidewalk is not sufficient to establish liability); Solinsky v. Wilkes-Barre, 99 A.2d 570 (Pa. 1953)(a municipality is not liable for personal injuries sustained by an individual who falls because of a generally slippery condition of either a street or sidewalk, which occurs in all cities of Pennsylvania in winter due to the presence of ice and snow, accumulated as a result of natural causes); Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962)(all that the plaintiff proved was that the sidewalk was icy and, in places, "bumpy," "lumpy" or "hilly" and covered with a layer of snow; the record was void of any evidence of the size or character of the ridges, bumps, lumps, hills or other elevations of the snow or ice such as would constitute an obstruction or danger to the traveling public)).

In the present case, the plaintiff testified that the pathway where she fell was completely covered with snow which was compacted and "smooth." The plaintiff did not provide any testimony that snow and/or ice accumulated on the pathway in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians. The plaintiff testified in relevant part as follows:

- the pathway was completely covered with snow (i.e., there was no pavement visible and no isolated patches of snow); she did not notice any ice. (**Whitsey depo.** at pp. 25-26).

- the snow on the pathway was compressed and "smooth." When asked whether there were any

footmarks or treads in the snow, Ms. Whitsey replied "there was, but it wasn't, like, visible. . . .." (**Whitsey depo.** at p. 26).

- the area where she fell was "smooth" with "some little footprints in it." Ms. Whitsey also testified that there was no ice but only compacted snow. (**Whitsey depo.** at pp. 33-34).

- before she attempted to walk down the pathway on the date of the accident, she stopped at the top of the hill, observed that the pathway was completely covered with snow, assessed the situation, deliberated upon whether or not she should risk attempting to go down the hill and nevertheless decided to walk down the snow-covered pathway. (**Whitsey depo.** at pp. 30-31 and 34).

- after she fell, Ms. Whitsey could not see or identify anything in the snow that indicated where she fell and she could not see or identify any defects or anything that caused her to trip; again, she testified that she slipped on the snow. (**Whitsey depo.** at p. 37).

- Ms. Whitsey later testified in response to questioning from her own counsel that the snow on the pathway was "a little bit lumpy" on the "sides" of the pathway; Ms. Whitsey did not describe the size of the lumps other than to say that it was "a little bit lumpy" and she did not claim that the "sides" where it was "a little bit lumpy" caused her to fall; to the contrary, Ms. Whitsey specifically testified that she did **not** walk on the "sides" where it was "a little bit lumpy" at the time of her fall; (**Whitsey depo.** at p. 63).

Based upon Ms. Whitsey's own sworn deposition testimony, it is clear, as a matter of law, that Ms. Whitsey cannot produce evidence necessary to satisfy the first element of the "hills and ridges" doctrine which requires proof that snow and ice accumulated in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon. Plaintiff's failure to produce such proof is fatal to her claim. (**See:** Miller v. City Ice & Fuel Co., 69

A.2d 140 (Pa. 1949); Solinsky v. Wilkes-Barre, 99 A.2d 570 (Pa. 1953); Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962); Kohler v. Penn Twp., 157 A. 681 (Pa. 1931); Roland v. Kravco, Inc., 513 A.2d 1029 (Pa. 1986); Harmotta v. Bender, 601 A.2d 837 (Pa. Super. 1992); Morin v. Travelers' Rest Motel, Inc., 704 A.2d 1085 (Pa. Super. 1997); Knight v. Pocmont Lodge, 37 D&C 4th 353 (CCP Pike Co. 1998); Saris v. Charles, 67 D&C 4th 545 (CCP Lanc. Co. 2004); Mack v. AAA Mid-Atlantic, Inc., 511 F. Supp. 2d 539 (E.D. Pa. 2007); Beck v. Holly Tree Homeowners Ass'n., 689 F. Supp. 2d 756 (E.D. Pa. 2010)).

Because the plaintiff has failed to produce evidence necessary to establish a *prima facie* cause of action against the defendant under the "hills and ridges" doctrine, defendant, the City of McKeesport is entitled to judgment as a matter of law. Accordingly, defendant, the City of McKeesport, respectfully requests that this Honorable Court enter an Order granting defendant's Motion for Summary Judgment and dismissing the plaintiff's Complaint in its entirety with prejudice.

(ii) Plaintiff has failed to produce evidence that satisfies the second element of the "hills and ridges" doctrine which requires proof that the defendant had notice, either actual or constructive, of the existence of the dangerous condition

The second element of the "hills and ridges" doctrine requires proof that the "property owner had notice, either actual or constructive, of the existence of such condition." McDonough v. Borough of Munhall, 200 A. 638 (Pa. 1938); Solinsky v. Wilkes-Barre, 99 A.2d 570 (Pa. 1953); Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962); Beck v. Holly Tree Homeowner's Ass'n., 689 F. Supp. 2d 756 (E.D. Pa. 2010); Alexander v. City of Meadville, 61 A.3d 218 (Pa. Super. 2012); Moon v. Dauphin County, 129 A.3d 16

(Pa. Cmwlth. 2015); Modica v. Maple Meadows Homeowners Ass'n., 2014 US. Dist. LEXIS 13094 (January 31, 2014); Creoruska v. Burger King, 2016 Phila. Ct. Com. Pl. LEXIS 321 (August 16, 2016).

In the present case, because the plaintiff is unable to produce evidence that satisfies the first element of the "hills and ridges" doctrine (i.e., she is unable to produce evidence that snow and ice accumulated in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon), it logically follows that the City of McKeesport could not have had notice, either actual or constructive, of a condition that did not exist at the time of the accident (**Whitsey depo.** at pp. 26-27 and 45-46).

Further, the plaintiff testified at her deposition that she did not know or could not remember when it last snowed before the date of the accident. The plaintiff also testified that there was no snow on the pathway on the day before she fell; she later testified that she did not know or could not remember whether the pathway was covered with snow on the day before the accident. Either way, if there was no snow on the pathway on the day before the accident, or if the plaintiff doesn't know or can't remember whether there was any snow on the pathway on the day before the accident, then it follows that the plaintiff could not have given notice to the City of McKeesport of the condition of the pathway at any time before the accident. Additionally, the plaintiff admitted that neither she nor her mother ever notified or gave notice of the allegedly dangerous condition of the pathway to the City of McKeesport at any time **before** her fall down accident on January 28, 2015. Ms. Whitsey testified in relevant part as follows:

- she "probably did" use the pathway on the day before the accident; however, she could not remember whether there was any snow on the pathway on the

day before the accident but she did not think so. (**Whitsey depo.** at pp. 26-27).

- Ms. Whitsey later testified that she could not remember one way or another whether she used the same pathway on the day before the accident and that she did not know whether or not there was snow on the pathway on the day before the accident. (**Whitsey depo.** at pp. 45-46).

- Ms. Whitsey admitted that she never encountered any problems using the pathway at any time before the date of the accident of January 28, 2015. (**Whitsey depo.** at pp. 48-49).

- Ms. Whitsey admitted that neither she nor her mother ever notified or placed the City of McKeesport on notice of any problem with the walkway or pathway at any time **before** she fell. (**Whitsey depo.** at p. 45).

Again, before a defendant can be charged with having actual or constructive notice of a dangerous condition which satisfies the second element of the "hills and ridges" doctrine, there must first be evidence which satisfies the first element of the "hills and ridges" doctrine (i.e., proof that such a dangerous condition in fact existed). No such evidence has been produced in the present case. Further, under Pennsylvania law, a landowner's knowledge of general weather conditions and/or general slippery conditions prevailing in the community does not constitute either actual or constructive notice (because a possessor of land is not liable for generally slippery conditions). (**See:** Solinsky v. Wilkes-Barre, 99 A.2d 570 (Pa. 1953); Tameru v. W-Franklin, L.P., 2008 US Dist. LEXIS 68770 (E.D. Pa. Sept. 11, 2008; Beck v. Holly Tree Homeowners Ass'n., 689 F. Supp. 2d 756 (E.D. Pa. 2010); Modica v. Maple Meadows Homeowners Ass'n., 2014 US. Dist. LEXIS 13094 (January 31, 2014); Creoruska v. Burger King, 2016 Phila. Ct. Com. Pl. LEXIS 321 (August 16, 2016).

In short, the plaintiff has failed to produce any evidence that defendant, the City of McKeesport, had either actual or constructive notice of any dangerous condition on the pathway at any time before the plaintiff fell on January 28, 2015. Accordingly, the plaintiff has failed to produce evidence that satisfies the second element of the "hill and ridges" doctrine. Plaintiff's failure to produce such proof is fatal to her claim.

Because the plaintiff has failed to produce evidence necessary to establish a *prima facie* cause of action against the defendant under the "hills and ridges" doctrine, defendant, the City of McKeesport, is entitled to judgment as a matter of law. Accordingly, defendant, the City of McKeesport, respectfully requests that this Honorable Court enter an Order granting defendant's Motion for Summary Judgment and dismissing the plaintiff's Complaint in its entirety with prejudice.

(iii) Plaintiff has failed to provide evidence that satisfies the third element of the "hills and ridges" doctrine which requires proof that the dangerous accumulation of snow and ice was the *cause* of the plaintiff's fall

The third element of the "hills and ridges" doctrine requires proof that the dangerous accumulation of snow and ice was the ***cause*** of the plaintiff's fall. Miller v. City Ice & Fuel Co., 69 A.2d 140 (Pa. 1949); Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962); Roland v. Kravco, Inc., 513 A.2d 1029 (Pa. 1986); Mack v. AAA Mid-Atlantic, Inc., 511 F. Supp. 2d 539 (E.D. Pa. 2007); Beck v. Holly Tree Homeowner's Ass'n., 689 F. Supp. 2d 756 (E.D. Pa. 2010); Alexander v. City of Meadville, 61 A.3d 218 (Pa. Super. 2012); Shields v. Phila. Hous. Auth., 28 D&C 5th 378 (CCP Phila. 2013); Creoruska v. Burger King, 2016 Phila. Ct. Com. Pl. LEXIS 321 (CCP Phila. August 16, 2016); Heichel v. Smith Paving & Constr. Co., 136 A.3d 1037 (Pa. Super. 2016)).

In Miller v. City Ice & Fuel Co., 69 A.2d 140 (Pa. 1949), the Pennsylvania Supreme Court held that mere proof of an accumulation of ice and snow was not sufficient to establish liability because the evidence failed to establish that the accumulation of ice and snow was the ***cause*** of the plaintiff's fall. In finding that the plaintiff failed to meet his burden of proof, the Pennsylvania Supreme Court stated:

> While there was proof of an accumulation of ice and snow on the sidewalk, the evidence failed to establish that it was the ***cause*** of the fall. On the contrary, the testimony of [the plaintiff] himself reveals that he fell as a result of the general icy condition of the crosswalk as he was proceeding from the northwest to the northeast corner of the intersection. He was asked to identify on a photograph the place where he slipped and indicated a point on the crosswalk several feet west of the curb line. According to his own testimony, he slid continuously from that point "up over the curb stone" until he fell at a point on the sidewalk 8 to 10 feet east of the curb line. When asked whether he continued to slip from the time he started to slide, he replied, "my feet slipped a little bit, then I tried to catch myself and then I fell down, continuously fell, one solid flop." Despite persistent questioning by his counsel, **[the plaintiff] failed to testify that the condition of the sidewalk was the *cause* of his loss of equilibrium, and he was the only witness to testify as to the manner of occurrence of his fall**.

69 A.2d at 140 (emphasis added); (**see also**: Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962); Roland v. Kravco, Inc., 513 A.2d 1029 (Pa. 1986); Mack v. AAA Mid-Atlantic, Inc., 511 F. Supp. 2d 539 (E.D. Pa. 2007); Beck v. Holly Tree Homeowner's Ass'n., 689 F. Supp. 2d 756 (E.D. Pa. 2010); Alexander v. City of Meadville, 61 A.3d 218 (Pa. Super. 2012); Shields v. Phila. Hous. Auth., 28 D&C 5th 378 (CCP Phila. 2013); Creoruska v. Burger King, 2016 Phila. Ct. Com. Pl. LEXIS 321 (CCP Phila. August 16, 2016); Heichel v. Smith Paving & Constr. Co., 136 A.3d 1037 (Pa. Super. 2016)).

Also, in Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962), the Pennsylvania Supreme Court held, inter alia, that the plaintiff failed to establish a causal connection between an improper accumulation of snow or ice and the plaintiff's fall. In reversing the trial court, the Pennsylvania Supreme Court held that the plaintiff "failed to sustain his burden of proof in two (2) respects: (1) he presented no evidence of either the size or the

character of any ridge or other elevation of snow or ice on the sidewalk, and (2) he failed to establish a ***causal connection*** between any improper accumulation of snow or ice and his fall." Id. at 626. Instead, the plaintiff merely proved that "the sidewalk was icy and, in places, "bumpy," "lumpy" or "hilly" and covered at the time of the accident with a layer with freshly fallen snow. The record is void of any evidence of the size or character of the ridges, bumps, lumps, hills or other elevations of the snow or ice such as would constitute an obstruction or danger to the traveling public. In short, his proof merely demonstrated an unevenness of the surface of the snow and ice such as would result from persons walking over the snow on the sidewalk; such proof is not proof of negligence." Id.

The other serious defect in the plaintiff's case addressed by the Rinaldi court was the plaintiff's "inability to state what ***caused*** him to fall. Under his own testimony either "a piece of ice" or "a ridge of ice" or "something" caused him to slip and fall; if Rinaldi does not know what caused his fall, then only by conjecture and guesswork could a jury find what caused him to fall". Id. The Rinaldi court concluded that in order for a plaintiff to recover, a plaintiff must "prove not only evidence of [a] dangerous condition in the form of hills and ridges, but must show that the dangerous obstructions on the sidewalk were the actual ***cause*** of the fall." Id.

Further, in Roland v. Kravco, Inc., 513 A.2d 1029 (Pa. 1986), the Pennsylvania Superior Court affirmed the trial court's order granting summary judgment in favor of the defendant where the plaintiff failed to prove that "ridges and elevations of ice" ***caused*** the plaintiff to fall. In affirming the trial court's order granting summary judgment in favor of the defendant, the court stated:

> In Pennsylvania there is no liability created by a general slippery condition on the surface of a parking lot. It must appear that there were dangerous conditions due to ridges or elevations, which were allowed to remain for an unreasonable length of time. (citations omitted). **Plaintiff must also show that these ridges or elevations were the *cause* of the fall and in the absence of proof of this, the plaintiff has no basis for recovery**. (citations omitted).
>
> . . .
>
> In the case before us, it is clear that **there were no ridges and elevations of ice that *caused* [the plaintiff] to fall** as she would have seen them had they existed.

513 A.2d at 1032 (emphasis added).

In the present case, even assuming, ***arguendo***, that snow had dangerously accumulated in "hills or ridges" of such size and character as to unreasonably obstruct travel, which is specifically denied and is clearly not supported by the plaintiff's own testimony, the plaintiff has failed to produce evidence that the dangerous accumulation of snow in "hills and ridges" was the ***cause*** of her fall. To the contrary, the plaintiff testified in relevant part as follows:

- as she began walking down the hill, she "started speed walking" because of the steepness of the hill, her feet then started sliding on the pathway, she then lost her balance and her feet then slipped out from under her. (**Whitsey depo.** at pp. 30, 34-36).

- as she was "starting to get more down the hill, it seemed like I couldn't get a balance, because of how the hill was, and because it's steep, that going down a steep hill makes you walk a little bit faster" and as a result she started to lose her balance and then started sliding down the hill and her feet slipped out from under her. (**Whitsey depo.** at pp. 34-35).

- When asked what caused her to fall, Ms. Whitsey testified that it was her "boots" which did not have good treads or traction and also the steepness of "the hill too." (**Whitsey depo.** at pp. 33-34).

- nothing tripped her causing her to fall; rather, she simply lost her balance and fell from the momentum of going forward down the hill and slipping on the snow. (**Whitsey depo.** at pp. 35-36).

- Ms. Whitsey testified that after she fell, she could not see or identify anything in the snow that indicated where she fell and she could not see or identify any defects or anything that caused her to trip; again, she testified that she slipped on the snow. (**Whitsey depo.** at p. 37).

- Ms. Whitsey later testified in response to questioning from her own counsel that the snow on the pathway was "a little bit lumpy" on the "sides" of the pathway; however, Ms. Whitsey did not describe the size of the lumps other than to say that it was "a little bit lumpy;" further, Ms. Whitsey did **not** claim that the "sides" where it was "a little bit lumpy" ***caused*** her to fall; to the contrary, Ms. Whitsey specifically testified that she did **not** walk on the "sides" where it was "a little bit lumpy" at the time of her fall; (**Whitsey depo.** at p. 63).

Based upon the plaintiff's own testimony, the plaintiff has failed to produce evidence necessary to satisfy the third element of the "hills and ridges" doctrine which requires proof that the dangerous accumulation of snow in "hills and ridges" was the ***cause*** of her fall. Plaintiff's failure to produce such proof is fatal to her claim.

In summary, under Pennsylvania law, in order for a plaintiff to recover for a fall on ice or snow, the plaintiff must produce evidence necessary to satisfy ***all*** three (3) elements under the "hills and ridges" doctrine. A plaintiff's failure to satisfy any one (1) of the three (3) elements is fatal to the plaintiff's claim. In the present case, the plaintiff cannot satisfy ***any*** of the three (3) threshold elements necessary to establish a *prima facie* claim against the City of McKeesport under the "hills and ridges" doctrine. Accordingly, defendant, the City of McKeesport, respectfully requests that this

Honorable Court enter an Order granting defendant's Motion for Summary Judgment and dismissing the plaintiff's Complaint in its entirety with prejudice.

B. **Plaintiff's claims are barred, as a matter of law, under the doctrine of Assumption of the Risk because the plaintiff knowingly, voluntarily and deliberately proceeded to encounter a known and obvious danger.**

(i) **Defendant, the City of McKeesport, was relieved of any duty to the plaintiff because the plaintiff knowingly, voluntarily and deliberately proceeded to encounter a known and obvious danger and is therefore deemed, as a matter of law, to have assumed liability for her own injuries.**

Under Pennsylvania law, in order to prevail in a negligence action, a plaintiff must establish four (4) elements: (1) the defendant owed him or her a duty of care; (2) the duty was breached; (3) the breach resulted in the plaintiff's injury; and (4) the plaintiff suffered actual loss or damages. Merlini Ex. Rel. Merlini v. Gallitzin Water Authority, 980 A.2d 502 (Pa. 2009). Establishing a breach of a legal duty is a condition precedent to a finding of negligence. Estate of Swift v. Northeastern Hospital of Philadelphia, 690 A.2d 719 (Pa. Super. 1997). The duty of care owed depends primarily upon the relationship between the parties at the time of the plaintiff's injury. *Id*.

Under the doctrine of assumption of the risk, a defendant is relieved of its duty to protect a plaintiff if the plaintiff has voluntarily and deliberately proceeded to encounter a known and obvious risk and is therefore deemed to have assumed liability for his/her own injuries. Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996). Whether the assumption of the risk doctrine applies in a particular case is typically a question for the jury, but the court may resolve the issue **as a matter of law** where reasonable minds could not differ. Howell v. Clyde, 620 A.2d 1107 (Pa. 1993); Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996). Under Pennsylvania law,

the doctrine of assumption of the risk continues to remain a viable defense in Pennsylvania. Howell v. Clyde, 620 A.2d 1107 (Pa. 1993).

In Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983), the plaintiff sued the defendant clinic owners after she slipped and fell on an isolated patch of ice in their parking lot. The plaintiff alleged that the defendants were negligent in failing to properly maintain the parking lot. The plaintiff testified that she parked her car in the lot, which was covered in a smooth sheet of ice. She also testified that she was aware of several convenient parking spaces that were free of ice and available for her to use as parking. The jury found the defendants 65% negligent and the plaintiff 35% negligent. After setting forth the duty of care owed to an invitee by a possessor of land, the Supreme Court found that the plaintiff's "own testimony showed not only that the existence of the ice was obvious to a reasonably attentive invitee, but also that she herself was aware of the ice and appreciated the risk of traversing it." 469 A.2d at 124. The Supreme Court further explained:

> [Plaintiff] misperceives the relationship between the assumption of risk doctrine and the rule that a possessor of land is not liable to his invitees for obvious dangers. When an invitee enters business premises, discovers dangerous conditions which are both obvious and avoidable, and nevertheless proceeds voluntarily to encounter them, the doctrine of assumption of risk operates merely as a counterpart to the possessor's **lack of duty to protect the invitee from those risks**. . . . By voluntarily proceeding to encounter a known or obvious danger, the invitee is deemed to have agreed to accept the risk and to undertake to look out for himself. . . . It is precisely because the invitee assumes the risk of injury from obvious and avoidable dangers that **the possessor owes the invitee no duty to take measures to alleviate those dangers**. Thus, to say that the invitee assumed the risk of injury from a known and avoidable danger **is simply another way of expressing the lack of any duty on the part of the possessor to protect the invitee against such dangers**.

469 A.2d at 125 (emphasis added).

Similarly, in Ott v. Unclaimed Freight Co., 577 A.2d 894 (Pa. Super. 1990), the Superior Court affirmed a trial court's order granting summary judgment in favor of the defendants where the plaintiff slipped and fell on an isolated patch of ice in a parking lot. The trial court concluded that the defendants owed no duty to the plaintiff because she assumed the risk of crossing the ice-covered parking lot. In affirming the trial court, the Superior Court held that "although snow and ice were present on the surface of the parking lot and were readily apparent to [plaintiff], she attempted to cross the parking lot." Id. at 895. The Superior Court concluded:

> Based on [the plaintiff's] own testimony, it is clear that she was aware of the hazard, but nevertheless proceeded to encounter it in spite of the fact that an alternative route was readily available to her. Because the condition of the parking lot was made known to [the plaintiff] and because she was well aware of the risks involved in attempting to cross the ice, **we hold that [the defendants] owed no duty to [the plaintiff]**. . ..

577 A.2d at 898 (emphasis added) (**see also**: Chiricos v. Forest Lakes Council Boy Scouts of America, 571 A.2d 474 (Pa. Super. 1990) (superior court affirmed the trial court's order granting summary judgment in favor of the defendant finding that the plaintiff made a conscious choice to place himself in a position of danger after hearing the sounds of an approaching ATV and placing himself in the path of the ATV resulting in injuries); Spady v. Acme Mkts., Inc., 2016 Phila. Ct. Com. Pl. LEXIS 349 (September 6, 2016), aff'd, 2017 Pa. Super. LEXIS 3740 (Oct. 10, 2017)(superior court affirmed the trial court's order granting summary judgment in favor of the defendant finding that the plaintiff's claim for injuries suffered as a result of a slip and fall on snow was barred under the "choice of ways" doctrine and the "assumption of the risk" doctrine where the snow upon which the plaintiff fell was an open and obvious condition); Rovinsky v. Lourdesmont/Good Shepherd Youth and Family Servs., 120 A.3d 1067 (Pa. Super. 2015)(superior court affirmed the trial court's order granting summary judgment for the defendant where the plaintiff was aware that a floor was covered with spilled food and beverages after a food fight but nevertheless chose to walk across the floor; the court held that the plaintiff assumed the risk of harm and the defendant was therefore relieved of any duty to the plaintiff)).

In the present case, the plaintiff testified that she knowingly and voluntarily proceeded to encounter a known and obvious danger by walking down the snow-covered pathway after observing and fully appreciating the snow-covered condition of the pathway and after deliberating upon whether or not she should risk attempting to walk down the snow-covered pathway. (**Whitsey depo.** at pp. 30-34). The plaintiff testified in relevant part as follows:

> Q. Tell me how the accident happened. How did you fall down?
>
> A. I was walking, and while I was walking, I stopped at the top of it to, like, actually think if I want to walk down this hill or not, and I looked at the time, and I thought – um – I had to go, and I didn't have time to turn back around and go down the hill where all the cars go down, so I was walking, and – um – I was, maybe, about where the circle (indicating on Exhibit 2) and that's when I was – I was walking, and then I started speed walking, because it gets a little steep, so it was, like, the hill was making me walk a little faster than I wanted to, and that's when the snow made me, like, fall back, and I fell. And I kind of, like, before I fell back, I twisted my ankle a little bit, and that's when I fell. I was laying there for a little bit.
>
> Q. So you said when you got to the top of the hill, before you started to go down the hill, you stopped and thought about whether or not you should go down the hill?
>
> A. Yeah.
>
> Q. What was – what were you thinking about?
>
> A. If I wanted to go down the hill, because it was covered in snow, and I didn't want to risk anything, but I had to get to school.
>
> Q. So as you were standing at the top of the hill, did you think it might be dangerous to walk down that hill?

A. I mean, I didn't think it was dangerous, I thought it would be okay, because I had boots on. I didn't think it was going to be a problem, but then I did, but in my mind, I had to get to school. So it wasn't really that much on my mind to make me want to go back.

Q. But you stopped at the top of the hill before you went down and you assessed the situation, you saw that it was snowy, and decided instead of taking another route, you had to get to school, so you went down that path anyway?

A. Yeah. I had to think about my priorities. I had to get to school.

. . .

Q. Okay. But you stopped at the top of the hill before you went down to assess the situation and saw that it was covered with snow, but nevertheless, decided to walk down the path?

A. Yeah.

(**Whitsey depo.** at pp. 30-31 and 34).

Based upon the plaintiff's own sworn testimony, it is clear that the plaintiff knowingly and voluntarily proceeded to encounter a known and obvious risk by walking down the snow-covered hill after observing and fully appreciating the snowy condition of the hill and after deliberating upon the risks of attempting to walk down the snow-covered pathway. Under Pennsylvania law, the plaintiff is deemed, as a matter of law, to have assumed liability for her own injuries and the defendant is therefore relieved of any duty of care to the plaintiff.

Accordingly, defendant, the City of McKeesport, respectfully requests that this Honorable Court enter an Order granting defendant's Motion for Summary Judgment and dismissing plaintiff's Complaint in its entirety with prejudice.

(ii) A possessor of land is not liable for a condition or danger which is known and obvious such that a reasonable person may be expected to discover it.

The standard of care that a possessor of land owes to one who enters upon the land depends upon whether the entrant is a trespasser, a licensee or an invitee. Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983); Palange v. City of Philadelphia, 640 A.2d 1305 (Pa. Super. 1994). The determination of whether an individual is an invitee, licensee or trespasser is usually a question of fact for the jury. *Id*. However, where the evidence is insufficient to support an issue, it may be appropriate for the court to remove that issue from the jury. *Id*.[2]

Under Pennsylvania law, a possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is *known or obvious* to them, unless the possessor should anticipate the harm despite such knowledge or obviousness. Restatement (Second) of Torts, § 343A; Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983); Howell v. Clyde, 620 A.2d 1107 (Pa. 1993); Chiricos v. Forest Lakes Council Boy Scouts of America, 571 A.2d 474 (Pa. Super. 1990); Rovinsky v. Lourdesmont/Good Shepherd Youth and Family Servs., 120 A.3d 1067 (Pa. Super. 2015); Spady v. Acme Mkts., Inc., 2016 Phila. Ct. Com. Pl. LEXIS 349 (September 6, 2016), aff'd, 2017 Pa. Super. LEXIS 3740 (Oct. 10, 2017). For a danger to be "known," the invitee must not only be aware of its existence, but must also recognize that it is dangerous and appreciate the probability and gravity of the

[2] In Alexander v. The City of Meadville, 61 A.3d 218 (Pa. Super. 2012), the Pennsylvania Superior Court noted that "Pennsylvania case law has established that a pedestrian walking on a public sidewalk is a **licensee** of the property owner;" (**see also:** Proctor v. Port Auth. of Allegheny Co., 54 D&C 4th 65 (CCP Alleg. Co. 2001); Robinson v. City of Phila., 46 A.3d 833 (Pa. Cmwlth. 2012)). The standard of care owed by a possessor of land to a licensee is less than the duty of care owed to a business invitee or public invitee. However, viewing this matter in the light most favorable to the plaintiff, and for purposes of the present motion for summary judgment only, defendant acknowledges that the plaintiff was a public invitee.

threatened harm. Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983). "A danger is deemed to be "obvious" when "both the condition and the risk are apparent to and would be recognized by a reasonable man, in the position of the visitor, exercising normal perception, intelligence and judgment." Id.

While a determination of whether a dangerous condition is "known" and "open and obvious" is ordinarily a question of fact for the jury, the trial court may decide the question **as a matter of law** "where reasonable minds could not differ as to the conclusion." Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983); Howell v. Clyde, 620 A.2d 1107 (Pa. 1993). It is well established under Pennsylvania law that "there are some dangers that are so obvious that they will be held to have been assumed as a matter of law despite assertions of ignorance to the contrary." Howell v. Clyde, 620 A.2d 1107 (Pa. 1993); Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996)("ice is always slippery and a person walking on ice always runs the risk of slipping and falling"). Other examples of "obvious" dangers as found by the courts in Pennsylvania include uneven steps and clearly visible patches of ice. (See: Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983) (danger posed by the isolated patch of ice was both obvious and known); Ott v. Unclaimed Freight Co., 577 A.2d 894 (Pa. Super. 1990)(condition of the icy lot was known and obvious); Volano v. Sec. Sav. Ass'n., 407 A.2d 440 (Pa. Super. 1979)(first step that was three inches higher than the opposite end due to a sloping sidewalk was an obvious and known condition and was not concealed)).

Again, in the present case, the plaintiff testified at her deposition that before she proceeded to walk down the snow-covered pathway, she stopped at the top of the hill, observed the snow-covered condition of the pathway, thought about whether or not she should risk attempting to walk down the pathway but nevertheless decided to walk down

the snow-covered pathway because she didn't want to be late for school. (**Whitsey depo.** at pp. 30-34). Because the allegedly dangerous condition on the defendant's property (i.e., the snow-covered pathway) was an open and obvious condition that was fully appreciated by the plaintiff and the risks associated with walking down the snow-covered pathway were consciously considered by the plaintiff before she voluntarily chose to walk down the hill, the plaintiff assumed the risk of harm and her claims are therefore barred as a matter of law. As common sense dictates and as is well established under Pennsylvania law, "ice is always slippery," "a person walking on ice always runs the risk of slipping and falling" and "some dangers are so obvious that they will be held to have been assumed as a matter of law despite assertions of ignorance to the contrary." Howell v. Clyde, 620 A.2d 1107 (Pa. 1993); Barrett v. Fredavid Builders, Inc., 685 A.2d 129 (Pa. Super. 1996).

Accordingly, defendant, the City of McKeesport, respectfully requests that this Honorable Court enter an Order granting defendant's Motion for Summary Judgment and dismissing plaintiff's Complaint in its entirety with prejudice.

(iii) Plaintiff's claims are barred as a matter of law by the "choice-of-ways" doctrine

Under Pennsylvania law, the "choice-of-ways" doctrine has been defined as "where a person, having a choice of two ways, one of which is perfectly safe, and the other of which is subject to risks and dangers, voluntarily choses the later and is injured, he is guilty of contributory negligence and cannot recover." Downing v. Shaffer, 371 A.2d 953 (Pa. Super. 1977).

Under the choice of ways doctrine, a plaintiff cannot recover if no reasonable minds could disagree that there was "(1) a safe course, (2) a dangerous course, and (3)

facts which would put a reasonable person on notice of the danger or actual knowledge of the danger." Updike v. BP Oil Co., 717 A.2d 546 (Pa. Super. 1998). The choice of ways doctrine "still exists in Pennsylvania despite the substitution of comparative negligence for contributory negligence." Mirabel v. Morales, 57 A.3d 144 (Pa. Super. 2012); Spady v. Acme Mkts., Inc., 2016 Phila. Ct. Com. Pl. LEXIS 349 (September 6, 2016), aff'd, 2017 Pa. Super. LEXIS 3740 (Oct. 10, 2017).

Viewing the evidence in the light most favorable to the plaintiff, no reasonable minds could disagree that the plaintiff assumed the risk of injury in knowingly, voluntarily and deliberately assuming the risk of harm in consciously deciding to walk down the snow-covered pathway instead of taking a different, safer route. (**Whitsey depo.** at pp. 30-34). The plaintiff testified in relevant part as follows:

> Q. But you stopped at the top of the hill before you went down and you assessed the situation, you saw that it was snowy, and decided instead of taking another route, you had to get to school, so you went down that path anyway?
>
> A. Yeah. I had to think about my priorities. I had to get to school.
>
> Q. Was there another way you could have gone to school without having to go down the path?
>
> A. Yeah.

(**Whitsey depo.** at pp. 30-31).

Based upon the plaintiff's own sworn testimony, the plaintiff's claims are barred, as a matter of law, by the "choice of ways" doctrine. Accordingly, defendant, the City of McKeesport, respectfully requests that this Honorable Court enter an Order granting defendant's Motion for Summary Judgment and dismissing plaintiff's Complaint in its entirety with prejudice.

C. **Plaintiff's claims are barred, as a matter of law, as defendant, the City of McKeesport, is entitled to governmental immunity under the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, et seq.**

Defendant, the City of McKeesport, is a "local agency" as that term is defined under the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8501 and § 8541, et seq. ("Tort Claims Act"). Under § 8541 of the Tort Claims Act, local agencies, such as cities, boroughs and municipalities and their officials, are immune from tort liability. Section 8541 of the Tort Claims Act provides as follows:

> Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

42 Pa. C.S.A. § 8541.

Section 8542(a) of the Tort Claims Act provides that liability for personal injury or property damage may be imposed upon a local agency if two (2) threshold conditions are met:

> (1) The damages would be recoverable under common law or statute against a non-immune party; and
>
> (2) The injury was caused by a negligent act of the local agency that falls within one (1) of the eight (8) exceptions to governmental immunity enumerated in § 8542(b) of the Political Subdivision Tort Claims Act.

42 Pa. C.S.A. § 8542(a)(1) and (2).

Before determining whether a plaintiff's claim falls within one (1) of the eight (8) exceptions to governmental immunity enumerated under § 8542(b)(1) – (8) of the Tort Claims Act, Section 8542(a) requires that a plaintiff must satisfy two (2) threshold conditions set forth under 42 Pa. C.S.A. § 8542(a)(1) and (2). **First**, a plaintiff must

establish that "the damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under § 8541 (relating to governmental immunity generally) or § 8547 (relating to defense of official immunity)." 42 Pa. C.S.A. § 8542(a)(1). **Secondly**, a plaintiff must establish that "the injury was ***caused*** by the negligent acts of the local agency. . . with respect to one (1) of the categories listed in subsection (b)." 42 Pa. C.S.A. § 8542(a)(2).

(i) Plaintiff's claims are barred as a matter of law because the plaintiff cannot produce evidence necessary to establish a common law cause of action against the City of McKeesport which is a prerequisite to the imposition of liability under § 8542(a)(1) of the Tort Claims Act

As above stated, under § 8542(a)(1) of the Tort Claims Act, the first threshold requirement for liability to be imposed upon a local governmental agency is that the plaintiff's damages must be recoverable under common law or statute against a non-immune party. (**See**: 42 Pa. C.S.A. § 8542(a)(1); Vitelli v. City of Chester, 545 A.2d 1011 (Pa. Cmwlth. 1988); Abella v. City of Philadelphia, 703 A.2d 547 (Pa. Cmwlth. 1997); Cohen v. City of Phila., 847 A.2d 778 (Pa. Cmwlth. 2004); Page v. City of Philadelphia, 25 A.3d 471 (Pa. Cmwlth. 2011); Alexander v. City of Meadville, 61 A.3d 218 (Pa. Super. 2012); Shields v. Phila. Hous. Auth., 28 D&C 5th 378 (CCP Phila. Co. 2013); Moon v. Dauphin County, 129 A.3d 16 (Pa. Cmwlth. 2015)).

In Moon v. Dauphin County, 129 A.3d 16 (Pa. Cmwlth. 2015), the Pennsylvania Commonwealth Court affirmed the trial court's entry of summary judgment in favor of the defendant based upon, inter alia, the plaintiff's failure to establish a common law claim under the "hills and ridges" doctrine for a slip and fall on ice. In finding that the plaintiff failed to establish a common law cause of action under the "hills and ridges"

doctrine, the court concluded that the plaintiff's claim failed to meet the first threshold condition of § 8542(a)(1) of the Tort Claims Act which requires, inter alia, that a plaintiff have a common law cause of action before there can be a basis for liability under one (1) of the exceptions to governmental immunity under the Tort Claims Act. (**See also**: Alexander v. City of Meadville, 61 A.3d 218 (Pa. Super. 2012));

As discussed in detail under Section "A" of this Brief, supra., the plaintiff has failed to produce evidence essential to establishing a *prima facie* common law cause of action against the City of McKeesport under the "hills and ridges" doctrine. Further, as discussed in detail under Section "B" of this Brief, supra., the plaintiff's common law claims are barred by the doctrine of assumption of the risk. Accordingly, because the plaintiff cannot, as a matter of law, produce evidence essential to establishing a common law cause of action against the City of McKeesport, the plaintiff has failed, as a matter of law, to satisfy the **first** threshold requirement for the imposition of liability against a local governmental agency under § 8542(a)(1) of the Tort Claims Act which provision requires that the plaintiff's "damages would be recoverable under common law or statute against a non-immune party."

Accordingly, defendant, the City of McKeesport, is entitled to governmental immunity as a matter of law under the Tort Claims Act, 42 Pa. C.S.A. § 8541, et seq.

(ii) Plaintiff's claims are barred as a matter of law because the plaintiff cannot produce evidence that her injury was *caused* by a negligent act of defendant that falls within one (1) of the eight (8) exceptions to governmental immunity under the Tort Claims Act

Even assuming, *arguendo*, that the plaintiff can produce evidence essential to establishing a *prima facie* common law cause of action against the City of McKeesport,

which is specifically denied and is clearly not supported by the evidence, the plaintiff has failed to produce evidence that her injury was ***caused*** by a negligent act of the City of McKeesport that falls within one (1) of the eight (8) enumerated exceptions to governmental immunity under § 8542(b)(1)-(8) of the Tort Claims Act.

Several courts in Pennsylvania have held that a slip and fall on an accumulation of ice and snow on a city sidewalk does not fall within the "**sidewalks**" exception to governmental immunity set forth under 42 Pa. C.S.A. § 8542(b)(7) (**see**: Ambacher v. Pennrose, 499 A.2d 716 (Pa. Cmwlth. 1985)(the mere presence of "hills and ridges" in snow or ice on a sidewalk, even if they are of such character and size as to constitute a substantial obstruction to travel, and even if known to the municipal agency, does not constitute a dangerous condition "of" the sidewalk or streets as that word has been interpreted by the courts in comparable situations); Snyder v. Harmon, 562 A.2d 307 (Pa. 1989)(plaintiff's claim that she slipped and fell down an embankment as a result of the Commonwealth's failure to warn or provide barricades to guard against an unsafe condition did not fall within the sidewalk exception to governmental immunity); McRae v. Sch. Dist. of Phila., 660 A.2d 269 (Pa. Cmwlth. 1995)(commonwealth court affirmed trial court's order granting judgment in favor of a school district finding that plaintiff's slip and fall on "hills and ridges" of snow and ice was not an exception to governmental immunity); Walinsky v. St. Nicholas Ukranian Catholic Church, 740 A.2d 318 (Pa. Cmwlth. 1999); Cohen v. City of Philadelphia, 847 A.2d 778 (Pa. Cmwlth. 2004)(the plaintiff failed to satisfy the requirements of the sidewalk exception because she did not sufficiently plead that the accumulation of snow and ice derived, originated from or had the realty as their source); Alexander v. City of Meadville, 61 A.3d 218 (Pa. Super. 2012)(superior court affirmed the trial court's grant of summary judgment finding that the

plaintiff's slip and fall on an ice and snow-covered sidewalk was barred by the "hills and ridges" doctrine and did not fall within the sidewalks exception to governmental immunity)).

In McRae v. Sch. Dist. of Phila., 660 A.2d 269 (Pa. Cmwlth. 1995), the commonwealth court affirmed the trial court's order granting the defendant school district's motion for judgment on the pleadings finding that the plaintiff's slip and fall on hills and ridges of ice and snow on a school district sidewalk did not fall within the sidewalk's exception to governmental immunity under § 8542(b)(7) of the Tort Claims Act. In affirming the trial court's order, the commonwealth court stated:

> We will not impose liability for injuries caused by the negligent failure of the government entity to remove a foreign substance from the real estate or the sidewalk. Since ice, snow, oil and grease are all foreign substances which can naturally accumulate on the sidewalk or real estate itself, government entities are not liable for injuries caused solely by the present of these substances on a sidewalk or on real property.
>
> . . .
>
> In order for the real property exception to the Political Subdivision Tort Claims Act to apply, it is incumbent upon the pleading party to assert that there was an actual defect or flaw in the real estate itself that caused the injury, not some substance such as ice, snow, grease or debris on the real property, that facilitated the injury, unless it is there because of a design or construction defect. (citations omitted). The absence of such an allegation precludes a viable cause of action in the common pleas court.

660 A.2d at 210.

More recently, in Moon v. Dauphin County, 129 A.3d 16 (Pa. Cmwlth. 2015), the commonwealth court held that the plaintiff's slip and fall on ice on a fenced-in walkway did not fall within the "**real estate**" exception to governmental immunity under 42 Pa.

C.S.A. § 8542(b)(3) (the Moon court also held, inter alia, that the plaintiff's claims were barred by the "hills and ridges" doctrine). Also, in Abella v. City of Philadelphia, 703 A.2d 547 (Pa. Cmwlth. 1997), a pedestrian was injured when she fell as a result of an accumulation of "hills and ridges of ice and snow" on a city sidewalk. On appeal, the commonwealth court held that the plaintiff could not recover because her claim did not fall under either the **real estate** exception or the **sidewalks** exception to municipal immunity under the Tort Claims Act.

Lastly, as discussed in detail under section A (iii) of this Brief, the plaintiff has failed to produce any evidence that the dangerous accumulation of snow in "hills and ridges" was the ***cause*** of her fall.

Because the plaintiff cannot produce evidence necessary to establish that her injury was caused by a negligent act of the defendant that falls within one (1) of the eight (8) enumerated exceptions to governmental immunity under the Tort Claims Act, the plaintiff has failed to satisfy the **second** threshold requirement under § 8542(a)(2) of the Tort Claims Act. Accordingly, defendant, the City of McKeesport, is entitled to governmental immunity as a matter of law.

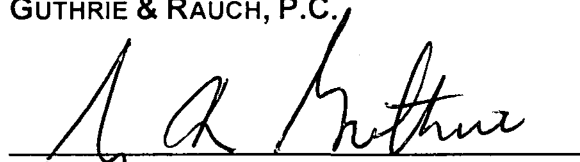
In summary, because the plaintiff cannot produce evidence necessary to satisfy either of the two (2) threshold requirements set forth under 42 Pa. C.S.A. § 8542(a) of the Tort Claims Act, which conditions are prerequisites to imposing liability against a local governmental agency under the Tort Claims Act, defendant, the City of McKeesport is immune from the plaintiff's claims as a matter of law.

IV. CONCLUSION

For all of the foregoing reasons, defendant, the City of McKeesport, respectfully requests that this Honorable Court enter an Order granting the Defendant's Motion for Summary Judgment and dismissing the plaintiff's Complaint in its entirety with prejudice.

Respectfully submitted,

SUMMERS, MCDONNELL, HUDOCK, GUTHRIE & RAUCH, P.C.



Gregg A. Guthrie, Esquire
Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMYA WHITSEY,	CIVIL DIVISION
Plaintiff,	NO.: GD 17-012175
vs.	**COMPLAINT**
CITY OF MCKEESPORT,	FILED ON BEHALF OF:
Defendant.	Plaintiff
	COUNSEL OF RECORD FOR THIS PARTY:
	ANDREW J. LEGER, JR., ESQUIRE PA. I.D. #43702 Law Office of Andrew J. Leger, Jr., P.C. 310 Grant Street Suite 2630 Pittsburgh, PA 15219

A JURY TRIAL DEMANDED

FILED
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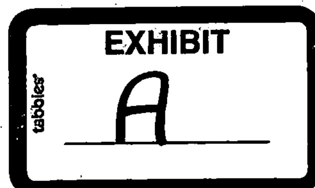
DEPT. OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMYA WHITSEY,	CIVIL DIVISION
	NO.: GD 17-012175
Plaintiff,	**COMPLAINT**
vs.	
CITY OF MCKEESPORT,	
Defendant.	

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the Complaint and notice are served, by entering a written appearance personally or by an attorney and by filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIDGIBLE PERSONS TO A REDUCED FEE OR NO FEE.

ACBA Lawyer Referral Service
436 7th Ave,
Pittsburgh, PA 15219
(412) 261-5555

The Law Office of Andrew J. Leger, Jr., P.C.

Date: November 9th 2017

By:

Andrew J. Leger, Jr., Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMYA WHITSEY,

Plaintiff,

vs.

CITY OF MCKEESPORT,

Defendant.

CIVIL DIVISION

NO.: GD 17-012175

COMPLAINT

COMPLAINT

A Jury Trial Demanded

And Now, comes the Plaintiff, Jamya Whitsey, by and through her attorney, Andrew J. Leger, Jr., Esquire and the Law Office of Andrew J. Leger, Jr., P.C. and files this Complaint upon a set of particulars of which the following is a statement:

1. Plaintiff, Jamya Whitsey, is an adult individual who resides at 3012 Boyd Street, McKeesport, Pennsylvania 15132 and who has a date of birth of October 1, 1998.

2. Defendant, City of McKeesport, is a political governmental municipality and/or subdivision, existing and doing business as such at 500 5th Avenue, McKeesport, Pennsylvania 15132.

3. That at all times pertinent and relevant to this cause of action, the City of McKeesport was the owner of real property between N. Grandview Avenue and Porter Street, was in possession and control of the premises and, as such, had a duty to Plaintiff and all others similarly situated to inspect, maintain, repair and keep it safe for use by members of the public.

4. At all times material and relevant hereto, the Defendant acted through its agents, servants and/or employees, acting within the scope of their agency, servitude and/or employment in the following respects.

5. The events upon which this Complaint is based occurred on or about January 28, 2015, at or about 6:55 a.m.

6. On and prior to this time, there existed on the real property a dangerous and unsafe and hazardous condition, to-wit, the premises contained hills and ridges of ice and snow, several inches in height, created by the Defendant's failure to remove and/or otherwise treat the ice and snow with and/or salt or use anti-skid material on the same, barricade the area and/or give warning of its dangerous condition.

7. At all times relevant hereto, the area identified above was unlit and/or poorly lit.

8. At or about the aforementioned time, Plaintiff entered the premises of the Defendant as an invitee.

9. On or about this time, Plaintiff was walking in a careful, reasonable, non-negligent and prudent manner, when she was caused to encounter ice and snow, which had been allowed to accumulate in the area being traversed by the Plaintiff, due to the neglect and negligence of the Defendant.

10. As a result, Plaintiff's feet slipped out from under her, causing her to fall and sustain serious and permanent injuries and damages.

11. The above described accident, resulting injures and damages were caused solely by and were the direct and proximate result of, the Defendant itself, acting through its agents,

servants, workmen and/or employees acting within the scope of their agency, servitude, workmanship and/or employment in general and, with respect to the following particulars:

a) In failing to properly construct, design and/or maintain the property;

b) In failing to inspect the property for dangerous conditions which an invitee would not be aware of;

c) In failing to provide for the protection of an invitee who would be unaware of dangerous conditions on the property of the Defendant;

d) In failing to inspect the area for the recurrence of snow and/or ice when the Defendant knew, or should have known, that snow and/or ice collected and froze in the same location;

e) In failing to properly maintain, shovel, salt and/or anti-skid material the area when the Defendant knew, or should have known, that invitees would be walking in this area;

f) In failing to protect Plaintiff from an unreasonable risk or harm posed by the condition of the slippery area, when Defendant expected or should have expected, that invitees such as Plaintiff would not realize the dangers that condition presented or would fail to protect themselves against the same;

g) In creating the dangerous condition by their own actions or those of their agents, employees, servants and/or workers;

h) In failing to make the premises safe for pedestrians;

i) In filing to adequately barricade or otherwise limit access to the area where the hazardous and dangerous condition was located;

j) In failing to exercise a proper degree of supervision regarding the maintenance, clean-up, use of salt and/or anti-skid material and/or properly repair the area on which there existed of snow and/or ice;

k) In being vicariously liable for the failure of an independent contractor to properly construct, design, maintain, clean, remove, de-ice, use anti-skid material and/or repair the dangerous condition;

l) In failing to take corrective measures to remedy said dangerous condition when the Defendant knew, or in the exercise of reasonable care, should have known of the existence of the dangerous condition;

m) In failing to provide a safe passageway and/or alternative route for Plaintiff to ingress and egress from the area;

n) In failing to warn the Plaintiff of the existence of a hazardous and dangerous condition;

o) In failing to provide adequate lighting in the area so invitees, including Plaintiff could safely traverse the snow and/or ice covered area; and,

p) In otherwise failing to exercise due care under the circumstances as more fully set forth hereinbefore.

12. The aforesaid snow and/or ice was an artificial condition created through Defendant's failure to maintain, repair and/or negligently maintain and/or repair the premises, resulting in a dangerous condition to the real property, which created a reasonably foreseeable risk of the kind of injury which was incurred by the Plaintiff herein.

13. The Defendant had actual and/or constructive notice of the aforesaid dangerous condition at a time sufficiently prior to the event to take appropriate measures to protect against this dangerous condition.

14. As the direct, legal and proximate result of the negligence of the Defendant, as aforesaid, Plaintiff was caused to suffer the following injuries all of which are or may be permanent in nature:

a. fractured left fibula;

b. Biamalleolar fracture to the left ankle with syndesmosis;

c. injury to the left leg;

d. contusions and bruises;

e. shock to the nerves and nervous system; and,

f. other serious and severe injuries.

14. That solely as a result of the aforesaid injuries Plaintiff sustained the following damages:

a. she has suffered, and will continue to suffer great pain, suffering, inconvenience, embarrassment and mental anguish;

b. she has been required to spend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;

c. she has been and/or will be deprived of her earnings;

d. her earning capacity has been reduced and/or permanently impaired;

e. she has been permanently disfigured;

f. her general health, strength and vitality have been impaired; and,

g. she has been and will be unable to enjoy the ordinary pleasures of life.

h. she has sustained a permanent loss of a bodily function; and,

i. she has medical expenses in excess of $1,500.00.

WHEREFORE, Plaintiff claims damages from the Defendant in an amount in excess of the compulsory arbitration limits.

LAW OFFICE OF ANDREW J. LEGER, JR., P.C.

BY:
Andrew J. Leger, Jr., Esquire
Attorney for the Plaintiff

A JURY TRIAL DEMANDED

VERIFICATION

I, **JAMYA WHITSEY,** hereby verifies that the statements of fact made in the foregoing Complaint in Civil Action are true and correct to the best of my knowledge, information and belief; that I am authorized to execute this Verification and that I understand that any false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

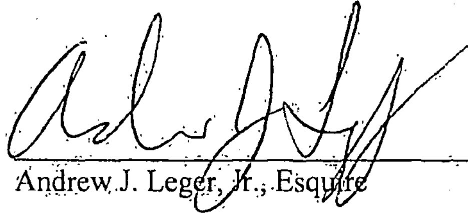
Date: 11-1-17

Jamya Whitsey
JAMYA WHITSEY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **COMPLAINT**, has been served upon the following counsel of record via U.S. First Class mail, postage pre-paid, on this 9th day of November, 2017, at the following address:

Gregg A. Guthrie, Esquire
Summers, McDonnell, Hudock & Guthrie, P.C.
707 Grant Street, Suite 2400
Pittsburgh, PA 15219



Andrew J. Leger, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMYA WHITSEY,

Plaintiff,

v.

CITY OF MCKEESPORT

Defendant.

CIVIL DIVISION

NO.: GD 17-012175

ANSWER AND NEW MATTER

(JURY TRIAL DEMANDED)

Filed on Behalf of Defendant, City of McKeesport

Counsel of Record for this Party:

Gregg A. Guthrie, Esquire
PA I.D. #59203

SUMMERS, MCDONNELL, HUDOCK & GUTHRIE, P.C.
Firm #911

707 Grant Street
Suite 2400, Gulf Tower
Pittsburgh, PA 15219

(412) 261-3232

<u>NOTICE TO PLEAD</u>

TO: Plaintiff

You are hereby notified to file a written response to the enclosed Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

Gregg A. Guthrie, Esquire

#22701

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMYA WHITSEY,

Plaintiff,

v.

CITY OF MCKEESPORT

Defendant.

CIVIL DIVISION

NO.: GD 17-012175

ANSWER AND NEW MATTER

Defendant, City of McKeesport, by its attorneys, Gregg A. Guthrie, Esquire and Summers, McDonnell, Hudock & Guthrie, P.C., files the following Answer and New Matter:

1. After reasonable investigation, defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

2. Admitted. The City of McKeesport is a "city" and as such is a political subdivision.

3. The allegations of paragraph 3 are conclusions of law to which no response is necessary. To the extent a responsive pleading is necessary, the plaintiff has not sufficiently identified the specific area where she allegedly fell and the defendant cannot therefore admit or deny ownership, possession and/or control of the premises. By way of further answer, upon information and belief, the plaintiff fell in an area known as a "paper alley" for which the City of McKeesport has no responsibility.

4. The allegations of paragraph 4 are conclusions of law to which no response is necessary. To the extent a responsive pleading is necessary, the allegations of paragraph 4 are generally denied.

5. After reasonable investigation, defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

6. The allegations of paragraph 6 are conclusions of law to which no response is necessary. To the extent a responsive pleading is necessary, it is denied that any dangerous condition existed on the defendant's premises. By way of further answer, to the extent the defendant had any duty or responsibility in this matter, at all times material hereto, the defendant exercised the degree of care necessary under the circumstances.

7. The allegations of paragraph 7 are generally denied.

8. The allegations of paragraph 8 are conclusions of law to which no response is necessary. To the extent a responsive pleading is necessary, after reasonable investigation, defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8.

9. The allegations of paragraph 9 are conclusions of law to which no response is necessary. To the extent a responsive is necessary, to the extent the defendant had any duty or responsibility in this matter, the defendant exercised the degree of care necessary under the circumstances.

10. After reasonable investigation, defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10.

11. The allegations of paragraph 11 are conclusions of law to which no response is necessary. To the extent a responsive is necessary, the allegations of paragraph 11 and all of its subparts are generally denied. By way of further answer, to the extent the defendant had any duty or responsibility in this matter, at all times material hereto, the defendant exercised the degree of care necessary under the circumstances.

12. The allegations of paragraph 12 are conclusions of law to which no response is necessary. To the extent a responsive is necessary, the allegations of paragraph 12 are generally denied. By way of further answer, to the extent the defendant had any duty or responsibility in this matter, at all times material hereto, the defendant exercised the degree of care necessary under the circumstances.

13. The allegations of paragraph 13 are conclusions of law to which no response is necessary. To the extent a responsive is necessary, it is denied that the defendant had actual and/or constructive notice of any allegedly dangerous condition.

14. The allegations of paragraph 14 are conclusions of law to which no response is necessary. To the extent a responsive pleading is necessary, it is denied that the defendant was negligent. At all times material hereto, the defendant exercised the degree of care necessary under the circumstances. By way of further answer, after reasonable investigation, defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 regarding the nature and extent of plaintiff's alleged injuries and damages.

14. After reasonable investigation, defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 regarding the nature and extent of plaintiff's alleged injuries and damages.

WHEREFORE, defendant, the City of McKeesport demands judgment in its favor and against the plaintiff.

NEW MATTER

15. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted against defendant, the City of McKeesport.

16. Plaintiff's claims are barred and/or reduced by the plaintiff's own contributory/comparative negligence and defendant raises the applicable provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. C.S.A. § 7102, as a complete and/or partial bar to plaintiff's claims.

17. Plaintiff voluntarily assumed the risk of harm by her own conduct and plaintiff's claims are therefore barred by the Doctrine of Assumption of the Risk.

18. If it is determined that a dangerous condition existed as alleged in the plaintiff's Complaint, which the City of McKeesport expressly denies, such condition was open and obvious and should have been apparent to the plaintiff had she been paying attention and exercised reasonable care for her own safety.

19. The area where the plaintiff allegedly fell was owned by and was in the care, custody and control of, and was maintained by, third-parties other than the City of McKeesport.

20. Upon information and belief, the area where the plaintiff allegedly fell was a "paper alley" for which the City of McKeesport has no responsibility.

21. Plaintiff's claims are barred by the "Hills and Ridges" doctrine.

22. Plaintiff's claimed accident and her alleged injuries and damages were not caused by any negligent, careless and/or wrongful conduct on the part of the defendant, the City of McKeesport, but instead was caused solely by the negligence and/or carelessness of persons and/or entities other than the City of McKeesport over whom the defendant had no control.

23. Plaintiff's claims against the City of McKeesport are barred due to plaintiff's failure to provide timely notice of the alleged accident to the defendant as required under 42 Pa. C.S.A. § 5522.

24. Plaintiff's claims against the City of McKeesport are barred in whole or in part by the applicable provisions of the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, et seq., which provisions are fully incorporated herein by reference.

25. If it is determined that a dangerous condition existed as alleged in the plaintiff's Complaint, which the City of McKeesport expressly denies, the City of McKeesport had no notice, actual or constructive, that such condition existed at any time prior to the date or time of the incident alleged in the plaintiff's Complaint.

26. If it is determined that the City of McKeesport had actual or constructive notice that a dangerous condition existed as alleged in the plaintiff's Complaint, which the City of McKeesport expressly denies, there was insufficient time prior to the alleged incident for the City of McKeesport to have taken measures to protect against and/or to correct the allegedly dangerous condition.

27. If it is determined that a dangerous or defective condition existed as alleged in plaintiff's Complaint, the condition was "de minimis" or "trivial" in nature and therefore not actionable at law.

28. If it is determined that the plaintiff is entitled to recover damages against the defendant, which is expressly denied, the plaintiff's recoverable damages are limited by the applicable provisions of the Pennsylvania Political Subdivision Tort Claim Act, 42 Pa. C.S.A. § 8541 et seq., which provisions are fully incorporated herein by reference.

29. Plaintiff did not suffer permanent loss of any bodily functions and/or permanent disfigurement and plaintiff is therefore barred from recovering any non-economic damages for pain and suffering.

30. If the plaintiff has received and/or is entitled to receive benefits under a policy of insurance as a result of the alleged accident, defendant is entitled to a reduction and/or set-off of the amount of such benefits pursuant to 42 Pa. C.S.A. § 8553(d).

31. Plaintiff's claims are barred by the applicable statute of limitations.

WHEREFORE, defendant, the City of McKeesport demands judgment in its favor and against the plaintiff.

Respectfully submitted,

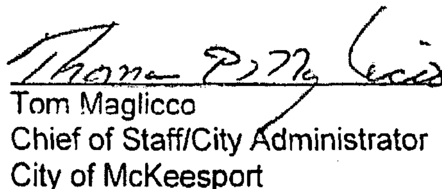
SUMMERS, McDONNELL, HUDOCK & GUTHRIE, P.C.

Gregg A. Guthrie, Esquire
Counsel for Defendant

VERIFICATION

I, Tom Maglicco, verify that I am the Chief of Staff/City Administrator of Defendant, the City of McKeesport, that I am authorized to execute this verification on behalf of Defendant, City of McKeesport and that the foregoing **ANSWER AND NEW MATTER** is based upon information which I have furnished to counsel and information which has been gathered by counsel. The language of the **ANSWER AND NEW MATTER** is that of counsel and not of the Defendant. I have read the **ANSWER AND NEW MATTER** and to the extent that the **ANSWER AND NEW MATTER** is based upon information which I have given to counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content of the **ANSWER AND NEW MATTER** is that of counsel, I have relied upon counsel in making this Affidavit. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Dated: 12/15/17



Tom Maglicco
Chief of Staff/City Administrator
City of McKeesport

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER AND NEW MATTER** has been served via first-class U.S. mail, postage prepaid, this 18th day of December, 2017, addressed as follows:

Andrew J. Leger, Jr., Esquire
Law Office of Andrew J. Leger, Jr., P.C.
310 Grant Street
Suite 2630
Pittsburgh, PA 15219

SUMMERS, MCDONNELL, HUDOCK & GUTHRIE, P.C.

Gregg A. Guthrie, Esquire
Counsel for Defendant

1 IN THE COURT OF COMMON PLEAS OF ALLEGHENY
COUNTY, PENNSYLVANIA

2

\- - -

3
JAMYA WHITSEY,)
4)
Plaintiff,)CIVIL DIVISION
5)
vs.)No. GD 17-012175
6)
CITY OF MCKEESPORT,)
7)
Defendant.)
8
9 - - -
10 Deposition of Jamya Whitsey
11 Wednesday, January 31, 2018
12 - - -
13 The deposition of Jamya Whitsey, called as a witness
by the Defendant, pursuant to notice and the Federal Rules
14 of Civil Procedure pertaining to the taking of
depositions, taken before me, the undersigned, Elizabeth
15 A. Besselman, a Notary Public in and for the Commonwealth
of Pennsylvania, at the law offices of Summers, McDonnell,
16 Hudock & Guthrie, P.C., 707 Grant Street, Suite 2400,
Pittsburgh, Pennsylvania 15219, commencing at
17 10:00 o'clock a.m., the day and date above set forth.
18

\- - -

19 NETWORK DEPOSITION SERVICES
1101 GULF TOWER
20 707 GRANT STREET
PITTSBURGH, PENNSYLVANIA 15219
21 (866)565-1929
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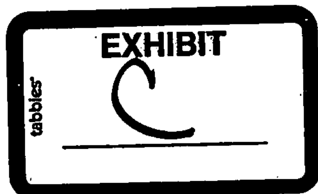

1 APPEARANCES:
2 On behalf of the Plaintiff:
3 LAW OFFICE OF ANDREW J. LEGLER, JR., P.C.
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4 aleger@legler-law.com
310 Grant Street
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Pittsburgh, PA 15219
6 P 412-281-1028 F 412-281-1058
7
8 On behalf of the Defendant:
9 SUMMERS, McDONNELL, HUDOCK & GUTHRIE, P.C.
Gregg A. Guthrie, Esquire
10 gguthrie@summersmcdonnell.com
2400 Gulf Tower
11 707 Grant Street
Pittsburgh, PA 15219
12 P 412-261-3232 F 412-261-3239
13
\- - -
14
I-N-D-E-X
15

EXAMINATION BY:	PAGE:
Mr. Guthrie	3,63
Mr. Legler	60

DEPOSITION EXHIBIT MARKED:	PAGE:
1 -	22
2 -	22
3 -	24

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25

1 JAMYA WHITSEY,

2 called as a witness by the Defendant, having first been

3 duly sworn, as hereinafter certified, was deposed and said

4 as follows:

5 EXAMINATION

6 BY MR. GUTHRIE:

7 Q. Good morning. My name is Gregg Guthrie, and I

8 represent the city of McKeesport in a lawsuit that you

9 filed against them arising out of a slip and fall accident

10 that you had back in January of 2015. I'm going to be

11 asking you some questions today regarding your memory of

12 that accident, as well as some questions regarding the

13 injuries and medical treatment you had as a result of that

14 accident. As you can see, there's a court reporter here

15 who's going to take down everything we say today, and

16 because of that, you want to make sure that all of your

17 answers to my questions are verbal. She can't take down a

18 nod of the head or a hand gesture, so you have to remember

19 to verbalize all of your answers; okay?

20 A. Okay.

21 Q. All right. Would you please state your full

22 name.

23 A. Jamya Marie Whitsey.

24 Q. And can you spell your name for the court

25 reporter.

1 A. It's hard for me to talk because I have a tongue
2 piercing. Ja-m-y-a, M-a-r-i-e, W-h-i-t-s-e-y.
3 Q. Okay. And is Whitsey your maiden name?
4 A. Um -- I guess, I don't know.
5 MR. LEGLER: She's not married.
6 Q. You've never been married?
7 A. No.
8 Q. So you haven't been known by any other last names
9 other than --
10 A. Yeah.
11 Q. Okay. What's your date of birth?
12 A. 10-01-1998.
13 Q. And that makes you how old today?
14 A. 19.
15 Q. And what are the last four digits of your Social
16 Security number?
17 A. 4456.
18 Q. Okay. Any children?
19 A. No.
20 Q. Okay. And where were you born?
21 A. Magee Hospital.
22 Q. And have you lived in Pittsburgh or the
23 surrounding areas your entire life?
24 A. Yeah.
25 Q. And what was your address back on the date of

1 accident in January 2015?

2 A. 30012 Boyd Street.

3 Q. Where is that located?

4 A. Um --

5 Q. Is that McKeesport?

6 A. Yeah.

7 Q. Okay. And do you remember the zip?

8 A. 15132.

9 Q. Do you still live at that address?

10 A. Yes.

11 Q. And how long have you lived there?

12 A. Um -- for, maybe, ten years.

13 Q. Okay. Is that a house or an apartment?

14 A. It's a house.

15 Q. And back on the date of the accident, who lived

16 there with you at that address?

17 A. Um -- my mom and my stepdad.

18 Q. And what is your mother's name?

19 A. Kanosha.

20 Q. Could you spell that?

21 A. K-a-n-o-s-h-a.

22 Q. Same last name, Whitsey?

23 A. No. King, K-i-n-g.

24 Q. Okay. And your stepdad?

25 A. Jeffrey King.

1 Q. Okay. All right. Where did you go to high school?

2 A. McKeesport.

3 Q. And what year did you graduate?

4 A. Last year.

5 Q. So 2017?

6 A. Yep.

7 Q. Any education after high school?

8 A. No.

9 Q. Even any trade school, beauty school, anything

10 like that?

11 A. No.

12 Q. Okay. Are you employed at the present time?

13 A. Yes.

14 Q. And where are you employed?

15 A. Wal-Mart.

16 Q. Okay. And how long have you worked at Wal-Mart?

17 A. Um -- maybe seven months now.

18 Q. And what do you do for Wal-Mart?

19 A. I'm a jewelry associate.

20 Q. Do you work there full time?

21 A. Part time.

22 Q. And how many hours a week?

23 A. Um -- maybe, like, five.

24 Q. Just five hours a week?

25 A. Yeah.

1 Q. Any reason why you're only working five hours a
2 week there?
3 A. Um -- it's easier for me since I'm standing a
4 lot, because five hours for me is still a lot, but it's
5 not as bad.
6 Q. Okay. Is that because of the accident, your fall
7 down accident?
8 A. Um -- I mean it's that and just standing period.
9 Q. Okay. So you don't think you could work more than
10 five hours a week at that job?
11 A. I can. I mean, I did it before, but it's just a
12 lot on my feet and my ankle too.
13 Q. When you said that you did it before, did you --
14 was there a time where you worked more than five hours a
15 week?
16 A. Yeah. I used to do eight hours, but it wasn't
17 throughout the whole week. It was, maybe, like, a day or
18 two.
19 Q. And that was at Wal-Mart?
20 A. Mm-hmm. Yeah.
21 Q. Okay. So you started working at Wal-Mart probably
22 in, what, June of 2017?
23 A. Yeah. July.
24 Q. Right after you graduated high school?
25 A. Yep.

1 Q. Okay. And what do you earn there per hour?
2 A. 10.50.
3 Q. And as a jewelry associate, is that something
4 where you're behind a counter?
5 A. Yeah.
6 Q. And you wait on customers?
7 A. Yes.
8 Q. Okay. But it involves a lot of standing?
9 A. Yeah.
10 Q. Is that the only problem you have working at that
11 job?
12 A. Yeah.
13 Q. But you do feel it is related to injuries you had
14 in the accident?
15 A. Yeah.
16 Q. And you said there was something else, some other
17 reason why it bothered you as well?
18 A. It's my ankle and standing, you know, standing on
19 your feet for five hours is a lot on your feet.
20 Q. Okay. Did you work anywhere else before Wal-Mart?
21 A. I used to work at Taco Bell.
22 Q. And when did you work at Taco Bell?
23 A. It was last year.
24 Q. Was it before the fall down accident?
25 A. Um -- yeah. No. It was after. It was after the

1 accident.

2 Q. And during what time period did you work at Taco

3 Bell?

4 A. I started working there November of last year.

5 Q. November of --

6 A. No. November of 2016 I was working there.

7 Q. And how long did you work at Taco Bell?

8 A. I was working there until January 2017. So I was

9 there for, like, a year.

10 Q. Okay. Well, if you worked there November of 2016

11 until January of 2017, that would only be two months.

12 MR. LEGLER: Could it have been November of 2015?

13 MS. WHITSEY: Um -- no, 'cause I was there

14 November 2016. And then I was there until January 2017.

15 MR. LEGLER: So that's only two months.

16 MS. WHITSEY: Two months? How? 2016 and 2017.

17 Q. November, December and then January starts a new

18 year.

19 A. Oh, yeah. That's right. I can't think. Um -- I

20 remember I started in the fall. I was there for, like, a

21 year, but I can't remember the date now. But two months

22 is not right. It was a year.

23 Q. Okay. Were you still working at Taco Bell when

24 you graduated high school or around the time you graduated

25 high school?

1 A. Yeah. I was working there while I was actually
2 in school.
3 Q. Did you have any other jobs other than Taco Bell
4 while you were in high school?
5 A. I would babysit, but that wasn't really a real
6 thing.
7 Q. Okay. So Taco Bell was, like, the first real
8 employer?
9 A. Yeah.
10 Q. Okay. What did you earn at Taco Bell?
11 A. 7.25.
12 Q. Okay. So other than Taco Bell and Wal-Mart, have
13 you worked anywhere else over the years?
14 A. No.
15 Q. Okay. Before the fall down accident in January of
16 2015, were you ever involved in a motor vehicle accident
17 either as a driver or a passenger?
18 A. No.
19 Q. Were you ever involved in a slip and fall or trip
20 and fall type accident before January of 2015?
21 A. No.
22 Q. Have you ever had a work related accident or
23 injury of any kind?
24 A. No.
25 Q. Any sports related or recreational activity

1 related injuries of any kind?

2 A. No.

3 Q. Have you ever been hospitalized overnight for any

4 reason before January of 2015?

5 A. I was in the hospital because I had an allergic

6 reaction, but I didn't have to stay overnight.

7 Q. Okay. Have you ever suffered a head injury or a

8 concussion?

9 A. No.

10 MR. LEGLER: Before this.

11 MR. GUTHRIE: Yes. Before January of 2015.

12 A. No.

13 Q. Okay. Did you ever receive treatment for

14 headaches before January of 2015?

15 A. No.

16 Q. Did you ever suffer from neck pain or back pain

17 before January of 2015?

18 A. No.

19 Q. Did you ever suffer from shoulder pain before

20 January of 2015?

21 A. No.

22 Q. Did you ever suffer from any leg pain or ankle

23 pain before January of 2015?

24 A. No.

25 Q. Did you undergo any surgeries of any kind before

1 January of 2015?

2 A. No.

3 Q. Did you ever treat with a chiropractor before

4 January of 2015?

5 A. No.

6 Q. Okay. So your health before the accident in

7 January of 2015 was very good?

8 A. Yeah.

9 Q. Okay. Did you suffer from any medical conditions,

10 any serious medical conditions?

11 A. Um -- just my allergic reaction.

12 Q. Okay. Were you on any regular prescription

13 medications before January of 2015?

14 A. I was just prescribed Metformin and Zyrtec.

15 Q. And Metformin, is that for diabetes?

16 A. Um -- I think it's to prevent diabetes or

17 something.

18 Q. And then the Zyrtec is for allergies?

19 A. Yeah.

20 Q. Okay. Any history of alcohol or drug abuse or

21 counseling for alcohol or drug abuse?

22 A. No.

23 Q. Have you ever filed a lawsuit other than the

24 lawsuit you filed in this case?

25 A. No.

1 Q. Is today the first time you're giving a
2 deposition?
3 A. Yeah.
4 Q. Okay. Since the accident in January of 2015, have
5 you been involved in any other accidents or injured
6 yourself in any way?
7 A. No.
8 Q. Okay. As a result of the accident on January 28,
9 2015, did you give any written or recorded statements to
10 anyone other than your lawyer?
11 A. No.
12 Q. Did you take any photographs relating to the
13 accident?
14 A. Like, of the hill?
15 Q. Yes, of the accident scene.
16 A. Yes.
17 Q. And when did you take those photographs?
18 A. I think my mom took them.
19 Q. And did she take them on a cell phone or a
20 camera?
21 A. Um -- a cell phone.
22 Q. And do you recall when she took those photos?
23 A. No. I think he wanted her to do that. I didn't
24 know anything about it.
25 Q. When you say "he," you mean your attorney?

1 A. Yeah.

2 Q. Okay. Do you know if it was around the time of

3 the accident or was it much later?

4 A. It was months later.

5 Q. Did you say months or much?

6 A. Months.

7 Q. Okay. Other than the photos your mom took of the

8 accident scene, are you aware of any other photographs

9 that were taken of the accident scene?

10 A. No.

11 Q. Did you take any photographs or did someone take

12 any photographs of any visible injuries to you?

13 A. Um -- my x-rays when I broke my ankle and stuff.

14 That's about it.

15 Q. Okay. I guess that counts as a picture, but I

16 meant, like, any photographs of you in a cast or any arm

17 crutches or anything like that.

18 A. Um -- I don't think so.

19 Q. Okay.

20 A. I mean, my sister had a birthday party and she

21 wanted a picture and I was in my cast, but I didn't want

22 to take one.

23 Q. Okay. All right. The information I have is that

24 the accident happened on January 28, 2015, at about

25 6:55 a.m. on some property located between North

1 Grandview Avenue and Porter Street. Does that sound
2 correct to you?
3 A. Yeah.
4 Q. Do you know what day of the week that was?
5 A. Um -- no.
6 Q. Was it a weekday?
7 A. Yeah. Because I was going to school that day.
8 Q. Okay. And what school were you attending at that
9 time?
10 A. McKeesport.
11 Q. High school?
12 A. Yeah.
13 Q. And do you recall what year you were in at that
14 time?
15 A. 2015.
16 Q. Yeah, but were you a sophomore? A junior?
17 A. Oh, I'm sorry. I think I was in 10th grade.
18 Q. Okay. And when you were in 10th grade, did you
19 normally take a bus to school? Did you walk to school? Did
20 your parents drive you to school?
21 A. Sometimes I walked. Sometimes I got a ride to
22 school.
23 Q. Did they have bussing?
24 A. Um -- no.
25 Q. And on the date of accident on January 28, 2015,

1 were you walking to school or did your parents drive you?
2 A. I walked.
3 Q. How far did you live from school?
4 A. Um -- I mean, to walk it's probably, like, 20
5 minutes or so.
6 Q. Okay. And you think the accident happened about
7 6:55 a.m.?
8 A. Um -- probably around there. Maybe, like, 7:00
9 o'clock.
10 Q. What time did you have to be at school that day?
11 A. Um -- well, school starts at 7:30. So I had to
12 be there before then. So when I left, it was probably
13 6:55.
14 Q. When you left your house it was 6:55?
15 A. Yeah.
16 Q. So what time do you think the accident actually
17 happened?
18 A. Um -- I think around, like, 7:15 or probably
19 around -- yeah, somewhere around, like, 7:15.
20 Q. And were you with anybody at the time of the
21 accident?
22 A. No. I was by myself.
23 Q. Were you carrying anything?
24 A. I was carrying my phone and my purse.
25 Q. Any bookbag or anything?

1 A. Um -- yeah.

2 Q. Okay. Were you carrying the bookbag or was it on

3 your shoulders or --

4 A. It was on my back.

5 MR. LEGLER: In his generation they were book

6 bags. In your generation they are backpacks.

7 MS. WHITSEY: Yeah.

8 MR. LEGLER: Okay. Sorry.

9 MR. GUTHRIE: It's okay.

10 Q. Okay. So you had a backpack on your back. Did you

11 have your school books in there?

12 A. Um -- I don't carry my school books, because

13 they're so heavy. So I usually leave them in my locker.

14 Q. Do you recall what you had in the backpack on the

15 day of the accident?

16 A. Probably just, like, folders and, like, little

17 small compensation books, stuff like that. It was nothing

18 heavy.

19 Q. And then you were carrying a purse?

20 A. Yeah.

21 Q. What kind of purse was that?

22 A. Um -- like, a purse you just put over your

23 shoulder.

24 Q. Did you have it over your shoulder or were you

25 carrying it?

1 A. It was over my shoulder. So my hands were free.
2 Q. And you said you were carrying a cell phone?
3 A. Mm-hmm. Yeah.
4 Q. And where did you have the cell phone?
5 A. In my hand.
6 Q. Were you using the cell phone at the time of the
7 accident?
8 A. Um -- yeah. I was texting and listening to music,
9 but it was mostly in my pocket.
10 Q. Okay. But at the time that you were walking in
11 the area where you fell, were you using your cell phone?
12 A. Oh, no. It was in my pocket.
13 Q. And you said you were listening to music?
14 A. Yes.
15 Q. From the cell phone?
16 A. Yeah.
17 Q. Did you have earbuds in?
18 A. Um -- yeah.
19 Q. Okay. But you think you were using your cell
20 phone at some point before the accident happened?
21 A. Yeah. I was using my phone before, but not while
22 I was walking down it.
23 Q. Were you talking on the cell phone or texting?
24 A. No. I was too busy concentrating on the hill.
25 Q. Okay. But you were texting at some point?

1 A. Yeah.

2 Q. Do you recall at this time who you were texting

3 with before the accident?

4 A. I was texting my friend, 'cause I was going to

5 meet her at school, because that was the plan.

6 Q. And who was that?

7 A. My best friend, Daija.

8 Q. How do you spell Daija?

9 A. D-a-i-j-a.

10 Q. And her last name?

11 A. Reed, R-e-e-d.

12 Q. Okay. So did you have anything in either one your

13 hands when the accident actually happened?

14 A. No.

15 Q. Did you have a hat on?

16 A. No.

17 Q. Okay. Did you have a scarf?

18 A. No.

19 Q. Any do you wear glasses?

20 A. No.

21 Q. So you didn't have any glasses on?

22 A. No.

23 Q. Okay. Were you wearing boots or shoes?

24 A. I was wearing boots.

25 Q. And what kind of boots? If you remember.

1 A. They're UGGs.

2 Q. UGGs? How do you spell that?

3 A. U-G-G-S.

4 Q. Okay. I don't know what UGGs are. What are UGGs?

5 A. Um -- they're basically, like, snow boots.

6 Q. Okay. What do you recall about the weather

7 conditions on the morning of the accident?

8 MR. LEGLER: Object to the form. You can answer.

9 A. Um -- I mean, there was snow on the ground, but

10 the streets were, like, clear, but the sidewalks were --

11 they weren't bad, but there was snow.

12 Q. Was it snowing on the morning of the accident?

13 A. No, it wasn't snowing.

14 Q. So when you left your house at 6:55 a.m. on

15 January 28, 2015, it wasn't snowing outside?

16 A. Before?

17 MR. LEGLER: No. At that time when you left your

18 house.

19 A. No. It wasn't snowing.

20 Q. Okay. And from the time you left your house up

21 until the time you fell, do you recall whether it snowed

22 at all?

23 A. No.

24 Q. Do you know when it snowed last? In other words,

25 did it snow the night before? The day before?

1 MR. LEGLER: If you know.

2 A. I can't remember.

3 Q. Okay. But when you left your house that morning,

4 you noticed that there was snow on the ground, but not on

5 the streets?

6 A. Yeah. The streets were clear, but there was snow

7 on the sidewalk.

8 Q. Did it look to you like it had just snowed or had

9 the snow been present for a period of time?

10 MR. LEGLER: Object to the form. You can answer.

11 A. It was there for a period of time.

12 Q. Okay. If you remember, on the day before the

13 accident, do you recall whether the snow conditions were

14 the same or different than they were on the date of the

15 accident?

16 A. Um -- I can't remember. It was probably the same.

17 Q. Okay. And when you left your house on the morning

18 of the accident, was it light out or dark out?

19 A. Um -- it was a little bit dark, because, you

20 know, the sun is just coming up.

21 Q. And when the accident happened at around 7:15,

22 was it light out or dark out?

23 A. It was light.

24 Q. So when you fell, it was light out?

25 A. Yeah.

1 Q. Okay. So you didn't have any difficulty seeing
2 where you were going because of lighting conditions?
3 A. No.
4 Q. In the complaint, you said the area where you
5 fell was property located between North Grandview Avenue
6 and Porter Street; is that correct?
7 A. Yes.
8 Q. And I think your attorney provided two
9 photographs. Okay. I'm going to show you two photographs
10 and mark them as Exhibits 1 and 2.
11 (Thereupon, Deposition Exhibits No. 1 and 2 were
12 marked for identification.)
13 And first of all, are those the photographs that your
14 mom took of the accident scene that you provided to your
15 attorney?
16 A. Yeah.
17 Q. Okay. And do those photographs marked Exhibits 1
18 and 2 show the area where you fell on January 28, 2015?
19 A. Yeah.
20 Q. Okay. And in either one of those photographs, can
21 you tell us where approximately you fell?
22 A. It was more towards, like, the beginning of the
23 hill, but a little bit more in the middle.
24 Q. Okay. Were you coming up or coming down the hill?
25 MR. LEGLER: By middle you mean the length of

1 the -- this picture?

2 MS. WHITSEY: Um --

3 MR. LEGLER: What do you mean by middle?

4 MS. WHITSEY: I mean, it's hard to explain,

5 because I'm more closer to the top, but then I'm, like,

6 somewhat, like, right here - in this region right here

7 (indicating).

8 Q. You're saying in the middle of the path as far as

9 the width goes?

10 MR. LEGLER: No. She means from top to bottom.

11 That's why I asked that.

12 MR. GUTHRIE: Okay.

13 A. Yeah. Top to bottom. So I'm more, like, you know,

14 here (indicating,) this part. I still have, like, a long

15 way to go. So I'm more at the beginning, if you want to

16 say that.

17 Q. Okay. Let me see if I have any other photographs.

18 And you may have answered this, and if you did I missed

19 it, but were you coming up or coming down the hill?

20 A. Down.

21 Q. So going down the hill would be on your way to

22 McKeesport High School?

23 A. Yes.

24 Q. This looks like a photograph. We'll mark it

25 Deposition Exhibit 3.

1 (Thereupon, Deposition Exhibit No. 3 was marked for
2 identification.)
3 . This is Deposition Exhibit 3, which I believe shows
4 the downward view of the same path, but take a look at it
5 and make sure I'm correct.
6 A. Yeah.
7 Q. Does that show the downward path as the same area
8 as depicted on photos one and two?
9 A. Yeah.
10 Q. Okay. And you're saying that the area where you
11 fell was somewhere in the middle, meaning somewhere in
12 between the top of the path and the bottom of the path?
13 A. It was more, like, when you walk down there -- I
14 mean -- it's hard to explain unless I'm actually walking.
15 Q. Okay. But did you start to walk down the path
16 before you fell?
17 A. Yeah.
18 Q. And about how far did you get down the path
19 before you fell?
20 A. Not even half way.
21 Q. Okay.
22 A. So I'm more at the top, but I'm not, like,
23 literally at the top.
24 Q. Do you think you got a quarter of the way down or
25 a third of the way down?

1 A. Probably, like, maybe, like, a quarter.
2 Q. About a quarter of the way down?
3 A. Yeah. I still had a long way to go. Not, like, a
4 long way, but, you know.
5 Q. Okay. And looking at either one of those three
6 photographs, are you able to point out the area where you
7 fell?
8 A. Yeah.
9 Q. Okay.
10 A. Do you want me to --
11 Q. Yes. If you could mark it with a pen.
12 A. Okay. Probably about right here.
13 (Marked for identification.)
14 Q. Okay. So you circled the general area where you
15 fell?
16 A. Yeah.
17 Q. Okay. Now, photograph number two, you circled the
18 area where you fell, and in that photograph it appears to
19 show snow on the ground, but not so much on the paved
20 pathway; is that accurate?
21 A. It's -- yeah. It's more on the side in that one.
22 Q. And on day of the accident on January 28, 2015,
23 you said there was snow on the ground, but not on the
24 streets. Was there snow or ice on the actual pathway?
25 A. Yeah. I'm not sure about ice, but I know there

1 was a lot of the snow.
2 Q. Was there a visible path or was it completely
3 covered in snow?
4 MR. LEGLER: Object to the form. You can answer.
5 A. It was completely covered.
6 Q. Okay. And was there any foot marks or treads in
7 the snow that indicated other people may have walked
8 through that area before you?
9 A. Um -- there was, but it wasn't, like, visible.
10 It was more lightly, because, like, how the snow was, it
11 was, like, hard and compressed.
12 Q. Okay. Did the -- if you can tell or if you
13 recall, did it look to you like this was fresh snow or had
14 been there for some time?
15 A. It was there for a couple of days.
16 Q. Okay. And how do you know that?
17 A. Because it was more hard, 'cause when I fell, it
18 was not fresh at all and it was dirty, because I know
19 fresh snow is clean and light and soft. It was the
20 opposite of that.
21 Q. Okay. Is that a path that you would use daily
22 when you would walk to school?
23 A. Yeah.
24 Q. Okay. And did you use the path on the day before
25 the accident?

1 A. Um -- I can't remember. I probably did.

2 Q. Okay. And if you recall, was there any snow on

3 the path on the day before the accident?

4 A. Um -- I don't think so. I can't remember, because

5 I probably either went down the other hill or I probably

6 got a ride or something. I can't remember the day before

7 the accident.

8 Q. How often would you walk to school when you were

9 in high school?

10 A. The whole week that I went to school. Seven days

11 a week.

12 Q. You mean five days a week?

13 A. Yeah.

14 Q. So it was -- your normal routine was to walk to

15 school everyday?

16 A. Yeah.

17 Q. Did that include 9th and 10th grade?

18 A. Yeah.

19 Q. And when you would walk to school, would you take

20 the same route everyday?

21 A. I might go that way or I would go up the other

22 hill, but I mostly went up the other hill, because

23 sometimes walking up that other hill was a lot, because it

24 was really steep.

25 MR. LEGLER: Which one are you talking about?

1 MS. WHITSEY: I'm talking about the path. Walking
2 up the path is really steep, so I usually go up the more
3 normal hill.
4 Q. Okay. Well, let me ask you this: Before the date
5 of the accident on January 28, 2015, on how many
6 occasions do you think you walked up or down the pathway
7 where you fell on January 28, 2015?
8 MR. LEGLER: Did you understand the question?
9 MS. WHITSEY: Yeah. I understand.
10 A. It was so long ago. And I haven't been to school
11 in, like, forever, so I can't really -- probably, maybe,
12 like, a couple of times.
13 Q. Okay. Well, was the pathway that we're talking
14 about, was that something that you used on a regular basis
15 although you might have used alternative paths as well?
16 MR. LEGLER: Object to the form. You can answer.
17 A. Not really.
18 Q. So it was unusual to use the pathway where you
19 fell on January 28, 2015 before the accident?
20 MR. LEGLER: Same objection. You can answer.
21 A. No. It's just -- I don't know. Like, I walk up
22 that path, but I try not to do it a lot.
23 Q. When you say "walk up," is that coming home from
24 school?
25 A. Yeah. Because sometimes I will walk up it

1 because it's faster, but I don't do it a lot. So I
2 probably walk up and down maybe, like, three times at the
3 most, because it's really steep, and it sucks walking up
4 that hill.
5 Q. Okay. How about on your way to school in the
6 morning, you would walk down that path; is that correct?
7 A. Yeah, but not a lot. Maybe, like, three times a
8 week.
9 Q. Three times a week?
10 A. Yeah. Or less than that, because walking down
11 that hill is crappy.
12 Q. So you used the pathway on your way to school
13 about three times a week --
14 MR. LEGLER: Or less she said.
15 Q. -- or less for your 9th and 10th grade years in
16 high school?
17 A. Yeah.
18 Q. Okay. And do you recall one way or the other --
19 and you may have answered this, and I apologize if I asked
20 this before -- but do you recall whether you used that
21 same pathway on the day before the accident of January 28,
22 2015?
23 MR. LEGLER: Objection. Asked and answered. You
24 can answer.
25 A. I don't remember using the path the day before.

1 Q. Do you remember when you would have last used the
2 pathway before January 28, 2015?
3 A. I probably did use it, but I just -- it was so
4 long ago. I can't remember.
5 Q. Okay. Tell me how the accident happened. How did
6 you fall down?
7 A. I was walking, and while I was walking, I stopped
8 at the top of it to, like, actually think if I want to
9 walk down this hill or not, and I looked at the time, and
10 I thought -- um -- I had to go, and I didn't have to time
11 to turn back around and go down the hill where all the
12 cars go down, so I was walking, and -- um -- I was, maybe,
13 about where the circle is (indicating,) and that's when I
14 was -- I was walking, and then I started speed walking,
15 because it gets a little steep, so it was, like, the hill
16 was making me walk a little faster than I wanted to, and
17 that's when the snow made me, like, fall back, and I fell.
18 And I kind of, like, before I fell back, I twisted my
19 ankle a little bit, and that's when I fell. I was laying
20 there for a little bit.
21 Q. Okay. So you said when you got to the top of the
22 hill, before you started to go down the hill, you stopped
23 and thought about whether or not you should go down the
24 hill?
25 A. Yeah.

1 Q. What was -- what were you thinking about?
2 A. If I wanted to go down the hill, because it was
3 covered in snow, and I didn't want to risk anything, but I
4 had to get to school.
5 Q. So as you were standing at the top of the hill,
6 did you think it might be dangerous to walk down that
7 hill?
8 MR. LEGLER: Object to the form. You can answer.
9 A. I mean, I didn't think it was dangerous, I
10 thought it would be okay, because I had boots on. I
11 didn't think it was going to be a problem, but then I did,
12 but in my mind, I had to get to school. So it wasn't
13 really that much on my mind to make me want to go back.
14 Q. But you stopped at the top of the hill before you
15 went down and you assessed the situation, you saw that it
16 was snowy, and decided instead of taking another route,
17 you had to get to school, so you went down that path
18 anyway?
19 MR. LEGLER: Same objection.
20 A. Yeah. I had to think about my priorities. I had
21 to get to school.
22 Q. Okay. Was there another way you could have gone
23 to school without having to go down the path?
24 A. Yeah.
25 Q. And where would that be?

1 A. It's this little hill right here (indicating).
2 Q. She can't pick that up, so you have to, sort of,
3 describe it rather than pointing a finger at --
4 A. Oh, sorry. It's more, like, a long hill that all
5 the cars go down. So it's more public. It's more, like,
6 a public hill with traffic. So that hill also gets me to
7 school too, but it's more longer.
8 Q. But you indicated earlier that you do take
9 alternate routes to school without having to use the
10 pathway; correct?
11 A. Yes.
12 Q. Because you said you only use the pathway three
13 times or less a week?
14 A. Yeah.
15 Q. So what was the alternate route you would use if
16 you didn't use the pathway?
17 A. It would be that hill I just described.
18 Q. Were those the only two routes you would take
19 when you were walking to school?
20 A. Yeah. That's my only two options in the picture.
21 Q. When you would leave in the morning and go to
22 school, what would make you decide to take one route over
23 the other route to get to school?
24 A. Depends on the timing that I have to be there or
25 the time that I left my house.

1 Q. Is it shorter to get to school if you take the
2 pathway?
3 A. Yeah.
4 Q. Okay. And if you are not in a hurry to get to
5 school, then you might take the alternative path?
6 MR. LEGLER: Object to the form. You can answer.
7 A. Yeah.
8 Q. Okay. Do you know what caused you to fall?
9 A. Um -- I would want to say my boots, then the hill
10 too. So, like, the snow, 'cause I don't think my boots
11 had, like, good traction on it, because the type of -- how
12 the snow was, it was more solid, like, I can't explain it.
13 It wasn't, like, how can I explain it -- new snow is more
14 soft and easy to walk through, but this snow was more,
15 like, really hard, and it was just more -- I can't explain
16 it.
17 Q. You said the snow was --
18 A. It was more ground leveled.
19 Q. It was trampled down you mean?
20 A. Yeah.
21 Q. Okay. So was it smooth then?
22 A. Yeah. It was smooth, but it still had some
23 little footprints in it.
24 Q. And you said there was no ice, but it was
25 compacted snow?

1 A. Yeah.

2 Q. Okay. And you felt that your boots didn't have a

3 good tread on them?

4 A. No.

5 Q. They did not?

6 A. No.

7 Q. Okay. And why was that? Were the boots worn

8 down, was the tread worn down?

9 A. No. They were new. It was just the snow. As I

10 was starting to get more down the hill, it seemed like I

11 couldn't get a balance, because of the how the hill was,

12 and because it's steep. It's never really -- the hill was

13 never really that bad, like, before the accident, but that

14 day was -- I could not walk down that hill.

15 Q. Okay. Buy you stopped at the top of the hill

16 before you went down to asses the situation and saw that

17 it was covered with snow, but nevertheless, decided to

18 walk down the path?

19 A. Yeah.

20 MR. LEGLER: Objection. Asked and answered.

21 Q. Okay. And then you said as you started to walk

22 down the path, you started to speed walk?

23 A. I wouldn't say speed walk.

24 Q. I'm just saying what you said earlier.

25 A. Um -- I mean, I wouldn't say speed walk, because

1 I was more likely walking my normal pace, especially going
2 down the hill, but when I got towards, like, on my way to
3 the bottom, I started walk a little bit faster. Going down
4 a steep hill makes you walk a little bit faster. So I
5 couldn't control how I was walking, because the snow on my
6 boots.
7 Q. But you said you didn't get down to the bottom --
8 A. Well, yeah, not to the bottom, but as I was
9 making my way to the bottom of the hill, I started to lose
10 my balance, and I was, kind of, like, scooting a little
11 bit, like, sliding. And then after I slid, I was, like,
12 trampling a little bit, and then I fell.
13 Q. So your feet were sliding on the pathway before
14 you fell?
15 A. Yeah.
16 Q. Okay. And then did your feet slip out from under
17 you?
18 A. Yeah.
19 Q. Okay. And did you fall forward or backwards?
20 A. Forward.
21 Q. So you didn't trip over anything, you slipped on
22 the snow?
23 A. Um -- I can't remember.
24 Q. Okay. Did anything cause you to trip or did you
25 just lose your balance from the momentum of going forward

1 and slip?

2 A. I lost my balance. I was off my phone. I wasn't

3 texting or any of that. I wasn't doing anything like that.

4 I was more likely looking down and trying to walk

5 carefully, because I was losing my balance.

6 Q. Okay. Do you understand what I'm saying? Did

7 anything trip you or did you slip and lose your balance?

8 A. I slipped and lost my balance.

9 Q. Nothing tripped you?

10 A. No.

11 Q. Okay. And did you lose your balance as a result

12 of slipping or from the momentum of just going forward

13 down the steep hill?

14 A. Going forward down the steep hill.

15 Q. Okay. And then you -- I think you said you slid a

16 little bit and then fell forward?

17 A. I wouldn't say "forward," I meant to say

18 backwards, because I fell on my rear end.

19 Q. You landed on your rear end?

20 A. Yeah. Sorry. It was so long ago. My memory

21 about this is, like, really fuzzy.

22 Q. And when you landed on your rear end, did you

23 continue to slide down the hill?

24 A. No. I was sitting there after I fell. I mean, I

25 tried to slide down on my rear end, but my ankle was so

1 twisted, I couldn't even move it. So I just sat there.
2 Q. Was that your right or left ankle?
3 A. It was my left.
4 Q. And do you know how you injured your left ankle?
5 A. Um -- I fell. And I don't really know how I broke
6 it, I just know I broke it. I want to say more, like,
7 twisted. I don't really -- I don't know. It more, like,
8 twisted I guess.
9 Q. Okay. When you fell to the ground, did you look
10 around and wonder what you slipped on or what caused you
11 to fall?
12 A. No. Because I knew what I slipped on. It was the
13 snow.
14 Q. Okay. I mean, could you see anything in the snow
15 as an indication of where you fell? Any slip marks or
16 anything like that?
17 A. No.
18 Q. Okay. Could you -- other than the snow that was
19 in the area where you fell, could you see any other
20 defects or anything that would have caused you to trip or
21 slip other than the compacted snow?
22 MR. LEGLER: Object to the form. You can answer.
23 A. No.
24 Q. Did anybody witness you fall?
25 A. No. But there was people walking down the hill

1 after I fell.

2 Q. And did they have any trouble coming down the

3 hill?

4 MR. LEGLER: Same objection. You can answer.

5 A. Yeah, they did.

6 Q. And how do you know that?

7 A. I seen the one girl, she almost fell too. And

8 she was sliding down a little bit, but she was with a

9 friend, so her friend was, like, helping her walk down the

10 hill, and they got down the hill okay.

11 Q. Was that after you fell?

12 A. Yeah. It was after.

13 Q. Did you see anybody go down the hill before you

14 fell?

15 A. No.

16 Q. As you were standing at the top of the hill

17 deciding whether or not to go down the hill, did you see

18 anyone else go down the hill?

19 A. No.

20 Q. And so after you fell, while your still sitting

21 there, some other students came down the hill?

22 A. Yeah.

23 Q. And do you know their names?

24 A. Um -- no. I only know one person's name, because

25 we were in the same grade. I mean, I know the other

1 people, but I didn't know their names.

2 Q. Okay. Would you be able to find out who those

3 students were that came down and saw you on the ground

4 after you fell?

5 A. Um -- probably not, because they all graduated.

6 Q. Okay. Did you say anything to those students or

7 did they say anything to you about your fall?

8 A. Um -- a couple people asked me if I needed help,

9 but, I mean, it was kind of pointless, because the hill

10 was so bad, and my ankle was, like, broken. So I didn't

11 want them to fall with me and make matters even worse, so

12 I just told them no.

13 Q. And they just kept going?

14 A. Yeah.

15 Q. Did you ask them to call for help?

16 A. No. I called.

17 Q. You called 911?

18 A. Well, I called my mom first to tell her what

19 happened. And that's when I called 911.

20 Q. So did an ambulance come?

21 A. Yeah.

22 Q. And which ambulance was that?

23 A. McKeesport ambulance.

24 Q. And where did they take you?

25 A. They took me to McKeesport Hospital.

1 Q. When the ambulance came to the accident scene,
2 did any police come to the accident scene?
3 A. No.
4 Q. Was there more than one ambulance or just --
5 A. There was two.
6 Q. Two ambulances?
7 A. Yeah.
8 Q. Were they from the same place? If you know.
9 A. Yeah, they were.
10 Q. And how many different ambulance personnel did
11 you speak with at the accident scene?
12 A. Like, on the phone or --
13 Q. No, no. When they came to the scene.
14 A. Just two.
15 Q. And did you tell them what happened?
16 A. Yeah, not really. I mean, I didn't have to,
17 because they seen the whole hill.
18 Q. Did you tell them you slipped and fell and hurt
19 your ankle?
20 A. Yeah. They knew it was broken.
21 MR. LEGLER: He's asking if you told them that.
22 MS. WHITSEY: Oh, yeah. I did.
23 Q. Okay. Did you have any conversation that you can
24 remember with the ambulance personnel about how or why the
25 accident happened or about the conditions of the accident

1 scene?

2 A. There wasn't really a lot of conversation,

3 because they took a while to get up the hill. And they

4 had to find out a way to even get me off the hill, because

5 it was that bad. So they had to walk up the hill. And

6 then they had to -- um -- climb over, there's, like, a

7 little railing on the other side of the path where the

8 cars are, and they had to bring me over. And I had to,

9 like, do all the extra stuff just to get into the

10 ambulance. It was a lot.

11 Q. Okay. How many other students do you think came

12 down the pathway after you fell while you were at the

13 accident scene?

14 A. Um -- it was probably, maybe, about, like, six.

15 Q. Okay. And do you know the identity or names of

16 any of those other students who walked down the path while

17 you were at the accident scene?

18 A. Um -- I know, maybe, about two people. Well,

19 yeah, I know two names: Kyreek Sayles --

20 Q. How do you spell that?

21 A. K-y-r-e-e-k.

22 Q. And what is his last name?

23 A. S-a-y-l-e-s.

24 Q. Okay. And who was the other person?

25 A. Curtis Harper, C-u-r-t-i-s, H-a-r-p-e-r.

1 Q. Okay. Those were two students that came upon the
2 accident scene after you fell?
3 A. Yeah.
4 Q. And did they offer to help you?
5 A. Yeah. One offered to help me, but I told him no.
6 Q. And did you tell them what happened?
7 A. Yeah. I told them my ankle was broken, and they
8 just kept walking, because I told them no.
9 Q. Okay. Did you tell them what caused you to fall?
10 A. No, because they had to get to school. I didn't
11 want to keep them standing there with me.
12 Q. Did you know these two individuals before the
13 accident?
14 A. Yeah.
15 Q. And were you friends with them?
16 A. No. But I know them. Because Kyreek Sayles is
17 the brother of my old friend's sister.
18 Q. When Kyreek and Curtis came upon you at the
19 accident scene, had you called for an ambulance yet?
20 A. No.
21 Q. Is it possible that they saw you fall?
22 A. No. I was already on the ground before they even
23 came.
24 Q. And you don't know the names of any of the other
25 students that came upon you at the accident scene?

1 A. No.

2 Q. Okay. Were Kyreek and Curtis friendly to you?

3 A. Yeah. They were friendly enough to ask if I

4 needed help.

5 Q. I mean, they weren't laughing or making fun of

6 you?

7 A. No.

8 Q. Okay.

9 A. This one girl asked if I needed help too, and I

10 told her no since I broke my ankle. I didn't want no one

11 helping me down the hill and make my ankle worse.

12 Q. And you don't know who that person is?

13 A. No. I don't know her.

14 Q. Do you know where Kyreek and Curtis are today?

15 A. Um -- no. I know Kyreek, he went off to college.

16 And I don't know where Curtis is.

17 Q. Okay. Do you know if either one of them still

18 live in McKeesport?

19 A. Um -- they probably do come to McKeesport,

20 because they live in McKeesport, so they probably do.

21 Q. Have you seen or spoken to either Kyreek or

22 Curtis since the date of the accident?

23 A. No. I don't talk to them.

24 Q. Okay. Did you see them in school or in any class?

25 A. Well, I mean, before the accident, I would see

1 them in school, but other than that -- after, no.

2 Q. Why is it that you saw them before the accident

3 but not after the accident at school?

4 A. Well, before my accident, we all went to the same

5 school, and Curtis was in the same grade as me. After my

6 accident, I was in cyber, so I didn't see nobody.

7 MR. LEGLER: You were being home schooled?

8 MS. WHITSEY: Yeah. I was home schooled.

9 Q. Until you graduated?

10 A. Yeah.

11 Q. Okay. To your knowledge, did a lot of the

12 students use that pathway to go to and from school?

13 MR. LEGLER: Object to the form.

14 A. Yeah.

15 Q. It was something that students regularly used?

16 MR. LEGLER: Same objection.

17 A. Yeah.

18 Q. Okay. Did anybody from the school district or

19 anybody from the city, to your knowledge, ever tell kids

20 not to use that pathway?

21 A. No.

22 Q. Were there any signs either on any part of the

23 pathway that said no trespassing, anything like that?

24 A. No.

25 Q. Since the day of the accident, have you ever used

1 that pathway?

2 A. No.

3 Q. Before the date of the accident, did you ever

4 complain to anyone at the city of McKeesport or put the

5 city of McKeesport on notice of any problem with the

6 walkway or pathway where you fell?

7 MR. LEGLER: Object to the form. You can answer.

8 A. I'm guessing my mom did.

9 Q. I'm asking if you did.

10 A. Oh, no.

11 Q. And when you say you guess your mom did, what do

12 you mean by that?

13 A. I mean, she told the school about it, about what

14 happened.

15 Q. No. I'm talking about before the day that you

16 fell.

17 A. Oh, no.

18 Q. Okay. And just so I'm clear, you don't know when

19 it last snowed before the date of your accident --

20 MR. LEGLER: Objection. Asked and answered.

21 Q. -- is that is correct?

22 A. Yeah.

23 Q. And you don't remember one way or the other

24 whether you used that same pathway on the date before the

25 accident?

1 MR. LEGLER: That's at least the third or fourth
2 time you asked that question. Object to the form. You can
3 answer.
4 A. No. I can't remember.
5 Q. So you don't know whether there was snow or not
6 on the pathway on the day before your accident?
7 MR. LEGLER: Again, same objection. You can
8 answer.
9 A. No.
10 Q. Did your mom come to the accident scene while you
11 were still at the accident scene?
12 A. No.
13 Q. Okay. Did you and your mom ever go back to the
14 accident scene after the accident?
15 A. She did to take pictures.
16 Q. And do know when that was? I think you indicated
17 earlier that it was months later.
18 A. Yeah. But I don't know what exact day, because I
19 was at home.
20 Q. Okay. Before your mom went out and took
21 photographs of the accident scene months later, do you
22 know if she went to the accident scene any time before
23 that, but following your accident?
24 A. Um -- no. It was, maybe, like, a month later that
25 she went to go back to take pictures, because she was so

1 busy helping me.

2 Q. Did you go with your mother when she took the

3 photographs?

4 A. No.

5 Q. Okay. So you weren't able to point out to your

6 mother where you fell?

7 A. No.

8 Q. How did she know to take pictures of the area

9 that she photographed?

10 A. Um -- my lawyer, I think, told her to do that.

11 I'm not sure. I told her where I fell, but other than the

12 pictures, I don't know.

13 Q. Okay. But when your mom went out to take

14 photographs of the area where you fell, how did she know

15 which area to photograph?

16 A. She just photographed the whole hill. She didn't

17 really pick a specific place to photograph. She just did

18 the whole thing.

19 Q. Okay. Is that because you told her, "I fell on

20 that hill," so she went out and took photos on that hill?

21 A. Yeah.

22 Q. Okay. Other than hurting your left ankle, did you

23 hurt any other part of your body in the accident?

24 A. No.

25 Q. Okay.

1 MR. LEGLER: If I may, I think you technically
2 might have broken the bones in your lower leg too as well
3 as your ankle.
4 MS. WHITSEY: Oh, yeah.
5 MR. LEGLER: The ankle is one of those joints
6 where there's a lot coming together.
7 Q. Let me ask it this way: Other than your left
8 lower extremity, did you hurt any other parts of your body
9 in the accident?
10 A. Um -- my tibia.
11 Q. No, I understand. Other than the bones and
12 tissues and everything in your left lower leg, did you
13 hurt any other parts of your body?
14 A. No.
15 Q. Okay.
16 MR. LEGLER: Again, I apologize, but did you have
17 a concussion too or no?
18 MS. WHITSEY: No.
19 MR. LEGLER: Okay. I'm sorry.
20 Q. You didn't hit your head in the accident;
21 correct?
22 A. No.
23 Q. Okay. On the times that you used the pathway
24 before the date of the accident, did you ever encounter
25 any problems using that pathway?

1 MR. LEGLER: Object to the form. You can answer.
2 A. No.
3 Q. Did you ever use the pathway before the date of
4 your accident when it was snow covered?
5 MR. LEGLER: Same objection.
6 A. No.
7 Q. Okay. Other than your mother and the 911, did you
8 report the accident to anyone else on the date of the
9 accident or in the days following the accident?
10 A. No.
11 Q. Okay. Did you report the accident to anyone at
12 the City of McKeesport or at your school following the
13 accident?
14 A. My mom called the school to tell them.
15 Q. And when did she call the school?
16 A. I'm not sure, but I know she called them. That's
17 why I was home schooled. So they could know that I won't
18 be physically going.
19 Q. Did she also call them to tell them about the
20 condition of the pathway where you fell or just to tell
21 them the reason why you wouldn't be in school?
22 MR. LEGLER: Same objection. You can answer.
23 A. I'm pretty sure she told them about the hill.
24 Q. Okay. Did you discuss the -- your fall down with
25 your stepdad?

1 A. No.

2 Q. Do you have any siblings?

3 A. Yes.

4 Q. And how many siblings do you have?

5 A. Two.

6 Q. What are their names?

7 A. Ones' name is Devon. And my older sister is

8 Tanisha.

9 Q. Same last name?

10 A. Um -- no. Me and my sister have the same last

11 name, but not my brother.

12 Q. What's your brother's last name?

13 A. I don't know his last name.

14 Q. Did you speak with either your brother or sister

15 about your fall?

16 A. No.

17 Q. Okay. When you were at the accident scene, were

18 you having pain in your left lower leg, your left ankle?

19 A. No, because I was sitting on snow, so I couldn't

20 feel anything.

21 Q. Were you in pain in any part of your body while

22 you were at the accident scene?

23 A. I probably was, but I couldn't feel nothing.

24 Q. And I think you just indicated that you didn't

25 hit your head and you didn't suffer a concussion as a

1 result of the accident; correct?
2 A. Yes.
3 Q. And you weren't knocked out; correct?
4 A. No.
5 Q. Did you suffer any cuts, lacerations or bleeding
6 to any part of your body?
7 A. No.
8 Q. Other than your ankle or the bones in your left
9 lower leg, did you suffer any broke bones as a result of
10 the accident?
11 A. Yeah.
12 Q. Other than your left ankle?
13 A. Oh, no.
14 Q. Okay. Did you have any visible scrapes or
15 abrasions to any part of your body?
16 A. No.
17 Q. Did you suffer any bruising, visible bruising as
18 a result of the accident?
19 A. No.
20 Q. Okay. So the McKeesport ambulance took you to the
21 McKeesport Hospital emergency room on the date of the
22 accident?
23 A. Yes.
24 Q. And what did they do for you at McKeesport
25 Hospital?

1 A. Um -- they put me in a splint. They gave me some
2 medicine. I can't remember what they gave me, but that was
3 about it. And they sent me home.
4 Q. So they didn't admit you overnight?
5 A. No.
6 Q. What other doctors did you treat with as a result
7 of the accident?
8 A. I'm not sure, but after that, after I came home
9 from McKeesport Hospital, I went straight to Children's
10 since my ankle was broken.
11 Q. Okay. Children's Hospital in -- I know they
12 might have different branches, where was the Children's
13 Hospital located that you went to?
14 A. I want to say Oakland.
15 MR. LEGLER: The main hospital?
16 MS. WHITSEY: Yeah.
17 Q. Okay. And that was the day of the accident or --
18 A. It was the day of, yeah.
19 Q. And what could they do for you there?
20 A. They put my ankle back into place and they put a
21 cast on my leg.
22 Q. Did you have surgery?
23 A. Not on the same day, no.
24 Q. Okay. So they casted it and then -- do you recall
25 the name of the doctor you saw at Children's Hospital?

1 A. No.

2 Q. Did you see a specific doctor or did you just go

3 to Children's Hospital and whoever was there saw you?

4 A. Um -- I seen a specific doctor after I got my

5 surgery, but not after -- well, yeah, I think it was the

6 same doctor while I had my cast on. I can't remember his

7 name though.

8 Q. After you were seen at Children's Hospital, what

9 other doctors did you see?

10 A. There was just one.

11 Q. And what was his or her name?

12 A. My mom knows his name. I can't remember his

13 name. I just know he was the doctor that did my surgery

14 twice, but before I got my cast on for the first time, it

15 was -- it was, like, a team of people that were helping

16 set my ankle into place and an anesthesiologist and all

17 them type of people.

18 Q. This was when you were at Children's Hospital on

19 the day of the accident?

20 A. Yeah.

21 Q. And so did they put you under?

22 A. Yeah.

23 Q. To reposition your foot?

24 A. Yeah.

25 Q. Were you admitted to the hospital overnight at

1 Children's?

2 A. No. I went home that same night.

3 Q. And when did you have surgery on your ankle?

4 A. Um, I can't remember. Maybe, like, a couple

5 months after. A month or two.

6 Q. And where did you have the surgery?

7 A. Children's.

8 Q. At the same hospital that you were seen at on the

9 date of the accident?

10 A. Yeah.

11 Q. And you don't remember the name of the surgeon?

12 A. No.

13 MR. GUTHRIE: Do you know offhand?

14 MR. LEGLER: I don't remember the name. I'm

15 sorry.

16 Q. After you had your surgery at Children's

17 Hospital, did you follow up with the surgeon again?

18 A. Yeah.

19 Q. And approximately for how long or on how many

20 occasions?

21 A. Up until everything was healed, so it was, maybe,

22 like, more than five months.

23 Q. Okay. And then did he finally release you?

24 A. Yeah.

25 Q. And that was about five or so months after the

1 accident or after the surgery?

2 A. Yeah.

3 Q. Okay. Did you have any physical therapy after

4 your surgery?

5 A. Yeah.

6 Q. Where did you have that?

7 A. Um -- it was in Monroeville, 'cause I know I went

8 to physical therapy, and then I would go back to the

9 doctor that did my surgery, and he would check my foot

10 and, like, see if it was -- um -- had some stability to

11 it.

12 Q. Was the physical therapy at a hospital or at a,

13 like, a physical therapy facility or --

14 A. Um -- I think it was a physical therapy facility.

15 Q. Okay. Did you treat with any other doctors or

16 hospitals as a result of the accident?

17 A. No.

18 Q. Okay. Is Vincent Deeney, is that the name of the

19 surgeon?

20 A. Yeah. That's him. I couldn't even remember it.

21 Q. Did you have a family doctor at the time of the

22 accident?

23 A. Um -- no. I just also went to him after my

24 physical therapy and if I ever needed my cast taken off or

25 something.

1 Q. Did you have more than one surgery?
2 A. I had two.
3 Q. When did you have the second surgery?
4 A. Um -- I think it was -- I think it was after I
5 had my cast off. And I had metal in my ankle, so I had to
6 wait a couple more months to get the other one. So I want
7 to say 2016, somewhere around there, because that was at
8 the time I was working at Taco Bell.
9 Q. Okay.
10 MR. LEGLER: You got some of the hardware
11 removed, is that what this was for?
12 MS. WHITSEY: Yeah.
13 Q. Same surgeon?
14 A. Yep.
15 Q. Same hospital?
16 A. Yeah.
17 Q. And did you undergo more physical therapy after
18 the second surgery?
19 A. Yeah.
20 Q. At the same place?
21 A. Yeah.
22 Q. Okay. Are you currently under the care of any
23 doctors related to this accident?
24 A. No.
25 Q. And when do you think you last treated with

1 somebody related to the accident?

2 A. Um -- maybe, 2016, with my physical therapist.

3 Q. The physical therapy ended in 2016?

4 A. Yeah.

5 Q. After the second surgery?

6 A. Yeah.

7 Q. Okay. Do you have some scarring on your ankle?

8 A. Yeah.

9 Q. Okay. Would it be possible for me to see it or do

10 you have boots on?

11 A. I have boots on.

12 Q. Would it be an inconvenience for you to show it

13 to me?

14 A. Kind of. I'd have to, like, unzip my boot and

15 take my foot out.

16 MR. LEGLER: I can get you picture. She's a

17 little shy.

18 MR. GUTHRIE: That's fine. I can follow up with

19 you.

20 Q. Okay. Did the surgeries help your ankle

21 condition?

22 A. Yeah.

23 Q. Okay. Are you having any problems now with your

24 ankle?

25 A. Sometimes.

1 Q. Okay. What symptoms or complaints do you have now
2 pertaining to your ankle?
3 A. Standing for long periods of time, sometimes it
4 hurts. Sometimes my ankle cracks. It's, like, my left one
5 cracks and my right one doesn't. So I don't know if it's
6 because of my bone or what. I don't know. That's about it
7 really.
8 Q. Do you have ankle pain all the time or only after
9 activity or only after standing for long periods of time?
10 A. Only after standing.
11 Q. Do you take anything for pain now?
12 A. No.
13 Q. Are you restricted in any physical activities now
14 because of your left ankle injury?
15 A. No.
16 Q. Okay. Were there any activities that you did on a
17 regular basis before the accident that you can't do now
18 because of the accident?
19 A. No.
20 Q. Were you involved in any sports or hobbies or
21 anything like that before the accident?
22 A. No.
23 Q. Okay. What do you like to do for recreational
24 activities?
25 A. Um -- I go outside and walk my dog, and that's

1 about it.

2 Q. Okay. Have you been on any vacations since the

3 accident?

4 A. No.

5 Q. Any trips, say more than 60 miles outside of your

6 house since the accident?

7 A. No.

8 Q. Have all of your medical bills relating to this

9 accident been paid?

10 A. Um -- I would hope so.

11 Q. Okay. And did you have health insurance at the

12 time of the accident?

13 A. Yeah. I think so.

14 Q. And do you know who the health insurance carrier

15 was?

16 A. UPMC.

17 Q. And that was your parents health plan; correct?

18 A. Yeah.

19 Q. Do you know if they had UPMC health through their

20 employers, one of their employers?

21 A. Well, my mom works for UPMC, so that's how she

22 gets it.

23 Q. What does she do for UPMC?

24 A. Um -- she tells me all of the time, I just

25 forget. Something with accounts.

1 Q. Does she work for a particular hospital?

2 A. Um -- no.

3 Q. And what does your stepdad to do?

4 A. I think he, like, directs traffic or something.

5 And he, like, I don't really know what he does, but it's

6 something in that nature.

7 Q. Okay. Are you aware of any medical bills that

8 remain unpaid or that were not paid as a result of the

9 accident?

10 A. No.

11 Q. Okay. Do you know if you or your parents had to

12 pay any money out of pocket for medical bills relating to

13 the accident?

14 A. No.

15 Q. Okay. And are you make a wage loss claim as a

16 result of the accident?

17 A. No.

18 MR. GUTHRIE: Is that correct, Drew?

19 MR. LEGLER: I believe so.

20 Q. All right. Those are all of the questions I have.

21 Thank you very much.

22 MR. LEGLER: I have a couple questions for you.

23 EXAMINATION

24 BY MR. LEGLER:

25 Q. I'm going to ask you about your boots. Those UGG

1 boots, were they new?

2 A. Yeah.

3 Q. And they had adequate tread on the bottom?

4 A. Yeah.

5 Q. It's just that when you got on the hill, the

6 tread didn't hold you on the slippery surface?

7 A. No.

8 Q. So you when you said that they didn't have good

9 tread, you meant that they did have good tread, but not on

10 the --

11 A. Not on the hill.

12 Q. Okay. Prior to your fall, when you were -- when

13 you went down -- you looked down the hill; correct?

14 A. Yeah.

15 Q. You knew it was snow covered?

16 A. Yeah.

17 Q. This alternative route, it's not, like, right

18 nearby, is it? It's a distance back that you would have

19 had to go back to get onto the alternative route?

20 A. Yeah.

21 Q. And it was snow covered too to your knowledge?

22 A. The whole hill or the sidewalks?

23 Q. The alternate route.

24 A. The sidewalks were.

25 Q. Okay. So you would have had to go out on the road

1 otherwise?

2 A. Yeah.

3 Q. This didn't have vehicular vehicles on it, did

4 it? This alternative route that you went down?

5 A. No.

6 Q. And you hadn't been it on it, as you said, at

7 least the day before, if not even longer than that?

8 A. Yeah.

9 Q. So although it was snow covered, you didn't know

10 how bad this route that you were on was until you got down

11 about a third or 40 percent of the way?

12 A. Yeah.

13 Q. And was it also -- let me ask you about, like,

14 when you -- this morning, you walked from my office to

15 here with me?

16 A. Yeah.

17 Q. Did your ankle bother you?

18 A. No.

19 Q. So you can walk about that distance without it

20 hurting?

21 A. Yeah.

22 Q. What about if you walked longer than that?

23 A. It would probably start hurting a little bit.

24 And I wasn't standing either earlier.

25 Q. You had been sitting in my office, is that what

1 you mean?
2 A. Yeah, yeah.
3 Q. Okay. Was the ground -- you said before it was
4 dirty, was it also lumpy?
5 A. Yeah. A little bit.
6 Q. Okay. I don't have anything further.
7 EXAMINATION
8 BY MR. GUTHRIE:
9 Q. Um -- you told me that the ground was compacted
10 and smooth, you didn't mention any lumps before. Are you
11 now saying it was lumpy?
12 A. It was compacted. It was, like, down the hill, it
13 was compacted, but on the sides it was lumpy.
14 Q. Okay. But you didn't walk on the sides where it
15 was lumpy; is that correct?
16 A. No. Well, yeah.
17 Q. Is that right?
18 A. Yeah.
19 Q. Okay. Thank you.
20 MR. LEGLER: Nothing further. We will read.
21 - - -
22 (Thereupon, the deposition was concluded at 11:18 a.m. and
23 signature was not waived.)
24 - - -
25

CERTIFICATE

1
2 COMMONWEALTH OF PENNSYLVANIA,)
) SS:
3 COUNTY OF ALLEGHENY.)
4 I, Elizabeth A. Besselman, do hereby certify that before me, a Notary Public in and for the Commonwealth
5 aforesaid, personally appeared Jamya Whitsey, who then was by me first duly cautioned and sworn to testify the truth,
6 the whole truth, and nothing but the truth in the taking of her oral deposition in the cause aforesaid; that the
7 testimony then given by her as above set forth was by me reduced to stenotypy in the presence of said witness, and
8 afterwards transcribed by means of computer-aided transcription?
9
I do further certify that this deposition was taken
10 at the time and place in the foregoing caption specified, and was completed without adjournment.
11
I do further certify that I am not a relative,
12 counsel or attorney of either party, or otherwise interested in the event of this action.
13
IN WITNESS WHEREOF, I have hereunto set my hand and
14 affixed my seal of office at Pittsburgh, Pennsylvania, on this _____ day of __________________, 2018.
15
16
17

____

18 Elizabeth Besselman, Notary Public
In and for the Commonwealth of Pennsylvania
19 My commission expires May 16, 2021.
20 - - -
21
22
23
24
25

1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
COUNTY OF ALLEGHENY) S H E E T
2
3 I, Jamya Whitsey, have read the foregoing pages of my
deposition given on Wednesday, January 31, 2018, and wish
4 to make the following, if any, amendments, additions,
deletions or corrections:
5
Page/Line Should Read Reason for Change
6
7
8
9
10
11
12
13
14
15
16
17
18
19
In all other respects, the transcript is true and correct.
20
____
Jamya Whitsey
21
Subscribed and sworn to before me this _____ day of
22
__________________________, 2018.
23
____
24 Notary Public
25

1 March 1, 2018

2

LAW OFFICE OF ANDREW J. LEGLER, JR., P.C.

3 310 Grant Street

Suite 2630

4 Pittsburgh, PA 15219

5 ATTN: Andrew Legler, Esquire

6

NOTICE OF NON-WAIVER OF SIGNATURE

7

8 Please have the deponent read his deposition transcript.

All corrections are to be noted on the prededing Errata

9 Sheet.

10 Upon completion of the above, the deponent must affix his

signature on the Errata Sheet, and it is to then be

11 notarized.

12 Please forward the signed original of the Errata Sheet to

Gregg Guthrie, Esq., for attachment to the original

13 transcript, which is in his possession, copying all other

counsel and myself.

14

As per the rules, if the witness does not sign the

15 signature page within 30 days after receipt of the

transcript, signature is deemed waived.

16

17

18

Elizabeth A. Besselman,

19 Court Reporter

20

21

22

23

24

25

Δ π EXHIBIT 1
Deponent JW
Date 1/31 Rptr. LB
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Δ π EXHIBIT 2
Deponent JW
Date 1/31 Rptr. LB
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Δ π EXHIBIT 3
Deponent JW
Date 1/31 Rptr. LB
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMYA WHITSEY,
Plaintiff,
v.
CITY OF MCKEESPORT
Defendant.

CIVIL DIVISION
NO.: GD 17-012175

ORDER OF COURT

AND NOW, this _____ day of _______________, 2018, it is hereby ORDERED, ADJUDGED and DECREED that defendant, the City of McKeesport's Motion for Summary Judgment is granted. Summary judgment is hereby entered in favor of defendant, the City of McKeesport and against the plaintiff, Jamya Whitsey. It is further ORDERED that the plaintiff's Complaint is dismissed in its entirety with prejudice.

BY THE COURT:

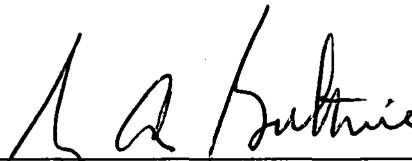
_____________________________________J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO PA. R.C.P. 1035.2 AND BRIEF IN SUPPORT** has been served via first-class U.S. mail, postage prepaid, this 22 day of March, 2018, addressed as follows:

Andrew J. Leger, Jr., Esquire
Law Office of Andrew J. Leger, Jr., P.C.
310 Grant Street
Suite 2630
Pittsburgh, PA 15219

SUMMERS, MCDONNELL, HUDOCK & GUTHRIE, P.C.

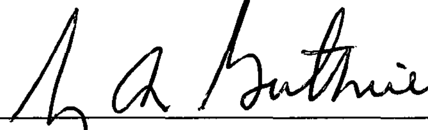


Gregg A. Guthrie, Esquire
Counsel for Defendant

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Gregg A. Guthrie, Esquire



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