



**Tabitha
Ponder
Beckford**

CONTACT:



Experience

**Staff Attorney | 2017 – present
Access to Justice Committee with Administrative
Offices of the Courts**

- Facilitate efforts to create improved coordination and support of civil legal services programs with the courts, administrative agencies and lawmaking bodies.
- Demonstrate strong strategic vision, leadership, management, and people skills, with in-depth knowledge of the local legal services network and the community it serves.
- Engage leaders and staff of the AOC. Bar, law firms, legal services providers, judicial leaders, elected officials and their staffs.
- Secure grants to ensure financial stability, and support the Committee in its meetings and other activities.

**Managing Partner | 2004-2006 & 2008-Present
The Ponder Law Group, LLC {Ponder-Solomon Law Group, PC}**

- Managed heavy caseload at a busy general litigation practice.
- Oversaw all managerial aspects of the law firm, including offices located in Atlanta and Tifton.

**Asst. Public Defender, Level IV | 2006-2008
Tift Judicial Circuit**

- Significant trial experience as a felony trial attorney, juvenile attorney and chief intake attorney for the misdemeanor division.
- Worked closely with the court system in the implementation of the joint project between the court, the District Attorney's office and the Public Defender's office in establishing a "fast-track" and fair system for calendaring cases, while successfully managing 200+ caseload.

**Supervising Attorney-Insurance Defense | 2000-2004
Clyatt, Clyatt & Golden, P.C. -Valdosta, GA**

- Served as supervising associate in an Insurance Defense litigation firm which focused on Workers' Compensation, Personal Injuries, and Wrongful Death matters.
- Principally assisted in litigation in trial and appellate courts on state, federal and administrative jurisdictions.

EDUCATION & CERTIFICATION

Mercer University School of Law-(J.D) 1999

Certified Legal Writing Program Recipient

American Bar Association, BLSA: Public Relations Chair

Ohio Northern University School of Law 1997 (transferred)

Academic Scholarship

Editor for Women's Law Journal

Albany State University-(B.S. Psychology) 1996

Cum Laude / Psi Chi Honor Society / Student Honor's Court

Body Government;

Clinical Psychology Dept. Student Assistant

University of Florida School of Law 1995

Honors Summer Apprenticeship Program

Paine College 1992 (transferred)

Academic Scholarship

Crowned Miss. Honor Society

**This questionnaire is submitted in connection with a vacancy on the
Georgia Court of Appeals**

1. Give your full name.

Tabitha Ponder Beckford

2. State both your office and home addresses.

**Office:
3330 Cumberland Blvd., Ste 500
Atlanta, GA 30339**

Home:

[Redacted]

**State your office telephone number, home telephone number, and cell
Phone telephone number.**

Office: 770-690-4269

[Redacted]

State your e-mail address.

[Redacted]

3. Give the date and place of your birth.

[Redacted]

Moultrie, GA

4. If you are a naturalized citizen, please give the date and place of naturalization.

N/A

**5. Indicate your marital status; if married, the name of your spouse; and the names
and ages of your children.**

Spouse:

[Redacted]

Children:
Step-children:

6. Indicate the periods of your military service, including the dates, and the branch in which you served, your rank or rate.

N/A

7. List each college and law school you attended, including the dates of attendance, the degree awarded, and your reason for leaving each school If no degree from that institution was awarded.

Paine College

Transferred to Albany State University 1992/1993
Academic Scholarship
Miss. Honor Society

Albany State University

B.S. of Psychology 1996
Cum Laude / Psi Chi Honor Society/Student Honor's Court
Student Body Government; Clinical Psychology Dept.
Student Asst.

Ohio Northern University School of Law (transferred to Mercer)

Academic Scholarship 1997
Editor for Women's Law Journal

Mercer University School of Law (J.D.)

Certified Legal Writing Program Recipient 1999
American Bar Association, BLSA: Public Relations Chair

8. List all courts in which you are presently admitted to practice, including the dates of admission in each case. Give the same information for administrative bodies having special admission requirements.

Superior/ State Courts of Georgia- 2002
Georgia Court of Appeals & Supreme Court- 2002
Middle District of Georgia Federal Court- 2002

9. Are you actively engaged in the practice of law at the present time? If you are connected with a law firm, a corporate law department or a governmental agency, please state its name and indicate the nature and duration of your relationship.

Ponder-Solomon Law Group, PC/The Ponder Law Group, LLC
Managing Attorney - 2008 to present
Staff Attorney - Georgia Judicial Council's Access to Justice Committee
Dec.'2017 to present
Cobb County Superior Court - Special Master
July 12, 2017 to present

10. If in the past you have practiced in other localities or have been connected with other law firms, corporate law departments or governmental agencies, please give the particulars, including the locations, the names of the firms, corporate law departments or agencies and your relationship thereto, and the relevant dates. Indicate also any period in the past during which you practiced alone.

Assistant Public Defender, Level IV **2007-2010**
Tift Circuit /Juvenile Conflicts Attorney

Supervising Attorney-Insurance Defense Litigation **2000-2004**
Clyatt, Clyatt & Golden, P.C. - Valdosta, GA

11. Do you presently hold judicial office, or have you in the past held any such office? If so, give the details, including the court or courts involved, whether elected or appointed, and the period of service. Also state whether you have been an unsuccessful candidate for election to judicial office, stating the court and date involved.

No

12. What is the general character of your practice? Indicate the character of your typical clients and mention any legal specialties which you possess. If the nature of your practice has been substantially different at any time in the past, give the details, including the character of such and the periods involved.

The character of my current practice is as a general practitioner with a focus on Personal Injury and Real Estate matters. We represent individuals and businesses from all socioeconomic levels.

13. (a) Have you regularly appeared in court during the past five years?

Yes

(b) What percentage of your appearances in the last five years was in:

(1) Federal Courts (list each court): **15%**
Middle District of Georgia, Valdosta Division

(2) State Courts (list all courts): 85%

**Cobb Co. Superior, State and Magistrate Courts
DeKalb Co. State and Magistrate Courts
Douglas County Superior Court
Fulton County Superior, State and Magistrate Courts
Atlanta Municipal Court
Lowndes County Superior Court
Tift County Superior, State and Magistrate Courts
Meriwether County Superior Court
Gwinnett County Magistrate Courts
Newton County Superior Court
Cherokee County State Court
Dougherty County State Court
Colquitt County Superior Court
Mitchell County State Court
Baldwin County Magistrate Court**

(3) other courts (please list all states other than Georgia in which you have appeared):

N/A

(c) What percentage of your court appearances in the last five years was:

- Civil? 70**
- Criminal? 30**

(d) What percentage of your trials in the last five years was:

- Jury? 0**
- Non-jury? 100**

(e) State the approximate number of cases you have tried to conclusion in courts of record during each of the past five years, indicating whether you were sole, associate, or chief counsel.

3- I was sole Counsel or Chief Counsel on all cases.

(f) Describe five of the more significant litigated matters which you have handled:

Newman v. Wal-Mart 7:15 cv 00165 HL (2017)

This was a slip and fall matter wherein the Plaintiff sustained injuries after slipping on some melting ice cubes while attempting to exit the store. Eventually, the Defendant's requested to move this case to the Middle District of Georgia Federal Court. At the close of discovery, the Defendant's filed a Motion for Summary Judgment. However, after a successful oral argument Judge Hugh Lawson decided against the Defendant's Motion and allowed my client to proceed to trial on all issues. The case settled shortly after MSJ Hearing.

Marisma V. Interactive Learning Systems, Inc. et al.

This was a premises liability/tort matter wherein the Plaintiff, while waiting in a crowded hallway during registration, was injured by Defendant's employee when he swung open a door and it slammed into the back of Plaintiff's head. Plaintiff was diagnosed with minor brain injury/post-concussion syndrome, and the case eventually settled after 3 years of litigation.

State of Georgia v. Dominique Hall

My client was the Defendant, a 17 yr. old who was charged with rape of a 16 yr. old. At the time of their sexual encounter, both parties had been drinking and smoking marijuana at a local high school bonfire party. I was able to find and produce sufficient evidence to have the case nolle prossed.

Estate of Christopher Powell v. Emory Hospital, Shepherd's Center et al.

Mr. Powell was initially injured in a motorcycle accident wherein he suffered extensive head injuries and was placed in ICU. Days after the accident, he was transferred to a rehabilitation center wherein he suffered a stroke which went undetected by doctors and hospital staff for more than 2 days. This claim developed into an extensive medical malpractice claim, which eventually settled after the discovery period ended.

Eric Pettiford v. Tift County Sheriff's Department et al.

My client was being pursued by deputies and ended up with very extensive mouth injuries which included a broken jaw and several broken teeth. Therefore, we sued the Defendants for brutality and violation of my client's civil rights. This case settled shortly after discovery began.

- (g) State with reasonable detail your experience in adversary proceedings before administrative boards or commissions during the past five years.**

N/A

14. (a) Summarize your experience in court prior to the last five years. If during any prior period you appeared in court with greater frequency than during the last five years, indicate the periods during which this was so and give for such prior periods the same data which was requested in item 13 above.

During the time I worked as an Asst. Public Defender, IV, I was required to attend Court at least twice per week. I served as a felony trial attorney and juvenile attorney for 2 counties. I am most proud of my work with the Tifton Judicial Circuit in implementing a joint effort between the Court, District Attorney's Office and Public Defender's Office to establish a "fast-track" and "fair system" for calendaring trials. At the time of my employment, my caseload included 200+ per cases a year.

- (b) Summarize your experience in adversary proceedings before administrative boards or commissions prior to the last five years.

N/A

15. Describe your appellate practice during the past five years in detail and give citations if your cases were reported.

N/A

16. Please submit a representative sample of your writing (e.g. brief, order, opinion, opinion letter).

See attached.

17. Describe your practice other than trial practice during the past five years in some detail as it may relate to office and business practice, as well as any other phases of your practice.

After more than 15 years of managerial/ supervisory legal experience and well over 18 years practicing law, I have become a very resourceful professional with pervasive skills in examining court documents, and responding to court orders. Additionally, I have an immense working knowledge of legal terminology, proceedings, general law and excellent research and writing skills.

I am a very detail-oriented individual who adeptly perform research work and manage investigations and reporting tasks and am proficient in collecting fees, balancing receipts and cash, typing legal forms and letters and maintaining records.

Furthermore, I am highly skilled in processing diverse cases and documents and am quite well versed in all kinds of court cases including criminal, civil, real

estate, domestic relations, special proceedings, court hearings and maintaining a calendaring system for litigation and updating information in databases for easy retrieval.

- 18. Have you ever been engaged in any occupation, business or profession other than the practice of law? If so, please give the details including dates.**

I previously owned a rental company (commercial and residential properties), mostly in South Georgia wherein I leased houses and buildings. I also previously owned a franchise, "OpenWorks", which is a commercial cleaning company. However, I decided to close the business due to time restraints and consistent problems with the Franchisor's business practices.

- 19. Are you presently acting in a fiduciary capacity? If so, state details.**

No

- 20. Please describe your opinion of the role a law clerk or a staff attorney should serve with respect to assisting a judge.**

Law clerks or Staff Attorneys should field calls that come into the Judge's chambers regarding scheduling matters, or communications. I believe that they should not decide cases, but they could impact the court's decision. Staff attorneys should review motions and briefs, and ultimately discuss them with the Judge to see if additional research and analysis is needed. However, the final opinion should be made by the Judge.

- 21. Please describe how a judge of the court for which you are applying might improve the efficiency and effectiveness of the legal system in administering justice.**

The Judge should begin by taking an assessment of the current administration, prior to deciding what is needed to improve its administrative capacity, skills and the effectiveness of the judiciary. One way to improve a judiciary's efficiency and overall effectiveness, is to upgrade any outdated technical equipment. Management practices should also be reviewed, and continued local and national training should be provided for all Judges and court staff.

- 22. Have you ever held public office, other than judicial office, or have you ever been a candidate for such an office? If so, give the details, including the offices involved, whether elected or appointed, and the length of your service.**

No

- 23. Have you ever been sued by a client? If so, please give particulars.**

No

- 24. Have you ever been a party or otherwise involved in any other legal proceedings?**

If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.

Divorce Proceedings in 2014- Defendant Lester C. Solomon

25. Have you published any legal books or articles? If so, please list them, giving the citations and dates.

Small articles for Georgia Courts Journal May & August 2018 editions.

26. List any honors, prizes, awards, or other forms or recognition which you have received.

Influence Award-2014 / The Atlanta Business & Entertainment Exchange

27. List all bar associations and professional societies of which you are a member and give the titles and dates of any offices which you have held in such groups. List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance.

GAWL/Board Member 2017 to present

GABWA/mentorship Committee -2014 to present

Gate City Bar-2015 to present

Cobb County Bar (Solo Practice Committee & Trial lawyers Section) 2014 to present

Delta Sigma Theta Sorority (Marietta/Roswell Chapter)

28. Have you read and carefully studied the Code of Judicial Conduct?

Yes, the revised Code, and I am continuing to study the Code.

29. Will you adhere to the letter and the spirit of such Code should you be appointed as judge?

Yes

30. You are requested to execute and transmit to the Chairman of the Commission two copies of the form of Authorization for Access to Information Concerning Disciplinary Matters Included with this questionnaire.

See attached.

31. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprise, please give details, including the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If it is not your intention to resign such positions and give up any other participation in the management of any of the foregoing enterprises, please so indicate, giving reasons. List all companies in which you, your spouse or minor children hold stock.

N/A

32. List the non-professional organizations to which you belong and civic and service activities in which you have participated in the past two years.

**Faith Christian Center- I serve in as a youth leader in children's church
S.A.L.T. (saving adolescent ladies today)- Founder, 2007**

33. Have you ever been arrested, charged, or held by federal, state or other law-enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of \$50.00 or less was imposed.

Traffic- traveling more than 150 feet in turning lane. (May 2016)

34. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.

No

35. The Governor's Ethics Order prohibits the appointment by the Governor of any person to fill a judicial vacancy:

- (a) who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee at any time after the vacancy occurs; or**
- (b) who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee within 30 days preceding the vacancy. Unless such person requests and is granted a refund of such**

person requests and is granted a refund of such contributions or reimbursement of such expenditure.

36. Have you made a contribution or expenditure as described in 35(a) above?
No

37. (a) Have you made a contribution or expenditure as described in 35(b) above?
No

(b) If you answered yes to 37(a), have you been granted a refund or reimbursement?
N/A



Applicant's Signature

Date: 10/25/19



store, when he slipped and fell because the floor was wet. (Plaintiff's Deposition p. 39). Plaintiff testified that he never saw a cone prior to falling and that the only saw a rug near the ice machine, which had some ice cubes on it. (Newman Deposition pp. 38, 39). In fact, Wal-Mart's employee (who was nearby), Agnes Walker, did not place a cone on the floor and at the accident site, until after the Plaintiff had slipped and fell to the floor. (Newman Deposition p. 43). In Wal-Mart's accident report, Agnes Walker stated that she notice some ice had fallen out of a bag, and also some water on the floor after the Plaintiff had fallen. (Exhibit 1- Incident Report of Agnes Walker).

Plaintiff further testified that he did not go near the ice machine on the date of the accident, and in fact; went away from the ice machine while exiting the store. (Newman Deposition pp 39).

While the Defendants argue in their Motion for Summary Judgment that there was a cone to warn the Plaintiff of a hazard at the time of the accident. A Wal-Mart manager, Felicia Spells, admitted that the cone located in the vestibule, was actually hung on the top of a pole which was located in front of the metal detector, and that the same is used for clean-ups (Spells Deposition pp. 27, 28 & 34). She further testified that anywhere water is on the floor, it is usually blocked off with cones. (Spells Deposition p. 27, 28 & 34). Ms. Spells admitted that Ms.

Agnes, an employee of Wal-Mart who was monitoring the vestibule area near the accident site, moved the aforementioned cone from the metal detector pole and placed the cone on the floor, near the hazard. (Spells Deposition p. 35). Spells also admitted that she doesn't recall any cones being near the ice machine, nor seeing any cones near water on the floor. (Spells Deposition p. 29).

In fact, the Company Policy that was recently provided to Plaintiff by Defendants holds that caution cones are kept in various places throughout that store to allow for (quick access) when associates need one. (Exhibit 2 -Company Policy Newman p. 0008).

Spells also admitted that all associates of Wal-Mart normally check their areas for any possible spills or hazards (maybe) every 2 hours, however; there is no way to know when sweeps are completed because the store doesn't keep any logs to ensure accuracy. (Spells Deposition p. 20). Moreover, Spells stated that there is no requirement for maintenance associates to check the vestibule entranceways. (Spells Deposition p. 20).

On the contrary, in Wal-Mart's Company Policy, it states that safety sweeps should be completed in high traffic areas during "scheduled times". (Exhibit 2-Company Policy Newman p. 0004). Additionally, the policy holds that employees should walked their areas to find and correct potential hazards. (Exhibit 2-

Company Policy Newman p. 0004).

ARGUMENT AND CITATION OF AUTHORITY
SUMMARY JUDGMENT INAPPROPRIATE:

Generally, under FRCP 56(c), a Motion for Summary Judgment is granted when there are no genuine issues as to any material fact, which entitles the moving party to judgment as a matter of law. "To prevail at summary judgment under FRCP 56, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law." Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 492 (1991). Moreover, the party opposing the motion is to be given the benefit of all reasonable doubts and all favorable inferences that may be drawn from the evidence...[T]he question before the court is whether the allegations of the pleadings have been pierced so that no genuine issue of material fact remains." Harding v. Georgia General Ins. Co., 224 Ga. App. 22,24 (1996).

Further, "[t]o warrant the entry of summary judgment, the undisputed facts should show the right of the [moving party] to a judgment with such clarity as to leave no room for controversy, and they should show affirmatively that the [non-moving party] would not be entitled to recover under any discernable circumstances." Williams v. Georgia Department of Corrections, 224 Ga. App.

571, 572 (1997). Certainly, when the above standards are applied to the facts of the present case, there can be no doubt that summary judgment is not appropriate, and genuine issues of material fact remain to be decided by the trier of fact.

Hence, as the discussion below proves, Defendants' Motion for Summary adjudication must fail.

Defendant owed a duty to Plaintiff:

According to O.C.G.A. Section 51-3-1:

“[w]here an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches same. “

Hence, "[b]y encouraging others to enter the premises to further the owner/occupier's purpose, the owner/occupier makes an implied representation that reasonable care has been exercised to make the place safe for those who come for that purpose, and that representation is the basis of the liability of the owner/occupier for an invitee's injuries sustained in a "slip-and-fall." Robinson v. Kroger Co., 268 Ga. 735, 740-741 (1997).

Defendant Wal-Mart owns a business that is open to the public, wherein it advertises for customers to come onto its property to patronize the business. Once

the Plaintiff entered onto Wal-Mart's property as a customer, the Plaintiff became an invitee upon Wal-Mart's premises. Thus, it is clear that Defendant owed Plaintiff a duty, and the discussion below establishes that Defendant breached its duty to Plaintiff. Therefore, this case is not amenable to summary adjudication.

Furthermore, "[w]here reasonable minds can differ as to the conclusion to be reached with regard to questions of whether an owner/occupier breached the duty of care to invitees and whether an invitee exercised reasonable care for personal safety, summary adjudication is not appropriate." Robinson supra, at 740.

The evidence in the case at hand shows that Plaintiff as a customer/invitee slipped and fell on in a clear liquid substance while in Defendant's Store. (Newman Deposition p.33 ; Exhibit 1-Agnes Walker's Incident Report). Moreover, Plaintiff reported that he slipped in a clear substance on the floor on the date of the fall, and the video shows a streak on the floor after the Plaintiff fell. (Newman Deposition, p. 43). The foregoing evidence is enough to avoid summary judgment because "[t]o avoid summary judgment, a plaintiff who alleges [s]he slipped on a foreign substance must offer some evidence of a foreign substance on the ground where [s]he slipped." Williams v. EMRO Marketing Co., 229 Ga. App. 468, 469 (1997). Surely, Plaintiff has met the standard to defeat summary judgment in the matter at hand.

Defendant's constructive knowledge of dangerous condition that injured Plaintiff:

The evidence shows overwhelmingly that Wal-Mart had superior knowledge of the dangerous condition that caused Plaintiff to fall, as store manager Felicia Spells admitted that no records are kept of safety sweeps, and that they are only required to do safety sweeps (maybe) every two hours. (Spells Deposition p. 21). Hence, the foreign substance could have been on the floor for more than two hours. (Spells Deposition. p. 21). Constructive knowledge may be established by showing ...that a foreign substance remained on the floor for such a time that ordinary diligence by the proprietor should have effected its discovery.'" (citations omitted) Brown v. Piggly Wiggly Southern, Inc., 228 Ga. App. 629, 631 (1997). See also Kelly v. Piggly Wiggly Southern, Inc. et al., 230 Ga. App. 508, 510 (1997)(Grant of summary judgment to defendants reversed in a slip-and-fall case because genuine issues of material fact existed as to whether operator had constructive knowledge of the dangerous condition that injured plaintiff).

In McConnell et al. v. Smith & Woods Mang. Corp. et al., 233 Ga. App. 447 (1998), the Court of Appeals reversed the grant of summary judgment to that defendant because there was evidence that the grape that plaintiff slipped and fell on could have been on the floor for at least 30 minutes and a reasonable jury could

conclude that through the exercise of ordinary care that defendant should have discovered the existence of the grape prior to the fall of that plaintiff. In the case at bar, there is evidence that the clear liquid substance could have been on the floor for a least two hours. (Spells Deposition. p. 21).

Clearly, if 30 minutes is enough time to create a jury issue as to whether the substance should have been discovered, two hours has to create a jury question as to whether the liquid substance should have been discovered by the defendant in the case at bar prior to the fall of Plaintiff.

Moreover, the Defendant has supplied the Plaintiff with video surveillance footage of the vestibule area wherein the Plaintiff was injured and the video shows an employee located in the vestibule area around the time the Plaintiff fell. However, still shots of the same video surveillance footage were supplied to this Court along with an Affidavit of Agnes Walker. Contrary to the Defendant's argument in its Motion before this Court, that Agnes Walker had inspected the floor prior to the Plaintiff's fall, none of the footage supplied to this Court shows Agnes ever looking down at the floor to do a visual examination or required safety scan. In fact, the first time she is captured looking down at the area is after the Plaintiff falls. (Exhibit 3-Still Shot of Accident Site Video Surveillance).

Immediately after the fall, Agnes pulls a cone from a pole and a cone from a

side wall and placed both cones on the floor near the wet spot. (Exhibit 4- Still Shot of Accident Site Video Surveillance). Actually, the provided video surveillance runs in time length from approximately 12:09 PM until shortly after 2:02 PM, and the first time a safety sweep is captured on same surveillance is not until approximately 2:01PM, when another employee arrives to monitor said vestibule area. (Exhibit 5-Still Shot of Accident Site Video Surveillance).

In Prescott v. Colonial Properties Trust, Inc., 283 Ga. App.753, 642 S.E.2d 425 (2007), Court of Appeals set out the complete test for constructive knowledge:

“Constructive knowledge can be established in one of two ways: (1) by evidence that employees were in the immediate vicinity and easily could have noticed and removed the hazard, or (2) by evidence that the substance had been on the floor for such a time that (a) it would have been discovered had the proprietor exercised reasonable care in inspecting the premises, and (b) upon being discovered, it would have been cleaned up had the proprietor exercised reasonable care in it method of cleaning its premises”

Id at 755.

The Plaintiff in Prescott, was injured after slipping on a wet substance located in he defendant’s common area. The Court of Appeals further ruled that until the defendant has (established compliance) with a reasonable inspection

procedure, the plaintiff is not required to show the length of time the substance was on the floor. In fact, there was no evidence presented that proved an inspection procedure or an inspection on the date of the accident. Therefore, the defendant was deemed to have constructive knowledge. 283 Ga. App. 753, 642 SE. 2d 425 (2007). Even when a defendant can show that it complied with a regular inspection procedure, the reasonableness of the inspection is often deemed a question of fact. Just as in Gibson v. Halpern Enterprises, 288 Ga. App. 790, 655 S.E. 2d. 624 (2007), the Court held that the specific facts and circumstances of a case determine the reasonability of an inspection procedure” *Id.* At 792.

In the case at bar, the Manager testified that there was no set procedure, except for a call for safety sweeps, which were done “maybe every two hours”. (Spells Deposition. p. 21).

Defendant cannot prove reasonable inspection procedures:

The discussion above makes it abundantly clear that Defendant had constructive knowledge of the substance that caused Plaintiff to slip-and-fall. Still, Defendant has contended that it had reasonable inspection procedures in place, and that these inspection procedures were followed on the date in question. However, Defendant has completely failed to establish any reasonable inspection procedures, or that if it had reasonable inspection procedures, said procedures were followed

on the date in question. Contrary to the assertions in Agnes Walker's affidavit, and Spells' Deposition, Spells admitted that she could not provide any evidence or acknowledge a safety sweep of the floor on the date in question, nor confirm any certain times a safety sweep call was made to Defendant's employees. (Spells Deposition. p. 32).

Spells also testified that there were, nor any physical logs or written records of safety sweeps made at or near the time of the accident in question. (Spells Deposition. p. 32). The facts of the present case are similar to the facts in Straughter v. J.H. Harvey Company, Inc., 1998 WL 125644 (Ga. App.). In Straughter, the Court held that there was no admissible evidence that defendant followed a reasonable inspection procedure on the date in question. According to the Court, "[d]efendant submitted the affidavit of its produce manager, stating that the store had a policy of sweeping the entire floor every hour and the produce department floor every three hours. However, the affidavit does not state that such policy was in fact carried out on the date in question." In the case at bar, Spells has admitted that she has no personal knowledge of the floor being swept on the date in question or could prove that the defendant's alleged sweeping policy was carried out of the date in question. (Spells Deposition p. 20). The Defendant also relies on an affidavit of Agnes Walker wherein she states that she, basically did what she

normally would have done on any given day while working. However, the video surveillance footage does not depict Agnes ever examining the floor, nor has the Defendant produced still shots which show that Agnes actually examined that floor on the date of the accident.

Moreover, there is a conflict in the evidence as to the policy itself. Spells states in her Deposition that the floor is swept “maybe” every two hours, but there is no set requirement to check the vestibules. (Spells Deposition p. 20). *However, the policy holds that the vestibule should be checked for spills at scheduled times.* (Exhibit 2-Company Policy p.0004). This evidence is inconsistent. Hence, if the deposition testimony of Spells and the Video Surveillance is to be construed in favor of Plaintiff, which it has to be on a motion for summary judgment, there is evidence in the record that defendant did not follow its inspection policy, if it were to be assumed *arguendo* that such a policy existed.

Plaintiff exercised ordinary care for her own safety:

Defendant has wholly failed to prove that Plaintiff failed to exercise ordinary care for his own safety. Therefore, Plaintiff does not have to establish her use of ordinary care. See Harderman, supra. In other words, defendant has not produced any evidence that Plaintiff's negligence was the proximate cause of his injuries. See Jones v. Ingles, 231 Ga. App. 338, 340 (1998). More importantly, the case

law is clear that failure to exercise ordinary care is not established as a matter of law by the admission that a person "did not look at the site on which he placed his foot or that he could have seen the hazard had he visually examined the floor before taking the step which led to his downfall." *Id.* 341. Furthermore, as the Court stated in McCullough v. Kroger Co., 231 Ga. App. 453, 454 (1998):

As an initial matter, simply because McCullough was pushing her cart straight ahead and looking in front of her, not at the floor, does not make this a case appropriate for summary adjudication. In *Robinson*, our Supreme court disapproved of the "appellate decisions which hold as a matter of law that an invitee's failure to see before falling the hazard which caused the invitee to fall constitutes a failure to exercise ordinary care." *Id.* at 743, 493 S.E. 2d 403.

The McCullough Court reversed the grant of summary judgment to that defendant. Plaintiff testified that the clear liquid substance made him fall. (Newman Deposition. P. 33). Plaintiff also told Spells on the date of the accident that something on the floor had caused him to slip-and-fall. Agnes Walker, an employee, also saw the wet spot where the Plaintiff had fallen, and reported the same in her Incident Report. (Newman Deposition p.39; Exhibit 1-Agnes Walker Incident Report). Although the record is clear as to what caused Plaintiff to fall,

even if the Court were to assume *arguendo* that Plaintiff did not know what caused him to fall, summary judgment would still be inappropriate. In Williams, supra, at 470, the Court wrote the following:

“Giving the non-movant the benefit of all inferences, this evidence would tend to support a finding of fact that Williams slipped on the ice upon which he lay. Although Williams may have slipped on something else and landed on the ice, his location on the ice after the fall, together with the fact that a witness saw ice where Williams fell, is some evidence of what caused his fall. Williams' own lack of knowledge of the substance on which he slipped is not dispositive. A person who is injured may become unconscious or disoriented by the fall and be unable or unconcerned then to investigate what he slipped on. That does not prevent other evidence on the issue.”

The evidence proves in the case at bar shows that Plaintiff slipped in a clear liquid substance while attempting to exit Defendant's Store. This evidence appears in the form of the testimony of Plaintiff and the testimony of Agnes. (Newman deposition p. 39; Exhibit 1-Agnes Walker Incident Report). See Bruno's Food Stores, Inc. v. Taylor, 228 Ga. App. 439 (1997); and Gourley v. Food Concepts, Inc., 229 Ga. App. 180 (1997).

Furthermore, Plaintiff testified that he was hurting, hit his head and that he was in a daze after he had fallen. Newman Deposition. p. 30). In sum, Plaintiff has overwhelmingly established that Defendant had constructive knowledge of the dangerous condition that caused him to fall, and that he lacked this knowledge despite his exercise of ordinary care for his safety.

CONCLUSION

The evidence is disputed that Plaintiff had equal knowledge of the actual hazard of a clear liquid substance on the floor and it is disputed that a warning cone was properly placed nearby, to indicate a potential hazard. Furthermore, it is disputed that Wal-Mart's employee inspected the area within a reasonable time prior to the accident. For the above-stated reasons, their Motion for Summary Judgment should be denied in full because genuine issues of material fact remain to be decided by the trier of fact.

Respectfully submitted, the 16th day of June, 2016.

THE PONDER LAW GROUP, LLC

/s/ Tabitha Ponder-Solomon

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CERTIFICATE OF SERVICE

I, hereby, certify that on the 16th Day of June, 2016, I electronically filed PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, PLAINTIFF'S BRIEF IN SUPPORT OF DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, RULE 6.5 STATEMENT OF MATERIAL FACTS, and PLAINTIFF'S NOTICE OF FILING IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Leslie P. Becknell.
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Attorney for Defendants
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Respectfully submitted, the 16th day of June, 2016.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

LIONEL NEWMAN	:	
	:	
Plaintiff,	:	
v.	:	
	:	
WAL-MART STORES EAST, LP,	:	Case No.:7:15-CV-00165-HL
and ANDREW MCCAULEY	:	JURY TRIAL DEMANDED
	:	
Defendants.	:	
	:	

RULE 6.5 STATEMENT OF MATERIAL FACTS

COMES NOW Plaintiff in the above-styled matter and files this U.S.C.R. 6.5 Statement of Material Facts as to which it is contended that there exist a genuine issue to be tried. Said statement is being filed in support of Plaintiff's Response to Defendants' Motion for Summary Judgment.

1.

There is a genuine issue of material fact as to whether Defendant, Wal-Mart Stores East, LP (Wal-Mart) breached its duty to Plaintiff.

2.

There is a genuine issue of material fact as to whether Defendant Wal-Mart failed to exercise ordinary care in keeping the premises and approaches safe.

3.

There is a genuine issue of material fact as to whether the foreign substance was on the floor for an unreasonable amount of time.

4.

There is a genuine issue of material fact as to whether Defendant should have discovered the foreign substance through the use of ordinary care prior to Plaintiff's fall.

5.

There is a genuine issue of material fact as to whether Defendant inspected the floor on the date in question.

6.

There is a genuine issue of material fact as to whether Defendant had reasonable inspection procedures in place on the date that Plaintiff fell.

7.

There is a genuine issue of material fact as to whether Defendant followed reasonable inspection procedures on the date in question, if it were assumed *arguendo*; that Defendant had reasonable inspection procedures in place on the date in question.

8.

There is a genuine issue of material fact as to whether the foreign substance

caused Plaintiff to fall.

9.

There is a genuine issue of material fact as to whether Defendant had actual knowledge of the condition that caused Plaintiff to slip-and-fall.

10.

There is a genuine issue of material fact as to whether Defendant had constructive knowledge of the condition that caused Plaintiff to slip-and-fall.

11.

There is a genuine issue of material fact as to whether the liquid substance caused Plaintiff to slip-and-fall.

13.

There is a genuine issue of material fact as to whether Plaintiff failed to exercise ordinary care for his own safety.

Respectfully submitted, the 16th day of June, 2016.

THE PONDER LAW GROUP, LLC

/s/ Tabitha Ponder-Solomon

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I certify that the within and foregoing Plaintiff's Brief in Support of Denying Defendants' Motion for Summary Judgment has been prepared in accordance with the formatting requirements set by the Local Rules of this Court, Rule 5.1 (C) using Times New Roman Font size 14.

Respectfully submitted, the 16th day of June, 2016.

THE PONDER LAW GROUP, LLC

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