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BRIAN D. WINTERSTEIN, Plaintiff, v. CECIL TYREL MCNEIL, SCHNEIDER NATIONAL, INC., SOUTH 6TH STREET PROPERTIES, LLC, ASHBY, INC., LGN MANAGEMENT, LLC, SCHNEIDER NATIONAL CARRIERS, INC., SCHNEIDER LOGISTICS TRANSLOADING AND DISTRIBUTION, INC., SCHNEIDER NATIONAL BULK CARRIERS, INC., SCHNEIDER LOGISTICS, INC., SCHNEIDER TRANSPORTATION, INC., DOLLAR TREE, INC., FAMILY DOLLAR STORES, INC., and FAMILY DOLLAR STORES OF PENNSYLVANIA, LLC, Defendants.	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY No.: 180400614

PRE-TRIAL CONFERENCE MEMORANDUM ON BEHALF OF DEFENDANT ASHBY, INC., DOLLAR TREE, INC., FAMILY DOLLAR STORES, INC., AND FAMILY DOLLAR STORES OF PENNSYLVANIA, LLC

Defendants Ashby, Inc., Dollar Tree, Inc., Family Dollar Stores, Inc., and Family Dollar Stores of Pennsylvania, LLC (collectively referred to as "Family Dollar") submit this Pre-Trial Conference Memorandum in anticipation of the Conference scheduled for September 13, 2021.

I. Nature of the Defense.

A. Facts.

This is a July 31, 2017 truck accident which occurred off the premises of the Family Dollar Store located at 400 South Sixth Street in Reading, PA (the "Store"). Plaintiff Brian Winterstein is a commercial truck driver. While he was driving his truck on South 6th Street, he saw McNeil trying to back his tractor trailer behind the Store—blocking the entire roadway. Winterstein got out of his truck to help McNeil. In doing so, he put himself between the front of McNeil's truck and a fence. McNeil, an inexperience driver, powered his truck forward and crushed Plaintiff. As the video demonstrates, McNeil's driving was the sole cause of the accident—nothing more, nothing less.

The Video

The video shows McNeil attempting to back his truck into the rear of the Store. Plaintiff is aiding McNeil by giving him directions from behind the truck. This goes on for several minutes, and eventually McNeil exits the cab and has a conversation with Plaintiff at the rear of the vehicle to assess the situation. McNeil then gets back in his truck and continues to maneuver. After a few minutes, McNeil and Plaintiff again talk to each other and McNeil gives it another try (with Plaintiff speaking to him and directing him from the front side of the vehicle). Plaintiff then moves directly in front of the cab—between the nose of the truck and a wood fence. Despite Plaintiff being in an unsafe position, McNeil does not turn off the truck or even put it in a safe mode with the parking brake. Rather, he continues to try to back it up. The truck rocks back and forth several times before coming to a complete stop for about three seconds. McNeil then accelerates the truck, driving it directly into Plaintiff. No one from Family Dollar appears in the ten minute and thirty second video.

Plaintiff attempts to insert Family Dollar into the case by alleging that it did not require third-party, independent trucking companies to park on the sidewalk adjacent to the building. By all accounts, including that of Schneider itself, Family Dollar has no control of how Schneider and its drivers operate their trucks or where they park them. Drivers decide where or how to park their trucks. As evidenced below, Plaintiff agrees.

The Store and the Loading Zone

The site developer (LGN) produced its project manager, Gabriel Hutchinson, for a deposition. Hutchinson testified that LGN developed a vacant lot at 400 South 6th Street in association with the City of Reading and Family Dollar. The City of Reading designed the project. The City dictated everything about the design of the building, including the brick façade, cast iron boots on the downspouts, special cornices, bowed windows, and gooseneck lights. The City allowed for a loading zone parallel to the building on the sidewalk—and specified that the loading zone be made of decorative pavers. The permit from the City for the loading zone on the side of the building simply stated that Family Dollar may park on the sidewalk to unload for deliveries.

Plaintiff's Deposition Testimony

Plaintiff is a commercial truck driver, having received his Class B Commercial Driver's License ("CDL") in 2010. At the time of the accident he was working as a truck driver for F.M. Brown's Sons, Inc. hauling home heating oil and making deliveries. Almost all his deliveries were in the City of Reading. He would pull up to the front of the house and make the delivery. If a homeowner suggested a place to park, he would make sure that the spot was safe. Plaintiff reiterated that a truck driver should never take the opinion of non-drivers because non-drivers do

not have the experience or knowledge of operating a truck. Nobody is in charge of the truck except for the driver; if anything happens the driver is responsible.

On the day of the accident, Plaintiff was driving his truck on South 6th Street and he encountered McNeil blocking the entire roadway while attempting to back behind the Store in traffic. He got out of his truck to help the driver back-up the truck; to be a spotter. He was a trained spotter and knew where to stand so that the driver could see him, and he was communicating with the driver using hand signals. After a few minutes, the driver still could not make it.

> Q. And, although, Mr. McNeil was having difficulty getting back there, did you ever feel that he was driving this vehicle in a way that made the process unsafe?
> A. Yes and no.
> Q. Okay.
> A. I can explain that. Unsafe, yes, because he was blocking a sidewalk -- he was also blocking both sidewalks on the street, also blocking the road. The other thing was is that loading dock they wanted him to get into, I don't believe a fifty-three foot trailer can make that swing. You know, about being -- it was just -- he shouldn't have been there.
>
> * * *
>
> Q. And it was your feeling, while this maneuvering was going on, that it was not a good idea to put this fifty-three foot trailer back in this alleyway?
> A. As a driver of twenty-five years, I wouldn't have done that. I would have asked the manager of the store is there anyway I can unload this truck.
> Q. And if the manager of the store said, you have to put it back there, you would do your best to put it back there?
> A. I would call my supervisor.
> Q. You would call your supervisor?
> A. Yes, I would.

Id. at 146-47. Even if there was an argument with the customer about where to park the truck, he would not do it and call his supervisor. "If it's not a safe way to go, I'm not doing it."

Plaintiff continued to try to help the Schneider driver. Another man appeared to try to help, but he was not a truck driver so he could not help. Id. at 153.

> A. And I asked this gentleman, I said, have you ever driven a truck before? And he told me no. So, I said, well, I don't understand what your concept is.
>
> * * *
>
> Q. [H]e was trying to tell you what to do and you were trying to tell him –
> A. Pretty much.
> Q. -- you are not a truck driver?
> A. Right.
> Q. Okay. Basically, you don't know what you are talking about?
> A. Basically.

Eventually, Plaintiff moves himself to the front of the truck; the driver tries to back-up, and then the driver "put his foot -- he slipped his foot off of something and just came at me. It was powered. It wasn't rocking." The action forced him through the fence. Plaintiff testified that he had been up and down South 6th Street a hundred times and he had never seen any vehicle parked in the sidewalk loading zone.

Store Employees' Testimony

Plaintiff deposed three former Family Dollar employees, Carmen Rivera, Heidy Gotay, and Emelyn Flores. All three women testified about the weekly tractor trailer deliveries to the Store. They confirmed that it was usual practice for large tractor trailer deliveries to be made in the back of the building, and not on the sidewalk loading zone. They were not told that drivers should park on the side of the building. Only one driver insisted on parking on the pavers on the side of the building. Gina Soldridge, Family Dollar's former District Manager, provided an unverified statement saying that she was never advised by Family Dollar that tractor trailers should have parked on the sidewalk loading zone.

Candice Edwards, the Store's manager since it opened, testified in a similar fashion. Edwards has been employed by Family Dollar since April, 2016. She is the first, and only, manager of the Store. She is responsible for running the Store: checking in vendors, receiving trucks, daily deposits, hiring, and firing—the daily operations of the Store.

Edwards explained the process of getting tractor trailer deliveries. The drivers park their trucks and come inside and ask a Family Dollar employee where to make the delivery. "I would come back – I would come out and show them exactly where they need to be . . . in the back of the store." The driver would be told to pull in, nose first so that the rear of the truck would be right to the back loading door. "Nose front. And I would seriously walk around there with them to show them that you can pull all the way forward into the alley because it's not being used and then your back will be at my back door." However, ordinarily Family Dollar employees would not direct them into the spot. Once the driver was parked, he would come into advise her. She would then connect her rollers to the back of his truck to unload. When the truck was unloaded and the driver is ready to leave, Family Dollar employees assist the driver.

Edwards confirmed that there was one tractor trailer driver parked on the pavers on the side of the Store. Before Plaintiff's accident, Edwards asked the driver to pull into the back and the driver refused. Both Edwards and the driver reached out to their superiors. "So we were at a standstill for about four hours until Corporate called and said I have to unload the way he wants to. It's his insurance. It's up to him." She unloaded the truck from the side as the trucker insisted. This driver continues to deliver to the store in this manner.

> Q. And he would continue to do his deliveries through that parking on the side method?
> A. Yes.
> Q. Did you have any further controversies with him about that?
> A. No, we're friends now.

> Q. Okay. So once you got word that if he wants to do it that way, that's the way he's gotta do it, you kind of accepted that.
> A. Yes.

No other driver ever discussed parking on the side. Edwards testified that the rollers lead into the Store if the truck is parked in the back of the building; when the truck is on the side, the rollers do not reach into the Store.

On the date of Plaintiff's accident, Edwards recalled being at the Store, waiting for the delivery, and observing that the driver was taking a long time. Either she or Rivera walked to the back of the Store to show the driver where to pull into the back of the building. She came outside of the Store and saw the driver in the middle of the street attempting to reverse his trailer. However, she was not expecting him to back-in, she thought the driver was going to pull around; she did not know what the driver was doing. In fact, she had never seen a full size tractor trailer attempt to back into the area behind the Store. As evidenced by the video, Edwards was not outside when Plaintiff was hit; she was, based on her own testimony, in the backroom of the Store preparing for the delivery.

McNeil's Testimony

McNeil testified that even though Plaintiff was standing in front of the truck—in what he termed to be a "dangerous" position—he moved his vehicle forward. McNeil started working for Schneider on May 27, 2017, two months before the accident. Working for Schneider was his first job as a tractor trailer driver, and he had only two months of experience prior to the accident.

On the day of the accident, he arrived at the Store and parked his truck in the middle of the street and put on his flashers. According to McNeil, the manager then came out and directed him to back in behind the building. Even if this is accurate, McNeil immediately knew that he could not do what was asked. He testified that he knew it was unsafe to back in as soon as he

arrived. He stated that Family Dollar would not let him park on the side of the building which he believed safer.

McNeil watched the video and confirmed that his inexperience caused the accident because it led to him not having complete control over the truck—if he was "in the same situation today, [he] would have enough skill so it wouldn't accidentally move forward[.]" McNeil described his actions just before the accident.

> Q. He's between you and the fence, right?
> A. Yeah.
> Q. How much room is there between the front of your bumper and the fence?
> A. I don't know. I was in the truck. It wasn't that many (sic) feet.
> Q. Three or four feet?
> A. No. That's too close (indicating). I don't know. Close.
> Q. Okay. Well, certainly he's in between your truck and the fence?
> A. Yeah, he's in between my truck and the –
> Q. And the fence. Did you feel uncomfortable at this time with him in front?
> A. Yeah. I felt uncomfortable with I arrived there, when I got there.
> Q. Okay. But now you could have – a this point you could have put the parking brake on?
> A. Um-hum.
> Q. Right?
> A. Yes. I did.
> Q. Turned off the key. Truck would not have moved?
> A. No. I didn't turn off the key.
> Q. But if you had pulled the emergency brake, the parking brake, turned off the key, the truck wouldn't have moved; right?
> A. Yeah, if I would have done that, yeah.

When looking at the point of impact, McNeil stated that he did not intend to move forward; he did not expect it to happen. McNeil testified that Schneider had a policy known as GOAL—Get Out And Look, as well as a policy to use a spotter whenever possible. According to Schneider's guidelines, McNeil was to "[p]osition the spotter so he/she is able to see what you cannot. Again

this is 20 to 25 feet from the right front corner of the tractor. Agree on hand signals you expect to use. Stop is the most important signal to have. Any time the spotter is out of sight, stop." Although he knew it was a policy to have spotters—and he was uncomfortable backing in—he did not ask for Family Dollar employees to spot him because they did not have any truck driving experience. And even though backing in was unsafe, at no point did he (1) stop work or (2) contact his superiors.

Schneider's Testimony

McNeil did not do what was required by his training, and McNeil's testimony contradicts Schneider's policies for its drivers.[1] Schneider produced its Director of Safety, Kenneth Vaughn for deposition. At the outset, Vaughn confirmed that if McNeil thought it was unsafe to deliver, "he has the ability to use his stop work authority and to call in and not execute that." Moreover, if a store manager asked McNeil to do something unsafe, McNeil should have called his supervisor.

> A. They're trained to review the area, survey it, ask questions in this case to the store, to the manager, to see how the delivery should be handled.
> Q. And if what the store tells them is unsafe under their training, are they supposed to just go ahead and do what the store tells them?
> A. They would assess it, and if they feel its safe, they would continue to execute based on what they have been instructed. If they felt there was truly an unsafe incident, then they would stop and they can call for assistance.
> Q. Well, not could. They have to, right?
> A. They should call for assistance, yes, if they feel it's unsafe.

[1] It should be noted that McNeil was terminated on September 14, 2017—about 45 days after the accident—following the completion of the accident investigation. He never did another assignment for Schneider after the day of the accident. Id. at 12-13.

The drivers are "in charge of the truck, control of the truck, responsible for the safety of the truck." Schneider trains its drivers in a safety first policy. The driver has to make the determination when he is at the location as to how to deliver the store in the safest way possible—that includes asking for a spotter, calling for assistance, even calling the police to control the scene. Vaughn conceded that backing-up is a tough part of the job, especially for an inexperienced driver like McNeil.

Vaughn's understanding was that when McNeil got to the Store, he spoke with the manager, they developed a plan of how to deliver, and then McNeil "began to execute a plan that he felt he could do." But we know that as soon as McNeil got to the site, he assessed the area and determined the difficulty in backing in—more precisely he "said, '[t]here ain't no way[.]'" When Vaughn read Mr. McNeil's sworn testimony that McNeil did not think it was safe, he confirmed that McNeil should have made a phone call, he should not have proceeded. McNeil was required to survey the delivery options for the Store to understand what is available, and if the driver receives what he considers an unsafe instruction from the customer, he is required to call his supervisor. That obligation especially applied here, since McNeil was trained to avoid backing over a city street.[2]

Vaughn confirmed that Schneider's company policies—acknowledged by McNeil—provide that:

> To begin this document, understand you have "stop work authority." The authority to stop or discontinue any task or activity that is likely to cause injury to any person or property is an expectation of all Schneider drivers. In accordance with FMCSR (in particular Sections 392.3 and 392.14) use that authority to avoid injury to any person or property. Resolve the situation safely before you restart the task. If you are not able to resolve or correct

[2] Vaughn stated Schneider's preferred method is to back into the lot, rather than pull forward, because Schneider does not want its drivers backing into a public road.

> the unsafe condition, promptly (within four hours after stopping the task) contact your driver business leader or the safety team for help resolving it. Remember, nothing we do is worth harming ourselves or others[.]

(quoting Schneider's company training policies signed by drivers when they come through training). He also confirmed that McNeil was required to ensure that people maintain safe distances from the truck—preferably 20 feet of space when a driver is attempting a maneuver. A Schneider driver should not move the truck if there is somebody standing between the front of the truck and a fixed obstacle. He should have turned the keys off and set the brakes to make sure that the truck did not roll. When McNeil left the truck, he should have turned off when he got out of the truck—a mistake Vaughn noted. Id. at 51-52. Vaughn stated—in no uncertain terms—that "[w]e should have stopped the vehicle. I don't know what the circumstances are around that, but the vehicle should have been stopped and then we should have either been able to move a person out from in front or if we needed to get out of the truck, then we would have had to turn the truck off."

Schneider tells its drivers that both safety and customer satisfaction are their number one priorities—which Vaughn admits may conflict. "They can come into conflict and that's where we want them to call in so they're not the one in the middle of that discussion." The best way to keep the customer happy is to never do something that is unsafe. The driver—and only the driver—is responsible for (1) the outside of the truck, (2) the inside of the truck, (3) to get out and look around the truck if you cannot see, and (4) to use a spotter. "[Y]ou want to make sure that even though somebody's directing you into a space that your truck and trailer would fit into that space . . . if he has any questions whatsoever, not necessarily even a safety issue, but just a general question[,] [h]e's to call his DBL or ASM."

Vaughn completely contradicted McNeil's testimony that McNeil was required to park where the manager alleged told him to because drivers have "stop work authority." Vaughn was adamant that "we don't want to put anybody in jeopardy. So you still have the ability to pause the action and call in for assistance." Essentially, Vaughn's testimony comes down to this:

> Q. There we go. Now I'm going to read you from Mr. McNeil's testimony. It's a question and an answer on Page 45. "QUESTION: If you were able to pull up onto that sidewalk, you could have pulled straight up and over? ANSWER: Yeah, and that would have been more easier for me to just pull up on that side where I had that room. That's where I thought the truck should be." If that was his perception and the store told him no, should he have made a phone call?
> A. He could have made a phone call or, again, if he assessed that the way the store was telling him was still a safe way to execute, then he could execute that other direction.
> Q. And if he made the assessment that it was not a safe way to execute, he should have made a phone call, correct?
> A. If he determined it to be unsafe, then he should have made a phone call, yes, sir.

Family Dollar's Transportation Director's Testimony

David Shay, Family Dollar's Director of Outbound Transportation, confirmed that Family Dollar has no authority or ability to direct or control a third-party truck driver. Family Dollar cannot specify the manner in which a truck driver operates and maneuvers a truck when parking at a Family Dollar store or otherwise. Ultimately, the driver is responsible for the tractor trailer—regardless of any direction he is given, he should not take any actions he believes to be unsafe. Moreover, there are no provisions in Family Dollar's agreement with Schneider which require Schneider to take any instructions from Family Dollar employees. Based on Vaughn's testimony, it would be against Schneider policy for a driver to take guidance from, or rely upon, a Family Dollar employee.

Expert Reports

Plaintiff also produced expert reports from Scott L. Turner and John A. Nawn, P.E. Turner, a trucking expert, offered 18 opinions "as a Commercial Motor Vehicle expert . . . based upon what is good and safe practices in the CMV Transportation Industry[.]" Of the 18 opinions, he directed 15 directly to McNeil and Schneider. The three opinions related to Family Dollar are that (1) Family Dollar should have advised McNeil of the proper loading zone, (2) that Family Dollar failed to instruct McNeil, and (3) Family Dollar should have advised Schneider of the proper loading zone. Oddly, although Turner listed Vaughn's transcript as a document he reviewed, he did not reference it once in his report. Had he, he would have known that Vaughn addressed each and every opinion and confirmed that McNeil had no right to rely on anything Family Dollar did or did not do. His opinions regarding Family Dollar directly contradict the facts of the case.

Nawn, a licensed engineer, offered opinions regarding Family Dollar. Like Turner, Nawn's net opinions also ignore Vaughn's testimony. Nawn focuses his report on Family Dollar's loading zone on the side of the building, approved as a loading option by the City of Reading. The crux of Nawn's report is that Family Dollar did not properly train its employees to instruct Schneider's drivers (including McNeil) about the loading zone. But again, as we have learned from Vaughn, Family Dollar does not control Schneider or its drivers. The drivers are solely responsible for their trucks and to make safe deliveries. That Nawn cites no authority for his opinions should come as no shock, they are contrary to the law, the facts, and every principle of safe handling of a truck set forth in Turner's report.

Family Dollar offered the expert report of Christina Kelly, a trucking and commercial vehicle expert. A copy of her report is annexed as Exhibit "A." Her report echoes Schneider's own policies. Family Dollar was not in control of McNeil's truck (or Plaintiff). McNeil was

solely responsible for the safe delivery of the truck; there is no accident if he follows his training. "McNeil had every opportunity to assess the area and handle the tractor-trailer safely, as he is tasked to do as a commercially licensed driver." He failed. He operated his tractor-trailer in a manner contrary to his training "and the reasonable expectations of a professional commercial vehicle driver while creating an unnecessary hazard to Winterstein."[3] Kelly also opined that Plaintiff was not required to help, and he should have stayed out of harm's way.

Schneider's Obligations to Family Dollar

Schneider owes Family Dollar defense and indemnity in this case. The Agreement between the Schneider (referred to as TRANSPORTER) and Family Dollar states:

> TRANSPORTER WILL INDEMNIFY, DEFEND, REIMBURSE AND HOLD HARMLESS FAMILY DOLLAR, ITS PARENT COMPANY, SUBSIDIARIES, AND AFFILIATES, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES (EACH, AN "INDEMNIFIED PARTY", AND COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LIABILITIES, LOSSES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED PARTY IN ENFORCING TRANSPORTER'S INDEMNIFICATION OBLIGATIONS UNDER THIS MASTER AGREEMENT) (COLLECTIVELY, "DAMAGES"), SUSTAINED BY AN INDEMNIFIED PARTY BY REASON OF: (I) BODILY INJURY, SICKNESS OR DEATH TO THIRD PARTIES OR ANY DAMAGES TO THE PROPERTY OF FAMILY DOLLAR, TRANSPORTER, END CARRIER, OR THIRD PARTIES, TO THE PROPORTIONATE EXTENT ARISING OUT OF THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TRANSPORTER OR ANY END CARRIER, OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, OR AFFILIATES, CONTEMPLATED BY, OR TAKEN PURSUANT TO, THIS MASTER AGREEMENT, AND REGARDLESS OF WHETHER OR NOT AN INDEMNIFIED PARTY WOULD OTHERWISE BE LIABLE FOR SUCH DAMAGES UNDER A

[3] These opinions are completely supported by Vaughn's testimony and McNeil's termination.

STATUTORY OR COMMON LAW STRICT LIABILITY STANDARD, OR (II) ANY BREACH BY TRANSPORTER OF, OR FAILURE OF ANY END CARRIER TO COMPLY WITH THE OBLIGATIONS CONTAINED IN, THIS MASTER AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT NOTWITHSTANDING THE FOREGOING, IN THE EVENT A COURT OF COMPETENT JURISDICTION HOLDS THAT A STATUTE LIMITING THE SCOPE OF TRANSPORTER'S INDEMNIFICATION OBLIGATIONS UNDER THIS MASTER AGREEMENT IS APPLICABLE TO THE PERFORMANCE OF TRANSPORTER UNDER OR PURSUANT TO THIS MASTER AGREEMENT, TRANSPORTER'S INDEMNIFICATION OBLIGATIONS UNDER THIS MASTER AGREEMENT WILL ONLY EXTEND TO THE EXTENT PERMITTED BY SUCH STATUTE. TRANSPORTER ACKNOWLEDGES THAT ITS INDEMNIFICATION OBLIGATIONS UNDER THIS MASTER AGREEMENT WILL EXTEND AND APPLY TO DAMAGES RESULTING FROM DIRECT CLAIMS BY ANY INDEMNIFIED PARTY AS WELL AS ANY DAMAGES AN INDEMNIFIED PARTY SUFFERS AS A RESULT OF ANY THIRD-PARTY CLAIMS (INCLUDING BUT NOT LIMITED TO ANY CLAIMS BY ANY END CARRIER). FOR THE AVOIDANCE OF DOUBT, TRANSPORTER IS NOT OBLIGATED TO INDEMNIFY OR HOLD HARMLESS AN INDEMNIFIED PARTY AGAINST ANY DAMAGES SUSTAINED BY SUCH INDEMNIFIED PARTY BY REASON OF, ARISING OUT OF, RELATED TO OR IN ANY MANNER OCCASIONED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF: (I) SUCH INDEMNIFIED PARTY OR (2) ANY THIRD PARTIES, OTHER THAN ANY END CARRIER OR ANY OF TRANSPORTER'S OR ANY END CARRIER'S OFFICERS, EMPLOYEES, AGENTS, OR AFFILIATES. NOTWITHSTANDING THE FOREGOING, ALL CLAIMS FOR LOSS AND/OR DAMAGE TO ANY GOODS OR FAMILY DOLLAR PROVIDED TRAILERS OR EQUIPMENT SHALL BE GOVERNED BY SECTION 9 OF THIS MASTER AGREEMENT. TRANSPORTER COVENANTS NOT TO SETTLE ANY MATTER UNDER THIS INDEMNITY WITHOUT OBTAINING THE PRIOR WRITTEN CONSENT OF FAMILY DOLLAR, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED, DELAYED OR REJECTED.

Schneider was required to maintain certain insurance, and to name Family Dollar as an additional insured. Schneider has failed to defend, indemnify and hold Family Dollar harmless.

II. Family Dollar's Defenses

Liability centers around the means and methods McNeil utilized in the operation and maneuvering of his truck—methods selected and executed, exclusively, by McNeil and Schneider. Family Dollar owed no duty whatsoever to Plaintiff (or Schneider) concerning the means and methods of truck operation or with respect to the configuration of the loading zone at the Store. Further, nothing Family Dollar did, or did not do, was a proximate cause of the accident. Family Dollar's request that McNeil "park in the back," which Plaintiff claims made McNeil's maneuvering of the truck more complicated in light of the configuration of the loading zone, does not attach liability to Family Dollar. Pennsylvania law is clear and well-settled in this regard.[4]

A. Family Dollar did not owe plaintiff any duty of care

Family Dollar did not owe Plaintiff any duty of care with respect to the operation of the truck, the configuration of the loading zone at the Store and/or any direction given to McNeil. Under Pennsylvania law, a duty of care will not be imposed on a property owner for a condition existing, or activity engaged in, on his own property which is merely incidental to injuries sustained by a plaintiff who is not located on its property. There is no legal duty to Plaintiff imparted upon Family Dollar with regard to the manner in which McNeil operated his truck. Plaintiff seeks to stretch the boundaries of the duty of care owed by possessors of property far beyond the point which the law allows.

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[4] Plaintiff's position in this lawsuit as to the obligations of individuals and businesses (like Family Dollar) lacking training in the handling, parking and maneuvering of a tractor trailer is curious at best. How could plaintiff, himself a trained truck driver, be blameless in the happening of the accident but Family Dollar be responsible in the absence of the specialized knowledge possessed by Schneider, McNeil and Winterstein himself? The claims against Family Dollar are fatally undercut by plaintiff's testimony, McNeil's testimony, Vaughn's testimony and common sense.

Like the instant case, Newell v. Montana West, Inc., 154 A.3d 819 (Pa. Super. Ct., 2017), involved a pedestrian struck by a motor vehicle operating on property not owned or possessed by the defendant commercial property owner. In Newell, plaintiff's decedent was struck and killed while crossing a public street adjacent to defendant's "Montana West" nightclub. Id. at 820-21. Upon his arrival at Montana West earlier that evening to attend a concert, the decedent discovered that there was insufficient parking for nightclub customers. Id. at 821. As a result, he was forced to park across the street from the nightclub on property not owned or possessed by the defendant, Montana West. Id. Upon leaving the concert later that evening, plaintiff's decedent attempted to cross the street to get back to his car when he was struck and killed by a passing motorist. Id.

Plaintiff's theory of liability was that Montana West "provided insufficient parking for those patronizing its facility, thereby making it necessary for Decedent to incur the risk of parking on the other side of [the street] and of crossing [the street] to reach his car." Id. Ultimately, the trial court entered summary judgment in favor of Montana West on the grounds that it "did not owe a duty to Decedent when he crossed [the street] and was fatally injured." Id.

Plaintiff raised the following issue on appeal:

> Did the Trial Court err in finding as a matter of law defendant Montana West did not owe [plaintiff's decedent] a duty of care when Montana West knew its property could not safely accommodate parking for large crowds, knew during major events its customers would routinely park across a dangerous abutting highway because there were no safe alternatives to park once Montana West's parking lot was full, historically (but not the night in question) took safety precautions for its customers in recognition thereof, and knew a Montana West customer had already been fatally injured crossing the same area of the highway on which [plaintiff's decedent] was killed?

Id. Plaintiff's arguments combined two theories of liability: (1) the duty of a landowner to pedestrians on adjoining roadways; and, (2) the duty of a landowner to provide safe and adequate parking on its premises. Id. at 822.

Although the former theory is not directly germane to the instant case, since Winterstein was not standing on a public roadway, the logic employed by the Newell Court in finding an absence of any legal duty owed by the defendant property owner to plaintiff while on the roadway is, in any event, applicable here:

> Any duty of care owed to that pedestrian must belong to . . . those motorists who are licensed to drive safely on [the roadway]. The duty does not extend to landowners who have premises adjacent to the roadway.

Id. at 826.

With respect to plaintiff's allegations of "a lack of safe conditions on Montana West's own property", plaintiff argued that, "Montana West lacked sufficient parking facilities, a deficiency that made its premises unsafe for Decedent and other business invitees by forcing them to find parking in such unsafe areas [and] [i]f Montana West had provided sufficient safe parking on its own premises . . . Decedent would not have had to incur the risk" of harm which ultimately befell him. Id. at 827. The Superior Court found these arguments unpersuasive and "in tension" with the Supreme Court's decisions in Gardner by Gardner v. Consol. Rail Corp., 573 A.2d 1016 (Pa. 1990) and Scarborough by Scarborough v. Lewis, 565 A.2d 122 (Pa. 1989). Id. at 828. In Gardner and Scarborough, the Supreme Court "rejected efforts to impose liability for failing to do something on the landowner's premises (repair a fence) that would have deterred the injured plaintiffs from reaching the adjoining railway where they were injured." Id. The Court in Newell recognized that plaintiff's theory of liability was similarly flawed in that it "would impose liability on Montana West for failing to do something on its premises (have more

parking spaces) that would have made it unnecessary for Decedent to cross the adjoining highway where he was fatally injured." Newell at 828.

Under Newell, if a duty of care owed to pedestrians walking on a public street does not extend to landowners adjacent to the street, then here, Winterstein cannot maintain that Family Dollar owed a duty to him for an accident on private property on the opposite side of the street. Further, unlike Winterstein, the plaintiff in Newell, just prior to the accident, was on the defendant's property as a business invitee—a legal status which carries with it the "highest duty owed to any entrant upon land" under Pennsylvania law. Truax v. Roulhac, 126 A.3d 991, 997 (2015); Eisbacher v. Maytag Corp., No. 2017 WL 947606, at *6 (Pa. Super. Ct. Mar. 9, 2017), (citing Emge v. Hagosky, 712 A.2d 315, 317 (Pa. Super. Ct. 1998); Crotty v. Reading Indus., Inc., 345 A.2d 259 (Pa. Super. Ct. 1975)). By contrast, here, Winterstein was merely a passerby who stopped and attempted to assist McNeil, a fellow truck driver. Winterstein had no connection or relationship, business or otherwise, to the defendant property owner, in this case, Family Dollar. Certainly, if no such duty existed in Newell, then no such duty can be imposed upon Family Dollar. As was the case in Newell, any duty owed to Winterstein would be owed solely by McNeil, a licensed motorist and rightful operator of the truck which struck Plaintiff on property not owned or possessed by Family Dollar. Newell controls. No duty exists.

B. The Actions of McNeil and Plaintiff Were Subsequent Intervening Acts—Superseding Causes of the Accident.

Under circumstances in which subsequent negligent acts are a factual cause in producing harm to the plaintiff after the defendant's alleged negligent act has been committed, the subsequent intervening acts break the causal chain and relieve the defendant from liability under

circumstances in which the subsequent negligent acts are "so extraordinary[5] as not to have been reasonably foreseeable." Straw v. Fair, 187 A.3d 966, 995 (Pa. Super. Ct. 2018) (emphasis added), reargument denied (July 18, 2018), appeal denied, 202 A.3d 49 (Pa. 2019), citing Von der Heide v. Commonwealth, Dep't of Transp., 718 A.2d 286 (Pa. 1998); Trude v. Martin, 660 A.2d 626, 632 (Pa. Super. Ct. 1995).[6] A defendant's preceding "act of negligence which creates merely a passive background or circumstance of an accident does not give rise to a right of recovery if the accident was in fact caused by an intervening act of negligence which is a superseding cause." Papa v. Pittsburgh Penn-Ctr. Corp., 218 A.2d 783, 787 (Pa. 1966) (emphasis

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[5] The determination of "whether an act is so extraordinary as to constitute a superseding cause is normally one to be made by the jury." However, "if the relevant facts are not in dispute and the remoteness of the causal connection between the defendant's negligence and the plaintiff's injury clearly appears, the question becomes one of law." Powell v. Drumheller, 653 A.2d 619, 624 (Pa. 1995), citing Klimczak v. 7-Up Bottling Co. of Phila., 122 A.2d 707 (Pa. 1956), and Green v. Independent Oil Co., supra.

[6] The Restatement (Second) of Torts § 442 lists a number of considerations that are of importance in determining whether an intervening force is a superseding cause of harm to another:

(a) the fact that its intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence;

(b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;

(c) the fact that the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation;

(d) the fact that the operation of the intervening force is due to a third person's act or to his failure to act;

(e) the fact that the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him;

(f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion.

added); Listino v. Union Paving Co., 124 A.2d 83 (Pa. 1956); De Luca v. Manchester Laundry & Dry Cleaning Co., 112 A.2d 372, 374–75 (Pa. 1955); Schwartz v. Jaffe, 188 A. 295, 298 (Pa. 1936); Stone v. City of Philadelphia, 153 A. 550 (Pa. 1931).

The configuration of the loading zones at the Store and any direction given to McNeil with respect to delivering the tractor trailer serve as nothing more than a "passive background or circumstance" or "setting" for an accident caused in fact by subsequent events. As the video makes clear, the case involves two negligent acts with a direct factual causal connection to the injuries sustained by Plaintiff, which were committed subsequent to the alleged negligent acts/omission of Family Dollar:

1) the actions of McNeil in causing his truck to move forward while Plaintiff was standing directly in front of it and in plain view; and

2) the actions of Plaintiff in voluntarily placing himself in the small space in between the front of the truck and the fence against which he was crushed.

In consideration of the foregoing, the determination is whether these subsequent intervening acts by McNeil and Plaintiff sever the chain of causation between the actions of Family Dollar and the injuries sustained by Plaintiff. The result is based on the answer to the question of what Family Dollar should been expected to foresee with respect to the off-property consequences of the conditions existing, and actions committed by Family Dollar, on its property? Specifically, should Family Dollar have been expected to foresee that the configuration of the loading zone and any direction given to McNeil would result in Plaintiff intentionally and voluntarily placing himself directly in front of McNeil's truck and McNeil then causing his truck to move forward and crushing plaintiff against a fence across the street? The law dictates that this question be answered in the negative.

A comparison and contrast of the cases of Liney v. Chestnut Motors, Inc., 218 A.2d 336 (Pa. 1966) (finding that the act of a third party was a superseding cause, thereby severing liability as to the defendant property owner), De Luca, 112 A.2d at 375 (finding that a condition on defendant's property "creat[ed] merely a passive background or circumstance of an accident", which was not a proximate cause of an accident occurring off defendant's property), and Straw, 187 A.3d at 995 (holding that the harm suffered by plaintiff was a foreseeable consequence of the defendant's actions and, therefore, the act of a third party was a not a superseding cause) leads to the irrefutable conclusion that Family Dollar could not have foreseen that the configuration of the loading zone on its property and any direction given to McNeil would result in the off-property actions of McNeil in pulling his truck forward while Plaintiff voluntarily and intentionally stood in front of it. Indeed, these actions by McNeil and Plaintiff easily fall within the category of acts "so extraordinary as not to have been reasonably foreseeable." Id. Consequently, the chain of causation between any act or omission of Family Dollar, allegedly negligent or otherwise, and the injuries sustained by Plaintiff, is severed.

Like the instant case, Liney, De Luca and Straw involve plaintiffs who were struck by motor vehicles operated by third-parties at locations off of the defendants' property. In all three cases, the plaintiffs alleged that conditions existing on the defendants' property, or in the case of Straw, an activity engaged in by defendant on his property, caused the off-property accidents.

In Liney, the defendant operated a car dealership and garage. Liney, 218 A.2d at 337. On the date of plaintiff's accident, a customer's car was delivered to defendant's garage for repairs. Id. The defendant's employees left the car double-parked in the street adjacent to the garage and with the keys in the ignition. Id. Approximately three hours later, the car was stolen. Id. The thief drove the car "around the block in such a careless manner that it mounted a sidewalk, struck the

plaintiff, a pedestrian thereon, causing her serious injury." Id. Defendant's garage was located in an area of Philadelphia which had experienced "a high and increasing number of automobile thefts in the immediate preceding months." Id. The trial court sustained defendant's preliminary objections to the complaint and dismissed the action for failure to state a valid cause of action against the defendant garage owner. Id.

On appeal, the Court assumed that the defendant's employees were negligent in leaving the car parked in the street with the keys in the ignition. Id. Even so, the Court held that the act of defendant in leaving the car in a position where it was vulnerable to theft was not the proximate cause of the harm suffered by plaintiff:

> . . . it is clear that the defendant could not have anticipated and foreseen that this carelessness of its employees would result in the harm the plaintiff suffered . . . Assuming also that the defendant should have foreseen the likelihood of the theft of the automobile, nothing existed in the present case to put it on notice that the thief would be an incompetent or careless driver. Under the circumstances, the thief's careless operation of the automobile was a superseding cause of the injury suffered, and defendant's negligence, if such existed, only a remote cause thereof upon which no action would lie.

Id. at 337-38 (emphasis added) (citing Restatement, Torts, (Second) §§ 448, 449; Prosser, Law of Torts (2d ed. 1941), at 140-41-42; DeLuca, 112 A.2d at 372-75; Kite v. Jones, 132 A.2d 683 (Pa. 1957); and Green, 201 A.2d at 207).

If it was not foreseeable that a car thief, in the act of stealing a car and fleeing the scene of the crime, would drive in a careless and negligent manner, then it cannot seriously be maintained that, in the instant case, Family Dollar should have foreseen that McNeil, the licensed and rightful operator of the truck would move his truck forward with Plaintiff standing in plain view in front of it.

In De Luca, 112 A.2d at 372-75, the defendant owned a laundry and dry cleaning company abutting a one-way street. De Luca at 373. Defendant's loading platform protruded

from the front of its property and extended over a portion of the sidewalk. Id. On the day of the accident, defendant's laundry truck was backed up to within one foot of the platform while the driver was unloading. Positioned as such, the truck covered the remaining width of the sidewalk and extended out an additional twelve feet into the street. Id. Plaintiff was walking on the sidewalk adjacent to defendant's property when she found her passage blocked by the truck. Id. She stepped out into the street approximately 5-6 feet away from the truck and was struck by a car. Id. at 373, 375.

Plaintiff sued both the driver of the car ("Chiardio") and the laundry and dry cleaning company ("Manchester"). At the bench trial, the Court ruled that neither plaintiff nor Chiardio acted negligently and that Manchester had acted illegally and negligently in allowing its truck to partially block the street and that such act was the proximate cause of the accident. Id. at 374. Manchester appealed.

On appeal, the Court found that the trial court erred in finding that Manchester's alleged negligence was the proximate cause of the accident. The Court held that plaintiff's own action in walking into the street approximately 5-6 feet beyond the truck was an act of subsequent intervening negligence—a superseding cause of the accident. By contrast, the Court held that Manchester's act of parking its truck in a manner which partially blocked the street was an act of negligence "which create[d] merely a passive background or circumstance of an accident [but did] not give rise to a right of recovery":

> . . . Where a second actor has become aware of the existence of a potential danger created by the negligence of an original tortfeasor, and thereafter, by an independent act of negligence, brings about an accident, the first tortfeasor is relieved of liability, because the condition created by him was merely a circumstance of the accident and not its proximate cause . . .
>
> Except under unusual circumstances there is certainly no particular 'peril' encountered by an adult person in walking into the roadway of a street . . .

> Without some act of negligence on the part of either the plaintiff or Chiardio no accident could or would have resulted, and the Laundry Company was not bound to anticipate such negligence. . .
>
> . . . In the present case . . . plaintiff saw the standing truck of the Laundry Company . . . however, by her own independent act of negligence, brought about the ensuing accident, so that it was her negligence, not the negligence of the Laundry Company (even assuming that there was such negligence) that was the proximate cause of the accident.

Id. at 374-46 (emphasis added).

Straw stands in stark contrast to Liney and De Luca with respect to the issue of the foreseeability of the harm suffered by a plaintiff. In Straw, plaintiff was driving his car with his family when the vehicle's hood latch malfunctioned, causing the hood to fly open and block plaintiff's view of the highway ahead. Straw, 187 A.3d at 971-2. This sudden event forced plaintiff to bring his vehicle to an immediate and complete stop in the middle of the highway. Id. Before plaintiff could exit his car, he was rear-ended by another vehicle traveling at 60 mph. Id. Plaintiff and his family sustained injuries and his six year old son was killed. Id.

The adverse driver was acting within the course and scope of his employment at the time. Id. Therefore, plaintiff sued the driver and his employer. The driver's employer joined additional defendants, including the entity which performed repair work on plaintiff's hood latch prior to the accident. Id. at 972. This additional defendant filed a motion summary judgment which was granted by the trial court because: (1) the additional defendant did not owe a duty to the plaintiffs, and (2) the conduct of the motorist who struck plaintiff's vehicle was not reasonably foreseeable and, therefore, proximate cause could not be established. Id. at 983.

On appeal, the Superior Court found that the trial court's granting of summary judgment on these grounds was improper and remanded the case. In so finding, the court stated as follows:

> [additional defendant] performed its services for [plaintiff], the [additional defendant] knew or should have known that a foreseeable consequence of any

> negligence with respect to the hood latch would be that: [plaintiffs] would drive their vehicle; the air speed at the front of the [plaintiffs'] vehicle would increase as the [plaintiffs] increased the speed of their vehicle; the increasing air speed at the front of the vehicle would increase the drag upon a partially raised, unsecured hood; and, as a result of the increased drag upon the hood, the unsecured hood on the vehicle would fly open while the [plaintiffs] were driving. Further, the additional defendants should have known that a foreseeable risk of their negligence would be that the suddenly-raised hood would obscure [plaintiffs'] vision of the road, leading to the foreseeable risk that [plaintiffs] would hit an object in front of him, lose control of his vehicle, or unexpectedly stop his vehicle on the roadway and be hit, from behind, by another vehicle—all of which could foreseeably cause grave injuries or death to [plaintiff] and his passengers. To be sure, these are the precise risks that made the additional defendants' actions negligent in the first place.

Id. at 997.

Unlike in Liney, the on-property acts of the defendant property owner in Straw placed plaintiff in the exact position of harm which one would expect to occur off of defendant's property. The harm suffered by the plaintiff in Straw was more than foreseeable—it was almost predictable.

Here, the configuration of the loading zone and/or any direction given to McNeil merely "created a passive background or circumstance of an accident." This condition served as an incidental setting for an accident caused by the manner in which McNeil operated his truck and the position of danger in which Plaintiff voluntarily placed himself. It was not foreseeable that this passive condition, allegedly negligent or otherwise, would result in McNeil, a trained tractor trailer operator, moving his truck forward while Plaintiff was standing in front of him. The chain of causation between any act or omission of Family Dollar and the injuries sustained by Plaintiff is severed. Respectfully, the Court should grant Family Dollar's motion.

C. SCHEIDER OWES FAMILY DOLLAR DEFENSE AND INDEMNIFICATION

Family Dollar has a contract with Schneider, and indemnity rights exist under that contract. Schneider and its insurer have failed to acknowledge the obligation to defend, indemnify and hold Family Dollar harmless. Therefore, we seek indemnity, and to recoup costs and expenses in defending this action. As set forth above, there is no possible argument of independent negligence. This is a means and methods of trucking case, and Family Dollar has no control over those means and methods. It is emphatically the duty of someone parking a vehicle to park it in a safe manner. According to the police report, the cause of the subject collision is referenced as "driver inexperience."

III. Damages.

1. Expert Reports of Dr. Vegari, Dr. Fedder and Dr. Bernstein

Dr. David Vegari, an orthopedic surgeon, examined the plaintiff. See Report at Exhibit "B." He opined that Winterstein could work in a sedentary job or in a function which would be primarily deskwork. Dr. Stephen Fedder, a neurosurgeon, also examined the plaintiff. See Report at Exhibit "C." He opined that Winterstein was employable in a full time capacity in a sedentary or light duty capacity. Dr. Bernstein, a urologist, examined Mr. Winterstein and opined that his symptoms could improve with diet and medication, and diabetes and cigarette smoking could play a role in certain symptoms. See Report at Exhibit "D."

2. Expert Report of Irene Mendelsohn, M.S., CRC

Irene Mendelsohn, M.S., CRC interviewed and administered vocational testing to Winterstein on November 2, 2019. After doing so and after reviewing voluminous medical records and expert reports, Ms. Mendelsohn opined that Winterstein was employable. He tested ta the medium level of work in functional capacity testing. There are no medical opinions stating

that he is totally and permanently disabled from working. There are also multiple medical opinions indicating that he can engage in non-physical work. Mendelsohn opined that Winterstein can work in suitable sedentary and light-level jobs which would consist of service support jobs such as security monitor or gate guard, dispatching clerk, customer service clerk, counter/rental clerk, and telephone answering service operator. He has the capacity to earn at the same hourly rate now, when compared with the $16.71 per hour which he reportedly earned as a fuel delivery driver. See Report at Exhibit "E."

II. Witnesses

1. Brian Winterstein
2. Cecil McNeil
3. Kenneth Vaughn
4. Candice Edwards
5. David Shay
6. Officer Yisleidy Minaya
7. Heidy Gotay
8. Carmen Rivera
9. Emelyn Flores
10. Gabriel Hutchinson
11. Joseph Kochar
12. Custodians of Records from
    a. Reading Hospital
    b. Todd Schwartz, D.O.
    c. DE Valley Chiropractic & Rehab
    d. Penn Medicine (orthopedics, neurology, urology)
    e. WellSpan Medical Group
    f. Keystone Spine & Pain Management
    g. Supply One Plastics
    h. Diagnostic Health of Reading
    i. Berks Community Health Center
    j. Chestnut Hill Hospital
    k. Dr. Hridayesh Nat
    l. Dr. Ronald L. Burinsky
13. Dr. H. Isaac Chen
14. Dr. Harold Einsig
15. Dr. Robert Caleb Kovell
16. Dr. Richard I. Zamarin
17. Steven Gemerman, Ph.d

18. Kimberly Kushner, MSN, RN
19. Andrew C. Verzilli, MBA
20. Christina Kelly
21. Scott L. Turner
22. John A. Nawn
23. Irene Mendelsohn, M.S., CRC
24. Dr. David Vegari
25. Dr. Stephen Fedder
26. Dr. Guy T. Bernstein
27. Any and all witnesses listed or referenced in the pretrial memorandum of any party or called by any party at trial

III. Exhibits

1. Video of the Incident
2. Deposition Transcript (including exhibits) of Brian Winterstein
3. Deposition Transcript (including exhibits) of Cecil McNeil
4. Deposition Transcript (including exhibits) of Kenneth Vaughn
5. Deposition Transcript (including exhibits) of Candice Edwards
6. Deposition Transcript (including exhibits) of David Shay
7. Deposition Transcript (including exhibits) of Officer Yisleidy Minaya
8. Deposition Transcript (including exhibits) of Heidy Gotay
9. Deposition Transcript (including exhibits) of Carmen Rivera
10. Deposition Transcript (including exhibits) of Emelyn Flores
11. Deposition Transcript (including exhibits) of Gabriel Hutchinson
12. Reports/c.v. Dr. H. Isaac Chen
13. Reports/c.v. Dr. Harold Einsig
14. Reports/c.v. Dr. Robert Caleb Kovell
15. Reports/c.v. Dr. Richard I. Zamarin
16. Reports/c.v. Steven Gemerman, Ph.d
17. Reports/c.v. Kimberly Kushner, MSN, RN
18. Reports/c.v. Andrew C. Verzilli, MBA
19. Reports/c.v. Christina Kelly
20. Reports/c.v. Scott L. Turner
21. Reports/c.v. John A. Nawn
22. Reports/c.v. Irene Mendelsohn, M.S., CRC
23. Reports/c.v. Dr. David Vegari
24. Reports/c.v. Dr. Stephen Fedder
25. Reports/c.v. Dr. Guy T. Bernstein
26. Any and all color photographs of the accident site
27. All pleadings in this matter
28. All discovery responses in this matter
29. All agreements between Family Dollar and Schneider
30. All communications between Family Dollar and Schneider
31. All Lease documents for Family Dollar
32. All records obtained via subpoena from:
    a. Reading Hospital

b. Todd Schwartz, D.O.
c. DE Valley Chiropractic & Rehab
d. Penn Medicine (orthopedics, neurology, urology)
e. WellSpan Medical Group
f. Keystone Spine & Pain Management
g. Supply One Plastics
h. Diagnostic Health of Reading
i. Berks Community Health Center
j. Chestnut Hill Hospital
k. Dr. Hridayesh Nat
l. Dr. Ronald L. Burinsky

33. All documents produced during discovery whether formally or informally
34. All documents marked at depositions
35. All documents nominated by Plaintiff
36. All documents nominated by a co-defendant
37. Records and diagnostic films of all Plaintiff's medical care providers
27. Any and all exhibits listed or referenced in the pretrial memorandum of any party or introduced by any party at trial
28. Any and all documents filed with the court
29. Defendant reserves the right to supplement and/or amend this list prior to trial

IV. Current Demand/Offer:

Demand: $15,000,000

Offer: none

V. Insurance

Family Dollar is self-insured up to $1,000,000. Family Dollar is insured by Arch Insurance Company with policy limits of $1,000,000. Family Dollar has excess insurance provided by Liberty Insurance Company with policy limits of $5,000,000.

VI. Estimate Time for Trial:

10-12 days

VII. Reports attached

SCHNADER HARRISON SEGAL & LEWIS LLP
BY: /s/ Gary N. Smith
Gary N. Smith, Esq.
Attorney for Ashby, Inc., Dollar Tree, Inc., Family Dollar Stores, Inc., and Family Dollar Stores of Pennsylvania, LLC