JOYCE LEWIS : NUMBER: 539,927, “B”

VERSUS : FIRST JUDICIAL DISTRICT COURT

JERRY LAIRD, R & R ENTERPRISES,

INC. AND SENTRY SELECT

INSURANCE COMPANY, ET AL : CADDO PARISH, LOUISIANA

**JUDGMENT ON PLAINTIFF’S MOTION FOR**

**SUMMARY JUDGMENT**

 The Court has thoroughly considered the Plaintiff’s Motion for Summary Judgment on Failure to Mitigate and Comparative Fault, filed September 12, 2011; the opposition filed by defendants Jerry Laird, R & R Enterprises, Inc. and Sentry Select Insurance Company, oral arguments of Lara Lane and Trey Morris held October 31, 2011, the entire summary judgment record, and applicable law. Concluding the presence of genuine issues of material fact, and for reasons set forth[[1]](#footnote-1), the Court concludes that the motion should be denied. Accordingly:

 **IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff’s Motion for Summary Judgment on Failure to Mitigate and Comparative Fault is denied at plaintiff’s costs.**

 Signed this 31st day of October, 2011 in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

B. Trey Morris, Counsel for Joyce Lewis

Justin C. Dewett, Counsel for Joyce Lewis

Lara A. Lane, Counsel for Jerry Laird, R & R Enterprises sand Sentry Select Insurance Company

Mark E. Gilliam, Counsel for Southwestern Electric Power Company

Joseph Greenwald, Counsel for City of Shreveport

1. Following the accident August 10, 2009, the plaintiff, Joyce Lewis, underwent knee surgery on February 25, 2010. The summary judgment record suggests that the plaintiff was playing softball less than six weeks following the surgery, on or about April 6, 2010, and also played regularly from April through September 2010. The evidence in this record is sufficient to set forth genuine issues of material fact as to the affirmative defense of failure to mitigate damages, and this line of evidence is admissible for other reasons, as well. The potential comparative fault of Swepco, City of Shreveport as well as, in particular, the plaintiff, is a subject for the jury to determine. Ms. Lewis, just as Mr. Laird, had a duty to be attentive, to see what should have been seen and to act as a prudent driver under the fact-specific circumstances. A jury trial on these issues is warranted. [↑](#footnote-ref-1)