JANICE THOMAS : NUMBER: 538,743-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

MARKET FOOD STORE, ET AL : CADDO PARISH, LOUISIANA

 **REASONS FOR JUDGMENT**

Trial was held October 19, 2011. The Court heard testimony from Janice Thomas, Frances Lewis, Sr., Lee Andrew Hamilton, Michelle Coleman, Larry Eason and, by stipulation, Gary Vines. The Court also received into evidence photographs, a DVR as well as medical reports and bills from Willis Knighton Medical Center, Accident and Injury Chiropractic Clinic, Lone Star Radiology and White Rock Open Air MRI. After thorough consideration of all of the evidence, applicable law, arguments of counsel, and for reasons which follow, the Court concludes that the plaintiff, Janice Thomas, has not met her burden of proof as to the defendant Market Food Store, Inc. and Markel International Insurance, Ltd. Judgment shall therefore be granted in favor of defendants.

1. In reviewing the photographic evidence, particularly J8, and in viewing the DVR, the Court is unable to conclude that the mat had any defect or that the store was negligent to any extent;

2. In considering the testimony of Frances Lewis and more particularly the testimony of store employees who witnessed the event, Michelle Coleman and Larry Eason, the Court accepts the defense position that “there was nothing wrong with the mat” and that Ms. Thomas, for whatever reason, stumbled and made contact with the store wall. Further, in considering the stipulation of the Gary Vines testimony and in examining his photographs, particularly D5, the Court concludes that this long, heavy rubber mat which grips the floor did not contain frayed or rough edges nor did it contain any defect.

3. The Court is troubled by some of the inconsistencies of Ms. Thomas’ testimony (in court testimony contrasted (a) with her statement to Vines, and (b)her deposition testimony) as to the details of the event. These inconsistencies, while seemingly minor in isolation, become problematic when viewed cumulatively. More significant, however, are the inconsistencies in Ms. Thomas’ testimony regarding whether or not she was employed at Red Oak Nursing Home on April 8, 2009 in light of her initial in-court testimony that she was not employed anywhere between December 23, 2009 and January 2010. Other concerns by the Court include Ms. Thomas’ in-court testimony that she couldn’t walk at the point of being evaluated in the hospital emergency room contrasted with the nurse’s observations, as recorded in the report, that she “ambulates well”. Finally, there is a significant lapse in medical treatment which is inconsistent with plaintiff’s complaints of pain.

4. Ms. Thomas’ court demeanor was unusual. During direct examination, Ms. Thomas sobbed to the extent that counsel, after several attempts to calm her, asked the Court for a recess. During testimony by one of the defense witnesses, Ms. Thomas acted inappropriately and had to be admonished by the Court. The somewhat odd demeanor coupled with the numerous inconsistencies present a credibility problem.

In conclusion, and notwithstanding the usual excellent attorney work of Robert Piper, this Court concludes that the plaintiff has not met her burden of proving liability as to the two defendants. Accordingly, there shall be Judgment in favor of Market Food Store, Inc. and Markel International Insurance Company and against Janice Thomas.

Counsel shall submit a Judgment in accordance with La. Dist. Ct. R. 9.5.

Signed this 17th day of November, 2011, in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

Robert E. Piper, Jr., Counsel for Janice Thomas

John C. Turnage, Counsel for Market Food Store, Inc. And Markel International Insurance Company