

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

**MELISSA METHVIN and  
 DONNIE METHVIN,**

**Plaintiffs**

**vs.**

**COCA-COLA BOTTLING CO.  
 CONSOLIDATED,**

**Defendants.**

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**CASE NO.: CV-2016-900760**

**MOTION FOR JUDGMENT AS A MATTER OF LAW, OR,  
 IN THE ALTERNATIVE MOTION FOR NEW TRIAL  
 AND/OR FOR JUDGMENT NOTWITHSTANDING THE VERDICT  
 AND/OR REMITTUR**

Pursuant to Rules 50 and 59 of the Alabama Rules of Civil Procedure, Defendant, Coca-Cola Bottling Co. Consolidated (sometimes referred to as “Consolidated” or “Coca-Cola Consolidated”), moves this Court to alter, amend, or vacate the jury verdict rendered against it on January 11, 2019, and the judgment entered thereon on January 16, 2019, and to enter judgment as a matter of law and/or judgment notwithstanding the verdict in its favor with respect to Melissa Methvin’s claims (sometimes referred to as “Mrs. Methvin” or “Plaintiff”) and to set aside the jury verdict rendered against it on January 11, 2019, and the judgment entered thereon on January 16, 2019; and, in the alternative, Coca-Cola Bottling Co. Consolidated asks the Court to order a new trial or to remit the amount of damages awarded to the Plaintiffs. Coca-Cola Bottling Co. Consolidated was entitled to judgment as a matter of law and is now entitled to the judgment against it being vacated.

These motions are based upon the following grounds, together with such different and additional submissions and arguments as were presented to the Court at trial or as are now or later

presented to this Court in brief and in oral argument all of which are incorporated herein by reference:

(a) To set aside the jury's verdict and judgment entered in this case in favor of plaintiff Melissa Methvin and enter a judgment notwithstanding the verdict in favor of this defendant (judgment as a matter of law) as requested and in accordance with this defendant's motions for directed verdict (judgment as a matter of law) made at the close of the plaintiffs' case, at the close of this Defendant's case, and at the close of all of the evidence, upon each ground (all of which are incorporated herein by reference and made a part hereof) set forth in said motions or at oral argument before this court during the trial and/or in this motion or any supplement or in argument hereafter, or in the alternative,

(b) To set aside said verdict and judgment in favor of Coca-Cola Bottling Co. Consolidated, and to grant this defendant a new trial or, further, in the alternative,

c) To order a remittitur.

**Grounds for the motion for judgment as a matter of law and/or  
Grounds for Judgment Notwithstanding the Verdict**

1. Coca-Cola Bottling Co. Consolidated incorporates by reference all of those grounds set out both in writing and orally in support of its motions for judgment as a matter of law presented at the close of Plaintiffs' case and at the close of all of the evidence at trial and at the close of this Defendant's case.

2. The Court erred in denying Coca-Cola Bottling Co. Consolidated's motion for judgment as a matter of law at the close of the Plaintiff Melissa Methvin and Plaintiff Donnie Methvin's case.

3. The Court erred in denying Coca-Cola Bottling Co. Consolidated's motion for judgment as a matter of law at the close of the Defendant's case and at the close of all of the evidence.

4. The verdict and judgment entered thereon are contrary to the law.

5. The verdict and judgment entered thereon are contrary to the weight of the evidence.

6. The verdict and judgment entered thereon are contrary to the facts established by the weight of the evidence.

7. Plaintiffs failed to present adequate evidence for a reasonable jury to find for either Plaintiff and against Coca-Cola Bottling Co. Consolidated.

8. Plaintiffs failed to present substantial evidence in support of each of the elements of their claims.

9. Plaintiffs failed to prove by substantial evidence that either was entitled to recover from this Defendant.

10. Plaintiff Melissa Methvin was guilty of and committed assumption of the risk as to her alleged accident as a matter of law so that the defendant was entitled to a judgment in its favor.

11. Plaintiff Donnie Methvin was guilty of and committed assumption of the risk as to Plaintiff's alleged accident as a matter of law so that the defendant was entitled to a judgment in its favor.

12. Plaintiff Melissa Methvin knew of the danger that she claimed was presented by the alleged water on the floor and that she says caused her harm, appreciated the risk of harm caused by that alleged danger, and voluntarily took that risk, so that she cannot recover damages because of her assumption of the risk in voluntarily assuming the risk that she would be harmed.

13. This Defendant is entitled to judgment as a matter of law because Plaintiff Melissa Methvin caused and knew of the existence of the danger that she claims was presented to Plaintiff, appreciated or should have appreciated the possibility of injury to herself or others as result of that hidden danger, and, having a reasonable opportunity to avoid it, voluntarily exposed herself to the risk.

14. The Court erred by granting Plaintiffs' motion for judgment as a matter of law on the defense of assumption of the risk and by striking the defense of assumption of the risk at the judgment as a matter of law stage of the case.

15. Both Plaintiffs failed to exercise reasonable care and that failure to exercise reasonable care constituted negligence that was the sole proximate cause of the accident as a matter of law.

16. Both Plaintiff Melissa Methvin and Plaintiff Donnie Methvin were guilty of assumption of the risk and contributory negligence as a matter of law, so that the Court should have entered judgment as a matter of law in favor of this Defendant, since both had control of the premises and knew that there was an alleged leak, both knew and recognized that the alleged leak was a safety hazard, neither warned any co-employees about the alleged hazard or took any action to protect themselves or anyone else from the consequences of any alleged continued leak, neither checked to determine whether any technician had responded to address the alleged leak, even though Melissa Methvin testified that the machine was still leaking when she looked at it and allegedly cleaned up water that had leaked onto the carpet at the right-hand front corner of it, and even though Melissa Methvin testified that she was told that a technician would respond within 20 minutes and her desk was at the front of the locked door of the business, neither called this Defendant or the 800

number after the 20 minute period had expired or made any other effort to notify this Defendant that there was any problem or that a technician had not responded, neither said that they bothered to look in the men's restroom or anywhere else for water, neither looked at the carpet to determine whether or not it was wet or wetter than they may have claimed it was previously in any effort to determine whether water was migrating from the alleged leaking machine, neither checked the floor of the bathroom, or the alleged leaking machine, even though Melissa Methvin testified she did not look at the floor when she walked in, Melissa Methvin said that she had seen water on floors before in bathrooms and was aware that a person could slip in water on a floor, and Melissa Methvin testified that she could see water on the floor when she did look.

17. The Complaint failed to state a claim on which relief could be granted inasmuch as one claim advanced as a basis for recovery was for an alleged failure to "properly maintain and/or repair the vending machine" which allegedly leaked, but the evidence was undisputed as to the standard of care applicable to this Defendant and this Defendant's conduct was established by the industry standard which indisputably was met in all respects so that none of the claims made by Plaintiffs could state a claim on which relief could be granted.

18. The Court erred in failing to grant judgment as a matter of law to this Defendant on the claim of improper, inadequate, or otherwise inappropriate maintenance, and by allowing the Plaintiffs to argue that alleged ground for relief to the jury, and instructing the jury in that regard, since the evidence was undisputed that Coca-Cola Bottling Co. Consolidated followed the industry standard applicable to companies of its type and acted in no way contrary to that standard of care so that its maintenance procedure, as a matter of law, was clearly adequate.

19. The Court erred to reversal by allowing the jury to consider the question of alleged improper maintenance inasmuch as the evidence was undisputed that the industry standard concerning maintenance and all other aspects of the response of this Defendant to the 800 call met that standard of care.

20. The judgment is due to be set aside with judgment entered in favor of this Defendant because the evidence shows that this Defendant at all times exercised reasonable care consistent with the industry standard for comparable companies so that reasonable fair-minded jurors could not have differed in concluding that this Defendant exercised reasonable care at all times.

21. The Court erred by allowing any evidence of the alleged 2016 leak incident to be presented to the jury and, in the alternative, by allowing that evidence as anything other than impeachment, with a proper limiting instruction to the jury, which was not given, since the alleged 2016 leak was not relevant to any material issue concerning the 2015 incident complained of by the Plaintiffs and because that evidence was developed by the Plaintiffs after suit had begun through direct contact with this Defendant and illicit videotaping and tape recording of a technician of this Defendant in what was a clear effort to bolster their claim and to use improper pattern evidence that was “fruit from a poisonous tree” not allowed by the case law or by statutory authority here in Alabama.

22. The Court erred by failing to give Defendant’s requested jury charge number 32, APJI 15.08, with respect to the alleged 2016 leak, at a minimum, with an instruction to limit the evidence to impeachment, while, alternatively it remains clear that it was error to allow that evidence for any purpose, since it was alleged pattern evidence not relevant to any material at issue in this lawsuit generated by the Plaintiffs through improper contact with this Defendant and this

Defendant's representatives after litigation began and which was clearly so overly prejudicial under Alabama Rule of Evidence 403 that that prejudice outweighed any slight relevance it might be argued to have.

23. The Plaintiffs' claims fail as a matter of law, because it is undisputed that the path that the water would have had to take from the alleged leaking machine would have been across the carpet in front of the doorway to the men's bathroom and through that doorway and into the bathroom, but the testimony was that that carpet was not wet when the Plaintiff walked across it, showing that the source of the alleged water on the bathroom floor would have to have been from one of the other potential sources, known or unknown, such as leaking pipes, leaks in the roof, or some other source inside the men's room, and establishing as a matter of law that water from the soft drink machine could not have been the proximate cause of Plaintiff Melissa Methvin's alleged accident.

24. The Plaintiffs have failed to mitigate their alleged damages in that the Plaintiff has been able to work, was released to return to work by Dr. West, and did not attempt to find work.

25. The Court erred by allowing argument by Plaintiff that Plaintiff had applied for disability benefits and not received them.

26. The Court erred in failing to grant judgment as a matter of law to this Defendant because of the alleged accident on premises which were not under the control of this Defendant and were subject to the control of Plaintiffs Donnie Methvin and Melissa Methvin.

27. The Court erred in failing to give the jury charges requested by this Defendant and which this Defendant again requested be given after the Court had instructed the jury, with the Court

also erring by giving those instructions to the jury that this Defendant had objected to and which this Defendant objected to again after the jury had been charged.

28. The Court erred in failing to instruct the jury, as requested by the defendant, on the defense of assumption of the risk and by failing to give the requested jury charges on this issue, including, but not limited to, APJI 30.03, as requested by the defense.

29. The Court erred in failing to give Defendant's requested jury charge number 19 based on the assumption of the risk by Melissa Methvin and based on the alleged condition of the floor as presenting an open and obvious danger to the Plaintiff.

30. The Court erred in failing to give Defendant's requested jury charge number 37, which was APJI 30.03, based on the assumption of the risk of Melissa Methvin.

31. The Court erred in failing to give Defendant's requested jury charge number 12.

32. The Court erred in failing to give the jury Coca-Cola Bottling Co. Consolidated's requested jury charge number 55.

33. The jury charges that were requested by Coca-Cola Bottling Co. Consolidated and that the Court failed to give were proper statements of law and were supported by the evidence introduced at the trial of this case. And Coca-Cola Bottling Co. Consolidated was prejudiced by the Court's failure to charge the jury with those charges and is entitled to either judgment in its favor or to a new trial with the jury being charged as set forth in the correct charges.

34. Alternatively, the jury charges that were requested by Consolidated that the Court failed to give were proper statements of law and were supported by the evidence introduced at the trial of this case. And Consolidated was prejudiced by the Court's failure to charge the jury with



those charges and is entitled to either judgment in its favor or to a new trial with the jury being charged as set forth in the correct charges.

35. Plaintiffs failed to present competent expert testimony to establish their claim, and the court should have stricken the testimony of Plaintiffs' experts whose testimony failed to meet the Daubert standard, or Frye, or any other reasonable standard and they were not qualified to testify and their testimony was not helpful to the jury.

36. As a matter of law, any alleged negligence by this Defendant was not the proximate cause of Plaintiff Melissa Methvin's alleged accident or of her alleged injuries or alleged damages or of those of Donnie Methvin, as both Melissa Methvin and Donnie Methvin were solely negligent with that negligence being the sole proximate cause of that accident.

37. Plaintiffs failed to state a claim against this Defendant upon which relief can be granted.

38. Plaintiffs failed to establish or make out a *prima facie* case against this Defendant.

39. The evidence was legally insufficient to support submission of Plaintiffs' claims against this Defendant to the jury.

40. The evidence was legally insufficient to support each and every element of Plaintiffs' claims against this Defendant.

41. The Plaintiffs' alleged injuries according to the evidence were solely the result of pre-existing conditions.

42. Plaintiffs failed to satisfy the burden of proof of their alleged damages.

43. Plaintiffs failed to meet the burden of proof of showing through competent evidence anything other than speculation concerning their claims.

44. The subject accident, according to the evidence, was the sole result of Plaintiff's sole negligence and the sole cause of the accident being the actions of Melissa Methvin, her husband, and her employer Pinnacle Recovery.

45. Judgment as a matter of law is due to be granted in favor of this Defendant because the admissible and competent evidence was undisputed that Coca-Cola Bottling Consolidated did not act negligently, contribute to or proximately cause or contribute in the slightest to causing the subject accident or in causing any harm to Plaintiff Melissa Methvin or to Donnie Methvin.

46. Plaintiff Melissa Methvin failed to establish foreseeability to anyone other than herself and her husband and employer of her alleged risk of being injured by water that had allegedly leaked onto the bathroom floor which was the very risk that caused this accident so that a fundamental element of their claims was not met as a matter of law.

47. The verdict is against the great weight of the evidence.

48. Plaintiff's complaint and amendments to it against this Defendant are not supported by substantial evidence in that:

- a. There are no controverted issues of fact upon which reasonable men could differ;
- b. There is no substantial evidence that any alleged act or omission of this Defendant caused the subject accident;
- c. There is no substantial evidence of negligence on the part of this Defendant or that any negligence on the part of this Defendant was the proximate cause of the Plaintiffs' alleged damages, or that any alleged negligence on the part of this defendant contributed in the slightest to causing the alleged accident or the Plaintiffs' alleged damages;
- d. There is no substantial evidence of any tortious conduct by this Defendant;
- e. There is no competent expert testimony or other substantial evidence that any alleged act or omission by this Defendant caused or contributed to the Plaintiffs' alleged damages;

- f. Plaintiffs' alleged injuries are solely the result of pre-existing conditions of the premises;
- g. The Plaintiffs failed to satisfy the burden of proof of their alleged damages;
- h. The subject accident involving Melissa Methvin was the sole result of Plaintiffs' sole negligence with the sole cause of the accident being the negligent actions of Plaintiffs;
- i. This Defendant and its employees, servants, and agents were not negligent and contributed in no way to the subject accident;
- j. The subject accident did not arise out of the operations or work of Coca-Cola Bottling Co. Consolidated.

49. There is no substantial evidence that this Defendant breached any duty to the Plaintiff or to anyone else.

50. It affirmatively appears from the evidence presented that Defendant conformed to the standard of care applicable to Defendant's actions and was not negligent.

51. The evidence is insufficient to support each and every element of Plaintiff's claim against this Defendant, including breach of duty or failure to exercise reasonable care, causation in fact, proximate causation and damage.

52. There is no substantial evidence that any alleged act or omission of this Defendant was the proximate cause of the Plaintiffs' alleged injuries.

53. It affirmatively appears from the evidence that the alleged damages to Plaintiff were the result of a superseding, intervening cause or causes.

54. The opinion testimony of Plaintiffs' experts does not create any substantial question of fact regarding causation in this case.

55. The testimony of Plaintiffs' experts as to causation in this case fails to create a question of fact because it was entirely conclusory, speculative, and lacking in a proper foundation in the facts and evidence and a proper and reliable methodology and factual basis from which to provide a basis for expert opinion testimony in Alabama. Kyser v. Harrison, 908 So.2d 914 (Ala. 2005); Bradley v. Miller, 878 So.2d 262, 266 (Ala. 2003); Beckon v. Rhone-Polignac, Inc., *supra*.

56. Plaintiffs' expert testimony failed to create any question of fact in this case because it did not meet the minimal requirements of Rule 702 of the Alabama Rules of Evidence nor the other established minimal reliability requirements for expert testimony in this state, including *inter alia*, Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

57. This Defendant is entitled to judgment as a matter of law on the basis of all of the defenses averred in this Defendant's answers to Plaintiffs' Complaints, and Amended Complaints; which are adopted and incorporated as if set out herein.

58. Plaintiffs' evidence of causation is insufficient because the evidence is without selective application to Plaintiffs' theory, which remains entirely conjectural. Bradley v. Miller, 878 So.2d 262 (Ala. 2003); Ex parte Diversely Corp., 742 So.2d 1250, 1254-1255 (Ala. 1999).

59. There is no substantial, competent evidence that any alleged tortious conduct, act or omission of this Defendant was either the cause in fact or the proximate cause of the Plaintiff's alleged injuries or damages.

60. For all of the reasons above, at a minimum, Coca-Cola Bottling Co. Consolidated is entitled to a remittur of the judgment to a reasonable, fair amount.

61. The judgment of \$1,400,000 is so large as to shock the conscience in a case involving a Plaintiff who had all of the same conditions before the accident that she claimed that she had after

the accident and who clearly could work as shown by the testimony of Dr. Chalhub and Dr. West and so that the judgment had to be the result of bias, passion, or prejudice by the jury and so that the verdict should be set aside.

62. Coca-Cola Bottling Co. Consolidated, reserves the right to supplement its motion for new trial after it receives the trial transcript and exhibits in this case.

### **Grounds for New Trial**

Coca-Cola Bottling Co. Consolidated adopts and incorporates herein by reference each and every ground assigned and stated in its renewed motion for judgment as a matter of law, and/or judgment notwithstanding the verdict, and each and every ground assigned and stated in its motion for remittur, and each and every ground stated in its motion for judgment as a matter of law filed and argued (both written and oral grounds) during trial and post-trial. This Defendant also incorporates by reference each and every ground assigned and stated above in this combined motion. Those grounds and the following individually and collectively prejudiced Coca-Cola Bottling Co. Consolidated and warrant a new trial.

1. The court should order a new trial to prevent substantial injustice to Coca-Cola Bottling Co. Consolidated

2. Because Plaintiffs advanced several theories of liability, one or more of which was improperly submitted to the jury, Consolidated is entitled to a new trial because the court “cannot presume that the verdict was returned on a good count.” South Central Bell Tel. Co. Branum, 568 So.2d 795, 799 (Ala. 1990).

3. This is clear, because the Plaintiffs’ claim of inadequate maintenance remained an issue in the case that was considered by the jury even though it was undisputed that the standard of

care for maintaining the subject soft drink machine was met in all respects; therefore, as a matter of law, the jury was allowed to consider a theory of liability which was improperly submitted to the jury and it cannot be presumed that the verdict was returned on an alleged good count.

4. The court “may weigh the credibility of the evidence and the witnesses and may grant a new trial if the jury’s verdict is not supported by the evidence or if substantial injustice would occur if a new trial were not granted.” Bekins Van Lines v. Beal, 418 So.2d 81, 84 (Ala. 1982). Under that standard, Coca-Cola Bottling Co. Consolidated is entitled to a new trial in this case.

5. The court “may properly grant a new trial even in a situation in which the granting of a [judgment as a matter of law] would be improper.” Bekins Van Lines v. Beal, 418 So.2d 81, 84 (Ala. 1982). Under that standard, Coca-Cola Bottling Co. Consolidated is entitled to a new trial in this case.

6. The court “may grant a new trial which might not constitute reversible error on appeal.” Bekins Van Lines v. Beal, 418 So.2d 81, 84 (Ala. 1982). Under that standard, Coca-Cola Bottling Co. Consolidated is entitled to a new trial in this case.

7. The court should order a new trial because the damages awarded by the jury were excessive, the product of juror passion, bias, prejudice and reveal an improperly functioning jury.

8. The cumulative errors in this case warrant a new trial.

9. The jury charges that were requested by Coca-Cola Bottling Co. Consolidated that the Court failed to give were proper statements of law and were supported by the evidence introduced at the trial of this case. And Coca-Cola Bottling Co. Consolidated was prejudiced by the Court’s failure to charge the jury with those charges and is entitled to either judgment in its favor or to a new trial with the jury being charged as set forth in the correct charges.

10. Coca-Cola Bottling Co. Consolidated incorporates by reference all of those grounds set out both in writing and orally in support of its motions for judgment as a matter of law presented at the close of Plaintiffs' case and at the close of all of the evidence at trial and at the close of this Defendant's case.

11. The Court erred in denying Coca-Cola Bottling Co. Consolidated's motion for judgment as a matter of law at the close of the Plaintiff Melissa Methvin and Plaintiff Donnie Methvin's case.

12. The Court erred in denying Coca-Cola Bottling Co. Consolidated's motion for judgment as a matter of law at the close of the Defendant's case and at the close of all of the evidence.

13. The verdict and judgment entered thereon are contrary to the law.

14. The verdict and judgment entered thereon are contrary to the weight of the evidence.

15. The verdict and judgment entered thereon are contrary to the facts established by the weight of the evidence.

16. Plaintiffs failed to present adequate evidence for a reasonable jury to find for either Plaintiff and against Coca-Cola Bottling Co. Consolidated.

17. Plaintiffs failed to present substantial evidence in support of each of the elements of their claims.

18. Plaintiffs failed to prove by substantial evidence that either was entitled to recover from this Defendant.

19. Plaintiff Melissa Methvin was guilty of and committed assumption of the risk as to her alleged accident as a matter of law so that the defendant was entitled to a judgment in its favor.

20. Plaintiff Donnie Methvin was guilty of and committed assumption of the risk as to Plaintiff's alleged accident as a matter of law so that the defendant was entitled to a judgment in its favor.

21. Plaintiff Melissa Methvin knew of the danger that she claimed was presented by the alleged water on the floor and that she says caused her harm, appreciated the risk of harm caused by that alleged danger, and voluntarily took that risk, so that she cannot recover damages because of her assumption of the risk in voluntarily assuming the risk that she would be harmed.

22. This Defendant is entitled to judgment as a matter of law because Plaintiff Melissa Methvin caused and knew of the existence of the danger that she claims was presented to Plaintiff, appreciated or should have appreciated the possibility of injury to herself or others as result of that hidden danger, and, having a reasonable opportunity to avoid it, voluntarily exposed herself to the risk.

23. The Court erred by granting Plaintiffs' motion for judgment as a matter of law on the defense of assumption of the risk and by striking the defense of assumption of the risk at the judgment as a matter of law stage of the case.

24. Both Plaintiffs failed to exercise reasonable care and that failure to exercise reasonable care constituted negligence that was the sole proximate cause of the accident as a matter of law.

25. Both Plaintiff Melissa Methvin and Plaintiff Donnie Methvin were guilty of assumption of the risk and contributory negligence as a matter of law, so that the Court should have entered judgment as a matter of law in favor of this Defendant, since both had control of the premises and knew that there was an alleged leak, both knew and recognized that the alleged leak



was a safety hazard, neither warned any co-employees about the alleged hazard or took any action to protect themselves or anyone else from the consequences of any alleged continued leak, neither checked to determine whether any technician had responded to address the alleged leak, even though Melissa Methvin testified that the machine was still leaking when she looked at it and allegedly cleaned up water that had leaked onto the carpet at the right-hand front corner of it, and even though Melissa Methvin testified that she was told that a technician would respond within 20 minutes and her desk was at the front of the locked door of the business, neither called this Defendant or the 800 number after the 20 minute period had expired or made any other effort to notify this Defendant that there was any problem or that a technician had not responded, neither said that they bothered to look in the men's restroom or anywhere else for water, neither looked at the carpet to determine whether or not it was wet or wetter than they may have claimed it was previously in any effort to determine whether water was migrating from the alleged leaking machine, neither checked the floor of the bathroom, or the alleged leaking machine, even though Melissa Methvin testified she did not look at the floor when she walked in, Melissa Methvin said that she had seen water on floors before in bathrooms and was aware that a person could slip in water on a floor, and Melissa Methvin testified that she could see water on the floor when she did look.

26. The Complaint failed to state a claim on which relief could be granted inasmuch as one claim advanced as a basis for recovery was for an alleged failure to "properly maintain and/or repair the vending machine" which allegedly leaked, but the evidence was undisputed as to the standard of care applicable to this Defendant and this Defendant's conduct was established by the industry standard which indisputably was met in all respects so that none of the claims made by Plaintiffs could state a claim on which relief could be granted.

27. The Court erred in failing to grant judgment as a matter of law to this Defendant on the claim of improper, inadequate, or otherwise inappropriate maintenance, and by allowing the Plaintiffs to argue that alleged ground for relief to the jury, and instructing the jury in that regard, since the evidence was undisputed that Coca-Cola Bottling Co. Consolidated followed the industry standard applicable to companies of its type and acted in no way contrary to that standard of care so that its maintenance procedure, as a matter of law, was clearly adequate.

28. The Court erred to reversal by allowing the jury to consider the question of alleged improper maintenance inasmuch as the evidence was undisputed that the industry standard concerning maintenance and all other aspects of the response of this Defendant to the 800 call met that standard of care.

29. The judgment is due to be set aside with judgment entered in favor of this Defendant because the evidence shows that this Defendant at all times exercised reasonable care consistent with the industry standard for comparable companies so that reasonable fair-minded jurors could not have differed in concluding that this Defendant exercised reasonable care at all times.

30. The Court erred by allowing any evidence of the alleged 2016 leak incident to be presented to the jury and, in the alternative, by allowing that evidence as anything other than impeachment, with a proper limiting instruction to the jury, which was not given, since the alleged 2016 leak was not relevant to any material issue concerning the 2015 incident complained of by the Plaintiffs and because that evidence was developed by the Plaintiffs after suit had begun through direct contact with this Defendant and illicit videotaping and tape recording of a technician of this Defendant in what was a clear effort to bolster their claim and to use improper pattern evidence that

was “fruit from a poisonous tree” not allowed by the case law or by statutory authority here in Alabama.

31. The Court erred by failing to give Defendant’s requested jury charge number 32, APJI 15.08, with respect to the alleged 2016 leak, at a minimum, with an instruction to limit the evidence to impeachment, while, alternatively it remains clear that it was error to allow that evidence for any purpose, since it was alleged pattern evidence not relevant to any material at issue in this lawsuit generated by the Plaintiffs through improper contact with this Defendant and this Defendant’s representatives after litigation began and which was clearly so overly prejudicial under Alabama Rule of Evidence 403 that that prejudice outweighed any slight relevance it might be argued to have.

32. The Plaintiffs’ claims fail as a matter of law, because it is undisputed that the path that the water would have had to take from the alleged leaking machine would have been across the carpet in front of the doorway to the men’s bathroom and through that doorway and into the bathroom, but the testimony was that that carpet was not wet when the Plaintiff walked across it, showing that the source of the alleged water on the bathroom floor would have to have been from one of the other potential sources, known or unknown, such as leaking pipes, leaks in the roof, or some other source inside the men’s room, and establishing as a matter of law that water from the soft drink machine could not have been the proximate cause of Plaintiff Melissa Methvin’s alleged accident.

33. The Plaintiffs have failed to mitigate their alleged damages in that the Plaintiff has been able to work, was released to return to work by Dr. West, and did not attempt to find work.

34. The Court erred by allowing argument by Plaintiff that Plaintiff had applied for disability benefits and not received them.

35. The Court erred in failing to grant judgment as a matter of law to this Defendant because of the alleged accident on premises which were not under the control of this Defendant and were subject to the control of Plaintiffs Donnie Methvin and Melissa Methvin.

36. The Court erred in failing to give the jury charges requested by this Defendant and which this Defendant again requested be given after the Court had instructed the jury, with the Court also erring by giving those instructions to the jury that this Defendant had objected to and which this Defendant objected to again after the jury had been charged.

37. The Court erred in failing to instruct the jury, as requested by the defendant, on the defense of assumption of the risk and by failing to give the requested jury charges on this issue, including, but not limited to, APJI 30.03, as requested by the defense.

38. The Court erred in failing to give Defendant's requested jury charge number 19 based on the assumption of the risk by Melissa Methvin and based on the alleged condition of the floor as presenting an open and obvious danger to the Plaintiff.

39. The Court erred in failing to give Defendant's requested jury charge number 37, which was APJI 30.03, based on the assumption of the risk of Melissa Methvin.

40. The Court erred in failing to give Defendant's requested jury charge number 12.

41. The Court erred in failing to give the jury Coca-Cola Bottling Co. Consolidated's requested jury charge number 55.

42. The jury charges that were requested by Coca-Cola Bottling Co. Consolidated and that the Court failed to give were proper statements of law and were supported by the evidence

introduced at the trial of this case. And Coca-Cola Bottling Co. Consolidated was prejudiced by the Court's failure to charge the jury with those charges and is entitled to either judgment in its favor or to a new trial with the jury being charged as set forth in the correct charges.

43. Alternatively, the jury charges that were requested by Consolidated that the Court failed to give were proper statements of law and were supported by the evidence introduced at the trial of this case. And Consolidated was prejudiced by the Court's failure to charge the jury with those charges and is entitled to either judgment in its favor or to a new trial with the jury being charged as set forth in the correct charges.

44. Plaintiffs failed to present competent expert testimony to establish their claim, and the court should have stricken the testimony of Plaintiffs' experts whose testimony failed to meet the Daubert standard, or Frye, or any other reasonable standard and they were not qualified to testify and their testimony was not helpful to the jury.

45. As a matter of law, any alleged negligence by this Defendant was not the proximate cause of Plaintiff Melissa Methvin's alleged accident or of her alleged injuries or alleged damages or of those of Donnie Methvin, as both Melissa Methvin and Donnie Methvin were solely negligent with that negligence being the sole proximate cause of that accident.

46. Plaintiffs failed to state a claim against this Defendant upon which relief can be granted.

47. Plaintiffs failed to establish or make out a *prima facie* case against this Defendant.

48. The evidence was legally insufficient to support submission of Plaintiffs' claims against this Defendant to the jury.

49. The evidence was legally insufficient to support each and every element of Plaintiffs' claims against this Defendant.

50. The Plaintiffs' alleged injuries according to the evidence were solely the result of pre-existing conditions.

51. Plaintiffs failed to satisfy the burden of proof of their alleged damages.

52. Plaintiffs failed to meet the burden of proof of showing through competent evidence anything other than speculation concerning their claims.

53. The subject accident, according to the evidence, was the sole result of Plaintiff's sole negligence and the sole cause of the accident being the actions of Melissa Methvin, her husband, and her employer Pinnacle Recovery.

54. Judgment as a matter of law is due to be granted in favor of this Defendant because the admissible and competent evidence was undisputed that Coca-Cola Bottling Consolidated did not act negligently, contribute to or proximately cause or contribute in the slightest to causing the subject accident or in causing any harm to Plaintiff Melissa Methvin or to Donnie Methvin.

55. Plaintiff Melissa Methvin failed to establish foreseeability to anyone other than herself and her husband and employer of her alleged risk of being injured by water that had allegedly leaked onto the bathroom floor which was the very risk that caused this accident so that a fundamental element of their claims was not met as a matter of law.

56. The verdict is against the great weight of the evidence.

57. Plaintiff's complaint and amendments to it against this Defendant are not supported by substantial evidence in that:

a. There are no controverted issues of fact upon which reasonable men could differ;

- b. There is no substantial evidence that any alleged act or omission of this Defendant caused the subject accident;
- c. There is no substantial evidence of negligence on the part of this Defendant or that any negligence on the part of this Defendant was the proximate cause of the Plaintiffs' alleged damages, or that any alleged negligence on the part of this defendant contributed in the slightest to causing the alleged accident or the Plaintiffs' alleged damages;
- d. There is no substantial evidence of any tortious conduct by this Defendant;
- e. There is no competent expert testimony or other substantial evidence that any alleged act or omission by this Defendant caused or contributed to the Plaintiffs' alleged damages;
- f. Plaintiffs' alleged injuries are solely the result of pre-existing conditions of the premises;
- g. The Plaintiffs failed to satisfy the burden of proof of their alleged damages;
- h. The subject accident involving Melissa Methvin was the sole result of Plaintiffs' sole negligence with the sole cause of the accident being the negligent actions of Plaintiffs;
- i. This Defendant and its employees, servants, and agents were not negligent and contributed in no way to the subject accident;
- j. The subject accident did not arise out of the operations or work of Coca-Cola Bottling Co. Consolidated.

58. There is no substantial evidence that this Defendant breached any duty to the Plaintiff or to anyone else.

59. It affirmatively appears from the evidence presented that Defendant conformed to the standard of care applicable to Defendant's actions and was not negligent.

60. The evidence is insufficient to support each and every element of Plaintiff's claim against this Defendant, including breach of duty or failure to exercise reasonable care, causation in fact, proximate causation and damage.

61. There is no substantial evidence that any alleged act or omission of this Defendant was the proximate cause of the Plaintiffs' alleged injuries.

62. It affirmatively appears from the evidence that the alleged damages to Plaintiff were the result of a superseding, intervening cause or causes.

63. The opinion testimony of Plaintiffs' experts does not create any substantial question of fact regarding causation in this case.

64. The testimony of Plaintiffs' experts as to causation in this case fails to create a question of fact because it was entirely conclusory, speculative, and lacking in a proper foundation in the facts and evidence and a proper and reliable methodology and factual basis from which to provide a basis for expert opinion testimony in Alabama. Kyser v. Harrison, 908 So.2d 914 (Ala. 2005); Bradley v. Miller, 878 So.2d 262, 266 (Ala. 2003); Beckon v. Rhone-Polignac, Inc., *supra*.

65. Plaintiffs' expert testimony failed to create any question of fact in this case because it did not meet the minimal requirements of Rule 702 of the Alabama Rules of Evidence nor the other established minimal reliability requirements for expert testimony in this state, including *inter alia*, Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

66. This Defendant is entitled to judgment as a matter of law on the basis of all of the defenses averred in this Defendant's answers to Plaintiffs' Complaints, and Amended Complaints; which are adopted and incorporated as if set out herein.

67. Plaintiffs' evidence of causation is insufficient because the evidence is without selective application to Plaintiffs' theory, which remains entirely conjectural. Bradley v. Miller, 878 So.2d 262 (Ala. 2003); Ex parte Diversely Corp., 742 So.2d 1250, 1254-1255 (Ala. 1999).



68. There is no substantial, competent evidence that any alleged tortious conduct, act or omission of this Defendant was either the cause in fact or the proximate cause of the Plaintiff's alleged injuries or damages.

69. For all of the reasons above, at a minimum, Coca-Cola Bottling Co. Consolidated is entitled to a remittur of the judgment to a reasonable, fair amount.

70. The judgment of \$1,400,000 is so large as to shock the conscience in a case involving a Plaintiff who had all of the same conditions before the accident that she claimed that she had after the accident and who clearly could work as shown by the testimony of Dr. Chalhub and Dr. West and so that the judgment had to be the result of bias, passion, or prejudice by the jury and so that the amount should be remitted to a reasonable, fair, and equitable amount.

71. For all of the reasons above, at a minimum, Coca-Cola Bottling Co. Consolidated is entitled to a remittur of the judgment to zero dollars with no interest, attorney's fees or costs being allowed.

72. Coca-Cola Bottling Co. Consolidated, reserves the right to supplement its motion for new trial after it receives the trial transcript and exhibits in this case. Coca-Cola Bottling Co. Consolidated, incorporates herein by reference all grounds and arguments for a new trial and/or judgment notwithstanding the verdict and/or motion for judgment as a matter of law and/or remittitur made in this Defendant's motions *in limine*, in this Defendant's motions for judgment as a matter of law, and the arguments concerning those judgments for a matter of law.

#### **Grounds for a Remittur**

1. The judgment of \$1,400,000 is so large as to shock the conscience in a case involving a Plaintiff who had all of the same conditions before the accident that she claimed that she had after

the accident and who clearly could work as shown by the testimony of Dr. Chalhub and Dr. West and so that the judgment had to be the result of bias, passion, or prejudice by the jury and so that the amount should be remitted to a reasonable, fair, and equitable amount.

2. Coca-Cola Bottling Co. Consolidated incorporates by reference all of those grounds set out both in writing and orally in support of its motions for judgment as a matter of law presented at the close of Plaintiffs' case and at the close of all of the evidence at trial and at the close of this Defendant's case.

3. The Court erred in denying Coca-Cola Bottling Co. Consolidated's motion for judgment as a matter of law at the close of the Plaintiff Melissa Methvin and Plaintiff Donnie Methvin's case.

4. The Court erred in denying Coca-Cola Bottling Co. Consolidated's motion for judgment as a matter of law at the close of the Defendant's case and at the close of all of the evidence.

5. The verdict and judgment entered thereon are contrary to the law.

6. The verdict and judgment entered thereon are contrary to the weight of the evidence.

7. The verdict and judgment entered thereon are contrary to the facts established by the weight of the evidence.

8. Plaintiffs failed to present adequate evidence for a reasonable jury to find for either Plaintiff and against Coca-Cola Bottling Co. Consolidated.

9. Plaintiffs failed to present substantial evidence in support of each of the elements of their claims.

10. Plaintiffs failed to prove by substantial evidence that either was entitled to recover from this Defendant.

11. Plaintiff Melissa Methvin was guilty of and committed assumption of the risk as to her alleged accident as a matter of law so that the defendant was entitled to a judgment in its favor.

12. Plaintiff Donnie Methvin was guilty of and committed assumption of the risk as to Plaintiff's alleged accident as a matter of law so that the defendant was entitled to a judgment in its favor.

13. Plaintiff Melissa Methvin knew of the danger that she claimed was presented by the alleged water on the floor and that she says caused her harm, appreciated the risk of harm caused by that alleged danger, and voluntarily took that risk, so that she cannot recover damages because of her assumption of the risk in voluntarily assuming the risk that she would be harmed.

14. This Defendant is entitled to judgment as a matter of law because Plaintiff Melissa Methvin caused and knew of the existence of the danger that she claims was presented to Plaintiff, appreciated or should have appreciated the possibility of injury to herself or others as result of that hidden danger, and, having a reasonable opportunity to avoid it, voluntarily exposed herself to the risk.

15. The Court erred by granting Plaintiffs' motion for judgment as a matter of law on the defense of assumption of the risk and by striking the defense of assumption of the risk at the judgment as a matter of law stage of the case.

16. Both Plaintiffs failed to exercise reasonable care and that failure to exercise reasonable care constituted negligence that was the sole proximate cause of the accident as a matter of law.

17. Both Plaintiff Melissa Methvin and Plaintiff Donnie Methvin were guilty of assumption of the risk and contributory negligence as a matter of law, so that the Court should have entered judgment as a matter of law in favor of this Defendant, since both had control of the premises and knew that there was an alleged leak, both knew and recognized that the alleged leak was a safety hazard, neither warned any co-employees about the alleged hazard or took any action to protect themselves or anyone else from the consequences of any alleged continued leak, neither checked to determine whether any technician had responded to address the alleged leak, even though Melissa Methvin testified that the machine was still leaking when she looked at it and allegedly cleaned up water that had leaked onto the carpet at the right-hand front corner of it, and even though Melissa Methvin testified that she was told that a technician would respond within 20 minutes and her desk was at the front of the locked door of the business, neither called this Defendant or the 800 number after the 20 minute period had expired or made any other effort to notify this Defendant that there was any problem or that a technician had not responded, neither said that they bothered to look in the men's restroom or anywhere else for water, neither looked at the carpet to determine whether or not it was wet or wetter than they may have claimed it was previously in any effort to determine whether water was migrating from the alleged leaking machine, neither checked the floor of the bathroom, or the alleged leaking machine, even though Melissa Methvin testified she did not look at the floor when she walked in, Melissa Methvin said that she had seen water on floors before in bathrooms and was aware that a person could slip in water on a floor, and Melissa Methvin testified that she could see water on the floor when she did look.

18. The Complaint failed to state a claim on which relief could be granted inasmuch as one claim advanced as a basis for recovery was for an alleged failure to "properly maintain and/or

repair the vending machine” which allegedly leaked, but the evidence was undisputed as to the standard of care applicable to this Defendant and this Defendant’s conduct was established by the industry standard which indisputably was met in all respects so that none of the claims made by Plaintiffs could state a claim on which relief could be granted.

19. The Court erred in failing to grant judgment as a matter of law to this Defendant on the claim of improper, inadequate, or otherwise inappropriate maintenance, and by allowing the Plaintiffs to argue that alleged ground for relief to the jury, and instructing the jury in that regard, since the evidence was undisputed that Coca-Cola Bottling Co. Consolidated followed the industry standard applicable to companies of its type and acted in no way contrary to that standard of care so that its maintenance procedure, as a matter of law, was clearly adequate.

20. The Court erred to reversal by allowing the jury to consider the question of alleged improper maintenance inasmuch as the evidence was undisputed that the industry standard concerning maintenance and all other aspects of the response of this Defendant to the 800 call met that standard of care.

21. The judgment is due to be set aside with judgment entered in favor of this Defendant because the evidence shows that this Defendant at all times exercised reasonable care consistent with the industry standard for comparable companies so that reasonable fair-minded jurors could not have differed in concluding that this Defendant exercised reasonable care at all times.

22. The Court erred by allowing any evidence of the alleged 2016 leak incident to be presented to the jury and, in the alternative, by allowing that evidence as anything other than impeachment, with a proper limiting instruction to the jury, which was not given, since the alleged 2016 leak was not relevant to any material issue concerning the 2015 incident complained of by the

Plaintiffs and because that evidence was developed by the Plaintiffs after suit had begun through direct contact with this Defendant and illicit videotaping and tape recording of a technician of this Defendant in what was a clear effort to bolster their claim and to use improper pattern evidence that was “fruit from a poisonous tree” not allowed by the case law or by statutory authority here in Alabama.

23. The Court erred by failing to give Defendant’s requested jury charge number 32, APJI 15.08, with respect to the alleged 2016 leak, at a minimum, with an instruction to limit the evidence to impeachment, while, alternatively it remains clear that it was error to allow that evidence for any purpose, since it was alleged pattern evidence not relevant to any material at issue in this lawsuit generated by the Plaintiffs through improper contact with this Defendant and this Defendant’s representatives after litigation began and which was clearly so overly prejudicial under Alabama Rule of Evidence 403 that that prejudice outweighed any slight relevance it might be argued to have.

24. The Plaintiffs’ claims fail as a matter of law, because it is undisputed that the path that the water would have had to take from the alleged leaking machine would have been across the carpet in front of the doorway to the men’s bathroom and through that doorway and into the bathroom, but the testimony was that that carpet was not wet when the Plaintiff walked across it, showing that the source of the alleged water on the bathroom floor would have to have been from one of the other potential sources, known or unknown, such as leaking pipes, leaks in the roof, or some other source inside the men’s room, and establishing as a matter of law that water from the soft drink machine could not have been the proximate cause of Plaintiff Melissa Methvin’s alleged accident.

25. The Plaintiffs have failed to mitigate their alleged damages in that the Plaintiff has been able to work, was released to return to work by Dr. West, and did not attempt to find work.

26. The Court erred by allowing argument by Plaintiff that Plaintiff had applied for disability benefits and not received them.

27. The Court erred in failing to grant judgment as a matter of law to this Defendant because of the alleged accident on premises which were not under the control of this Defendant and were subject to the control of Plaintiffs Donnie Methvin and Melissa Methvin.

28. The Court erred in failing to give the jury charges requested by this Defendant and which this Defendant again requested be given after the Court had instructed the jury, with the Court also erring by giving those instructions to the jury that this Defendant had objected to and which this Defendant objected to again after the jury had been charged.

29. The Court erred in failing to instruct the jury, as requested by the defendant, on the defense of assumption of the risk and by failing to give the requested jury charges on this issue, including, but not limited to, APJI 30.03, as requested by the defense.

30. The Court erred in failing to give Defendant's requested jury charge number 19 based on the assumption of the risk by Melissa Methvin and based on the alleged condition of the floor as presenting an open and obvious danger to the Plaintiff.

31. The Court erred in failing to give Defendant's requested jury charge number 37, which was APJI 30.03, based on the assumption of the risk of Melissa Methvin.

32. The Court erred in failing to give Defendant's requested jury charge number 12.

33. The Court erred in failing to give the jury Coca-Cola Bottling Co. Consolidated's requested jury charge number 55.

34. The jury charges that were requested by Coca-Cola Bottling Co. Consolidated and that the Court failed to give were proper statements of law and were supported by the evidence introduced at the trial of this case. And Coca-Cola Bottling Co. Consolidated was prejudiced by the Court's failure to charge the jury with those charges and is entitled to either judgment in its favor or to a new trial with the jury being charged as set forth in the correct charges.

35. Alternatively, the jury charges that were requested by Consolidated that the Court failed to give were proper statements of law and were supported by the evidence introduced at the trial of this case. And Consolidated was prejudiced by the Court's failure to charge the jury with those charges and is entitled to either judgment in its favor or to a new trial with the jury being charged as set forth in the correct charges.

36. Plaintiffs failed to present competent expert testimony to establish their claim, and the court should have stricken the testimony of Plaintiffs' experts whose testimony failed to meet the Daubert standard, or Frye, or any other reasonable standard and they were not qualified to testify and their testimony was not helpful to the jury.

37. As a matter of law, any alleged negligence by this Defendant was not the proximate cause of Plaintiff Melissa Methvin's alleged accident or of her alleged injuries or alleged damages or of those of Donnie Methvin, as both Melissa Methvin and Donnie Methvin were solely negligent with that negligence being the sole proximate cause of that accident.

38. Plaintiffs failed to state a claim against this Defendant upon which relief can be granted.

39. Plaintiffs failed to establish or make out a *prima facie* case against this Defendant.



40. The evidence was legally insufficient to support submission of Plaintiffs' claims against this Defendant to the jury.

41. The evidence was legally insufficient to support each and every element of Plaintiffs' claims against this Defendant.

42. The Plaintiffs' alleged injuries according to the evidence were solely the result of pre-existing conditions.

43. Plaintiffs failed to satisfy the burden of proof of their alleged damages.

44. Plaintiffs failed to meet the burden of proof of showing through competent evidence anything other than speculation concerning their claims.

45. The subject accident, according to the evidence, was the sole result of Plaintiff's sole negligence and the sole cause of the accident being the actions of Melissa Methvin, her husband, and her employer Pinnacle Recovery.

46. Judgment as a matter of law is due to be granted in favor of this Defendant because the admissible and competent evidence was undisputed that Coca-Cola Bottling Consolidated did not act negligently, contribute to or proximately cause or contribute in the slightest to causing the subject accident or in causing any harm to Plaintiff Melissa Methvin or to Donnie Methvin.

47. Plaintiff Melissa Methvin failed to establish foreseeability to anyone other than herself and her husband and employer of her alleged risk of being injured by water that had allegedly leaked onto the bathroom floor which was the very risk that caused this accident so that a fundamental element of their claims was not met as a matter of law.

48. The verdict is against the great weight of the evidence.

49. Plaintiff's complaint and amendments to it against this Defendant are not supported by substantial evidence in that:

- a. There are no controverted issues of fact upon which reasonable men could differ;
- b. There is no substantial evidence that any alleged act or omission of this Defendant caused the subject accident;
- c. There is no substantial evidence of negligence on the part of this Defendant or that any negligence on the part of this Defendant was the proximate cause of the Plaintiffs' alleged damages, or that any alleged negligence on the part of this defendant contributed in the slightest to causing the alleged accident or the Plaintiffs' alleged damages;
- d. There is no substantial evidence of any tortious conduct by this Defendant;
- e. There is no competent expert testimony or other substantial evidence that any alleged act or omission by this Defendant caused or contributed to the Plaintiffs' alleged damages;
- f. Plaintiffs' alleged injuries are solely the result of pre-existing conditions of the premises;
- g. The Plaintiffs failed to satisfy the burden of proof of their alleged damages;
- h. The subject accident involving Melissa Methvin was the sole result of Plaintiffs' sole negligence with the sole cause of the accident being the negligent actions of Plaintiffs;
- i. This Defendant and its employees, servants, and agents were not negligent and contributed in no way to the subject accident;
- j. The subject accident did not arise out of the operations or work of Coca-Cola Bottling Co. Consolidated.

50. There is no substantial evidence that this Defendant breached any duty to the Plaintiff or to anyone else.

51. It affirmatively appears from the evidence presented that Defendant conformed to the standard of care applicable to Defendant's actions and was not negligent.

52. The evidence is insufficient to support each and every element of Plaintiff's claim against this Defendant, including breach of duty or failure to exercise reasonable care, causation in fact, proximate causation and damage.

53. There is no substantial evidence that any alleged act or omission of this Defendant was the proximate cause of the Plaintiffs' alleged injuries.

54. It affirmatively appears from the evidence that the alleged damages to Plaintiff were the result of a superseding, intervening cause or causes.

55. The opinion testimony of Plaintiffs' experts does not create any substantial question of fact regarding causation in this case.

56. The testimony of Plaintiffs' experts as to causation in this case fails to create a question of fact because it was entirely conclusory, speculative, and lacking in a proper foundation in the facts and evidence and a proper and reliable methodology and factual basis from which to provide a basis for expert opinion testimony in Alabama. Kyser v. Harrison, 908 So.2d 914 (Ala. 2005); Bradley v. Miller, 878 So.2d 262, 266 (Ala. 2003); Beckon v. Rhone-Polignac, Inc., *supra*.

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58. This Defendant is entitled to judgment as a matter of law on the basis of all of the defenses averred in this Defendant's answers to Plaintiffs' Complaints, and Amended Complaints; which are adopted and incorporated as if set out herein.

59. Plaintiffs' evidence of causation is insufficient because the evidence is without selective application to Plaintiffs' theory, which remains entirely conjectural. Bradley v. Miller, 878 So.2d 262 (Ala. 2003); Ex parte Diversely Corp., 742 So.2d 1250, 1254-1255 (Ala. 1999).

60. There is no substantial, competent evidence that any alleged tortious conduct, act or omission of this Defendant was either the cause in fact or the proximate cause of the Plaintiff's alleged injuries or damages.

61. For all of the reasons above, at a minimum, Coca-Cola Bottling Co. Consolidated is entitled to a remittur of the judgment to a reasonable, fair amount.

62. The judgment of \$1,400,000 is so large as to shock the conscience in a case involving a Plaintiff who had all of the same conditions before the accident that she claimed that she had after the accident and who clearly could work as shown by the testimony of Dr. Chalhub and Dr. West and so that the judgment had to be the result of bias, passion, or prejudice by the jury and so that the amount should be remitted to a reasonable, fair, and equitable amount.

63. For all of the reasons above, at a minimum, Coca-Cola Bottling Co. Consolidated is entitled to a remittur of the judgment to zero dollars with no interest or costs being allowed.

64. Coca-Cola Bottling Co. Consolidated, reserves the right to supplement its motion for new trial after it receives the trial transcript and exhibits in this case.

Respectfully submitted,

/s/ Weyman W. McCranie, Jr.  
WEYMAN W. MCCRANIE, JR. (MCC059)

Respectfully submitted,

/s/ Weyman W. McCranie, Jr.  
WEYMAN W. MCCRANIE, JR. (MCC059)  
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**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 4<sup>th</sup> day of February, 2019, served a copy of the foregoing pleading by electronically filing the foregoing with the Clerk of the Court using the Alacourt e filing system which will send notification of such filing to all counsel of record:

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/s/ Weyman W. McCranie, Jr.  
WEYMAN W. MCCRANIE, JR.