

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

MARY TATE	(
PLAINTIFF	(
	(CASE NO.5:20-cv-00265-MAS
VS.	(
	(
STEAK N SHAKE, INC.	(
DEFENDANT/THIRD-PARTY	(
PLAINTIFF	(
	(
VS.	(
	(
JAMIA DETRICK	(
THIRD-PARTY DEFENDANT	(
	(

DEFENDANT STEAK ‘N SHAKE’S PRETRIAL MEMORANDUM

Comes the Defendant, Steak ‘n Shake, and in compliance with the Court’s Pretrial Scheduling Order [DN 69], states as follows:

I. Succinct Statement of Facts

This litigation arises from a slip and fall that occurred on December 27, 2019, at the Steak ‘n Shake on Colby Taylor Drive in Richmond. Between approximately 5:30 and 6:00 p.m. on December 27, 2019, Third-Party Defendant Jamie Detrick mistakenly drove her vehicle into the Steak ‘n Shake parking through a marked exit only lane. In the process, Ms. Detrick had to swerve to avoid an oncoming/exiting vehicle and hit the curb which dislodged her vehicle’s oil pan and spilled a significant amount of oil in a line across the parking lot to her eventual parking spot. Ms. Detrick and her husband proceeded into the Steak ‘n Shake and Ms. Detrick’s husband informed Steak ‘n Shake employees of the oil spill. Steak ‘n Shake personnel immediately went to view and assess the situation and made a plan to correct it. However, before Steak ‘n Shake

could take action, and (undisputedly) only approximately five minutes after the spill was created, the Plaintiff walked through the clearly visible spill of oil, falling and injuring her elbow.

The Plaintiff had a displaced fracture of her left (non-dominant) elbow. She had surgery to repair the fracture, underwent physical therapy, and has recovered to a fully functional status. She does not have any expected needed future medical care.

II. Questions of Fact

1. Whether the subject spill of oil constituted an unreasonably dangerous condition.
2. Whether spill of oil was open and obvious.
3. Whether Jamia Detrick and/or Steak 'n Shake breached any duty owed to the Plaintiff.
4. Whether Jamia Detrick exercise ordinary care in the operation of her motor vehicle or in her actions following the discharge of oil from her vehicle.
5. Whether Jamia Detrick's failure to exercise ordinary care was a substantial factor in causing the Plaintiff's injury.
6. Whether Steak 'n Shake knew of, or in the exercise of ordinary care should have discovered, the condition of the premises.
7. Whether the spill of oil existed for sufficient time before the Plaintiff fell that the Defendant Steak 'n Shake should have remedied it.
8. Whether Defendant Steak 'n Shake failed to exercise ordinary care under the circumstances.
9. Whether Steak 'n Shake's failure to exercise ordinary care was a substantial factor in causing the Plaintiff's injury.

10. Whether the Plaintiff exercised ordinary care for her own safety and protection.
11. Whether the Plaintiff's failure to exercise ordinary care was a substantial factor in causing the Plaintiff's injury.
12. What percentage of total fault is attributable to each party found to have breached their duty of ordinary care.
13. The extent and relatedness of the Plaintiff's claimed injuries and damages to the subject fall.

III. Questions of Law

1. Whether the Defendants' actions or non-actions were a proximate cause of the Plaintiff's fall and injuries.
2. Whether the Plaintiff's conduct was a cause of her fall and injury.
3. Whether the Plaintiff has sufficiently established their claims of damages.
4. Whether any negligence by Ms. Detrick constitutes an intervening, superseding, primary, or active cause of the Plaintiff's injury.
5. In the event of a verdict against Steak 'n Shake, whether Steak 'n Shake is entitled to common law indemnity from the Third-Party Defendant Jamia Detrick pursuant to Kentucky law. *See i.e., Garland v. Tennessee Valley Auth.*, 336 F.3d 455, 457 (6th Cir. 2003); *Brown Hotel Co. v. Pittsburgh Fuel Co.*, 224 S.W.2d 165, 167 (Ky.1949).

Respectfully submitted,

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Counsel for Defendant Steak 'n Shake, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was filed through the ECF system and served this 10th day of June, 2022, which will send electronic notice and service to:

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