

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

FILED ELECTRONICALLY

MARY TATE)	
Plaintiff,)	
)	
V.)	
)	
STEAK N SHAKE, INC.)	
Defendant,)	CASE NO. 5:20-cv-00265-MAS
)	
V.)	
)	
JAMIA DETRICK)	
Defendant/Third-Party Defendant.)	

PRETRIAL COMPLIANCE: PLAINTIFF’S PRETRIAL MEMORANDUM

Comes now Plaintiff, Mary Tate, by Counsel, and for her Pretrial Memorandum states as follows:

1. Facts of the Case:

Mrs. Tate and her husband, Tom, have been married for 44 years and live in Van Wert, Ohio. Mrs. Tate retired from being a kindergarten teacher at a local church in 2018. On December 27, 2019, the two were driving their camper through Kentucky on their way to Florida, where they planned to vacation through the end of March 2020. They stopped in Richmond, Kentucky around 3:30 to 4:00 p.m. that afternoon and checked in to a Holiday Inn Express. They decided to get dinner at Steak N Shake and walked over to the restaurant around 5:30; Mrs. Tate is not sure of

the exact time they went to dinner but testified the sun had set and it was getting dark. Historic data shows sunset was at 5:25 p.m. in Richmond, Kentucky on December 27, 2019.¹

Mr. and Mrs. Tate walked diagonally across Steak N Shake's parking lot, toward its front door. As they approached the front door, Mrs. Tate slipped and fell in a swath of motor oil that had been spilled across the parking lot, landing on her left knee and elbow. Mr. Tate also slipped in the oil but did not fall. There was no absorbent powder or warning device to warn of the oil.

They went inside immediately after the fall and reported the incident to a Steak N Shake employee. A male customer, Bob Detrick (now deceased), then approached Mr. and Mrs. Tate and apologized for the oil in the parking lot, explaining that his wife (Defendant, Jamia Detrick) had hit the curb when entering the parking lot through an exit lane, and damaged their oil pan; Mrs. Detrick was in a booth and appeared to be crying at the time. Mr. Tate testified that when Mr. Detrick told him about his wife hitting the curb, he also said he had, "been calling a whole bunch of shops to try and find one that's open and can get a repair done" and that he already told Steak N Shake employees about the oil in the parking lot. Mrs. Detrick estimated it was maybe 5:20 or 5:30 p.m. when she hopped the curb, and states it was still daylight.

Steak N Shake's manager, Rhonda Wilson, was in the back office when Mr. Detrick informed the restaurant staff of the spill. She confirmed that Mr. Detrick took an employee out to the location in the parking lot to show exactly where the spill was and how much oil was on the ground. Ms. Wilson also viewed the oil spill through the windows, from inside the restaurant. She testified that Mr. and Mrs. Tate, "came in within ten minutes of us hearing from the husband and wife that she had knocked the pan off."

¹ <https://www.timeanddate.com/sun/@7170131?month=12&year=2019>

Once Ms. Wilson was aware of Mrs. Tate's fall, she filled out an incident report, drove Mr. and Mrs. Tate to their hotel so they could grab an insurance card, and then drove them to Baptist Hospital in Richmond. Mrs. Tate testified that while she and Ms. Wilson were in the vehicle, Ms. Wilson apologized for the fall happening and told her she, "didn't think that anyone was going to walk there, so it wasn't any big deal." Steak N Shake's incident report provides that the fall happened at 6:00 p.m. and that, "It had only been about 5 mins."

The fall resulted in Mrs. Tate suffering a severe left elbow dislocation and fracture which required an open reduction internal fixation surgery. That surgery took place in Florida approximately two weeks after the fall. She completed extensive physical therapy in Florida and in Ohio thereafter and has permanent loss of range of motion and residual pain in her elbow.

2. Questions of Fact:

The factual issues involve liability for Mrs. Tate's fall. The central issue is the amount of time Shake N Shake's employees had to warn of and/or remedy the oil spill after being informed of the spill. The amount of time ranges from at least 5 minutes (based on Rhonda Wilson's testimony and notation on the incident report) up to 40 minutes (based upon Mrs. Detrick's statements that it may have been around 5:20 p.m. when they pulled in, with the sun still being up -- sunset then being at 5:25 p.m. -- and the incident report then stating 6:00 p.m. as the time of the incident). Steak N Shake claims its employees acted reasonably and were figuring out what to do with the oil after they were alerted to its presence, while Plaintiff claims they did not act reasonably under the circumstances. Steak N Shake also contends the oil was "open-and-obvious" and could have been avoided.

3. Questions of Law:

Should Mrs. Tate prevail on her negligence claims, there will be an issue raised as to

whether Steak N Shake could be entitled to common law indemnity from Mrs. Detrick. Otherwise, the only remaining legal questions are possible differences in the parties' respective jury instructions and the Motions in *Limine* pending before the Court.

Respectfully submitted,

/s/ Tanner H. Shultz

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed using the Court's ECF electronic system on this the 10th day of June, 2022, which will forward a copy of same to the following:

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