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Nebraska Judicial Branch

Case Summary

In the District Court of Douglas County
 The Case ID is CI 17 0004981
 Coston v. HY-VEE, a foreign Corporation
 The Honorable James T Gleason, presiding.
 Classification: Negligence-Other
 Filed on 06/14/2017
 This case is Open as of 06/14/2017

Parties/Attorneys to the Case

| Party | Attorney |
|--|---|
| Plaintiff ACTIVE Dana J Coston 4919 Spalding St. Omaha NE 68154 | James R Welsh 9290 West Dodge Road 204 The Mark Omaha NE 68114 402-384-8160 |
| Defendant ACTIVE HY-VEE, a foreign Corporation c/o CT Corporation System 5601 South 59th Street Lincoln NE 68516 | David M Woodke 619 N 90th Street Omaha NE 68114 402-391-6000 |
| Alias is d/b/a HY-VEE Defendant ACTIVE Eastern Nebraska Human Services c/o Garry Osborn, Sect of Brd 900 S 74th Plaza #200 Omaha NE 68114 | Robert M Livingston 310 W. Kanesville Blvd. 2nd F P.O. Box 398 Council Bluffs IA 51502 712-322-4033 |
| Alias is EASTERN NE HUMAN SERVICES AGENCY | |

Court Costs Information

| Incurring By | Account | Date | Amount |
|--------------|---------------------------|------------|---------|
| Plaintiff | Petition | 06/14/2017 | \$35.00 |
| Plaintiff | Filing Fee - State | 06/14/2017 | \$3.00 |
| Plaintiff | Automation Fee | 06/14/2017 | \$8.00 |
| Plaintiff | NSC Education Fee | 06/14/2017 | \$1.00 |
| Plaintiff | Dispute Resolution Fee | 06/14/2017 | \$0.75 |
| Plaintiff | Indigent Defense Fee | 06/14/2017 | \$3.00 |
| Plaintiff | Uniform Data Analysis Fee | 06/14/2017 | \$1.00 |
| Plaintiff | J.R.F. | 06/14/2017 | \$6.00 |
| Plaintiff | Filing Fee-JRF | 06/14/2017 | \$4.00 |

| Incurring By | Account | Date | Amount |
|--------------|-------------------------|------------|---------|
| Plaintiff | Legal Aid/Services Fund | 06/14/2017 | \$6.25 |
| Plaintiff | Complete Record | 06/14/2017 | \$15.00 |
| Plaintiff | Service Fees | 06/27/2017 | \$5.47 |
| Plaintiff | Service Fees | 07/05/2017 | \$5.47 |

Financial Activity

No trust money is held by the court
No fee money is held by the court

Payments Made to the Court

| Receipt | Type | Date | For | Amount |
|---------|------------------|------------|------------------------|---------|
| 265848 | Electronic Trans | 06/14/2017 | Coston,Dana,J | \$83.00 |
| | | | Petition | \$35.00 |
| | | | Filing Fee - State | \$3.00 |
| | | | Automation Fee | \$8.00 |
| | | | NSC Education Fee | \$1.00 |
| | | | Dispute Resolution Fee | \$.75 |
| | | | Indigent Defense Fee | \$3.00 |
| | | | Uniform Data Analysis | \$1.00 |
| | | | J.R.F. | \$6.00 |
| | | | Filing Fee-JRF | \$4.00 |
| | | | Legal Aid/Services Fun | \$6.25 |
| | | | Complete Record | \$15.00 |

Register of Actions

07/25/2017 Notice-Lien
This action initiated by party Eastern Nebraska Human Services
MG
Image ID N172065TQD01

07/25/2017 Answer
This action initiated by party Eastern Nebraska Human Services
MG
Image ID N172065TID01

07/25/2017 Appearance of Counsel
This action initiated by party Eastern Nebraska Human Services
Re: Robert Livingston /mg
Image ID N172065T8D01

07/19/2017 Answer
kr This action initiated by party HY-VEE, a foreign Corporation
Image ID N17200EOGD01

07/05/2017 Return Summons/Alias Summons
MG The document number is 00462525
Served 06/29/2017, Certified Mail
Image ID N17186S1SD01

06/27/2017 Summons Issued on Eastern Nebraska Human Services
The document number is 00462525
E-MAILED: laurie@welsh-law.com
Image ID D00462525D01

06/27/2017 Return Summons/Alias Summons
MG The document number is 00459982
Served 06/19/2017, Certified Mail
Image ID N1717818YD01

06/26/2017 Praecipe-Summons/Alias
s1 This action initiated by party Dana J Coston
Image ID N17177X5WD01

06/14/2017 Notice-Service
Re: Req /mg This action initiated by party Dana J Coston
Image ID N17165NOUD01

06/14/2017 Summons Issued on Eastern Nebraska Human Services
The document number is 00459983
E-MAILED: laurie@welsh-law.com
Image ID D00459983D01

06/14/2017 Summons Issued on HY-VEE, a foreign Corporation
The document number is 00459982
E-MAILED: laurie@welsh-law.com
Image ID D00459982D01

06/14/2017 Praecipe-Summons/Alias
pm This action initiated by party Dana J Coston
Image ID N17165LQUD01

06/14/2017 Complaint-Praecipe
praecipe filed seperate..pm This action initiated by party Dana J Coston
Image ID N17165LPYD01

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

| | | |
|--------------------------------------|---|------------------|
| DANA J. COSTON, |) | CASE NO. |
| |) | |
| Plaintiff, |) | |
| v. |) | COMPLAINT |
| |) | |
| HY-VEE, INC., a foreign corporation, |) | |
| d/b/a HY-VEE, and EASTERN |) | |
| NEBRASKA HUMAN SERVICES |) | |
| AGENCY. |) | |
| |) | |
| Defendants. | | |

Plaintiff states:

1. That Plaintiff is a resident of Omaha, Douglas County, Nebraska.
2. That the Defendant, Hy-Vee, Inc., d/b/a Hy-Vee, (“Hy-Vee”), is a foreign corporation, qualified to do, and is doing business in Omaha, Douglas County, Nebraska.
3. That the Defendant, Eastern Nebraska Human Services Agency, is a corporation organized under the State of Nebraska and authorized to do and is doing business in the State of Nebraska and that at all times hereinafter mentioned will be referred to as “Eastern.” That Defendant Eastern is made a party to this action for the reason that the accident hereinafter described occurred while Plaintiff was an employee of Eastern, and that Eastern has paid certain medical bills and workers compensation insurance benefits to Plaintiff under the Nebraska Workers Compensation Act, and therefore Eastern is entitled to certain subrogation rights by virtue of these payments.
4. That on or about February 23, 2015, at approximately 5:00 o’clock p.m., Plaintiff walked in to Hy-Vee, located at 5150 Center Street, Omaha, Douglas County, Nebraska, to shop for groceries. As she entered the store, she tripped and fell over a rolled up rug in the front foyer

of the store. This fall caused her to suffer severe and permanent personal injuries and damages as hereinafter more specifically set forth in paragraph 8.

5. That the Defendant, by and through its agents, representatives and employees, while in the scope and course of their employment and agency, knew or should have known that the rolled up rug was a hazard to its customers, including the Plaintiff, who were walking over it as they entered the store. That the safe maintaining of the rug on the floor was the responsibility of Defendant by and through its agents, representatives and employees in the course and scope of their employment.

6. That the Defendant, by and through its agents, representatives and employees, was negligent in one or more of the following particulars, to-wit:

- a) In failing to use proper care under the circumstances;
- b) In creating a dangerous hazard to its shoppers, including Plaintiff, allowing them to walk over a rolled up rug in its front foyer;
- c) In failing to warn its shoppers, including Plaintiff, of the dangers and hazardous conditions of this rolled up rug;
- d) In failing to make a timely inspection of this floor to determine if it was free of any hazards and to make sure it was safe for its shoppers, including Plaintiff;
- e) In failing to maintain the floor and its rug, commonly used by its shoppers, including Plaintiff, in a safe condition when it knew or should have known that this rug was rolled up; and
- f) In failing to train its employees to recognize and dispose of hazards.

7. That one or more of these acts of negligence, as heretofore set forth in Paragraph 6 above, caused this accident, injuries and damages to Plaintiff. That any and all allegations of negligence asserted against the agents, representatives and employees of the Defendant are imputed to the Defendant under the Doctrine of Respondeat Superior.

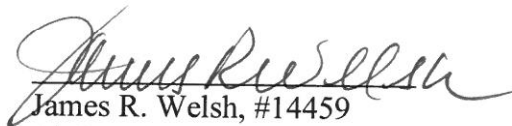
8. That as a direct and proximate result of the negligence of the Defendant, as heretofore set forth in paragraph 6, the Plaintiff was seriously and permanently injured in that she suffered physical injury to both her head and back, severe shock to her nervous system, loss of enjoyment of life, aggravation and inconvenience. That these injuries are all permanent in nature. That she has suffered, now suffers, and will in the future continue to suffer great and excruciating permanent physical pain and mental anguish. The Plaintiff has incurred fair and reasonable medical expenses because of these injuries, and will incur same in the future. That Plaintiff has lost income and wages and will lose income in the future because of these injuries. That because of these injuries, Plaintiff's earning capacity has been permanently diminished and impaired.

WHEREFORE, Plaintiff, prays for judgment against the Defendant, for special damages and general damages, together with her costs herein expended.

DATED: June 14th, 2017

DANA J. COSTON, Plaintiff,

By:



James R. Welsh, #14459

Christopher P. Welsh, #22279

9290 West Dodge Road

204 The Mark

Omaha, Nebraska 68114

(402) 384-8160

(402) 384-8211 (fax)

jwelsh@welsh-law.com

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

DANA J. COSTON,

Plaintiff,

vs.

HY-VEE, INC., a foreign corporation,
d/b/a HY-VEE and EASTERN
NEBRASKA HUMAN SERVICES
AGENCY,

Defendants.

Case No. CI 17-4981

ANSWER TO COMPLAINT

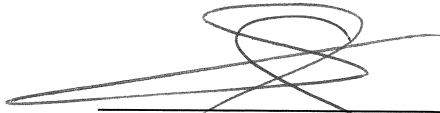
COMES NOW, Accident Fund General Insurance Company, on behalf of and for Defendant, Eastern Nebraska Human Services Agency, and for its Answer to Plaintiff's Complaint states as follows:

1. Defendant admits the allegations of paragraph 1 in its entirety.
2. Defendant admits the allegations of paragraph 2 in its entirety.
3. Defendant admits the allegations of paragraph 3 in its entirety.
4. Defendant admits the allegations of paragraph 4 in its entirety.
5. Defendant admits the allegations of paragraph 5 as it relates to Defendant Hy-Vee, Inc. Defendant denies the allegations of paragraph 5 for all other purposes and with respect to all other Defendants.
6. Defendant admits the allegations of paragraph 6, inclusive of subparts a, b, c, d, e, and f, as it relates to Defendant Hy-Vee, Inc. Defendant denies the allegations of paragraph 6, specifically including subparts a, b, c, d, e, and f, for all other purposes and with respect to all other Defendants.

7. Defendant admits the allegations of paragraph 7 as it relates to Defendant Hy-Vee, Inc. Defendant denies the allegations of paragraph 7 for all other purposes and with respect to all other Defendants.

8. Defendant admits the allegations of paragraph 8 as it relates to Defendant Hy-Vee, Inc. Defendant denies the allegations of paragraph 8 for all other purposes and with respect to all other Defendants.

WHEREFORE, Accident Fund General Insurance Company, on behalf of Defendant, Eastern Nebraska Human Services Agency, respectfully prays that damages be awarded in a fair and reasonable amount to satisfy its workers' compensation subrogation lien pursuant to Nebraska Revised Statute Section 48-118 *et seq.*, and for further relief as this Court deems just and proper.



Robert M. Livingston #22053
STUART TINLEY LAW FIRM LLP
310 W. Kaneshville Blvd., 2nd Floor
P. O. Box 398
Council Bluffs, Iowa 51502
Telephone: 712.322.4033
Facsimile: 712.322.6243
Email: livingston.robert@stuarttinley.com

ATTORNEYS FOR ACCIDENT FUND
GENERAL INSURANCE COMPANY ON
BEHALF OF AND FOR DEFENDANT
EASTERN NEBRASKA HUMAN SERVICES
AGENCY

CERTIFICATE OF SERVICE

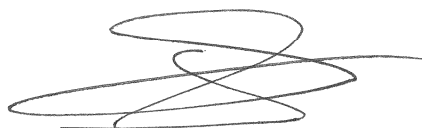
The undersigned hereby certifies that on JULY 25, 2017, the above and foregoing ANSWER TO COMPLAINT was electronically filed with the Clerk of District Court of Douglas County, Nebraska using the ECF system, service being made by ECF upon the following:

James R. Welsh
Christopher P. Welsh
9290 West Dodge Road
204 The Mark
Omaha, NE 68114

ATTORNEY FOR PLAINTIFFS

David Woodke
Woodke & Gibbons, P.C., L.L.O.
619 N. 90th Street
Omaha, NE 68114

ATTORNEY FOR DEFENDANT HY-VEE, INC.

A handwritten signature in black ink, appearing to read "Robert M. Livingston", written over a horizontal line.

Robert M. Livingston

Certificate of Service

I hereby certify that on Tuesday, July 25, 2017 I provided a true and correct copy of the Answer to the following:

Eastern Nebraska Human Services service method: No Service

Coston,Dana,J represented by Welsh,James,R (Bar Number: 14459) service method:
Electronic Service to laurie@welsh-law.com

Coston,Dana,J represented by Welsh,Christopher, (Bar Number: 22279) service method:
Electronic Service to laurie@welsh-law.com

HY-VEE, a foreign Corporation represented by Woodke,David,M (Bar Number: 15211)
service method: Electronic Service to dwoodke@woglaw.com

Signature: /s/ Robert Livingston (Bar Number: 22053)

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

DANA J. COSTON,

Plaintiff,

vs.

HY-VEE, INC., a foreign corporation,
d/b/a HY-VEE and EASTERN
NEBRASKA HUMAN SERVICES
AGENCY,

Defendants.

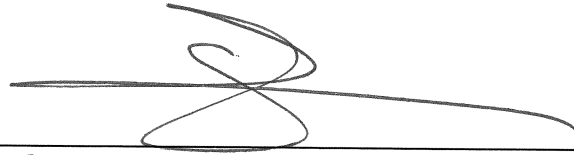
Case No. CI 17-4981

NOTICE OF LIEN

COMES NOW the undersigned, Robert M. Livingston, attorney of record for Accident Fund General Insurance Company, on behalf of and for Defendant, Eastern Nebraska Human Services Agency, and hereby places all the parties herein on formal notice of a workers' compensation subrogation lien regarding the above captioned matter, pursuant to Nebraska Revised Statute Section 48-118 *et seq.*

1. Plaintiff, Dana J. Coston has received, and continues to receive, workers' compensation benefits arising out of the alleged injuries she claims to have sustained on or about February 23, 2015.
2. Those injuries form the basis for this cause of action.
3. That as of July 25, 2017, Plaintiff has received a total of \$3,583.37 in medical benefits.
4. Accident Fund General Insurance Company, on behalf of and for Defendant, Eastern Nebraska Human Services Agency, hereby claims a lien on the claim and any recovery or judgment therein.

Dated JULY 25, 2017.



Robert M. Livingston #22053
STUART TINLEY LAW FIRM LLP
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P. O. Box 398
Council Bluffs, Iowa 51502
Telephone: 712.322.4033
Facsimile: 712.322.6243
Email: livingston.robert@stuarttinley.com

ATTORNEYS FOR ACCIDENT FUND
GENERAL INSURANCE COMPANY ON
BEHALF OF AND FOR DEFENDANT
EASTERN NEBRASKA HUMAN SERVICES
AGENCY

CERTIFICATE OF SERVICE


The undersigned hereby certifies that on JULY 25, 2017, the above and foregoing NOTICE OF LIEN was electronically filed with the Clerk of District Court of Douglas County, Nebraska using the ECF system, service being made by ECF upon the following:

James R. Welsh
Christopher P. Welsh
9290 West Dodge Road
204 The Mark
Omaha, NE 68114

ATTORNEY FOR PLAINTIFFS

David Woodke
Woodke & Gibbons, P.C., L.L.O.
619 N. 90th Street
Omaha, NE 68114

ATTORNEY FOR DEFENDANT HY-VEE, INC.


Robert M. Livingston

Certificate of Service

I hereby certify that on Tuesday, July 25, 2017 I provided a true and correct copy of the Notice-Lien to the following:

Coston,Dana,J represented by Welsh,Christopher, (Bar Number: 22279) service method:
Electronic Service to laurie@welsh-law.com

Eastern Nebraska Human Services service method: No Service

Coston,Dana,J represented by Welsh,James,R (Bar Number: 14459) service method:
Electronic Service to laurie@welsh-law.com

HY-VEE, a foreign Corporation represented by Woodke,David,M (Bar Number: 15211)
service method: Electronic Service to dwoodke@woglaw.com

Signature: /s/ Robert Livingston (Bar Number: 22053)