

No. 21-6267

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Court of Special Appeals of Maryland court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was June 22, 2021.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: June 22, 2021, and a copy of the order denying rehearing appears at Appendix A.
September 14, 2021 Petition for Writ of Certiorari filed in the US Supreme Court.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

No. 21-0267

IN THE
SUPREME COURT OF THE UNITED STATES

Aldenne Brown-Mell — PETITIONER
(Your Name)

Potomac Concrete Co. Inc, et al ^{VS.}
Creative Landscapes by Gregory — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

U.S. Supreme Court
Court of Appeals of Maryland

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

Aldenne Brown Mell
(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Adrienne Brown-Mc, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Self-employment	\$ <u>0</u>	\$ <u>-</u>	\$ <u>0</u>	\$ <u>+</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>-</u>	\$ <u>0</u>	\$ <u>-</u>
Interest and dividends	\$ <u>0</u>	\$ <u>-</u>	\$ <u>0</u>	\$ <u>-</u>
Gifts	\$ <u>0</u>	\$ <u>-</u>	\$ <u>0</u>	\$ <u>-</u>
Alimony	\$ <u>0</u>	\$ <u>-</u>	\$ <u>0</u>	\$ <u>-</u>
Child Support	\$ <u>0</u>	\$ <u>-</u>	\$ <u>0</u>	\$ <u>-</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>-</u>	\$ <u>0</u>	\$ <u>-</u>
Disability (such as social security, insurance payments)	\$ <u>-</u>	\$ <u>-</u>	\$ <u>0</u>	\$ <u>-</u>
Unemployment payments	\$ <u>-</u>	\$ <u>-</u>	\$ <u>0</u>	\$ <u>-</u>
Public-assistance (such as welfare)	\$ <u>200</u>	\$ <u>-</u>	\$ <u>200</u>	\$ <u>-</u>
Other (specify): <u>-</u>	\$ <u>-</u>	\$ <u>-</u>	\$ <u>-</u>	\$ <u>-</u>
Total monthly income:	\$ <u>200</u>	\$ <u>-</u>	\$ <u>200</u>	\$ <u>-</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<u>N/A</u>			\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<u>N/A</u>			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 1,400
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
<u>checking</u>	\$ <u>1,400</u>	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☒ Home
Value \$450,000

☐ Other real estate
Value _____

☐ Motor Vehicle #1
Year, make & model _____
Value _____

☐ Motor Vehicle #2
Year, make & model _____
Value _____

☐ Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 1,700	\$ _____
Are real estate taxes included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 400	\$ _____
Home maintenance (repairs and upkeep)	\$ 0	\$ _____
Food	\$ 300	\$ _____
Clothing	\$ 0	\$ _____
Laundry and dry-cleaning	\$ 0	\$ _____
Medical and dental expenses	\$ 0	\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>100</u>	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ _____
Life	\$ <u>0</u>	\$ _____
Health	\$ <u>0</u>	\$ _____
Motor Vehicle	\$ <u>0</u>	\$ _____
Other: _____	\$ <u>—</u>	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>0</u>	\$ _____
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ _____
Credit card(s)	\$ <u>0</u>	\$ _____
Department store(s)	\$ <u>0</u>	\$ _____
Other: _____	\$ <u>—</u>	\$ _____
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ _____
Other (specify): _____	\$ <u>—</u>	\$ _____
Total monthly expenses:	\$ <u>2500</u>	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? N/A

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Work injuries Disabilities

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 11, 2022

Adrian B. Miller

(Signature)

APPENDIX

1 CERTIFICATE OF TRANSCRIBER

2
3 I hereby certify that the proceedings
4 in the matter of Mallard vs. Creative
5 Landscaping by Gregory, Inc., Volume 1,
6 No. CAL17-13531, heard in the Circuit Court for
7 Prince George's County, Upper Marlboro,
8 Maryland, on October 29, 2018, before the
9 Honorable James J. Lombardi, Judge, were
0 recorded by means of an audio file.

1 I further certify that, to the best of
2 my knowledge and belief, page numbers 1 through
3 177 constitute the official transcript of the
4 proceedings as transcribed by me from said audio
5 file to the within typewritten matter in a
6 complete and accurate manner.

7 I further certify that I am neither
8 related to, nor an employee of, any attorney or
9 party herein, and that I have no interest in the
0 outcome of this case.

1 In Witness Whereof, I have affixed my
2 signature this 18th day of September, 2019.

3
4 
5 _____
6 SUSANNE BERGLING, RMR-CRR-CLR

Attorney Complaints

Against Kevin Finnegan

8401 Colesville Road, Ste. 630

Silver Spring, MD 20910

301-589-2999

Adrienne Mallard v. Potomac Concrete, Co., et

For starters, Kevin seemed to fight me against nearly every idea or suggestion. It seemed to be his way or no way.

As a claimant and a client who has never spent a day in law school, I hired and relied on him to represent my personal injury case and zealously fight for my rights to a fair and equal trial. He did not. He seemed to waiver at times especially close to the trial date. The week of the trial was particularly extraordinary, and the trial was nothing short of unbelievable.

Some of the issues.

During deposition, I had my notebook which I keep notes in for my VA workers compensation case. I had a deadline the same day to make an important filing. The deposition lasted from about 10:00 am to 3:30 pm. Extremely long from what I have been told. Sitting next to Kevin, I had my notebook on the table during deposition. Halfway through deposition, the defendants said they needed to confiscate my notebook. I am not understanding, this is my notebook. I desperately NEED my notebook (my notes) for my other case (workers comp) I am pro se (unfortunately). Kevin said **he didn't notice my notebook**, on the table right next to his open laptop he was busy on emails and other issues throughout my deposition. Defendants took my notebook, which is my bible for my workers comp case with very important notes and instructions for 3 years! My notebook helped me because I do not have representation and I am forced to do everything myself (research, learn law/rules, write briefs, write responses, filings, follow thousands of rules...). I told everyone I need my notebook; I have to file something today and how in the world can I work on my workers comp case without my notebook? They took it anyway, Kevin told me they have to take it. I said I need to file, I need my notebook. I was devastated! That is like blind filing. Can you imagine handling a case and people come in without notice, snatch away all of your notes and your work, and you have to file by end of day!?! I asked Kevin, can't they just make copies, I need my book! Kevin Finnegan said NO! (They had a copier). Just devastating as if I were not going through enough with injuries on all four limbs and suffering Life-Long injuries and nerve damages with my life flipped inside out. I called Kevin's office afterwards in tears. Kevin acted like he could not understand. They scanned every page and emailed it to me. I had to ask for a filing continuance...

Note: After Kevin Finnegan lost my case, I asked him for my notebook back, he said he will give it back to me but it is still evidence. I went to the office to pick it up. Now, this tells everyone he could have made copies and given me back my notebook.

I suggested Kevin get a (not sure of title) Life Specialist, to attest to my future lost pay I surely have to right to ask for because I have a degree and had 3-JOBS when I got numerous injuries. For months, Kevin refused, he said I do not qualify I don't have work experience. At time I was 50 years old and generally had 2 jobs throughout. The week of trial he finds one who testifies by video in trial (I don't think I ever met her). When she said I had not worked since injury, some of the juror's gasp. Kevin did not make any corrections. He knew I did go back to work with heavy restrictions but had to stop because doctors were saying I got worse and needed surgery. He also knew I tried again as Realtor but the swelling and pain from walking was excruciating. No one could understand, why Kevin would fight against getting a Life Specialist to include my rightful future pay. He did not include my future lost pay in court from my understanding.

The week of the trial was remarkable, shocking, and confusing. I said in my first appeal to the Prince Georges County Circuit Court, "...my trial was decided on before I even stepped foot in the court room, the first day." This is where it gets rough. Bullet points below are used because this case has just too many layers. It was like a circus. Started as a straightforward case having a lot of evidence against defendants (multiple builder code violation, even what I think would be an attorneys dream, A CONFESSION TO VIOLATING TWO (2) CODES! Moreover, Defendant CONFESSED TO REPAIRING THE STEP after learning of my fall! Straight-forward case turned into a circus **while my family watched helplessly**. My family and I are shocked and still just cannot believe this happened in a U.S. Court.

- Two steps involved in case. Both Defendants each built a step bonded together.
- Creative Landscape by Gregory (CLG) built Red-Brick sidewalk & 5-inch/ Red-Brick bottom step.
- Potomac Concrete (PC) built White-Concrete 6-Inch stoop/top step.
- Trial/depositions, CLG **confessed** to bad **color** contrast and **riser heights** Violating Builder Codes.
- Defendant CLG also **admitted to repairing step**, explaining how they fixed it.
- With only 2-Steps involved, Prince Georges County Circuit Court (PGCCC) Judge Lombardi discriminately removed PC (one of the ONLY 2 steps involved) beginning of Trial without fact finding.

NOTE: Both defendants CLG & PC also filed lawsuits against each other in 2017.

Five (5) days before trial PC offers a settlement.

Three (3) days before trial PC removes offer & files sanctions for \$26,000 against me (?).

Three (3) days before trial CLG untimely files to remove any talks of RISER HEIGHTS (same day).

Morning of trial, PC files removing \$26,000 sanctions against me (3 days after filing).

Morning of trial, PC and CLG both dismisses lawsuits against each other.

Constitutional rights need to be activated. Kevin Finnegan and the Maryland courts at every level since October 29, 2018 have showed they prefer not to honor my Constitutional Rights as a U. S. and Maryland Citizen. Anyone reading this should be outraged.

Please tell me this horrible treatment is not normal for Maryland citizens in court.

I came court seeking help. Seeking acknowledgement, accountability, and resolution for my numerous Life-Long injuries. Needing and having the right to a fair trial.

I did not receive what was due to me, simply a fair and equal trial without bias, without gross manipulations and defiantly without shenanigans in court.

I did receive the unbearable heavy burden to carry, along with my Life-Long injuries and drastic change of life, the courts errors to carry, the courts justice abuse, the courts judicial abuse/bias, and the court inability to acknowledge own errors, while continuing to judge others every day.

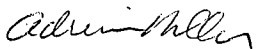
The courts errors are not mine to carry, not mine to correct, not mine to live with. Corrections in this harshly disproportionate case is needed immediately.

I believed throughout my appeals in Maryland courts, the blatant trial courts errors would have been acknowledged and addressed with corrections from their clear Judicial Misconduct. I gave 3 years, time and agony of my life hoping for help and acknowledgment of Maryland's own laws fractured. Shockingly the level and number of errors were all ignored.

Kevin Finnegan did not zealously fight for my case while laws were fractured. He actually flipped back and forth mostly. After trial, I asked Kevin to appeal and to right this wrong. He said no, fussed about money lost. This was prior to me learning Maryland rules and other fractures of law throughout trial. His contributing to the courts both violating the Rule of Law, our U. S. Constitution, Civil Rights Laws, Due Process of the law, judge oath and attorney oath. Imagine how I feel every time I touch this case, I'm shocked with findings.

Imagine, I had three (3) attorneys in court with me, all three days of trial. I have been so busy since trial from Kevin's neglect losing this straightforward case, with my injuries, handling this case up to Court of Appeal of Maryland, and my Virginia Workers "Compensation" Case, my mother and I just realized, all three attorneys didn't object, didn't fight for my Constitutional Rights... they just watched this all go down and had the audacity to be shocked with the verdict. I was not. Disturbed on numerous levels, not shocked.

Adrienne Mallard



ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

OFFICE OF BAR COUNSEL

200 HARRY S. TRUMAN PARKWAY
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LYDIA E. LAWLESS
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DEPUTY BAR COUNSEL

ERIN A. RISCH
DEPUTY BAR COUNSEL

May 11, 2021

PRIVATE AND CONFIDENTIAL

VIA EMAIL ONLY: kfinnegan@goldbergfinnegan.com

Kevin James Finnegan, Esquire
Goldberg & Finnegan LLC
8401 Colesville Road
Suite 630
Silver Spring, MD 20910

RE: File No. 2021-0676
Complainant: Adrienne Mallard

Dear Mr. Finnegan:

I enclose a copy of a complaint made against you. Maryland Rule 19-703 authorizes Bar Counsel to investigate allegations of professional misconduct.

Bar Counsel is making a preliminary inquiry to determine whether this complaint should be closed or docketed for investigation. Before a complaint is docketed for investigation, Bar Counsel must determine that a sufficient basis exists to demonstrate misconduct and that the overall circumstances warrant an investigation. *See* Maryland Rule 19-711(b)(3). We are aware that the complaint is merely one side of a dispute, and it is important that we have a full understanding of all relevant facts.

Please provide your written response to the complaint and copies of any relevant documents no later than June 1, 2021. As you know, Rule 19-308.1(b) of the Maryland Attorneys' Rules of Professional Conduct provides, in relevant part, that it is professional misconduct for an attorney to knowingly fail to respond to a lawful request for information from this office. Any failure to timely and completely respond to this request may result in the imposition of disciplinary sanctions. If you need additional time to respond, you must request an extension in writing with justifiable reasons for requesting an extension.

As part of our inquiry, we may forward a copy of your response to the Complainant and we may seek further information from you and/or the Complainant. When the inquiry is concluded, both you and the Complainant will be notified, in writing, as to whether this matter has been closed or docketed for investigation.

May 7, 2021
File No. 2021-0676
Page Two

The procedures associated with attorney disciplinary matters can be found at Maryland Rule 19-711, *et seq.* which are available on our website at www.courts.state.md.us/attygrievance.

Thank you for your anticipated cooperation.

Very truly yours,

/s/ Clara H. Salzberg

Clara H. Salzberg
Assistant Bar Counsel

CHS

Enclosure

cc: Adrienne Mallard (w/out enclosure and via email only: Adrienne_Fox@juno.com)

1 THE COURT: Hi.

2 THE CLERK: Hi. How are you doing?

3 THE COURT: All right, thanks.

4 I assume all the *voir dire* is in. I
5 haven't seen it, but I know that John Burkhardt
6 told me that you guys filed it.

7 And do we have preliminary -- we have
8 some preliminary stuff, don't we, before we even
9 get to the jury?

10 MR. FINNEGAN: We do, Your Honor.

11 THE COURT: That's what I thought.

12 Well, Madam Clerk, then, do the thing.
13 Call this case.

14 THE CLERK: Now calling Civil Action
15 Law 17-13531, Mallard vs. Potomac Concrete
16 Company, Inc.

17 MR. FINNEGAN: For the record, Your
18 Honor, Kevin Finnegan on behalf of the
19 plaintiff, Adrienne Mallard.

20 MR. STURMAN: Joshua Sturman also for
21 plaintiff.

22 MR. DAILY: Good morning, Your Honor.
23 Frank --

24 THE COURT: Wait a minute. Wait a
25 minute, fellows. Let me get -- Kevin, I

1 remember, Finnegan. And what's your name?
2 MR. STURMAN: Joshua Sturman.
3 THE COURT: Spell your last name for
4 me.
5 MR. STURMAN: S-T-U-R-M-A-N.
6 MR. FINNEGAN: Your Honor,
7 Mr. Sturman's wife is on -- is close to having a
8 baby, so hopefully he'll be here the four days,
9 but if you don't see him one day, that's why
10 he's not here.
11 THE COURT: All right.
12 And in this corner, weighing 250 --
13 MR. DAILY: Your Honor -- I'm not sure
14 if I should comment on that, Your Honor, but my
15 name is Frank Daily, D-A-I-L-Y, and I am here
16 for defendant Creative Landscapes by Gregory,
17 Inc.
18 THE COURT: Okay.
19 MR. DAILY: Good morning, Your Honor.
20 THE COURT: And who's this (inaudible)?
21 MR. HETHERINGTON: Good morning, Your
22 Honor. Bob Hetherington on behalf of Potomac
23 Concrete. Nice to see you.
24 THE COURT: You, too.
25 So, who's got the first motion in

1 MR. HETHERINGTON: Pardon? No, it was
2 denied without a hearing.

3 THE COURT: What's -- what do you say
4 about this, Kevin? How come you keep them in?

5 MR. FINNEGAN: Your Honor, I -- I am
6 going to -- we oppose the motion for
7 reconsideration. We are going to rely on the
8 arguments --

9 THE COURT: You can raise those
10 summaries any time.

11 MR. FINNEGAN: Sure, and I am going to
12 rely on the arguments that we submitted, but I
13 do not dispute anything that Mr. Hetherington
14 just said --

15 THE COURT: Yeah.

16 MR. FINNEGAN: -- as far as the facts.
17 As far as the facts, I don't dispute anything he
18 had to say.

19 THE COURT: You want to keep him in
20 because you're looking --

21 MR. DAILY: Your Honor, actually, to
22 the contrary. I wanted the Court to know two
23 things.

24 THE COURT: I mean, he could be out.

25 MR. DAILY: I don't dispute

1 Mr. Hetherington being out. I agree, and, in
2 fact, we had filed a cross-claim, and we're
3 dismissing the cross-claim.

4 THE COURT: And I'm dismissing them.

5 MR. DAILY: Okay.

6 THE COURT: Go home, Hetherington.

7 MR. HETHERINGTON: Thank you, Your
8 Honor. Always nice to see you.

9 THE COURT: All right.

10 **(Mr. Hetherington excused.)**

11 THE COURT: Now, who's got the next
12 at-bat? I know there were some motions that
13 were withdrawn. I did get word on that.

14 MR. FINNEGAN: Right.

15 MR. DAILY: That's correct, Your Honor,
16 yes.

17 THE COURT: And is there anything
18 pending before we get a jury in here?

19 MR. FINNEGAN: Yes, Your Honor.

20 MR. DAILY: There's a couple from
21 plaintiff, Your Honor, and I've got one or two
22 as well, but we did narrow down the list.

23 THE COURT: Yeah, I thought you did.

24 MR. DAILY: Yeah.

25 THE COURT: So tell me which one you

1 person who caused the accident ran the red light
2 while I was going through it green. It turned
3 out he didn't have insurance, so my insurance
4 company and I took him to court.

5 THE COURT: Okay. When did this
6 happen? It was a while ago, right?

7 PROSPECTIVE JUROR 12: About '93.

8 THE COURT: Yeah, right. I thought you
9 said that. Can you be fair in this case if
10 you're picked?

11 PROSPECTIVE JUROR 12: I presume so,
12 only that, you know, I think like everyone else
13 who's talking about this that we're a little
14 concerned that we might tend to find for a
15 person who was hurt, but, yeah, I think I can be
16 fair. I mean, I'm being as honest as I can
17 about that, too.

18 THE COURT: Next?

19 PROSPECTIVE JUROR 14: Juror number 14.
20 I fell at work, didn't make a claim, just made
21 notes to my supervisor that I had the accident,
22 and that was as far as it went.

23 THE COURT: Can you be fair?

24 PROSPECTIVE JUROR 14: Yes.

25 PROSPECTIVE JUROR 16: Juror number 16.

1 I did have a fall at work, did report it, but no
2 claim, and I also had a car accident years ago.

3 THE COURT: What part of your body?

4 PROSPECTIVE JUROR 16: Lower back, and
5 I have back issues for life.

6 THE COURT: Do you think you could be
7 fair in this case if you're picked?

8 PROSPECTIVE JUROR 16: Um-hum.

9 THE COURT: You have to say yes or no.

10 PROSPECTIVE JUROR 16: Yes.

11 THE COURT: All right.

12 Over here?

13 PROSPECTIVE JUROR 21: I'm number 21.

14 THE COURT: All right.

15 PROSPECTIVE JUROR 21: In 2006, I filed
16 a claim on my daughter's behalf. Her fingertip
17 was amputated in Prince George's County Public
18 Schools. And, yes, I can be fair.

19 THE COURT: All right, thank you.

20 PROSPECTIVE JUROR 25: Juror 25. I was
21 in a car accident a while back.

22 THE COURT: Can you handle this case
23 fairly if you're picked? What's the last grade
24 you went to in school?

25 PROSPECTIVE JUROR 25: Bachelor's.

1 again?

2 PROSPECTIVE JUROR 15: Number 15.

3 THE COURT: All right.

4 PROSPECTIVE JUROR 15: I previously

5 worked for Kaiser Permanente Health Management.

6 THE COURT: And are you all right on

7 this case so far?

8 PROSPECTIVE JUROR 15: Yes, I am.

9 THE COURT: Thank you.

10 Did I get all of your questions, Kevin?

11 I think I got them.

12 MR. FINNEGAN: Yes, Your Honor. Thank

13 you.

14 THE COURT: Okay. So you're all right

15 on the *voir dire*? Are you good on the *voir*

16 *dire*?

17 MR. FINNEGAN: Yes, Your Honor.

18 THE COURT: How about you?

19 MR. DAILY: Yes, Your Honor. Thank

20 you.

21 THE COURT: All right.

22 Now, ladies and gentlemen, I've

23 listened very carefully to some of your issues

24 about this four-day trial and about some other

25 things you've said, and so right now I'm going

1 strikes, that's our jury. Now, they're only
2 getting ten strikes, so I don't think we're
3 going to get down to -- I don't think we're
4 going to get down to the people who are the
5 caregivers, but we'll see. I just don't have
6 enough jurors here to let you go. Otherwise, I
7 might have let you go, but you might go anyway
8 if they don't get to you.

9 **(Pause in the proceedings.)**

10 THE COURT: Do you know it's almost
11 12:30 and we haven't called the first witness?

12 **(Pause in the proceedings.)**

13 THE CLERK: Ladies and gentlemen of the
14 jury, as I call your number, please stand and
15 answer by saying "here," then have a seat in the
16 jury box.

17 Juror number 13.

18 THE BAILIFF: Answer "here."

19 PROSPECTIVE JUROR 13: Here.

20 THE CLERK: Juror number 15.

21 PROSPECTIVE JUROR 15: Here.

22 THE CLERK: Juror number 17.

23 PROSPECTIVE JUROR 17: Here.

24 THE CLERK: Juror number 18.

25 PROSPECTIVE JUROR 18: Here.

1 THE CLERK: Juror number 19.
2 PROSPECTIVE JUROR 19: Here.
3 THE CLERK: Juror number 23.
4 PROSPECTIVE JUROR 23: Here.
5 THE CLERK: Juror number 24.
6 PROSPECTIVE JUROR 24: Here.
7 THE CLERK: And juror number 25.
8 PROSPECTIVE JUROR 25: Here.
9 THE BAILIFF: You can use the back row,
10 too.
11 THE COURT: Is the plaintiff satisfied
12 with the jury panel?
13 MR. FINNEGAN: Yes, Your Honor.
14 THE COURT: Defendant?
15 MR. DAILY: Yes, sir, Your Honor.
16 THE COURT: Swear the jury panel, Madam
17 Clerk.
18 THE CLERK: Can you please stand and
19 raise your right hands.
20 **(Jury panel sworn.)**
21 THE CLERK: You may be seated.
22 THE COURT: Members of the jury panel
23 and who have participated in this selection
24 process, thank you very much. You can return to
25 the jury room.

1 **(Other Jurors Excused.)**

2 THE COURT: Let me see who my jury is.

3 Number 1 -- number 13? No, just stay
4 where you are. I want to take a look at you
5 because I have to pick a chairman or a foreman.

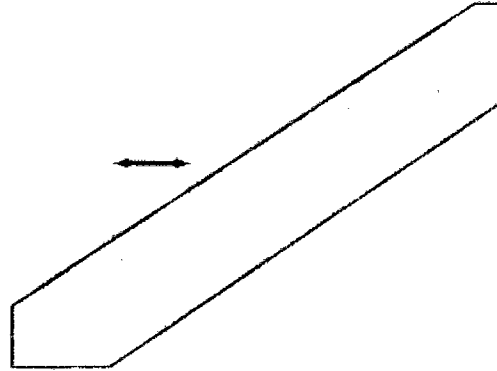
6 Number 15? Number 17? Who's 17?
7 Yeah, just put up your hand, because I don't
8 know where you're sitting.

9 Number 18? Number 19? Number 23?
10 Okay. Well, that's my jury. Six members of the
11 panel become the jury in civil cases. Criminal,
12 it's 12, but civil, six.

13 Now, I've got these two people back
14 here. They're alternates. That doesn't mean
15 that you can fall asleep. It means that you
16 might be able to be a seventh and eighth juror
17 at the end of this case, we don't know, or if
18 somebody should not be able to make it back
19 here, then you will just fit into their slot.

20 So number 24? That would be you. And
21 number 25? That would be you. If you need a
22 letter for Chik-Fil-A, I'll be happy to have
23 something ready for you. Just give me a name
24 and address. That goes for any of you that have
25 issues with your employer.

IBC 2018 states that "tread depth is measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge." It is a measure of the surface available for the user's foot to rest as they ascend or descend the stair.

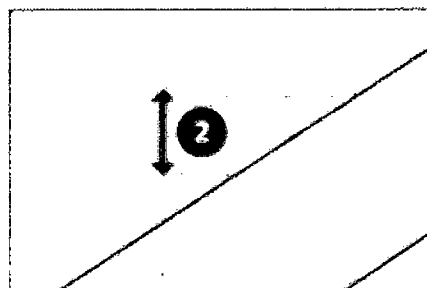


Stair Riser Height Definition

The stair riser height code is also defined in OSHA sections 1910.21 and 1910.25 and in IBC chapter 10 means of egress.

OSHA 1910.21 defines a stair riser as the upright (vertical) or inclined member of a stair that is located at the back of a stair tread or platform and connects close to the front edge of the next higher tread, platform, or landing.

According to IBC 1011.5.2, the riser height is measured vertically between the nosings (the leading edge) of adjacent treads.



Minimum Stair Tread Depth

OSHA and IBC have different tread depth requirements for different stair types. OSHA introduced minimum tread depths in its 2017 update to walking-working surface standards. IBC has required minimum tread depth for many years.

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

ADRIENNE MALLARD

Plaintiff,

vs.

POTOMAC CONCRETE CO., INC., et
al.

Defendants.



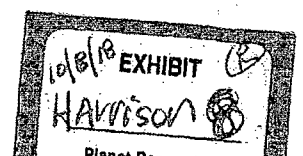
Case No. CAL17-13531

AFFIDAVIT OF GREGORY A. HARRISON, Ph.D., P.E.

I, Gregory A. Harrison, Ph.D., P.E., state and declare that I am over 18 years of age, of sound mind, capable of making this affidavit, and have personal and professional knowledge of the matters set forth herein and, if called as an expert witness in this matter, could and would testify truthfully and competently thereto under oath.

I. QUALIFICATIONS:

I am a registered professional engineer in six states to include the state of Maryland and I consult in the disciplines of civil/safety engineering; fall prevention human factors; and, also, building codes and the Life Safety Code and other related standards of care, viz., ASTM F-1637 and the Encyclopedia of Architecture. I have testified in 14 states, I have been recognized as an expert



by the Prince George's County Court system over decades and I have qualified and testified numerous times therein since approximately 1980. I have more than 50 years of professional engineering experience in numerous federal agencies, private enterprise both nationally and internationally, and in private practice commencing in 1985. In addition to my full-time career related work efforts, I have engaged in forensic engineering matters on a part time basis in addition thereto for both the defense and plaintiff. Currently, I am semi-retired.

I expect to testify as to standards of care required of the Defendants in this case – Defendant Potomac Concrete Company, Inc. ("Potomac Concrete") and Defendant Creative Landscapes By Gregory, Inc. ("Creative Landscapes") - as it applies to the location where Ms. Mallard fell and was injured. I have been provided with pertinent records, photographs, and various discovery responses generated during the course of this case and will continue to review these materials and other relevant materials, including but not necessarily limited to, deposition transcripts, answers to interrogatories and other discovery pleading when they become available during the course of the litigation.

In addition to my review of materials generated in this case, I am familiar with the building exterior in question and made a site visit in June, 2017 as part of my work on the case. Based upon my knowledge and expertise, and my review of the pertinent materials pertaining to this litigation, I expect to testify that there is a standard of care the Defendants had to meet under these circumstances. My testimony regarding the standard of care is based upon my

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education, training, background experience for 50 years, knowledge and expertise in my profession, as well as my interaction with other safety professionals in and around the Washington metropolitan area and, finally, in my continuing professional development training as required by my P.E. licensing requirements.

I expect to testify as to departures in the standard of care by Defendants, including, but not limited to, their creation of and notice of the unsafe conditions and their failure to act appropriately to prevent injuries to Ms. Mallard, a member of the Public as intended by the model building codes. I expect to testify that the Defendants' breaches in the standards of care were the proximate cause or root cause of the injuries suffered by Ms. Mallard as a direct result of her fall. I expect to testify that had the Defendants complied with the applicable standard that Ms. Mallard would not have been injured.

I expect to testify that the standard of care required for Public Safety that the Defendants had to comply with were clearly specified within the Maryland State Model Building Code [IBC] and the Maryland State Fire Prevention Code that adopts the National Fire Protection Association (NFPA) Life Safety Code [LSC] and also other engineering standards of care to include the Encyclopedia of Architecture, ASTM F-1637, DOJ ADA pedestrian safety requirements, and the safety literature at large. These life safety and public safety technical provisions are and were located in any Section/Chapter entitled "Means of Egress" located within a model building code and/or the NFPA LSC going back

as far as 1960 and even earlier. Ms. Mallard fell and suffered her injury while she was in the subject building's Means of Egress per se that was leading to a Public Way but due to her fall incident she never made it to the Public Way as defined in any model building code or LSC regardless of edition or publication year. The Means of Egress sections or chapters regardless of edition contain the technical requirements specifying when guardrails and handrails are required, lighting levels, walkway slip resistance, and other architectural-engineering criteria for the prevention of falls. I will opine that falls are a leading cause of American fatalities and injuries (30,000 fatalities per year) with falls being a far greater life safety problem than fires, which is only 2,500 fatalities per year. Hence, I will opine that builders and builder sub-contractors, project engineers or architects, and property managers know or should know that falls are a very serious life threatening problem and are the number one insurance claim in the construction and housing industry.

I expect to opine on the following parameters surrounding the cause of Ms. Mallard's fall and resulting injuries. My evaluation of the facts of this case is still ongoing as I understand the parties are still conducting fact discovery. However, I have the following comments at this time:

A. STATEMENT OF THE USA FALL FATALITY AND INJURY PROBLEM:

By way of preface, about 30,000 Americans die each year in fall accidents, which is second only to motor vehicle accidents. Also, on an annual basis, there

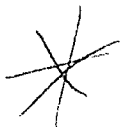
are over 3 million fall related injuries and it has been estimated that over 2 billion dollars represents the loss associated with parameters such as lost income and medical expenses. The aforementioned statistics are according to the National Safety Council/CPSC, which were based on fall accident data collected via the National Electronic Incident Surveillance System [NEISS]. Hence, it is readily apparent that fall incidents are quite foreseeable and contractors, among others, should exercise prudent and reasonable care and professional judgment in the layout, design, construction and maintenance of an exterior entranceway stairway for use by the Public. This standard of care was not in evidence for the subject building exterior entrance stairway whereon Ms. Mallard, a member of the Public, was caused to fall on. She sustained personal injuries as she attempted to use the subject steps in descent, which is the most dangerous and unforgiving direction to fall while on any stairway or steps.

Given the above statement of the USA fall statistics, it is obvious that any steps or stairway should have at least one handrail to offer the Public the benefit of sensing the change of elevation and, lastly, to offer the Public one last chance to prevent their fall altogether or prevent death or severe injuries as a result of their fall.

B. CODE REMEDIAL:

Building codes represent the minimum standard of care voted into a code by a democratic process composed of industry and trade group representatives

that dominate the voting bloc. Building codes do not and cannot anticipate all field conditions and are silent on many technical issues and often condone unsafe conditions to suit the building industry. The Encyclopedia of Architecture addresses this problem in volume 4 pages 607 and 608, attached hereto as Exhibit A.



Also, when building codes and the LSC and other recognized Standards of Care conflict with each other, the more restrictive provisions are used or govern or are recognized as the ruling "standard of care". In addition, building code shall not be deemed to nullify any provisions of local, state or federal law. Section 102 Applicability [A] 102.1 General is attached herewith, as Exhibit B, and so too is Section 102.2 "Other Laws". Hence, the Maryland State Fire Prevention Code is not nullified nor its adoption of the Life Safety Code that specifies handrails for all steps and stairs. A copy of this provision is attached hereto as Exhibit C. Also, a copy of the LSC Chapter 24 provisions for one and two-family dwellings that requires steps and stairs to have handrails is attached herewith as Exhibit D. Hence, the Life Safety Code (LSC) becomes the dominant code for Public Safety compliance in addition to the IBC and other standards such as ASTM F-1637, Good Practices, and the Encyclopedia of Architecture, Vol. 4, "Stairs and Ramps – Safety Design Aspects".

C. INSTALLATION OF THE "IN BETWEEN" BRICK STEP:

The problem with the "in between" brick step installed by Defendant Creative Landscapes By Gregory Inc. was that it removed a long standing code

requirement for a strong color contrast for small changes of elevation, aka, one and two step locations. This requirement can be found in the Change of Elevation paragraph located within the Section or Chapter entitled Means of Egress both in the IBC and the LSC. The purpose of using a strong color contrast in small changes of elevation is to alert the pedestrian that a change of elevation exists. It is not the duty of the pedestrian to memorize all small changes of elevation that they may have traversed in the past. A walkway component located within the Means of Egress is either safe or not so, but is required to be safe at all times and is not dependent on a pedestrians memory of past usage. Further, a single handrail would have also greatly aided in this situation but it was not installed contrary to code requirements therefore.

The building codes and LSC have known for decades that one, two and three step locations were inherently dangerous and that is why they in the past attempted to not allow them but to have small changes accommodated by ramps only to include handrails for the ramps similar to a stairway per se.

Currently for new construction, which would include the subject premises, any two step location is required to have at least one handrail and strong color contrast between upper and lower elevations. Also, the tread depth for a two-step location is required to be 13 inches and not the normal 10 or 11 inches. The LSC began requiring at least one handrail for single and two step location in or around 1997. Further, the LSC also applies to existing buildings and means of

egress. The Life Safety Code is the standard of care for Maryland State and it requires a handrail for a two step location.

D. HANDRAILS:

The Defendants in this case, Defendant Potomac Concrete Company, Inc., which built the concrete step, and Defendant Creative Landscapes by Gregory, Inc., which installed a brick step, the walkway and walkway grading, violated both the LSC and IBC technical provisions pertaining to installation of handrails for a "Change of Elevation" located within the Means of Egress as defined by any model building code and LSC going back many decades. The Change of Elevation paragraph is located within the Chapter or Section entitled "Means of Egress". Stairways are no longer defined as having more than three (3) risers as was done in the 1960's, 1970's and 1980's. Regardless, back then, the building code and LSC simply did not allow for one, two and three step locations and required that a Ramp per se shall be used when the Change of Elevation is 21 inches or less. For many years, the IBC and LSC and other standards of care required at least one handrail for one, two and three step locations.

Regardless of any code, the contractors involved had a duty to install at least one handrail for the subject steps and to make the risers uniform and had to have a strong color contrast between all steps and the walkway.

These subcontractors who constructed the outside steps for public use had a duty to comply with current IBC and LSC standards of care.

The purpose of a handrail is to first, serve as a visual cue that a Change of Elevation exists. Secondly, a handrail is one of the most important components in stairway construction because it represents the very last chance for a pedestrian to either prevent their fall altogether or reduce the fall injuries or death. Since a handrail was not installed, Ms. Mallard was given no chance to either prevent her fall or mitigate or reduce her fall injuries.

E. STEP RISER HEIGHTS:

Defendant Creative Landscapes by Gregory, Inc., which installed a brick step, the walkway and walkway grading, violated the IBC and the LSC. The code required that all risers and treads have a dimensional uniformity not greater than 3/16 inches between adjacent risers and treads and not have dimensions vary by more than 3/8 inches overall. Dimensional uniformity has been an IBC and LSC requirement for decades past.

The "in between" step installed by this subcontractor was measured by Ms. Mallard and the difference in the riser heights on the subject steps (ie. concrete step to brick "in between step" and then that step to the ground) was almost one inch. I have reviewed her deposition testimony regarding her measurements (Mallard Dep. Of March 13, 2018 at pp. 178:1- 183:6) and have reviewed her photographs which are attached hereto as Exhibits E & F. This is a violation of building codes and the LSC as indicated above. In short, these steps did not comply with the IBC or LSC or any other standard of care or good practice regarding dimensional uniformity.

Other professional opinions that I will offer include the following but may not be limited thereto depending upon questions generated during cross exam:

- A. Building codes are written in performance language and not prescriptive language;
- B. Regardless of which model code or LSC edition one selects, all editions are essentially the same over time with respect to not having unsafe conditions or hazards located within the means of egress;
- C. The building codes and the life safety codes [LSC] regardless of edition all define the term "means of egress" in the same manner or way;
- D. The subject fall incident occurred within the means of egress per se;
- E. The subject stairway without handrails represents an unsafe and dangerous condition located within the means of egress;
- F. Ms. Mallard is a member of the public and as such is entitled to the benefits and protections afforded by compliance with the BOCA building code, IBC, and the LSC technical provisions for stairway safety;

- G. Ms. Mallard was not walking in an abnormal manner at the time of her fall;
- H. There is nothing in the record to indicate that Ms. Mallard was engaged in an unsafe activity or distracted from her walking out of the building;
- I. The subject "in between" brick step with riser heights of 6 inches and then 5 inches was an inherently unsafe stairway condition and a danger to any pedestrian traversing same in either an up or down direction;
- J. The subject area was required to be kept in a safe condition in accordance with the spirit and intent of the technical provisions of the BOCA, IBC, LSC, ASTM F 1637, prevailing practices, and the premises safety literature at large and the state of Maryland fire prevention code;
- K. The building codes and the LSC both require that not only buildings and structure be build and/or maintained but also premises per se;
- L. The subject "in between" brick step riser height and missing handrails were not individually or collectively trivial in nature but material and deviant enough to throw an adult off balance while walking down and off a step tread coupled with not knowing where the "last step" was, in fact, located;

- M. The subject fall incident location was not in compliance with any older or current model building code nor the NFPA LSC technical provisions;
- N. The subject fall incident was not in compliance with the spirit and intent of any older or current model building code nor the NFPA LSC technical provisions;
- O. The spirit and intent of a model building code is to protect the health and safety of the public at large and should be interpreted "justly and liberally" to accomplish that intent;
- P. The subcontractors who performed the work to the concrete and brick steps, and the brick walkway, are responsible for public safety within and exterior to the building, a structure, and premises leading to a public way;
- Q. The subject stairway was a walkway component located within the means of egress per se;
- R. The subject stairway was required to be maintained safe at all times for public use;
- S. There was no warning posted that the subject premises were in an unsafe condition and that important life saving handrails were in fact missing and that the last step was an inherently dangerous condition;

T. The means of egress incorporates all possible paths of travel that a pedestrian can take leading to a public way and the subject stairway was within the means of egress as defined by any model building code and the LSC that led to a public way per se;

U. To err is human and that is why the code making authorities requires handrails that are reachable and graspable on an otherwise safe flight of steps with an abundance of lighting;

V. Lighting is not an issue for the subject fall injury incident nor was the weather;

W. Full compliance with a model building code is not a defense against negligence and is not sufficient per se for premises safety given that codes are minimus standards and often have typos and are silent on important building parameters; However, the IBC^C and LSC codes adequately address the safety issues surrounding missing handrails and non conforming riser heights due to non uniformity for the subject case but were not complied with nonetheless;

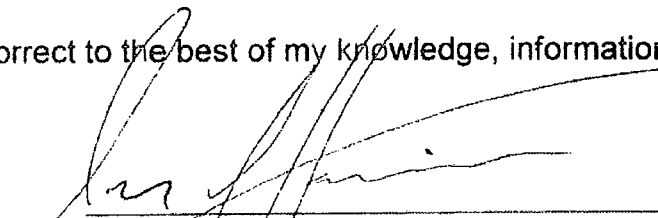
X. The missing handrails was a root cause or proximate cause of Ms. Mallard's fall.

Y. The non-conforming riser height was a material defect in the subject steps as discussed above and represented a danger to the Public at large.

I anticipate offering additional testimony and opinions on these issues at trial, as well as articulating the full basis of my opinions. This affidavit is not intended to be self-limiting.

The professional opinions stated above are opinions that I hold within a reasonable degree of engineering certainty in my fields of expertise.

I hereby declare, under the penalties of perjury that the statements made heretofore are true and correct to the best of my knowledge, information and belief.

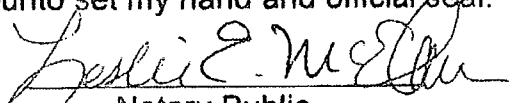

Gregory A. Harrison, Ph.D., P.E.
Maryland Registered P.E. No. 8669

State of: Maryland

County of: Montgomery

BEFORE ME, the undersigned Notary, on this 25th day of July, 2018, personally appeared Gregory A. Harrison, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

In witness hereof, I hereunto set my hand and official seal.


Notary Public

My Commission Expires: 4/27/2022

LESLIE E MCELWAIN
NOTARY PUBLIC
FREDERICK COUNTY
MARYLAND
My Commission Expires 04-27-2022