

D.N. UWY-CV-15-6025912-S

JAMES GRECHKA

v.

WHOLE FOODS MARKET GROUP, INC.,  
ET AL.

SUPERIOR COURT

J.D. OF WATERBURY

AT WATERBURY

NOVEMBER 1, 2016

**MEMORANDUM OF LAW**  
**IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

NOW COMES Defendant, WFM Properties Cheshire, LLC (hereinafter “WFM Properties”), by and through their undersigned counsel, and pursuant to Practice Book §17-49, hereby respectfully files this Memorandum of Law in Support of its Motion for Summary Judgment as to Count Two of Plaintiff’s Amended Complaint dated August 4, 2016. Plaintiff’s negligence claim against WFM Properties fails as a matter of law because WFM Properties owed no duty to the Plaintiff. Therefore, WFM Properties is entitled to summary judgment.

In support of this Motion, WFM Properties respectfully submits as follows:

**I. UNDISPUTED FACTS:**

WFM Properties respectfully submits the following material facts and procedural history to which it contends there can be no real dispute.

By Writ, Summons, and Complaint dated December 17, 2014, Plaintiff James Grechka brought a negligence action for personal injuries against Defendant Whole Foods Market Group, Inc. (hereinafter “Whole Foods”) arising out of a trip and fall accident that occurred on October 4, 2013. According to the Original Complaint, Plaintiff, while lawfully on the premises in the course of his employment, tripped and fell on allegedly uneven pavers on a walkway leading into

the office trailer of non-party Lily Transportation located at 400 East Johnson Avenue, Cheshire, Connecticut. *See Original Complaint, dated 12/17/14, p.1.*

The real property known as 400 East Johnson Avenue, Cheshire, Connecticut is comprised of that part occupied by Defendant Whole Foods, which operates a Distribution Center thereon, and that part wholly occupied by non-party Lily Transportation, a trucking company. WFM Properties is the title holder and owner of the real property known as 400 East Johnson Avenue, Cheshire, Connecticut. WFM Properties leased the real property at issue to Defendant Whole Foods. *See Exhibit A, Lease.*<sup>1</sup> Defendant Whole Foods then leased to non-party Lily Transportation the area on which the office trailer is located and the surrounding area. On the portion of the premises that it leased from Defendant Whole Foods, Lily Transportation installed its office trailer and the paver walkway leading to its office trailer. *See Exhibit B, Affidavit of Judy Cadden, p.2.* Lily Transportation had exclusive possession and control of the office trailer and the area surrounding it, including the paver walkway. *See id.*

Plaintiff's Original Complaint alleged that Defendant Whole Foods was negligent because it failed to: (1) inspect the paver walkway leading to non-party Lily Transportation's office trailer; (2) warn the Plaintiff of the dangerous condition of the paver walkway; (3) repair the paver walkway; and (4) erect barriers to prevent those lawfully on the premises from falling due to dangerous conditions. *See Original Complaint, dated 12/17/14, p.2-3.*

On May 14, 2015, in its Answers to Plaintiff's Interrogatories and Requests for Production, Defendant Whole Foods advised Plaintiff that, at all relevant times, WFM Properties was the owner of the premises known as 400 East Johnson Avenue, Cheshire, Connecticut. *See*

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<sup>1</sup> Exhibit A not been attached, but rather has been lodged with the Court pursuant to Practice Book § 7-4C, because it is subject to a motion to file record under seal filed contemporaneously with this motion. This exhibit involves WFM Properties' business and trade secrets and, thus, should not be available publicly. *See Practice Book § 11-20A (c).*

*Exhibit C, Answers to Plaintiff's Interrogatories, P.2.* Over a year later and more than two years after the accident at issue occurred, on June 29, 2016, Plaintiff filed a motion to cite in WFM Properties as a defendant [Docket Entry 126.00]. On June 30, 2016, Defendant Whole Foods objected to Plaintiff's motion to cite in [Docket Entry 129.00]. On July 11, 2016, the Court granted Plaintiff's motion to cite in [Docket Entry 126.10]. Plaintiff then filed his Amended Complaint on August 4, 2016 [Docket Entry 133.00].

In Count Two of his Amended Complaint, Plaintiff alleges that he learned on May 14, 2015, through Whole Foods' interrogatory responses, that Defendant WFM Properties owned the real premises known as 400 East Johnson Avenue, Cheshire, Connecticut. *See Amended Complaint, p.5 [Docket Entry 133.00]*. Plaintiff further alleges that Defendant WFM Properties owned, possessed, managed, controlled, and maintained the premises at issue, including the paver walkway. *See id.* Plaintiff claims that WFM Properties was negligent in one or more of the following ways:

- a. They failed to properly maintain the exterior brick/paver stone walkway area;
- b. They failed to properly and reasonably inspect the exterior brick/paver stone walkway area on the premises;
- c. They knew or in the exercise of reasonable care and inspection should have known of the aforementioned conditions and should have taken measures to remedy and correct the same but this they carelessly and negligently failed to do;
- d. They failed to warn the plaintiff of the dangerous condition of the exterior brick/paver stone walkway area on the premises;

- e. They failed to erect barriers for those lawfully on the premises not to use the subject exterior brick/paver stone walkway area and/or prevent those lawfully on the premises from falling due to the dangerous and/or hazardous condition; and/or
- f. They failed to repair the exterior front walkway area in a timely manner.

WFM Properties does own the premises known as 400 East Johnson Avenue, Cheshire, Connecticut. WFM Properties, however, does not possess, maintain, control, or manage the premises at issue. Rather, WFM Properties leased the premises at issue to Defendant Whole Foods. *See Exhibit A, Lease*. In the lease, WFM Properties did not retain possession or control over the area at issue, the paver walkway leading to Lily Transportation's office trailer. The clear and unambiguous language of the lease grants sole and exclusive possession and control, including the responsibility for maintaining the premises, to the lessee:

“Tenant, at its sole cost and expense, shall keep the Demised Premises<sup>[2]</sup> in good condition and repair throughout the Demised Term, including, without limitation, (1) all portions on the Building, (2) the roof covering and membrane, (3) storefront glass, (4) HVAC, mechanical, electrical, plumbing and other equipment, (5) exterior doors, (6) the elevators serving the Demised Premises, (7) all utility lines within the Demised Premises, (8) ducts and systems located within the Demised Premises, and (9) all utility lines located outside the Demised Premises which serve the Demised Premises exclusively, from the point where such utility lines begin to exclusively serve the Demised Premises. Tenant's obligations under this Section 6.3 (a) shall include, without limitation, cleaning, re-striping and resurfacing the parking areas located within the Demised Premises and cleaning the loading dock/receiving area.” *See Exhibit A, Lease, Section 6.3 (a), p.9*.

Under the lease, WFM Properties only retains control over the HVAC system and the roof system: “Landlord expressly agrees that Tenant shall have no obligation to replace the HVAC system serving the Demised Premises (or any elevators or other mechanical equipment

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<sup>2</sup> Under the lease, “Demised Premises” is defined as “[t]he land identified in Exhibit A located at East Johnson Road, Cheshire, Connecticut, together with all improvements and structures now or hereafter located thereon, including without limitation, the Building.” *See Exhibit A, Lease, p.2*.

located in or serving the Demised Premises) or the roof system of the Building upon the expiration or any earlier termination of this Lease or to otherwise deliver the HVAC system (or elevators or other mechanical equipment located in or serving the Demised Premises) in working order.” *See Exhibit A, Lease, Section 6.3 (a), p. 9-10.*

Additionally, the lease grants sole ownership to the lessee of any fixtures, equipment, or improvements installed by the lessee:

“(a) Fixtures and Equipment. The term “Tenant’s Fixtures and Equipment” shall mean any and all moveable or removable fixtures, equipment and personalty purchased by, belonging to or leased from third parties by Tenant and installed within the Demised Premises (whether or not affixed). Tenant shall own all Tenant’s Fixtures and Equipment to the exclusion of Landlord. . . .

“(b) Improvements. The leasehold improvements (as distinguished from Tenant’s Fixtures and Equipment) . . . installed in the Demised Premises which are constructed and funded by Tenant (and not reimbursed by Landlord) are the property of Tenant. . . .” *See Exhibit A, Lease, Section 6.2, p.9.*

In the event of an emergency, however, the lease allows WFM Properties to enter the Demised Premises and make repairs:

“Notwithstanding anything in this Lease to the contrary, and in addition to the other rights and remedies of Landlord and Tenant set forth in this Lease, Landlord and Tenant shall each have the right, but not the obligation, to take such actions as are reasonably necessary to prevent or mitigate damages or injury to persons or property arising out of the need for repairs or maintenance of the portions of the Demised Premises that are the responsibility of the other party, and at the cost and expense of the party so responsible, but only where (i) an emergency exists, or (ii) any delay or further delay in taking action would likely result in irreparable harm and/or cause, increase or compound damages or injury to persons or property. . . .” *See Exhibit A, Lease, Section 6.3 (c), p. 10.*

WFM Properties also retains the right to enter and inspect the premises during normal business hours: “Landlord may enter the Demised Premises during Tenant’s normal business hours to inspect same and, beginning six (6) months before the end of the Demised Term, to exhibit same to prospective tenants, so long any such entry does not interfere with Tenant’s business activities.” *See Exhibit A, Lease, Section 6.5, p.10.*

## II. STANDARD OF LAW:

“Practice Book §17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” Provencher v. Enfield, 284 Conn. 772, 790-91, 936 A.2d 625 (2007) (internal quotation marks omitted). “[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way . . . [A] summary disposition . . . should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party.” Dugan v. Mobile Medical Testing Services, Inc., 265 Conn. 791, 815, 830 A.2d 752 (2003) (citations omitted) (internal quotation marks omitted). “A genuine issue has been variously described as a triable, substantial or real issue of fact . . . and has been defined as one which can be maintained by substantial evidence.” United Oil Co. v. Urban Redevelopment Commission, 158 Conn. 364, 378, 260 A.2d 596 (1969) (citation omitted) (internal quotation marks omitted). “In ruling on a motion for summary judgment, the court’s function is not to decide issues of material fact . . . but rather to determine whether any such issues exist.” RMS Residential Properties, LLC v. Miller, 303 Conn. 224, 233, 32 A.3d 307 (2011) (internal quotation marks omitted).

“On a motion by [the] defendant for summary judgment the burden is on [the] defendant to negate each claim as framed by the complaint . . . It necessarily follows that it is only [o]nce [the] defendant’s burden in establishing his entitlement to summary judgment is met [that] the burden shifts to [the] plaintiff to show that a genuine issue of fact exists justifying a trial.” Mott v. Wal-Mart Stores East, L.P., 139 Conn. App. 618, 626, 57 A.3d 391 (2012) (internal quotation

marks omitted). “[T]o satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book §[17-45].” Zielinski v. Kotsoris, 279 Conn. 312, 318-19, 901 A.2d 1207 (2006) (internal quotation marks omitted).

“In a negligence action, the plaintiff must meet all of the essential elements of the tort in order to prevail. These elements are: duty; breach of that duty; causation; and actual injury . . . Duty is a legal conclusion about relationships between individuals, made after the fact, and [is] imperative to a negligence cause of action. The nature of the duty, and the specific persons to whom it is owed, are determined by the circumstances . . .” LaFlamme v. Dallessio, 261 Conn. 247, 251, 802 A.2d 63 (2002) (citation omitted) (internal quotation marks omitted). “Where there is no duty, there can be no actionable negligence.” Frankovitch v. Burton, 185 Conn. 14, 20, 440 A.2d 254 (1981). “Issues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner.” Fogarty v. Rashaw, 193 Conn. 442, 446, 476 A.2d 582 (1984) (internal quotation marks omitted). However, “[t]he existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand.” Neuhaus v. Decholnoky, 280 Conn. 190, 217, 905 A.2d 1135 (2006) (internal quotation marks omitted).

“[T]he use of a motion for summary judgment to challenge the legal sufficiency of a complaint is appropriate when the complaint fails to set forth a cause of action and the defendant can establish that the defect could not be cured by repleading.” Larobina v. McDonald, 274 Conn. 394, 401, 876 A.2d 522 (2005).

### **III. LAW & ARGUMENT:**

As a matter of law, WFM Properties owed no duty to Plaintiff because it did not possess or control the premises at issue, and, thus, there is no genuine issue of material fact regarding the existence of such a duty.

“[L]iability for an injury due to defective premises does not depend on title, but on possession and control.” Farlow v. Andrews Corp., 154 Conn. 220, 225, 224 A.2d 546 (1966). “As a matter of common law, although landlords owe a duty of reasonable care as to those parts of the property over which they have retained control, landlords generally [do] not have a duty to keep in repair any portion of the premises leased to and in the exclusive possession and control of the tenant. . . . In other words, the generally accepted rule imposing liability on a landlord is that it is the duty of a landlord to use reasonable care to keep in reasonably safe condition the parts of the building over which he reserves control.” Stokes v. Lyddy, 75 Conn. App. 252, 260-61, 815 A.2d 263 (2003) (internal quotation marks omitted). “As the possession or control of premises is the legal basis for liability, a landlord out of possession is normally not liable to persons on the demised premises. The tenant who is in possession of the premises is ordinarily the proper party defendant.” Grier v. 73 Whitney Assocs., Superior Court, judicial district of New Haven, Docket No. CV-05-5001356-S, \*2 (Aug. 20, 2007) (internal quotation marks omitted).

“The word ‘control’ has no legal or technical meaning distinct from that given in its popular acceptance . . . and refers to the power or authority to manage, superintend, direct or oversee. . . . Unless it is definitely expressed in the lease, the circumstances of the particular case determine whether the lessor has reserved control of the premises or whether they were under the exclusive dominion of the tenant, and it becomes a question of fact and is a matter of intention in the light of all the significant and attendant facts which bear on the issue. . . . Responsibility for the proper care over portions of the premises within the leased area may rest with the lessor if, with the acquiescence of the lessee, he retains control, and an agreement between the parties as to the landlord’s right to inspect the premises together with his exclusive right to make repairs therein and the tenant’s total abstention from making any repairs would be the equivalent of retention of control of the leased premises.” Panaroni v. Johnson, 158 Conn. 92, 98, 256 A.2d 246 (1969).

If a lease is unambiguous regarding possession and control, whether a landlord controls the premises and, thus, owes a duty to the plaintiff is a question of law. See Farrell v. McDonald’s Corp., Superior Court, judicial district of New Britain, CV-98-0491505, \*6-7 (Feb. 14, 2000). “Whether control of the premises has been retained by the lessor is determined by examining the terms of the lease.” Martel v. Malone, 138 Conn. 385, 388, 85 A.2d 246 (1951). “A lease is a contract . . . and its construction presents a question of law for the court.” (Citations omitted.) Robinson v. Weitz, 171 Conn. 545, 551, 370 A.2d 1066 (1976). When the language of a written lease is plain and unambiguous, it is not subject to interpretation or construction. Central New Haven Development Corp. v. La Crepe, Inc., 177 Conn. 212, 215, 413 A.2d 840 (1979). “A lease is a contract . . . and its construction presents a question of law for the court.” Robinson v. Weitz, 171 Conn. 545, 551, 370 A.2d 1066 (1976) (citations omitted). “In

construing a written lease . . . three elementary principles must be [considered]: (1) The intention of the parties is controlling and must be gathered from the language of the lease in the light of the circumstances surrounding the parties at the execution of the instrument; (2) the language must be given its ordinary meaning unless a technical or special meaning is clearly intended; [and] (3) the lease must be construed as a whole and in such a manner as to give effect to every provision, if reasonably possible.” Firstlight Hydro Generating Co. v. First Black Ink, LLC, 143 Conn. App. 635, 640, 70 A.3d 174 (2013).

Courts consistently have held that a lease unambiguously divests a landlord of possession and control over a particular area if the lessee is responsible for maintenance, and repairs and the landlord’s right to enter the area at issue and make repairs is limited: “[W]here the right of the lessor to enter the leased premises and make repairs is limited, the lessor does not retain control and possession of leased property . . . . Judges of the Superior Court have found the right of the landlord to enter or repair has been sufficiently limited when the lease gave the lessor the right to enter the premises at reasonable hours to examine or make any repairs or alterations necessary for the safety and preservation of the premises and provided that the leased premises should be available for the inspections and necessary repairs . . . or when the lessor could only enter during reasonable business hours to inspect the premises and had the right to make repairs only in the event of fire or other casualty. . . . [Other] [j]udges of the Superior Court have held that similar lease provisions create no control or possession sufficient to create a legal duty between an invitee and a landlord. See Waller v. W.E.F. Associates, LLC, Superior Court, judicial district of New Haven, Docket No. CV-04-5000188 (May 2, 2006) (41 Conn. L. Rptr. 291) (finding that lease gave exclusive control to tenant to make repairs was not undermined by provision giving landlord the right to make repairs that tenant refuses or neglects to make); Koonce v. W.E.F.

Associates, LLC, Superior Court, judicial district of New Haven, Docket No. 407114 (June 16, 1999) (24 Conn. L. Rptr. 683) (same); Furr v. Longcove, LLC, Superior Court, judicial district of New London, Docket No. CV-08-5007508 (January 14, 2009).” Velasquez v. Jones Lang Lasalle Ams., Inc., Superior Court, judicial district of Fairfield, Docket No. CV-11-6016361-S, \*21-23 (Sep. 30, 2013).

For example, in Velasquez v. Jones Lang Lasalle Ams., Inc., supra, Docket No. CV-11-6016361-S, \*21-23, the lease at issue stated that the lessee was solely responsible for operating, managing, maintaining, and repairing the property. The landlord’s right to access the property was limited to “all reasonable times” and its duty to repair was limited to roof repairs. The court determined that the lease clearly and unambiguously divested the landlord of control and possession, except as to the roof. In construing the lease, the court found that the landlord’s limited access to make repairs was not sufficient to establish that it retained possession or control over the property. Id. at \*32-33. Because the plaintiff’s injuries were not caused by roof deficiencies, the court held that there was no genuine issue of material fact that the landlord did not have possession and control of the premises where the plaintiff fell. Id.

Similarly, in Farrell v. McDonald’s Corp., Superior Court, judicial district of New Britain, Docket No. CV-98-0491505, \*4 (Feb. 14, 2000), the landlord-defendant argued that in the lease, it had divested itself of possession and control over the area where the plaintiff had fallen and been injured. The lease stated that the lessees were responsible for maintaining and repairing the entire premises. Id. The court found that the lease provision permitting the landlord to enter and make repairs to the premises in the event of a fire or other casualty was not sufficient to establish that the landlord retained control over the premises. Id. at \* 8. Additionally, the court found that the right to inspect provision in the lease did not raise a

genuine issue of material fact as to whether the landlord retained control over the premises because the right to inspect is not equivalent to the right to control. Id. at \*10. Accordingly, the court held that the lease unambiguously divested the landlord-defendant of possession and control over the area in question and the landlord was entitled to judgment as a matter of law. Id. at \*7.

Additionally, in Waller v. Associaters, LLC, Superior Court, judicial district of New Haven, Docket No. CV-04-5000118-S, \*2 (May 2, 2006), the lease at issue stated that the landlord, as a matter of self-help, could make repairs to the premises that the lessee refused or neglected to make. Additionally, the lease permitted the landlord to enter to show the premises and make repairs at reasonable times if reasonable notice had been given. Id. The court held that the landlord did not retain possession or control over the premises on the basis of these provisions because the landlord's right to enter and repair the premises was limited to narrow instances—self-help or during reasonable times after reasonable notice. Id. See also Averitt v. Oakdale Dev., Ltd. P'shp, Superior Court, judicial district of New Haven, Docket No. CV-02-0459460, \*17-18 (May 21, 2003) (“[The lease] does give the landlord the right to enter the premises at any reasonable time to ascertain that the tenant is performing its obligations under the lease, providing that except in emergencies, the landlord shall give the tenant advance notice of its intent to inspect the premises. This right to inspect provision does not raise a genuine issue of material fact as to whether [the landlord] had control over the premises. The right to inspect in this context does not mean and is not equivalent to the right to control.”).

In the present case, the lease clearly and unambiguously divests WFM Properties of possession of and control over the paver walkway leading to non-party Lily Transportation's office trailer. The lease clearly states that the lessee is solely responsible for the maintenance

and repairs of the premises, which includes the land identified in Exhibit A of the lease on which the paver walkway is located: “Tenant, at its **sole** cost and expense, shall keep the Demised Premises<sup>3</sup> in good **condition and repair** throughout the Demised Term, **including, without limitation**, (1) all portions on the Building, (2) the roof covering and membrane, (3) storefront glass . . . .” (emphasis added) *See Exhibit A, Lease, Section 6.3 (a), p.9*. Although the lease does not list explicitly the area at issue as being under the lessee’s control, by using the phrase “including, without limitation,” Section 6.3 (a) states clearly that the listed areas are not an exhaustive list and the lessee is responsible for the entire premises, as identified on Exhibit A, which includes the area on which the paver walkway is located. *See Exhibit A, Lease, Exhibit A*.

Under the clear terms of the lease, WFM Properties retained control over only the HVAC system and the roof: “Landlord expressly agrees that Tenant shall have no obligation to replace the HVAC system serving the Demised Premises (or any elevators or other mechanical equipment located in or serving the Demised Premises) or the roof system of the Building upon the expiration or any earlier termination of this Lease or to otherwise deliver the HVAC system (or elevators or other mechanical equipment located in or serving the Demised Premises) in working order.” *See Exhibit A, Lease, Section 6.3 (a), p. 9-10*.

WFM Properties’ duty to repair is clearly limited to the roof and HVAC system. WFM Properties exclusively contracted to retain control over only the roof and the HVAC system, establishing that the remainder of the premises, including the paver walkway, was not controlled by WFM Properties. Because Plaintiff was not injured by a defect with the roof or HVAC system, which were the only areas that Defendant WFM Properties retained control over, as a matter of law, WFM Properties owed no duty to Plaintiff.

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<sup>3</sup> Under the lease, “Demised Premises” is defined as “[t]he land identified in Exhibit A located at East Johnson Road, Cheshire, Connecticut, together with all improvements and structures now or hereafter located thereon, including without limitation, the Building.” *See Exhibit A, Lease, p.2*.

The lease in the present case is analogous to the lease in Velasquez. Like in Velasquez, WFM Properties retained control over only the roof and HVAC system. To be liable, WFM Properties had to have maintained control over the paver walkway. Because WFM Properties retained control over only the roof and HVAC system and because the lessee was solely responsible for the remainder of the premises, as a matter of law, WFM Properties did not possess or control the paver walkway.

Additionally, the lease expressly divests WFM Properties of possession of and control over any fixtures, equipment, and improvements installed and funded by the lessee or sub-lessee: “The leasehold improvements . . . installed in the Demised Premises which are constructed and funded by Tenant (and not reimbursed by Landlord) are the property of Tenant. . . .” *See Exhibit A, Lease, Section 6.2 (b), p.9; Section 14.1.*

Prior to the subject incident, WFM Properties had leased the entire premises including the area upon which the paver walkway is situated to Whole Foods Market Group, Inc. Then, prior to the subject incident, Whole Foods Market Group subleased a portion of the premises including that part upon which the paver walkway is situated to Lily Transportation for its sole and exclusive use. *See Exhibit B, Affidavit of Judy Cadden, p.2.*

Non-party Lily Transportation thus became a tenant under the lease, which permitted Defendant Whole Foods to sublease any part of the premises without Defendant WFM Properties’ prior written consent. *See Exhibit A, Lease, Section 14.1, p.20.*

At the time that non-party Lily Transportation leased the area at issue, the paver walkway and office trailer were not located thereon. After non-party Lily Transportation leased the area at issue, non-party Lily Transportation installed at its own expense the paver walkway and office trailer. *See Exhibit B, Affidavit of Judy Cadden, p.2.*

The paver walkway constitutes an improvement under the terms of the lease. The lease does not define the term “improvement.” Our Supreme Court, however, has held that “[w]ithout attempting to define the phrase in all its possible nuances and applications . . . an ‘improvement to real property,’ as commonly understood in the law, generally has reference to buildings, but may also include any permanent structure or other development [of the real property in question]’ Black’s Law Dictionary (6th Ed. 1990). Consistent with that understanding, [our Supreme Court has] defined an improvement to real property as an alteration or development of the property in order to enhance or promote its use for a particular purpose. . . . [This is] consistent with the definition of ‘improvement’ found in the most recent edition of Black’s Law Dictionary, the seventh edition, published in 1999. There, the term is defined as ‘an addition to real property, whether permanent or not; [especially] one that increases its value or utility or that enhances its appearance. Black’s Law Dictionary (7th Ed. 1999).” Verna v. Comm’r of Revenue Servs., 261 Conn. 102, 108-109, 801 A.2d 769 (2002) (citations altered).

In the present case, the paver walkway was an addition to the real property at issue that increased its utility by providing a pathway that led from the road to Lily Transportation’s office trailer. Thus, the paver walkway constitutes an “improvement” under Section 6.2 (b) of the lease.

Additionally, the paver walkway was “constructed and funded by Tenant.” As explained above, non-party Lily Transportation was a tenant under the terms of the lease after it leased the portion of the premises at issue from Defendant Whole Foods. Non-party Lily Transportation constructed, installed, and funded the paver walkway. *See Exhibit B, Affidavit of Judy Cadden, p.2.* At no time did WFM Properties or Defendant Whole Foods reimburse non-party Lily Transportation for constructing, installing, and funding the paver walkway. *See id.* Thus, the

paver walkway constitutes an improvement constructed and funded by a tenant, and, therefore, under Section 6.2 (b) of the lease, the paver walkway was the exclusive property of non-party Lily Transportation.

Because the paver walkway was the exclusive property of non-party Lily Transportation and because non-party Lily Transportation, as the sub-lessee, had exclusive possession of and control over the portion of the premises on which it was located, under the clear and unambiguous language of the lease, WFM Properties did not retain possession of or control over the paver walkway. Accordingly, WFM Properties owed no duty to Plaintiff concerning the paver walkway.

Moreover, nothing in the lease contradicts Sections 6.3 (a), which states that the lessee is solely responsible for maintenance and repairs of the entire premises, including the area on which the paver walkway was located. *See Exhibit A, Lease, p.9.* Although Section 6.3 (c) permits WFM Properties to enter and repair the premises in the event of an emergency, it is established law in Connecticut that such a provision does not invest a landlord with possession of and control over the premises. *See Waller v. Associaters, LLC*, supra, Docket No. CV-04-5000118-S, \*2; *Farrell v. McDonald's Corp.*, supra, CV-98-0491505, \*4. Additionally, Section 6.5 of the lease, which permits WFM Properties to inspect and show the premises, does not invest WFM Properties with possession and control because the right to inspect and show the premises is limited to normal business hours as long as entry does not interfere with business activities. *See Waller v. Associaters, LLC*, supra, at \*2; *Farrell v. McDonald's Corp.*, supra, at \*4; *Averitt v. Oakdale Dev., Ltd. P'shp*, supra, Docket No. CV-02-0459460, \*17-18.

Analogous to *Waller*, *Farrell*, and *Averitt*, although the lease in the present case permits WFM Properties the right to enter, repair, and/or inspect the premises, that right is limited to

self-help, emergency situations, and normal business hours as long as entry does not interfere with business activities. As courts have noted, the right to inspect is not equivalent to the right to control. Averitt v. Oakdale Dev., Ltd. P'shp, supra, Docket No. CV-02-0459460, \*17-18. In light of the limitations placed on WFM Properties' right to enter, inspect, and repair the premises, WFM Properties did not retain control over the paver walkway, and, thus, owed no duty to Plaintiff concerning the paver walkway.

Furthermore, Plaintiff cannot cure the legal sufficiency of his complaint by repleading. See Larobina v. McDonald, 274 Conn. 394, 401, 876 A.2d 522 (2005) (“[T]he use of a motion for summary judgment to challenge the legal sufficiency of a complaint is appropriate . . . [if] the defendant can establish that the defect could not be cured by repleading.”). There is no way in which Plaintiff may replead his claim that would alter the terms of the lease and invest WFM Properties with possession of or control over the paver walkway.

In sum, under the clear and unambiguous terms of the lease at issue, as a matter of law, WFM Properties did not possess or control the paver walkway. Absent such possession or control, WFM Properties owed no duty to Plaintiff regarding the paver walkway. Accordingly, there is no issue of material fact that WFM Properties owed a duty to Plaintiff, and, therefore, WFM Properties is entitled to judgment as a matter of law as to Count Two of Plaintiff's Amended Complaint.

#### **IV. CONCLUSION:**

In conclusion, as a matter of law, WFM Properties owed no duty to Plaintiff regarding the paver walkway because, under the clear and unambiguous terms of the lease, it did not possess or control the paver walkway. Therefore, there is no issue of material fact that WFM



**CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2016, a copy of the above was mailed and/or e-mailed to the following counsel and pro se parties of record:

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\_\_\_\_\_  
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8005.006

# EXHIBIT A

As referenced in this motion and in accordance with Connecticut Practice Book Sections 7-4C and 11-20A, this exhibit is being lodged with the Court.

# EXHIBIT B

D.N. UWY-CV-15-6025912-S

JAMES GRECHKA

v.

WHOLE FOODS MARKET GROUP, INC.

SUPERIOR COURT

J.D. OF WATERBURY

AT WATERBURY

NOVEMBER 1, 2016

**AFFIDAVIT OF JUDY CADDEN**

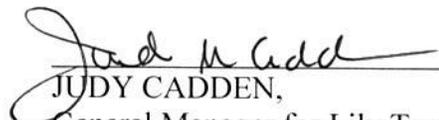
I, Judy Cadden having been duly sworn, hereby deposes and says:

1. I am over the age of eighteen;
2. I believe in the obligation of an oath;
3. I am making this Affidavit in support of WFM Properties Cheshire, LLC's Motion for Summary Judgment;
4. I am familiar with the facts concerning the above entitled lawsuit, James Grechka v. Whole Foods Market Group, Inc., bearing the docket number UWY-CV-15-6025912S;
5. I am a General Manager for Lily Transportation Corp. with my office located in Cheshire, Connecticut and I have held this position at all relevant times in question;
6. I have personal knowledge of the matters contained in this affidavit and information based on my review of Lily Transportation's records, the following statements are the truth to the best of my understanding;

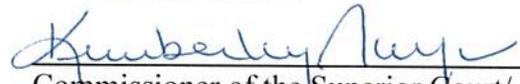
7. On August 18, 2011, Lily Transportation leased a certain portion of the premises located at 400 East Johnson Avenue, Cheshire, Connecticut, from Whole Foods Market Group, Inc. (“Leased Property”).
8. Shortly thereafter, Lily Transportation placed its office trailer onto the Leased Property. The office trailer is owned by Lily Transportation.
9. Lily Transportation wholly occupies the Leased Property to the exclusion of Whole Foods Market Group, Inc. and WFM Properties Cheshire LLC.
10. Sometime in August 2013, Lily Transportation installed and paid for a paver walkway on the Leased Property which leads from the road to its office trailer.
11. The Plaintiff James Grechka was an employee of Lily Transportation.
12. Upon information and belief, on October 4, 2013, Mr. Grechka tripped and fell on the paver walkway and sustained personal injuries.
13. At all times relevant herein, Lily Transportation was responsible for the maintenance and repair of the Leased Property including the paver walkway upon which Mr. Grechka tripped and fell..
14. At all times relevant herein, the paver walkway was owned by Lily Transportation.
15. At all times relevant herein, Lily Transportation was in possession and control of the paver walkway and the Lease Property upon which it was situated.
16. At no time prior to or after October 4, 2013, did Lily Transportation receive monetary reimbursement or compensation from WFM Properties Cheshire, LLC or Whole Foods Market Group, Inc. for installing the paver walkway.

17. Sometime after October 4, 2013, Lily Transportation removed the paver walkway to install a concrete walkway in its place.

This 31<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
JUDY CADDEN,  
General Manager for Lily Transportation Corp.

Subscribed and sworn to before me on this day 31<sup>st</sup> of October 2016.

  
\_\_\_\_\_  
Commissioner of the Superior Court/  
Notary Public

**KIMBERLEY TAYLOR**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES JAN. 31, 2018



# EXHIBIT C



Attorney/Firm: RYAN RYAN DELUCA LLP (436612)

E-Mail: SHMALITZ@RYANDELUCALAW.COM Logout

[Hide Instructions](#)

**You have successfully e-filed!**

**Instructions:** The information about the item you filed is on this confirmation page. You must print a copy of this page for your records. Choose [Print This Page](#) at the top of the page to print your copy.

Choose [E-File Another Pleading/Motion/Other](#) on this Case to go back to the [Select a Motion](#) page to choose another document name and file another document.

Choose [Return to Civil/Family Menu](#) to go back to the menu page.

Choose [Return to Case Detail](#) to look at the documents filed in this case or to file a reclaim in this case.

[Print This Page](#)

**Confirmation of E-filed Transaction (print this page for your records)**

<b>Docket Number:</b>	<a href="#">UWY-CV-15-6025912-S</a>
<b>Case Name:</b>	GRECHKA, JAMES v. WHOLE FOODS MARKET GROUP, INC. Et Al
<b>Type of Transaction:</b>	Pleading/Motion/Other document
<b>Date Filed:</b>	May-15-2015
<b>Motion/Pleading by:</b>	RYAN RYAN DELUCA LLP (436612)
<b>Document Filed:</b>	118.00 NOTICE OF COMPLIANCE
<b>Date and Time of Transaction:</b>	Friday, May 15, 2015 11:56:28 AM

[E-File Another Pleading/Motion/Other document on this Case](#)

[Return to Civil / Family Menu](#)

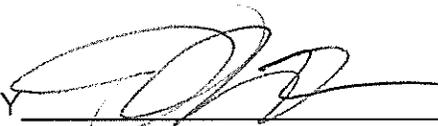
[Return to Case Detail](#)

DOCKET NO.: UWY-CV-15-6025912-S : SUPERIOR COURT  
JAMES GRECHKA : J.D. OF WATERBURY  
V. : AT WATERBURY  
WHOLE FOODS MARKET GROUP, INC. : MAY 14, 2015

**NOTICE OF COMPLIANCE**

Pursuant to §13-6 et seq. of the Connecticut Practice Book, the defendant, ***Whole Foods Market Group, Inc.*** hereby gives notice that it has filed its Responses to the plaintiff's Interrogatories and Requests for Production, dated February 4, 2015 on this date.

THE DEFENDANT,  
WHOLE FOODS MARKET GROUP INC

BY 

Janice D. Lai  
Ryan Ryan Deluca LLP  
360 Bloomfield Avenue  
Suite 2000  
Windsor, CT 06095  
860.785.5154 (Tel)  
860.785.5040 (Fax)  
Its Attorneys

**CERTIFICATION**

I hereby certify that on this 14<sup>TH</sup> day of May 2015, a copy of the foregoing was sent via U.S. mail, postage prepaid, to the following counsel of record:

Garrett M. Moore, Sr.  
Moore, O'Brien, Yelenak & Foti  
700 West Johnson Avenue  
Suite 207  
Cheshire, CT 06410  
*Counsel for the Plaintiff*

  
\_\_\_\_\_  
Janice D. Lai

DOCKET NO.: UWY-CV-15-6025912-S : SUPERIOR COURT  
JAMES GRECHKA : J.D. OF WATERBURY  
V. : AT WATERBURY  
WHOLE FOODS MARKET GROUP, INC. : MAY 14, 2015

**WHOLE FOODS MARKET GROUP, INC.'S ANSWERS TO PLAINTIFF'S  
INTERROGATORIES & REQUEST FOR PRODUCTION**

The Defendant, **Whole Foods Market Group, Inc.** hereby responds to the Plaintiff's Interrogatories and Requests for Production as follows:

(1) Identify the person(s) who, at the time of the Plaintiff's alleged injury, owned the premises where the Plaintiff claims to have been injured.

(a) If the owner is a natural person, please state:

- (i) your name and any other name by which you have been known;
- (ii) your date of birth;
- (iii) your home address;
- (iv) your business address.

**ANSWER: (i-iv) Not applicable.**

(b) If the owner is not a natural person, please state:

- (i) your name and any other name by which you have been known;
- (ii) your business address;
- (iii) the nature of your business entity (corporation, partnership, etc.);
- (iv) whether you are registered to do business in Connecticut;
- (v) the name of the manager of the property, if applicable.

**ANSWER: (i) WFM Properties Cheshire LLC is the owner of the premises.  
(ii) Upon information and belief, WFM Properties Cheshire LLC  
business address is 550 Bowie Street, Austin, TX 78703  
(iii) Whole Foods Market Group, Inc. does not have information  
responsive to this interrogatory**

- (iv) **Whole Foods Market Group, Inc. does not have information responsive to this interrogatory**
- (v) **Whole Foods Market Group, Inc. does not have information responsive to this interrogatory**

(2) Identify the person(s) who, at the time of the Plaintiff's alleged injury, had a possessory interest (e.g., tenants) in the premises where the Plaintiff claims to have been injured.

**ANSWER: Whole Foods Market Group, Inc. leased the premises from WFM Properties Cheshire LLC**

(3) Identify the person(s) responsible for the maintenance and inspection of the premises at the time and place where the Plaintiff claims to have been injured.

**ANSWER: Upon information and belief, Lily Transportation placed the pavers on site and maintained the pavers.**

(4) State whether you had in effect at the time of the Plaintiff's injuries any written policies or procedures that relate to the kind of conduct or condition the Plaintiff alleges caused the injury.

**ANSWER: Whole Foods Market Group, Inc. has no policies or procedures in place with respect to the conduct or condition in question because the plaintiff was an employee of Lily Transportation and Whole Foods Market Group, Inc. had no control over either the plaintiff or the area where the plaintiff alleges the incident happened.**

(5) State whether it is your business practice to prepare, or to obtain from your employees, a written report of the circumstances surrounding injuries sustained by persons on the subject premises.

**ANSWER: The Plaintiff did not report the accident to Whole Foods Market Group. Upon information and belief, the Plaintiff reported the accident to his employer, Lily Transportation.**

(6) State whether any written report of the incident described in the Complaint was prepared by you or your employees in the regular course of business.

**ANSWER: No.**

(7) State whether any warnings or caution signs or barriers were erected at or near the scene of the incident at the time the Plaintiff claims to have been injured.

**ANSWER: No.**

(8) If the answer to the previous interrogatory is in the affirmative, please state:

- (a) the name, address and employer of the person who erected the warning or caution signs or barriers;
- (b) the name, address and employer who instructed the person to erect the warning or caution signs or barriers;
- (c) the time and date a sign or barrier was erected;
- (d) the size of the sign or barrier and wording that appeared thereon.

**ANSWER: Not applicable.**

(9) State whether you received, at any time within twenty-four (24) months before the incident described by the Plaintiff, complaints from anyone about the defect or condition that the Plaintiff claims caused the Plaintiff's injury.

**ANSWER: No.**

(10) If the answer to the previous interrogatory is in the affirmative, please state:

- (a) the name and address of the person who made the complaint;
- (b) the name, address and person to whom said complaint was made;
- (c) whether the complaint was in writing;
- (d) the nature of the complaint.

**ANSWER: Not applicable.**

(11) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape or any other

digital or electronic means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

**ANSWER: None**

(12) State the following:

- (a) your full name and any other name(s) by which you have been known;
- (b) your date of birth;
- (c) your motor vehicle operator's license number;
- (d) your home address;
- (e) your business address.

**ANSWER: (a) James D. Doyle, Jr.  
(b) Not applicable  
(c) Not applicable  
(d) Not applicable.  
(e) 400 East Johnson Ave., Cheshire, CT 06410**

(13) Have you made any statements, as defined in Practice Book Section 13-1, to any person regarding any of the incidents alleged in the Complaint?

**COMMENT: This interrogatory is intended to include party statements made to a representative of an insurance company prior to involvement of defense counsel.**

**ANSWER: No.**

(14) If the answer to Interrogatory #13 is affirmative, state:

- (a) the name and address of the person or persons to whom such statements were made;
- (b) the date on which such statements were made;
- (c) the form of the statement (i.e., whether written, made by recording device or recorded by a stenographer, etc.);
- (d) the name and address of each person having custody, or a copy or copies of each statement.

**ANSWER: (a-d) Not applicable.**

(15) State the names and addresses of all persons known to you who were present at the time of the incident alleged in the Complaint or who observed or witnessed all or part of the incident.

**ANSWER:** The defendant did not witness the alleged incident and, therefore, has no independent knowledge of any such witnesses. Upon information and belief, Mike Pajor of Lily Transportation observed the Plaintiff after his accident and spoke with him.

(16) As to each individual named in response to Interrogatory #15, state whether to your knowledge, or the knowledge of your attorney, such individual has given any statement or statements as defined in Practice Book Section 13-1 concerning the subject matter of the Complaint in this lawsuit. If your answer to this Interrogatory is affirmative, state also:

- (a) the date on which the statement or statements were taken;
- (b) the names and addresses of the person or persons who took such statement or statements;
- (c) the names and addresses of any person or persons present when such statement or statements were taken;
- (d) whether such statement or statements were written, made by recording device or taken by court reporter or stenographer;
- (e) the names and addresses of any person or persons having custody or a copy or copies of such statement or statements.

**ANSWER:** Notwithstanding the defendant's response to Interrogatory No. 15, the defendant responds as follows:

**Plaintiff, James Grechka**

- (a) **October 5, 2013**
- (b) **Upon information and belief Lily Transportation, Mike Pajor**
- (c) **Mr. Grechka and Mr. Pajor**
- (d) **Written.**
- (e) **Ryan Ryan Deluca, LLP, Whole Foods Market Group, Inc.'s attorneys**

(17) Are you aware of any photographs depicting the accident scene, any vehicle involved in the incident alleged in the Complaint, or any condition or injury alleged to have been caused by the incident alleged in the Complaint? If so, for each set of photographs taken of each such subject by each photographer, please state:

- (a) the name and address of the photographer, other than an expert who will not testify at trial;
- (b) the dates on which such photographs were taken;
- (c) the subject (e.g., "Plaintiff's vehicle," "scene," etc.);
- (d) the number of photographs.

**ANSWER: No.**

**(a-d) Not applicable.**

(18) If, at the time of the incident alleged in the Complaint, you were covered by an insurance policy under which an insurer may be liable to satisfy part or all of a judgment or reimburse you for payments to satisfy part or all of a judgment, state the following:

- (a) the name(s) and address(es) of the insured(s);
- (b) the amount of coverage under each insurance policy;
- (c) the name(s) and address(es) of said insurer(s).

**ANSWER: See attached declarations pages. The defendant is being provided coverage pursuant to Lily Transportation Corp's insurance policy.**

(19) If at the time of the incident which is the subject of this lawsuit you were protected against the type of risk which is the subject of this lawsuit by excess umbrella insurance, or any other insurance, state:

- (a) the name(s) and address(es) of the named insured;
- (b) the amount of coverage effective at this time;
- (c) the name(s) and address(es) of said insurer(s).

**ANSWER: (a-c) The defendant is insured in an amount sufficient to satisfy any judgment which the plaintiff may recover as reflected in its response to Interrogatory No. 18.**

(20) State whether any insurer, as described in Interrogatories #7 and #8 above, has disclaimed/ reserved its duty to indemnify any insured or any other person protected by said policy.

**ANSWER: None to our knowledge**

(21) If any of the Defendants are deceased, please state the date and place of death, whether an estate has been created, and the name and address of the legal representative thereof.

**ANSWER: Not applicable.**

(22) If any of the Defendants is a business entity that has changed its name or status as a business entity (whether by dissolution, merger, acquisition, name change, or in any other manner) since the date of the incident alleged in the Complaint, please identify such Defendant, state the date of the change, and describe the change.

**ANSWER: Not applicable.**

### **REQUESTS FOR PRODUCTION**

(1) A copy of the policies or procedures identified in response to Interrogatory #4.

**RESPONSE: None.**

(2) A copy of the report identified in response to Interrogatory #6.

**RESPONSE: None.**

(3) A copy of any written complaints identified in Interrogatory #10.

**RESPONSE: None.**

(4) A copy of declaration page(s) evidencing the insurance policy or policies identified in response to Interrogatories numbered 18 and 19.

**RESPONSE: Attached**

(5) A copy of any non-privileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

**RESPONSE: Attached**

(6) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

**RESPONSE: None**

**THE DEFENDANT,  
WHOLE FOODS MARKET GROUP, INC.**

By  \_\_\_\_\_

Janice D. Lai, Esq.  
Ryan Ryan Deluca LLP  
360 Bloomfield Avenue  
Suite 301  
Windsor, CT 06095  
Tel. 860.785.5154  
Fax: 860.785.5040

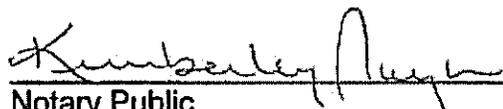
**VERIFICATION PAGE**

I, **Jim Doyle for Whole Foods Market Group, Inc.** makes these Answers to Interrogatories for and on behalf of Whole Foods Market Group, Inc. but that many facts set forth in such Answers are not within my personal knowledge, having been assembled and compiled within the employ of Whole Foods Market Group, Inc. at my direction, as to which facts I am informed and believe the same to be true and that the remaining facts are known to me to be true.

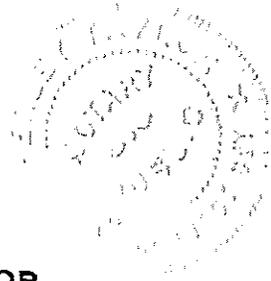
**WHOLE FOODS MARKET GROUP, INC.**

  
\_\_\_\_\_  
**James D. Doyle, Jr.**  
**Authorized signatory**

Subscribed and sworn to before me this 6<sup>th</sup> day of May, 2015

  
\_\_\_\_\_  
Notary Public

**KIMBERLEY TAYLOR**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES JAN. 31, 2018



**CERTIFICATION**

This is to certify that on this 14 day of May 2015, a copy of the foregoing was mailed, postage prepaid, to:

Joseph Rossetti, Esq.  
Moore, O'Brien, Yelenak & Foti  
Westgate Office Center  
700 West Johnson Avenue  
Cheshire, CT 06410-1135

  
\_\_\_\_\_  
Janice D. Lai



## Hudson Insurance Company

Subject to the Terms and Conditions attached to and forming a part hereof, hereby agrees to indemnify

No. HMU200034-02

### Declarations

#### Section 1

(a) **Insured:** Lily Transportation Corp.  
(also see Endorsement No. 1)

(b) Address of **First Named Insured** Above:  
145 Rosemary Street  
Needham, MA 02494

#### Section 2

Contract Period: December 19, 2012 to December 19, 2013  
12:01 A.M., Standard Time at the  
address of the **First Named Insured** as  
stated herein.

#### Section 3

Coverages Provided:	Included	Not Included
Coverage A ( <b>Personal Injury Liability</b> )	X	
Coverage B ( <b>Property Damage Liability</b> )	X	
Coverage C ( <b>Uninsured and Underinsured Motorists</b> )	See attached Endorsement	
Coverage D ( <b>Personal Injury Protection</b> )	See attached Endorsement	
Coverage E ( <b>Cargo Damage</b> )		X
Coverage F ( <b>Physical Damage - Comprehensive</b> )		X
Coverage G ( <b>Physical Damage - Collision</b> )		X
Coverage H ( <b>Employers Liability</b> )		X

**Declarations Page 2**

No. HMU200034-02

**Section 4**

Limit of Liability:

\$750,000 combined single limit per **occurrence** excess of **retention** for Coverages A-D. Coverages C and D are included only to the extent these Coverages may not be waived or rejected by the **Insured**, and in any event not provided in an amount greater than applicable minimum state limits. Payment of any such amount under Coverages C and or D shall serve to satisfy **retention** and contribute to **net loss**.

**Section 5**

Retention: \$250,000 per **occurrence** for Coverages A-D.

**Section 6**

Deposit: N/A – Prepayment of all installments.

**Section 7**

Premium Rate: per 100 of **Miles**

**Section 8**

Estimated Contract Period **Miles**:

**Section 9**

**Endorsements at Inception:**

MTU S01 07 02	MTU S16 07 02
MTU S02 12 09	MTU S08 03 08
MTU S03 07 02	MTU S12 07 02
MTU S04 12 09	MTU S17 11 02
MTU S05 01 05	MTU S37 03 12
MTU S06 07 02	MTU S38 03 12
MTU S07 07 02	MTU S16 07 02
MTU S37 03 12	CA 23 56 11 02
	CG 21 70 11 02



Authorized Agent

**Lily Transportation Employee Injury Report**  
**FAX#: 877-784-5329**  
**Corporate Fax# 781-453-6991**



Work location: 588 Date of Accident: 10/4/13 Date of report: 10/6/13

TRK-UB-10101227-09  
 Policy #'s: TC2H-UB-8198A048-09 Reported to: Mike Pujor Time of Injury: 6:50

James Grechik 800-605-0858 866-605-5800  
 Employee's name Phone # Secondary Phone # Date of Hire

49 Contour Court Oakdale 2/27/59 Walking on pavement  
 Employee's Address DOB Activity performing at time of injury

CT Cheshire CT  
 City & State of Hire Location of loss - City, State Dock [ ] Yard [ ] Other(describe)

Married [ ] Single # of Dependents: 3 SS#: 047-62-3933

List any individuals present at time of incident. If none, write None:

Mike Pujor - Dispatcher

**Check or circle all that apply:**

Type of treatment: not a doctor Name of Hospital: Waterbury hospital  
 Hospital Emergency Room [ ] Occupational Health Clinic [ ] First Aid  
 None needed [ ] declined treatment - If this item checked, employee must sign here:

Were you able to return to work? [ ] Yes  No Date RTW Authorized at least 6  
weeks

Did you return with restrictions? [ ] Yes [ ] No If yes, indicate the restrictions.

**Nature of Injury**

- |   |                                     |   |
|---|-------------------------------------|---|
| <input type="checkbox"/> Cut                    | <input type="checkbox"/> Amputation | <input type="checkbox"/> Dislocation      |
| <input type="checkbox"/> Bruises/contusions     | <input type="checkbox"/> Hemia      | <input type="checkbox"/> Electrical shock |
| <input type="checkbox"/> Sprains/strains        | <input type="checkbox"/> Abrasions  | <input type="checkbox"/> Heat exhaustion  |
| <input checked="" type="checkbox"/> Fracture    | <input type="checkbox"/> Dermatitis | <input type="checkbox"/> Other            |
| <input type="checkbox"/> Burn (heat, chemical,) | <input type="checkbox"/> Poisoning  |   |

**Body Part**

- |                                      |                                       |  |                                    |   |
|--------------------------------------|---------------------------------------|--|------------------------------------|---|
| <input type="checkbox"/> Head        | <input type="checkbox"/> Elbow L/R    | <input type="checkbox"/> Chest         | <input type="checkbox"/> Knee L/R  | <input type="checkbox"/> Eyes L/R             |
| <input type="checkbox"/> Forearm L/R | <input type="checkbox"/> Abdomen      | <input type="checkbox"/> Lower Leg L/R | <input type="checkbox"/> Ears L/R  | <input checked="" type="checkbox"/> Wrist L/R |
| <input type="checkbox"/> Groin       | <input type="checkbox"/> Ankle L/R    | <input type="checkbox"/> Neck          | <input type="checkbox"/> Hand L/R  | <input type="checkbox"/> Hips L/R             |
| <input type="checkbox"/> Feet L/R    | <input type="checkbox"/> Shoulder L/R | <input type="checkbox"/> Fingers L/R   | <input type="checkbox"/> Thigh L/R | <input type="checkbox"/> Upper arm L/R        |
| <input type="checkbox"/> Upper Back  | <input type="checkbox"/> Lower Back   | <input type="checkbox"/> Other         |                                    |   |

# Lily Transportation Employee Injury Report

FAX#: 877-784-5329

Corporate Fax# 781-453-6991



### Accident Type

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Contact with   | <input type="checkbox"/> Struck by                     | <input type="checkbox"/> Fall to different level |
| <input type="checkbox"/> Caught in      | <input type="checkbox"/> Overexertion                  | <input type="checkbox"/> Inhalation/absorption   |
| <input type="checkbox"/> Struck against | <input checked="" type="checkbox"/> Fall on same level | <input type="checkbox"/> Other (describe below)  |

Explain: \_\_\_\_\_

Describe the accident IN DETAIL. Include what happened and how it happened. Include any equipment or machinery involved. **BE VERY SPECIFIC.** Use additional papers if necessary and attach it to this document.

At 6:45pm on Friday night coming on duty,  
 tripped on power on ~~west~~ walk way and  
 fell into garbage can, fell into metal  
 steps. ~~coming on duty~~  
 Brake left arm.

As described to me by Jim Grechka, - Jim Grechka

List any previous injuries or illnesses you have had during the last 5 years, including dates.

By signing this form, I acknowledge that the information recorded on this Accident Form is accurate. Additionally, I authorize the release of all medical information and records concerning me that may be related to this injury to Lily Transportation Corp. and its insurers.

\_\_\_\_\_  
Employee's signature

10  
Date

\_\_\_\_\_  
Employee's Name (printed)

Employee has not been available to  
sign