

FILED

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By *[Signature]* Deputy

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

**VICKI WHITEAKER and
LEONARD WHITEAKER**

PLAINTIFFS

VS.

CIVIL ACTION NO 3:08CV129-M-A

FREDS, INC.; A, B, and C; the person, firm and/or corporation who was the owner, operator and/or party in control of the establishment known as FRED'S DOLLAR STORE, located at 8912 Northwest Dr., Southaven, MS on the occasion of the incident made the basis of this suit; D, E and/or F, the person, firm, and/or corporation who was responsible for the maintenance of outdoor displays/barriers and/or railings in the parking area of the FRED'S DOLLAR STORE located at 8912 Northwest Dr., Southaven, MS on the occasion of the incident made the basis of this suit; all of whose true names and legal identities are otherwise unknown to the Plaintiffs at this time, but will be added by amendment when ascertained; individually and jointly,

DEFENDANT

JURY TRIAL DEMANDED

COMPLAINT

Comes now the Plaintiffs, by and through their attorney of record, and file this Complaint against the Defendants and for cause would state the following, to-wit:

PARTIES

1. Plaintiffs, Vicki and Leonard Whiteaker are adult resident citizens of the State of Mississippi, and reside at 4915 Alden Lake Dr. W., Horn Lake, Mississippi 38637.

2. Defendant FRED'S, INC. (hereinafter "Fred's) upon information and belief, is and was at all times material herein, a corporation organized and existing under the laws of the State of Tennessee, whose principal place of business is located at 4300 New Getwell Road, Memphis, Tennessee 38118. Fred's may be served through its agent for service of process via Jerry A. Shore, 4300 New Getwell Road, Memphis, Tennessee 38118.

3. Fictitious Defendants, A, B, and C; whether singular or plural, being the person, firm and/or corporation who was the owner, operator and/or party in control of the establishment known as FRED'S DOLLAR STORE, located at 8912 Northwest Dr., Southaven, MS on the occasion of the incident made the basis of this suit; D, E and/or F, the person, firm, and/or corporation who was responsible for the maintenance of outdoor displays/barriers and/or railings in the parking area of the FRED'S DOLLARSTORE located at 8912 Northwest Dr., Southaven, MS on the occasion of the incident made the basis of this suit; all of whose true names and legal identities are otherwise unknown to the Plaintiffs at this time, but will be added by amendment when ascertained; individually and jointly, and are liable to Plaintiffs as set forth in the Complaint herein below.

JURISDICTION AND VENUE

4. This is a claim for personal injuries and property damages resulting from a trip and fall incident which occurred in Desoto County, Mississippi.

5. The Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332.

6. Venue is proper in the Northern District of Mississippi under 28 U.S.C. § 1391.

GENERAL ALLEGATIONS:

7. That on or about the 23rd day of December, 2006, Plaintiff Vicki Whiteaker was a business invitee at Defendants' place of business located at 8912 Northwest Dr., Southaven, MS.

8. While exiting the store into the parking area on the aforementioned date, Plaintiff Vicki Whiteaker tripped over a wooden railing that had been set up by Defendants' just outside of the entrance and exit doors of the store. The railings were supported by concrete blocks on either side and were directly in the path used by patrons to exit the store.

9. Defendants knew or should have known that the location and height of the railings over which Plaintiff fell were not safe and posed a serious danger to patrons entering and exiting the store.

COUNT ONE

NEGLIGENCE

10.. Plaintiffs reallege and incorporate herein each and every preceding paragraph as if fully set forth herein and further alleges as follows:

11. That Defendants were guilty of the following acts of negligence, all of which contributed to and proximately caused Plaintiffs' injuries and damages:

- (a) in failing to adequately warn the Plaintiff of a dangerous condition that existed on the premises;
- (b) in failing to exercise diligence to keep the premises in reasonably safe condition for the use of business invitees such as the Plaintiff;
- (c) in failing to exercise reasonable care to prevent injury to the Plaintiff and other customers from defects on the premises;

- (d) in creating and allowing a condition to exist which created an unreasonable danger to invitees such as the Plaintiff;
- (e) in failing in its duty to exercise reasonable care to keep the premises in a reasonably safe and suitable condition which includes warning of latent or hidden dangers of which the Defendants knew, or with the exercise of reasonable care, would have known;
- (f) in other ways to be shown upon completion of discovery in the trial of this case.

12. Plaintiffs would show that as a direct and proximate result of the acts of negligence of the Defendants as aforesaid, she has suffered in the following particulars:

- (a) Doctor, hospital, drug and other medical bills related to the injury;
- (b) extreme pain and suffering;
- (c) mental and emotional trauma and anguish;
- (d) debilitating permanent injuries;
- (e) significant loss of income;
- (e) among other things to be shown at the trial of this cause

WHEREFORE, Plaintiffs demand against Defendants for compensatory damages in excess of the jurisdictional limits of this Court together with interest and costs.

COUNT TWO

WANTONNESS

13. Plaintiffs reallege and incorporate herein each and every preceding paragraph as if fully set forth herein and further alleges as follows:

14. The acts and/or omissions of the Defendants constitute wanton conduct and exhibit total disregard and lack of concern for the safety and welfare of Plaintiffs.

15. As a direct and proximate consequence of the Defendants' wanton conduct, the Plaintiffs were injured and damaged as set forth herein above.

WHEREFORE, Plaintiffs demand judgment against the Defendants for compensatory and punitive damages in excess of the jurisdictional limits of this Court, plus interest and costs.

COUNT THREE

LOSS OF CONSORTIUM

16. Plaintiffs reallege and incorporate herein each and every preceding paragraph as if fully set forth herein and further allege as follows:

17. At all times material hereto, Plaintiff, Leonard Whiteaker, has been married to Plaintiff, Vicki Whiteaker.

18. As a direct and proximate result of the conduct of Defendants, as alleged herein, Plaintiff, Leonard Whiteaker has suffered loss of the comfort, services, companionship and consortium of his wife, Vicki Whiteaker.

WHEREFORE, Plaintiff, Leonard Whiteaker, demands judgment against the Defendants for damages in excess of the jurisdictional limits of this Court, plus interest and costs, attorney fees, and such other relief to which the Plaintiff may be justly entitled.

Respectfully submitted this the 21st day of November, 2008.

BY: 

PHILIP A. STROUD (MSB# 99401)
JAMES D. HARPER (MSB#99386)
Attorneys for Plaintiffs

OF COUNSEL:

STROUD & HARPER, P.C.
Post Office Box 210
Southaven, MS 38671
(662) 536-5656

**PLAINTIFF RESPECTFULLY REQUESTS A TRIAL BY JURY AS TO ALL COUNTS
HEREIN.**

BY: 

PHILIP A. STROUD

DEFENDANTS MAY BE SERVED AS FOLLOWS:

Fred's, Inc.
c/o its registered agent: Jerry A. Shore
4300 New Getwell Road
Memphis, TN 38118