IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2007-CA-01801

BRIEAH S. PIGG, INDIVIDUALLY AND
ON BEHALF OF GARRETT KADE PIGG, A MINOR — APPELLANT

VS.

EXPRESS HOTEL PARTNERS, LLC
D/B/A HOLIDAY INN EXPRESS,
EXPRESS HOTEL PARTNERS, LLC,
BHARAT R. PATEL, ABC, DEF AND GHI — APPELLEES

ON APPEAL FROM THE CIRCUIT COURT
OF CLAY COUNTY, MISSISSIPPI

AMENDED BRIEF OF APPELLANT

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ORAL ARGUMENT IS NOT REQUESTED

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable Lee J. Howard, Circuit Court Judge
2. Brieah S. Pigg, Appellant
3. B. Stevens Hazard, Victoria H. Rundlett, Daniel Coker Horton & Bell, Eugene C. Tullos, Attorneys for Appellant
4. Express Hotel Partners, LLC d/b/a Holiday Inn Express, Appellee
5. Express Hotel Partners, LLC, Appellee
6. Bharat R. Patel, Appellee
7. David L. Sanders, Mitchell McNutt & Sams, Attorneys for Appellees

Victoria Hardy Rundlett

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STATEMENT OF THE CASE

A. Proceedings and Disposition in the Court below

Plaintiff/Appellant filed an Amended Complaint in the Circuit Court of Clay County on November 14, 2005, seeking damages for injuries received on November 16, 2002. (R. at 60-67). Thereafter, discovery ensued and defendants/appellees filed a motion for summary judgment on September 20, 2006. (R. at 100-130, Tab 4). Plaintiff/Appellant provided her response to the motion (R. at 131-170, Tab 5) and the motion was brought forward for hearing on July 17, 2007. (R. at Vol. 3, Tab 8). Thereafter, the lower court granted defendants'/appellees' motion (R. at 177-79, Tab 2). Believing this to be error, plaintiff/appellant filed a motion for the court to reconsider its prior ruling. (R. at 180-252, Tab 6). The court overruled plaintiff's/appellant's motion and plaintiff/appellant timely perfected her appeal. (R. at 276-81, Tab 3).

B. Statement of the facts.

On November 15, 2002, appellant Brieah S. Pigg, her husband Greg Pigg and their two year old son, Garrett Kade Pigg, rented a hotel room at the Holiday Inn Express in West Point, Mississippi. (R. at 193-94). On the morning of November 16, 2002, Greg Pigg left for work as a journeyman restoring power to the Mississippi

University for Women in Columbus and appellant took a shower in the small two room (one bedroom and one bath) hotel room while her son, then at the age of two, watched cartoons on television in the bedroom. (R. at 194-97). While appellant Brieah Pigg (hereinafter "Brieah") was in the shower, her two year old son came through the bathroom's open door where Brieah acknowledged the child and continued with her shower behind the curtain. *Id.* The door leading into the bathroom of the hotel room had a mirror attached to the outside of the door. (R. at 225-26). Brieah witnessed her son begin to attempt to close the door. (R. at 196-98). She saw his hand on the door knob and saw him moving backward to close the door. *Id.* She testified that his arms could pull faster than his feet could back up. (R. at 194-95). Within seconds, Brieah heard glass breaking and immediately saw her child on his back on the bathroom floor with glass shards on him. (R. at 197-200). The breaking glass was the only sound Brieah heard, she did not hear a door closing or slamming or a door hitting the stopper on the wall or any other sound. *Id.* The mirror fell from its attached location on the door, injuring the two year old child. (R. at 200, 201, 208-21). As a result of the fallen mirror, the child's cornea was cut and required medical attention. *Id.* The bathroom door was never completely closed. (R. at 196-98).

SUMMARY OF THE ARGUMENT

The trial court incorrectly granted summary judgment to appellees. There is a genuine issue as to a material fact, requiring that the subject case be submitted to the jury for consideration. In the case at bar, the mirror that injured the two year child of Brieah and Greg Pigg did not fall due to negligence on the part of the injured party or his parents. The mirror was in the exclusive control of the appellees and would not have fallen but for the appellees' negligence. The appellees owed a duty to appellant, an invitee, to keep the premises reasonably safe. Appellees breached the duty owed and Kade Pigg was injured as a result.

Negligence may be proven by circumstantial evidence, such as the doctrine of *res ipsa loquitur*, which is applicable in premises liability actions. In the subject case, it is more probable than possible that the mirror which fell and cut the minor child's cornea was not adequately secured the door in the appellees' business. There is a genuine issue as to a material fact and a jury should be permitted to consider and infer appellees' negligence.

ARGUMENT

I. THE LOWER COURT ERRED WHEN IT DETERMINED THAT SUMMARY JUDGMENT WAS PROPER SINCE A GENUINE ISSUE OF MATERIAL FACT EXISTED WHICH SHOULD HAVE ALLOWED THE CASE TO PROCEED TO TRIAL

Appellant respectfully avers that the facts established during discovery demonstrate that summary judgment should not have been granted for appellees. Appellant contends that there is a genuine issue of material fact which should allow this case to proceed to trial. Summary Judgment is proper only when there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Mississippi Rule of Civil Procedure 56(c). To avoid summary judgment, the nonmoving party must establish a genuine issue of material fact by means allowable under Rule 56(c). *Lyle v. Mladinich,* 584 So. 2d 397, 398 (Miss.1991).

A motion for summary judgment should be denied unless the trial court finds, beyond any reasonable doubt, that the plaintiff would be unable to prove any facts to support his claim. *McFadden v. State,* 580 So. 2d 1210 (Miss.1991). "[T]he Court cannot try issues of fact on a Rule 56 motion; it may only determine whether there are issues to be tried." *Brown v. Credit Center Inc.,* 444 So. 2d 358, 362 (Miss.1983).

In the case at bar, appellant established through deposition testimony that she would be able to prove the facts to support her claim against appellees. As the argument following supports, the lower court erred by granting summary judgment.

On November 16, 2002, Garrett Kade Pigg was two years old. (R. at 192). He was watching television in the hotel room his parents rented in West Point while his mother took a shower in the adjacent bathroom. (R. at 193-97). This is when the minor was injured by a falling mirror that should have been securely fastened to the bathroom door. It is undisputed that appellant was an invitee to the appellees' place of business. It is well established that, due to appellant's status, appellees owed a duty to appellant to "keep the premises reasonably safe." *Leffler v. Sharp*, 891 So. 2d 152, 156 (Miss. 2004) (quoting, *Massey v. Tingle*, 867 So. 2d 235, 239 (Miss. 2004)). "To prove that the business operator was negligent, the plaintiff must show either (1) the operator caused the dangerous condition, or (2) where a third person unconnected with the store's operation caused the condition, that the operator had actual or constructive knowledge of the condition." *Almond v. Flying J Gas Co.*, 957 So. 2d 437, 439 (Miss. Ct. App. 2007).

Negligence may be proved by circumstantial evidence, that is "evidence of a fact, or a set of facts, from which the existence of another fact may reasonably be inferred." *Mississippi Winn-Dixie Supermarkets v. Hughes*, 247 Miss. 575, 585 So.

2d 734, 736 (1963). This circumstantial evidence must be such that is creates a legitimate inference that places it beyond conjecture. *Downs v. Choo*, 656 So. 2d 84, 90 (Miss. 1995). Circumstantial evidence may be used in the absence of testimony by eye witnesses, provided the circumstances are such so as to take the case out of the realm of conjecture and place it within the field of legitimate inference. *Leflore County v. Givens*, 754 So. 2d 1223, 1230 (Miss. 2000)(overruled on other grounds)(citing, *K-Mart Corp. v. Hardy*, 735 So. 2d 975, 981 (Miss. 1999)). If proof of a causal connection is to be established by circumstantial evidence, it must be sufficient to make the plaintiff's asserted theory reasonably probable, not merely possible, and it is generally for the trier of fact to say whether circumstantial evidence meets this test. *Mississippi Valley Gas Co. v. Walker*, 725 So. 2d 139, 145 (Miss. 1998). The inference must cover all of the necessary elements of negligence, and must point to a breach of defendant's duties. *Dees v. Campbell*, 183 So. 2d 624, 626 (Miss. 1966).

Appellant argues that appellees should have adequately inspected the mirrors attached to the doors in their business establishment frequented by the appellant. An adequate inspection would have revealed that the mirror was not properly secured to the bathroom door, causing appellees to repair or replace the door and/or mirror, thus keeping the premises reasonably safe. One of the owners of the hotel and the current

maintenance man, Bharat Ramesh Patel, testified concerning the safety of the hotel room and the condition of the mirror. (R. at 233). Patel testified that a hotel room should be safe for a two year old. (R. at 243). Further, Patel testified that the rooms should be safe enough for a child to be alone for a few minutes while his or her parents are either going to the bathroom or taking a shower since it was his goal to have a safe room to rent. (R. at 244).

Patel testified that the mirror on the bathroom doors in his hotel are 2.5 feet by 5 feet. (R. at 235). He testified that he conducts inspections of the hotel rooms, including the mirrors; however, he testified that he only inspects about half of the rooms a month and he does not inspect each room in the hotel every month. (R. at 241-42). Similar testimony was given by executive housekeeper Moease Cannon who testified that Patel checked the mirrors in the bathroom but she did not know how often. (R. at 227-28). Cannon testified that she also checked the mirrors on the bathroom doors but she has never checked the mirror by hitting it or opening the door hard to see if it would fall off. (R. at 229-31). Patel testified that the bathroom mirrors are attached with six fasteners and he would expect the fasteners to be secure enough so that if the door was bumped by a child's shoes or if a child pushed the door to which the mirror was attached, the mirror would not fall off. (R. at 234-42, 245).

Patel testified that it was foreseeable that if a mirror or glass fell, someone would get hurt. (R. at 246-47).

Patel and Cannon's testimony support appellant's argument that the mirrors were not securely fastened to the door and the mirrors were not inspected properly to render a reasonably safe premises for invitees such as appellant. Patel even testified that he doesn't inspect each mirror in each room every month. (R. at 241-42). Cannon testified that she doesn't use force of any level when she inspects the mirror. (R. at 229-31). Further, Patel also testified that if the mirror was properly secured, bumping the door or pushing on the door should not cause the mirror to fall. (R. at 245). This testimony negated the appellees' motion for summary judgment and presented a genuine issue as to material fact, thereby allowing the case to go to the jury. As such, it was error for the lower court to grant appellees' motion and a reversal is warranted.

Undisputed testimony from Greg and Brieah Pigg (hereinafter "Greg" or "Brieah"), the minor's parents, also support the appellant's allegations of negligence. After the accident, Greg and Brieah took their son to the Clay County Emergency Room and then returned to the appellees' hotel. (R. at 249, 201). After returning from the ER, Greg and Brieah entered two of the rooms near the one they occupied to inspect the mirrors attached to those bathroom doors. (R. at 249-52, 203-04, 206,

207). They were accompanied by a member of the hotel's housekeeping staff. (R. at 202). Both rooms checked by Greg and Brieah were found to have loose mirrors attached to the bathroom doors. (R. at 249-52, 203-04, 206, 207). Greg testified that he examined the mirror in one room and it would move back and forth from left to right. (R. at 252). Brieah testified that she also looked at and touched the mirrors and they would move in both rooms that she, Greg and the housekeeper examined. (R. at 202-04).

Greg and Brieah Pigg found 100% of the mirrors on the bathroom doors loose that they inspected. This testimony supports the appellant's negligence allegations against the appellees and presented a question of material fact. The fact that two of the hotel rooms near the appellant's room had loose mirrors certainly is circumstantial evidence in support of the negligence claims against the appellees and presented a question of fact for the jury to render a decision.

It is not disputed that there were no adult witnesses to the accident. However, the testimony concerning the location of the broken mirror post accident supports the appellant's theory that the mirror was not securely fastened to the door and does not support the appellees' speculation that the two year old child slammed the bathroom door into the wall in the bathroom. Moease Cannon is a long time employee of the Holiday Inn Express in West Point and, at the time of her deposition, was the

executive housekeeper. (R. at 223-24). Cannon testified that the bathroom doors go to the inside of the bathroom and a stopper is in place to keep the door from slamming into the wall. (R. at 225-26). As such, even if the child tried to push the door back, the stopper would have prevented him from doing so.

Brieah Pigg testified concerning the placement of the broken mirror during her deposition. Brieah testified that she saw her minor son attempting to close the door, pulling it to him while he was attempting to leave the bathroom. (R. at 196-98). Brieah testified that after she heard the mirror break which was the only sound she heard, she found her two year old son lying on his back on the bathroom floor with glass on his clothes, on the carpet outside of the bathroom and around the child on the tile floor of the bathroom itself. (R. at 198-200). Brieah found her son bleeding from the cut glass. (R. at 200). He had scratches on his face and arm. *Id.*

Brieah testified that when she looked out of the shower, her two year old son was attempting to leave the bathroom and was trying to close the bathroom door to go watch television in the bedroom portion of the hotel room. (R. at 196-98, 205). Brieah testified that she saw his hand on the door and that his arms could pull faster than his feet could back up. (R. at 194-95). She testified that her son did not get the door shut, which statement was agreed to by appellees' counsel. (R. at 198-99). The placement of the glass supports appellant's contention that the bathroom door was

neither slammed open or shut. Had the door been shut as quickly, or as quickly as a two year old can shut a door, the glass would only be on the outside of the bathroom on the carpet. The facts do not support that position. Further, the facts do not support the position that the door was pushed into the wall by the two year old child, as all of the glass was not found in the bathroom, Brieah testified she saw her son trying to close the door by pulling it towards him to the outside of the bathroom and there was a stopper in place to prevent the door from opening and slamming into the wall. Brieah specifically testified that the door was not shut and appellees' counsel deduced from his interpretation of the facts that the door did not close. It must be sufficient to make the plaintiff's asserted theory reasonably probable, not merely possible, and it is generally for the trier of fact to say whether circumstantial evidence meets this test. *Mississippi Valley Gas Co. v. Walker*, 725 So. 2d 139, 145 (Miss. 1998).

The facts support the appellant's position that it is probable that the mirror was not adequately and securely fastened to the bathroom door, thus rendering the premises unsafe. The mirror was maintained by the appellees and therefore, it is more probable than not, that the appellees' negligence in inspecting and fastening the mirror to the door caused the injury to the two year old child. As such, a question as to a material fact was presented by deposition testimony and during oral argument which would negate the award of summary judgment and the lower court erred in

granting the motion. Pursuant to *Mississippi Valley Gas Co. v. Walker*, the jury as the trier of fact is to analyze the circumstantial evidence and determine what inference, if any, it will give it.

II. THE LOWER COURT ERRED WHEN IT DETERMINED THAT THE DOCTRINE OF *RES IPSA LOQUITUR* WAS NOT APPLICABLE TO THE SUBJECT PREMISES LIABILITY CASE.

Appellant believes that the theory of *res ipsa loquitur* can be utilized as circumstantial evidence to prove appellees' negligence does apply in this case. Appellees argue that the doctrine is inapplicable to all premises liability cases; however, appellees misconstrue the law and presented an incorrect correlation to the lower court, which it believed. The appellees argued during the hearing on this matter that the law in Mississippi was that *res ipsa loquitur* did not apply in all premises cases and challenged the lower court not to take the "giant leap and change the law in the State of Mississippi." (R. at Vol. 3 at 7).

Res ipsa loquitur is not a theory of recovery. Rather, it is simply one form of circumstantial evidence. *Read v. Southern Pine Elec. Power Assoc.*, 515 So. 2d 916, 918-20 (Miss. 1987)(citing, *Dees*, 183 So. 2d at 626). *Res ipsa loquitur* is a rule of evidence that allows negligence to be inferred in certain fact situations. *Winters v. Wright, et al.*, 869 So. 2d 357, 363, 366 (Miss. 2003). The doctrine of *res ipsa loquitur* (literally, "the thing speaks for itself") permits the jury to infer that the

appellees caused the appellant's harm if three elements are present: (1) the instrumentality causing the damage was under the exclusive control of the defendants, (2) the occurrence was such that in the ordinary course of things would not happen if those in control used proper care, and (3) the occurrence was not due to any voluntary act on the part of the plaintiffs. *Read*, 515 So. 2d at 919-20(citing, *Clark v. Vardaman Mfg. Co.*, 162 So. 2d 857 (Miss. 1964), *Palmer v. Clarksdale Hospital*, 206 Miss. 680,694, 40 So. 2d 582, 584 (1949)). In the case at bar, all three elements of *res ipsa loquitur* were met. The mirror was attached to the bathroom door in the appellees' hotel room, thus in the appellees' exclusive control. The broken mirror caused harm to appellant and, in the ordinary course of things, it should not have fallen. If the mirror was adequately and securely fastened to the door, it should not have fallen at all and certainly not if it was opened or closed by a two year old child. Furthermore, one of the hotel's owners testified that an adequately secured mirror should not fall if it is pushed or bumped by the shoe of a small child. (R. at 245). Thus, the second element was met. Concerning the third element, appellant urges this Court that the lower court erred in its ruling that the child may have made a voluntary act which caused the mirror to fall. The child, at the time of the accident, was only two years old. This Court stated previously stated that *prima facie*, a child of tender years is incapable of exercising judgment and discretion. *Westbrook v. Mobile & Ohio*

R.R. Co., 66 Miss. 560, 568 6 So. 321 (1889). The Mississippi Supreme Court expanded on the tender years doctrine several years later by stating:

> The [plaintiff], on account of his tender age, is *prima facie* presumed not to be possessed of sufficient discretion to make him guilty of contributory negligence for his failure, if such there was, to exercise due care for his safety. This presumption may be overcome by proof, in which event it becomes a question of fact for the jury. Even when chargeable with contributory negligence, a child of the tender age of [plaintiff] is not held to the same degree of care as is required of adults under similar circumstances, but only such care as it is capable of exercising, taking into consideration its age, experience, knowledge, and intelligence.

Potera v. Brookhaven, 95 Miss. 774, 783 (1909). The tender years doctrine has been upheld and followed by other cases. Generally, *Skelton v. Twin County Rural Elec. Assoc.*, 611 So. 2d 931 (Miss. 1992); *Murchison, a minor v. Sykes*, 223 Miss. 754, 78 So. 2d 888 (1955)(holding that a nine year old child was of tender years and incapable of contributory negligence), *Hinds, Director General of RR, et al. v. Moore, et. al.*, 124 Miss. 500; 87 So. 1 (1920); *Mayor of Vicksburg v. McLain*, 67 Miss. 4, 14 6 So. 774, 775-76 (1889). The third element has been met as the minor plaintiff is not legally capable of contributing to the accident which caused his injury.

Appellees argued to the lower court that *res ipsa loquitur* is inapplicable in all premises liability cases. Appellees are incorrect as a matter of law. The 1966 case

which was previously relied upon by the appellees concerned a plaintiff who slipped and fell on a gum ball at a Sears, Roebuck & Company store. *Sears, Roebuck & Company v. Tisdale*, 185 So. 2d 916, 917-18 (Miss. 1966). The court stated "[p]roof that the floor on which the fall occurred had present thereon litter and debris is similarly insufficient; and the doctrine of *res ipsa loquitur* is inapplicable in cases of this kind. *Id.* at 916 (emphasis added). The court did not dictate that *res ipsa loquitur* does not apply in all premises liability cases, only cases like the factual situation presented in the *Tisdale* case, i.e. a slip and fall premises liability case. Additionally, several other slip and fall premises liability cases have been evaluated by this appellate court. The Mississippi Supreme Court, following *Tisdale*, specifically upheld the rule that *res ipsa loquitur* is inapplicable in the slip and fall cases of *Douglas v. Great Atlantic & Pacific Tea Co.*, 405 So. 2d 107, 111 (Miss. 1981), *Daniels v. Morgan & Lindsey, Inc.*, 198 So. 2d 579, 584 (Miss. 1967) and *F.W. Woolworth Co. v. Stokes*, 191 So. 2d 411, 414 (Miss. 1966). This assertion has no bearing on the case at bar since it is not a slip and fall case. Additionally, the undersigned could not locate any Mississippi Supreme Court or Court of Appeals cases that rendered *res ipsa loquitur* inapplicable in premises liability cases. Moreover, to make such an argument defies logic and common sense. The doctrine, by definition, only applies when an object is in the exclusive control of a defendant.

"It has been said that where *res ipsa* is applicable, a presumption of negligence arises requiring the defendant to come forward with an explanation." *Read*, 515 So. 2d at 920. In the case at bar, the defendants cannot and have not offered any other explanation for the mirror to fall other than to place blame on a mere two year old child by speculation.

Furthermore, courts in Mississippi have applied the doctrine of *res ipsa loquitur* in premises liability actions. Most recently, Judge Guirola of the United States District Court for the Southern District of Mississippi, Southern Division, analyzed the doctrine in a premises liability action brought by a women (an invitee) who claimed injury as a result of a box falling, hitting her while she shopped at the Sam's Club in Gulfport, Mississippi. *Byrd v. Sam's East, Inc.*, 2007 U.S. Dist. LEXIS 81298 (October 31, 2007). The district court found the *res ipsa loquitur* doctrine was inapplicable under the facts of the case but did not determine that *res ipsa loquitur* was inapplicable in all premises liability cases. *Byrd*, at *6 (emphasis added). The trial court determined that plaintiff only showed it was *possible* that a Sam's employee placed the fallen item on the shelf improperly or negligently but she did not show that it was *probable,* thereby placing liability on defendants. *Id.* (emphasis in original). Judge Guirola determined that the "evidence produced was not sufficient to take it out of the realm of conjecture and place it within the field of

legitimate inference." *Id.* Such is simply not the case in the appeal before this Court. The appellees, and/or its employees, were the only parties responsible for maintaining and inspecting the mirrors to make sure that the objects were adequately fastened to the door. Further as shown by the testimony of the Piggs regarding their inspection of the adjacent rooms, it is probable, rather than possible, that the appellees' negligence caused the accident and thus, takes it out of the realm of conjecture and places it within the field of legitimate inference.

In 1935, the Mississippi Supreme Court specifically determined that the doctrine of *res ipsa loquitur* could be applied to establish negligence on the part of the store when an invitee of the premises was injured. *J.C. Penney Co. v. Evans*, 172 Miss. 900,904-06, 160 So. 779, (1935). The evidence showed that the store operated a carrier system from its cashier's desk on the second floor of the building to various parts of the first floor thereof, for the purpose of transmitting to the cashier cash received by its clerks for articles purchased. *Id.* at 904. Plaintiff was injured when metal chips fell from the carrier system into her eye. *Id.* This Court affirmed the Circuit Court of Harrison County, determining that the jury, in applying the doctrine of *res ipsa loquitur,* inferred negligence by the store by believing that the appellee's injury was due to the store's carrier system's malfunction and that the incident would

not ordinarily have occurred had the appellant exercised due care, either in the installation or maintenance of the carrier system. *Id.* at 905-06.

The appellees were negligent and did not keep its premises reasonably safe. As such, the owed duty to the invitee appellant was breached. The door housing the mirror was in the appellees' hotel and under its exclusive control. The mirror would not have fallen but for the appellees' negligence. The appellant did not contribute to or cause the mirror to fall. Furthermore, as a matter of law, the minor child was incapable of contributing to his injury. Clearly, the injury to the child's eye is related to the falling glass. The appellees' own witness testified that she saw damage to the child's right eye caused by the falling glass and that he was crying. (R. at 167-70). Appellees have not asserted any other theory to explain the causation of the injury to the minor's eye. Negligence can be proved by circumstantial evidence and the doctrine of *res ipsa loquitur* is one form of circumstantial evidence. *Read*, 515 So. 2d at 919-20. All elements of *res ipsa loquitur* have been met.

It is anticipated that appellees may attempt argue again that the mirror was not in its "exclusive control" and therefore it can not be responsible based upon the fact that different guests occupy the room each night. However, this argument is without merit. As Professor Prosser indicated in his learned treatise, "control" is a flexible term. W. Page Keeton et al., Prosser and Keeton on the Law of Torts, § 29 at 250 (5th

ed. 1984). In *Johnson v. Coca-Cola Bottling Co., Inc.*, 239 Miss. 759, 765-66, 125 So. 2d 537 (1960), the Mississippi Supreme Court stated that the meaning of "exclusive control" as it applies to *res ipsa loquitur*, is that the "defendant to be charged with negligence is only required to have control of the instrumentality at the time of the negligent act which gives rise to the injury and not necessarily at the time of the accident to plaintiff." *Id.* at 765-66. The Court gave the example that when an object falls from a building or a vehicle runs wild, the exclusive control requirement is satisfied where the defendant "is shown to be in such control of the building from which the falling object came, or in control of the vehicle at the time it was negligently allowed to begin running wild, and not at the time a plaintiff was struck thereby." *Id.* at 766. Applying *Johnson* to the case at bar, the appellees are in exclusive control of each hotel room due to the fact that once the guest leaves, the appellees' employees clean the room and have the opportunity to inspect the mirrors on the doors. Further, the guests have nothing to do with the mirror's placement, maintenance, inspection or erection. The appellees were in exclusive control of the mirror prior to its falling and injuring the minor child.

Res Ipsa Loquitur is applicable to infer negligence on the part of appellees in the case at bar. The lower court erred when it ruled that *res ipsa loquitur* did not

apply in this case. Appellant prays that this Court will reverse the trial court and allow the case to proceed to trial.

CONCLUSION

Brieah S. Pigg, Individually and on behalf of Garrett Kade Pigg, a minor, respectfully submits the lower court committed errors of law in its grant of summary judgment and its failure to be persuaded by the doctrine of *res ipsa loquitur*. Brieah S. Pigg respectfuly requests that this Court reverse the judgment entered by the lower court, and allow the case to proceed to trial.

Respectfully submitted,

BRIEAH S. PIGG, INDIVIDUALLY AND ON BEHALF OF GARRETT KADE PIGG, A MINOR

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CERTIFICATE OF SERVICE

I, Victoria Hardy Rundlett, of counsel for Appellant Brieah S. Pigg, Individually and on Behalf of Garrett Kade Pigg, a Minor, do hereby certified that I have this day mailed via United States Mail, postage prepaid, a true and correct copy of the above and foregoing Amended Brief of Appellant Brieah S. Pigg, Individually and on Behalf of Garrett Kade Pigg, a Minor to:

Honorable Lee J. Howard
Circuit Court Judge
Post Office Box 1344
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THIS, the 5 day of February, 2008.

Victoria Hardy Rundlett
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