

1 hour or so, a couple of hours. I don't -- don't
2 recall exactly the time lines, but then I saw Lynn
3 walking next to me, and she was really like -- you
4 know, from the last time I saw her, she was a lot
5 worse. Kind of like she -- when you're walking and
6 you're kind of making a noise from hurting. So --
7 and -- and then I stopped immediately, and I was
8 like, "Okay, please, no climbing, no ladder, no
9 physical work. All I want you..." Because I
10 checked the schedule that minute. I was like -- I
11 saw that she was working 'til three. She was
12 getting off at three and she had like maybe a few
13 hours left, and so I was like, "No any physical
14 work. All I want you to do is cash people out. Be
15 a cashier today. Don't do nothing. You've got Zack
16 if you need to climb on a ladder. Go ask Zack,
17 he'll do anything, and there's the rest of the girls
18 for any other chores that you needed to do."

19 Q. And who was present within earshot, within listening
20 distance?

21 A. I was standing exactly in the connection between the
22 surf shop, the general store. So when I'm standing
23 there, the ice cream counter is maybe two-feet away
24 from me. Leticia and Lily stood over there. I was
25 watching even with my eyes, kind of to the side,

1 that Raven and Zack were looking at me, talking to
2 me, 'cause I was giving her strict instructions.

3 Q. Did you give her instructions more than one moment,
4 or is that the only time you gave her instructions?

5 A. I -- I was talking to her for a good few minutes and
6 telling her exactly "Do not go on the ladder. Do
7 not."

8 Q. Had you ever, prior to that day, instructed her not
9 to go on the ladder?

10 A. Not really. I usually -- I'm there most of the
11 time, so I'm the one that gave them all their big
12 stuff on the -- on the -- on the cooler. That's
13 where we store the majority of our stuff. Or, you
14 know, if we need to bring a box maybe once every two
15 weeks and get it down so they can have inventory,
16 but I tried to do that most of the time. The only
17 thing the girls needed is when there was an urgency
18 and I wasn't around or there wasn't a guy around,
19 you know, I mean, to climb for them.

20 Q. After you talked to Lynn, as is your testimony about
21 your instructions, did you give that instruction to
22 anybody else in the store?

23 A. Yes, I personally went to Leticia, because she was
24 standing next to me, and I was like, "Did you hear
25 what I talked to her about?" And she's like,

1 "Clearly." I said, "Please do me a favor. Do not -
2 - she's hurt. Do not let her -- she's, you know, an
3 older woman. Do not let her go on the ladder, and
4 she's hurt especially. Please." And then I went
5 specifically to Zack, because I know Zack and her
6 had some issues earlier that week, and there --
7 there was some confrontation between them, and so I
8 asked him, "Please, no -- no games. Don't play
9 games with her. If she needs something,
10 immediately, 'cause she's hurt, go do it, okay."
11 And then I asked Raven if she heard me, and she's
12 like, "Yeah, I heard clearly." "I thank you," and
13 then I left.

14 Q. Okay. And after you left, what was the next thing
15 you recall about the day that happened?

16 A. The next thing I recall, I was doing some work in
17 one of the other shops, and then I get a phone call.
18 I don't recall if it was Raven or Leticia called me
19 to be honest, but I got a phone call from one of the
20 girls, and they told me "We need to call 9-1-1," and
21 then I asked 'em why. "Lynn fell off the ladder."
22 And then I kind of lost it to be honest with you,
23 and I -- I yelled at them. I said, "What exactly,
24 thirty minutes. Thirty minutes I was there, and
25 what did I instruct each one of you personally?" So

1 she said, "You know, we were busy. We didn't pay
2 attention. She just went ahead and did it."

3 Q. Did you go back to the store?

4 A. Yes, after that.

5 Q. Was Lynn there when you went back to the store?

6 A. (Inaudible).

7 Q. Have you had any conversations with Lynn since the
8 date of the ladder incident?

9 A. I texted her one after that, later on that day, to
10 see how she was doing, and she never did text me
11 back, and that's it.

12 Q. Now, you brought the ladder with you today; did you
13 not?

14 A. Yes, sir.

15 **BY MR. MOGIL:**

16 Madam Commissioner, would it be helpful for
17 your -- I know it's not going to be in evidence, if
18 you could actually see this ladder, so you could see
19 the size and the space rather than from the
20 pictures?

21 **BY COMMISSIONER JAMES:**

22 We borrow the locations, so I do not want to
23 bring the ladder in the building.

24 **BY MR. MOGIL:**

25 Maybe at the end then we can take a look at it?

1 **BY COMMISSIONER JAMES:**

2 Let's talk about that at the end ---

3 **BY MR. MOGIL:**

4 Okay.

5 **BY COMMISSIONER JAMES:**

6 --- with the rest of the materials.

7 **BY MR. COGGIN:**

8 Your Honor, I don't know, I might object to
9 this. We don't know what ladder it is, and he could
10 have gotten any ladder. It could be a ---

11 **BY MR. MOGIL:**

12 We'll represent it's the same ladder that you
13 took pictures of.

14 **BY MR. COGGIN:**

15 --- fireman's ladder, who knows. I just don't
16 -- this is kind of beyond the (inaudible.) There's
17 been no -- I have a picture of the ladder. You can
18 use that. To bring the ladder in itself, I don't
19 think that's anything ---

20 **BY COMMISSIONER JAMES:**

21 We'll talk about it at the end. If the
22 ladder's identified, then we'll talk about it at the
23 end. Right now, let's proceed forward with the
24 actual testimony.

25 **BY MR. COGGIN:**

1 Okay.

2 **DIRECT EXAMINATION RESUMED BY MR. MOGIL:**

3 Q. Okay. Mr. Bitton, you went to the store last week
4 and had a series of pictures taken of the location
5 and the ladder with you in them; is that correct?

6 A. Yes, sir.

7 Q. Okay. And were these pictures printed by you?

8 A. Yes, sir.

9 Q. Okay. Were they taken with your phone?

10 A. Yes, sir.

11 Q. Okay.

12 **BY MR. MOGIL:**

13 And I've shown these to you before, Mr. Coggin.

14 These are just ---

15 **BY MR. COGGIN:**

16 Well, I'd like to see them again.

17 **BY MR. MOGIL:**

18 --- to show the Commissioner the scene.

19 They're not anything with Ms. Bridges in it.

20 **BY MR. COGGIN:**

21 Again, this is a bit questionable. We've got a
22 ladder with him standing on top of the ladder. I
23 was happy if it was the ladder itself being shown.
24 I don't know why you need a model here.

25 **BY MR. MOGIL:**

1 You just said you didn't want the ladder being
2 shown -- you just said you didn't want the ladder
3 being shown.

4 **BY COMMISSIONER JAMES:**

5 So, you would rather show me the ladder?

6 **BY MR. COGGIN:**

7 You're going to see it anyway. Why don't you
8 go take a look at the ladder. I've taken pictures
9 of the ladder. I don't understand. This is
10 overkill having somebody standing on the ladder.
11 What's that got to do with this case?

12 **BY MR. MOGIL:**

13 Well, I think the reason, Your Honor, just so
14 the picture of that -- is it shows the room. It
15 shows where Ms. Bridges claims that she climbed up.
16 It's exactly the scene so that Your Honor sees,
17 because she's claiming a pretty significant injury
18 here. I wanted Your Honor to see the room, the
19 ladder, the location as part of your evaluation.

20 **BY MR. COGGIN:**

21 The problem is is we've got a man that's --
22 he's a big man, what, five-ten, five-eleven. This
23 is a little woman. It's not exactly the same. And,
24 you know, pictures of somebody on them -- this one
25 here, it's like a circus act (indicating).

1 **BY COMMISSIONER JAMES:**

2 All right. Mr. Killen, did you have something
3 you wanted to say, sir?

4 **BY MR. KILLEN:**

5 I just wanted to say we went over this
6 photograph issue at length two days ago, and Mr.
7 Coggin, at that time, to the best of my
8 recollection, agreed to allow these photographs in.

9 **BY MR. COGGIN:**

10 Your Honor, he agreed the photographs coming
11 in, and then protested when they came in. So it's a
12 little bit different.

13 **BY MR. KILLEN:**

14 No.

15 **BY COMMISSIONER JAMES:**

16 All right. Let's go off the record for a
17 moment.

18 **OFF THE RECORD**

19 **DIRECT EXAMINATION RESUMED BY MR. MOGIL:**

20 Q. Mr. Bitton, what does this picture depict?

21 A. (Witness views photograph). This is exactly where
22 Leticia and Raven were standing when I spoke to
23 Lynn, which is -- if you can see that ice cream
24 edge, the gelato machine, I was standing there
25 talking to Lynn, and at the end of the -- the room,

1 you see, that's where the incident happened.

2 Q. What is at the end of the room?

3 A. That's where the shelf -- you cannot see it, but the
4 shelves are just above that wall. It's just a
5 little bathroom.

6 Q. In that closet?

7 A. Yeah, that closet.

8 Q. Okay. So, it ---

9 **BY MR. MOGIL:**

10 Your Honor, this is just being shown so, Your
11 Honor, since you're not at the store, has some
12 context of where everybody is here, what the witness
13 is testifying is this is where they had the
14 discussion, and in the back there is where the
15 incident happened in the corner. I'm agreeing not
16 to put that into evidence.

17 **DIRECT EXAMINATION RESUMED BY MR. MOGIL:**

18 Q. And Mr. Bitton, this next picture, what does this
19 picture show?

20 A. (Witness views photograph). This is basically the
21 ladder, how they stand it up, and if they need to
22 reach to get -- there's two shelves as you see. And
23 these are the stored candies on the right-hand side
24 of the first shelf, and this is if you stand on the
25 second step from the bottom you can see that you can

1 reach the -- the first shelf, and you don't need to
2 climb anymore (indicating).

3 Q. So, when you say you usually store candies on the
4 first shelf, is that the first shelf where there are
5 cardboard boxes right now?

6 A. That's where the candy is. They're stored in the
7 cardboard boxes. They come like that.

8 Q. Do you ever store it on the upper shelf?

9 A. No.

10 **BY MR. MOGIL:**

11 Your Honor, this one was admitted (indicating).

12 **BY COMMISSIONER JAMES:**

13 All right. This will be admitted as
14 Defendant's Number 4.

15 (COURT REPORTER MARKS PHOTOGRAPH DEFENDANT'S
16 EXHIBIT NUMBER 4, RETAINED IN COMMISSION FILE)

17 **DIRECT EXAMINATION RESUMED BY MR. MOGIL:**

18 Q. Okay. And in that picture that you just showed, you
19 are the person in the picture, right?

20 A. Yes, sir.

21 Q. And which step are you standing on?

22 A. The second step.

23 Q. And then what's this picture depicting?

24 A. This is basically, if you're standing on the second
25 step from the top, it's just for showing your body

1 in relation to the shelf. Basically, you have
2 nothing to climb all the way up there for because
3 you are basically hitting the ceiling, and you're
4 way above the second shelf or the first shelf.

5 Q. Could you even reach down to the second shelf from
6 there?

7 A. No, it's -- it's too low.

8 Q. Too low.

9 A. You have to get down.

10 **BY MR. MOGIL:**

11 Your Honor,...

12 **BY COMMISSIONER JAMES:**

13 All right. Defendant's Exhibit Number 5.

14 (COURT REPORTER MARKS PHOTOGRAPH DEFENDANT'S
15 EXHIBIT NUMBER 5, RETAINED IN COMMISSION FILE)

16 **DIRECT EXAMINATION RESUMED BY MR. MOGIL:**

17 Q. Mr. Bitton, do all the employees work the hours on
18 those work schedules?

19 A. No.

20 Q. Where are the work -- do you ever see the work
21 schedules?

22 A. Yes.

23 Q. Where do you see them?

24 A. At the store posted.

25 Q. Are they usually marked up?

1 A. Yes.

2 Q. What's on them?

3 A. Basically, one of them does, is just send them a
4 confirmation of availability for the employees for
5 the days whenever they can work, if it's like
6 morning or night. So he writes, let's say, "eight
7 to ten." So he knows they can be available either
8 morning or night, and then he scratch it with his
9 pen in the office, or the secretary does it. She
10 confirm with everybody that's -- those are the days
11 they're available, and then he scratch it and fix
12 the shifts for them.

13 Q. Do you keep the work schedules after the weeks are
14 completed in your business records?

15 A. The employees usually trash it, and they post a new
16 one.

17 Q. Do you keep them?

18 A. I don't.

19 Q. Does the business keep them?

20 A. No, we don't.

21 Q. Do you use the same template over and over?

22 A. Yeah, it's just an Excel form. It's blank, and then
23 you fill it in, and they send a picture, and then
24 one of the employees come -- they come to the store
25 and then they check their schedule.

1 Q. Has there been ever a prior -- since 2010, has there
2 ever been an injury claim against the business, ---

3 A. No.

4 Q. --- Harbour Town Surf Shop?

5 A. I never had any injury claims against me.

6 Q. On that business?

7 A. On any of my businesses.

8 Q. Okay.

9 **BY MR. MOGIL:**

10 No, further questions, Your Honor.

11 **BY COMMISSIONER JAMES:**

12 Cross.

13 **BY MR. COGGIN:**

14 I'm wondering if -- how are we doing this? Do

15 I get to cross on each gentleman comes up, Mr.

16 Killen comes up and direct -- do I ---

17 **BY COMMISSIONER JAMES:**

18 We go back through until we're finished.

19 **BY MR. COGGIN:**

20 Okay, that's fine.

21 **BY COMMISSIONER JAMES:**

22 So, yes.

23 **CROSS-EXAMINATION BY MR. COGGIN:**

24 Q. Mr. Bitton, good morning to you. Thank you for
25 being here. I have a couple of questions about your

1 schedules. You make up schedules for what reason?

2 A. I don't make them up.

3 Q. Okay. We're going to play that game. What I'm
4 asking is, do you or ---

5 **BY MR. MOGIL:**

6 Objection, Your Honor.

7 **BY MR. KILLEN:**

8 He's badgering the witness.

9 **BY COMMISSIONER JAMES:**

10 Mr. Coggin -- Mr. Coggin -- Mr. Coggin,

11 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

12 Q. --- someone else -- I'm asking about your company.
13 Does the company make up schedules?

14 **BY COMMISSIONER JAMES:**

15 Mr. Coggin, please. As we discussed a couple
16 of days ago, let's not have individual commentary.

17 **BY MR. COGGIN:**

18 Oh, okay. Yes.

19 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

20 Q. Who makes up the schedule?

21 A. From what I understand, it's my secretary and my
22 business partner.

23 Q. And how are those schedules determined?

24 A. I don't understand the question.

25 Q. How do you determine who works when?

1 A. They ask for the employees -- they call each person
2 or text them, and they ask for their availability
3 for this week, and they send them the days that
4 they're available. They say "I can be working the
5 whole day. I can work --" They say -- they say "I
6 can work all day." That means that he can fit them
7 morning or night, whatever he needs to.

8 Q. Okay.

9 A. And then he fix -- fix it up, and then he post it.

10 Q. And so your testimony is, is if somebody is
11 scheduled from eight until ten at night, they can
12 come in and work anytime they want to?

13 A. No, it means my partner can schedule them either
14 morning shift or night shift. They're available the
15 whole day for any shift that day.

16 Q. Once they're on the schedule though, they're
17 supposed to work those hours?

18 A. No.

19 Q. They're not supposed to work those hours. You
20 schedule them, and what happens?

21 A. If it was up to me, I wish they can work, but half
22 of them don't show up. They call in, and there's
23 always something happen. But the -- the schedule
24 actually is marked, and it says -- it -- it cross --
25 they -- they print it out, and then it says "three

1 to nine," or "eight to three" whatever. Usually,
2 they work after three, and then from three to night
3 shift.

4 Q. But for your intents and purposes, when they're
5 scheduled say from nine to five, they're expected to
6 be there at nine; is that correct?

7 A. I don't know. That's -- that's what my partner
8 decides with them after that.

9 Q. Have you ever discussed that with your partner?

10 A. Nobody -- it's each employee specifically.

11 Q. So, essentially what you're saying is they can show
12 up anytime they want to then?

13 A. No. He discusses with them and gets exactly what
14 time and what shift they're going to be.

15 Q. Isn't that what Zack told us the other day?

16 A. I don't know what Zack told you.

17 Q. Well, you were sitting there.

18 A. I don't remember.

19 Q. Okay. He said he kind of worked anytime he wanted
20 to; take off, go here, go there.

21 A. Zack, specifically, yes. He could have worked
22 anytime because he -- I was training him.

23 Q. Okay. So, you got Raven scheduled on June the 18th
24 from nine to ten. That's 13 hours. Now, when did
25 Raven come in, and when did she leave?

1 A. I don't remember.

2 Q. Okay. So, what you're saying is, is that this
3 schedule is a schedule for people to work.
4 Sometimes they don't work, sometimes they do. You
5 switch them around, and this really doesn't mean
6 very much?

7 A. No, it just shows their availability. That's it.

8 Q. Okay. Let's talk about Lynn. When she was
9 scheduled from eight until ten, did she come and
10 work?

11 A. Lynn was just available from eight to ten. She
12 couldn't work. She was sick all the time.

13 Q. When did she work?

14 A. She worked half a day.

15 Q. She worked half a day?

16 A. Either eight to three or three to closing, to ten.

17 Q. So, this was fiction then if you scheduled her from
18 eight until ten; is that right?

19 A. I don't understand the question.

20 Q. Well, that was made up then if you scheduled her
21 from eight until ten, and she was only going to work
22 a half a day?

23 A. Are you done?

24 Q. Yes, I am. Go ahead.

25 A. That's just her availability.

1 Q. I'm sorry, speak up.

2 A. This is just her availability for that day that she
3 can work either morning or night, that she's
4 available the whole day, but he can schedule her
5 morning shift or night shift, whatever he decided.

6 Q. I'm just trying to get to the bottom of this. If
7 somebody was scheduled eight o'clock, that opens the
8 store; is that right?

9 A. No. Alon usually be there all the time in the
10 morning before anybody.

11 Q. Alon. Okay, Alon opens the store?

12 A. The majority of time, he's there when the store is
13 opened.

14 Q. Okay. And then she's scheduled until ten o'clock at
15 night. Does she close the store then?

16 A. If you're scheduled to close, yes. But if not,
17 you're not.

18 Q. Okay. But what you have her down here for is from
19 eight in the morning until ten o'clock at night?

20 A. She's available from eight 'til nine.

21 Q. Does that mean -- here's what I'm trying to get at.
22 Does that mean she can come in anytime she wants to?

23 A. No. It's discussed later after her availability,
24 then he mark the schedule. He post it, and then
25 they can see when -- because the schedule comes

1 earlier before the end of the week so they can see
2 exactly what they work.

3 Q. Okay. Your testimony earlier though was that these
4 schedules are sent out Thursday and Friday; is that
5 right?

6 A. I didn't say that.

7 **BY MR. MOGIL:**

8 Objection. Witness didn't make any of that
9 testimony. That was another party.

10 **BY COMMISSIONER JAMES:**

11 You can answer the question, sir.

12 **BY THE WITNESS:**

13 I said, "I didn't say that." I didn't testify
14 to that. This is my first time testifying in front
15 of you, sir.

16 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

17 Q. Okay. I have, for example, Aleiandro working from
18 nine to nine on June the 18th. Tell me what
19 happened with Aleiandro. Would he come and work
20 from nine until nine? That's what I'm trying to get
21 at; you don't know?

22 A. I wouldn't know. This happened in 2018 in June, so
23 I -- you're asking me about specific people I -- I
24 couldn't recall.

25 Q. I got Monda scheduled from nine to nine.

1 A. I have no idea who that is. I have no idea who that
2 is.

3 Q. Okay. Abigail from nine to nine.

4 A. Again, they're available those hours. That's it.
5 It doesn't mean that they're going to work the whole
6 shift, the whole time, nine to nine. They're
7 available to work morning or day or night. That's
8 the whole idea.

9 Q. Okay. But when they're available, and they're
10 scheduled for nine, shouldn't they show up at nine?

11 A. This is not a schedule. This is just their
12 availability. That's all it is. And then the
13 schedule is printed out, fixed and posted in the
14 store by the weekend so they can see for the next
15 week what they work.

16 Q. Okay. So, we talked earlier this morning to Raven,
17 right, and Raven said she never worked for 30 -- 30
18 hours -- more than 30 hours a week; is that correct?

19 A. I don't know what she works really.

20 Q. She testified this morning that she never works more
21 than 30 hours a week.

22 A. I guess she knows when she works.

23 Q. I showed her a sheet that said she worked mostly 13
24 hours a day.

25 A. Again, it showed her -- it showed her availability

1 for that week, not that she worked that week.

2 Q. Here's my question. If in fact she has a habit of
3 only working 30 hours a week, why do you have her
4 available from nine to nine -- nine to nine, nine to
5 eleven?

6 A. So he -- he can know that she's available the whole
7 day, and if he need her either for the morning shift
8 or the -- or night shift, so he can play with the
9 other employees that cannot show up for different
10 shifts.

11 Q. I gotcha. So, he'll give them a call, say at eight
12 in the morning saying "Don't come in at nine"?

13 A. I don't know what he does.

14 Q. And this is Alon?

15 A. Yes.

16 Q. Does your company have a handbook?

17 A. I'm not sure what you're asking.

18 Q. A company handbook where you list the rules and so
19 forth that the company employees have to adhere to?

20 A. We have different businesses, so each business is --
21 is different.

22 Q. I thought all your businesses were under one
23 umbrella.

24 A. Umbrella of what?

25 Q. You have Island Republic, Harbour Town, Harbour Town

1 Two, Treasure Island, Neptune Beach, a tattoo shop;
2 are they all owned by you and Alon?

3 A. Yes, sir.

4 Q. Okay. So, it's under the umbrella of Amir and Alon;
5 is that correct?

6 A. Yes, sir.

7 **BY MR. KILLEN:**

8 Objection, Your Honor. We're here for Harbour
9 Town Surf Shop, LLC, not two individuals, and I
10 don't know which LLCs or whether individuals own
11 these other entities.

12 **BY COMMISSIONER JAMES:**

13 I'll allow the questions. Y'all have available
14 cross and re-direct with regards to -- I understand
15 the entity that we're here for today.

16 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

17 Q. Could you describe your function with the company
18 again, Amir? You testified to that on direct. Can
19 you tell me what you do?

20 A. I do basically all the -- the merchandising,
21 stocking, fixing. I'm more in the field.

22 Q. You're the operations manager?

23 A. Correct.

24 Q. Okay. And Amir is the legal and administrative,
25 would you say?

1 A. No, Amir is the operative ---

2 Q. Oh, excuse me, Alon. I apologize.

3 A. Alon is in the office. He does all the invoices,
4 payments, payroll.

5 Q. I have a "yes" or "no" question for you. Do you
6 believe that Ms. Bridges' injuries that she
7 sustained took place on the Saturday at three
8 o'clock when she fell from the ladder, or did they
9 take place the week before when she was in North
10 Carolina?

11 A. I'm not sure where they took, but I don't think it
12 happened at my place.

13 Q. Let me ask you that one more time, and we're going
14 to make sure we both understand the same thing.
15 Amir, Lynn is here with injuries, all right, and
16 I'll make it as simple as possible for myself, not
17 for you. Did those injuries take place in North
18 Carolina, or did they take place in the storage room
19 on Hilton Head Island?

20 **BY MR. KILLEN:**

21 Objection, Commissioner. I don't even know
22 that he was there at the time. All the other
23 witnesses say he wasn't even there. He's asking
24 about a medical opinion about something that he
25 didn't witness.

1 **BY MR. COGGIN:**

2 Your Honor, in response to that, ---

3 **BY COMMISSIONER JAMES:**

4 If you can repeat the question, the witness can
5 answer.

6 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

7 Q. Did the injuries that she has today as she sits
8 here, did they take place in North Carolina, or did
9 they take place in the Harbour Town Surf Shop in
10 Hilton Head?

11 A. I don't know. I don't know where they took place.
12 I'm not the one to decide that.

13 Q. Are you telling me that they did not take place when
14 we claim they did?

15 A. I don't understand what you're trying to tell me, or
16 you're asking me.

17 Q. They did not take place at Hilton Head Surf Shop?

18 A. I don't know. That's my answer, I don't know where
19 they took place.

20 Q. Mr. Bitton, the reason we're here today is because
21 there was no workers' compensation insurance
22 available; is that correct?

23 **BY MR. MOGIL:**

24 Objection. That's not the reason we're here
25 today, Your Honor. We're here today because she's

1 made a claim.

2 **BY MR. COGGIN:**

3 Your Honor, if you'd give me a couple ---

4 **BY MR. MOGIL:**

5 If there was workers' compensation coverage or
6 not coverage, it's an irrelevant question. If there
7 was coverage, we'd be here today. If there wasn't
8 coverage, we'd be here today.

9 **BY MR. KILLEN:**

10 And the Fund is not the only entity that denies
11 claims. Plenty of carriers deny claims as you well
12 know.

13 **BY COMMISSIONER JAMES:**

14 All right. Mr. Coggin, you can ask the
15 question, sir.

16 **BY MR. COGGIN:**

17 Thank you.

18 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

19 Q. Do you agree the reason we're here today is because
20 you do not carry workers' compensation insurance?

21 **BY MR. MOGIL:**

22 Objection.

23 **THE WITNESS ANSWERS:**

24 A. I'm not a lawyer, so I don't know why we're here
25 today.

CROSS-EXAMINATION RESUMED BY MR. COGGIN:

Q. Do you know what workers' compensation insurance is?

A. Vaguely.

Q. Tell me what your understanding of it is.

A. Barely nothing.

Q. Pardon me?

A. Barely nothing I understand about it. Because ---

Q. In your busy season, and I've counted the list here, you employ anywhere from 15 to 23 employees; is that correct?

A. You have the list. I don't know.

Q. Okay. And you purchased the Harbour Town Surf Shop in 2016; is that correct?

A. I purchased the -- the general store in 2016.

Q. Excuse me, general store. I apologize. I said that statement about a hundred times before. I apologize. You purchased that when, what time, you purchased the business?

A. July -- July in -- the end of July of 2016.

Q. And you purchased it from a gentleman by the name of John Trunck?

A. Correct.

Q. Are you saying -- I think you're a terrific businessman, and I always thought that. Did you look at John Trunck's financials before you

1 purchased this?

2 A. Yes, I did.

3 Q. You and Alon?

4 A. Correct.

5 Q. Did John Trunck's financials say anywhere that he
6 was paying workers' compensation?

7 A. I -- I don't recall.

8 Q. Didn't he in fact advise you to take out a policy
9 and continue that policy for workers' compensation?

10 A. No.

11 Q. No?

12 A. No.

13 Q. Now, you and I talked about workers' compensation
14 sometime ago, we talked about it at length; do you
15 recall that?

16 **BY MR. MOGIL:**

17 Objection.

18 **BY COMMISSIONER JAMES:**

19 Basis for objection?

20 **BY MR. COGGIN:**

21 What's the objection?

22 **BY MR. MOGIL:**

23 There's no evidence in the record that Mr.
24 Coggin and Mr. Bitton had any prior relationship.
25 If he wants to be more specific; did they talk at a

1 bar, did he talk at Mr. Coggin's house. I don't
2 know what this is about.

3 **BY MR. COGGIN:**

4 We talked at a deposition.

5 **BY MR. KILLEN:**

6 It's also irrelevant.

7 **CROSS EXAMINATION RESUMED BY MR. COGGIN:**

8 Q. Remember, we talked in deposition?

9 **BY COMMISSIONER JAMES:**

10 Was this witness's deposition taken?

11 **BY MR. COGGIN:**

12 Yes.

13 **BY COMMISSIONER JAMES:**

14 Is that what you're referring to then?

15 **BY MR. COGGIN:**

16 Yes.

17 **BY COMMISSIONER JAMES:**

18 Okay. Then if you'll refer to that.

19 **BY MR. MOGIL:**

20 Thank you, Your Honor.

21 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

22 Q. Do you remember when we talked at your deposition?

23 A. Yes, sir.

24 Q. And I asked you if you had workers' compensation,
25 and you said, "no"?

1 **BY MR. MOBIL:**

2 Objection. That's inaccurate, Your Honor.
3 He's mischaracterizing the testimony of the witness
4 at the deposition. Your Honor, this is getting out
5 of control. If he wants to read from the deposition
6 and say "Here was my question and answer," but he
7 can't just mischaracterize it to bait him into
8 trying to answer. The testimony -- there's a signed
9 document with the Workers' Compensation Commission
10 that this company purchased workers' compensation
11 after this incident, after being advised what the
12 law was, because they thought if they had two or
13 less employees most of the year, they didn't have
14 it. But if he wants to open the door -- so in the
15 compliance action, they went and bought -- they
16 contacted him, they went and purchased it. So when
17 he asked him at deposition, they had workers'
18 compensation insurance.

19 **BY COMMISSIONER JAMES:**

20 All right.

21 **BY MR. COGGIN:**

22 Your Honor, this is critical to this. I don't
23 understand the basis of any of this.

24 **BY COMMISSIONER JAMES:**

25 Well, if you want to provide -- if you want to

1 ask -- again, we can discuss the use of depositions
2 and how they're used for impeachment, but if you
3 want to ask him a question today, and if it's
4 something different -- if you want to show him the
5 deposition, then ---

6 **BY MR. COGGIN:**

7 That's -- I have his -- that's what I was
8 doing.

9 **BY COMMISSIONER JAMES:**

10 Okay.

11 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

12 Q. Do you remember when we talked about this, I asked
13 you why you didn't carry workers' compensation; do
14 you remember that?

15 A. No.

16 Q. Okay. Do you remember the name "Erica"?

17 A. Yes.

18 Q. Okay. Who is Erica?

19 A. My insurance agent.

20 Q. Okay. Do you remember you told me that Erica
21 advised you not to have it?

22 A. No.

23 Q. You know, when I asked you about Erica, I asked you
24 for her last name. You didn't know that, did you?

25 A. Correct.

1 Q. And I asked you where her insurance agency was, you
2 didn't know where that was either?

3 A. I know where it is, I just don't remember the name
4 of the company.

5 Q. Yes. And I asked you the name of it, and you didn't
6 know the name of that; is that right?

7 A. I didn't remember that.

8 Q. Huh?

9 A. It's not that I didn't know. I didn't remember.

10 Q. Don't you remember you told me that Erica said you
11 didn't need it?

12 A. No, not -- I didn't say that. I said, "She is doing
13 an umbrella insurance for all my businesses," and I
14 never, you know, was advised to -- she never told
15 me. That means she just didn't -- she didn't
16 counsel specifically, say "Hey, you don't need work
17 comp." She just never mentioned it. So I didn't
18 know if I needed it or not, and I -- I trusted her,
19 like I trust my CPA and my accountant and everybody
20 else.

21 Q. And when we continued to talk about that, you told
22 me you asked her about it?

23 A. No, I didn't.

24 Q. You didn't ask her about it?

25 A. No, I didn't say that. After the fact, I asked her

1 about it.

2 Q. Okay. Well, tell me what she said.

3 A. She said she messed up. She said that.

4 Q. And you haven't brought a negligence action against
5 her for that?

6 A. No.

7 Q. Have you talked to any attorneys about bringing an
8 action against the insurance company?

9 **BY MR. KILLEN:**

10 Objection, Commissioner. Whether or not he's
11 talked to a lawyer about a negligence action against
12 a third party that's not even here is not relevant.

13 **BY COMMISSIONER JAMES:**

14 Mr. Coggin, ---

15 **BY MR. COGGIN:**

16 What I'm trying to get in here is that ---

17 **BY COMMISSIONER JAMES:**

18 --- I think we've established there's no
19 insurance.

20 **BY MR. COGGIN:**

21 Yes. What I'm trying to get in is, is that
22 there was no due diligence in this in even
23 attempting to get the insurance, okay?

24 **BY COMMISSIONER JAMES:**

25 What the Commission has to determine today is

1 whether it's subject to the act, which the parties
2 have agreed to. The parties have agreed that
3 there's no insurance, and so I'm not -- we don't
4 make a determination with regards to negligence in
5 not acquiring it. It's that it's just not acquired.
6 So, I mean, is it relevant for another reason?

7 **BY MR. COGGIN:**

8 I think it's relevant in establishing an
9 apparent pattern of negligence that goes through the
10 operation of this company, yes.

11 **BY COMMISSIONER JAMES:**

12 Okay. Workers' comp is not a negligence
13 system.

14 **BY MR. COGGIN:**

15 I know that, but I was asking if they brought a
16 negligence action. That's all I said. She couldn't
17 sue them under workers' comp, but he could have
18 brought a negligence action. These are brought all
19 the time. People come to me all the time for these
20 cases.

21 **BY COMMISSIONER JAMES:**

22 All right. I'm not going to allow that.
23 That's another arena. I'm not really sure why we
24 would be getting into ---

25 **BY MR. COGGIN:**

1 Well, I think it goes to ---

2 **BY COMMISSIONER JAMES:**

3 There's no insurance.

4 **BY MR. COGGIN:**

5 I think it goes to credibility.

6 **BY COMMISSIONER JAMES:**

7 All right. Go ahead and answer the question,
8 sir.

9 **BY THE WITNESS:**

10 I'm sorry, what was the question, Your Honor?

11 **BY COMMISSIONER JAMES:**

12 I believe he ---

13 **BY MR. COGGIN:**

14 We'll just waive that question, that's fine. I
15 really don't care.

16 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

17 Q. Isn't the fact of the matter is that you never
18 purchased worker' compensation insurance; you just
19 wanted to save the money?

20 A. No, that wasn't an issue. That wasn't an issue
21 even.

22 Q. And didn't you think that you'd get away with this,
23 ---

24 **BY MR. MOGIL:**

25 Objection, Your Honor.

1 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

2 Q. --- that something like this would never happen?

3 **BY MR. MOGIL:**

4 Objection.

5 **BY MR. COGGIN:**

6 I can ask his opinion.

7 **BY COMMISSIONER JAMES:**

8 I'm going to allow it. Go ahead.

9 **THE WITNESS ANSWERS:**

10 A. No.

11 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

12 Q. This is an important question. Did you ever tell
13 any of your employees that you did not have workers'
14 compensation?

15 A. I didn't know I don't have it, so how can I tell
16 them if I don't know if I have something or not?

17 Q. Your testimony is you thought you had workers'
18 compensation insurance?

19 A. No. I said, "I didn't know I had it." I didn't
20 know I don't have it, so how can I tell them if I
21 know if I have something or not? I didn't know if I
22 had workers' comp or not.

23 Q. You had a responsibility to your company to provide
24 for their welfare in addition to this. Didn't you
25 ever tell -- the question's "yes" or "no." Did you

1 tell any of your employees you did not carry
2 workers' compensation insurance?

3 A. Repeat the question.

4 Q. Did you ever tell any of your employees that you did
5 not carry workers' compensation insurance?

6 A. It never came up. Never spoke about that to any of
7 my employees.

8 Q. It goes back to the handbook. That would be in the
9 handbook. Did you ever tell them -- don't you think
10 you have an affirmative duty to tell them that?

11 A. No.

12 Q. And would it in fact if you told your employees, a
13 long-time employee like Lynn, that you did not carry
14 workers' compensation, they probably would have gone
15 and gotten a job somewhere else?

16 A. Two months is a long time employee?

17 Q. Pardon me?

18 A. Two months for you is a long time employee? She
19 worked for me for two months. That's a longtime
20 employee? I'm just asking. I don't know what's a
21 long time employee in your definition, sir, so.

22 Q. Thank you for that. My question is though, did you
23 ever tell Lynn that you didn't have workers'
24 compensation insurance?

25 A. It never came up.

1 Q. Do you think it might have been an affirmative duty
2 on your part as a boss to tell your employees if
3 they were covered or not?

4 A. I don't know to be honest with you.

5 Q. And if perhaps if they weren't covered, they would
6 go out and purchase their own; didn't you give them
7 that option?

8 **BY MR. MOGIL:**

9 Objection. He's speculating to what employees
10 -- I think he can ask him if he believes he had a
11 duty, but not what the employees may or may not have
12 done. He's just speculating as to things that no
13 employer could think of.

14 **BY MR. COGGIN:**

15 Your Honor, anybody I've ever worked for ---

16 **BY COMMISSIONER JAMES:**

17 Mr. Coggin, you can ask the question; however,
18 with regards to speculation as to what another
19 individual would do, that's a different question.

20 **BY MR. COGGIN:**

21 I'm sorry.

22 **BY COMMISSIONER JAMES:**

23 Speculation as to what somebody else would do
24 is a different question. You can ask this witness
25 what this witness would do or didn't do.

CROSS-EXAMINATION RESUMED BY MR. COGGIN:

Q. So, let's make it a matter of record, you did not have workers' compensation insurance; is that right?

A. I'm sorry, sir. Say again.

Q. You did not have workers' compensation insurance at the time of her accident?

A. Correct.

Q. You do have it now?

A. Correct.

Q. Mr. Bitton, since I've taken this case over, and I've been on this case since probably the end of June 2018, I've seen a number of erroneous defenses floated.

BY MR. KILLEN:

Objection, Commissioner.

CROSS-EXAMINATION RESUMED BY MR. COGGIN:

Q. One of the first ---

BY COMMISSIONER JAMES:

Mr. Coggin, I would ask that ---

BY MR. COGGIN:

I'll strike the erroneous.

BY COMMISSIONER JAMES:

Okay. And again, we've had some characterizations.

BY MR. COGGIN:

1 I know, I apologize.

2 **BY COMMISSIONER JAMES:**

3 Okay.

4 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

5 Q. Initially, I was aware, Mr. Bitton, that arguments
6 of the fact that Harbour Town Surf Shop did not come
7 under the jurisdiction of Title 42 of the workers'
8 compensation; is that right?

9 A. I have no idea what you're talking about.

10 Q. Did you ever argue -- or let me ask you this. I'm
11 sure you've talked to Mr. Mogil. The attorney that
12 he is, I know he would have told you about this.
13 Under Title 42, which is a workers' compensation --
14 go ahead.

15 **BY MR. KILLEN:**

16 Finish your question.

17 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

18 Q. Under Title 42, did he ever discuss with you your
19 options?

20 **BY MR. KILLEN:**

21 Objection to attorney/client privilege. He's
22 specifically soliciting something that Mr. Mogil
23 talked about.

24 **BY COMMISSIONER JAMES:**

25 Sustained.

1 **BY MR. COGGIN:**

2 I would agree.

3 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

4 Q. Did you ever talk about workers' compensation and
5 the fact that you might not be under the
6 jurisdiction?

7 A. I -- I don't know what you're talking about, sir.
8 Those terms, I ---

9 Q. That workers' compensation didn't apply to you?

10 A. If I talk about -- the majority of my business don't
11 need workers' comp actually.

12 Q. Okay. Explain that.

13 A. 'Cause I have less than three employees in the
14 business.

15 Q. You have less than three employees?

16 A. Yes.

17 Q. Now?

18 A. Always had. And I found out just later when I find
19 -- you know, when I got the lawsuit, and then I
20 started, you know, acquiring my workers' comp and
21 what's the law and what we needed. I always thought
22 just construction company needs it. You know,
23 people that are working in dangerous stuff like
24 that. I never knew that a t-shirt/souvenir shop
25 needed it.

1 Q. Okay. Do you agree that on, I believe it was,
2 August the 8th a consent agreement was signed, not
3 by you, but by Alon, admitting that you were outside
4 the jurisdiction of Title 42, and that you were
5 liable for her injury?

6 A. Did I know that?

7 **BY MR. KILLEN:**

8 Objection, Commissioner. That's not what the
9 client's agreement says, and it's part of the
10 Commission's file.

11 **BY MR. COGGIN:**

12 Read number one and number four.

13 **BY MR. KILLEN:**

14 It does not say he's liable for her injuries.

15 **BY MR. MOGIL:**

16 Right. And Your Honor, this is an agreement
17 somebody else and I -- I believe I signed it with
18 somebody else, but it's not something that Mr.
19 Bitton necessarily reviewed or signed. He hasn't
20 established that. He's asking him to interpret the
21 law, which is the legal argument that he can make to
22 Your Honor, but Mr. Bitton's not a lawyer. He's not
23 ---

24 **BY MR. COGGIN:**

25 Your Honor, I have just passed that up, and I,

1 you know, want to make the point that they agreed
2 that they were under Title 42.

3 **BY MR. KILLEN:**

4 So stipulated.

5 **BY MR. COGGIN:**

6 And they said they should have been under Title
7 40. That's it.

8 **BY COMMISSIONER JAMES:**

9 I think from the beginning of the trial and
10 even when we started, everybody agreed that they did
11 not have insurance and were subject to the act. Was
12 that not an initial stipulation?

13 **BY MR. COGGIN:**

14 I don't know.

15 **BY MR. KILLEN:**

16 Yes, ma'am, it was.

17 **BY COMMISSIONER JAMES:**

18 Yes.

19 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

20 Q. Now, we have speculation now that Ms. Bridges hurt
21 her leg when she was in North Carolina; do you
22 agree?

23 A. Correct.

24 Q. Okay. And when she came back from the graduation of
25 her grandson from high school, she was limping, ---

1 A. Correct.

2 Q. --- and in a great deal of pain?

3 A. On Saturday, she was.

4 Q. Okay. Unable to walk?

5 A. She was walking.

6 Q. She was walking?

7 A. Barely, but she was walking.

8 Q. And she has variously been described as suffering
9 from pain to her ankle and her foot.

10 A. Say your question.

11 **BY MR. MOGIL:**

12 Objection.

13 **BY THE WITNESS:**

14 Are you making a statement or asking me a
15 question?

16 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

17 Q. I'm asking you a question.

18 A. What was the question? I didn't understand.

19 Q. Okay. I said are you of the opinion that it was an
20 injury to her ankle and her foot?

21 A. I -- I -- I was sure there was an injury. She told
22 everybody she got hurt, so it was obvious.

23 Q. Okay. And she was wrapped?

24 A. Yes.

25 Q. She had the wrap? You call it a bandage. It was

1 actually a -- or a band-aid. It was actually a
2 bandage, an Ace bandage; is that right?

3 A. Those elastic wrap thing that you pull when you
4 twist your ankle or whatever, but, you know, she had
5 long pants, so I -- I couldn't see all the way to
6 the middle of her foot. You know, I mean, that's
7 about it.

8 Q. My question is, that even though she was apparently
9 badly injured, she worked Monday for 14 hours?

10 A. I don't know.

11 Q. Tuesday for 14 hours?

12 A. That's what you're saying.

13 Q. Wednesday for 14 hours?

14 A. That's what you're saying.

15 Q. Thursday for 14 hours? No?

16 A. Is that a question or a statement? Again, I don't
17 understand. If you ask me the question, ask me the
18 question. I'll answer.

19 Q. I'm asking you if she worked ---

20 A. I don't know.

21 Q. --- Monday, Tuesday, Wednesday, Thursday ---

22 A. Again, I told you, on the schedule it reflects
23 availability of employees, not the original schedule
24 that is marked and changed and stuff. I can show
25 you text messages of her that she cannot show up

1 every week for two days. So how about that?

2 Q. Tell me what days she worked then, the day that
3 you're focused on.

4 A. I don't remember. I don't do the schedule, so I
5 don't remember who ---

6 Q. Was she off Monday?

7 A. I don't know -- no, Monday she was working, because
8 I saw her in the morning. That's for sure.

9 Q. How about Tuesday?

10 A. I don't know.

11 Q. Weren't you in the shop on Tuesday?

12 A. I'm -- I'm there every day.

13 Q. Wednesday?

14 A. She worked one more day, maybe one or twice that
15 week, but I -- I don't recall when. I saw her a few
16 times that week, but that's about it.

17 Q. Thursday?

18 A. I don't remember.

19 Q. She's off Friday?

20 A. I don't even know that. I don't remember that
21 either.

22 Q. Saturday you saw her? Saturday ---

23 A. Definitely, I saw her.

24 Q. Tell me what you saw.

25 A. I came to the store, walked in about eleven, eleven-

1 thirty again, did whatever I needed, greeted her. I
2 saw her in the main counter. Said, "hi" to her.
3 Went down, saw Leticia and Lily in the ice cream
4 counter. Said, "hi" to them. Did a few things over
5 there, and then I went to Raven's and Zack's store.
6 Go over there and talk to them, "What's going on."
7 Then I came back. And then Lynn came out of the
8 counter, and she's walking -- was walking toward
9 where I'm at, and I saw her walking kind of like a
10 lot slower. Because she usually would walk, she
11 moves. And then I saw her kind of slowly walking,
12 and the pain kind of, "ugh". So I -- that drawn my
13 attention, and I immediately, I was like, "Hey,
14 you've been hurt since Monday already. I -- I don't
15 even know what you're doing here basically, but do
16 not, no physical, no climbing, no climbing on the
17 ladder or no doing any physical. Just cash out
18 people on the register," 'Cause I knew she was
19 getting off at three that day. She was the morning
20 shift, so.

21 Q. On the schedule it says that she was working until
22 ten o'clock at night.

23 **BY MR. KILLEN:**

24 Objection, Commissioner.

25 **BY THE WITNESS:**

1 Her availability.

2 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

3 Q. Pardon me?

4 A. Her availability.

5 **BY MR. KILLEN:**

6 We've been over this ad nauseam.

7 **BY COMMISSIONER JAMES:**

8 You can finish your answer, sir.

9 **BY THE WITNESS:**

10 I'm done.

11 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

12 Q. The schedule said that she worked from eight to ten.
13 She was not scheduled to three. Again, let's go
14 back to the foot. What did the foot look like?

15 A. It was wrapped with those elastic band-aids.
16 They're whatever you call it, Ace band, whatever you
17 want to call it.

18 Q. On the ankle, too?

19 A. I don't know. She had long pants, so I couldn't
20 see. I could -- could have seen just a part of the
21 foot that was exposed, and it was up to like the
22 middle of the foot (indicating). That's about it.

23 Q. And that is the injury that she had when she came
24 back from North Carolina with; is that right?

25 A. Correct.

1 Q. That raises a couple of questions with it. Why
2 didn't you send her to the hospital?

3 A. It's not my duty.

4 Q. Why didn't you take her to the doctor?

5 A. It's not my job.

6 Q. Why didn't you tell her to go home?

7 A. I did.

8 Q. You told her to go home?

9 A. I asked her if she needs to go home, she said, "no,"
10 she can -- she -- she'll be all right. I asked her
11 if she went to the doctor for it, and she said she's
12 taking care of it.

13 Q. Okay. Was this injury you think to her foot, her
14 ankle, whatever it was, was that severe enough that
15 she should have gone to the doctor?

16 A. I'm not a doctor. I don't know how ---

17 Q. I'm asking your opinion as a layman.

18 A. I'm sorry?

19 Q. Under the law, you can give your opinion as a
20 layman.

21 A. I cannot give you an opinion on something that I
22 don't know how they feel or how that look like or
23 whatever.

24 Q. Do you think she should have been sent to the
25 doctors?

1 **BY MR. MOGIL:**

2 Objection.

3 **THE WITNESS ANSWERS:**

4 A. She should have went to the doctor herself if she
5 felt that bad. She's old enough to be responsible
6 for -- for herself. I'm not dealing with a child
7 here.

8 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

9 Q. Was the injury that bad that say she have gone to
10 the hospital and gotten an X-ray?

11 **BY MR. MOGIL:**

12 Objection.

13 **THE WITNESS ANSWERS:**

14 A. It's not my duty.

15 **BY COMMISSIONER JAMES:**

16 Sir?

17 **THE WITNESS ANSWERS:**

18 A. It's not my duty. She came injured to work after a
19 vacation. So I don't know what happened, where it
20 happened, and how it happened. I was just making
21 sure she can work and perform her duties that day.
22 That's it.

23 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

24 Q. I'm just trying to determine the severity of this
25 injury. That's all.

1 A. I don't know. I'm not a professional.

2 Q. But didn't you say she on this Saturday was in
3 terrible condition; is that what you said?

4 A. You said that. I said she was hurting.

5 Q. I'm asking you. I'm referring to your deposition.

6 **BY MR. COGGIN:**

7 Page fifty-eight, gentlemen, line ten.

8 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

9 Q. "Before I left, Lynn was walking by me, and I saw
10 her in agonizing pain limping." Now, what does that
11 say?

12 A. I said exactly "She was hurt bad, and she was
13 walking and making a -- a -- a noise like she's
14 hurting, like 'ugh -- ugh.'"

15 Q. My question to you is, if that injury had been
16 yours, would you have gone to the doctor, gotten an
17 X-ray, had someone see if it was broken; what would
18 you have done?

19 A. I don't know, it depends.

20 Q. And you did not suggest that she go home or anything
21 else; is that right?

22 A. I asked if she can work, and she said she can. And
23 I asked her if she wanted to check with a doctor on
24 that, and she said she's checking, and that's the
25 best I can do.

1 Q. Mr. Bitton, you know that she was in the hospital
2 that afternoon, don't you?

3 A. Yes.

4 Q. And when she was in the hospital, she was checked
5 over probably by -- and I have the list as a matter
6 of fact, and the list is here in the APAs. And she
7 was checked over the first -- I think it's the four
8 days or something like ---

9 A. By someone ---

10 **BY MR. MOGIL:**

11 Excuse me, Your Honor. I'm sorry, I don't mean
12 to prolong this, but I'm going to object to any
13 questions -- he testified that he didn't have any
14 contact with her or see her after the incident. So
15 anything that anybody else observed of her after the
16 incident is not within this witnesses -- that comes
17 in through doctor testimony or medical nurse
18 testimony or Ms. Bridges' testimony, but she already
19 rested, but it doesn't come in through my client.

20 **BY MR. COGGIN:**

21 Your honor, I'm just ---

22 **BY MS. MELLARD:**

23 He has nothing to do with the hospital.

24 **BY MR. COGGIN:**

25 I'm just trying to make a point and get through

1 this with him. I asked him if ---

2 **BY COMMISSIONER JAMES:**

3 Mr. Coggin, I'm trying to understand. If the
4 witness said that they've had no further contact
5 with her -- so what is the basis of the question?

6 Before you go through the list of doctors, what ---

7 **BY MR. COGGIN:**

8 Could I ask him two more questions, and I'll
9 get this done.

10 **BY COMMISSIONER JAMES:**

11 Okay. And I just want to know, before you go
12 through the list of doctors, if we can have the
13 basis of the question without the doctors, then I
14 can rule on it.

15 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

16 Q. My question is this. If her ankle was so severe --
17 you said, "Before I left, Lynn was limping, walking
18 by me, and I saw her in agonizing" that's your word,
19 "pain limping." Okay, do you remember that? Do you
20 want to look at it?

21 A. Yes.

22 Q. Okay. Three hours later, ---

23 A. Not three hours. Thirty minutes later I got a call
24 that she fell. Not three hours. I can remember
25 that clear as the sun.

1 Q. Then you remember everything that happened here then
2 too?

3 A. No, that particular thing I remember clearly,
4 because I was furious.

5 Q. The point I'm trying to make is, I have 2200 pages
6 of medical testimony. I have something like 65
7 medical testimony pages that I've handed up to the
8 Commissioner. Mr. Mogil and Mr. -- have testimony.
9 Not one time is the ---

10 **BY MR. KILLEN:**

11 Commissioner, there's no medical testimony. If
12 he's referring to medical records, that's a whole
13 different ball game. But...

14 **BY MR. COGGIN:**

15 Your Honor, medical testimony. What I'm saying
16 is omission. Not one time in all of this -- I defy
17 you to look here and see if there's any mention of
18 her ankle anywhere at all. In fact, when I ---

19 **BY THE WITNESS:**

20 I didn't say her ankle. Nobody said her ankle.
21 We just saw the bandage on her foot here
22 (indicating), but we didn't know how far it goes.
23 You know, I mean, nobody -- that's all we saw.
24 Because she was covering it with long pants. That's
25 about it. That's all I'm saying.

CROSS-EXAMINATION RESUMED BY MR. COGGIN:

Q. What I'm saying is that everybody testified so far it was a twisted ankle. One girl said that her toes ---

A. That's what it looked like to them.

Q. One girl said her toes were black. She was wrapped. And what I'm saying is there's not one mention of the ankle or the foot in a year's worth of medical work. I thought ---

A. Are you asking me questions, or are you making statements?

BY THE WITNESS:

I need to understand why I'm sitting here for, ma'am.

CROSS-EXAMINATION RESUMED BY MR. COGGIN:

Q. This is the statement I'm making.

BY MR. KILLEN:

Objection to that, Commissioner. He's not a witness.

BY COMMISSIONER JAMES:

All right. Mr. Coggin, I understand you're on cross, but at the end of statements, there's usually a question. So if ---

BY MR. COGGIN:

Well, I thought I had. The question was in the

1 tone of my voice. A lot of times in your tone of
2 voice is the question. That's all. I can ---

3 **BY MR. KILLEN:**

4 The Court of Appeals can't read your tone of
5 voice.

6 **BY COMMISSIONER JAMES:**

7 And the court reporter can't get the tone of
8 the voice either. So make sure that if you're going
9 to have a statement, there's a question at the end.

10 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

11 Q. Do you find it strange, Mr. Bitton, that after you
12 characterized her of being in agonizing pain, then
13 she goes to the hospital and there's not one mention
14 of her ankle, and there's not one mention of black
15 and blue toes, there's not one mention of a twisted
16 ankle anywhere in any of the medical records?

17 A. What was the question?

18 Q. That was the question. Are you surprised?

19 A. Am I surprised, no.

20 Q. No?

21 A. Why would I?

22 Q. I don't know.

23 A. You're asking the question, you should know.

24 Q. Pardon me?

25 A. You're asking me the question, you should have the

1 background for it, you know. If you're asking me
2 the question. I don't know, I'm not a doctor. I'm
3 not a professional. All I can tell you is what we
4 saw, and what I saw. That's it.

5 Q. Fair enough. Thank you.

6 **OFF THE RECORD DISCUSSION**

7 **BY MR. COGGIN:**

8 No, I'm not done, not by a longshot. I'm not
9 done.

10 **BY COMMISSIONER JAMES:**

11 Can we take a break?

12 **OFF THE RECORD**

13 **BY COMMISSIONER JAMES:**

14 We're back on record.

15 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

16 Q. During the deposition that you had with me, and this
17 was in March of 2019, the 29th of March, I was
18 there, and Mr. Mogil was there, Mr. Killen was
19 there; you remember that, ---

20 A. Yes, sir.

21 Q. --- and we talked about this?

22 A. About what?

23 Q. This whole issue that we're talking about here.

24 A. Yes, sir.

25 **BY MR. COGGIN:**

1 Okay. And I'm going to refer to page 58. Go
2 back to line nine, Tim.

3 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

4 Q. And here's what you said. Let's skip to the bottom
5 line. It's almost like we're talking here. Let's
6 start there, that's what you said, "Before I left,
7 Lynn was walking by me. I saw her in agonizing pain
8 limping." Do you agree?

9 A. Agreed.

10 Q. "And then I turned around, and I was like 'you do
11 not do any physical work today.'" I assume you were
12 talking to Lynn; is that correct?

13 A. Correct.

14 Q. Okay. "Then I went personally to each one of my
15 employees." Do you remember who was working there
16 that day?

17 A. Yes.

18 **BY MR. KILLEN:**

19 You skipped over some lines there, Gary.

20 **BY MR. COGGIN:**

21 No, I don't think I did.

22 **BY MR. KILLEN:**

23 Yes, you did.

24 **BY MR. COGGIN:**

25 Oh, okay, I'm sorry. Back up.

1 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

2 Q. "And I turned around, and I was like 'you do not do
3 any physical work today. You just greet
4 customers,'" right?

5 **BY MR. COGGIN:**

6 Thank you, Tim.

7 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

8 Q. "Don't climb on any ladder. Don't pick anything.
9 Then I went personally to each one of the employees.
10 'Do not let her go on the ladder. Do not let her do
11 any physical work.' Zack was working in the surf
12 shop. I went specifically to him. I was like,
13 'Zack, you're the guy here. You're my family. Make
14 sure no girls go on the ladder. Especially Lynn.'"
15 Do you agree?

16 A. Agreed.

17 Q. "She's hurting. She's sick. Let her be with
18 customers today." You agree that's what you said?

19 A. Agreed.

20 Q. That's not exactly what happened, is it?

21 **BY MR. MOGIL:**

22 Objection.

23 **THE WITNESS ANSWERS:**

24 Q. I don't understand the question. I don't know ---

25 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

1 Q. I just said, "That's not exactly what happened, is
2 it?"

3 A. That's exactly how it happened.

4 Q. Wasn't Lynn working at the front of the store when
5 you came in about eleven, eleven-thirty?

6 A. She was ---

7 Q. And you asked her what she was doing?

8 A. No.

9 Q. And didn't she tell you that that day she was going
10 on top of the cooler, ---

11 A. No.

12 Q. --- and she was going to take inventory ---

13 A. No.

14 Q. --- just like she had done the previous several
15 years she had worked there?

16 A. We don't do inventory on Saturday. We do it on
17 Monday.

18 Q. And didn't you tell her when she said, "I'm going up
19 onto the cooler to take inventory," you said, "I
20 don't want you to do that. Zack, that's what Zack
21 is here for"?

22 A. No.

23 Q. And then you said to her, "I want you to tell Zack
24 that he has to go up onto the ladder and get the
25 inventory"?

1 A. I did that.

2 Q. You did tell her ---

3 A. Not inventory. I told her if she needs to go on the
4 ladder, go and get Zack. He will go on the ladder
5 for you and ---

6 Q. Let me repeat what I said. Didn't you tell her,
7 "You need to go onto the -- get Zack and tell him to
8 go onto the cooler and take the inventory"?

9 A. No, that's not correct.

10 Q. And didn't she tell you -- didn't you say "I'm going
11 to talk to him, too"?

12 A. Say it again.

13 Q. She said, "I'm going to talk to him also"?

14 A. No, she didn't say nothing. She was quiet and put
15 her head down like she agreed to what I said, and
16 that's it, and she went back to the counter.

17 Q. And then didn't Lynn confront -- or you didn't
18 confront him. You went and saw Zack. Zack was in
19 the bathroom putting lotion on his face.

20 A. I wasn't there, so I don't know.

21 Q. I'm just describing it for you.

22 A. I wasn't there. I'm answering.

23 Q. Putting lotion on his face. And didn't she tell
24 Zack at that time "You have to go up." And he said,
25 "Yeah, I'll do it. Amir already talked to me"?

1 A. I wasn't there. I don't know.

2 Q. You never talked to Zack?

3 A. I talked to Zack, but he never mentioned anything
4 like that to me. So I have never heard that until
5 when I heard it from you.

6 Q. And wasn't it in fact your proscription, or your
7 prohibition was, "Don't go on the cooler today, up
8 on the cooler today. Have Zack do it"?

9 A. No.

10 Q. No?

11 A. No.

12 Q. Do you want to think about that for a minute?

13 **BY MR. MOGIL:**

14 Objection. He's just baiting the witness,
15 arguing with the witness, Your Honor. That's not a
16 fact probative question.

17 **BY MR. COGGIN:**

18 Let me ---

19 **BY COMMISSIONER JAMES:**

20 Mr. Coggin, if you want to proceed with the
21 questions.

22 **BY MR. COGGIN:**

23 I'm sorry. Let me finish this.

24 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

25 Q. Here's what you said again. "I went specifically to

1 him. I was like 'Zack, you're the guy here. You're
2 my family'"; is that right?

3 A. Correct.

4 Q. And Zack is your family. "Make sure no girls go on
5 the ladder," is that right, ---

6 A. Correct.

7 Q. --- "Especially Lynn. She's hurting, she's sick.
8 Let her be with customers today"; is that right?

9 A. Correct.

10 Q. Do you know when Lynn went to the hospital what she
11 was treated for?

12 A. Do I know what she was treated for that day?

13 Q. Yes.

14 A. All I heard is she broke her -- her leg, her foot,
15 and that's about it.

16 Q. Would it surprise you it wasn't her leg or her foot,
17 it was her knee?

18 A. Would it surprise me?

19 Q. Yes.

20 A. I don't understand the question.

21 Q. Here's my question. Is that you had three young
22 women testify that Lynn was in a black boot. Lynn's
23 -- one of them said, "Lynn's toes were black and
24 blue." Someone else said, "her ankle was twisted."
25 And my question to you is, does it surprise you that

1 her knee was broken into 22 different pieces?

2 A. Why I'm supposed to be surprised finding that? I
3 don't understand the question really. I'm not -- I
4 don't know where -- where you're trying to go with --
5 - with that.

6 Q. Let me ask you the same question I asked you before.
7 Maybe we can clear it up this way. And I asked you
8 for a "yes" or "no" answer. When Lynn came back
9 from North Carolina, the injury you claim that she
10 came back with, is that what she is in here today
11 about?

12 A. I'm not a doctor. I don't know. And I haven't seen
13 the injuries. I just saw the band-aid on it.
14 That's it. So I don't know what kind of injuries
15 she had from the get go.

16 **BY MR. COGGIN:**

17 I don't know, Your Honor, which is the
18 photograph. I have this photograph, and then the
19 photograph of her with her grandson. Can I use
20 those two?

21 **BY COMMISSIONER JAMES:**

22 They're all up here.

23 **BY MR. COGGIN:**

24 Yes, okay. I just didn't want to shuffle
25 through your stuff.

1 **BY COMMISSIONER JAMES:**

2 No, they're meant for y'all.

3 **BY MR. COGGIN:**

4 Okay.

5 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

6 Q. I'm going to show you, Amir, Plaintiff's Exhibit
7 number 3 for identification. Do you recognize the
8 people in that photograph?

9 A. (Witness views photograph). Yes.

10 Q. Who are they? You recognize one of them, don't you?

11 A. Both.

12 Q. Both?

13 A. I know her grandson too, yeah.

14 Q. Okay, good. Now, the testimony was that this was
15 taken the day of his graduation, okay?

16 A. Okay.

17 Q. And that would have been the 12th, I believe, of
18 June.

19 A. Okay.

20 Q. How do her legs look there?

21 A. Fine.

22 Q. This was Saturday morning?

23 A. So you say.

24 Q. Okay. Let me show you what's been marked as
25 Plaintiff's Exhibit Number 5 for identification. Do

1 you recognize that?

2 **BY COMMISSIONER JAMES:**

3 Exhibit.

4 **BY MR. COGGIN:**

5 Exhibit, I'm sorry.

6 **THE WITNESS ANSWERS:**

7 A. (Witness views photograph). Do I recognize that?

8 No, I don't see anybody I recognize.

9 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

10 Q. Do you recognize the woman in the hat?

11 A. No. Looks like a blurry-blonde woman with glasses.

12 I don't know who she is though.

13 Q. That blurry-blond woman, would you tell me what her
14 legs look like, her ankles?

15 A. I cannot see. There is a pole of the umbrella
16 covering it.

17 Q. The left leg is the one that you said was injured,
18 and it's right there.

19 A. It's blurry.

20 **BY MR. MOBIL:**

21 Your Honor, I think that Your Honor is capable
22 of looking at the picture, which we admitted into
23 evidence without knowing when it was taken. We just
24 stipulated that he could use it for demonstrative
25 purpose. We don't know if that was taken here, but

1 I think Your Honor can look at it. His opinion of
2 what the picture shows is irrelevant. It really has
3 no relevance to whether the person was hurt, or
4 whether she is hurt or his role. It's for the fact
5 finder to look at that picture.

6 **BY MR. COGGIN:**

7 I'm a little confused. Is Mr. Mogil saying
8 that I can't show impeachment evidence?

9 **BY COMMISSIONER JAMES:**

10 Mr. Coggin, if you can go ahead and move on
11 with the questions please, sir.

12 **BY MR. COGGIN:**

13 Okay, yes.

14 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

15 Q. Do you see any wraps on this woman's leg, the left
16 leg?

17 A. No.

18 Q. Do you see any black boot on that leg?

19 A. No.

20 Q. Looks like the leg's perfectly normal, isn't it?

21 A. It is. Please don't hover over me.

22 Q. Oh, I'm sorry.

23 A. Thank you.

24 Q. No problem.

25 **BY MR. COGGIN:**

1 Thank you, Your Honor.

2 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

3 Q. So, you would agree that in that photograph her leg
4 looks was perfectly normal; is that correct?

5 A. I would agree, but I wouldn't agree that it's Lynn.
6 I don't know if it's Lynn or not. So it could be
7 any woman that is healthy and perfectly fine.
8 'Cause I don't recognize that woman, you know. To
9 be honest, it's just blurry and not clear, so.

10 Q. Now, when Lynn was injured, she went onto the
11 stepladder to get hard-rock candy; is that correct?

12 A. That's what they -- I've been told.

13 Q. And the reason that I mentioned the other day that
14 it was red hots, and whatever the other one was, was
15 because they were kept on the top shelf; isn't that
16 correct?

17 A. No, I don't keep anything that we need on a daily or
18 weekly basis up -- up. I try -- try to keep it
19 close. Only the big stuff that I need once every
20 two weeks or whatever we keep up. So I -- I get it
21 down for them.

22 Q. Now, in your testimony in deposition you said that
23 nobody saw her falling, and people were six -- five
24 -- six to eight-feet away. Nobody heard her
25 falling, screaming, breaking a leg; is that right?

1 A. Correct.

2 Q. Okay. There was no argument -- and you've stated
3 that she fell and broke her knee, and there was no
4 noise, no screaming, nothing?

5 **BY MR. KILLEN:**

6 Objection.

7 **BY THE WITNESS:**

8 That's what I've been told.

9 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

10 Q. Okay. What is your suggestion when you say that?

11 A. I don't understand that question.

12 **BY MR. MOGIL:**

13 He testified he wasn't there.

14 **BY COMMISSIONER JAMES:**

15 Mr. Coggin, was this witness there?

16 **BY MR. COGGIN:**

17 This is his testimony, Your Honor.

18 **BY COMMISSIONER JAMES:**

19 Okay. But he wasn't -- this is testimony
20 today. I understand that's a discovery deposition.

21 **BY MR. COGGIN:**

22 Yes.

23 **BY COMMISSIONER JAMES:**

24 But today this witness has indicated that he
25 wasn't there.

1 **BY MR. COGGIN:**

2 What I'm only saying is what he said under
3 deposition.

4 **BY COMMISSIONER JAMES:**

5 But today is -- so, there are things in
6 depositions that are discovery that aren't
7 necessarily admissible. So that's why we start with
8 the testimony of the witness first before we revert
9 to the deposition. So if my understanding is the
10 witness says he wasn't there, ---

11 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

12 Q. Well, my next question is, if you weren't there, how
13 did you know that there was no scream, there was no
14 noise?

15 A. 'Cause I asked the people that were next -- standing
16 next to her. It was Lily and Leticia.

17 Q. Okay. And what does that mean?

18 A. I don't understand the question.

19 Q. If she didn't yell, you didn't hear a bone breaking,
20 nobody heard anything, and they were six to eight-
21 feet away, why are you even saying that?

22 A. Because most likely when somebody -- accidents,
23 people breaking legs. I was in the special forces
24 in the military. I've seen people getting hurt, and
25 leg -- breaking bones. When you break your bone,

1 you scream, it hurts. So I ---

2 Q. That's why I'm ---

3 A. --- I -- for me, it's like an automatic human being
4 reaction. If you get hurt, especially women,
5 they're usually like more louder than guys when they
6 scream or do any kind of action or they cry or
7 whatever. And when I questioned the employees that
8 were standing over there, they haven't heard
9 anything, they haven't seen anything, and I was just
10 kind of -- kind of like -- it doesn't make sense to
11 me. You know when a woman breaks her -- a bone, and
12 especially after I found out the severity of the
13 break, and that -- she didn't make any -- not even a
14 sound. That kind of was ---

15 Q. But you were trying to make a point when you say
16 that, and I asked you that. I asked you ---

17 A. That's my point.

18 Q. What's the point?

19 A. That it -- it didn't make sense to me that somebody
20 breaks a bone and doesn't make any sound or crying.

21 Q. Are you saying that she or somebody ---

22 A. I'm not saying anything. I was just saying it
23 didn't sound right. That's it.

24 Q. Do you think she broke that bone somewhere else?

25 A. I have no idea.

1 Q. Do you think she broke that bone in North Carolina?

2 A. I don't know.

3 Q. The fact of the matter is that she didn't break any
4 bones in North Carolina.

5 **BY MR. KILLEN:**

6 Objection.

7 **BY COMMISSIONER JAMES:**

8 Sustained.

9 **BY MR. COGGIN:**

10 I apologize for this, but somebody is going to
11 have to tell me the basis of why I'm allowed to say
12 that.

13 **BY COMMISSIONER JAMES:**

14 You are stating what the ultimate facts are in
15 this case. I think you can ask questions otherwise,
16 but you're making a statement, and none of the
17 attorneys can ultimately say what the facts are in
18 this case unless they're undisputed.

19 **BY MR. COGGIN:**

20 Okay.

21 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

22 Q. You still maintain that she had an injury in North
23 Carolina; is that correct?

24 A. She was injured in North Carolina, that's for sure.
25 Because she came back to work limping and with her -

1 - with her foot band-aid and wrapped with an elastic
2 band-aid. So it was a fact that she told everybody
3 -- she didn't tell me specifically the details of
4 the injury. She told me she got injured, but she
5 told everybody else the detail too. So, I mean,
6 what's the question. You know, it's not that I'm
7 making up stuff. It's just she told everybody
8 clearly.

9 Q. Okay.

10 A. And the severity of the injury, we don't know
11 because we're not professionals. So -- and she
12 didn't show me personally what she was covering as I
13 said. So I -- I couldn't determine what was the
14 injury, and even if I could see, I wouldn't be able
15 to determine, because I'm not a doctor.

16 Q. You and I had a curious exchange towards the end of
17 the deposition. "Curious" is my characterization.

18 BY MR. COGGIN:

19 Beginning on page 70, line eight, gentlemen,
20 which I'm going to read in. Tell me when you're
21 ready.

22 BY MR. MOGIL:

23 Again, Your Honor, I don't want to prolong
24 this, but objection on the basis that deposition
25 testimony is admissible to impeach contrary

1 testimony at trial. We're not litigating the
2 deposition today. So he needs to ask a question,
3 and if the answer is different, he can use the
4 deposition transcript to do that, but we're not
5 litigating why the witness said something at
6 deposition today.

7 **BY MR. KILLEN:**

8 I wholeheartedly agree with that.

9 **BY MR. COGGIN:**

10 I am trying to point out, Your Honor, ---

11 **BY COMMISSIONER JAMES:**

12 Mr. Coggin, and we can go look at the civil
13 rule, and we're under the civil rules when it comes
14 to depositions.

15 **BY MR. COGGIN:**

16 Yes, I know that.

17 **BY COMMISSIONER JAMES:**

18 So, the depositions are one part of the civil
19 rules indicate that they're used for an impeachment
20 purpose. So if you ask a question and there's a
21 contrary answer, then you go to the deposition.

22 **BY MR. COGGIN:**

23 I understand.

24 **BY COMMISSIONER JAMES:**

25 So, if you would first ask ---

1 **BY MR. COGGIN:**

2 I agree.

3 **BY COMMISSIONER JAMES:**

4 --- whatever questions there are, and then if
5 you have a contrary answer, then go to the
6 deposition.

7 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

8 Q. Mr. Bitton, didn't you during the deposition infer
9 that I was involved in this whole matter before any
10 of these accidents took place?

11 **BY MR. KILLEN:**

12 Again, it's the same objection that we just
13 made.

14 **BY MR. COGGIN:**

15 I've asked him, then I'm going to read the
16 answer. I want to see what his answer is.

17 **BY COMMISSIONER JAMES:**

18 Before going to the deposition, ask him a
19 question, and if he says to the contrary -- so
20 you're saying some contact at the deposition? All
21 right, go ahead and ask the question. But ---

22 **BY MR. COGGIN:**

23 I'll do it again.

24 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

25 Q. Did you infer at anytime that I was involved in this

1 case with Lynn before the accident?

2 A. I don't remember.

3 Q. We were talking about the retention of lawyers, and
4 I had asked you why you didn't contact her ---

5 **BY MR. KILLEN:**

6 Mr. Coggin, can you point out where you're
7 referring to in the deposition?

8 **BY MR. COGGIN:**

9 I thought I told you. I'm sorry. It's 70,
10 line eleven. I thought I told you that.

11 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

12 Q. My question was, "Did you ever go to the hospital?"
13 Your answer was "no." "Why not?" You said,
14 "Because my -- I don't know why. Because I think
15 she took a lawyer, or she hired you, and when
16 somebody retains a lawyer against me -- I mean, I
17 hired a lawyer that tells me what to do, so I was
18 waiting for instructions. Because she retained you
19 the next day on a Sunday, the day after the
20 accident"; is that correct?

21 A. Maybe so.

22 Q. "Or maybe you knew about that before."

23 A. Okay.

24 Q. What did you mean by that?

25 A. I don't remember what was the topic of conversation

1 when you questioned me last.

2 Q. Would it be okay if I read it to you again; would
3 you understand?

4 A. No, because it's going to be out of context if
5 you're reading just a few lines of it.

6 Q. No, it's in context. I was just wondering ---

7 A. You want me to read the whole deposition again?

8 Q. Pardon me?

9 A. Do you want me to read it again, and then I can
10 remember it maybe?

11 Q. Yes -- yes, you want me to read the whole thing?

12 A. No.

13 **BY MR. MOGIL:**

14 Your Honor, he's arguing with the witness.

15 This has nothing to do with the accident. I don't
16 really -- even if Mr. Bitton said anything about Mr.
17 Coggin at the deposition, which he didn't, but
18 there's nothing wrong in going -- it's not relevant
19 to the injury.

20 **BY COMMISSIONER JAMES:**

21 The question's been asked and answered.

22 **BY MR. COGGIN:**

23 Yes, it was a half-answered.

24 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

25 Q. You just don't know what the basis of that was?

1 A. I just don't remember what we spoke about. So I
2 don't want to answer something that is going to be
3 out of context, because you just gave me one
4 sentence of what I said, so.

5 Q. No, I followed up with you a number of times, and
6 you just said you didn't know. I thought maybe you
7 could clear it up. Okay. Mr. Bitton, you are aware
8 that through your attorney -- and this was -- Mike
9 has been in and out of this case, your attorney,
10 okay. Your attorney at one time was Mary Sharp.

11 A. You're making a statement that's not correct first
12 of all, because Mike has always been on the case.
13 He's never been in and out.

14 Q. Do you remember Mary Sharp was your attorney?

15 A. Yes.

16 Q. And she represented you for, oh, I don't know, quite
17 some time, don't you think?

18 A. Since December.

19 Q. Pardon me?

20 A. Since December. December/January would be -- it
21 would be around that time.

22 Q. And do you remember through your attorney on March
23 the 4th I subpoenaed your text messages and cell
24 phone bills for that period?

25 A. Do I remember that?

1 Q. Uh-huh.

2 A. I think so.

3 Q. Pardon me?

4 A. Maybe.

5 **BY MR. COGGIN:**

6 I'm going to mark this into evidence.

7 **BY COMMISSIONER JAMES:**

8 Show it to the other side first.

9 **BY MR. COGGIN:**

10 Yes, okay.

11 **BY MR. KILLEN:**

12 Is this the subpoena we discussed at length at
13 the outset of this litigation?

14 **BY MR. COGGIN:**

15 No, I don't think so.

16 **BY COMMISSIONER JAMES:**

17 Are there any objections?

18 **BY THE WITNESS:**

19 Any objections?

20 **BY COMMISSIONER JAMES:**

21 Are there any objections?

22 **BY MR. MOGIL:**

23 No.

24 **BY MR. KILLEN:**

25 No.

1 **BY COMMISSIONER JAMES:**

2 All right. This is Claimant's 6.

3 (COURT REPORTER MARKS DOCUMENT DEFENDANT'S
4 EXHIBIT NUMBER 6, RETAINED IN COMMISSION FILE)

5 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

6 Q. Take a look at what's just been marked as
7 Plaintiff's Exhibit Number 6 for identification; do
8 you recognize that?

9 **BY COMMISSIONER JAMES:**

10 No, it's in evidence.

11 **BY MR. COGGIN:**

12 In evidence. I'm sorry. I keep saying
13 "identification."

14 **BY THE WITNESS:**

15 (Witness views document). Okay.

16 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

17 Q. Do you see what I asked for?

18 A. Yes.

19 **BY THE WITNESS:**

20 Can you stand over there, please (indicating)?

21 **BY MR. COGGIN:**

22 Sure.

23 **BY THE WITNESS:**

24 Thank you. I just don't like people behind me.
25 I'm sorry, it's a military thing. I apologize.

1 **BY MR. MOBIL:**

2 Your Honor, this is also kind of also bizarre
3 that he's standing over the witness. I mean, in no
4 court does the attorney stand over the witness and
5 try to intimidate him into, you know, ---

6 **BY MR. COGGIN:**

7 I wasn't trying to intimidate him.

8 **BY THE WITNESS:**

9 I am not intimidated by all means. So don't
10 worry about that. That's not the issue.

11 **BY MR. COGGIN:**

12 Thank you.

13 **BY MR. KILLEN:**

14 He's pretty tall though, isn't he?

15 **BY THE WITNESS:**

16 It's just he's breathing and all that, and it
17 just like ---

18 **BY MR. COGGIN:**

19 Bad breath.

20 **BY THE WITNESS:**

21 --- I feel like -- yeah, I just ---

22 **BY COMMISSIONER JAMES:**

23 All right. Mr. Coggin, do you have a question?

24 **BY MR. COGGIN:**

25 Yes, I thought I asked him if he recognized

1 that.

2 **BY COMMISSIONER JAMES:**

3 Okay.

4 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

5 Q. One of the things that I asked you for, if you
6 recall, and I was very interested in looking at your
7 cell phone; do you remember that?

8 A. Yes, sir.

9 Q. And do you remember Mary and I had some problems
10 over that, and you never produced that; is that
11 correct?

12 A. I produced to my lawyers whatever I needed to
13 produce to them.

14 Q. Do you remember ---

15 A. The cell phone records, because I lost it. I lost
16 the cell phone.

17 Q. What happened?

18 A. I was in Cuba for the weekend with my cousins, and I
19 left it in a cab on the last day of my trip.

20 Q. Where, Havana, Cuba?

21 A. In Havana, Cuba, yes, sir.

22 Q. And we talked about -- didn't we talk about the
23 messages be allowed and so forth?

24 A. I -- I didn't have any storage cloud. I just got
25 storage cloud after I lost it, because I had some

1 important things that I needed too.

2 Q. And you lost that in a cab in Cuba; is that correct?

3 A. Yes, sir.

4 **BY MR. COGGIN:**

5 Your Honor, I may be very close to being done.

6 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

7 Q. A couple other things. Do you remember a young lady
8 by the name of Jamie that worked for you?

9 A. Jamie?

10 Q. Yes.

11 A. Jamie who. I have many Jamies.

12 Q. Jamie Willard?

13 A. Yes.

14 Q. Okay. And she had testified in deposition that you
15 had threatened to take papers out on her.

16 A. If she was saying it. Whatever she said, okay.

17 Q. Did you threaten that?

18 A. Threaten to take papers on her?

19 Q. Yes.

20 A. No, never said anything like that. Did I take
21 papers on her? So you say "papers." I'm -- I'm not
22 sure what you're referring to, "take papers on her."

23 Q. So, you're saying you didn't do that?

24 A. No, I didn't do anything, obviously.

25 Q. But didn't you say that if in fact she didn't back

1 out of testifying -- she was the young lady that was
2 in ---

3 A. I know exactly who you're talking about.

4 Q. That you were going to take papers out on her?

5 A. No, I never said that.

6 Q. Wasn't that the testimony that you gave in
7 deposition that Zack told her?

8 **BY MR. KILLEN:**

9 Objection, Commissioner. Now he's asking for
10 hearsay and referring to a deposition that's who
11 knows where.

12 **BY MR. COGGIN:**

13 I'm going to have to ask for a ruling of law
14 here, Your Honor, because I couldn't find the
15 answer. If we could go off, I want to ask about
16 that.

17 **BY COMMISSIONER JAMES:**

18 Well, she had testimony the other day.

19 **BY MR. COGGIN:**

20 Yes.

21 **BY COMMISSIONER JAMES:**

22 So, if you're going to refer to whatever the
23 testimony is and ask, then that's fine.

24 **BY MR. COGGIN:**

25 But I read excerpts of the deposition into the

1 record.

2 **BY COMMISSIONER JAMES:**

3 Well, then that's what she testified to
4 yesterday while you were reading the excerpts, if
5 that's one of the things that you're referring to.

6 **BY MR. COGGIN:**

7 "No" or "yes"? I'm sorry, I didn't hear you.

8 **BY COMMISSIONER JAMES:**

9 I'm not sure what you're asking me.

10 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

11 I'm asking you if -- we're on the topic now of
12 vale -- what would I say? I want to be careful what
13 I say here. Things that Amir said through Zack.
14 And I asked Zack about these things, and I read them
15 into record.

16 **BY COMMISSIONER JAMES:**

17 Okay. Then what ---

18 **BY MR. COGGIN:**

19 And I want to ask Amir about that.

20 **BY COMMISSIONER JAMES:**

21 Well, then go ahead and ask him about that.

22 **BY MR. COGGIN:**

23 That's what I want to know.

24 **BY COMMISSIONER JAMES:**

25 But they need to be -- they're from the

1 testimony that we had two days ago, correct?

2 **BY MR. COGGIN:**

3 Yes.

4 **BY COMMISSIONER JAMES:**

5 Okay. Then go from the testimony that we had
6 two days ago if that's what you're asking.

7 **BY MR. COGGIN:**

8 Okay. I'm not going to remember what went into
9 the testimony. I'll go as closely as I can.

10 **BY COMMISSIONER JAMES:**

11 Okay.

12 **BY MR. MOGIL:**

13 And Your Honor, just for the record, we'll
14 object to him not referring to the live testimony
15 and rather reading what happened at a deposition
16 three or four months ago. Because all the witnesses
17 have testified here at this proceeding.

18 **BY MR. COGGIN:**

19 No, this was all testimony yesterday, or the
20 day before.

21 **BY COMMISSIONER JAMES:**

22 Okay. If there's testimony from two days ago.
23 Otherwise, then all of these hearsay witnesses that
24 have been available so that the hearsay could come
25 in, are now no longer here. So ---

1 **BY MR. COGGIN:**

2 That's Rule 42. That's what I -- that's
3 exactly right. I just want to get it clear ---

4 **BY COMMISSIONER JAMES:**

5 But they're no longer here. So, yes, whatever
6 was referred to yesterday. If something else comes
7 up and -- well, go ahead. Just go ahead.

8 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

9 Q. And do you remember when I talked to Zack, and I
10 asked him if he was going to -- if you had told Zack
11 you were going to take papers out on Jamie if she
12 stayed in the case?

13 A. What was the question?

14 Q. Do you remember when I was doing -- when I was
15 interviewing Zack, doing the cross-examination --
16 direct examination of Zack, I asked him if he had
17 ever said anything about you taking papers out on
18 Jamie?

19 A. I don't remember.

20 Q. You don't remember?

21 **BY MR. COGGIN:**

22 On line 17, page 30 of Zack's deposition.

23 **BY THE WITNESS:**

24 We're talking about my testimony, or
25 deposition?

1 **BY MR. MOGIL:**

2 Yes, you're going back to the deposition.

3 **BY MR. COGGIN:**

4 Yes, that's what we read from at the ---

5 **BY THE WITNESS:**

6 Yeah, you asked me about the testimony. You
7 don't ask me about the deposition. So decide what
8 you want to ask me, because the deposition, I don't
9 know what he said. I don't remember.

10 **BY COMMISSIONER JAMES:**

11 Mr. Coggin, the witness is -- let me see how to
12 explain this. I understand that you may have been
13 reading from that yesterday ---

14 **BY MR. COGGIN:**

15 Yes.

16 **BY COMMISSIONER JAMES:**

17 --- when you asked Zack questions, but you need
18 to refer to the testimony from two days ago. We
19 need to be very clear as to what you're referring to
20 with regards ---

21 **BY MR. COGGIN:**

22 And I understand. That's the reason I asked
23 you.

24 **BY COMMISSIONER JAMES:**

25 --- with regards to any of the evidence.

1 **BY MR. COGGIN:**

2 The rules aren't that clear on this. I've read
3 it a number of times.

4 **BY COMMISSIONER JAMES:**

5 All right. Well, if you will go ahead and ask
6 the question, but if you ask the question from what
7 -- I mean, the testimony that was presented was two
8 days ago.

9 **BY MR. COGGIN:**

10 My question to Zack was, "Did Amir ever
11 threaten to take papers out on Jamie?" And he of
12 course said, "No," and I read for him Jamie's
13 testimony.

14 **BY MR. MOGIL:**

15 But, Your Honor, we are not impeaching Zack's
16 testimony right now. Zack is not on the stand. So
17 ---

18 **BY MR. COGGIN:**

19 We're impeaching his testimony (indicating).
20 You can use the testimony.

21 **BY MR. MOGIL:**

22 I'm sorry if I'm out of turn, but he can use
23 Mr. Bitton's testimony to impeach Mr. Bitton. He
24 can't use Zack's deposition testimony to impeach
25 Zack when Zack is no longer here, and he's been

1 cross-examined ---

2 **BY MR. COGGIN:**

3 You can use the deposition testimony of anybody
4 if it's been used in trial for the same trial.

5 **BY COMMISSIONER JAMES:**

6 That's been used -- okay, what page are you on?

7 **BY MR. COGGIN:**

8 I am on page 30 of the deposition testimony of
9 Jamie Willard.

10 **BY MR. MOGIL:**

11 Mr. Coggin, you were just reading from Zack's
12 deposition, so that's what we were just focusing on,
13 not Ms. Willard's testimony. Ms. Willard testified
14 in Court as well.

15 **BY MR. COGGIN:**

16 If you have time, I'll talk to you later about
17 it.

18 **BY COMMISSIONER JAMES:**

19 Let's go off record for a moment.

20 **OFF THE RECORD**

21 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

22 Q. Did you ever tell Zack you were going to take papers
23 out on Jamie?

24 A. No, I didn't.

25 Q. And didn't Zack say, ---

1 **BY MR. COGGIN:**

2 And this is on page 30, 31. I want to give you
3 a chance, because I don't know if you want me to do
4 this or not.

5 **BY COMMISSIONER JAMES:**

6 Just ask the question of the witness. You
7 don't ---

8 **BY MR. COGGIN:**

9 I already did. I asked him, "Did you ever --"

10 **BY COMMISSIONER JAMES:**

11 Right, but you don't need to refer to the
12 deposition page. Just go ahead and ask.

13 **BY MR. COGGIN:**

14 Well, I already asked him. I said, "Did you
15 ever threaten to take papers out on Jamie?"

16 **BY COMMISSIONER JAMES:**

17 Okay.

18 **BY THE WITNESS:**

19 I said, "no."

20 **BY MR. COGGIN:**

21 On page 30, line 23 of ---

22 **BY COMMISSIONER JAMES:**

23 But that's not his deposition. Do you have a
24 question of him?

25 **BY MR. COGGIN:**

1 If I have a question of another -- I'm
2 impeaching him from another deposition is what I'm
3 doing.

4 **BY COMMISSIONER JAMES:**

5 No. You can ask him about other testimony in
6 the deposition to impeach -- that's from the
7 testimony. His deposition is used to impeach him.

8 **BY MR. COGGIN:**

9 All right. I may be wrong. I'll go back and
10 read the rule. I think I'm correct. That rule is -
11 --

12 **BY COMMISSIONER JAMES:**

13 You can ask him questions about the other
14 witness. You don't have to read from the deposition
15 to do it. You don't have to give us the page and
16 line number.

17 **BY MR. COGGIN:**

18 Okay.

19 **BY COMMISSIONER JAMES:**

20 If you have a question from him -- for
21 instance, you've already asked him did he not
22 threaten to take out papers on Jamie, and he
23 answered it. Then you can go on with that question.
24 But ---

25 **BY MR. COGGIN:**

1 Okay.

2 **BY COMMISSIONER JAMES:**

3 --- if he's said other things to other people
4 or whatnot -- but I don't -- as far as the
5 deposition page numbers from -- we've had the
6 testimony from two days ago.

7 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

8 Q. Let's try it again. Did you ever tell Zack that you
9 were going to take papers out on Jamie?

10 A. No.

11 Q. Would Jamie have done anything that would take
12 papers out on her for?

13 A. I could have if I needed to, if I wanted to.

14 Q. What was it?

15 A. She stole money from me for a long time every day.

16 Q. Did she pay that back?

17 A. No. Hell, no.

18 Q. Didn't you keep \$300 off of her?

19 A. Which is just what I could have got out of her,
20 because that's the money she was working for, and
21 that's ---

22 Q. Was is you or Alon?

23 A. Alon.

24 Q. She told me she paid Alon.

25 A. She paid Alon.

1 Q. Okay. It wasn't you?

2 A. No, it wasn't me.

3 Q. She had an agreement with Alon, didn't she, ---

4 A. No.

5 Q. --- the case was closed?

6 A. No.

7 Q. Didn't Jamie give -- I don't need to go into that
8 now.

9 A. I don't do agreements with thieves.

10 Q. Pardon?

11 A. I don't do agreements with thieves.

12 Q. But you never threatened to take papers out on her?

13 A. If I wanted to, I would have a long time ago. Why
14 would I threaten her now?

15 Q. And did you ever tell Zack how he's supposed to
16 testify?

17 A. Never.

18 Q. And if Zack had said, "I'm going to say whatever
19 Amir told me to say," that didn't mean he'd talk to
20 you?

21 A. Is that a question?

22 Q. Yes.

23 A. What was the question?

24 Q. The question is, did Zack ever say "I'm going to do
25 whatever Amir tells me to do"?

1 A. I don't know what Zack said.

2 Q. And my next question is, did you ever tell Amir what
3 to say, ---

4 A. I'm Amir.

5 Q. --- or Zack what to say?

6 A. No, I never told anybody what to say, especially
7 Zack.

8 Q. Okay. We're almost done. A couple of things, Amir.
9 Your testimony is that Lynn came back from North
10 Carolina injured; is that correct?

11 A. Correct.

12 Q. And that you saw her the whole week that she was
13 injured; is that right?

14 A. No.

15 Q. You saw her how many times that week?

16 A. A few times that week, as far as I recall.

17 Q. And every time you saw her, she was injured?

18 A. Yes, sir.

19 Q. And she was worse on Saturday; is that right?

20 A. Yes.

21 Q. Okay. And each time you talked about it, you talked
22 about the ankle and the foot; is that right?

23 A. No.

24 Q. What did you say?

25 A. I said that all I can see is the band-aid all the

1 way -- wrapped all the way down to her foot. But I
2 couldn't determine what was injured because she was
3 covered.

4 Q. Would you agree that every witness you have came in
5 here said it was her ankle ---

6 A. No.

7 Q. --- and her foot?

8 A. They said that they can see the band-aid on her
9 foot, and they saw a boot. Which I never saw a boot
10 either. So I saw just the Ace bandage, and that's
11 about it.

12 Q. Amir, do you agree that she actually fell off the
13 ladder at your store?

14 A. I don't know.

15 Q. Is that your answer?

16 A. Yes, sir.

17 Q. And the fact that she broke eight -- twenty bones in
18 her foot did not take place while she was in the
19 course of employment?

20 A. I don't think so. Because the -- the -- the height
21 of she -- she claimed in the beginning she fell and
22 where you can climb up, I don't think you can break
23 20 places in your whatever part of your leg from
24 that height.

25 Q. My question to you is, did she or did she not break

1 her leg ---

2 A. You asked for my opinion. I gave you my opinion.

3 Q. Pardon?

4 A. You asked for my opinion. I gave you my opinion.

5 Q. And what is your opinion?

6 A. That from wherever she claims she fell off, I don't
7 think anybody can break any bones, not even a
8 fracture.

9 Q. What I'm trying to get at, I've been trying to get
10 at this whole afternoon, is it one injury or two
11 injuries?

12 A. I don't understand the question.

13 Q. Did she have one injury or two injuries that she
14 went to the hospital for?

15 A. I -- I have no idea. I don't understand your
16 question, and I don't know what she went to the
17 hospital for, you know. I wasn't there. I was told
18 that they called 9-1-1. Supposedly, she fell off
19 the ladder, that nobody saw her or heard her, and
20 that she had multiple fractures, the facts after.
21 You know, that's all I know.

22 Q. Well, it seems to me from looking at this that what
23 you're saying is that she had an injury in North
24 Carolina, and that's the injury she faked, and then
25 she went to the hospital with that; is that right?

1 A. I don't understand the question.

2 Q. Did she fake the fall from the ladder?

3 A. I don't know.

4 Q. Do you think she did?

5 A. Does my opinion really matter?

6 Q. Oh, I think it does.

7 A. That's what we're here for.

8 **BY MR. MOGIL:**

9 Objection.

10 **THE WITNESS RESUMES ANSWER:**

11 A. So, the judge will decide, not me.

12 **BY MR. MOGIL:**

13 Objection, Your Honor. The basis of the
14 objection is it is asking for a lay opinion, and I'm
15 not familiar with the Commission's practice, but I
16 don't want my client to be prejudiced in any way if
17 he states what his opinion is, because I don't know
18 that it's relevant. I don't want him to be
19 prejudiced if he says, you know -- and he's a fact
20 witness to this. He's not the judge. The employer
21 has taken the position that's set forth in the Rule
22 51 response that was filed back in November, and
23 then also in the APA submissions, and in the Rule
24 58. And then I believe the Fund may have agreed as
25 to what the employer's defenses are. Those defenses

1 were crafted by the attorneys. I don't want to get
2 anybody out of bounds here by stating an opinion
3 when it's already been stated what the decision --
4 you know, what the defense is.

5 **BY COMMISSIONER JAMES:**

6 Okay. You're not asking for a legal opinion.
7 Just go ahead and ask the question. I think the
8 greater part of it has already been asked and
9 answered.

10 **CROSS-EXAMINATION RESUMED BY MR. COGGIN:**

11 Q. Earlier in this deposition, or this hearing today, I
12 asked you to give me a "yes" or "no" answer; "Did
13 the injury she went to the hospital with take place
14 in North Carolina?" You said you don't know.

15 A. I don't know.

16 Q. And then I asked you "Was she injured in the storage
17 room of Harbour Town Surf Shop?" and your answer is
18 "I don't know."

19 A. Correct.

20 Q. Was she injured?

21 A. She was injured when she came back from North
22 Carolina, that's for sure. That's the only thing I
23 can tell you.

24 Q. That's the only thing you know?

25 A. Yeah.

1 **BY MR. COGGIN:**

2 Okay. I have no further questions. I greatly
3 appreciate spending time with you.

4 **BY THE WITNESS:**

5 Thank you.

6 **BY MR. COGGIN:**

7 Thank you.

8 **BY COMMISSIONER JAMES:**

9 Cross on behalf of the Fund.

10 **BY MR. KILLEN:**

11 Thank you, Commissioner.

12 **CROSS-EXAMINATION BY MR. KILLEN:**

13 Q. Mr. Bitton, I'm Tim Killen for the Uninsured
14 Employers' Fund. Do you know whether or not Ms.
15 Bridges was at work the day before she said she
16 fell?

17 A. I don't remember.

18 Q. If the schedule, which we've gone over, shows that
19 Lynn was off on Friday, June 15th, would she have
20 been at work?

21 A. If she's off, unless she got called on emergency or
22 anything like that, and she's willing to work, that
23 means she's off. That's why we ask for availability
24 to know when to schedule her.

25 Q. Okay. So, you don't know whether or not she injured

1 herself even worse on that Friday, do you?

2 A. I have no clue.

3 Q. Okay. But you do know is on that Saturday you told
4 her not to get on the ladder; is that correct?

5 A. Correct.

6 Q. Okay. And you told her not to get on a ladder
7 because of the condition of her leg, correct?

8 A. Correct.

9 Q. And so, when she got on that ladder, she was acting
10 contrary to explicit and clear instructions you had
11 given her; is that correct?

12 A. Correct.

13 Q. So, getting on the ladder that day wasn't part of
14 her job, was it?

15 A. No.

16 Q. And you close for two months for 30 to 60 days every
17 winter?

18 A. Every winter, right.

19 Q. So, nobody's getting paid during those two months?

20 A. No. It's like a ghost town. There's not even
21 customers. It's torturing the employees basically.

22 Q. And you have a number of businesses that you run,
23 correct?

24 A. Yes, sir.

25 Q. Okay. And do you have an LLC for each particular

1 entity?

2 A. Correct.

3 Q. And the entity that Ms. Bridges was working for is
4 Harbour Town Surf Shop, LLC, correct?

5 A. Correct.

6 Q. Okay. And you and Mr. Mentz are the members of that
7 LLC, correct?

8 A. Correct.

9 Q. And for most of the year ---

10 **BY MR. KILLEN:**

11 Well, thank you, that's all I have. I
12 appreciate it.

13 **BY COMMISSIONER JAMES:**

14 Any re-direct?

15 **BY MR. MOGIL:**

16 No, Your Honor.

17 **BY MR. COGGIN:**

18 Re-cross, or cross?

19 **BY COMMISSIONER JAMES:**

20 Okay.

21 **RE-CROSS EXAMINATION BY MR. COGGIN:**

22 Q. I showed you a photograph marked Plaintiff's Exhibit
23 Number 3. Did I give that back to you?

24 **BY COMMISSIONER JAMES:**

25 They're all up here.

1 **BY MR. COGGIN:**

2 It's the beach photograph.

3 **RE-CROSS EXAMINATION RESUMED BY MR. COGGIN:**

4 Q. I'm handing you what's been marked as Plaintiff's
5 Exhibit Number 3; what's the date on that?

6 A. (Witness views document). June 15, 2018.

7 Q. That's a Friday; is that right?

8 A. I don't know.

9 Q. Okay. That was a Friday, the accident took place on
10 Saturday; is that right? The last day before that
11 she was at work. I want you to look at that again.
12 The woman with the hat on, her daughter came in on
13 Wednesday and testified.

14 A. It wasn't her daughter.

15 Q. It was Chuck's daughter. Very good.

16 A. Her boyfriend's daughter.

17 Q. Yes, thank you, daughter-in-law. Oh, no, it's not
18 even that. It's Chuck's daughter.

19 A. Her boyfriend's daughter.

20 Q. Go ahead.

21 A. What's the question?

22 Q. You testified -- didn't she testify that that was
23 Lynn?

24 A. I don't remember what she testified. But, okay.

25 Q. If that was -- let's do it this way. If that was

1 Lynn, did she have any marks on her body at all?

2 A. If that was her, no. But ---

3 Q. But is it her?

4 A. --- is it her?

5 Q. I'm sorry, go ahead.

6 A. Is it her?

7 Q. If that was Lynn, ---

8 A. Is it her? My question, is it her, because I don't
9 recognize that woman. I know Lynn very good, and
10 I've seen her in pictures. It's blurry, and I don't
11 recognize that woman. So I cannot define what --
12 what determines who's that woman.

13 Q. If it was her, does she have any marks on her body?

14 A. But it's not her. So, if -- I cannot answer if it
15 was her. If it -- if -- if it's a different woman,
16 I can -- I -- from the picture, I can see blurry
17 legs, that they look normal. But that's ---

18 Q. Didn't Beth Anne McAlpine give testimony, and she
19 was cross-examined that she took that photograph?

20 **BY MR. MOGIL:**

21 Objection, Your Honor. This witness wasn't at
22 this scene. It doesn't matter what Beth said.
23 That's for Your Honor's determination. This
24 witness's observation of this picture is irrelevant
25 to this case.

1 **BY MR. KILLEN:**

2 Outside of the scope of my cross.

3 **BY COMMISSIONER JAMES:**

4 How is this within the scope of the cross?

5 **BY MR. COGGIN:**

6 I think it is within the scope of the cross
7 because they were talking about her injury. What
8 I'm trying to determine is this woman didn't have no
9 injuries whatsoever.

10 **BY MR. KILLEN:**

11 I didn't talk about her injuries.

12 **BY COMMISSIONER JAMES:**

13 There was -- I'm looking back -- hold on.
14 There was no questions with regards to her condition
15 prior to June 16th. So it's outside the scope of
16 the cross.

17 **BY MR. COGGIN:**

18 Thank you.

19 **BY MR. KILLEN:**

20 Thank you.

21 **RE-CROSS EXAMINATION RESUMED BY MR. COGGIN:**

22 Q. And I believe you said that she was under explicit
23 directions not to use the ladder; is that right?

24 A. Correct.

25 Q. And every other girl in the place was under explicit

1 instructions for that same day; is that correct?

2 A. No.

3 **BY MR. COGGIN:**

4 Give me a minute, Your Honor. I have to look
5 this up. I'm reading from page 58.

6 **BY MR. KILLEN:**

7 Same one you read it from before.

8 **BY MR. COGGIN:**

9 I'll start at line 19.

10 **RE-CROSS EXAMINATION RESUMED BY MR. COGGIN:**

11 Q. "I was like 'Zack, you're the guy here, you're my
12 family. Make sure no girls go on the ladder.
13 Especially, Lynn." You want to read that into the
14 testimony ---

15 A. I heard you.

16 Q. Do you agree you said that?

17 A. I agree I said that.

18 Q. So, you explicitly said all the girls; is that
19 right?

20 A. But I said specifically about Lynn I spoke about.
21 In general, we have respect to women. So we tend
22 not to let women do the heavy lifting and stuff like
23 that out of respect.

24 Q. Especially Lynn?

25 A. That's how I run my businesses. So that's -- that's

1 what I meant. Just be respectful for the ladies.

2 If there is anything that is heavy, or they need to
3 climb, don't let them. Be courteous. That's it.

4 But Lynn specifically, do not let her.

5 Q. Then you say "Make sure no girls go on the ladder"?

6 A. Correct.

7 Q. You did say that?

8 A. I did say that.

9 Q. Only -- today only; is that right, only today?

10 A. You're referring to what, only today?

11 Q. Girls going on the ladder?

12 A. Only today?

13 Q. Yes.

14 A. No, I didn't say that. I said that...

15 Q. "She's hurting, she's sick. Let her be with
16 customers only today."

17 A. I'm referring to Lynn, not to the girls. That's
18 what I asked, if you're referring to the girls.

19 Q. I'm referring to the ladder, only today?

20 A. You asked me a question about the girls, so be more
21 specific please ---

22 **BY THE WITNESS:**

23 'Cause I don't understand his question.

24 **RE-CROSS EXAMINATION RESUMED BY MR. COGGIN:**

25 Q. Lynn worked around the shop for quite some time,

1 didn't she?

2 A. No.

3 Q. And she used the ladder for quite a lot, didn't she?

4 A. No.

5 Q. She used the ladder probably two, three times a
6 week, right?

7 A. No.

8 Q. She never used the ladder at all?

9 A. She did, but not that is seen, or that I let her.

10 Q. Wasn't it her job to take the inventory on top of
11 the cooler?

12 A. No.

13 Q. Didn't she do that almost every week?

14 A. No, I did it. I did it, and I still do it until
15 today.

16 Q. No one except for you took that on top of the
17 cooler?

18 A. They're making a list of what they need that they
19 know, and then I finish the inventory of what I know
20 I need and check things off and so forth.

21 Q. What I'm asking you is how many times do you
22 remember Lynn being on the ladder?

23 A. I don't recall her ever on the ladder.

24 Q. And you made that proscription -- when did you make
25 that proscription? When did you say that she

1 couldn't go on the ladder specifically?

2 A. On that Saturday, June 16th. Specifically, I
3 instructed her not to go on the ladder.

4 Q. And that's what you said half an hour before this
5 accident took place?

6 A. Correct. No, I -- I said that maybe 30 minutes
7 after I left I got a call that she fell. Let's be
8 correct. The instruction, I'm not sure if it was --
9 because I was there for a few hours. I don't
10 remember if it was like -- you know, exactly what
11 the time, but I -- I give her instruction -- I did
12 some work, and then I give her instruction, then I
13 left. And I remember, 30 minutes after I got a call
14 that she got hurt, and that was -- that I remember
15 really good.

16 Q. And wasn't the conversation -- I'll do this one more
17 time, and then we're done. Wasn't the conversation
18 with Lynn is when she told you she was going to take
19 the inventory, you said, "Let Josh do it," or "Let
20 Zack do it"? Excuse me. I keep calling him Josh.

21 A. She didn't. We do inventory on Mondays.

22 Q. You said, "that's what ---

23 A. So, there's no reason to do inventory on Sunday.

24 Q. Didn't you say "That's what Zack's here for"?

25 A. No -- no, I asked -- I told her anything she needs

1 specifically -- if she needs anything, to get Zack.
2 He can get her anything that she needs. Not to
3 climb on a ladder, not to go anywhere. Just be
4 behind the counter to greet customers and check
5 customers.

6 Q. And that's because she had injured her leg; is that
7 right?

8 A. Because I saw her in pain.

9 Q. And you deny that this is her picture where her leg
10 is perfectly ---

11 A. I just don't agree. I don't recognize the people in
12 that picture. That's all I said.

13 Q. Let me put it this way. If in fact this was Lynn,
14 would you say that perhaps in all this testimony,
15 yours is wrong?

16 **BY MR. KILLEN:**

17 Objection.

18 **BY MR. MOGIL:**

19 Objection.

20 **BY COMMISSIONER JAMES:**

21 Mr. Coggin, I'll look at the photograph.

22 **BY MR. COGGIN:**

23 What?

24 **BY COMMISSIONER JAMES:**

25 I'll look at the photograph.

1 **BY MR. COGGIN:**

2 Okay. I'm done anyway. That's all the
3 questions I have. Thank you very much.

4 You know what, Your Honor, I got the wrong one.

5 **BY COMMISSIONER JAMES:**

6 Well, we're going to count these before we
7 leave anyway. Anything further from this witness?

8 **BY MR. MOGIL:**

9 Well, just to re-direct on one specific point
10 that Mr. Coggin made, Your Honor. Not to belabor
11 this.

12 **RE-DIRECT EXAMINATION BY MR. MOGIL:**

13 Q. Mr. Bitton, did you give any other female employee
14 an express instruction not to get on the ladder?

15 A. On that day?

16 Q. On that day.

17 A. No.

18 Q. You mentioned it to Zack but to nobody else?

19 A. No, I gave all the girls instruction not to let Lynn
20 go on the ladder but not specifically to them. I
21 just told them that, you know, if they need anything
22 in general, there's a guy here. And out of respect,
23 you know, usually, that's the way I was raised. Out
24 of respect, if there's a guy, the guy does all the
25 heavy lifting, climbing or whatever.

1 Q. But you specifically instructed Lynn?

2 A. Lynn, and everybody else, not to let Lynn go on the
3 ladder or do any physical work.

4 **BY MR. MOGIL:**

5 That's it, Your Honor.

6 **BY MR. COGGIN:**

7 Your Honor, I have to impeach that statement.

8 **BY COMMISSIONER JAMES:**

9 Hold on a second. Do you have anything further
10 from this witness?

11 **BY MR. KILLEN:**

12 No, Your Honor.

13 **BY COMMISSIONER JAMES:**

14 All right.

15 **BY MR. COGGIN:**

16 Page 58.

17 **BY MR. KILLEN:**

18 Same.

19 **BY COMMISSIONER JAMES:**

20 We've read page 58.

21 **BY MR. COGGIN:**

22 Line 20.

23 **BY COMMISSIONER JAMES:**

24 Is this the same thing we've read three times?

25 **BY MR. COGGIN:**

1 He, Zack -- or excuse me, Mr. Bitton, just said
2 he told no other girl, and he's made that
3 proscription against no other girl. I just want to
4 emphasize that fact.

5 **BY MR. MOGIL:**

6 No, that's not what he -- Mr. Coggin, you
7 opened the door. He didn't go to any other girl and
8 say "Don't get on a ladder." He told Zack "Don't
9 let the girls get on the ladder."

10 **BY MR. KILLEN:**

11 Right.

12 **BY MR. MOGIL:**

13 That's what his deposition says. He didn't go
14 to anybody else other than Lynn and say "Don't get
15 on the ladder." That's what it says, Mr. Coggin.
16 And you're mischaracterizing it if you say anything
17 else. That doesn't mention what he said to anybody
18 else. It's his conversation with Zack.

19 **BY MR. COGGIN:**

20 "Zack, you're the guy here, you're my family.
21 Make sure no girls go on the ladder, especially
22 Lynn." I rest my case.

23 **BY COMMISSIONER JAMES:**

24 Okay.

25 **BY MR. COGGIN:**

1 If you can rest a case.

2 **BY COMMISSIONER JAMES:**

3 Any further witnesses on behalf of the
4 Employer/Defendant?

5 **BY MR. MOGIL:**

6 No, Your Honor.

7 **BY COMMISSIONER JAMES:**

8 Any witnesses on behalf of the Fund?

9 **BY MR. KILLEN:**

10 No, Your Honor.

11 **BY COMMISSIONER JAMES:**

12 Any rebuttal witnesses?

13 **BY MR. COGGIN:**

14 I have one rebuttal witness.

15 **BY COMMISSIONER JAMES:**

16 Okay. All right, is that the gentleman that's
17 outside?

18 **BY MR. COGGIN:**

19 Yes.

20 **BY THE WITNESS:**

21 Am I excused?

22 **BY COMMISSIONER JAMES:**

23 Yes.

24 **BY MR. COGGIN:**

25 Amir, thank you.

1 **BY THE WITNESS:**

2 Is there anyway I can take a break?

3 **BY COMMISSIONER JAMES:**

4 Certainly.

5 **OFF THE RECORD**

6 **BY COMMISSIONER JAMES:**

7 What is your last name, sir?

8 **BY THE WITNESS:**

9 Earley, E-a-r-l-e-y.

10 **BY COMMISSIONER JAMES:**

11 All right. If you would raise your right hand
12 for me please, sir?

13 * * * * * * * * * * * * * * *

14 The witness was duly sworn to tell the truth, the
15 whole truth, and nothing but the truth concerning the
16 matter herein:

17 **CHARLES EARLEY,**

18 Being first duly sworn, testified on his oath as follows:

19 **BY COMMISSIONER JAMES:**

20 Your witness, sir.

21 **DIRECT EXAMINATION BY MR. COGGIN:**

22 Q. Mr. Early, I'm Gary Coggin, and I'm the attorney for
23 Lynn. You've already told the Court your full name.

24 Where are you from, Charles?

25 A. Originally, Pittsburgh, Pennsylvania.

1 Q. Where did you go to high school?

2 A. North Hills High School.

3 Q. What did you after -- what was your professional
4 life after high school -- what did you do after high
5 school?

6 A. Went in the -- well, let's see. I went to college
7 at Youngstown State University.

8 Q. When did you go into the Navy?

9 A. Three years later I went into the Navy for
10 approximately seven years. Air Navy, NAS, Norfolk,
11 Virginia.

12 Q. And your daughter testified yesterday; is that
13 correct?

14 A. Yeah.

15 Q. And she testified, we had a photograph, of your
16 longtime girlfriend, Lynn, in evidence; is that
17 correct?

18 **BY MR. MOGIL:**

19 Objection. He wasn't in the room when she
20 testified.

21 **BY MR. COGGIN:**

22 I'm sorry?

23 **BY MR. MOGIL:**

24 He should have no knowledge -- unless he's been
25 coached by the attorney or talked to by other

1 witnesses, he should have no knowledge of her
2 testimony.

3 **BY MR. COGGIN:**

4 He lives with his daughter.

5 **BY COMMISSIONER JAMES:**

6 All right. Well, Mr. Coggin, he wasn't in the
7 courtroom. You're referencing to what happened in
8 the courtroom.

9 **BY MR. COGGIN:**

10 No, that's not true. She came for the reason
11 as to ---

12 **BY MR. MOGIL:**

13 Objection.

14 **BY MR. COGGIN:**

15 --- turn certain evidence into ---

16 **DIRECT EXAMINATION RESUMED BY MR. COGGIN:**

17 Q. --- is that right?

18 **BY MR. MOGIL:**

19 Your Honor, I don't think he can tell this
20 witness what the other witness testified. That's
21 why we do sequestration.

22 **BY COMMISSIONER JAMES:**

23 Yes.

24 **BY MR. COGGIN:**

25 Let me ask it this way. That's fine.

DIRECT EXAMINATION RESUMED BY MR. COGGIN:

Q. Do you recognize this photograph? Let me show you what's been marked as Plaintiff's Exhibit Number 3 for identification.

BY COMMISSIONER JAMES:

No, it's Number 5 in evidence.

BY MR. COGGIN:

Five in evidence. I am so sorry.

DIRECT EXAMINATION RESUMED BY MR. COGGIN:

Q. Do you recognize that photograph?

A. (Witness views photograph). Yes.

Q. Do you recognize yourself in there?

A. No, I guess I don't.

Q. Okay. Is that the gentleman that's getting up in the background?

A. It is kind of -- oh, okay, I see myself now.

Q. Okay. Let me ask it this way. Do you see Lynn in that photograph at all?

A. Yes.

Q. Where is she?

A. She has a foot pad on, and she's on a lounge chair.

Q. She had a foot pad on; is that what you said?

A. Yeah, it's like a pill. Yeah.

Q. Look at her. Do you see any deficiencies in her body at all?

1 A. No -- no.

2 Q. Look at both her right and left leg; do you see any
3 deficiencies there?

4 A. (Witness complies). No.

5 Q. Okay. Now, what is your arrangement with Lynn, how
6 long have you known her?

7 A. It's been seven-and-a-half, eight years now.

8 Q. Okay. So, you're a companion for Lynn; is that
9 right?

10 A. Yes, significant other.

11 Q. Yes. And you live together?

12 A. Yes, we do.

13 Q. Okay. Did you go to North Carolina with her?

14 A. No, sir.

15 Q. And I'm talking for her grandson's graduation?

16 A. No, sir.

17 Q. Do you remember when she came back?

18 A. Several days later.

19 Q. Okay. What did she look like when she came back?

20 A. She looked good.

21 Q. Did she have any injuries?

22 A. No.

23 Q. Did she have anything wrong with her foot?

24 A. No.

25 Q. Did she have any wrapping on her foot?

- 1 A. No.
- 2 Q. Did she have a boot on her foot?
- 3 A. No.
- 4 Q. Was there any of her toes black and blue?
- 5 A. No.
- 6 Q. Did you see her walking around? I know she walks
- 7 for exercise. Did you see her walking?
- 8 A. On the beach. We walked maybe a thousand yards back
- 9 and forth. We did it all the time.
- 10 Q. Any noticeable limp at all?
- 11 A. No.
- 12 Q. Okay. Did she tell you anything about, let me see
- 13 if I got this right, a white fold-up table falling
- 14 off a, I think it was a truck onto her leg, or at a
- 15 party onto her leg?
- 16 A. No.
- 17 Q. Nothing like that at all?
- 18 A. No, sir.
- 19 Q. The entire time that she was at home following going
- 20 up to her grandson's graduation, did you at any time
- 21 see her -- did she appear sick at any time?
- 22 A. No.
- 23 Q. Did she appear injured at any time?
- 24 A. No.
- 25 Q. Was she limping or hobbling?

1 A. No.

2 Q. Did she by any chance go to the doctor or to the
3 hospital early that week when she came back?

4 A. No.

5 Q. Was there any evidence that she went to the hospital
6 in North Carolina?

7 A. None that I'm aware of.

8 Q. Okay. Do you recognize this photograph -- do you
9 recognize ---

10 A. (Witness views photograph). I do, yes.

11 Q. Do you know when it was taken? Look down at the
12 corner.

13 A. Yeah, it's June -- well, my daughter and family and
14 grandchildren were all there.

15 Q. That's your family?

16 A. Well, yes, by and large. They're kind of scattered
17 everywhere (indicating).

18 **BY MR. MOGIL:**

19 Your Honor, I'd ask the attorney not to coach
20 him and tell him what the date is. That's
21 completely inappropriate.

22 **BY COMMISSIONER JAMES:**

23 All right.

24 **BY MR. MOGIL:**

25 He can recognize when the picture was taken

1 from his personal knowledge ---

2 **BY COMMISSIONER JAMES:**

3 Sustained.

4 **BY MR. MOGIL:**

5 --- if he can recognize it.

6 **BY COMMISSIONER JAMES:**

7 Mr. Coggin, if you ---

8 **BY MR. MOGIL:**

9 The fact that there's a stamp on the picture
10 doesn't mean it's taken -- I can go into any
11 computer and put a stamp on anything. That's what
12 we call Photoshop. And I'm not saying that
13 happened, Your Honor, but he's not supposed to tell
14 the witness when a picture was taken. He's supposed
15 to ask the question.

16 **DIRECT EXAMINATION RESUMED BY MR. COGGIN:**

17 Q. Let's go back to Lynn and the photograph. Does she
18 have any infirmities -- deformities, I'm sorry. Not
19 infirmities.

20 A. No.

21 Q. Is there any bandages on her legs?

22 A. No.

23 Q. Okay. It's been over a year since Lynn was injured.
24 You know that, don't you?

25 A. I'm sorry?

1 Q. It's been over a year since Lynn has been injured;
2 you know that?

3 A. Yes, I understand. Yes, I know that.

4 Q. And you live with her. What has her life been like?

5 A. Pretty dismal. She's been depressed. Imagine
6 yourself stuck in the house for over 13 months.
7 It's been hard on our friendship/relationship, et
8 cetera.

9 Q. What's her mental state been like?

10 A. Up and down -- up and down.

11 Q. How does she get around?

12 **BY MR. MOGIL:**

13 Objection, Your Honor. He's a rebuttal
14 witness. I don't know what he's rebutting. Ms.
15 Bridges was on the stand for two hours. She wasn't
16 asked about her mental state or anything. What's he
17 rebutting, what's he here for? His case in chief is
18 closed, Your Honor. This is entirely inappropriate.

19 **BY COMMISSIONER JAMES:**

20 Mr. Coggin, he is a rebuttal witness.

21 **BY MR. COGGIN:**

22 Okay. Did he ask her how she gets around -- I
23 asked how she got around before we started.

24 **BY MR. MOGIL:**

25 Your Honor, I'm going to object to anything

1 that's rebutting. It's statement he's rebutting.

2 What is going on here?

3 **DIRECT EXAMINATION RESUMED BY MR. COGGIN:**

4 Q. My last question. How have you guys been getting by
5 -- how have you been getting by? Lynn's not
6 employed anymore. How are you guys getting by?

7 **BY MR. MOGIL:**

8 Objection, Your Honor. It's not that I don't
9 want to hear the answer, but what's it rebutting?
10 His case in chief closed. He brought him in as a
11 rebuttal witness. That's what he testified, stated
12 to the Court, and that's the only reason -- what's
13 he rebutting?

14 **BY COMMISSIONER JAMES:**

15 Mr. Coggin?

16 **BY MR. COGGIN:**

17 Well, actually, what we're rebutting, and I'm
18 trying to get into this, is ---

19 **BY COMMISSIONER JAMES:**

20 Because there wasn't -- I don't ---

21 **BY MR. COGGIN:**

22 --- how much she made. Everybody's making the
23 statement they worked 30-hours a week. I'm going --
24 -

25 **BY COMMISSIONER JAMES:**

1 Okay. If it's rebuttal for that purpose, but
2 after the fact, can you move back into the relevant
3 portion?

4 **BY MR. COGGIN:**

5 Well, I'm almost done, so it doesn't matter.

6 **BY COMMISSIONER JAMES:**

7 Okay. Just -- okay.

8 **DIRECT EXAMINATION RESUMED BY MR. COGGIN:**

9 Q. You remember what Lynn -- how much she worked a
10 week?

11 A. Close to 80 hours most weeks.

12 Q. Uh-huh. And that was how many days a week?

13 A. Five to six.

14 Q. Uh-huh.

15 **BY MR. MOGIL:**

16 Your Honor, ---

17 **DIRECT EXAMINATION RESUMED BY MR. COGGIN:**

18 Q. She ever call in sick?

19 **BY MR. MOGIL:**

20 Objection, Your Honor. Mr. Coggin is saying
21 "uh-huh." This is not a party. This is supposedly
22 a third-party witness that's being brought to rebut
23 something. It's clearly inappropriate for counsel
24 to agree with, nod, "uh-huh." And I usually
25 wouldn't object, but this is getting out of hand.

1 **BY MR. COGGIN:**

2 I apologize for saying that. I didn't know I
3 was doing that. Thank you for pointing that out,
4 Mike. I appreciate that.

5 **DIRECT EXAMINATION RESUMED BY MR. COGGIN:**

6 Q. How many hours a week did she work?

7 A. Seventy or eighty hours a week.

8 Q. Ever take any time off?

9 A. Rarely, if ever.

10 Q. Uh-huh.

11 **BY MR. COGGIN:**

12 I have no further questions. Thank you so much
13 for coming in.

14 **BY COMMISSIONER JAMES:**

15 Cross.

16 **BY MR. COGGIN:**

17 You might have something from Tim or Mike.

18 **BY MR. MOGIL:**

19 Your Honor, just a couple. Well, Your Honor,
20 before I ask it, I do think that the entire
21 testimony that wasn't related to rebutting is not --
22 shouldn't be admissible.

23 **CROSS-EXAMINATION BY MR. MOGIL:**

24 Q. But Mr., your last name is "Earley," right?

25 A. (Witness nods head up and down).

1 Q. You and I have met before, correct?

2 A. Oh, yeah.

3 Q. Right. And I think many years ago we may have even
4 talked about legal matters and stuff; is that
5 correct?

6 A. Yes.

7 Q. Probably five, ten years ago?

8 A. Longer.

9 Q. Yes, longer than that. Okay. So I just want to
10 make it clear. So you and I know each other. We've
11 seen each other out?

12 A. Oh, yeah.

13 Q. All right. Are you working now?

14 A. No.

15 Q. Are you retired?

16 A. You can say I was, I am.

17 Q. Are you collecting a pension?

18 A. Of sorts, yes.

19 Q. Like Social Security you mean?

20 A. Yes.

21 Q. Do you get a private pension as well?

22 A. It would be my, yes, investments over the years.

23 Q. Okay. So, do you contribute to the household income
24 of Ms. Bridges?

25 A. Absolutely.

1 Q. Okay. And I'm not going to go back in history. In
2 the last year, does anybody else live in the
3 household with you and Ms. Bridges?

4 A. Full time, no.

5 Q. Who else ---

6 A. Guests in and out, yes.

7 Q. But nobody else calls it their residence?

8 A. No.

9 Q. So, is there anybody else contributing to the
10 household income of Ms. Bridges other than you and
11 whatever she has?

12 A. Just me, yeah.

13 Q. Any other source of income coming in besides you and
14 whatever she has?

15 A. No.

16 **BY MR. MOGIL:**

17 Okay. No further questions, Your Honor.

18 **BY COMMISSIONER JAMES:**

19 All right.

20 **BY MR. COGGIN:**

21 I have one further question of what he brought
22 up.

23 **BY COMMISSIONER JAMES:**

24 Wait. Cross?

25 **BY MR. COGGIN:**

1 Tim has something. I'm sorry.

2 **BY MR. KILLEN:**

3 Thank you, Mr. Coggin. Thank you, Your Honor.

4 **BY MR. COGGIN:**

5 Thank you, Tim.

6 **CROSS-EXAMINATION BY MR. KILLEN:**

7 Q. Mr. Earley, my name is Tim Killen; I represent the
8 South Carolina Workers' Compensation Uninsured
9 Employers' Fund.

10 A. Hi, Tim, how are you?

11 Q. It's nice to meet you.

12 A. Same here.

13 Q. It took yourself a while to pick yourself out of
14 that picture, didn't it?

15 A. Yeah, it did. But now that I'm focused on me, I
16 don't believe I look that old number one, but that's
17 me.

18 Q. Okay. And how long have you lived with Ms. Bridges?

19 A. Seven years, approximately, plus maybe a couple of
20 months here or there.

21 Q. Okay. And you've been significant others that
22 entire time?

23 A. Say it again.

24 Q. She has been your significant other the entire time
25 you've lived with her?

- 1 A. Yes, sir.
- 2 Q. And you continue to live with her now?
- 3 A. Excuse me?
- 4 Q. You continue to live with her now?
- 5 A. Yes.
- 6 Q. Okay. So, y'all spent the night in the same house
7 last night; is that correct?
- 8 A. Yes, sir.
- 9 Q. You said she rarely if ever missed work, and you
10 also said she'd never been sick. That's not
11 entirely true, is it?
- 12 A. No, I didn't say that. Not the sick.
- 13 Q. Okay. Well, he asked you if she had ever been sick
14 or injured, and you said, "never."
- 15 A. Okay.
- 16 Q. Okay. But she has missed -- she did miss a lot of
17 time work due to her eye illness; is that correct?
- 18 A. I have no knowledge.
- 19 Q. But you live together?
- 20 A. I don't know the answer.
- 21 Q. So, you don't know when she was working, when she
22 wasn't working?
- 23 A. I didn't keep her schedule, and I didn't -- you
24 know, we were both working, so.
- 25 Q. Okay. So, "no," you don't know when she was working

1 and when she wasn't working?

2 A. From time to time, I probably did know.

3 Q. But she's not really stuck in the house now, is she?

4 A. Right now?

5 Q. Yes.

6 A. Are you kidding me?

7 Q. I'm asking you the question.

8 A. Yes, she is.

9 Q. She doesn't go to the pool and lay out?

10 A. Very rarely. But, yes, she has.

11 Q. Okay. Was she working in January and February of
12 2018?

13 A. January and February of 2018, yes, she was. Yes.

14 Q. Who was she working for in January and February of
15 2018?

16 A. Steve somebody maybe.

17 Q. When does the Harbour Town Surf Shop, the General
18 Store, does it ever close?

19 A. Oh, yeah.

20 Q. When does it close?

21 A. Close, period, you mean?

22 Q. Close for an extended period of time, not at the end
23 of the day.

24 A. I believe the month of January 2000 maybe '19.

25 BY COMMISSIONER JAMES:

1 Thank you. That's all I have.

2 **BY MR. COGGIN:**

3 I have one question I want to clear up.

4 **RE-DIRECT EXAMINATION BY MR. COGGIN:**

5 Q. You haven't worked over the past year? I'm talking
6 to you, Chuck.

7 A. Me?

8 Q. Yes.

9 A. No, I've worked.

10 Q. What have you done?

11 A. Everything from delivering pizzas to working at a
12 hardware store.

13 **BY MR. COGGIN:**

14 Okay. No further questions.

15 **BY MR. KILLEN:**

16 Nothing further.

17 **BY MR. COGGIN:**

18 Thank you very much.

19 **BY COMMISSIONER JAMES:**

20 All right. Any further witnesses?

21 **BY MR. COGGIN:**

22 None.

23 **BY MR. MOGIL:**

24 No witnesses from our side, Your Honor.

25 **BY MR. KILLEN:**

1 None from the Fund.

2 **BY COMMISSIONER JAMES:**

3 All right. Let's take a moment off record to
4 look at the evidence.

5 **OFF THE RECORD**

6 **BY COMMISSIONER JAMES:**

7 All right. We're back on record just for
8 purposes of going through the evidence as to what
9 was placed in the record because there are some --
10 based on the beginning of the trial, because some
11 things were not numbered. There are some things I
12 need to correct. So the Claimant handed up and was
13 submitted in as far as the APAs are not twenty-two-
14 hundred pages. It is page one through fourteen-
15 ninety. The Claimant will be uploading those
16 electronically. The Claimant handed up -- it's not
17 evidence, but handed up a summary sheet of the
18 medical evidence that he wanted to provide the
19 Commissioner for review. Those pages were numbered
20 to a sixty-two page subset. The subset is not going
21 to be made evidence. Instead, the Claimant will re-
22 number this summary sheet to match the fourteen-
23 ninety so that everybody can follow that.

24 The Defendant/Fund has placed into record pages
25 one through ten that was stated in the beginning.

1 That's correct. The Defendant/Employer has placed
2 in the record pages one through fifty-four. When I
3 counted them, they were not numbered. When I
4 counted I believe that there were fifty-five. But
5 after numbering them, there is fifty-four, and those
6 will be uploaded by the Defendant/Employer.

7 **BY MR. COGGIN:**

8 That's the Employer's APAs?

9 **BY COMMISSIONER JAMES:**

10 That's the APAs. We've not gotten to evidence
11 yet. These are just -- the Claimant wanted to
12 submit two pages, which were pictures of X-rays that
13 were submitted on a light screen. Those should be
14 within the APA. If they are -- as I indicated
15 before, I am not a physician, so these by themselves
16 -- but there was another objection to the fact that
17 they're not identified. And if there's any
18 identification on this, it's not present. So of
19 course the X-ray reports and everything should be
20 within these fourteen-hundred and ninety pages.
21 This seems to be extremely inclusive. If you wish
22 to proffer these and place them in a proffer,
23 there's a category electronically that you can take
24 these and place them in a proffer in the Commission
25 file.

1 **BY MR. COGGIN:**

2 Is it just those two that will be in the
3 proffer?

4 **BY COMMISSIONER JAMES:**

5 Based on what you said before, I'm assuming
6 that the X-ray report and all of these -- because
7 you have them in your summary package, are already
8 going to be in these twenty-two hundred pages.

9 **BY MR. COGGIN:**

10 Yes, they're in -- I was going to say, they're
11 in this.

12 **BY COMMISSIONER JAMES:**

13 Okay. If they're already in there, then that's
14 fine. Then I don't need them as a duplicate exhibit
15 anyway.

16 **BY MR. COGGIN:**

17 I need you to check first and see.

18 **BY COMMISSIONER JAMES:**

19 All right. The Defendants, particularly the
20 Defendant/Employer, has placed into evidence five
21 exhibits, and the Claimant has placed into evidence
22 six exhibits. The Commission will upload those.
23 There have been handed up two notations. Those are
24 not evidence. They're just two summary sheets where
25 the parties have presented various math off of a

1 exhibits that they've looked at, and so they
2 provided those as aid. They're not exhibits, and
3 they're not evidence. But just for the record, as
4 indicated previously, it's Claimant's summary of
5 Zack's schedule and a Defendant/Fund summary with
6 regards to wages and what the Defendant/Fund
7 believes the calculation of the average weekly wage
8 and the comp rate is.

9 Okay. I think that takes care of everything.
10 Does anybody have anything else with regards to what
11 went in?

12 **BY MR. COGGIN:**

13 Your Honor, I have a procedural question that's
14 in regarding the Form 52 that I handed up today.
15 Pursuant to regulation 52 ---

16 **BY COMMISSIONER JAMES:**

17 You mean 51?

18 **BY MR. COGGIN:**

19 Yes, Form 51, excuse me.

20 **BY COMMISSIONER JAMES:**

21 That's in the Commission file already.

22 **BY MR. COGGIN:**

23 Yes. I've made the argument that there should
24 have been no affirmative defenses in this case.

25 **BY COMMISSIONER JAMES:**

1 And that argument's already been perfected in
2 the beginning of the trial.

3 **BY MR. COGGIN:**

4 Pardon me?

5 **BY COMMISSIONER JAMES:**

6 It's already been perfected and placed on
7 record in the beginning.

8 **BY MR. COGGIN:**

9 That's what I wanted to know. Thank you.

10 **BY COMMISSIONER JAMES:**

11 Okay. All right.

12 **BY MR. MOGIL:**

13 And Your Honor, I believe that we really didn't
14 get into detail. I did object to the -- even though
15 I don't know if it's relevant based on Your Honor's
16 rulings that the employer's 51 was late in the
17 context of that it was filed nine months ago, and
18 you said it didn't matter. You said, "That that's
19 not a defense." But I just did make that argument.

20 **BY COMMISSIONER JAMES:**

21 We had a pretrial earlier. That part was not
22 on the record with regards to what was affirmative
23 defense or not. That was during the pretrial. I
24 only stated when we went on record what the
25 positions were, and the position of Mr. Coggin, ---

1 **BY MR. COGGIN:**

2 Yes, that's fine. Yes.

3 **BY COMMISSIONER JAMES:**

4 --- and the position of the Fund and also the
5 position that you just stated.

6 **BY MR. MOGIL:**

7 Okay.

8 **BY COMMISSIONER JAMES:**

9 Okay. All right.

10 **BY MR. COGGIN:**

11 Your Honor, the only other thing I have is that
12 I have also in my Form 58, I think I had six
13 questions or something like that. The last question
14 had to do with the hundred and fifty-day rule. I
15 cannot tell you what the number is on that one. The
16 idea being that the employer has a hundred and fifty
17 days to contest whether or not they should receive
18 anymore compensation. And by the same token, in a
19 case-called Jury, it's come up that if they don't
20 contest within a hundred and fifty days, also they
21 give away their right to deny compensation, and I
22 have that in there. And I just wanted to make sure
23 that was there also.

24 **BY COMMISSIONER JAMES:**

25 All right.

1 **BY MR. KILLEN:**

2 Commissioner, I would just like to state that
3 he's talking about the regulations.

4 **BY MR. COGGIN:**

5 Speak up, Tim, I can't hear you.

6 **BY MR. KILLEN:**

7 He's referring to accepted cases and ignoring
8 the general denial of the regulation.

9 **BY MR. COGGIN:**

10 I didn't hear any of that.

11 **BY MR. KILLEN:**

12 What you're referring to refers to accepted
13 cases. They have a hundred and fifty days to deny
14 the case without a hearing, the stop payment of
15 TTDs. It's not accepted cases. It's denied cases.
16 And even if you're correct on the Form 51, or Forms
17 51, the general denial reg kicks in.

18 **BY MR. COGGIN:**

19 I do not agree with you. We'll have to talk
20 about that.

21 **BY COMMISSIONER JAMES:**

22 All right. I believe that's everybody's
23 position on the record.

24 **BY MR. COGGIN:**

25 That is a position.

1 **BY COMMISSIONER JAMES:**

2 So that concludes this hearing.

3 **(THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS**
4 **CONCLUDED AT THE HOUR OF 3:47 P.M.)**

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1808344

EMPLOYEE/CLAIMANT: NAOMI LYNN BRIDGES

EMPLOYER: HARBOUR TOWN SURF SHOP, LLC

INSURER: (UNINSURED)

I, SHEILA SMALL, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **202** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **NAOMI LYNN BRIDGES** TAKEN ON THE 26TH DAY OF JULY, 2019.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 7TH DAY OF NOVEMBER, 2019.

SHEILA SMALL
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3-11-2029

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1808344

Naomi L. Bridges,)
)
 Claimant,)
)
 v.)
)
 Harbour Town Surf Shop, LLC,)
)
 Employer,)
)
 and)
)
 South Carolina Uninsured)
 Employer's Fund,)
)
)
 Carrier/Defendants.)
 -----)

FULL COMMISSION HEARING

Monday, January 24, 2022
2:47 p.m. - 3:13 p.m.

The Full Commission Hearing was heard virtually before Commissioner Michael Campbell, II, Gene McCaskill, and T. Scott Beck at the Workers' Compensation Commission, 133 Main Street, Panel A, Columbia, South Carolina on the 24th day of January, 2022, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

Bridges, N. 2137

APPEARANCES

Josh R. Fester, Esquire (virtually)
Law Office of Darrell Thomas Johnson, Jr., LLC
300 Main Street
Hardeeville, South Carolina 29927
Attorney for the Appellant/Defendants

Michael W. Mogil, Esq. (virtually)
Law Office of Michael W. Mogil, PA
2 Corpus Christie Place
Suite 303
Hilton Head, South Carolina 29928
Attorney for the Employer/Respondent

Timothy B. Killen, Esq. (virtually)
Holder, Padgett, Littlejohn & Prickett, LLC
945 Houston Northcutt Boulevard
Mount Pleasant, South Carolina 29464
Attorney for SCUEF/Respondent

Also present:
Naomi Bridges, via ZOOM

INDEX

<u>CALL TO ORDER:</u>	<u>PAGE</u>
COURT REPORTER.	4
 <u>POSITION STATEMENTS:</u>	
MR. FESTER.	4
MR. KILLEN.	13
MR. MOGIL.	19
MR. FESTER. REPLY.	20
 Certificate	 24



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

Bridges, N. 2138

EXHIBITS

(No Exhibits were marked at this hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

Bridges, N. 2139

CALL TO ORDER:

MADAME COURT REPORTER: Today is January 24th, 2022.

This is South Carolina Workers' Compensation Case Number 1808344. This is the case of Naomi L. Bridges versus Harbour Town Surf Shop, LLC and SCUEF. The Appellant is the Claimant, represented by Warren Johnson and Josh Fester. The Respondent is represented by Michael Mogil for the Employer and Timothy Killen for the SCUEF. Each side is allowed ten minutes for oral argument and the Appellate three minutes in reply. You are requested to argue the grounds of exception and stay within the record. And I think we had said seven minutes for Killen and three minutes Mr. Mogil.

COMMISSIONER BECK: That's correct.

Mr. Fester, glad to hear from you, sir.

APPELLANT'S POSITION:

MR. FESTER: Yes, sir. Again, my name is Josh Fester and I represent the Claimant, Ms. Naomi Bridges, in this case. Before I get too far in the weeds of our legal argument today I just wanted to briefly cover basic facts here. Ms. Bridges was employed by Harbour Town Surf Shop on June 16th, 2018, the date of her injury, and



1 at the hearing the Employer stipulated they
2 were subject to the Act and that is at all
3 times relevant to this case, and that the
4 owner, the Employer, admitted that they were
5 not insured in compliance with the Act at the
6 time of the accident. On that date Ms. Bridges
7 climbed the ladder to retrieve some items, I
8 believe it was some candy in this case, to
9 restock. And the evidence of record is that
10 she was a shop clerk and part of her regular
11 duties was restocking shelves, getting out
12 inventory for her customers. Ms. Bridges fell
13 from the ladder and shattered, fractured her
14 tibial plateau on the left knee. At the
15 hearing -- well, the Single Commissioner denied
16 this case primarily due to the injury fell
17 outside of the scope of employment due to clear
18 and explicit instructions not to climb the
19 ladder on the date of her injury. That was a
20 Single Commissioner's findings. And this was
21 based on testimony from the Employer (technical
22 break in audio) self-conflicting and self-
23 contradicting and also from the Claimant. My
24 client testified that she understood that Mr.
25 Benton, the owner of the -- Employer, told her



1 not to use a ladder to get on top of a cooler
2 to reach things, and so that was her
3 understanding. But based on these findings
4 Commissioner James found that this was outside
5 of the scope of her employment, this injury,
6 and also found an average weekly wage and
7 compensation rate based solely upon pay records
8 while there was other evidence and testimony
9 that she worked far in excess of what was on
10 her pay stubs and ---

11 **COMMISSIONER BECK:** Mr. Fester, wasn't she given the
12 opportunity to provide that evidence and failed
13 to do so?

14 **MR. FESTER:** She was. She did not. She was not
15 able to for some reason or another produce the
16 tax records within the two week period. And I
17 can't speak to that and quite frankly I wasn't
18 the -- I didn't represent her at that time, but
19 there is significant testimony of record from
20 her other employees and they were frequently
21 paid under the counter. Even a witness that
22 was supposed to be friendly to the Employer
23 stated that he was paid in cash frequently and
24 in kind and so this was common. And then there
25 were other schedules that showed her working



1 well in excess of 40 hours a week frequently
2 especially during, you know, the busy season
3 for Hilton Head which is spring and summer. So
4 but the -- I guess the first issue is that the
5 Commissioner applied the wrong standard, wrong
6 legal standard here holding that ---

7 **COMMISSIONER MCCASKILL:** Can I ask you to hold on
8 just one second?

9 **MR. FESTER:** Sure.

10 **COMMISSIONER MCCASKILL:** Mr. Chairman, Lynn's Ipad,
11 that's the title of the device, is in the
12 waiting room and Jeanie wants to know should
13 she let that person in.

14 **MR. FESTER:** That is Ms. Bridges.

15 **COMMISSIONER BECK:** Would you like Ms. Bridges to
16 attend?

17 **MR. FESTER:** Yes, Your Honor.

18 **COMMISSIONER BECK:** Let her go -- let her in Jean.

19 **MR. FESTER:** Sorry, I got ahead of myself. I
20 thought she was already in the mix here.

21 **COMMISSIONER BECK:** All right, Mr. Fester, we're
22 going to go ahead and resume your time.

23 **MR. FESTER:** All right. So the first issue is that
24 the Single Commissioner applied the wrong
25 standard. The burden of showing an exception



1 or exclusions to the Act, as in this case that
2 the injury fell outside of the course and scope
3 of her employment, is always on the Employer.
4 That is an exception or exclusion and those are
5 to be strictly construed. It's an affirmative
6 defense. And so the Commissioner applied the
7 wrong the standard here, but let's assume that,
8 you know, she had held the Defendant and the
9 Employer to their burden here, the Employer
10 just did not prove that exclusion and the
11 Commissioner erred in the finding including
12 that the Claimant was removed from the scope of
13 her employment. So we look at three things in
14 looking at an exception or exclusion in South
15 Carolina. And that's violation of an express
16 order, one. Second, that that order is clear
17 or that permission was clear and explicit. And
18 three, that the award goes to the sphere of
19 employment itself and not the conduct or
20 method. Professor Larson phrases it as method
21 versus the ultimate thing being done. I might
22 phrase it the how versus the what.

23 **COMMISSIONER BECK:** Hang on a second, Ms. Fester.
24 Mr. Killen, could you mute yourself. We're
25 getting some -- a lot of background noise



1 coming in and it's sort of conflicting with our
2 ability to hear Mr. Fester.

3 **MR. KILLEN:** Apologies. I will surely do so.

4 **COMMISSIONER BECK:** Thank you, sir. All right, Mr.
5 Fester.

6 **MR. FESTER:** Yes, Your Honor. And so here we look
7 first to whether there was an expressed order
8 and whether that was clear and explicit. And
9 it's our position that it's certainly not.
10 Greater weight of the evidence does not support
11 a clear and explicit pro-admission here. We
12 have conflicting testimony from the Employer
13 himself who says -- and it depends on where
14 we're at in the hearing or in his deposition or
15 what time of day it is or how he feels, but at
16 one point he says cleanings, no climbing, no
17 ladder, no physical work to Ms. Bridges. At
18 another point he says you got Zack, who's a co-
19 employee, if you need to climb on the ladder go
20 ask Zack. He'll do anything and there's the
21 rest of the girls for any other chores. And at
22 another point he says no girls on the ladder.
23 So at one point in the hearing he feels a
24 little bit more chivalrist for some reason but
25 there's conflicting testimony about that. And



1 based on these inconsistencies greater weight
2 of the evidence can't support a finding that
3 there was a clear and explicit prohibition.
4 But, let's assume for the sake of argument that
5 we find here that there was a clear and
6 explicit prohibition, no climbing on the
7 ladder. That in of itself is not enough to get
8 us outside of the scope of employment because
9 that -- as I said earlier, that is conduct with
10 the sphere of employment or the how you do
11 something versus what you're doing and so that
12 doesn't get us there. That doesn't get the
13 Defense there and that was respectively just a
14 nuance of things that was missed at the Single
15 Commission. And so again, don't climb on the
16 ladder, it's just not enough to get us there.
17 It's her regular job duties. I mean,
18 undisputed facts here are her regular job
19 duties were stocking shelves, putting inventory
20 out, and that is a manner of doing something.
21 Another distinction between this and the cases
22 that are cited in I think both of our briefs
23 and in this case and in the ones where they
24 define that an Employee's injury is outside of
25 the scope of her employment is -- is in both



1 the *Black v. Town of Springfield* and the *Bi-Lo*
2 case that the courts made the point of showing
3 a pattern of telling you the injured Employee
4 not to do it several times over the course of
5 a lot of time. It conveniently -- Ms. Bridges
6 was allegedly told not to get on the ladder the
7 day she was injured, so it's a pretty big
8 distinction. I think it goes to more whether
9 there was a clear and explicit prohibition
10 rather than, you know, the method versus scope,
11 but it is a distinction. And also the
12 Commissioner erred in finding that the very
13 weight of the evidence supported that Ms.
14 Bridges suffered a pre-existing left leg injury
15 prior to the date of the workplace accident.
16 The only evidence of record is lay testimony
17 from her Employees that she might have had a
18 wrap around her leg. No medical evidenced at
19 all, I mean, any pre-existing left leg injury.
20 You know, in *Burnett v. City of Greenville* the
21 Court said that a Commissioner attempting to
22 interpret an MRI regarding a change in
23 condition is speculative, it's conjecture
24 surmised. This is even more so. We have lay
25 testimony that she might have had a wrap around



1 the leg that day. And while it wasn't clear
2 from the order or the Employer's testimony, I
3 am glad that at least in briefing they take the
4 position that the pre-existing left leg injury
5 wasn't the same as the date, and I think it's
6 painfully obvious that a fracture of the tibial
7 plateau that requires an ambulance ride, it
8 couldn't have pre-existed if she showed up to
9 work that day. But there's just absolutely no
10 support at all for a pre-existing injury that
11 day. And lastly, you went into a bit, but I
12 just find the fact that the Single Commissioner
13 took the word of this Employer who has -- for
14 Hilton Head's a comparatively large employer.
15 It has 15 plus employees, no workers' comp
16 coverage, claim did not know he needed workers'
17 comp coverage in the hearing and that somehow
18 we're supposed to place more weight on his word
19 versus my client's word. And that just, it
20 seemed upside down to me when this guy has
21 every reason to try and get out of, you know,
22 paying, you know, fines and comp --
23 substantial compensation in this case. So as
24 to the wage issue, I think that, you know,
25 greater weight of the evidence shouldn't lie in



1 Mr. Benton's testimony. But I think I'm about
2 out of time -

3 **COMMISSIONER BECK:** You are exactly out of time.
4 Thank you very much, Mr. Fester. Mr. Killen,
5 seven minutes, sir.

6 **RESPONDENT'S POSITION (SCUEF):**

7 **MR. KILLEN:** Thank you, Mr. Chairman. May it please
8 the Commission. Tim Killen here for the South
9 Carolina Workers' Compensation Uninsured
10 Employer's Fund. The way Claimant's counsel
11 phrased his arguments it was as if you have
12 only two witnesses in this case. You have the
13 Claimant and you have the Employer but that's
14 not in fact the case. I think we had eight or
15 nine different witnesses in this case and I
16 should have counted them, but it's all in
17 there. And, I would argue against any
18 statement that Mr. Benton's testimony was
19 contradictory. He was very clear throughout
20 the entire time that his -- he did in fact tell
21 her not to get on the ladder. It's very clear.
22 And this testimony is supported by the other
23 witnesses, and these include LaTisha Rodriguez
24 who was a former Employee. She wasn't working
25 for the Employer at the time of the injury.



1 She told her -- she testified that Benton told
2 the Claimant not to use the ladder due to her
3 already injured foot. Ms. Rodriguez testified
4 that the Claimant came to work that day with an
5 injured foot that she injured it in North
6 Carolina when the table fell on it. That was
7 the story that she told many different
8 witnesses and they all testified to it. And
9 Ms. Rodriguez importantly testified that it
10 wasn't limited to certain tasks. I mean, the
11 instruction was specific, it was not to get on
12 a ladder. And then you have Zack Hendry [sic],
13 he was family friend of the Employer, that's
14 admitted. But he testified that the Claimant
15 was told not to get on the ladder because of
16 her already injured foot, which she came to
17 work with an injured foot. There's Raven
18 Baden, this is -- she's no longer -- she was no
19 longer an Employee of the Employer at the time
20 of the accident either. She testified that the
21 Claimant was told not to get on the ladder
22 because of her already injured foot. This
23 makes sense. Of course he didn't tell her not
24 to do it previously because she hadn't come to
25 work with an injured foot previously. Raven



1 Baden testified. She contradicted the
2 Claimant's testimony on how far she actually
3 fell. And Raven's testimony is supported by
4 the actual EMS records and the initial hospital
5 records. Claimant testified she fell much
6 further than she did in the records than she
7 did when she -- when Raven Baden, who was there
8 present at the scene. And Ms. Baden was
9 instructed or asked by the Claimant to call the
10 Claimant's long time companion Mr. Chuck Early
11 and tell him that she got hurt. As she
12 testified that when she talked to Chuck Early
13 on the phone Mr. Early got mad at the Claimant
14 because he had previously told the Claimant not
15 to call the ambulance and she called an
16 ambulance. I don't know whether Mr. Early was
17 psychic or ... Anyway, and you have Amir
18 Benton, who is the Employer, he testified it
19 was clear and explicit instructions not to get
20 on a ladder. And Christine Sweeny also no
21 longer an Employee of the Employer at the time
22 of the hearing. She testified about Claimant's
23 prior injuries on the date of accident. Though
24 she wasn't present to hear the instructions but
25 she did know that the Claimant came to work



1 with injuries to her left leg. And I just want
2 to say before I forget that the Commissioner's
3 finding of fact number eight is about the prior
4 condition. It's not -- she doesn't say -- this
5 is what she said, that the Claimant suffered an
6 injury to the left leg prior to June 16th, 2018
7 and she is suffering from this injury prior to
8 her alleged fall. And then the second sentence
9 of the finding of fact is, this finding is
10 supported by the witnesses' testimony and
11 comports with the admitted instructions given
12 for her not to climb the ladder. It's not --
13 the Commissioner never found it was a pre-
14 existing condition that the Claimant was
15 suffering from. I don't know what it was. We
16 don't -- it's kind of -- it's immaterial. It
17 just -- the reason that she found it was
18 justified was the clear and explicit
19 instructions for the Claimant not to climb the
20 ladder. Your other witnesses were ---

21 **COMMISSIONER MCCASKILL:** Mr. Killen?

22 **MR. KILLEN:** Yes, sir.

23 **COMMISSIONER MCCASKILL:** This injury to her foot now
24 all these folks testifying but there are no
25 medical records in evidence about that are



1 there?

2 **MR. KILLEN:** That's correct, Your Honor, because the
3 injury happened in North Carolina. We were
4 unable to get any medical records from North
5 Carolina to say that there was. Even if she
6 didn't go to the doctor the fact is that she
7 came to work with a -- and these people
8 testified and multiple witnesses testified that
9 she came to work with her foot wrapped.

10 **COMMISSIONER MCCASKILL:** I understand that but my
11 question was, which you answered, there's been
12 no medical records as to that foot injury?

13 **MR. KILLEN:** That's correct.

14 **COMMISSIONER MCCASKILL:** All right. I'm sorry. Go
15 ahead.

16 **MR. KILLEN:** And would say that the Single
17 Commissioner didn't make any findings about her
18 medical condition, just simply that she had a
19 an injury at the time on the day of the
20 accident preceding the alleged fall. Other
21 witnesses were called by the Claimant. We have
22 Chuck Early, the Claimant's boyfriend who lived
23 with the Claimant for seven years. He wasn't
24 present when the Claimant was instructed not to
25 get on the ladder. He testified he didn't keep



1 the Claimant's schedule so he didn't know how
2 often she worked. She testified she worked 80-
3 90 hours a week. Everybody else testified they
4 worked 30 hours a week or less except for Jamie
5 Willard Hudson, who the claimant also testified
6 she said she worked 40 hours a week. This is
7 still contradictory of the Claimant's testimony
8 that she worked double that. When Jamie
9 Willard Hudson was fired by the Employer prior
10 to this testimony she was fired for theft. She
11 admitted it. She didn't deny that it happened.
12 She was represented by the Claimant's attorney
13 in a separate incident. Claimant's attorney
14 didn't charge her for it and she testified.
15 But she still testifies she's still
16 contradicting the Claimant's testimony on the
17 number of hours and she wasn't working on the
18 date of accident so she didn't hear any
19 instructions. And then you have the Claimant's
20 -- well Mr. Early's daughter who was visiting
21 from Ohio that weekend. She wasn't present on
22 the date of accident. She didn't have any
23 information on that instruction. So all we
24 have are the Claimant and these many other
25 multiple former Employees, one current



1 employee, and the Employer and the -- all the
2 Employees' testimony about this are very
3 similar. And you'll see that if you read the
4 two day trial transcript, I mean, it's all in
5 there and it should be laid out very well in
6 our briefs.

7 **COMMISSIONER BECK:** Mr. Killen, your time's expired,
8 sir.

9 **MR. KILLEN:** Thank you, Commissioner.

10 **COMMISSIONER BECK:** Mr. Mogil. You gotta unmute
11 yourself, sir.

12 **RESPONDENT'S POSITION (EMPLOYER):**

13 **MR. MOGIL:** Okay. Thank you, Your Honor. I'm
14 Michael Mogil. I -- may it please the Court,
15 Michael Mogil. I also tried the case along
16 with Tim. I don't -- I join in his brief and
17 his argument. I would just point out, Your
18 Honor, that there's not actual evidence other
19 than her testimony that she fell from a ladder.
20 I believe she told one of the Employees that
21 she fell from the second rung of a ladder. No
22 Employee saw her fall. Mr. Killen noted that
23 she communicated with her boyfriend who was
24 upset that she had called the ambulance before
25 she called him. But nobody saw her fall and



1 she's alleging a pretty devastating injury to
2 fall from the second rung of the ladder
3 besides so it's not taken as fact that she
4 actually fell. All the witnesses -- she
5 acknowledged, I believe that there was a
6 meeting before work, but all the witnesses
7 testified similar that there was a meeting
8 before work and due to her obvious injury she
9 was instructed not to climb or do anything, not
10 to climb on anything including the ladder.
11 Finally, Your Honor, I point out that this
12 Employee had just come back from vacation,
13 that's the week before that week. This was the
14 week she came back and she hadn't even been
15 working for this Employer for a large gap of
16 time after she quit to work for a competitor.
17 So there was a four to five to six month gap
18 before she came back and then took this
19 vacation and then came back. So when she's
20 testifying about all the hours she worked it
21 was long before this incident occurred.

22 **COMMISSIONER BECK:** All right. Thank you, sir. Mr.
23 Fester you have three minutes in reply, sir.

24 **APPELLANT'S REPLY:**

25 **MR. FESTER:** Yes, sir. I guess to the -- I'm a bit



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

Bridges, N. 2156

1 surprised by the argument of Employer's counsel
2 to the extent that they're arguing or implying
3 this injury is somehow fake. I just needed to
4 address this. There is no, again, no medical
5 evidence of a pre-existing injury. To have a
6 pre-existing condition there needs to be
7 evidence of a condition. Secondly, that ---

8 **COMMISSIONER BECK:** Well, there's not evidence --
9 there's not medical evidence, but there is
10 evidence.

11 **MR. FESTER:** There is. And to that point there's
12 evidence and there's lay testimony that she had
13 a wrap around her foot. We're talking about
14 a knee injury. This is tibial plateau. It was
15 so devastating. I mean, I'm sure you've seen
16 ample of these in your tenure. This is a
17 devastating injury to the knee. A complex,
18 traumatic fracture of that knee that she
19 couldn't have hobbled in there. Common sense
20 would dictate that she couldn't have hobbled in
21 there that day and tried to work prior to this.
22 And so I would just address to the extent that
23 counsel for the Employer is arguing that this
24 is -- this was somehow staged I think is absurd
25 just all on the face that -- on the face and



1 the evidence we have here. And that would
2 essentially conclude what I have other than,
3 again, I would just point out and I don't
4 believe that counsel for the UEF even addressed
5 it, but there's a difference between method
6 versus or conduct within the sphere of
7 Employment and the Employment itself. So even
8 if this whole Commission finds that there was
9 a expressed prohibition, a clear and explicit
10 prohibition not to get on the ladder, that
11 legally doesn't get us there to get us out of
12 the scope of Employment. And that's supported
13 by *Johnson versus Merchants*, 80 year old case
14 and all of it's progeny, literally every case
15 after Johnson. It's a 80 year precedent in
16 this state. While nuanced and a bit
17 complicated that is the law in South Carolina.
18 You know, we would just ask that this
19 Commission reverse on those grounds that at the
20 very least.

21 **COMMISSIONER BECK:** All right. Thank you very much.
22 Gentlemen, it's good to see you. That will
23 conclude this proceeding. You have a great
24 afternoon.

25 **(There being nothing further, the hearing concluded**



1 at 3:13 p.m.)
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

