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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appellate Case No. 2022-001385
Case No. 2017-CP-08-02238

Matthew Zetz,

Appellant,

v.

Daniel Island Company, Inc.,

Respondent.

RECORD ON APPEAL – VOLUME 5

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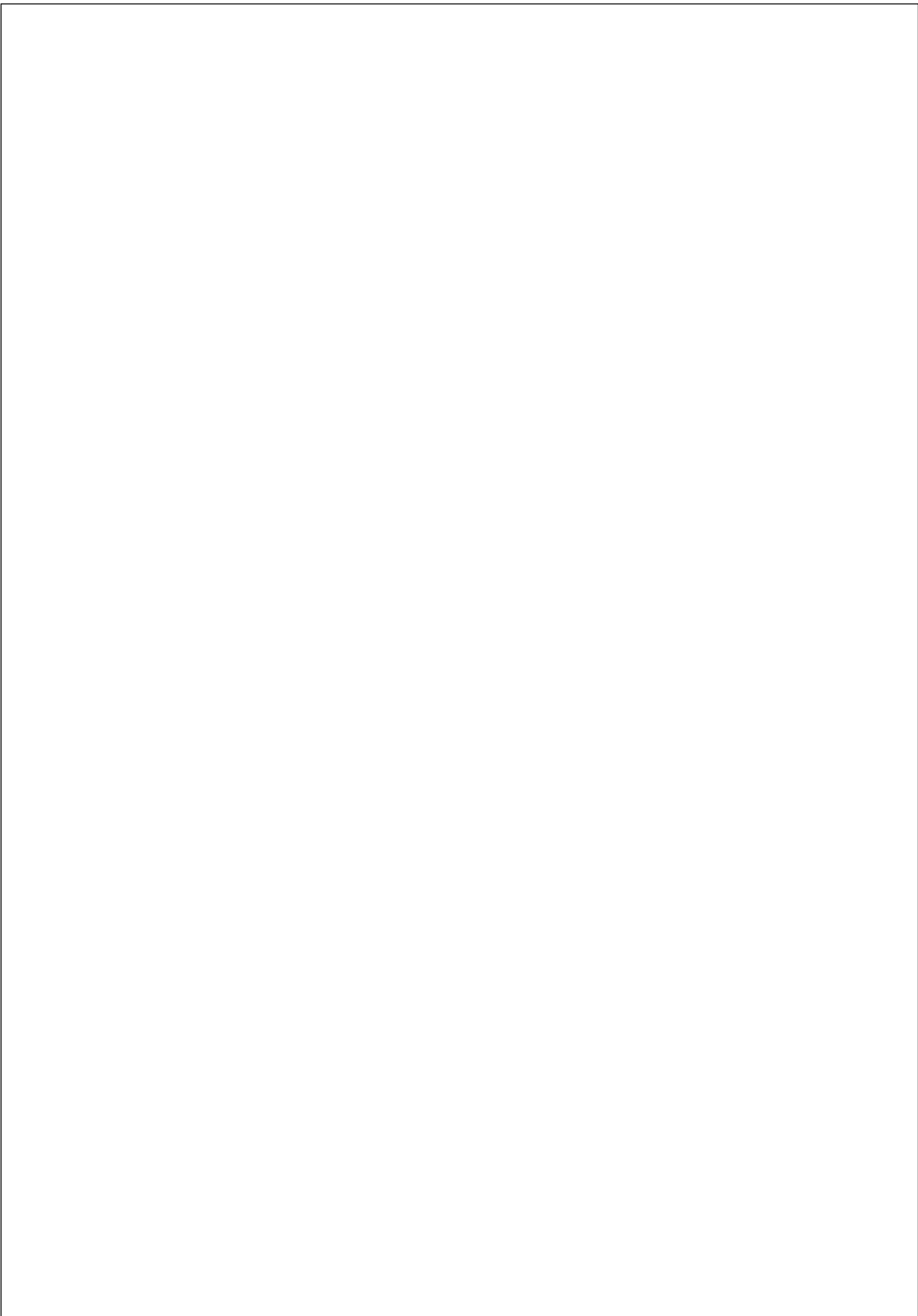
Angeline M. Larrivee (SC #105466)
Roy T. Willey, IV (SC #101010)
Eric Poulin (SC #100209)
Lane Jefferies (SC #101764)
32 Ann Street
Charleston, SC 29403
(803) 222-2222

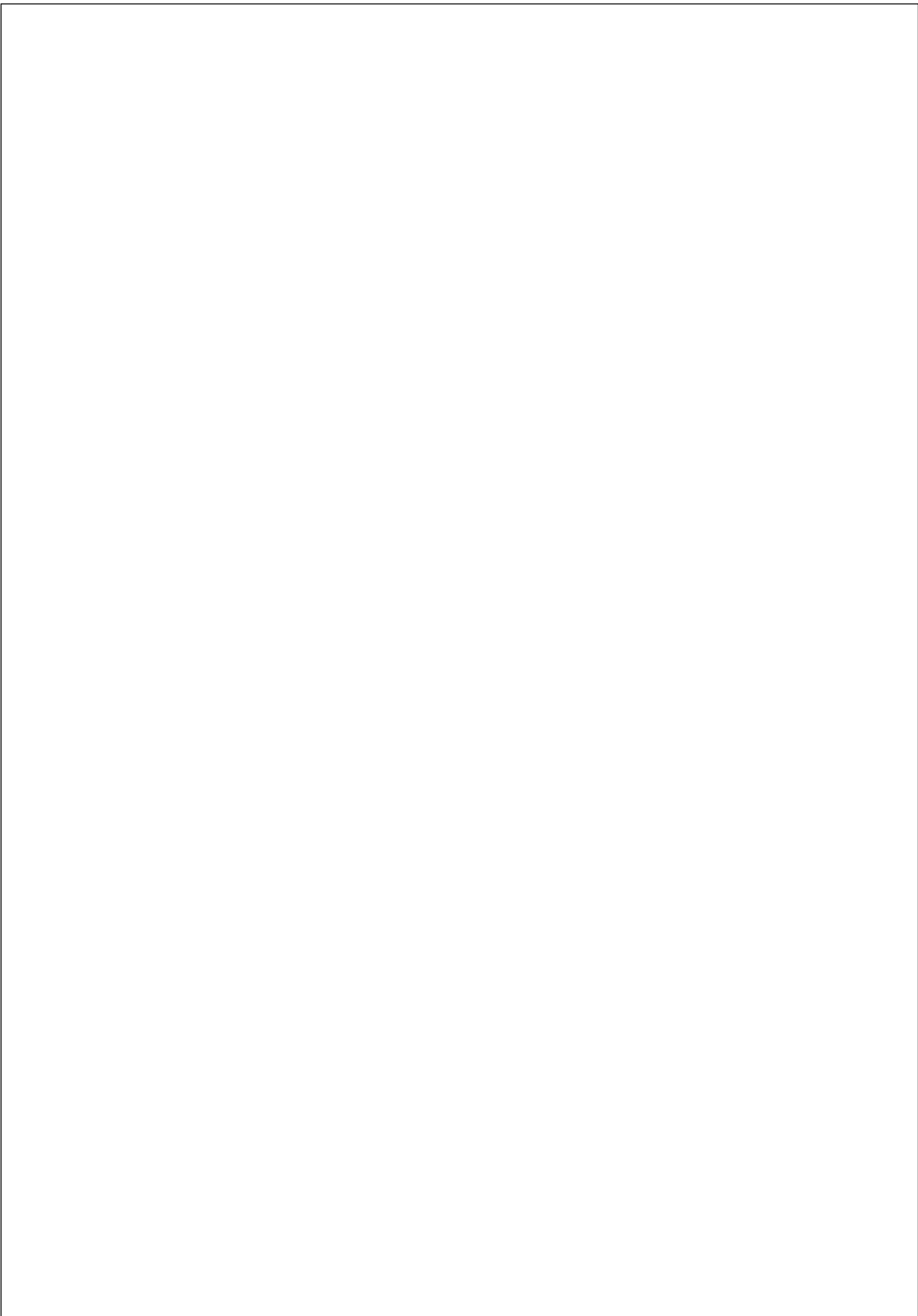
Attorneys for the Appellant

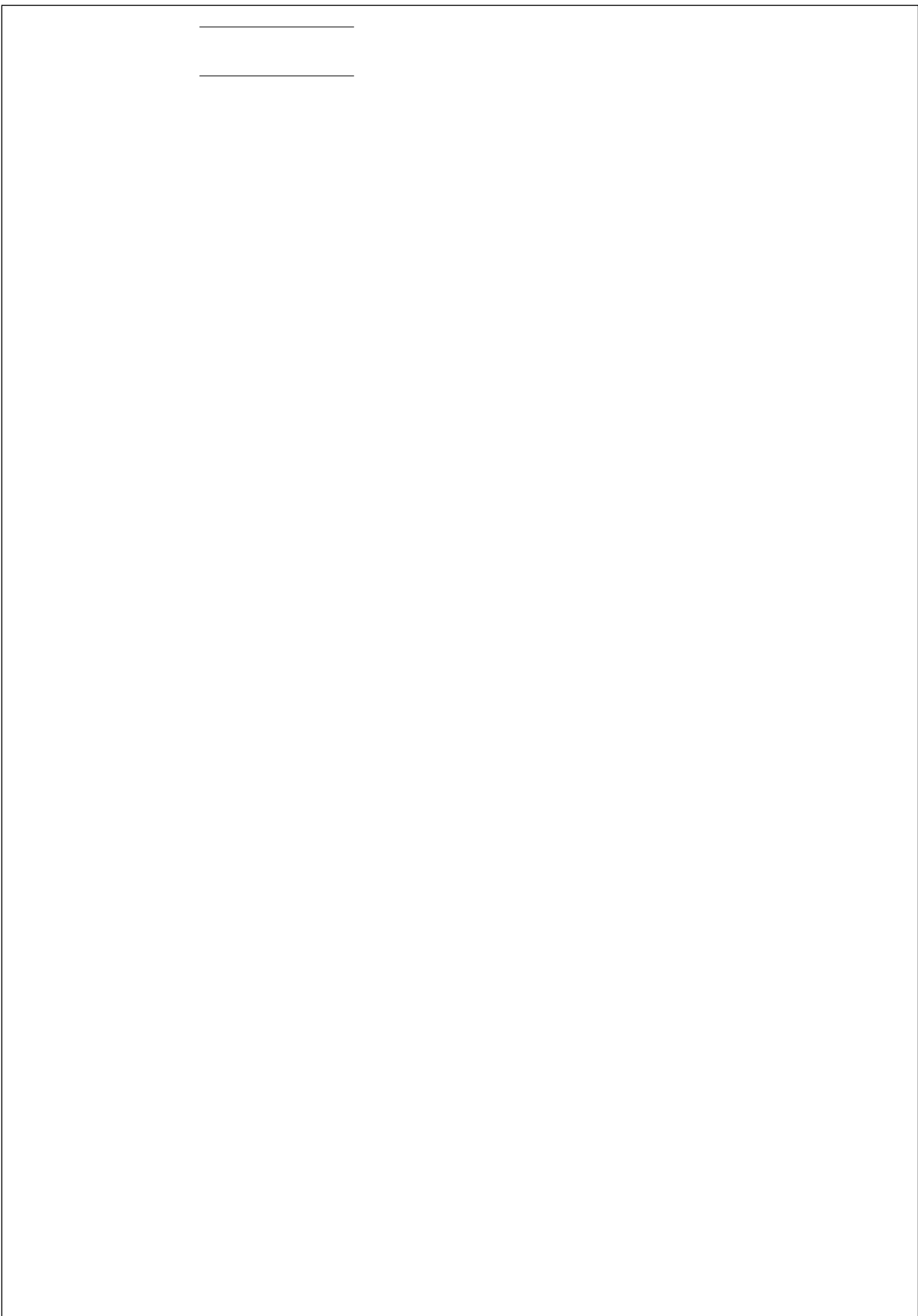
BARNWELL WHALEY
PATTERSON & HELMS, LLC

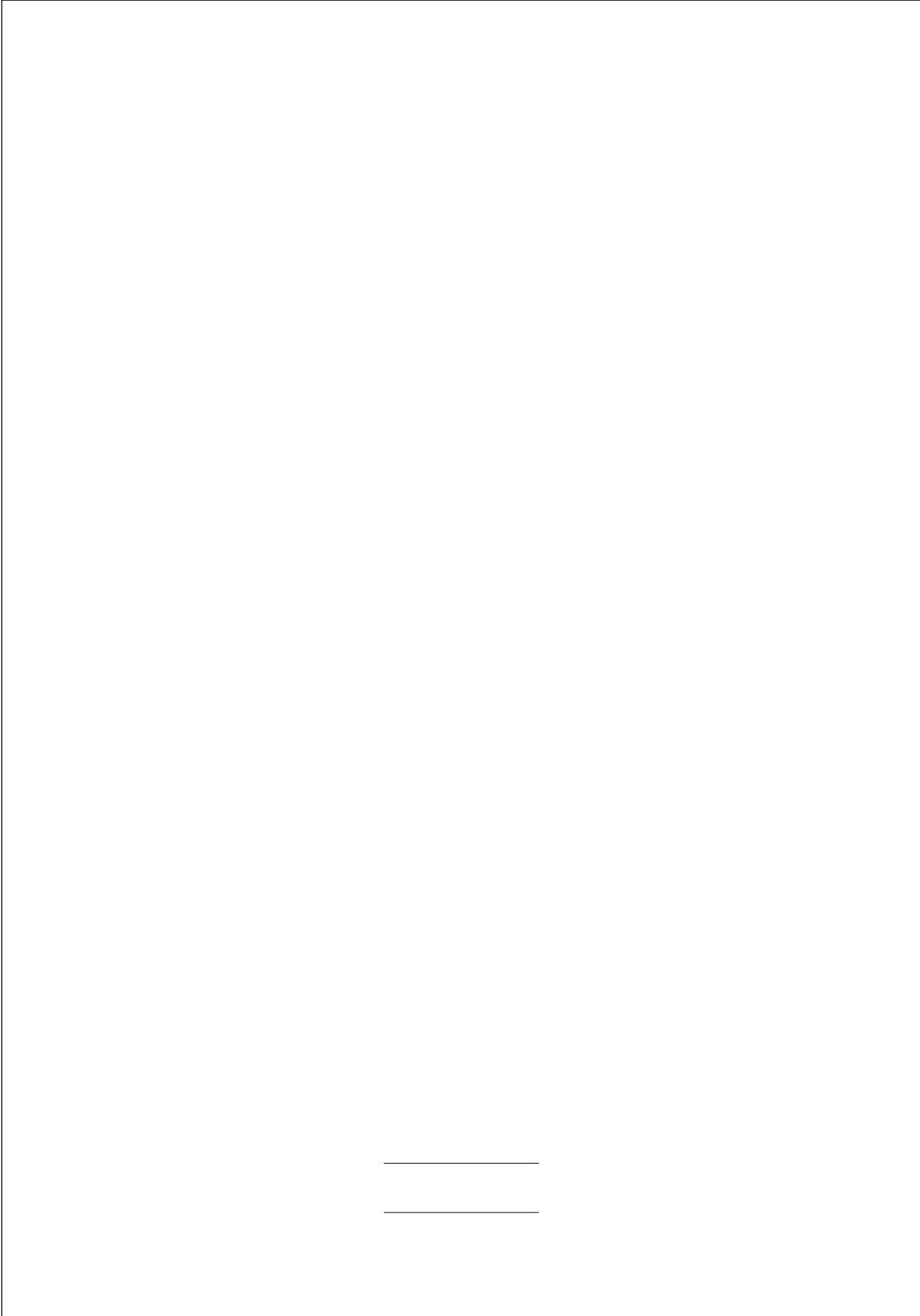
Kenneth Michael Barfield (SC #69400)
Diane Summers Clarke, II (SC #74829)
211 King Street, Suite 300
Charleston, SC 29401
(843)577-7700

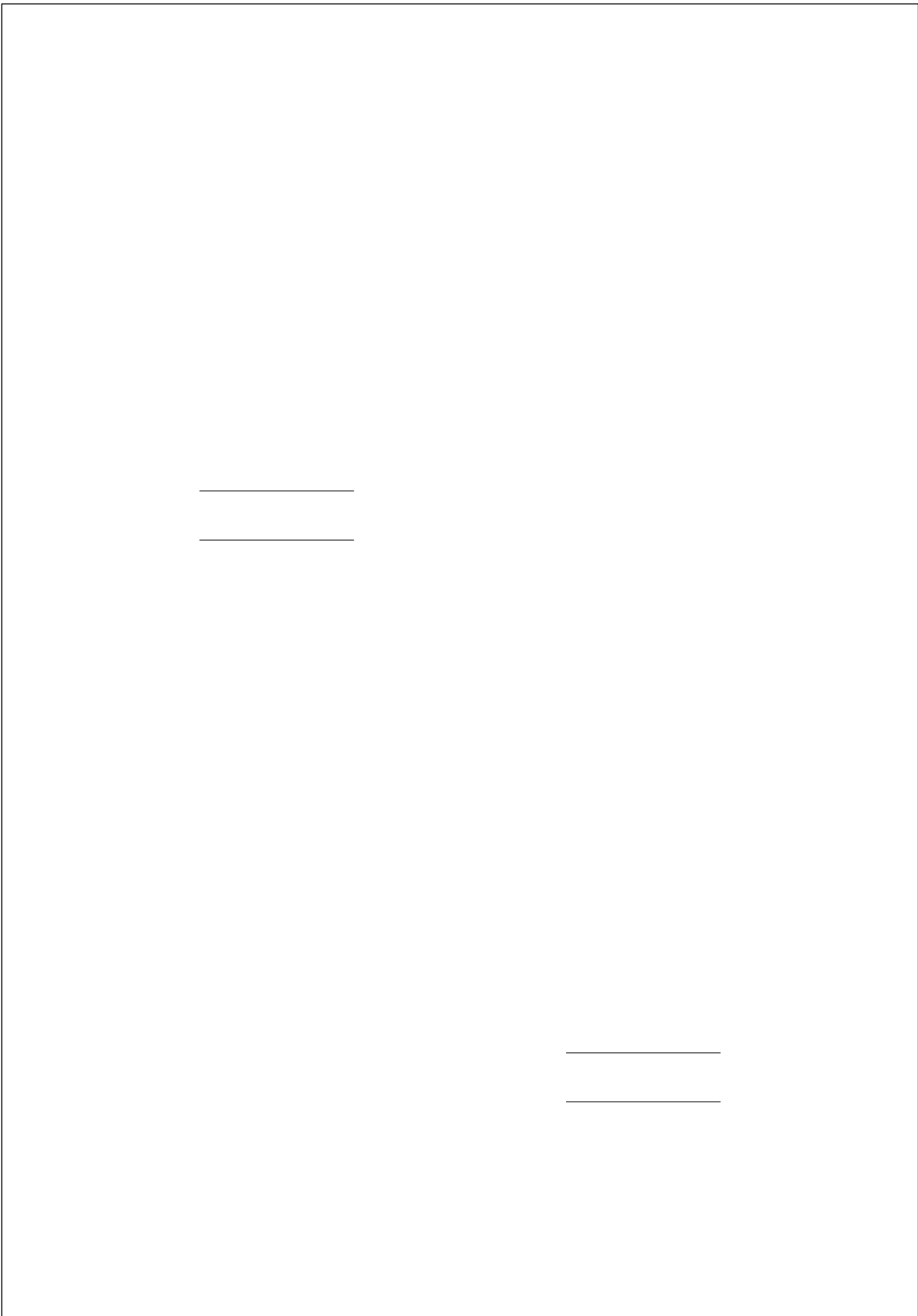
Attorneys for the Respondent

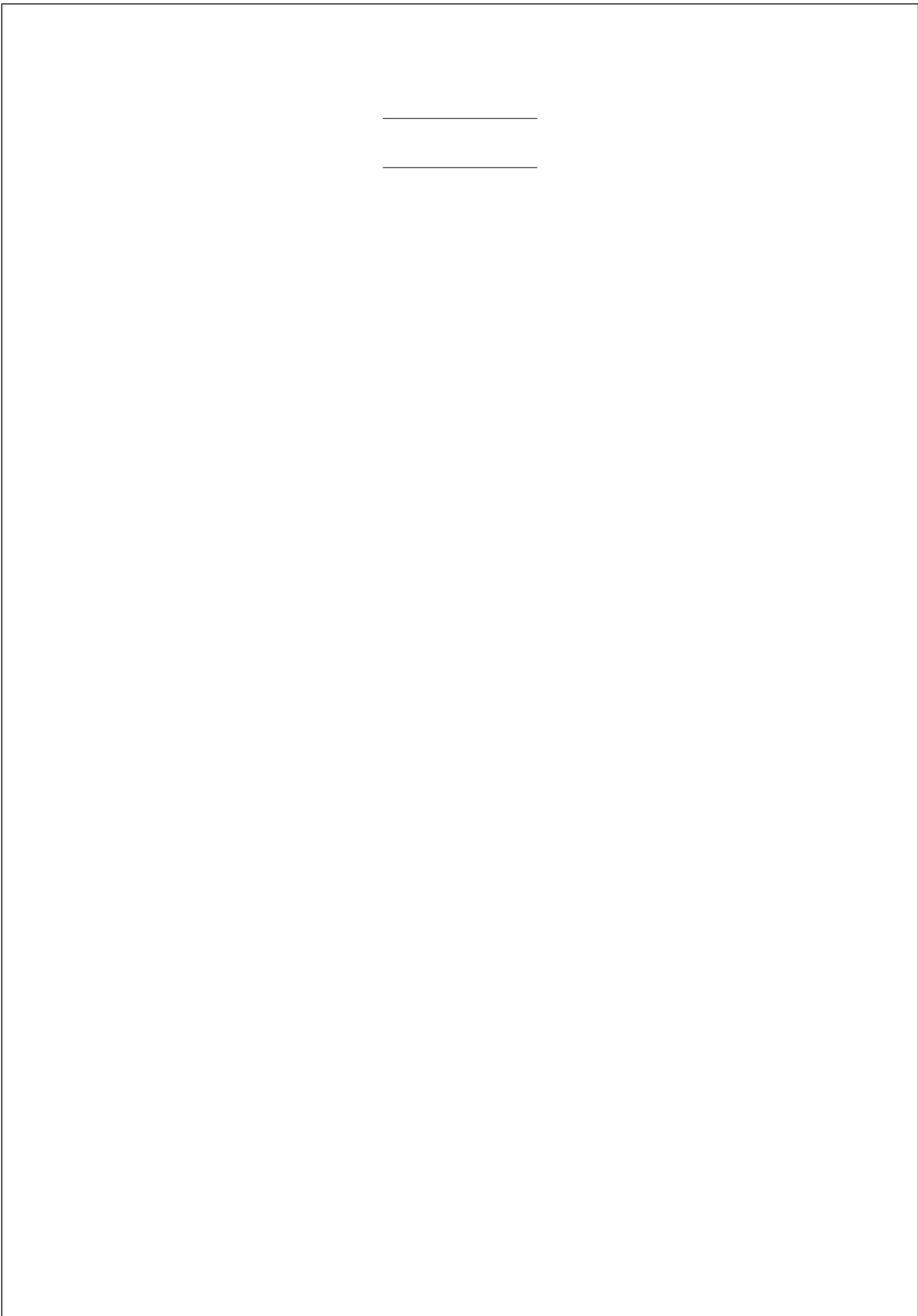


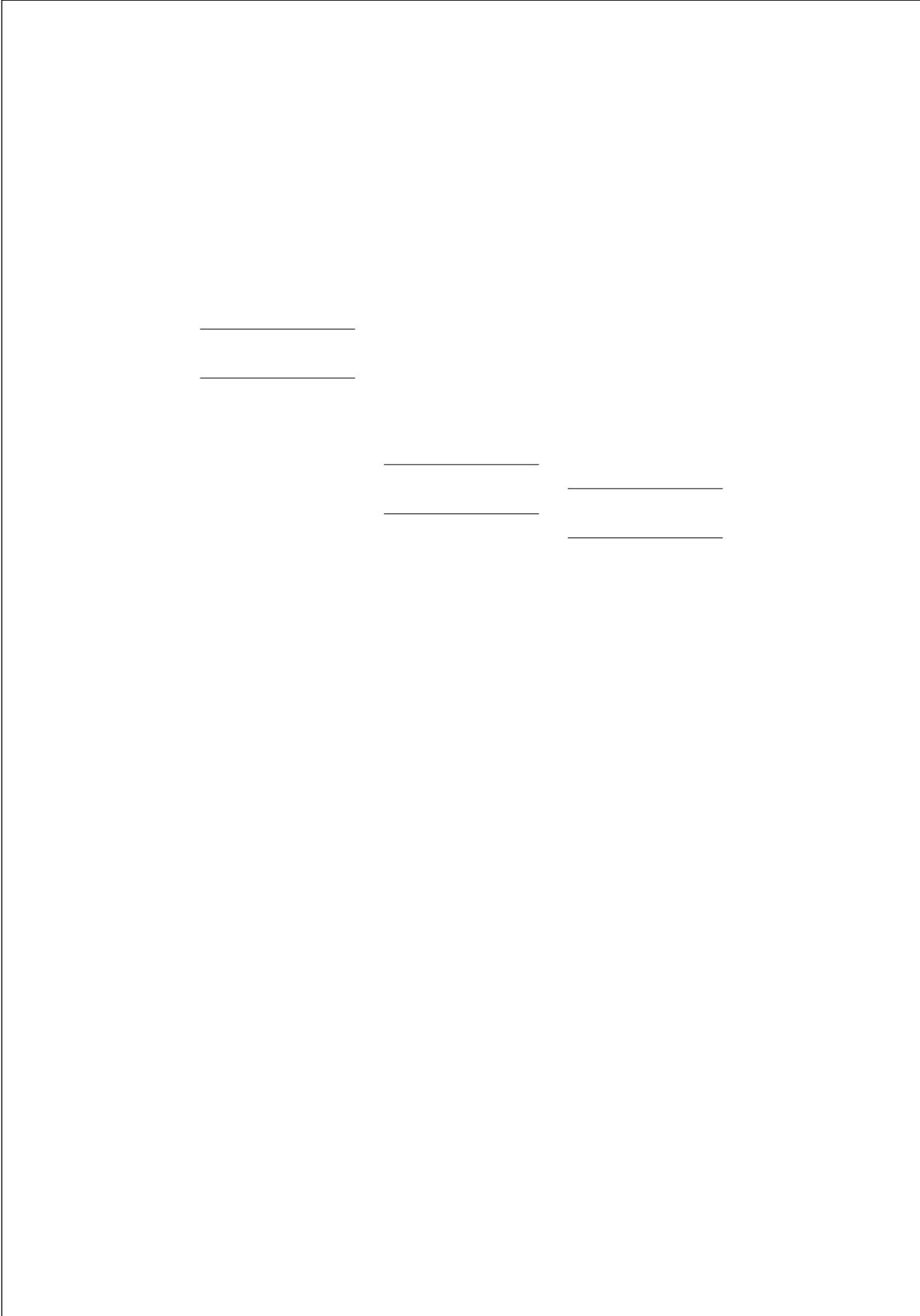




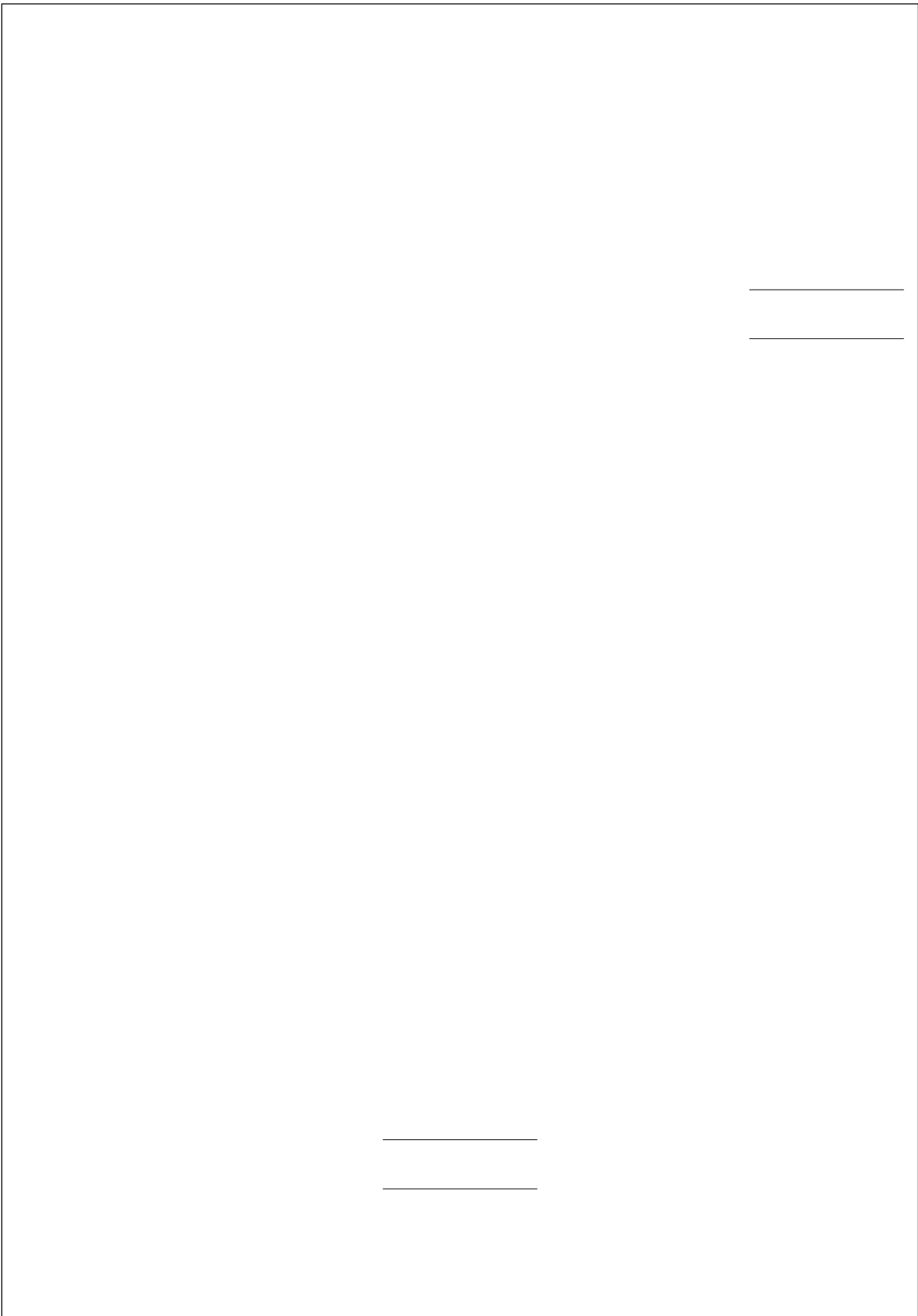




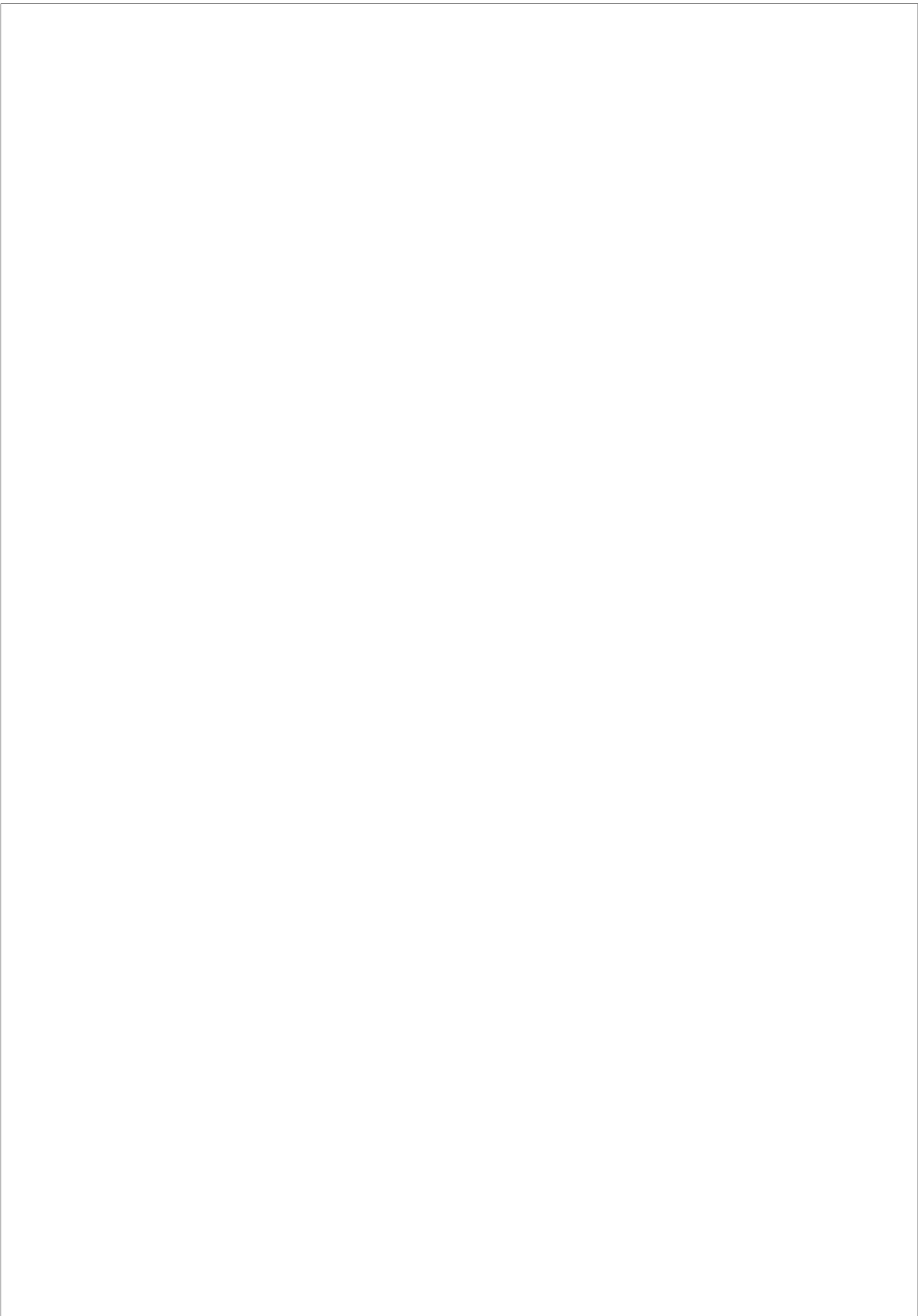


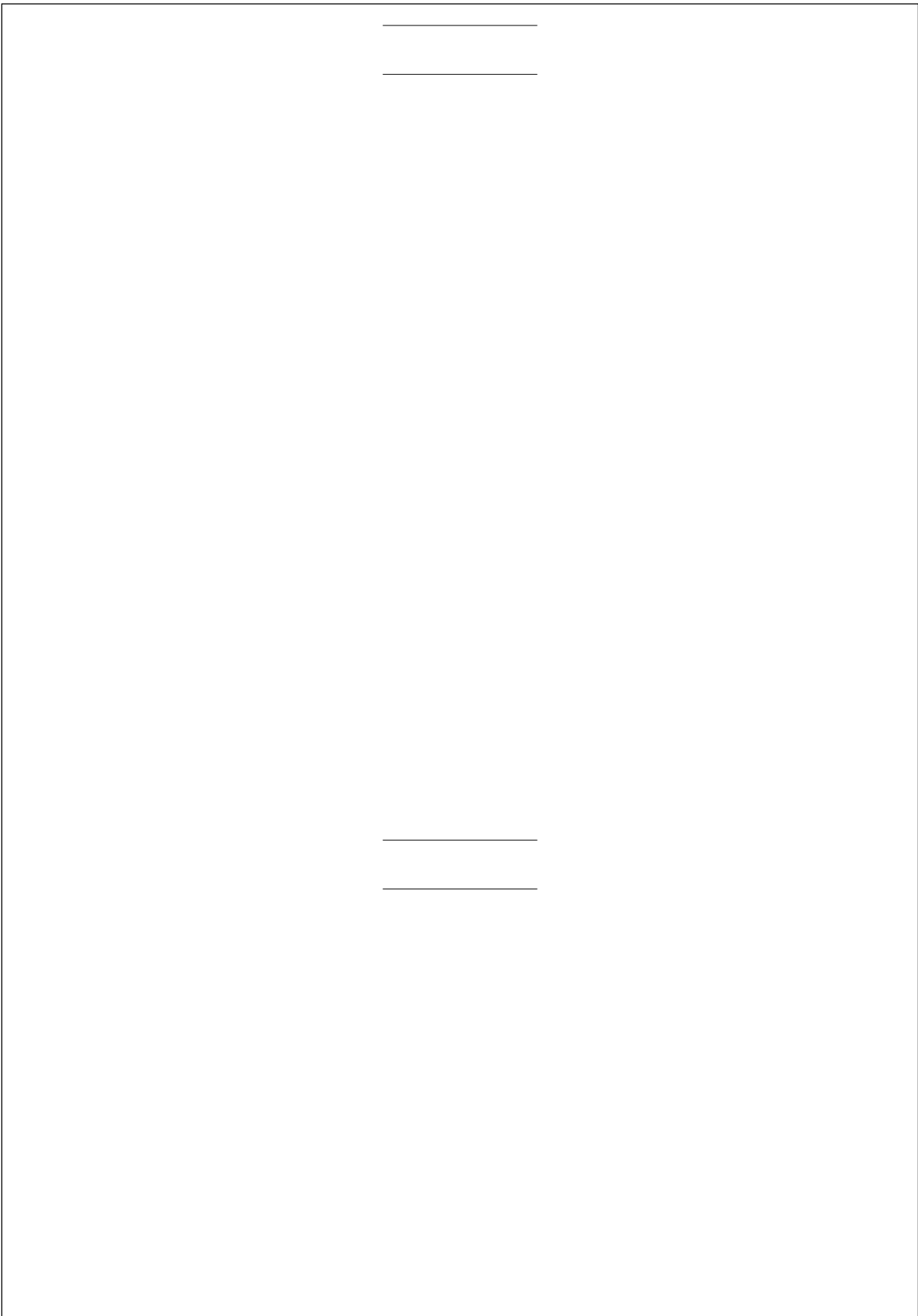




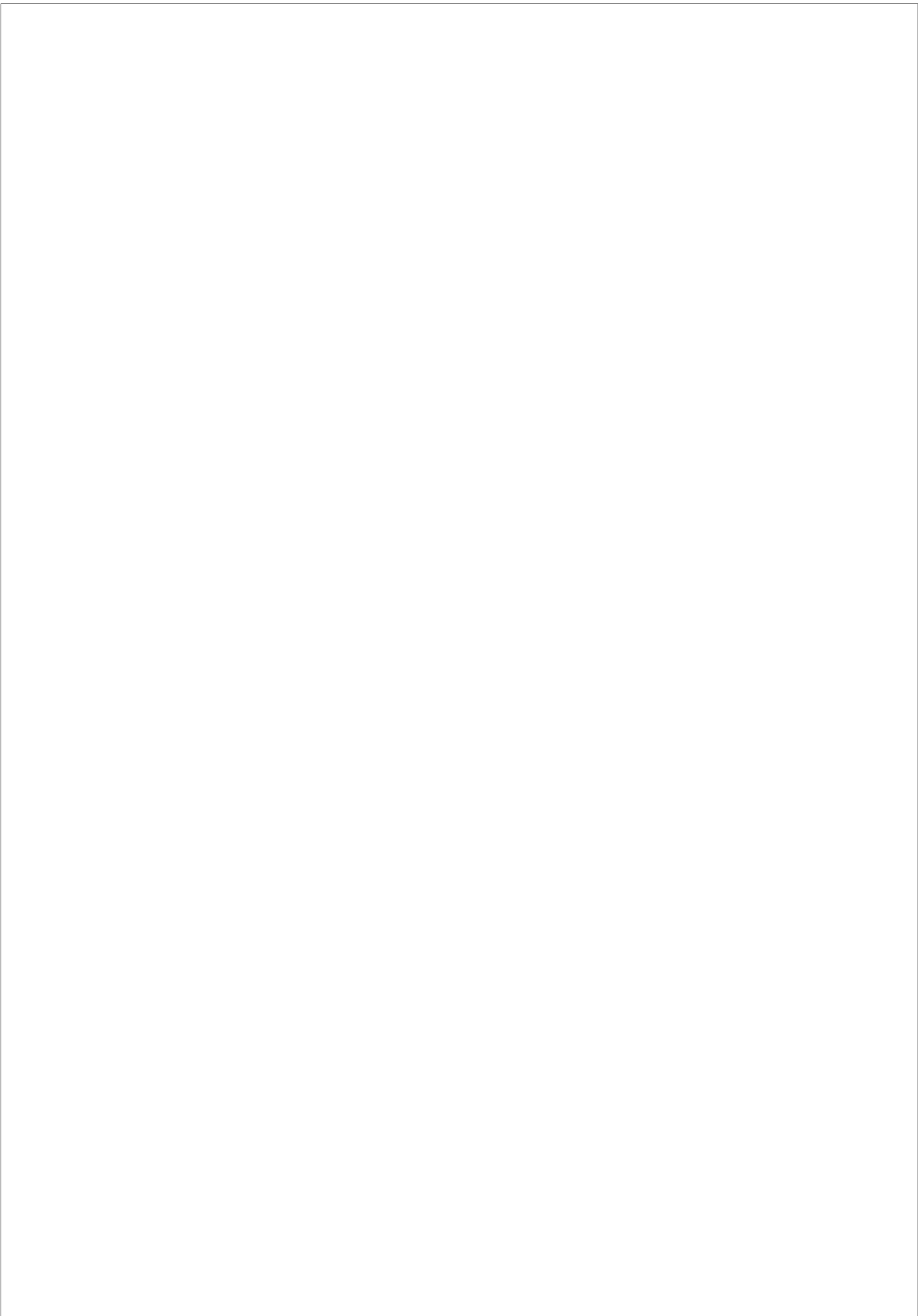


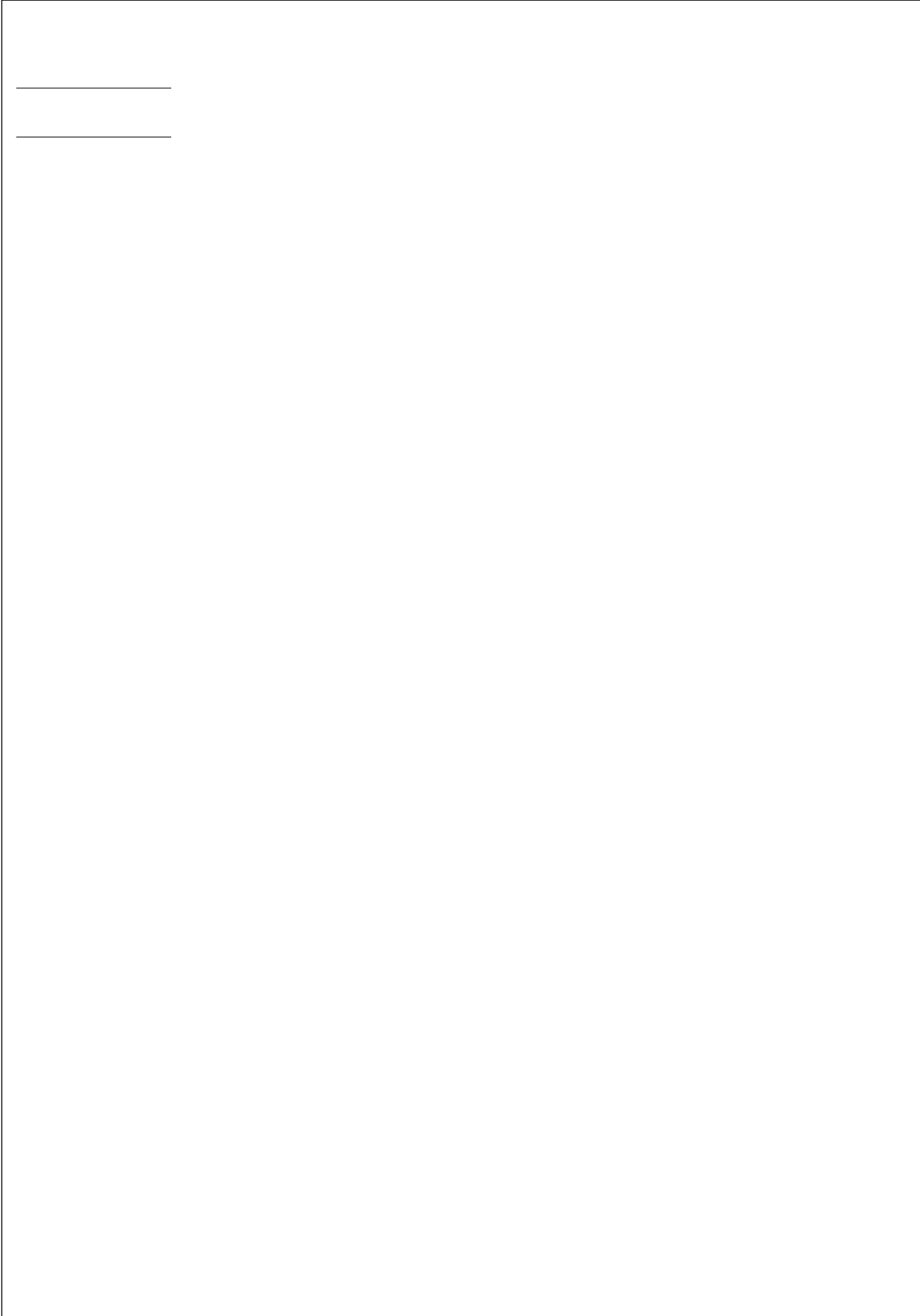












EXHIBIT

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

MATTHEW ZETZ,

PLAINTIFF,

-VS-

DANIEL ISLAND COMPANY, INC., DANIEL
ISLAND COMMUNITY FOUNDATION, INC.,
DANIEL ISLAND TOWN ASSOCIATION, INC.,
DANIEL ISLAND COMMUNITY ASSOCIATION,
INC., and MGR RESOURCES, INC. d/b/a
MOONLIGHTING LANDSCAPE LIGHTING
SYSTEMS,

DEFENDANTS.

) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO. 2017-CP-08-02238

DEPOSITION OF:

FRANK BRUMLEY

MAY 9, 2022

10:15 a.m.

A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff: Poulin, Willey, Anastopoulo, LLC
By: Lane D. Jefferies, Esq.
32 Ann Street
Charleston, SC 29401
Lane@akimlawfirm.com

For the Defendant The Daniel Island Company, Inc.:

Barnwell Whaley Patterson & Helms
By: K. Michael Barfield, Esq.
211 King Street, Suite 300
Charleston, SC 29401
Mbarfield@barnwell-whaley.com

For the Defendant Daniel Island Town Association, Inc.:

Hood Law Firm
By: Evan M. Sobocinski, Esq.
172 Meeting Street
Charleston, SC 29401
Evan.sobocinski@hoodlaw.com

Also present: Womble Bond Dickinson
By: F. Cordes Ford, IV, Esq.
5 Exchange Street
Charleston, SC 29401
Cordes.ford@wbd-us.com

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INDEX TO EXAMINATIONS

Page

Mr. Barfield.....	4, 30
Mr. Jefferies.....	14, 31
Reporter's Certificate.....	34
(Reading and signing of transcript waived.)	

INDEX TO EXHIBITS

Page marked

(No exhibits marked.)

1 FRANK BRUMLEY,
2 having been duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. BARFIELD:

5 Q Good morning, sir. Can I have you state your
6 name for the record, please.

7 A Frank Brumley, B-R-U-M-L-E-Y.

8 Q All right. Mr. Brumley, I'm going to be very
9 brief, and I'm sure Mr. Jefferies will have probably
10 more questions than I have, but I just want to get a
11 sense of who you are and what you do. So can you give
12 me the benefit of your professional background?

13 A Uh-huh. I was a banker for the first seven
14 or eight years in business. College graduate of the
15 University of Georgia in 1962 and then I was in the
16 banking business until 1970. I joined the Sea Pines
17 Company in Hilton Head, South Carolina, and the first
18 position there was as general manager of the Amelia
19 Island Plantation property north of Jacksonville, and
20 I was transferred here in 1974 as the original
21 CEO/general manager for the Kiawah Island Company, and
22 I have operated the Brumley Company, a commercial real
23 estate development management brokerage company, since
24 1975. I was a partner with The Beach Company group at
25 Kiawah for the next 20 years, and then I purchased

1 Daniel Island in 1997 and have continued to be
2 involved there since then.

3 Q All right. And when you say "involved,"
4 what -- let's talk about Daniel Island, because you
5 were in on the ground floor, right?

6 A Uh-huh. Yep. Yep. My brother's family and
7 I and Matt Sloan purchased the property in 1997, and
8 Matt served as chief operating officer, and I served as
9 chairman of the board. I didn't really play much of a
10 day-to-day role. Matt was the operating officer and
11 made most of those decisions, and I attended annual
12 board meetings.

13 Q Okay. And when you talk about titles, what
14 entity, what company were you?

15 A This was for the Daniel Island Company, but I
16 was an officer in most of the other operations on the
17 island there also.

18 Q Okay. And was the Daniel Island Company the
19 original -- the developer entity?

20 A Yes.

21 Q And was that a -- or is it -- was it/is it a
22 for-profit company?

23 A Yes.

24 Q All right. And tell me, if you will, just a
25 little bit about the genesis of the development of

1 Daniel Island, the concept of it.

2 A Well, the property was undeveloped and we --
3 when we purchased it from the Guggenheim Family, and I
4 worked with the foundation, the Harry Frank Guggenheim
5 Foundation on there, I worked with them before
6 purchasing the island, and we coordinated the
7 annexation of the island into the City of Charleston
8 with the encouragement of Joe Riley.

9 And so this was all in the late '90s/mid
10 '90s, '93 to '95 or '96 when the foundation was
11 continuing to operate things. And so we annexed into
12 Charleston, produced our own zoning code working with
13 the city and then ensued with development. And
14 probably 1998, 1999, we brought in the Trammell Crow
15 Company from Dallas as our joint venture partner in
16 the golf and residential communities in about the year
17 2000. We continued to own and operate the commercial
18 and retail operations within the Daniel Island
19 Company. We did have a 50/50 partnership with
20 Trammell Crow in what was called Daniel Island
21 Associates.

22 Q Okay. You mentioned the City of Charleston.
23 Daniel Island is sort of a geographically oddity,
24 isn't it? It's --

25 A It is.

1 Q It's in the city but it's in Berkeley County,
2 right?

3 A It always confuses people. That's correct.
4 We were part of the unincorporated area of Berkeley
5 County in the past, and then in the annexation, we
6 became a part of the City of Charleston, worked very
7 closely with Riley. He was looking to grow the tax
8 bases for the City of Charleston, and we were
9 contiguous and made sense and also were courted by the
10 unincorporated Berkeley County, but also the towns of
11 Mount Pleasant and North Charleston also were
12 interested in Daniel Island, but we chose the City of
13 Charleston, and he chose us.

14 Q Got you. Did the city have any -- did it
15 have its own vision or, I should say, requirement for
16 how Daniel Island would be developed?

17 A Joe Riley always has his own visions for
18 things and very good ones, that's the reason we went
19 with him, but yes, he wanted the island to be very
20 inclusive, no gates, open to the public, wanted it to
21 be a large public property. And as part of the
22 condition, we sold him 200 acres for park properties
23 at a bargain price when we put the zoning code
24 together.

25 He was very smart in knowing that he wasn't

1 going to be able to afford park property in later
2 years, so he paid us maybe \$1 for 200 acres, \$5,000 an
3 acre, and that was literally day one coincidental with
4 the zoning and when the development began, we began to
5 pull our first zoning permits and construction
6 permits, so that was all --

7 We had Joe, and Joe was very focused on --
8 the mayor was very focused on making sure that it was
9 an inclusive property. He didn't want us to have any
10 gates. He didn't want there to be any -- the golf
11 courses were allowed to be private, but he didn't want
12 them gated. He wanted to see his citizens of
13 Charleston to be able to come to the parks he was
14 going to build. So it's widely used -- Waterfront
15 Park, the Governor's Park, it's widely used by people
16 from all over the community.

17 Q Okay. And you mentioned the city actually
18 purchased and took ownership of a number of the parks
19 out there?

20 A They did, yes.

21 Q Okay. Now, the case that we're here for
22 today deals with a piece of park property that has
23 come to be known as the Childrens Park. Are you
24 familiar with that?

25 A I am familiar with it.

1 Q Okay. And that's one that the city did not
2 take title to?

3 A It took the waterfront, which is literally
4 across from the Childrens Park that was built. They
5 had ownership of that, and I believe that's been
6 transferred, maybe, to the property owners'
7 association. It's been a tight collaboration with the
8 city over the years, and so we've worked -- and they
9 didn't have a well-defined park program when we
10 started, so as our master plan evolved, their park
11 plans evolved at the same times. Sometimes they
12 played more intensive roles than others in some of the
13 parks, and it worked well. It was a fluid, flexible
14 plan.

15 Q Okay. If I told you that the Childrens Park
16 was deeded to the Daniel Island Town Association,
17 would that ring a bell?

18 A Yes. I'm not sure I would have remembered
19 that specific transfer. I wasn't involved in that
20 level of detail, but yes, that sounds right.

21 Q Okay. All right. Were you involved at all
22 in the initial design and construction of the
23 Childrens Park?

24 A I reviewed the final plan when it was
25 completed, but I really wasn't involved in reviewing

1 early documents or talking to the planners, but I saw
2 it, I'm sure, at the board meeting when it was
3 approved. It wasn't approved, probably, it was just
4 -- it was there for review, and we had a development
5 update at each board meeting, and I'm sure I saw it.

6 Q Okay. And do you remember who the designer
7 was that was hired to do that?

8 A I don't. It was a national designer, but I
9 don't remember the name. I remember he was touted as
10 being very good with public spaces and particularly
11 oriented to children.

12 Q Okay. The Daniel Island Company, we've
13 established as sort of the initial developer entity
14 was -- did the Daniel Island Company form or the
15 individuals behind the Daniel Island Company form
16 other entities over the years?

17 A We did. It was a wide, large structure and,
18 so yes, there were a number of subsidiaries associated
19 and affiliated. Because we had a joint venture
20 partner, we did even more of that because there were
21 entities that we owned together, and there were
22 entities that were separately owned and operated. And
23 so yes, there were a number of entities, LLCs, and
24 partnerships that were formed.

25 Q Okay. And were some of those entities

1 not-for-profit property owner associations on the
2 island?

3 A Yes. We formed a property owner association
4 for the north end, which is called the Daniel Island
5 Park Association; that's on the other side of I-26.
6 And then there's the Daniel Island Community
7 Association, which was the first one formed, which is
8 the south end POA, and then there was a -- we have a
9 commercial center in the heart of the island, and
10 that's the Daniel Island Commercial, and it's called
11 DITA, Daniel Island -- I can't remember exactly what
12 DITA stands for, but they were responsible for the
13 commercial properties and were kind of the overall
14 master entity of the POAs.

15 Q Got you. And are those POAs set up at
16 designated points in time or events to turn over
17 completely to the control of property owner boards?

18 A Yes, and that was set up as originally
19 designed to -- at certain points based on the
20 certificates of occupancy within the town
21 organizations, so that when you had a certain
22 percentage of the to-be-developed property was
23 achieved, then there was automatic turnover. I
24 believe it would have been a staged process because it
25 kind of went through two or three stages of -- in that

1 turnover, but yes, that's the way they were designed,
2 and the park was going to happen in the same way.

3 Q And how do those POAs get their funding to
4 fund their budgets?

5 A Through an assessment, a property owner
6 assessment, yeah.

7 Q Okay. And are property owners -- or have
8 property owners always been allowed to attend board
9 meetings of the POAs that they are affiliated with?

10 A Yes. We have -- actually, we have outside
11 members even before they took control, there would be
12 some percentage -- like if we had five total board
13 members, three would be from the developer, and two
14 would be from the property owner basis even long
15 before we turned over control. And so yes, they were
16 involved. And each year, we had an annual meeting, I
17 think maybe in December, and there would be sometimes,
18 you know, 50, sometimes 75 or 100 property owners
19 would attend those meetings. And they would be there
20 to ask questions and, you know, just make sure they
21 were comfortable, and sometimes they weren't always
22 comfortable. You know, it's like typical property
23 owners.

24 Q Sure. Sure. And they're probably concerned
25 about where their -- how their money is being used,

1 right?

2 A Exactly. Is the grass being cut in front of
3 my yard or my house.

4 Q Got you. In terms of physical space and
5 resources, there's been -- there have been previous
6 depositions in this case of some employees of the
7 various property owners' association and some
8 testimony about them sharing physical space and some
9 office equipment and that sort of thing. What about
10 Daniel Island Company, were you under the same -- was
11 that entity under the same roof as the POAs?

12 A No, it was not. It was totally separate from
13 the POAs, and we knew the people that were there and
14 running it, but no, we didn't have any day-to-day
15 involvement.

16 Q Okay. Daniel Island Company -- would it be
17 safe to say that Daniel Island Company was in the
18 business of developing and selling real estate at a
19 profit?

20 A Correct.

21 Q And the property owners' associations were in
22 the business of managing and maintaining real estate
23 that had already been sold to other people?

24 A Referred to as the common properties,
25 exactly.

1 Q Got you. And that included some of the parks
2 that the city didn't...

3 A The city was always stretched thin and didn't
4 have the assets to maintain the park system to the
5 level that we wanted it, so yes, there were times that
6 we would -- basically, we would end up paying for it
7 or the company would if we wanted to keep them looking
8 -- flowers being planted and things that we wanted.

9 Q Okay. Prior to the incident in the Childrens
10 Park involving Mr. Zetz that's the subject of this
11 lawsuit, had you ever heard -- caught wind of any
12 serious injuries occurring in the Childrens Park?

13 A No.

14 Q Okay. I think that's all I have. I will --
15 I may have some follow-up after Mr. Jefferies, but
16 thank you for your time this morning.

17 A Absolutely.

18 MR. JEFFERIES: Evan, do you have anything?

19 MR. SOBOCINSKI: No, I don't have any
20 questions.

21 EXAMINATION

22 BY MR. JEFFERIES:

23 Q Mr. Brumley, I appreciate you being here. My
24 name is Lane Jefferies. You probably know I represent
25 the Plaintiff, Matthew Zetz, in this action.

1 Mr. Barfield's covered the vast majority of what I
2 planned to cover, so I only have a handful of
3 questions for you, so I appreciate your time.

4 Tell me about the process of establishing
5 these property owners' associations. Like, how does
6 that actually occur? Is that something that happens
7 through the master deed or -- how and why are they
8 established?

9 A That covers a part of our covenants, rules
10 and restrictions, the CCRs that are filed -- Charles
11 Fraser that I worked for in the '70s put these
12 original ones together, and you'll still occasionally
13 see that name pop up by mistake and somebody else's
14 because they've been copied so many times around the
15 country. But yes, he was a brilliant land both
16 planner and developer and lawyer by training at the
17 University of Georgia and Yale, and he developed these
18 CCRs, and they've really been used throughout the
19 industry. There's a decided format for it, and things
20 really haven't changed much over the years. They've
21 been tweaked, but there's a decided format of how
22 these are put together, how the property owners and
23 the boards are set up, how officers are elected, and
24 various different communities.

25 When the turnover happens, we've always done

1 it in the late stages, 75, 80 percent, if my memory
2 serves me correctly, of when the certificates of
3 occupancy are achieved. And at that point in time, it
4 gets automatically turned over. And that's pretty
5 well done industrywide, and that's because it's pretty
6 much an established protocol.

7 Q And that protocol, really, Charles Fraser
8 kind of thought that up, along with some other really
9 smart people?

10 A He did, yes.

11 Q And then that's gone industrywide?

12 A That and the Urban Land Institute, ULI, has
13 been widely involved in that, and they've taken
14 Fraser's kind of base document and tweaked it or
15 improved it.

16 Q Now, for folks that don't know, Charles
17 Fraser was with Sea Pines back in the day?

18 A That's right. He was Mr. Sea Pines. He
19 really was the patriarch of our coastal resort
20 industry.

21 Q Now, when did you start working with Charles
22 Fraser?

23 A Actually, I started working for him in 1969.
24 He had bought 3,000 acres on Cumberland Island, and it
25 was an area where I grew up, and so I got involved and

1 went to work for him. And then we decided to sell
2 that property to the National Park Service, took those
3 dollars and bought the Amelia Island Plantation in
4 Florida, south end of Fernandina Beach and --

5 Q I'm familiar with it. I love it. Y'all did
6 a fine job there.

7 A Yeah, it had been a real success, and it's a
8 great place to go back and visit.

9 Q Do you have some insight into why Mr. Fraser
10 developed the concept the way he did as opposed to
11 prior to that when you could, obviously, buy a big
12 piece of property, bust it up into lots and sell the
13 lots; people have done that for a long, long time.
14 Why not just continue doing that? Why did he go to
15 this new model, if you know?

16 A I think he was what he considered to be an
17 appropriate form of democracy. He'd have
18 property-owner input to how things were being run, and
19 so it was really to achieve what he thought was a good
20 balance of developer involvement and property-owner
21 input.

22 Q As opposed to just selling lots where anybody
23 could do whatever they wanted on each lot?

24 A Exactly. And he was adamant about approving
25 landscape design, colors of the property, and how you

1 could maintain -- it almost got to the point where
2 what kind of Christmas decorations you could put up in
3 your yard. Yeah, he was very focused.

4 Q And that's helped a lot of developers, I
5 would think, sell property probably for more than they
6 could have sold it for otherwise because people have
7 some assurance when they move into that neighborhood
8 that it's not going to go crazy?

9 A People are looking for predictability, and
10 that's what you have in the typical Sea Pines master
11 plan.

12 Q So I know my neighbor, if I buy a piece, my
13 neighbor is not going to put a chain-link fence in the
14 front yard because he can't?

15 A That's correct. That's correct.

16 Q And you found the market will pay more for
17 those types of properties than for others?

18 A Correct.

19 Q At the time y'all started developing Daniel
20 Island -- when was that when you actually started with
21 the first -- the first CCR, those first neighborhoods
22 that fell under this new model of control?

23 A It would have been probably in 1994 or '95.
24 The foundation was precluded from being in the
25 development business themselves as a not-for-profit,

1 so we formed an entity and brought in a joint venture
2 partner and put in the capital, and we developed the
3 first 400-lot division, Codner's Ferry. At that point
4 in time, and that was done prior to my brother and
5 myself and Matt Sloan purchasing the property in 1997.

6 Q And y'all chose to use this model developed
7 by Charles Fraser that gave greater control and
8 uniformity and value to the property --

9 A True.

10 Q -- rather than the old-school way?

11 A True.

12 Q And why did y'all make that decision? Why
13 didn't you just do it the old-school way of selling
14 lots and people can do whatever they want?

15 A Candidly, it was never discussed that we'd do
16 it any other way than the way we ended up doing.
17 There was never a decision made not to do it one way.
18 We did it the way that -- this is the way I had been
19 trained.

20 Q Then that makes sense. You have a beautiful
21 island now.

22 A Uh-huh.

23 Q And I take it, Daniel Island Company has
24 probably made a lot of money off of that, more than
25 they would have had they just sold lots at random to

1 people?

2 A It's been successful.

3 Q Do you remember when Daniel Island Town
4 Association, DITA, went from developer control over to
5 property-owner control? Do you remember when that
6 occurred?

7 A I don't think DITA has.

8 Q Okay.

9 A DICA on the south end either has or is in the
10 process of. It's been a lot of conversation about it
11 recently and, you know, just because of the memos from
12 the management team saying, "We're about to do this."
13 I can't tell you that it's already officially
14 transferred but if not, it's in process.

15 Q What about the one on the north end, Daniel
16 Island, DIPA?

17 A No. It's a slower development than the south
18 end, and, again, it's based on percentages. So DIPA,
19 as it's called, the park association, has still got
20 several more years, but it's on the same structure,
21 and it will transfer, but they're some way away from
22 achieving their percentages.

23 Q So back in 2016, all three of those entities
24 DICA, DIPA, and DITA -- that's D-I-C-A, D-I-P-A, and
25 D-I-T-A -- all three of those entities were still

1 developer controlled?

2 A Yes, that's correct.

3 Q And for folks who don't know, what does
4 developer controlled mean? Is it a little bit, is it
5 a lot, is it everything? What does the developer
6 control when it controls in the association?

7 A You have voting control of the majority of
8 the board, but you begin to keep property owners
9 enthusiastic about values and doing things on their
10 own property. You have them very much involved, and
11 you want them to be happy, so they participate. I
12 can't ever remember there being a vote that was
13 contested one way or the other. It was, basically, we
14 -- it was a homogenous group that worked together, but
15 the developer absolutely maintains control until he
16 transfers.

17 Q Okay. And so back in 2016, when the
18 developer had control, the developer could choose to
19 listen to the people and often did but could also, if
20 it wanted to, just ram something through, if it so
21 chooses. So "absolutely, we're doing this," it would
22 have the votes to do it; is that fair?

23 A Well, the term "ram something through" never
24 surfaced, never came up, so we'd never had to do that.
25 So it was run very cordially and with enthusiastic

1 property-owner support. They liked what we were
2 doing. They liked the way the place looked and
3 thought we were doing a good job. So candidly, it
4 never really came up. There was never any opposition
5 about what do you think we ought to do, or where do
6 you -- no, it just -- it was never a matter of
7 contention.

8 Q But if you wanted to, you could have?

9 A We could have, yeah.

10 Q In the community where I live, which is
11 Conway, South Carolina, there's just a little tiny
12 marina -- we're a small town -- a little tiny marina,
13 and there at the marina is a rack of free lifejackets;
14 they're just free to use. You take your kids down
15 there to the marina and the little park, if you're
16 getting nervous about them falling in the water, you
17 can just grab a free-to-use lifejacket and put it on.

18 I don't know whether the city did that or if
19 the private operator of the marina did it, but I
20 mention it for this reason: Say that y'all were
21 developing a park along the river and you wanted to do
22 something like that as the developer. "We want to put
23 out free lifejackets because we think that's a good
24 idea," and the homeowners said, "No, we just don't
25 think that's an expense that's worth it." Could you,

1 as the developer, have said, "Well, we hear you, but
2 we're doing it anyway because we think it's the right
3 thing and the safe thing to do?"

4 A We could have.

5 Q And probably -- might have, right, if you
6 thought it was the right thing to do?

7 A Those kind of questions, you know, in our
8 situation, never came up. Typically, if it was
9 something that should have been done, we did it. It
10 didn't have to be told or didn't have to be discussed
11 with the property owners.

12 Q And could unilaterally decide if you wanted
13 to?

14 A We could have, yes.

15 Q What about the Daniel Island Community
16 Foundation, which I think used to be the community
17 fund, maybe, are you familiar with that?

18 A They're two different entities, and it is
19 confusing, but they're set up with a fee that comes
20 from property sales, and we have committees and board
21 structures that primarily supports the communities,
22 the underserved communities that -- Clements Ferry
23 Road, Cainhoy properties, and there's a little town of
24 Wando that's primarily African American, underserved
25 communities, and these foundations were set up

1 basically to try to provide dollars, and it's several
2 hundred thousand dollars a year gets spent on
3 children's programs and things like that, and that's
4 all done through this, and it's generated from every
5 sale that happens. There's a specific -- I want to
6 think it's a quarter of a point, whatever that number
7 is, it's just paid at closing of a resale, and those
8 funds go into a fund, and we have a separate board and
9 a separate group of people who solicit grants and
10 approve grants and very democratically spread that
11 money out, people and the property owners are invited
12 to suggest applicants, and we get a lot of applicants,
13 but it's been -- in most community associations, most
14 communities around the United States, those funds --
15 it's done in other places but those funds are utilized
16 by the developers to offset his expenses. We've never
17 chosen to do that. We distribute it on a charitable
18 contribution basis.

19 Q It sounds like a worthy organization. Let me
20 ask you this: Bear with me just a moment. Back in
21 2016, remind me what your role was with Daniel Island
22 Company.

23 A I would have been chairman of the board.

24 Q Okay. And do you recall what Matt Sloan's
25 role was?

1 A He would have been president and the chief
2 operating officer.

3 Q Okay. And what about David Crawford?

4 A David was an attorney with Womble Carlyle and
5 did a lot of the POA legal work and served as a board
6 member on several of those associated POA boards.

7 Q Okay. Did David Crawford have a role in the
8 Daniel Island Company?

9 A No.

10 Q Okay. But he did have a role as a board
11 member in some of the POA boards?

12 A The POA, yes.

13 Q And who hired David Crawford as an attorney;
14 was that the Daniel Island Company?

15 A No, it would have been the POA -- I'm not
16 sure when Jane Baker came on board but prior to Jane,
17 there was a young man named Jimmy Bailey, so it was
18 either Jimmy Bailey or Jane Baker would have hired
19 him.

20 Q Now, the control -- the developer control of
21 the various boards you've mentioned, that is by being
22 able -- the developer being able to place its own
23 people in certain numbers on those boards; is that how
24 that works?

25 A I'm not sure it's ever come up. Typically,

1 there were some of the management team. This was true
2 at Kiawah and Amelia Island: Some of the management
3 team typically plays a role and sits in on those
4 boards, just because they've got the credibility and
5 the experience and the ability to make things happen.
6 So yeah, and I'm not sure exactly if it's ever come up
7 before, but I typically have served on those boards.

8 Q And five-person boards is what they were?

9 A Normally, yes.

10 Q So back in -- in my notes, back in 2016,
11 Daniel Island Community Association's board had
12 Matthew Sloan as president; you, Frank Brumley, as the
13 vice president; and David Crawford as secretary and
14 treasurer. Does that sound right?

15 A That sounds correct.

16 Q Okay. And back in 2016, I think y'all were
17 also on the board of Daniel Island Town Association,
18 similar roles or maybe a couple of you flip-flopped,
19 but all three of y'all were on the board?

20 A Probably.

21 Q And it looks like Daniel Island Community
22 Foundation back in 2016 would have been you, Frank
23 Brumley, as president; Matt Sloan as vice president;
24 David Crawford, once again, as secretary and
25 treasurer. Does that sound right?

1 A That sounds right.

2 Q So the same three guys controlling, back in
3 2016, Daniel Island Community Foundation, it has
4 control, Daniel Island Town Association, and it has
5 control of Daniel Island Community Association?

6 A That's correct.

7 Q All right. I'm going to go back to something
8 you said earlier. The City of Charleston didn't want
9 Daniel Island to have any gates, no gates; what do you
10 mean by that? You don't mean baby gates, right?

11 A I mean big, gated communities.

12 Q Gated communities.

13 A Like Kiawah, Wild Dunes, Sea Pines. Yeah.

14 Q All right. So no front gate to keep certain
15 people out and allow others in?

16 A Yeah.

17 Q Okay. But aside from that, you could,
18 obviously, gate off safety hazards. You can have
19 front doors to buildings. You can do all the normal
20 stuff. You just can't selectively restrict access,
21 some people can come in and some people cannot?

22 A I'm not sure it was ever really ever defined.
23 That was just my understanding with Joe Riley, and he
24 requested it, and that's what we did.

25 Q The public can come in?

1 A Absolutely.

2 Q As long as the public can come in, you can
3 also make sure the public is safe, right?

4 A That's correct.

5 Q You can have a gate at the top of a ramp that
6 goes down to a dock, if you want to?

7 A I assume. As I said, it was never really
8 discussed, but yes, you would think that's logical.

9 Q Right. That's not the kind of thing he was
10 trying to prevent. He was trying to prevent another
11 gated island where only the rich people can go in and
12 everybody else has to stay out?

13 A That's correct.

14 Q Okay. Mr. Brumley, I think you mentioned
15 that you didn't have a whole lot of input into the
16 construction of the Daniel Island Childrens Park?

17 A Not a lot, I didn't have any.

18 Q Didn't have any, okay. Are you aware of who
19 might have, aside from -- well, let me not assume.
20 Would Matt Sloan have had input?

21 A He would have had input, yes.

22 Q And what about David Crawford?

23 A No.

24 Q So Matt Sloan would have, all right. Are you
25 aware of anyone besides Matt Sloan who would have had

1 input into the construction of the Childrens Park and
2 the design of the Childrens Park?

3 A Whoever was the CEO of the POA at the time
4 would have had involvement. They were designing it to
5 provide access for children, basically, of the island
6 and the general public, and so those people who were
7 trying to define what those -- that amenity, how it
8 was to be designed, would have had the input to it.

9 Q In your role with the Daniel Island Company
10 on these various other entities, did you give anyone
11 any instructions with respect to safety standards?

12 A No.

13 Q What about with respect to the Park Day event
14 in November of 2016, would you have had any
15 involvement in that?

16 A No, none of the planning, and I think I've
17 attended but one Park Day in 20 years.

18 Q So you would not have given any instructions
19 for safety standards, policies, or procedures for that
20 event?

21 A I was never asked to provide any.

22 Q Okay. Mr. Brumley, I don't want to take up
23 any more of your time. I think I have everything that
24 I need. I appreciate it. Mr. Sobocinski might have
25 some questions, and of course, Mr. Barfield might have

1 some follow-ups.

2 MR. SOBOCINSKI: I don't have any questions.
3 Thanks for your time.

4 RE-EXAMINATION

5 BY MR. BARFIELD:

6 Q I just want to -- just real quickly, I forgot
7 to ask earlier: All of these entities that have been
8 mentioned today, do they all maintain separate meeting
9 minutes when they have meetings?

10 A Yes.

11 Q Okay. Do they all maintain separate budgets?

12 A Yes.

13 Q Okay. And we've established that the Daniel
14 Island Town Association was funded -- its source of
15 revenue was assessments from the property owners, is
16 that true of all of the various --

17 A For each one.

18 Q -- associations?

19 A Yes.

20 Q Okay. And did they all maintain separate
21 insurance?

22 A That's my understanding.

23 Q Okay. All right. That's all I have. Thank
24 you.

25 A Thank you, Michael.

1 RE-EXAMINATION

2 BY MR. JEFFERIES:

3 Q Real quick, just to follow up just to get a
4 few things in order here. I think, if I understand
5 what you said earlier, when Daniel Island Company
6 decided to develop Daniel Island, y'all chose the
7 method that Charles Fraser had used which gave the
8 developer additional control, enabled y'all to set
9 standards and to realize a greater profit on the lots
10 than you would have had if you just sold them to the
11 public; is that fair to say?

12 A Yeah, it's fair to say, but it was never
13 given it any thought, candidly. We didn't go and say,
14 "Let's do it the Charles Fraser way because we'll make
15 more money," that was never a part of any decision; it
16 was the successful model nationally.

17 Q Because it was so obvious?

18 A It was obvious. It looked good. It had a
19 lot of -- it had won a lot of awards throughout the
20 country, and so, you know, we followed what seemed to
21 be the smart thing to do.

22 Q Right, because after somebody figured that
23 out, only a fool would say, "Let's do it the other way
24 and make less money?"

25 A Probably.

1 Q Part of that methodology of Charles Fraser
2 was to have a set of codes and covenants and
3 restrictions in the master deed and a property owners'
4 association?

5 A Correct.

6 Q And that property owners' association would
7 fall under the control of the developer initially?

8 A Correct.

9 Q And that developer is Daniel Island Company?

10 A Uh-huh.

11 Q And eventually, that association would be
12 turned over to property owner control; is that
13 correct?

14 A Eventually.

15 Q Okay. But as of November of 2016, that had
16 not occurred with any --

17 A I don't believe so, no.

18 Q Okay. So in November -- prior to and in
19 November of 2016, all those property owners'
20 associations were still under the control of the
21 developer of Daniel Island Company?

22 A Yes.

23 Q Thank you.

24 A Uh-huh.

25 MR. BARFIELD: All right. We're done.

(Deposition concluded at 10:52 a.m.)

* * *

C-E-R-T-I-F-I-C-A-T-E

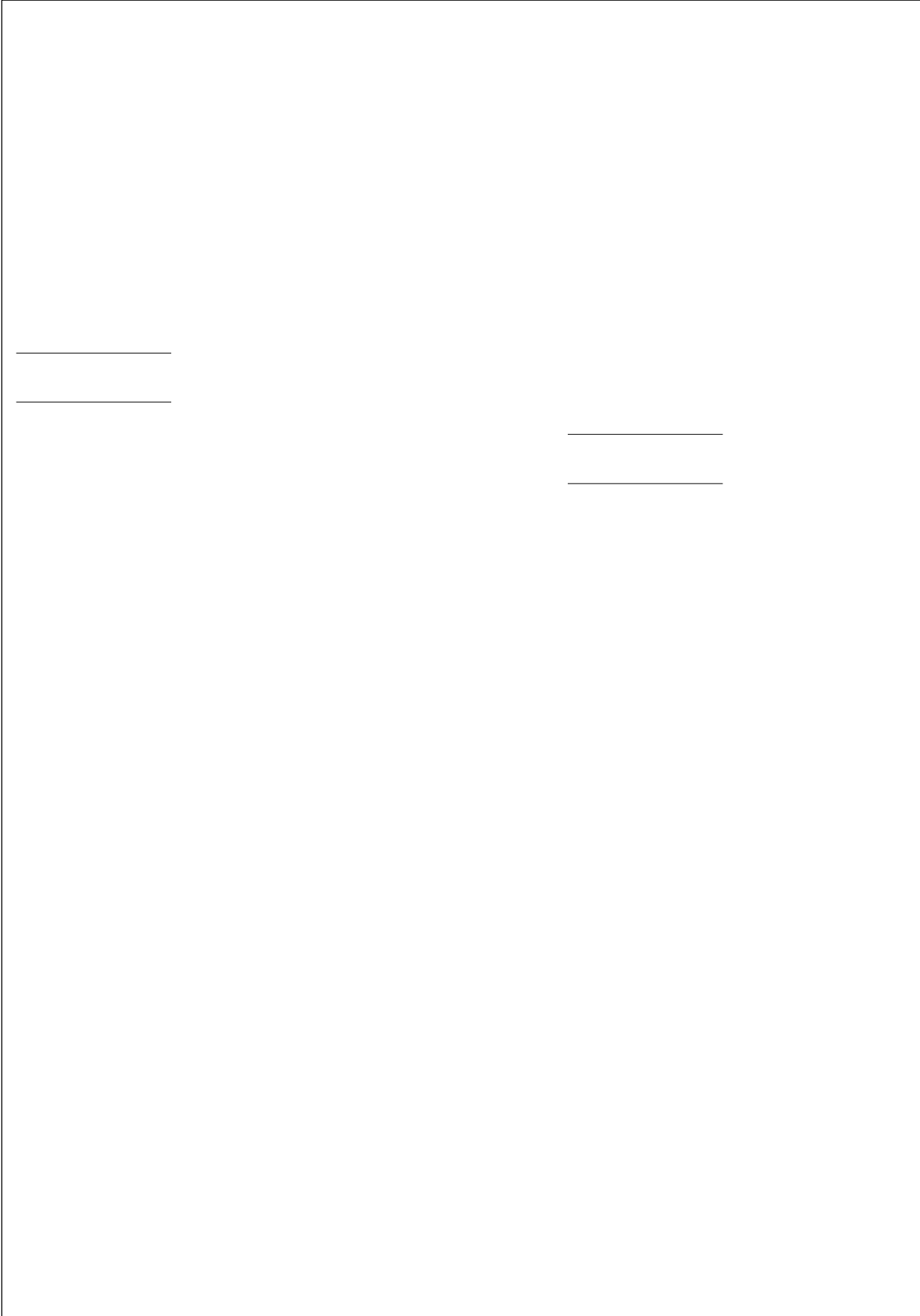
I, Lisa A. McCarn, Professional Court Reporter and Notary Public for the State of South Carolina, certify that the witness in the foregoing deposition was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the deposition was taken at Barnwell Whaley, 211 King Street, Suite 300, Charleston, South Carolina; that the foregoing pages constitute a true and accurate transcript of the deposition proceeding.

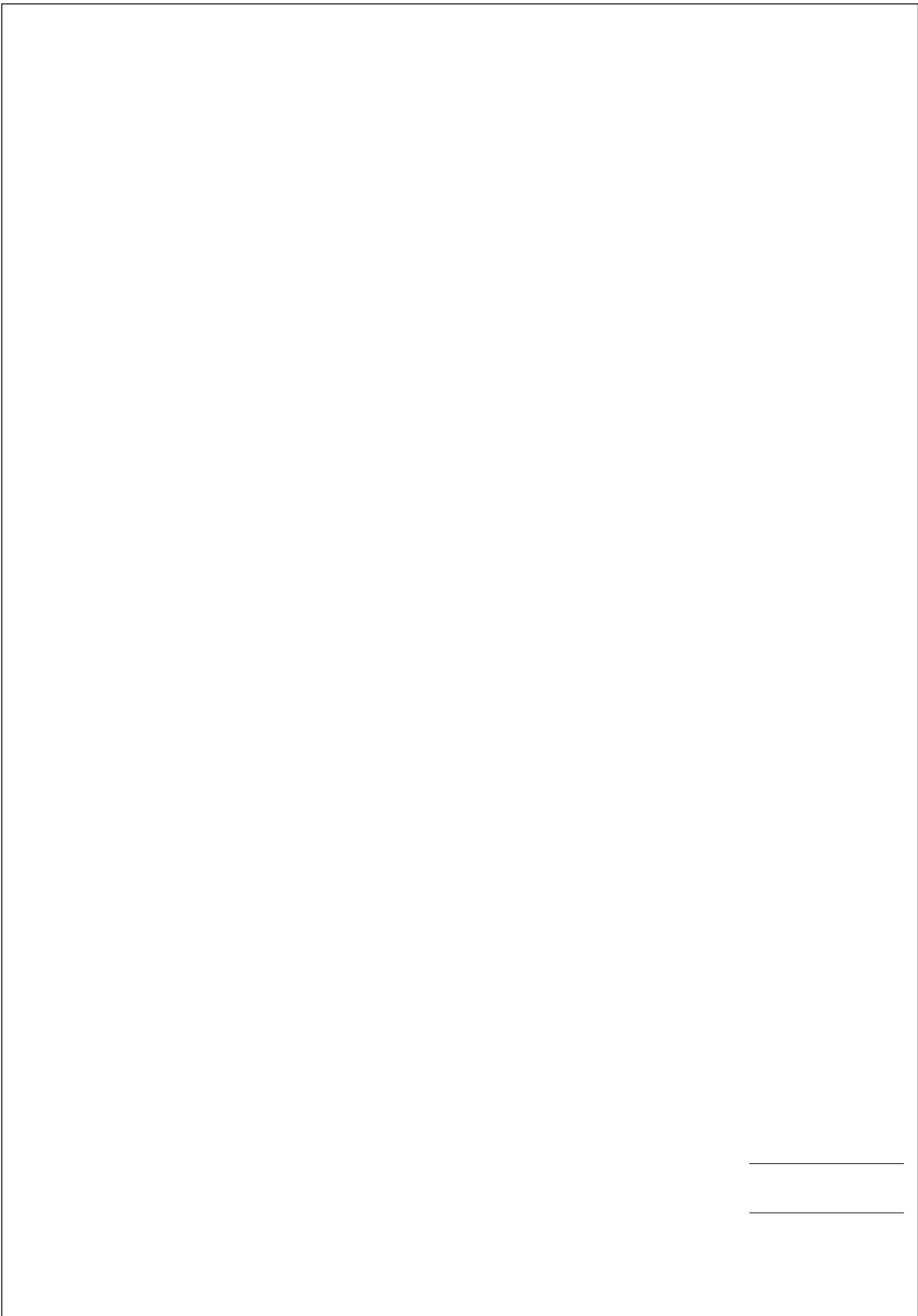
I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

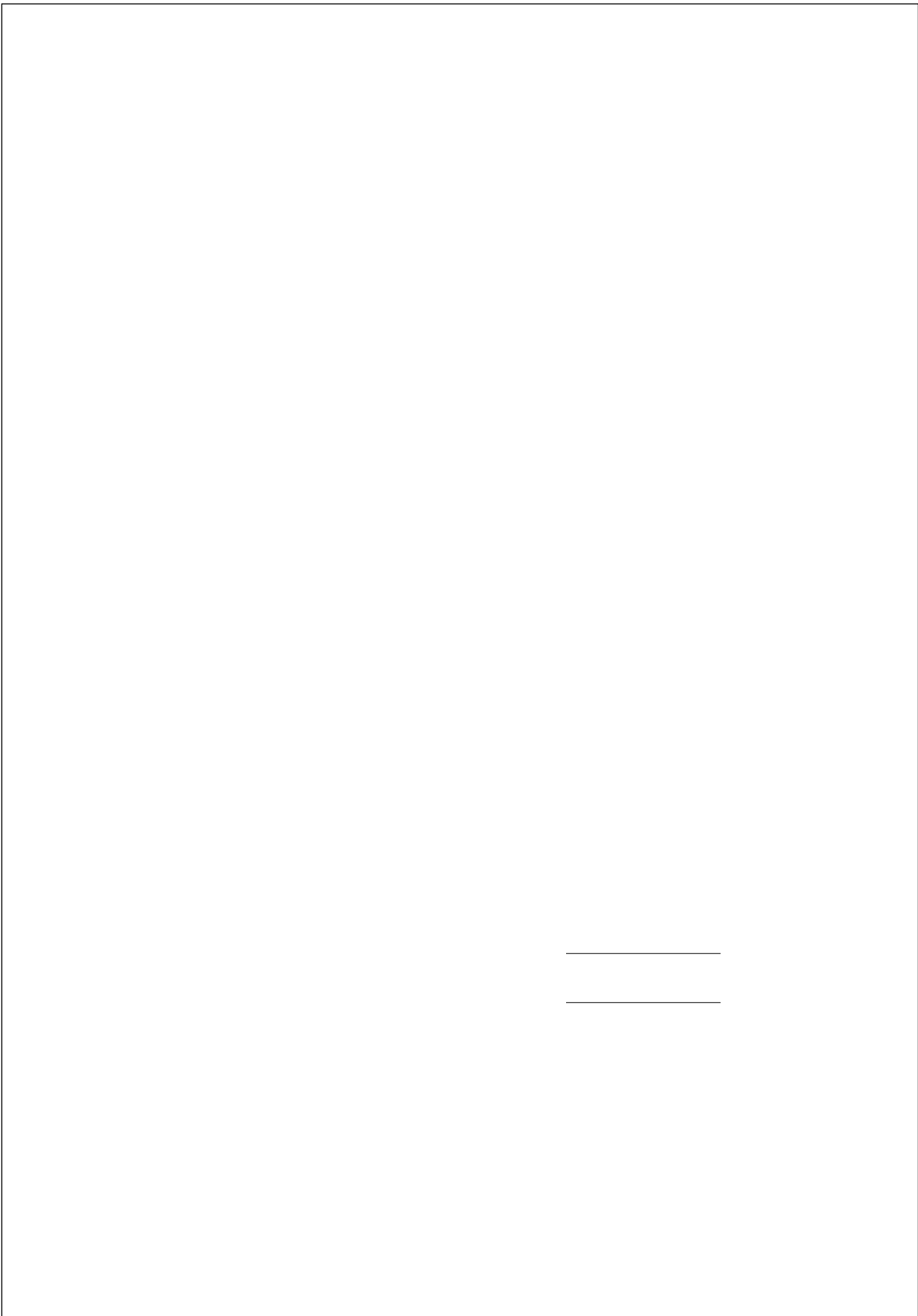
IN WITNESS WHEREOF I have hereunto set my hand and seal this 18th day of May, 2022.

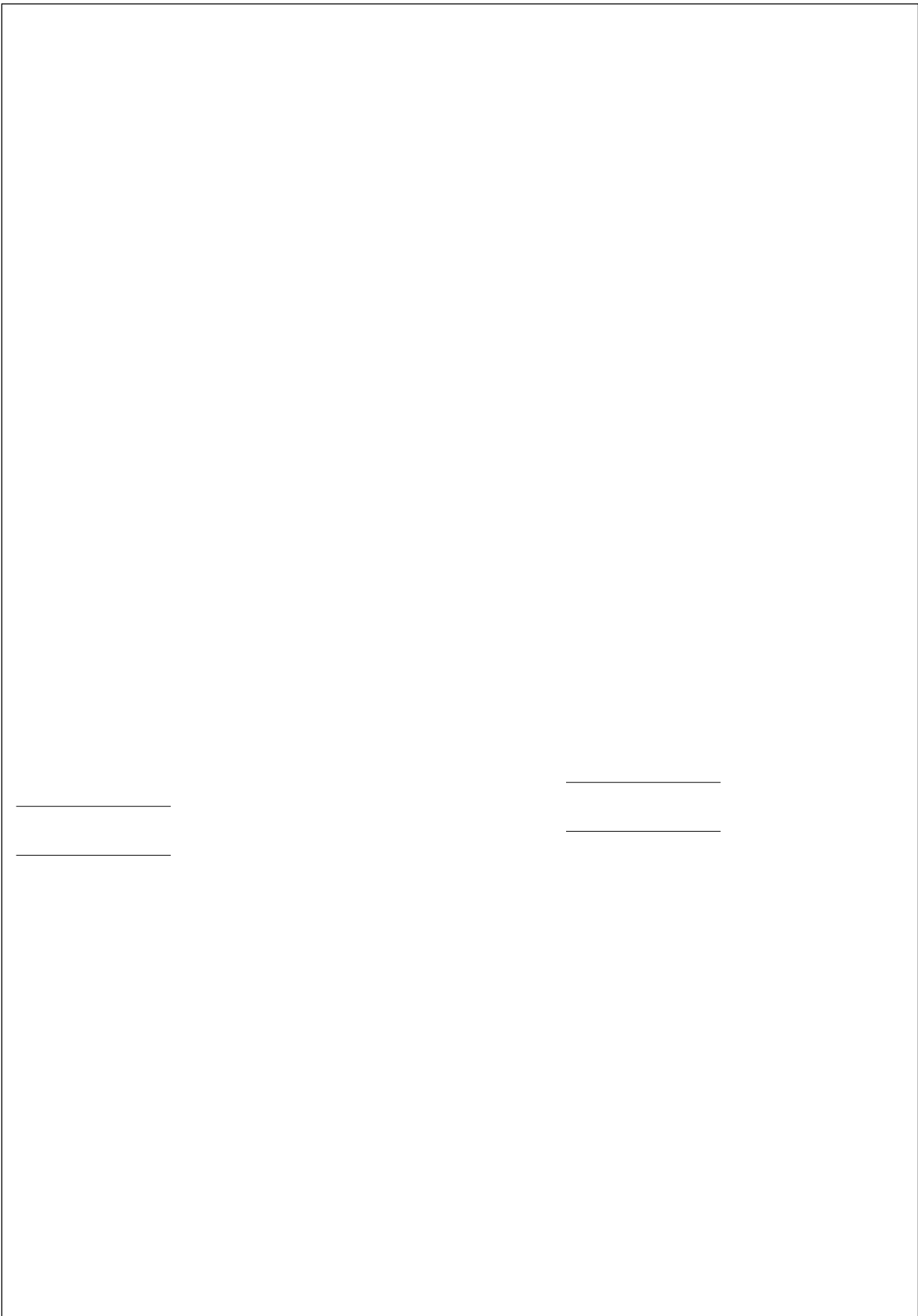


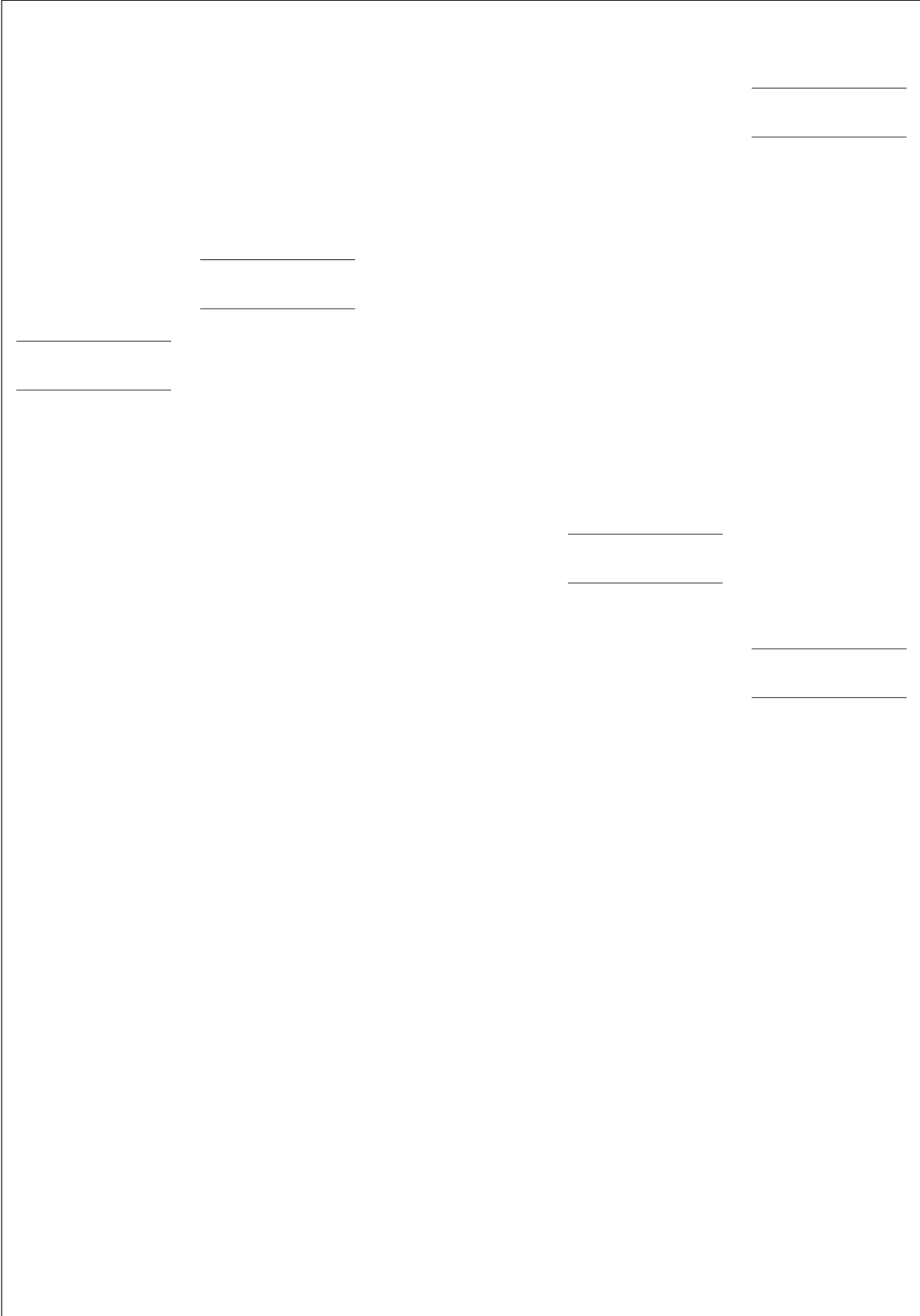
Lisa A. McCarn
Notary Public for South Carolina
My Commission Expires:
April 30, 2025

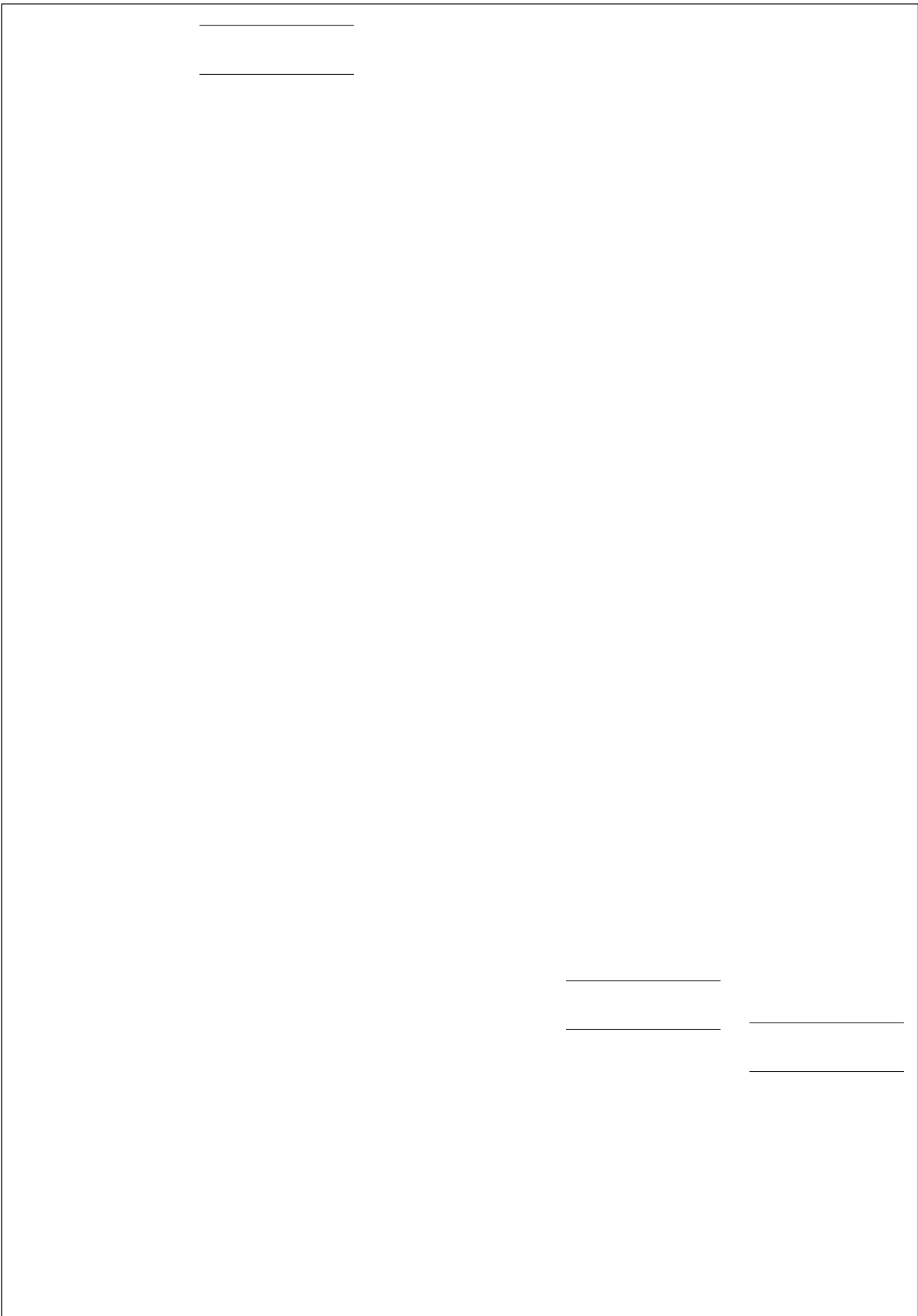


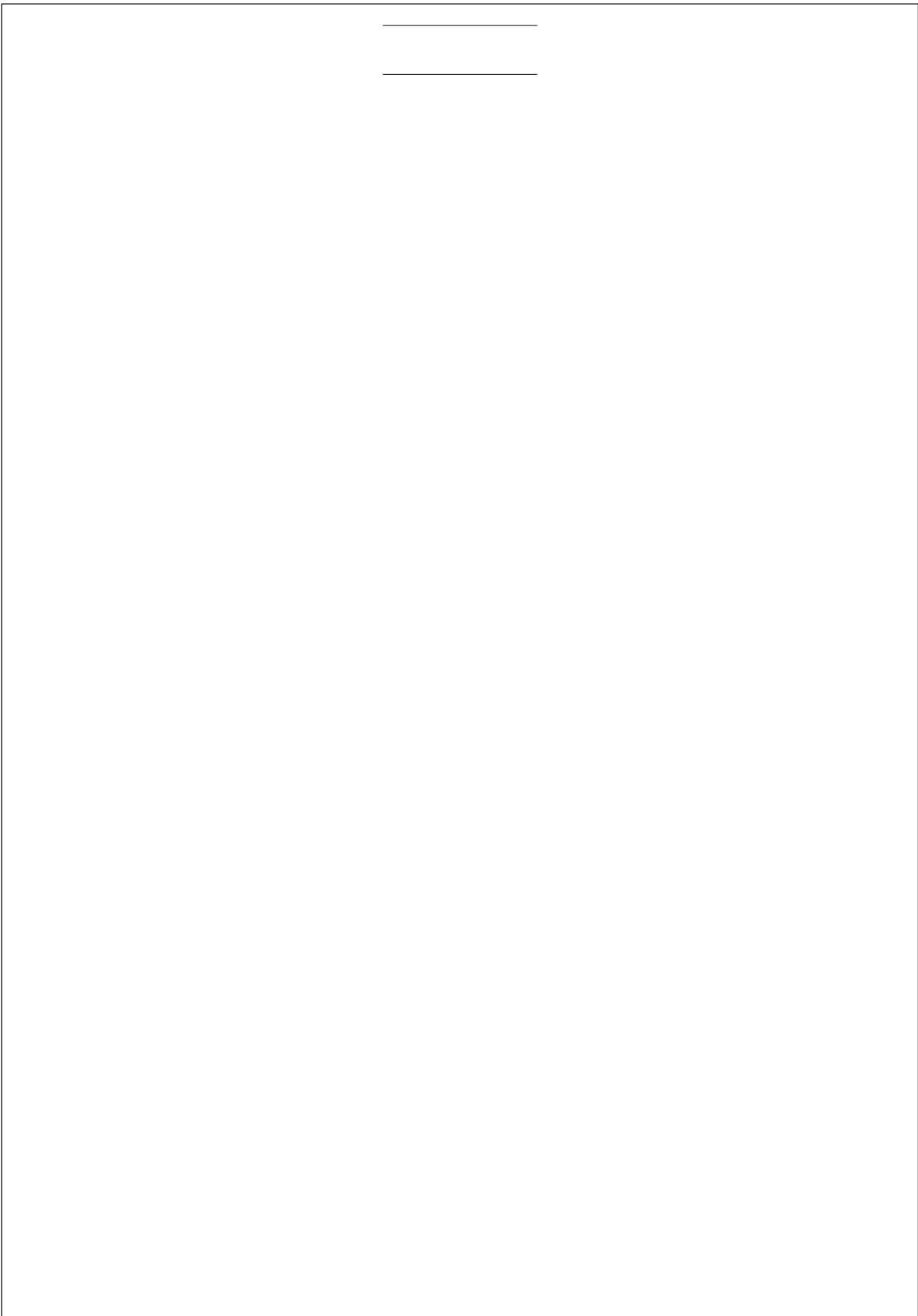


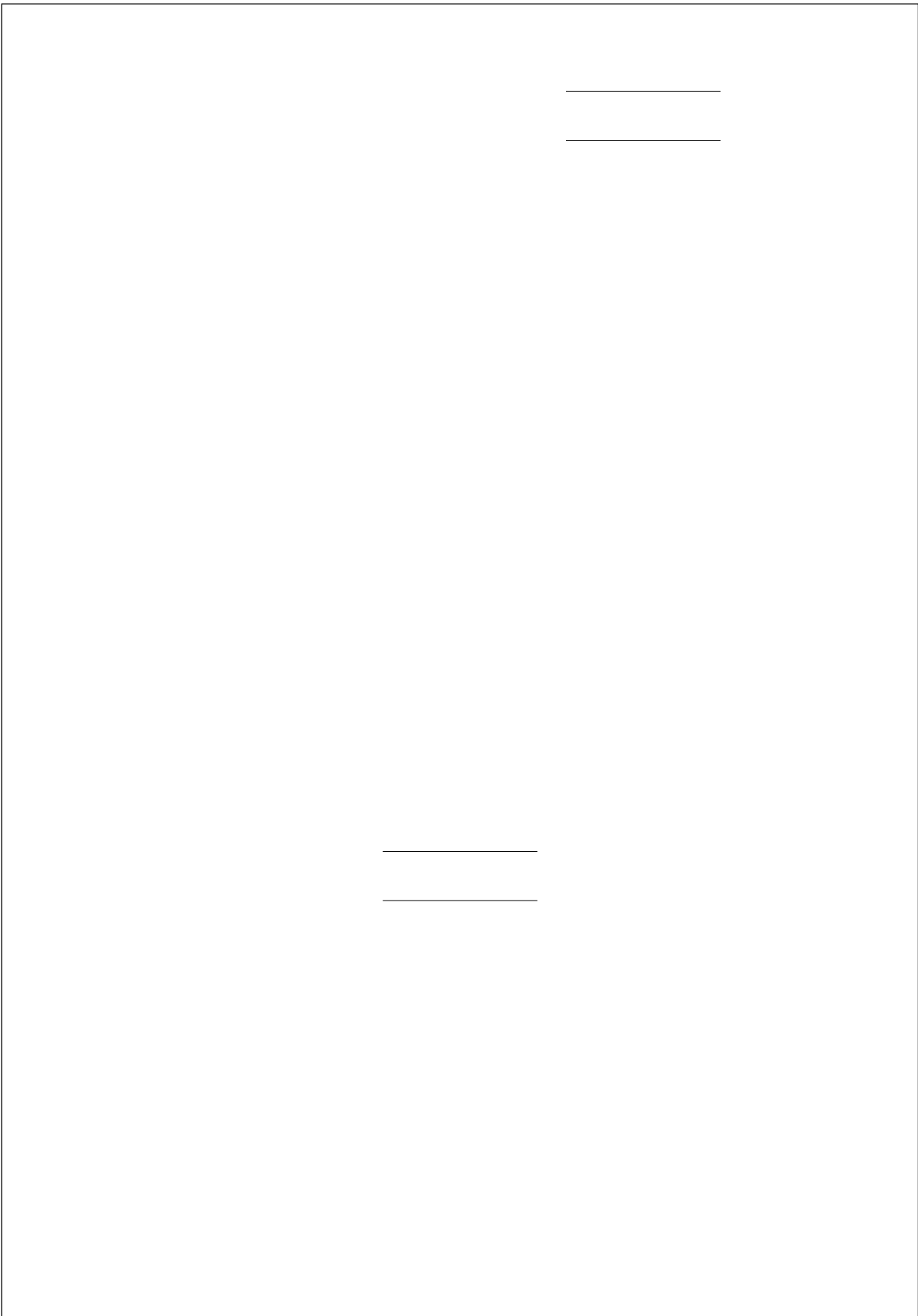


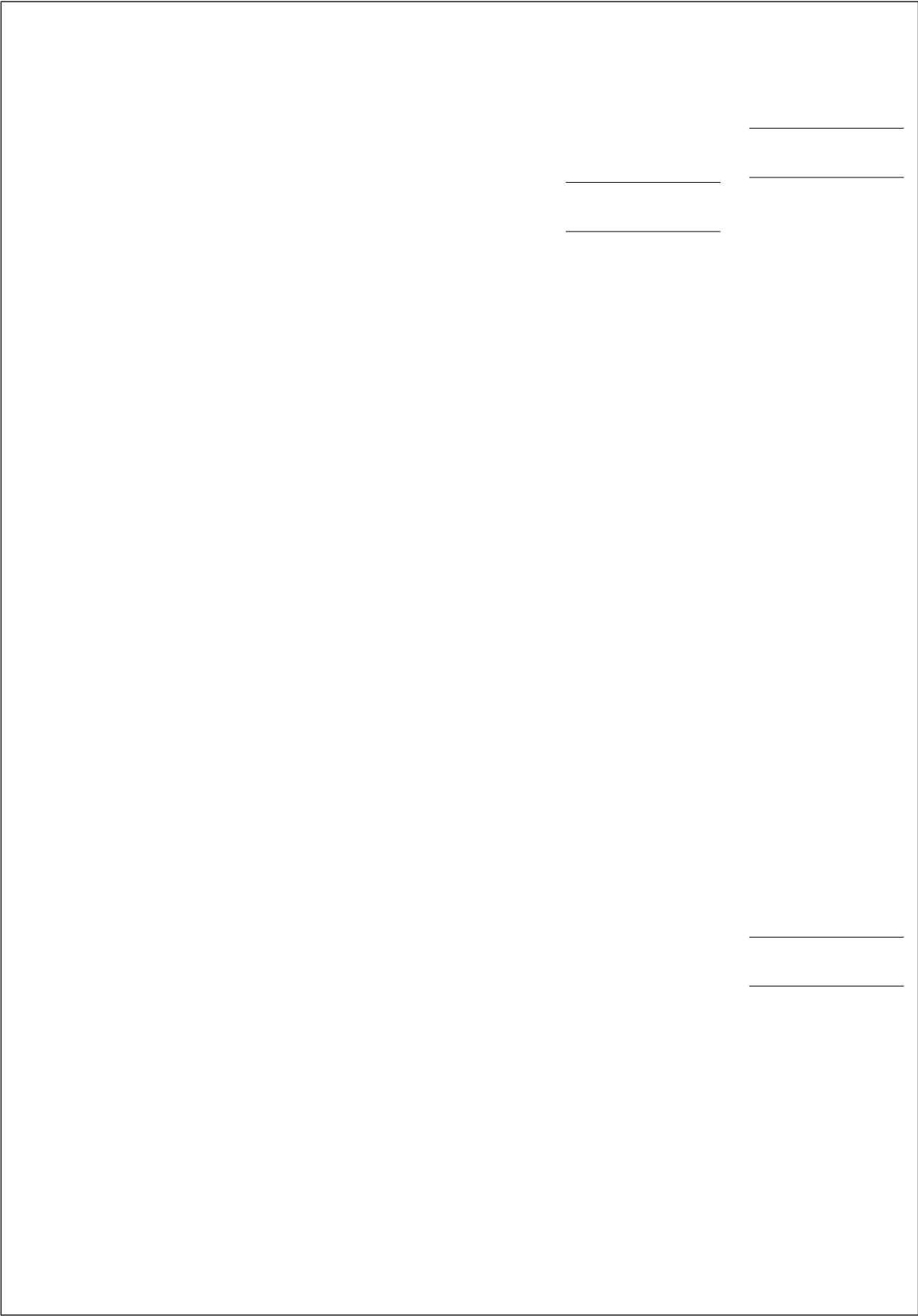


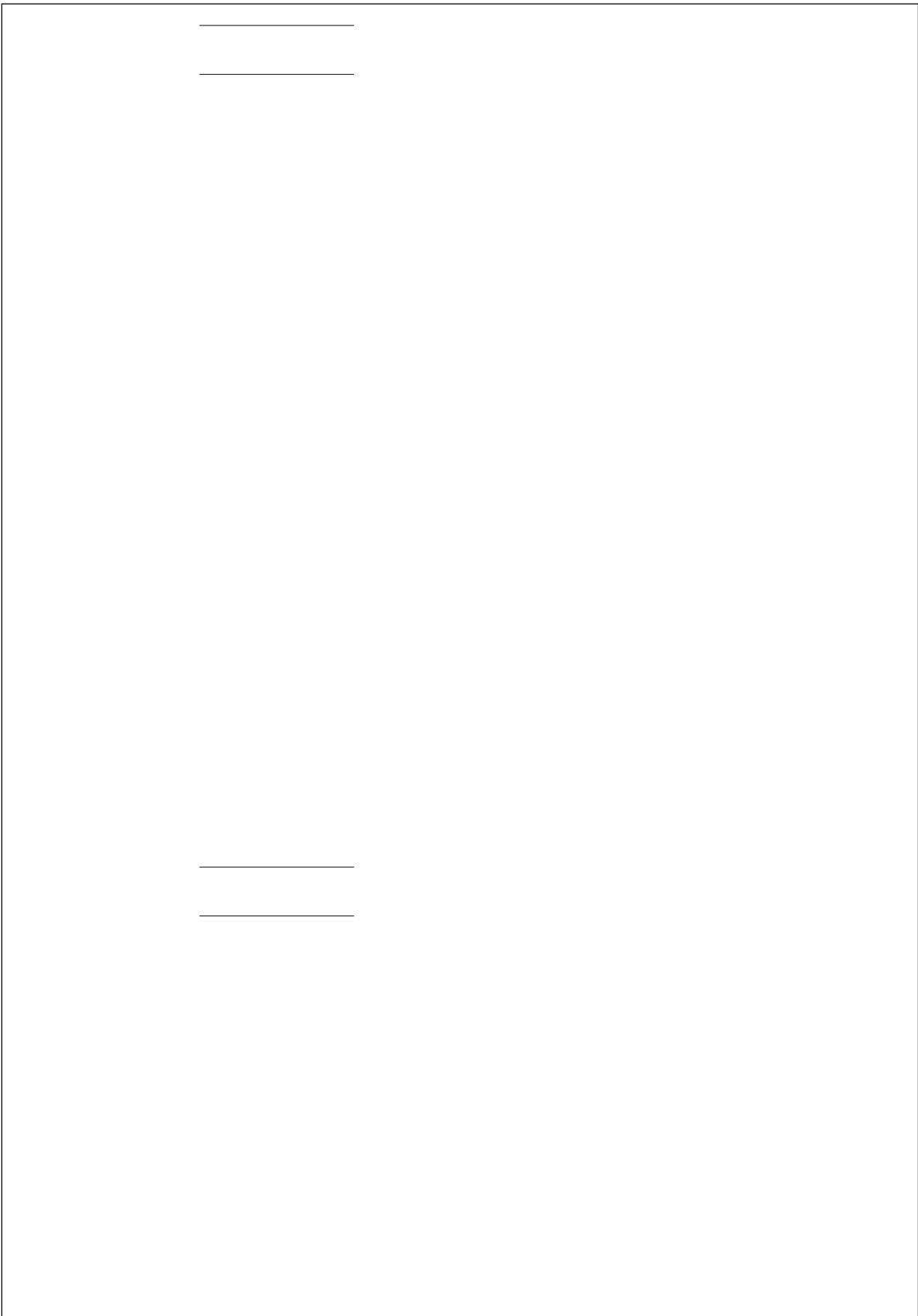












IN THE STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-08-02238

MATTHEW ZETZ,

Plaintiffs,

v.

DANIEL ISLAND COMPANY, INC.;
DANIEL ISLAND COMMUNITY
FOUNDATION, INC.; DANIEL
ISLAND TOWN ASSOCIATION, INC.;
DANIEL ISLAND COMMUNITY
ASSOCIATION, INC.; and MGR
RESOURCES, INC. d/b/a
MOONLIGHTING LANDSCAPE
LIGHTING SYSTEMS,

Defendants.

**PLAINTIFF’S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
DEFENDANT DANIEL ISLAND
COMPANY, INC.’S MOTION FOR
SUMMARY JUDGMENT**

TO THE HONORABLE COURT AND ALL PARTIES OF RECORD:

COMES NOW the Plaintiff, Matthew Zetz, by and through undersigned counsel, and does submit this supplemental memorandum in opposition to Defendant Daniel Island Company, Inc.’s (herein “Defendant”) Motion for Summary Judgment.

INTRODUCTION

On August 24, 2022, this matter came before Your Honor on Defendant’s Motion for Summary Judgment. Your Honor requested supplemental briefing on the issue of a party’s duty toward a plaintiff injured by defective conditions on premises which the party did not own, but rather controlled, and on the facts which establish control in this case.

CASE LAW

As the following authority makes clear, South Carolina law permits a party injured on premises to sue an individual who controlled, but did not own, the premises. Specifically, in all the following cases, the court allowed a party injured on a merchant's premises to sue a manager. “. . . [T]he touchstone of the inquiry is the extent of the manager's control over the premises.” Patterson v. Wal-Mart Stores E. LP, No. 9:20-CV-1445-DCN, 2020 WL 3056084, at *3 (D.S.C. June 9, 2020).

- “The principles governing liability in a case of this kind are very simple and well settled. One who *operates* a mercantile establishment is not an insurer of the safety of those who enter his store but he does owe them the duty of exercising ordinary care to keep the aisles, passageways, and such other parts of the premises as are ordinarily used by customers in transacting business in a reasonably safe condition.” Richards v. Great Atl. & Pac. Tea Co., 226 S.C. 119, 122, 83 S.E.2d 917, 918 (1954) (emphasis added) (citations omitted) (Stukes, J.).
- “Plaintiffs allege Defendant Schofield was the General Manager of the Omni and exercised significant *control* over the premises and hotel employees. . . . [T]he Court finds that Plaintiffs state plausible claims for negligent supervision/training against Defendants Omni and Schofield.” Curry v. Omni Hotels Mgmt. Corp., No. CV 9:21-3587-RMG, 2022 WL 528195, at *3 (D.S.C. Feb. 17, 2022) (emphasis added) (Richard M. Gergel, United States District Judge).
- “A person who operates a commercial establishment but is neither an owner nor a lessee may nonetheless have a duty to exercise reasonable care to maintain safe premises. Liability in such a situation depends upon *control* of the premises, not necessarily ownership.” Bryant v. Hodges Mgmt. Co., Inc., No. 9:20-CV-04217-DCN, 2021 WL 2003188, at *3 (D.S.C. May 19, 2021) (internal citations omitted) (David C. Norton, United States District Judge).
- “Under South Carolina law, a manager or employee can be personally liable, in addition to the store owner, for injuries that a customer sustains in the store if the manager or employee exercises a substantial level of *control*.” Williams v. Walmart Stores E., LP, No. 5:20-CV-1090-JFA, 2021 WL 1616174, at *3 (D.S.C. Apr. 26, 2021) (emphasis added) (Joseph F. Anderson, Jr., United States District Judge).
- “Plaintiff claims that Alley has extensive *control* of the property because she is the senior-most manager in charge of the Harbison Branch and was told after her accident that Alley was the ‘person in charge’ at the Harbison Branch. Consequently, a jury could find that Alley had a duty to inspect and maintain the property.” Laing v. Truist Bank, No. 3:20-CV-01134-JMC, 2020 WL 4462977, at *4 (D.S.C. Aug. 4, 2020) (emphasis added) (internal citations omitted) (J. Michelle Childs, United States District Judge).

- “. . . [T]he touchstone of the inquiry is the extent of the manager's control over the premises.” Patterson v. Wal-Mart Stores E. LP, No. 9:20-CV-1445-DCN, 2020 WL 3056084, at *3 (D.S.C. June 9, 2020) (emphasis added) (David C. Norton, United States District Judge).
- “[The plaintiff] has clearly alleged that, as manager for the entire store, Worley exerted a high level of **control** over the premises. It is conceivable that Hardrick could demonstrate . . . that Worley did exercise ‘such control of the premises so as to impose a duty to reasonably inspect the premises’” Hardrick v. Wal-Mart Stores Inc., No. 9:18-CV-01345-DCN, 2018 WL 3867805, at *3 (D.S.C. Aug. 15, 2018) (emphasis added) (David C. Norton, United States District Judge).
- “. . . [P]otential liability hinges on how much ‘**control**’ a party had over the premises, not simply whether they own it.” Paetzold v. Walgreen Co., No. 2:17-CV-02883-DCN, 2018 WL 718962, at *3 (D.S.C. Feb. 6, 2018) (emphasis added) (David C. Norton, United States District Judge).
- Premises “liability depends upon **control**, rather than ownership of the premises.” Cook v. Wal-Mart Stores, Inc., No. 3:17-CV-1391-DCC, 2018 WL 345085, at *3 (D.S.C. Jan. 10, 2018) (emphasis added) (Donald C. Coggins, Jr., United States District Judge).
- “[A] store manager can be held personally and jointly liable with the store itself for an alleged act of negligence,” because “a store manager by virtue of his position has a high level of **control** over the store.” Jones v. Ringer, No. 4:17-CV-02182-RBH, 2017 WL 5077870, at *3 (D.S.C. Nov. 6, 2017) (emphasis added) (citations omitted) (R. Bryan Harwell, United States District Judge).
- Liability for failing to remedy a “dangerous condition” “depends upon **control** of the premises, not ownership.” Griggs v. Dollar Gen. Corp., No. 4:15-CV-04600-RBH, 2016 WL 70017, at *5 (D.S.C. Jan. 6, 2016) (emphasis added) (citations omitted) (R. Bryan Harwell, United States District Judge).
- Premises “liability depends upon **control** of the premises.” Doe v. OwenMcClelland LLC, No. CIV.A. 8:11-01008, 2012 WL 667828, at *3 (D.S.C. Feb. 29, 2012) (emphasis added) (citations omitted) (J. Michelle Childs, District Judge).
- “ ‘[B]y virtue of [her] position,’ defendant Rana has a ‘high level of **control** over the store.’ This clearly leaves open the possibility that she has the authority to search for and discover, or warn customers against, defects in the Wal-Mart store parking lot.” Mobley v. Wal-Mart Stores, Inc., No. CIV. 209CV3019DCN, 2010 WL 503101, at *5 (D.S.C. Feb. 8, 2010) (emphasis added) (internal citations omitted) (David C. Norton, Chief Judge).
- “[S]tore managers[’]” “[l]iability . . . depends on **control**, rather than ownership, of the premises.” Owens v. Dolgencorp, Inc., No. CV 5:08-0467-MBS, 2008 WL 11348726, at

*2 (D.S.C. Oct. 22, 2008) (emphasis added) (internal citations omitted) (Margaret B. Seymour, United States District Judge).

- Premises “liability depends upon **control**, rather than ownership, of the premises.” White v. Davis, No. CV 1:07-0295-MBS, 2007 WL 9736212, at *1 (D.S.C. July 17, 2007) (emphasis added) (Margaret B. Seymour, United States District Judge).
- Premises “liability . . . is dependent on the **control**, rather than ownership of the premises.” *Id.*, 44 S.E.2d at 317. Cook v. Lowe's Home Centers, Inc., No. 5:06-2130 RBH, 2006 WL 3098773, at *3 (D.S.C. Oct. 30, 2006). (emphasis added) (citations omitted) (R. Bryan Harwell, United States District Judge).

In fact, this firm has in numerous cases sued a store and its general manager. See:

- Katie Wilson v. Brad Lewis, Roses, et al.
- April Jones v. Wal-Mart Stores, Inc., et al.
- Michael Casey v. Spartanburg Auto Acquisitions, Inc. & William Redford, Jr.
- Howard Radford v. Embassy Suites
- Germaine Laing v. Truist Bank, et al.
- Medina Bright-Jamison v. Vacation Rental Pros Property Management, LLC

On a slightly different note, South Carolina case law definitely holds that in a case involving control versus ownership, both the controller and the owner can be corporations or other large entities.

- Even though the appellant was the corporate sub-lessee’s invitee, the commercial landlord did not have a duty “to protect her from the criminal acts of third parties inside the leased premises, an area which [the landlord] did not **control** or possess.” Jackson v. Swordfish Invs., L.L.C., 365 S.C. 608, 610–12, 620 S.E.2d 54, 55–56 (2005) (emphasis added) (Burnett, J.).
- The lessor had no duty to discover and warn of the defect because “[a]fter the premises are surrendered in good condition, the lessor [a state-owned utility company] typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee [a corporation],” held that the lessor had no duty to discover and warn of the defect. Byerly v. Connor, 307 S.C. 441, 442–43, 445, 415 S.E.2d 796, 797–99 (1992) (Harwell, C.J.)

ARGUMENT

The Developer absolutely maintains control until he transfers. (Frank Brumley Depo, 21:15-16). When Mr. Brumley was asked whether or not the property owners’ association fell under the control of the developer initially, his response was that that was correct. (Frank Brumley

Depo, 32:6-8). Mr. Brumley said that as of November of 2016, the developer still remained control because it had not shifted to the property owners' association at that time. (Frank Brumley Depo, 32:11-16).

Matthew Sloan admitted that Daniel Island Company largely owned and developed parks and then turned them over to other entities. (Matt Sloan Depo, 10:13-16). When Mr. Sloan was asked if the park had been turned over to one of the property owners' associations he replied that would have been turned over to the Daniel Island Town Association. (Matt Sloan Depo, 14:20-25). Mr. Sloan admitted that the developer controls up to a certain point and that Daniel Island Town Association has a turn-over date of 2025 (Matt Sloan Depo, 19:9-19). He also admitted that the town association votes were controlled by Daniel Island Company officers, specifically himself and Frank Brumley. (Matt Sloan Depo, 50:9-11). Furthermore, Mr. Sloan explained during his deposition that all three associations were efficient because they have to work and coordinate together. (Matt Sloan Depo, 70:19-25).

CONCLUSION

A plethora of case law details the duty of a party who controls but does not own the defective premises. Furthermore, numerous admissions reveal control in this case.

WHEREFORE Plaintiff respectfully requests that this Court DENY Defendant Daniel Island Company, Inc.'s Motion for Summary Judgment in its entirety.

[SIGNATURE ON FOLLOWING PAGE]

Dated: August 25, 2022
Charleston, South Carolina

Respectfully Submitted,

POULIN, WILLEY, ANASTOPOULO, LLC

/s/Lane D. Jefferies

Lane D. Jefferies (Bar No. 101764)

Eric M. Poulin (Bar No. 100209)

Roy T. Willey, IV (Bar No. 101010)

32 Ann Street

Charleston, SC 29403

P: (843) 614-8888

F: (843) 973-8971

E: eric@akimlawfirm.com

roy@akimlawfirm.com

cld@akimlawfirm.com

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A No. 2017-CP-08-02238
Matthew Zetz,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DANIEL ISLAND COMPANY, INC.’S
	)	SUPPLEMENTAL MEMORANDUM IN
Daniel Island Company, Inc., Daniel Island	)	SUPPORT OF ITS MOTION FOR
Community Foundation, Inc., Daniel Island	)	SUMMARY JUDGMENT
Town Association, Inc., Daniel Island	)	
Community Association, Inc., and MGR	)	
Resources, Inc. d/b/a Moonlighting	)	
Landscape Lighting Systems,	)	
	)	
Defendants.	)	

The Daniel Island Company, Inc. (“DIC”), by and through the undersigned counsel, hereby submits this Supplemental Memorandum in Support of Its Motion for Summary Judgment.

The undisputed facts relevant to Daniel Island Company’s Motion for Summary Judgment are as follows:

Daniel Island Company (“DIC”) is a for profit corporation. It was the original developer entity for the entirety of Daniel Island. As part of the master plan to develop the island, the City of Charleston mandated a number of parks and greenspaces be built and be open to the public. The City also mandated that all such parks must be conveyed to one of the nonprofit property owners’ associations on the island or to the City itself. The Children’s Park where the Plaintiff was injured was constructed by DIC in 1999 and conveyed to the Daniel Island Town Association immediately upon its completion, per the City’s requirements. DITA has been the sole owner of the Children’s Park since that conveyance. DITA, a South Carolina non-profit corporation, is managed by a board of directors and operated in accordance with a Master Deed. DIC, as the declarant entity listed in the DITA Master Deed, has the right to appoint DITA’s directors until a given number of properties

with that association have been sold to third party owners, at which time its board members will be elected from the association's members.

The Plaintiff's Argument is Fatally Flawed

The Plaintiff's argument hinges on a single word: "control." He cites to myriad cases that are factually inapposite to the case at bar. All of the cases cited by the Plaintiff are basic premises liability cases. Not one of them comes close to addressing, much less refuting, the crux of DIC's grounds for summary judgment.

The park in which the Plaintiff was injured was owned by a corporation, DITA. Corporations exist for one basic purpose, to shield their officers, directors, and shareholders from individual liability. *See Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 280 (2018) ("[C]orporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that."); *Hunt v. Rabon*, 275 S.C. 475, 272 S.E.2d 643 (1980) ("Generally the reason for the creation of a corporation is to limit liability. While there are instances in which directors and/or trustees and officers may be personally liable, an officer or a director of a corporation is not, merely as a result of his standing as such, personally liable for torts of corporate employees."). The only way to legally nullify that protection is to pierce the corporate veil on the vertical axis or seek to have entities amalgamated on the horizontal axis. *See Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008) ("If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons. The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied."); *Walbeck v. I'On Co., LLC*, 426 S.C. 494, 528, 827 S.E.2d 348, 366 (Ct. App.

2018) (“the requirements for the single business enterprise theory as adopted by our supreme court overlap with the *Sturkie* requirements for piercing the corporate veil. The single business enterprise theory does not require a showing of the corporate defendants' failure to observe corporate formalities. However, the theory dovetails with the second prong of the *Sturkie* test, i.e., an element of injustice or fundamental unfairness, to place accountability where it belongs.”).

The Plaintiff has conceded that he cannot prevail under either theory in this case. However, the Plaintiff may not defeat summary judgment by simply ignoring the protections afforded by DITA’s status as a corporation. In fact, the Plaintiff argues that he has the right to look beyond DITA as an entity AND beyond that corporation’s own directors and pursue his claims for premises liability against DIC, a separate corporate entity that merely appoints DITA’s directors.

“Control” is not a word with a single legal definition. In the context of horizontal property regimes, master deeds frequently refer to a “declarant control period.” That is simply common parlance for the time during which the original developer of a community may appoint the board members of a property owners association it has formed. That said, if proper corporate formalities are observed, the declarant does not actually exercise direct operational control over the POA, much less the common elements that are owned by its members. In the context of the kinds of premises liability cases upon which the Plaintiff relies, “control” is used as a way to describe the circumstances under which a legal duty arises to protect occupants and visitors to a property. That is a very different analysis than what is appropriate to examine the relationships between separate corporate entities.

In this case, one must go through each link in the chain: DIC selects the board of DITA. DITA’s board makes upper-level decisions for that entity. DITA’s employees and vendors carry out those decisions. The Children’s Park is one of the common elements owned by the many

property owners that actually own all of the property that comprises DITA. An injury occurred in that park, allegedly because of inadequate lighting. The Plaintiff would have the Court agree that there is legal support for the notion that DIC has sufficient control over the park to create a legal duty in that entity and utterly ignore its corporate veil rather than going through the trouble of piercing it. What's more, the Plaintiff's theory of negligence as to DIC is based on allegations of omissions rather than commission. That is, the Plaintiff contends that DIC had control over the park and failed to reasonably light it. That argument is quite the counterpoint to what might typically be argued to support a case for veil piercing or amalgamation. In such a case, a plaintiff would surely wish to point to active management of a piece of property by an entity that is closely affiliated with the entity that actually owns the property. In this case, the Plaintiff is attempting to show that the lack of active interference in the management of the Children's Park by DIC is somehow proof that DIC is liable for Plaintiff's injuries.

Finally, it is worth pointing out that while the Plaintiff elected to pursue DIC rather than the board members of DITA, his theory of the case would certainly expose those individuals to liability. A short time from now, complete control of DITA will be turned over to a board elected by its members. Those board members will be volunteers who have decided to serve the association. If the Court adopts the Plaintiff's fictional control standard, such individuals will always be exposed to personal liability for the actions and omissions of the entities on whose boards they serve. One can imagine the chilling effect such exposure would create for such individuals' willingness to run for seats on non-profit boards.

CONCLUSION

DIC is entitled to summary judgment because there is absolutely no evidence in the record that it had direct control over the property at which the Plaintiff was injured. In order to make a

case against DIC, the Plaintiff must first pierce the corporate veil of DITA. However, doing so would expose only the directors of DITA to liability. In order to extend liability up another rung of the ladder, the Plaintiff would have to show some improper arrangement between DITA's board members and DIC. Alternatively, the Plaintiff could show that DIC and DITA are collectively liable under a corporate amalgamation theory. However, there is no evidence whatsoever in the record to support a case for veil piercing or amalgamation. To accept the Plaintiff's simplistic vicarious liability theory would void a good portion of the law of business corporations and create a mountain of exposure to tort liability for businesses where none currently exists.

Barnwell Whaley Patterson & Helms, LLC

s/K. Michael Barfield

K. Michael Barfield

P.O. Drawer H

Charleston, SC 29402

mbarfield@barnwell-whaley.com

Counsel for The Daniel Island Company, Inc.

August 26, 2022

Charleston, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2017-CP-08-02238

MATTHEW ZETZ,

Appellant,

v.

DANIEL ISLAND COMPANY,
INC.,

Respondent.

NOTICE OF APPEAL

Appellant, Matthew Zetz, hereby appeals the Order of the Honorable Roger M. Young signed September 8, 2022 and filed September 9, 2022. This Notice of Appeal is timely filed pursuant to Rule 203(c), SCACR.

Respectfully submitted,

Lane D. Jefferies

Lane D. Jefferies, Esquire

SC Bar No. 101764

Roy T. Willey, IV, Esquire

SC Bar No. 101010

Eric M. Poulin, Esquire

SC Bar No. 100209

Anastopoulo Law Firm, LLC

32 Ann Street

Charleston, SC 29403

(843) 614-8888

CLD@akimlawfirm.com

Attorneys for Appellant

Charleston, South Carolina
October 4, 2022

Other Counsel of Record:

Kenneth M. Barfield
Diane S. Clarke
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700
mbarfield@barnwell-whaley.com
sclarke@barnwell-whaley.com
Attorneys for Respondent

G. Chris Hamil—Direct Examination by Mr. Jefferies.

8

1 started. If you need a break partway through, just
2 after you answer the question say, hey, I need a
3 break and we'll take one. No trouble at all.

4 Just a word of caution.

5 Anything you talk about on the break I can ask you
6 about. So things that might ordinarily be
7 privileged aren't if you talk about it on the break.
8 So best not to talk to anybody on a break.

9 So with that in mind, I think
10 you know that you're here as a result of a lawsuit
11 that arises out of a fall on November 11th of 2016.
12 Is that correct?

13 A To my knowledge, yes.

14 Q All right. Do you know anything about
15 that particular -- you know, the plaintiff, Matthew
16 Zetz, the one who fell, do you know anything in
17 particular about his fall at firsthand or you just
18 know what you've learned from other people later?

19 A I would call it hearsay.

20 Q Okay. You've heard from others but you
21 didn't actually witness Matthew Zetz fall or
22 anything like that?

23 A Correct.

24 Q Let's go back to 2016. Who did you work
25 for during the year of 2016?

1 A The Daniel Island Town Association.

2 Q And is that who you work for still today?

3 A Yes, sir.

4 Q Okay. So no change there. So you worked
5 for the Daniel Island Town Association. And what
6 did you do for the Daniel Island Town Association?

7 A My title is field operations manager and
8 I manage close to 400 acres of common area, close
9 to 50 storm management ponds, and three swimming
10 pool facilities. And the -- all the associated
11 subcontracts in order to maintain those entities
12 or common areas.

13 Q So tell me what you mean by that. You
14 hire outside contractors to do certain things, is
15 that right?

16 A Yes.

17 Q Okay. Tell me again your title. Did you
18 say field operations manager?

19 A Yes.

20 Q How long have you been the field
21 operations manager for Daniel Island Town
22 Association?

23 A Six years.

24 Q So you would have started, what, 2015, is
25 that right?

1 with respect to the park?

2 A We had two contracts that -- well, three
3 contracts that were a part of Children's Park.
4 One was the landscape maintenance for that area.
5 That was a part of the larger-scale landscape
6 maintenance package.

7 Then we had another one for
8 Children's Park which managed all the pump features,
9 keeping the pool water clean, chemically treated.

10 And then we also had a contract
11 with Moonlighting that was responsible for all the
12 lighting or existing lighting for the park.

13 Q Okay. Contract with Moonlighting to
14 maintain the lighting?

15 A Yes, sir.

16 Q A contract with another entity to maintain
17 the pumps and the chemicals and the stuff that
18 relates to the water?

19 A That was The Greenery.

20 Q Greenery. Okay.

21 And then who did the landscape?

22 A The Greenery.

23 Q The Greenery did that as well, okay. Two
24 separate contracts, one for landscape and one for
25 pumps and chemicals?

1 remember about the history of Park Day, where it
2 started out, what your involvement was, that sort of
3 thing?

4 A My understanding of Park Day initially
5 was to instigate curiosity, attention for Daniel
6 Island and for all it can present anyone, resident
7 or nonresident to want to come live, work, and
8 play. And so Park Day was one of those big
9 events.

10 And when I came on board, my
11 responsibility was to work directly with Barbara
12 McLaughlin and Rona Bobey for preparations for Park
13 Day that occurred at Children's Park and that, well,
14 it used to be a vacant plot to the left and to the
15 right of Children's Park.

16 Q In terms of preparations for Park Day in
17 2016, what did that entail for you? What did you
18 have to organize as field operations manager to pull
19 off Park Day in 2016?

20 A Well, number one, make sure that the
21 landscape maintenance contracts were being
22 fulfilled, the Moonlighting contract was being
23 fulfilled, that the pool and pump features were
24 operating as they should be.

25 But as I told someone else, you

1 A Again, on any event, it's all hands on
2 deck, especially the day before. But Barbara had
3 given me a list of instructions, whether verbally
4 or via this dossier, which I just can't remember
5 what, but usually we had -- excuse me -- we had
6 that completed about mid morning the day before
7 and were just there as support for Barbara for
8 anything else she may -- she may need.

9 Q Okay.

10 A And our -- our staff works from 7:00 to
11 3:00, 3:30 Monday through Friday, not on the
12 weekends.

13 Q Gotcha. Gotcha. All right. In the
14 preparation and in dealing with the subcontractors,
15 one of them obviously is the lighting company. Did
16 you have the lighting company come out and check all
17 the lighting, make sure all the lighting that was
18 there was working?

19 A I believe so, yes, 'cause we had done
20 some enhancements to the water feature and to the
21 deck. We had added painting. You know, that
22 scape was like a cityscape and all the three
23 rivers that converge, the Wando, the Cooper River,
24 and the Ashley. And so during that process also
25 was ensuring that all of the existing lighting

1 were working appropriately.

2 Q And was all -- all that lighting up and
3 running before the end of the day on the 10th or was
4 some of that repair done later on?

5 A No. The direction was have it all ready
6 prior to the event.

7 Q And would there be any sort of work orders
8 or invoices or anything along those lines that would
9 show what was done prior to the event, what was done
10 after the event?

11 A Generally I communicated with these
12 contractors. We've recently, probably three or --
13 two or three years ago we created a work order
14 system to have better -- better efficiency and
15 productivity for all of our contractors, including
16 my staff. But then we haven't had it. So it was
17 generally through email or text.

18 Q Okay. Going back to the question of
19 preparations in terms of safety, any sort of safety
20 audit or review prior to and in preparation for Park
21 Day in 2016?

22 A Can you say your question again? You
23 kind of broke up a little bit.

24 Q Sure. Sure. In preparation for the 2016
25 Park Day, was there any sort of formal safety audit

1 Matt Sloan?

2 A Not really.

3 Q Did Mr. McKenzie have a role with Daniel
4 Island Town Association that you're aware of?

5 A Not that I'm aware of.

6 Q Okay. And in working with Matt Sloan, he
7 worked with Matt Sloan at some other entity, is that
8 right?

9 A I believe so, yes.

10 Q And do you know which entity or entities
11 that would be?

12 A I'm unsure.

13 Q Okay. There's a lot of different entities
14 out at Daniel Island that begin with the words
15 Daniel Island, aren't there?

16 A Yes.

17 Q Do you have an overall picture of how they
18 all fit together?

19 A Just on my part.

20 Q And what's -- what's your understanding?

21 A So we have the Daniel Island Property
22 Owners Association. And under that umbrella of
23 the Daniel Island Property Owners Association,
24 there's the Daniel Island Town Association, which
25 is its own separate entity; the Daniel Island Park

1 Governor's Park. The rest of the trails are owned
2 by Daniel Island, yeah, if they're on our
3 property, yes.

4 Q Okay. And when you say owned by Daniel
5 Island, do you mean owned by the town association
6 or --

7 A Town association. Town association.
8 And the whole purpose of this was to allow a
9 smooth transition between a developer-controlled
10 board to a resident-controlled board and to keep
11 the equality, the integrity of what Daniel Island
12 is as it's passed down from developer-controlled
13 board to resident-controlled board.

14 Q And when you say the developer, who is the
15 developer of Daniel Island?

16 A Daniel Island Development Company, I
17 believe, or Daniel Island Associates.

18 Q And then there's one called Daniel Island
19 Company. Is that some version of that?

20 A It's the Daniel Island Development
21 Company, I believe, or Daniel Island Associates.
22 I don't know which one.

23 Q Okay. And that's the developer. And back
24 in 2016, were the boards of the town association,
25 park association, community association, were those

1 still all developer-controlled?

2 A I believe so, yes.

3 Q All right. So your office is in a
4 building and the sign says property owners
5 association?

6 A Yes.

7 Q What's the address of your office?

8 A 130 River Landing Drive, Suite 1C,
9 Charleston, South Carolina 29492.

10 Q All right. And then where's the office of
11 the Daniel Island Park Association?

12 A They do not have an office. As I -- as
13 I stated before, we managed those. Until it's
14 completely resident owned and controlled, right
15 now it's under our management, the Daniel
16 Island --

17 Q Okay.

18 A Yeah.

19 Q Okay, so -- so you manage the Great Oak
20 Park Boat Landing for the park association?

21 A Yes, sir.

22 Q And do you have some sort of contract
23 between the town association and the park
24 association to do that management or is it just a
25 handshake? Or how does that work?

1 A Well, right now the developer still has
2 majority control of the park association.

3 Q Okay.

4 A So the developer would still have, I
5 guess, direction and leadership on who manages it.

6 Q All right. So when the park association
7 engaged the town association to manage the Great Oak
8 Boat Landing, how did that happen? Like who called
9 you from the park association and said, please
10 manage our boat landing?

11 A There may be some confusion here. The
12 developer created these associations so that in
13 the future there would be a smooth transition from
14 a developer-control to a resident-control.

15 And so until -- it has
16 everything to do with number of homes sold or
17 residents that live within the park area before it's
18 transitioned from a developer-control board to a
19 resident-control board.

20 And there's like a phased-in
21 process whereas they get closer to whatever those
22 numbers are, a board member gets elected to -- it's
23 called like a transition board, to kind of welcome
24 residents who live in that area to become a part of
25 that board. Does that make sense?

1 Same thing that the community
2 association did back in 2016. It was still a
3 developer-control board but it was starting to
4 transition to a more resident-control board in the
5 future. So they started having elections for
6 residents to become part of that board.

7 Q So --

8 A It's a way for the developer to step out
9 seamlessly instead of it being a complete break
10 and no one knowing what to do and how to maintain
11 the property.

12 Q Back in 2016, in November of 2016, were
13 any of these associations, as far as you know,
14 independent of the developer at that time or were
15 they still developer-controlled?

16 A To my knowledge, developer-controlled.

17 Q All right. With respect to the three
18 pools and the boat landing that the community
19 association owned, you-all at the town association
20 managed those as well, is that correct?

21 A Correct.

22 Q And is there any sort of written agreement
23 between the community foundation and the town
24 association -- pardon me, the community association
25 and the town association that engaged you to do that

1 work?

2 A Again, it hadn't transitioned from a
3 resident-controlled board yet, so it was still a
4 developer-controlled. So our direction came from
5 the developer on management of those entities.

6 Q Okay. Okay. So to manage, for instance,
7 the Pierce pool, Pierce Park Pool, you didn't get a
8 call from somebody at the community association
9 saying, hey, town association, we'd like to hire you
10 to do this and let's sign a contract, you got
11 instruction from the developer, take care of this
12 pool, is that right?

13 A Well, from my experience, the existing
14 conditions were already there. When I moved into
15 my role, we were already managing the pool
16 facilities and the ponds and Great Oak Park.
17 Those conditions were already existing.

18 Q Okay. So you weren't there when the
19 original arrangement was made?

20 Can you hear me all right,
21 Mr. Hamil?

22 A Yeah. What did you say? I may have
23 missed something.

24 Q The arrangement of management, you were
25 saying that that existed when you arrived there.

1 association office at 130 River Landing were the
2 same office, is that correct?

3 A Yes.

4 Q And park association didn't have an office
5 and community association didn't have an office, is
6 that correct?

7 A Correct.

8 Q And all of these things, property owners
9 association, town association, park association,
10 community association, were all
11 developer-controlled, is that correct?

12 A At this time -- in 2016, to the best of
13 my knowledge, yes.

14 Q Okay. And Matt Sloan was the boss of the
15 developer, Matt Sloan was the guy running the
16 development company, is that right?

17 MR. BARFIELD: Object to the form.

18 BY MR. JEFFERIES:

19 Q You can go ahead and answer if you know.
20 Was Matt Sloan the guy in charge of the development
21 company?

22 A I'm unsure. I don't want to speculate.

23 Q Since 2016, have you seen any -- any
24 change in control of any of these associations from
25 developer-controlled to homeowner-controlled?

1 A Yes.

2 Q All right. Which ones?

3 A Just the Daniel Island Community
4 Association.

5 Q And when did that change?

6 A I'm unsure, but I believe it was two or
7 three years ago.

8 Q Okay. Does the town association continue
9 to manage the Pierce, Scott and Edgefield pools and
10 the Beresford Landing for the community association
11 today?

12 A Yes.

13 Q You broke up a little on me. I think you
14 said "yes."

15 A Yes.

16 Q And is there any sort of written contract
17 at this time between the community association and
18 the town association for the management of those
19 properties?

20 A No, because I believe it's still
21 developer-controlled as far as the board. So
22 those existing conditions are still there.

23 Q I thought you had indicated the community
24 association wasn't developer-controlled anymore.

25 A No, my understanding from your question

1 separate Daniel Island Town Association meeting.

2 Q And who comes to all these meetings?

3 Sounds like the same people.

4 A Well, from a community standpoint, it
5 would be folks that live on the south side of
6 Daniel Island. And then from a town standpoint,
7 that would be townhome regimes, store owners
8 within the town area. And then from a park
9 association, that would be the north side, so golf
10 course area and the neighborhoods in between.

11 Q And in addition to those folks, there's
12 you and David Crawford, Matt Sloan and Frank
13 Brumley?

14 A Normally, because we have a decent size
15 staff, we would alternate on going to one of those
16 three. And so -- but David and Matt and Frank
17 would normally be there --

18 Q Okay.

19 A -- at all three.

20 Q At all three.

21 What about Jane Baker, would she
22 go to -- go to those meetings?

23 A Yes. She was the presenter of all
24 three.

25 Q Of all three?

1 A Um-hum. Moderator too, for that matter.

2 Q You mentioned that your office, the sign
3 says property owners association, but you said
4 there's only three meetings. Wouldn't there be
5 four? Wouldn't there be a town association meeting,
6 a park association meeting, a community association
7 meeting, and a property owners association meeting?

8 A No. It's just the three, to my
9 knowledge. The POA manages, and maybe I misspoke
10 before, but manages all three. My salary comes
11 from the town association.

12 Q Okay.

13 A If that makes sense.

14 Q So now I understand, when you said like an
15 umbrella, the property owners association really
16 isn't a thing, it's a collection of other
17 associations?

18 A Managing those associations, yes.

19 Q And at each one of those annual meetings,
20 community association, park association, town
21 association -- those three annual meetings, David
22 Crawford shows up, Matt Sloan shows up, Frank
23 Brumley shows up, Jane Baker shows up, and she's the
24 moderator of the meeting?

25 A To the ones I attended, that's who was

1 A K-A-Y.

2 Q K-A-Y. All right. I'm just looking -- and I'm
3 sure you're familiar with this. I'm just looking at the
4 Daniel Island POA staff web page, which I think you've
5 probably seen before in your life--

6 A Correct.

7 Q -- at some point. And it shows a number of people
8 on there. And you're one of them, Kay Fabrizio. And what
9 it says is that you are the finance manager for the Daniel
10 Island Property Owners Association. Is that right?

11 A Correct.

12 Q Okay. How long have you had that position as --
13 and instead of saying Daniel Island Property Owners
14 Association, I'm just going to say POA. We all know what
15 POA is; right?

16 A Yes.

17 Q Okay. How long have you had the position of
18 finance manager for the Daniel Island POA?

19 A Since 2016.

20 Q Okay. When abouts in 2016? Early 2016 or late?

21 A February.

22 Q February of 2016. All right.

23 A February 1st.

24 Q So you were finance manager of Daniel Island POA
25 at the time of the events that are the subject of this

1 have a budget and that's why -- why you don't produce a
2 budget for them?

3 A Correct.

4 Q Okay. Now, is there a budget for Daniel Island
5 Property Owners Association?

6 A Property owners association is basically just a
7 title to -- so that every time we answer the phone, we don't
8 have to say: You're calling Daniel Island Town Association,
9 Daniel Island Community Association, Daniel Island Park
10 Association, Daniel Island Community Fund. Property owners
11 is not actually an entity.

12 Q Okay. Okay. And that makes sense. So there's
13 one phone number. If somebody on Daniel Island calls, they
14 call that one phone number to get you?

15 A Correct.

16 Q And instead of rattling off, Hi, you've reached
17 the offices of Daniel Island Town Association, Daniel Island
18 Community Association, park association, Daniel Island Fund;
19 you just say property owners association?

20 A Correct.

21 Q That's the umbrella name?

22 A Yes.

23 Q Okay. Gotcha. All right. So you produce those
24 budgets for Daniel Island Town Association, Daniel Island
25 Park Association, Daniel Island Community Association, and

1 Daniel Island Community Fund. What do you then do with
2 those? Is that something that gets approved by somebody
3 else or?

4 A They're approved by the board.

5 Q Okay. And is that -- is that, what, four separate
6 boards?

7 A Yes.

8 Q Okay. And are those boards -- are all four of
9 those boards still developer controlled or have some gone
10 over to the homeowners?

11 A Daniel Island Community Association has two
12 resident board members currently. But they're not
13 controlled by the residents.

14 Q Okay. So community association has two resident
15 members, but the control hasn't gone over yet?

16 A Correct.

17 Q What about the others, town association, park
18 association and fund?

19 A I -- the declarant still is the developer. Or
20 Daniel Island Company.

21 Q Okay. And that's as of now; right?

22 A Correct.

23 Q Okay. So back in 2016, it was -- it was the same
24 way, Daniel Island Company, the developer, still controlled
25 those four boards?

1 A Correct.

2 Q Okay. So you would of submitted the budgets --
3 you would of produced the budgets for these four entities
4 and submitted them to the boards of those four entities?

5 A Correct.

6 Q And each of those boards was controlled by the
7 developer, which is Daniel Island Company?

8 A Well, the board was basically officers of Daniel
9 Island Company.

10 Q Okay.

11 A Except for one.

12 Q Do you remember back in 2016 who the officers of
13 the Daniel Island Company were?

14 A Daniel Island Company? Or associations?

15 Q The various associations, I should say. Let's go
16 through that first.

17 A Matt Sloan, Frank Brumley, and David Crawford.

18 Q All right. Matt Sloan, Frank Brumley, and David
19 Crawford?

20 A Correct.

21 Q And so each of those boards was controlled by some
22 combination of Matt Sloan, Frank Brumley, and David
23 Crawford?

24 A Correct.

25 Q Okay. Do you remember what the relationship was

1 between Matt Sloan, Frank Brumley and David Crawford, like
2 who worked for whom? Who reported to whom?

3 A David Crawford is an attorney.

4 Q Okay.

5 A He has nothing to do with Daniel Island Company.

6 Q Okay. He's an outside attorney, David Crawford?

7 A I think he's done work for Daniel Island Company,
8 Daniel Island Real Estate. I mean, he's--

9 Q Okay.

10 A He's been doing legal work for -- he used to do a
11 lot of closings.

12 Q Okay. Matt Sloan and Frank Brumley, what's their
13 relationship? Is one--

14 A President -- one was president, one was vice
15 president. And Dave Crawford was the secretary/treasurer.

16 Q Do you remember which one was president, which was
17 vice president?

18 A Matt Sloan, president, Frank Brumley, vice
19 president.

20 Q So Frank reported -- as vice president, Frank
21 Brumley reported to Matt Sloan, who was president?

22 A I assume, yes. I mean...

23 Q That's the way it usually works.

24 A They just, like, basically looked at budgets and
25 all agreed or disagreed or changed something.

1 Q All right. So to recap that, you, in your -- in
2 your role as finance manager of the Daniel Island Property
3 Owners Association, you didn't really create a budget for
4 the property owners association, because that's not actually
5 a thing; you created a budget for four other entities?

6 A Correct.

7 Q Okay. And those four entities, Daniel Island Town
8 Association, Daniel Island Park Association, Daniel Island
9 Community Association, and Daniel Island Community Fund,
10 were all controlled by a board; right?

11 A Correct.

12 Q Okay. And that board consisted of -- for each of
13 those, Matt Sloan, Frank Brumley, and David Crawford?

14 A Correct.

15 Q Okay. And within the Daniel Island Company, Matt
16 Sloan was president, Frank Brumley was the vice president.

17 A Daniel Island Company, Mr. Brumley was the
18 chairman of the board, I think.

19 Q Okay. And Matt Sloan was president; is that
20 right?

21 A In '16, I--

22 Q You don't know?

23 A I can't say.

24 Q But on each of those boards then, Matt Sloan was
25 the president of the board--

1 A Right.

2 Q -- and Frank Brumley was the vice president?

3 A Correct.

4 Q So every single one of those boards was controlled
5 by the same president and vice president; right? They're
6 the same officers?

7 A Correct.

8 Q Okay. And every single one of those budgets came
9 off of your desk?

10 A Yes.

11 Q For approval by those same guys on those -- on
12 those same boards?

13 A Yes.

14 Q Okay. Now, who paid to have all of that work
15 done? I mean, obviously you get paid. Who pays you?

16 A Daniel Island Town Association.

17 Q Okay. So Daniel Island Town Association pays you,
18 but you actually do work for Daniel Island Town Association,
19 Daniel Island Park Association, Daniel Island Community
20 Association, and Daniel Island Community Fund?

21 A Correct.

22 Q Okay. At least with respects to budgets. In
23 respect to other things, y'all do some -- also do some work
24 for Daniel Island Community Foundation?

25 A Yes.

1 Q Okay. All right. So tell me about the -- you
2 mentioned you also do financial statements. Tell me about
3 that work. What does that consist of?

4 A Doing -- processing the monthly general ledgers,
5 making sure everything's in balance. Making sure we're
6 staying within our budgets that are set for the year.

7 Q And when you say our budgets, is that, again, four
8 or five separate budgets?

9 A Yes.

10 Q For the--

11 A Yes.

12 Q And with respect to financial statements, you do
13 that work for not only the four we already discussed, the
14 town association, park association, community association,
15 and community fund, but also for community foundation?

16 A Yes.

17 Q Okay. So all five. All right. So you do the
18 financial statements for all five of those Daniel Island
19 entities?

20 A Yes.

21 Q Okay. Who controlled Daniel Island Community
22 Foundation? Is it like the others where it's got a board
23 and there's -- Matt Sloan and Frank Brumley ran the board?

24 A There are other -- they're all considered board
25 members, but they are various residents of Daniel Island.

1 financial statements, you would deal with the financial
2 statements and you would interact with Jane Baker?

3 A Yes.

4 Q And her role was to run all of those five
5 entities?

6 A Yes.

7 Q Okay. And she reported, I would assume, to the
8 boards of those five entities?

9 A Yes.

10 Q And the boards of those five entities were -- the
11 president and vice president, were Matt Sloan and Frank
12 Brumley?

13 A Yes.

14 Q Okay. So all of these five entities had the same
15 person doing their financial statements, the same person
16 running them, and the same two people as president and vice
17 president of the boards?

18 A Yes.

19 Q All right. And you mentioned they all shared the
20 same phone number; is that right?

21 A Yes.

22 Q Like -- okay. And that's why you answer property
23 owners association?

24 A Yes.

25 Q All right. Were there separate offices?

1 handled events that were funded by the community fund or the
2 community foundation.

3 Q Okay. And just like you and Chris Hamil and Mary
4 Stuart Sutton, her work was necessary work?

5 A Yes.

6 Q That if any of those five didn't exist, the other
7 remaining ones would of still had to hire somebody just like
8 Barbara McLaughlin--

9 A Yes.

10 Q -- to do that work?

11 And so those four folks, Mary Stuart Sutton, Kay
12 Fabrizio, Chris Hamil and Barbara McLaughlin, all reported
13 to Jane Baker in her role as well. What was her title?

14 A VP of community services.

15 Q VP of community services. All right. And then do
16 you know -- and it's okay if you don't. Do you know who
17 Jane Baker reported to back in 2016?

18 A To the board.

19 Q The board of each of the--

20 A Yes.

21 Q -- five? Okay.

22 And the board of each of the five entities -- the
23 board of each of the five entities, each one had this in
24 common, the president was Matt Sloan and the vice president
25 was Frank Brumley?

1 A Yes.

2 Q And your understanding is, back in 2016, each of
3 those boards were still what they called developer
4 controlled?

5 A Yes.

6 Q Okay. And the developer that controlled each of
7 those five boards that had the same president and vice
8 president, Matt Sloan and Frank Brumley, respectively, that
9 developer was Daniel Island Company?

10 A Yes.

11 Q So when I drew -- when I drew an organizational
12 chart here of the developer, Daniel Island Company,
13 controlling the boards of five entities, and each of those
14 five entities having the same president and vice president,
15 Matt Sloan and Frank Brumley, respectively, and reporting to
16 each of those boards was the same person, Jane Baker, vice
17 president of community services; right?

18 A Yes.

19 Q All right. And then there's Mary Stuart Sutton,
20 Kay Fabrizio, Chris Hamil and Barbara McLaughlin also doing
21 work across the board for either three of the five entities
22 or all five of the five entities, depending on the type of
23 the work?

24 A Yes.

25 Q All right. And it looks like only really -- well,

1 let's see. Mary Stuart Sutton and Chris Hamil did work only
2 for the associations town, park and community associations?

3 A Yes.

4 Q You and McLaughlin handle all five?

5 A Yes.

6 Q All right. So really with respect to each of
7 these five entities, it's all the same people doing all the
8 same jobs reporting to all the same bosses all the way up
9 the line; isn't it?

10 A Yes.

11 Q Okay. So there's no one of these entities, back
12 in 2016, that had a different management structure,
13 different control; they're all controlled by the same
14 people?

15 A Yes.

16 Q Working out of the same space?

17 A Yes.

18 Q And at 130 River Landing?

19 A Yes.

20 Q The same telephone number?

21 A Yes.

22 Q The same copiers, printers, desks and everything
23 else; right?

24 A Yes.

25 Q If I walked into 130 River Landing, would I be

1 Q All righty. Back on the record after a brief
2 break. I have a few more questions for you and then I'm
3 going to turn it over to the rest of these folks.

4 So we've talked about these five entities and
5 we've talked about the employee and the management
6 structure. And it's the same across all five entities.

7 A Yes.

8 Q Did the five entities have, to the best of your
9 knowledge, any contracts between themselves? You know, did
10 they -- is their business governed by something that's in
11 writing?

12 A I don't understand the question.

13 Q All right. So -- yeah, so let me say that another
14 way. So, like, for instance, you -- one of the things that
15 you do is you, you know, create assessments.

16 A Okay.

17 Q For the three associations.

18 A Yes.

19 Q Town, park and community. And, of course, your
20 paycheck is coming from town association?

21 A Yes.

22 Q But you're doing this work for the other two, as
23 well. Is there some kind of contract from -- between town
24 association and let's say park association or community
25 association, that says, hey, we're going to have your

1 A No.

2 Q Or you just did that yourself?

3 So specifically with respect to town association,
4 do you remember the size of the umbrella policy?

5 A No.

6 Q All right. Were you involved at all in the
7 decision making to purchase an umbrella policy?

8 A I mean, they've been in place since I've went to
9 work there.

10 Q Okay. So it just gets renewed--

11 A Yes.

12 Q -- every year you renew it. All right.

13 So you don't know who would of decided, hey, we
14 need to buy an umbrella?

15 A I don't.

16 Q Somebody up the chain from you?

17 A Yes.

18 Q Okay. And I think up that chain, at least back in
19 2016, would of been Jane Baker, Matt Sloan, Frank Brumley
20 and Daniel Island Company?

21 A Yes.

22 Q Okay. We'll just have to ask them.

23 You know, I think that's got it for me. I'll ask
24 you a few wrap-up questions and then I'm going to turn it
25 over to these folks. I might have some follow-ups if they

1 everything that you've said. But I know you answered this
2 question already. Could you describe again the things you
3 did for Daniel Island Community Foundation back in 2016?

4 A Approved checks for processing and financial
5 statements. Deposits as well.

6 Q Okay. Approve checks, make deposits and create
7 financial statements?

8 A Yes. Yes.

9 Q Okay. Did you have -- I'm sorry?
10 Did you have a formal position or a job title with
11 Daniel Island Community Foundation?

12 A No.

13 Q Do you -- you -- or can you recollect
14 approximately how much of your time, as a percentage of your
15 workday, would be devoted to Daniel Island Community
16 Foundation work?

17 A About two hours per week.

18 Q And do you know if any part of your salary is paid
19 by Daniel Island Community Foundation?

20 A It is not.

21 Q All right. There were some questions about
22 controlling interests. And at one point I thought you said
23 you did not know who had controlling interests in Daniel
24 Island Community Foundation. I thought you said maybe
25 various residents, and then another time I thought you said

1 that Mr. Sloan or Mr. Brumley did. Or the developer. I
2 couldn't quite make out what you said. Do you recall who
3 had the, quote, controlling interest in Daniel Island
4 Community Foundation in 2016?

5 A The board was Frank Brumley, Matt Sloan and David
6 Crawford.

7 Q Okay. And were there any other residents who were
8 part of that board that you can recall?

9 A I don't think so.

10 Q Okay. And did that board -- what was their
11 relationship with Daniel Island Company, if you know?

12 A I don't know.

13 Q Okay. Did you state that Daniel Island Community
14 Foundation was not part of the overhead expense sharing
15 agreement?

16 A It is not.

17 Q Okay. And for park day, I think you were -- you
18 testified you only prepared -- or I guess responded to
19 invoices by sending checks that were associated with that.
20 But, nonetheless, you volunteered on your personal time to
21 work on park day?

22 A Yes.

23 Q All right. What kind of work did you do for park
24 day?

25 A We had a tent. It's like a welcome tent.

1 lot of landscaping. There's a lot of pretty flowerbeds.
 2 There's parks. It's a beautiful island. And so is it safe
 3 to assume that the money that goes -- that comes from those
 4 residents into those associations is then paid out to keep
 5 those things looking beautiful?

6 A Yes.

7 Q Okay. So, you know, the guys like -- that are on
 8 the boards, like Mr. Brumley or Mr. Sloan, they don't make a
 9 penny from that; do they?

10 A No, they don't.

11 Q Okay. And we were talking a little bit about
 12 Daniel Island Company as the developer entity. You know,
 13 people who may not have lived in planned communities or been
 14 part of homeowners associations might -- might not
 15 understand what that means. So I want to talk a little bit
 16 about that. First off, do you know what a master deed is?

17 A Yes.

18 Q Okay. Just -- I don't want to put words in your
 19 mouth. So can you just sort of briefly -- and this is not a
 20 test. So I'm not holding you to a legal definition. I just
 21 want to know in your words, based on your experience, what
 22 is a master deed and why -- and what purpose does it serve
 23 in a -- in a planned community?

24 A Okay, I don't know. I've read our master deed,
 25 but I don't know what purpose it serves. Little too thick

1 for me.

2 Q It is a -- it's a thick document. Okay. Well,
3 I'll sort of -- again, not -- not going to be a test. But
4 I'll -- I'll -- I'll give you sort of my understanding of it
5 and you tell me if that comports with your -- with your
6 understanding or experience, okay?

7 A Okay.

8 Q So under the law -- under the law in South
9 Carolina, there's a statute called the South Carolina
10 Horizontal Property Act. And it's a very old statute. But
11 it talks about how you -- how you create a planned
12 community. And sort of the documents that gets it off the
13 ground is called the master deed. And it's kind of a
14 roadmap to how it's going to work. How a board is formed.
15 How budgets are created. You know, everything that you need
16 to plant the seed to grow a community. Is that -- is that
17 kind of -- does that track with what you understand a master
18 deed does generically?

19 MR JEFFERIES: Object to the form of the question.

20 BY MR. BARFIELD:

21 Q You can answer.

22 MR JEFFERIES: Yeah, you go ahead and answer.

23 THE WITNESS: Yes.

24 BY MR. BARFIELD:

25 Q Okay. So, you know, that all presupposes -- when

1 I say a planned community, somebody's got to plan it; right?

2 A Yes.

3 Q Okay. And usually that's a developer. Or
4 sometimes, in those documents, a developer is referred to as
5 a declarant. Are you familiar with that term?

6 A Yes.

7 Q Okay. And for Daniel Island, the developer or the
8 declarant, was the Daniel Island Company; right?

9 A Yes.

10 Q Okay. And in the beginning of a property
11 association's life, you've got the developer or the -- that
12 has a vision for a planned community and the--

13 [Audio disruption.]

14 MR. SOBOCINSKI: Michael, you're breaking up a
15 little too much.

16 MR JEFFERIES: We can't hear your testimony, Mike.

17 MR. BARFIELD: Okay.

18 THE WITNESS: Pull over.

19 MR. BARFIELD: Funny guy.

20 BY MR. BARFIELD:

21 Q It stands to reason -- I'll back up. That when
22 you've got a planned community that's got a developer with a
23 vision for how that community is going to be, that developer
24 is alone until they start selling lots or homes to
25 residents; right?

1 A Yes.

2 Q Okay. So that developer is in control of the
3 operation for a period of time, according to the master
4 deed. Is that -- is that your understanding of how things
5 work, generically?

6 A Yes.

7 Q Okay. And is that how Daniel Island was set up
8 originally by the Daniel Island Company?

9 A Yes.

10 Q Okay. So we talked a lot about how the Daniel
11 Island Company, through representatives like Mr. Sloan and
12 Mr. Brumley, controlled the boards of the various
13 sub-associations on Daniel Island, like Daniel Island Town
14 Association or Daniel Island Community Association; right?

15 A Yes.

16 Q Okay. Now, am I correct that that is not always
17 going to be the case?

18 A Yes.

19 Q That at some point all of the -- okay. And at
20 some point, all of those boards, once the certain number of
21 homes or lots are sold or whatever the threshold is, that
22 automatically control of those boards get in turn -- get
23 turned over completely to residents of Daniel Island?

24 A Yes.

25 MR. BARFIELD: Okay. All right. I think that's

1 all I have. Thank you.

2 THE WITNESS: Thank you.

3 MR. SOBOCINSKI: I don't have any questions at
4 this time.

5 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

6 BY MR JEFFERIES:

7 Q So I just have a few follow-ups. And first of
8 all, I want to thank Michael for kind of explaining that --
9 that process of how boards work. Because a lot of folks who
10 don't live in a planned community have no idea about that.
11 And that might be folks on the jury, as well. So that was
12 kind of a -- kind of a cogent explanation of what happened
13 and what is likely to happen in the future.

14 Back in 2016, turn over of control from the
15 developer to the residents hadn't happened yet, had it?

16 A Had not, no.

17 Q For any of these--

18 A No.

19 Q Right. So Daniel Island Company that, as Mr.
20 Barfield said, conceived of the plan of Daniel Island and
21 built it and sold the lots and created these -- these
22 associations and hired the management and put its own people
23 on the board of every single one. Nothing wrong with that;
24 right? That's the way it's done?

25 A Yes.

1 Q Okay. And in 2016, Daniel Island Company still
2 had control of all of these?

3 A Yes.

4 Q Across the board?

5 A Yes.

6 Q And nothing wrong with that, but some
7 responsibility goes with that; right?

8 A Yes.

9 Q When you're in control?

10 A Yes.

11 Q Yep. When y'all had your welcome tent at park
12 day, do you remember what it said? Like did it say welcome?

13 A I don't know.

14 Q Did it say anything? I mean, how did people know
15 who you were versus you being a dog grooming outfit or a
16 Subway sandwich shop?

17 A I don't remember.

18 Q Did you have a sign that would of said--

19 A We had tickets for sale.

20 Q Tickets for sale. And anywhere on that tent did
21 it say welcome by Daniel Island Town Association, Daniel
22 Island Park Association, Daniel Island Community
23 Association, Daniel Island Community Fund, Daniel Island
24 Community Foundation?

25 A I don't remember.

1 Q Sound about right?

2 A Correct.

3 Q And then when you left Seabrook, did you go
4 directly to the Daniel Island Property Owners?

5 A No, I moved to Colorado.

6 Q Okay. How long were you in Colorado for?

7 A Until 2016.

8 Q What -- do you remember what month in 2016 you
9 would of moved back?

10 A I believe it was April; but I'd have to double
11 check.

12 Q Okay. Whereabouts in Colorado were you?

13 A Outside of Boulder.

14 Q Very nice. Very nice. And then you just missed
15 the Lowcountry so much you had to come back?

16 A The tied doesn't rise out in Colorado. Yes, I did
17 miss the Lowcountry and we moved back.

18 Q Fair enough. When did you start with Daniel
19 Island Property Owners Association?

20 A June 1st, 2016.

21 Q Okay. And that would be about, roughly, five
22 months, a little -- little more, before the incident that
23 gave rise to this lawsuit, which was in November of 2016,
24 just by way of reference --

25 I also took a peek at the Daniel Island Property

1 Owners Association page where it says Daniel Island POA
2 staff. And just for the ease of talking, if I say Daniel
3 Island POA, I mean property owners association. I'm not
4 going to spell it out every time. So can we agree that POA
5 means property owners association?

6 A Yes.

7 Q Excellent. So as I look at the staff page, it
8 says that you, Mary Stuart Sutton, are the ARB
9 administrator. Is that correct?

10 A It is.

11 Q Excellent. Is that what -- and I know that's what
12 you are now. Is that what you were back in 2016?

13 A Yes.

14 Q Okay. So you've had that same--

15 A Yes.

16 Q -- I mean, that's the job you've had?

17 A Yes.

18 Q Okay. I'm going to ask you a number of questions
19 about the job, about -- well, about a lot of things. If
20 there's a difference between how it is now and how it was
21 then, back in 2016, I'd like you to highlight that for me.

22 I'll try to ask you about both so that we're real
23 clear. But if some -- if there's some big difference and
24 you're not clear which I'm asking about, please say, hey,
25 Lane, you know, are you talking about now or are you talking

1 about then.

2 A Okay.

3 Q Okay. So, tell me, both now and back in 2016,
4 when you were an ARB administrator, what -- well, first off,
5 what does ARB stand for?

6 A Architectural review board.

7 Q Excellent. All right. What did you do and do you
8 do as architectural review board administrator?

9 A I'm responsible for reviewing new home
10 construction plans and improvement plans, modifications.

11 Q All right. So you review those plans. Do you
12 yourself--

13 A Administer the guidelines and create meetings with
14 the architectural review board members to also review the
15 plans.

16 Q So if somebody wants to either build a house or
17 improve a house--

18 A Correct.

19 Q -- they need to submit something to you?

20 A Correct.

21 Q And then you review it. And then does it
22 automatically go to the full board or is there the chance
23 that you might look at it and kick it back and say there's
24 no sense taking this to the board, this is completely out of
25 whack?

1 A Correct, we would look at something like that at
2 staff level review.

3 Q Okay. So the first thing is a staff level review
4 to see if it complies with the guidelines?

5 A Correct.

6 Q It might not, in which case it gets kicked back?

7 A Correct.

8 Q If it does, then you take it to a meeting with
9 the -- with the board?

10 A I can. Or review it at staff level. And/or
11 review it with a board member outside of an ARB meeting.

12 Q Okay.

13 A And process it from there.

14 Q Okay. Is there -- how do y'all decide, like, what
15 has to go to a full board meeting and what one board member
16 can do and--

17 A The guidelines are fairly straightforward about
18 what is required for review. And if I feel that the design
19 doesn't meet the design guidelines, I'll ask the board to
20 review it.

21 Q Okay. Let me make sure I understand the process.
22 And that sounds like, you know, kind of my typical
23 understanding of what an architectural review board and a
24 review board administrator does.

25 You -- applications come in for you, new

1 construction or improvement, you take an initial look at
2 those, see if they meet the guidelines. They might get
3 rejected by you. They might get scheduled for a meeting
4 with one or more of the board members, in which case it
5 could get rejected or approved potentially.

6 A Uh-huh.

7 Q So it's really kind of three things. You know,
8 the stuff coming in, your initial review, and then dealing
9 with the board. Is that a fair way of saying it?

10 A You -- we could review it one or two board members
11 outside of an ARB formal meeting.

12 Q Okay.

13 A Or then have the entire board review it as well.

14 Q All right. Aside from -- so essentially four
15 things. Aside from those four things, is there anything
16 else you do as a part of your job title as ARB administrator
17 for the Daniel Island Property Owners Association?

18 A That consumes most of my time.

19 Q Okay. Is there any other tasks that you have
20 that's not a part of that? Is there any separate thing,
21 like in addition to that you are also in charge of dog
22 walking trails or--

23 A No.

24 Q Okay. So everything you do is essentially this or
25 some component of this?

1 A Correct.

2 Q Related to approval. All right.

3 Now, tell me about this. So these applications
4 come in because someone is doing construction or
5 improvement. In what geographical area do they have to
6 apply to you in your office? I mean, is it -- is it all of
7 the entire island called Daniel Island or is it just the
8 development of Daniel Island or is it just parts of the
9 Daniel Island development or, you know, who has to apply to
10 you and who can just build a house on their own?

11 A It would be the entire subdivision of Daniel
12 Island.

13 Q Okay. So essentially every part of Daniel Island,
14 the Daniel Island Company has developed over time if there's
15 going to be a new house or a -- or an improvement, that
16 application process is coming through your office?

17 A I don't know if the Daniel Island Company was
18 solely responsible for all of the development. But any new
19 developments or improvements in the subdivision of Daniel
20 Island, I review. Came through my office.

21 Q Okay. So the entire subdivision. All right. And
22 that -- and that makes sense. Are there different -- are
23 there different sets of guidelines for different parts of
24 Daniel Island? Or what guidelines do you look at? Is it
25 like one big book and it applies everywhere? Or is it, you

1 know, this neighborhood has this set and this other
2 neighborhood has that set?

3 A The different associations have different
4 guidelines.

5 Q Okay. And the -- by different associations, how
6 many different associations are there?

7 A Daniel Island Park Association, Daniel Island
8 Community Association, and Daniel Island Town Association.

9 Q Okay. So each of -- Daniel Island Park
10 Association, Daniel Island Community Association, and Daniel
11 Island Town Association, each of those has a separate set of
12 guidelines?

13 A Correct.

14 Q And you just apply the relevant guidelines for
15 wherever the building is?

16 A Correct.

17 Q Okay. Do you know where those -- where those
18 guidelines came from? Like where they originated from? I'm
19 guessing they existed before you.

20 A Yes.

21 Q Any idea of their origin, who wrote them or--

22 A I do not.

23 Q I'm sorry--

24 A I do not.

25 Q Okay. Is there a way for you to characterize for

1 me, without going into all the detail of these regulations,
2 is there any way that they differ or any way that they are
3 alike, kind of across the board?

4 A In terms of differences, there are technicalities
5 with setbacks and -- setbacks, landscaping requirements.

6 Q Okay. And do you know the reason for those
7 differences in setbacks and landscaping requirements?

8 A Lot -- lot sizes, being able to accommodate the
9 different setbacks and landscaping.

10 Q Okay.

11 A Is typically a driving element for that.

12 Q Okay. And the commonalities, I imagine, probably
13 outnumber the differences. I mean, I imagine you can't have
14 a mobile home anywhere; right? And you can't have --
15 probably all manner of things. You can't have garish colors
16 probably anywhere; is that fair to say?

17 A Colors are reviewed on a case-by-case basis.

18 Q Okay. Now, where do you -- where do you actually
19 work out of?

20 A 130 River Landing Drive, unit 1C.

21 Q Unit 1C. Is that the same unit 1C that Kay
22 Fabrizio works in and -- oh, gosh, who else? Chris Hamil
23 and Barbara McLaughlin and--

24 A Correct.

25 Q -- those folks? Okay. All right. Is there

1 another office--

2 Thank you, Fanisa. [ph]

3 Is there another office that y'all have aside from
4 this 130 River Landing address?

5 A Other -- when COVID hit, we worked from our --
6 whatever little home office we were able to set up.

7 Q Gotcha.

8 A But, no, that is the -- that is the office.

9 Q That's the address?

10 A Uh-huh. Correct.

11 Q And y'all work, I understand, under the banner of
12 the Daniel Island Property Owners Association?

13 A Correct.

14 Q Okay. Is there a unit 1A and 1B in--

15 A I don't know.

16 Q Okay. But they're not -- if they are, they're not
17 yours?

18 A Correct.

19 Q Okay. I was just curious. Y'all were 1C. So
20 you're not the entire -- are you not the entire building?
21 Are there other people in the building?

22 A It's a condominium complex.

23 Q Okay.

24 A With residential housing above and other rental
25 spaces on the first floor.

1 Q I gotcha. And so all of the Daniel Island
2 Property Association stuff is at this 130 River Landing,
3 unit 1C?

4 A The offices, yes.

5 Q Okay. I'm going to try to save a little time here
6 by telling you what we just heard Kay Fabrizio say about the
7 structure at Daniel Island Property Owners Association. And
8 I just want you to tell me if you agree that it's right or
9 if -- or if you think it's something wrong. If she said
10 something wrong, I want you to, obviously, point it out.

11 But my understanding is that you report directly
12 to Jane Baker as vice president of community services. Is
13 that who you report to?

14 A I report to Jane Baker, yes.

15 Q Okay. And you report to Jane Baker now. Did you
16 also report to Jane Baker back in 2016?

17 A Yes.

18 Q Okay. Have you ever reported directly to anybody
19 else or has it always been Jane Baker?

20 A It's always been Jane.

21 Q Okay. And Kay Fabrizio told us that she also
22 reports to Jane Baker. Is that your understanding?

23 A I believe so.

24 Q Okay. And that Sara Cuthber reports to Kay?

25 A That's my understanding.

1 Q All right. And then do you know Chris Hamil?

2 A Yes.

3 Q All right. And my understanding from Ms. Fabrizio
4 is that Chris Hamil also reports to Jane Baker?

5 A I believe that's correct.

6 Q All right. And you know Barbara McLaughlin?

7 A Uh-huh.

8 Q Okay.

9 A Yes.

10 Q My understanding from Ms. Fabrizio is that Barbara
11 McLaughlin also reports to Jane Baker.

12 A That's my understanding.

13 Q Okay. Are you aware of anybody else that reports
14 to Jane Baker, either now or back in 2016, besides the four
15 people I just named, you, Mary Stuart Sutton, Kay Fabrizio,
16 Chris Hamil and Barbara McLaughlin?

17 A Other staff members or sub-staff members?

18 Q Yeah, anybody who works at the property owners
19 association that reports to Jane.

20 A No.

21 Q Okay. And then do you know who Jane Baker reports
22 to?

23 A When?

24 Q Well, at any time, I guess, would be a good
25 question. My understanding -- so I'll tell you what -- what

1 Ms. Fabrizio told us.

2 Thank you very much.

3 She told us that Jane Baker reports to the boards
4 of five different entities, three of which you just named,
5 those three associations, as well as the Daniel Island
6 Community Fund and the Daniel Island Community Foundation.

7 A Uh-huh.

8 Q Does that sound right?

9 A Correct. Yes.

10 Q Okay. And Ms. Fabrizio also told us that back in
11 2016, the president and vice president of each of those five
12 boards were Matt Sloan and Frank Brumley, respectively. Is
13 that your understanding as well?

14 A I don't recall Frank Brumley's position on the
15 boards.

16 Q Okay.

17 A I do recall Matt Sloan being on the board.

18 Q Okay. And do you remember Matt Sloan's position?
19 Was he president?

20 A I believe so.

21 Q Okay. All right. So with respect to what Ms.
22 Fabrizio told us, you don't think she's wrong, you just
23 don't know?

24 A Correct.

25 Q Okay. Fair enough. All right. And she also told

1 us that each of those five boards, back in 2016, as well as
2 today, was still under the control of the developer of the
3 island, Daniel Island Company. Is that your understanding
4 as well?

5 A That's my understanding.

6 Q Okay. All right. So you, unlike Ms. Fabrizio who
7 did work for five different entities under that property
8 owners association umbrella, you don't do any work for
9 community fund or community foundation, do you?

10 A I do not.

11 Q Okay. You just do work strictly for Daniel Island
12 Town Association, Daniel Island Park Association, Daniel
13 Island Community Association?

14 A Correct.

15 Q Okay. Now, your -- your actual paycheck, does
16 that come from Daniel Island Property Owners Association or
17 town or community or park association?

18 A Daniel Island Town Association.

19 Q Daniel Island Town Association. So Daniel Island
20 Town Association writes your paycheck to you, but you
21 actually do work not only for town association, but also for
22 park association and community association?

23 A Correct.

24 Q Okay. Do you know if there's any sort of
25 contracts between Daniel Island Town Association, Daniel

1 going anywhere. If I were to come to 130 River Landing,
2 coming in off the street, is there a sign to tell me, like,
3 where I am? I'm looking for you because I want to renovate
4 my house, let's say. How do I know what building to come
5 into?

6 A There is a sign that says Daniel Island Property
7 Owners Association.

8 Q Okay. And so coming through there -- and
9 presumably I'd come to the front desk and I say, hey, I'm
10 here to see Mary Stuart, and they show me back to your
11 office?

12 A Correct.

13 Q And then your office, does it say anything? Does
14 it say Mary Stuart Sutton or does it say anything else?

15 A Nothing. No.

16 Q All right. Do you have a business card?

17 A I do.

18 Q What is -- and it has your title on it?

19 A Correct.

20 Q And who does it -- what does it say for the
21 entity, Daniel Island Property Owners Association?

22 A Correct.

23 Q Okay. Do you have a separate business card for
24 Daniel Island Town Association, park association and
25 community association?

1 A I do not.

2 Q Okay. So it's just the one card that says
3 property owners association?

4 A Correct.

5 Q Now, Ms. Fabrizio told us that property owners
6 association really isn't a separate entity. It's a name for
7 all of these associations put together. Is that fair? Is
8 that right?

9 A I can't speak to the structure of it. But it's
10 intended for a one-stop shop so we can help provide
11 community members service.

12 Q Okay. And that sounds very convenient. Is there
13 any distinction, if I were to come into the office or
14 anybody were to come into the office, is there any
15 distinction about this -- this part of the office is town
16 association, this other part is park, and this other part is
17 community association?

18 A I'm sorry, would you ask the question again.

19 Q Yeah. If I were to walk into the offices at 130
20 River Landing, would I be able to tell what part was the
21 office for the Daniel Island Town Association and what part
22 was the office for the community association and what part
23 was the office for the park association?

24 A The office is not subdivided by association.

25 Q It's just altogether?

1 because you and Ms. Fabrizio have talked about Jane Baker.
2 And I understand she is your boss and she is the vice
3 president of community services for the Daniel Island
4 Property Owners Association; is that right?

5 A I think so.

6 Q Okay. And, again, the Daniel Island Property
7 Owners Association is really the umbrella of Daniel Island
8 Town Association, Daniel Island Park Association, Daniel
9 Island Community Association, as well as a couple funds and
10 foundations; is that right?

11 A I believe so, yes.

12 Q Okay. All right. So I know Jane. And Matt
13 Sloan, is he with -- back in 2016, he would be with the
14 Daniel Island Company?

15 A Correct.

16 Q All right. And did he have any other -- I
17 understand from Ms. Fabrizio he had other roles, obviously,
18 as president of the board of the five different entities
19 that I just listed.

20 A Correct.

21 Q What was Mr. Sloan's role on the architectural
22 review board?

23 A He was president.

24 Q He was president. So he's always president. Do
25 you remember who the vice president was back in 2016?

1 Q Okay. So if I'm counting this up right, it looks
2 like back in 2016 when there were eight members of the
3 architectural Review Board, one, two, three, four, five of
4 those eight members were also with the Daniel Island
5 Company? That would be Jane Baker, Jeff Elliott, Matt
6 Sloan, Bill McKenzie and Caroline Lancaster?

7 A Jane Baker didn't work for the development
8 company, to my knowledge.

9 Q Oh. She work worked for property owners
10 association?

11 A Yes.

12 Q Okay.

13 A My understanding.

14 Q All right. So four of the eight worked for the
15 Daniel Island Company, and Jane, one of the eight, worked
16 for the Daniel Island Property Owners Association?

17 A Correct.

18 Q Okay. And I can't remember -- I know that Ms.
19 Fabrizio told us this; but I don't know whether you
20 confirmed this or not. At the Daniel Island Property Owners
21 Association, Jane Baker, back in 2016, would have reported
22 to the boards of five entities, and each of those boards had
23 as its president Matt Sloan. Does that sound right to you?

24 A Yes.

25 Q Okay. So Daniel Island Town Association, Daniel

1 Island Park Association, Daniel Island Community
2 Association, Daniel Island Community Fund and Daniel Island
3 Community Foundation, those five entities?

4 A I'm not familiar with the fund and the
5 foundation--

6 Q Okay.

7 A -- structure.

8 Q Okay. The ones you are familiar with, the first
9 three I named, the boards were -- the president of those
10 boards--

11 A I only knew the president.

12 Q That was Matt Sloan?

13 A Correct.

14 Q Okay. And Jane Baker reported to those five --
15 those boards, of which Matt Sloan was the president?

16 A As far as I know.

17 Q Okay. So if I'm reading this right, it looks like
18 whoever was controlling Daniel Island Company, through its
19 control of the property owners association, had five of the
20 eight votes on the architectural review board; right?

21 MR. BARFIELD: Object to the form.

22 MR. SOBOCINSKI: Object to the form.

23 THE WITNESS: I don't--

24 MR. SOBOCINSKI: Do we want to put the stipulation
25 of objection of one is the objection of all?

1 MR JEFFERIES: Yeah, let's stipulate for the
2 record that if anyone objections, it's counted as an
3 objection for all of the defendants so that we don't have to
4 spend a bunch of time raising a bunch of them.

5 BY MR JEFFERIES:

6 Q So I'll ask that again.

7 A Thank you.

8 Q I think, as we went through here, you said there
9 were eight members of architectural review board in 2016; is
10 that right?

11 A I believe so.

12 Q Okay. And of those eight, four were also with the
13 Daniel Island Company, the developer?

14 A Correct.

15 Q And a fifth one was Jane Baker, who was with the
16 property owners association?

17 A Correct.

18 Q And Jane Baker reported to the boards of five
19 entities, three of which you know personally the president
20 of the board was Matt Sloan?

21 A Correct.

22 Q Okay. And as to the other two, you don't know?

23 A Correct.

24 Q All right. But you don't have any reason to doubt
25 Ms. Fabrizio when she says--

1 A Not a bit.

2 Q -- Mr. Sloan was president of those, too?

3 A Huh-uh.

4 Q Okay. So if it turned out to be the case that
5 Mr. Sloan controlled the Daniel Island Company, and that
6 Ms. Fabrizio is right, of course, about him being the
7 president of all five boards--

8 A Uh-huh.

9 Q -- Mr. Sloan really controlled the architectural
10 review board, because he had five people on it?

11 MR. SOBOCINSKI: Object to the form.

12 MR. BARFIELD: Object to the form.

13 THE WITNESS: I do not agree with that statement.
14 He did not.

15 BY MR JEFFERIES:

16 Q Oh. Tell me why not.

17 A Because they're all free-thinking people with
18 opinions about design.

19 Q Who all worked, one way or another, for Matt
20 Sloan?

21 MR. SOBOCINSKI: Object to the form.

22 BY MR JEFFERIES:

23 Q Right? I mean, they did all work one way or
24 another for Matt Sloan; right?

25 A The entire board?

1 Q No, no, no, just the five people that I named.

2 A I believe so, yes.

3 Q Okay. I like to think I'm a free-thinking person.
4 But I know that in the bottom right hand corner of my
5 paycheck, it says Akim Anastopoulo. So when it comes down
6 to it, I know who my boss is.

7 MR. BARFIELD: Object to the form.

8 THE COURT REPORTER: This is the court reporter.
9 Can I -- I'm seeing Mr. Barfield's name only on my Zoom
10 feed. Is that who's been objecting, is Mr. Barfield?

11 MR. BARFIELD: It is I, yes.

12 MR JEFFERIES: Yep.

13 THE COURT REPORTER: Thank you.

14 BY MR JEFFERIES:

15 Q Mary Stuart, when you do -- when you do your work,
16 when you analyze a new proposed -- new construction or
17 proposed improvement, you apply these guidelines. Do you
18 keep track in any way of how much time you're spending
19 applying the guidelines of park association versus community
20 association versus town association?

21 A I do not.

22 Q Okay. Do you keep track of how many copies you
23 make when dealing with park or community or town?

24 A I do not.

25 Q Or how many e-mails you send dealing with park,

Sara Cuthbert—Direct Examination by Mr. Jefferies.

14

1 if this is correct. My understanding from
2 Kay Fabrizio is that there's no entity actually
3 called Daniel Island Property Owners Association.
4 That's more of an umbrella term for a collection of
5 other entities. So are there -- number one, is that
6 correct, my understanding?

7 A Yes.

8 Q Okay. Would there be any invoices that
9 would be payable by the Property Owners Association
10 in that name, or are they coming to other entities?

11 A Other entities.

12 Q Okay. And what would those entities be
13 that you handle accounts payable for?

14 A Daniel Island Town Association, Daniel
15 Island Community Association, Daniel Island Park
16 Association, Daniel Island Community Fund, and
17 Daniel Island Community Foundation.

18 Q Gotcha. And so that is -- one, two,
19 three, four, five -- five entities that you handle
20 accounts payable for, correct?

21 A Yes.

22 Q And before we go down through the rest of
23 this list, as we go down through these other things,
24 are there any things that you do for entities other
25 than the five that you just named for me?

Barbara McLaughlin - October 5, 2021
Video Deposition

Barbara McLaughlin—Direct Examination by Mr. Jefferies. 10

1 A No, I wasn't lucky enough to do that.

2 Q Fair enough. All right. So continuously
3 for 21 years. Now, I've heard some other folks
4 explain it but I'd like you to as well, tell me what
5 the -- the Daniel Island Property Owners Association
6 isn't an entity in itself, is it? It's a collection
7 of entities, is that right?

8 A That's correct.

9 Q And what are those entities that make up
10 the Property Owners Association?

11 A The Daniel Island Community Association,
12 Daniel Island Park Association, and Daniel Island
13 Town Association.

14 Q Daniel Island Community Association,
15 Daniel Island Park Association, and Daniel Island
16 Town Association?

17 A Correct.

18 Q Okay. Now, I'm aware there's some other
19 entities, one called the Daniel Island Community
20 Foundation, and another, the Daniel Island Community
21 Fund. Are you familiar with those at all?

22 A I am familiar with the Daniel Island
23 Community Fund for the purposes of events, some
24 events that I do, that I host.

25 Q Okay. So the Daniel Island Community Fund

1 Q Right, fair.

2 Besides code enforcement, what
3 else?

4 A Well, you know, we're sort of the face
5 of the community, so we are who the owners call
6 for any questions that they have. A lot of the
7 questions, you know, where do I go for this, what
8 do I do for this?

9 We're sort of the sounding
10 board, customer service for any kind of service,
11 whether it be something that we do from the POA, or
12 perhaps it's a City of Charleston question or
13 complaint about anything from trash to streetlights
14 to you name it. We run a little town there.

15 Q And that's -- I'm looking at your title
16 here. This is you-all's website, property owner
17 association website. Manager of community services.
18 So that's a pretty broad kind of title?

19 A It is broad, yeah.

20 Q So people call up. Any kind of question
21 they have, they might be asking you and you're
22 fielding it somehow?

23 A If it's dealing with parks, common
24 areas, boat landings, pools, that would fall more
25 on Chris and Dani Hermann in our office.

1 A Yes, sir.

2 Q Okay. So your boss is Jane Baker. Who is
3 Jane Baker's boss?

4 A I would imagine the boards, the board,
5 board of directors.

6 Q Okay. And that's the board --

7 A And the officers and the board.

8 Q All right. And are there separate -- are
9 there different boards for Community Association,
10 Property Association, and Town Association?

11 A There are -- ask the question again.
12 I'm sorry.

13 Q Jane reports -- if I understood you
14 correctly, Barb, you report to Jane Baker?

15 A Correct.

16 Q And then Jane Baker reports to the
17 officers and boards of the Property Owners
18 Association?

19 A Yes, correct.

20 Q Which is really three associations,
21 although nobody seems to know that except for us.

22 Do you know who those board
23 members are on those associations? Or the officers,
24 do you know who any of those people are?

25 A Matt Sloan, Frank Brumley, David

1 Crawford, and then we have a couple of resident
2 board members on the Community Association Board
3 at this point.

4 Q And what is Matt Sloan's role on the
5 various boards?

6 A I think he's the president of the Daniel
7 Island Company. That's what I would say on that.

8 Q Okay. Is he the president of the boards
9 as well, or was he in 2016?

10 A I don't know.

11 Q Okay.

12 A I don't know.

13 Q And the Daniel Island Company, is that the
14 developer of Daniel Island?

15 A That's correct. Frank Brumley, of
16 course.

17 Q And Frank Brumley. Okay. So, yeah,
18 Matt Sloan, Frank Brumley. And then David Crawford,
19 is he an attorney, I'm thinking?

20 A He is an attorney.

21 Q Okay. And he's on the boards as well, as
22 far as you know?

23 A He is. Yes, sir.

24 Q All right. You mentioned earlier when I
25 asked you about the creation of associations, you

1 said, well, I think the developer would have done
2 that. So that would be the Daniel Island Company,
3 then, that like actually created the associations?

4 A I would assume that. I would assume
5 that. Through their original declarations and
6 that sort of thing, I would assume that.

7 Q Gotcha. All right. Back in 2016 -- and
8 you might not know the answer to this question --
9 did Daniel Island Company as a developer still
10 control those three boards?

11 A Yes.

12 Q Okay. It hadn't handed it over to the
13 homeowners or anything?

14 A Correct.

15 Q Okay. So top of the pyramid, you got
16 Matt Sloan, Frank Brumley, and David Crawford who
17 control the boards of the associations?

18 A Yes.

19 Q And then down from them, you have
20 Jane Baker?

21 A Yes.

22 Q And down from them, we have you?

23 A We have -- and I'm sort of at a level of
24 Kay and Chris.

25 Q Other folks at your level as well?

1 A Yes.

2 Q Okay.

3 A We are the -- those department managers,
4 I guess you could say.

5 Q Right. So Jane manages you. Matt Sloan,
6 Frank Brumley, David Crawford and the boards manage
7 Jane?

8 A Yes.

9 Q All right. And if Jane thought -- and I'm
10 not suggesting you're doing a bad job or a good job.
11 I don't know what kind of job you do. I presume
12 it's good. You're doing a good job, Jane Baker
13 would be the one to say, nice work?

14 A She would.

15 Q And if there were something you were doing
16 that she didn't like, she'd be the one to say, Barb,
17 I need you to correct this?

18 A She sure would.

19 Q All right. And up the ladder from her,
20 she'd get the same kind of feedback from Matt Sloan,
21 Frank Brumley, and David Crawford?

22 A I would guess, but I can't say that for
23 sure. I can only speak for Jane and I. That's
24 who I have direct contact with.

25 Q Gotcha. When you talked to Jane about

Frank Brumley—Direct Examination by Mr. Barfield.

1 Daniel Island in 1997 and have continued to be
2 involved there since then.

3 Q All right. And when you say "involved,"
4 what -- let's talk about Daniel Island, because you
5 were in on the ground floor, right?

6 A Uh-huh. Yep. Yep. My brother's family and
7 I and Matt Sloan purchased the property in 1997, and
8 Matt served as chief operating office, and I served as
9 chairman of the board. I didn't really play much of a
10 day-to-day role. Matt was the operating officer and
11 made most of those decisions, and I attended annual
12 board meetings.

13 Q Okay. And when you talk about titles, what
14 entity, what company were you?

15 A This was for the Daniel Island Company, but I
16 was an officer in most of the other operations on the
17 island there also.

18 Q Okay. And was the Daniel Island Company the
19 original -- the developer entity?

20 A Yes.

21 Q And was that a -- or is it -- was it/is it a
22 for-profit company?

23 A Yes.

24 Q All right. And tell me, if you will, just a
25 little bit about the genesis of the development of

1 early documents or talking to the planners, but I saw
2 it, I'm sure, at the board meeting when it was
3 approved. It wasn't approved, probably, it was just
4 -- it was there for review, and we had a development
5 update at each board meeting, and I'm sure I saw it.

6 Q Okay. And do you remember who the designer
7 was that was hired to do that?

8 A I don't. It was a national designer, but I
9 don't remember the name. I remember he was touted as
10 being very good with public spaces and particularly
11 oriented to children.

12 Q Okay. The Daniel Island Company, we've
13 established as sort of the initial developer entity
14 was -- did the Daniel Island Company form or the
15 individuals behind the Daniel Island Company form
16 other entities over the years?

17 A We did. It was a wide, large structure and,
18 so yes, there were a number of subsidiaries associated
19 and affiliated. Because we had a joint venture
20 partner, we did even more of that because there were
21 entities that we owned together, and there were
22 entities that were separately owned and operated. And
23 so yes, there were a number of entities, LLCs, and
24 partnerships that were formed.

25 Q Okay. And were some of those entities

1 not-for-profit property owner associations on the
2 island?

3 A Yes. We formed a property owner association
4 for the north end, which is called the Daniel Island
5 Park Association; that's on the other side of I-26.
6 And then there's the Daniel Island Community
7 Association, which was the first one formed, which is
8 the south end POA, and then there was a -- we have a
9 commercial center in the heart of the island, and
10 that's the Daniel Island Commercial, and it's called
11 DITA, Daniel Island -- I can't remember exactly what
12 DITA stands for, but they were responsible for the
13 commercial properties and were kind of the overall
14 master entity of the POAs.

15 Q Got you. And are those POAs set up at
16 designated points in time or events to turn over
17 completely to the control of property owner boards?

18 A Yes, and that was set up as originally
19 designed to -- at certain points based on the
20 certificates of occupancy within the town
21 organizations, so that when you had a certain
22 percentage of the to-be-developed property was
23 achieved, then there was automatic turnover. I
24 believe it would have been a staged process because it
25 kind of went through two or three stages of -- in that

1 turnover, but yes, that's the way they were designed,
2 and the park was going to happen in the same way.

3 Q And how do those POAs get their funding to
4 fund their budgets?

5 A Through an assessment, a property owner
6 assessment, yeah.

7 Q Okay. And are property owners -- or have
8 property owners always been allowed to attend board
9 meetings of the POAs that they are affiliated with?

10 A Yes. We have -- actually, we have outside
11 members even before they took control, there would be
12 some percentage -- like if we had five total board
13 members, three would be from the developer, and two
14 would be from the property owner basis even long
15 before we turned over control. And so yes, they were
16 involved. And each year, we had an annual meeting, I
17 think maybe in December, and there would be sometimes,
18 you know, 50, sometimes 75 or 100 property owners
19 would attend those meetings. And they would be there
20 to ask questions and, you know, just make sure they
21 were comfortable, and sometimes they weren't always
22 comfortable. You know, it's like typical property
23 owners.

24 Q Sure. Sure. And they're probably concerned
25 about where their -- how their money is being used,

1 right?

2 A Exactly. Is the grass being cut in front of
3 my yard or my house.

4 Q Got you. In terms of physical space and
5 resources, there's been -- there have been previous
6 depositions in this case of some employees of the
7 various property owners' association and some
8 testimony about them sharing physical space and some
9 office equipment and that sort of thing. What about
10 Daniel Island Company, were you under the same -- was
11 that entity under the same roof as the POAs?

12 A No, it was not. It was totally separate from
13 the POAs, and we knew the people that were there and
14 running it, but no, we didn't have any day-to-day
15 involvement.

16 Q Okay. Daniel Island Company -- would it be
17 safe to say that Daniel Island Company was in the
18 business of developing and selling real estate at a
19 profit?

20 A Correct.

21 Q And the property owners' associations were in
22 the business of managing and maintaining real estate
23 that had already been sold to other people?

24 A Referred to as the common properties,
25 exactly.

Frank Brumley—Cross Examination by Mr. Jefferies.

1 Mr. Barfield's covered the vast majority of what I
2 planned to cover, so I only have a handful of
3 questions for you, so I appreciate your time.

4 Tell me about the process of establishing
5 these property owners' associations. Like, how does
6 that actually occur? Is that something that happens
7 through the master deed or -- how and why are they
8 established?

9 A That covers a part of our covenants, rules
10 and restrictions, the CCRs that are filed -- Charles
11 Fraser that I worked for in the '70s put these
12 original ones together, and you'll still occasionally
13 see that name pop up by mistake and somebody else's
14 because they've been copied so many times around the
15 country. But yes, he was a brilliant land both
16 planner and developer and lawyer by training at the
17 University of Georgia and Yale, and he developed these
18 CCRs, and they've really been used throughout the
19 industry. There's a decided format for it, and things
20 really haven't changed much over the years. They've
21 been tweaked, but there's a decided format of how
22 these are put together, how the property owners and
23 the boards are set up, how officers are elected, and
24 various different communities.

25 When the turnover happens, we've always done

1 it in the late stages, 75, 80 percent, if my memory
2 serves me correctly, of when the certificates of
3 occupancy are achieved. And at that point in time, it
4 gets automatically turned over. And that's pretty
5 well done industrywide, and that's because it's pretty
6 much an established protocol.

7 Q And that protocol, really, Charles Fraser
8 kind of thought that up, along with some other really
9 smart people?

10 A He did, yes.

11 Q And then that's gone industrywide?

12 A That and the Urban Land Institute, ULI, has
13 been widely involved in that, and they've taken
14 Fraser's kind of base document and tweaked it or
15 improved it.

16 Q Now, for folks that don't know, Charles
17 Fraser was with Sea Pines back in the day?

18 A That's right. He was Mr. Sea Pines. He
19 really was the patriarch of our coastal resort
20 industry.

21 Q Now, when did you start working with Charles
22 Fraser?

23 A Actually, I started working for him in 1969.
24 He had bought 3,000 acres on Cumberland Island, and it
25 was an area where I grew up, and so I got involved and

1 went to work for him. And then we decided to sell
2 that property to the National Park Service, took those
3 dollars and bought the Amelia Island Plantation in
4 Florida, south end of Fernandina Beach and --

5 Q I'm familiar with it. I love it. Y'all did
6 a fine job there.

7 A Yeah, it had been a real success, and it's a
8 great place to go back and visit.

9 Q Do you have some insight into why Mr. Fraser
10 developed the concept the way he did as opposed to
11 prior to that when you could, obviously, buy a big
12 piece of property, bust it up into lots and sell the
13 lots; people have done that for a long, long time.
14 Why not just continue doing that? Why did he go to
15 this new model, if you know?

16 A I think he was what he considered to be an
17 appropriate form of democracy. He'd have
18 property-owner input to how things were being run, and
19 so it was really to achieve what he thought was a good
20 balance of developer involvement and property-owner
21 input.

22 Q As opposed to just selling lots where anybody
23 could do whatever they wanted on each lot?

24 A Exactly. And he was adamant about approving
25 landscape design, colors of the property, and how you

1 could maintain -- it almost got to the point where
2 what kind of Christmas decorations you could put up in
3 your yard. Yeah, he was very focused.

4 Q And that's helped a lot of developers, I
5 would think, sell property probably for more than they
6 could have sold it for otherwise because people have
7 some assurance when they move into that neighborhood
8 that it's not going to go crazy?

9 A People are looking for predictability, and
10 that's what you have in the typical Sea Pines master
11 plan.

12 Q So I know my neighbor, if I buy a piece, my
13 neighbor is not going to put a chain-link fence in the
14 front yard because he can't?

15 A That's correct. That's correct.

16 Q And you found the market will pay more for
17 those types of properties than for others?

18 A Correct.

19 Q At the time y'all started developing Daniel
20 Island -- when was that when you actually started with
21 the first -- the first CCR, those first neighborhoods
22 that fell under this new model of control?

23 A It would have been probably in 1994 or '95.
24 The foundation was precluded from being in the
25 development business themselves as a not-for-profit,

1 so we formed an entity and brought in a joint venture
2 partner and put in the capital, and we developed the
3 first 400-lot division, Codner's Ferry. At that point
4 in time, and that was done prior to my brother and
5 myself and Matt Sloan purchasing the property in 1997.

6 Q And y'all chose to use this model developed
7 by Charles Fraser that gave greater control and
8 uniformity and value to the property --

9 A True.

10 Q -- rather than the old-school way?

11 A True.

12 Q And why did y'all make that decision? Why
13 didn't you just do it the old-school way of selling
14 lots and people can do whatever they want?

15 A Candidly, it was never discussed that we'd do
16 it any other way than the way we ended up doing.
17 There was never a decision made not to do it one way.
18 We did it the way that -- this is the way I had been
19 trained.

20 Q Then that makes sense. You have a beautiful
21 island now.

22 A Uh-huh.

23 Q And I take it, Daniel Island Company has
24 probably made a lot of money off of that, more than
25 they would have had they just sold lots at random to

1 people?

2 A It's been successful.

3 Q Do you remember when Daniel Island Town
4 Association, DITA, went from developer control over to
5 property-owner control? Do you remember when that
6 occurred?

7 A I don't think DITA has.

8 Q Okay.

9 A DICA on the south end either has or is in the
10 process of. It's been a lot of conversation about it
11 recently and, you know, just because of the memos from
12 the management team saying, "We're about to do this."
13 I can't tell you that it's already officially
14 transferred but if not, it's in process.

15 Q What about the one on the north end, Daniel
16 Island, DIPA?

17 A No. It's a slower development than the south
18 end, and, again, it's based on percentages. So DIPA,
19 as it's called, the park association, has still got
20 several more years, but it's on the same structure,
21 and it will transfer, but they're some way away from
22 achieving their percentages.

23 Q So back in 2016, all three of those entities
24 DICA, DIPA, and DITA -- that's D-I-C-A, D-I-P-A, and
25 D-I-T-A -- all three of those entities were still

1 developer controlled?

2 A Yes, that's correct.

3 Q And for folks who don't know, what does
4 developer controlled mean? Is it a little bit, is it
5 a lot, is it everything? What does the developer
6 control when it controls in the association?

7 A You have voting control of the majority of
8 the board, but you begin to keep property owners
9 enthusiastic about values and doing things on their
10 own property. You have them very much involved, and
11 you want them to be happy, so they participate. I
12 can't ever remember there being a vote that was
13 contested one way or the other. It was, basically, we
14 -- it was a homogenous group that worked together, but
15 the developer absolutely maintains control until he
16 transfers.

17 Q Okay. And so back in 2016, when the
18 developer had control, the developer could choose to
19 listen to the people and often did but could also, if
20 it wanted to, just ram something through, if it so
21 chooses. So "absolutely, we're doing this," it would
22 have the votes to do it; is that fair?

23 A Well, the term "ram something through" never
24 surfaced, never came up, so we'd never had to do that.
25 So it was run very cordially and with enthusiastic

1 property-owner support. They liked what we were
2 doing. They liked the way the place looked and
3 thought we were doing a good job. So candidly, it
4 never really came up. There was never any opposition
5 about what do you think we ought to do, or where do
6 you -- no, it just -- it was never a matter of
7 contention.

8 Q But if you wanted to, you could have?

9 A We could have, yeah.

10 Q In the community where I live, which is
11 Conway, South Carolina, there's just a little tiny
12 marina -- we're a small town -- a little tiny marina,
13 and there at the marina is a rack of free lifejackets;
14 they're just free to use. You take your kids down
15 there to the marina and the little park, if you're
16 getting nervous about them falling in the water, you
17 can just grab a free-to-use lifejacket and put it on.

18 I don't know whether the city did that or if
19 the private operator of the marina did it, but I
20 mention it for this reason: Say that y'all were
21 developing a park along the river and you wanted to do
22 something like that as the developer. "We want to put
23 out free lifejackets because we think that's a good
24 idea," and the homeowners said, "No, we just don't
25 think that's an expense that's worth it." Could you,

1 as the developer, have said, "Well, we hear you, but
2 we're doing it anyway because we think it's the right
3 thing and the safe thing to do?"

4 A We could have.

5 Q And probably -- might have, right, if you
6 thought it was the right thing to do?

7 A Those kind of questions, you know, in our
8 situation, never came up. Typically, if it was
9 something that should have been done, we did it. It
10 didn't have to be told or didn't have to be discussed
11 with the property owners.

12 Q And could unilaterally decide if you wanted
13 to?

14 A We could have, yes.

15 Q What about the Daniel Island Community
16 Foundation, which I think used to be the community
17 fund, maybe, are you familiar with that?

18 A They're two different entities, and it is
19 confusing, but they're set up with a fee that comes
20 from property sales, and we have committees and board
21 structures that primarily supports the communities,
22 the underserved communities that -- Clements Ferry
23 Road, Cainhoy properties, and there's a little town of
24 Wando that's primarily African American, underserved
25 communities, and these foundations were set up

1 basically to try to provide dollars, and it's several
2 hundred thousand dollars a year gets spent on
3 children's programs and things like that, and that's
4 all done through this, and it's generated from every
5 sale that happens. There's a specific -- I want to
6 think it's a quarter of a point, whatever that number
7 is, it's just paid at closing of a resale, and those
8 funds go into a fund, and we have a separate board and
9 a separate group of people who solicit grants and
10 approve grants and very democratically spread that
11 money out, people and the property owners are invited
12 to suggest applicants, and we get a lot of applicants,
13 but it's been -- in most community associations, most
14 communities around the United States, those funds --
15 it's done in other places but those funds are utilized
16 by the developers to offset his expenses. We've never
17 chosen to do that. We distribute it on a charitable
18 contribution basis.

19 Q It sounds like a worthy organization. Let me
20 ask you this: Bear with me just a moment. Back in
21 2016, remind me what your role was with Daniel Island
22 Company.

23 A I would have been chairman of the board.

24 Q Okay. And do you recall what Matt Sloan's
25 role was?

1 A He would have been president and the chief
2 operating officer.

3 Q Okay. And what about David Crawford?

4 A David was an attorney with Womble Carlyle and
5 did a lot of the POA legal work and served as a board
6 member on several of those associated POA boards.

7 Q Okay. Did David Crawford have a role in the
8 Daniel Island Company?

9 A No.

10 Q Okay. But he did have a role as a board
11 member in some of the POA boards?

12 A The POA, yes.

13 Q And who hired David Crawford as an attorney;
14 was that the Daniel Island Company?

15 A No, it would have been the POA -- I'm not
16 sure when Jane Baker came on board but prior to Jane,
17 there was a young man named Jimmy Bailey, so it was
18 either Jimmy Bailey or Jane Baker would have hired
19 him.

20 Q Now, the control -- the developer control of
21 the various boards you've mentioned, that is by being
22 able -- the developer being able to place its own
23 people in certain numbers on those boards; is that how
24 that works?

25 A I'm not sure it's ever come up. Typically,

1 there were some of the management team. This was true
2 at Kiawah and Amelia Island: Some of the management
3 team typically plays a role and sits in on those
4 boards, just because they've got the credibility and
5 the experience and the ability to make things happen.
6 So yeah, and I'm not sure exactly if it's ever come up
7 before, but I typically have served on those boards.

8 Q And five-person boards is what they were?

9 A Normally, yes.

10 Q So back in -- in my notes, back in 2016,
11 Daniel Island Community Association's board had
12 Matthew Sloan as president; you, Frank Brumley, as the
13 vice president; and David Crawford as secretary and
14 treasurer. Does that sound right?

15 A That sounds correct.

16 Q Okay. And back in 2016, I think y'all were
17 also on the board of Daniel Island Town Association,
18 similar roles or maybe a couple of you flip-flopped,
19 but all three of y'all were on the board?

20 A Probably.

21 Q And it looks like Daniel Island Community
22 Foundation back in 2016 would have been you, Frank
23 Brumley, as president; Matt Sloan as vice president;
24 David Crawford, once again, as secretary and
25 treasurer. Does that sound right?

1 A That sounds right.

2 Q So the same three guys controlling, back in
3 2016, Daniel Island Community Foundation, it has
4 control, Daniel Island Town Association, and it has
5 control of Daniel Island Community Association?

6 A That's correct.

7 Q All right. I'm going to go back to something
8 you said earlier. The City of Charleston didn't want
9 Daniel Island to have any gates, no gates; what do you
10 mean by that? You don't mean baby gates, right?

11 A I mean big, gated communities.

12 Q Gated communities.

13 A Like Kiawah, Wild Dunes, Sea Pines. Yeah.

14 Q All right. So no front gate to keep certain
15 people out and allow others in?

16 A Yeah.

17 Q Okay. But aside from that, you could,
18 obviously, gate off safety hazards. You can have
19 front doors to buildings. You can do all the normal
20 stuff. You just can't selectively restrict access,
21 some people can come in and some people cannot?

22 A I'm not sure it was ever really ever defined.
23 That was just my understanding with Joe Riley, and he
24 requested it, and that's what we did.

25 Q The public can come in?

1 A Absolutely.

2 Q As long as the public can come in, you can
3 also make sure the public is safe, right?

4 A That's correct.

5 Q You can have a gate at the top of a ramp that
6 goes down to a dock, if you want to?

7 A I assume. As I said, it was never really
8 discussed, but yes, you would think that's logical.

9 Q Right. That's not the kind of thing he was
10 trying to prevent. He was trying to prevent another
11 gated island where only the rich people can go in and
12 everybody else has to stay out?

13 A That's correct.

14 Q Okay. Mr. Brumley, I think you mentioned
15 that you didn't have a whole lot of input into the
16 construction of the Daniel Island Childrens Park?

17 A Not a lot, I didn't have any.

18 Q Didn't have any, okay. Are you aware of who
19 might have, aside from -- well, let me not assume.
20 Would Matt Sloan have had input?

21 A He would have had input, yes.

22 Q And what about David Crawford?

23 A No.

24 Q So Matt Sloan would have, all right. Are you
25 aware of anyone besides Matt Sloan who would have had

1 input into the construction of the Childrens Park and
2 the design of the Childrens Park?

3 A Whoever was the CEO of the POA at the time
4 would have had involvement. They were designing it to
5 provide access for children, basically, of the island
6 and the general public, and so those people who were
7 trying to define what those -- that amenity, how it
8 was to be designed, would have had the input to it.

9 Q In your role with the Daniel Island Company
10 on these various other entities, did you give anyone
11 any instructions with respect to safety standards?

12 A No.

13 Q What about with respect to the Park Day event
14 in November of 2016, would you have had any
15 involvement in that?

16 A No, none of the planning, and I think I've
17 attended but one Park Day in 20 years.

18 Q So you would not have given any instructions
19 for safety standards, policies, or procedures for that
20 event?

21 A I was never asked to provide any.

22 Q Okay. Mr. Brumley, I don't want to take up
23 any more of your time. I think I have everything that
24 I need. I appreciate it. Mr. Sobocinski might have
25 some questions, and of course, Mr. Barfield might have

Frank Brumley—Recross Examination by Mr. Jefferies.

RE-EXAMINATION

BY MR. JEFFERIES:

Q Real quick, just to follow up just to get a few things in order here. I think, if I understand what you said earlier, when Daniel Island Company decided to develop Daniel Island, y'all chose the method that Charles Fraser had used which gave the developer additional control, enabled y'all to set standards and to realize a greater profit on the lots than you would have had if you just sold them to the public; is that fair to say?

A Yeah, it's fair to say, but it was never given it any thought, candidly. We didn't go and say, "Let's do it the Charles Fraser way because we'll make more money," that was never a part of any decision; it was the successful model nationally.

Q Because it was so obvious?

A It was obvious. It looked good. It had a lot of -- it had won a lot of awards throughout the country, and so, you know, we followed what seemed to be the smart thing to do.

Q Right, because after somebody figured that out, only a fool would say, "Let's do it the other way and make less money?"

A Probably.

1 Q Part of that methodology of Charles Fraser
2 was to have a set of codes and covenants and
3 restrictions in the master deed and a property owners'
4 association?

5 A Correct.

6 Q And that property owners' association would
7 fall under the control of the developer initially?

8 A Correct.

9 Q And that developer is Daniel Island Company?

10 A Uh-huh.

11 Q And eventually, that association would be
12 turned over to property owner control; is that
13 correct?

14 A Eventually.

15 Q Okay. But as of November of 2016, that had
16 not occurred with any --

17 A I don't believe so, no.

18 Q Okay. So in November -- prior to and in
19 November of 2016, all those property owners'
20 associations were still under the control of the
21 developer of Daniel Island Company?

22 A Yes.

23 Q Thank you.

24 A Uh-huh.

25 MR. BARFIELD: All right. We're done.

Matthew R. Sloan—Direct Examination by Mr. Barfield.

1 were to be no gated communities on Daniel Island.

2 A Yeah, he hates gates.

3 Q Right. And also that there would be a number
4 of public parks out there?

5 A He was not in favor of private parks, nor
6 were we.

7 Q Okay.

8 A All parks were meant to be public. The only
9 things that we've ever built in the three communities
10 that I've been responsible for that are private are
11 swimming pools, and that's strictly for liability and
12 capacity issues, but all parks are open to all.

13 Q Okay. And is it accurate that the Daniel
14 Island Company largely owned and developed the parks
15 and then turned them over to other entities?

16 A Yeah, that's what we do. So we -- in my job,
17 one of the great things is you get to build parks, and
18 you try and figure out what uses, you know, people
19 might like, and you build a park programmed along
20 those uses. You build it -- you own it for a little
21 bit, just to make sure -- it's like building a house
22 and having a punch list. And so you make sure
23 everything is just right, and then you turn it over to
24 a property owners' association; and that is what is
25 industry custom in our business.

1 -- somebody can look up that transfer date.

2 Q Okay.

3 A I'm sure it was turned over quickly.

4 Q All right.

5 A And so our company, we -- we -- you know,
6 we're a for-profit developer. We come up with ideas,
7 we design them, we build them, we implement them, but
8 we don't maintain. All -- they're dedicated off to
9 POAs. They're open to -- property owners'
10 associations, excuse me. They're open to all, but the
11 property owners' association has to maintain them.

12 Q Okay. And -- and so as a for-profit
13 developer, Daniel Island Company derives its income
14 from, what, the development and sale of real estate?

15 A Yeah. Yeah. What we do -- I'm not there
16 anymore --

17 Q Okay.

18 A -- but what we have done and very
19 successfully is we put in infrastructure, and we
20 create either home sites for residential or commercial
21 sites for office and retail and whatnot, and we
22 enhance the values of those places by buildings parks.

23 Q Okay. And the -- do you recall about how
24 many property owners' associations there are on Daniel
25 Island?

1 A There are three.

2 Q Okay. And so what -- what distinguishes one
3 from the other; is it geography?

4 A It's geography. So there are three: One is
5 the Daniel Island Community Association, which is all
6 of the residential on the south side of Daniel Island.
7 One is the Daniel Island Park Association, which is
8 all the residential on the north side of Daniel
9 Island. And then one is the Daniel Island Town
10 Association, which is all of the commercial, and
11 commercial is a bit of a misnomer because it also
12 includes condominiums and apartment complexes and
13 things like that, so --

14 Q Got you.

15 A -- it's our mixed-use district.

16 Q So how -- and are all of those associations
17 non-profit companies?

18 A Yeah, of course.

19 Q Okay.

20 A That's -- that's the case with every property
21 owners' association that I've ever heard of.

22 Q Okay. And so how -- how do these non-profit
23 associations, how are they funded?

24 A There -- there's dues formulas on each of
25 them. Some are very simple. It's like okay, if you

1 have 100 houses, each house pays, you know, a dollar,
2 and then some are more complicated. So the Daniel
3 Island Town Association is funded on this very
4 complicated formula of land and building points. So
5 if you have a big piece of land and a big building,
6 you get assessed based on the size of the amount of
7 acreage you have and then the size of your building.

8 If you have a big piece of land and a small
9 building, you pay less; if you have a small site but a
10 really big building on the small site, you would pay
11 more, but that's how it is. It's an annual
12 assessment. It happens once a year.

13 Q Okay. And did the Daniel Island -- does the
14 Daniel Island Town Association, or did it as of 2016,
15 have any employees?

16 A I think so.

17 Q Okay. And who kind of ran the day-to-day
18 operations of that entity?

19 A That would be Jane Baker at the time, in
20 2016 --

21 Q Okay.

22 A -- but she had a staff there. We -- she
23 would have outsourced for landscaping and things like
24 that, but she had in-house staff for admin and
25 customer service, if a property owner has a concern or

1 a complaint or, you know, the streetlight's out and
2 they don't know where to go, all that, so she would
3 have had staff. I don't know what their names may
4 have been at that time or how many there were.

5 Q Okay. And what -- what -- out of what
6 facility did Jane Baker and her staff work?

7 A She had -- at that time, I believe she had
8 moved into an office on River Landing Drive, and I
9 apologize, but I can't remember the exact street
10 address.

11 Q Perfectly fine. Perfectly fine.

12 A I think you could Google it right now and
13 find it. It's the same -- I believe she's -- she and
14 her staff are at the same office now as she was in
15 2016.

16 Q Okay. And what about your office, where did
17 you physically work when you were out there?

18 A At that time, in 2016, I was at a building on
19 230, two three zero, Seven Farms Drive above a Synovus
20 Bank branch, and that's where we ran our development
21 office. So we had departments there, development,
22 finance, marketing, and myself, and that's where we
23 were.

24 Q Okay. Now, we've heard some -- we had some
25 testimony in the record of this case about the fact

1 that the Daniel Island Company, as part of the master
2 deed or development plan, what have you, would have
3 control of the boards of the various property owners'
4 association for a given period of time or up till some
5 triggering event. Can you tell me -- tell us why that
6 is, why -- why the developer would keep control or the
7 right to control those boards?

8 A Well, that's just how it is -- that's
9 industry standard in my world. The developer always
10 controls up to a certain point. Sometimes it's tied
11 to you sold a certain percentage of your property, or
12 sometimes there's an end date. So as an example, the
13 Daniel Island Town Association, which this gentleman
14 represents, has a turnover date of 2025, regardless of
15 how many people own what, but as the developer, you're
16 putting all of your assets into -- and all of your
17 energy into building a community, and you want to be
18 able to control what is built and how it is managed
19 and add value to the community that way.

20 Q Okay.

21 A So that's what people in my job do.

22 Q Got you. So if there was a -- well, let me
23 ask you this: Did the various POAs, including town
24 association, have annual meetings?

25 A Yeah. Yeah. Yeah, those were a big thing

1 for us --

2 Q Okay.

3 A -- actually, and we would do that at the end
4 of the year before we sent assessments out. And so we
5 would have three: Daniel Island Community
6 Association; Daniel Island Park Association; and
7 Daniel Island Town Association.

8 Q Okay. And were those meetings open to the
9 residents who were under the auspices of one of those
10 associations?

11 A Yeah, of course. They were actually open to
12 all. They were open to media, because the media would
13 attend, but that's a chance for the residents or the
14 business owners, depending on your association, to
15 come in and state what's on their minds and things
16 like that, so they were open meetings.

17 Q Okay. What about -- what about board
18 meetings with Daniel Island Company, are those open
19 meetings or -- the for-profit entity?

20 A No. No. Those are not open.

21 Q Okay.

22 A That's a -- you guys were just with Frank
23 this morning. That's a closed -- that's a closed
24 meeting.

25 Q Right.

1 A We're a closely-held private company.

2 Q All right.

3 A The difference between Daniel Island Company
4 meetings and association meetings is night and day.

5 Q Got it. Now, were -- for association
6 meetings, I'm assuming some notice was sent out to the
7 community?

8 A You should ask Ms. Baker but, yes. There's a
9 -- she was earnest in making sure that those protocols
10 were followed and that proxy votes were tallied and
11 things like that. I think it was a 30-day notice.
12 I'm not knowledgeable about that.

13 Q Got you. Were meeting minutes maintained?

14 A Yes.

15 Q And were separate accounting books maintained
16 for all of those associations?

17 A Oh, of course.

18 Q Okay. And --

19 A And I think each association had their own.
20 Well, actually I know that to be true. Each
21 association had their own, and those are completely
22 independent from the Daniel Island Company, the
23 financial records, and done by different firms, and I
24 don't know anything about those.

25 Q Okay. And did the various associations

Matthew R. Sloan—Cross Examination by Mr. Jefferies.

1 ultimately, the developer leaves, the POA assumes
2 control, all of this goes back to Sea Pines.

3 Q And that was -- that was cutting edge at the
4 time. Now it's kind of the standard, I mean, pretty
5 much --

6 A Yeah. I was in high school.

7 Q Right. One of the things Mr. Brumley told
8 us, and I'm curious if you agree with it, is that by
9 using that method, by doing the CCRs and having a POA,
10 the developer can keep some control and also could
11 increase the value of the lots that they were selling
12 because they did have that control, that -- that the
13 market was willing to pay more for a lot in an HOA
14 community where they knew their neighbor wasn't going
15 to have a car up on blocks in the driveway or build a
16 chain-link fence or keep dogs or anything like that
17 than they were when all those things were the case.
18 That was actually a -- not only was it good
19 aesthetically, it was profitable; would you agree with
20 that?

21 A I'm not -- I'm not -- of course, I do. And
22 I'm not sure where you're going with that, but what
23 people like myself and Frank, you know, do is you try
24 and create place. And if you create place, then the
25 value of the place you've created adds value to the

1 surrounding properties that you own. So you're using
2 Charles Fraser as an example, Harbour Town is a great
3 example. I don't think Charles Fraser made a nickel
4 off of Harbour Town. In fact, I'm -- I'm sure he lost
5 tens of millions of dollars and things like that
6 because that was an expensive place to build, but look
7 what it did.

8 Q Right.

9 A And it put Hilton Head on the map.

10 Q Right.

11 A So that's -- that's the mindset that you
12 have.

13 Q And the idea of that was to add value. He
14 didn't intend to lose money on it, on Harbour Town.
15 He meant to make money, right?

16 A I think he -- I don't know. I can't -- you
17 know, I was -- I was a kid.

18 Q Right. You meant to make money though, in
19 your developments. Not only to do good work but to
20 make money?

21 A Our developments have been proven that if we
22 create a nice sense of place that the value permeates.
23 The residents -- you attract more residents because
24 you've created a nice place, and, perhaps, they pay a
25 little bit more for the place they are buying because

1 there's something nice there.

2 Q Right. And -- and an assurance that that
3 something nice will stay, that there's not -- they're
4 not just relying on what the current neighbor is
5 doing, because there's some rules?

6 A There's rules and then -- I think you're
7 hitting on something that's relevant. So I don't know
8 if you live in a planned community or not or --

9 Q I live in a very tiny one, but yes.

10 A You live in a place where there's a POA?

11 Q Right.

12 A So -- so what -- if your POA controls the
13 open space, you should have peace of mind because you
14 then have a vote in it. If the developer continues to
15 own it -- and this has happened, actually, it happened
16 at Sea Pines of all places. If the developer
17 continues to own it, then you never know: The
18 developer may say, "Hey, you know what? Let's put a
19 condo there."

20 Q Right.

21 A Or something like that, so that's -- that's
22 how it works. You turn it over to the property
23 owners' association and -- and -- and people have
24 comfort and -- and pay for and oversee the ongoing
25 maintenance of it.

1 Q Right. Yeah, and you saw that a lot in
2 Myrtle Beach, where the developers kept the golf
3 courses, and now they're all becoming condos, Litch --
4 Deerfield and all of these --

5 A I'm not telling you anything you don't know.

6 Q Yeah, that's -- now, there's the transitional
7 period, right? So there's -- when the developer first
8 develops, they own everything. And ultimately,
9 there's a property owners' association that's going to
10 own everything and control itself. And somewhere in
11 the middle there, there's the property owners'
12 association that owns the stuff but it's still
13 controlled by the developer; is that fair?

14 A Yeah, that's -- that's how it works. So his
15 client will have complete control in 2025. One of our
16 three associations on Daniel Island, I turned over
17 last year.

18 Q Which one was that?

19 A That was the Daniel Island Community
20 Association.

21 Q Okay.

22 A And that was tied to a percentage of
23 build-out. So that turned over last year, and then
24 the third association will turn over no later than
25 2025 and possibly earlier.

1 Q And that's the park --

2 A The Daniel Island Park Association.

3 Q Park Association, okay. Back in -- well, let
4 me ask you this first: What's your relationship with
5 the Daniel Island Company now?

6 A I'm an owner.

7 Q Okay. Do you have a role other than being an
8 owner?

9 A No.

10 Q Okay. You're not an officer any longer?

11 A No.

12 Q All right. When was the last time you held
13 an officer position with the Daniel Island Company?

14 A I think it was two years ago.

15 Q Okay. And what made you choose to get out of
16 that operational role and --

17 A It was a long -- it was a long relationship,
18 and it was time for it to transition to the --

19 Q Okay. And you would go do some other things?

20 A I am doing other things.

21 Q Back in 2016, you were an owner -- a part
22 owner of Daniel Island Company?

23 A The same percentage as I am today.

24 Q Okay. Can you tell us what that percentage
25 is?

1 A 20.

2 Q 20, okay. Who are the other owners?

3 A The other owners are Frank Brumley, who
4 you've met, and his -- I don't know how to describe
5 his brother's family's interest because most of them
6 were killed in a plane crash.

7 Q Oh, I'm sorry.

8 A So -- all at once. So there's an -- you
9 would -- you should ask Frank about that, but that's
10 50 percent. So Frank and I, he's 30, I'm 20, and then
11 the other 50 --

12 Q Is his family in some fashion --

13 A And I'm not -- yeah. I'm not the right
14 person to speak about that.

15 Q Right. What -- back in 2016, what officer
16 were you with at Daniel Island Company?

17 A I was the president.

18 Q The president, okay. When you started
19 working with Mr. Brumley back in the early '90s and
20 developed the concept of -- of developing Daniel
21 Island, did he at that time share with you kind of
22 Charles Fraser's vision for this is -- this is how you
23 do it, this is how you do one of these planned
24 communities so that -- so that people want to live
25 there, so that you add value, so that you preserve

1 things?

2 A No. You know, it wasn't like that. It
3 wasn't like a -- you know, him lecturing on this. I
4 did -- I did note -- I've met Charles several times
5 before his passing. Charles wanted to put a theme
6 park. He wanted to put a -- it wasn't Disneyland. It
7 was one of the other -- so it was Six Flags. He
8 wanted to put a Six Flags where the tennis stadium is.
9 That was -- that was his -- his idea.

10 Q That was not your vision?

11 A Well, maybe he was right. I don't know, but
12 -- but no, Mayor Riley laid out -- laid out a vision
13 for the community. He laid out what he wanted. I
14 said this earlier and I'm on tape about it, and -- and
15 -- and then you kind of go from there, and you just
16 try and create places where people want to be, which
17 is what I do. I've been doing it my whole adult
18 career.

19 Q I want to run through and just make sure I
20 have the various offices that you held correct. So
21 back in 2016, you would have been president --
22 president of the Daniel Island Company, right?

23 A Yeah, I think so.

24 Q Okay. And back in 2016, with respect to the
25 Daniel Island Community Association, you would have

1 also been president of the community association?

2 A I don't think so. I -- I think Frank -- I
3 knew you were going to ask this. I think -- and I'm
4 sorry, I got bogged down over the weekend because I
5 meant to look this up. But I believe Frank was the
6 president, and I was like the secretary or something.

7 Q Okay.

8 A That's a question for -- for Ms. Baker.

9 Q Okay. I can tell you, I'll represent to you
10 that when we asked the community association what
11 roles you and Frank had back in 2016, the answer was
12 Matthew Sloan, president; Frank Brumley, vice
13 president; David Crawford as secretary and treasurer.
14 Could that be right?

15 A Okay. You might be right --

16 Q Okay.

17 A -- in that regard. I don't know.

18 Q And if not, you think you might have been
19 secretary or treasurer at the time?

20 A I -- I don't know if I was the president or
21 not.

22 Q Right, but you held one of the four offices?

23 A I certainly did.

24 Q Okay.

25 A And the board -- the board was Frank, myself,

1 and David Crawford.

2 Q Okay. And then two other people that were
3 like property owners or something would have been on
4 the board of the community association?

5 A It's complicated. On the community fund, we
6 had others. I don't know who -- I don't recall others
7 being on the community association boards. Is that
8 right? Am I -- do you -- you don't know?

9 MR. BARFIELD: I can't tell you.

10 THE WITNESS: Okay.

11 BY MR. JEFFERIES:

12 Q And I promise, I'm not trying to trip you up.

13 A No, I get it. I'm just thinking about being
14 at all these annual meetings.

15 Q Right.

16 A And it was only me, Frank, David sitting
17 there. If there were two other guys involved, then --

18 Q They might have --

19 A -- then why the heck didn't they show up?

20 Q Right. Got you. So the common theme is --
21 is Matt Sloan, Frank Brumley, David Crawford at the
22 various board meetings?

23 A Yes.

24 Q Okay. So the community association,
25 community foundation, town association, park

1 association --

2 A We kept that all in sync. The community fund
3 -- the community fund board is larger --

4 Q Right.

5 A -- and that includes residents, but that has
6 nothing to do with this deposition.

7 Q Okay. So -- and that -- of course, that
8 makes sense because back in 2016, all of the property
9 owners' associations were still controlled by the
10 developer. I mean, that's why y'all were on the
11 board?

12 A That's -- that's how it works.

13 Q Right. Yeah, they had -- none of them had
14 been handed over at that stage.

15 A And just -- I'll give you an education, if
16 you want. The developers don't want to control the --
17 as soon as the developer is able to turn things
18 over --

19 Q They want to?

20 A -- you want to.

21 Q Sure.

22 A Yeah, because it's the residents' money.

23 Q Right.

24 A And so you're making decisions with other
25 people's money.

1 Q Right.

2 A And let them decide but while you're in your
3 control period and you're developing, you want to have
4 some guidance on that.

5 Q Right.

6 A And then, you know, I can give you half an
7 hour on this off -- off -- you know, offline about why
8 it works that way, but that's -- that's commonplace,
9 that's every single community --

10 Q Right.

11 A -- that's being built in this country right
12 now.

13 Q Nothing unusual about the developer having
14 control of the property owner board for some period of
15 time; that's the industry standard?

16 A 100 percent.

17 Q Okay. And, of course, there -- you wouldn't
18 be surprised as a legal matter that there are always
19 consequences for having control of something. If you
20 have control of something, there's going to be some
21 consequence of that?

22 MR. BARFIELD: Object to the form.

23 BY MR. JEFFERIES:

24 Q Would that surprise you at all?

25 THE WITNESS: What's that?

1 MR. JEFFERIES: You get to answer.

2 MR. BARFIELD: Oh, I just lodged an
3 objection. You can go ahead.

4 MR. JEFFERIES: You can go ahead and answer.

5 THE WITNESS: I -- sorry, I got distracted.
6 What was your question?

7 BY MR. JEFFERIES:

8 Q Would it surprise you to know that there are
9 always legal consequences from having control over
10 someone or something?

11 A Of course.

12 Q That's normal, right?

13 A It comes with the territory.

14 Q It comes with the territory. I control my
15 paralegal, if he or she screws something up, I'm on
16 the hook for it because I have control, right? Do you
17 agree with that?

18 A Yes --

19 Q Okay.

20 A -- to a point.

21 Q Okay. What would be that point; is there
22 something beyond which --

23 A If your paralegal does something that's
24 completely off-base, like --

25 Q Right.

1 A -- commits a criminal act or something like
2 that --

3 Q Right.

4 A -- yeah, I mean, I think there's limits. So
5 your question is a little --

6 Q Yeah. It's hypothetical, of course. So back
7 in 2016, when Daniel Island Company had control over
8 the boards of town association and park association
9 and community association and I think you said as
10 well, community foundation; is that right?

11 A Community fund and then this community
12 foundation.

13 Q Back when Daniel Island Company as the
14 developer had control over those entities, it could
15 listen to resident input, of course, and probably did,
16 right?

17 A Of course.

18 Q It could choose to honor that input, do what
19 the residents wanted, if it wanted to, right?

20 A Of course.

21 Q It could also choose to consider that
22 resident input and go a different way and say, "Nope,
23 we're not going to do that. We're still in control.
24 We are going to overrule you guys. We're going to do
25 something else?"

1 A Of course, you're asking me questions you
2 know the answer to, so...

3 Q Did y'all -- how much control did Daniel
4 Island Company exercise back in 2016? It had this
5 control; did it really exercise it?

6 A That's a really broad statement, that --
7 you're covering every single issue --

8 Q Right.

9 A -- that -- that the associations deal with,
10 and the -- there's no clear answer because it varies
11 by the issue.

12 Q Okay.

13 A And if you want to tie it down to the park in
14 question, well, I can answer it that way but --

15 Q Sure. Yeah. Yeah.

16 A How much influence did we have? Very, very
17 little. We paid attention. And by "we," I mean me,
18 because I was Jane Baker's colleague, and if she had a
19 good day, she would let me know she had a good day and
20 if she had a bad day, she would let me know she's
21 having a bad day, and you're going to get a chance to
22 talk to her, but if something was making her, you
23 know, upbeat, I would be the one she'd let know and if
24 something was dragging her down, she would have called
25 me at that time, but as far as day-to-day, you know,

1 "are you cutting the grass," zero.

2 Q But you could have exercised -- Daniel Island
3 Company could have exercised day-to-day control over
4 cutting the grass had it wanted to? That's just a
5 silly example --

6 A That's not what we do.

7 Q Right.

8 A The Daniel Island Company is about -- my job
9 is to make money. We're a for-profit company. So
10 every hour I spend dealing with the non-profit is an
11 hour that I'm not making money for -- for our company
12 or was not making money for our company at that time.
13 So to the extent that everything was successfully
14 delegated, that's what good managers do.

15 Q And how would you know, how would the Daniel
16 Island Company know that everything was successfully
17 delegated as opposed to just delegated?

18 A We would rely on -- well, first of all, it's
19 -- you live in a place with a POA. If people are
20 pissed off, you're going to know about it. Your phone
21 is going to ring, you're going to get e-mails saying,
22 "Why is this happening, what's that," et cetera, et
23 cetera," but you rely on your manager. And so that
24 was -- that was Jane -- Ms. Baker's job was to say if
25 things are going good or if we got a little bit of a

1 problem.

2 Q What if it's the kind of thing that wouldn't
3 piss off the average -- to use your terminology,
4 wouldn't piss off the average homeowner? I'll give
5 you an example. In my community, we're a small
6 community. We are probably the smallest HOA community
7 I've ever heard of. We have seven homes in our
8 community. We did that to build a community pool, a
9 community pool. Because it's a community pool, there
10 is a rope that goes across the middle to separate the
11 shallow end from the deep end --

12 A Yeah. You've got to have that for liability
13 purposes, by the way.

14 Q Right. And DHEC will bust you if you don't,
15 if they ever come by and check, right? Our homeowners
16 routinely take that rope down and put it off on the
17 side of the pool because they don't like it being
18 there. So when it's missing, nobody is pissed off, in
19 fact, they're happy, but we always have to put it
20 back; that's the sort of thing that no resident is
21 going to complain, "hey, the thing is missing." It's
22 the president's job -- because we only have seven
23 people, we don't have a full-time staff. It's the
24 president's job to make sure it's up so we don't get
25 popped by DHEC. So what about things like that that

1 wouldn't make a resident angry but ought to be on
2 somebody's radar, how do you know as the developer
3 that you successfully delegated?

4 A I'm -- I'm not trying to push things off to
5 Ms. Baker, but that's her job, to say, "We've got a
6 problem. God darn it, somebody took the rope down,
7 get -- somebody needs to get out there and swim across
8 the pool and put it back up." That would never --
9 that would never enter the developer spectrum.

10 Q How do you know the Jane Baker person or
11 whoever's responsible, how do you, as the controller
12 and developer, know that they're doing their job and
13 doing it well?

14 A How do you know that your paralegal is doing
15 her job and doing it well?

16 Q Well, I'll answer: I monitor, and I check.
17 So how do y'all do it? Like how did you know, back in
18 2016, that Jane Baker or whoever was doing that job
19 was looking at the things that needed to be looked at?

20 A Because that's what you do as a manager, and
21 Jane is my professional colleague, or was at that
22 time, and she would let me know. Now, the pool -- the
23 rope in the pool could have been off for three weeks,
24 I would never have known about it, but I would have
25 counted on Jane to say, "We've got this problem:

1 Every time we put the rope back up in the pool,
2 somebody takes it down," but that was the basis of the
3 professional relationship. If she had something on
4 her mind, she would let me know. Could she have kept
5 things from myself and the board members? Certainly,
6 but that's not her; she's a professional.

7 Q If she notices?

8 A Or if her staff notices.

9 Q Back in 2016, as the developer in control of
10 the town association and community and park, what sort
11 of routine reports would you require from those
12 entities to make sure they were doing a good job?

13 A Nothing formal, and it was informal
14 discussion, so it was, you know, talking pretty much
15 every day.

16 Q Nothing written?

17 A No.

18 Q What sort of instructions did -- back in 2016
19 and prior to that, did Daniel Island Company as the
20 controlling developer give to these various entities
21 that it controlled, including town association, about
22 safety policies and safety procedures?

23 A Zero.

24 Q But it could have had it wanted to, right?

25 A It was not needed. We relied on the

1 association to come up with their own protocols. We
2 would have communal discussions about like hurricane
3 stuff, which like in my office -- probably in your
4 office, if a hurricane comes, fairly simple, but for
5 Jane, in her world, hurricanes are a major issue, so
6 we would have conversations about that, but we've
7 never had a conversation about a swimming pool or --
8 or the park in question.

9 Q And Daniel Island Company never gave any
10 instruction to any of these entities about develop a
11 policy around parks, pools, et cetera, with respect to
12 safety?

13 A They had been developed. The policies had
14 been -- had been -- whatever policies there were were
15 in place.

16 Q Okay. And so we would have copies of those
17 by now, had we -- we requested them, so--

18 A I don't know if they --

19 Q -- if they existed, we would have them?

20 A I have no idea if they were written --

21 Q Okay.

22 A -- policies. I don't think they were.

23 Q Would anyone at Daniel Island Company,
24 besides yourself, have an idea as to the existence of
25 such policies if they existed?

1 A No.

2 Q So you're the guy?

3 A I'm the guy, and they were -- I've never --
4 just to cut to the chase: There's never been a policy
5 for the maintenance of Childrens Park that -- that's
6 in writing. It was: We are going to bid this out;
7 it's going to go to this contractor; they're going to
8 do it, and that's it. There's no -- the booklet
9 you're looking for never existed.

10 Q Okay. Now, just to make sure I'm clear, if
11 I'm understanding you correctly: Had Daniel Island
12 Company wanted to, it could have told the town
13 association, "Listen, you need to come up with a
14 written policy to ensure the safety of our guests at
15 all of these parks?"

16 MR. BARFIELD: Object to the form.

17 BY MR. JEFFERIES:

18 Q They could have done that, right?

19 A We had no need for that.

20 Q I'm sorry, that really wasn't my question.
21 My question was: Could Daniel Island Company, had it
22 wanted to, as the controlling developer, instructed
23 town association to come up with a written policy for
24 safety at the parks?

25 A No. The Daniel -- The Daniel Island Town

1 Association board could have said, "Hey, let's have
2 things in writing," and that was not needed, so the --
3 the association boards never did that.

4 Q And the town association board was controlled
5 by the developer at that time, the Daniel Island
6 Company?

7 A Yeah, but it's different roles.

8 Q But controlled, right?

9 A The votes at the town association were
10 controlled by Daniel Island Company officers,
11 specifically myself and Frank.

12 Q Right. So if Daniel Island Company had woken
13 up one day and said, "We want a policy for X," you
14 could have at the next Daniel Island Town Association
15 board meeting said, "Guys, you've got to give us a
16 policy for X," because you had that level of control,
17 you could have done that?

18 A We did not see any need for that. Our level
19 of performance is second to none -- not ours, the
20 association's level of performance is second to none,
21 and this has never been an issue.

22 Q Had you seen a need though, you could have
23 done it?

24 A Had we seen a need, we would have called Ms.
25 Baker and said, "Hey, you know, how do you feel about

1 this?"

2 Q Right. And you could have given a command,
3 had you -- had you seen a need that you felt strongly
4 enough about?

5 A Obviously, as a board member.

6 Q Yeah. You mentioned the plaque, the
7 dedication plaque. I think you said you're not sure
8 where that dedication plaque is now, why not? Is it
9 not still in the ground?

10 A It's not -- it wouldn't be in its original
11 spot, but hopefully, it's -- it's nearby.

12 Q Why would it not be in its original spot?

13 A The park was redone.

14 Q What kind of park is there now?

15 A Similar.

16 Q On the -- on the same footprint, there's a
17 children's park with water and a shrimp boat and all
18 that?

19 A Not that similar, there's a water feature.

20 Q Okay.

21 A And by the way, the plaque may be there. I
22 don't -- I don't work there anymore --

23 Q Understood. So --

24 A -- so I don't know what's actually there.

25 Q I got you. I got you. All right.

1 A And we were talking about this as we were
2 preparing for this, I've actually never been to the
3 site at night, which I'm not proud of, but -- it's
4 probably lovely, but I've never been there.

5 Q You've probably heard that there's -- there's
6 lighting on the site at night. You've never seen the
7 lighting because you haven't been there at night,
8 personally, but there is some light?

9 A There -- there was a -- all I know is that
10 there's a wonderful allée of live oak trees, and they
11 were uplit.

12 Q Uplit, okay.

13 A But I've never set foot in the -- never set
14 foot in the park as it was at that time at night.

15 Q This is hypothetical, because obviously, the
16 park has some lighting, but had you gone out there
17 back in 2016 at night and it had been just entirely
18 dark, not a single light, and you thought, "oh, my
19 goodness, we -- this is terrible, it should be lit,"
20 the Daniel Island Company could have, using its level
21 of control over town association, said, "Town
22 association, light the park up. Make it lit at
23 night," you could have done that, right? You didn't
24 need to, but you could have done it had you wanted to?

25 A As a board member, we could have expressed to

1 -- to the manager in charge to, perhaps, pick up the
2 garbage, that kind of thing.

3 Q Right, or light the park, whatever?

4 A It's not what you do, and we're -- we're
5 managing so many different things.

6 Q Right.

7 A And you trust your manager to make sure that
8 the park is adequately lit.

9 Q And it's more than just a board member
10 because there were three of y'all that are on the
11 board?

12 A Yes.

13 Q Frank and you and David Crawford, so it's the
14 controlling block of the board, right?

15 A It wouldn't take a board vote to make a
16 suggestion.

17 Q Right, but you could get -- also do more than
18 make a suggestion; you could give an order. The board
19 could vote, take a board vote and say, "Light the park
20 up at night?"

21 A The board -- in the board's responsibilities,
22 they don't go -- myself included, don't go to the
23 parks. That's not what -- what the board's supposed
24 to do. The board is supposed to say, are the
25 assessments going in on time? Are people paying their

1 HOA dues? Are they funding the seven-person community
2 pool? And if you don't pay, what do you do about it?

3 Q What if you, as a board member and as an
4 officer of the Daniel Island Company, went to one of
5 these places, you went to a park and observed
6 something that you thought was dangerous, just
7 something that you were like "oh, my heavens, that's
8 dangerous," could you make them fix that dangerous
9 thing back in 2016?

10 A "Make them" is an interesting term. The
11 board would never meet on that, and you're mixing
12 roles. So in my role -- and in Frank's role, because
13 Frank -- Frank drives around a good bit and if he sees
14 something he likes, he points it out, and if he sees
15 something that he doesn't like, he would point it out.
16 It would be a suggestion to Ms. Baker of, you know,
17 "are you happy about this," or "what's going on," and
18 she'd respond --

19 Q Right.

20 A -- you know, as she saw fit.

21 Q But ultimately --

22 A But the board would never -- to get to your
23 question, and I'm just trying to nail it down, the
24 board would never like meet and say, "Let's discuss,
25 you know, the maintenance of this park over here," or

1 anything like that; that doesn't happen.

2 Q But it could, if the board wanted to, right?
3 And that's what I'm getting at, that if it were
4 important enough, a board member could raise it as an
5 issue?

6 A That has never happened and would never have
7 happened, and frankly, that's because the associations
8 do an exemplary job of maintaining their assets, so --

9 Q I think you're -- I think you're --

10 A You're asking -- you're asking a
11 hypothetical, to use your words, that has not existed.

12 Q Right. Well, it is a hypothetical, so --

13 A But if anybody's upset, if anybody -- it
14 could be a property owner or it could be a board
15 member, it could be -- it could be, you know, a
16 visitor, if anybody is upset, they have a venue, an
17 avenue to make their concerns known.

18 Q Right. Well, and I understand what you're
19 saying about --

20 A The board -- the board -- the board never
21 does stuff like that. I've told you what the board
22 does: Approve the budget, what are the assessments,
23 did people pay us, and if not, what do we do about it,
24 and you keep capital reserves; those are the things.

25 Q Those are the things that the board chooses

1 to do?

2 A Those are the things that the board is tasked
3 with, yes, and the board is not chosen to do anything
4 other than that.

5 Q Other than that, okay.

6 A The board has to do those things.

7 Q Back to my hypothetical: If you saw
8 something, if you had seen something personally, and I
9 know you didn't because you didn't -- number one, you
10 didn't go out there at night but if you had gone to
11 any park, not just the Childrens Park, and seen
12 something that really, really bothered you, could you
13 have ensured through the control that the Daniel
14 Island Company had that it was addressed?

15 A In my role?

16 Q Does Daniel Island Company as the controlling
17 developer, could you have told that association,
18 "Guys, I know you disagree. I know you think it's not
19 that important, but we, as the developer, think it's
20 really important to do it?"

21 MR. BARFIELD: Object to the form.

22 THE WITNESS: That's what developers --
23 that's what -- that's what developers do.

24 BY MR. JEFFERIES:

25 Q Okay. So you could have done that? I get

1 that. That makes sense. I mean, listen, I've got a
2 lot of lawyers who work for me. I like to give them
3 suggestions. Occasionally, I've got to give them an
4 order, so they've got to take it when I give it to
5 them.

6 A So -- so if you go out and your seven-person
7 -- seven-household swimming pool is dirty --

8 Q Right.

9 A -- you know, at some point, you go, "why is
10 this dirty, what's the pool maintenance guy doing,
11 let's clean this up." That's basic business.

12 Q Right. And that's something you, as the
13 developer, could do?

14 A It's the same thing as Michael coming in and
15 seeing the lobby in this building is dirty.

16 Q Right.

17 A And he could do something about that.

18 Q Well, and the difference between Michael and
19 the lobby of this building and Daniel Island Company
20 and the town association is that Michael doesn't
21 control the building.

22 A Well, it's -- and then The Beach Company
23 comes in and says --

24 Q Right.

25 A -- "hey, why is this lobby at the Majestic

1 Square dirty? Clean it."

2 Q So y'all had your sales office like right
3 there, I think you were describing, from right by
4 where the park is?

5 A Yeah. Immediately adjacent, yes.

6 Q Right. And the park's never been so dirty
7 that y'all felt like you had to take action, I take
8 it?

9 A Never.

10 Q Right. But had it been, had you said to Jane
11 "I think you ought to clean it up," and it didn't get
12 cleaned up, and you said, "Jane, I think you ought to
13 clean it up," and it didn't get cleaned up and this
14 went on and on, eventually, you could have given an
15 order, something more than a suggestion that said,
16 "You do this now," because you're the controlling
17 developer, you could do that, had y'all needed to?

18 MR. BARFIELD: Object to the form.

19 THE WITNESS: How do I proceed?

20 BY MR. JEFFERIES:

21 Q You just answer the question. Just a "yes"
22 or "no," could you have done it?

23 A I would have said to Jane, "this is not
24 right, fix it. You haven't fixed it." And at some
25 point, I would have talked to the board and said,

1 "Jane may need to go."

2 Q Okay.

3 A Because she's not fixing it.

4 Q Right.

5 A And that has never been the case --

6 Q Right.

7 A -- at all, and -- and Jane agonized over the
8 park in question. And I would say -- and I guess
9 you're going to get to, you know, have this road show
10 with her. She spent more energy on that park and
11 brain cells on that park than probably any other park
12 here; it was complicated. It involved water features
13 and -- and, you know, it was dated, so -- it wasn't
14 dated, you know, in '16. It was dated last year when
15 -- when she and others decided to overhaul and replace
16 it.

17 Q Last year being 2021? So that was --

18 A Starting -- starting -- I think it started --
19 I think it started in '20 and then finished -- it
20 finished in 2021.

21 Q But it was built in 1999 --

22 A There was never -- it was built, I think, in
23 '99. It opened in 2000, and there was never any
24 reason to talk to her or her staff about that because
25 they worked their butts off trying to make sure that

1 it was maintained to the highest standards.

2 Q And did Daniel Island Company do anything to
3 check behind them to make sure that was the case or
4 you just trusted Jane?

5 A We trusted Jane. I would also drive by it
6 every time I went down to our sales office and look at
7 it, and that place mattered to me; I was proud of it.

8 Q But you didn't go at night?

9 A No, I'm not on Daniel -- I live in West
10 Ashley. I'm -- I'm not out there at night.

11 Q You never leave the office late?

12 A No. If I do -- well, my office was not
13 there, and if I do, I'm not going there, so -- I've
14 actually never -- I didn't think about this until we
15 were talking the other day; I've never been there at
16 night.

17 Q It is what it is.

18 A I had dinner at the new restaurant out there
19 a few weeks ago, but it was still daylight when we
20 left, so...

21 Q As to exactly what Jane did -- Jane Baker did
22 or didn't do, would you defer to her as to her
23 specific memory of "this is what I did with respect to
24 the park, this is what I did with respect to Park
25 Day," et cetera?

1 MR. BARFIELD: Just one clarification, I want
2 to kind of --

3 THE WITNESS: I've never done this before, so
4 bear with me. It's all new.

5 RE-EXAMINATION

6 BY MR. BARFIELD:

7 Q We -- you know, we kind of talk -- talked
8 about control and, you know, developer control and
9 board control and all of these terms. I want to -- I
10 want to dial down on this, to clarify. So Daniel
11 Island Company is the developer, right?

12 A Yes, sir.

13 Q Three property owners' associations were
14 created on Daniel Island, right?

15 A Yes, sir.

16 Q Including Daniel Island Town Association,
17 that's one of them, correct?

18 A Yes, sir.

19 Q Okay. Daniel Island Company had the right to
20 appoint the board members of those associations,
21 right?

22 A Yes, sir.

23 Q Okay. But that -- but -- and this is -- this
24 is kind of splitting hairs, but it's important because
25 the boards control those associations, right?

1 A Yes, sir.

2 Q Okay. Not -- not Daniel Island Company
3 directly?

4 A Yes, sir.

5 Q Okay. And so Daniel Island Company, we know,
6 appointed you and Frank and David Crawford to those
7 boards, right?

8 A Yes.

9 Q Okay. But it could have appointed anybody?

10 A It could have.

11 Q Right?

12 A (Nods head up and down.)

13 Q Okay. And so had it -- had they appointed,
14 you know, Tom, Dick, and Harry instead of you guys
15 then Tom, Dick, and Harry would have management or --
16 or oversight of those associations, right?

17 A Yes, sir.

18 Q And then you guys would be up here at Daniel
19 Island Company, and Daniel Island Company would have
20 fulfilled its obligation by appointing Tom, Dick, and
21 Harry, right?

22 A (Nods head up and down.) I like that you
23 chose Tom, Dick, and Harry but --

24 Q Well, I was going to say Larry, Moe, and
25 Curly, but I didn't want to -- didn't want to --

1 A People would be thinking like what are these
2 three stooges doing?

3 Q That's right. That's right. So, again, the
4 Daniel Island Company, just to kind of close the loop,
5 has the ability to appoint the people that have
6 authority over those associations, but Daniel Island
7 Company does not have direct control over those
8 associations?

9 A No. The associations are turned over, and
10 direct control is turned over to the manager, and
11 sometimes the manager's a third-party. So as an
12 example, at our project on Cainhoy at Clements Ferry
13 Road, we use a third-party firm. There is no Jane.
14 We use this firm and, you know, I -- the only
15 influence that I would have there is "do we still want
16 to use this firm? Are we happy with this firm or not
17 happy with this firm?" It's completely delegated out.

18 Q Got you.

19 A The only difference with Daniel Island is
20 Jane and I are friends, and everybody needs somebody
21 to talk to, like I need somebody to talk to after this
22 experience. So I would be that -- and Jane would talk
23 to people in our company about "I'm having a good day.
24 I'm having a bad day. My car has a flat tire. The
25 traffic was terrible," that kind of thing, so I served

Matthew R. Sloan—Recross Examination by Mr. Jefferies.

1 BY MR. JEFFERIES:

2 Q Just to make sure I'm clear about the
3 industry standard and how it works: You have a
4 development, there's an amenity, it gets turned over
5 to a property owners' association?

6 A Yes.

7 Q So far, so good? That property owners'
8 association is going to be for some period of time
9 what they call developer-controlled before it gets
10 turned over completely to the property owners; is that
11 correct?

12 A That's how it works.

13 Q Okay. And the way the developer actually
14 exercises that control is by putting its own people on
15 the board; is that correct?

16 A Yep.

17 Q Right. Because obviously the developer
18 entity is not a person, it can't sit on the board, so
19 it has to send people to sit on the board?

20 A The -- the developer entity sets up the board
21 and finds, you know, the poor guy that has to like
22 represent the developer entity on the board, which is
23 me.

24 Q Right. And it could pick people at random
25 out of the phonebook if it wants to?

1 A It could, and then it gets -- at some point
2 it's turned over to a vote.

3 Q Right.

4 A So right now, one of the associations, the
5 five people that are on that board were elected by
6 their peers.

7 Q Right. Back in 2016, though, that wasn't the
8 case, it was still developer controlled --

9 A It was.

10 Q -- all of these boards? And Daniel Island
11 Company, when it exercised its power of the people on
12 the boards of town association, park association,
13 community association, and I guess even the
14 foundation, the community foundation, it did not
15 choose to pick names at random out of the phonebook,
16 did it?

17 A No. We --

18 Q Picked the same three guys, right?

19 A Well -- and this is kind of funny because the
20 principal's -- Frank's late brother was in Atlanta,
21 and he was, you know, absentee, and Frank and I, as
22 the developer people within our company, said "this is
23 something we do." And then we said we needed a
24 grownup in the room, so we appointed his former
25 partner, David Crawford, who actually knows things

1 like Robert's Rules of Order --

2 Q Right.

3 A -- and resolutions and minutes and whatnot,
4 and David was a gentleman and kind enough to serve.

5 Q Right. And so you ended up with a board
6 composed of several of the owners of Daniel Island
7 Company and a lawyer who was loyal to them. That
8 makes sense. That's how I'd do it too. Is that -- I
9 mean, that's right?

10 A Well, you know the answer to the question,
11 so...

12 Q "Yes," it's right?

13 A That was our board.

14 Q That was your board of -- and it was not only
15 the board of town association, it was the board of
16 park association, community association, community
17 foundation, all three of you, Matt, Frank, David, each
18 time?

19 A Of the three associations, yes. And there
20 was efficiency in that because all the associations
21 have to work together and coordinate things, and there
22 are things that are common costs, so they all have to
23 agree. And that's how it's done. And then one
24 association's been turned over to resident control;
25 you'll have to ask Jane about that. I don't know

1 who's on that board, and then the other two are
2 getting ready to be turned over.

3 Q Back in 2016, though, it was -- it was Frank,
4 Matt, and David?

5 A That was the board.

6 MR. JEFFERIES: That's all I've got.

7 THE WITNESS: Okay. You know the answer to
8 your questions, so...

9 MR. BARFIELD: All right. We're done.

10 VIDEOGRAPHER: This is the end of the Video
11 Deposition of Matt Sloan. Off the record at 1:15, May
12 9th, 2022.

13 MR. BARFIELD: Original of both and e-Trans.

14 MR. SOBOCINSKI: E-trans of both.

15 MR. JEFFERIES: E-Trans, absolutely fabulous.

16
17 * * *

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF BERKELEY) CASE NO. 2017-CP-08-02238
 3 MATTHEW ZETZ,)
 4 Plaintiff,) Transcript of Record
 5 vs.) Webex Hearing
 6 DANIEL ISLAND COMPANY,)
 7 ET. AL.,) Date: October 20, 2020
 Defendants.

8 * * * * *

10 B E F O R E:

11 The Honorable Roger Young

20 * * * * *

22 Denise J. Lauder, RPR

23 Ninth Judicial Circuit

1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFF:

3 LANE JEFFERIES, ESQUIRE
4 Anastopoulo Law Firm
5 2170 Ashley Phosphate Road
6 North Charleston, SC 29406

7

8 REPRESENTING THE DEFENDANT:

9 KENNETH MICHAEL BARFIELD, ESQUIRE
10 Barnwell Whaley
11 288 Meeting Street
12 Suite 200
13 Charleston, SC 29401

14

15 LAURA RUTH BAER, ATTORNEY AT LAW
16 Collins & Lacy, P.C.
17 1330 Lady Street
18 Columbia, SC 29201

19

20 DAVID A. NASROLLAHI, ESQUIRE
21 Wall Templeton
22 145 King Street, Suite 300 (29401)
23 Post Office Box 1200
24 Charleston, South Carolina 29402

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INDEX

Page No.

PROCEEDINGS.....	4
REPORTER'S CERTIFICATE.....	21

INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were had
2 via Webex, October 20, 2020, Judge Roger Young,
3 Berkeley County Court of Common Pleas, 10:59 a.m.)

4 THE COURT: 2017-CP-08-02238, Zetz
5 versus Daniel Island Community Foundation.

6 So we've got a summary judgment motion,
7 motion for more definite statement as to Daniel
8 Island's motion for summary judgment, and motion to
9 compel proper and complete discovery responses.

10 What is still missing on discovery?

11 MR. JEFFERIES: Your Honor, Lane
12 Jefferies for the plaintiff. As to that motion for
13 more definite statement, we withdrew that. They
14 provided that before the hearing; so that is
15 withdrawn.

16 On discovery, Your Honor, just four
17 items, request for production related to employee
18 records on the day of the incident -- (inaudible)

19 THE COURT: Hold on, you're breaking
20 up.

21 MR. JEFFERIES: I'm sorry, Your Honor.
22 It's four items, meeting minutes, employee records
23 from the day of the incident, e-mails, and net
24 worth are the four items.

25 THE COURT: E-mails of what?

1 MR. JEFFERIES: Pardon me, Your Honor?

2 THE COURT: When you say e-mails, I
3 mean, all e-mails --

4 MR. JEFFERIES: Yes, Your Honor.

5 THE COURT: -- or what?

6 MR. JEFFERIES: No, Your Honor.

7 Specifically, it's e-mails to or from one gentleman
8 with the defendant entity. He was an officer in
9 the entity named Matthew Sloan. E-mails to and
10 from Matthew Sloan. The period that we requested
11 is a five-year period, four years before the
12 incident through one year after.

13 Issue argued for -- (inaudible)

14 THE COURT: Mr. Jefferies, you're
15 breaking up again.

16 MR. JEFFERIES: Okay.

17 THE COURT: Four years before and one
18 year after.

19 MR. JEFFERIES: That's correct, Your
20 Honor. A five-year period of e-mails from this one
21 gentleman, Matthew Sloan.

22 THE COURT: On everything he ever wrote
23 an e-mail on?

24 MR. JEFFERIES: That was the original
25 request, Your Honor, because it relates to a

1 variety of different entities that he controls. We
2 could narrow that request and, in fact, are gladly
3 willing to narrow the request. The response back
4 we got from the defendant was, no, you don't get
5 anything at all.

6 So there wasn't a productive -- there
7 wasn't a productive dialogue there. And we didn't
8 want to guess at what they might accept. So we
9 would gladly either narrow the time frame or
10 perhaps narrow e-mails related to the specific
11 other defendant entities. Apparently --

12 THE COURT: Narrow it in time and
13 subject matter, but to just say every e-mail he
14 wrote for five years or received for five years is
15 so over broad as to not even begin discussion. I
16 actually would agree with him on that, if that's
17 your actual request.

18 MR. BARFIELD: Your Honor, if I may.
19 This is the same request that you have taken under
20 advisement as to another defendant in this case,
21 and so whatever your decision may be for one, for
22 the sake of consistency, should -- I would think
23 should apply to the others.

24 I just want to make the Court aware
25 that this was already before the Court pending a

1 ruling on Christian Stegmaier's discovery
2 responses. He represents Daniel Island Community
3 Foundation, I believe. Or Community Association
4 rather.

5 MR. JEFFERIES: That's correct. And,
6 Your Honor, all we're requesting is some guidance
7 from the Court. We attempted to engage in a
8 dialogue about what would be reasonable. We asked
9 for five years. The other side said nothing at
10 all.

11 We could continue to guess at what they
12 might not object to, but if we could have some
13 guidance from the Court or some movement from the
14 other side to say, listen, five years is too much,
15 we'll give you a year on these topics, we could
16 reach some middle ground.

17 We just don't know what they would
18 accept since they've said nothing, you can have
19 nothing at all as the response.

20 THE COURT: Well, what are the topics
21 that you want e-mails on, other than everything
22 that they wrote or received?

23 MR. JEFFERIES: Specifically this, Your
24 Honor. There are three other defendant entities
25 that are controlled by this defendant. We would

1 like e-mails that are to and from those defendant
2 entities that relate to the control of those
3 entities.

4 And, specifically, one is called the
5 Daniel Island Town Association that this defendant
6 controls the board of. So if there are e-mails
7 back and forth that show that level of control, how
8 much control it has, we would want those e-mails
9 related to the Daniel Island Town Association.

10 THE COURT: Well, I'm trying to think
11 out loud here as to what an e-mail under that
12 category would include, when you say it relates to
13 the control of them, I understand your theory as
14 you've brought it under the single business entity
15 theory the supreme court has, but it's not just,
16 yeah, these people all own the same companies.

17 You have to show some kind of abuse or
18 injustice somewhere. It's not just, yeah, these
19 people all own or control. What's the injustice
20 inequity theory you're going for here? I mean,
21 it's okay that one company owns other companies.
22 That's not a problem.

23 MR. JEFFERIES: We agree with that,
24 Your Honor. Our theories are actually two-fold and
25 the single business enterprise theory is probably

1 the weaker of the two.

2 The primary theory is simply this.

3 There is an entity called the Daniel Island Town

4 Association that admits that it owns that park.

5 And there is evidence that the Daniel Island Town

6 Association is controlled by this defendant, Daniel

7 Island Company.

8 So Daniel Island Company actually has

9 not just single business enterprise control, but it

10 has direct control. It controls the Town

11 Association -- (inaudible)

12 THE COURT: Well, they can do that.

13 You're breaking up again. You're breaking up

14 again. Hold on.

15 About the last 30 seconds were just

16 incomprehensible.

17 MR. JEFFERIES: Understood, Your Honor.

18 I will see if I can get this a little -- is that

19 any better?

20 THE COURT: Well, it's not breaking up.

21 MR. JEFFERIES: I don't know what the

22 issue there is. Let me try that again. Can you

23 hear me now?

24 So, Your Honor, the single business

25 enterprise theory of liability is only one of two

1 theories of liability, and it's actually, candidly,
2 the weaker of the two. The other is just straight
3 up control of the park.

4 THE COURT: You stopped. You broke up.
5 You broke up after control of the park.

6 MR. JEFFERIES: Your Honor, the entity
7 that controls the park, that owns the park directly
8 is the Town Association.

9 THE COURT: Okay.

10 MR. JEFFERIES: And that entity is
11 directly controlled by this defendant, Daniel
12 Island Company.

13 THE COURT: Uh-huh.

14 MR. JEFFERIES: That's just traditional
15 control of premises. That's not any -- that's not
16 the prettiest single business enterprise theory.
17 That's just straight up, this entity controls this
18 entity that controls the park.

19 Same way, Your Honor, that I have a
20 paralegal that has a computer. She controls the
21 computer, I control her. I shouldn't be heard to
22 say that, oh, I have no control over that computer.
23 That is the paralegal's. Well, no, I control the
24 paralegal. So that's just straight up old school
25 premises liability.

1 The single business enterprise is a
2 separate theory and, candidly, it's a weaker
3 theory. So what we are seeking primarily are the
4 e-mails that show that the Daniel Island Town
5 Association is run by the Daniel Island Company.

6 MR. BARFIELD: Your Honor, if I may, in
7 quick rebuttal. Our response to that is, if it is,
8 so what? We sent documentary proof that this --
9 the control of the board of the Daniel Island Town
10 Association by the Daniel Island Company is
11 pursuant to the master deed of the Daniel Island
12 Town Association.

13 As you well know, every HOA that is
14 formed in South Carolina under the horizontal
15 property act has a developer control period and a
16 mechanism by statute whereby control is ultimately
17 turned over to the members of the association.
18 That's all this is. There's nothing nefarious
19 about it.

20 We produced the master deed to
21 plaintiff's counsel showing exactly why one entity
22 controls -- not controls the other, but controls
23 the board of the other. It's all pursuant to
24 corporate formalities. It's all pursuant to
25 statute. There is no bogeyman behind the corner

1 with these guys or these entities.

2 And so to say that because -- and I'm
3 skipping forward a little bit in the summary
4 judgment territory, but to the extent it's germane
5 to this question, just because one entity controls
6 another entity, or the board of another entity,
7 that happens to own a piece of real property where
8 somebody is injured, that's not enough to say that
9 the entity at the top of the chain is responsible
10 for the injury that happened on the real estate.

11 It just doesn't work like that;
12 otherwise, we'd be ignoring many, many years of the
13 law of business corporation.

14 MR. JEFFERIES: Your Honor, I would
15 respectfully disagree with that -- with
16 Mr. Barfield. And we're not alleging that it's
17 nefarious in and of itself, that it's a reasonable
18 way to conduct business, but there are consequences
19 from that the same way -- you know, it's fine to
20 have an agent, but there are consequences from
21 having an agent; you assume liability for what that
22 agent does if he injures somebody.

23 And so what we have here is a defendant
24 who denies having any control at all over this
25 park. At the same time, there's evidence that it

1 controls the entity that actually owns the park.
2 And that's the same we've seen in run of the mill
3 premises case.

4 You know, Walmart owns the building,
5 but a general manager controlled the building. He
6 doesn't own it, but he controls it. And the law is
7 very clear that liability can extend to each of
8 them, one based on ownership, the other based on
9 control.

10 And that's the issue here, what is the
11 level of control? And that's why we're seeking
12 e-mails between these entities.

13 THE COURT: All right. Here's what I'm
14 going to do. I'm going to order that you produce
15 the e-mails for one year before the entity for both
16 Stegmaier and this Matthew Sloan. And it's for any
17 e-mails that pertain to corporate ownership or
18 control of daily operations of Daniel Island
19 Company over Daniel Island Town Associates -- or
20 Association, for one year prior to incident.

21 All right. Now --

22 MR. BARFIELD: That's reasonable.

23 THE COURT: All right. Well, I looked
24 at the stuff that got produced in privilege, and I
25 agree that what you submitted were work product. I

1 mean, 99 percent of it was photographs that the
2 lawyer took after the -- after they got involved in
3 the lawsuit.

4 So there's nothing -- as I understand,
5 the whole area doesn't even exist now as it did
6 then. So I'm not even sure what good those
7 pictures are for now, but they certainly aren't
8 relevant to what it looked like back then. And
9 besides they were taken by the lawyer. It's what
10 the property looks like now and the plaintiff can
11 go take the exact same pictures.

12 And then there was a public document
13 that was filed three years or something after the
14 incident. So if they want to go look that up, they
15 can.

16 And then as far as the summary judgment
17 goes, it doesn't sound like it's ripe for a summary
18 judgment motion yet with discovery still going as
19 to the issues. So produce these documents that are
20 requested.

21 What do you need, employee -- employee
22 records on the day of the incident are the only
23 thing you're asking for on employee records?

24 MR. JEFFERIES: That's correct, Your
25 Honor. Just as to the day of the incident.

1 THE COURT: All right. And then
2 meeting minutes -- what meeting minutes?

3 MR. JEFFERIES: So, Your Honor, we
4 requested two types of meeting minutes; one are
5 meetings of shareholder meetings or member
6 meetings -- and, again, it's that five-year time
7 frame, one year after, four years before.

8 And the other type of minutes are
9 meetings of -- board of director meetings. Same
10 five-year time frame. And the thinking there on
11 the time frame, Your Honor, these are meetings that
12 are typically held annually. So we're only talking
13 about potentially five meetings.

14 There could be another time frame
15 that's reasonable. If the meetings are quarterly,
16 there might be a time frame that is shorter that is
17 reasonable, but the shareholder and member meetings
18 and the board of director meetings for that
19 five-year time frame is what we are seeking.

20 THE COURT: Mr. Barfield, do you want
21 to be heard on that?

22 MR. BARFIELD: Well, Your Honor, it's a
23 pretty broad request. And, frankly, this is --
24 this is a fishing expedition. And I've looked at
25 meeting minutes, and none of them have to do with

1 the park that is after all the substance of this
2 case. The scope of this case is -- it's
3 threatening to become out of control.

4 I'm not sure what it is that they are
5 looking for in these meeting minutes, but, frankly,
6 the meeting minutes of this entity are -- we would
7 consider them confidential. And so to the extent
8 the Court is inclined to order us to produce any of
9 them, we would certainly want that done pursuant to
10 a protective order.

11 But, again, there's no there there. So
12 the time frame is expansive that they're asking
13 for, but -- again, I'm not sure what they're
14 looking for.

15 MR. JEFFERIES: Your Honor -- I'm
16 sorry.

17 THE COURT: Go ahead.

18 MR. JEFFERIES: Your Honor, we're
19 looking for the same thing there as with the
20 e-mails. It's not necessarily minutes related to
21 the park. It's minutes related to the direct
22 control of Town Association by this defendant.

23 It's not overly broad. It's only a
24 handful of meetings that would occur in this time
25 frame that relate specifically to the issue of who

1 controlled this park on November 11, 2016.

2 We know, of course, the Town
3 Association is one of the entities that controlled
4 it, they owned it, but if it was directly and
5 100 percent controlled by Daniel Island Company,
6 then there is sufficient control there for there to
7 be liability.

8 And that's the issue we need to
9 explore, how much control of the Town Association
10 was there. And it's a narrowly focused request,
11 just a handful of meetings, meetings that typically
12 do not occur often, but over a bounded time frame.

13 THE COURT: All right. Well, they've
14 got to produce two years before, one year after. I
15 don't know what -- if you find something that you
16 think strikes gold, I'll consider extending that,
17 but we'll see what they contain.

18 All right. So you need to take some
19 depositions. What --

20 MR. JEFFERIES: So, Your Honor, the
21 very last thing was simply an answer to our
22 interrogatory -- this is a for-profit company --

23 THE COURT: You're breaking up again.
24 We could hear you better when you turned your video
25 off. Maybe it's your bandwidth.

1 Go ahead.

2 MR. JEFFERIES: Let me try that.

3 So, Your Honor, the last piece of
4 discovery is simply an answer regarding net worth.
5 This is a for-profit company. It's not a
6 charitable entity or anything like that. It
7 appears that the amount of insurance coverage could
8 well be less than what a jury might award.

9 In addition, we have pled for punitive
10 damages. We haven't at this stage made a showing
11 that would entitle us to punitive damages and, of
12 course, one of the reasons for that is we've barely
13 gotten any discovery responses from the defendants,
14 but as Your Honor suggested before, it's
15 appropriate to have some disclosure on this issue
16 rather than go halfway through trial and then
17 having to have that information and documents
18 disclosed, experts weigh in that -- you know,
19 trials are not conducted in stages.

20 This is a reasonable area of inquiry as
21 to this for-profit entity.

22 THE COURT: All right. Well, they
23 don't have to do it yet. If they survive -- if
24 they're still in after summary judgment, then we'll
25 take another look at that, but right now you're on

1 shaky ground getting past summary judgment.

2 But I know they've got -- you're
3 entitled to some discovery on it so you might be
4 able to get past summary judgment, and if so, then
5 net worth might come into play if there is ground
6 for it factually.

7 All right. Anything else?

8 MR. BARFIELD: No, Your Honor.

9 MR. JEFFERIES: That's it -- with
10 respect to discovery, that's it. I know
11 Mr. Barfield has a summary judgment motion, I
12 believe, Your Honor.

13 THE COURT: It's not ripe. It's not
14 ripe. You've got to finish discovery at least on
15 this issue of this corporate ownership before I can
16 entertain a summary judgment motion on it. So
17 you're entitled to some discovery on that,
18 Mr. Jefferies. I'll let them renew that summary
19 judgment motion after discovery is done on that
20 issue.

21 MR. BARFIELD: That was my question,
22 Your Honor. I should refile that motion and --

23 THE COURT: Well, I'll just right now
24 -- we'll just put on here that it is stayed. And
25 so when we get to the point where you guys have

1 finished discovery on that, just contact the
2 clerk's office and let them know it needs to be set
3 then for a hearing.

4 MR. BARFIELD: Very good.

5 THE COURT: Okay.

6 MR. BARFIELD: Thank you, Judge.

7 THE COURT: All right. Anything else?

8 MR. JEFFERIES: No, Your Honor. Thank
9 you very much.

10 THE COURT: Okay. Talk to you later.

11 (These proceedings were concluded at
12 11:21 a.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 29th day of October, 2020 at
13 Charleston, Charleston County, South Carolina.

14

15

16

17 S/Carol Denise Lauder, RPR
18 Carol Denise Lauder
19 Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	2017-CP-08-02238
	)	
	)	
	)	
	)	
MATTHEW ZETZ,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DANIEL ISLAND COMPANY, INC.,	)	
DEFENDANT.	)	
_____	)	

August 24, 2022
Moncks Corner, South Carolina

B E F O R E:

THE HONORABLE ROGER M. YOUNG, JUDGE.

A P P E A R A N C E S:

LANE JEFFERIES, ESQ.
Attorney for the Plaintiff

MICHAEL BARFIELD, ESQ.
Attorney for the Defendant

Proceedings recorded via DCRP
Transcribed by Penny M. Johnson

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

THE COURT: Mr. Barfield.

MR. BARFIELD: Thank you, Your Honor. May it please the Court.

I'm not sure quite where to start. Your Honor has history being stuck with motions on this particular case. It's been around for a very long time. This is the second time this particular motion has come up for hearing, although, the first time was almost two years ago.

This is a case that involves an unfortunate incident on Daniel Island, a gentleman tripped in a water feature in what's known as the children's park and fractured his ankle and, unfortunately, ended up having to have his lower leg amputated as a result of some complications from that.

My client is the Daniel Island Company. And as you probably surmised, this case is -- on the Defense side is quite the alphabet soup and everything starts with Daniel Island and it's some permutation of the name Daniel Island. Good news is, it's only two of us left. It's my client, Daniel Island Company, and then the Daniel Island Town Association, which I venture is probably the target Defendant in that that entity owned the park at the time of this incident and had control of the park. All the other Defendants settled out.

It's my understanding Daniel Island Town Association is

1 on the cusp of settling out in some shape or form on a
2 covenant, but we are staring down the barrel of trial, date
3 certain mid-September. So if my motion is not ripe now, it
4 never will be.

5 In essence, the gravamen of my motion is they have sued
6 Daniel Island Company as the original developer entity of
7 Daniel Island, the original owner of this particular park 20
8 years prior under some theory of veil piercing or
9 amalgamation, although, their pleadings don't articulate
10 that particular well. It's also my understanding that they
11 are trying pivot, Plaintiff is, to some sort of basic
12 respondeat superior theory as if these were not corporate
13 entities. And Your Honor, I'm a big fan of creative
14 lawyering, occasionally, I have to do some myself, but
15 there's a difference between creative lawyering and just
16 picking and choosing the body of law that you like because
17 the body of law that applies to a particular case doesn't
18 suit the facts of the case.

19 The body of law that applies to this case and the basis
20 for my motion is the law of corporations. What we have is a
21 developer entity for profit, Daniel Island Company, that as
22 part of the original master development plan in conjunction
23 with the City of Charleston and Berkeley County, for Daniel
24 Island many, many years ago created a number of these
25 nonprofit associations, one of which was Daniel Island Town

1 Association. Another was former Defendant Daniel Island
2 Community Association. And there was a third, as I
3 understand it, that was not a party to this case.

4 As part of the master deed, Daniel Island Company had
5 the right, the ability to appoint the board members of those
6 nonprofit associations. This is how it works, I don't have
7 to tell Your Honor that because it's how every HOA, every
8 planned community works. The developer creates the
9 association, the developer controls the association for a
10 time until a triggering event occurs, usually some sales
11 threshold, at which point the developer phases out and the
12 property owners take control of the association. That's
13 just the way it's done. That doesn't mean that there's an
14 automatic piercing of the veil or amalgamation between those
15 entities. That flies in the face of hundreds of years for
16 law of corporations. There is insulation there.

17 Now, South Carolina has adopted tests for both
18 amalgamation and veil piercing, whichever form you want to
19 take, that says there's certain factors that are to be
20 considered if you want to contend that these things are
21 actually a single purpose entity and should not be afforded
22 the protections of the law of corporations.

23 And one of those factors are the things that -- some of
24 the things they cite that actually don't apply here. You
25 know, the sharing of address, the sharing of personnel, the

1 sharing of equipment, all of these things. Now, that was
2 the case at one level of this case amongst the nonprofit
3 associations, but those factors do not apply vertically to
4 my client. My client, the for profit entity did not share
5 personnel, did not share an address, did not share
6 equipment.

7 But all of that is sort of noise in this case because
8 the factor that I want to focus on is the requirement that
9 there has to be some nefariousness. It's an interesting
10 word, but that's the word that's cited in the (inaudible)
11 case. You have to show that there's a nefarious purpose for
12 trying to separate entities that should not otherwise be
13 separated.

14 There's simply no evidence in this case. I believe the
15 Plaintiffs could see this. There's no evidence in this case
16 that there was any nefarious purpose behind these entities
17 being set up like every other planned development in South
18 Carolina. They've got no evidence to show there was ever
19 any nefarious purpose, much less any nefariousness when it
20 comes to the construction, the maintenance, the ownership of
21 this particular park where this gentleman unfortunately
22 tripped and broke his ankle. I just don't see it.

23 When it comes down to this notion that they say in
24 their memo in opposition that all that aside that they know
25 Daniel Island Company is liable for what happened at the

1 park because they quote, unquote controlled the park.

2 That's a red herring. The evidence says the Daniel Island
3 Company had the right to appoint board members to Daniel
4 Island Town Association, which they did. Daniel Island Town
5 Association is operating independently and using the
6 appropriate formalities owned and controlled the park.

7 So they're trying to blur a very distinct line there.
8 They're saying by right of Daniel Island Company having the
9 ability to appoint board members, they de facto had so much
10 control over this park that they should be held vicariously
11 liable for the negligence or alleged negligence of Daniel
12 Island Town Association. That's simply not what the law
13 supports. So Your Honor, I believe that we're entitled to
14 summary judgment now that we're at the conclusions of
15 discovery.

16 I would point out one more thing and this is at the end
17 of me memo. They say summary judgment should be denied
18 because it's a jury question. That is also incorrect.
19 Amalgamation, veil piercing are inherently equitable causes
20 of action. So even if you deny this motion for summary
21 judgment, the proper mode of trial for my client is nonjury.
22 I guess it's up to the discretion of the trial judge as to
23 whether or not that should be heard sequentially, which I
24 would argue makes the most sense, or simultaneously along
25 with the jury case against Daniel Island Town Association.

1 But, nevertheless, nonjury question under any permutation.

2 Thank you.

3 THE COURT: All right.

4 Mr. Jefferies.

5 MR. JEFFERIES: Thank you, Your Honor, Lane Jefferies
6 for the Plaintiff.

7 Mr. Barfield is correct, we've pled a number of
8 theories that give rise to liability on his client. He's
9 addressed some of them and, in fact, he's addressed, not
10 surprisingly, kind of the weakest ones. Amalgamation, yeah,
11 that's a controversial topic. It's a tough row to hoe, it's
12 hard to get at factually, veil piercing and all that.

13 We don't have to rely on that. The reason we don't is
14 we have simple regular, going back 60 years control. It's
15 goes all the way back to Dunbar back in, I think '47. If
16 you control property, you control premises, then you are
17 exposed to liability for what happens on those premises.
18 And it's control, not ownership or other things that really
19 gives rise to liability, that's why, for instance, a general
20 manager of a Wal-Mart is exposed to liability for what
21 happens in the Wal-Mart. He doesn't own the Wal-Mart, but
22 he controls it.

23 Flip side of that, of course, is most commercial
24 landlords don't actually control the property, they've given
25 that control to their commercial tenants, so they're not

1 exposed to liability. Liability in a premises case follows
2 controls.

3 And you heard what Mr. Barfield said, Daniel Island
4 Town Association owned the property. There's no question
5 about that. There's also no question that Daniel Island
6 Town Association was developer controlled. That's the word.
7 That's the word Mr. Barfield used, it's the word Mr. Brumley
8 used, head of Daniel Island Company, it's the word that Matt
9 Sloan used, also one of the senior executives of Daniel
10 Island Company. Developer control. Daniel Island Company
11 controlled the Town Association and the Town Association ran
12 the park. That is -- that's kind of like eighth grade math
13 --

14 THE COURT: It's the same individuals who happen to be
15 on both boards, but there's nothing wrong with that.

16 MR. JEFFERIES: That's correct, Your Honor, there is
17 nothing wrong with that.

18 THE COURT: There has to be something that is a bad
19 faith, nefarious, something -- well, the law says combining
20 multiple corporate entities into a single business
21 enterprise requires further evidence of bad faith, abuse,
22 fraud, wrongdoing or injustice resulting from the blurring
23 of the entities legal distinctions.

24 So where -- you sent me a lot of stuff, but I haven't
25 seen any evidence of bad faith, fraud, abuse, wrongdoing or

1 injustice.

2 MR. JEFFERIES: Your Honor, our argument is actually
3 not an amalgamation argument. It's not seeking to combine
4 these entities under an amalgamation theory. Candidly, I
5 wish now we never had pled that because it --

6 THE COURT: You can drop it.

7 MR. JEFFERIES: We could.

8 THE COURT: You can. You can say we withdraw.

9 MR. JEFFERIES: If that simplifies things, I think I
10 will. Because then we go back to the simple issue of
11 control. That's the question --

12 THE COURT: The question is ownership. Ownership has a
13 lot more to do with it than just control. Control goes back
14 to your respondeat superior/amalgamation/corporate veil. I
15 disagree with you entirely that if somebody goes over and
16 slips and falls at Wal-Mart that you get to sue the general
17 manager. You don't, you get to sue Wal-Mart. Maybe you
18 just misspoke.

19 MR. JEFFERIES: Respectfully, Your Honor --

20 THE COURT: The general manager gets sued every time
21 somebody walks in the door?

22 MR. JEFFERIES: Routinely, and it's been upheld and the
23 federal courts -- I'll give you --

24 THE COURT: I mean, I see this all the time and I never
25 see anybody other than Wal-Mart get sued.

1 MR. JEFFERIES: We just had one, we got a 10 million
2 dollar verdict against Wal-Mart back in November where we
3 sued the general manager. If I can explain a little bit,
4 oftentimes --

5 THE COURT: Sued him as a party individually?

6 MR. JEFFERIES: As an individual party, as an
7 individual party, and he stayed as a party all the way
8 through trial.

9 THE COURT: And where was this?

10 MR. JEFFERIES: This was in Florence County. And the
11 federal courts have analyzed this deeply and if I may
12 explain just for a moment how that works. What happens when
13 we would sue a Wal-Mart along with a general manager is that
14 it would instantly be removed to federal court and they say
15 well, the general manager is a sham defendant.

16 And every single federal court, Judge Gurgle, Judge
17 Childs on and on and on have looked at it and said no, that
18 manager is exposed to liability because that manager has
19 control over the premises. Now whether he'll be found
20 liable is a whole other matter, but he is exposed to
21 liability because he has control of the premises, therefore,
22 he is a proper defendant, therefore, there isn't diversity
23 and the case get back remanded. And it's every --
24 literally, every single one has come back and --

25 THE COURT: You've got to show me some law on that.

1 This is new to me. I have never heard of this.

2 MR. JEFFERIES: If I may, I'll submit a supplemental
3 memo. I mean, I can do it by tomorrow because it's that --

4 THE COURT: I'm telling you, I do Wal-Mart cases to the
5 point where I'm going I'm sure these people get somebody
6 that's insured. They must self-insure them. I know you
7 probably had Amy Gaffney and her law firm representing them,
8 but it's always just Wal-Mart. I'm like, now --

9 MR. JEFFERIES: If you --

10 THE COURT: If a general manager had something in
11 particular that he did that was negligent, Wal-Mart would be
12 responsible for what he did, but I don't see how the general
13 manager of a Wal-Mart automatically becomes responsible for
14 every single thing that's done in that -- that happens in
15 that store.

16 MR. JEFFERIES: The analysis that the federal courts
17 used and the state courts used, too, goes back to Dunbar,
18 control of the premises. And multiple entities can have
19 control, multiple people can have control.

20 The case I was referring to was April Jones vs. Tim
21 Ringer and Wal-Mart. It's a case in Florence County, Judge
22 Nettles tried it. And as I recall, Wal-Mart tried to get
23 Tim Ringer out and they made motions, Judge Nettles denied
24 them. He said no, the man is on the hook by virtue of his
25 control. Whether or not he did -- you know, he didn't have

1 to put the nail on the floor. He didn't have to actually
2 commit the negligent act, but he had control over the people
3 who were supposed to take care of the store. So it comes
4 back to control.

5 If Your Honor likes -- I understand that this is
6 probably the issue this turns on. I think we do need to
7 submit a memo on that. My thinking was that it was kind of
8 a well-tried path and, perhaps, it's not.

9 THE COURT: Not my me.

10 MR. JEFFERIES: Understood, Your Honor. So if I may
11 then, present the rest of that argument, I think that's the
12 issue. If it turns out we're right, that control gives rise
13 to liability, then the Daniel Island Company is on the hook
14 because it's clear that they had control.

15 THE COURT: What's clear about it?

16 MR. JEFFERIES: Well, their top people admit it. When
17 I talked to them, so it's a developer controlled town
18 association. What does developer control mean? How is that
19 done? And what they explained is it's done by the developer
20 having the right to put its own people on the board of the
21 association so that he can control the vote because,
22 obviously, entities don't do anything themselves, they have
23 to do it through people. So a developer controlled
24 association is controlled by virtue of the fact that the
25 developer puts its own people on the board of the

1 association.

2 And then I ran through some examples with both Mr.
3 Sloan and Mr. Brumley. I said so, if you wanted to, if you
4 wanted to have extra security procedures at the park, could
5 Daniel Island Company make the Town Association do that at
6 the park? Their initial response, both of them, was well,
7 we don' really do it that way. I said, I understand. I
8 understand you didn't do it. My question was could you. If
9 Daniel Island Company wanted to make the Town Association
10 have additional security procedures could they do it and,
11 ultimately, the answer was yes. We never did that, but we
12 had the power because it's a developer controlled
13 association.

14 And again, there's nothing wrong with that. I mean,
15 it's like, for instance, my boss controls me and I control
16 my paralegal. There's nothing wrong with that. That's a
17 typical structure. But it also means that my boss has
18 control over my paralegal. That if my paralegal commits
19 some sort of tort, not only am I potentially on the hook
20 because I had control, but my boss could be, too, because he
21 had control. The same way the superintendent of the school
22 controls the principal and controls the teacher. So the
23 superintendent has control over the teacher. The fact
24 that's there an intermediary in that chain of control
25 doesn't wipe it out.

1 I mean, that's the Army, right, the general, all the
2 way down through to a major, to a sergeant to a private.
3 There are intermediaries in that chain of control, but it's
4 still a chain of control. No one would be heard to say the
5 general does not control the privates because there's people
6 in between. Well, of course, he does. He can order them to
7 go anywhere he wants them to go. That's the same argument
8 here and going all the way back to Dunbar, 1947, and all the
9 cases that come out of that, control of premises puts you on
10 the hook.

11 And I'll supplement with that law, Your Honor. I don't
12 think there's any need to beat that dead horse unless Your
13 Honor has questions about it. I can supplement with that
14 law and that is well established in South Carolina.

15 THE COURT: Okay.

16 Mr. Barfield.

17 MR. BARFIELD: If I may? I'd like to stay with that
18 word control because I'm going to harken back to what I said
19 in the beginning. It's a question of what body controls the
20 facts of this case. This is not master servant. This is
21 multiple layers of corporation. This is not general manager
22 of Wal-Mart and Wal-Mart. This is them trying to sue the
23 Sam Walton family trust for an incident that happened in a
24 Wal-Mart store. Say well, if the Walton Family trust has
25 the ability to appoint board members to the Wal-Mart

1 Corporation, then they control everything that happens at
2 Wal-Mart. That's simply not the law. The law of
3 corporations applies to this case.

4 And as you pointed out, just because different entities
5 share board members, that is not sufficient to pierce the
6 corporate veil or amalgamate those entities. They simply
7 cannot get around the fact that these entities are separate
8 corporate entities, which are afforded the protections of
9 the law of corporations. Individuals are --

10 Frankly, I'll point this out. If they wanted to go up
11 the chain and assert control, they skipped a step. They
12 should have, under their theory, sued the individual board
13 members, not the next entity up because to pierce the veil,
14 they should have pierced it at the first level and said that
15 the board members of the Daniel Island Town Association had
16 control of the park. But that doesn't quite fit the facts,
17 so they sued the next entity up, the next deep pocket.

18 In terms of control of the park, Daniel Island Company
19 had not owned this particular property for 17 years prior to
20 this incident occurring. And so the law is very clear, the
21 law of premises liability, a former owner cannot be liable
22 for personal injury that occurs on the property, even to the
23 subsequent property owner, much less one of their invitees
24 or trespassers or whatnot.

25 So, Your Honor, this is a marlin-sized red herring in