

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry County
Court of Common Pleas
Kirsti F. Curtis, Circuit Court Judge

Appellate Case No. 2023-000569

Case No. 2019-CP-26-07075

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SC Court of Appeals

Meswaet Abel, as Personal Representative of the Estate
of Zerihun Wolde and as Natural Parent and Legal
Guardian of Adam Wolde and Wubit Wolde, ...

Respondent,

v.

Lack's Beach Service, Inc., City of Myrtle Beach, and
Joe Doe Lifeguard, Defendants,

Of which Lack's Beach Service, Inc. is the.....

Appellant,

RECORD ON APPEAL
VOLUME I

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Certificate of Counsel

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 15TH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2019-CP-26-07075
MESWAET ABEL, AS PERSONAL	)	
REPRESENTATIVE OF THE	)	
ESTATE OF ZERIHUN WOLDE,	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO APPOINT A RECEIVER,
	)	GRANTING DEFENDANT'S MOTION
v.	)	FOR A STAY OF EXECUTION, AND
	)	SETTING A SUPERSEDEAS BOND
LACK'S BEACH SERVICE, INC.,	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court on Plaintiff's Motion for Appointment of a Receiver and Defendant's Motion for a Stay of Execution on the Judgment pending appeal. For the reasons stated below, the Court denies Plaintiff's motion, grants Defendant's motion for a stay, and sets a supersedeas bond pursuant to Rule 62(d), SCRPC and S.C. Code Ann. § 18-9-130.

BACKGROUND

This matter was tried between July 25, 2022 and July 29, 2022. The jury found in Plaintiff's favor and awarded \$3.73 million on the survival claim, \$10 million on the wrongful death claim, and \$7 million in punitive damages. On August 1, 2022, the Court entered a Form 4 judgment stating the jury had rendered a verdict in this amount. Lack's timely filed post-trial motions for JNOV, a new trial absolute, and a new trial *nisi remittitur*. Plaintiff then filed a Motion for Appointment of a Receiver, and Lack's filed a Motion to Stay. This court denied Defendant's post-trial motions and affirmed the award of punitive damages.

THE COURT'S ANALYSIS

The Court finds that Plaintiff's motion to appoint a receiver should be denied.

As the Supreme Court has explained, appointment of a receiver "is a drastic remedy, and should be granted only with reluctance and caution." *Midlands Util., Inc. v. S.C. Dep't of Health & Envtl. Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989). Thus, a receiver will not be appointed during the progress of a cause "unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined." *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887). The Court finds that the remedy of a receiver is not needed in this case.

Plaintiff's motion to appoint a receiver is premised on: 1) the existence of the verdict in this matter and 2) Lack's negative net worth and thus "imminent insolvency" in light of that verdict. The Court finds that Defendant's agreement to post security sufficient to satisfy the appeal bond statute - as a matter of law - adequately protects Plaintiff's interests while the appeal progresses, which the General Assembly has expressly acknowledged through its adoption of S.C. Code Ann. § 18-9-130.

The Court also finds that Plaintiff's motion should be denied because appointment of a receiver could potentially impair Lack's contract with the City of Myrtle Beach. Section 9 of the Franchise Agreement between Lack's and the City only permits the franchise to be transferred to another franchise holder subject to 60 days' notice, approval of the City manager, and upon a Resolution approving the transfer passed by City Council. Similarly, the Franchise Agreement provides that it may not be assigned in whole or in part except upon written consent of the City of Myrtle Beach. If the Court appoints a receiver, such an Order could run afoul of these restrictions and result in a potential cancellation of the franchise by the City.

In light of the foregoing, the Court finds that Plaintiff's motion to appoint a receiver should be denied.

The court finds Defendant's motion for a stay of execution pending appeal should be granted upon Defendant posting a supersedeas bond in the amount of \$1,000,000.00.

Pursuant to Rule 62(d), SCRCP, an appealing party may obtain a stay as to the enforcement of a judgment by giving a supersedeas bond. Pursuant to section 18-9-130(A), the maximum supersedeas bond following appeal by an individual or a business entity that employs fewer than fifty people or which has revenue of less than \$5,000,000.00 in the previous tax year is \$1,000,000.00 or the amount of the judgment, whichever is less. S.C. Code Ann. § 18-9-130(A)(1)(b). Given the amount of the judgment along with the trial testimony as to Defendant's limited net worth, the court finds the maximum amount of the bond in the amount of \$1,000,000.00 is appropriate.

CONCLUSION

For the reasons stated above, the Court denies Plaintiff's motion for appointment of a receiver and grants Defendant's motion for a stay of execution on the judgment contingent upon Defendant obtaining a supersedeas bond in the amount of \$1,000,000.00

SO ORDERED this ____ day of _____, 2023.

The Honorable Kristi Curtis
Presiding Judge



Horry Common Pleas

Case Caption: Meswaet Abel , plaintiff, et al VS Lacks Beach Service , defendant, et al
Case Number: 2019CP2607075
Type: Order/Appointment of Receiver

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 15TH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2019-CP-26-07075
	)	
MESWAET ABEL, AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF ZERIHUN WOLDE AND AS	)	
NATURAL PARENT AND LEGAL	)	
GUARDIAN OF ADAM WOLDE AND	)	
WUBIT WOLDE,	)	
	)	<u>ORDER ON POST-TRIAL MOTIONS</u>
Plaintiff,	)	<u>FOR JNOV, NEW TRIAL, AND NEW</u>
v.	)	<u>TRIAL NISI REMITTITUR</u>
	)	
LACK'S BEACH SERVICE, CITY OF	)	
MYRTLE BEACH, AND JOHN DOE	)	
LIFEGUARD,	)	
	)	
Defendants.	)	
	)	

This matter is before this Court on the Post-Trial Motions of Defendant Lack's Beach Service ("Defendant" or "LBS"), pursuant to Rules 50 and 59, SCRPC, seeking judgment notwithstanding the verdict or, in the alternative, a new trial absolute or a new trial *nisi remittitur*. A hearing on Defendant's post-trial motions took place on March 9, 2023.

After a thorough and careful review of the trial transcript, the briefs submitted by the parties, and the evidence and testimony at trial, this Court finds: (1) the jury's verdict is supported by the evidence; (2) the jury's carefully considered damages awards are fair, proportionate to the injuries suffered, and not the result of any improper impulse, passion, or prejudice; and (3) there was no prejudicial trial event or error to justify post-trial relief. Defendant's Post-Trial Motions are, accordingly, denied.

BACKGROUND

This wrongful death action arises out of the tragic death of Zerihun Wolde, a forty-one-year-old father of four, who drowned at a public beach where Defendant LBS was responsible for

providing lifeguard services. Defendant LBS is a beach safety company that contracted with the City of Myrtle of Beach to provide lifeguard protection at the City's public beaches in exchange for the privilege of operating as the sole vendor for beach concessions, such as umbrella and chair rentals, on those same public beaches. Plaintiff Meswaet Abel is the decedent's surviving fiancé and mother to his four young children, Adam, Wubit, Eden, and Edom.

Trial testimony indicated that on August 23, 2018, Mr. Wolde and Ms. Abel traveled with their four children from the family's home in Maryland to Myrtle Beach for a summer vacation. After an eight-hour drive, the family arrived in Myrtle Beach. Around 12:00 p.m. on the following day, the family went to the beach and settled in near lifeguard stand L21. As Ms. Abel watched the couple's two youngest children play in the sand, Mr. Wolde took Adam and Wubit to the water's edge to play in the surf. Mr. Wolde was an avid swimmer. Adam and Wubit were also adept swimmers and regularly attended swim lessons.

Once at the water's edge the children began playing and jumping in the waves with their father. According to Adam, they were in water that came up to his waist. They felt comfortable and believed the swimming conditions were safe. However, unbeknownst to the children and Mr. Wolde, LBS had received warnings earlier that day of dangerous swimming conditions due to rip and longshore currents. While playing in the surf, the children began to get pulled out to sea, causing Adam and Wubit to struggle and hang on to their father. According to Adam and Wubit, they were unintentionally getting deeper and deeper. As they got deeper in the water, they became scared. Mr. Wolde and the children began yelling for help. After trying to swim toward the shore, Adam, who was pulled out in front of his father and sister, began swimming to his left. Eventually, he was able to swim out of the rip current and make it back to shore. As Adam approached the

beach, Wubit continued to struggle and hold onto her father. Wubit and Mr. Wolde continued to yell and wave their arms for help.

As they struggled, it became obvious to bystanders on the beach that there was a problem. While clinging to her father, Wubit witnessed him begin to go under and then resurface, where he gasped for air and yelled for help. This process of going under, resurfacing, gasping for air and yelling for help went on for a period time. At this point, bystanders entered the water and pulled Mr. Wolde and Wubit to shore. Mr. Wolde was later pronounced dead of asphyxia due to drowning.

Following Mr. Wolde's death, Plaintiff filed suit against LBS,¹ alleging LBS knowingly breached numerous standards of care in operating its beach safety business and that these breaches were a proximate cause of Mr. Wolde's death. Among the breaches alleged was LBS's use of "dual-role" lifeguarding, *i.e.*, the practice of entrusting lifeguards with two conflicting roles: 1) providing lifeguard protection; and 2) transacting sales of beach merchandise and performing related customer service. Plaintiff alleged LBS's unauthorized use of this dual-role practice cost LBS its lifeguard certification in 2007. Since that time, LBS was on notice that dual-role lifeguarding posed a dangerous safety risk to swimmers, yet LBS continued the practice anyway. In addition to other standard of care breaches, Plaintiff also alleged that LBS was required to provide lifeguards that were both tested and certified, yet it failed to do so. Consequently, had LBS complied with beach safety and lifeguard protection standards, the drowning incident that cost Mr. Wolde his life could have been averted.

The case was tried before a jury in Horry County during the week of July 25-29, 2022. At trial, Plaintiff presented evidence and testimony that LBS received a warning from the National

¹ The City of Myrtle Beach was dismissed prior to trial.

Weather Service that hazardous conditions were present on the day of the incident. Despite the National Weather Service warning, LBS presented no witnesses who had any personal knowledge of having provided any warnings or efforts to guard against the dangerous swim conditions present that day. Instead, numerous witnesses testified that there were no warnings and no indication that LBS took measures to guard against the hazardous swim conditions or prevent swimmers from entering the water.

Plaintiff presented expert testimony that LBS violated the prevailing standard of care by engaging in dual role lifeguarding, by failing to properly train and supervise the lifeguards, and by allowing lifeguard towers to go unattended with no other safety strategy to ensure constant, proper water observation. Plaintiff's expert further testified that LBS violated the standard of care by failing to close areas for swimming or provide adequate warning of the hazardous conditions. Plaintiff also presented evidence that LBS was understaffed at the section of the beach where Mr. Wolde drowned. The owner of LBS, George Lack, admitted that being understaffed as they were on the day Mr. Wolde drowned could make all the difference between life and death. LBS did not call an expert to rebut Plaintiff's expert as to the standard of care, nor did LBS call any witnesses who had any personal knowledge that LBS complied with the standard of care on the day Mr. Wolde drowned.

The jury entered a verdict in favor of the Plaintiff and awarded \$3,700,000.00 in survival damages, \$10,000,000.00 in wrongful death damages, and \$7,000,000.00 in punitive damages. LBS now seeks judgment as a matter of law notwithstanding the jury's verdict, or, in the alternative, a new trial absolute, or a reduction of the damages by way of a new trial *nisi remittitur*.

STANDARD OF REVIEW

When ruling on a motion for directed verdict or JNOV, the trial court must view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the nonmoving party. *Garrison v. Target Corp.*, 435 S.C. 566, 576, 869 S.E.2d 797, 803 (2022). “A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012) (quoting *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998)). “The motion[] should be denied when either the evidence yields more than one inference or its inference is in doubt.” *Garrison*, 435 S.C. at 576, 869 S.E.2d at 803 (quoting *Gadson ex rel. Gadson v. ECO Servs. of S.C., Inc.*, 374 S.C. 171, 176, 648 S.E.2d 585, 588 (2007)). In considering a directed verdict or JNOV motion, “neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.” *Id.* (quoting *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006)).

South Carolina’s “thirteenth juror” doctrine allows the trial court to grant a new trial absolute only if the court finds, in its discretion, that the evidence does not justify the verdict. *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002). A new trial absolute is likewise warranted where a verdict is so “shockingly disproportionate” to the injuries suffered as to indicate that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded. *Welch v. Epstein*, 342 S.C. 279, 302, 536 S.E.2d 408, 420 (Ct. App. 2000) (citing *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996)). “Motions for a new trial on the ground of either excessiveness or inadequacy are addressed to the sound discretion of the trial judge.” *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 829 (2015) (citation and quotations omitted). “A verdict which may be supported by any rational

view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained, is not excessive.” *Kunst v. Loree*, 424 S.C. 24, 46-47, 817 S.E.2d 295, 306 (Ct. App. 2018) (quoting *Young v. Warr*, 252 S.C. 179, 187, 165 S.E.2d 797, 801 (1969)).

A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice. *Welch*, 342 S.C. at 303, 536 S.E.2d at 420 (citing *O’Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993)). However, the jury’s determination of damages is entitled to substantial deference. *Id.* (citing *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993)). In considering a motion for new trial *nisi*, the trial court must evaluate the adequacy of the verdict in light of the evidence presented. *Id.* (citing *Waring v. Johnson*, 341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000)). Further, the trial court “cannot, under the guise of amending the verdict, invade the exclusive province of the jury or substitute his verdict for theirs.” *Vinson*, 324 S.C. at 407, 477 S.E.2d at 724 (quoting *South Carolina State Hwy. Dep’t v. Miller*, 237 S.C. 386, 394-95, 117 S.E.2d 561, 565 (1960)). “[T]he verdict must be not merely what the judge thinks it ought to have been, but what the jury intended it to be.” *Id.* Thus, “compelling reasons” must be given to justify invading the jury’s province in this manner. *Riley*, 414 S.C. at 192, 777 S.E.2d at 828 (2015) (citations omitted); *see also Curtis v. Blake*, 392 S.C. 494, 501, 709 S.E.2d 79, 82 (Ct. App. 2011) (finding appellant’s arguments did not constitute compelling reasons to justify the grant of a new trial *nisi remittitur*).

DISCUSSION

I. Proximate Cause

LBS moves for JNOV or, in the alternative, a new trial absolute, arguing there was insufficient evidence to create a jury issue that its conduct, including its use of dual role lifeguarding, contributed to Mr. Wolde's death by drowning.

On directed verdict, LBS asked this Court to grant judgment in its favor on the ground it maintained there was "no amount of time that the family struggled" and no evidence that a lifeguard could have reached Mr. Wolde in time to change the outcome. Specifically, LBS argued:

"[T]hen this is a quick one ... the evidence of proximate cause doesn't exist, either direct or circumstantially, for the same or similar reasons that I've just described with the dual role, the fact that there's no amount of time that the family struggled, no evidence that a lifeguard could get from his or her location to Mr. Wolde to change his outcome. . . there's just no direct or circumstantial evidence to indicate proximate cause has been . . . proved or that should go to the jury"

(Trial Tr. 618:25-619:8). Contrary to LBS's contention, the Court finds the evidence on this issue conflicting. Therefore, the issue was appropriately submitted to the jury.

The jury heard testimony from multiple witnesses that the incident lasted for a period of time sufficient to create a jury question as to whether LBS's lifeguards—if acting in accordance with the standard of care—could have changed the outcome. Wubit, who was with her father during the incident, testified they struggled for a "long period of time" and that the entire incident up until they got to shore lasted 10 to 15 minutes.² The evidence also shows that Adam, Wubit, and Mr. Wolde were all screaming, yelling, and waving for help.³ Wubit testified they were yelling as loudly as they could.⁴ And not only were they positioned close enough to see the beach, Wubit

² Trial Tr., 586:1-4; 589:18-24.

³ Trial Tr., 585:3-11.

⁴ Trial Tr., 585:3-11.

explained that from where they were yelling, she could see bystanders on the beach.⁵ Adam testified he could see the shore.⁶ He explained that they yelled as loudly as they possible could, many times.⁷ And even the bystanders, who observed their calls for help from the beach, could not get the attention of Lack's lifeguards nor could they find any.⁸ This evidence shows the incident was not quick or instantaneous, and, in fact, bystanders were able to see their distress and attempt a response.

Plaintiff's expert, Dr. Griffiths, also provided testimony that Mr. Wolde was a distressed swimmer before he drowned, meaning LBS's lifeguards should have observed his distress with enough time to respond:

- Q. Does the literature differentiate between silent drownings and distressed swimmer drownings?
- A. That's a good point. The progression, there is a progression in drowning. If you're a non-swimmer, most non-swimmers enter into a drowning scenario very quickly which is quick, quiet and subtle. They can't cry out for help. There's very few visual signs of drowning. Someone who can swim first becomes distressed and when they're distressed they can call out for help and they can wave for help. But when they're distressed, if they don't help themselves or someone doesn't rescue them quickly then they rapidly move from a distressed victim to a drowning victim....But Mr. Wolde apparently was a distressed victim that could have and should have been easily recognizable by attentive lifeguards.⁹

This evidence was sufficient to create a jury issue as to proximate cause, and sufficient to support the resulting factual findings implicit in the jury's verdict.¹⁰

⁵ Trial Tr., 586:13-20.

⁶ Trial Tr., 543:9-12.

⁷ Trial Tr., 543:6-544:5.

⁸ Trial Tr., 196:17-24; 197:3-10.

⁹ Griffiths, 96:23 – 97:16.

¹⁰ See *RFT Mgmt. Co.*, 399 S.C. at 331, 732 S.E.2d at 170-171 (“[O]nly the grounds raised in the directed verdict motion may properly be reasserted in a JNOV motion.”) (citing *In re McCracken*, 346 S.C. 87, 551 S.E.2d 235 (2001); *Gov’t Emps. Ins. Co. v. Mackey*, 260 S.C. 306, 195 S.E.2d 830 (1973)).

The evidence at trial also shows other breaches of the standard of care linked to Mr. Wolde's drowning. In particular, Plaintiff's expert testified that LBS's conduct violated the standard of care in multiple respects, was dangerous, and was a contributing cause to Mr. Wolde's death:

A. Clearly by all the evidence provided in this case, the lifeguards were not adequately tested, not trained, not on duty at the time, if you look at the beach service line up at any given time during this incident. People were out to lunch without alternative coverage. They were supposed to have even lifeguard onlys on duty, they had less than half of the required amount. And plus provided the dual role is unacceptable. It's both unacceptable in our industry and it's dangerous. Lifeguards cannot be performing other duties that divert their attention from the water. And so, lack of training, lack of testing, lack of supervising, and the people on the stands were put in a position of failure. They were not adequately trained or supervised or tested to be providing ocean lifeguarding service, surf guarding service protection for the people.

Q. Yes sir. And was operating this endeavor in a dangerous and unsafe manner a contributing cause to Mr. Wolde's death?

A. Yes, I believe it was a direct cause to his death. Yes sir.¹¹

As to training, evidence was offered that LBS's lifeguards were untrained and unequipped to comply with the standard of care. LBS's chief operator, Weslyn Lack-Chickering, testified that LBS had no training records for any of the lifeguards, including those assigned to stands at L-20, L-21, and L-22.¹² She further admitted that these lifeguards missed multiple days of training because they were not in the country when the training took place.¹³ The evidence at trial also showed LBS was understaffed on the day of the incident and that understaffing was a contributing cause to Mr. Wolde's death.¹⁴ In fact, George Lack, the owner of Lack's, conceded that being

¹¹ Griffiths, 111-112.

¹² Trial Tr., 842:7-15.

¹³ Trial Tr., 838:8-839:4.

¹⁴ Trial Tr., 362:3-6.

short a lifeguard in the section where Mr. Wolde drowned was “theoretically” enough to make a difference in a lifesaving situation, such as the instant case:

Q. Under your testimony, you’re one short. Well, can’t one short make all the difference between life and death when it’s the tower responsible for the section of the public beach where Mr. Wolde drowned to death?

A Theoretically, yes.¹⁵

There was also evidence that LBS’s failure to close the beach was a breach of the standard of care.¹⁶ Specifically, Plaintiff’s expert testified that the National Weather Service warning provided notice of a hazardous condition which, at a minimum, warranted extra caution. Yet LBS took no action to close the beach and failed even to take minimum measures to effectively notify and warn the public. Dr. Griffiths further testified that LBS had a duty and obligation to warn the public of known hazards.¹⁷ The evidence showed that LBS, however, failed to place a single rip current warning anywhere on the beach, much less close to the water’s edge as required by the standard of care.¹⁸

While LBS argues the staff member assigned to L-21 was on a regularly scheduled lunch break at the time of the incident, the Court fails to see how this fact could be dispositive. Instead, viewing it in the light most favorable to the Plaintiff, an inference could be drawn that the L-21 lifeguard left the tower unoccupied at a time when LBS knew there were dangerous swimming conditions present. As Dr. Griffiths testified: “[a] lifeguard is never supposed to abandon their

¹⁵ Trial Tr., 451:14-18.

¹⁶ Griffiths, 101-102.

¹⁷ Griffiths, 102:22-103:6.

¹⁸ Griffiths, 93:1-9; 93:22-23.

post without someone else filling in for them, taking their stand, or closing the water. Otherwise, *it's a dereliction of duty.*"¹⁹

From this evidence, the jury could reasonably infer that LBS failed to provide acceptable, effective, and critical lifeguard protection and beach safety measures that could have prevented Mr. Wolde's premature and untimely death. To the extent there is conflicting evidence, it is not the function of this Court to weigh the evidence and resolve those conflicts. *See Welch*, 342 S.C. at 300, 536 S.E.2d at 419 (finding conflicting evidence sufficient to deny JNOV, noting "[i]t is not the function of this Court to weigh the evidence and resolve those conflicts."). Because the evidence, viewed in the light most favorable to the Plaintiff, supports the factual findings implicit in the jury's verdict, LBS's motion for JNOV on proximate cause is denied. *See Wright v. Craft*, 372 S.C. 1, 18, 640 S.E.2d 486, 495 (Ct. App. 2006) (a factual finding by the jury will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the jury's findings). For these same reasons, the Court further finds the evidence justifies the verdict; thus, LBS's motion for new trial absolute on proximate cause is likewise denied.

II. Dual Role Negligence

As to dual role negligence, LBS challenges the sufficiency of the evidence linking LBS's dual role lifeguarding practice to Mr. Wolde's death. Specifically, LBS maintains there is no direct or circumstantial evidence establishing that any LBS lifeguard was performing a sale or related commercial duties at the time of the incident.

Contrary to Lack's contention, bystander Julian Chandler provided evidence from which the jury could infer that the lifeguard at L-22 was engaged in commercial activity during the time

¹⁹ Griffiths, 68:21-25.

of Mr. Wolde's distress. Chandler provided direct testimony that the L-22 lifeguard was on the beach talking to two people near the umbrella line with his back to the ocean.²⁰ That the L-22 lifeguard was talking to two people near the umbrella line is evidence from which the jury could infer that the lifeguard was conducting umbrella or chair rental sales or performing related customer service. Likewise, from this evidence, an inference could be drawn that the staff member positioned at L-22—closest to where the Wolde family entered the water—was distracted by commercial activity and this distraction impeded a proper lifeguard response.

In addition, Plaintiff offered evidence that the City of Myrtle Beach required lifeguard protection on the tower and that positioning on the tower is consistent with the standard of care. Because the L-22 lifeguard was at the umbrella line and was not on the tower, an inference can be drawn that he was not performing lifeguard duties and was instead engaged in performing revenue-generating duties which were required by LBS.

Evidence at trial further shows LBS's staff were required to make commercial sales, were financially motivated to make sales,²¹ were required to keep track of all sales activity, were required to immediately update all sales records, and were required to maintain a seating chart—all in addition to their lifesaving duties.²² Indeed, the sales totals for the date of the incident established that LBS's staff did in fact make sales at the three lifeguard towers closest to the drowning incident, towers L-22, L-21 and L-20.²³ Consistent with this evidence, Plaintiff's expert testified that: "all three [lifeguards, *i.e.*, L-22, L21 and L-20] were engaged in sales. And I would

²⁰ Chandler Video Tr., 16:10-19:1.

²¹ Trial Tr., 307:9-12 (confirming that LBS lifeguards earn commissions based on sales of umbrella and beach chair rentals).

²² Plt. Trial Ex. 10, p.10.

²³ Plt. Trial Ex. 17.

say that, in part, contributed—that dual role in part led to the accident.”²⁴ Dr. Griffiths testimony was preceded by the acknowledgment that the sales receipts from L20, L21, and L22 “exemplif[y] and highlight[] the fact that sales were taking place during the day.”²⁵ These sales receipts establish that the three lifeguards monitoring the beach where Mr. Wolde’s drowning occurred generated \$1,173.50 in sales that day.²⁶

Moreover, there was evidence that Mr. Wolde was in distress for a “long period of time,” and at no time during the estimated ten to fifteen-minute drowning event did any LBS staff member respond or attempt lifesaving efforts, despite yells for help by both the Wolde family and bystanders.²⁷ Even the bystanders on the beach could not get the attention of Lack’s lifeguards nor could they find any.²⁸

This evidence, viewed in the light most favorable to the Plaintiff, is sufficient to create a jury question as to whether LBS’s use of dual role lifeguarding prevented an adequate lifeguard response to Mr. Wolde and his family’s distress in the water. LBS’s motion for JNOV on the issue of dual role negligence is, therefore, denied.²⁹ Because the Court finds the evidence as to LBS’s

²⁴ Griffiths, 232:6-8.

²⁵ *Id.* at 232:2-10.

²⁶ Plt. Ex. 17.

²⁷ Trial Tr., 543:6-544:5; 585:3-11; 586:1-20; 589:18-24.

²⁸ Trial Tr., 196:17-24; 197:3-10.

²⁹ To the extent LBS argues that evidence of dual role negligence led to confusion of the issues, mislead the jury, constituted undue delay or a waste of time, LBS never objected to this evidence or argument at trial. *See* Rule 403, SCRE. Rather, LBS’s sole objection to this evidence was prior to trial and based on the false assumption that “[w]hile Plaintiff’s attorneys are expected to harp on profits over people the completely conjectural and speculative evidence as to commercial activities of the lifeguards would be irrelevant, non-probative and highly prejudicial.” (*See* Def. MIL, p. 9). However, the prejudice LBS alleged before trial did not occur at trial. At no time during the trial was there any reference to “profits over people.” Notwithstanding, as shown above, evidence of LBS’s dual role practice was properly admitted as relevant to the liability issues of standard of care, breach, and proximate cause. *See* Rule 401, SCRE (evidence is admissible if it has a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”).

dual role practice justifies the verdict, the Court further denies LBS's alternative motion for new trial absolute on dual role negligence.

III. Admission of Evidence

LBS next challenges several evidentiary rulings, arguing the evidence was so prejudicial as to warrant a new trial absolute. As addressed in turn below, the Court finds no error and no prejudice sufficient to warrant the relief requested.

"[T]o warrant reversal based on the admission or exclusion of evidence, the appealing party must show both the error of the ruling and prejudice." *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008). "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v Mitchell*, 286 S.C. 572, 573, 247 S.E.2d 334, 337 (1978).

A. LBS's Inconsistent Factual Position in Prior Litigation

LBS's owner, George Lack, maintained at trial that the young adults his company hired to conduct public safety were lifeguards and not beach attendants. He contended that the lifeguards were trained, that they watched the water for distressed swimmers, and that only a small part of their working day was spent selling commercial equipment. For these reasons, Plaintiff sought to introduce evidence that George Lack had taken the opposite position in litigation before the South Carolina Workers Compensation Commission. In that litigation, Lack submitted to the Commission that his lifeguards' duties were 99.995% commercial sales and .0047% lifeguarding. Plaintiff maintained at trial that this opposing position before the Commission is highly relevant to this case because LBS's lifeguarding practices were the same then as they were on the day of Mr. Wolde's drowning.

As an initial matter, LBS opened the door to this evidence by claiming at trial that its lifeguards perform all lifeguarding and only minimal commercial sales. Cross-examination on the inconsistency between LBS's position in this case and that before the Workers' Compensation Commission was, therefore, permissible and appropriate. *See Rauch v. Zayas*, 284 S.C. 594, 327 S.E.2d 377 (Ct. App. 1985) (upholding admission of settlement in prior Workers' Compensation claim to impeach personal injury plaintiff's testimony of pain and suffering as a result of a later accident). Likewise, LBS was permitted and did elicit testimony from George Lack in its cross regarding the background and rationale for the percentages provided to the commission.

While LBS argues the evidence is "grossly remote in time, nonprobative, and unduly prejudicial,"³⁰ the evidence shows Lack's lifeguarding practices were exactly the same in 2018 as they were in 2002 during the workers' compensation litigation. On this basis alone, the probative value of the evidence outweighs any alleged prejudice.

Further, the admission of evidence is within the sound discretion of the trial judge and will not be disturbed on appeal absent a clear showing of an abuse of discretion, commission of a legal error, and prejudice. *Hall v. Palmetto Enterprises II, Inc., of Clinton*, 282 S.C. 87, 91, 317 S.E.2d 140, 142-43 (Ct. App. 1984). No abuse of discretion or legal error has been demonstrated. Finally, even if there was error, there is no evidence Lack's suffered any prejudice because George Lack conceded at trial that his company's lifeguards performed commercial duties and engaged in dual-role lifeguarding. *See Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984).

B. Lack's USLA Decertification

Throughout the trial of this case, the United States Lifeguard Association ("USLA") was consistently recognized as the lifeguard industry's standard of care. LBS, however, claims

³⁰ *See* Lack's Mot. New Trial Absolute, p. 18.

reversible error in the admission of this standard of care evidence and, more specifically, in admitting evidence of its failure to meet the standard of care set by the USLA, as evidenced by communications with the USLA and the USLA's resulting decision to decertify Lack's as an accredited lifeguard service. The Court finds LBS's arguments unavailing. The facts show this evidence was highly probative and essential to the liability issues of notice, foreseeability, willfulness, and recklessness.

Chris Brewster, the former President of the USLA, testified that his organization plays a large role in establishing the national standard of care for ocean lifeguards.³¹ George Lack conceded the USLA is the standard of care for lifeguarding. Indeed, Lack testified he sought to secure USLA certification so his company could advertise the same to the public—*i.e.*, he wanted to hold out to the public that his lifeguards were trained and competent because they met the criteria of the USLA. Brewster testified that Lack concealed from USLA the fact that his lifeguards were participating in commercial activities in addition to lifeguarding. It was not until Brewster traveled to Myrtle Beach in 2007 that the USLA was apprised of the misrepresentation.³² The USLA thereafter de-certified LBS as a USLA compliant lifeguard service. As this evidence demonstrates, LBS's USLA certification and decertification is highly probative of both (1) the standard of care relevant to this case, and (2) Lack's knowledge that its practices violated the standard of care.

Further, Brewster also explained that it would be impossible for any Lack's lifeguard to meet the USLA training requirements required by the franchise agreement because dual-role lifeguarding is entirely inconsistent with USLA standards.³³ Brewster testified that the USLA trains lifeguards to watch the water, minimize distractions, and prevent people from even getting

³¹ Trial Tr., 473:15-17 (“... we [USLA] do set the standard.”).

³² Trial Tr., 495:18-25.

³³ Trial Tr., 478:5-9.

into danger in the water. If a company knowingly introduces distractions to its lifeguards in the form of selling commercial goods, and then trains them on how to sell the equipment, they are knowingly and intentionally violating USLA training.³⁴ Evidence of LBS's USLA membership, certification, and decertification is, thus, highly relevant to the standard of care applicable to this case as well as to LBS's breach and the foreseeability that LBS's breach could pose a dangerous safety risk to beachgoers like Mr. Wolde. Moreover, because LBS concedes its lifeguards perform dual roles and earn commissions from selling beach concessions, it cannot complain of prejudice resulting from evidence that it lost USLA certification because of this practice. The Court finds no error in admitting this evidence much less one that would warrant a new trial absolute.

C. LBS's Gross Commercial Sales from Lifeguards for 2018

LBS next challenges the admission of its 2018 gross sales from lifeguards as well as sales tax calculations for the three-month period surrounding the incident. LBS maintains the evidence, which reflected \$1,520,918.00 in gross sales, is not relevant and so "highly prejudicial" as to warrant a new trial.

The Court finds no error or prejudice warranting a new trial based on the sales records. While there was no dispute at trial that LBS's lifeguards performed commercial sales while also entrusted with performing lifeguard protection duties, the sales totals offer insight as to the time and frequency in which LBS's lifeguards were engaged in commercial duties. This evidence is relevant to essential elements of Plaintiff's negligence claim, such as LBS's knowledge that it engaged in a water safety practice that was directly contrary to its duty of providing lifeguard protection, and that LBS violated the standard of care and the Franchise Agreement by failing to

³⁴ Trial Tr., 478:5-9.

“ensure minimum lifeguard staffing in each zone.”³⁵ Further, the sales evidence was limited in scope and tailored to the week, month, and year of the incident. The Court finds this limitation was sufficiently tailored to the liability issues of whether LBS was in fact engaging in dual role lifeguarding, whether this practice put swimmers—and Mr. Wolde—at risk, whether it violated the standard of care and the Franchise Agreement, and whether it was a contributing cause of Mr. Wolde’s death.

As to prejudice, the Court is unable to find any. LBS’s gross sales are a matter of public record by virtue of its franchise agreement with the City of Myrtle Beach. Moreover, the sales evidence reflects only gross sales and is not an indicator of LBS’s financial position or net profits. Gross sales, being entirely distinct from the amount of money LBS made off its beach rentals, are not prejudicial in the manner complained of by LBS.³⁶

LBS’s reliance on *Branham v. Ford Motor Co.* for the assertion that “business income of this kind and nature has been forbidden by the South Carolina Supreme Court” is misplaced.³⁷ The court in *Branham* did no such thing. Rather, in *Branham*, the court found plaintiff’s counsel “went far beyond the pale in submitting evidence of Ford’s Senior Management compensation,” finding such evidence improper because it introduces an “arbitrary factor” in a jury’s consideration and assessment of punitive damages. *Id.* at 240, 701 S.E.2d at 25. The improper evidence there included that “the Ford Chairman and Chief Executive Officer was compensated by stock options worth \$5,300,000; the Ford President and Chief Operating Officer received a salary \$1,458,000 in 2005; the Ford Executive Vice President received a salary of \$972,000 in 2005; the Ford Chief

³⁵ Franchise Agreement, Plt. Trial Ex. 15, p. 2:29-30.

³⁶ See Lack’s Mot. New Trial Absolute, p. 21.

³⁷ See Lack’s Mot. New Trial Absolute, p. 21 (citing *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5 (2010)).

Financial Officer received a salary of \$916,000 in 2005; a former Ford chairman received \$880,000 in 2005[;]" and that "[i]n 2005, they didn't pay bonuses [but] in 2004, they did pay bonuses: \$2 Million, \$1 Million, \$1 Million and \$1 Million plus stock and other compensation." *Id.* LBS's 2018 gross sales figures are entirely distinguishable from this type of "arbitrary" and prejudicial financial testimony.

Furthermore, to the extent LBS's takes issue with the "manner in which Plaintiff's counsel used the evidence throughout the trial and in his closing argument,"³⁸ LBS's never once objected to the manner in which this evidence was used. In fact, LBS never made a single objection to Plaintiff's closing. This failure constitutes a waiver of any right to challenge the evidence on this basis now. *See e.g. Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994) (the general rule is that the lack of a contemporaneous objection to an improper argument acts as a waiver."); *Scott*, 340 S.C. at 167, 530 S.E.2d at 393 ("Ordinarily, if an appellant fails to object the first time a statement is made in closing argument, he or she waives the right to raise the issue on appeal").³⁹

In sum, LBS waived its right to challenge the manner in which the sales records were used, and as to its admissibility, Lack's argument fails on probative value alone. Any suggestion of

³⁸ *See* Lack's Mot. New Trial Absolute, p. 21.

³⁹ This rule is subject to one very narrow exception "in flagrant cases where a vicious inflammatory argument results in clear prejudice." *Dial v. Niggel Assocs., Inc.*, 333 S.C. 253, 256, 509 S.E.2d 269, 271 (1998) (quoting *Toyota of Florence*). In *Dial*, the court made clear that the "vicious inflammatory argument" contemplated in the exception must be a closing argument that "constitutes abuse of a party or witness." *Id.* at 259, 509 S.E.2d at 272. In *Toyota of Florence*, the court found that racist posters about the party opponent that counsel used as props in a closing argument met this narrow exception. 314 S.C. at 263, 442 S.E.2d at 615. LBS's challenge to the admission of a public record showing its yearly gross sales is hardly comparable to the type of vicious inflammatory argument referenced in *Dial* or *Toyota of Florence*. Reference to gross sales is simply not "flagrant" or "vicious" nor is it an "abuse" of LBS so as to warrant deviation from the strict rule barring consideration of an allegedly prejudicial closing statement despite a failure to object.

prejudice is further undercut by the fact the sales record is a public document, reflects only gross sales (not net income), and is required by the Franchise Agreement. There is, thus, no error in admitting evidence of the 2018 stand totals, much less any error warranting a new trial. LBS's new trial motion based on the admission of the 2018 stand totals and sales tax calculations is denied.

IV. JNOV on Survival

LBS challenges the sufficiency of the evidence supporting the jury's award of survival damages, arguing it is entitled to a JNOV on the ground the evidence at trial failed to show that Mr. Wolde endured a period of conscious pain and suffering to warrant submission of the survival claim to the jury.

The South Carolina survival statute provides that a cause of action for personal injuries survives the decedent's death. S.C. Code Ann. § 15-5-90. Damages for a decedent's conscious pain and suffering are recoverable, but there must be proof that the decedent consciously suffered prior to death. *Smalls v. S.C. Dep't of Educ.*, 339 S.C. 208, 216, 528 S.E.2d 682, 686 (Ct. App. 2000); *Croft v. Hall*, 208 S.C. 187, 193, 37 S.E.2d 537, 539 (1946). "If there is any evidence from which a jury could reasonably conclude a decedent experienced conscious pain and suffering," it should be submitted to the jury. *Vereen v. Liberty Life Ins. Co.*, 306 S.C. 423, 432, 412 S.E.2d 425, 431 (Ct. App. 1991). In deciding whether to submit a claim of conscious pain and suffering claim to a jury, all evidence and any inferences reasonably therefrom must be viewed in the light most favorable to the plaintiff. *Vereen*, 306 S.C. at 432; 412 S.E.2d at 431.

Here, the evidence meets and exceeds the requisite standards. Two of Mr. Wolde's children, Adam and Wubit, witnessed their father struggle for his life in the water. Adam testified that the entire drowning event lasted for an extended period—including being pulled out to sea,

fighting for his life, yelling and waiving his arms for help. Adam testified he watched his father struggle while trying to save Wubit.⁴⁰

Wubit's testimony was equally powerful and even more direct because she was in her father's arms during his struggle to stay afloat. She not only saw but also felt his struggle, his gasps for air, and his calls for help.⁴¹ She testified her father repeatedly went under water, came back to the surface, and gasped for air while fighting to stay afloat.⁴² This terrifying sequence lasted for a "long period of time."⁴³ Wubit went on to explain that eventually the yelling, gasping, and going under came to a frightening stop, and she just held onto her father.⁴⁴ Wubit estimated the entire incident lasted for ten to fifteen minutes.⁴⁵ As Wubit's testimony shows, she was not only able to see and hear her father's struggle, but she was also able to feel the tremendous suffering and pain associated with his struggle.

Bystander testimony also supports Mr. Wolde's pain and suffering. One of the bystanders, Julian Chandler, testified he was sitting on the beach approximately 100 feet from the ocean when he heard cries for help in the water.⁴⁶ He rushed into the ocean using a mix of walking and swimming to reach Mr. Wolde, a process which took several minutes.⁴⁷ When Chandler finally got to Mr. Wolde, he had been assisted closer to shore into waist deep water.⁴⁸ Chandler testified

⁴⁰ Trial Tr., 543:23-544:5.

⁴¹ Trial Tr., 584:7-13.

⁴² Trial Tr., 584:7-13; 585:17-586:4.

⁴³ Trial Tr., 586:1-4.

⁴⁴ Trial Tr., 586:1-4; 587:11-588:3; 606:24-607:3.

⁴⁵ Trial Tr., 589:18-24.

⁴⁶ Chandler Video Tr., 59:19-22.

⁴⁷ *Id.*, 31:2-5.

⁴⁸ *Id.*, 62:8-11.

that when brought to shore, Mr. Wolde's eyes were bulging, he was spitting up water and sand, and he had a pulse.⁴⁹ Chandler went on to explain:

[T]he nurse and the larger gentlemen that were there that pulled him out to the sand issued CPR[.] The issue was the water and sand would come out and then get sucked back in, so she asked me to roll him, so I then rolled him on his side[.] She began clearing everything out of his mouth to then try to roll him back and administer CPR."⁵⁰

Based on this testimony, the evidence was not that Mr. Wolde died instantaneously; rather, he was still alive at the time he was brought back to shore. But as the coroner later confirmed, the rescue attempt on shore was unsuccessful and Mr. Wolde ultimately died from asphyxia due to drowning.⁵¹ At trial, the coroner explained that the asphyxia diagnosis meant Mr. Wolde's lungs filled up with water and prevented oxygen from getting into his blood.⁵² In other words, the process of going under, swallowing water, and gasping for air eventually caused him to suffocate to death.⁵³

Viewing this evidence in the light most favorable to the Plaintiff, the Court finds sufficient evidence to create a jury issue as to pain and suffering. This is not a situation where an individual is knocked unconscious, falls in the water, and immediately drowns; nor is this akin to a toddler falling in the water and immediately sinking to the bottom. Notwithstanding, LBS argues that in order to submit the survival claim to the jury expert testimony on the pathophysiology of the drowning process was required. While such expert testimony may be helpful or even necessary in some cases, in light of the direct witness testimony recounted above, this is not one of those cases.

⁴⁹ *Id.*, 21:11-19.

⁵⁰ *Id.*, 22:1-9.

⁵¹ Trial Tr., 466:2-4.

⁵² Trial Tr., 466:8-10.

⁵³ The coroner's report indicated that at the time of Mr. Wolde's drowning he was trying to save his daughter's life. *See* Ex. 20, p. 4.

Moreover, it is not Plaintiff's burden to prove survival damages through expert testimony. Rather, as in this case, Plaintiff's burden is to offer sufficient evidence from which the jury can infer conscious pain and suffering. *Scott v. Porter*, 340 S.C. 158, 171, 530 S.E.2d 389, 394-95 (Ct. App. 2000) (affirming survival damages award of \$600,000 based on circumstantial evidence from from which the jury could infer pain and suffering which preceded the decedent's coma and death) *Vereen*, 306 S.C. at 432, 412 S.E.2d at 431 (stating jury could infer conscious pain and suffering from evidence).

Lack's reliance on *The Corsair*, 14 U.S. 335 (1892), is also misplaced. Unlike the witness testimony here, there were no witnesses in *Corsair*. The *Corsair* court did not have the benefit of testimony recounting the decedent's pain, consciousness, or duration of suffering. Rather, the only evidence available in *Corsair* was that the decedent drowned when the steam tug she was riding in struck the bank of the Mississippi River and sank. *See id.* In stark contrast to *Corsair*, the evidence recited above is sufficient for the jury to infer that Mr. Wolde endured pain and suffering which preceded his death by asphyxiation due to drowning. LBS's reference to "pre-impact fear" is also unavailing. Pre-impact fear pertains to accident victims prior to the impact which renders them unconscious or instantly causes death.⁵⁴ This is not a motor vehicle accident or similar situation involving an impact resulting in instantaneous death or unconsciousness. Accordingly, because the evidence is sufficient for the jury to infer conscious pain and suffering, LBS's motion for JNOV on the submission of Plaintiff's survival claim to the jury is, therefore, denied. *See Vereen*, 306 S.C. at 432, 412 S.E.2d at 431 ("If there is any evidence from which a jury could reasonably conclude a decedent experienced conscious pain and suffering," it should be submitted

⁵⁴ *See Rutland v. South Carolina Dept. of Transp.*, 400 S.C. 209, 214-15, 734 S.E.2d 142, 144-45 (2012) (discussing pre-impact fear as a possible element of conscious pain and suffering from death by motor vehicle accident but declining to adopt or reject rule under the facts of this case).

to the jury). For these same reasons, the Court finds the jury's survival verdict is supported by the evidence; thus, LBS's request for a new trial absolute is likewise denied.

V. Motion for New Trial on Survival Damages

LBS maintains the jury's award of \$3.73 million in survival damages is so excessive as to suggest it was improperly motivated by passion or prejudice warranting a new trial absolute, or that it is merely unduly liberal entitling LBS to a reduction of the award by way of a new trial *nisi remittitur*.

As an initial matter, LBS argues—for the first time—that the Court's instruction on the mortality table was confusing and may have mislead the jury so as to taint the award. Having never raised the error it now claims as a basis to set aside the jury's award, LBS is barred from assigning any error now.⁵⁵ It is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (citing *Parks v. Morris Homes Corp.*, 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965)). If the instruction on survival and wrongful death damages was so confusing as to warrant a new trial, it was incumbent on LBS to object to the court's instruction or seek a clarification. Indeed, LBS could have objected both before the court approved the instruction and again when the instruction was given. LBS also neglected yet another opportunity when the court asked counsel: "[a]ny additions or anything else . . . before we send the jury back to deliberate."⁵⁶ Because LBS failed to object or otherwise address its concerns—despite multiple opportunities—LBS is barred from doing so now.

⁵⁵ *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (citing *McGee v. Bruce Hosp. Syst.*, 321 S.C. 340, 347, 468 S.E.2d 633, 637 (1996) ("It is well settled that an issue may not be raised for the first time in a post-trial motion.")).

⁵⁶ Trial Tr., 939:19-22 (responding, "None from the defendant, Your Honor.").

As to LBS's argument that the award was motivated by improper prejudice, passion, or other outside influence, LBS merely reiterates the same arguments raised in its JNOV motion, *i.e.*, that there was no evidence of the specific duration of the drowning incident, and no expert evidence of the drowning process to inform the jury as to the effects a drowning victim might experience. For the same reasons this Court rejected LBS's JNOV arguments, the Court finds LBS's arguments unavailing.

As set forth above, the jury heard evidence that: (1) Mr. Wolde was conscious and struggling to stay afloat for a period of time; (2) during this time, Mr. Wolde repeatedly went under water, gasped for air, and cried for help; and (3) the incident lasted 10-15 minutes from the time Mr. Wolde became distressed until he was brought to shore. This evidence was more than sufficient for the jury to infer conscious pain and suffering. Accordingly, the Court finds the jury's award of survival damages is properly supported by the evidence. LBS's request for a new trial absolute is, therefore, denied.

As to LBS's alternative request to reduce the award by *nisi remittitur*, the Court likewise finds no basis to justify invading the jury's province. In considering a motion to reduce a damages award by *nisi remittitur*, the jury's determination of damages is entitled to substantial deference. *Smalls*, 339 S.C. at 215, 528 S.E.2d at 686 (citation omitted). Again, the direct testimony of Mr. Wolde's daughter who provided firsthand knowledge of Mr. Wolde's drowning experience, including the duration of the event and his pain and suffering in the process, provides more than sufficient evidence.⁵⁷ Further, the coroner testified as to the cause of Mr. Wolde's death, explaining what death by asphyxia due to drowning entails.⁵⁸ In considering this evidence, the

⁵⁷ Wubit testified the sequence of "going under and coming back up, . . . gasp[ing] for air and [] yell[ing] for help" lasted for "a long period of time." (Trial Tr., 586:1-4).

⁵⁸ Trial Tr., 456:2-10; 468:4-10; 469:11-12; *See* Plt. Ex, 19, 20 & 21.

jury could reasonably infer that the suffocation process endured by Mr. Wolde, while conscious and drowning, was painful and resulted in a period of conscious pain and suffering.

Indeed, courts have denied similar defense motions on much less. In *Smalls v. S.C. Dep't of Educ.*, the court of appeals upheld an award of survival damages, finding no error in the trial court's denial of JNOV and new trial *nisi remittitur* despite scant evidence of the decedent's consciousness prior to her death. 339 S.C. at 216–17, 528 S.E.2d at 686. There, the decedent, who was fatally injured in a car accident, was found unconscious and, in fact, never regained consciousness. *Id.* However, the decedent's father testified she was “gasping for air” when he found her, though there was no further evidence of any consciousness. The court of appeals upheld the trial court's denial of *nisi remittitur*, finding the “gasping for air” testimony was sufficient to support the jury's award of survival damages for conscious pain and suffering. Here, the evidence supporting conscious pain and suffering, including the detailed account from Wubit, far exceeds that in *Smalls*. Considering the facts in evidence, the Court finds the jury's award of \$3.73 million in survival damages is reasonable, measured, and supported by the evidence and testimony in this case. Accordingly, LBS's motion for new trial *nisi remittitur* is denied.

VI. Wrongful Death Damages

LBS asserts it is entitled to a new trial absolute on the grounds the jury's award of \$10 million in wrongful death damages is grossly excessive or, in the alternative, that it is entitled to a reduction of the award on the ground it is unduly liberal. LBS also asserts it is entitled to a new trial absolute under the thirteenth juror doctrine.

The issue of damages in a wrongful death claim is not directed toward the value of the human life that was lost, but rather the damages sustained by the beneficiaries as a result of the death. *Welch*, 342 S.C. at 304, 536 S.E.2d at 421 (citing *Zorn v. Crawford*, 252 S.C. 127, 165

S.E.2d 640 (1969); *Self v. Goodrich*, 300 S.C. 349, 387 S.E.2d 713 (Ct. App. 1989)). Damages recoverable in a wrongful death action include: (1) pecuniary loss; (2) mental shock and suffering; (3) wounded feelings; (4) grief and sorrow; (5) loss of companionship; and (6) deprivation of the use and comfort of the intestate's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries. *Id.*

Here, the jury was presented with the tragic loss of a forty-one-year-old father of four young children who drowned while saving his daughter's life when they became entrapped in a deadly rip current. The decedent's family testified as to the enormous effect Mr. Wolde's death had on his four young children, of whom Mr. Wolde was the primary caretaker.⁵⁹ Mr. Wolde's fiancé, Meswaet Abel, was a registered nurse at George Washington hospital and worked long hours to provide for the family.⁶⁰ Mr. Wolde handled everything at home—he made the meals, he helped the children with homework, he went to the grocery store, he got them ready for school, and he was home for them when they arrived at the end of the day.⁶¹ In fact, on the morning Mr. Wolde died, he was the one who went to Wal-Mart to pick up groceries, who made the family's breakfast, who helped the children get ready for the beach, and who put on their sunscreen.⁶²

Ms. Abel, Adam, and Wubit further testified at length as to what his loss has meant to their family. They would set a place for him at the dinner table every night until it became too unbearable to see the empty seat.⁶³ They now eat dinner in the family room instead.⁶⁴ Adam, who enjoyed watching the Redskins on television with his father, could no longer watch football after

⁵⁹ Trial Tr., 587:11-588:3.

⁶⁰ Trial Tr., 570:15-22; 226:14-227:14.

⁶¹ Trial Tr., 570:20-571:8; 528:23-529:9.

⁶² Trial Tr., 232:2-8; 536:18-19.

⁶³ Trial Tr., 243:22-244:2.

⁶⁴ *Id.*

his father died—now he watches alone at their townhome with a collection of the memorabilia his father had given to him.⁶⁵ One of the twin daughters recently refused to re-paint her room because she did not want to remove the paint her father had applied.⁶⁶ As Ms. Abel testified, life without their father has been inconceivably difficult:

Our life changed. Our house is dark. We're living in no hope, with no answers to my kids, "Who is going to walk me down the aisle when I get married?" If I change, I would give my life. It's not because I love him; it's because of the kids. They need him more than me. . . He's done everything. He teach how to swim. He teach how to study. He teach them how to ride a bike. He painted their rooms.⁶⁷

In other words, Mr. Wolde was an active, involved, and loving father.

The children also testified as to the immeasurable trauma and shock experienced in witnessing their father's death in such a horrific manner. Wubit endured the entire event latched onto her father's shirt, where she could see, hear, and feel his suffering. The horrifying experience continued on shore as Wubit saw foam coming out of her father's mouth when the bystanders were performing CPR.⁶⁸ Bystanders Jeff Bender and Julien Chandler also testified as to the children's presence during the horrific event. Bender testified Wubit was floating on her father, "using him like a life preserver," at the time he began assisting them to shore.⁶⁹ Chandler testified that he stopped Adam from getting too close to his father's body and encouraged him to be strong for his younger twin sisters, after which Adam and his sisters knelt and prayed.⁷⁰ The children also witnessed their mother "hysterically flailing and screaming."⁷¹ This evidence all plays a factor in determining wrongful death damages. *See Lucht v. Youngblood*, 266 S.C. 127, 136–37, 221 S.E.2d

⁶⁵ Trial Tr., 246:10-23.

⁶⁶ Trial Tr., 249:12-15.

⁶⁷ Trial Tr., 249:5-13.

⁶⁸ Trial Tr., 590:12-13.

⁶⁹ Trial Tr., 197:22-198:1.

⁷⁰ Chandler Video. Tr., 25:16-26:3

⁷¹ *Id.*, 26:6-9.

854, 859 (1976) (noting wrongful death damages includes the damages sustained by the beneficiaries from the death, such as mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of the decedent's society).

Considering the wide range of losses encompassed by wrongful death damages, Plaintiff's counsel, during closing argument, appropriately suggested a per diem calculation as a method the jury could apply to arrive at a damages award for the children's nonpecuniary wrongful death damages. Counsel further made clear that whether to award and how much, if any, was entirely up to them. *See Edwards v. Lawton*, 244 S.C. 276, 281, 136 S.E.2d 708 (1964) (accepting a per diem calculation as acceptable in a closing argument). The per diem suggested was based on the children's loss of companionship and loss of society given their father's 37.3 years of remaining life expectancy. Under this calculation, the estimated per diem of \$10 an hour, multiplied by fifteen hours per day, translated to \$54,750.00 per year, per child. In total, this calculation amounts to roughly \$8.1 million over the remaining 37.3 years of Mr. Wolde's life expectancy.⁷² After three hours of deliberation, the jury awarded \$10 million, or \$2.5 million per child. Considering all objective evidence, the jury's award of \$10 million in wrongful death damages is reasoned, measured, and proportionate to the injuries suffered.

In challenging the propriety of the jury's damages award, LBS points to no concrete basis to suggest the award was motivated by anything but the evidence. LBS's attempt to challenge this jury's award by cherry picking various verdicts in other wrongful death cases is equally unavailing.⁷³ Though comparisons to other verdicts are only persuasive at best, LBS omits numerous wrongful death verdicts in which the actual damages awards are consistent with and

⁷² Trial Tr., 905:14-906:11.

⁷³ *See* Lack's Mot. New Trial Absolute, pp. 26-28; New Trial Nisi, pp. 6-8.

even higher than that in this case. *See Lucht*, 266 S.C. at 136, 221 S.E.2d at 858 (stating that while the comparison approach is sometimes helpful, each case must be evaluated as an individual one, within the framework of its distinctive facts and, when comparing awards in previous cases, recognition must be given to the continuing erosion in the purchasing power of the dollar); *see e.g., Reeves v. Town of Cottageville et al.*; Case No. 14-11-070043 (2014) (compensatory award for wrongful death of \$7.5 million and \$90 million in punitive damages); *Givens v. Samkharadze*, Case No. 21-10-130012 (2021) (compensatory pain and suffering of \$25 million and \$8 million in punitive damages); *Bales v. Martinez*, Case No. 14-03-170022 (2014) (\$20 million award for loss of service, \$30 million in punitive damages); *Dial v. Toyota Motor Sales USA Inc.*, Case No. 18-10-220036 (2018) (\$6 million in compensatory damages and \$6 million for loss of service); *Bannister v. Columbia Urological Associates, P.A.*, No. 2015-CP-40-4794 (2017) (\$10 million in compensatory damages); *Huff v. XPO Express, Inc.*, Case No. 19-11-120022 (2019) (compensatory pain and suffering of \$7 million); *Oickle and Oickle v. XPO Express Inc. f/k/a Express 1 Inc.*, Case No. 19-03-200062 (2019) (loss of services award of \$5 million).

The Court further finds no basis to exercise its discretion as the thirteenth juror. As the thirteenth juror, the Court is charged with reviewing what happened, what was presented and what was not presented, in the trial of this case. *See Lucht*, 266 S.C. at 136, 221 S.E.2d at 858. Here, there was simply not “any trial event or any item of evidence that might have caused the jury to base its award on either passion, prejudice, or partiality.” *See Clark v. Ross*, 284 S.C. at 568, 328 S.E.2d at 106. The Court further finds there is no “compelling reason” to invade the jury’s province and reduce the verdict. *See Proctor v. Dep’t of Health & Env’t Control*, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) (“compelling reasons must be given to justify invading the jury’s province by granting a new trial *nisi remittitur*.”). Considering the ample evidence

supporting the award of wrongful death damages, the Court finds the jury's \$10 million award or \$2.5 million per child is justified, is not grossly excessive, and is not unduly liberal. LBS's motions for new trial absolute and new trial *nisi remittitur* are, therefore, denied.

VII. Punitive Damages

LBS challenges the jury's award of \$7 million in punitive damages, arguing it is entitled to a JNOV or, in the alternative, a new trial absolute or a new trial *nisi remittitur*. As with the jury's survival and wrongful death awards, there is nothing meriting a JNOV, a new trial absolute, or a reduction of the punitive damages award.

In South Carolina, "punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." *Gamble v. Stevenson*, 305 S.C. 104, 110, 406 S.E.2d 350, 354 (1991) (citations omitted). Moreover, they serve "as a vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated. Lastly, punitive damages may be awarded only upon a finding of actual damages." *Id.*

To receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence that the defendant's misconduct was willful, wanton, or with reckless disregard for the plaintiff's rights. S.C. Code Ann. § 15-33-135; *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996); *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005). "A conscious failure to exercise due care constitutes willfulness." *Mishoe*, 366 S.C. at 201, 621 S.E.2d at 366 (citing *Welch*, 342 S.C. at 301, 536 S.E.2d at 419). When evidence exists that suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness and recklessness. *Id.*

(citing *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996)). The amount of damages, actual or punitive, remains largely within the discretion of the finder of fact, as reviewed by the trial judge. *Id.* (citing *Gamble*, 305 S.C. 104, 406 S.E.2d 350).

A. JNOV on Punitive Damages

The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton. *Mishoe*, 366 S.C. at 201, 621 S.E.2d at 366 (citing *Welch*, 342 S.C. at 301, 536 S.E.2d at 419). Where, as here, the Plaintiff presented testimony and evidence that LBS was aware of a dangerous condition and failed to take action to minimize or avoid the danger, an inference could be drawn that LBS's conduct was reckless, willful, and wanton. Thus, whether there is clear and convincing evidence of willful and reckless conduct to support punitive damages was appropriately submitted to the jury. *See id.* (citing *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996)).

If the jury believes the plaintiff established willful, wanton, or reckless conduct by clear and convincing evidence, the jury has considerable discretion to determine the amount of punitive damages. *Sea Island Food Grp., LLC v. Yaschik Dev. Co., Inc.*, 433 S.C. 278, 289, 857 S.E.2d 902, 907–08 (Ct. App. 2021), reh'g denied (May 12, 2021) (citing *Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 404–05, 714 S.E.2d 904, 915 (Ct. App. 2011) (noting the deference due to the jury on punitive damages)).

In *Mishoe v. QHG of Lake City, Inc.*, the South Carolina Court of Appeals affirmed the denial of JNOV on the issue of punitive damages where there was evidence the defendant was provided “actual, written notice” of a dangerous condition on its premises—a hole in the pavement near the defendant's emergency room exit—and failed to take any action to repair the hole or to

warn visitors or patients of the existence of the hole. 366 S.C. at 201–02, 621 S.E.2d at 366. Having neglected to take any corrective action for nearly a year since being notified, the *Mishoe* court specifically found the written notice informing QHG of the hole was sufficient evidence of QHG’s willful, wanton, reckless, or malicious conduct to warrant submission of punitive damages to the jury. *Id.*

Here, the evidence of LBS’s willfulness and recklessness is even more glaring. While QHG’s conduct in failing to take corrective action within a year of notice was deemed sufficient, LBS’s intentional disregard for its known standard of care violations went on for not just one but *ten years*. In the ten years since being decertified by the USLA for its unsafe practices, LBS took no corrective action whatsoever. Not only did LBS have notice that its practices posed a threat to the safety of swimmers,⁷⁴ but LBS also concealed that its practices violated the standard of care—thereby further endangering the beachgoing public who trusted that the City’s beach was safely guarded by adequate and trained lifeguards.

Further, LBS was on notice by the National Weather Service that hazardous rip and longshore currents posed a dangerous threat to the safety of beachgoers, yet LBS failed to close the beach and failed to warn beachgoers of the hidden threat posed by these dangerous conditions. This cumulative misconduct, as established by clear and convincing evidence at trial, more than satisfies the willful, wanton or reckless standard to warrant submission of punitive damages to the jury. As the evidence shows, Plaintiff’s punitive damages claim is not mere speculation. The

⁷⁴ As set forth above in Plaintiff’s proximate cause, negligence, and recklessness arguments, the evidence established at trial shows LBS had actual notice that its beach safety services violated the standard of care and created a hazardous condition in numerous respects, including its non-compliance with USLA standards by engaging in dual role lifeguarding, its failure to provide 40 hours of training as required by USLA standards and its contract with the City of Myrtle Beach, and by its understaffing and failing to provide backup protection when a lifeguard leaves a tower unattended. Plaintiff refers to and relies on these arguments and the evidence therein.

evidence recounted above clearly and convincingly supports a finding that LBS was willful and reckless in committing standard of care violations it knew posed serious and life-threatening safety risks.

Further, as to LBS's claim of prejudice by being labeled a for-profit entity, LBS never objected to any such reference during trial and has therefore waived its right to do so now.⁷⁵ In sum, LBS's motion for JNOV ignores the ample evidence supporting Plaintiff's punitive damage claim, inappropriately suggest the jury's verdict was based on speculation, and inappropriately claims prejudice as a result of an alleged character attack that also finds no support in the record. For these reasons, Lack's motion for JNOV as to punitive damages is denied.

B. Recklessness in First Phase of Trial

LBS's arguments challenging the propriety of trying the issue of recklessness during the liability phase of this bifurcated proceeding are unavailing. As an initial matter, LBS consented to, and in fact agreed it was proper in phase one to have the jury determine whether Plaintiff proved willful, reckless, and willful conduct:⁷⁶

PLAINTIFF'S COUNSEL: I thought that you did the reckless question on the first verdict form, and that way -- I've done that in front of Judge Young, is the way we did it. And, that way, when they render that verdict, you know whether or not there's going to be a second phase, because they either find reckless, willful, or wanton, or they don't. You see what I'm saying?

THE COURT: Yeah. I mean, it either eliminates the need to go forward with the second phase --

PLAINTIFF'S COUNSEL: Right. And we don't make punitive damages arguments to the jury in the first phase, *but the evidence of recklessness comes in*, and if they make that determination, then I guess we bring them back in, and then we would argue the Gamble factors.

⁷⁵ See *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 111, 498 S.E.2d 395, 406 (Ct. App. 1998) (failure to object constitutes a waiver of issue).

⁷⁶ Trial Tr., 845:11-846:19.

COURT: What are your thoughts, Mr. Thompson?

COUNSEL FOR LACK'S: Your Honor, *I think that's correct*. I mean, the first question is liability, damages, actuals. And then the question to the jury is: Do you find evidence, whatever the question would be, for the punitive conduct. And then it's just yes or no. And then, if yes, there will be a second receiving or a second -- something along the lines.⁷⁷

That LBS's agreed to the same verdict form to which it now objects, at a minimum, amounts to a waiver of this issue. *See Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 421, 453 S.E.2d 908, 912 (Ct. App. 1995) (holding that by failing to object to a verdict form until after the verdict had been reached, a party failed to preserve any issue relating to the verdict form); *Gause v. Smithers*, 403 S.C. 140, 151, 742 S.E.2d 644, 650 (2013) (failure to object to verdict form until after verdict was read amounted to a waiver of issue).

As to the merits, evidence of recklessness in the liability phase of the trial is appropriate because it is not "evidence relevant *only* to the issues of punitive damages." S.C. Code Ann. §15-32-520 (B) (emphasis added). First and foremost, a finding of recklessness is a determination of liability. Negligence and recklessness are not different merely as a matter of degree. By definition, they are distinct types of fault. *See Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011) (providing different legal definitions of "negligence" and "recklessness" and observing that "[t]he element distinguishing negligence from willful tort is inadvertence") (citation omitted)); *Fairchild v. S.C. Dept. of Transp.*, 398 S.C. 90, 99, 727 S.E.2d 407, 411–12 (2012) ("Recklessness is the doing of a negligent act knowingly; it is a conscious failure to exercise due care, and the element distinguishing actionable negligence from a willful tort is inadvertence.").

Due to these distinct types of fault, Plaintiff was procedurally required to try her entire case on liability, including evidence of both negligence and recklessness, during the first stage—the

⁷⁷ Trial Tr., 845:11-846:6.

fault stage—of this trial bifurcated pursuant to S.C. Code Ann. § 15-32-520. Pursuant to § 15-32-520, plaintiffs *have to* present theories of a defendant’s negligence and recklessness during the liability stage of a bifurcated trial. *See* S.C. Code Ann. § 15-32-520 (“In the first stage of a bifurcated trial, the jury shall determine *liability* for compensatory damages and the amount of compensatory or nominal damages. Evidence relevant *only to* the issues of punitive damages is not admissible at this stage.” (emphasis added)). At the close of that first stage, the jury deliberates and determines fault and compensatory damages, if any. On the same verdict form, typically as the last question, the jury also determines whether the defendant’s conduct was reckless, willful, or wanton, as opposed to merely negligent. This widely used format was properly followed in this case. In fact, this precise format has been followed in trials across this state.

Not only is this procedure appropriate and sanctioned throughout South Carolina, it also serves the interests of judicial economy. If the jury *had not* found recklessness, then there would have been no need to waste their valuable time, and that of the Court, with a second phase of trial. Only when the jury finds recklessness does the trial move into the punitive damages stage, where the evidence is generally limited to the defendant’s financial condition and ability to pay punitive damages, followed by closing arguments solely on punitive damages. *See, e.g., Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 29–30 (Tex. 1994) (observing that evidence of a defendant’s net worth is relevant only to the amount of punitive damages, and therefore not admissible until the bifurcated punitive phase of trial). Accordingly, LBS’s request for a new trial on this basis is denied.

C. New Trial Absolute on Punitive Damages

LBS seeks a new trial absolute on the basis that it believes the jury’s award of \$7 million in punitive damages is so grossly excessive as to be motivated by passion, caprice, prejudice, or

some improper influence. However, LBS fails to support this contention with anything more than conclusory statements or the improper assertion that the award is excessive based on size alone.

The extraordinary relief of new trial absolute is only warranted “[i]f the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice or some other influence outside the evidence.” *O’Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993). “[T]he jury’s determination of damages is entitled to substantial deference.” *Welch*, 342 S.C. at 303, 536 S.E.2d at 420 (citation omitted).

Here, there is simply no evidence that the jury’s award considered anything other than the relevant evidence, and LBS cites to none. LBS instead contends that given evidence of its negative net worth, the trial court’s instruction on economic bankruptcy must have been deficient. However, the actual language of the economic bankruptcy instruction, as is consistent with South Carolina law, states in full:

Any award of punitive damages must be limited to punishment and, thus, may not effect economic bankruptcy. To this end, the Defendant’s ability to pay any punitive damage award should be considered. *However, the economic bankruptcy factor is not an absolute bar to an award of punitive damages.*⁷⁸

Thus, as is consistent with the court’s instruction, economic bankruptcy is not an absolute bar to punitive damages. That the award was nearly half the amount of actual damages suggests the jury took this instruction into account.

In light of its financial position, LBS contends the punitive damage award is in itself evidence that it was motivated by passion, prejudice, or some other improper influence. But again, the size of the award does not in and of itself justify a new trial, especially given the evidence in this case and the fact the award is less than a 1:1 ratio to actual damages. Indeed, a punitive award

⁷⁸ Trial Tr., 968:3-7.

that is less than three times the amount of a compensatory award is *per se* reasonable. *See* S.C. Code Ann. § 15-32-530 (setting statutory cap on punitive damages of three times the amount of a compensatory award; only if that cap is exceeded is it relevant for the court to consider additional factors in determining the awards reasonability). The jury's \$7 million punitive award is almost half the \$13.7 million compensatory award—far under the multiplier set forth in the statutory cap. Accordingly, considering the evidence supporting punitive damages in this case, the Court finds the jury's \$7 million punitive award is not grossly excessive so as to result from improper influence nor is it unduly liberal to warrant a reduction by *nisi remittitur*. LBS's motions for new trial absolute and new trial *nisi remittitur* as to punitive damages are, therefore, denied.⁷⁹

CONCLUSION

Accordingly, for the foregoing reasons, Defendant's Post-Trial Motions for JNOV, new trial absolute, and new trial *nisi remittitur* are denied.

IT IS SO ORDERED.

Kristi F. Curtis, Circuit Court Judge

Sumter, South Carolina
April 10, 2023

⁷⁹ The Court has issued a separate due process analysis of the constitutionality of the punitive damages award in this case. Consistent with that opinion, the Court denies LBS's post-trial motions to the extent they challenge the constitutionality of the award.



Horry Common Pleas

Case Caption: Meswaet Abel , plaintiff, et al VS Lacks Beach Service , defendant, et al
Case Number: 2019CP2607075
Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
MESWAET ABEL, AS PERSONAL	)	Case No. 2019-CP-26-07075
REPRESENTATIVE OF THE ESTATE	)	
OF ZERIHUN WOLDE	)	
	)	
Plaintiff,	)	<u>ORDER ON POST-TRIAL REVIEW OF</u>
	)	<u>PUNITIVE DAMAGES AWARD</u>
vs.	)	
	)	
LACK'S BEACH SERVICE, INC.,	)	
	)	
Defendant.	)	

This case came before the court on July 25, 2022. At the end of a week-long trial, the jury returned a verdict in favor of the Plaintiff in the amount of \$13,730,000.00 actual damages and \$7,000,000 in punitive damages.

The practice of awarding punitive damages originated in principles of common law “to deter the wrongdoer and others from committing like offenses in the future.” Laird v. Nationwide Ins. Co., 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964) (quoting Bowers v. Charleston & W. C. Ry. Co., 210 S.C. 367, 42 S.E.2d 705 (1947)). “Punitive damages may properly be imposed to further a state's legitimate interests in punishing unlawful conduct and deterring its repetition.” B.M.W. of North America, Inc. v. Gore, 517 U.S. 559, 568 (1996). The state's interests in awarding punitive damages must remain consistent with the principle of penal theory that “the punishment should fit the crime.” Atkinson v. Orkin Exterminating Co., Inc., 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004) (quoting Mathias v. Accor Economy Lodging, Inc. and Motel 6 Operating L.P., 347 F.3d 672, 676 (7th Cir.2003)). Nevertheless, “while States possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards.” State Farm v. Campbell, 538 U.S.

408, 416 (2003). “To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property.” Id. at 417.

This Court must consider the three guideposts that indicate whether the due process requirement of fair notice has been met. In determining the constitutionality of a punitive damages award, Gore directed that courts consider: (1) the degree of reprehensibility of the defendant’s conduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Gore, 517 U.S. at 575.

1. Reprehensibility

First, any court reviewing a punitive damages award should consider the degree of reprehensibility of the defendant’s conduct. Reprehensibility is “perhaps the most important indicium of the reasonableness of a punitive damages award.” Gore, 517 U.S. at 575. “This principle reflects the accepted view that some wrongs are more blameworthy than others.” Id. In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. Campbell, 538 U.S. at 419.

In this case, the harm to Mr. Wolde was physical and resulted in the loss of his life at forty-one years of age. The conduct of Lack’s in employing a decades-long system of “dual role” lifeguards even in the face of repeated warnings from USLA that the practice was

dangerous and violated USLA safety standards supports the punitive damages award.

Furthermore, there was testimony that Lack's knowingly misrepresented to USLA that its lifeguards were no longer actively engaged in concessions in order to maintain its USLA certification for several years and then continued the practice even after losing its USLA certification. In addition, Lack's incentivized the lifeguards to focus more on the concessions role than the lifeguarding role by paying the guards a commission based on their beach rentals, all while knowing that the inattention would jeopardize public safety.

2. Ratio

Second, the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award. The ratio of actual or potential harm to the punitive damages award is "perhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award." Gore, 517 U.S. at 580. Although the Supreme Court has "been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award," and has consistently declined to adopt a bright line ratio or simple mathematical test, the Court has remarked that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." Campbell, 538 U.S. at 424-25. Nevertheless, the Supreme Court has made clear that "there are no rigid benchmarks that a punitive damages award may not surpass," so long as "the measurement of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and the general damages recovered." Id. at 425-26. When determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, the court may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result

from such conduct; and the defendant's ability to pay. Nevertheless, a court may not rely upon these considerations to justify an otherwise excessive punitive damages award. In this case, the punitive damages awarded by the jury were less than the actual damages awarded and were less than a 1:1 ratio. While the actual damages awarded in this case were significant, they were not unreasonable given the fact that Mr. Wolde was only forty-one years of age at the time of his death, he left behind a widow and four young children, and he was the primary caregiver for the children. The jury was apprised of the defendant's net worth and the limits of its liability coverage and presumably took those factors into consideration in awarding punitive damages. Given the evidence that Lack's business practices posed a significant threat to public safety to an area that is a major attraction for tourists, the award is both reasonably related to the grave harm likely to result from the conduct and large enough to deter the defendant from continuing to engage in like conduct.

3. Comparative Penalty Awards

Third, the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. When identifying "comparable cases" a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant. In this case, there are no authorized civil penalties applicable or comparable to this case. As Plaintiff points out, there was testimony from Chris Brewster that Lack's was the only beach safety provider in the country to employ dual role lifeguards in such a setting.

This court has reviewed the Gore guideposts, along with the Gamble factors, and finds that the punitive damages award in this case is reasonable, is not grossly excessive or unduly

liberal, was not actuated by passion, caprice, or prejudice, or some other influence outside of the evidence, and does not violate due process.

IT IS SO ORDERED.

Kristi F. Curtis, Circuit Court Judge

Sumter, SC
November 2, 2022



Horry Common Pleas

Case Caption: Meswaet Abel , plaintiff, et al VS Lacks Beach Service , defendant, et al
Case Number: 2019CP2607075
Type: Order/Damages

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2022-11-23 12:34:57 page 6 of 6

ELECTRONICALLY FILED - 2022 Nov 28 4:55 PM - HORRY - COMMON PLEAS - CASE#2019CP2607075

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP2607075

Meswaet Abel Zerihun Wolde Zerihun Wolde Estate	Adam Zerihun Meswaet Abel Prs Wubit Zerihun	Lacks Beach Service Myrtle Beach City Of	John Doe Lifeguard

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk Of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit)
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

*We, the jury, unanimously find in favor of the plaintiff in the amount of \$13.73 million actual damages and \$7 million punitive damages.*This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Meswaet Abel Zerihun Wolde Zerihun Wolde Estate Adam Zerihun Meswaet Abel Prs Wubit Zerihun	Lacks Beach Service John Doe Lifeguard	\$20,730,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2762	7/29/2022
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Harry Cooper Wilson III 3 Morris Street Suite A
Charleston, SC 29403
William Mullins McLeod Jr. PO Box 21624 Charleston, SC
29413
John Christopher Pracht V PO Box 4025 Anderson, SC
29622

Elizabeth Fulton Morrison 111 Coleman Boulevard Suite
301 Mount Pleasant, SC 29464
Joseph DuRant Thompson III 111 Coleman Boulevard, Suite
301 Mount Pleasant, SC 29446
David Richard Sligh 1303 Third Ave. Conway, SC 29576
Robert Gerald Chambers Jr. PO Box 1473 Columbia, SC
29202
Virginia Patterson Bozeman PO Box 1473 Columbia, SC
29202
Kelli Lister Sullivan PO Box 1473 Columbia, SC 29202
Paul Barry Trainor 191 Peachtree Street, NE Suite 2900
Atlanta, GA 30303

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Bobbi Fisher

Renee N. Elvis - Clerk of Court

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY FOR THE 15th JUDICIAL CIRCUIT

Case No. 2019-CP-26-07075

MESWAET ABEL, AS PERSONAL,
REPRESENTATIVE OVER THE
ESTATE OF ZERIHUN WOLDE,

Plaintiff,

VERDICT FORM

LACK'S BEACH SERVICE

Defendant.

-
1. Was the defendant Lack's Beach Service negligent?
☒ YES - Go to Question 2
☐ NO - Stop deliberations
 2. Was the defendant's negligence a proximate cause of Zerihun Wolde's death?
☒ YES - Go to Question 3
☐ NO - Stop deliberations
 3. Was the decedent Zerihun Wolde negligent?
☐ YES - Go to Question 4
☒ NO - Go to Question 7
 4. Was Mr. Wolde's negligence a proximate cause of his death?
☐ YES - Go to Question 5

NO - Go to Question 7

5. Using the combined negligence that proximately caused Mr. Wolde's injuries as one hundred percent (100%), what percentage of that negligence is attributable to Mr. Wolde and what percentage is attributable to the defendant Lack's Beach Service? [The percentages must add up to 100%.]

Plaintiff %

Defendant %

Total %

6. Was the plaintiff's negligence greater than fifty percent?

 YES - Stop deliberations

 NO - Go to Question 7

7. We, the jury, unanimously find Plaintiff, Meswaet Abel; as Personal Representative of the Estate of Zerihun Wolde, is entitled to the following damages, if any: [Do not reduce the plaintiff's total damages based on the percentage of negligence by any party. After you have answered these questions, the judge will compute the amount of damages for which the defendant is responsible based on the percentage of the defendant's negligence which you have decided proximately caused the plaintiff's injuries. You are to determine only the total amount of the plaintiff's damages and enter that amount below.]

\$ 3.73 million Actual Damages to the Estate
of Zerihun Wolde for his conscious pain and suffering,

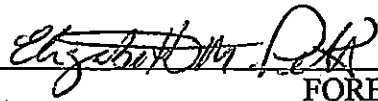
\$ 10 million Actual Damages to the Estate
of Zerihun Wolde for the benefit of his statutory beneficiaries Adam
Zerihun, Wubit Zerihun, Eden Zerihun and Edom Zerihun.

8. Do you, the jury, unanimously find that Plaintiff Meswaet Abel, as Personal Representative of the Estate of Zerihun Wolde, established by clear and

convincing evidence that Lack's Beach Service acted in a reckless, willful, or wanton manner, and that such recklessness caused the injuries claimed by the Plaintiff.

☒ YES

☐ NO


FOREPERSON

WHEN YOU HAVE COMPLETED THE QUESTIONS, NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY FOR THE 15th JUDICIAL CIRCUIT

Case No. 2019-CP-26-07075

MESWAET ABEL, AS PERSONAL,
REPRESENTATIVE OVER THE
ESTATE OF ZERIHUN WOLDE,

Plaintiff,

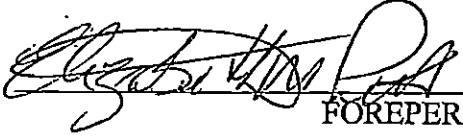
LACK'S BEACH SERVICE

PUNITIVE DAMAGES VERDICT FORM

Defendant.

What amount of punitive damages, if any, is the Plaintiff Meswaet Abel, as
Personal Representative of the Estate of Zerihun Wolde, entitled to receive:

\$7 million Dollars.


FOREPERSON

WHEN YOU HAVE COMPLETED THE VERDICT FORM, PLEASE
NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO.: 2019-CP-26-07075

Meswaet Abel, as Personal
Representative over the Estate of
Zerihun Wolde and as Natural Parent
and Legal Guardian for Adam Wolde
and Wubit Wolde,

Plaintiffs,

v.

Lack's Beach Service, City of Myrtle
Beach and John Doe Lifeguard,

Defendants.

**DEFENDANT CITY OF MYRTLE BEACH'S
ANSWER TO PLAINTIFF'S COMPLAINT**

(Jury Trial Demanded)

**TO: W. MULLINS M MCLEOD, JR., ESQUIRE, H. COOPER WILSON, III, ESQUIRE
AND J. CHRISTOPHER PRACHT, ESQUIRE, V, ATTORNEYS FOR PLAINTIFF:**

Defendant, City of Myrtle Beach ("MB") by and through its undersigned attorneys, subject to and without waiving its defense answers the Complaint of the Plaintiff as follows:

1. The Defendant denies each and every allegation that is not specifically admitted herein.

2. The Defendant lacks sufficient information to form a belief regarding the allegations set forth in Paragraphs 1, 2, 3 and 4 of the Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

3. Upon information and belief, MB admits the allegations contained in Paragraphs 5 and 6 of Plaintiff's Complaint.

4. The Defendant denies the allegations contained in Paragraph 7 of Plaintiff's Complaint.

5. The allegations contained in Paragraph 8 of Plaintiff's Complaint state a legal conclusion to which no response is necessary. To the extent a response is necessary, these allegations are denied.

6. The Defendant admits the allegations contained in Paragraph 9 of Plaintiff's Complaint.

7. The Defendant lacks sufficient information to form a belief regarding the allegations set forth in Paragraphs 10, 11, 12, 13, 14, and 15 of the Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

8. Upon information and belief, MB admits the allegations contained in Paragraph 16 of Plaintiff's Complaint.

9. The Defendant lacks sufficient information to form a belief regarding the allegations set forth in Paragraph 17 of the Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

10. Answering the allegations contained in Paragraphs 18 and 19 of Plaintiff's Complaint, MB craves reference to any contract between itself and LBSI and denies any allegations that are inconsistent.

11. In response to the allegations contained in Paragraphs 20, 21 and 22, MB specially refers and incorporates the terms of any franchise agreement for the duties and obligation of the parties contained therein. MB denies each and every allegation of this paragraph that are inconsistent with the expressed terms of the franchise agreement.

12. The Defendant lacks sufficient information to form a belief regarding the allegations set forth in Paragraph 23 of the Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

13. Answering the allegations contained in Paragraph 24 of Plaintiff's Complaint, upon information and belief, MB admits that at the time the allegations were contained in the Complaint, Lacks did not possess a voluntary certification authored by the United States Lifesaving Association. MB denies the remaining allegations and demands strict proof thereof.

14. MB craves reference to any letter dated September 30, 2016 from the President of the United States Lifesaving Association regarding the allegations contained in Paragraphs 25, 26 and 27. MB specifically denies the assertions alleged in the letter and specifically denies any allegations that are inconsistent.

15. The Defendant denies the allegations contained in Paragraphs 28 and 29 of Plaintiff's Complaint.

16. MB craves reference to the expressed terms of the applicable franchise agreement and denies any allegations of that agreement regarding the allegations set forth in Paragraph 30.

17. The Defendant denies the allegations contained in Paragraph 31 of Plaintiff's Complaint.

18. The Defendant lacks sufficient information to form a belief regarding the allegations set forth in Paragraphs 32, 33, 34, 35 and 36 of the Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

19. The Defendant denies the allegations contained in Paragraphs 37 and 38 of Plaintiff's Complaint.

20. MB craves reference to the National Weather Service alerts and/or documented information from August 23, 2018 regarding the allegations set forth in Paragraphs 39 and 40 of the Plaintiff's Complaint and denies any allegations that are inconsistent.

21. The Defendant lacks sufficient information to form a belief regarding the allegations set forth in Paragraphs 41, 42, 43, 44, 45, 46, 47 and 48 of the Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

22. Upon information and belief, MB admits the allegations contained in Paragraph 49.

23. The Defendant lacks sufficient information to form a belief regarding the allegations set forth in Paragraphs 50, 51 and 52 of the Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

SURVIVAL ACTION
S.C. Code Ann §15-51-10

24. As to the allegations of Paragraph 53, this Defendant reiterates and realleges each of its previous responses as set forth fully herein.

25. The Defendant denies the allegations contained in Paragraphs 54 and 55 of Plaintiff's Complaint.

WRONGFUL DEATH ACTION
S.C. Code Ann §15-51-20

26. As to the allegations of Paragraph 56, this Defendant reiterates and realleges each of its previous responses as set forth fully herein.

27. The Defendant denies the allegations contained in Paragraph 57 of Plaintiff's Complaint.

28. The Defendant lacks sufficient information to form a belief regarding the allegations set forth in Paragraph 58 of the Plaintiff's Complaint and therefore denies the same and demands strict proof thereof.

29. The Defendant denies the allegations contained in Paragraph 59 of Plaintiff's Complaint.

GROUND OF LIABILITY
Negligence, Gross Negligence, Recklessness – All Defendants

30. As to the allegations of Paragraph 60, this Defendant reiterates and realleges each of its previous responses as set forth fully herein.

31. MB admits that it owed certain dues according to the law and denies it breached any duties. The remaining allegations contained in Paragraph 61 are denied.

32. MB craves reference to the expressed terms of the franchise agreement with LBSI for their parties' respective duties and obligations regarding the allegations contained in Paragraph 62 of the Plaintiff's Complaint. MB denies any allegations of Paragraph 62 that conflict with and/or contradict the franchise agreement and denies the remaining allegations of the Paragraph.

33. The Defendant denies the allegations contained in Paragraphs 63, 64, 65 and 66 of Plaintiff's Complaint.

BYSTANDER LIABILITY – ALL DEFENDANTS

34. As to the allegations of Paragraph 67, this Defendant reiterates and realleges each of its previous responses as set forth fully herein.

35. The Defendant denies the allegations contained in Paragraphs 67, 68 and 69 of Plaintiff's Complaint.

RELIEF REQUESTED

36. The Defendant denies the allegations contained in Paragraphs 70, 71 and 72 of Plaintiff's Complaint.

FOR A SECOND DEFENSE

37. **FURTHER ANSWERING THE COMPLAINT AND AS A SECOND DEFENSE**, this Defendant alleges the Complaint fails in whole or in part to state facts sufficient to constitute a cause of action and, therefore, this action should be dismissed pursuant to Rule

12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

38. **FURTHER ANSWERING THE COMPLAINT AND AS A THIRD DEFENSE**, this Defendant submits the injuries and damages for which Plaintiff seeks recovery were due to and proximately caused by the intervening negligence, recklessness, willfulness, wantonness, and fault of a party or parties other than this Defendant. Such intervening negligence, recklessness, willfulness, wantonness, and fault were the sole cause of the injuries and damages for which Plaintiff seeks recovery and, therefore, Plaintiff may not recover against this Defendant.

FOR A FOURTH DEFENSE

39. **FURTHER ANSWERING THE COMPLAINT AND AS A FOURTH DEFENSE**, this Defendant alleges the injuries and damages for which Plaintiff seeks recovery were due to and proximately caused by the sole negligence, recklessness, willfulness, wantonness, and fault of third parties for whom this Defendant is liable. Therefore, the acts or fault of third parties are the real, efficient and proximate cause of the injuries for which Plaintiff seeks recovery, and, therefore, Plaintiff cannot recover against this Defendant.

FOR A FIFTH DEFENSE

40. **FURTHER ANSWERING THE COMPLAINT AND AS A FIFTH DEFENSE**, this Defendant alleges any injuries or damages sustained by the Plaintiff were due to and caused by the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness (“negligence”) of the Plaintiff, combining, concurring and contributing with the negligence of this Defendant, if any, without which contributory negligence, the Plaintiff’s alleged injuries and damages would not have been incurred or sustained. Should the negligence of the Plaintiff be determined to be greater than that of this Defendant if any, the Plaintiff is entitled to no recovery. If

the negligence of the Plaintiff be determined to be not greater than that of these defendants, if any, the Plaintiff's recovery is to be reduced by the percentage of Plaintiff's fault.

FOR A SIXTH DEFENSE

41. **FURTHER ANSWERING THE COMPLAINT AND AS A SIXTH DEFENSE**, this Defendant alleges that any award of punitive damages to Plaintiff would violate the constitutional safeguards provided to this Defendant by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded to Plaintiff.

FOR A SEVENTH DEFENSE

42. **FURTHER ANSWERING THE COMPLAINT AND AS A SEVENTH DEFENSE**, any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Complaint could not be avoided, and this Defendant pleads an unavoidable accident as a complete bar to this action.

FOR AN EIGHTH DEFENSE

43. **FURTHER ANSWERING THE COMPLAINT AND AS AN EIGHTH DEFENSE**, this Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

FOR A NINTH DEFENSE

44. **FURTHER ANSWERING THE COMPLAINT AND AS A NINTH DEFENSE**, this Defendant pleads the procedures and limitations of punitive damages as provided in S.C. Code Ann. § 15-32-520.

FOR A TENTH DEFENSE

45. **FURTHER ANSWERING THE COMPLAINT AND AS A TENTH DEFENSE**, this Defendant asserts that it is a governmental entity as contemplated by the South Carolina Torts Claims Act, and it hereby asserts all defenses afforded it by the South Carolina Tort Claims Act 15-78-10, et seq., Code of Laws of South Carolina, whether or not specifically or separately pleaded herein.

FOR AN ELEVENTH DEFENSE

46. **FURTHER ANSWERING THE COMPLAINT AND AS AN ELEVENTH DEFENSE**, the injury or damages suffered, if any, were due to and caused by, and were the direct proximate and exclusive result of the violence of nature and such constitutes an act of God and a complete defense to all claims.

FOR A TWELFTH DEFENSE

47. **FURTHER ANSWERING THE COMPLAINT AND AS A TWELFTH DEFENSE**, the claims asserted by Plaintiff are barred by the South Carolina Limitation on Liability of Landowners Act, S.C. Code Ann. § 27-3-10 *et seq.*

FOR A THIRTEENTH DEFENSE

48. **FURTHER ANSWERING THE COMPLAINT AND AS A THIRTEENTH DEFENSE**, this Defendant asserts the provisions of §15-78-60 (16) & (20) of the Code of Laws of South Carolina, as amended.

WHEREFORE, having fully answered Plaintiff's Complaint, this Defendant prays that the same be dismissed with costs and for such other and further relief as this Court may deem to be just and proper.

TURNER PADGET GRAHAM & LANEY P.A.

By: s/R. Gerald Chambers, Jr.
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s/David R. Sligh
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Myrtle Beach, SC 29578
Telephone: (843) 213-5519
Fax 843-213-5619

**ATTORNEYS FOR DEFENDANT CITY OF
MYRTLE BEACH**

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 15TH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2019-CP-26-07075
MESWAET ABEL, AS PERSONAL	)	
REPRESENTATIVE OVER THE	)	
ESTATE OF ZERIHUN WOLDE AND	)	
AS NATURAL PARENT AND LEGAL	)	
GUARDIAN FOR ADAM WOLDE,	)	
AND WUBIT WOLDE,	)	
	)	ANSWER OF DEFENDANT
Plaintiffs,	)	LACK'S BEACH SERVICE, INC.
	)	(Jury Trial Demanded)
v.	)	
	)	
LACK'S BEACH SERVICE, CITY OF	)	
MYRTLE BEACH, AND JOHN DOE	)	
LIFEGUARD,	)	
	)	
Defendants.	)	

Defendant Lack's Beach Service, Inc. ("LBSI"), by and through its undersigned attorneys, hereby responds to Plaintiffs' Complaint as follows:

1. Answering the allegations contained in Paragraph 1, LBSI acknowledges that Plaintiffs' action arises from the alleged accidental death of Zerihun Wolde on or about August 24, 2018 in Horry County, South Carolina. It lacks sufficient information to form a belief as to the remaining allegations of the Paragraph and, therefore, denies same and demands strict proof thereof.

2. LBSI lacks sufficient information to form a belief as to the allegations contained in Paragraphs 2, 3 and 4 and, therefore, denies same and demands strict proof thereof.

3. LBSI admits the allegations contained in Paragraph 5.

4. LBSI admits, upon information and belief, the allegations contained in Paragraph

6.

5. LBSI denies the allegations contained in Paragraph 7 and denies that Defendant John Doe Lifeguard has been properly served and/or made a party to the subject action.

6. Paragraph 8 contains conclusions of law to which LBSI is required neither to admit nor deny. To the extent any allegations are asserted against LBSI, they are denied and strict proof is demanded thereof.

7. LBSI admits the allegations contained in Paragraph 9.

8. LBSI lacks sufficient information to form a belief as to the allegations contained in Paragraphs 10, 11, 12, 13, 14 and 15 and, therefore, denies same and demands strict proof thereof.

9. LBSI admits, upon information and belief, the allegations contained in Paragraph 16.

10. Answering the allegations contained in Paragraph 17, LBSI admits that it provides certain lifeguarding services as well as equipment rentals on the beachfront in accordance with a franchise agreement with the City of Myrtle Beach. It denies any allegations that are inconsistent with the terms of the franchise agreement. It denies the remaining allegations of the Paragraph.

11. LBSI admits the allegations contained in Paragraph 18.

12. The Complaint served on LBSI did not include a Paragraph 19 and, therefore, no response is offered.

13. Answering the allegations contained in Paragraphs 20, 21 and 22, LBSI specifically refers to and incorporates herein, the express terms of the franchise agreement for the duties and obligations of each of the parties thereto. LBSI denies each and every allegation of the Paragraphs that are inconsistent with and/or contravene the express terms of the franchise agreement.

14. Answering the allegations contained in Paragraph 23, LBSI admits that it obtains certain revenue from the operation of the franchise agreement which includes, in part, the rental of beach equipment. It denies the remaining allegations of the Paragraph.

15. Answering the allegations contained in Paragraph 24, LBSI admits that at the time of the subject incident, it did not possess a voluntary certification offered by the United States Lifesaving Association. It denies the remaining allegations of the Paragraph.

16. LBSI lacks sufficient information to form a belief as to the allegations contained in Paragraphs 25, 26 and 27 and, therefore, denies same and demands strict proof thereof.

17. Answering the allegations contained in Paragraph 28, LBSI incorporates herein the express language of the franchise agreement for the party's duties and obligations thereto. To the extent Paragraph 28 is in conflict with and/or contravenes the language of the franchise agreement, the allegations are denied.

18. LBSI denies the allegations contained in Paragraph 29.

19. Answering the allegations contained in Paragraph 30, LBSI craves reference to the express terms of the applicable franchise agreement and denies any allegations of the Paragraph that conflict with and/or contravene same. LBSI denies the remaining allegations of the Paragraph.

20. LBSI denies the allegations contained in Paragraphs 31 and 32.

21. LBSI lacks sufficient information to form a belief as to the allegations contained in Paragraphs 33, 34, 35 and 36 and, therefore, denies same and demands strict proof thereof.

22. LBSI denies the allegations contained in Paragraphs 37 and 38.

23. Answering the allegations contained in Paragraphs 39 and 40, LBSI craves reference to the National Weather Service alerts and/or documented information from August 23,

2018. LBSI denies the allegations of Paragraphs 39 and 40 that are inconsistent with and/or contravene the information published by the National Weather Service on August 23, 2018.

24. LBSI lacks sufficient information to form a belief as to the allegations contained in Paragraphs 41 and 42 and, therefore, denies same and demands strict proof thereof.

25. Answering the allegations contained in Paragraphs 43 and 44, LBSI affirmatively asserts that all required warning signs were displayed on August 24, 2018. It denies the remaining allegations of the Paragraphs.

26. LBSI lacks sufficient information to form a belief as to the allegations contained in Paragraphs 45, 46 and 47 and, therefore, denies same and demands strict proof thereof.

27. LBSI denies the allegations contained in Paragraph 48.

28. LBSI admits, upon information and belief, the allegations contained in Paragraph 49.

29. LBSI lacks sufficient information to form a belief as to the allegations contained in Paragraphs 50, 51 and 52 and, therefore, denies same and demands strict proof thereof.

AS TO THE SURVIVAL ACTION

30. Answering the allegations contained in Paragraph 53, LBSI reasserts its responses to the allegations contained in Paragraphs 1 – 52 of Plaintiffs' Complaint.

31. LBSI denies the allegations contained in Paragraphs 54 and 55.

AS TO THE WRONGFUL DEATH ACTION

32. Answering the allegations contained in Paragraph 56, LBSI reasserts its responses to the allegations contained in Paragraphs 1 – 55 of Plaintiffs' Complaint.

33. LBSI denies the allegations contained in Paragraph 57.

34. LBSI lacks sufficient information to form a belief as to the allegations contained in Paragraph 58 and, therefore, denies same and demands strict proof thereof.

35. LBSI denies the allegations contained in Paragraph 59.

AS TO THE NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS CLAIMS

36. Answering the allegations contained in Paragraph 60, LBSI reasserts its responses to the allegations contained in Paragraphs 1 – 59 of Plaintiffs' Complaint.

37. Answering the allegations contained in Paragraph 61, LBSI admits that it owed certain duties according to law and denies that it breached any duties. It denies the remaining allegations of the Paragraph.

38. Answering the allegations contained in Paragraph 62, LBSI craves reference to the express terms of the franchise agreement with the City of Myrtle Beach for the parties' respective duties and obligations. LBSI denies any allegations of Paragraph 62 that conflict with and/or contravene the terms of the franchise agreement. It denies the remaining allegations of the Paragraph.

39. LBSI denies the allegations contained in Paragraphs 63, 64, 65 (the first Paragraph 65), 65 (the second Paragraph 65) and 66.

AS TO BYSTANDER LIABILITY CLAIMS

40. Answering the allegations contained in Paragraph 67, LBSI reasserts its responses to the allegations contained in Paragraphs 1 – 66 of Plaintiff's Complaint.

41. LBSI denies the allegations contained in Paragraphs 67 (the second Paragraph 67), 68 and 69.

AS TO THE RELIEF REQUESTED

42. LBSI denies the allegations contained in Paragraphs 70, 71 and 72, being all of the remaining allegations of Plaintiffs' Complaint.

43. LBSI denies each and every allegation of Plaintiffs' Complaint not specifically admitted herein.

44. LBSI denies the allegations and the prayer for relief in the "Wherefore" paragraph of Plaintiffs' Complaint.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

45. Plaintiffs' Complaint fails to state facts sufficient to constitute any cause of action against Defendant Lack's Beach Service, Inc. and, therefore, the Complaint should be dismissed as to it pursuant to SCRCP 12(b)(6).

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

46. Further answering the Plaintiffs' Complaint and as an affirmative defense, LBSI would show that pursuant to the doctrine of comparative negligence the negligence and/or recklessness of Decedent was greater than any negligence which may be established against Defendant and, therefore, Plaintiff is barred from recovery. LBSI further alleges that any injury and damage sustained by Decedent were due to and caused by the negligence and/or willfulness of Decedent combining, concurring and contributing with the negligence and/or willfulness if any on the part of Defendant and that any amount of recovery awarded to Plaintiffs for the alleged injuries and damages shall be reduced by the Court based on the percentage of negligence and/or willfulness attributed to Plaintiffs.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

47. That the injuries and damages to Plaintiffs, if any, as alleged in the Complaint, were due to and proximately caused by an unavoidable accident or occurrence not proximately caused by or due to any alleged negligence, recklessness or willfulness on the part of Defendant.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

48. Further answering Plaintiffs' Complaint and as an affirmative defense, LBSI will show it was confronted with a sudden emergency situation caused by an occurrence or event over which it had no control and which was not created through its own negligence, which created an unavoidable accident and that LBSI acted as any reasonable and prudent person would when faced with such an emergency. Accordingly, Plaintiffs' Complaint should be dismissed.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

49. That the injury or damages suffered, if any, were due to and caused by, and were the direct, proximate and exclusive result of the violence of nature, and such constitutes an act of God and a complete defense to all claims.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

50. Plaintiffs' Complaint fails to state facts sufficient to constitute any cause of action for bystander liability and, therefore, the bystander liability claims should be dismissed as a matter of law pursuant to SCRCP 12(b)(6).

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

51. Any punitive damage award against LBSI cannot exceed the statutory cap as provided in South Carolina Code § 15-32-530.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

52. Pursuant to statute, LBSI demands that the claim for punitive damages be bifurcated/separated from the liability/actual damages phase of the trial of this case.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

53. Further answering Plaintiffs' Complaint and as an affirmative defense, LBSI would show the claim of Plaintiffs for punitive damages against Defendant cannot be sustained because any award of punitive damages under South Carolina law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness and the appropriate size of the punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principals of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages in whole or in part on the basis of invidiously discriminatory characteristics including the resident wealth and corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity of the conduct or mental state that makes punitive damages permissible, and (5) is not subject to trial court and appellate court judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards would violate Defendant's due process and equal protection rights guaranteed by the 14th Amendment to the United States Constitution and by the South Carolina constitutional provisions providing for due process and equal protection and would be improper under the common law and public policies of the State of South Carolina.

Wherefore, having fully answered the allegations herein, LBSI prays that this Honorable Court:

- a) dismiss Plaintiffs' claims;
- b) award LBSI's costs in defending this action; and
- c) grant any other relief the Court and jury may deem just and proper.

Respectfully Submitted,

HALL BOOTH SMITH, P.C.

/s/Joseph D. Thompson, III

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Attorneys for Defendant Lack's Beach Service, Inc.

February 7, 2020

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT
Civil Action No.: 2019-CP-

MESWAET ABEL, AS PERSONAL
REPRESENTATIVE OVER THE ESTATE
OF ZERIHUN WOLDE AND AS
NATURAL PARENT AND LEGAL
GUARDIAN FOR ADAM WOLDE, AND
WUBIT WOLDE

SUMMONS

PLAINTIFFS,

VS.

LACK'S BEACH SERVICE, CITY OF
MYRTLE BEACH, AND JOHN DOE
LIFEGUARD
DEFENDANT.

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at their office located at 3 Morris Street, Suite A, Post Office Box 21624, Charleston, South Carolina, 29413, within thirty (30) days of the service, exclusive of the day of such service; and if you fail to answer the Complaint within this time, the Plaintiff will move for entry of Default Judgment and apply to the Court for the relief sought therein.

McLeod Law Group, LLC
3 Morris Street, Suite A (29403)
PO Box 21624
Charleston, South Carolina 29413
P: 843-277-6655 F: 843-277-6660

s/ H. Cooper Wilson, III
W. Mullins McLeod, Jr. (S.C. Bar #: 14148)
H. Cooper Wilson, III (S.C. Bar #: 74939)

and

THOMASON & PRACHT, LLP
J. Christopher Pracht, V (S.C. Bar #: 77534)
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Fax: (864) 226-7224

ATTORNEYS FOR PLAINTIFF

November 1, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT
Civil Action No.: 2019-CP-

MESWAET ABEL, AS PERSONAL
REPRESENTATIVE OVER THE ESTATE
OF ZERIHUN WOLDE AND AS
NATURAL PARENT AND LEGAL
GUARDIAN FOR ADAM WOLDE, AND
WUBIT WOLDE

**COMPLAINT
(Jury Trial Demanded)**

PLAINTIFFS,
VS.

LACK'S BEACH SERVICE, CITY OF
MYRTLE BEACH, AND JOHN DOE
LIFEGUARD
DEFENDANT.

COMES NOW, Plaintiffs, Meswaet Abel individually, and as the personal representative of the Estate of Zerihun Wolde, deceased, and as the natural parent and legal guardian for Adam Wolde and Wubit Wolde and alleges as follows:

NATURE OF THE ACTION

1. This is a wrongful death, survival and bystander action arising from the catastrophic drowning of Zurihun Wolde. Meswaet Abel was the fiancé of Mr. Wolde and is the mother of his four (4) children. Furthermore, she is the duly appointed Personal Representative over his Estate which is pending and open in the State of Maryland. Meswaet Abel also brings this action as mother and legal guardian on behalf of Adam Wolde and Wubit Wolde.

PARTIES

2. Plaintiff, Meswaet Abel, is an adult individual who resides in Silver Springs, Maryland. She and Zurihun Wolde lived together for many years and were living together at the

time of his tragic death. Ms. Abel and Mr. Wolde were the parents of four (4) children who all resided with them in Silver Spring, Maryland. Ms. Abel brings this action in her capacity as Personal Representative over the Estate of Zurihund Wolde. ("Mr. Wolde"). (See Verification of Personal Representative marked as Exhibit A.)

3. Plaintiff, Adam Wolde ("Adam") is a minor individual residing in Silver Spring, Maryland. This action is brought on his behalf and for his benefit by his mother Meswaet Abel.

4. Plaintiff, Wubit Wolde ("Wubit") is a minor individual residing in Silver Spring, Maryland. This action is brought on his behalf and for his benefit by his mother Meswaet Abel.

5. Defendant, Lack's Beach Service, Inc. ("Lack's") is a corporation organized and existing under the laws of the State of South Carolina. Lack's principal place of business is in Horry County, South Carolina and at all times was doing business as Lack's in Horry County, South Carolina.

6. Defendant, City of Myrtle Beach ("City") is a municipality situated in Horry County, South Carolina. Each and every allegation made against the City of Myrtle Beach is brought pursuant to the South Carolina Tort Claims Act.

7. Defendant John Doe Life Guard are upon information and belief an employee, agent, and/or legal representative of Defendant Lack's and was acting with the scope of his employment at times relevant.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to Article V, § 11 of the South Carolina Constitution. This Court has jurisdiction over all parties as the Defendants do business in Horry County, South Carolina.

9. Venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-30 as the most substantial part of the alleged actions occurred in Horry County.

FACTUAL BACKGROUND

10. On August 23, 2018 Zurihun Wolde, his fiancé, Meswaet Abel, their four children, and other family members left Silver Springs, Maryland for a vacation in Myrtle Beach South Carolina.

11. The family drove through the afternoon and early evening of August 23, 2018 arriving in at the Sea Crest Oceanfront Resort in Myrtle Beach on the evening of August 23, 2018.

12. The family checked into their rooms, had a leisurely dinner, and enjoyed the resort.

13. On the morning of August 24, 2018, Mr. Wolde woke up early, went to the local grocery store, and bought breakfast and beach supplies for his children to play with on the beach.

14. The family awoke shortly thereafter and enjoyed a late breakfast on their first day of vacation at the Sea Crest Resort in Myrtle Beach.

15. On or around 10:30AM – 11:00AM the family made their way to beach in front of the Sea Crest Resort.

16. The Sea Crest Resort is located at 803 South Ocean Blvd, Myrtle Beach, S.C. 29679.

17. The beach in front of the Sea Crest Resort contains lifeguard stands and beach chairs and umbrellas that are rented out by Defendant Lack's.

18. Lack's has a contract with Defendant City of Myrtle Beach that is titled "2018-2025 water safety franchise."

20. The fundamental purpose of the City of Myrtle Beach entering into this agreement is for the “protection of its tourist and residential population through an efficient and effective Water Safety Program.”

21. In the contract between the City of Myrtle Beach and Lack’s, the parties agreed that Lack’s would provide lifeguards and beach safety. Furthermore, the franchise agreement allowed Lack’s to rent equipment for profit.

22. The City granted Lack’s an exclusive right to sell beach equipment on certain areas of the Beachfront including the area directly in front of the Sea Crest Resort.

23. Lack’s profits from renting out beach equipment.

24. Prior to the incident complained of herein, Lack’s had lost its certification from the United States Lifesaving Association.

25. On September 30, 2016 the president of the United States Lifesaving Association (“USLA”) wrote a letter to the City of Myrtle Beach specifically warning about the dangers presented by combining lifesaving acts with commercial activities like renting beach chairs for money.

26. Specifically, the letter stated, “the USLA has identified the Myrtle Beach system of combining lifesaving and commercial activities to be an unreliable means of protecting swimmers.”

27. The letter from the USLA went on to say “The USLA will not certify any beach lifeguard agency that assigns lifeguards to a dual role of public safety and commercial activity because all water safety professionals agree that a distracted lifeguard cannot properly maintain safe surveillance of the water. In the interest of public safety, we encourage Myrtle Beach to

change its standards in accordance with USLA certification standards with respect to this and other points of the USLA certification program.”

28. Dual role lifeguarding is a system where the on-duty lifeguards are tasked with duties other than protecting safety. Specifically, the lifeguards are required to rent umbrellas and beach chairs as well as protect public safety.

29. Despite these clear and obvious warnings given in 2016, the City of Myrtle Beach and Lack’s refused to place the public’s safety as a higher importance than making money.

30. The City of Myrtle Beach and Lack’s entered into their contract in 2018 more than one (1) year after this warning. The contract permits and encourages the use of dual role lifeguarding.

31. Upon information and belief, Lack’s has a history of misrepresenting its efforts to make public safety a priority through training and other means. As a result of this misrepresentation Lack’s was stripped of its USLA certification years prior to the death of the Zurihun Wolde.

32. The city of Myrtle Beach and Lack’s received complaints by concerned residents and visitors. These complaints centered around the fact that Lack’s lifeguards were more focused on selling beach chairs and umbrellas than saving lives or protecting the public.

33. On August 9, 2018, a mere two weeks before the death of Zurihun Wolde, a complaint was received by the City of Myrtle Beach.

34. The incident complained of occurred on the beach in front of the Sea Crest Resort, which is the exact location where Zurihun Wolde would die from drowning on August 24, 2018.

35. The complaint noted that a lifeguard was selling beach chairs and umbrellas and was carelessly neglecting his duty to protect people in or near the water.

36. The complaint was forwarded to Lack's for them to address the issue.

37. Upon information and belief, Lack's took inadequate or zero corrective action to address the safety concern raised in the complaint.

38. Dual role lifeguarding sacrifices public safety in exchange for money.

39. Upon information and belief, the National Weather Service issued an alert on Thursday, August 23, 2018 stating that there were high rip currents present in the Myrtle Beach area.

40. Lack's and the City of Myrtle Beach knew or should have known of the rip currents and specifically the alert of the national weather service. Rip currents are a highly dangerous condition.

41. Zurihun Wolde and his family were never informed about the alert from the National Weather Service by Lack's or the City.

42. On the morning of August 24, 2018, Mr. Wolde and his family arrived at the beach in front of the Sea Crest resort. Ms. Abel and her twins put up an umbrella and beach chairs and began to build a sand castle.

43. Mr. Wolde and his older children, Adam and Wubit, went down to the water. At no point were there warning signs about the rip currents nor did lifeguards provided by Lack's warn them of the same.

44. At no time did lifeguards, to include Defendant John Doe, from Lack's attempt to prevent Mr. Wolde, Adam or Wubit from entering the water. Additionally, there were numerous people in the water; none of whom were being warned of any dangers present on the beach.

45. Mr. Wolde and his two older children entered the water and began to swim. At some point after their entry into the water, Mr. Wolde and his two children became caught in a rip current and began to struggle to return to shore.

46. Mr. Wolde struggled to save his two children and called for help. No lifeguard responded to his cries.

47. Other citizens came to his aid and were able to assist Wubit and Adam to shore while Mr. Wolde thrashed and struggled to stay afloat.

48. Eventually, Mr. Wolde's body made it to the shore where other beachgoers attempted to give him aid. After this point, lifeguards and other emergency personnel arrived on scene and began life saving efforts on Mr. Wolde. Defendant Lack's and Defendant John Doe lifeguard at no time attempted to rescue Mr. Wolde from the water.

49. He was rushed to Grand Strand Hospital where he was pronounced dead.

50. The Horry County Coroner's Office determined the cause of death to be asphyxia due to drowning.

51. At all times relevant to this complaint, Wubit Wolde and Adam Wolde were in the zone of danger to their father and were in imminent danger of drowning.

52. Wubit Wolde and Adam Wolde suffered psychological injuries which physically impacted both Wubit and Adam.

SURVIVAL ACTION
S.C. Code Ann. § 15-51-10

53. Plaintiff incorporates all paragraphs above as if fully stated herein.

54. Decedent, during the course of this incident, suffered injury and damages caused by the actionable conduct of these Defendants, which include, but are not limited to:

a. Pain and suffering;

- b. Shock and terror;
- c. Mental and emotional distress;
- d. Medical bills;
- e. Funeral expenses; and
- f. Severe injury to the whole person.

55. Decedent's causes of action for his injuries and damages survive his death and pass to his Estate and Plaintiff seeks general, special, and punitive damages and such further relief as this Honorable Court and the jury deem just and proper.

WRONGFUL DEATH ACTION
S.C. Code Ann. § 15-51-20

56. Plaintiff incorporates all paragraphs above as if fully stated herein.

57. As a direct result of the actionable conduct of this Defendant, decedent met his untimely death.

58. The Plaintiff and the statutory beneficiaries of decedent's estate have experienced great mental anguish, suffering, grief, sorrow, bereavement, and loss of society, advice, companionship, comfort, protection, and pecuniary benefit.

59. The Plaintiff is informed and believes pursuant to the South Carolina Wrongful Death Act, it is entitled to a judgment against this Defendant for an award of actual damages in an amount to be determined by the trier of fact, and further are entitled to punitive damages, and for any additional relief the court deems just and proper.

GROUND OF LIABILITY

NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS – ALL DEFENDANTS

60. Plaintiff incorporates all paragraphs above as if fully stated herein.

61. At all times material hereto, Defendants Myrtle Beach and Lack's owed a duty to the Plaintiffs and the public at large to conduct their water safety program in a reasonably safe manner and to take the necessary steps to prevent foreseeable harm to the Plaintiffs.

62. Defendant Myrtle Beach owed a duty to Mr. Wolde to properly oversee Lack's services and Defendant Myrtle Beach breached its duty to Mr. Wolde to exercise reasonable care in oversight of Lack's and for the services provided by Lack's and in such other particulars as the evidence may show.

63. Defendants Lack's and the City of Myrtle Beach breached that duty in numerous ways that are outlined in this complaint.

64. As a result of that breach, Plaintiffs' decedent drowned and met his untimely death as a proximate result of the Defendants' gross negligence, negligence and/or recklessness.

65. The injuries and damages sustained by Plaintiff and her decedent were the direct and proximate result of the negligence, gross negligence, willfulness, wantonness, carelessness, and recklessness of Defendants Lack's and City of Myrtle Beach in one or more of the following particulars:

- a. By engaging in "dual role" lifeguarding;
- b. By not properly warning people on the beach of dangerous rip currents;
- c. By renting beach chairs, umbrellas and other beach equipment rather than protecting the Plaintiffs and the public at large;
- d. In failing to properly monitor alerts from the national weather service and take appropriate action;
- e. In ignoring the numerous warning from various sources indicating that dual role lifeguarding is inherently unsafe;
- f. In ignoring the September 30, 2016 letter from the USLA when the Defendants knew or should have known that to do so endangered lives;

- g. By failing to take action in response to the numerous complaints of citizens indicating that Lack's life-guards were more interested in selling beach equipment than protecting lives;
- h. By failing to prevent swimmers from entering an area of the ocean that contained a dangerous rip current;
- i. By failing to adequately train lifeguards;
- j. By overworking lifeguards;
- k. In failing to properly supervise the activities of its lifeguards;
- l. In such other ways as shall be shown and proven through discovery;
- m. In failing to exercise even slight care or effort to address concerns raised about Defendant Lack's performance as a franchisee;
- n. And by placing profits and money above safety.

65. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff suffered severe emotional distress and Plaintiff's decedent suffered injuries before death and was killed.

66. The Plaintiff is informed and believes she is entitled to a judgment against the Defendants for an award of actual damages in an amount to be determined by the trier of fact, and further are entitled to punitive damages, and for any additional relief the court deems just and proper.

Bystander Liability – All Defendants

67. All previous paragraphs are incorporated herein as if stated verbatim.

67. Wubit Wolde and Adam Wolde assert a bystander claim for the physical manifestation of emotional injuries. The proximate cause of these injuries was the negligence, gross negligence, and reckless conduct of the Defendants.

68. Plaintiffs, Wubit Wolde and Plaintiff Adam Wolde were in the zone of danger and perceived their father's injuries and death. Both Plaintiffs suffered, and continue to suffer, physical manifestations of their emotional grief that can be objectively evaluated.

69. The Plaintiff is informed and believes Wubit Wolde and Adam Wolde are entitled to a judgment against the Defendants for an award of actual damages in an amount to be determined by the trier of fact, and further are entitled to punitive damages, and for any additional relief the court deems just and proper.

RELIEF REQUESTED

70. As a direct and proximate result of the Defendants' negligence, gross negligence, and recklessness, Plaintiff's decedent suffered conscious pain and suffering, shock and terror, mental and emotional distress, and a loss of earnings. Those injuries survive his death and pass to his Estate.

71. As a direct and proximate result of the Defendants' negligence, gross negligence, and recklessness, Plaintiffs have suffered pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of the decedent's society. Additionally, Plaintiffs have incurred funeral and estate administration expenses as a result of the Defendants' negligence, gross negligence, and recklessness.

72. As a direct and proximate result of the Defendants' negligence, gross negligence, and recklessness, Plaintiffs have experienced severe and traumatic emotional distress.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. For actual damages according to proof;
- B. For compensatory damages as permitted by law;
- C. For statutory damages as permitted by law;

- D. For punitive damages as determined by the trier of fact;
- E. For all costs of Court; and
- F. For such other relief as the trier of fact deems just and proper

JURY TRIAL DEMANDED

Trial by jury is demanded as to all issues set forth herein to the extent permitted by law.

Respectfully submitted,

McLEOD LAW GROUP, LLC

s/ H. Cooper Wilson, III
W. Mullins McLeod, Jr. (S.C. Bar #: 14148)
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ATTORNEYS FOR PLAINTIFF

November 1, 2019
Charleston, South Carolina



**STATE OF MARYLAND
LETTERS OF ADMINISTRATION**

ESTATE NO. W96924

I certify that administration of the Estate of

ZERIHUN KEBEDE WOLDE

was granted on the 19th day of DECEMBER, 2018,
to MESWAET ABEL

as personal representative(s) and the appointment is in effect
this 19th day of DECEMBER 2018,

☐ Will probated _____
(date)

☒ Intestate estate

Joseph M. Griffin

JOSEPH M GRIFFIN

Register of Wills for

MONTGOMERY COUNTY

VALID ONLY IF SEALED WITH THE SEAL OF THE COURT OR THE REGISTER

RW1120

ROWNET
11/2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) In Court of Common Pleas
) Fifteenth Judicial Circuit
) 2019-CP-2607075

MESWAET ABEL, AS PERSONAL
REPRESENTATIVE OF THE
ESTATE OF ZERIHUN WOLDE,

Plaintiff,

vs.

LACK'S BEACH SERVICE, INC.,

Defendant.

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) Transcript of Record
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Conway, South Carolina
July 22, 2022

B E F O R E:

The Honorable Kristi F. Curtis

A P P E A R A N C E S:

Mr. Mullins McLeod, Esquire
Attorney for the Plaintiff

Mr. Kelli Sullivan, Esquire
Attorney for the Defendant, City of Myrtle Beach

Mr. Joseph Thompson, Esquire
Attorney for the Defendant, Lack's Beach Service, Inc.

Recorded by: WebEx

Transcribed by: Lisa Carter, Court Reporter

I N D E X

WITNESSESPAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(EXHIBITS INTRODUCED DURING HEARING)

1 THE COURT: I couldn't get my camera on there for a
2 second. Good morning.

3 MS. SULLIVAN: Good morning.

4 MR. THOMPSON: Good morning.

5 THE COURT: Sorry to keep you all waiting. Coming
6 to my office Wednesday between two out of town terms of
7 court has got me scattered in a lot of different
8 directions. But thanks for getting on, on WebEx this
9 morning. I am recording on the record function. We don't
10 have a court reporter this morning but again, I've got the
11 record function on recording our session.

12 So I have reviewed the parties position regarding the
13 motions for summary judgment. I'm granting the motion for
14 summary judgment as to the city under the discretionary
15 immunity exception. Also as to 15-78-60 Subsection (2)
16 which deals with administrative action or inaction,
17 Subsection (4) on adoption enforcement or compliance with
18 an ordinance and Subsection 20 with respect to the actions
19 of third-parties. I don't find that the public duty rule
20 applies in this case because I think that the plaintiff's
21 case is not based on any duty created by statute. And I'm
22 not granting it as to recreational use immunity, in spite
23 of the Mena case, I do think that if it was just based on
24 recreation use immunity that that would go to the jury as
25 to whether there was gross negligence. But I just can't get

1 around the other provisions of the Tort Claims Act that
2 grant immunity and do not have a gross negligence standard.
3 Specifically, in light of Section 5-7-145, it seems to me
4 to contemplate the dual role of the private safety beach
5 company in that status seems to contemplate that rentals
6 would be part of the agreement between the city and the
7 private company. So again, I'm not granting it as to
8 recreational use or public duty rule, but I am granting it
9 as to the various provisions of the Tort Claims Act.

10 MS. SULLIVAN: Yes, ma'am. I was taking notes as you
11 were speaking. Did you say as to two, four and twenty, I
12 want to make sure I wrote that correctly.

13 THE COURT: Two, four, five, and twenty.

14 MS. SULLIVAN: I missed five. Thank you.

15 THE COURT: I think five is discretionary ---

16 MS. SULLIVAN: Yes, ma'am.

17 MR. McLEOD: Your Honor, this is Mr. McLeod. Can I
18 just address one point please, Your Honor?

19 THE COURT: Sure.

20 MR. McLEOD: The -- we have cited in our brief and I
21 don't have the citation in front of you, but the courts
22 have, have made it clear that in 15-78-60, if any of the
23 provisions that are raised by the defendants contain the
24 words 'gross negligence' then gross negligence applies to
25 all of the sections.

1 THE COURT: So what provision contains a gross
2 negligence standard because I did not see one in any of
3 those provisions.

4 MR. McLEOD: So Your Honor, for example, in the
5 Proctor case, that's Proctor versus Department of Health
6 Environmental Control, I think it's 28 S.E. 2d, 496. The
7 court held "even if we held Dorsey exercise of discretion,
8 so that would be Subsection (5), which I don't believe
9 subsection five has the word 'gross negligence' in it. The
10 court says, "the performance of discretion and duties does
11 not give rise to immunity if the public official acted in a
12 grossly negligent manner." And in additions, Your Honor, I
13 don't have the citation in front of me - here it is - "when
14 a governmental entity asserts multiple exceptions to the
15 waiver of immunity, at least, one of the exceptions
16 contains a gross negligence standard. We must interpolate
17 the gross negligence standard into the other exceptions.
18 And the court cites ---

19 THE COURT: I certainly agree one hundred percent
20 with you but again, I think all of the cases that I read,
21 for example, there's a number of dealing with foster care
22 and DSS's duty with respect to children in foster care. And
23 there is a, an exception dealing specifically with
24 supervising, I think children and inmates, etc., and the
25 language in that Subsection says, "except if their actions

1 are grossly negligent." But I do not see a gross negligence
2 standard ---

3 MS. SULLIVAN: I think, Your Honor, I understand what
4 Mr. McLeod is saying and I think the difference here is we
5 raise multiple Tort Claims Act defenses in our answer
6 because, of course, obviously, if you don't waive them, I
7 mean, if you don't raise them they are waived for the
8 future. And I -- that is certainly not what any of the
9 focus has been throughout this entire case. We have focused
10 on these several that we raise none of which have a gross
11 negligence exception. If you follow Mr. McLeod's logic
12 then, we would be facing a Hobson's choice of, not raising
13 an exception that may apply and waiving it or forcing
14 ourselves into a gross negligence standard that doesn't
15 apply to one of the other exceptions.

16 MR. McLEOD: Your Honor, if I could just quickly.
17 Their answer clearly has pled all the exceptions applicable
18 under 15-78-60. The court said in the Proctor "we avail
19 when a governmental entity assert various deceptions to the
20 waiver of immunity, it is to be read exceptions that did
21 not contain the gross negligence standard in light of the
22 sections that do." And so the gross negligence standard is
23 part of the exceptions that, Your Honor, is about to grant
24 summary judgment on and that's the only thing that I wanted
25 to bring to the court's attention. I mean, and for example

1 ---

2 THE COURT: Its it very your argument that if any
3 of the forty something exceptions contain a gross
4 negligence standard that it applies to all of them?

5 MR. McLEOD: Yes, Your Honor.

6 THE COURT: And see, I guess, I -- the way I'm
7 reading those cases is that if you have a provision again,
8 that contains a gross negligence standard, for example, the
9 duty to inspect an amusement park ride, that duty to
10 inspect contains a gross negligence standard. So if I am
11 asserting that an immunity under the duty to inspect and
12 there's also a duty that says or there's also an exception
13 that says granting a license is an exception and there's no
14 gross negligence standard. So I'm claiming those two, one
15 contains a gross negligence standard; and one does not, I
16 can't get around the gross negligence standard by also
17 claiming an immunity that doesn't have the gross negligence
18 property.

19 MR. McLEOD: Well, for example ---

20 THE COURT: Again, my question to you is, what
21 exception do you think applies here that does contain a
22 gross negligence?

23 MR. McLEOD: One that pled would be Subsection (12),
24 licensing powers or functions including, but not limited
25 to, the issuance, denial, suspension, renewal, or

1 revocation of or failure or refusal to issue, deny,
2 suspend" and it goes on to give the grossly negligent
3 standard. And Your Honor, in our brief and what we argued
4 the other day I don't -- the -- the courts have made it
5 clear that when the state is grossly negligent, they are
6 responsible and answerable for the harm that is on harmed.
7 In this case, Your Honor, they didn't just enter into a
8 contract and ---

9 THE COURT: Mr. McLeod, I understand your argument
10 perfectly, sir, but I do not read the statute that way.
11 First of all, I don't think the licensing provision applies
12 to this case. And I'm not granting immunity under of the
13 licensing provision. I don't think this has anything to do
14 with licensing. And I completely understand your arguments.
15 Again, every case that I have found that sends it to the
16 jury for determination of gross negligence is where there's
17 an applicable exception that does contain an gross
18 negligence standard along with, you know, maybe there's two
19 exceptions that would apply. One contains gross negligence;
20 one does not. And so you have to read the gross negligence
21 into both. But I don't -- I haven't found any case that
22 says gross negligence applies to all provisions of the Tort
23 Claims Act.

24 MR. McLEOD: So - so, Your Honor, Your Honor, in
25 the, in the court case and in the Proctor case what the

1 court said was when you, when you look at discretionary
2 immunity there are two types of conduct. There's a planning
3 phase and then there's the operational phase. And the
4 courts have said that on the operational phase, they are
5 not immune if they are grossly negligent. In addition, that
6 we cited in our brief, even on the planning phase they are
7 required to use duly accepted professional standards, and
8 if they don't and they are grossly negligent they can also
9 be responsible for the planning phase. And so our courts
10 have determined that under Section (5) in the facts of this
11 case the gross negligence goes to the jury.

12 THE COURT: Sir, I just disagree with you and I
13 can't find that it goes to the jury on general professional
14 standards when, again, the statute 5-7-145 specifically
15 contemplates rentals as part of that giving the city the
16 option to either hire private employees or to hire the
17 private beach safety.

18 MR. McLEOD: Your Honor, the only, the only thing
19 that I would add is that statute does not say that
20 lifeguards are allowed to engage in commercial sales and
21 that's what they're doing here. The statute simply doesn't
22 allow it. And the statute requires that they contract with
23 a safety company, not a beach concessionaire to perform
24 lifeguard services who is not certified to perform
25 lifeguard services. We've got a very in Mr. Peterson,

1 depending on the court's ruling, will testify at trial and
2 I will go through and explain and put the evidence in this
3 record that they have violated the limited authorization
4 provided by and allowed by the legislature.

5 MR. McLEOD: Mr McLeod, sir, I'm not gonna argue
6 with you, I've made my ruling.

7 MR. McLEOD: I understand ---

8 MR. McLEOD: And I've looked closely at everything.
9 It's my, always my preference that it goes to the jury, but
10 I just cannot find a legal basis to allow it to go to the
11 jury. I'm denying the motion for summary judgment as to
12 Lack's. I do think that there are genuine issues and
13 material fact for the jury to determine and so I'm denying
14 summary judgment with respect to Lack's. I would like to go
15 through the various motions in limine.

16 MR. THOMPSON: Your Honor?

17 THE COURT: Mmm, hmm.

18 MR. THOMPSON: There were a couple of other MSJ items
19 that had to do with the negligent infliction of emotional
20 distress claims, any claims by Ms. Abel and then the
21 survival action claim?

22 THE COURT: And I guess it was my understanding
23 that the negligent infliction of emotional distress was
24 being withdrawn or, at least, that plaintiff was not really
25 arguing that there was any physical manifestations to

1 support that. So ---

2 MR. THOMPSON: Well, judge won't be pursuing that
3 cause of action, Your Honor.

4 THE COURT: So the negligence, I am granting
5 summary judgment, I guess, then I'll give you a formal
6 ruling as to the negligent infliction of emotional
7 distress. Um, I don't see any anything that would allow
8 wrongful death as to a fiancé so I'm granting it as to her
9 personal claim. I do think that -- I'm denying summary
10 judgment as to the survival. I think that that's going to
11 be an issue for the jury.

12 MR. THOMPSON: Thank you.

13 THE COURT: Okay. Turning to the motions in
14 limine....

15 MS. SULLIVAN: Your Honor, given your previous rulings
16 so I don't clutter up matters may, may Mr. Chambers and I'd
17 be excused or I'm happy to stay if there's anything
18 necessary?

19 THE COURT: No. That's -- that's fine, Ms.
20 Sullivan. Thank you.

21 MS. SULLIVAN: Mr. McLeod, Mr. Thompson I realize
22 there are various subpoenas in place for city employees
23 that we have accepted. Of course, we will honor those and
24 get the folks there that you need when you need them if you
25 just let us give us a little heads up on. on your order

1 Thank you so much.

2 Thank you, Your Honor.

3 THE COURT: Thank you. Okay. I took considerable
4 notes on the motions in limine, but I don't think we've
5 ever, we didn't reach that the other day. So I'm glad to
6 hear from y'all, Mr. Thompson if you want, since this is
7 your motion, to exclude certain things I'm glad to hear
8 from you. And then certainly Mr. McLeod I'll hear from you
9 in response

10 MR. THOMPSON: Yes. Your Honor. Thank you. May it
11 please, the Court? I assume we'll just work through the
12 list of items one by one and take them as they come.

13 The first item, Your Honor, in the motion has to do
14 with the dual role issue. Your Honor, that was actually
15 the basis of the summary judgment motion. It wasn't
16 actually a summary judgment for the entire case so it was
17 just simply asked to that negligence count, that negligence
18 claim because there just isn't any evidence to support it.
19 The motion in limine then kind of goes parallel that
20 ducktails into that, right. The prejudice on the dual role
21 issue is substantial. I anticipate and expect there to be
22 significant argument both in opening and through every
23 witness about the dual role and the financial consideration
24 of, of the alleged financial consideration of the
25 lifeguarding group. Your Honor, if anything the dual role,

1 you know, again there's no evidence of it today. You know,
2 I think it's one of those you ring the bell and you can't
3 unring it. So to the extent that we can, you know,
4 obviously keep out any evidence any argument any discussion
5 of the dual role the financial aspect of it or anything
6 like it until that information is, you know, there's
7 evidence of it, right. I mean, if Mr. McLeod gets up and
8 opening and talks about profits over people and talks about
9 financial implications and then there's no evidence that
10 any of these lifeguards were engaged in any financial
11 activity or commercial activity, then there's been
12 substantial prejudice to my client because there's no
13 evidence of that at all. And that is something, Your Honor,
14 that I believe that again, you know, it ducktails back into
15 the arguments with regard to the temporal concepts. There's
16 no evidence of timing to lay a foundation that any of these
17 lifeguards were delayed as a result of any commercial
18 activity. There's certainly no evidence of any direct
19 financial commercial activity at the time. And so, Your
20 Honor, the endless number of possibilities. I'm not
21 suggesting today, you know, there are quite a number of
22 possibilities and Mr. McLeod has argued over and over and
23 he kind of gets sideways on some of them and kind of throws
24 them back in together. But very specifically, you know, we
25 can talk about the impact or the, you know, whether the

1 lifeguard service responded in time. Whether the lifeguard
2 service was trained. Whether the lifeguard service was, you
3 know, you know, those sorts of things. But the specific
4 conduct that Mr. McLeod wants to get into there's just no
5 evidence of it and insignificantly prejudicial to my
6 clients in the absence of that evidence. So we would ask
7 that the court issue a ruling that plaintiff's stay away
8 from that kind of discussion, that kind of argument, those
9 kinds of questions until foundation and factual basis has
10 been established.

11 THE COURT: Mr. McLeod?

12 MR. McLEOD: Yes, Your Honor. There is direct
13 evidence from which the jury can conclude that they were
14 engaged in commercial activity during the window of time
15 Mr. Wolde was a distressed swimmer and then, ultimately,
16 became a drowning victim. One is they were required to do
17 that. These were not lifeguard, Your Honor, and I'm gonna
18 prove that next week. They were not lifeguards. Just
19 because you put a jersey on somebody that says lifeguard
20 that does not make you a lifeguard. What the witness
21 testified to day before yesterday and I hope this makes
22 sense - so the lifeguard stands are set up, basically,
23 every city block. And so there's a lifeguard stand to the
24 north. There's a lifeguard stand to the south. Two of the
25 stands are an issue here, okay. And for the lifeguard

1 stands for this lifeguard, although, he was not a lifeguard
2 and will prove that, he is responsible for half the city
3 block to his left, half the city block to his right. The
4 Lifeguard on the southern, to the south of him is
5 responsible for half a city block to his left and half the
6 city block to his right. What happened in this case was Mr.
7 Wolde and his daughter and his son were in the water when
8 they were pulled out because of a rip current. This was
9 done up the beach closer to the northern lifeguard stand,
10 an issue, okay. Now, during this window of time Adam, the
11 son, a bystander was able to help the son and the son was
12 able to get out of the water and come to shore. Now,
13 because there was also a long shore current which runs down
14 the beach Mr. Wolde and his daughter were caught then once
15 they were dragged out, they were caught in the long shore.
16 As long shore current brings them down the beach and in
17 enough time for Adam to run up - to get out of the water
18 get his mother. They then run down the beach. Mr. Chandler,
19 the eye witness, who testified day before yesterday, he was
20 at the southern, closer to the southern lifeguard stand.
21 What he witnessed was Mr. Wolde coming out of the water,
22 okay. And then when he was being pulled out of the water
23 there were two other bystanders, men, in the water and a
24 woman who was in the water who had gone in the water to
25 help the daughter, Wubit, get out of the water.

1 Now what's important is that between 5 and 10 minutes
2 is the testimony before Mr. Chandler heard the first
3 scream. That is them pulling Mr. Wolde and his daughter out
4 of the water. He personally observed the lifeguard with his
5 bath turned to the water talking to people at the umbrella
6 line. Well, when you conduct sales you also have customer
7 service. And that lifeguard, he testified never showed up
8 and wasn't until Mr. Wolde was pulled ashore, a nurse
9 performed CPR, found that he had a pulse and not until a
10 crowd gathered around Mr. Wolde did Mr. Chandler, who
11 served in our country in the Air Force, noticed the
12 lifeguard who was talking to the people in the umbrella
13 line, standing amongst the crowd. And his testimony, I
14 asked him "Did that gentleman appear competent?" And his
15 exact words were, "He had a deer in the headlights look."
16 Now, this guy, his back turned, talking to two people at
17 the, with the umbrellas is responsible for half the drift.
18 Where Mr. Wolde and his daughter are drifting. She's using
19 her father as a float. So there is absolute direct evidence
20 that he was engaged with the umbrellas, his back turned to
21 the water. During the time period they floated down the
22 beach. And I ask Mr. Chandler at anytime did any lifeguard
23 come from the northern? No. And, Your Honor, the evidence
24 that the jury, the reason it went to the jury conclude is
25 there's a reason why these kids don't help, they don't know

1 how. They don't know what to do. Just like the kid that did
2 come after Mr. Wolde drowned, he had a "deer in the
3 headlights look." And they -- we have the sales receipts
4 from that day, from both of those stands. The northern
5 stand and the southern stand. There is overwhelming
6 evidence which you can conclude they were conducting
7 commercial sales. There's evidence, Your Honor, is there
8 zero evidence they weren't selling. Zero. There's zero
9 evidence they weren't selling. He can argue all he wants
10 that they weren't selling. He has zero evidence that they
11 were not selling. And for those reasons, Your Honor, we
12 respectfully ask that the court denied that motion.

13 MR. THOMPSON: Your Honor ---

14 THE COURT: I think I understand everybody's
15 position at this point. I'm gonna deny the motion in limine
16 at this point as to the dual role of the lifeguards. Number
17 two, I think it's testimony about other drowning's in the
18 area?

19 MR. THOMPSON: Yes, Your Honor. Your Honor, this one
20 is, is -- it's fairly self explanatory, I think. You know,
21 they're -- no two drownings are alike. They just aren't.
22 They happen at different times. They happen in different
23 places under different sets of circumstances. Different
24 beaches. It's almost impossible to compare one to another.
25 And I think, Your Honor, what's most important there are a

1 couple of things that I think, Your Honor, I'd really
2 liked, Your Honor, to understand in the context of the
3 beach situation and lifeguarding a beach. Because it's a
4 very different situation than a pool, very different. And
5 it should -- it's one of those things that I think and what
6 you hear from Mr. McLeod in plaintiff case is that,
7 essentially, if a lifeguards on the beach then everybody is
8 safe and that everybody is going to survive. His own expert
9 has testified to these things. And this is an important
10 backdrop for all of this. Lifeguards do not guarantee
11 safety. Accidents happen in a surf environment despite
12 anybody's best efforts to avoid them. You can have a
13 drowning in front of a fully guarded, fully staffed, fully
14 competent set of lifeguards. This is, again, his expert.
15 Lifeguarding is a merely impossible task. Again, these are
16 not my words, these are his. Lifeguards do not guarantee
17 patron's safety. Constant vigilance and observation is an
18 almost impossible task to achieve. Vigilant surveillance
19 decreases or it becomes increasingly more difficult as
20 temperatures rise and more people enter the water. The job
21 of lifeguarding provides almost too much stimulus for the
22 brain. Lifeguards cannot prevent all accidents particularly
23 in the surf environment. The risk of drowning is ever
24 present whenever in or around the water. It is impossible
25 to prevent all accidents in the surf environment.

1 Your Honor, so against that sort of backdrop and that
2 background and what their expert has testified to, we have
3 to understand that this is not a situation where, you know,
4 Mr. Wolde was guaranteed to survive or Mr. Wolde guaranteed
5 not to get into trouble or end up in a situation where he
6 was. And so against, when we start talking about other
7 drowning's, obviously, anything that happened since, for
8 example, you know, I know that Mr. McLeod put in his, one
9 of his memos, there had been two or three drowning since
10 the last potential trial date. Well, obviously that's 2022.
11 It's different staff. Different personnel. Different sets
12 of circumstances. If we start talking about different
13 drowning's we have to get into the specifics. Were there
14 lifeguards there? What was the circumstances? Did that
15 individual that drowned sustain a medical event or
16 something that was different than simply getting involved
17 in, in a rip? Was the individual involved in a rip current?
18 Was individual involved in long shore current? I can go on
19 and on about various differences in drowning events. Were
20 they preventable? You know, that's another issue. I mean,
21 we can't even say that, you know, just again because there
22 are lifeguards there that every drowning is preventable.
23 Their expert says that. So comparing drownings or
24 suggesting that there are other drownings is, is without
25 the substantial similarity, without the evidence that the

1 Supreme Court has required when you start talking about
2 examples of other incidents, judge, it's exceptionally
3 incredibly prejudicial to my client. Well, that's the first
4 issue which is other drownings.

5 The other is, it's kind of a sub-setter or ducktails
6 together which is statistics, right, drowning statistics.
7 So generally speaking, you know, for example, again, I know
8 Mr. McLeod put in one of his memos that, you know, he was
9 comparing drowning statistics to like Edisto Beach from a
10 time period in the early 2000's.

11 You know, again, we don't know anything about anything
12 that goes into drowning statistics. Are they pools? Are
13 they lakes? Are there swimming rivers? Are they ocean life
14 or are they ocean situations? Are they manned lifeguarded
15 or otherwise? So just generalized statistics again, without
16 context and again, without any kind of substantial
17 similarity, again, it becomes very prejudicial just to say
18 there are more drownings here or there are less drownings
19 and/or trying to compare drowning.

20 So, Your Honor, you know, this is a case about this
21 specific individual. This specific event. Whether it was
22 preventable or not. And whether the lifeguards performed
23 whether they, in the way that they should. And -- and, Your
24 Honor, anything else outside of that we believe should be
25 prohibited.

1 THE COURT: Mr. McLeod?

2 MR. McLEOD: Yes, Your Honor, the prior drownings
3 will be offered for three different evidentiary reasons.
4 And as, Your Honor, knows evidence can be offered for one
5 or, or more reasons. The first will be noticed. The second
6 will be the defect itself. And the third will be
7 foreseeability.

8 The Supreme Court, Justice Toal in the Whaley versus
9 CSX case said that OSI are admissible as long as they're
10 substantially similar. I recognize what my burden is with
11 regard to proving and laying the factual foundation that
12 they are substantially similar and that's what we intend to
13 do, Your Honor.

14 THE COURT: Tell me about the timeframe of the
15 prior incidence?

16 MR. McLEOD: So the timeframe that makes it
17 substantially similar is a timeframe when George Lack and
18 his company were responsible for Myrtle Beach. Do you
19 follow me?

20 THE COURT: Yes, sir.

21 Q. That makes it substantially similar. The next thing
22 that would make it ---

23 THE COURT: Again, I'm asking like are we talking -
24 --

25 MR. McLEOD: Yes, sir.

1 THE COURT: --- this month or so years before.

2 MR. McLEOD: Oh, the city has compiled statistics
3 and it's contained in a report that we will move into
4 evidence next week, where they list the number of drownings
5 from I think it's 2004 to 2012, okay. All of those years
6 are, you know, were under Mr. Lack's and his company's
7 responsibility. No one keeps statistics, Your Honor,
8 specifically as it relates to rip currents. Those
9 statistics are published annually. Those statistics are
10 known by the city and should have been known by the beach
11 patrol. As far as drownings that happen because of someone
12 has a heart attack or there's alcohol related or anything
13 like that, obviously, that's not substantially similar and
14 I wouldn't even begin or attempt offer that evidence
15 before, Your Honor, because I want the burden bot be upheld
16 on appeal.

17 The other thing that makes it substantially similar,
18 Your Honor, is, did the drowning occurred during
19 lifeguarded hours? The testimony from Mr. Brewster - Mr.
20 Brewster is the head of the [inaudible].... he's coming
21 from California, I believe. Because this case is so
22 important to the aquatic safety community. Myrtle Beach has
23 been for the last 20 years an absolutely outlier in the
24 field of aquatic safety because of the number of deaths
25 that continue to occur. We'll be able to prove to, Your

1 Honor, that there was from 2004 to 2012 roughly a drowning
2 during lifeguard hours on Mr. Lack's beach approximately
3 every 30 days. That is astronomically high when compared to
4 the fact that the chance of drowning on a lifeguarded beach
5 with properly trained lifeguards is more than 18 million.
6 Your Honor, your chance of getting struck by lightning, you
7 have a better chance getting struck by lightning than
8 drowning in a lifeguarded beach. That goes to the
9 foreseeability. And so, Your Honor, I'm well aware of the
10 factual foundation that is required and, and, and we'll
11 meet it.

12 MR. THOMPSON: Your -- Your Honor ---

13 THE COURT: Let me address one issue first. You do
14 not intend to try to introduce any evidence of drownings
15 that have taken place since this incident, is that correct,
16 Mr. McLeod?

17 MR. McLEOD: To make it easy we'll agree not to,
18 Your Honor.

19 THE COURT: Yeah, I don't think anything since the
20 incident would be admissible. I mean, what I -- what I
21 would say at this point is that I'm going to need to see
22 what ground - what groundwork or foundation you have laid
23 to show that this is admissible. So I'm leery of just
24 statistics, again, unless we're comparing apples to apples.
25 So what I would say is anything that you want to submit to

1 me, you know, pre- trial is fine, because I'm gonna have to
2 see us a substantial foundation before we go into other
3 drowning statistics or other individual drownings.

4 MR. THOMPSON: Your Honor?

5 THE COURT: Yes, sir.

6 MR. THOMPSON: One point, Mr. McLeod was talking about
7 drowning statistics from 2014 to 2012. The drowning that
8 we're talking about here today occurred during the time
9 when there was a specific set of requirements under a
10 franchise agreement that was entered into in 2018. So, in
11 other words, there was a different franchise agreement with
12 different staffing and different things that were going on
13 back in the other timeframe 2005 to or 2014 to 2012. So
14 it's -- that's gonna be really difficult to compare apples
15 to apples when you have different staffing and different
16 agreement between the city and Lack's so just point that
17 out.

18 THE COURT: Mr. McLeod, do you want to respond to
19 that at all, sir?

20 MR. MCLEOD: He's making arguments, Your Honor. It's
21 my burden to lay the factual foundation that is
22 substantially similar and that's what we intend to do. I
23 mean, we will. I mean....

24 MR. THOMPSON: Your Honor, obviously, the concern is
25 simply if we get into opening statements and Mr. McLeod

1 says that there's a drowning every 30 days, you know, for a
2 period of time and then that proof isn't established, it's
3 very difficult in the absence of having, you know, he said
4 he was going to produce the statistics for the 2004 to 2012
5 timeframe, if we can get that information, obviously,
6 before it's presented to a jury so we can deal with it.

7 MR. McLEOD: Your Honor, for example, the, the
8 Assistant Fire Chief Thomas Squire, he did the study. He'll
9 testify at trial. He specifically found that a majority of
10 the drownings in a window of time, he looked at the
11 coroner's statistics. He went to the police in Myrtle Beach
12 to try to get statistics and they, basically, you know,
13 were not very forthcoming. But he found that a majority of
14 the drownings during that window happen during lifeguard
15 hours. That is, is highly abnormal. It rarely, if, ever
16 happens. Because, Your Honor, it's real simple. You have to
17 lifeguard stands, they're at the water's edge, if they're
18 doing their job, drownings don't happen period.

19 THE COURT: I would say at this point is that I'm
20 not going to allow any mention of previous drownings until
21 a proper foundation has been laid.

22 MR. McLEOD: Fair enough, Your Honor.

23 THE COURT: So if you do not address it in opening
24 and again, if the proper foundation is laid I'll address
25 it during the trial.

1 MR. McLEOD: Fair enough, Your Honor.

2 THE COURT: Number three, is the video of a
3 lifeguard two weeks prior.

4 MR. THOMPSON: Yes, Your Honor. There's a video taken
5 by a citizen his name's Casey Tritt. I assume he's coming
6 to testify. If he's not, obviously, we got problems there.
7 But assuming he testifies the video, Your Honor, is a six
8 minute video, it demonstrates a lifeguard - another
9 identified lifeguard - sitting next to a chair and
10 conversing with a patron or just somebody that's just
11 there. There's no commercial activity going on. It's just a
12 discussion of some sort.

13 THE COURT: I'm sorry, sir, who took the video?

14 MR. THOMPSON: I'm sorry?

15 THE COURT: Who took the video? I'm sorry, I
16 didn't catch that.

17 MR. THOMPSON: A fella by the name of Casey Tritt, T-
18 r-I-t-t.

19 THE COURT: And he was not an employee, he was just
20 somebody on the beach?

21 MR. THOMPSON: He just "concerned citizen", Your
22 Honor.

23 THE COURT: Okay.

24 MR. THOMPSON: So his video, Your Honor, again, it --
25 this is your classic prior acts kind of concept that

1 somehow we want to introduce this to demonstrate that if
2 they were doing it two weeks before then they must have
3 been doing it at the time of this incident. So we got a
4 problem, obviously, just straight up and down with, with
5 Rule 404. Your Honor, the other problems are, we don't know
6 who that lifeguard is or was. We don't know the location,
7 which tower that was. If it was, obviously, not one of the
8 three lifeguards at issue, again, we keep talking about
9 three lifeguards involved at L22, L21 and 20. If it was a
10 lifeguard at, you know, somewhere at another part of the
11 beach, obviously, clearly doesn't have any relevance
12 whatsoever because it wouldn't had any relevance whatsoever
13 to what happened at the time of this incident. So we don't
14 know who it is. We don't know where it is. And, obviously
15 again, the only reason that I can imagine that the evidence
16 is being admissive or trying to be admitted is to I argue
17 or to convince a jury that here this is what they do and
18 they must have been doing it at the time of loss. And it's
19 important again, because that's, that's the issue, right.
20 What was 22 and 20 doing at the time? There's no direct
21 evidence of that at all. So we're going to try and
22 bootstrap in a video from two weeks prior and that, Your
23 Honor, under all of the 401, 402, 404, Your Honor, doesn't
24 have any relevance. It's highly prejudicial. It's prior bad
25 acts. It's not admissible to conformity there with. So for

1 those reasons we'd move to have the video excluded as well
2 as Mr. Tritt's testimony to that effect.

3 THE COURT: My recollection is that this gentleman
4 complained to the city and then the city may be forwarded
5 it to Lack's, is that correct?

6 MR. THOMPSON: That's -- that seems to be the, the
7 chain of emails, if you will.

8 THE COURT: So Mr. McLeod, I'm guessing your
9 argument is gonna be that this is relevant to the issue of
10 notice.

11 MR. McLEOD: Yes ---

12 THE COURT: Let me hear from you?

13 MR. McLEOD: Yes, Your Honor. Notice of defect and
14 foreseeability. There was -- this is an email that came in
15 to the city. And again, unlike what Mr. Thompson has argued
16 to you, the video was taken at the Sea Crest Inn, the 800
17 Block. That's where my folks were staying. It's the exact
18 same location of the beach. The person called today about a
19 lifeguard who spent six minutes talking with a customer
20 rather than watching the water. It was at Sea Crest in the
21 800 Block at South Ocean Boulevard. He called here and I
22 spoke with him directly about this which is how we got to
23 the email stage of things. While he was pleasant with me,
24 he obviously, plan to share this on YouTube from the get
25 go. He said, "other families on the beach were disturbed by

1 the lifeguards lack of attention to the water. See his
2 YouTube link to the video below and my initial email to
3 him. Will you follow-up with a lifeguard service and see
4 what's up with this please. I'd like to be able to reply
5 back to him with some sort of information, although, I
6 doubt they will change the decision to post this on the
7 internet along with this comment." This email and the video
8 was received and forwarded to Lack's on August 9, 2018
9 which is roughly three weeks before the exact same thing
10 caused Mr. Wolde to die. I mean, I don't -- I mean, I know
11 Trey doesn't like the facts of this case, but he can't take
12 him out of it.

13 MR. THOMPSON: Your Honor, I assume Mr. Tritt is
14 coming to testify at trial and so we don't have that issue.

15 MR. McLEOD: Mr. Tritt does not have to testify at
16 trial in order for me to meet my evidentiary foundation,
17 Mr. Thompson. The video was received by the city. The video
18 is what it is.

19 MR. THOMPSON: Your Honor, I can't cross-examine
20 anybody about the authentic, authenticity any of the basis
21 for where the video was taken. This is classic hearsay.
22 It's classic lack of authentication. Again, we don't even
23 know this Casey Tritt. I mean, you're just assuming there
24 is a Casey Tritt. You're just assuming that there's a
25 person that doesn't have a grudge against the city or the

1 beach company. I mean, now I'm learning there's not going
2 to be a Casey Tritt at trial. I can't imagine a more
3 grossly prejudicial situation not allowing my client the
4 opportunity to cross-examine this individual about this
5 video and the circumstances.

6 MR. McLEOD: Your Honor, I think Your Honor has
7 heard enough. But if you'd like anything further from me,
8 Your Honor, or Mr. Wilson we're happy to provide it on
9 this issue.

10 THE COURT: Well, I'm not going to grant the motion
11 in limine. Again, at the time it's offered I'm going to
12 hear the proper foundation for admissibility.

13 MR. THOMPSON: Well, Your Honor, then can we do have a
14 ruling with regard to no discussion or introduction of such
15 a thing and in opening again, because of the prejudicial
16 value. If Mr. McLeod gets up in opening and says there was
17 a video of a lifeguard and, and explains exactly what's in
18 it, then, I mean, he's telling the jury what is not going
19 to actually be there.

20 THE COURT: Yeah, I will say that. That -- that if
21 you will not go into that in opening so that I can rule on
22 the admissibility of it at the time it's offered.

23 MR. McLEOD: Your Honor, may I be allowed in the
24 opening to reference that complaints were made in this same
25 location on this day regarding the purported lifeguards not

1 watching the water?

2 THE COURT: Um, yeah, I think saying that, that
3 complaints or a complaint was made is relevant to the
4 notice issue. It's, you know, in my mind it's different
5 from hearsay and that it's not being offered for the truth
6 of the matter asserted. It's being offered to show that
7 they were on notice that there had been complaints made. So
8 I'm going to allow that.

9 MR. THOMPSON: Thank you, Your Honor.

10 THE COURT: The next matter is evidence of Lack's
11 finances.

12 MR. THOMPSON: Yes, Your Honor. There's no relevance
13 for any financial data, financial information at all in
14 this case. If there's going to be a punitive exposure and
15 we can sidestep right now on that. Obviously, we're
16 requesting as we did in the answer that punitives be
17 bifurcated pursuant to statute. So if we get there then,
18 obviously, the only financial information that's relevant
19 for the jury is the net worth that's been well established
20 by case law. Now, Your Honor, in polling with regard to
21 financials, Mr. McLeod continues to represent, represent
22 that he has receipts. He does not have sales receipts. He
23 does not. He has totals for the lifeguard stands on a daily
24 basis. Receipts are, were provided. At the end of the day
25 Lack's would input them into the system, into their

1 accounting and then discard the receipts. So there's no
2 receipts. They're none. There's nothing, nothing to say
3 what anybody, when any of these receipts were taken. It's
4 also important for, Your Honor, to know that a lot of these
5 chairs are rented on multiple days, multiple weeks kinds of
6 concepts. So the actual numbers that you see for the daily
7 stands are not necessarily exactly what was done that day.
8 It accounts for the fact that a chair or chairs were
9 rented, but that rental may have actually occurred the day
10 before or three days before. but it's accounted for, for
11 that day. So the idea of asserting or allowing that there
12 is some amount of financial activity or the amount of
13 financial activity at each chair, there's no relevance at
14 all. All it is, is to inflame the jury and say look how
15 much money they're making. And it has nothing to do
16 whatsoever with what happened to Mr. Wolde.

17 THE COURT: Mr. McLeod? I'm sorry, you are muted.
18 There you go.

19 MR. McLEOD: I apologize, Your Honor. So other than
20 the franchise agreement, they're required to document to
21 the city what their sales are in a given period. Now, as --
22 I don't think -- you know, we asked for these finances and
23 we didn't first I believe get really any financial
24 information on the sales until approximately four months
25 ago. And we have very little data. There should be a lot of

1 data, but we have very little data. Of course, Lack's
2 didn't produce us any financial data, I don't believe. But
3 the sales figures for these lifeguards, they, it is
4 irrelevant to prove that they are not lifeguards. In
5 addition, the sales at these stands go to the pro, go to
6 prove feasibility and control. Our argument will be that
7 had you put real lifeguards on these stands this drowning
8 would not have happened. Because real lifeguards once they
9 knew that morning that they were high hazards of rip
10 currents would have warned, would have guarded, and would
11 have protected against those rip currents and if the
12 swimmer happened to get in the water and come in contact
13 with it anyway, they would provide rescue efforts.

14 And so, Your Honor, the sales figures will show just
15 how deeply in feasibility he could have done that which the
16 standard of care required him to do, Your Honor.

17 THE COURT: And for what timeframe are you trying
18 to enter this financial information?

19 MR. McLEOD: For the -- for the fiscal year of 2018
20 which is what they gave us. And I believe we've got some
21 2019. So that's the year of the death, Your Honor.

22 THE COURT: That's the year -- that was the year of
23 the drowning Yes, Your Honor,

24 MR. McLEOD: Yes -- Yes, Your Honor.

25 MR. THOMPSON: And --and that's a gross number, Your

1 Honor. Again, that's -- that's just classic. We don't get
2 into putting the company's financial information up for
3 jury's consideration. The only financial information is
4 relevant is the net worth on a punitive context. It -- what
5 -- again, you know, you're talking about 32 stands over 12
6 miles of beach and, you know, the revenue from those
7 stands, I mean, it's the classic look how much money
8 they're making and, therefore, they should be held
9 accountable. I mean, it is the classic.

10 THE COURT: Well, I mean, I think it is relevant to
11 the activities of the lifeguards and, you know, what
12 incentive there is to stress training and lifeguard
13 training over retail sales. So, you know, I'm having a hard
14 time saying it's not relevant. I think there is some
15 relevance other than just, oh, look how much money these
16 people make because it's specifically related to what the
17 lifeguards are doing during the day. So I'm gonna deny the
18 motion with respect to number four.

19 Number five, is any evidence about lifeguard
20 certification?

21 MR. THOMPSON: Yes, Your Honor, and this is
22 exceptionally important now that the city is out. And it
23 has everything to do with the statute, right. So the
24 statute that 15, I mean, 5-7-145, It says, "the city can if
25 it wants put lifeguards on the beach. It doesn't have to."

1 And then it says, "what the city, the municipality can or
2 may do with regard to its lifeguards." and importantly it
3 says, "under Section B(4) lifeguard personnel must be
4 tested and certified as required by the municipality,
5 right. So the municipality sets the standards for the
6 qualifications of the lifeguards not USLA. And in this
7 circumstance the qualifications and the franchise agreement
8 did not require USLA certification. So it doesn't matter
9 what USLA says or doesn't say it was not required.

10 Again, this is now with the city out, this is very
11 important because this is the city's agreement that we are
12 complying with. And the requirement is simply, we must be
13 tested and as required by the municipality. Now, the -- the
14 -- the training regimen, if you will, was provided to the
15 city in 2018 and they approved it and they said that is
16 fine.

17 Now, whether they actually trained them or not, that's
18 Mr. McLeod's argument that there's no evidence that they
19 did because there's no records. Now, we're going to have a
20 long line of witnesses that are going to testify it
21 actually happened. And it'll be up to a jury, I guess, to
22 decide whether the fact they don't have any records or not
23 means that they didn't provide the training or not. But at
24 the end of the day the requirements were submitted to the
25 city, the city approved them pursuant to the statute. It

1 doesn't matter what USLA says, right. And so then the
2 question is - and Mr. McLeod can get into whether we
3 actually trained pursuant to the regimen that was approved
4 by the city or not but whatever USLA says or whether they
5 agree with it or not doesn't matter. Now, initially,
6 obviously, the context I think in which Mr. Brewster was to
7 provide testimony was the fact that, you know, he takes
8 issue with the city's requirements, right. Hey, the city in
9 the first instance - this is not good and this is -- and,
10 you know, he sends the letter to the city in 2016 and says
11 you can't do this, right. But the city can do what it
12 wants, and in relation to the statute, how it wants. It
13 doesn't have to listen to Chris Brewster. Doesn't have to
14 listen to USLA. And so then Lack's is in compliance with
15 the agreement by providing the training the city approves
16 so ---

17 THE COURT: My recollection is that there are
18 specific things in the agreements like 40 hours of open
19 water training and being able to swim a certain distance in
20 a certain period of time. So Mr. McLeod, let me hear from
21 you, sir. Are you attempting to enter into evidence
22 additional requirements over and above what was required in
23 the franchise agreement?

24 MR. McLEOD: There are three things, Your Honor.
25 First as to the franchise agreement on page 4, "a

1 requirement is that they successfully completed course
2 consisting of a total of not less than 40 hours in open
3 world lifesaving which meet the criteria of the United
4 States Lifeguard Association." The fact that he is not
5 certified is admissible because if you're not certified and
6 you don't know what the criteria are then it makes it
7 believable why you didn't do it. And on the certification,
8 Your Honor, and -- and I don't want to beat a dead horse on
9 the city, but just so, Your Honor, knows what happened. In
10 1996, this guy George Lack had communications with USLA
11 which is the governing authority when it comes to
12 certification and training of how this job is to be
13 performed. They told him they had issues and problems with
14 the fact that he wanted to do concessions on the beach. He
15 wrote the USLA and he promised them that he would devote
16 enough lifeguards to the beach whose sole responsibility
17 was to be lifeguards. So USLA believes for many years that
18 that's exactly what's happening. The USLA because of all
19 the drowning in Myrtle Beach during lifeguard hours does
20 their own investigation into Mr. Lack's company and they
21 figure out that he is not doing that which he had
22 represented them that he would. So then you have
23 correspondence between Mr. Lack and the USLA where Mr. Lack
24 lies to the USLA and says I have a deal with this guy, Mr.
25 Brewster that I could do this. The USLA says, no, sir.

1 There is no such deal and your certification is revoked.
2 And in addition, the USLA had to write the city because
3 despite the fact the certification was revoked, there were
4 instances where the USLA believes they were falsely
5 representing to the public that they were "certified." And
6 so in addition to the requirements in a franchise agreement
7 the certification is part of the standard of care and in a
8 negligence action it is my burden to establish which we
9 have, Your Honor, the prevailing standards of care.

10 THE COURT: So help me understand because I think
11 there's two different things we're talking about. What the
12 franchise agreement requires is a course that is a USLA
13 approved course, is that what you would say? What the
14 exact language that it requires?

15 MR. McLEOD: That which meet the criteria of the
16 United States Lifeguard Association. In addition, Your
17 Honor, lifeguards are required to have, you know, adequate
18 a good vision hearing. They have to have a valid lifeguard
19 record which they did not. They have to be in good health.
20 There are additional requirements set forth it all which
21 come from the USLA standards.

22 THE COURT: I guess like I understand, you know,
23 you have to take a Red Cross Lifeguard Class like I -- so
24 it would be a class that you take like at the YMCA and at
25 the end you get your little Red Cross Lifeguard whatever

1 certification. So how does a -- how would the 40 hour open
2 water course, how would we determine whether it meets the
3 criteria of the USLA?

4 MR. McLEOD: Because the USLA what they do is it's
5 not just that they are the credentialing agency. They have
6 -- They do efficiency tests. They monitor. You have to
7 produce documents to them showing them that you are
8 training and that you're complying. Lack's, I believe,
9 maybe the only ocean lifeguard that is not certified by the
10 USLA. And the -- it would -- I don't know any other way to
11 say it other than that is part of the standard of care. And
12 if the city -- if the city mistakenly, which I don't think
13 they did, if they require him ---

14 THE COURT: Let me stop you just a minute.

15 MR. McLEOD: Yes, Your Honor.

16 THE COURT: I'm sorry, for about 30 seconds or a
17 little bit longer I lost all audio and video.

18 MR. THOMPSON: Right you went black, blank.

19 THE COURT: So are we all online now? Can you all
20 hear and see me, okay?

21 MR. THOMPSON: I can.

22 THE COURT: Okay. So I lost you -- I was asking,
23 how does one determine that a 40 hour open water course
24 meets the criteria of USLA and you were starting to answer
25 that Mr. McLeod?

1 MR. McLEOD: Yes, Your Honor. The USLA sets forth
2 how the training is to be conducted. And the USLA comes in
3 to make sure that the training was, in fact, conducted. So,
4 for example, in this case we have an email from Lack's to
5 the city - this is only, one only training records they've
6 been able to find and it says, "this is the training we're
7 going to do on this day," and it list lifeguards, but
8 that's it. There's no documentation that the training
9 actually happened and the USLA that is part of what they
10 do. They require you to demonstrate and prove on an ongoing
11 basis that the training is happening and the training is
12 happening pursuant to their standards. I mean, for example
13 you've got two kids from Poland which is near the Baltic
14 Sea which does not have tides and you have another kid from
15 Russia and there's the ocean in Russia. Here there are on
16 the Atlantic Ocean with a six foot tide and the standard of
17 care and lifeguarding is that the local environment is very
18 important to how you train. These kids had never had any
19 training and adequate for ocean water, open water
20 lifeguarding, Your Honor,

21 THE COURT: I mean, it sounds to me like there's a
22 jury question as to whether or not the training provided
23 met the criteria set in the agreement. I think I agree with
24 Mr. Thompson that requirements over and above what are
25 required in the agreement would not be relevant. But I

1 think that there is -- I think it'd be up to the jury to
2 determine whether their certification or their training met
3 what was required in the agreement.

4 MR. THOMPSON: Right.

5 THE COURT: Does that make sense?

6 MR. THOMPSON: And Your Honor -- I'm sorry.

7 THE COURT: Go ahead.

8 MR. THOMPSON: And that, obviously, when we start
9 talking about Chris Brewster of the USLA coming out to
10 testify about whatever their standards are, again, you hit
11 the nail on the head, right. I mean, the city's agreement
12 sets forth requirements which is what the statute says. The
13 statute doesn't say you have to have you USLA certified
14 lifeguards. It says the municipality sets the standards.
15 And so I think what Mr. McLeod has an issue with is whether
16 the city standards are appropriate or not. But at the end
17 of the day for my client the question is, did we meet the
18 standards set by the city, not by the standards set by
19 USLA. Then that is a ---

20 THE COURT: The agreement requires that they
21 training that they have to meet the criteria of the USLA.

22 MR. THOMPSON: Right. And so the training regimen was
23 submitted to the city and approved and the city said you
24 train to this standard and the important piece. Again, the
25 city said, I mean, we submitted a training regimen and they

1 said it's approved. And so, you know, the question of
2 whether they trained them and whether they trained them
3 correctly or not, I agree that's an issue for the jury. But
4 the idea that USLA should come in or Chris Brewster should
5 come in and say that it was an incorrect or improper or
6 should have been more, that sort of thing, again, that's
7 completely interfering or invading the province of the
8 municipalities decision under the statute to set a extreme
9 standards.

10 THE COURT: Yeah. I do think it's a jury issue as
11 to whether or not Lack's met the requirements of the 2018
12 agreement. I don't -- I think I put this under number five.
13 There was a motion to exclude social media reviews of
14 Lack's by unknown people.

15 MR. THOMPSON: Yes, Your Honor.

16 MR. McLEOD: We won't offer that, Your Honor. We've
17 agree not to do that.

18 THE COURT: Okay.

19 MR. McLEOD: Other than -- other than we've already
20 discussed, Your Honor.

21 THE COURT: You're talking about Mr. Tritt and ---

22 MR. McLEOD: Yes.

23 THE COURT: --- at some point he posted that on
24 YouTube?

25 MR. McLEOD: Yes, Your Honor.

1 THE COURT: The report of Tricia Yount as an
2 economic loss expert.

3 MR. McLEOD: I would agree to that. She won't be
4 testifying, Your Honor, so that's not an issue.

5 THE COURT: Okay.

6 MR. McLEOD: And the only thing I'll tell you about
7 the Google reviews is we don't intend to offer as evidence,
8 but obviously, if they try to offer that evidence then,
9 Your Honor, we would have the right to go in and prove the
10 opposite. I guess I should just mention that for the
11 record. I don't want to waive that.

12 THE COURT: Sure, if there's any opening of the
13 door. Anything else that we need to cover?

14 MR. THOMPSON: Yes, Your Honor. I have two additional
15 matters that, that haven't been necessarily briefed, but
16 will bring to the court's attention. One is, there's quite
17 a bit of discussion about North Myrtle Beach and what North
18 Myrtle Beach does. Again, you know, both the expert talks
19 about it. I think there's North Myrtle Beach materials.
20 There are a number of issues with regard to North Myrtle
21 Beach. Primarily, obviously, it's a different municipality
22 and it just under the statute can decide how it wants to do
23 things just like the city can, right. So North Myrtle Beach
24 over the course of time has decided to take its lifeguards
25 in house. In other words, they are city employees and not -

1 it's not a franchise situation. You know, that -- that's
2 what North Myrtle Beach has decided to do. It has no
3 relevance what the city had the opportunity to do and I
4 think, Your Honor, the city, obviously, being granted a
5 summary judgment, the city had the ability and the right to
6 make the decisions that it did to employ Lack's and
7 comparing or attempting to compare the city and/or a
8 situation with the City of North Myrtle Beach. It's really,
9 really prejudicial because the City of Myrtle Beach is not
10 in it anymore. So how can you compare anything the City of
11 North Myrtle Beach does to Lack's Beach Service which is a
12 private beach service company. So any information or any
13 evidence about what North Myrtle Beach does, I mean,
14 obviously, Lack's can't control its situation, its
15 franchise agreement is provided by the city. So any
16 information about the City of North Myrtle Beach, how it
17 does things, why it does anything, is not relevant to any
18 issue and the case - certainly not now that the City of
19 Myrtle Beach is out.

20 THE COURT: Mr. McLeod?

21 MR. McLEOD: Yes, Your Honor. The City of North
22 Myrtle Beach banded dual role lifeguarding because people
23 were drowning. And because it was commonly held universally
24 and unanimously in a quiet safe community, you can't do it.
25 And if you do it, people die so they get away with it. And

1 they did what the legislature suggested and that is they
2 took the people in house and they trained and they don't
3 dual role and they do a good job. As it relates to Lack's
4 itself, what North Myrtle Beach is doing is relevant to
5 prove the standard of care i.e. they are acting reasonable
6 and prudent under like or similar circumstances when it
7 comes to dual role lifeguarding and they are just up the
8 beach. So it is irrelevant as to Lack's own the standard of
9 care.

10 THE COURT: I'm gonna grant the motion to exclude
11 that for, again, I think it's the dual role is allowed and
12 contemplated by the statute. But I think it would be
13 admissible possibly for another reason just depending on
14 what comes out. In other words, if it's to refute a claim
15 that it just wasn't feasible or it was too expensive or
16 something along those lines.

17 MR. McLEOD: Your Honor, I would just point out that
18 the statute does not allow dual role lifeguarding. It
19 doesn't say that. It just doesn't.

20 THE COURT: And, I mean, I guess we just gonna have
21 to agree to disagree on this because it looks to me like
22 there's a lot of language in the statute about that you can
23 allow rentals, but it shouldn't interfere with the, the
24 enjoyment of the beach goes ---

25 MR. McLEOD: So -- so ---

1 THE COURT: --- and that's the way I read it.

2 MR. McLEOD: Can I just make one more comment, Your
3 Honor?

4 THE COURT: Sure.

5 MR. McLEOD: The state owns the beach and statute
6 authorizes municipalities to do two things on their beach
7 because without their authorization they can't do it. One
8 is, to perform lifeguard services. And two is, to do sales.
9 The statute does not say that your lifeguards can do sales.
10 My guess is the reason why the legislature did it was to
11 give the cities a way to make money to offset the costs of
12 putting real life guards on the beach.

13 THE COURT: I understand your argument.

14 MR. THOMPSON: Your Honor ---

15 THE COURT: What else do we need to address, Mr.
16 Thompson.

17 MR. THOMPSON: Yeah. The only other issue, judge, is
18 it goes back to the Tricia Yount and then Dr. Griffiths.
19 The only expert that's been identified in this case has
20 been Dr. Griffiths, specifically. That information was
21 provided as to what he would testify to and we were given
22 the opportunity, obviously, to take his deposition, we did.
23 There have not been other experts identified in the case or
24 any of their information provided as to who or what they
25 would testify about to give us the opportunity to

1 investigate and/or present our own experts. So we expect
2 that there will only be one expert at trial and that Dr.
3 Griffiths. We object to any other entity or individual
4 being identified or offering expert testimony in this case
5 as throughout now, two and a half years of discovery, no
6 other expert has been identified by plaintiff.

7 THE COURT: Mr. McLeod?

8 MR. McLEOD: Yes, Your Honor. Dr. Proctor is the
9 medical doctor who did the pathology piece on behalf of the
10 coroner's report. And the coroner's report, it's
11 statutorily required and I can't quote for, Your Honor, the
12 specific statute, but I'm very familiar with it. The
13 coroner brings in the medical piece to do the pathology
14 piece and then the pathology piece becomes part of the
15 coroner's report by statute. And so Dr. Proctor's report
16 should be admitted in evidence through the coroner. If Mr.
17 Thompson doesn't like that, then we'll just have to call
18 Dr. Proctor and he'll get his pathology report in and, of
19 course, we would qualify him as the expert that he is, Your
20 Honor.

21 THE COURT: Mr. Thompson?

22 MR. THOMPSON: Your Honor, again, this is why we have
23 discovery, right, so we can decide what we want to do, what
24 we want to investigate, what we want to depose, and whether
25 we need a corresponding or a refutable expert, right. And

1 as we sit here the only one in all of the discovery
2 responses is Dr. Griffiths. That's it. And, you know, going
3 through or going back now and then identifying an expert
4 for whom we can't reasonably have any time to depose and/or
5 refute with our own expert is highly prejudicial.

6 THE COURT: You've had the coroner's report
7 throughout the case, I'm guessing?

8 MR. THOMPSON: The coroner's report, I don't remember
9 when it was submitted or produced, but it has been
10 available.

11 MR. McLEOD: They have it for a few years.

12 MR. THOMPSON: But, again, there -- there are a lot of
13 people that could be potentially experts, right. They're
14 police. officers. There's firemen. There's ocean rescue.
15 There's a lot of people that could be identified as
16 experts, but the haven't. And we have a right to rely on
17 their discovery responses telling us who the experts are
18 going to be. If they're not identified we don't worry about
19 their expert testimony.

20 THE COURT: Mr. McLeod, anything else, sir?

21 MR. McLEOD: No, Your Honor.

22 THE COURT: So tell me what your intention is to
23 call the coroner?

24 MR. McLEOD: Well, so the coroner will testify and -
25 - but if Trey fusses about the pathologist report coming in

1 through her, then I'll just bring a doctor. I mean, I'm
2 trying to, you know, I do everything I can. And so they've
3 had Dr. Proctor's report for probably two years. I don't
4 see how there's any, any prejudice, I mean, he's a treating
5 physician because he took the body that was dead and he did
6 a pathology piece on it.

7 THE COURT: So are y'all objecting to Dr. Proctor's
8 live testimony?

9 MR. THOMPSON: No, Your Honor. I mean, again, Dr.
10 Proctor is -- I mean, I can -- he's a fact witness. He did
11 the autopsy. Testified about the facts.

12 THE COURT: So you're saying that you would object
13 to Dr. Proctor testifying as to cause of death?

14 MR. THOMPSON: Correct.

15 THE COURT: Yeah, I guess, given the fact that
16 you'd have the coroner's report from the beginning, I just,
17 I can't see that there's any unfair effect on the defense
18 since you've had that from day one. So, I mean, subject to
19 the, to the right foundation being laid, I can't exclude in
20 a motion in limine.

21 MR. THOMPSON: Thank you, Your Honor.

22 THE COURT: What else? Anything else we need to
23 address?

24 MR. THOMPSON: No, Your Honor. Obviously, there are --
25 I'm concerned about timing, you know, it keeps being

represented that, that we filed a motion for continuance last time. That's just not right. I mean, we brought to the court's attention the question of whether this case can be tried in four days 'cause this was on the Juneteenth holiday week. And Judge Burch took the bench and said in his 31 years of experience there was no way this case was going to be tried in four days and he continued it. And then, you know, I know Mr. McLeod has said it will take five days to try. So I'm concerned -- I can probably in my head based on subpoenas and everything else, count up Mr. McLeod's witnesses I've got about eleven or twelve I'm gonna have probably six or seven now that the city is out I might have eight. So we're looking at 20-ish witnesses. The experts testimony went four hours in his video. Now, you know, obviously, we have some significant objections and issues with that transcript and that video and Your Honor's rulings today, you know, I provided the court my client's excerpts, my clients objections, and, and obviously, my concern was that the excerpts and/or the objections might change depending upon Your Honor's rulings this morning and I think they absolutely will. So I'm going to have to take some amount of time to go back based on your rulings and, obviously, with the city being out, there's going to be some, probably some testimony and some excerpts that won't be relevant. We're just gonna have to take an amount of

1 additional time to go back through that transcript and
2 perhaps submit additional objections and/or excerpts. So
3 that's -- that's -- just giving the court -- we got some
4 concerns there. And it's gonna take some time to work
5 through those.

6 THE COURT: Well, the issue that we have is on
7 Saturday of next week, so a week from tomorrow I am flying
8 to Italy and I have

9 MR. McLEOD: Can I go? It sounds like fun.

10 THE COURT: Y'all are making me wish I was flying
11 tomorrow.

12 MR. McLEOD: I apologize, Your Honor.

13 THE COURT: This is my, May of 2020 trip for my
14 25th wedding anniversary that has now been - I think this
15 is our fourth itinerary - looks like it's now actually
16 going to go and so I'm gonna be gone for two weeks. I don't
17 know that I've ever taken a two week vacation, but I'm
18 taking a two week vacation. And so if we don't get done
19 with this trial we're gonna have mess. Mr. McLeod, tell me
20 what your thoughts are?

21 MR. McLEOD: We'll get it done, Your Honor.

22 THE COURT: I mean, yeah, I am willing to start
23 early and go late, but I think that everybody needs to
24 understand that we're, we're gonna have some time
25 constraints or you guys are going to have a real mess if we

1 do not finish this case on Friday afternoon.

2 MR. McLEOD: We're willing to start as early as Your
3 Honor will have us and stay as late as Your Honor will have
4 us, Your Honor.

5 MR. THOMPSON: And, Your Honor, I, you know, again,
6 just for the purposes of timing, you know, I'm trying to
7 figure out, you know, when my witnesses should be
8 available. I'm trying to figure out when Mr. McLeod will,
9 you know, more than likely finish his side of the case. I'm
10 having a hard time figuring that out.

11 THE COURT: Well, I've got a number of things that
12 we scheduled next week that I'm just gonna move. Minor
13 settlements. They scheduled me for a non-jury hearing, I
14 don't know why it seems that, everybody seems to think that
15 I'm the only one who can hear that case on a non-jury road
16 closure with pro se parties. I guess, I understand why.
17 The out-of-town judge needs to hear that one. So I'm going
18 to move everything else that I've got for next week so that
19 we can start at 9 o'clock every day. And we'll just have to
20 tell the clerk's office that we're going to need to have a
21 quick lunch break for these jurors and that we're going to
22 have time constraints. I might go ahead and contact the
23 court reporter just so that he or she can be prepared for
24 that.

25 MR. McLEOD: Thank you, Your Honor.

1 MR. THOMPSON: Thank you, Your Honor.

2 THE COURT: Okay. If you guys will certainly go
3 ahead and extend voir dire so we'll be ready to go. I think
4 the jury is not coming in till 10 on Monday. I usually like
5 to be there for qualification so we can jump right in.

6 MR. McLEOD: We'll be ready, Your Honor.

7 THE COURT: All right. Thank y'all.

8 MR. McLEOD: Thank you.

9 MR. THOMPSON: Thank you, Your Honor.

10 (CONCLUSION OF HEARING HELD ON JULY 22, 2022)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifteenth Circuit for Horry County, South Carolina, on the 22nd day of July, 2022.

That said proceedings are transcribed to the best of my ability from the audio recording and supporting information.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

s/ Lisa S. Carter

Lisa Carter

Circuit Court Reporter

September 15, 2022

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF HORRY) TRANSCRIPT OF RECORD
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4 MESWAET ABEL, AS PERSONAL)
5 REPRESENTATIVE OVER THE)
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E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

Plaintiff's Exhibit

No.	Description	ID.	REC'D
1	Survey	108	111

Court's Exhibits

No.	Description	ID.
1	Jury Note	127

1 P R O C E E D I N G S

2 (Whereupon, the following proceedings started at 12:02
3 p.m.:)

4 PRE-TRIAL MOTIONS/MATTERS OF LAW

5 THE COURT: All right. Where shall we start?

6 MR. WILSON: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. WILSON: May it please the Court, Your Honor? I'm
9 Cooper Wilson. Nice to see you today. We have -- the
10 plaintiffs have designated deposition transcripts from two
11 different witnesses, Your Honor. One is named Julian
12 Chandler. He's a fact witness from Illinois who is in active
13 duty. The deposition cumulatively lasted, I would say, about
14 an hour. We have designated portions of his transcript. The
15 attorney for Lack's has made some objections. He's designated
16 portions of his cross-examination of Mr. Chandler.

17 We also have Dr. Tom Griffiths, who is our expert. That
18 will be probably longer, I would imagine.

19 The purpose of today, Your Honor, we plan to play both of
20 these via video, and, unfortunately, in today's time, we can
21 cut them; we just have to let our IT person, give them about a
22 day to cut them so we don't waste the jury's time tomorrow.
23 Our intention is to call both witnesses tomorrow. So,
24 respectfully, we would like to at least go over the
25 designations and the objections today procedurally, so we can

1 have them cut and be ready to roll tomorrow. That's all we're
2 trying to do.

3 THE COURT: Okay.

4 MR. WILSON: If you would like, Mr. Chandler is shorter.
5 I have provided the Court, I believe to your law clerk, Jack,
6 our designations. Mr. Thompson provided you with his
7 depositions. I think in the notebook I handed up, I believe,
8 is the transcript. For all intents and purposes, we
9 designated our entire examination of Mr. Chandler, and, for
10 all intents and purposes, Mr. Thompson identified his entire
11 cross-examination.

12 So, if you don't mind, they're his objections. And so if
13 you want me to address each of his objections, I will, or if
14 you want him to -- I know what they are because he's told me
15 in this form, or you can hear from him and then I'll respond;
16 however you'd like to do it.

17 THE COURT: Let me hear from Mr. Thompson. And then
18 let's try to not address each objection, like, four times. If
19 I can hear from y'all preferably once each on the objections
20 so we can try to get through as much as possible.

21 MR. WILSON: Before you jump in, just as a reminder: A
22 lot of these objections appear to be leading, Your Honor. The
23 rules allow you to lead as long as you're going to move along
24 in the deposition, under the rule.

25 Mr. Chandler was active duty, who was right in the middle

1 of planning something for the country and agreed to do a
2 deposition, so Mr. McLeod took his deposition and the best he
3 could to speed it along for him. Mr. Thompson had any chance
4 he wanted to cross-examine him on any of his qualifications or
5 whatever foundational arguments he has. I'm just trying to
6 put into perspective how the deposition was taken so it makes
7 sense.

8 THE COURT: Mr. Chandler was a bystander?

9 MR. WILSON: He was, yes, ma'am.

10 THE COURT: Okay. Mr. Thompson?

11 MR. THOMPSON: Thank you, Your Honor. May it please the
12 Court? Your Honor, I had previously provided a copy of our
13 objections. They were sent by email; I hope you have them.
14 This was all done yesterday, and so everything is in
15 electronic format. I don't have any hard copies,
16 unfortunately, to hand up to you, Your Honor.

17 THE COURT: Let's see. I have, I think, received --

18 MR. THOMPSON: And, Your Honor, in all honesty, we can
19 just go through the transcript, and when we hit my objections,
20 the excerpts that I --- or the objections I provided you are
21 simply the objections that are in the transcript. So having
22 that actual designation, I mean, all we have got to do is go
23 through the transcript and hit every objection as they come
24 up, and that will cover it.

25 THE COURT: Yeah, I'm looking -- I do see the -- I see

1 plaintiff's designation and defendant's designation and
2 objection to plaintiff's designation as to Mr. Griffiths. And
3 it may be that I -- these were filed when?

4 MR. THOMPSON: They were not filed, Your Honor. These
5 were sent by email yesterday afternoon.

6 THE COURT: Okay. Then I would not have those.

7 MR. THOMPSON: Okay. Well, it will be easy enough,
8 Judge, to just -- if you have the transcript in front of you,
9 we can work through the transcript.

10 THE COURT: Okay.

11 MR. THOMPSON: Your Honor, again, as a bit of background,
12 this is Julian Chandler. He's a witness on the beach, and
13 he's providing testimony in that context.

14 The first objection is on page 8, line 14. And
15 Mr. Chandler is in the military and so then he is asked the
16 question that you see there. The objection is leading,
17 relevance, and foundation. He's talking about training and
18 certification for safety purposes in the military.

19 THE COURT: Okay.

20 MR. THOMPSON: Has no relevance to this case.

21 THE COURT: Mr. Wilson?

22 MR. WILSON: Yes, ma'am. May it please the Court? He's
23 a master sergeant in the Air Force. He has personal
24 observations about training and certification. You can ask a
25 question that doesn't suggest the answer. He can say yes or

1 no. And it is relevant to this case because he has experience
2 in training and certification.

3 THE COURT: He's not offering any expert testimony --

4 MR. WILSON: No, ma'am.

5 THE COURT: -- on the training and certification. He's
6 strictly a fact witness to testify about what happened?

7 MR. WILSON: But that's based on his personal experience
8 in life. We asked the jury to bring in your real-world common
9 sense, what you have gone through in your life, and that's
10 what he's gone through in his life. That's his everyday
11 experience.

12 MR. THOMPSON: Your Honor, there's not just this one
13 question, but there's a series of questions that they elicit
14 with regard to his experience in the military, training in the
15 military, training for safety purposes, and the whole concept
16 here is to somehow bootstrap that somehow the military has a
17 training system or safety program to then compare it to the
18 program here. And it's not relevant. He's not an expert. He
19 wasn't qualified as an expert.

20 Whether the military trains and in what context, that's
21 the other problem. It's the broadest question of all: "Do
22 you train for safety purposes?" "Yes." And then you get into
23 these other questions, and they're very -- again, have nothing
24 to do with the relevance of this case.

25 THE COURT: I'm going to -- I need to read a little more

1 to kind of get a flavor of what we're doing here, but I'm not
2 going to allow Mr. Chandler to testify about the training or
3 whether he thinks his training was sufficient or anything like
4 that. If he is a fact witness who is testifying about what he
5 observed, then I can't imagine I'm going to let him offer some
6 kind of opinion as to whether he thought somebody was well
7 trained or what his training is.

8 MR. WILSON: Yes, ma'am.

9 THE COURT: So I think I need to see a little more of
10 what the testimony is before I give you my final answer.

11 MR. WILSON: Your Honor, if I may just very briefly. He
12 doesn't make the correlation. He just -- I mean, this is just
13 his background about training. He doesn't say, "Based on my
14 experience, they were trained or not trained." He's just
15 bringing his background to his testimony, and that forms the
16 basis by which he's out on the beach, what he saw, what his
17 experience is in life. He's not offering an opinion that they
18 were trained or were not trained.

19 THE COURT: Yeah, I'm going to look at his answer:
20 "Safety saves lives, in short, both from an individual
21 involved and people trying to assist with task safety is there
22 for a reason." I'm not going to not allow that to come in
23 front of the jury. Again, he's a fact witness. He's not an
24 expert witness. And that looks like it is from line 16 on
25 page 8.

1 I'm guessing the next question on page 9. Again, "Based
2 on your experience, when it comes to safety, is prevention
3 normally the first priority to any type of injury?"

4 MR. THOMPSON: Yes, Your Honor. It really -- it starts
5 on page 8. The first question is elicited at line 11, and
6 then it's just a series of questions from that point: Page 8,
7 line 11, through to page 9 -- actually, page 10, line 7. If
8 you take out all of that, that's all his military questions
9 and their training and that sort of thing, and it picks up
10 again in the summer of 2018, "Did you go to the beach?" So if
11 we take those questions and answers out, that takes care of
12 the military and the safety questions that were being asked.

13 THE COURT: Yeah, I don't find that those are
14 appropriate. So, again, that's excluding page 8, line 16
15 through page 10, line 7.

16 MR. THOMPSON: Well, Your Honor, again, page 8, line 11.

17 THE COURT: I got you. Yes.

18 MR. THOMPSON: And that's through page 10 --

19 THE COURT: Line 7. Okay.

20 MR. THOMPSON: The next one is on page 14, Your Honor.

21 THE COURT: Okay.

22 MR. THOMPSON: The objection is at line 16 as to the
23 question that starts on line 10. The objection is to -- it's
24 leading, relevance, foundation. I think I may have said
25 mischaracterization in my pleading. It's basically -- and,

1 again, "Did you receive any warnings of any kind that you were
2 to believe that the swimming conditions were unsafe that day?"
3 Again, it's -- there's no foundation at all for that in that
4 testimony. Additionally, Your Honor, again, it's leading.
5 It's not asking him the question about what he saw, what he
6 observed that day. So leading, foundation, and, again, "When
7 you say that the swimming conditions were unsafe," that hasn't
8 been established.

9 THE COURT: Mr. Wilson?

10 MR. WILSON: Your Honor, this is simply -- the question
11 was, "Were you warned that day?" Lack's Beach Service knew,
12 as of that morning, that there were riptides and longshore
13 currents all day. We're asking a witness, "Did you?" And
14 then the answer is, "Yes, I did," then okay. His answer is,
15 "No, I didn't." It's an open-ended question. It doesn't
16 suggest the answer.

17 THE COURT: I'm going to allow it in.

18 MR. THOMPSON: Then the next objection is, just down,
19 Your Honor, again, the question is -- it's a leading question:
20 "The fact that there were people in the water, did that lead
21 you to believe that the conditions were safe?" I mean, again,
22 it's a problem with the way that these questions are asked
23 over and over again, that the answer is really not for him,
24 other than to say yes or no.

25 THE COURT: Again, I'm going to allow that one.

1 MR. THOMPSON: Page 15, Your Honor. The objection at
2 line 12 goes to the question at line 8, and it talks about
3 "For the first time you saw Mr. Wolde in distress." Your
4 Honor, that is a mischaracterization of his testimony. His
5 testimony absolutely, 100 percent is, "The first time I saw
6 Mr. Wolde, he was unconscious, he was not responsive, he was
7 not doing anything other than being carried to the beach." So
8 that is an absolute mischaracterization of the testimony.
9 Mr. Chandler never says at any time that he ever saw Mr. Wolde
10 in distress.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: Your Honor, it's not a mischaracterization
13 at all. And, second of all, any of these questions are
14 subject to cross-examination on what did you see? He
15 testified that he looked out there and saw Mr. Wolde being
16 held in, in chest-deep water. And the simple question is:
17 "Did you see any life safety hazards?" He could have said,
18 "Yes, I went in the water and there were rip currents
19 everywhere. I shouldn't have let my family go in." He said,
20 "No, I didn't see anything." It's not a mischaracterization.
21 It's totally relevant. It's based on his personal observation
22 of what he saw.

23 MR. THOMPSON: Your Honor, I challenge them to show Your
24 Honor where he said he saw Mr. Wolde in distress. It doesn't
25 exist. He was lifeless, he was nonresponsive, he was being

1 pulled in when he first saw him. Two people had him, pulling
2 him in. He was never in distress.

3 THE COURT: And I'm guessing that you, on cross, bring
4 that out, elicit that testimony from Mr. Chandler?

5 MR. THOMPSON: It was established just as I described,
6 Your Honor. The first time he sees Mr. Wolde, he is
7 non-responsive, he is being carried into the beach by two
8 others.

9 THE COURT: Again, I'm going to allow it. I feel certain
10 you would have brought out on cross the fact that he didn't
11 see him until he was actually unconscious.

12 MR. THOMPSON: The next one, Your Honor, is on page 19.
13 It's -- the question starts at line 14. And the basis for the
14 objection is leading, foundation, and speculation, Your Honor.
15 He's being asked -- the witness is being asked -- and actually
16 not even being asked. He's being told that a woman dropped
17 the child because she was tired, exhausted, and that's why she
18 dropped the child and was still in the water.

19 Again, this is not an objective direct examination
20 question: What did you see, what was the child doing? This
21 is the woman that was bringing the child out appeared
22 exhausted to you and she dropped the child because of that.
23 That's pure speculation.

24 THE COURT: Well, it looks like he just got through
25 saying that the lady that pulled her up was exhausted as well.

1 MR. WILSON: Yes, ma'am, that was going to be my response
2 is that this is exactly -- this is the circle back as to
3 what's just been testified to.

4 THE COURT: I'm going to allow it.

5 MR. THOMPSON: Your Honor, the same objection goes to
6 page 20, line 5. It's just another leading, foundation,
7 speculation. I understand that probably it circles back to
8 your recent or previous ruling.

9 THE COURT: Yeah, I'm going to allow that in as page 20,
10 line 2.

11 MR. THOMPSON: On which side?

12 THE COURT: Page 20, starting at line 2. Your objection
13 at line 5.

14 MR. THOMPSON: Correct. I understand that one is
15 overruled.

16 Page 21, Your Honor. All right. So, page 21, the
17 witness is asked just generally what happened next. And then
18 the witness then describes what was happening. He describes a
19 nurse coming in and then the nurse saying that Mr. Wolde had a
20 weak pulse. That's hearsay. I move to strike and really,
21 technically, the answer that involves the hearsay aspect of
22 it, but it's classic hearsay.

23 THE COURT: Mr. Wilson?

24 MR. WILSON: Your Honor, the question was simply: "Share
25 with the ladies and gentlemen of the jury what happened,"

1 which she did. And what was said by a nurse is a present
2 sense impression. It's not hearsay. She is helping somebody
3 perform CPR on the beach. That is the definition of not
4 hearsay. It's a present sense impression. And he was in her
5 presence helping her. This is in the moment. This is not
6 hearsay.

7 THE COURT: I think it probably -- between present sense
8 impression and being excited utterance, I can't imagine
9 anything more stressful than doing CPR on an unconscious
10 person at the water's edge. So I'm going to allow that in as
11 an exception, again, either present sense impression or
12 excited utterance.

13 MR. THOMPSON: 22.

14 MR. WILSON: You withdrew that one.

15 MR. THOMPSON: Yeah, I'm withdrawing 22.

16 Page 23, the objection is at line 10, and the question
17 starts at 8: "Did the lifeguard, based upon your personal
18 observations, appear to be competent?" Mr. Chandler has no
19 qualification to gauge the competency of a lifeguard
20 whatsoever. That's an opinion. There's no foundation at all.

21 THE COURT: Mr. Wilson?

22 MR. WILSON: Your Honor, he's not offering testimony that
23 anybody violated any sort of standard of care. In every part
24 of our everyday life, we encounter things, and based on our
25 experience, we say that person didn't appear competent in

1 their job, whether they're bagging groceries or responding to
2 us at the store. "In my view, the way I look at it, he didn't
3 appear competent." And then he explained why. To him, he
4 looked like a deer in the headlights. That is a fact witness
5 about how a person appeared to a witness. He's not saying, in
6 my opinion, he's not competent or violated the standard of
7 care.

8 THE COURT: Yeah, I'm going to exclude that, on page 23
9 from line 8 through line 14. I mean, I'd be fine with him
10 just saying he was standing there with the crowd but not the
11 part where he says "with no clue what to do."

12 MR. WILSON: May I ask, Your Honor: If we're able to
13 edit it and simply take out the last part which says "with no
14 clue what to do," would that satisfy your ruling?

15 THE COURT: The question: "Did he appear to be
16 competent," I'm not allowing in. His answer: "To answer your
17 question, sir, no," I'm not allowing in.

18 I mean, the part where he says, "To use the phrase
19 loosely, looked like a deer in the headlights," I don't have
20 any problem with that. And "he was standing there with the
21 crowd," I don't have any problem with that. But the comment
22 about his -- where he appeared competent and with no clue what
23 to do, I'm excluding.

24 MR. WILSON: So just so I'm clear, we can play in "to use
25 the phrase loosely, looked like a deer in the headlights. He

1 was standing there with the crowd."

2 THE COURT: Correct.

3 MR. THOMPSON: Is the question -- I mean, the question is
4 going to be for that answer or --

5 THE COURT: The question is not coming in. So lines 8,
6 9, 10, and 11 through when he says, "To answer your question,
7 sir, no. That is excluded." Line 14 is excluded.

8 MR. WILSON: Okay.

9 MR. THOMPSON: Your Honor, the trouble is, there's then
10 no question for that one sentence in that answer to be related
11 to. The whole answer is related to the question.

12 MR. WILSON: Your Honor, the question before it ties in
13 perfectly: "And what do you recall, if anything, that the
14 lifeguard did to help or assist Mr. Wolde with anything during
15 this particular period of time?"

16 "Mr. Wolde, in particular, sir? Nothing."

17 And then you follow it with, "To use the phrase loosely,
18 he looked like a deer in the headlights. He was standing
19 there with the crowd." It flows with that.

20 THE COURT: I mean, I'm going to allow in his personal
21 observation but not the rest of it.

22 MR. WILSON: Thank you, Your Honor.

23 MR. THOMPSON: Page 24, line 5 has to do with the
24 question that starts back on page 23. He's being asked
25 whether the nurse performing CPR, was she able to get oxygen

1 into his lungs and then the sand and the water within his
2 lungs were compromising his breathing. Your Honor, there's no
3 foundation whatsoever. Mr. Chandler admitted he has no
4 medical training. It's an absolutely leading question. I'm
5 pretty sure he wouldn't have even come up with that
6 information but for the leading question, providing all that
7 he needed to answer, which is yes.

8 THE COURT: Mr. Wilson?

9 MR. WILSON: Your Honor, well, first of all, as a master
10 sergeant, he is trained in CPR, number one. But number two
11 is, it's what he personally witnessed. You can look at
12 somebody and see --

13 THE COURT: And I don't have any problem with that, but
14 the issue is -- but your question is, "Based on what you
15 observed with the nurse performing CPR, did it appear that she
16 was able to get" -- I mean, it's pretty leading, wouldn't you
17 agree?

18 MR. WILSON: Well, I think he can say -- the answer would
19 be -- we're not suggesting to him that she was or she wasn't.
20 No, it didn't appear that way, or yes, it did. I mean, you're
21 allowed under the cases simply if it doesn't suggest the
22 answer. He can say "yes, it did" or "no, it didn't." It's
23 what he observed happened.

24 THE COURT: It looks to me like it's suggesting exactly
25 the answer.

1 MR. WILSON: Simply: "Did it appear she was?" And he
2 could say, "No, it didn't appear that way to me" or "yes, it
3 did."

4 MR. THOMPSON: Your Honor, it's a very specific question,
5 talking about compromised breathing and what water was going
6 in and what water was coming out. Again, it's a very
7 technical question.

8 THE COURT: I'm going to exclude that. Again, this is
9 not, "What did you see?" It was, "Did you see A, B, C?" And
10 he says, "Yes, I saw A, B, C."

11 MR. WILSON: Would you allow the answer in? "I can say,
12 from what I could see, the compressions were causing the water
13 and sand to come out"? That's what he saw, that "Once the
14 compressions were being released, it was being sucked back
15 in?" "Yes, sir."

16 THE COURT: I think it's worse to not have the question
17 and just allow the answer because, at least if we allow the
18 question and the answer, the jury can observe that that's the
19 exact question that was asked.

20 MR. WILSON: Yes, ma'am.

21 THE COURT: So I'm excluding page 23, line 25 through
22 page 24, line 10.

23 MR. WILSON: Thank you, Your Honor.

24 MR. THOMPSON: I think the next one, Your Honor, is at
25 page 26, line 15. Your Honor, the question, again, it would

1 have been nice if he asked the question, "Did you know
2 anything about where Ms. Wolde went into the water?" "No."
3 Right?

4 Instead, the question is: "You learned or it's your
5 understanding that Mr. Wolde had gone into the water some
6 distance to the north of where he's brought out of the water."
7 The objection is for leading. It's also hearsay, Your Honor.
8 It was never established for where he got that information
9 from. Where was he told that? He didn't observe that
10 himself.

11 MR. WILSON: Your Honor, if I may.

12 THE COURT: Mm-hmm.

13 MR. WILSON: "Was it your understanding" is the exact way
14 you ask any witness that question. "Based on what you saw,
15 based on understanding of what you saw."

16 THE COURT: Well, I thought y'all said that he did not
17 see Mr. Wolde until he was actually pulled out of the water.

18 MR. McLEOD: Your Honor, he also testifies that the
19 reason he believes that is, because once Mr. Wolde was pulled
20 out of the water by the bystanders and once his daughter was
21 pulled to the shore by the bystanders, the nurse started doing
22 CPR, and it took so long that a crowd then assembled, and
23 that's when he first noticed the lifeguard that was talking to
24 the two people in the umbrella line.

25 And then he saw the mother and the son, Adam, coming from

1 the north, running down to the crowd. Your Honor, where Adam
2 and his father and his daughter -- and the sister went into
3 the water, a bystander was able to provide assistance to Adam,
4 and he was able to get out of the rip current, come back to
5 shore, go get Mom, and then run down the beach. And he
6 testifies that he saw Mom and the son coming down the beach
7 from the north.

8 And he testifies about him stopping the son, because he
9 also has a young son, and did not want Mr. Wolde's son, Adam,
10 to see his father lying on the beach in that condition, Your
11 Honor. So he has personal knowledge of all of that.

12 THE COURT: I'm not going to allow the question about if
13 he didn't see him in the water -- and I understand it's maybe
14 circumstantial to where he went in, but he didn't see him go
15 in the water. He only saw him come out of the water. So I'm
16 going to exclude page 26, line 11 through line 17.

17 MR. THOMPSON: The next one, Your Honor, I think is at
18 the bottom of 26, line 25. I believe that one is withdrawn.

19 Then 27, line 8. The objection -- the question was:
20 "When the pickup truck arrived, had Mr. Wolde already passed
21 away?" There's no foundation. It's speculation. There's no
22 information that Mr. Chandler did anything to assess or was
23 even capable of assessing whether Mr. Wolde was dead or not.
24 Mr. Wolde was not even pronounced dead until at the hospital.

25 So this question, "When the pickup truck arrived, had

1 Mr. Wolde already passed away," he doesn't have the -- the
2 foundation has not been established for him by that answer.

3 THE COURT: I'm going to allow it, because he says, "I
4 couldn't say. I'm not a medical professional." And then he
5 just goes on to talk about what he personally observes, so I'm
6 going to allow that.

7 MR. THOMPSON: Page 27 is the question; the objection is
8 on page 28. "Do you know that there were rip currents that
9 were present that day?" He said he was told after the fact.
10 "Sir, that is hearsay." There's no exception for that
11 information.

12 THE COURT: Mr. Wilson?

13 MR. WILSON: His understanding of rip currents can come
14 from any source. That's his personal understanding of what
15 happened, if there were rip currents that day.

16 MR. THOMPSON: He said he was told.

17 THE COURT: Well, I mean, someone has now since told him
18 that there were rip currents that day, and he says, "I was
19 told after the fact. I don't know by whom."

20 MR. WILSON: He can testify based on -- I mean, the
21 entirety of the situation. He is on the beach providing CPR,
22 figuring out what's happening in the moment. He was told that
23 there were rip -- I mean, it's his understanding of what
24 happened. They can come from any source. It's not being
25 offered for the truth of the matter asserted. That was his

1 understanding.

2 THE COURT: Yeah, I'm not going to allow page 27, line
3 25, through page 28, line 4.

4 MR. THOMPSON: The next -- it's the next question, Your
5 Honor. And Mr. Chandler is asked whether the beachgoers
6 should have received a warning -- a life safety hazard warning
7 that day. He is being asked for an opinion. This is an
8 aquatic safety expert opinion, what a lifeguard or a City
9 should or shouldn't -- or would have or should have done on
10 this particular day. Your Honor, there is no foundation.
11 It's leading. But, most importantly, he's being asked
12 essentially the ultimate opinion here about warnings, and he's
13 not an expert.

14 THE COURT: Mr. Wilson?

15 MR. WILSON: Your Honor, he doesn't have to be an expert.
16 He's not testifying as to what the standard of care is. As a
17 citizen, as a human, we make complaints about lots of
18 different things in our everyday life. He's out there on the
19 beach, and, through all this, notices that people are dying,
20 the water's rough, there's a rip current -- there's a
21 longshore current. "Sir, based on what you observed, should
22 people have been warned about this?"

23 I mean, he can cross-examine him on the basis of that he
24 wants to, but citizens have the right to make complaints about
25 anything. It's not an expert opinion. He's on the beach. He

1 can make -- based on what he observed, based on this
2 interaction, based on multiple people, not lifeguards, going
3 out into the water to save somebody, what he saw and what he
4 experienced, he can say that people should have been warned.

5 MR. THOMPSON: I mean, there's no foundation, Your Honor,
6 at all.

7 THE COURT: Yeah, I'm not going to allow that. From page
8 28, line 5, through line 16.

9 MR. THOMPSON: Your Honor, the next one is at the bottom
10 of page 28. The objection is to the question that starts,
11 "Can you share with the ladies and gentlemen what you have had
12 occasion to witness as far as other lifeguards at other
13 beaches providing warnings to swimmers?"

14 Again, Your Honor, the -- Mr. Chandler's experience in
15 another beach, one of the things that we will learn or will be
16 instructed by Dr. Griffiths, the expert, is that every beach
17 is different. They're not the same. That's why you train to
18 the beach. You train to the locality. You train to the
19 conditions that you see.

20 For example, in the Northeast, I have been where you have
21 flags, and you swim between the flags. We can't swim outside
22 the flags. We don't have that here in South Carolina.

23 So, then, to bootstrap or suggest somehow, from a lay
24 witness, that somehow something that's being done in another
25 beach should be done here, one, it starts to sound like expert

1 witness because, in some form or fashion, you should be doing
2 something similar here to what's going on up there. The fact
3 that he experienced something different in another location is
4 not relevant at all to our location. If he had been here and
5 had some experience, maybe then we can talk about it, but when
6 you're talking about another location altogether and when you
7 have their experts saying every location is different and you
8 have to train to the specific location and you have to guard
9 to the specific location, you have to staff to the specific
10 location, whatever happened somewhere else is not relevant.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: Your Honor, you have to put this deposition
13 in context, number one. Throughout this deposition -- this
14 case, they have asked the mother, the children, "Have you been
15 to other beaches before? What do they do at other beaches?
16 Are you familiar with flags? Have you seen rip currents?"

17 If they plan to not ask our witness anything about prior
18 experience at any other beach or their understand of basic
19 things, then fine. But, here, this is a witness. He's not
20 saying you have to do it this way. He said, "I have been to
21 other beaches before." He doesn't say that's necessarily
22 right or necessarily wrong. It's his personal observation.
23 It is fact witness testimony.

24 THE COURT: It looks very much to me like -- I mean, the
25 purpose of this is to say this is what they should have done

1 here. In fact, you ask him, "Is that for safety reasons?" So
2 it's looking very similar to expert testimony here, eliciting
3 certainly an opinion from this witness.

4 MR. WILSON: At least as to this question on page 28 and
5 he answered on page 29 is simply, "Have you been to other
6 beaches and what do they do?" That's asking "have you." And
7 they plan to make that part of their entire case.

8 MR. McLEOD: Your Honor -- and this is Mr. McLeod. If I
9 can also just add for the record -- he's a lay witness --

10 THE COURT: And I'm glad to hear from you, but can't --
11 you can't double-team me on every objection.

12 MR. McLEOD: I understand. Yes, ma'am.

13 THE COURT: So I don't have any problem with page 28,
14 line 17 through 22. I do have a problem with page 28, line
15 23, and his answer going through line 15.

16 MR. THOMPSON: And really, Your Honor, it's the whole
17 line of questioning. Every question is objected to down
18 through the bottom of page 29.

19 MR. WILSON: Your Honor, I would just offer under the
20 rules, under Rule 701. Lay witnesses can give opinion
21 testimony based on their rational -- based on their perception
22 to help them clearly understand the witness's testimony and do
23 not require special knowledge. He's not offering the standard
24 of care for lifeguards. He can offer what he's seen in the
25 past.

1 THE COURT: He's giving a pretty good imitation of it.
2 So I'm going to exclude from page 28, line 17, through page
3 29, line 24. Basically all of page 29.

4 MR. THOMPSON: Your Honor, the next objection is on page
5 30. It's the next question. In essence, Mr. Chandler is
6 testifying that he was located in a certain area of the beach
7 when he heard a yell and that he then responded. His
8 testimony is that there was a lifeguard about 20 feet, 30 feet
9 behind him.

10 And so then he's asked the question: "Can you think of
11 any reason why he -- that lifeguard could not have heard the
12 same yells that you heard?" Your Honor, that's pure
13 speculation. Again, sound is not infinite and indefinite.
14 Right? I mean, he's not an expert on audio signals. And if
15 you heard it at that, what's to say that it can be heard 20
16 feet later? What's to say the level of the audio 20 feet
17 later? And then suggesting that that person at that location
18 could have, should have heard something is absolutely pure
19 speculation.

20 THE COURT: I mean, I'm going to allow that. I think
21 it's within the basic common knowledge of a layperson. I'm
22 going to allow it.

23 MR. WILSON: That really goes to the same one, I think,
24 in 15.

25 MR. THOMPSON: Yeah. So, Your Honor, I would assert the

1 same argument for the objection at line 19. I understand Your
2 Honor's ruling on the prior one. It's essentially the same.

3 THE COURT: Yeah, I'm going to allow that. Basically all
4 of page 30.

5 MR. THOMPSON: Then the next one is on page 32, Your
6 Honor. So Mr. Chandler was being asked questions about police
7 officers and what they were doing on the beach. He was asked
8 the question: "The police officers weren't focused or
9 interested on what the lifeguards were doing; is that
10 correct?"

11 Well, first of all, any time you end a question "is that
12 correct," that's a leading question, and that wasn't something
13 that Mr. Chandler offered and then they were trying to
14 correct. It's testimony that was directly provided to
15 Mr. Chandler and he simply agreed with it.

16 And then, on top of that, Your Honor, what the police
17 officers were doing, I'm not sure what the relevance are.
18 Police officers are not Lack's Beach Service. Police officers
19 are employed by the City. What they were doing or not
20 doing...

21 THE COURT: Mr. Wilson?

22 MR. WILSON: Your Honor, I understand the objection. I
23 would simply point out that, in his cross-examination, he
24 cross-examined Mr. Chandler on a statement he gave to the
25 police officers, and the idea is, if the police officer took a

1 statement, it's three sentences where Mr. Chandler told him
2 stuff for a long time. So that was part of the bases of that,
3 Your Honor. But I certainly understand your ruling on it, but
4 there is a reason those questions were asked. I mean,
5 Mr. Thompson cross-examined him with his statement to the
6 police.

7 MR. THOMPSON: Well, the reason was, because it was not
8 consistent with what he told the police.

9 MR. WILSON: Well, then, that's up to the jury, Your
10 Honor.

11 THE COURT: Well, I'm going to -- I mean, certainly the
12 question: "Did you tell the officers about the concerns you
13 had?" I think that's fine to come in. The question: "The
14 police officers weren't focused or interested in what the
15 lifeguard was doing," I'm going to exclude that as leading.

16 MR. THOMPSON: Page 33, Your Honor. And, again, it's
17 more of a continuation of the questions regarding the police
18 officers and the police officers' interest in the
19 investigation afterwards.

20 So, at the end of 32, it talks about, "Did they," that's
21 the police officer, "appear, based upon the conversation you
22 had with them, concerned or worried about the fact that the
23 lifeguards did not arrive, did not pull" -- you know, again,
24 "No, sir, that was not even a topic of conversation." We're
25 talking about what the police officers, their investigation,

1 what they were interested in, what they were asking questions
2 about.

3 Now, to be fair, Your Honor, when this deposition was
4 taken, the City of Myrtle Beach was still in this case, and so
5 there would be questions about the City's involvement, the
6 City's police department, and perhaps, I assume, maybe even
7 some kind of closeness with the Lack's Beach Service group.

8 And so I can understand why this question might have been
9 asked then. It's not relevant now. What the police officers
10 did, how they investigated it afterwards has nothing to do
11 with Lack's Beach Service and this case.

12 THE COURT: Well, I guess the question I have is: Was it
13 in response to, basically, your contention that the story has
14 somehow changed; in other words, that you didn't tell that to
15 the police because they didn't ask?

16 MR. WILSON: That's what I was going to offer, Your
17 Honor. That's part of his cross-examination. Because he
18 shows him a statement that the police officers wrote. It's
19 three sentences. And these questions were in knowing what the
20 statement says. And so Mr. Thompson had a right to cross and
21 say, "Well, sir..."

22 So if you want to pull from the cross-examination any
23 questions related to the statement, then we can potentially
24 work on that, but you have to put the statement in the
25 context, which is exactly what we're doing here. Did they

1 appear to be concerned about it? And they put the wrong
2 people's names in the statement, and then he cross-examined on
3 it almost like, "Well, why didn't you tell the police officers
4 that?" And he says, "I did."

5 MR. THOMPSON: Again, the question is not -- if it was
6 about what happened, that's one thing, but it's being -- the
7 focus on this is "you weren't interested in the lifeguards."
8 And that's not what Mr. Chandler was asked by the police
9 officer, that's not what they told them at the police
10 department. What happened on the beach that day? And the
11 questions here are being elicited to suggest that somehow,
12 again, you didn't investigate the lifeguards.

13 THE COURT: At this point, I'm going to leave it in. I'm
14 going to review the testimony that came out on cross. At this
15 point, I'm going to leave that in.

16 MR. WILSON: And that's page 33 through line 5, Your
17 Honor?

18 THE COURT: Yes.

19 MR. WILSON: Okay.

20 THE COURT: Well, really through line 8.

21 MR. THOMPSON: Through line 8.

22 MR. WILSON: Okay. Thank you.

23 MR. THOMPSON: Then, Your Honor, the next objection is
24 actually Ms. Sullivan's, but it would be mine as well, and
25 that is: "Did you know at the time that the lifeguards on the

1 beach were supervised by the Myrtle Beach Police Department?"
2 That's absolutely, uncategorically wrong. The City police
3 department had no supervision on the beach of any lifeguard at
4 all.

5 THE COURT: Mr. Wilson?

6 MR. WILSON: Your Honor, I'm not going to fuss too hard
7 about that one. I would simply say his answer is, "No, sir, I
8 didn't know," but there's no prejudice to them.

9 MR. THOMPSON: The question says --

10 THE COURT: I'm not going to allow that. That's page 33,
11 line 10 through 15.

12 MR. WILSON: Is out?

13 THE COURT: Is out.

14 MR. WILSON: Yes, ma'am.

15 MR. THOMPSON: Your Honor, the next one is the next
16 sentence. This double backs into the military questioning.
17 Mr. McLeod was asking questions about how the military
18 investigates, and, again, the concept that somehow there was a
19 flawed police investigation of what happened.

20 MR. WILSON: No problem.

21 THE COURT: So that looks like it starts at page 33, line
22 16.

23 MR. THOMPSON: Yes.

24 MR. WILSON: Through line 22.

25 THE COURT: Looks like all of page 34.

1 MR. THOMPSON: Yeah, really all of 34.

2 THE COURT: And looks like most of 35 here. Through
3 lines --

4 MR. THOMPSON: And it's really down through -- the
5 military stuff ends on 35, line 12.

6 THE COURT: I'm going to say through line 17.

7 MR. THOMPSON: That would take care of my next objection,
8 yes, Your Honor.

9 MR. WILSON: You're still on page 35, Your Honor?

10 THE COURT: That is from page 33, line 16, through the
11 end of the page, all of page 34, and page 35 through line 17.

12 MR. WILSON: Through page 35, line 17?

13 THE COURT: Correct.

14 MR. THOMPSON: The next objection, Your Honor, starts at
15 the bottom of page 35. And he's asked the question about what
16 he witnessed, whether it was traumatic to him. And then,
17 obviously, he provides an answer about, you know, his family
18 and the comparison to his family.

19 Your Honor, this case is not about the impact this
20 incident had on Mr. Chandler. It's the impact and the effect
21 on the Wolde family. How it impacted or -- again, you know,
22 you can provide testimony -- the witness provides -- and
23 Mr. Chandler does. In this circumstance, he provides
24 testimony about what he saw in the children, how they were
25 reacting, how he saw the wife or the mother, how she was

1 reacting, providing information and evidence about what they
2 experienced.

3 What he experienced is not relevant. I mean, if somebody
4 else came in and said that didn't move me at all, I mean, how
5 many witnesses are we going to have come in here to say
6 whether it was traumatic or not?

7 THE COURT: I'm going to allow the question. I can't
8 imagine he would have said no to that, but I think that's
9 relevant.

10 MR. THOMPSON: The next objection is the next question,
11 Your Honor. It says, "Do you believe that Myrtle Beach is
12 unsafe?" And then he asks, allegedly, a better question. It
13 says, "You have not returned to Myrtle Beach because you're
14 concerned about the beach's safety?"

15 THE COURT: Mr. Wilson?

16 MR. WILSON: Your Honor, there's no better testimony from
17 a witness than what you experienced. The question is based on
18 what you experienced, what you sensed, smelled, touched,
19 tasted. What you endured and experienced, did you feel it
20 that way? There's no better testimony from a fact witness
21 than that. I mean, police officers offer that testimony all
22 the time in basic wreck cases. "This was a bad wreck. I saw
23 it." Whatever. I mean, it's his experience, his family's
24 experience. That is fact witness testimony.

25 THE COURT: I can't allow that in.

1 MR. THOMPSON: It's page 36, line 7.

2 THE COURT: Through -- line 7 through --

3 MR. THOMPSON: 23.

4 THE COURT: Looks like 24.

5 MR. WILSON: And, Your Honor, just for our record, the
6 basis of that is, is it's not --

7 THE COURT: He's giving opinion testimony about the
8 safety of Myrtle Beach. He's not an expert.

9 MR. THOMPSON: Your Honor, page 37, the objection at
10 line 7 is withdrawn.

11 Let's see. Line 13, that was Ms. Sullivan's objection.
12 I initially said I'm going to follow it, but I'm going to
13 withdraw that one.

14 I think the next...

15 MR. WILSON: Trey, you put on here page 37, line 18 as
16 well. That's not right.

17 MR. THOMPSON: Right.

18 MR. WILSON: There's no objection.

19 MR. THOMPSON: I understand that. I think I can still
20 object, but I don't -- I don't have any problem with the rest
21 of it, Your Honor, that's page 37. So the next objection will
22 be 38.

23 MR. WILSON: Thank you.

24 MR. THOMPSON: Line 8 is the objection to the question
25 is: "One of the reasons you agreed to testify is because you

1 don't want to see what happened to Mr. Wolde happen to anybody
2 else?" First of all, it's leading. Second of all, Your
3 Honor -- well, it's mostly leading. He already testified why
4 he was providing testimony in the prior question.

5 And, again, I think that's important because I sort of
6 left the page 37, the question there alone. He provides the
7 basis for why he's testifying. And then Mr. McLeod tried to
8 wrap it all up with the leading question, which he's
9 already -- the witness, frankly, already asked and answered in
10 the prior answer. So it's leading, asked and answered, it's
11 cumulative.

12 THE COURT: Mr. Wilson?

13 MR. WILSON: Your Honor, a fact witness is allowed to
14 testify why they agreed to testify in a trial. It's a basic
15 personal basis for why you're testifying. There's nothing
16 irrelevant or leading at all about that. It's who the fact
17 witness is. Why are you here?

18 MR. THOMPSON: And he did.

19 MR. WILSON: It also goes to motive, bias. I mean, he's
20 not a paid witness. He's just a fact witness. Why are you
21 here?

22 THE COURT: I'm not going to allow that. And that's
23 page 38, 4 through 14. It's leading.

24 MR. THOMPSON: Your Honor, then we skip over to page 79.

25 MR. WILSON: Trey, if you want to, that was basically

1 ending our direct. Trey did his cross-examination. Why don't
2 we go ahead and hit a couple of our objections to you.

3 MR. THOMPSON: Okay. Sure. I didn't mean to --

4 MR. WILSON: No, no, that's fine.

5 MR. THOMPSON: I didn't remember seeing them in the
6 designations, but that's fine.

7 MR. WILSON: There are not very many, Your Honor. Let's
8 see. Just came through. Your Honor, there's really probably
9 only one, and I believe it's page 46, starting at line --
10 they're asking about signs or flags systems. He was asked
11 about flags. He said, "I didn't see any flags."

12 The question is: "Did you see the sign as it described
13 what rip currents were, how they formed, and how -- I guess,
14 educate yourself from a rip current?" There's no foundation
15 for that or in this deposition or with this witness. It
16 wasn't established through cross-examination, "this is where
17 the sign was located" or anything. This is just -- that's
18 pure lack of foundation, if that was in the 50 we just went
19 through, and was the basis for every one of theirs, I suppose.
20 This is the definition of no foundation.

21 MR. THOMPSON: Your Honor, the problem here, of course,
22 is this witness -- this isn't the first one out of the gate.
23 Every Lack's witness is going to testify that, at every public
24 beach access, there are signs, and we have got photos, and
25 they will be exhibits in this case, Your Honor, of the rip

1 current signs, the flag signs, and the "swim at your own risk"
2 signs. And it's really important for Mr. Chandler because,
3 unlike the Woldes, who access the beach by a private beach
4 access, Mr. Chandler came through a public beach access. So
5 he would have passed by these signs.

6 There will absolutely be 100 percent be testimony in this
7 case that, in 2018 when this incident happened, there were
8 signs at all public beach accesses, including the one that
9 Mr. Chandler used.

10 MR. WILSON: Your Honor, they can establish that through
11 a witness. That's like saying, "Did you see our lifeguard out
12 there doing everything he was supposed to do?" And there's no
13 prejudice to them because he says, "I didn't see it." They're
14 just assuming and they're just trying to tell him that one was
15 there. "I didn't see it." If they want to establish that
16 happened to another witness, they're welcome to do that.

17 MR. THOMPSON: The problem is they go first. This
18 witness has been videotaped from Missouri, and this evidence
19 will be in the case. This is not even a thought. I mean, it,
20 again, is the fact. These public beach accesses had these
21 signs in 2018. Mr. Chandler came by.

22 Now, Mr. Chandler, he knew about rip currents, he
23 testified to, so he's not really necessarily paying attention
24 to any signs, but the signs were there.

25 THE COURT: I guess the issue that I have got is you're

1 characterizing it as a sign that talks about what they are,
2 how they're formed, and how to extricate yourself from a rip
3 current. I haven't seen that sign to be able to tell if
4 that's a fair characterization.

5 MR. THOMPSON: I can provide you a copy right now, Your
6 Honor, of the photograph of the sign.

7 THE COURT: Okay.

8 MR. WILSON: Your Honor, there's no -- they didn't
9 provide it to the witness, and it would be up to the jury to
10 weigh the evidence.

11 MR. THOMPSON: May I approach, Your Honor?

12 THE COURT: Sure. (Handed document to judge.)

13 I'm going to allow it. It appears to be exactly what
14 this sign is saying.

15 MR. WILSON: Your Honor, the bigger issue is not simply
16 did you see it but was it there. And so they can put up
17 witnesses to that, but to ask a fact witness to say, "Did you
18 see everybody doing what they were supposed to do?" "No, I
19 didn't see that." I mean, that is for the jury to decide.
20 There's no foundation. They didn't even tell him where the
21 signs that he's alleged were.

22 THE COURT: If your argument is -- I mean, he's going to
23 say he didn't see the sign. If your argument is going to be
24 that the sign wasn't there, I don't see how that hurts you.

25 MR. WILSON: Thank you, Your Honor.

1 MR. THOMPSON: May I have the photo back, Your Honor?

2 THE COURT: Mm-hmm.

3 MR. THOMPSON: Thank you.

4 MR. WILSON: And, Your Honor, simply on the same page,
5 just one more: "Can you tell us that that sign did not exist
6 in August of 2018?" What's the foundation of that?

7 MR. THOMPSON: Your Honor, I'm asking the question. I'm
8 cross-examining a witness. I'm allowed to lead, and I'm
9 asking you, "Did you seen that sign," which is one thing,
10 right? Did you see it? And then the other question is, "Can
11 you say it did not exist?" as in, I can say that walked by
12 that area, and there was absolutely not a sign.

13 So it's a two-part concept; right? "Did you see it?"

14 "Well, I don't know if it was there or not."

15 "Can you tell me or can you tell this jury that it did
16 not exist?"

17 Because that's important in this case.

18 MR. WILSON: Your Honor, I don't even know what to say to
19 that. I mean, it's the definition --

20 THE COURT: I don't have any problem with it. I mean,
21 he's clarifying that he can't say for sure that it was there
22 or not. He did not see it.

23 MR. WILSON: Thank you, Your Honor.

24 MR. THOMPSON: Do you have any more?

25 MR. WILSON: I don't believe we do.

1 MR. THOMPSON: Then, Your Honor, turning over to
2 page 79 -- are you there, Your Honor?

3 THE COURT: Mm-hmm.

4 MR. THOMPSON: The objections are in the middle of the
5 page -- now, this is redirect so this not a cross-examination,
6 but it looks like a cross-examination. You know, when the
7 question ends "is that correct," that's a leading question.
8 It's a cross-examination question.

9 More importantly, Your Honor, you know, the second
10 objection with regard to, again, the unsolicited discussion or
11 the unsolicited statement that the nurse said she had a weak
12 pulse, again, I'm going back to prior -- this is more hearsay.
13 It's more, again, leading. Frankly, it's not even -- it's
14 outside the scope of -- there was no cross-examination on the
15 resuscitative effort. So the redirect is improper to start
16 with.

17 THE COURT: Well, I mean, it looks to me like this is
18 just basically referring back to what he's already testified
19 to.

20 MR. WILSON: Yes, ma'am.

21 MR. THOMPSON: Correct. And that's improper. Redirect
22 is to deal with things that were addressed on cross. It's not
23 to go back and reaffirm direct.

24 THE COURT: You didn't ask anything in your
25 cross-examination about the resuscitation efforts?

1 MR. THOMPSON: No, Your Honor.

2 MR. WILSON: He asked questions about where they were
3 located, what happened. It was all about how long it took for
4 the lifeguards to get there, which, as we get through this
5 case, we recognize it's longer and longer. And so his
6 testimony is we're there and we're providing resuscitative
7 attempts.

8 Part of his cross-examination, he tried to get him to say
9 that the lifeguard was in the waves, almost like as the person
10 was coming up on the beach, which is a lie. And so this is
11 all about what y'all were doing. He was brought ashore,
12 pulled up, started resuscitative efforts to save his life, and
13 the lifeguard was not coming over there to do anything. It is
14 directly related to his cross-examination.

15 MR. THOMPSON: Your Honor, the transcript is the
16 transcript. The testimony is right there. And there's
17 nothing that I asked about the resuscitative effort that
18 either Mr. Chandler or the nurse was involved in.

19 THE COURT: I'm going to allow it in on the issue of the
20 timing.

21 MR. THOMPSON: I'm sorry, Your Honor?

22 THE COURT: I'm allowing it in. I think it goes to the
23 issue of the timing of when the lifeguards arrived.

24 MR. WILSON: Page 80, line 5.

25 MR. THOMPSON: Right. Your Honor, you know, page 80, the

1 question, again, it's mostly leading. Actually, line 5 -- I
2 withdrew that one, so let's not even go there.

3 But I do have to -- Your Honor, there is quite a bit of
4 leading in here. I didn't object to every leading question.
5 It may look like it, but that's the way the examination went.

6 So, Your Honor, with regard to page 80, line 17, that's
7 the deer in the headlights. Again, that is not in on the
8 front end. It's now a leading question on the back end.
9 Again, this redirect is not -- this question is not related to
10 anything that the cross-examination dealt with.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: It is absolutely directly related. The
13 cross-examination was based on the attempt to shorten the time
14 by which a lifeguard was there and that he arrived and was all
15 of a sudden doing things, which he was not, according to this
16 witness. He's already testified he looked like a deer in the
17 headlights.

18 And to put it into context, what Mr. McLeod has done in
19 redirect is to address the heart of the cross-examination of
20 what you saw these lifeguards do and when. He didn't walk up,
21 according to this witness, and offer to help. He didn't walk
22 up while they're in the surf. He walked up and looked like a
23 deer in the headlights, which he's already testified to.
24 That's totally related to cross-examination and is the purpose
25 of redirect.

1 MR. THOMPSON: It's actually just echoing the direct.
2 It's not -- I didn't ask him about being a deer in the
3 headlights.

4 THE COURT: I understand your point, but I'm going to
5 allow it.

6 MR. THOMPSON: Your Honor, page 81, the objection is at
7 line 16. The question is: Now that Mr. Thompson has showed
8 you the statement -- this is a statement the police had that
9 they prepared -- did they do that or did they fail to do that?

10 Again, this is going back to law enforcement, law
11 enforcement's investigation, and frankly, first of all, it
12 sounds like -- I couldn't tell from the question whether he
13 was suggesting that I prepared the statement or we prepared
14 the statement, like Lack's. But the police begin, Your Honor,
15 the investigative effort does not have anything -- we don't --
16 Lack's doesn't control that.

17 What the police officers did, how they did their job,
18 whether they did their job, Lack's can't control that. And so
19 it's irrelevant for the purposes of this proceeding and having
20 a jury decide what we did, what Lack's did, not what the City
21 police department did.

22 THE COURT: Mr. Wilson?

23 MR. WILSON: Your Honor, I apologize. My sheet says she
24 had already withdrawn that objection, but I'm happy to address
25 it. That was the substance of the cross-examination. "Sir,

1 this is not what they wrote down in your statement. That is
2 not what they did." This is part of the cross. This is a
3 redirect of what you encountered. We're not saying Lack's
4 with this -- did anything wrong. Well, that's part of his
5 cross-examination, trying to show that he's being dishonest.
6 It is relevant.

7 THE COURT: I'm going to allow it.

8 All right. I know we have got a jury coming in a little
9 over 15 minutes. Let's at least take that much of a break
10 before we have the jury assembled, and then we'll take this up
11 after we select the jury. We'll kind of see where we stand.

12 MR. McLEOD: Thank y'all for working through lunch. We
13 appreciate it.

14 MR. THOMPSON: We only have three more objections in this
15 one if you wanted to --

16 THE COURT: From the same witness?

17 MR. THOMPSON: Yeah, Mr. Chandler.

18 MR. WILSON: There's just two more, I think.

19 THE COURT: Okay.

20 MR. THOMPSON: I'm sorry.

21 THE COURT: I thought we were at the last page.

22 MR. THOMPSON: Right. No, no. We were close. That's
23 why I wanted to make sure we finished. We're right at the
24 finish line.

25 THE COURT: All right.

1 MR. THOMPSON: All right. Page 81 --

2 THE COURT: The last page, page 82.

3 MR. THOMPSON: So 81 at the -- let's see. Line 24.

4 Again, it's leading.

5 THE COURT: I'm sorry; you're talking about page what?

6 MR. THOMPSON: Page 81, the question starts at line 20.

7 The objection is at line 24 on page 81.

8 THE COURT: Yeah, I'm going to allow that.

9 MR. THOMPSON: And then, page 82, the question at the
10 top, talking about what he said to the police. Again, the
11 police investigation does not have anything to do with Lack's.

12 THE COURT: And I'm going to allow that for the same
13 purpose.

14 MR. THOMPSON: And that's all of them, Judge.

15 THE COURT: Okay.

16 MR. WILSON: Thank you for indulging us.

17 (A brief recess was taken at 1:10 p.m. to 1:41 p.m.)

18 THE COURT: Thank you. Do you have some voir dire that
19 you want to hand up to me?

20 MR. THOMPSON: Yes, ma'am.

21 MR. WILSON: Yes, ma'am. May I approach?

22 THE COURT: And can I have y'all approach just a moment.

23 BENCH CONFERENCE

24 (The following bench conference was held outside the hearing
25 of the jury and others.)

1 THE COURT: Have y'all discussed the voir dire? Are we
2 in agreement with the voir dire?

3 MR. THOMPSON: No, we have not discussed it.

4 THE COURT: Do you need to have a discussion?

5 MR. McLEOD: Do you have any objection to ours?

6 MR. THOMPSON: I generally think the more questions, the
7 better. I can't imagine we would have an objection, Your
8 Honor.

9 MR. WILSON: I don't have any objections.

10 MR. THOMPSON: Your Honor, I have a problem with No. 7.
11 Plaintiff's No. 7.

12 THE COURT: Hang on a second. Let me look at the
13 defendant's.

14 MR. THOMPSON: Sorry?

15 THE COURT: So your objection is to No. 7?

16 MR. THOMPSON: I got two things. First of all, with
17 regard to witnesses, Judge, I have listed everybody that's
18 ever been identified in discovery. It's not necessary. I
19 really want to know who is going to be here in the courtroom
20 to testify. If we can get -- I mean, I can tell you who my
21 witnesses are and get who the plaintiff's are and then we can
22 cut that list down significantly.

23 THE COURT: Can we do that?

24 MR. THOMPSON: Yes, Your Honor.

25 THE COURT: You have only listed eight or so.

1 MR. THOMPSON: Who else is there besides the eight?

2 MR. WILSON: Sorry, Your Honor. I'm using the bridge of
3 the desk. Just read through all the family, obviously.
4 George Lack. Petersen. Holly Robinson.

5 THE COURT: I'm sorry; you tell me who you are calling.

6 MR. WILSON: I'm telling him who I am calling, yes,
7 ma'am. I'm sorry. And you, Your Honor. I apologize. I
8 thought we were going to present it to you.

9 P and Q on the defendant's. BB. Dr. Proctor. DD.
10 Thomas Griffiths. Jim DeFeo. Christopher Brewster. I did
11 not see the surveyor. I didn't see Mr. Chandler listed on
12 this one. Julian Chandler, who we just went through is page
13 lines. We have a surveyor, Your Honor, named Todd Beam.
14 B-e-a-m. And the last, Jeffrey Bender. Chandler, Beam, and
15 Bender are all from out of town.

16 MR. McLEOD: And Thomas Gwyer.

17 MR. WILSON: I thought you listed Tom Gwyer.

18 MR. THOMPSON: I have got 15. You got Gwyer on there
19 too?

20 MR. WILSON: Yeah, Tom Gwyer.

21 THE COURT: G-u-r-r-e?

22 MR. WILSON: G-w-y-e-r, Your Honor.

23 MR. THOMPSON: So that's 16. And, Judge, mine -- you
24 have mine. George Lack, obviously. Weslyn. And then we have
25 Flaherty, R. Brady Oliver, S.

1 THE COURT: I'm sorry? Because I saw Julian Chandler on
2 there.

3 MR. THOMPSON: I'm sorry?

4 MR. McLEOD: He is. He's at J. Yes, ma'am.

5 THE COURT: I'm sorry. After J, tell me who is your next
6 one.

7 MR. THOMPSON: Oh, after J?

8 THE COURT: Or after G. J is not here.

9 MR. THOMPSON: So we have Q.

10 THE COURT: Mm-hmm, Q.

11 MR. THOMPSON: R.

12 THE COURT: Mm-hmm.

13 MR. THOMPSON: S.

14 THE COURT: Mm-hmm.

15 MR. THOMPSON: U. Is that everybody?

16 MR. WILSON: Did you say you were calling Q, Holly
17 Robinson?

18 MR. THOMPSON: I thought you. Well, I thought you put a
19 mark --

20 MR. WILSON: Oh, I did.

21 MR. THOMPSON: Okay. I think that's -- I would, out of
22 an abundance of caution, I may have to call some City
23 witnesses. So Chief Mitchell and Herrera, public information.
24 I think that covers everybody for the trial. Got a lot of
25 ground to cover.

1 MR. WILSON: There's the deputy coroner, Michelle
2 McSpadden.

3 THE COURT: Is she on here?

4 MR. WILSON: I did not see her, Your Honor.

5 MR. THOMPSON: She is. She's Z.

6 MR. McLEOD: Oh, yes, ma'am. Z.

7 MR. THOMPSON: Only three witnesses.

8 MR. WILSON: We'll move fast.

9 THE COURT: How do you pronounce Ms. Abel?
10 "Mes-way-ant"?

11 MR. THOMPSON: "Mes-watt."

12 THE COURT: "Mes-watt." Okay.

13 MR. THOMPSON: And then, obviously, the two kids are no
14 longer in the caption.

15 THE COURT: Okay. All right.

16 MR. WILSON: Thank you, Your Honor.

17 (Open court resumes as follows:)

18 THE COURT: Okay. Good afternoon, ladies and gentlemen.
19 We have been working through the lunch break: Myself, the
20 court reporter, the lawyers. So I don't want you to think
21 that we have been just kicking back and drinking coffee. We
22 have been working during the break to try to get through this
23 as quickly as we can.

24 I have some specific questions to ask you regarding the
25 case that is going to be tried first up this week. In

1 addition to the questions that you have already been asked,
2 these pertain to the specific case. The case that we're going
3 to try is a civil case. Some of you may have been in the jury
4 selection for the criminal trial that will start this morning
5 as well, or start this afternoon as well. Unlike a criminal
6 trial, this is a civil trial. It's for money damages.

7 This is the case of Meswaet Abel, as personal
8 representative of the Estate of -- and if y'all will pronounce
9 that name for me --

10 MR. PRACHT: Zerihun Wolde.

11 THE COURT: -- Zerihun Wolde versus Lack's Beach Service.

12 And this is pertaining to an accident that occurred on
13 August 24th, 2018, involving Mr. Wolde near the Sea Crest
14 oceanfront resort in Myrtle Beach. So my first question is:
15 Is there any member of the jury panel who has any personal
16 knowledge of this incident?

17 (No response given.)

18 THE COURT: The plaintiff in this case is represented by
19 attorneys Mullins McLeod and Cooper Wilson of the McLeod Law
20 Group.

21 If you would please introduce yourself and your client to
22 the jury panel.

23 MR. McLEOD: Good morning. I'm Mullins McLeod, and I
24 practice law in Charleston, and this is -- these are our
25 clients here, the four children and Ms. Abel. And this is

1 Cooper Wilson who also works with me.

2 MR. WILSON: And along with us is Christopher Pracht as
3 well.

4 MR. PRACHT: Good afternoon.

5 JURY VOIR DIRE

6 THE COURT: Okay, ladies and gentlemen. Is there any
7 member of the jury panel related by blood or marriage or with
8 a close personal and business relationship with Ms. Meswaet
9 Abel -- I'm trying to get the pronunciation correct -- or with
10 the attorneys: Mr. Mullins McLeod, Mr. Cooper Wilson, or
11 Mr. Chris Pracht?

12 (No response given.)

13 THE COURT: Is there any member of the jury panel who is
14 a current client or former client of any of those three
15 lawyers or the Mullins Law Group?

16 (No response given.)

17 THE COURT: It's McLeod Law Group?

18 MR. PRACHT: Yes, Your Honor.

19 THE COURT: Is there any member of the jury panel that
20 you or your family has ever been employed or is currently
21 employed with their law firm, the McLeod Law Group?

22 (No response given.)

23 THE COURT: Okay. The defendant in this case, Lack's
24 Beach Service, is represented by Mr. Trey Thompson.

25 If you would also introduce yourself and your client to

1 the jury panel.

2 MR. THOMPSON: Thank you, Your Honor. This is Paul
3 Trainor, and this is Weslyn Lack-Chickering. George Lack will
4 also be in attendance as the owner of Lack's Beach Service.

5 THE COURT: Thank you.

6 Ladies and gentlemen, is there any member of the jury
7 panel related by blood or marriage or with a close personal or
8 business relationship with either Mr. Trey Thompson or
9 Mr. Paul Trainor or Mr. George Lack.

10 And, I'm sorry, if you'll repeat --

11 MR. THOMPSON: Weslyn Lack-Chickering.

12 THE COURT: Weslyn Lack-Chickering.

13 MR. THOMPSON: Chickering. C-h-i-c-k-e-r-i-n-g.

14 THE COURT: Thank you.

15 Anyone related by blood or marriage or with a close
16 personal or business relationship with any of those three
17 individuals?

18 Yes, ma'am?

19 JUROR NO. 280: In my place of business, the Lacks come
20 in all the time. My daughter went to school with Weslyn Lack,
21 so...

22 THE COURT: And tell me your name.

23 JUROR NO. 280: Georgia Morgan.

24 THE COURT: And what is your juror number, Ms. Morgan?

25 JUROR NO. 280: 280.

1 THE COURT: I'm sorry, my list is not in alphabetical
2 order or numerical order, so I have just got to pick you out
3 here. 280?

4 JUROR NO. 280: Yes, ma'am.

5 THE COURT: And would that prevent you from being a fair
6 and impartial jury?

7 JUROR NO. 280: No.

8 THE COURT: And you have known them for how long?

9 JUROR NO. 280: Many years.

10 THE COURT: Thank you so much for sharing that
11 information.

12 Is there any member of the jury panel who is a current or
13 former client of Mr. Thompson or Mr. Trainor?

14 (No response given.)

15 THE COURT: And is there any member of the jury panel who
16 has either a family member or you yourself have ever worked
17 for Mr. Thompson's law firm, which is Hall Booth Smith out of
18 Mount Pleasant?

19 Correct?

20 MR. THOMPSON: Yes, sir.

21 THE COURT: Anyone who has ever worked there?

22 (No response given.)

23 THE COURT: Ladies and gentlemen, we have a number of
24 potential witnesses in this case. I'm going to read you their
25 names, and for each of these witnesses, I'm going to ask you

1 the same question: Are you related by blood or marriage or do
2 you have a close personal or business relationship with any of
3 these potential witnesses. I'm going to give you about ten
4 names at a time. I think we've got about 24 people who I'm
5 going to be asking you about.

6 Meswaet Abel, Wubit Wolde --

7 And, again, am I pronouncing "Wol-dee" correct?

8 MR. PRACHT: And, I'm sorry, Your Honor. It's Wubit
9 Zerihun. And that would be true for Adam Zerihun as well.
10 Thank you, Your Honor.

11 THE COURT: Either Wubit Zerihun or Adam Zerihun? Edom
12 Wolde --

13 MR. PRACHT: I'm sorry; Edom and Eden Zerihun as well.
14 That's their last name; I apologize.

15 THE COURT: So we have Eden Zerihun and Edom Zerihun.
16 George Lack. Weslyn Lack-Chickering, who is in the courtroom
17 today, along with the Zerihuns. Julian Chandler. Or John
18 Pedersen, who is the former Myrtle Beach City manager.

19 Let me stop there and ask is anyone related by blood or
20 marriage or with a close personal or business relationship
21 with any of those potential witnesses?

22 (No response given.)

23 THE COURT: Okay. Next, we have Holly Robinson. The
24 Horry County Fire Rescue Health and Safety Officer Tony
25 Flaherty. Brady Oliver. Randy Smith. Brian Mitchell, who is

1 the Myrtle Beach Rescue Battalion Chief. The City of Myrtle
2 Beach Public Information Director Mark Kruea. K-r-u-e-a.

3 Again, anyone related by blood or marriage or with a
4 close personal or business relationship?

5 (No response given.)

6 THE COURT: Horry County Deputy Coroner Michelle
7 McSpadden. Dr. Edward L. Proctor, Jr. Mr. Thomas Griffiths.
8 Mr. James DeFeo, D-e-F-e-o. Christopher Brewster. Tom Gwyer,
9 G-w-y-e-r. Todd Beam or Jeffrey Bender.

10 Again, anyone related by blood or marriage or who has any
11 close personal or business relationship with any of those
12 potential witnesses?

13 (No response given.)

14 THE COURT: Is there any member of the jury panel that
15 you yourself or any member of your immediate family has ever
16 been trained to work or actually work as a lifeguard either in
17 a pool or an open-beach setting?

18 Yes, ma'am. If you'll tell me your name.

19 JUROR NO. 241: Tambrey Kreissl Lawrence.

20 THE COURT: And do you know your juror number?

21 JUROR NO. 241: 241.

22 THE COURT: And can you tell me a little bit about -- is
23 it yourself or a member of your family?

24 JUROR NO. 241: My daughter was a trained lifeguard. She
25 worked at an amusement park in Ohio.

1 THE COURT: Okay. Thank you so much for that
2 information.

3 Has any member of the jury panel or a member of your
4 immediate family been trained in the medical profession as a
5 nurse, doctor, or another healthcare provider? If so, please
6 stand.

7 (Several jurors stand.)

8 THE COURT: I'm going to start from this side of the room
9 and just work my way over. I'm going to ask your juror
10 number, and then just give us a little bit of information who
11 it was and what they do.

12 JUROR NO. 351: Yes. It's 351, I believe. Shaw is the
13 last name. I was trained as an EMT in the Army, and I won't
14 say the year. The '80s; we'll just call it that.

15 THE COURT: Fair enough, Mr. Shaw. Thank you.

16 JUROR NO. 198: 189, Leslie Hinzman. I work in the
17 emergency room. I'm a coordinator. Been in the field for ten
18 years.

19 THE COURT: And are you an RN or a physician?

20 JUROR NO. 198: I'm an LPN.

21 THE COURT: LPN. Thank you so much.

22 JUROR NO. 421: Number 421. And I was a paramedic for 20
23 years back in the 2000s. Right now, I just work at a nursing
24 home as a transport coordinator.

25 THE COURT: Thank you so much.

1 JUROR NO. 310: 310, Mary Phillips. Been a registered
2 nurse for 37 years, mostly surgery and trauma.

3 THE COURT: And you're still working as an RN?

4 JUROR NO. 310: I am, at Palmetto Infusions.

5 THE COURT: Thank you so much.

6 And if I could get -- in the back of the room?

7 JUROR NO. 19: 19. Last name, Basenese. My mom is an RN
8 or was an RN, and she's retired.

9 THE COURT: And was that here in Horry County?

10 JUROR NO. 19: No. That was in New Jersey.

11 THE COURT: Thank you, ma'am.

12 Yes, sir?

13 JUROR NO. 151: 151, John Gaston. My wife is an RN at
14 Conway Medical Center and has been for 21 years.

15 THE COURT: Thank you, sir.

16 JUROR NO. 275: 275, Mincey. My aunt is a nurse
17 practitioner at Conway Medical Center.

18 THE COURT: And can you tell me her name?

19 JUROR NO. 275: Elena. Oh, did you say my name or her
20 name?

21 THE COURT: Her name.

22 JUROR NO. 275: Robin Niederwerfer (ph).

23 THE COURT: Thank you, ma'am.

24 And if I can go ahead and get you, ma'am.

25 JUROR NO. 6: My sister is an RN at Conway Medical

1 Center.

2 THE COURT: And tell me your juror number.

3 JUROR NO. 6: 6. Mary Altman.

4 THE COURT: I'm sorry?

5 JUROR NO. 6: Mary Altman.

6 THE COURT: You're Mary Altman? And your sister is who
7 is the nurse at Conway Medical Center?

8 JUROR NO. 6: Michelle Maples (ph).

9 THE COURT: Thank you, ma'am.

10 Yes, sir?

11 JUROR NO. 396: Juror No. 396. My son is an emergency
12 medical technician, and I was in the Coast Guard for 25 years,
13 Search and Rescue.

14 THE COURT: And your son, you said, is currently?

15 JUROR NO. 396: Yes.

16 THE COURT: And where? Did you tell me where?

17 JUROR NO. 396: Reliant Medical.

18 THE COURT: Here in Horry County?

19 JUROR NO. 396: Yes, ma'am.

20 THE COURT: And is that a medical supply company?

21 JUROR NO. 396: Medical transport.

22 THE COURT: Do you mind telling me his name?

23 JUROR NO. 396: Timothy Warren (ph).

24 THE COURT: Thank you, sir.

25 How about in the front row?

1 JUROR NO. 237: 237, Trinity. My mom's been an RN for
2 the past 15 years in Pennsylvania.

3 THE COURT: Thank you so much.

4 JUROR NO. 297: 297, O'Donnell. My sisters are nurses up
5 in New York.

6 THE COURT: Thank you, ma'am.

7 Has any member of the jury panel or a member of your
8 immediate family ever been trained to work or actually worked
9 as a police officer in beach patrol or a firefighter in ocean
10 rescue or a similar emergency response personnel? Specific to
11 either beach patrol or ocean rescue. Any kind of first
12 responder in those two settings?

13 (No response given.)

14 THE COURT: Is there any member of the jury panel that
15 you yourself or someone in your immediate family has ever been
16 in trouble or distress in an aquatic or water environment?
17 And so if you have ever had that experience, we're going to
18 ask whether it was a pool setting or an ocean water setting,
19 like a lake or an ocean, and whether a lifeguard responded or
20 intervened, and then whether an injury or a death resulted
21 from the incident.

22 (No response given.)

23 THE COURT: Is there any member of the jury panel that
24 you yourself or a member of your immediate family has ever
25 been caught in a rip current?

1 JUROR NO. 351: Both my kids have several times over the
2 20-some years we have lived here.

3 THE COURT: And you are number --

4 JUROR NO. 351: 351. I'm sorry, ma'am. Shaw.

5 THE COURT: Did anybody have to intervene in this
6 incident?

7 JUROR NO. 351: No. We taught them how to swim sideways.

8 THE COURT: Thank you, Mr. Shaw.

9 Yes, ma'am?

10 JUROR NO. 115: Karen Dussault-Prochilo. Where I was
11 born and raised is the ocean. There were always riptides.

12 THE COURT: And tell me your juror number.

13 JUROR NO. 115: Oh, apology. 115.

14 THE COURT: Thank you so much.

15 JUROR NO. 115: Thank you.

16 JUROR NO. 344: Juror number is 344. I have been caught
17 in riptides with my dad and my brother on vacation in
18 St. Simon's Island, but we knew how to get out of them, so we
19 were fine.

20 THE COURT: Thank you so much.

21 Is there any member of the jury panel who has lost a
22 father, a father has passed away, as a result of some claimed
23 negligence or the fault of someone else? If so, if you would
24 just raise your hand.

25 (No response given.)

1 THE COURT: Is there any member of the jury panel who has
2 lost a family member as a result of the negligence or fault of
3 someone else?

4 Yes, ma'am.

5 JUROR NO. 143: Juror No. 143. Rita Gainey. My daughter
6 passed away due to negligence during an auto accident.

7 THE COURT: I'm very sorry. Thank you very much for
8 giving us that information. This does not pertain to a motor
9 vehicle accident, but do you think that this -- this pertains
10 to a gentleman who drown in the ocean. Do you think that your
11 experience would prevent you from being fair and impartial in
12 this case?

13 JUROR NO. 143: No, ma'am.

14 THE COURT: Do you think you can listen to the facts,
15 follow my instructions on the law, and give both sides a fair
16 trial?

17 JUROR NO. 143: Yes, ma'am.

18 THE COURT: Thank you so much for sharing that
19 information.

20 Yes, ma'am?

21 JUROR NO. 200: Juror No. 200, Jessica Hogan. I lost a
22 nephew and a 16-year-old as a result of negligence in an
23 automobile accident, and I lost a niece at the age of 18 at
24 the negligence of another person in an automobile accident.

25 THE COURT: Ms. Hogan, I'm terribly sorry, and I

1 appreciate you sharing that with us. Would those experiences
2 keep you from being a fair and impartial juror in this case?

3 JUROR NO. 200: No.

4 THE COURT: And do you believe that you can listen to the
5 facts, that you can follow my instructions on the law, and
6 give both sides a fair trial?

7 JUROR NO. 200: Yes, I do.

8 THE COURT: Ms. Hogan, thank you so much for sharing that
9 information.

10 Is there any member of the jury panel or a member of the
11 your immediate family who works for the City of Myrtle Beach
12 or who have, in the past, worked for the City of Myrtle Beach?

13 JUROR NO. 6: My father, at one time, worked for the City
14 of Myrtle Beach in the water treatment facility.

15 THE COURT: And remind me of your number again.

16 JUROR NO. 6: Juror No. 6, Mary Altman.

17 THE COURT: And can you tell me your father's name?

18 JUROR NO. 6: Tracy Rhodes (ph).

19 THE COURT: And he worked in water treatment?

20 JUROR NO. 6: Yes.

21 THE COURT: Thank you so much for giving us that
22 information.

23 Is there any member of the jury panel that you yourself
24 or a family member have ever worked or currently work for
25 Lack's Beach Service?

1 (No response given.)

2 THE COURT: Is there any member of the jury panel who is
3 employed or has a family member employed in City government,
4 City administration, or any function of City government that
5 may relate to the facts of this case?

6 And, so the City is not a party to this, but we have some
7 witnesses from the City in this case. So I guess that would
8 pertain to anyone employed, having to do with any authority or
9 supervision of something around the beach.

10 (No response given.)

11 THE COURT: Is there any member of the jury panel that
12 has had a close personal friend or family member who has
13 drowned or had to be rescued by a lifeguard?

14 Yes, ma'am?

15 JUROR NO. 275: 275, Mincey. My grandma, she did drown
16 but it was not -- she did not have to be rescued by a
17 lifeguard, but I wanted to answer that previously when you
18 asked the question earlier, but I do have a grandmother that
19 had passed away due to a drowning.

20 THE COURT: I'm sorry to have to ask you questions about
21 this, but can you tell me where it occurred?

22 JUROR NO. 275: It was on our property or our family's
23 property in a private pond. The medical staff did have to
24 come, but by the time that they arrived, she had passed.

25 THE COURT: Thank you very much for sharing that with us.

1 Is there any member of the jury panel who has ever been
2 involved in a lawsuit as a plaintiff or a defendant? And I'm
3 going to say excluding a family court case or a bill
4 collection case. If you have ever been a plaintiff or a
5 defendant in a lawsuit that was not a family court case or a
6 bill collection case, if you would please stand.

7 JUROR NO. 351: I'm sorry, Your Honor. 351 again. I was
8 a defendant, and it was a failure to compete case back in
9 1992. Or noncompete clause case, I'm sorry.

10 THE COURT: Okay. Thank you so much sir.

11 Yes, sir?

12 JUROR NO. 67: 67, Donald Cimorelli. Currently a
13 plaintiff in a lawsuit in a cruise line case in Italy over a
14 fall on a cruise ship.

15 THE COURT: Anything else that y'all want me to ask this
16 gentlemen with respect to that?

17 MR. McLEOD: No more additional questions, Your Honor.

18 MR. THOMPSON: No, Your Honor.

19 THE COURT: Thank you so much.

20 Yes, ma'am.

21 JUROR NO. 143: Juror 143. In the case of my daughter
22 that had passed away, she was three. There was a civil case
23 here in Horry County relative to the negligent death.

24 THE COURT: Thank you, ma'am.

25 Yes, ma'am?

1 JUROR NO. 100: Many years ago, my ex-husband was a
2 plaintiff in a personal injury case.

3 THE COURT: Arising out of a car wreck?

4 JUROR NO. 100: An assault.

5 THE COURT: Anything about that experience that would
6 prevent you from being a fair and impartial juror in this
7 case?

8 JUROR NO. 100: No.

9 THE COURT: And, I'm sorry, did you tell me your number?

10 JUROR NO. 100: 100.

11 THE COURT: Thank you so much.

12 JUROR NO. 110: 110. And I was a plaintiff in a criminal
13 law case in Florence for attempted murder.

14 THE COURT: Anything about that that would prevent you
15 from being fair and impartial in this case?

16 JUROR NO. 110: No, ma'am.

17 THE COURT: Thank you.

18 JUROR NO. 396: 396. My wife and I were co-plaintiffs
19 for a medical malpractice suit for a surgical procedure
20 against the Air Force hospital.

21 THE COURT: Same question: Anything about that that
22 would prevent you from being a fair and impartial juror today?

23 JUROR NO. 396: No.

24 THE COURT: Thank you, sir.

25 Yes, ma'am?

1 JUROR NO. 108: Plaintiff in a case -- 108, Suzanne
2 Dunmire. City of Myrtle Beach regarding zoning issues.

3 THE COURT: And I'm sorry; you were the plaintiff or you
4 were the defendant?

5 JUROR NO. 108: Plaintiff.

6 THE COURT: And you brought a suit against the City of
7 Myrtle Beach?

8 JUROR NO. 108: Yes.

9 THE COURT: Regarding a zoning issue?

10 JUROR NO. 108: Yes.

11 THE COURT: The City is not a party to this case. We may
12 hear from City witnesses. Anything about that prior
13 experience that would prevent you from being fair and
14 impartial in this case?

15 JUROR NO. 108: No, ma'am.

16 THE COURT: Thank you very much for sharing that
17 information with us.

18 Ladies and gentlemen, is there any -- knowing just a
19 little bit about the facts that you know, from what I have
20 told you, does any member of the jury panel know of any reason
21 whatsoever that you cannot give both parties in this case a
22 fair trial?

23 (No response given.)

24 THE COURT: Okay. Anything further from the plaintiff?

25 MR. McLEOD: May we approach, Your Honor?

1 THE COURT: Sure.

2 BENCH CONFERENCE

3 (The following bench conference was held outside the
4 hearing of the jury and others:)

5 MR. McLEOD: No additional questions, Your Honor. I
6 would just ask that Juror No. 280, is the juror that went to
7 school with Ms. Chickering, and she also knows the Lacks
8 professionally, it looks like we have got enough people,
9 obviously, to pick the jury along with the alternates. I'd
10 just ask that she be removed for cause, Your Honor.

11 MR. THOMPSON: She said she'd be fair and impartial,
12 Judge. I have had this happen multiple times on both sides,
13 and she said she can be fair and impartial. She took an oath
14 and said she could.

15 MR. McLEOD: I don't see any reason to take that risk,
16 Your Honor. We have enough jurors here.

17 THE COURT: I'm going to exclude her. I mean, we have
18 got a full panel. We're good.

19 (Open court resumes as follows:)

20 THE COURT: Anything else from either the plaintiff or
21 the defendant?

22 MR. McLEOD: No, Your Honor.

23 MR. THOMPSON: No, Your Honor.

24 THE COURT: This is a little bit of a process. So our
25 clerk is going to generate a random list of jurors. I'm going

1 to give the attorneys a few minutes to look over that list
2 before we move into jury strikes. So it's going to take --
3 I'm going to say let's just go ahead and say 20 minutes to
4 give them enough time.

5 So I'm going to let y'all take a break, walk around, if
6 you need to use the facilities. If you'll just please be back
7 in your seats -- I'm showing 2:14. At 2:35, if you'll be back
8 in your seats.

9 (The jury panel exited the courtroom at 2:14 p.m.)

10 BENCH CONFERENCE

11 (The following bench conference was held outside the hearing
12 of the jury and others.)

13 THE COURT: So just wanted to go over with you the list.
14 This is -- what they basically did was just generate a random
15 list of every juror that was in here.

16 THE CLERK: Yeah.

17 THE COURT: Well, it should have been every juror that
18 was in here, though I think some of the people reported
19 downstairs and then got sent up.

20 THE CLERK: Got sent up.

21 THE COURT: So I think we have more people in here than
22 the 45 we had requested. Because I didn't see Juror No. 280
23 on the list.

24 MR. WILSON: I didn't see her either.

25 THE COURT: So what we propose to do is, just the first

1 20 -- we'll strike our 12 from the first 20. And then so --
2 first 20, we'll strike the 12 jurors. And then I would
3 propose that we use -- that we have two alternates, I feel
4 like.

5 MR. McLEOD: That would be fine with the plaintiff, Your
6 Honor.

7 MR. THOMPSON: That's fine.

8 THE COURT: So 21 through 23 will be the first alternate,
9 and then 24 through 26 would be the second alternate. Does
10 that make sense? Okay.

11 MR. McLEOD: Okay.

12 MR. THOMPSON: Yes, ma'am.

13 THE COURT: I'm sorry. Y'all carry on.

14 MR. THOMPSON: And, Your Honor --

15 THE COURT: Sorry; one more question.

16 MR. THOMPSON: Your Honor, it's a little bit late now,
17 but are we going to have a chance to take a break after we
18 select a jury before we start? The reason being, that we have
19 asked the witnesses be sequestered, and that means all the
20 family members -- they're all going to be witnesses, and
21 they're not parties to the case.

22 THE COURT: We'll send the jury -- we'll dismiss these
23 folks and send them to the jury room for a minute, let them
24 get their instructions, and we'll take up -- see how much we
25 need to take up. I'd like to get into the case. And if we

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1 can release the jury at 5:00 and then take up anything we need
2 to take up.

3 So we can address only what we really need to get going
4 and try to address the rest after we are done with the jury
5 for the day.

6 MR. THOMPSON: Thank you, Your Honor.

7 MR. WILSON: Understood. Thank you.

8 (A brief recess was taken from 2:19 p.m. to 2:25 p.m.)

9 JURY SELECTION

10 THE COURT: Okay. I think we're ready.

11 THE CLERK: We'll start with the plaintiff, please strike
12 the numbers on the left side.

13 MR. McLEOD: Plaintiff excuses Juror No. 7.

14 THE CLERK: Plaintiff excuses Juror No. 7.

15 (Juror No. 7, a white male, was excused.)

16 MR. THOMPSON: Defendant excuses Juror No. 5.

17 THE CLERK: Defendant excuses Juror No. 5.

18 (Juror No. 5, a white female, was excused.)

19 MR. McLEOD: Plaintiff excuses Juror No. 11.

20 THE CLERK: Plaintiff excuses Juror No. 11.

21 (Juror No. 11, a white male, was excused.)

22 MR. THOMPSON: Defendant excuses Juror No. 12.

23 THE CLERK: Defendant excuses Juror No. 12.

24 (Juror No. 12, a white female, was excused.)

25 MR. McLEOD: Plaintiff excuses Juror No. 16.

1 THE CLERK: Plaintiff excuses Juror No. 16.

2 (Juror No. 16, a white male, was excused.)

3 MR. THOMPSON: Defendant excuses Juror No. 9.

4 THE CLERK: Defendant excuses Juror No. 9.

5 (Juror No. 9, a white female, was excused.)

6 MR. McLEOD: Plaintiff excuses Juror No. 19.

7 THE CLERK: Plaintiff excuses Juror No. 19.

8 (Juror No. 19, a white female [as listed on roster], was
9 excused.)

10 MR. THOMPSON: Defendant excuses Juror No. 3.

11 THE CLERK: Plaintiff excuses Juror No. 3 -- or
12 defendant.

13 MR. THOMPSON: Defendant, yes.

14 (Juror No. 3, a white male, was excused.)

15 THE CLERK: All right. We'll start with the alternate.

16 MR. McLEOD: The plaintiff excuses Juror No. 22, Your
17 Honor.

18 THE CLERK: Plaintiff excuses Juror No. 22.

19 (Juror No. 22, a white male, was excused.)

20 MR. THOMPSON: Defendant excuses Juror No. 21.

21 THE CLERK: Defendant excuses Juror No. 21.

22 (Juror No. 21, a white male, was excused.)

23 MR. McLEOD: And, lastly, Your Honor, the plaintiff
24 excuses Juror No. 25.

25 THE CLERK: Plaintiff excuses Juror No. 25.

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1 (Juror No. 25, a white male, was excused.)

2 MR. THOMPSON: Defendant excuses Juror No. 24.

3 THE CLERK: Defendant excuses No. 24.

4 (Juror No. 24, a white female, was excused.)

5 THE CLERK: All right. May we review your strikes
6 please?

7 Plaintiff strikes No. 7, No. 11, No. 16, No. 19, No. 22,
8 and No. 25; is that correct?

9 MR. McLEOD: That is correct.

10 THE CLERK: The defendant excuses No. 3, No. 5, No. 9,
11 No. 12, No. 21, and 24; is that correct?

12 MR. THOMPSON: That's correct.

13 THE COURT: Okay. As I call your name, please have a
14 seat in the jury box:

15 Juror No. 276, Dylan Moe.

16 Juror No. 107, Kimberly Dow.

17 168, Mary Grant.

18 398, Kelly Watts.

19 6, Mary Altman.

20 247, Hope Lawrence.

21 319 [verbatim] Toni Johnson.

22 110, Ashlyn Duplisea.

23 2, Debbra Alexander.

24 325, John Riggs.

25 91, John Cuoco.

1 308, Elizabeth Petit.

2 Our first alternate being 108, Susan Dunmire. And then
3 344, Cara -- thank you.

4 THE COURT: Any motions with respect to the impanelling
5 of the jury?

6 MR. McLEOD: None from the plaintiff, Your Honor.

7 MR. THOMPSON: No, Your Honor.

8 THE COURT: Okay. Ladies and gentlemen, if you were not
9 selected, I'm going to go ahead and release you at this time.
10 We anticipate that this trial will probably last the duration
11 of the week; however, we will ask, if you'll please call in
12 the call-in number that you have been provided. I'm going to
13 say -- I think we're pretty safe to say not to call back until
14 tomorrow after 5 p.m. What's the time that you usually --

15 THE CLERK: 6:00.

16 THE COURT: If you-all will please call the number you
17 have been provided tomorrow at 6 p.m. At that time, you'll be
18 told -- you'll be given further instruction about when to
19 either call back or when to report back. All right?

20 JUROR: What about tonight?

21 THE COURT: Yeah, you don't need to call back until
22 tomorrow at 6 p.m. or after 6 p.m. tomorrow. All right.
23 Thank you and good evening.

24 (The remaining jury panel exited the courtroom at
25 2:42 p.m.)

1 THE COURT: Okay, ladies and gentlemen. We're going to
2 take up a few matters before we bring you back in to begin the
3 case. So we're going to excuse you to the jury room. If
4 you'll follow the bailiff. And we'll be with you shortly.
5 Please don't begin discussing the case.

6 (The jury exited the courtroom at 2:43 p.m.)

MOTIONS/MATTERS OF LAW

8 THE COURT: Okay. We have some motions or a motion?

9 MR. THOMPSON: Your Honor, technically not a motion, I
10 don't think. The parties had discussed -- there was
11 Chandler's deposition that was going on on Wednesday this past
12 week. Communicated with Mr. McLeod and said that, obviously,
13 the husband and the wife were going to testify, and I said I
14 wanted sequestration, expected the witnesses to be
15 sequestered. He agreed --

16 MR. MCLEOD: We don't have a problem with that, Your
17 Honor.

18 MR. THOMPSON: Well, that leads to the next issue, Judge,
19 which is, all the family members are all going to be witnesses
20 in the case. They're not parties. So the only party in this
21 case is Ms. Abel. She is the personal representative of the
22 estate, and, therefore, all the others are witnesses and
23 should be sequestered.

24 MR. MCLEOD: For the testimony, Your Honor. They
25 absolutely have every right to be here for opening statements,

1 which that's what we intend to do, and then the children will
2 be dismissed until they testify, Your Honor.

3 MR. THOMPSON: Your Honor, I'm not aware -- I think if
4 they're sequestered, they're sequestered. They're not
5 supposed to hear anything, not get any information about what
6 their testimony might be or what the evidence might be. I
7 mean, the whole thing about opening is to say this is what the
8 evidence is going to be. If you're going to tell the
9 witnesses what the evidence is going to be, then, there's no
10 reason to have them sequestered.

11 MR. PRACHT: These witnesses have been deposed
12 previously, for what that's worth. Their testimony is part of
13 the record. Mr. Thompson had an opportunity to ask them any
14 question he wanted to lock them into their testimony.

15 MR. THOMPSON: The two youngest have not been.

16 THE COURT: Is there any issue with them being excused? I
17 mean, you have got somebody who can watch over them?

18 MR. McLEOD: Not right this minute we don't, Your Honor.
19 What we intended was to -- for them to be there during the
20 opening, and then we have got arrangements for them to be
21 taken care of through trial so they're not here in the
22 courtroom except for when they testify and then, again, for
23 closing arguments, Your Honor.

24 And I'm not aware of any rule that says that a statutory
25 beneficiary of the sole heirs to their dead father cannot be

1 in a public courtroom to see opening statements. I have never
2 even heard that argument before, Your Honor.

3 MR. THOMPSON: They're witnesses, Judge. It doesn't
4 matter whether they are beneficiaries are not. They are not
5 parties.

6 And it's very clear under the statute who the party is in
7 a wrongful death case. No question about that. It's
8 Ms. Abel. The rest of them are witnesses. And two of them
9 have been deposed, two of them have not.

10 Now, I don't know who is in the courtroom, Your Honor. I
11 have observed the family with others. I think they're here.
12 I believe that they can be sequestered. And I don't
13 understand how they can be here for opening and then
14 magically, 30 minutes later, they're available to be taken
15 care of outside.

16 So I think that the ability for them to be taken care of
17 is available now. Again, the sequestration is an important
18 piece of this, Your Honor, because two of them have not been
19 deposed and then the other two, frankly, have not seen or
20 heard the evidence from any other witnesses or what,
21 obviously, is going to be presented in this courtroom. And
22 the purpose of sequestration is to allow us to get a fresh
23 view of their testimony.

24 THE COURT: I totally understand your position, but I
25 think, if they're family members, they've probably heard

1 everything with this case previously. I cannot imagine that
2 this is going to be a surprise with what is said in openings.
3 I'm going to allow them to stay in through opening.

4 MR. McLEOD: Thank you, Your Honor.

5 THE COURT: Anything else we need to address before we
6 bring the jury in?

7 Let's talk about timing a little bit. So I'd like us to
8 get through as much as we can. I know that we have a number
9 of matters that we're going to need to probably address. I
10 mean, I'm fine to release the jury as close to 5:00 as we can
11 get.

12 MR. McLEOD: One proposal, Your Honor, is that we open,
13 and then I have got a short witness, Todd Beam, who did a
14 survey, just took measurements of the mean high-water mark.
15 We would call him.

16 And the next witness is going to be Ms. Abel, which will
17 probably be more lengthy. So maybe we open, we do Mr. Beam,
18 and then we can recess for the day and send the jury home and
19 deal what whatever we need with so we'll be ready to go
20 tomorrow.

21 But whatever suits Your Honor is what we want to do, Your
22 Honor.

23 MR. THOMPSON: Your Honor, I agree with Mr. McLeod that,
24 in the order that he is talking about, we won't have enough
25 time for Ms. Abel this afternoon. But my bigger concern is I

1 think I know what he wants to address, which is
2 Dr. Griffiths's video deposition and the excerpts, and there
3 are literally a hundred objections in that transcript.

4 But, more importantly, Judge, those excerpts and those
5 designations were done prior to the June trial date. And so,
6 since that they have -- we have, obviously, had the City
7 dismissed. And so there is a significant amount of change
8 that I would anticipate. I frankly -- I thought they were
9 going to redesignate based on the fact that the City had been
10 dismissed. Obviously, there is a tremendous amount of
11 discussion in that transcript that includes the City -- the
12 City this, the City that -- that wouldn't be relevant.

13 There's also opinions now that Mr. -- or Dr. Griffiths
14 offered that would no longer be relevant. For example, the
15 dual-role issue that he offers testimony or an opinion that
16 that shouldn't be allowed. Well, with the City and the
17 franchise agreement, everything being in compliance with the
18 statute, there's no way to argue that the dual role is
19 improper. The City is not here. The City's agreement --

20 THE COURT: I understand we're going to have a number of
21 issues we need to take up.

22 MR. THOMPSON: I'm sorry, Your Honor.

23 THE COURT: If we don't take it up this afternoon -- I
24 mean, we've got to take it up at some point. Is there some
25 alternative that you have for how we're going to deal with

1 that?

2 MR. THOMPSON: I'm happy to be here first thing in the
3 morning, Your Honor. I'm happy to work through this this
4 afternoon.

5 THE COURT: That would be fine if you think that it's
6 going to be productive for y'all to try to work through it
7 without me ruling on it. I'm feeling less optimistic about
8 y'all working that out.

9 MR. THOMPSON: I think, Your Honor, that the issue,
10 though, with Dr. Griffiths is for us -- it's a four-hour-plus
11 transcript -- four-hour-plus testimony. And so I really need
12 to sit down and go back through things that I may not have
13 objected to and now I do because the City's been out. That
14 happened on Friday.

15 So, again, I anticipated or expected re-designations; I
16 haven't received those. And, obviously, now I need to deal
17 with that. I thought we were going to try to figure out --
18 you know, sort of reduce the scope of that testimony,
19 apparently not.

20 MR. McLEOD: We just need to get it worked out one way or
21 the other as quickly as possible just because that, obviously,
22 affects our presentation, and we have the burden of proof.

23 Your Honor has already ruled on the dual-roll issue. I
24 don't know why he's readdressing it now. But, anyway, we just
25 want to get it worked out, and whatever the Court wants us to

1 do, we're willing to do it, Your Honor.

2 THE COURT: Well, and I'm glad to come early. It's just,
3 if it takes us an hour to get through it, I just don't want
4 our juror time to be spent with us going over the video
5 excerpts.

6 MR. McLEOD: That's why I suggested today, Your Honor,
7 for that very reason.

8 THE COURT: And I understand your position. If y'all can
9 agree on some of it that we don't have to spend an hour and a
10 half tomorrow, then that's fine; then I feel like it's time
11 well spent for y'all to work through it, but I'm not feeling
12 overly optimistic that we're not going to end up tomorrow
13 being at this for two hours before we reach the jury.

14 MR. THOMPSON: In theory, Your Honor, right, based on the
15 City being dismissed, the transcript -- we should have less to
16 talk about. Right? There should be less objections to deal
17 with because it should be reduced in scope.

18 If we sit down here this afternoon and go through every
19 deposition objection, there will be some that may not be
20 applicable. There will probably be more. For example, I
21 didn't object or didn't raise an objection with regard to the
22 dual-role issue because that was an opinion he was offering
23 and the City was in. And that was an issue. It's not an
24 issue anymore.

25 MR. McLEOD: I don't -- I'm sorry.

1 THE COURT: I thought I had already ruled on the motions
2 in limine that that could come in.

3 MR. McLEOD: You have, Your Honor.

4 And if I could just offer one thing: If we start on
5 the -- Dr. Griffiths's deposition tonight or this afternoon,
6 even if we don't get through, we'll have a very good idea of
7 how Your Honor is likely to rule, because a lot of the issues
8 are the same as you go through the deposition. And at least
9 we can then sit down tonight, as officers of this court, and
10 see if we can work through the remaining parts of the
11 deposition.

12 THE COURT: Let's at least start that and then -- I
13 promise you, there's nothing I would rather do less than go
14 page by page through Dr. Griffiths's testimony, but let's at
15 least -- we'll start doing that. If y'all think at some point
16 you can take it up on your own, that's fine.

17 MR. THOMPSON: And so I do have a question based on --
18 because this is important with openings and where this is
19 headed -- about the dual-role piece, because I understood Your
20 Honor's ruling that the dual-role issue was something for the
21 jury to decide whether they were engaged in it at the time;
22 whether, in, its simplest sort of foundational aspect, whether
23 you could or couldn't do it is not an issue in the case
24 anymore. Because my client, Lack's Beach Service, is in
25 compliance with and in agreement with the City. The City says

1 that you can do dual role. The City says that you can do
2 these things.

3 And so we are in compliance with the agreement of the
4 City. And so my belief and understanding, walking in today,
5 was the challenge is not to the foundation or the fundamental
6 concept of the dual role. It's more to, okay, were you doing
7 dual role at the time this incident happened and, therefore,
8 you should have been paying more attention to the water.

9 But if it is foundation, which is, you should never have
10 been doing it in the first place, well, the City -- it's the
11 City -- we're having a problem because the City is not here,
12 and it's the City's agreement that says that we can.

13 THE COURT: Well, I think that you can address that with
14 the jury. I mean, I have already ruled that I denied the
15 motion in limine to exclude any evidence about the dual role.
16 So, I mean, I think that is an issue. I don't know how to
17 separate the two things and say, well, you can only discuss it
18 if you talk about it this way but you can't discuss it if you
19 talk about it this way. I feel certain that you will clarify
20 with the jury the agreement between the City and Lack's.

21 MR. THOMPSON: Thank you, Your Honor.

22 MR. McLEOD: Could we have a five-minute break?

23 THE COURT: Sure, sure.

24 (A brief recess was taken at 2:55 p.m. to 3:00 p.m.)

25 THE COURT: Okay. Ready for the jury?

1 MR. McLEOD: We are, Your Honor.

2 MR. THOMPSON: Yes.

3 (The jury entered the courtroom at 3:02 p.m.)

4 THE COURT: If I can get you to go ahead and swear the
5 jury now.

6 (The jury was duly sworn.)

7 THE COURT: Thank you.

8 Ladies and gentlemen, the case we're about to try is
9 Meswaet Abel, as personal representative over the Estate of
10 Zurihun Wolde, versus Lack's Beach Service. And before we
11 begin the trial, I want to tell you that this trial may be
12 very different from what you might expect from what you have
13 seen on movies or in books or television where there are a lot
14 of riveting circumstances and dramatic witness testimony.

15 While all those things may be true at times, the trial is
16 not for entertainment. It is a fundamental part of our
17 democracy. It's often, from where you're sitting, it may
18 appear to be slow, repetitive, deliberate, the opposite,
19 pretty much, of what you have seen on television.

20 But the courtroom is a place of honor that is dedicated
21 to the protection and preservation of citizen's rights through
22 what many people call the greatest justice system ever
23 created.

24 The attorneys appearing before you are advocates for
25 their clients, but, first and foremost, they're officers of

1 the court, and they're sworn to uphold the integrity and
2 fairness of our judicial system. You should expect them to be
3 professional, competent, and ethical in the representation of
4 their client's interest, and, of course, you yourself have
5 taken an oath to try the case and reach a fair and just
6 verdict, and you're also expected to be professional,
7 reasonable, and ethical. So I thank you, first of all, for
8 taking on this very important responsibility.

9 The first thing that will occur during the trial is that
10 the plaintiff -- and the plaintiff is the person who has
11 brought this action or suit -- will make an opening statement
12 through the attorney, which will be followed by a similar
13 opening statement from the attorney for the defendant.

14 These opening statements are not arguments or evidence.
15 The arguments will come at the conclusion of the trial. But
16 the purpose of the opening statement is for each party to
17 outline his claims to you and give you an indication of what
18 type of testimony you're going to hear during the trial.

19 Following the opening statements, then, each side will
20 give its evidence with the plaintiff, once again, going first.
21 Evidence can take many forms during a trial. It can be the
22 sworn testimony of a witness, it can be documents, models,
23 photographs, or other similar items. You should pay close
24 attention to all the evidence.

25 You, the jury, are the sole finders of the facts in this

1 case. No one else is permitted to weigh the evidence and
2 render a verdict based on the evidence. After all the
3 evidence has been presented, the attorneys will make their
4 closing arguments, and unlike the opening statements, the
5 final remarks will be true arguments; that is, each side will
6 emphasize certain portions of the evidence and try to persuade
7 you to agree with their version of the facts.

8 Keep in mind that the opening statements as well as the
9 closing arguments of the attorneys do not represent evidence
10 in the case. Again, the evidence is the sworn testimony from
11 this witness stand and any exhibits which are properly
12 admitted during the course of the trial, but, of course,
13 please give the attorneys your undivided attention.

14 After the arguments are finished, I will explain to you
15 the law that applies in this case, and you must apply the law
16 as I instruct you even, if you personally were to disagree
17 with it.

18 You'll then return to the jury room to consider the
19 facts, apply it to the law, and once you have done so, you'll
20 return a verdict in favor of one side or the other.

21 During the course of the trial, the plaintiff has the
22 burden of proof. The plaintiff must meet this burden by
23 proving her claims by the greater weight or preponderance of
24 the evidence. And what we mean by the greater weight of the
25 evidence can be illustrated by imaging a traditional set of

1 scales. When the case begins, the scales are even. After all
2 the evidence has been presented, if the scales should remain
3 evenly balanced or if they should tip even slightly in favor
4 of the defendant, then the plaintiff would have failed to meet
5 her burden of proof, and your verdict would be for the
6 defendant.

7 If, on the other hand, the scales should tip even
8 slightly in favor of the plaintiff, then she will have met her
9 burden of proof, and your verdict will be for the plaintiff.

10 Although I'm the only person who can tell you what the
11 law is in this case, you are the only ones who can determine
12 the facts. I do not have the right to indicate how I feel
13 about the facts of the case, and throughout this trial, my
14 intention will be to act impartially toward each party. You
15 are the sole finders of fact in this case.

16 Second, from time to time, an attorney may object to some
17 bit of testimony or evidence being presented. There are
18 certain rules that both sides have to obey in presenting
19 evidence, and these rules are to ensure that the information
20 you receive is the most trustworthy and reliable evidence
21 available. An objection is the procedure that's used to call
22 to my attention any possible violation of the rules. Please
23 don't hold an attorney's objection against the party, and
24 please don't conclude from my ruling on the objection that I'm
25 favoring one side or the other. My rule is to -- my role is

1 to rule on the admissibility of the evidence. Whether you
2 believe the evidence or not is solely for your determination.

3 Finally, I would ask that you pay close attention to all
4 of the evidence presented to you in this case. Again, it's
5 you, the jury, who will determine the facts, and, as a result,
6 you have the right to evaluate the credibility and
7 believability of all the witnesses who testify in this matter,
8 so of course it's necessary that you pay careful attention to
9 their testimony, that you watch them while they're testifying,
10 so you can evaluate those witnesses.

11 You are participating in a time-tested system, and it's
12 extremely important for each of you to listen carefully to all
13 of the evidence presented.

14 Just a little bit of logistics about how we'll try to
15 conduct court each day, we do have a number of witnesses that
16 we need to get through; it's a little bit of a more lengthy
17 trial. We may start at 9:00. We will give you a lunch break
18 every day. We're going to try to have the lunch break for one
19 hour, so we may release you from 12:00 to 1:00 or 12:30 to
20 1:30, and then we'll resume the testimony.

21 We're going to try to end the testimony as close to 5:00
22 as we can each day, but keep in mind, if we're in the middle
23 of a witness, we may go past 5:00 in order to get through that
24 witness and not have to split it between days.

25 Every night we'll send you home, and I'll give you the

1 same instruction every time we take a break and every time we
2 release you at the evening, to not begin discussing the case.
3 You will have heard only a portion of the testimony, and so it
4 wouldn't be fair to either side for you to begin discussing it
5 and begin your deliberations until you have heard all the
6 evidence and you have heard my instructions on the law, you
7 have heard the parties' closing arguments.

8 So when you go home tonight, your friends and family are
9 going to be very interested. They know you're going for jury
10 duty. You've now been selected on a case. It's human nature,
11 they may want to hear about the case. I'm going to instruct
12 you to please don't discuss this case with your friends and
13 family at this point. And the reason for that is, both sides
14 at this point believe that you are fair and impartial jurors,
15 and that you can hear the facts in this case, you can apply
16 the law, and you can do so in a fair and impartial manner.

17 And sometimes when you tell folks just the littlest bit
18 about the case -- what it's about or who is involved -- you
19 may unintentionally elicit back from them a response that's
20 going to compromise your ability to be fair and impartial.

21 So, again, before every break, I'm going to remind you
22 not to discuss it, and before we leave every evening, I'm
23 going to remind you again, please don't discuss the case.

24 Now, when the case is over, you can discuss it with
25 anyone you want to or you can decline to discuss it. It will

1 be entirely up to you.

2 Okay. I'm going to turn it over to the plaintiffs for an
3 opening statement.

4 MR. McLEOD: May it please the Court, Your Honor?

5 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

6 MR. McLEOD: It's been said there's no violation worse
7 than of the public trust. In this community, the City of
8 Myrtle Beach decided years ago that, because the town was
9 growing from a small beach town to a national destination for
10 travelers, the City recognized that, annually, 14.7 million
11 visitors would come to the city. Most of those visitors came
12 for the attraction of the beach. Because of that and because
13 the beach was at the heart of the City's tourism industry, the
14 City made a decision that it was important for there to be
15 professional lifeguards on the beach. It was so important
16 that they gave, as the evidence will show, a citizen a
17 privilege that few citizens ever have the opportunity.

18 You see, the evidence will show that the City, because it
19 was so important for the protection of its residents and
20 visitors, they gave a company, named Lack's Beach Service,
21 which is the defendant in this case, the privilege of making
22 money on the public's beach. The evidence will show that that
23 privilege was the sole right to rent beach chairs and
24 umbrellas to the public, on the public beach.

25 Now, the evidence will show that, with privilege, comes

1 responsibility. And as it turns out and as the evidence will
2 show in this case, the responsibility of being a professional
3 lifeguard is real. You will hear that lifeguards are also
4 emergency responders. Professional standards, you will hear,
5 were developed many, many years ago so that the quality of the
6 lifeguarding services at Myrtle Beach would be similar to the
7 quality of lifeguarding services on other beaches,
8 professional standards of care, the safety rules that apply.
9 So that people, regardless of the setting, if lifeguarding on
10 the ocean, they follow the rules.

11 Now, for Myrtle Beach in particular, it sits in the
12 curvature of South Carolina's coast, and the evidence will
13 show that rip currents have been at the forefront of ocean
14 safety for many, many years, and you'll hear testimony that
15 rip currents are more likely to form where they hit the
16 beach -- the angle of approach of the wave is at 90 degrees.
17 Like Myrtle Beach, it sits in the curvature of our coast.

18 You'll also hear testimony that rip currents in
19 particular, what causes them -- one of the main causes is
20 actually, when the water recesses from the beach, if it pulls
21 sediment and sand quickly away, it forms a depression. It's
22 almost like a channel or a river.

23 And so what happens is, when the waves come on the shore,
24 when the energy of that water leave the shore, it follows the
25 path of least resistance. Just like the deep end of the

1 Waccamaw River; the water is faster than the shallow ends of
2 the Waccamaw River.

3 Now, you'll also hear evidence that rip currents can be
4 very deceiving to swimmers for two reasons: One, the evidence
5 will show they're hard to detect from ground level. And
6 that's one reason why lifeguard towers are just that. They're
7 towers. Lifeguards, if they comply with professional
8 standards of care, don't lifeguard from a beach chair. They
9 lifeguard from a tower because of the vantage and the
10 viewpoint that that gives.

11 You'll also hear testimony that rip currents can be
12 deceiving to the swimmer because the water going back out to
13 the ocean is going at a faster clip than water coming on the
14 shore, and so it flattens the waves that are coming in, and so
15 the area actually looks calm to a swimmer. Most people, the
16 evidence will show, view calm as safe.

17 Now, in addition, there is another hazard that has been
18 at the forefront of oceanfront lifeguarding for many years,
19 and that is a longshore current. So the rip current pulls
20 out. The longshore current goes down the beach. And the
21 evidence in this case will show that, normally, if the rules
22 are followed, swimmers don't get in trouble or lose their life
23 like Mr. Wolde did because lifeguards are required, by the
24 rules, to maintain constant water observation. And if there
25 is a life safety hazard, like a rip current, they are

1 required, by the rules, to warn of that specific hazard on
2 that specific day.

3 The evidence will also show that the standard of care
4 requires that, in addition, they are to guard, protect
5 swimmers from that very life-safety hazard because not all
6 swimmers are good swimmers. The evidence in this case will
7 show that Mr. Wolde was not only a good swimmer, he was avid
8 swimmer, and his daughter -- and his son, Adam, and his
9 daughter, Wubit, they were also good swimmers.

10 But you see, on August 24, 2018, they came to Myrtle
11 Beach for a family vacation. They got here the night before.
12 Of course the kids, the twins and Adam and Wubit were excited
13 about going to the beach. This was their family vacation.
14 Ms. Abel is a nurse. She doesn't get a whole lot of time off.
15 And when they do get time off, the family treasures it.

16 What the evidence will show, they got to town the night
17 before, and they were staying at the Sea Crest Resort there in
18 Myrtle Beach. The kids were so excited about going to the
19 beach, they went out on the beach that afternoon. As the
20 evidence will show, they weren't allowed to get in the water
21 because no lifeguards were present, the beach was closed,
22 although the towers were there.

23 So, the next morning, Mr. Wolde gets up early. He goes
24 and he gets breakfast for the family. They have breakfast.
25 Mr. Wolde puts sunscreen on all four of the kids, which is a

1 real job -- on all four of the kids, and they go to the beach.

2 Now, what they did not know and what they did know was
3 that, that day, there were warnings that the professional
4 lifeguard company received about dangerous rip currents that
5 day.

6 They get on the beach. There are people swimming. There
7 doesn't seem to be anything abnormal. And you'll hear the
8 testimony. And so, Mr. Wolde and the two children, Adam and
9 Wubit, went to get in the water, and Mom stayed up higher on
10 the beach with the twins because they were younger.

11 Well, that same life-safety hazard that they knew about
12 got ahold of Mr. Wolde and his kids. That evidence will show
13 that they were first pulled out by the rip current. And, now,
14 Adam, with the help of a bystander, was able to get out of the
15 rip current and come to shore. Regrettably, Mr. Wolde and
16 Wubit were unable. And once they got to the longshore current
17 it pulled them down the beach.

18 As it pulled them down the beach, there was witnesses --
19 you'll hear from a witness, Mr. Chandler, who he saw two
20 bystanders already in the water trying to help Mr. Wolde and
21 Wubit to shore. He'll also testify by video, because he's in
22 the military and he's on an Air Force base, that a nurse came
23 to assist. They performed CPR, but, regrettably, Mr. Wolde
24 lost his life in front of his daughter, Wubit; his significant
25 other, Ms. Abel; and Adam.

1 And I wish I could tell you that what happened that day
2 was a simple mistake, was an honest mistake, but that's not
3 what the evidence will show in this case, ladies and
4 gentlemen. What the evidence will show is that the defendant,
5 who was given that privilege, the unfettered right to make
6 money on the public's beach, they did not warn at all of that
7 hazard that day. They did not, as the evidence will show,
8 guard against that hazard, whether it be closing that section
9 of the beach or closing the beach. You'll hear that, when rip
10 currents are likely, the standard of care requires that the
11 beach be closed or at least that section of the beach where
12 rip currents are present.

13 Now, the question becomes why? Well, the City entered
14 into this contract giving the privilege to this for-profit,
15 and the City says, Look, we want these towers stretched along
16 the beach, and we require and need protection at each tower.
17 Well, what you'll see in this case is that this defendant
18 for-profit ran his business a little different. For one, the
19 evidence will show that most of the lifeguards that they hired
20 came from other countries, which there's nothing wrong with
21 that. The three lifeguards at issue in this case, one was
22 from Russia and the other two were from Poland. But, you see,
23 what the evidence will show is that, for example, the kid from
24 Russia, he was hired sight unseen. And, you see, he gets
25 here, and as soon as he gets here, he is out working on the

1 beach in a position of public trust. The evidence will show
2 that they received little to no training, or at least there's
3 no records of it. Now, we haven't had a chance to talk to
4 those three lifeguards because they're no longer on this
5 continent.

6 You will also hear that this particular for-profit runs
7 this operation very differently in that his lifeguards also
8 are beach attendants. They are the ones that sell the
9 umbrellas and the chairs. It is undisputed, in the aquatic
10 safety community, that's a lifeguard's sole responsibility is
11 water observation, and if there is any task or responsibility
12 that detracts from that, that deviates from the standard of
13 care. That's breaking the rules, and, as the evidence will
14 show, for obvious reasons.

15 In this case, Mr. Chandler, who was the witness that
16 you'll hear from, where he saw Mr. Wolde and his daughter
17 being pulled out of the ocean, he will testify to you that he
18 saw a lifeguard approximately five to ten minutes before he
19 heard yells at the water's edge and that lifeguard had his
20 back to the water and he was talking to two people in the
21 umbrella line.

22 The evidence will show that no lifeguard ever showed up.
23 From the time Mr. Wolde was in distress to the time that he
24 and his daughter drifted in the longshore current until the
25 time that he was dragged ashore, they never showed up.

1 I suspect what they will tell you is that they're allowed
2 to do what they call dual-role lifeguarding. I suspect they
3 will tell you, "We teach them and we tell them that, when
4 you're taking the receipts and you're getting the cash, don't
5 ever take your eyes off the water."

6 Well, you see, what the evidence will show is they are
7 putting these kids in a position to fail, even if they were
8 properly trained, because they give them conflicting roles and
9 responsibilities. Well, you can't make the commissions on the
10 sales if you're doing your job as a lifeguard, staying on the
11 tower watching the water. And the evidence will show that
12 these kids, when they come here, they make commissions on the
13 sales.

14 Now, the evidence will also show that, in addition to the
15 kids being put in a position to fail, where they have
16 conflicting responsibilities, they are required, by the City
17 contract, to have supervisors watching the lifeguards. The
18 contract from the City to this for-profit requires what they
19 call LGO towers. And the evidence will show that an LGO tower
20 is one where there's a lifeguard on the tower where no sales
21 are permitted. That lifeguard's responsibility is solely to
22 watch the water.

23 But, you see, on this day, the evidence will show the
24 closest lifeguard on the tower that was occupied by a
25 lifeguard was approximately eight city blocks away. They were

1 required to have eight on the beach that day. The evidence
2 will show they had three.

3 I suspect they will tell you that they're allowed to do
4 this. Well, the State allows me to drive a car, but I want
5 you to listen carefully to the evidence that they offer in
6 support of "they're allowed to do it." I'd also ask you to
7 listen carefully to their testimony, to whether they prove to
8 you they're allowed to not provide any warnings whatsoever of
9 a specific life-safety hazard that they know about that day.
10 I would ask you to please listen carefully to their testimony,
11 whether they prove to you that they're allowed to leave the
12 beach open for swimmers, for kids, for families under these
13 conditions.

14 And, lastly, I'd ask you to hear the evidence in this
15 case, to ask yourself whether this community values safety and
16 those safety rules and the standard of care. Thank you.

17 THE COURT: Mr. Thompson?

18 MR. THOMPSON: May it please the Court, Your Honor?

19 THE COURT: Yes, sir.

20 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

21 MR. THOMPSON: Good afternoon. My name is Trey Thompson.
22 This is Paul Trainor in my office. And this is Weslyn
23 Lack-Chickering. She's the current operations manager for
24 Lack's Beach Service.

25 George Lack is the owner/operator and has been on the

1 beach all his life. He has owned and operated Lack's Beach
2 Service since 1979. George, unfortunately, is a little bit
3 under the weather right now; we're hoping he's going to get
4 better and be available to you and to hear from him this week.

5 What's important today is to understand a couple of
6 things. As you go through this case, there are a couple of
7 overriding themes and overriding issues that you have to think
8 about and consider.

9 This event happened at the beach. It did not happen at a
10 pool. This event happened in a place where there is no
11 guarantee of safety. You will hear their expert testify over
12 and over again: You can't guarantee safety on a beach. You
13 can't eliminate risks. It's inherent. It's the ocean. It's
14 the ocean environment. It's not a controlled environment.
15 Right?

16 So when we start talking about what happened that day,
17 it's very important for you to hear the testimony and listen
18 to the witnesses, because what you are going to hear is very
19 important, just as much as what you're not going to hear. All
20 right?

21 So let's talk about the facts. All right? Lack's Beach
22 Service has been providing lifeguard services to the City of
23 Myrtle Beach and to Horry County in the unincorporated areas
24 for 40 years. They have been operating Lack's Beach Service
25 in the City of Myrtle Beach under a franchise agreement since

1 2018. There were agreements before that.

2 And, importantly, Lack's Beach Service has to be in
3 compliance with that agreement. It starts and ends there
4 because, as Mr. McLeod pointed out, Lack's Beach Service has
5 no right to be on the beach but for the City allowing it to do
6 it. And, so, the franchise agreement, which you will have, is
7 the most important thing because that's where it starts.
8 Lack's Beach Service doesn't dictate the terms. The City has
9 provided the terms. The City has said these are the things
10 that we want you to do. The City has said these are the
11 things that you need to do on the beach.

12 The City designates or has the ability to provide a
13 franchise agreement because the State, South Carolina, allows
14 them to. The State says you can provide lifeguards on your
15 beach. You don't have to. Right? It's an important concept.
16 The City has no obligation to provide lifeguards at all. The
17 State says you can. And the State also says that you can, the
18 beach service provider, also do concessions, rent umbrellas,
19 rent chairs. The State says you can do it. The City says you
20 can do it. Lack's did it.

21 Now, on August 24, 2018, the real question is: Did any
22 of that have anything to do with what happened? This was a
23 tragic event. Unfortunately, somebody, Mr. Wolde, lost his
24 life. That is terrible. However, under the circumstances of
25 this case, as you will hear, where, as you go through this

1 case, would the outcome be different? What evidence have you
2 seen that would show the outcome would be different?

3 So what do we know about the facts? Right? The family
4 came in the evening before. They went to the beach around
5 noon on August 24th. When they walked out, they walked out of
6 the Sea Crest Resort hotel, a private beach access. They did
7 not use the public beach access.

8 Now, taking one time back, before the family arrived on
9 the beach, before they arrived in South Carolina, which they
10 had never been here before, they did no research, they didn't
11 access the City's website to find out about the beach, to find
12 out about lifeguards, find out about the ocean, to find out
13 about anything about this community.

14 They arrived here. They did no further investigation.
15 They didn't ask anybody at the Sea Crest Resort hotel about
16 anything. They accessed the beach.

17 When they went to the beach, you have to understand, you
18 have towers that are orange. You have umbrellas that are
19 orange. And, then -- and I will -- there's actually another
20 part of this that goes in that, goes over there, and it
21 probably is not tall enough.

22 These are the flags. Lack's Beach Service employed a
23 flag system in 2018, and this would demonstrate to all that
24 are on the beach what the condition of the water was that day.

25 And, on this day on August 24, 2018, it was a single red

1 flag day, a high hazard warning day. These flags were in
2 front of all lifeguard towers up and down the beach.

3 The family didn't ask anybody about what the flags meant.
4 Didn't ask any of the lifeguards. Didn't seek out information
5 at all.

6 The family went in the water in front of -- and you will
7 hear as we go through this, the lifeguard towers are numbered
8 from north to south in descending order. So, at the Sea Crest
9 Resort hotel, we're generally going to be talking about L-22,
10 Lifeguard Tower 22. So L-22. And you go down about a block
11 or so, and it's L-21. And then go down another block, and
12 it's L-20.

13 So when Mr. McLeod was talking about there would be three
14 lifeguards, those are the three lifeguard towers that we're
15 going to be talking about. On L-22, we had Lucasz; on L-21,
16 you had Kacper; on L-20, you had Alex.

17 So the family, apparently, gets to the beach around noon.
18 Everybody is on their towers at that time. Everybody has a
19 red flag in front of them.

20 At 12:15, Kacper, who is at L-21, went to lunch. Now,
21 the franchise agreement provides for all of the lifeguards to
22 go to lunch, every third lifeguard, for 45 minutes. And what
23 that would allow them is, of course, when one lifeguard was at
24 lunch, the two lifeguards on either side, then, would watch
25 their water, the overlapping towers. That's the way it was

1 set up.

2 So, when this event happened, L-21, Kacper, was at lunch.
3 Well, we know that the family went into the water near L-22,
4 right in front of the Sea Crest Resort hotel. Mr. Wolde ended
5 up down in front of L-21. That's where he was brought ashore.
6 At the time that he got into trouble, Kacper was at lunch. In
7 accordance with the franchise agreement, that's the way the
8 City had it set up.

9 So we know that they went into the water at L-22. There
10 was a longshore current. It was moving down the beach.
11 That's how they ended up in front of L-21. What happened to
12 them is the mystery, because, really, the only two people that
13 have any opportunity to tell you about what happened are the
14 two children. I really feel for them in this situation.
15 They're young people being brought in to talk to you about
16 what happened.

17 But what they'll tell you is that Wubit, the youngest, at
18 that time was, I think, nine, was a weak swimmer. She didn't
19 like the deep water. She was afraid. She was holding onto
20 her father.

21 You'll hear about how Adam was a stronger swimmer. And
22 as they were playing in the water, they ended up going deeper
23 and deeper into a place where even their family rule was you
24 don't go deeper than where you can touch. They got deeper
25 than that. That was not because they were pulled there. That

1 was not because they were pushed there. The testimony is they
2 just kept on going deeper. And then the trouble happened.

3 So the question then becomes: What did anybody see? How
4 long did they have to do it? What could have been done
5 differently?

6 And the only witnesses that I'm aware of that are going
7 to talk to you about -- today about what happened are all
8 going to tell you about what happened after. Mr. Chandler is
9 going to tell you about he heard a yell and he saw two people
10 bringing Mr. Wolde in like this. That's the first he saw. He
11 didn't see anything before that. Nobody is going to tell you
12 anything from the beach, from the witness stand, about what
13 happened in the water. And what could have been seen? Don't
14 know, unfortunately.

15 So you have a question. Right? What happened that day?
16 Well, I think you heard Mr. McLeod, towards the end of his
17 opening, he talked about us, Lack's Beach Service. He wants
18 us to prove something to you. He wants us to show something
19 to you. Well, Judge Curtis described to you at the very
20 beginning, it's the plaintiff's burden of proof. They have to
21 show you what happened. They have to show you why Lack's
22 Beach Service is responsible in this case. That's their
23 burden.

24 Ladies and gentlemen, this is a tough case. It really
25 is. I mean, it's tough. Nobody wants to see what happened to

1 Mr. Wolde. Nobody wants that to have occurred at all. But
2 when you think about the case, when you think about the
3 evidence, when you hear the witnesses talk about what
4 happened, think about how the outcome would have changed,
5 could have been changed. Because if you can't -- you can't
6 change the outcome, there can't be any liability.

7 Thank you for your time. We look forward to working with
8 you this week. Thank you.

9 MR. McLEOD: Your Honor, our first witness is Mr. Beam.
10 He's out in the hallway. We need to get the Elmo hooked up.
11 It will be a short witness, Your Honor. This is the surveyor.

12 THE COURT: Okay.

13 JUROR NO. 91: Your Honor, may I speak to you? Ma'am, I
14 need to talk to you.

15 THE COURT: Sir, I can't answer questions for you during
16 the course of the trial. If there's something that needs to
17 be brought to my --

18 JUROR NO. 31: It's due to the judgment of the trial.

19 THE COURT: Okay. I'm going to ask if you will -- when
20 we take a break, if you'll write a note. We have a procedure
21 that we have to go through. So if you'll please write a note
22 and give it to the bailiff, and then she'll give it to me, and
23 then we'll -- I'll read it out in open court, and we'll
24 address it.

25 JUROR NO. 31: Okay.

1 THE COURT: And I think we're going to excuse the
2 witnesses at this point as well.

3 (Potential witnesses exited the courtroom.)

4 MR. McLEOD: Your Honor, may he take the stand?

5 THE COURT: Sure.

6 TODD BEAM,
7 after having been duly sworn, was examined and testified
8 to as follows:

9 THE CLERK: When you get up here, just state your name
10 and spell it out for the Court, please.

11 THE WITNESS: Todd Beam. T-o-d-d, B-e-a-m.

12 MR. McLEOD: May I begin the examination, Your Honor?

13 THE COURT: You may.

14 DIRECT EXAMINATION

15 BY MR. McLEOD:

16 Q Mr. Beam, are you a licensed surveyor in South Carolina?

17 A Yes, sir.

18 Q Could you share with the ladies and gentlemen of the jury
19 where you live, sir?

20 A I live in Clemson, South Carolina.

21 Q All right. And could you share with them how one becomes
22 a land surveyor licensed in South Carolina?

23 A Yes, sir. You have to go to school. You have to take
24 land surveying classes. I have a four-year degree now. You
25 have to work under a licensed surveyor for four years. You

1 have to take an LSIT exam, and then you have to take another
2 exam, and then you have to take a State-specific exam. And
3 then you have to have 30 hours' continuing education for every
4 two years.

5 Q Yes, sir. And when were you first licensed as a surveyor
6 in South Carolina?

7 A 2011.

8 Q Okay. And can you share with the ladies and gentlemen of
9 the jury what different types of survey jobs you have done
10 over the course of your career?

11 A I do residential boundary surveys, I do commercial
12 boundary surveys, I do stake-out work, topographic surveys,
13 ALTA surveys, which is the American Land and Title
14 Association. Basically any surveys out there.

15 Q Have the tools that surveyors have available to them
16 gotten better over the years?

17 A Yes, sir, they have.

18 Q And could you share with the ladies and gentlemen of the
19 jury how those tools have gotten better with technology?

20 A Used to, it used to take two people to do a survey, or
21 three. Now, it can be done with one. We're using GPS, which
22 everybody knows what GPS, Global Positioning Systems, and a
23 robotic total station.

24 Q And what does it mean to shoot the lines, to a surveyor?

25 A When you shoot the lines, you shoot from Point A to Point

1 B. And what you do is you hit on one point, hit on the other
2 point, and that makes you a straight line. It does not follow
3 the ground. It is a straight line just like this surface
4 right here. It's a straight. You just cut a straight line on
5 a piece of paper.

6 Q Mr. Beam, did I ask you to come to Myrtle Beach on behalf
7 of the family and survey an area of the beach?

8 A Yes, sir, you did.

9 Q And could you share with the ladies and gentlemen of the
10 jury when you came to Myrtle Beach and what you did?

11 A In June of this year, I came down and shot the beach. I
12 shot the access points from 7th, 8th, 9th, 10th plus Crown
13 Reef, and there's another one that -- if I can get a copy of
14 the survey --

15 Q We'll get there in just a second, yes, sir.

16 A Okay. But I surveyed the beach. I surveyed the
17 topographic contours of the beach, the accesses, and measured
18 the distance between the accesses and the high-water mark.

19 MR. McLEOD: Your Honor, may I approach the witness?

20 THE COURT: Yes.

21 BY MR. McLEOD:

22 Q Mr. Beam, I want to hand you what we'll mark 1 for
23 identification purposes at this time.

24 (Plaintiff's Exhibit No. 1, Survey, was marked for
25 identification.)

1 BY MR. McLEOD:

2 Q And I'll ask you, sir, is survey familiar to you?

3 A Yes, sir, it is:

4 Q And is that the survey that you did of the area of Myrtle
5 Beach near the Sea Crest Resort?

6 A Yes, sir.

7 Q And, at the bottom of the survey, it has these stamps or
8 these seals?

9 A Yes.

10 Q Could you show the ladies and gentlemen of the jury what
11 those are?

12 A Those are -- one is a surveying stamp, and one is a
13 certificate of authenticity of my company.

14 MR. McLEOD: At this time, Your Honor, we, move to have
15 Plaintiff's 1 into evidence.

16 MR. THOMPSON: Objection, Your Honor?

17 THE COURT: And what's the basis?

18 MR. THOMPSON: Relevance.

19 THE COURT: Do you want to be heard on it?

20 MR. McLEOD: Your Honor, he took measurements of the
21 beach, for example, the distance of a city block, the distance
22 from the dune line to the high-water mark, and I think it's
23 good for the jury to have some basic reference points, and
24 that's a part of his survey, Your Honor.

25 MR. THOMPSON: Your Honor, this is a survey that was done

1 in 2022. The incident we're talking about happened in 2018.
2 Since that time, there's been a significant hurricane that
3 came through, Hurricane Florence. There's not been any
4 establishment of any foundation that the current condition or
5 the condition that Mr. Beam surveyed was the condition of the
6 beach at the time.

7 If he's talking about simple distances between access
8 points on the dune line that haven't changed over the course
9 of time, that's one thing. If he's going to be offering
10 evidence about distance of the beach and how much beach is
11 available, Your Honor, there's been too much time that's
12 passed.

13 BY MR. McLEOD:

14 Q Mr. Beam, how does a land surveyor determine the average
15 mean high-water mark?

16 A The average mean high-water mark is done over a period of
17 time by the tidal -- NOASS tidal company or government. And
18 what they do is they take all the averages of the low-water
19 mark and the high-water mark over a ten-year period and base
20 that on the mean low-water mark and the mean high-water mark.

21 Q And so the high-water mark that is depicted in
22 Plaintiff's Exhibit No. 1, that would include data from 2018
23 because that would be within the ten-year window; is that
24 correct?

25 MR. THOMPSON: Objection, Your Honor. Leading.

1 THE COURT: I'm going to overrule the objection and allow
2 that question.

3 MR. THOMPSON: Yes, Your Honor.

4 A The high-water mark and the low-water mark were based off
5 of a benchmark that was published by the South Carolina
6 Geodetic Survey, yes, sir.

7 BY MR. McLEOD:

8 Q In addition, as far as the measurements of the city
9 blocks, the widths, to your knowledge, have the city blocks
10 changed at all between 2018 and today?

11 A Not to my knowledge, no, sir.

12 Q And could you share with the ladies and gentlemen of the
13 jury how you measured the distance between, say, for example,
14 8th Avenue and 9th Avenue?

15 A I measured -- I took a shot right where the access of 7th
16 Avenue came where the dunes were and the access of the 8th
17 Avenue, with a GPS receiver tied into the South Carolina
18 Virtual Reference System.

19 MR. McLEOD: Your Honor, we move this into evidence.

20 THE COURT: I understand your objection. I'm going to
21 allow the evidence at this point. I feel like you can
22 cross-examine him as to the time frames.

23 MR. McLEOD: Thank you, Your Honor.

24 (Plaintiff's Exhibit No. 1 was received into evidence.)

25 BY MR. McLEOD:

1 Q Mr. Beam, I want to put this on the Elmo.

2 MR. WILSON: That's backwards.

3 MR. McLEOD: I know, I know, I know. That will be the
4 first mistake. Can y'all see that well enough? Okay.

5 BY MR. McLEOD:

6 Q Mr. Beam, could you just come down, if you don't mind,
7 please, sir?

8 Now, if you would, can you show us where the Sea Crest
9 Resort is located in the survey?

10 A Sea Crest Resort access is right there.

11 Q Okay.

12 A And that is where the actual opening is between the sea
13 oats and the sand.

14 Q Okay. So is that where the path is --

15 A Yes.

16 Q -- going from the resort out onto the beach?

17 A Yes, sir.

18 Q Okay. And then, this line here, the solid line, could
19 you share with the ladies and gentlemen of the jury what that
20 line indicates?

21 A That is the dune line. That is where the sea oats and
22 the beach are together. And I call that the dune line.

23 Q Okay. And this measurement here, which would be to the
24 south of the Sea Crest Resort, what's the purpose of that
25 measurement?

1 A The purpose of that measurement is from Sea Crest private
2 beach resort to the 9th Avenue public beach resort is
3 approximately SE 36° 56' 16" W, approximately 211.7 feet.
4 It's not approximately, but it's 211.7 feet.

5 Q Yes, sir. And, then, where is 8th Avenue depicted on the
6 survey, which is in evidence at Plaintiff's Exhibit 1?

7 A 8th Avenue is the second point down from 7th Avenue. And
8 it's 360.72 feet from 7th Avenue to the public beach access.

9 Q And can you share with the ladies and gentlemen of the
10 jury how far it is from 8th Avenue to 9th Avenue?

11 A 8th Avenue is 167.11 plus 211.70, so we're talking 378.81
12 feet.

13 Q Okay. So there's 378 feet from 8th Avenue to 9th Avenue;
14 is that right?

15 A Yes, sir.

16 Q All right. And, then, is 9th Avenue depicted here?

17 A That would be the Crown Reef. 9th Avenue is depicted
18 right there.

19 Q Okay. And then what is this mark here?

20 A That is the Crown Reef private beach access.

21 Q And approximately how far is it -- or how far is it from
22 the Sea Crest to the Crown Reef?

23 A Sea Crest to the Crown Reef would be 211.70, and then
24 it's 143.89. So we're talking 354 -- 355.55 feet.

25 Q Yes, sir. And this photograph that's depicted here, is

1 that the path coming from the Sea Crest Resort?

2 A These were all taken from the 9th Avenue. That would be
3 looking from the 9th Avenue towards the Sea Crest, yes, sir.

4 Q And is this a public walkway on the beach or is that
5 private from the resort itself; if you remember?

6 A That way? I don't remember. I think that it's public
7 that way and this is public, this is public, this is public.
8 The only places that you could not walk were where the sea
9 oats were.

10 Q And when you were on the beach, were there also beach
11 accesses that went directly from the Sea Crest out onto the
12 beach that were inside of the public beach accesses?

13 A Yes.

14 Q And the solid lines that are here on the survey, they
15 have numbers 2, 3, 4, and 5. Could you share with the ladies
16 and gentlemen of the jury what those lines indicate?

17 A Those are topographic lines. Those tell the elevation of
18 the actual ground at the time of the survey.

19 Q Okay. And does the survey depict the distance between
20 the dune line and the average high-water mark?

21 A Yes, it does.

22 Q Could you share with the ladies and gentlemen of the jury
23 that distance?

24 A Comes from there to there at the Sea Crest from the
25 dunes, at the Sea Crest private resorts, and from the dune at

1 the Crown Reef private resorts, down to the two-foot contour
2 line.

3 Q Okay. And what is the distance from the Sea Crest to the
4 high-water mark?

5 A 135.77 feet.

6 Q Okay. And how about from this line to the high-water
7 mark?

8 A 127.06 feet.

9 Q Does this survey also depict the distance to the
10 low-water mark?

11 A No, sir, it does not, because the low water mark, when we
12 were doing the survey is -- we referenced North American
13 Vertical Datum of '88, and that is depicted at a negative,
14 showing this table over here, it's a negative, so it would be
15 in the water and a negative foot mark, which is negative 3.13
16 feet.

17 Q And that was going to be my next question.

18 A Yes.

19 Q And so, from a surveyor's standpoint, because it's below
20 grade level, it's not depicted on the survey; is that correct?

21 A Correct.

22 Q But this illustration here depicts the drop-off below sea
23 level; is that correct?

24 A Yes. This is just a generic drop-off. And if you look
25 right here, this is NAVD 88, and this is the mean low-water

1 mark way down here.

2 Q Mr. Beam, I think those are all the questions I have.
3 Thank you for coming to Myrtle Beach and doing this for us.

4 A Thank you.

5 THE COURT: Mr. Thompson?

6 MR. THOMPSON: May it please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. THOMPSON:

10 Q Mr. Beam, my name is Trey Thompson. I have not had the
11 pleasure of meeting you before.

12 A Nice to meet you.

13 Q I am a Clemson grad, so I do appreciate that.

14 A Thank you.

15 Q Mr. Beam, this case was filed in 2019. When were you
16 first contacted about being involved in it?

17 A 2022.

18 Q So almost three years later, you first got involved in
19 it?

20 A Yes, sir.

21 Q You didn't go survey the beach in 2019, did you?

22 A No, sir.

23 Q In 2020, did you?

24 A No, sir.

25 Q 2021, did you?

1 **A** No, sir.

2 **Q** It was last month; is that right?

3 **A** Yes. June. Yes.

4 **Q** Was this your first survey of this area?

5 **A** Yes, sir.

6 **Q** Okay. In other words, you hadn't been to Myrtle Beach

7 before and surveyed this area before, had you?

8 **A** No, sir.

9 **Q** The first time was in June of 2022?

10 **A** Yes, sir.

11 **Q** You keep talking about and referencing the dune line.

12 Where was the dune line in 2018?

13 **A** I couldn't tell you, sir.

14 **Q** How about 2019?

15 **A** No, sir.

16 **Q** 2020?

17 **A** No, sir.

18 **Q** 2021?

19 **A** No, sir.

20 **Q** So the testimony you're providing to this jury today is

21 about a dune line that existed in 2022, a month ago; correct?

22 **A** Yes, sir.

23 **Q** And you don't know where it was in 2018 when this

24 incident happened, do you?

25 **A** No, sir.

1 Q Do you know how many hurricanes and/or tropical storms or
2 depressions have been through Myrtle Beach since 2018?

3 A No, sir.

4 Q Don't know whether it's rearranged the beach or the dune
5 line in that time frame?

6 A No, sir.

7 Q Haven't done any of that research, have you?

8 A No, sir, I have not.

9 Q And, to be clear, you were talking about there's a
10 picture here on the side.

11 A Yes, sir.

12 Q The drop-off. Well, it's gone now. But that was a
13 generic drawing; right? Generic?

14 A No. It's just depicting how you come up with the mean
15 low-water mark and the mean high-water mark.

16 Q Okay. How you come up with those values.

17 A Yes, sir.

18 Q You're not trying to depict --

19 A No.

20 Q -- what the topography was in Myrtle Beach in 2018, were
21 you?

22 A No.

23 MR. THOMPSON: Your Honor, I don't have any further
24 questions.

25 THE COURT: Any redirect?

1 MR. McLEOD: Just real quick.

2 REDIRECT EXAMINATION

3 BY MR. McLEOD:

4 Q Mr. Beam, did I tell you the jury might appreciate having
5 the distances between the city blocks, knowing that distance
6 so they can have some perspective?

7 A Yes, sir.

8 Q And while you were down here, driving all the way from
9 Clemson, and I'll just ask you to please give us the
10 measurements for the mean high-water mark?

11 A Yes, sir.

12 Q And did you do that, sir?

13 A Yes, sir, I did.

14 Q To the best of your ability?

15 A Yes, sir, I did.

16 Q Thank you for doing that.

17 A Thank you.

18 THE COURT: Anything further?

19 MR. THOMPSON: No, Your Honor.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: Do you mind just pulling that to the side?

23 MR. McLEOD: May we approach, Your Honor?

24 THE COURT: Sure.

25 BENCH CONFERENCE

1 (The following bench conference was held outside the hearing
2 of the jury and others.)

3 MR. McLEOD: We should break to do the page/line stuff
4 because, if not, we could end up going into Ms. Abel's, you
5 know, testimony, and it's going to --

6 THE COURT: We'll go ahead and we'll hear what's going on
7 with this juror. Before I excuse them, I'm going to send them
8 out and have him write a note outside the presence of the
9 jurors.

10 MR. THOMPSON: That's a good instruction for us because
11 we've got good instruction on research and the press because
12 the press is here today.

13 MR. McLEOD: What's the juror issue?

14 THE COURT: I have no idea.

15 MR. McLEOD: Oh, okay.

16 MR. PRACHT: He said he's got some issue with the
17 judgment in the case.

18 MR. McLEOD: Thank you, Your Honor.

19 (Open court resumes as follows:)

20 THE COURT: Okay. We are going to dismiss you a little
21 bit earlier today because we have got some issues that we're
22 going to need to take up outside of your presence to get ready
23 for tomorrow. Again, I don't want you think that we're all
24 knocking off early; we will be working here probably long
25 after y'all get home and are enjoying your dinner.

1 So a couple of instructions for you. Sir, I'm going to
2 address your issues before you leave today.

3 I just want to give you some further instruction and a
4 little bit of introduction about who some of the people are in
5 the courtroom.

6 You have met the bailiff over here, and you we see have
7 got security in the courtroom. We always have those folks
8 here to assist. Not because of this particular case, that's
9 just courtroom protocol.

10 Also, you'll see to my left Ms. Fisher, who is our court
11 reporter. She is charged with taking down everything that's
12 said by every witness and me and anybody else who speaks in
13 the courtroom during the course of this trial. Just so you
14 know, that's what her role is, and sometimes you might hear me
15 saying, you know, only one person can talk at a time. That's
16 because she's going to have to make a transcript of everything
17 that's taking place here.

18 And, then, this is my law clerk, Jack Jackson. He
19 graduated from law school. He passed the bar last summer, and
20 he's been with me for a year. We have law clerks that rotate
21 in and out, and they assist me during the course of the trial.

22 Also, behind me, I have Ms. Jarrett, who is a current law
23 student. And the law student has a program that allows
24 current law students to come in on actual trials and get that
25 trial experience.

1 We also have this young lady, who is a full-time employee
2 of the Clerk of Court's office. She is always in the
3 courtroom working with civil cases. Your clerk's office does
4 a fantastic job in Horry County. They're responsible for
5 every filing done in both the civil and the criminal side and
6 keeping all this straight and making sure that juror notices
7 go out and that sort of things. So she'll be assisting with
8 me on behalf of the clerk's office throughout the trial. I
9 think we have got everybody.

10 I'm going to, again, release you tonight. Please don't
11 begin discussing the case with anyone, including your fellow
12 jurors.

13 We have had press in the courtroom. We may have -- he
14 may return during the course of the trial, and that's
15 perfectly fine. We have a courtroom. The press is absolutely
16 allowed to come in. He has instructed me that he will not be
17 videoing or taking any photographs without first telling me.
18 I don't think he'll be taking any video. I just want to kind
19 of reassure you: They are not allowed to take any videos of
20 jurors.

21 I also want to remind you: Please don't do any
22 independent research about the case. Now, we have got
23 unlimited access, for better or worse, to the internet. What
24 you will be discussing in deliberations should only be what
25 you hear within the four walls of this courtroom. So it's

1 very important that you don't do any kind of independent
2 research about the case while this case is going on.

3 Anything else y'all would like me to discuss with the
4 jury?

5 MR. McLEOD: Nothing from the plaintiff, Your Honor.

6 MR. THOMPSON: No, Your Honor.

7 THE COURT: Are you Mr. Cuoco?

8 JUROR NO. 91: That's correct.'

9 THE COURT: Okay. I'm just going to ask, if you have got
10 an issue that you would like to write a note and give that to
11 the bailiff. I'm just going to ask that you do that outside
12 of the presence of the other jurors so if it's an issue that
13 we'd need for you not to bring up with the other jurors
14 present. And then she will bring that to me. If you'll kind
15 of hang out for a minute while we see what's what.

16 All right. Thank you so much. We'll see you tomorrow
17 morning at 9 a.m. Thank you.

18 (The jury exited the courtroom at 4:04 p.m.)

19 JUROR ISSUE

20 THE COURT: Okay. If I could ask -- if y'all would just
21 hang out for a minute until we find out what's going on with
22 the juror, and then I'm glad for us to take a break for a
23 minute before we start on our deposition of Dr. Griffiths.

24 Okay. Can we address the juror issue?

25 MR. McLEOD: Yes, ma'am.

1 THE COURT: So I don't know if you saw, during -- I think
2 when it was when we were either putting up the screen or at
3 some point, the juror kind of tried to get my attention and
4 said that he had an issue, something that he needed to talk to
5 me with about, something to that effect. He said it had to do
6 with the judgment of the case.

7 He handed me a note. It says, "In the lawyer's opening
8 statement, he stated Russian lifeguard. I didn't like that at
9 all. My wife is Russian!" If y'all want to take a look at
10 it, you're welcome to.

11 So he felt the need to bring this to my attention and
12 write a note about it. So tell me what y'all want me to do.

13 MR. McLEOD: I think if he developed a strong feeling
14 just on the opening, then he probably should be excused for
15 cause. I mean, we have got two alternates, and, therefore,
16 it's not going cause an issue with having the 12 ultimately
17 deliberate.

18 MR. THOMPSON: Your Honor, if -- before he's going to be
19 excused, I think, at this point, ask him whether he can still
20 be fair and impartial. I mean, he's just taken an issue with
21 Mr. McLeod's opening, and Mr. McLeod didn't say anything other
22 than one of the guards was Russian. He didn't make any
23 derogatory comments about anybody being Russian. Just said he
24 was.

25 So, you know, I have a -- I mean, if we're going to start

1 saying things and then disqualifying jurors because people
2 take offense or are -- "Hey, you said something in opening" --
3 I mean, every one of those jurors can say "I didn't agree with
4 that" or "I disagree with that." That's not a reason for
5 disqualifying a juror at this point.

6 THE COURT: Well, I mean, the issue I have got is that he
7 asked to bring this to my attention.

8 MR. McLEOD: And, Your Honor, the other thing I would add
9 is I just stated a fact in the case. That is a fact in the
10 case that isn't going to go away. And so just that fact alone
11 caused him to motion to Your Honor and have an issue with the
12 judgment in the case, Your Honor. And so I'd ask that he
13 be --

14 THE COURT: I'm going to bring him out and make some
15 inquiry of him.

16 MR. McLEOD: Thank you, Your Honor.

17 (Pause in the proceedings.)

18 (Juror No. 91 entered the courtroom.)

19 THE COURT: Thank you so much, sir. You're not in any
20 trouble. I just have to ask you some questions on the record
21 here so we just know where we stand.

22 I got your note, and I have discussed it with the
23 attorneys. So my question to you is whether you believe that
24 you can be a fair and impartial juror in this case.

25 JUROR NO. 91: Well, I was kind of offended that he had

1 to state Russian and Polish lifeguards. The way he stated
2 lifeguards. I didn't like that idea because of my wife's
3 background.

4 THE COURT: And I understand that. I don't think anybody
5 meant to offend you or --

6 JUROR NO. 91: But why bring it up? Just lifeguards.

7 THE COURT: Well, I'm not -- I have no dog in this fight.
8 Okay?

9 JUROR NO. 91: Okay, okay.

10 THE COURT: My only issue is, of course, because you
11 wanted to address it with me -- and, normally, we don't have
12 -- we have very limited interactions with the jurors during
13 the course of the case. Jurors can't ask questions from the
14 jury box, etc. We have to go through a specific procedure.
15 So I need to know: Can you be a fair and impartial juror in
16 this case?

17 JUROR NO. 91: Truthfully, I don't think so.

18 THE COURT: Okay. You haven't discussed this with any of
19 your fellow jurors?

20 JUROR NO. 91: No, no.

21 THE COURT: Okay. If you will -- if I can just ask you
22 to step out for a minute. Please don't leave yet.

23 (Juror No. 91 exited the courtroom at 4:15 p.m.)

24 THE COURT: I think I have got to excuse him at this
25 point, which I really hate to do since we're not even into the

1 second witness of this case. But I just don't know any way
2 that I can rehabilitate him if he says he can't be fair and
3 impartial.

4 MR. McLEOD: I would have to agree, Your Honor.

5 THE COURT: Okay. Will you please let him know that he's
6 excused?

7 DEPUTY GERALD: Yes, ma'am.

8 THE COURT: Since this is a civil case, my intention is
9 just to go to our Alternate Juror No. 1, Suzanne Dunmire, and
10 elevate her to our 12th juror. Any objection to that?

11 MR. McLEOD: None from the plaintiff, Your Honor.

12 MR. THOMPSON: No.

13 THE COURT: All right.

14 MR. THOMPSON: Your Honor, as a matter of housekeeping,
15 as far as foreperson --

16 THE COURT: I'll give them that instruction tomorrow and
17 ask them to do that at the first break that we have.

18 Do you-all need a break before we start into
19 Dr. Griffiths? I need a break. Let's take a break.

20 MR. McLEOD: That's the most important.

21 THE COURT: Let's take it back up at 4:30 if we could.

22 MR. THOMPSON: Thank you, Your Honor.

23 (A brief recess was taken at 4:17 p.m. to 4:35 p.m.)

24 (Court's Exhibit No. 1, Jury Note, was marked for
25 identification and received into the record.)

MATTERS OF LAW

1 THE COURT: All right. Page 1.

2 MR. THOMPSON: All right, Judge.

3 THE COURT: This is something like out of a movie, I have
4 to say. Let's dive in.

5 MR. THOMPSON: I believe that Your Honor has been
6 provided a copy of the designations and the objections. It
7 was sent in last week, or actually -- yeah, last week. We can
8 go through them. It starts at page 19. Do you have a copy of
9 the transcript?
10

11 THE COURT: I do.

12 MR. THOMPSON: Very good.

13 THE COURT: And what I would say also is, let's get
14 through as much as we can go through. If you go home tonight
15 and you feel like we have overlooked something major -- I know
16 we're doing this; you prefer to have some time to look over
17 it. If you go home and feel like you have overlooked
18 something major, we will address it.

19 MR. THOMPSON: I appreciate that, Your Honor.

20 THE COURT: And I'm sorry; you said page 19?

21 MR. THOMPSON: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. THOMPSON: Page 19, the objection at line 19. The
24 question prior: "Is a lifeguard recognized within the
25 industry as the equivalent of a police officer or a fireman or

1 emergency responder?" The objection is leading and
2 foundation. It doesn't even actually answer the question.

3 THE COURT: Okay.

4 MR. WILSON: May it please the Court, Your Honor? This
5 is how the lifeguard standards were started. The evidence in
6 this case will be this is what -- the groups got together and
7 said that these are public safety positions. They are no
8 different than lifeguards -- I mean, than police officers or
9 firefighters. They provide a public safety to people, to
10 include on the beach. And the literature is out there on
11 that. That's how all this started with making lifeguards a
12 professional organization. That's how they see themselves.

13 MR. THOMPSON: You're comparing them to police officers
14 and firemen, which there's not even close to the same amount
15 of training and qualifications. And the concept here is that
16 you want to equate them, and they're just not.

17 THE COURT: Well, and it doesn't sound like he really
18 equates them from his answer. It sounds like he
19 differentiates between prevention and responding. I'm going
20 to allow the question.

21 MR. THOMPSON: Your Honor, on page --

22 MR. WILSON: We have made it through one, Your Honor.

23 THE COURT: All right.

24 MR. THOMPSON: Page 21. And the objection there --

25 THE COURT: Looks like the last line, there's an

1 objection at line 25.

2 MR. THOMPSON: Right. I usually don't get things copied
3 on both sides; I'm trying to reorient myself. I'm sorry.

4 THE COURT: That's fine.

5 MR. THOMPSON: All right. So the problem is the answer
6 more than it is the question.

7 MR. WILSON: Your Honor, that's not even objectionable,
8 the answer.

9 MR. THOMPSON: It's objectionable now.

10 THE COURT: Let me hear your objection.

11 MR. THOMPSON: Your Honor, it's not responsive. I mean,
12 obviously, the question is: "Did CDC make a recommendation
13 about lifeguards only be assigned tasks of watching people in
14 the water?" Initially, my objection was going to be with
15 regard to the dual-role issue, and I understand Your Honor's
16 position on that, but, at the end of the day, it's -- halfway
17 down, Mr. -- Dr. Griffiths is very much an advocate. So he
18 will take a question and then add a bunch of something that's
19 not responsive; you'll see that throughout. And this is one
20 of those times.

21 It gets down to about "any other duty that detracts from
22 the eyes being placed on the water should not be allowed."
23 That's the answer.

24 Then he goes back to talking about the Frank Pia (ph),
25 detecting a drowning victim, and the rip factor, which is -- I

1 mean, all he was asked was a question about being assigned the
2 task of watching the water.

3 THE COURT: Mr. Wilson?

4 MR. WILSON: Your Honor, he is one of the leading experts
5 in the country in this field. He's written the book on ocean
6 lifesaving. He has been teaching, writing, and saying for
7 years. His answer is definitely responsive, number one: Only
8 be assigned the task of watching the water. And he says yes,
9 and then goes into the basis of that testimony.

10 Further, Your Honor, the idea that you can strike -- you
11 can object and not even put on the record at the time the
12 basis of an objection to a question, and then come into court
13 and say, well, maybe not the question but I object to the
14 answer of an expert. He's subject to cross-examination, which
15 he got, but this answer is responsive to the question.

16 MR. THOMPSON: Your Honor, I'll withdraw that objection.

17 THE COURT: Okay.

18 MR. THOMPSON: Page 23. All right. I'll withdraw that
19 objection, at line 4.

20 THE COURT: Okay.

21 MR. THOMPSON: I'm just making notes, Your Honor. I'm
22 sorry.

23 Line 19. I withdraw the one on line 19.

24 I withdraw the line -- objection at 24, line 7.

25 Your Honor, most all of these have to do with the

1 dual-role issue, and they're being withdrawn on the basis of
2 Your Honor's prior ruling with regard to the dual role.

3 Page 25. Your Honor, at page 25, at line 12 -- I have
4 got that one withdrawn. You'll have to bear with me, Your
5 Honor. I'm trying to work through looking at this and then
6 looking at my objections.

7 MR. WILSON: I was going to say that I thought you
8 withdrew that one.

9 MR. THOMPSON: I'm on top of it.

10 MR. WILSON: All right.

11 MR. THOMPSON: I'm working on it. Okay?

12 MR. WILSON: I'm not fussing.

13 MR. THOMPSON: Well...

14 Page 26, line 4 and 19, those objections are withdrawn.

15 Page 27, line 8, that objection is withdrawn.

16 28, line 4, withdraw that objection.

17 18, let's see. Your Honor, at page 28, there is an
18 objection at line 18, and the question is asking about
19 foreigners not being able to swim. It has no relevance to
20 this case. No lifeguards went swimming.

21 MR. WILSON: Your Honor, we can withdraw that question.
22 So line 28, question 13 through the whole page and ending with
23 page 29, line 9 is out.

24 THE COURT: I'm sorry; starting with 28/13 and ending
25 where?

1 MR. WILSON: Page 29, line 9. That's his answer.

2 MR. THOMPSON: It also goes to -- well, no. The
3 objection at 29 -- on page 29, line 17 is withdrawn. If I can
4 look at my notes here first, that would be helpful.

5 Page 30, line 9. Let's see. Withdraw that one, Your
6 Honor.

7 31, line 14. There's an objection to that question.
8 It's leading and argumentative. I mean, it's his own witness.
9 Mr. McLeod's words, this stuff is misleading the public as
10 opposed to the witness saying --

11 THE COURT: Yeah, I'm just looking at the answer in the
12 paragraph before it. But Mr. Wilson, I'm glad to hear from
13 you.

14 MR. WILSON: The basis of this is on the research. That
15 will be the testimony both from fact witnesses in this case
16 and from the experts, and that's when you see beachgoers in
17 the water and you see people being allowed to swim and you see
18 lifeguards out there. That connotes safety. That's just
19 not only an opinion. That's set forth in the literature. It
20 was also part of what Mr. Chandler testified to as well.

21 THE COURT: Well, it's most definitely leading, and it's
22 a little different from -- at first glance, it looked like he
23 was basically just repeating what the witness said in the
24 answer right above it, but it's a little different.

25 MR. WILSON: Your Honor, I would just, for the record,

1 point out that the rules certainly allow you to lead, to move
2 along in the course of the deposition. He's allowed to
3 answer, and his answer is based on the research that he helped
4 write.

5 MR. THOMPSON: There's leading throughout this
6 transcript. It's not the only instance.

7 THE COURT: I'm going to exclude page 31, line 8 through
8 24, I believe.

9 MR. WILSON: And, Your Honor, just for our record, the
10 basis of that is leading?

11 THE COURT: Yes, sir.

12 MR. WILSON: Thank you.

13 MR. THOMPSON: Page 34, I withdraw that one. Line 25.

14 Page 35, line 12 is withdrawn.

15 Line 21 on page 35 is withdrawn.

16 Page 36, lines 5, 14, and 23, all of those objections are
17 withdrawn.

18 Page 37, withdraw that one. Line 10.

19 Page 38 -- Your Honor, with regard to page 38, the
20 objection there, Mr. McLeod is questioning our document
21 production and seems to be calling the lawyers into question.
22 Says, "Did your review of the file also indicate that the
23 training records that Lack's produced to us in this case are
24 suspect, if you will?" It's leading. I mean, the records are
25 what the records are. Calling them suspect -- it might be a

1 closing argument.

2 THE COURT: I mean, I thought the whole issue was that
3 there were very little records.

4 MR. WILSON: There are none.

5 MR. THOMPSON: There are records, Your Honor.

6 MR. WILSON: There's not one record in this entire
7 file -- let me first say, the question was not directed at
8 Mr. Thompson or anybody in his law firm. He has a client.
9 They produced documents. Mr. Thompson, to our knowledge, has
10 never withheld something that his client produced to him.
11 This is about Lack's.

12 And we asked for my documents showing that these
13 lifeguards completed the training. Did they show up? Did
14 they sign in? There are none.

15 MR. THOMPSON: Let's be clear --

16 MR. WILSON: So that's the question. The basis of his
17 testimony was the standard of care requires, if you're saying
18 you're going to train them, to document who was there and what
19 training they got. There's nothing.

20 MR. THOMPSON: I just want to make sure the record is
21 clear. The training regimen, the in-service training was
22 provided. What Mr. Wilson is talking about is whether it was
23 documented that it was actually performed or not.

24 There's records about these lifeguards in their personnel
25 files that were produced, the training in-service was

1 produced. You know, they take issue with -- and the concern
2 is, you just don't have the checklist where, you know, these
3 guards actually went to the training.

4 MR. WILSON: Your Honor --

5 THE COURT: I'm going to allow it. I think it's a fair
6 comment on what he's reviewed.

7 MR. THOMPSON: Page 47. All right. Your Honor, this
8 line of questioning or this question, it's misrepresenting the
9 facts. Mr. McLeod had -- there is a questionnaire that Lack's
10 would ask the guards about, and typically, this was done over
11 the telephone. Typically, it was done by Skype in this time
12 frame. And so, then, Mr. McLeod was asking the questions
13 about these lifeguards filling in these forms. Well, they
14 didn't. They never did. They would not fill in the forms.

15 So when Mr. McLeod says to the jury -- the question was
16 asked: "And what was this kid's response?" Right? And then
17 it goes on -- there are -- he has Dr. Griffiths read this
18 questionnaire, if you will. And what was this kid's response?
19 Empty. What was this kid's response? There was no response.
20 And over and over and over.

21 So, Your Honor, the facts aren't in evidence and won't be
22 in evidence that these questionnaires were submitted to these
23 kids and then they fill them out and send them back. It's
24 simply questions that would be asked by Lack's of the
25 lifeguards, and they would get that information.

1 THE COURT: So --

2 MR. THOMPSON: So it's a misrepresentations of what was
3 happening.

4 THE COURT: So, I'm sorry; I didn't understand. This is
5 what -- what is it supposed to be documenting on the
6 questionnaire?

7 MR. THOMPSON: So the Lack's people that were hiring
8 would ask questions of the guard, the guard candidates, if you
9 will. And that information -- whoever is hiring is processing
10 that. It was not a questionnaire that was sent to the kids or
11 sent to the lifeguard prospect and then we received it back.

12 But the questions were always directed to, you know, what
13 was -- you know, what did he answer here and what did he
14 answer there. That wasn't his job to answer on that form.

15 THE COURT: So you're saying this was more like a guide
16 for the interviewer?

17 MR. THOMPSON: Correct.

18 THE COURT: Okay.

19 MR. WILSON: Your Honor, it's their document. It's their
20 interview. The question was about -- asked his training, and
21 his response, according to the document -- their document was
22 that he was 20 years old and cool. Part of this case is these
23 kids had no training whatsoever. And on a phone interview,
24 where they have not met him in person, they asked him to go
25 through his training, and what they document, this guy who is

1 going to be on the beach, that says, "I'm 20 and cool," as the
2 basis for his ability. An expert can review that and say
3 that's absurd. It's their document.

4 MR. THOMPSON: Your Honor, I'll withdraw that objection
5 because we'll have plenty of testimony about what that is, and
6 that's completely wrong.

7 THE COURT: Okay.

8 MR. WILSON: Thank you.

9 MR. THOMPSON: Page 50. Your Honor, I think -- if I'm
10 not mistaken, I think 50 is the first time, at line 25, that
11 Mr. McLeod talks about public trust and that the lifeguards
12 are, in some way or form, placed in a public trust. I can't
13 find any definition that says that. Mr. McLeod actually used
14 it in his opening that somehow there is a public trust content
15 here. Again, it's not -- it's misleading. It's
16 argumentative. It's not representative of what a lifeguard
17 actually is doing. There's not any public trust in a
18 lifeguard. It hadn't even been established. I mean, people
19 go on the beach all the time. Right? They're not entrusting
20 the lifeguards with anything. They're just not.

21 Now, I know you're looking at me -- the lifeguards are
22 looking there -- right? -- but nobody -- there's just no
23 testimony that equates or describes or defines public trust
24 and/or says what a lifeguard is. I have looked it up. I
25 looked it up in the dictionaries. It just doesn't seem to fit

1 what a lifeguard is and what a lifeguard does. I think it's
2 improper to be asking that question. I think that's the first
3 of that, when that information is used or when he uses that
4 phrase. There are others throughout the transcript. I think
5 it's improper. And, frankly, again, it's leading. I mean,
6 these aren't -- this wasn't Dr. Griffiths's words, "public
7 trust." And it would be one thing if Dr. Griffiths suggested
8 it or used it. These are Mr. McLeod's words.

9 THE COURT: I mean, it's certainly leading. I guess
10 I'm -- I can't really follow you about an objection to public
11 trust because I feel like a lifeguard is there to guard the
12 life. I mean, it's kind of in the very name. So I don't
13 think that public trust is some kind of term of art that's got
14 a restrictive meaning or some kind of specialized meaning.

15 MR. THOMPSON: I just have more concern, Your Honor, that
16 this is Mr. McLeod's language, and it's the leading aspect of
17 it. If the expert had used those words the first time, but
18 Mr. McLeod is leading the witness and using the language that
19 he wants the expert to agree with him on.

20 THE COURT: I'm going to allow the question.

21 MR. THOMPSON: Page 54. Your Honor, I'll withdraw 54.
22 Line 5. Line 16 is withdrawn on 54.

23 Page 55, line 8. Withdraw.

24 Page 56, line 7. Your Honor, that one is another one
25 with the public trust. I understand Your Honor's ruling on

1 that one. So it's still an objection, but I assume it's
2 overruled.

3 THE COURT: Yeah, I'm okay with that one.

4 MR. THOMPSON: Page 59.

5 MR. WILSON: We will withdraw 59, Trey, from lines 15
6 through page 60, line 8.

7 MR. THOMPSON: Okay. All right. Page 61. I'll withdraw
8 line 12. I'll withdraw line 21.

9 Page 62. I'll withdraw 62, line 7. And 62, line 17.

10 Page 63. Withdraw line 5. Line 18, I withdraw.

11 Page 64. Withdraw line 3.

12 Page 65. Withdraw line 5.

13 Page 66. Wait a minute, 65, line 19. Let's see.

14 Withdraw that.

15 Page 66, line 20.

16 MR. WILSON: We can withdraw that one if you'd like.

17 THE COURT: That was referring to the City's --

18 MR. WILSON: Yes, ma'am, it does. So 66, lines 5
19 through -- sorry, Your Honor; trying to read quickly. Through
20 at least page 67, line 10 or 12. And then there's a next
21 question.

22 MR. THOMPSON: I think that's just a continuation.

23 MR. WILSON: Okay. Remove from 67, lines 14 through 22.

24 MR. THOMPSON: Yep.

25 MR. WILSON: On page 67, lines 24, not going to withdraw

1 that one, Your Honor. I don't know if you want to keep it.

2 MR. THOMPSON: Your Honor, just for the record, it's page
3 66 is what we just cleaned up. Page 66, line 15, through 67,
4 line 22.

5 MR. WILSON: I'm sorry; I also took out line 66 -- page
6 66 starting at line 5.

7 THE COURT: 5 through the end of the page?

8 MR. WILSON: Yes, ma'am.

9 THE COURT: Top of 67 through line 23?

10 MR. WILSON: Yes, ma'am. And there's a question at line
11 24 on page 67: "Yes, sir. And does the standard of care
12 require that a lifeguard station be occupied at all times or
13 that the section of the beach be closed?" It's a little
14 separate question. That does go to Lack's.

15 MR. THOMPSON: Your Honor, it's the words of the
16 agreement, and I understand -- I mean, the franchise agreement
17 allows us to do exactly what they're asking the question that
18 say violates the standard of care on. And I understand, Your
19 Honor, as I understand it, gets to talk to the jury about it?
20 Doesn't matter what this expert says is the standard of care.
21 The agreement says what it says, and we can do whatever the
22 City says we do.

23 THE COURT: I'm going to exclude that because, again, I
24 do think that the -- I mean, the agreement was that that area
25 would be covered by other lifeguards on either side.

1 MR. WILSON: Your Honor, if I may -- I'm sorry to
2 interrupt you.

3 THE COURT: No, go right ahead.

4 MR. WILSON: The agreement provides for Lack's to
5 implement policies and procedures and for them to follow their
6 policies and procedures and if the lifeguards are not
7 following the policies and procedures for Lack's to identify
8 those situations. There is a portion of the manual that deals
9 with lunchtime and filling in of guards, to include an LGO.
10 So the City doesn't set the requirement there. They say you
11 have your own policies and procedures or how to perform it.
12 So that is a fair question as far as what Lack's policies and
13 procedures are and were they followed.

14 THE COURT: But that's not what you're asking here. It
15 just says that if you -- you know, if one guard stand is
16 closed, then you either need to guard that stretch of water,
17 that stand, or you close it down. I mean, that's what the
18 terms of the agreement says. They can go to lunch and then
19 someone else -- the other two on the other side would guard.

20 MR. WILSON: Your Honor, if I may, but it doesn't set
21 forth also. It directs them, Lack's, to develop policies and
22 procedures: "You are expected to meet a minimum standard of
23 care, which may be established in part by your training
24 program." That's the City -- this is the Lack's training
25 manual.

1 THE COURT: I understand, but you had a specific lunch
2 schedule that was approved by the City. Now, I think it's
3 perfectly fair to go into the fact that there was supposed to
4 be a certain number of lifeguards only.

5 MR. WILSON: To fill in to watch.

6 THE COURT: Yeah.

7 MR. WILSON: Okay.

8 THE COURT: But as far as -- I'm looking at 68, from
9 line 1 through --

10 MR. THOMPSON: It starts on 67, the question.

11 THE COURT: We already had all of 67. You're right. 67,
12 line 24, certainly through the end of the page really.

13 MR. THOMPSON: And it's particularly egregious, at the
14 end of that one, because the expert talks about the lifeguard
15 being at lunch as being AWOL, which is -- that's not what the
16 City calls it. The City calls it going to lunch.

17 So are we through page 68, Your Honor?

18 THE COURT: Yes, sir.

19 MR. THOMPSON: Okay. I think, again, the continuing --
20 it's the continuing discussion or questions about that issue
21 and then comparing to North Myrtle Beach. Then it goes
22 through page 69 and then to page 70. And, frankly, when we
23 keep going to page 70, we get into North Myrtle Beach's
24 policies and procedures. So we're through 69, and the whole
25 discussion is about going to lunch and then comparing it to

1 the City of North Myrtle Beach. And 69, going through to page
2 70 and then to 71, probably all the way through to the top of
3 page 72.

4 THE COURT: And my recollection is that I did grant your
5 motion in limine with respect to what North Myrtle Beach does.

6 MR. THOMPSON: Yes, Your Honor.

7 THE COURT: Mr. Wilson, did you want to be heard on that
8 at all, sir?

9 MR. WILSON: No, ma'am, I don't believe so.
10 Respectfully, I do think an expert can talk about what the
11 standard of care is in a neighboring jurisdiction and how they
12 do it and the feasibility to do it the way it should be done
13 instead of being an outlier. But I understand your ruling at
14 the pretrial stage. I just want my objection to be heard and
15 understand your ruling.

16 MR. THOMPSON: So it really takes out page 68, page 69,
17 page 70, page 71. And then, at page 72 through, looks like,
18 9 -- 18 would be out.

19 MR. WILSON: Through page 72, line 18 is what I have.

20 MR. THOMPSON: Correct. That's what I have.

21 THE COURT: Okay.

22 MR. THOMPSON: Let's see. 72, line -- no, 73. The
23 objection at 72, line 24 is withdrawn. I think, in the
24 context, 73, the objection that I entered there, 10, it's
25 talking about and referring to the lifeguards maintaining

1 consistent surveillance. For now, that one would be withdrawn
2 because I think that question relates to that, assuming it
3 doesn't relate back to the City of Myrtle Beach issue. Need
4 to continue to -- so I think that one is in context. So I
5 withdraw the objection at page 73, line 10.

6 Page 74, line 10. Let's see. Your Honor, I'm doing the
7 best I can at this point. There's so much leading I'm
8 withdrawing. I hope -- like, for example, 74, my objection
9 there is relevance and leading. The question is asked about
10 lifeguards breaking down. Obviously, the lifeguards at the
11 beginning of the day, they set out the umbrellas and the
12 chairs. At the end of the day, they break them down.

13 And the question is asked whether you're being unsafe
14 when you're doing that. It has no relevance to this case
15 because, of course, the incident happened at 12:45. It did
16 not happen at the end of the day. The breaking down of the
17 chairs and what lifeguards are doing at that time of day has
18 no relevance whatsoever.

19 THE COURT: Mr. Wilson?

20 MR. WILSON: The manner in which they run their business
21 is totally relevant. They're supposed to be on the beach and
22 providing lifeguard service from 8:00 to 5:00. From 8:00 to
23 9:00, they're walking back and forth, bringing chairs. And
24 then from 4:00 to 5:00. And it's in their training manual. I
25 mean, that certainly can be opined on as far as the standard

1 of care.

2 MR. THOMPSON: It's not relevant.

3 THE COURT: I'm not going to let that in. This accident
4 happened at 12:45. I'm going to exclude that from 74 -- well,
5 it looks like the --

6 MR. THOMPSON: Line 5 through line 16.

7 THE COURT: Okay.

8 MR. THOMPSON: So, for sure at the end of 74, the
9 question starting at 22, talking about lunch breaks, and
10 Mr. McLeod's question was, "Would a third of the lifeguard
11 force be AWOL?"

12 MR. WILSON: We'll withdraw that, Your Honor.

13 THE COURT: Okay.

14 MR. THOMPSON: So that's page 74, line 22.

15 Let's see. Well, to be fair, there was no answer, so we
16 just take that question out.

17 MR. WILSON: That's probably why I agreed.

18 MR. THOMPSON: What's that?

19 MR. WILSON: That's probably why I agreed.

20 MR. THOMPSON: Okay. So it's just remove that question.

21 THE COURT: All right.

22 MR. THOMPSON: Page 75. That question is asking about
23 the lifeguards being on lunch and having alternatives and/or
24 closing the beach while the lifeguard is at lunch. We have
25 already addressed that once. It's not what the agreement

1 provides.

2 THE COURT: And I'm going to exclude that. Again, we
3 have talked about that was specifically permitted under the
4 agreement.

5 MR. THOMPSON: So that's page 75, line 13 through the
6 end -- that would be line 25.

7 THE COURT: Really, it's all of page 75.

8 MR. WILSON: That's right.

9 MR. THOMPSON: So the whole thing?

10 THE COURT: Yes.

11 MR. THOMPSON: Okay. Page 76 --

12 MR. WILSON: We'll withdraw from lines 1 through line 20.
13 Starting at 22, it's a different question. It doesn't
14 reference the City at all. It's just a requirement that
15 lifeguards sell merchandise, if that puts swimmers at risk.
16 That's a separate question.

17 MR. THOMPSON: Right. The objection there, I would
18 withdraw 77, line 3 -- well, so I withdraw the objection on
19 page 77, line 1, which is the question on the prior page.
20 Withdraw at line 10.

21 Page 78. Your Honor, again, for the purposes of this
22 discussion and Dr. Griffiths, there are going to be questions
23 that I am withdrawing and the reason being, because of the
24 dual-role issue. And so I do want to preserve for the record
25 that all of these objections -- and I'm trying for the benefit

1 of the Court to move this along -- but anything that has to do
2 with dual role, I continue to have an overriding objection on
3 all of those questions. I don't want to be prejudiced or have
4 a situation where I say, "Oh, I withdraw that objection." I'm
5 trying to help move this along. So I can continue to object,
6 but I hope the Court understands my position on that issue.

7 THE COURT: Yeah, and I have no problem -- if we had a
8 live witness, of course, you could make a contemporaneous
9 objection, but now that -- since we're having to redact this
10 before it goes to the jury, I'm fine to say that your
11 objection to anything doing with dual role runs throughout the
12 course of his testimony.

13 MR. THOMPSON: Thank you, Your Honor.

14 THE COURT: Y'all don't have any problem with that?

15 MR. MCLEOD: No, Your Honor. We agree with that.

16 MR. WILSON: Thank you, Your Honor.

17 MR. THOMPSON: All right. So that's 78. Let's see.

18 Okay. That would be the dual role issue. I may just say that
19 going forward, that's just dual role. And I understand Your
20 Honor's ruling, just to make sure the record's clear.

21 Page 80 --

22 MR. WILSON: Hold on. Page 78, line 16.

23 MR. THOMPSON: Right.

24 MR. WILSON: You had an objection. We'll withdraw it.

25 MR. THOMPSON: Is that all the way through 79 --

1 MR. WILSON: Through 79, line 21.

2 MR. THOMPSON: Okay. So that's 78, line 16 through 79,
3 line 21?

4 MR. WILSON: Yeah. I think it's page -- line 22, still
5 talking about beach cleanliness so we can remove --

6 MR. THOMPSON: Doesn't it go all the way through page 80?

7 MR. WILSON: It does. So, Your Honor, page 79 is struck
8 or withdrawn or whatever.

9 THE COURT: So we've got page 78, line 16, through page
10 80, line 8.

11 MR. THOMPSON: Correct.

12 MR. WILSON: That's correct, Your Honor. And that would
13 include his answer, which is through at line 20 at least.

14 THE COURT: Are you talking about on page 80?

15 MR. WILSON: Yes, Your Honor. I'm still on page 80.
16 Because the answer was in response to the question, so we
17 would withdraw that too. And that's lines 16 through 20.

18 THE COURT: So, again, page 80 is now struck, through
19 line 20.

20 MR. WILSON: We would keep in line 22 on page 80, subject
21 to -- I believe you withdraw those objections, Trey, on page
22 81.

23 MR. THOMPSON: That's correct. Page 81, line 1. That's
24 withdrawn.

25 MR. WILSON: On 13, I have you withdrew as well.

1 MR. THOMPSON: That's correct. Line 13 is withdrawn.

2 Withdraw the objection at 22.

3 Okay. Yeah. 82, line 8 is the objection. The question
4 is asking about whether Mr. Wolde or Ms. Abel did anything
5 wrong on that day. Mr. McLeod specifically made the argument
6 the other day about -- in front of this Court that he can't be
7 testifying about other people's fault, and an expert isn't
8 allowed to do that. I don't see any basis for reaching the
9 ultimate issue about whether they did anything wrong or not.
10 It's an improper question.

11 MR. WILSON: Your Honor, he's already put that issue in
12 front of the jury. They're already blaming my clients, why
13 they went in the ocean or what they did. They didn't ask
14 anybody. They didn't call anybody.

15 Mr. Griffiths has written books about this, and
16 Mr. Thompson cross-examined him on, "Did you go in the water?
17 How deep were you? Did you talk to anybody?" That's part of
18 the cross-examination. And he's already put their comment in
19 front of the jury. He's going to blame them. An expert can
20 opine on that.

21 MR. THOMPSON: Mr. McLeod just made this argument -- and
22 I'll have to go get the transcript from Friday about not being
23 able to offer opinion testimony on the ultimate issue about
24 whether somebody's at fault or not. It's "did they meet the
25 standard of care or did they not meet the standard of care"?

1 The concept about whether Mr. Wolde and Ms. Abel did
2 anything wrong on that day? That's the jury's province. The
3 jury is going to say that. That's not for the expert to get
4 up and say they didn't do anything wrong.

5 THE COURT: Yeah, I'm going to exclude that --

6 MR. WILSON: Your Honor --

7 THE COURT: And let me tell you why. I mean, he's an
8 expert as to lifeguarding. And, so, I think him giving an
9 opinion on whether or not they did anything wrong on that day
10 is just beyond the scope of his testimony and his expertise.
11 He wasn't there that day. So I'm going to grant that.

12 MR. WILSON: Okay. If I may, Your Honor, for the record,
13 Rule 704, opinion on the ultimate issue states, "Testimony in
14 the form of an opinion or inference, otherwise admissible, is
15 not objectionable because it embraces the ultimate issue
16 decided by the trier of fact."

17 It's just simply a fact. And Mr. Thompson cross-examined
18 Mr. Griffiths on a book that he wrote on this issue. "Don't
19 you tell families to do this? Do you tell families to do
20 that? Did they do this? Did they do that? Was that wrong?
21 They shouldn't have done that." That's part of his whole
22 case.

23 And so he literally wrote a book on this, and he was
24 cross-examined on it. He's allowed to testify that, based on
25 his review, no other actions were -- you know, violated

1 anything, and he's allowed to offer that opinion. It's part
2 of the case.

3 THE COURT: Are we going into that on cross-examination
4 as to whether what they did was right or wrong?

5 MR. McLEOD: He does, with Mr. Griffiths's book.

6 MR. THOMPSON: I asked him questions about Dr. Griffiths
7 and what his recommendations are with regard to families using
8 the beach.

9 MR. WILSON: Exactly. Can't have it both ways. He can't
10 say that Dr. Griffiths can't testify about it then put it in
11 front of the jury about using a book from a different area to
12 say, "Oh, well, the family should have done something
13 different." He cannot have it both ways.

14 MR. THOMPSON: I just can't believe Mr. McLeod made this
15 same argument to this Court on Friday, and now they're making
16 the exact opposite argument now.

17 THE COURT: Well, that was Friday's argument.

18 MR. THOMPSON: I know. It was just a motion then.

19 THE COURT: All right. I'm going to come back to that
20 after I have seen more of his testimony on what he was asked
21 on cross. I have tabbed that on page 82.

22 MR. WILSON: Okay. Thank you, Your Honor.

23 MR. THOMPSON: Line 2 on 82 is withdrawn.

24 Page 84 is withdrawn, line 15.

25 Line 25 is withdrawn, page 86.

1 Your Honor, with regard to page 86 and the question --
2 the question actually is referring to Dr. Griffiths's
3 testimony about rip currents and warning of rip currents. And
4 the question is, then, providing warnings to prevent exactly
5 what happened to Mr. Wolde.

6 And, again, whether he was in a rip current or not, I
7 mean, honestly, Judge, it's still an issue -- a question of
8 whether that happened or not. The answer -- or the question
9 is leading. And, I mean, it's basically saying that's exactly
10 what happened to Mr. Wolde that day.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: I don't think it does at all. I mean, the
13 testimony is going to be from the children, from the other
14 witnesses on the beach that he was pulled out and over.
15 There's going to be documents and testimony in this case from
16 presumably the witnesses they call regarding rip currents were
17 there that day, the warnings were for the entire beach. Rip
18 currents, longshore currents. That is what happened to
19 Mr. Wolde. He drowned and died. And the testimony as to the
20 standard of care require you to warn.

21 THE COURT: If the question was, "In order to prevent a
22 swimmer from being pulled out to sea," then I would say it's a
23 fair question, but when you say "in order to prevent exactly
24 what happened to Mr. Wolde," I'm going to sustain that
25 objection on page 86 from line 9 through line 18.

1 MR. THOMPSON: Through line 18?

2 THE COURT: Yes.

3 MR. THOMPSON: 87, Your Honor, Mr. -- or Dr. Griffiths
4 was asked an amount of questions we're getting into now about
5 the sea floor and the formation of rip currents. The start of
6 this line of questioning is a leading question. You know, "Is
7 the ocean floor one of the most important factors of whether
8 or not a rip current will form in the first place?" And then
9 we're off to the races.

10 Now, one of the things, in this amount of questioning or
11 this line of questioning, when we get -- I think it's here --
12 Dr. Griffiths is asked quite a number of questions about the
13 beach. He's never been to Myrtle Beach at all. Never been
14 here. And so him offering testimony about what the topography
15 is, what the beach looks like, those sort of things, it
16 doesn't have any foundation. It just doesn't.

17 THE COURT: I think he's just testifying to generally how
18 a rip current forms.

19 MR. WILSON: He is, Your Honor. That's exactly how it
20 is, and it's set forth in the report from the Horry County
21 Fire Department that rip currents are formed on the ocean
22 floor. It's just how they form. We're going to educate the
23 jury.

24 MR. THOMPSON: We get into the next thing as an exhibit,
25 which is a random photograph of a low tide at Myrtle Beach,

1 and then he's asked questions about that exhibit.

2 THE COURT: I'm going to allow 87, certainly 1 through
3 17.

4 MR. THOMPSON: So we're getting the exhibit -- again, it
5 was kind of a technical issue at that time. Let's see.
6 Page 88. Again, they're trying to talk about the photograph
7 of Myrtle Beach at low tide. Right? So he doesn't even know
8 it. It's provided to him as this is what it is and says "a
9 color photograph of apparently Myrtle Beach at low tide."

10 Again, Dr. Griffiths has never been to Myrtle Beach ever.
11 He's never seen the beach at low tide. He has no foundation
12 for providing any testimony and goes to a fair amount of great
13 length about what the beach at Myrtle Beach looks like at low
14 tide. There's no foundation.

15 THE COURT: I'm having trouble understanding here. I
16 guess he's -- is it just for demonstration?

17 MR. WILSON: It's a demonstrative, Your Honor. It's used
18 all the time in trial with any sort of images to show a jury.
19 He doesn't say that's what it was that day. He's
20 demonstrating to the jury and to the Court, as an expert, what
21 a rip current is. I believe the question is, "Do you have
22 Exhibit 8 for demonstrative purposes?"

23 THE COURT: I'm going to allow it.

24 MR. THOMPSON: Page 89, the objection at line 9 is the
25 same objection, and I understand the ruling. Just continuing

1 on with the exhibit.

2 MR. WILSON: He's just teaching about rip currents.

3 MR. THOMPSON: Huh?

4 MR. WILSON: He's just teaching about rip currents.

5 MR. THOMPSON: Well, it's actually Mr. McLeod teaching
6 about rip currents. For example, page 90, line 1, the
7 objection there at 6 is leading, foundation, relevance. And
8 it goes on to continuation of the objection at line 19.

9 THE COURT: So he seems to be going from using this as a
10 demonstrative to -- is he trying to say Myrtle Beach is more
11 prone to rip currents than other beaches?

12 MR. WILSON: Are we on --

13 THE COURT: I'm looking at the top of 91.

14 MR. WILSON: "Can some beaches, as far as rip currents
15 go, be less at risk of rip currents just based on the physical
16 layout of the sand?" That's just explaining that the answer
17 is yes.

18 MR. THOMPSON: Again, that --

19 THE COURT: I'm looking at the top of line 1: "Is there
20 anything that the defendants in this case" ... "or anything to
21 inform or notify beachgoers that the physical characteristics
22 of Myrtle Beach are more prone to rip currents than perhaps
23 other beaches?"

24 MR. THOMPSON: That's correct, Your Honor. And there's
25 no foundation for that at all. And he doesn't ever offer that

1 testimony. What Mr. Wilson has explained is describing rips,
2 and then it's Mr. McLeod that says in his leading question
3 that -- "so Myrtle Beach has more rips than any other beach,"
4 which, of course, doesn't have any information about Myrtle
5 Beach. He's never been here. Never even researched it.

6 MR. WILSON: Your Honor, the City of Myrtle Beach Fire
7 Department wrote an article about the City of Myrtle Beach.
8 He doesn't say they have more. He says they're more prone to.
9 And they are. And I imagine their witnesses, when we ask
10 them, are going to agree to that. They just do. The physical
11 layout, as set forth in the reports, says that.

12 MR. THOMPSON: Your Honor, you've got to have some
13 foundation. I mean, he readily admits he's never been to a
14 beach in the State of South Carolina, much less Myrtle Beach.
15 How can you say that it's more prone to rip currents when he
16 doesn't know anything about them?

17 MR. WILSON: He doesn't have to have been here to
18 understand the topography of this area.

19 THE COURT: I'm going to exclude on page 90 from line 16
20 through 91, line 11.

21 MR. THOMPSON: I think that brings us down to page 92.
22 Your Honor, there is a -- I'm trying to get my bearings on
23 this one. Mr. McLeod was using a rip current warning sign. I
24 think I withdraw, Your Honor, that objection on page 92. And,
25 again, this is assuming that the photograph of the warning rip

1 sign is not being introduced. It's a demonstrative aid only.

2 THE COURT: That's correct.

3 MR. WILSON: That's right. We did not offer -- we're not
4 introducing that as an exhibit, but it will be presumably
5 shown as a demonstrative.

6 MR. THOMPSON: Right.

7 THE COURT: Okay.

8 MR. THOMPSON: And I'll withdraw the objection at line
9 18, page 92.

10 I withdraw the objection at page 93, line 11. And 93,
11 line 20.

12 So page 94, line 21. Your Honor, and going into page 95,
13 the expert was asked about swimming between the flags and this
14 concept of you swim between two flags, don't swim outside the
15 flags. That's not a requirement of the City of Myrtle Beach
16 at all. It's never been done in the City of Myrtle Beach ever
17 or in the, to my knowledge, the State of South Carolina,
18 frankly. It has no relevance.

19 THE COURT: Mr. Wilson?

20 MR. WILSON: Your Honor, if I may. Throughout this
21 entire thing, all we're hearing is that this contract somehow
22 provides the standard of care for Lack's. It does not. It
23 cannot. It does not. It allows them to be on the beach. It
24 cites to their policy and procedure manual. There is a
25 standard of care for lifeguards in this country. There is.

1 Whether they want to abide by it or not, that's up to them.
2 But to stand up and say the contract doesn't require it,
3 therefore, we don't have to comply with the standard of care,
4 is absurd.

5 THE COURT: I'm going to allow that line of questions.

6 MR. THOMPSON: Your Honor, there's no opinion with regard
7 to swimming between the flags. He doesn't say that that's
8 what they should have done or that not having the flags is a
9 violation of any standard of care. So without even that, it's
10 just irrelevant.

11 THE COURT: I'm going to allow it. I think it's relevant
12 as to what could have been a safe practice when you have got a
13 rip current and you've got lifeguards at lunch.

14 MR. THOMPSON: Page 96, line 11. The objection there is
15 leading.

16 MR. WILSON: Your Honor, it's a fact. His children have
17 testified. They were screaming, waving their arms. People on
18 the beach are going to say that's what happened. It's a fact.
19 He became a distressed swimmer.

20 THE COURT: So I guess I want to hear what your position
21 is, Mr. Wilson, on him commenting -- because, I mean, he's not
22 a fact witness as to what happened that day. He is going into
23 pretty detailed testimony here about what did or didn't happen
24 and who noticed him and who brought him to shore.

25 MR. WILSON: Well, Your Honor, he's no different than any

1 expert. That forms the basis of his opinion. For example, in
2 a medical malpractice case, you offer -- an expert offers
3 opinions on standard of care. What's the basis for that?
4 So-and-so testified that they didn't chart that day.

5 THE COURT: I know but the question is not "if a
6 lifeguard didn't respond within 20 minutes of a person
7 thrashing in the water, would that be a violation of the
8 standard of care" --

9 MR. WILSON: Your Honor, there's a significance to the
10 term "distressed swimmer."

11 THE COURT: Let me finish my --

12 MR. WILSON: I apologize, Your Honor.

13 THE COURT: The issue that I'm having, so you know what
14 to address, is the -- is his testimony as though he is
15 testifying like a fact witness. He became a distressed
16 swimmer shortly after entering the water. He began to be
17 pulled southward. When he went in, he was in waist-deep
18 water. He was a distressed victim that could have and should
19 have been easily recognized.

20 At least at the bottom of page 97, he's saying, according
21 to the incident reports, according to this and that, they were
22 all yelling for help.

23 Again, I'm looking at the end of page 98 where he says
24 there were bystanders who went in. So I guess that's what I
25 want to address is -- he seems to be testifying as a fact

1 witness at times.

2 MR. WILSON: Are you ready for me, Your Honor?

3 THE COURT: Yes, sir.

4 MR. WILSON: First of all, experts are allowed to do
5 that, number one, under Rule 703: "The facts or data in the
6 particular case upon which an expert bases an opinion or
7 inference may be those perceived by or made known to the
8 expert at or before the hearing. If of a type reasonably
9 relied upon by experts in a particular field forming opinions
10 or inferences upon the subject, the facts or data need not be
11 admissible."

12 There's a difference between a distressed swimmer and a
13 swimmer that just goes straight down underwater and dies. He
14 was a distressed swimmer by all accounts of everybody. He is
15 allowed to testify no different than an accident
16 reconstructionist in a wreck case. "John said the guy was
17 going 50 miles an hour and ran into him from the side. That's
18 what I'm basing my opinions on.

19 If he's -- the facts are right -- he's subject to
20 cross-examination on that, but they form the basis of his
21 testimony.

22 THE COURT: Mr. Thompson, anything you want to say, sir?

23 MR. THOMPSON: No, nothing further, Your Honor.

24 THE COURT: I'm reading down here. He does say,
25 according to the incident reports and according to his son,

1 Adam, and according to Wubit, refers to the incident report
2 again. So I'm going to allow it.

3 MR. THOMPSON: Your Honor, I had moved to strike on
4 page 97, line 18. In essence, that last paragraph. It says,
5 "Mr. Wolde apparently was a distressed victim that could have
6 and should have been easily recognized by attendant
7 lifeguards." There's no foundation for that at all.

8 "Where were the lifeguards? What were they doing?" You
9 know, we get back into this concept, Your Honor, that
10 lifeguards do have other roles other than watching the water
11 that are appropriate. They deal with the public. They find
12 lost children. They play mediator for beachgoers that have
13 issues on the beach. There are a number of things that they
14 are absolutely 100 percent part of their actual lifeguarding
15 that Dr. Griffiths admits, anybody else will admit.

16 So this whole concept about this conclusion that he could
17 have and should have been easily recognized by attendant
18 lifeguards, there's no foundation whatsoever.

19 THE COURT: I'm going to allow it.

20 MR. THOMPSON: It's, frankly, also nonresponsive to the
21 question that was asked.

22 Page 98, line 11 is withdrawn.

23 Page 99, line 6 is withdrawn.

24 Line 12 -- at line 12, on 99, there's -- this kind of
25 goes back to the other one. It's speculative. Speculation

1 and foundation.

2 THE COURT: I'm going to allow it.

3 MR. THOMPSON: Line 20, the same objection. I understand
4 Your Honor's ruling.

5 Page 100. Your Honor, page 100, it's leading. Line 5,
6 it's the question before. Speculation and foundation. It's
7 probably also asked and answered several times.

8 THE COURT: It is most definitely leading. All right.
9 I'm going to exclude page 99, line 24 through 100, line 11.

10 MR. THOMPSON: Your Honor, the next question talks about
11 what would have happened to Mr. Wolde if the bystanders had
12 not -- well, first, if they didn't rescue him, and, then,
13 second, if he would have drifted out to sea. And that's pure
14 speculation. I mean, we know rips. Everybody, at least in
15 this case, knows rips. They stop. They don't go out to sea
16 indefinitely. So that's a mischaracterization of everything
17 we know about rips.

18 THE COURT: Mr. Wilson?

19 MR. McLEOD: They, by definition, take you out to sea.
20 He doesn't say he was five miles out in the ocean. They take
21 you out into the sea. You drift into the sea. That is the
22 definition of a rip.

23 THE COURT: I'm going to exclude through the end of page
24 100 as speculative. My understanding of the literature is
25 that you're supposed to let it carry you out a little bit and

1 then swim parallel, but they don't necessarily take you out to
2 the sea. Regardless, I think it's speculative.

3 MR. THOMPSON: Page 101, line 5. Withdraw that one.

4 Line 20. I'm sorry, I'll withdraw that one. It was
5 already withdrawn.

6 You can help me out, Cooper.

7 MR. WILSON: I'm sorry.

8 MR. THOMPSON: That's okay. I have already withdrawn it.
9 Help me out a little bit.

10 MR. WILSON: No, I should have. I apologize.

11 MR. THOMPSON: Page 102. Okay. Yeah, move to strike the
12 last sentence of the answer that started on 101.

13 THE COURT: The part, "In fact, we had another drowning
14 that same day?"

15 MR. THOMPSON: That's correct.

16 MR. WILSON: That's a fact. Holly Robinson testified to
17 that.

18 THE COURT: What was the timing of the other drowning?

19 MR. McLEOD: I believe, Your Honor, it was three hours
20 later, and it was under rip current conditions.

21 MR. THOMPSON: Judge, we don't know anything -- that has
22 not been investigated at all. In fact, all the incident
23 reports indicate that it was a medical event that happened,
24 and it happened at another part of the beach and another part
25 of the day.

1 MR. WILSON: All he said was we had another drowning that
2 same day. That's a fact.

3 MR. McLEOD: What I shared with the Court was just from
4 their incident reports. That's all I was referring to, Your
5 Honor, their own documents.

6 THE COURT: Well, I mean, I think a drowning that
7 happened after this incident, I'm going to have an issue with
8 that, and I think we already addressed that in the motions in
9 limine that I'm excluding any mention of drownings that had
10 happened after this one.

11 MR. THOMPSON: Yes, Your Honor.

12 THE COURT: I'm granting that to take out the "in fact,
13 we had another drowning that same day."

14 MR. WILSON: Yes, ma'am. Just so I'm clear, on page 102,
15 lines -- starting with "in fact" through "the same day"
16 struck.

17 THE COURT: Yeah. And, I guess, also his "objection,
18 move to strike" on line 6.

19 MR. WILSON: Yes, ma'am.

20 Trey, you withdrew the next one.

21 MR. THOMPSON: Thank you.

22 MR. WILSON: I'm jumping right in.

23 MR. THOMPSON: Yeah, so line 12 is withdrawn.

24 MR. WILSON: You withdrew 103, line 8.

25 MR. THOMPSON: Yes. So page 104, let's see.

1 Technically, the answer -- I moved to strike the answer. The
2 lifeguard-only -- there is evidence that a lifeguard-only was
3 missing. There is no evidence that they were short
4 lifeguards. And, frankly, it's not even responsive to the
5 question. It was talking about staffing lifeguard-onlys. At
6 this particular time, they were not only short lifeguards.
7 They were not short lifeguards. And it's not responsive to
8 the question.

9 THE COURT: Well, I mean, I think they were short
10 lifeguards in the sense that lifeguards were on lunch break.

11 MR. WILSON: And they were short lifeguard-onlys too.
12 They were short both ways. I mean, I don't even know how you
13 move to strike somebody's answer in an expert deposition.

14 THE COURT: I'm going to allow that to stay.

15 MR. THOMPSON: Page 105. I'll withdraw the objection.

16 THE COURT: It looks like 107, line 1 is withdrawn.
17 Line 13?

18 MR. THOMPSON: Withdraw that one. A lot of this is
19 dual-role stuff, so...

20 Page 108, withdraw that.

21 109, I'll withdraw that one. More dual-role stuff.

22 Page 110.

23 MR. WILSON: You withdrew line 2.

24 MR. THOMPSON: What's that?

25 MR. WILSON: You withdrew line 2.

1 MR. THOMPSON: On 109?

2 MR. WILSON: On page 110, line 2 is the next one you
3 withdrew. Move to line 13, I believe.

4 MR. THOMPSON: 110, withdraw. Line 2. Line 13. I'll
5 withdraw that one, line 13. Line 22, withdrawn. 11.

6 Page 111, Your Honor, where they -- the question is
7 operated -- "they operated this beach service endeavor in a
8 dangerous and unsafe manner." So that's the City and Lack's.

9 THE COURT: Well, now that the City is out, I don't think
10 the jury would think "they" referred to both. The question is
11 whether his answer -- whether you can differentiate between
12 what he puts at the City's feet versus what he puts at Lack's.

13 MR. WILSON: I don't think there's any way to attribute
14 any of this to the City, Your Honor. His opinions are about
15 Lack's. To include page 112, "Now, does your review of the
16 files indicate whether or not George Lack and Lack's Beach
17 Service knew the manner in which operating the beach was
18 dangerous?" I don't think there's any confusion for the jury.

19 THE COURT: Yeah, the only thing I would say is the
20 sentence, "People were out on lunch without alternative
21 coverage." But I do think, given the testimony, that there
22 was supposed to be lifeguard-onlys at that time. I'm going to
23 allow it. That's page 111 through 112, line 13.

24 MR. THOMPSON: All right. So then we're at 112, line 18.
25 Your Honor, the objection there is leading, foundation,

1 relevance, and no proximate cause. I mean --

2 MR. WILSON: Your Honor, he's an expert. He's offering
3 his opinion. Are we objecting to what an expert -- what his
4 opinions are? That's his opinion, based on his review of the
5 file, which is set forth in the next sentence and the previous
6 three pages.

7 THE COURT: Yeah, I'm going to allow it.

8 MR. THOMPSON: Your Honor, 113. I'll withdraw the
9 objection. It's completely wrong. If he wants to testify to
10 that...

11 Page 114. All right. So page 114, Your Honor, we get
12 into a line of questions concerning a letter between Chris
13 Brewster and George Lack from 1996.

14 THE COURT: Do you have a copy of that letter that I can
15 take a look at?

16 MR. THOMPSON: I'm sorry?

17 THE COURT: Do I need to be looking at that letter, do
18 you think?

19 MR. THOMPSON: Well, Your Honor, I'm not sure that it
20 really matters even what's in the letter from 1996. It had
21 nothing to do with what happened in 2018.

22 MR. McLEOD: It matters, Your Honor. We're trying to get
23 a copy.

24 MR. WILSON: Your Honor, it's just sort of astonishing
25 what Lack's has been doing since '96. They have been

1 misrepresenting to everybody saying what they're not allowed
2 to do. He reviewed the letter. The USLA is a national
3 organization that George Lack wanted to be a member of to tell
4 the public that he was a member. Our expert looked at it --
5 I'm pulling it up for you.

6 MR. THOMPSON: Your Honor, Lack's was not certified after
7 2007 by USLA. He operated for 11 years without certification.
8 And USLA certification was not required. It certainly wasn't
9 at the time of the 2018 incident. It really doesn't matter
10 what happened back in a time period from 1996 to 2007. We
11 don't even know what the franchise agreement or what the
12 agreement was between the City and Lack's at that time, what
13 they could and couldn't do.

14 None of that is in the record at all. But it really
15 is -- and, Your Honor, this is going to be something that
16 we're going to talk about with regard to Chris Brewster and
17 perhaps others. Because we started thinking about this case
18 they're talking about, in essence, bad acts or the character
19 of George or that sort of thing.

20 Well, if you think about -- this incident happened in
21 2018. You're talking about something that happened in 1996.
22 We don't even talk about impeaching witnesses with criminal
23 acts that are older than ten years. So how in the world are
24 we going to go back 12 years, 15 years, 16 years? It has no
25 relevance to this case. It has no relevance to what was

1 happening in 2018 at all.

2 MR. WILSON: Your Honor, I apologize. I'm trying to
3 listen -- it has 100 percent relevance. If he wants to talk
4 about the contract -- if they say 40 hours as set forth by
5 USLA. He wanted to be certified by USLA to get that standard.
6 USLA sets the standard. That includes 40 hours of training
7 that would be approved up to the USLA standards.

8 USLA says you can't be training at all to any of our
9 standards if you're letting people do what you do. So the
10 letters that he got, the wool that he tried to pull over their
11 eyes and their actions since then are directly related to what
12 happened to Mr. Wolde and everybody else who's drowned on that
13 beach.

14 THE COURT: So my understanding is the franchise
15 agreement required that they take a 40-hour open water course
16 that was certified by USLA, but it did not require the beach
17 service itself to be certified by USLA.

18 MR. WILSON: It doesn't, but the manner in which they get
19 this training that complies with USLA standards is certainly
20 relevant and how the USLA treats that and what they do and how
21 that happens is totally relevant.

22 THE COURT: Let me see the letter, because I'm kind of
23 speculating here as to what's actually in it.

24 MR. THOMPSON: Your Honor, you're right on track here
25 because Lack's nor the City submitted anything to USLA at all.

1 They don't. There is a USLA manual that's published that has
2 the standards and has the criteria. And when you talk about
3 certification, there really is no certification. This
4 agreement, again, says that they train 40 hours to the
5 criteria of the USLA. Right? We don't have to get any
6 certification, we don't have to deal with Chris Brewster. We
7 don't have to be cert- --

8 Mr. Wilson keeps saying that we want to, George Lack
9 wants to. No, not at all. If they wanted to, they would.

10 MR. WILSON: He's testified he did.

11 But, number two is, in the letter, it says he's telling
12 USLA, the people that they say you have to have this training
13 from. "It should be noted that lifeguards assigned to this
14 new service will not be subject to duties that would distract
15 or intrude their attention."

16 It's sort of like an app; you can use your fingers to
17 scroll in, too, if you want.

18 MR. THOMPSON: And that was in 1996, Your Honor. 2018,
19 Lack's had every right to employ dual-rule lifeguards.

20 (Pause in the proceedings while the Court reviews
21 documents.)

22 THE COURT: You know, I'm a little torn on this because I
23 think it's old and I think that certainly the City's contract
24 allowed them to have the dual role; however, it does seem to
25 acknowledge here very clearly that "lifeguards assigned to

1 this new service will not be subject to duties that would
2 distract or intrude their attention from the observation of
3 persons in the waterfront area or that prevents immediate
4 assistance to persons in distress."

5 So, I mean, it seems to me that he is commenting on the
6 fact that that dual role is distracting the lifeguards. I
7 mean, those are his own words. So I don't know how that
8 wouldn't be relevant to whether you can have a lifeguard who
9 is also performing other duties. I just -- I don't see any
10 way around that.

11 MR. THOMPSON: It's really old, Judge. I mean, that's
12 1996. Again, we're talking about a different paradigm at that
13 time. Do we even know whether dual-role lifeguards were
14 allowed on the beach? Was there a franchise agreement? Was
15 there even a state statute at that time? Again, I'd have to
16 remember -- I'd have to pull the state statute, because the
17 state statute was enacted in a period of time that clarified a
18 lot of this.

19 THE COURT: And I understand your position, but, again, I
20 think his characterization of it "distracting from the
21 lifeguard role," is -- I don't know of any other way to say
22 that that's not relevant in this case.

23 MR. THOMPSON: Well, Your Honor, then it seems to me that
24 that's -- if it's going to be anything, it's an impeachment
25 piece for George Lack. I mean, what is it for the expert in

1 this circumstance -- an aquatics expert?

2 MR. WILSON: Your Honor, it's a straight 703. It forms
3 the basis of his opinions.

4 MR. THOMPSON: There's just no connection to this.

5 THE COURT: It's basically in response to the question of
6 whether George Lack and Lack's Beach Service knew that the
7 matter in which they were operating the beach service company
8 was dangerous.

9 MR. WILSON: Exactly.

10 THE COURT: So it's a notice or a knowledge issue. I
11 mean, I think you're correct in that it's really not relevant
12 to whether he was required to -- I mean, he clearly was not
13 required to have lifeguards-only over and above what the
14 contract provided. I think that's fair argument. But I also
15 think it's relevant to the issue of whether or not he knew
16 that that was a safe practice.

17 MR. THOMPSON: Thank you, Your Honor.

18 THE COURT: I do think, however, the next question about
19 "Did he assure them that he would only place lifeguards whose
20 sole responsibility was to provide lifeguard services," that
21 would not be relevant given that there's an entirety different
22 contract in effect in 2018. So that's -- I think that's your
23 objection at page 115, line 6.

24 MR. THOMPSON: Yes, Your Honor. So that would be
25 starting at line 1 through line 11.

1 THE COURT: It really encompasses the next question as
2 well.

3 MR. THOMPSON: Yes, Your Honor. Down through line 21.

4 THE COURT: Yes. So that's page 115, line 1, through 21.

5 Okay. So we kind of need to wrap this up because I can't
6 keep our court personnel a whole lot longer, but I also want
7 to give y'all plenty of time to do what you have got to do to
8 the video here. And we have got about 130 more pages to go
9 through.

10 MR. WILSON: Hopefully we can short-circuit that.
11 Mr. McLeod is vigorously reading through Mr. Thompson's cross.
12 I'm not sure we're going to have many objections.

13 MR. McLEOD: Your Honor, I'll look at it tonight. I
14 generally -- I don't like to fuss. I mean, I want him to get
15 whatever evidence he needs to get in front of the jury that's
16 admissible, and I want to do the same thing.

17 THE COURT: As long -- if he would just quit objecting to
18 your leading, then we wouldn't have to do all this.

19 MR. McLEOD: I'll look at it tonight and see if we can
20 figure it out.

21 THE COURT: So tell me what you're -- where, tomorrow,
22 you were hoping to do the video.

23 MR. McLEOD: Well, we probably --

24 THE COURT: In other words, can you do the video after
25 lunch so that y'all at least have some period of time at lunch

1 to do whatever you need to do?

2 MR. McLEOD: Yes, Your Honor. And it may be that we can
3 wait and do it after lunch or even Wednesday morning. But,
4 Your Honor, staying late tonight -- and Madam Clerk and Madam
5 Court Reporter, thank you, because this has allowed us to at
6 least cover a lot of ground, and we can start to get the video
7 edited and finished off, and we appreciate the Court's
8 indulgence.

9 MR. WILSON: If I may, Your Honor, it looks like
10 Mr. Thompson has -- in this page, I'm not sure we're going to
11 have very many objections. I think we can knock these out in
12 five or ten minutes.

13 MR. THOMPSON: Judge, we're really, really close.

14 MR. WILSON: May I approach?

15 THE COURT: Yeah, we have gone this far. If y'all can
16 handle a few minutes.

17 MR. THOMPSON: Yes, ma'am. We're here, and so we're just
18 trying to get here, and that may be it.

19 THE COURT: Okay.

20 MR. THOMPSON: I only have -- we were just finishing up
21 115, and so I only have objections through 118 for tonight.
22 Now, I have got objections on their redirect, and we can take
23 that up at another time. But with regard to the objections on
24 the direct, we can finish that up right now if that is okay
25 with Your Honor.

1 THE COURT: Sure.

2 MR. THOMPSON: We can at least -- I mean, they can get
3 editing on that piece of it for sure.

4 MR. WILSON: Are we now on page 116?

5 MR. THOMPSON: Yes.

6 Your Honor, are you on at 116?

7 THE COURT: Mm-hmm.

8 MR. THOMPSON: Yeah. So it's actually a question that
9 starts at 115 and then talks about the number of drownings and
10 lifeguards not paying attention to the water.

11 MR. WILSON: You can take that out. Withdraw.

12 THE COURT: Okay. So that takes out all of page 115 and
13 116 -- basically all of 116.

14 MR. THOMPSON: And down through 117, line 2. Take all of
15 that out.

16 MR. WILSON: Your Honor, I thought that was related to
17 just random Yelp posting. This is actually related to
18 Mr. Tritt's video that we talked about in the motion in limine
19 stage that was sent to the City. I believe we said because it
20 was -- it was sent to the City. It was also sent to Lack's,
21 the same location, 13 days earlier.

22 MR. THOMPSON: There was no drowning, Your Honor. That's
23 the problem.

24 MR. WILSON: It was a lifeguard not paying attention.

25 MR. THOMPSON: The question is about the number of

1 drownings and their lifeguards not paying attention to the
2 water. And the question -- the answer is all about drownings.

3 THE COURT: And I still may allow in Mr. Tritt's video
4 subject to a proper foundation but not at this point.

5 MR. WILSON: Okay. We'll take it up. That's 115, line
6 24 through 116, line -- all the way through. That's fine.

7 THE COURT: Really through 117, line 2.

8 MR. WILSON: That's right. Yes, ma'am.

9 We can take out. I don't know who Lisa Phipps (ph) is.
10 I guess that's supposed to be Lack's Beach Service.

11 MR. THOMPSON: I don't know what that is.

12 MR. WILSON: We can take out 117 all the way down to
13 line 19. And that's simply, "Are these the violations of the
14 standards of care that you share with the jury been a
15 contributing cause to the death of Mr. Wolde?" I think we
16 have already touched on causation. We're going to keep that
17 in.

18 THE COURT: I'm fine with that.

19 MR. WILSON: And that should be 118, line 8. And I
20 presume you withdraw that.

21 MR. THOMPSON: Yeah, 118, and withdraw the objection on
22 line 8. And that's concludes the direct examination of
23 Dr. Griffiths.

24 THE COURT: So are we going to hold off on the cross?

25 MR. THOMPSON: There weren't a ton of them.

1 MR. WILSON: There were not a lot. We should be able to
2 work that out between us.

3 As to the redirect --

4 MR. THOMPSON: I mean, there's another 10 or 15.

5 MR. WILSON: Do you want to try to power through them and
6 try to get them done? Well, the Court can decide or whatever.

7 THE COURT: I can give y'all to 6:30 and then I have got
8 to let these folks go home.

9 MR. THOMPSON: It's going to be really close at 6:30.

10 MR. WILSON: 244. We're starting at line 20. You
11 withdrew that one, so we're off to a good start.

12 MR. THOMPSON: Yeah, I withdrew. Are we going to go --
13 244, Your Honor.

14 THE COURT: 245 is what we're on now, line 8?

15 MR. WILSON: We can withdraw.

16 MR. THOMPSON: 245 then is what? That's the City of
17 North Myrtle Beach. That would be 9.

18 MR. WILSON: 245, lines 1 through 17 are withdrawn.

19 MR. THOMPSON: 245, 1 through 17.

20 THE COURT: What is the question on...

21 MR. THOMPSON: The question is about City of North Myrtle
22 Beach. 245.

23 THE COURT: I'm looking at the bottom of page 245, line
24 23.

25 MR. WILSON: We can strike that.

1 Basically 245, the whole page is struck.

2 THE COURT: Okay.

3 MR. THOMPSON: 246 -- Your Honor, the question is -- it's
4 leading. It's not proper redirect.

5 THE COURT: Mr. Wilson?

6 MR. WILSON: It's in response to the questions on
7 cross-examination about how they do their business and simply
8 saying -- I mean, it's an opinion. He has an opinion.
9 They're not competent, qualified, or capable. He's testified
10 to that. He was crossed on that. It's his opinion.

11 THE COURT: I'm going to allow it.

12 MR. THOMPSON: 247. It's really the 247 objection is a
13 continuation of the objection on 246 at line 2.

14 THE COURT: And I'm going to allow that.

15 MR. THOMPSON: Withdraw 247. 15.

16 248, the objection to 10 is withdrawn.

17 MR. WILSON: Got five minutes. We're going to do it.

18 MR. THOMPSON: 248 is -- line 22 is withdrawn.

19 Hey, don't put the clock on me.

20 MR. WILSON: Sorry.

21 MR. THOMPSON: 249, withdrawn, line 7. Withdrawn 249,
22 21. The objection at line 2 -- page 250, line 6. Talking
23 about profit objections of the lifeguards.

24 THE COURT: So did I hear that correctly that the
25 lifeguards get paid a percentage commission on their rentals?

1 MR. WILSON: They do. That's how they're paid. And I
2 asked one of the witnesses is there some incentive for them to
3 get out and sell more, and she said yeah. One of their
4 witnesses. That's how they set the business up. They set it
5 up to make commissions on the number of chairs they sell.

6 MR. THOMPSON: I did not cross Dr. Griffiths on the
7 profits part. That is completely improper redirect. There's
8 no cross on --

9 THE COURT: Is that a new matter on redirect?

10 MR. WILSON: I think it relates still to the fact of
11 being unsafe when you have competing objectives. If your only
12 objective is to watch the water and save swimmers, that would
13 be one thing. But this is tied into his criticisms of the
14 manner in which they do business and not only watching the
15 water. I think it's totally related.

16 THE COURT: Well, if it doesn't come in on direct and it
17 didn't come in cross -- I mean, I'm not saying you can't go
18 into it on another witness but not on redirect.

19 MR. WILSON: Yes, ma'am.

20 Page 250, lines 1 through 11 are out.

21 THE COURT: Well, it's really starting with 249.

22 MR. WILSON: I'm sorry. 249. I think we have already
23 addressed -- we were starting at 250, line 2, and the same he
24 said for a lifeguard is another objective.

25 MR. THOMPSON: 250, line 2.

1 THE COURT: Okay.

2 MR. WILSON: We'll take out 13 through 22.

3 THE COURT: Are you still on page 250?

4 MR. WILSON: Yes, ma'am.

5 MR. THOMPSON: It's 250, line 2 through 22.

6 MR. WILSON: That's right. And at least on page 250,
7 line 24, they were paid primarily a commission as part of
8 their sales.

9 MR. THOMPSON: Your Honor, again, there's not a single
10 question about commissions or sales in my cross.

11 MR. WILSON: That's fine, Your Honor.

12 MR. THOMPSON: Redirect is supposed to be addressing
13 stuff in cross.

14 THE COURT: All right. Page 250 is out. Looks to me
15 like page 251 is addressing the same stuff.

16 MR. THOMPSON: It's really all of 251.

17 THE COURT: At the bottom we're addressing --

18 MR. WILSON: That's fine. You can take out 251.

19 MR. THOMPSON: And then, obviously, into page 252, there
20 is the -- they talk about the second drowning.

21 MR. WILSON: That's fine. We'll withdraw 252 all the way
22 to line 16.

23 Line 18 is in reference to questions about L-20 and L-22.

24 MR. THOMPSON: And, again, the problem with the objection
25 on 252 is the characterization that they were AWOL. It's

1 incorrect.

2 THE COURT: I'm going to exclude all of 252.

3 MR. WILSON: Okay.

4 MR. THOMPSON: It really goes down to 253 through line 4.

5 THE COURT: Okay. I can go along with that.

6 MR. THOMPSON: 253, line 8. Withdrawn.

7 Line 22. Your Honor, leading -- it's improper redirect.

8 And the question, "Do you believe there's any betrayal worse
9 than of the public trust in your line of work?"

10 MR. WILSON: We can withdraw it. That appears to be the
11 end of a long, contentious deposition.

12 MR. THOMPSON: Page 253, line 19.

13 MR. WILSON: But hold on, on 253, we're saying that lines
14 19 through 25 are out.

15 MR. THOMPSON: Yes.

16 MR. WILSON: The previous question is, "Who is in a
17 position" -- okay. Thank you.

18 Lines 15 through 18 are in.

19 MR. THOMPSON: Correct.

20 MR. WILSON: Okay. Thank you.

21 MR. THOMPSON: And then it's out, 253 to 254, line 4.

22 MR. WILSON: Okay.

23 MR. THOMPSON: That's all of the direct and redirect,
24 which would only leave any --

25 THE COURT: Why don't y'all take a stab.

1 MR. WILSON: We'll work that out between each other,
2 because we may not have any.

3 MR. THOMPSON: We ought to try to figure that out
4 ourselves.

5 MR. WILSON: We'll work it out.

6 THE COURT: If you're not able to, then we can address
7 it.

8 MR. THOMPSON: Your Honor, there's also an amount of
9 testimony that was elicited by the City on cross-examination
10 that I may need to designate. So I haven't had a chance to go
11 back through that since the City was --

12 MR. McLEOD: I would just say, Your Honor, in the
13 interest of time, if we could just take the City's questions
14 out, it would make the deposition shorter. I don't want the
15 jury to be confused about who is in the case and who is not.

16 THE COURT: Sure, except that he may not have asked a
17 question because the City had already asked it.

18 MR. McLEOD: Okay.

19 THE COURT: Y'all take a look at it. If we -- I mean, I
20 don't want to work these people to death, but I also know
21 y'all know my issue is, if we don't finish Friday morning or
22 Friday afternoon, I promise you, I will be on a plane to
23 Italy. I will not give y'all one more thought.

24 I don't mean to hurt your feelings, but I will be where
25 you cannot get me, and there's no power to subpoena me back

1 and Court Administration cannot get me.

2 MR. McLEOD: We understand. Thank y'all for tonight. We
3 really appreciate it.

4 THE COURT: So the jury is going to be back at 9:00. If
5 we can try to be ready to go right at 9:00 when they come back
6 in.

7 MR. McLEOD: Yes, Your Honor.

8 THE COURT: All right. Thank y'all.

9 MR. WILSON: Thank you, Your Honor. And everybody here,
10 thank you.

11 (At 6:33 p.m., the trial adjourned until Tuesday, July
12 26, 2022, at 9:00 a.m.)

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CERTIFICATE OF COURT REPORTER

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)
County of Horry)

RE: *Meswaet Abel v Lack's Beach Service*

I, Bobbi J. Fisher, Registered Professional Reporter
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in the *Court of Common Pleas for Horry County*, South Carolina,
on the *25th of July, 2022*.

Submitted: *August 10, 2022*

Bobbi Fisher

/s/ Bobbi Fisher

Bobbi J. Fisher, RPR

Official Court Reporter III

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6 ESTATE OF ZERIHUN WOLDE AND)
7 AS NATURAL PARENT AND LEGAL)
8 GUARDIAN FOR ADAM WOLDE,)
9 AND WUBIT WOLDE,)
10)
11 Plaintiffs,)
12 vs.) Case No. 2019-CP-26-07075
13)
14 LACK'S BEACH SERVICE, CITY)
15 OF MYRTLE BEACH, AND JOHN)
16 DOE LIFEGUARD,)
17)
18 Defendants.)
19 -----x

Tuesday, July 26, 2022

TRIAL DAY 2

B E F O R E:

The Honorable Kristi Curtis, Presiding Judge; and a jury.

A P P E A R A N C E S:

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Attorneys for the Defendants

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

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MESWAET ABEL

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GEORGE LACK

Direct Examination 286

E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

Plaintiff's Exhibit

No.	Description	ID.	REC'D
3	Photograph of Engagement Party	219	220
4	Photograph of Engagement Party	219	221
5	Photograph of Engagement Party	219	222
6	Photograph of Family at School	225	226
7	Photograph of Child on Beach	234	251
8	Photograph of Child on Beach	236	236
9	Photograph of Child on Beach	236	236
10	Training Manual	291	293
11	January 21st Letter from Mr. Brewster	301	304
12	January 27th Letter from Mr. Brewster	303	305
13	Letter from Lack 9/11/2007	314	
14	USLA Letter 10/24/2007	314	
15	Franchise Agreement	332	333
16	Enlarged Chart	351	354

Defendant's Exhibit

No.	Description	ID.	REC'D
1	Photograph	251	251
2	Photograph	251	251

	Court's Exhibits		
	No.	Description	ID.
1	2	Chandler Deposition Transcript	277
2			
3			
4			
5			
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P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:09 a.m.):

THE COURT: I think all of our jurors are present and accounted for. Anything we need to address before we bring the jury in?

MR. McLEOD: Nothing from the plaintiff, Your Honor.

MR. THOMPSON: No, Your Honor.

(The jury entered the courtroom at 9:10 a.m.)

THE COURT: Okay. Good morning, ladies and gentlemen. Thank you very much for being prompt this morning. We really appreciate it.

For your general information, I have excused Juror No. 91, Mr. Cuoco.

So, Ms. Dunmire, Juror No. 108, who is our first alternate, you will now be on the jury panel.

And, Ms. Schildtknecht, you'll still be our alternate juror.

Okay. Mr. McLeod?

MR. McLEOD: Yes, Your Honor. Our next witness will be Jeff Bender. He's waiting out in the hall.

JEFFREY BENDER,

after having been duly sworn, was examined and testified to as follows:

THE CLERK: When you get up there, just state your name and spell it out for the Court, please.

1 THE WITNESS: My name is Jeffrey Bender. J-e-f-f-r-e-y,
2 B-e-n-d-e-r.

3 DIRECT EXAMINATION

4 BY MR. McLEOD:

5 Q Good morning, sir.

6 A Good morning.

7 Q Can you please share with the ladies and gentlemen of the
8 jury where you live?

9 A Millsboro, Delaware.

10 Q And are you married, sir?

11 A Yes.

12 Q And do you and your wife have children?

13 A Yes. Three.

14 Q How long have you and your wife been married, sir?

15 A Since 2011.

16 Q Okay. And can you share with the ladies and gentlemen of
17 the jury what line of work you're in back home?

18 A Auto technician.

19 Q How long have you worked in the automotive business?

20 A Over 35 years.

21 Q Okay. Were you on the beach on August 24, 2018, when
22 Mr. Wolde lost his life?

23 A Yes.

24 Q Tell the ladies and gentlemen of the jury a little bit
25 about your travel to Myrtle Beach yesterday. Did you have an

1 easy trip --

2 A No.

3 Q -- or was it difficult?

4 A Flew out of Salisbury, Maryland, into Charlotte. Flight
5 got delayed. From what I understand, there's mechanical
6 issues. And the flight got cancelled, and I was at the
7 airport for a little over six hours until I got another flight
8 to get here.

9 Q Yes, sir. What time did your flight arrive in Myrtle
10 Beach last night?

11 A 9:47, I think it was.

12 Q And what time are you scheduled to fly back out today?

13 A 6:11 p.m.

14 Q Yes, sir.

15 Have you had to take time off from work to be present for
16 the ladies and gentlemen of the jury?

17 A Yes, I have. Yesterday and today.

18 Q Yes, sir. Share with us, please, sir, going back to
19 August of 2018, whether or not you and your family vacationed
20 here in Myrtle Beach.

21 A Yes, we did.

22 Q And can you share with the ladies and gentlemen of the
23 jury where y'all stayed?

24 A I think it was the Days Inn; about a block off the beach.

25 Q Yes, sir. Is it hard to get time off from work?

1 A Yes.

2 Q Are vacations something that you and your family look
3 forward to?

4 A Yes.

5 Q How old were your children in August of 2018?

6 A My oldest daughter was 20 and my youngest son and
7 daughter were 16.

8 Q Okay. And do you recall how long y'all's stay was going
9 to be in the Myrtle Beach area?

10 A Just for an extended weekend. We got here Thursday night
11 and we were leaving Sunday.

12 Q Had the kids started back school yet?

13 A No.

14 Q Was this a trip to come to the beach before the kids got
15 back in school and got back in their routines?

16 A Yeah, and also to visit our neighbors. We originally
17 lived in Pennsylvania, and our neighbors moved to South
18 Carolina. And we came down to visit them and check out the
19 area.

20 Q Yes, sir. Where did you and your family stay when you
21 came to Myrtle Beach?

22 A At the hotel.

23 Q Which hotel?

24 A I think it was the Days Inn or something like that. It
25 was like a block off the beach.

1 Q Yes, sir.

2 A I don't remember or recall the name of the hotel. It was
3 right in that area.

4 Q Was it near 9th Avenue?

5 A If I recall, yes.

6 Q Yes, sir. And did y'all decide to stay in that hotel
7 because of its close proximity to the beach or was there some
8 other reason?

9 A Close proximity to the beach and availability because it
10 was one of those last-minute decisions we decided to make.

11 Q Yes, sir. Okay.

12 On August 24, 2018, can you share with the ladies and
13 gentlemen of the jury what time approximately you and your
14 family got onto the beach?

15 A It was probably around noon. Somewhere around there.

16 Q Yes, sir. And can you share with the ladies and
17 gentlemen of the jury what you and your family did when you
18 first got to the beach?

19 A When we first got to the beach, we walked on. We set up
20 our blankets and towels about 20 yards from the lifeguard
21 stand and walked down to the water and got in the water. We
22 were about maybe knee deep.

23 Q Yes, sir. When y'all came on the beach to set up your
24 towels, did you notice an umbrella line?

25 A There was people with umbrellas up and chairs and stuff

1 like that.

2 Q And, so, did y'all set up in close proximity to the
3 umbrella line and the lifeguard stand?

4 A I'm assuming so. I was approximately to the left of the
5 stand, like even with the lifeguard stand.

6 Q So if you're facing the water, which side was the
7 lifeguard stand: On your left or your right?

8 A On my right.

9 Q Yes, sir. And when y'all got on the beach, did you have
10 occasion to look at the lifeguard stand?

11 A Yes.

12 Q Can you share with the ladies and gentlemen of the jury
13 whether or not you saw any off-duty flags on that stand?

14 A No, I did not.

15 Q Can you share with the ladies and gentlemen of the jury
16 whether or not you saw any no-swimming flags on that stand?

17 A No, I did not.

18 Q Can you share with the ladies and gentlemen of the jury
19 whether or not you saw any flags on that particular lifeguard
20 stand?

21 A No, I did not.

22 Q Did you happen to see whether or not a lifeguard was on
23 the tower conducting water observation at the time you and
24 your family got on the beach?

25 A There was no one present.

1 Q Now, when you and your family got to the beach, was it a
2 sunny day or was it cloudy and raining?

3 A Sunny.

4 Q Was there anything about what you saw in the water -- I
5 mean, was there anything about what you saw that led you to
6 believe that there were any life safety hazards in the water
7 itself?

8 A No. The beach was full, and there were people in the
9 water.

10 Q Were there children swimming in the water?

11 A Yes.

12 Q After y'all -- so y'all were in the water and then you
13 got out?

14 A Yeah.

15 Q Can you share with the ladies and gentlemen of the jury
16 what happened next?

17 A We were getting out of the water. My wife and kids were
18 in front of me. I was just about to step on the shore when I
19 heard a lady yelling for help behind me. I looked back and
20 saw a lady with a child and it appeared to be someone bobbing
21 in the water. I looked up to the lifeguard stand. There was
22 no one in it. Didn't see any lifeguards around. So I told my
23 wife and kids to go find lifeguards, and I went back in the
24 water.

25 Q Yes, sir. And when you were -- so you were coming back

1 out of the water when you heard the screams?

2 A Yes.

3 Q And were the screams over your left shoulder or your
4 right shoulder, if you remember?

5 A Over my right shoulder.

6 Q Okay. And is that when you asked your wife to go find
7 lifeguards?

8 A Yes, because I looked up in the chair and didn't see a
9 lifeguard. Didn't see any around us. So I asked them to go
10 find lifeguards.

11 Q What did you do after that, sir?

12 A Went back in the water, out to the lady yelling for help.

13 Q Share with the ladies and gentlemen of the jury what
14 happened next.

15 A Got out to the lady with the child and a man bobbing in
16 the water, face-down. The current was very strong. I rolled
17 the man over. He had foam in his mouth. I grabbed ahold of
18 him, and the lady said that she could get in with the child.
19 And I started to go in, and I think one or two other people
20 showed up that were beachgoers and helped me bring the man in
21 to shore.

22 Q Yes, sir. When you got to Mr. Wolde, where was the young
23 girl, his daughter, at that time?

24 A The lady was holding her and kind of him, and she was on
25 his back, the little girl was on his back, using him like a

1 life preserver.

2 Q When you got to Mr. Wolde, can you share with the ladies
3 and gentlemen of the jury how deep the water was you were in?

4 A Chest-to-shoulder depth.

5 Q And how did you try to pull him in once you got to him?

6 A Put my arm around him with his back towards me and
7 started walking him in.

8 Q Yes, sir. Now, from the time that you first saw
9 Mr. Wolde in the water until this point, did any lifeguards
10 show up at all?

11 A No.

12 Q Share with the ladies and gentlemen of the jury what
13 happened next.

14 A We got him to shore. I collapsed once we got to shore.
15 I was just exhausted from the current. The lifeguard finally
16 showed up, tried to administer CPR but they were doing it
17 wrong. My oldest daughter is a CNA. Water was coming up and
18 stuff and hitting him in the face, so they put him up a little
19 further. She went to start CPR when another lady came up and
20 said she was an RN and she started CPR.

21 Q Yes, sir. When Mr. Wolde and Wubit were drifting, when
22 you got to him, how did his daughter appear?

23 A I'd say scared and in shock.

24 Q Did there come a time when a crowd gathered around
25 Mr. Wolde once he had been pulled to shore?

1 A Yes.

2 Q And, at that time, did any lifeguards show up?

3 A The one lifeguard that was there. And then a police
4 officer, a Corporal Hunt, showed up, and then two lifeguard
5 supervisors pulled up in a truck.

6 Q At that point, did any of the lifeguard -- did the
7 lifeguard have an AED device?

8 A Yes.

9 Q And what is an AED device?

10 A It's like a defibrillator, but it's carry-around,
11 easy-to-operate for anyone to use -- be able to use it.

12 Q And does it have -- just share with the ladies and
13 gentlemen of the jury where it goes on your body and how you
14 active it.

15 MR. THOMPSON: Objection, Your Honor.

16 A One of the patches --

17 THE COURT: Hang on a minute, sir.

18 What's the grounds?

19 MR. THOMPSON: Foundation. He has no experience with an
20 AED.

21 THE WITNESS: I was trained.

22 THE COURT: Just a minute.

23 THE WITNESS: I'm sorry.

24 THE COURT: Do you want to lay a foundation?

25 MR. McLEOD: I'll lay a foundation. Yes, Your Honor.

1 BY MR. McLEOD:

2 Q Well, first, let me ask you: Are you CPR certified?

3 A Yes.

4 Q And how long have you been CPR certified?

5 A About 12, 14 years.

6 Q Yes, sir. And have you also had training on AEDs?

7 A Yes.

8 Q And can you share with the ladies and gentlemen of the
9 jury what that training was?

10 A I worked for Bridgestone Americas at the time, and our
11 company policy was that two people in the store at all
12 times -- one had to be in the store at all times, but at least
13 two people had to have CPR training and be certified and know
14 how to use an AED.

15 THE COURT: I'm sorry; I did not catch where you said you
16 were working.

17 THE WITNESS: Bridgestone Americas.

18 THE COURT: Bridgestone?

19 THE WITNESS: Yes.

20 BY MR. McLEOD:

21 Q Did you have that training in the event that somebody in
22 the store had an event and needed it?

23 A Yes. And that was company policy, and they sent me to
24 training for that.

25 Q Is the AED easy to operate?

1 **A** Yes.

2 **Q** Can you share with the ladies and gentlemen of the jury
3 what, if anything, you observed with regard to an AED device
4 on that day?

5 **A** The lifeguard did not know how to use it --

6 MR. TRAINOR: Objection, Your Honor. Can we approach?

7 THE COURT: Sure.

8 BENCH CONFERENCE

9 (The following bench conference was held outside the
10 hearing of the jury and others:)

11 MR. TRAINOR: He's not qualified as an expert in the use
12 of the AED. He can talk about what he saw, but as far -- he's
13 been trained on it. He hasn't been identified as an expert.
14 He's a fact witness to talk about what he saw.

15 So if he wants to talk about, "This is how they put it on
16 and saying it's right or wrong," is out of bounds.

17 MR. McLEOD: You don't have to be an expert to know how
18 to work an AED device. And lay witness-- --

19 THE COURT: Here's what I would say: He can testify as
20 to how he saw the lifeguard operating it.

21 MR. McLEOD: Okay.

22 MR. TRAINOR: Can we move to strike his last statement
23 then?

24 THE COURT: Sure.

25 MR. TRAINOR: Thank you.

1 (Open court resumes as follows:)

2 THE COURT: Ladies and gentlemen, I'm going to ask you to
3 disregard the last statement about whether or not the
4 lifeguard was doing it 'correctly or incorrectly.

5 BY MR. McLEOD:

6 Q What did you personally observe the lifeguard do with the
7 AED device?

8 A He didn't know how to use it, from what I saw.

9 MR. TRAINOR: Objection.

10 THE COURT: Okay. Again, I'm going to ask you, you can
11 describe what you saw, but what I am sustaining the objection
12 to is to the characterization of whether or not the lifeguard
13 was using it correctly or incorrectly. And that's what I'm
14 asking the jury to disregard because this is not an expert
15 witness.

16 So, again, sir, you're a fact witness. You can testify
17 as to what you observed.

18 A He basically just looked at it and tried to figure out
19 where to put the pads on the body.

20 BY MR. McLEOD:

21 Q Now, did that happen once the trucks arrived after the
22 crowd had gathered?

23 A If I recall properly, yes.

24 Q Okay. When y'all were able to get Mr. Wolde to shore,
25 did a lifeguard arrive wearing red shorts at that time?

1 A Yes, once we reached shore.

2 Q And could you describe for the ladies and gentlemen of
3 the jury about how old he was?

4 A Probably late teens, very early 20s.

5 Q Do you know what color of hair he had?

6 A Blond hair.

7 Q Do you know whether or not -- share with the ladies and
8 gentlemen of the jury what you observed that person do.

9 A He didn't speak very good English. He really didn't
10 understand how to perform CPR. My daughter went to do CPR and
11 that's when an RN showed up and she started doing CPR.

12 Q Now, did the police arrive at some point when the trucks
13 arrived?

14 A Yes.

15 Q And can you share with the ladies and gentlemen of the
16 jury whether you recall speaking to any officers from the
17 Myrtle Beach Police Department.

18 A Corporal Hunt.

19 Q I'm going to show you what's been marked for
20 identification purposes at this point and ask you -- does the
21 top of that document have the Myrtle Beach Police Department
22 logo on it?

23 A Yes, it does.

24 Q All right. And does this document have a signature on
25 it?

1 A Yes, it does.

2 Q Is that your signature?

3 A Yes, it is.

4 Q Now, the handwriting in this document, is that your
5 handwriting?

6 A No, it is not.

7 Q Share with the ladies and gentlemen of the jury whether
8 or not what is accounted for here is everything that you
9 shared with Corporal Hunt about what you observed that day.

10 A Yes, until we got to where it says that myself and other
11 rescuers drug the victim out of the surf. It was bystanders.
12 There was no lifeguards helping me whatsoever. And, like I
13 said, it says here they started CPR, one of the lifeguards
14 deployed an AED. They tried but they didn't know how to do
15 it.

16 Q What else did you share with Corporal Hunt --

17 MR. TRAINOR: Your Honor --

18 THE COURT: Again, that objection is sustained.

19 Again, ladies and gentlemen, Mr. Bender is a fact
20 witness. I'm going to ask you to disregard any
21 characterization about whether the lifeguard knew how to use
22 the AED or did not know how to use the AED.

23 THE WITNESS: Sorry.

24 THE COURT: Thank you.

25

1 BY MR. McLEOD:

2 Q Mr. Bender, share with the ladies and gentlemen of the
3 jury what else you told Corporal Hunt at that time about what
4 you saw that day.

5 A I was kind of upset and mad because I told him, where I
6 came from, Delaware beaches, this wouldn't have happened.

7 MR. TRAINOR: Objection, Your Honor. Can we approach?

8 MR. McLEOD: The objection of what he said on the day
9 that Mr. Wolde drowned?

10 THE COURT: Tell me what the grounds is -- the grounds
11 are for your objection.

12 MR. TRAINOR: Relevance. And this concept that it
13 wouldn't have happened is speculation.

14 THE COURT: I'm going to allow him to testify about what
15 he told the officer that day.

16 MR. McLEOD: Thank you, Your Honor.

17 A I told the officer that this probably wouldn't have
18 happened on a Delaware beach because there's two lifeguards at
19 each station, and they are constantly watching the water. Not
20 saying that people don't get in trouble or have issues out in
21 the water, but that's what the lifeguards are there for, to
22 protect the people. And there was none present that day.

23 And Corporal Hunt told me that the --

24 MR. TRAINOR: Objection, Your Honor. This is going to be
25 hearsay.

1 THE COURT: That's sustained.

2 BY MR. McLEOD:

3 Q Okay. Tell us what else you remember about that day,
4 please, sir.

5 A There was sirens going, emergency equipment going up and
6 down the roads while I was with Corporal Hunt, and he told me
7 that there was other emergencies.

8 MR. TRAINOR: Objection, Your Honor.

9 THE COURT: Sustained.

10 Sir, don't tell us what somebody else told you.

11 THE WITNESS: Sorry.

12 THE COURT: That's okay.

13 BY MR. McLEOD:

14 Q Mr. Bender, when you first heard the screams in the
15 water, do you know approximately how long it took for you to
16 get from where you were located to Mr. Wolde?

17 A It took awhile. How long exactly, I don't know. I
18 wasn't watching my watch.

19 Q Yes, sir.

20 A I was just doing. But I can tell you, it took awhile.
21 And when I got back to the shoreline, I was exhausted.

22 Q Yes, sir. And when you started going towards Mr. Wolde,
23 were other bystanders already there, or were you the first
24 bystander to get to him?

25 A I was the first bystander to get to him from the lady

1 calling for help. There was people around, but nobody was
2 reacting except for, like I said, one or two other people
3 showed up to help me pull him in.

4 Q And those people were bystanders?

5 A Yes.

6 Q Did you notice, when the lady yelled for help, whether or
7 not she was on the beach or whether she was in the water?

8 A She was in the water.

9 Q Defendant's attorney shared with the jury in his opening
10 that what happened to Mr. Wolde that day was a mystery. Do
11 you agree with that?

12 A No.

13 Q And can you share with the ladies and gentlemen of the
14 jury why?

15 A If the lifeguards would have been present, I think the
16 outcome would have been different.

17 Q Thank you, Mr. Bender.

18 MR. TRAINOR: Objection, Your Honor. Move to strike.

19 MR. McLEOD: On what basis?

20 THE COURT: I'm going to allow that.

21 MR. McLEOD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. TRAINOR:

24 Q Good morning, Mr. Bender. How are you?

25 A Good. Good morning.

1 Q You were asked to come here by Mr. McLeod; is that right?

2 A Yes.

3 Q When were you first contacted about this case?

4 A Approximately a month ago, maybe a little longer. It was
5 about that time.

6 Q June of 2022?

7 A Yes.

8 Q You weren't contacted in 2018 about this?

9 A No.

10 Q Or 2019?

11 A No.

12 Q 2020?

13 A No.

14 Q Or 2021?

15 A No.

16 Q So four years after this happened is the first time you
17 were contacted about this case, this trial, your testimony;
18 right?

19 A Yes.

20 Q When you got out to the beach, did you use the public
21 beach access?

22 A Yes.

23 Q Did you see signs out there?

24 A No.

25 Q Let me ask it this way: Were there signs or you don't

1 know?

2 A I didn't see any.

3 Q You didn't see any signs about flags or rip currents or
4 anything like that?

5 A No.

6 Q Okay. Do you have any reason to think that those signs
7 were there or you just didn't pay attention to them?

8 MR. McLEOD: Objection, Your Honor. Asked and answered.

9 THE COURT: I'm going to allow the question. Go ahead.

10 BY MR. TRAINOR:

11 Q Do you know whether they were or not?

12 A I didn't see any.

13 Q Okay. Your statement that you gave to the police, you
14 signed this statement; right?

15 A Yes.

16 Q Did you read the whole thing, the whole form?

17 A Yes.

18 Q Did you read where it says that you certify you have read
19 the statement and it's true and correct to the best of your
20 knowledge?

21 A Yes.

22 Q And that's why you signed it?

23 A Yes.

24 Q And you said you didn't write it.

25 A No.

1 Q And if you felt like more information should have been in
2 there, you had the opportunity to tell the officer, and you
3 could have added anything you wanted; right?

4 A At the time, I was pretty shaken up and a lot of things
5 were going through my mind and emotions. I told him what
6 happened. He wrote it down. I read over it. At the time,
7 what was transpiring, it seemed accurate, and I signed it.

8 Q At the time, what was written down seemed accurate?

9 A As far as how my mental state was, yes. It was a very
10 traumatic day. I haven't been back here since.

11 Q And, since then, you have remembered more things that
12 happened that are not in this statement?

13 A I remember it clearly because it was a very traumatic
14 event for me.

15 Q The first thing that you saw was when you turned around
16 after hearing somebody yell; right?

17 A Mm-hmm.

18 Q You didn't see anything that happened before that; right?

19 A No.

20 Q You don't know what led to that situation when you turned
21 around, do you?

22 A No.

23 Q And when you saw Mr. Wolde, I think you said he was limp
24 and bobbing in the water; is that right?

25 A Yes.

1 Q You had testified here that, when you went out to help,
2 that Mr. Wolde and the woman were in chest-to-shoulder-deep
3 water?

4 A Yes.

5 Q Why does this statement say that it's waist to chest? Is
6 that more accurate, when you gave that information the day of?

7 A It was somewhere between this area and the chest, so...
8 I said as far as I can remember, that's how it was.

9 Q You were able to stand?

10 A Yes.

11 Q I think you said you assisted with pulling Mr. Wolde up
12 to the shore; right?

13 A Yes.

14 Q And, in your statement here, you have got that you and
15 other rescuers drug the victim out of the surf. And then the
16 next sentence says, "Lifeguards arrived at this point and
17 started CPR." Is that what you told the police officers?

18 A Yes. When we got to shore, that's when a lifeguard
19 showed up.

20 Q A lifeguard?

21 A Yes.

22 Q Not lifeguards like it's written here, that you signed?

23 A Just one.

24 Q So when you got to the beach, when you got to the shore,
25 there was a lifeguard there on the scene?

1 A Yes, once I got there.

2 Q And whether it was one lifeguard or multiple lifeguards,
3 depending on the statement or your testimony, somebody started
4 CPR?

5 A Yes.

6 Q And, at some point, an AED was attached?

7 A Yes.

8 Q Did you ever see the screen on the AED?

9 A No.

10 Q You have no idea whether it advised to shock or not
11 shock?

12 A No.

13 Q You never saw Mr. Wolde conscious at all, did you?

14 A No.

15 MR. TRAINOR: Your Honor, may I approach?

16 THE COURT: Mm-hmm.

17 BY MR. TRAINOR:

18 Q I know this isn't a full photo, but is that you in this
19 photograph?

20 A Honestly, I can't tell.

21 Q Okay. You said there were no flags up anywhere, no red
22 flags?

23 A None that I saw.

24 Q Okay. Did you talk to any Lack's employees while you
25 were at the beach?

1 A Any who?

2 Q Lack's. Lifeguards, supervisors, managers.

3 A After the incident.

4 Q Did you tell them what you saw, what you heard, what you
5 did?

6 A Yes.

7 Q Was that all truthful when you told them?

8 A Yes.

9 Q Give me two seconds, Mr. Bender.

10 How tall are you, Mr. Bender?

11 A Approximately six-two.

12 Q All right, sir. I don't have any more questions at the
13 moment. Thank you.

14 A Mm-hmm.

15 MR. McLEOD: Very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. McLEOD:

18 Q The statement that is marked as Plaintiff's 2 for ID, is
19 there a phone number on that statement?

20 A Yes.

21 Q And is that your current phone number?

22 A No, it is not.

23 Q Okay. Did you know that this document wasn't given to us
24 until approximately a month ago?

25 A No.

1 MR. TRAINOR: Objection, Your Honor.

2 MR. McLEOD: What's the objection?

3 MR. TRAINOR: First of all, it's leading. Can we
4 approach?

5 THE COURT: I'm going to sustain that objection. He
6 would have no way of knowing when you received that statement.

7 BY MR. McLEOD:

8 Q Mr. Bender, does the statement indicate that your
9 daughter, who is a CRN, was the first person to start CPR?

10 A No.

11 Q Does the statement indicate that a registered nurse
12 arrived next and she took over the CPR?

13 A No.

14 Q Thank you for being here, sir.

15 MR. TRAINOR: Nothing further, Your Honor.

16 THE COURT: Thank you, sir. You can step down.

17 THE WITNESS: Thank you.

18 MR. McLEOD: Your Honor, may we approach?

19 BENCH CONFERENCE

20 (The following bench conference was held outside the
21 hearing of the jury and others:)

22 MR. McLEOD: We brought a large TV, and we just need to
23 get it hooked up for who is going to testify next. We'd just
24 like a short break to give us a chance to get it set up.

25 THE COURT: Sure.

1 MR. McLEOD: Thank you, Your Honor.

2 (Open court resumes:)

3 THE COURT: Ladies and gentlemen, we're going to set up
4 some of the technology, and I'm going to let y'all take a
5 break while we do that so you're not just sitting here waiting
6 on that. This shouldn't take long; I'm going to say about ten
7 minutes.

8 (The jury exited the courtroom at 9:44 a.m.)

9 (A brief recess was taken from 9:44 a.m. until 9:51 a.m.)

10 (The jury entered the courtroom at 9:52 a.m.)

11 THE COURT: Mr. McLeod?

12 MR. McLEOD: Yes, Your Honor. Our next witness will be
13 Ms. Abel.

14 MESWAET ABEL,

15 after having been duly sworn, was examined and testified
16 to as follows:

17 THE CLERK: When you get up there, just state your name
18 and spell it out for the Court, please.

19 DIRECT EXAMINATION

20 BY MR. PRACHT:

21 Q Meswaet, are you afraid?

22 A Very.

23 Q Me too. We're going to have a conversation and we're
24 going to share what you know with this jury. Okay?

25 Would you please state your full name for the record.

1 A So my name is Meswaet Abel. M-e-s-w-a-e-t. And my last
2 name is Abel, A-b-e-l.

3 Q Now, yesterday, your children were in the courtroom; were
4 they not?

5 A Yes, they were.

6 Q Will you please share with the jury the names, dates of
7 birth, and the ages of your children?

8 A So my first son, Adam Zerihun, his date of birth, August
9 15, 2006. My daughter -- my second daughter, her name is
10 Wubit, W-u-b-i-t. Last name, Zerihun. And date of birth,
11 January 27, 2009. And my twin girls, the oldest by ten
12 minutes is Eden, E-d-e-n, Zerihun; date of birth, August 10th,
13 2012. And my other twin daughter name, Edom, E-d-o-m,
14 Zerihun. Date of birth, August 10th, 2012.

15 Q And, of course, we're here about Zerihun Wolde today.
16 Can you tell me who Zerihun Wolde was, how old he was, what
17 his date of birth was, and when he passed away?

18 A So Zerihun Wolde was -- his date of birth, October 10th,
19 1976. And he died in August 24th, 2018. And he was my
20 soulmate, my high school sweetheart.

21 Q Okay. Let's talk about that.

22 Where were you born, Ms. Abel?

23 A I was born in Ethiopia. Addis Ababa.

24 Q And tell me about your childhood growing up in Ethiopia,
25 briefly.

1 **A** So childhood in Ethiopia is tough. You know, there's
2 also ups and downs. I was one of the six child. And my
3 father was a police officer, and my mom is a stay-at-home mom,
4 so father was supporting the family.

5 **Q** And when did you first meet Zerihun?

6 **A** So we met in 10th grade. He was my classmate in 10th
7 grade.

8 **Q** And, at some point, did y'all become separated?

9 **A** Yes. So there was some government issue that happened,
10 and my father was imprisoned because he served the previous
11 government, and our family was not able to support, so we have
12 to separate, which I end up with my -- outside of Addis Ababa
13 with my grandparents, so I have to leave and finish my 12th
14 grade outside of Addis Ababa, so we separated.

15 **Q** And tell me about how you came to the United States.

16 **A** So I came to the United States because there was a tribal
17 conflict, which is still going on for years and years, and we
18 weren't able to live life, and everybody was separated. And I
19 do know family friend who lives in the United States who
20 arrange it for me to come here and live my dream.

21 **Q** And were you granted asylum by our government?

22 **A** Yes. I applied for asylum and provided all the legal
23 documents, and I was approved. You know, I stayed with the
24 people until I start working and able to support myself.

25 **Q** How much money did you have when you came here?

1 **A** Not much. Maybe a couple hundred dollars.

2 **Q** What was your first job here?

3 **A** I worked as a waitress.

4 **Q** Take us and tell us when you saw Zerihun again.

5 **A** So, every Sunday, we go to church. We have Ethiopian
6 Orthodox Church. I go to St. Michael's church every Sunday,
7 and we have days that we celebrate: St. Mary's Day,
8 St. Gabriel's Day, and St. Michael's Day. And, that day, it
9 was St. Mary's day, so I end up going to St. Mary's Orthodox
10 Church, and I met him there.

11 **Q** How long had it been since you had seen him in Ethiopia?

12 **A** Maybe four years after.

13 **Q** And so did a relationship bloom?

14 **A** Not right away, but we were so happy to see each other
15 and exchange phone numbers. And we do have our neighbors --
16 we were in the same area together, so we start getting
17 together, you know, every now and then, but we start dating
18 after some time.

19 **Q** So tell me about what happened in 2005.

20 **A** So, 2005, you know, after we date for some time, I
21 remember it was Christmas Eve. So we usually -- it's cold
22 and, you know, so we went out for dinner. He took me by the
23 water. I think maybe Potomac River in Washington, D.C. I was
24 just asking him, "Why are you taking me there? It's cold and
25 chilly night." And he proposed to me that night by the water.

1 He was on his knees, and I did say yes.

2 Q Okay. And did y'all have a big engagement party when you
3 were --

4 A Yes. So we had a big engagement party, planning to get
5 married, go back home and have a big wedding. We wanted to do
6 something for our friends here. So we have over 120 people at
7 the engagement party in February 2019, 2006 [verbatim].

8 Q Hold on one sec. Take your time.

9 MR. PRACHT: Mark these for identification, please.

10 (Plaintiff's Exhibit Nos. 3, 4, and 5, Photographs, were
11 marked for identification.)

12 BY MR. PRACHT:

13 Q Okay, Meswaet. I'm going to show you what's been marked
14 for identification as Plaintiff's 3, 4, and 5. Take a moment,
15 familiarize yourself with these, and I'm going to ask you a
16 couple of questions. Okay?

17 Meswaet, let me see which one you're looking at so I want
18 to make sure we're in the same order. So that's 3, 4, 5.

19 Okay.

20 So the first picture, Plaintiff's marked for
21 identification 3, do you recognize what is shown in that
22 photo?

23 A Yes, I do.

24 Q Are you familiar with the scene that is portrayed in that
25 photo?

1 A Yes.

2 Q How are you familiar with that scene?

3 A This was our engagement party in 2006, February 20.

4 Q Okay. Does that photograph accurately represent the
5 scene as you remember it?

6 A Yes.

7 MR. PRACHT: Your Honor, I'd move that Defense Exhibit 3
8 entered into evidence -- or, excuse me, Plaintiff's Exhibit 3
9 for identification moved into evidence.

10 MR. THOMPSON: No objection, Your Honor.

11 THE COURT: It's admitted.

12 (Plaintiff's Exhibit No. 3 was received into evidence.)

13 BY MR. PRACHT:

14 Q And as we look there -- let me do this -- let me show you
15 another copy because I know we've got it up here on the Elmo.

16 A Okay.

17 Q But can you tell us who all is in that photograph?

18 A This was me and Zerihun and his best friend and friends
19 with us at our engagement party day.

20 Q Okay. Now, the next photograph, which is marked as
21 Plaintiff's Exhibit 4 for identification, do you recognize
22 what is shown in that photo?

23 A Yes, I do.

24 Q And are you familiar with the scene depicted in that
25 photo?

1 A Yes.

2 Q How are you familiar with that scene?

3 A This was our engagement party. And my mom and my dad...

4 Q Take your time, Meswaet.

5 A I'm sorry; I lost my dad also.

6 Q Take your time. Meswaet, is this photograph an accurate
7 representation of the scene as you remember it?

8 A Yes.

9 MR. PRACHT: Your Honor, I'd move that Plaintiff's
10 Exhibit marked as No. 4 for identification be moved into
11 evidence.

12 THE COURT: Any objection?

13 MR. THOMPSON: No, Your Honor.

14 THE COURT: It is admitted.

15 (Plaintiff's Exhibit No. 4 was received into evidence.)

16 BY MR. PRACHT:

17 Q I want to move to the last one here, the last photograph,
18 and it's marked as Plaintiff's Exhibit 5. Do you recognize
19 what's shown in this photo?

20 A Yes.

21 Q Are you familiar with the scene portrayed in this photo?

22 A Yes.

23 Q How are you familiar with this scene?

24 A So this was also our engagement party, cutting the cake.

25 Q Does this scene or does that photograph accurately

1 reflect the scene, as you remember it?

2 A Yes.

3 MR. PRACHT: Your Honor, I'd move that plaintiff's marked
4 for identification No. 5 be moved into evidence.

5 THE COURT: Any objection?

6 MR. THOMPSON: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (Plaintiff's Exhibit No. 5 was received into evidence.)

9 BY MR. PRACHT:

10 Q Okay, Meswaet. Now, we talked a lot about engagement,
11 but did you and Zerihun ever become legally married?

12 A No, we did not.

13 Q Share with the jury the circumstances around that.

14 A So the plan was to go back to Ethiopia and have a wedding
15 with family and friends, but I got pregnant with my first son,
16 Adam, right after, and he was born, and I was not able to be
17 pregnant to Ethiopia, and we postponed the date after, and he
18 was born in August of 2006.

19 So that's the reason that we were not able to do the
20 wedding. Right after my -- when I -- Adam was two, my second
21 daughter came. So we were saying we can still do it, let's
22 get ourselves together.

23 Q All right. So now over time -- and I want to move along
24 here -- you ended up having four children with Mr. Wolde;
25 correct?

1 A Correct.

2 Q Okay. And tell me about Mr. Wolde and his contributions
3 to the family at this time. What was he doing? What did he
4 do for a living?

5 A He drives a taxi for a living. The reason, he had lots
6 of opportunity to do other works, but driving a cab is
7 independent work, so he can be there for his family, for the
8 kids whenever. So when I work -- I used to work at Silver
9 Diner restaurant for seven years. I work early shift from 5
10 a.m. to 1:00. As soon as I get home, he goes out to work and
11 work the evening hours and he come home. Whenever we have,
12 you know, school closed, sick days, he can take off without
13 any -- because, driving a cab, you can drive at any time on
14 your own. So that's the reason he was driving a taxi.

15 Q Now, when you were working at the diner, who was paying
16 the majority of the bills in the home?

17 A He was paying the majority of the bills.

18 Q How many hours a week was he working during this time
19 period?

20 A So, while I was working, he was not working as much
21 because I could contribute some, but he was working more of
22 the afternoon. Friday and Saturday evening shift is busy for
23 the taxi, so he works more hours on Friday and Saturday.

24 Q Now, was it your dream to always be a waitress?

25 A No, never.

1 Q What was your dream?

2 A I always wanted to be a nurse. I love helping people. I
3 stayed with my grandparents, and I always wanted to be there
4 for them. And my dream was to become a nurse.

5 And Zerihun was the reason to pursue my dream, and he
6 said, "You can still do it. We have two kids. I'm here. I
7 will do everything." So I start full-time school to be --
8 become a registered nurse.

9 Q How many hours a week was Zerihun working when you were
10 in nursing school full time?

11 A He works every time. Every time when I'm home,
12 especially Friday, Saturday, I don't have school. He leaves
13 home at 11. He comes home at 3 a.m. after he work the
14 night/party hours, you know, like the rush, the 3:00,
15 2:00 a.m., and he comes home, like, working 16, 18 hours,
16 especially Friday and Saturday, to support and pay the bills.

17 Q Were you earning any income at all when you were in
18 nursing school?

19 A None. I was a full-time student, and he was paying
20 mortgage. We own a home. He bought that townhouse before we
21 get married -- we never get married; I'm sorry.

22 Q That's okay. Did you eventually graduate from nursing
23 school?

24 A Yes, I did.

25 Q Are you a registered nurse?

1 A Yes, I'm a registered nurse, yes. I got my bachelor's
2 degree, so I start full-time student and graduated in 2014,
3 December, from Washington Adventist University. So I got my
4 bachelor's.

5 Q Now, by the time you finished Washington Adventist
6 University, how many children did you have?

7 A Four.

8 Q And so the twins had been born by then?

9 A The twins. So after -- while I was in nursing school, I
10 got pregnant. I got pregnant not only one, but twins, and I
11 thought I was going to stop and Zerihun was there. "I'm
12 here."

13 Q Let me ask you this, Meswaet. I'm going to show you --
14 MR. PRACHT: This is our next one, 6.

15 (Plaintiff's Exhibit No. 6, Photograph of Family at
16 School, was marked for identification.)

17 BY MR. PRACHT:

18 Q Meswaet, I have handed you what's been marked for
19 identification as Plaintiff's Exhibit 6. Can you please tell
20 me if you recognize what is shown in that photo.

21 A Yes, I do.

22 Q Are you familiar with the scene portrayed in this photo?

23 A Yes.

24 Q How are you familiar with that scene?

25 A So this was Stonegate Elementary School, my daughter's

1 school. This was culture night, and my daughter was
2 performing on that day, so this was at Stonegate Elementary
3 School.

4 Q Does that photo accurately represent the scene as you
5 remember it that day?

6 A Yes.

7 MR. PRACHT: Your Honor, I'd move that plaintiff's marked
8 for identification purposes No. 6 be admitted into evidence.

9 MR. THOMPSON: No objection, Your Honor.

10 THE COURT: It's admitted.

11 (Plaintiff's Exhibit No. 6 was received into evidence.)

12 BY MR. PRACHT:

13 Q Did you get a job as a nurse?

14 A Yes. So I graduated from nursing school in 2014. I
15 passed my board exam my first attempt, and I was offered a job
16 at the University of Washington --

17 Q Take your time.

18 A -- George Washington University Hospital at med surge as
19 a registered nurse.

20 Q Tell me about your specific job duties as a registered
21 nurse.

22 A So I work at med surge unit, which I see every patient.
23 I enjoy it, because I learned from more than school. You
24 learn when you work, so I was able to see all different kind
25 of patients, different procedures. So I was working 12-hour

1 shift, three days a week, but I work more hours because I
2 wanted to take over. I wanted him to take time with family,
3 so...

4 Q As a result of your job, did the family make more money?

5 A Absolutely, yes.

6 Q What did that do -- how did that impact Zerihun and the
7 family and the children?

8 A He was able to stay with the kids. He was able to do all
9 house chores, because I bring in the money, he does
10 everything. He does the cooking. He does the cleaning. He
11 was there for all of us. So he can work. You know, he goes
12 to work as needed. He doesn't need to work as much like 16,
13 18 hours a day. So I was more supporting the family
14 financially.

15 Q Now, during this time, did y'all have occasion to take a
16 vacation to Ocean City, Maryland, during this period?

17 A Yes, we do. Ocean City is not far away. It's about two
18 and a half hours. So every now and then, you know, we have
19 friends coming, we take them to Ocean City. Some days, we go
20 for a couple of nights. Some days, we can drive in the
21 morning and go back home at night.

22 Q Did you have a good experience when you went to Ocean
23 City?

24 A Yes, always. It's fun. I love the beach. I don't know
25 how to swim. I don't enjoy it as much, but usually, I just go

1 there to, you know, take pictures most of the time.

2 Q So now you don't know how to swim. Did Zerihun know how
3 to swim?

4 A He knows how to swim. He actually grew up back home in a
5 small river by the neighborhood. So they swim as kids. They
6 swim. He also swim. He works at -- I mean, he exercise five
7 days a week at a fitness. They have indoor pool. He enjoyed
8 the pool. He always -- even wintertime, he can swim at the
9 LA Fitness. So he's a strong swimmer. He surf on the
10 surfboard.

11 Q Now, how about the children -- and I'm talking about Adam
12 and Wubit? Did you guys ever get them swimming lessons?

13 A Yes, he got swimming lesson. He take them to swimming
14 lesson, especially Adam and Wubit, the first two. They were
15 also in summer camps every summer, and they were able to swim
16 twice a day from the summer camp. They usually test them
17 before they take to the swimming, so you have to pass certain
18 for them to just let them swim. So they were certified to
19 swim.

20 Q They passed that test?

21 A They passed that test, yes.

22 Q Now, real quick on Ocean City. Was it just a regular
23 vacation? Was it anything out of the ordinary?

24 A Just regular vacation.

25 Q Now, I want to fast-forward a little bit. We know where

1 your family was. Tell us about how you came to this
2 community, to Myrtle Beach. How did this all come about, the
3 vacation?

4 A So, every year, you know, we take a vacation. We have
5 been in Florida, different places. We have been in Europe.
6 We love taking vacations, especially after I become a nurse,
7 we were financially okay to travel with four kids.

8 So my twins' birthday was August 10th. My son's
9 birthday was August 15th. We wanted to make it special for
10 them. We asked them -- they have been asking to get an iPad,
11 and we asked them, Do you want us to buy iPad or take you --
12 take a vacation, go to the beach? And they wanted to do -- to
13 take a vacation.

14 So we decided to make it special, which we drove all
15 the way from Maryland, eight hours. Instead of going to Ocean
16 City, we wanted them to experience something different, so we
17 decided to come to Myrtle Beach.

18 Q Okay. Now, why Myrtle Beach? How did you hear about
19 Myrtle Beach?

20 A So a friend of mine came to Myrtle Beach, stayed at Sea
21 Crest, and she was telling me -- her kids -- she has three
22 boys. The kids love it because Sea Crest has water park
23 inside. They have a lot of activities for kids. So I just
24 ask her for the hotel's name and booked it.

25 Q Did you do any kind of digging around or research on the

1 internet about Myrtle Beach or anything like that?

2 A No. Usually I search for the hotel, from the rating, how
3 far is it from the beach, is it oceanfront. But she told me
4 everything, so I just booked.

5 Q And when you booked it, did you book it by telephone?

6 A Yes.

7 Q So when you drove down, was that a Thursday?

8 A It was a Thursday.

9 Q Okay. Tell me about the drive down. Who all came down
10 in your family to Myrtle Beach in August of 2018?

11 A So it was me, Zerihun, my four kids, and my father drove
12 all the way here.

13 Q What time did y'all arrive Thursday?

14 A In the evening time. I would say maybe around 6 p.m.

15 Q So was it light outside? Dark outside?

16 A It was light.

17 Q Tell me what y'all did when you arrived at Myrtle Beach.

18 A So we checked in -- I checked in, and we unloaded our
19 car, put our stuff in our hotel room. And the kids were very
20 excited. They wanted to go to the beach. And my son
21 called -- after we get to our room, my son called to front
22 desk and ask if it's okay to go -- is the beach open? And I
23 learned that they say the beach is open, no lifeguards after
24 5 p.m. And we decided, okay, we're not swimming, but we can
25 walk at the shore. So we did walk that evening.

1 Q Now, when you went out to the beach, was it dark?

2 A It was about to be dark, but some light. Yeah, you can
3 see.

4 Q Sure. And when you went out to the beach, did you
5 observe anything out of the ordinary or anything that gave you
6 pause?

7 A No. It was, you know, quiet. Usually it's busy during
8 the day, but it was kind of quiet that evening, nice and
9 breezy.

10 Q When you went out to the beach that evening, how did you
11 go? I mean, you were staying at the Sea Crest Resort. Take
12 us on the pathway you walked from your room out onto the
13 beach, if you can remember.

14 A Yes. So there is an access to the beach from the Sea
15 Crest hotel, so we take that access.

16 Q Along that access that night -- I'm talking about the
17 night before --

18 A Yes.

19 Q -- did you see any signs along that access?

20 A No, I did not see any sign.

21 Q Did you see any warning or anything that would have
22 alerted you to a danger on the beach?

23 A No, I did not.

24 Q All right. Let's go to the next morning. So this would
25 be Friday, August 24th. Start and tell me about what you

1 remember when you woke up.

2 A So, while we were sleeping, when I wake up, Zerihun was
3 saying, "Wake up, you know, it's almost midday, and you are
4 still sleeping." I learned that he went out that morning to
5 buy some groceries, breakfast, you know, eggs, cereal. Went
6 with my son. And he made some breakfast for the kids.

7 Q Okay. After breakfast, what happened next?

8 A So he put sunscreen for all the kids. Everybody changed.
9 Went down. We all went down. And while we were waiting for
10 him, he went to the car to get the beach chairs, the umbrellas
11 from the car. We headed to the beach through the access.

12 Q So let's talk about that. Did you-all head to the beach
13 as a family, all of you?

14 A Yes.

15 Q Okay. Did y'all travel down the same access point
16 through the Sea Crest that you did the night before?

17 A Yes.

18 Q Take me to the beach. Tell this jury what you did and
19 what you saw when you got to the beach.

20 A So, when we get to the beach, it was a lot of people. A
21 nice day. Lots of beach chairs in the front and umbrellas.
22 And we went through the access and maybe walk to the left to
23 set up our umbrella and chairs.

24 Q You mentioned a long line of umbrellas. Did you set up
25 your chairs in front of those umbrellas or behind those

1 umbrellas?

2 A Behind. We did not think it's allowed in front because
3 you can see the chairs lining up, so we were behind the
4 chairs.

5 Q You mentioned you-all had equipment. Can you describe,
6 if you remember, what equipment you took with you to the
7 beach, what beach items did you bring?

8 A So we have beach chairs. I would say maybe three or
9 four. We have two umbrellas. We have our cooler that he
10 filled with some Gatorade, water, juices for the kids.

11 Q When you guys were -- when you're on the beach, Meswaet,
12 did you ever have a chance to see a lifeguard stand?

13 A There was a lifeguard stand to my right side.

14 Q And I want to be clear because when you say "right side,"
15 is that where you're facing the ocean?

16 A I am facing the ocean, yes.

17 Q Do you have an idea of how far that lifeguard stand was
18 away from you?

19 A I was able to see it. I'm not sure how far.

20 Q Did you see a red flag in front of it?

21 A No.

22 Q Did you see any red flag within your vision while you
23 were on the beach that day?

24 A I did not see any red flags.

25 Q Did you see any signs on the beach that said anything

1 about rip currents?

2 A Nothing. It was beautiful day. Lots of people swimming.

3 Q Did you see any off-duty flags on that lifeguard stand?

4 A I did not see any flags.

5 Q All right. So you get to the beach. You set up. Were
6 you worried about anything at this point?

7 A No. We're just normal families there for vacation. This
8 is not our first time being at the beach, so...

9 Q Now, it was your first time at this beach?

10 A This is our first time, yeah.

11 Q But you had been to other beaches?

12 A Yeah.

13 Q What did you do? I know you said you don't swim, but
14 tell me what you did once y'all got set up on the beach.

15 A So my first two kids and Zerihun went into the beach, and
16 I was just watching my twins. They were doing sandcastle, and
17 I was just -- start taking pictures with them.

18 Q Okay. I want to take this time to go over some of those
19 photographs, Meswaet. Give me one second.

20 (Plaintiff's Exhibit No. 7 marked for identification.)

21 BY MR. PRACHT:

22 Q So, briefly, Ms. Abel, we're going to go through some of
23 these pictures, and I know it's a little bit of a process.

24 I'm showing you what's been marked for identification as

25 Plaintiff's Exhibit 7. Do you recognize what's shown in that

1 photo?

2 A Yes, I do.

3 Q Are you familiar with the scene portrayed in that photo?

4 A Yes.

5 Q How are you familiar with that scene?

6 A This is the picture that I took that day, and my
7 daughter -- my twin daughters, Edom and Eden, playing in the
8 sand.

9 Q Does this photograph accurately represent the scene as
10 you remember it?

11 A Yes.

12 MR. PRACHT: Your Honor, I'd move that Plaintiff's 7 for
13 identification be moved into evidence.

14 MR. THOMPSON: Your Honor, may we approach?

15 BENCH CONFERENCE

16 (The following bench conference was held outside the
17 hearing of the jury and others:)

18 MR. THOMPSON: Your Honor, I'd really like to move this
19 along. I don't have any problem with any of these photos. I
20 don't know why they didn't --

21 MR. WILSON: I apologize, Your Honor. If he'll consent
22 to just moving in all the photos, we'll do it right now.

23 MR. THOMPSON: Yeah, if we can just do that.

24 THE COURT: Sure.

25 (Open court resumes as follows:)

1 MR. PRACHT: Your Honor, I'm going to mark two more
2 exhibits here. And we'll just move things along here, if I
3 might.

4 THE COURT: Sure.

5 MR. PRACHT: All right, Your Honor. It's my
6 understanding that Plaintiff's 8 and 9 are going to be moved
7 into evidence without objection.

8 MR. THOMPSON: That's correct, Your Honor.

9 THE COURT: They're admitted.

10 (Plaintiff's Exhibit No. 8 and 9 was received into
11 evidence.)

12 BY MR. PRACHT:

13 Q All right. I want to take a look at what's been
14 introduced into evidence as Plaintiff's Exhibit 8. And I'm
15 going to hand you a copy of Plaintiff's Exhibit 8. Let's talk
16 about this photo for a second, if we could.

17 MR. PRACHT: And, Your Honor, for purposes of
18 identification for the jury, too -- I think it's a little
19 clearer than that -- we have got a demonstrative that's just
20 Plaintiff's Exhibit 8, and we'd like to publish that to the
21 jury.

22 BY MR. PRACHT:

23 Q Okay. Meswaet, so who is in that photograph?

24 A This is my daughter, Eden.

25 Q Okay. And I want you to, if you can, look over what

1 would have been Eden's left shoulder. It's the right side of
2 the photograph in the background.

3 A Mm-hmm.

4 Q Do you see -- and it's rather small, but do you see a
5 lifeguard stand in that photograph?

6 A Yes, I do.

7 Q Okay. And if you look hard, can you see a red flag in
8 front of that lifeguard stand?

9 A I do not see any red flags.

10 Q Okay.

11 MR. PRACHT: Your Honor, this is a zoomed-in -- just a
12 portion of Exhibit 8 that's been admitted into evidence.

13 THE COURT: You have seen this, Mr. Thompson?

14 MR. THOMPSON: Yes.

15 THE COURT: Okay.

16 BY MR. PRACHT:

17 Q Meswaet, I want to show you this larger photograph here.
18 Can you see the lifeguard stand better there?

19 A Yes, I can.

20 Q Now that you see the lifeguard stand better, do you see
21 any flag?

22 A No, I don't see any flag.

23 Q Do you see an off-duty flag?

24 A I don't see any flag.

25 Q Now, this photograph was taken after you got to the

1 beach; correct?

2 A Correct.

3 Q You don't know exactly when it was taken, though, do you?

4 A I don't.

5 Q Okay. But is it fair to say that this was taken after
6 you arrived on the beach but before any trouble started?

7 A Correct.

8 Q Okay. And let's move on to that, Meswaet. Tell us when
9 was the first time that you perceived or came to know that
10 something was wrong.

11 A So, I was just playing with my twins, and my son run up
12 to me and said, "Mama" -- he called me "Mama," and he called
13 his dad "Baba. "Baba was screaming for help. Come on, come
14 on, let's help." And I asked him, "Are you okay?" And he
15 said, "Yes." Baba was screaming for help, and I thought he
16 lost my daughter.

17 And I said, "Have you seen Wubit?"

18 He said yes.

19 "He lost her?"

20 And he said, "No." He was screaming, "Come on."

21 So I start running to my right side. I called my dad to
22 watch my twins and run to my right side.

23 Q Do you have any idea how far you had to run?

24 A It was long. It was long. I was running to the point my
25 knees gave out, and I was just crawling on the sand. It was

1 long.

2 Q Did you ever -- were you ever able to see Zerihun?

3 A So I was -- I was able to see people gathering around,
4 and while I was crawling, I saw his swimsuit laying on the
5 ground.

6 Q Did you see Adam or Wubit or the twins?

7 A Yes. I saw my daughter when I looked. She was right
8 next to him by his head. And I don't know. My twins end up
9 next to him. I don't know how. Yes, all four of them were
10 there.

11 Q Is it fair to say that you were extremely upset,
12 hysterical?

13 A I was going crazy. People were trying to be -- to calm
14 me up, and I say, "I'm a nurse, let me help." They were
15 trying to calm me. And they said -- one of the person I
16 remember saying, "He's okay. We have a pulse." She told me
17 she's a nurse, and they did CPR. "We have a pulse, he's fine.
18 Just calm down."

19 Q And, at some point, was Mr. Wolde put on a board and
20 taken to the hospital?

21 A Yes. So they -- police officer arrived and some truck
22 and they transport him. And I asked them can I go with him?
23 He said no, I'm not allowed to go. They'll send someone for
24 me to take me to the hospital.

25 Q Meswaet, I think the jury might need a break right now.

1 **A** Sure.

2 MR. PRACHT: Your Honor, if we can take a brief recess,
3 if that's okay with Your Honor.

4 THE COURT: Do y'all want to approach just a minute?

5 BENCH CONFERENCE

6 (The following bench conference was held outside the hearing
7 of the jury and others:)

8 THE COURT: Do we need to take a break because she needs
9 a break?

10 MR. McLEOD: Yeah, I think she would probably need a
11 break.

12 MR. THOMPSON: She hasn't asked for one.

13 THE COURT: I mean, this isn't going to be any easier ten
14 minutes from now.

15 MR. PRACHT: All right.

16 (Open court resumes as follows:)

17 BY MR. PRACHT:

18 **Q** Are you okay, Meswaet? Can we continue going on?

19 **A** Yes.

20 **Q** Is that okay?

21 **A** Yes.

22 **Q** If you need a break, just speak up. Okay?

23 So where we left off, they wouldn't let you ride in the
24 emergency vehicle with Mr. Wolde. I want you to tell me what
25 you did next.

1 **A** So I got my kids, went back to our umbrella and chairs,
2 and all the people help us to get our stuff. Went back to our
3 hotel. Change my clothes. And one of the person at the
4 beach -- I don't know which hospital to go, so she texted
5 me -- she asked my son for my phone number, and they texted me
6 the hospital's address.

7 So, after we went back to the hotel, get our stuff,
8 change my clothes, went to look for my car, because he went to
9 Walmart that morning, and I didn't know where he parked the
10 car. So I was running in the parking lot looking for the car.

11 **Q** Okay. So were you able to find the car?

12 **A** Yes, I did.

13 **Q** And did you make it to Grand Strand Regional Hospital?

14 **A** Yes.

15 **Q** Tell me what happened at Grand Strand Regional Hospital.

16 **A** So I arrived at the hospital, went to the reception, and
17 asked them, "Do you have a person who came from the beach?"
18 And they asked me for his name, and I told them, "You probably
19 don't have a name for him but he's in trauma. He came from
20 the beach." And they told me to sit down in the waiting area.

21 **Q** Tell me what happened after you sat in the waiting area.

22 **A** Then they called me to go to the consultation room, which
23 there was a police officer, asked me who I am. And show my
24 ID. And asked me Zerihun's ID, which I gave it to him. And I
25 was asked who I am.

1 Q And what did you learn from your meeting with the
2 officials?

3 A So I learned there was one doctor, a police officer, two
4 nurses in the room, and I learned that he died. They tried so
5 much to resuscitate him. They told me his lung was full of
6 water. They weren't able to resuscitate him. And he died of
7 drowning.

8 Q How long did you stay at the hospital, Meswaet?

9 A So I asked them to show me. I went to the room where his
10 body was. He was still warm. Warm to touch. I begged them,
11 you know, what we can do. They were just denying it. Just
12 feeling his body. And I stayed in that room. They told me do
13 something, what would I do. They can't do anything. I don't
14 know what to do. So I stayed.

15 I asked them to call my dad. They send someone to bring
16 my dad and the kids at the hospital. And I believe they keep
17 the kids somewhere, and my dad came, and I told him he died.
18 My father was devastated. Fall. They got him a chair. And
19 they got me a priest. I just wanted to be with him.

20 Q Meswaet, so let's go from the hospital back to the hotel
21 room. Explain how the family got back home.

22 A So they got my father and the kids. My father called
23 friends and family in Maryland and let them know that he
24 passed, and he took the kids back to the hotel room. And I
25 was told that I have to leave. I have to move his body. And

1 went back to the hotel. I couldn't face my kids. Couldn't
2 let them know he died. So I stayed outside of the hotel in
3 the corner, just crying. And I just go up in the hotel, tell
4 them, "He's in ICU, he can't talk, you can't see him, but he's
5 okay," because I can't tell them he died.

6 Q So how did you guys get home?

7 A So we have our friends drove here maybe at 1 a.m. that
8 night. Maybe ten people came over. I arrange flights for us,
9 me and my kids and my dad the next day. And took my car --
10 they drove my car back, and we flew back home.

11 Q When did the children first learn that their father
12 wouldn't be coming home?

13 A So, after contacting my priest, to tell them, because I
14 couldn't tell them. So the priest came the next -- the
15 following day and told them that he died.

16 Q Tell me about life after -- I want to talk about life
17 after that. Tell us about how life -- for the children and
18 for your family was different without Zerihun.

19 A Life without Zerihun, we all have to learn life. The
20 moment that we wake up, making breakfast, getting the kids
21 ready for the school. School opens the following week.

22 Our house was dark, cold, lifeless. Eating dinner was --
23 we have to set up a plate for Daddy in his seat. The kids are
24 asking to keep a plate in front of his every night we sit for
25 dinner. And I have to change things around. We start eating

1 dinner in the family room because it is just difficult to see
2 that empty seat.

3 Q Could you observe changes in the children and how it
4 impacted them?

5 A Yes.

6 Q What I want to do, as we wrap up here, Meswaet, is I want
7 to go through each of your four children. Okay? And I know
8 this will be hard, but I want to talk about how each of these
9 children has been impacted by the loss of their father. So if
10 we could start, we'll go youngest to oldest. Tell me about
11 how the loss of Zerihun has affected Eden Zerihun.

12 A Eden. Eden is one of the twins. She loved to please her
13 dad. She always follows the rules. She always listened to
14 him. Actually, the others get upset because he loves -- I
15 mean, she listened to him, and they think, oh, she's trying to
16 please him. If he tell her put your shoes here, she does. We
17 have two closets for the twins' bedroom. Her bedroom is
18 perfect -- her closet is perfect. Her shoes is in place.
19 That's how Daddy taught her. She keeps doing that.

20 She loves reading with her dad. He teach them math. He
21 loves education. He believes in education. He teach the
22 twins the math. They're smart. She continues to be smart,
23 taking advanced classes out as of now in 4th grade. The twins
24 are taking advanced 5th grade courses because of Zerihun. He
25 reads with them every night, doing school work, teach them how

1 to swim.

2 Q How about -- let's talk about -- we talked about Eden.
3 Let's talk about Edom. Talk about how Edom has been impacted
4 by the loss of Zerihun.

5 A Edom has been unable to understand death. "When is my
6 daddy coming back?" Asking me, "When am I going to see my
7 dad?" See her dad in her dreams coming out of cribs.

8 Edom challenged her dad. If he tell her to do things,
9 she's like, "Let me tell you, that's not how it is." She
10 challenges him.

11 Q How about his genfo?

12 A And he cooks for them, always cooked for them. And he
13 makes their favorite food. We call it genfo. And I have been
14 trying to make that until now which they say, "Close, this
15 close. Never like Daddy." So we missed his -- she missed his
16 cooking.

17 Q Okay. Take your time.

18 A Yeah.

19 Q Let's talk about Wubit Zerihun.

20 A We name Wubit after his mom. His mom's name is Wubit.
21 It means beautiful in Ethiopian. His mom died, so he named
22 her after his mother. He loved Wubit. She was with him when
23 he died.

24 Wubit has been unable to sleep at night, hearing his
25 voice, screaming for help. Feeling the salt water in her

1 lungs. We have to keep the light on all night long because
2 she's afraid. My daughter, Wubit, lives in guilt. What if --
3 we should have done better. I [verbatim] was holding her
4 father's shirt. She said, "I wouldn't let him go, I wouldn't
5 let him go."

6 She gave up on her school. Lost interest. Daddy was
7 there to do homework. He's not there anymore.

8 Q Okay. Let's talk about Adam, your oldest. Tell me how
9 the loss of Zerihun has affected Adam Zerihun.

10 A So Adam was 12 -- he just turned 12 at the time. Adam
11 was attached to his father. Always with him. Going places.
12 Playing basketball. Watching football. Redskins.

13 Zerihun loves Redskins. So, Adam, they watched football
14 games together. Adam has a hat. He bought him black hats.
15 He bought him different stuff. So when it's Sunday, Adam
16 collect everything in front of the TV, watching the game.
17 Sadly, Redskins lost most of the time. I want him to like
18 Ravens team, because we live in Maryland, tried to make sense.
19 At least, you know, we will be happy some days, but he just
20 followed Daddy. Follows Baba.

21 So, after he died, he can't watch the football. He's
22 sitting in the living room by himself. So I tried to fit in.
23 Sit with him. Learn the football. Support Redskins.

24 And Adam becomes a man of the house at 12 years old. Tried
25 to be there for his sisters. Tried to tell them what to do,

1 from what he learned from his father. And the conflict start
2 between him and his sister, especially Wubit. She doesn't
3 want to listen to him. She's like, "You're my brother, not my
4 father. Why would you tell me to do this?"

5 My son lost his childhood because he lost his dad. He
6 take trash out. When I work 12 hours, he filling the gap.

7 I was not able to work for six month after he passed because
8 I can't leave my kids, especially evening hours. I can't
9 leave them. Zerihun was involved in the community. People
10 were giving me money to pay for the mortgage. So, for six
11 month, I stopped working. Adam has to be there for the kids.
12 You know, preparing like, at least giving them peanut butter
13 and jelly sandwich, something when I'm not there.

14 Q Meswaet, I think I'm almost done.

15 MR. PRACHT: Your Honor, I think I'm done. I would just
16 ask the Court if I could have one moment to go over my notes,
17 a quick break?

18 THE COURT: Sure.

19 (Pause in the proceedings.)

20 BY MR. PRACHT:

21 Q Meswaet, one question here. I want to go back to that
22 day: August 24th. We're back at the beach. Okay? When you
23 guys first set up, I believe you testified that Wubit, Adam,
24 and Zerihun went into the ocean.

25 A Correct.

1 Q Did they go -- do you remember seeing how they went in
2 the ocean, like which direction they went?

3 A They went straight to the ocean in front of our chairs.

4 Q And, over time, did they come back and forth or any of
5 them come back and forth as they were playing in the surf?

6 A Wubit, I remember, she came maybe once, yes.

7 Q And then she returned?

8 A She returned back to her dad.

9 Q Okay. And, so, when they went in the ocean and were
10 playing, that was -- was that essentially directly in front of
11 you?

12 A Yes.

13 Q Where was your attention?

14 A My twins.

15 Q You were taking the photographs?

16 A Photographs, mm-hmm.

17 Q And then, just to recount, when you ran, you ran to which
18 direction?

19 A To my right side.

20 Q If you were facing the ocean?

21 A The ocean, yes.

22 Q All right. The last question I have is: Your entire
23 family -- we just went through every child, but tell me in
24 your own words how August 24th, 2018, what it did to your
25 family.

1 **A** So we were just normal family, came here for fun, to
2 celebrate the kids' birthday, and end up losing my soulmate,
3 the love of my life. I'm not legally married, but I marry him
4 for life.

5 Our life changed. Our house is dark. We're living in no
6 hope, with no answers to my kids, "Who is going to walk me
7 down the aisle when I get married?" If I change, I would give
8 my life. It's not because I love him; it's because of the
9 kids. They need him more than me.

10 **Q** Thank you.

11 **A** He's done everything. He teach how to swim. He teach
12 how to study. He teach them how to ride a bike. He painted
13 their rooms. My daughter, 13. Her room is pink. She wanted
14 to change that room. She doesn't want to change it because
15 Daddy painted it.

16 **Q** Meswaet --

17 **A** My kids -- Father's Day, we celebrated by his graveyard.
18 Christmas is not Christmas anymore. Holidays are -- how do we
19 pass this day? It's not like how do you celebrate it but how
20 do you pass it over.

21 **Q** Meswaet, thank you. Thank you for sharing that. And
22 Mr. Thompson or the defense is going to ask you some
23 questions. I would ask that you answer truthfully and answer
24 any questions they may have. Okay?

25 THE COURT: Ms. Abel, would you like a break before we

1 keep going?

2 THE WITNESS: Let's go over it.

3 THE COURT: I'm sorry?

4 THE WITNESS: It's okay. I can continue.

5 MR. THOMPSON: Your Honor, may we have a break?

6 THE COURT: Sure, sure.

7 Ladies and gentlemen, I'm going to release you back to
8 the jury room for about ten minutes. Please don't begin
9 discussing the case.

10 (The jury exited the courtroom at 10:58 a.m.)

11 THE COURT: And, Ms. Abel, you are free to get up and walk
12 around. You're still under oath, so don't discuss your
13 testimony with anyone, but you're welcome to take a break
14 also.

15 (A brief recess was taken at 11:00 a.m. to 11:12 a.m.)

16 MR. WILSON: Your Honor, we do have one matter to take
17 up. The court reporter informed me while we were on the break
18 that she did not move Exhibit 7 in, and we went back and we
19 reviewed the transcript. If she would read to the Court what
20 was said.

21 We had Exhibit 7 and 8 and 9, and we moved 8 and 9 in.
22 She has not moved 7 in, and I believe it was everyone's
23 intention that we move all three of those exhibits in.

24 THE COURT: I marked three as being admitted.

25 MR. THOMPSON: I don't have any objection.

1 COURT REPORTER: Okay. Thank you.

2 MR. McLEOD: The court reporter brought that to my
3 attention, so I wanted to make sure that Exhibit 7 is moved
4 into evidence.

5 THE COURT: I'm showing, at this point, 1 through 9 with
6 the exception of 2, that 2 was not admitted.

7 COURT REPORTER: Thank you. That's right.

8 THE COURT: Is that good?

9 MR. THOMPSON: Yes, sir. Before the jury comes back, we
10 have two more photographs that are going to be Defendant's
11 Exhibits 1 and 2 that, I believe, will be in evidence without
12 objection.

13 MR. McLEOD: No objection.

14 THE COURT: Okay. We'll go ahead and say Defendant's 1
15 and 2 are admitted.

16 MR. THOMPSON: Thank you, Your Honor.

17 (Plaintiff's Exhibit No. 7 was received into evidence.)

18 (Defendant's Exhibit No. 1 and 2, Photographs, were
19 marked for identification and received into evidence.)

20 (The jury entered the courtroom at 11:15 a.m.)

21 THE COURT: And, ladies and gentlemen, just so I don't
22 forget to tell you at our next break, we do need you to select
23 a foreperson to -- the foreperson presides over the jury
24 deliberations. So whenever we have our next break or at our
25 lunch break, whenever it's convenient for y'all, I will need

1 y'all to decide on a foreperson. Any of the 12 jurors can be
2 a foreperson except for our alternate. I know you're
3 heartbroken over that.

4 You do not need any special training or experience to be
5 the foreperson. You have all the skills you need just from
6 your good common sense and life experience. The duties of the
7 foreperson are, during deliberations, you preside over the
8 deliberations. If there's anything that needs to be brought
9 to my attention, you will write a note on behalf of the jury,
10 give it to the bailiff, and they will bring me your note.

11 You will -- once the jury has reached a unanimous
12 verdict, you will sign the verdict form on behalf of the jury
13 panel. So I just want to go ahead and mention that to you, at
14 the next break or over lunch, whenever you're back convened
15 together, if you'll please select a foreperson.

16 Okay. Mr. Thompson.

17 MR. THOMPSON: Thank you, Your Honor. May it please the
18 Court?

19 CROSS-EXAMINATION

20 BY MR. THOMPSON:

21 Q Ms. Abel, can you hear me okay?

22 A Yes.

23 Q Obviously, Ms. Abel, we are very sorry for your loss. It
24 was a tragic loss. And it's difficult to go through this
25 process, I know, and I have some questions for you today.

1 Okay?

2 A Okay.

3 Q Before you and the family went to Myrtle Beach in August
4 of 2018, your children went to the pediatrician; correct?

5 A Correct.

6 Q And, at that time, it was noted that Adam was 5-foot-1
7 inches tall. Does that sound about right?

8 A Yes.

9 Q He's a lot taller now.

10 A Yeah.

11 Q He's grown a lot.

12 A Yeah. He's like 6, yeah, something, yes.

13 Q And Wubit, at that time, was about 4 foot 8 inches when
14 they went to see the pediatrician about a week before this
15 happened. Does that sound about right?

16 A Yes. Zerihun took them on that Saturday, which is for
17 their birthday, so I'm not sure exactly how tall they were.

18 Q But they're all taller now, certainly, aren't they?

19 A Yes.

20 Q Now, when you described earlier that occasionally you and
21 the family would go to Myrtle -- not Myrtle Beach -- Ocean
22 City, Maryland; correct?

23 A Correct.

24 Q And you would go to the beach there?

25 A Yes.

1 Q And you don't recall seeing any signs there that were
2 informative to you about the beach or the beach conditions, do
3 you?

4 A I mean, I do signs [verbatim], but I don't -- any signs
5 "no alcohol allowed." We go there more often, so...

6 Q But did you recall reading signs about rip currents?

7 A Never.

8 Q Did you recall signs about flags?

9 A Never.

10 Q Or warnings or information about what flags might mean on
11 the beach?

12 A No.

13 Q Okay. Did you ever perform any research before you went
14 to Ocean City, Maryland, beach about the beach or its beach
15 conditions, the surf, anything like that before you went?

16 A No. I researched the weather, rain day. Research the
17 hotel, how far from the beach, you know, if it's beachfront,
18 but never about the beach condition, the water condition.

19 Q Did you have any knowledge or information about rip
20 currents?

21 A Never.

22 Q When you and the family decided to go to South Carolina
23 for your vacation, as I understand it, you got a
24 recommendation from a friend; is that right?

25 A Correct.

1 Q And the friend suggested the Sea Crest Resort?

2 A That's where she stays, yes.

3 Q And then you really didn't do any more research at that
4 time. You literally called the hotel and made a reservation.

5 A Correct.

6 Q You didn't go online to find out any information about
7 the Sea Crest Resort itself?

8 A No.

9 Q You didn't go online to find out about Myrtle Beach?

10 A No.

11 Q What Myrtle Beach had to offer?

12 A No.

13 Q What, if any, restrictions or specific requirements there
14 might be for using the beach?

15 A No.

16 Q You didn't do any research at all about Myrtle Beach
17 before you came?

18 A I did not. I did not do any research.

19 Q And nobody else did either, did they?

20 A Nobody --

21 Q Nobody in your family did.

22 A Oh, no.

23 Q Now, you came down on August 23. That was the evening
24 before; right?

25 A Correct.

1 Q Okay. And then, as I understood it, your son, Adam,
2 contacted the front desk and asked about lifeguards; correct?

3 A Not specifically lifeguard. "Is the beach open?"

4 Q Oh, that's right. He was told the beach was open; there
5 just were no lifeguards after 5:00?

6 A That's what I learned.

7 Q So there's an amount of information that the Sea Crest
8 provided to you when you asked or when Adam asked; correct?

9 A Correct.

10 Q In other words, he called and asked about the beach.
11 They provided information to him about the beach at that time.
12 Obviously, it was after hours and there were no lifeguards
13 working at that time; correct?

14 A So the question was, "Is the beach open?" And the
15 answer, "Yes, the beach is open. No lifeguards after 5 p.m."

16 Q Okay. But my point is, is that Adam called and asked for
17 information, and information was provided about the beach;
18 correct?

19 A Correct.

20 Q You or your family, nobody asked about the beach after
21 that, did you?

22 A No.

23 Q Okay. You didn't ask the front desk? You didn't ask
24 anybody about lifeguards or when they even might be on duty.
25 You knew they were off at five, but didn't know when they were

1 on duty, did you?

2 A I figured, I mean, they should be on duty before 5 p.m.

3 Q Did you know when they started work that day?

4 A I did not know.

5 Q Did you -- at the time when you were at the resort, did
6 anybody at the resort provide you information about the beach?

7 A No.

8 Q Provide you information about the surf?

9 A No.

10 Q Provide you information about the ocean?

11 A No.

12 Q Provide you information about rip currents?

13 A No.

14 Q Nobody at the Sea Crest Resort provided you any
15 information at that time?

16 A No, that was our first day, first morning.

17 Q But there wasn't any kind of brochures or pamphlets or
18 information that was provided to you as a guest at the resort?

19 A No.

20 Q Now, you indicated that you went down on the beach the
21 evening before, August 23, and you went down, obviously, on
22 August 24. When you went to the beach both times, did you use
23 the same access?

24 A Yes.

25 Q And there was the access -- there was the beach path to

1 get from the Sea Crest to the beachfront; correct?

2 A Correct.

3 Q In other words, you didn't go walk down the street a
4 block or walk down the street another block and then find a
5 public beach access, did you?

6 A No.

7 Q You were able to walk out the back of the resort hotel
8 and walk out its private access onto the beach?

9 A Correct.

10 Q And in your travels from the hotel -- let's just say the
11 lobby through the pool area through the beach access, did you
12 see any signs that provided you any information about the
13 beach?

14 A No, I did not.

15 Q About the flags?

16 A No, I did not.

17 Q About rip currents?

18 A No, I did not.

19 Q So nothing was provided to you, information-wise, from
20 Sea Crest on its private beach access to the beach?

21 A No, they didn't.

22 Q Now, when you and your family went to the beach on
23 August 24, it was around noon; correct?

24 A About noon, yes.

25 Q And as I think you described, there were a lot of

1 people --

2 A Correct.

3 Q -- on the beach.

4 There were people in the water?

5 A Correct. Lots of people.

6 Q There were children in the water?

7 A Correct.

8 Q And as I understand it, you and your family came straight
9 out from the back of the Sea Crest Resort through the private
10 beach access, and you set up your beach towels, your umbrella
11 maybe to the left?

12 A Little bit to the left, yes.

13 Q Okay. But, generally, sort of in front of -- maybe just
14 to the left of the front of the Sea Crest Resort hotel?

15 A Correct. We just -- yeah, to the -- to the left but
16 right by the access -- by the access door. To the left side.

17 Q All right. And so you were asked some questions and you
18 identified some photos of a lifeguard stand that was to your
19 right off in the distance; correct?

20 A Correct.

21 Q And we talked about that during your direct examination;
22 correct?

23 A Correct.

24 Q Do you remember the lifeguard stand that was just to your
25 left when you walked out of the Sea Crest Resort?

1 **A** I did not, to my left.

2 **Q** Do you remember it or do you not remember it?

3 **A** I do not remember seeing any on my left.

4 **Q** Are you telling the jury today that there was not a
5 lifeguard stand near the Sea Crest Resort to your left or are
6 you telling them "I don't remember"?

7 **A** I did not see any. Maybe I was not looking to my left,
8 because, as I take pictures, I was tilted to the right, so I
9 did not see any on my left side.

10 MR. THOMPSON: May I approach, Your Honor?

11 THE COURT: Mm-mmm.

12 BY MR. THOMPSON:

13 **Q** Ms. Abel, I'm going to show you what's marked as
14 Defendant's 1 and 2.

15 **A** Okay.

16 **Q** And they are admitted into evidence. And are those also
17 photos that you took on August 24, 2018?

18 **A** Correct.

19 **Q** And I think you described earlier, all of the photos that
20 you took and all of the photos that we have are all looking
21 towards the right and generally towards the south area of the
22 beach.

23 **A** When I'm facing the ocean, yes.

24 **Q** To the right.

25 **A** To the right.

1 Q Okay. Can I have that back, please? Thank you.

2 On the photo -- and you can see it in Exhibit 2 as
3 well -- do you see the yellow sign on the umbrella stand, the
4 chair? Do you see that yellow sign?

5 A I see it now in the picture.

6 Q I'm sorry?

7 A Now?

8 Q Yes.

9 A Yes, I do see it.

10 Q Okay. And do you see it talks about if you want to rent
11 a chair, go this way? Do you see that?

12 A Yeah, I do see the arrow, yes.

13 Q Okay. So if we orient ourselves, there is -- when you
14 were taking these photographs, there was rental chairs and
15 rental umbrellas, and then there was a yellow sign that was
16 pointing to your left; correct?

17 A Yes.

18 Q Okay. Thank you, ma'am.

19 But you didn't see the lifeguard tower to your left where
20 people could rent the umbrellas and that chairs that were in
21 the photograph? You didn't see that tower?

22 A I did not see that tower.

23 Q Okay. At the time when you and your family went to the
24 beach, were you specifically looking for lifeguards?

25 A Not specifically. I mean, we're just families there to

1 just have -- enjoy. Not expecting any trouble, so...

2 Q I understand. But you weren't planning to swim that day;
3 correct?

4 A I don't swim.

5 Q I understand. But you weren't planning to swim. You
6 were going to stay on the beach?

7 A Yes.

8 Q So it wouldn't necessarily matter to you about the
9 lifeguards. You were more concerned about the kids that were
10 playing on the beach with you; correct?

11 A Correct.

12 Q All right. And it was about 30 minutes or so after y'all
13 got to the beach when the trouble happened; correct?

14 A Yes. Sometime -- I can't tell time, but we were sitting
15 there. Maybe 30, 45 -- maybe 45 minutes.

16 Q I mean, it wasn't that you went down to the beach around
17 noon and then it happened. There was an amount of time that
18 passed between the time that you first arrived and when the
19 trouble started; correct?

20 A Correct.

21 Q About 30 to 45 minutes; correct?

22 A I would say, yes.

23 Q And as I understand your testimony, when Mr. Wolde and
24 your two older children went into the water, they generally
25 went straight --

- 1 A Correct.
- 2 Q -- from where you were set up on the beach?
- 3 A Yes.
- 4 Q And then, of course, when Adam came back to you that day,
- 5 he was running from the south? He was running from your
- 6 right; correct?
- 7 A Correct.
- 8 Q Towards you?
- 9 A Yes.
- 10 Q And then you had to go back in that direction; correct?
- 11 A Correct.
- 12 Q That's not where they entered the water, was it?
- 13 A No.
- 14 Q And where Mr. Wolde ended up, that's not where he entered
- 15 the water, is it?
- 16 A No.
- 17 Q At any point did anybody -- you or any family member --
- 18 go to any lifeguard stand before you went in the water to get
- 19 any information?
- 20 A No.
- 21 Q In other words, we saw a photograph of one that was
- 22 further down on the right. There may have been one to your
- 23 left. Did you go to either one to get any information from
- 24 anybody -- lifeguards or otherwise -- about the conditions
- 25 that day?

1 A No, we did not.

2 Q Or go to see whether, on the lifeguard stand itself,
3 whether there was any information posted?

4 A No.

5 Q You didn't go look?

6 A I didn't see any. I was not looking for any, so I
7 just --

8 Q And none of your family did either?

9 A No.

10 MR. PRACHT: Objection. Calls for speculation.

11 THE COURT: That's sustained.

12 BY MR. THOMPSON:

13 Q Did you observe your -- Mr. Wolde ever go to either
14 lifeguard stand for information?

15 A I don't know about that.

16 Q Did you observe any of your children go to any of the
17 lifeguard stands to get any information?

18 A I did not see any.

19 Q I think I have asked you before: Did you do anything to
20 try to find any signs, to try to find any information on the
21 beach that day?

22 A No. It was a beautiful day, sunny, people -- full of
23 people, kids swimming. Nothing to make me worry about or get
24 some more information.

25 Q You just go with the flow?

1 A I go with the flow. Yeah, nothing to worry. Usually I
2 am -- I can see things, but nothing that makes me look to talk
3 to some lifeguards. Beautiful day. Lots of people swimming.

4 Q And when we talked about there were people, it wasn't
5 overly crowded that day?

6 A I wouldn't say overly crowded. Lots of people.

7 Q But it was something that you experienced before in Ocean
8 City?

9 A Correct.

10 Q I mean, it wasn't a huge crowd or overly crowded. It was
11 something that you had seen and experienced before.

12 A Correct.

13 Q So, today, your recollection has always been that the
14 only tower you ever saw was the one in that photograph off in
15 the distance to the right?

16 A Correct.

17 Q You never observed your -- Mr. Wolde or your children in
18 the water playing, did you?

19 A As soon as they went in, I can see them in front, but
20 then my attention was on my twins.

21 Q And then, again, the first time you became aware that
22 there was something that was happening, it was when your son
23 came to you?

24 A Correct.

25 Q Does your family have any rule about how deep the

1 children can go in the water?

2 A There's always a rule. You have to be with adults.

3 Q How about how deep?

4 A As long as they can stand.

5 Q And when you say "stand," I would assume that would mean
6 stand on the ocean floor; correct?

7 A Correct.

8 Q And then I would also assume that it would be something
9 that they could stand comfortably with their head, their body
10 out of the water and breathe without having to go under;
11 correct?

12 A Yes, I always tell them about safety. Safe, you know, as
13 long as you can stand on your own, with adult supervision.

14 Q And with regard to Wubit, Wubit wasn't a particularly
15 strong swimmer, was she?

16 A She can swim. She was -- she passed the test from the
17 summer camp. They attended summer camp that summer. She was
18 able to swim. I'm not sure how deep, but she was -- she
19 passed the test. And she also attended swim classes.

20 Q Did you ever observe her, like, in a pool, be fearful of
21 the deep end of the pool?

22 A Our townhome has a swimming pool. She was able to swim
23 comfortably.

24 Q And did she ever wear wingies when she went into deep
25 water?

1 A When she was very young, yes.

2 Q And do you ever -- did she ever tell you that she was
3 fearful about being in deep water?

4 A I don't remember that. They swim with Baba most of the
5 time. I don't swim, so...

6 Q Now, there was a time certainly when you had testified
7 that you really didn't even know what happened in the water
8 that day.

9 A Correct.

10 Q You were still searching for answers.

11 A Still searching; correct.

12 Q And that was as late as March of 2021; correct?

13 A Correct.

14 Q When I took your deposition?

15 A As of now, what happened.

16 Q And, again, your son, Adam, didn't tell you what
17 happened?

18 A (Witness nodding.)

19 Q Your daughter, Wubit, didn't tell you what happened?

20 A I do know what happened, why -- Zerihun is a strong
21 swimmer. What happened to him, that's my question still to
22 this date.

23 Q In other words, you still don't know what happened to
24 Mr. Wolde --

25 A Yes.

1 Q -- in the water that day.

2 A I learned from the doctor that he -- he was -- the rip
3 current was strong that day. So the doctor told me -- I
4 explained, "He's a strong swimmer, he can swim. How?" And I
5 learned that rip current, even if you are a certified swimmer,
6 if you don't know what to do during rip current, you don't how
7 to survive. That's what I have learned.

8 Q The doctor wasn't on the beach that day, was he?

9 A No, he was not.

10 Q And so the information that you have has come from your
11 children; correct?

12 A Correct.

13 Q And, to this day, you still don't know what happened to
14 Mr. Wolde in the water?

15 A Correct.

16 Q Ms. Abel, again, very sorry for your loss. Thank you for
17 your time and patience with me today.

18 A Thank you.

19 MR. THOMPSON: Thank you, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. PRACHT:

22 Q Meswaet, briefly. When you went with the doctor, I
23 believe you testified there were police officers there?

24 A Correct.

25 Q Mr. Thompson asked you about rules and how your family

1 was. Was Zerihun a reckless man?

2 A Never. He was a very responsible person, very
3 responsible father. He'd never take a risk.

4 Q Would you or Zerihun have ever done anything to put your
5 children in danger?

6 A Never.

7 MR. PRACHT: No further questions.

8 THE COURT: Anything further for this witness?

9 MR. THOMPSON: No, Your Honor. Thank you.

10 MR. PRACHT: Thank you, Ms. Abel.

11 THE COURT: You can step down.

12 THE WITNESS: Thank you.

13 MR. McLEOD: Our next witness will be via video. We just
14 need a couple of seconds to set it up.

15 MR. WILSON: The video will be about an hour.

16 BENCH CONFERENCE

17 (The following bench conference was held outside the
18 hearing of the jury and others:)

19 MR. McLEOD: Should we push through it? Whatever the
20 Court pleases. Do you want to play it through?

21 THE COURT: Let's go until noon, and then we'll ask the
22 jury if they want to press on.

23 MR. McLEOD: Okay. Thank you.

24 (Open court resumes as follows:)

25 THE COURT: Okay. Ladies and gentlemen of the jury, I

1 just wanted to give you a little instruction here. We are
2 getting ready to view a witness's testimony that was taken by
3 a video deposition. So this is sworn testimony taken outside
4 of the courtroom with lawyers for both sides present for use
5 at trial. So you should consider the testimony just like you
6 would a live witness and give it the same effect, value,
7 weight that you would of live testimony.

8 Go ahead.

9 JULIAN CHANDLER (BY VIDEO DEPOSITION),
10 after having been duly sworn, was examined and testified
11 to as follows:

12 (Video Deposition of Julian Chandler played for the jury.)

13 MR. THOMPSON: Your Honor, may we approach?

14 THE COURT: Mm-hmm.

15 BENCH CONFERENCE

16 (The following bench conference was held outside the
17 hearing of the jury and others:)

18 MR. WILSON: You can strike that and instruct the jury.

19 MR. THOMPSON: They played stuff that was out.

20 THE COURT: We started at line 10 on page 20.

21 MR. WILSON: Lines 10 through 12.

22 THE COURT: I have got page 33, line 10, through the rest
23 of page 33 and all of page 34 and then 35 through line 17.

24 MR. THOMPSON: They played -- they already played 10
25 through 18. That was out.

1 THE COURT: Do we need to see --

2 MR. THOMPSON: I don't want to replay it.

3 THE COURT: No, you might want to restart it and --

4 MR. McLEOD: Do you want to give them a lunch break and
5 we'll --

6 MR. THOMPSON: I think it needs to be a curative
7 instruction. It was the last thing that they heard.

8 MR. WILSON: That's fine, Your Honor.

9 THE COURT: Okay.

10 (Open court resumes as follows:)

11 THE COURT: Okay. Ladies and gentlemen of the jury, we
12 have gone over the video deposition previously, myself, and
13 the attorneys, and we had taken out the last part that you
14 just heard: "Did you know at the time that the lifeguard that
15 you saw on the beach that day was supervised by the Myrtle
16 Beach Police Department?" and then the response to that.

17 MR. THOMPSON: I'm sorry, Your Honor. It's on page 32,
18 line 10 through 18.

19 THE COURT: Okay. So any testimony about what this fact
20 witness thought that the police were interested in, we have
21 excluded that on the basis of a couple of things. First of
22 all, that he wouldn't have any way of knowing what someone
23 else is thinking. So I'm striking that and asking you to
24 disregard that testimony.

25 Now, we had previously talked about going for about 30

1 minutes and then releasing y'all for lunch. So this is
2 probably a good time for us to go ahead and release you for
3 lunch, and we're just going to make sure -- again, we have
4 been through this entire testimony previously. We have
5 redacted some of it, which you may or may not be able to
6 notice from watching this, and that's pursuant to these
7 previous court sessions that we have had yesterday and today.

8 So I'm going to go ahead and release you for an hour.
9 We're going to just make sure that we have the video cleaned
10 up for you. When you come back, we'll resume this video
11 deposition.

12 It's now, I'm showing, 12:11. If you'll be back at 1:15 and
13 we'll be ready to resume. Again, please don't discuss the
14 case amongst yourselves or with anyone else during the lunch
15 break. You are welcome to select a foreperson either before
16 you leave or after you get back. Either way is fine with me.
17 Okay. Enjoy your lunch.

18 MR. WILSON: Thank you, Your Honor.

19 (The jury exited the courtroom at 12:11 p.m.)

20 THE COURT: I think that I had tabbed this part to come
21 back to it. There's a section immediately after this
22 Mr. Thompson had objected to: "Did the police officers that
23 came to your room ask anything about what you witnessed as far
24 as the lifeguards were concerned?"

25 He says, "Not that I can recall."

1 The objection was on the next question: "Did they
2 appear, based on your conversation -- based on your
3 conversation you had with them to be concerned or worried
4 about the fact that the lifeguards did not arrive?"

5 There's an objection there. I think I had tabbed that to
6 come back to it, is my recollection. So I'm going to go ahead
7 and sustain that objection. So I think what we need is to
8 make sure, when we come back, that puts us, I think, at page
9 35, line 18.

10 MR. McLEOD: We'll scroll forward, Your Honor, and get to
11 that point during the lunch break.

12 THE COURT: All right. Anything else before we adjourn?

13 MR. THOMPSON: Thank you, Your Honor.

14 MR. WILSON: Thank you, Your Honor.

15 THE COURT: All right. We'll be back at 1:15.

16 (A lunch recess was taken at 12:13 p.m. to 1:26 p.m.)

17 THE COURT: Thank you all. Please have a seat. We have
18 an inquiry from the jurors about note-taking. What I
19 generally tell them is that they're welcome to take notes,
20 just not to rely on somebody else's notes over their own
21 recollection. But I wanted to run that by y'all and see if
22 you had an objection to me allowing them to take notes.

23 MR. McLEOD: No objection. The only question I would
24 have is, normally, they take notes but then the notes don't go
25 back to the jury room, if that's the way Your Honor typically

1 does it.

2 THE COURT: I don't have any strong preference. You
3 know, of course I think the danger is that, you know, one
4 person takes better notes, and so they all kind of defer who
5 is taking the better --

6 MR. McLEOD: And, technically, they have to rely on their
7 memory of the testimony.

8 THE COURT: I'm going to tell them that.

9 MR. McLEOD: Okay. I don't have a problem with them
10 taking notes. Whatever the Court thinks is appropriate is
11 fine with us, Your Honor.

12 MR. THOMPSON: Your Honor, I think my concern is that
13 we're two or three witnesses deep without them taking notes
14 and not being able to capture or to record whatever they might
15 have wanted to record and might now try to think back through
16 that. I have a concern that it's not going to be
17 contemporaneous with the testimony that was received for the
18 first couple or three witnesses. I would prefer that we just
19 continue in the way that we started and finish it on out.

20 I do agree with Mr. McLeod, that, if they do take
21 notes, that the notes then, when it's all said and done, would
22 stay here and not go back to the jury room.

23 THE COURT: I mean, I'm going to let them take notes.
24 I'm taking notes. We're all taking notes. It seems crazy to
25 me that they can't take notes. And I'm not calling your

1 argument crazy, I just --

2 MR. THOMPSON: Wouldn't be the first time, Judge, I've
3 been called crazy before, Judge. [Laughter]

4 MR. McLEOD: That would be okay if you did.

5 THE COURT: I understand your point. It feels
6 hypocritical to tell them that they can't take notes when
7 literally every other person is taking notes.

8 One other thing I wanted to bring up: Ms. Fisher
9 pointed out to me -- so we had the little bit of testimony
10 that came in that was over the objection that we had already
11 talked about. And when this -- if this ever goes up on
12 appeal, that portion -- this transcript is not going to be
13 part of any record. So if there's some part of the transcript
14 that you want to enter as a Court's exhibit, I think you would
15 need to do that if you wanted it --

16 MR. McLEOD: So what we could do is we could get a --
17 take a hard copy of the transcript and redact it where -- you
18 know -- redact it and then just mark that as a Court's
19 exhibit.

20 THE COURT: But the problem is the redaction would take
21 out the part that did come in. You know what I'm saying?

22 MR. McLEOD: I'm just saying since Your Honor, you know,
23 told the jury to disregard it -- I guess we would just have to
24 then have a transcript that includes the part that they heard
25 and then, you know -- so your motion to strike would be --

1 would make sense -- not your motion but your telling them to
2 disregard it.

3 MR. THOMPSON: Your Honor, your point is well taken. I
4 think, for the record, having an unredacted transcript as just
5 a Court's exhibit so that, obviously, when we went through the
6 transcript, we were talking about pages and lines. There was
7 also designations and objections that were submitted, probably
8 would make that as a Court's exhibit or -- I don't need this
9 as an defendant's exhibit, but my designations and objections,
10 I would want that in the record in addition to a full
11 transcript so that anybody looking back will always be able to
12 say this is where we started from and this is where we ended
13 with.

14 THE COURT: So I think it's fine if you wanted to just
15 put the original deposition transcript in or video deposition
16 transcript in, unredacted, as a Court's exhibit, and of
17 course, that's never going to go to the jury.

18 Okay. Anything else we need to address before we bring
19 them in?

20 MR. McLEOD: Nothing from the plaintiff, Your Honor.

21 MR. THOMPSON: No, Your Honor.

22 THE COURT: Okay.

23 MR. McLEOD: Your Honor, this is the sealed copy of the
24 transcript. If you want to mark it as Court's exhibit. Thank
25 you.

1 Do you want to go on the record real quick?

2 COURT REPORTER: Oh, we are on.

3 MR. McLEOD: We have marked the deposition under seal of
4 Mr. Chandler as a Court's exhibit, and the deposition date is
5 July 20, 2022, and it's Court Exhibit No. 2.

6 (Court's Exhibit No. 2, Chandler Deposition Transcript,
7 was marked for identification and received into the record.)

8 MR. THOMPSON: And, Your Honor, I will get a hard copy of
9 our page/line designations for Mr. Chandler. I think I have
10 them. So I'll provide the Court with that as well to be a
11 Court's exhibit. We'll get that.

12 (The jury entered the courtroom at 1:32 p.m.)

13 THE COURT: Okay. Good afternoon. Thanks for being back
14 promptly.

15 A couple of things I wanted to ask you. First of all,
16 have you selected a foreperson yet?

17 JUROR NO. 308: Mm-hmm (raises hand).

18 THE COURT: Great. Secondly, there was an inquiry about
19 whether or not you can take notes. I'm fine with you taking
20 notes. I'm taking notes. You see everybody in here is taking
21 notes. But I do want to give you some instruction about the
22 notes.

23 If you want to take notes, we're going to provide
24 everybody with paper and pencil. What we don't want you to do
25 is rely on somebody else's notes over your own recollection of

1 the testimony. You-all have the obligation to listen to the
2 testimony and then to rely on your own recollection of the
3 testimony. So that's the first thing.

4 Secondly, we generally will have you keep the notes in
5 here and not take them back into the jury deliberation room.
6 Usually, the rationale for that is, again, we don't want you
7 to rely on one person was a better note-taker than another and
8 so their recollection carries more weight with the jury.

9 So I'm fine if you want to provide them with paper and
10 pencil. It's up to y'all. If you would like to take notes,
11 that's perfectly fine with me.

12 And tell me your name, ma'am.

13 JUROR NO. 308: Elizabeth Petit.

14 THE COURT: Thank you, Ms. Petit.

15 Okay.

16 (Video deposition of Julian Chandler continues to play.)

17 THE COURT: Do we need to put that into evidence, the
18 video? Do we need to put that video into evidence?

19 MR. McLEOD: I don't believe so because of her record,
20 but we can, Your Honor.

21 THE COURT: Are you transcribing from the video?

22 COURT REPORTER: No.

23 MR. McLEOD: Okay. Then we will, Your Honor.

24 Our next witness, Your Honor, is George Lack of Lack's
25 Beach Service.

1 THE COURT: Let me just ask the jury: Do y'all need a
2 break before we move on with the next witness or are you good?

3 MR. THOMPSON: Your Honor, we may need to take a matter
4 outside the presence of the jury at this time.

5 THE COURT: Okay. Let's take about ten minutes. Please
6 don't begin discussing the case.

7 (The jury exited the courtroom at 2:28 p.m.)

8 THE COURT: Are y'all going to give -- do you have a CD
9 or how do you have the video deposition?

10 MR. WILSON: It came on a link sort of overnight for the
11 trial. What we'll do, if it's okay with the court reporter,
12 is I will save it to a jump drive and mark the jump drive
13 tomorrow if that's okay. If our record is just complete that
14 the plaintiff plans to mark a jump drive with the video
15 deposition of Mr. Chandler, and I'll bring it to court on
16 Wednesday for introduction. Is that okay?

17 COURT REPORTER: That's fine. Thank you.

18 THE COURT: Yes, sir?

19 MR. THOMPSON: Your Honor, may it please the Court?
20 There's one matter that I'm anticipating that counsel is going
21 to be addressing with Mr. Lack. It has to do -- it was
22 mentioned during motions on Friday. There is some kind of
23 insurance case back in the early -- well, mid to late 1990s,
24 and there was a final decision, I think, in 2002. It had to
25 do with workers' comp and classification of employees at

1 Lack's.

2 And the case exists out there, but I think that, Friday,
3 they were representations made about what George Lack said or
4 represented in that case. I haven't been presented with any
5 kind of transcript or otherwise that George Lack gave any
6 testimony in, summarizing a case as his, quote/unquote,
7 testimony or impeaching him about some case would be improper.
8 It's not his statements. It's not his representations at all.

9 So we have got a number of different problems because
10 it's not relevant to anything in this case. There are, to my
11 knowledge, no actual statements that would be impeachable to
12 Mr. Lack. And, again, we're talking about something that
13 happened 20-plus years ago, something that happened -- I guess
14 that litigation may have been started 20 years before this
15 incident happened.

16 THE COURT: Yes, sir?

17 MR. McLEOD: From a foundational standpoint, I'll be able
18 to establish its relevance that his operations have not
19 changed from the time that this order was entered until today
20 with regard to beach concessions and lifeguards in general.

21 Your Honor, this is a public document. This is from --
22 and he's been asked about this in other lawsuits, so it will
23 be no surprise to Mr. Lack.

24 But this is -- the document number is 01-ALJ-090374-AP.
25 Lack's Outdoor Furniture is the appellant. The respondent is

1 the Traveler's Indemnity Company. And this was a matter that
2 was heard by the administrative law judge after an appeal,
3 Your Honor.

4 And my representation to the Court is exactly what is in
5 this document. And I quote on page 8: "Appellant," which is
6 George Lack, "however argues that its employees perform their
7 beach chair concession duties 99.995 percent of the time and
8 that the lifeguard duties only have the potential to perform.
9 .0047 percent of the time. Appellant further argues that
10 performing lifeguard duties is not the primary business and
11 that the loss risk by the carrier is extremely small."

12 This, Your Honor, should go into evidence through this
13 witness to prove exactly what it proves. This is a beach
14 concession company. This is not a lifeguard company, Your
15 Honor.

16 MR. THOMPSON: Your Honor, the order actually established
17 that they were lifeguards. The ultimate conclusion of the ALJ
18 is they're lifeguards, and Mr. Lack has been paying work comp
19 premiums as they are lifeguards ever since, even in '18, '17,
20 '16, all the way back.

21 So, again, there's no relevance to anything that was
22 happening in this time frame. We're talking about something
23 that happened back in the late 1990s and a decision that was
24 issued in 2002. And, again, what Mr. McLeod is referencing is
25 the ALJ's words and the ALJ's reports. It's not Mr. Lack's

1 words. It's not Mr. Lack's testimony that he can be impeached
2 on it.

3 THE COURT: I have a couple of questions. First, was
4 this with respect to the contract that he had with Myrtle
5 Beach?

6 MR. McLEOD: Yes. In particular, Your Honor, let me --
7 and that was really what -- really is what the Court was
8 concerned about, was that the contract required him to provide
9 lifeguard services; yet, he was arguing to the Court that
10 99.995 percent of the time they were selling beach
11 concessions. And I want to find the specific language, if I
12 can.

13 So this is on page 2 of the order, Your Honor:
14 "Pursuant to contracts with the City of Myrtle Beach and Horry
15 County, Appellant," again, that would be Mr. Lack's company,
16 "is required to provide lifeguard services in order to
17 maintain its commercial franchise to rent beach chairs and
18 umbrellas." Exact same thing here, Your Honor. "The
19 application for workers' compensation insurance did not
20 reference the lifeguard duties performed by Appellant's
21 employees nor did it recite the franchise agreement between
22 Appellant and Horry County, which required such lifeguard
23 duties to be performed."

24 In August 1994, Respondent submitted a premium
25 adjustment notice, indicating that the class code of certain

1 payroll would be changed to Class Code 9015, which addresses
2 lifeguard duties. That would have resulted in a premium
3 increase of \$26,969, and that's what Mr. Lack was upset about,
4 and he was trying to get out of paying that additional
5 premium.

6 And, Your Honor, Mr. Thompson told the ladies and
7 gentlemen of the jury that Mr. Lack has been here, he's a
8 member of this community, he's been protecting this beach
9 since 1979; I can't remember the exact time. I'll lay the
10 foundation that the way that he's operated has not changed
11 from the time this order was entered.

12 THE COURT: What's the date of that order?

13 MR. McLEOD: Yes, Your Honor. It is -- I think 2002 was
14 when the appeal -- yeah, February 20 of 2002. Again, Your
15 Honor, he's been asked about this in other litigation, so it
16 will be no surprise to him. And he had some pretty crafty
17 answers. He can give them to the jury and try to explain it
18 as best he can, Your Honor. But it's certainly -- it's
19 admissible. How can it be prejudicial? This was an order of
20 the Court.

21 THE COURT: Yes, sir?

22 MR. THOMPSON: I mean, this litigation he just referenced
23 started in 1994; right? So, again, we're going back almost
24 now 30 years and a solid 25-plus before this incident that
25 we're here about here today to talk about. Again, the

1 ultimate resolution of that was they're lifeguards, and he's
2 been paying premiums on his work comp ever since.

3 So if you -- from 2002 to 2018, he's paid 12 years of
4 premiums for lifeguards on work comp. Now, we're going to end
5 up with a lot of insurance company information coming in here,
6 unnecessary insurance information coming into this jury, and,
7 Your Honor, we're going to end up, frankly, with, you know,
8 what do these statistics come from. I mean, he was
9 represented by a lawyer that came up with these statistics, I
10 assume. But, at the end of the day, it doesn't matter because
11 the end result was this -- they're lifeguards, and they were
12 determined to be lifeguards.

13 MR. McLEOD: Doesn't that go to weight, Your Honor? He
14 can bring all that out in cross, and he's happy to do that. I
15 think that, you know -- if Ford is making a Pinto that is
16 subject to fuel-fed fires in a rear-end collision at moderate
17 speeds for 20 years, that doesn't mean that it's relevant in
18 the 20th year.

19 I have the opportunity to lay a factual foundation that
20 his operations have not changed. It's the same beach. It's
21 the same responsibilities. And I think it would be almost a
22 fraud on the Court for him to take a position in this case
23 that their primary responsibility is lifeguarding when he's
24 represented to another Court, Your Honor, that that's not the
25 case. Now, I haven't moved for collateral estoppel on that

1 issue, but I certainly should be able to go into it, Your
2 Honor.

3 THE COURT: I understand y'all positions. I'm going to
4 hear what foundation you lay for it. I'd also like to see a
5 copy of the order. If y'all can get a copy of that.

6 MR. McLEOD: We'll get you that, Your Honor.

7 THE COURT: And let me take a look at it. And let's take
8 a little short break before we bring the jury back in.

9 MR. McLEOD: Thank you, Your Honor.

10 (A brief recess was taken at 2:38 p.m. to 2:53 p.m.)

11 THE COURT: Okay. I think we're ready for the jury.

12 MR. THOMPSON: Your Honor, there was one more with regard
13 to that -- the insurance issue. Did you read the order?

14 THE COURT: I did. Well, I didn't read all of it, but I
15 read the majority of it. And, again, subject to the proper
16 foundation, I'm going to rule on it once I hear what the
17 foundation is.

18 MR. THOMPSON: I'm just concerned with the insurance and
19 stuff coming in and --

20 THE COURT: Well, I don't think workers' comp insurance
21 is going to have any kind of -- introduce any issue in this
22 case that's improper. I mean, we're not talking about
23 liability insurance. We're talking about workers' comp
24 insurance for his employees.

25 MR. McLEOD: I agree, Your Honor. Workers' comp actually

1 shows ownership and control, which is relevant here, and
2 there's no prejudice. I'll lay a foundation, knowing that
3 he's going to object, and let Your Honor rule how you see fit,
4 Your Honor.

5 MR. THOMPSON: It's the insurance agent that submitted
6 the application, so...

7 THE COURT: Well -- and I think that's proper certainly
8 for argument and cross and anything else, but whether it goes
9 to admissibility -- again, I'm going to hear the foundation
10 and I'll make a ruling.

11 You can bring them in.

12 (The jury entered the courtroom at 2:55 p.m.)

13 THE COURT: Okay, Mr. McLeod? Our next witness is
14 Mr. Lack of Lack's Beach Service.

15 GEORGE LACK,
16 after having been duly sworn, was examined and testified
17 to as follows:

18 THE CLERK: When you get up there, just state your name
19 for the Court, please.

20 THE WITNESS: My name is George W. Lack.

21 DIRECT EXAMINATION

22 BY MR. McLEOD:

23 Q Good afternoon, sir. I'm Mullins McLeod. We haven't had
24 the pleasure of meeting before, have we, sir?

25 A No, sir.

1 Q Have you met the children's mother, Ms. Abel, before?

2 A No, I have not.

3 Q Were you in Myrtle Beach on the day that her husband
4 drowned?

5 A No, sir.

6 Q Have you had occasion to reach out to her at any time
7 before this lawsuit was filed?

8 A No, sir.

9 Q I want to go through a few things with you first and ask
10 you -- a lifeguard is a professional; is he not?

11 A Yes, he is.

12 Q And as far as lifeguards are concerned, professional
13 standards of care have been developed over many, many years;
14 isn't that correct, sir?

15 A Yes, sir.

16 Q And, in fact, in 1912, is that when our country had the
17 first volunteer lifeguard service?

18 A I couldn't answer to that.

19 Q You don't know whether's true or not?

20 A No, sir.

21 Q Do you know, in 1964, a group called the United States
22 Lifesaver Association was formed?

23 A No, sir.

24 Q Do you know what USLA stands for?

25 A Yes, sir, I do.

1 Q Are you very familiar with that organization?

2 A Yes, sir.

3 Q In order to -- do you believe that a lifeguard's role is
4 important?

5 A Absolutely.

6 Q Do you believe that a lifeguard is placed in a position
7 of trust?

8 A Yes, he is.

9 Q Do you believe, sir, that a lifeguard is much like other
10 emergency responders in that they have to be competent in what
11 they do?

12 A Yes, sir.

13 Q And when I say "competent," does that mean trained and
14 knowledgeable about the tasks that they are asked to perform
15 on behalf of the public?

16 A Standard of care, yes, sir.

17 Q Yes, sir.

18 And there is a national standard of care when it comes
19 to lifeguards and how they follow the safety rules; isn't that
20 correct, sir?

21 A There are national standards.

22 Q And you're well aware of that; aren't you, sir?

23 A Yes, sir.

24 Q And those national standards are professional standards
25 for professional lifeguards; isn't that correct?

1 A Yes, sir.

2 Q Now, in addition to being competent, is it important,
3 sir, for the lifeguard to be capable of performing his or her
4 responsibility to beachgoers and swimmers?

5 A Yes.

6 Q So for a lifeguard, when I say "capable," you have to be
7 physically fit; do you not?

8 A Yes.

9 Q You have to be in good shape; do you not?

10 A Yes.

11 Q You have to have good vision?

12 A Yes.

13 Q You have to be able to swim very well?

14 A Yes.

15 Q But it's not just about being able to swim well; is it,
16 sir?

17 A I would suppose, to be able to comprehend the job set
18 forth.

19 Q That's right. Because, actually, isn't it true, sir,
20 that a good swimmer, who is placed on a lifeguard tower and is
21 not properly trained, he or she is in danger if they don't
22 know how to rescue someone from the ocean?

23 A I don't think anyone would do that.

24 Q Well, let me ask you this.

25 A Yes.

1 Q Are lifeguards trained to get to a struggling swimmer and
2 grab ahold of them, or are they trained to throw a lifeline or
3 a buoy? Which of the two?

4 A Well, it's actually all three.

5 Q Okay. And that's because the training teaches the
6 lifeguard that you want something between you and the
7 struggling swimmer so that the swimmer doesn't latch ahold of
8 you in trying to stay up; isn't that correct?

9 A If at all possible, yes.

10 Q And there are a lot of female lifeguards in this country;
11 are there not, sir?

12 A Yes, sir.

13 Q And female lifeguards are just as good as the males,
14 aren't they?

15 A Yes, sir.

16 Q So, for example, if the female lifeguard goes into the
17 water and the distressed swimmer is a 250-pound man, it would
18 be dangerous for that female, if she grabbed ahold of that man
19 to try to pull him in, just because of the weight difference;
20 isn't that correct, sir?

21 A Yes, sir. It would be on how she approached.

22 Q Now, in addition to being competent and being capable, is
23 it important for lifeguards -- professional lifeguards to be
24 given the right tools or equipment to perform their
25 life-saving function?

1 A Yes, sir.

2 Q Okay. And isn't it true, sir, that, in the old days,
3 they were actually called lifesavers; isn't that true?

4 A The tools or the profession?

5 Q The profession.

6 A I can assume so, yes.

7 Q Because, in the old days, the emphasis was on rescue, and
8 that's why they were called lifesavers; isn't that true, sir?

9 A I didn't make the phrase up. I'm not sure of the basis.

10 Q Okay. Today, they're called lifeguards; are they not?

11 A Yes, sir.

12 Q And is it true, sir, that, within the aquatic safety
13 community, that it is all about prevention, and that's why
14 they're called lifeguards and not lifesavers?

15 A They're taught preventative lifeguarding, yes, sir.

16 Q Let me -- I want to show you -- Mr. Lack, I want to show
17 you a document that I'll mark now as Plaintiff's 10 for
18 identification purposes initially and ask you if you have seen
19 that document before, sir.

20 (Plaintiff's Exhibit No. 10, Training Manual, was marked
21 for identification.)

22 A Do I need to identify each page?

23 BY MR. MCLEOD:

24 Q No, sir. I'm just asking you, are you familiar with that
25 document?

1 A I'm familiar with this cover, yes, sir, but I haven't
2 looked at anything else.

3 Q Okay. Well, take your time.

4 A Excuse me. Some of these are blank. Should I separate
5 the blank ones?

6 Q Yes, sir, you can. That's the way they came to us.

7 MR. McLEOD: And, for the record, Your Honor, this is
8 Wolde Training Manual, Bates No. 001 through 0033.

9 A Now, do you want me to read this?

10 BY MR. McLEOD:

11 Q No, sir. I'm just asking you if you have seen that
12 document before.

13 A (Reviewing document.) It appears to be like several
14 other documents I have seen like this before also.

15 Q Take your time, sir.

16 Are you familiar with the Lack's North and South Strand
17 Beach Service Training Manual?

18 A Yes, sir. I will add that I probably haven't read any
19 new added -- anything that was added in the last two years. I
20 probably would not be familiar with that.

21 Q Yes, sir.

22 And what's marked as Plaintiff's Exhibit No. 10 for ID,
23 that is, in fact, the training manual for Lack's Beach
24 Service; is it not, sir?

25 A It appears to be, yes.

1 MR. McLEOD: At this time, Your Honor, I'd move into
2 evidence Exhibit 10.

3 MR. THOMPSON: No objection, Your Honor.

4 THE COURT: 10 is entered.

5 (Plaintiff's Exhibit No. 10, Training Manual, was
6 received into evidence.)

7 BY MR. McLEOD:

8 Q Now, Mr. Lack, before I ask you about this, I was asking
9 you about the competency and capability of a lifeguard.

10 Do you need some water, sir? I have got some.

11 A I think there's some right here.

12 Q If not, we have some bottles of water.

13 A Oh, thank you.

14 Q And let me ask you, sir: Have you ever driven your car
15 to a four-way stop sign?

16 A I'm sure I have, yes, sir.

17 Q And when you come to a four-way stop sign, is it
18 important for the driver to know the rules when it comes to
19 the right-of-way?

20 A Yes, sir.

21 Q And it's the first car to the stop line that has the
22 right-of-way in a four-way stop; isn't that right, sir?

23 A Yes, sir.

24 Q And in addition to knowing the rules at that four-way
25 stop, is it important for people to follow those rules at a

1 four-way stop sign?

2 A In all reality, yes.

3 Q Okay. So let me show you, on page 0008 -- that's the
4 Bates number -- I just want to -- do you see this page?

5 A I can look it up, yes, sir.

6 Q This might be easier. Would you read for the ladies and
7 gentlemen of the jury the last paragraph of page 1 of the
8 manual, which is Bates No. 0008?

9 A The highlight?

10 Q Yes, sir.

11 A [As read] "As a lifeguard, everyone is expected to keep
12 him or her out of danger or react to and aid him or her
13 whenever an emergency arises. The public is counting on you.
14 The lifeguard -- is counting on the lifeguard to make
15 life-and-death decisions -- to make life or death if he -- if
16 and when an emergency arises. Below is the schedule for the
17 typical day at Lack's. Notice the differing responsibilities
18 you will have to carry out each day."

19 Q Yes, sir. And that's true, is it not, sir, of the
20 lifeguard's roles and responsibilities?

21 A I didn't write that. Yes, sir, it would seem to be, yes.

22 Q Is it true that the public is counting on lifeguards,
23 based upon your having run this for-profit endeavor for -- 38
24 years, is it?

25 A No, sir. This is my 48th.

1 Q 48. I apologize.

2 Based upon your having run this for-profit for 48 years,
3 is the public counting on lifeguards to protect them?

4 A Yes, sir.

5 Q And is it also true, sir, that, with regard to Myrtle
6 Beach in particular, many of the City's visitors are
7 unfamiliar with the beach or may have limited beach
8 experience? Isn't that true, sir?

9 A Yes, sir, I would feel so.

10 Q On page 2 of the manual, if you could just read that
11 first sentence for the ladies and gentlemen of the jury.

12 A "The majority of Myrtle Beach visitors are from out of
13 town and with limited beach experience."

14 Q Okay. And that second sentence? "Some visitors..."

15 A "Some visitors, of all ages, have never seen the beach
16 before. They will be approaching you to inquire about
17 everything: Rental information, on hazards, where to eat,
18 first aid, lost children, shells, casual conversation. Be
19 prepared to meet the people from all walks of life. Always be
20 respectful and always be professional."

21 Q And is that, in fact, true of a lifeguard's
22 responsibilities at this particular beach, Myrtle Beach?

23 A We would certainly hope they carry it out that way, yes,
24 sir.

25 Q Yes, sir. And did you grow up in Horry County?

1 **A** Yes, sir.

2 **Q** You have been here all your life?

3 **A** Since 1956. I moved here in 1956.

4 **Q** Yes, sir. So I guess you have seen Myrtle Beach go from
5 a sleepy beach town to an international tourist destination;
6 have you not?

7 **A** Yes, sir.

8 **Q** Could you describe, in your own words, the growth that
9 you have seen in Myrtle Beach over your 40 years running this
10 for-profit endeavor?

11 **A** A lot of oceanfront development, a lot of secondary road
12 development, a lot of jobs, a lot more population, a lot more
13 developing.

14 **Q** Yes, sir.

15 **A** Turning into a metropolitan area.

16 **Q** Yes, sir. And the beach itself is, from an economic
17 development standpoint, pretty important; is it not, sir?

18 **A** Absolutely.

19 **Q** Is there any other stretch of dirt in Horry County that
20 is more important to Horry County than that beach?

21 **A** Not in my mind.

22 **Q** Now, I shared with the ladies and gentlemen of the jury
23 in opening that approximately 14.7 million visitors come to
24 Myrtle Beach annually. Does that sound right to you?

25 **A** I have heard lots of numbers.

1 Q Would that surprise you?

2 A Oh, no, sir. No, sir.

3 Q Now, going back to the professional standards of care
4 that we talked about, is it true, sir, that professional
5 standards of care relate to how to properly perform the job of
6 a lifeguard?

7 A They can -- they can differ geographically.

8 Q That's right. And so there are uniform standards; is
9 that correct?

10 A Yes, sir.

11 Q And then the standards are local because of the type of
12 beach or aquatic environment that the lifeguard is in charge
13 of; isn't that correct?

14 A Yes, sir.

15 Q So, for example, in a New England coast where there is a
16 rocky coastline, rip currents are not as foreseeable as they
17 are in a beach like Myrtle Beach that has a sandy bottom;
18 isn't that correct?

19 MR. THOMPSON: Objection, Your Honor. Lacks foundation.

20 BY MR. McLEOD:

21 Q That's why you train locally, for that very reason?

22 MR. THOMPSON: He's asking about what happens up in the
23 northeast, Your Honor. There's not any foundation.

24 THE COURT: I mean, you can ask him if he knows that. I
25 don't know if you have a basis for that.

1 BY MR. MCLEOD:

2 Q Do rip currents have a tendency to form where the waves
3 crash on a sandy beach?

4 A I can only speak for the beaches that I'm geographically
5 familiar with, yes.

6 Q And speak to that experience then. Do they have a
7 tendency to form where waves crash on a sandy beach?

8 A Under the proper weather conditions and tide conditions,
9 yes, sir.

10 Q Okay, Mr. Lack. And Myrtle Beach, it sits in the
11 curvature of our state's coastline; does it not?

12 A Yes, sir. It sits in the long bay.

13 Q Yes, sir. And do the approach angle of the waves have an
14 impact on whether or not rip currents will form or not?

15 A They're more prevalent on east-facing beaches, which
16 basically Myrtle Beach, up to about midtown, North Myrtle
17 Beach down to about Surfside, is not an east-facing beach.

18 Q Yes, sir.

19 A It's a southeast-facing beach.

20 Many times, beaches to the north of us and the south of
21 us will have rip currents, and we won't because we're not a
22 due-east-facing beach. But, yes, sir, we do have rip
23 currents.

24 Q Okay. And was there a time in your life when you were a
25 lifeguard?

1 A Yes.

2 Q Were you a certified lifeguard?

3 A Yes, I was.

4 Q And what year would that have been, sir?

5 A I started in 1966.

6 Q And did you have certification from the American Red
7 Cross or the USLA or some other organization?

8 A From the American Red Cross.

9 Q And is it true, sir, that American Red Cross
10 certifications are for a pool aquatic environment and not open
11 water aquatic environments?

12 A That is a ruling that's been prevalent for about the last
13 15 years. Prior to that, there was no differentiation.

14 Q Yes, sir.

15 A You were just trained as a lifeguard.

16 Q Yes, sir. And when was the last year that you were
17 certified by any agency to be a lifeguard?

18 A Me personally?

19 Q Yes, sir.

20 A I advanced from a lifeguard to a water safety instructor.
21 My father was in the Air Force, so that gave me the
22 opportunity to go through some military training that they
23 did. So I would say until my mid 30s.

24 Q So approximately what year would that have been?

25 A Well, that would have been, like, '80 to '84 or '5.

1 Q And how old are you now, sir?

2 A Seventy-two.

3 Q So the last time you were certified to perform the job of
4 a lifeguard was over 40 years ago; is that fair?

5 A Not -- well, if you're saying certified, yes.

6 Q Yes.

7 A But I would have been considered a recurrent guard.

8 Q Yes, sir.

9 And did you say, within the last 15 years, that there was
10 a differentiation between the American Red Cross and the
11 limits of its certification?

12 A The American Red Cross -- it's been many -- as long as 20
13 years ago that they decided that they were not training for
14 open water rescue.

15 Q And the open water rescue training in this country is
16 done by the USLA; is it not, sir?

17 A Well, there's also the American Lifeguard Association.
18 Then there's international -- other international
19 certifications.

20 Q You would agree with me, sir, that the USLA is a
21 proponent of the standard of care when it comes to ocean
22 lifeguarding; is it not, sir?

23 A They have a wonderful training manual, yes, sir.

24 Q Would you agree with me, sir, that they are a proponent
25 of the standard of care?

1 A Yes, sir.

2 Q I want to show you Plaintiff's Exhibit 11 and ask you,
3 first, is that a letter dated January 21st, 1996?

4 A It is a letter.

5 Q And who is that letter from?

6 A A gentleman -- the committee chairman for the
7 certification. Chris Brewster.

8 (Plaintiff's Exhibit No. 11, January 21st Letter from
9 Mr. Brewster, was marked for identification.)

10 BY MR. McLEOD:

11 Q And when you received that letter, did you own Lack's
12 Beach Service?

13 A Yes, sir, I did.

14 Q When you received that letter, were you the sole owner of
15 Lack's Beach Service?

16 A Yes, sir, I was.

17 Q Are you the sole owner of Lack's Beach Service today?

18 A Yes, sir.

19 Q So does that mean that whatever net revenues the company
20 enjoys, they go to you, sir; is that correct?

21 A At the end of the day, what's left, yes, I guess so.

22 Q Yes, sir.

23 Did I give you the January 21st or 27th?

24 A Are you talking to me?

25 Q Yes, sir.

1 **A** 21st.

2 **Q** 21st?

3 **A** Yes, sir.

4 **Q** No, I gave you the 27th.

5 MR. McLEOD: Court's indulgence, Your Honor. I
6 apologize.

7 MR. THOMPSON: You gave me January 11th.

8 BY MR. McLEOD:

9 **Q** All right. Plaintiff's 11 is January 21st, 1996. That's
10 the date of that letter?

11 **A** Yes, sir.

12 **Q** And this is a letter that you received from the USLA?

13 **A** If you'd let me have a moment to read.

14 **Q** Please. Take all the time.

15 **A** (Reviewing document.) Yes, sir.

16 MR. THOMPSON: Your Honor, I interpose an objection to
17 the letter.

18 MR. McLEOD: I didn't ask a question. I didn't offer it
19 for evidence.

20 MR. THOMPSON: Well, he's putting it in front of him and
21 getting ready to ask a question about it --

22 MR. McLEOD: Well, that's how you lay a foundation and
23 let the witness identify it. Just trying to do it the right
24 way, Your Honor. That's all.

25 THE COURT: And this is the January 21st, you said?

1 MR. McLEOD: That's correct, Your Honor.

2 THE COURT: Okay. Go ahead and ask your question.

3 (Plaintiff's Exhibit No. 12, January 27th Letter from
4 Mr. Brewster, was marked for identification.)

5 BY MR. McLEOD:

6 Q Mr. Lack, is this a letter that you received while you
7 were the sole owner of the U.S. -- I mean, of Lack's Beach
8 Service?

9 A Yes, sir.

10 Q And you received it from the United States Lifesaving
11 Association on -- is that true, sir?

12 A I received it from Chris Brewster, the chairman of the
13 certification committee.

14 Q And was there a carbon copy of this letter to the USLA
15 president of the southeast region?

16 A I'm not sure.

17 Q And, in 1996, were your lifeguards selling concessions?

18 A We have been a dual-role agency since before the Korean
19 War.

20 Q We'll get to that. But I'll ask you, the way that this
21 for-profit was run in 1996, it was run the same way in 2018;
22 is that right?

23 A Well, not exactly.

24 Q With regard to the lifeguards being involved in beach
25 concessions.

1 A As a dual-role agency, yes, sir.

2 THE COURT: At this time, I'd move to have Plaintiff's 11
3 into evidence.

4 MR. THOMPSON: Objection. Relevance. Hearsay. Lack of
5 foundation.

6 THE COURT: Can I see it?

7 I'm going to allow it.

8 (Plaintiff's Exhibit No. 11 was received into evidence.)

9 BY MR. McLEOD:

10 Q Now that 11 is in evidence, I want to show you what's
11 been marked for identification purposes only at this point,
12 Plaintiff's Exhibit No. 12. Can you tell the ladies and
13 gentlemen of the jury who that letter is to?

14 A It's to George Lack.

15 Q And who is it from?

16 A B. Chris Brewster, certification chairman.

17 Q Yes, sir. And what's the date on that letter?

18 A January 27th, 1996.

19 Q With regard to lifeguards also being involved in beach
20 concessions, were they doing that when you received that
21 letter?

22 A Yes, sir.

23 Q Just as they were doing it on August 24th, 2018, when
24 Mr. Wolde lost his life; is that correct?

25 A Yes, sir.

1 MR. McLEOD: At this time, Your Honor, I'd move 12 into
2 evidence.

3 MR. THOMPSON: Objection, Your Honor. Relevance.

4 THE COURT: And, again, can I see it?

5 MR. McLEOD: Yes, Your Honor.

6 MR. THOMPSON: And hearsay as well.

7 THE COURT: I'm going to hand that back to you. I'm
8 going to allow it.

9 (Plaintiff's Exhibit No. 12 was received into evidence.)

10 BY MR. McLEOD:

11 Q Now that Plaintiff's 11 and Plaintiff's 12 are in
12 evidence, I want to publish to the jury Plaintiff's 11, which
13 is the January 21st, 1996, letter. And I'll give you your
14 copy. I'm sorry.

15 Could you read the letter for the ladies and gentlemen
16 of the jury?

17 A "Mr. Lack: I was most inspired to received your letter
18 of January 11th indicating that your company intends to make
19 some organizational changes in an effort to adhere to the
20 recent actions of the board of directors. I am eager to send
21 your final notice of certification post haste. I would
22 appreciate a little clarification regarding the
23 purpose/changes so that I can better understand them.

24 "You state that you'll employ a corps of open-water
25 lifeguards whose sole responsibility will be to provide

1 lifeguard services in designated areas in Myrtle Beach in
2 Horry County. May I ask who will be responsible for rentals
3 in those commercial activities if not the lifeguards? Will
4 any lifeguards be involved in commercial activities?

5 "I would like to make it clear I am only trying to better
6 understand how this will work. It seems from your letter that
7 your plans will bring you into compliance. I join you in
8 hoping that Lack's can be a leader in making these
9 adjustments."

10 Q And, Mr. Lack, isn't it true, sir, that the USLA was
11 concerned about your lifeguards selling beach concessions?
12 Isn't that true, sir?

13 A Not altogether.

14 Q Would you agree with me, sir, that was one of their
15 concerns?

16 A That was one of Chris Brewster's concerns.

17 Q And he'll be here tomorrow.

18 A Certainly.

19 Q That was one of his concerns; is that fair to say?

20 A Yes, it was. Yes, it was.

21 Q And when you talk about concessions and lifeguarding,
22 lifeguarding -- people don't make commissions as lifeguards,
23 do they? Have you ever known that to be the case?

24 A I would only know through my experience, what I do.

25 Q In your company, do lifeguards make commissions based

1 upon their safety record?

2 A No, sir.

3 Q Do they make commissions based upon how many times they
4 properly warn of life safety hazards like rip currents?

5 A No, sir.

6 Q Do they get commissions, sir, for how many times in a
7 year their beach is properly guarded?

8 A No, sir.

9 Q Do they, however, get commissions for how much money they
10 generate for your company through the sale -- through the
11 rental of umbrellas and chairs?

12 A Yes, sir.

13 Q And what is the split -- what was the split in 2018 for
14 every dollar of revenue from a rental, how much did the
15 lifeguard get?

16 A I couldn't answer that.

17 Q You don't know?

18 A No, sir.

19 Q Would it have been more or less than a 20 percent
20 commission?

21 A I think I -- it would be speculation. I was not involved
22 in that area of the business at that time.

23 Q Okay. What area of the business were you involved in, in
24 2018?

25 A Just being there basically as an advisor and a

1 consultant.

2 Q But, in 2018, the advisor, the consultant was the sole
3 owner; is that right?

4 A Yes, sir.

5 Q So the fruits of everybody else's sales went to you;
6 didn't they, sir?

7 A It went to the company.

8 Q Let me show you Plaintiff's 12.

9 MR. McLEOD: And this time, Your Honor, I'd like to
10 publish this to the jury. This is a letter dated January
11 27th, 1996.

12 BY MR. McLEOD:

13 Q And if you would, please, sir, read the first paragraph
14 to the ladies and gentlemen of the jury.

15 A "Dear Mr. Lack: USLA has now completed our review of
16 your Horry County operation. I congratulate you on being
17 approved as meeting USLA minimally recommended guidelines and
18 standards for beach lifeguards agencies. Enclosed is your
19 certificate."

20 Q And "in particular." Could you read the third paragraph
21 for the ladies and gentlemen of the jury?

22 A "In particular, you have agreed to modify your operation
23 in such a way so as to ensure that lifeguards assigned to
24 supervising aquatic areas shall not be subject to duties that
25 would distract or intrude their attentions from proper

1 observations of persons in the waterfront area or to prevent
2 immediate assistance to persons in distress in the water.
3 Specifically, your lifeguards assigned to water surveillance
4 will not be assigned to any other duties than public safety.
5 As you know, this change is a critical aspect of your
6 certification."

7 Q And isn't it true, sir, that you represented to the USLA
8 that your lifeguards in charge of water observation would not
9 be responsible for any of other task other than public safety?
10 Isn't that true, sir?

11 A No, sir.

12 Q Okay. Well, Mr. Brewster will be here tomorrow.
13 You don't believe that to be the case?

14 A Sir, I'm not afraid of Mr. Brewster.

15 Q No, I understand.

16 A Okay.

17 Q I'm just wondering if -- are you telling this jury that
18 you did not represent to the USLA that your lifeguards would
19 not be involved in beach concessions in order to get a
20 certification from the premiere authority in this country on
21 open-water lifeguarding?

22 A No, sir.

23 Q Sir?

24 A There were many, many discussions in this area. We had a
25 certification officer, Mr. Mike Hensley, from Volusia County

1 Florida, and he came down and observed everything we did. The
2 agreement that we met with USLA was to provide lifeguard-only
3 personnel, and the ratio of that was determined by us and
4 USLA. Mr. Brewster was under a tremendous amount of pressure
5 to provide different types of lifeguarding services.

6 Q Okay. While Madam Court Reporter is marking those for
7 identification purposes, there is another way to perform
8 lifeguard services and beach concessions on Myrtle Beach,
9 isn't there?

10 A I'm sure there could be several different ways.

11 Q For example, the beach attendants could wear a blue
12 shirt, couldn't say?

13 A Yes, sir.

14 Q And they would only be in charge of and responsible for
15 the task of beach rentals; isn't that true, sir?

16 A Yes, sir.

17 Q And lifeguards could wear the yellow shirt; isn't that
18 true, sir?

19 A Yes, sir.

20 Q And then the lifeguard's sole responsibility would be to
21 perform water observation; isn't that right, sir?

22 A Yes, sir.

23 Q Do you go to church?

24 A Pardon me?

25 Q Do you go to church?

1 A Yes, sir, I do.

2 Q Do you believe it is very difficult for a man to serve
3 two masters?

4 A Yes, sir, I do.

5 Q That's as old as the Bible itself, isn't it, sir?

6 A Yeah, I think so.

7 Q Okay. So when the lifeguard is on the tower, if he gets
8 down to do the beach concessions, he ain't on the tower, is
9 he?

10 A It would be the same thing if he got down to treat
11 someone with a broken leg.

12 Q I understand. That would be performing his job as a
13 lifeguard; would it not?

14 A Not under some agency descriptions, no, sir.

15 Q Let me ask you this: Is there a reason why lifeguard
16 towers are elevated?

17 A Yes, sir.

18 Q And what is that reason, sir?

19 A To be seeing over the crowd.

20 Q And seeing into the water; correct?

21 A Yes, sir.

22 Q I mean, there could be sharks?

23 A Yes, sir.

24 Q There could be all sorts of things?

25 A Absolutely.

1 Q How about swimmers going too deep?

2 A Yes, sir.

3 Q And lifeguard whistles them in; isn't that one way?

4 A Yes, sir.

5 Q How about if a lifeguard sees a child in the water too

6 deep? Lifeguard has a megaphone to call them in?

7 A No, sir.

8 Q Your lifeguards don't have megaphones, do they?

9 A No, sir. Supervisors.

10 Q Your supervisors do. But your lifeguards don't have

11 megaphones; isn't that right?

12 A I just answered that, yes, sir.

13 Q Do they have a whistle?

14 A Yes, sir.

15 Q Okay. Now, would you agree with me, sir, that if a

16 lifeguard is on the ground selling umbrellas or chairs, he

17 can't also be on top of the tower? Would you agree with that?

18 A Yes, sir.

19 Q And would you agree with me, sir, that a beach attendant

20 and a lifeguard have completely different roles and

21 responsibilities, and those responsibilities conflict; do they

22 not?

23 A Maybe they combine.

24 Q Don't they conflict? I mean, in all honesty, don't they

25 conflict?

1 A I don't think so, no.

2 Q Well, share with the ladies and gentlemen as to why you
3 think that.

4 A Because you can be trained to do two things at one time.

5 Q Tell me exactly how you train these lifeguards to sell
6 beach concessions on a commission basis and also be in the
7 charge of public safety? How do you train them to do that?
8 Yes, sir?

9 A Okay. When they go through our classroom training,
10 they're shown how to approach -- when they have to approach a
11 customer, a beach patron, they don't turn their backs to
12 the -- they don't turn their backs to the water. They keep
13 the initial contact as brief as possible.

14 Q Okay.

15 A So they're watching the water as they do their
16 transaction.

17 Q Okay. Now, what about setting up the umbrellas? I mean,
18 these aren't small umbrellas, are they?

19 A No, sir.

20 Q And isn't it true, sir, that, at your for-profit, you're
21 very particular about the umbrella heights; isn't that
22 correct, sir?

23 A There's a safe way to install a beach concession
24 umbrella, yes, sir.

25 Q And, in fact, you want the umbrellas to all be the exact

1 same height; isn't that correct, sir?

2 A Sir, by virtue of the fact that all the umbrellas are the
3 same, if you put them in the ground 24 inches, they're all
4 going to be the same height.

5 Q Well, let me ask you this, sir: Isn't it true that you
6 testified before under oath that the lifeguards are constantly
7 adjusting the height of the umbrellas to keep them even?
8 Isn't that true, sir?

9 A No, sir. The only time we would adjust the umbrellas is
10 for wind conditions, to keep them from blowing out of the
11 ground and striking someone on the beach.

12 Q Okay.

13 (Plaintiff's Exhibit No. 13, Letter from Lack 9/11/2007,
14 was marked for identification.)

15 (Plaintiff's Exhibit No. 14, USLA Letter 10/24/2007, was
16 marked for identification.)

17 BY MR. McLEOD:

18 Q Now, you have given sworn testimony in other lawsuits;
19 have you not, sir?

20 A Yes, sir.

21 Q And one of them --

22 MR. THOMPSON: Objection, Your Honor.

23 THE COURT: Can you-all approach?

24 BENCH CONFERENCE

25 (The following bench conference was held outside the hearing

1 of the jury and others:)

2 MR. McLEOD: I'm just going to impeach him. That's all.

3 MR. THOMPSON: Asking him about prior testimony. He
4 doesn't have to say about the lawsuits. It's prejudicial.
5 It's highly irrelevant.

6 MR. McLEOD: I won't say anything -- I'm not going to go
7 into detail about -- he's giving sworn testimony and I can
8 impeach him.

9 THE COURT: You can impeach him with this.

10 MR. McLEOD: Yeah. Thank you, Your Honor.

11 (Open court resumes:)

12 THE COURT: Ladies and gentlemen, there was reference to
13 prior lawsuits. That has nothing to do with this case.
14 Whether or not there have been any lawsuits prior has zero
15 relevance in this case, and so you are not to consider that in
16 your deliberations.

17 BY MR. McLEOD:

18 Q Now, Mr. Lack, you have given sworn testimony before;
19 have you not?

20 A Yes, sir.

21 Q And I don't want you to tell the ladies and gentlemen of
22 the jury what is on this page, but I just want to ask you
23 whether you gave sworn testimony on that date, November 9th,
24 2011. It has your name.

25 A Yes, sir. I'd have to look through this. I'm sure

1 that's a court document, but I don't remember that.

2 Q Well, on page 21, if you will, please, sir, I'm going to
3 read the question. If you would please read the answer for
4 the ladies and gentlemen of the jury.

5 A So this is a deposition?

6 Q This is your testimony, sir.

7 A But it's a deposition? Or was it court?

8 Q It's sworn testimony, yes, sir.

9 A You're not answering my question.

10 Q The question is: At line 5 on page 21, "Can you rely on
11 them to train the other guards?" Question.

12 And could you read for the ladies and gentlemen of the
13 jury your answer beginning on line --

14 MR. THOMPSON: Objection.

15 THE COURT: Hang on just a minute.

16 MR. THOMPSON: That's not the impeachment of what the
17 question was prior. That's a completely different question.
18 He was asking about umbrellas and setting them up and whether
19 they're in different locations.

20 MR. McLEOD: And his testimony is getting ready to
21 explain.

22 MR. THOMPSON: That's not the question.

23 THE COURT: Do you have a copy of what he's getting
24 ready to --

25 MR. THOMPSON: I do not, Your Honor. I do not have a

1 copy of this transcript.

2 THE COURT: All right. Let's give a copy to him so he
3 can see what you're referring to.

4 MR. McLEOD: Okay.

5 BY MR. McLEOD:

6 Q If you would, please, read for the ladies and gentlemen
7 of the jury --

8 THE COURT: Okay. Hold on just a minute.

9 MR. McLEOD: Yes, Your Honor.

10 THE COURT: Let me give him a chance to read what you're
11 actually --

12 MR. THOMPSON: What page?

13 MR. McLEOD: Page 21. His sworn testimony. Line 7
14 through line 11. Then there's another question on line 12 and
15 another sworn answer on line 13.

16 BENCH CONFERENCE

17 (The following bench conference was held outside the hearing
18 of the jury and others:)

19 MR. McLEOD: Your Honor, this is what I'm impeaching him
20 on.

21 (Open court resumes:)

22 MR. THOMPSON: Your Honor, for context sake, it would
23 seem that, starting on line 20, page 24, the question. I
24 think the rule requires context.

25 MR. McLEOD: We could, Your Honor, have the court

1 reporter read back his testimony before to this jury on the
2 umbrella height, and then Your Honor could determine whether
3 that sworn testimony, I'm allowed to impeach him with it.

4 THE COURT: I'm going to allow this. I think that you're
5 certainly allowed to introduce any remaining portions of it.

6 MR. THOMPSON: I think, as I understand the rule, it's
7 contemporaneous with the presentation of the section. So I'm
8 asking that he read the entire, starting at page 20, line 24,
9 the question, to provide the context.

10 THE COURT: I think that's fair. It seems to all be
11 dealing with the same topic.

12 MR. McLEOD: All right. So where would you like me to
13 start, Mr. Thompson?

14 MR. THOMPSON: Page 20, line 24.

15 BY MR. McLEOD:

16 Q Okay. Are you okay, sir? I brought you a water.

17 A Yes, sir, I know.

18 Q If you need time --

19 A I'm good.

20 Q I want to make sure because we're --

21 A I appreciate your concern.

22 Q Yes, sir. Mr. Thompson wanted me to read this question,
23 which I will: "Any other steps taken throughout a guard's,
24 let's say, career to ensure they still know what they're doing
25 as far as placing the umbrella in the sand."

1 What was your answer, sir?

2 A I can't see it from there.

3 Q Yes, sir.

4 A "Just a general experience of the supervisors and the
5 management."

6 Q And then the next question is: "You're allowing them to
7 train the other guards?" Question.

8 And what was your answer, sir?

9 A "Yes. Hypothetically, in their beach assignment each
10 morning, if they see an umbrella that sticks up taller than
11 all the other umbrellas around it, they know it's not proper
12 -- it's not in at a proper depth, they instruct the guard to
13 redig the umbrella."

14 Q And the next question is: "How often do they check the
15 umbrellas during the day?"

16 And what was the -- now, the question is: "How often do
17 they check during the day?"

18 And what was your answer, sir?

19 A "All day, as part of what they do."

20 Q That's right, sir. Because beach concessions, that's
21 just part of what beach concessions does, is manage the
22 merchandise; isn't that correct; sir?

23 A That relates more to beach safety. An umbrella weighs
24 13 1/2 pounds. It's 7 1/2 foot in diameter. If that umbrella
25 becomes airborne, it can do serious damage to someone. So

1 that would be a responsibility that they would have to check
2 that. But if a lifeguard has 30 umbrellas up, it would only
3 take them one second looking one way and the one second
4 looking the other to see if he has any serious hazards.

5 Q Now, that merchandise, do you own the umbrellas?

6 A I own the company that owns the umbrellas.

7 Q And that company is not Lack's Beach Service, is it, sir?

8 A No, sir.

9 Q What company is that?

10 A That's Lack's Outdoor Furniture.

11 Q And is that company also a for-profit venture?

12 MR. THOMPSON: Objection, Your Honor. Relevance.

13 THE COURT: What's the relevance?

14 MR. McLEOD: The relevance is that he owns the company --
15 sole owner of the company that puts the chairs and umbrellas
16 on the beach and then makes the money off the chairs and
17 umbrella on the beach and so --

18 THE COURT: Y'all approach just a minute.

19 BENCH CONFERENCE

20 (The following bench conference was held outside the hearing
21 of the jury and others:)

22 THE COURT: That's for the benefit of the jury,
23 obviously. Don't do that. Just give me a short response to
24 what your reply is.

25 MR. McLEOD: Okay. He's already testified he goes to

1 church.

2 THE COURT: Okay. I'm going to allow it, but please
3 don't grandstand. Give me your legal response.

4 MR. McLEOD: I will.

5 THE COURT: Don't do that.

6 MR. McLEOD: I apologize.

7 THE COURT: Thank you.

8 (Open court resumes:)

9 MR. McLEOD: May I?

10 THE COURT: Yes, sir.

11 BY MR. McLEOD:

12 Q Mr. Lack, what is the name of the company that owns the
13 umbrellas and the chairs that Lack's Beach Service rents on
14 the public's beach?

15 A The umbrellas and chairs that we manufacture, we also
16 lease to the Beach Services, but we also buy from Frankfort
17 Outdoor Furniture in New Jersey, and we also buy from East
18 Coast Umbrella in Hamlet, North Carolina, and we also buy
19 chairs from H&T Chair in Boone, North Carolina.

20 Q Yes, sir.

21 And what is -- again, what's the name of that company?

22 A Which one?

23 Q The furniture company.

24 A In Boone?

25 Q No, sir. The local one on 533 Robert Grissom --

1 **A** Lacks's Outdoor Furniture, yes, sir.

2 **Q** And how long have you been the sole owner of Lack's
3 Outdoor Furniture?

4 **A** Probably '81 -- 1981.

5 **Q** So have you owned the furniture -- outdoor furniture
6 company longer than you owned Lack's Beach Service, or do you
7 know? Which was in existence first?

8 **A** Lack's Beach Service, if I can digress a little bit.

9 **Q** Yes, sir, please.

10 **A** Okay. The gentleman that I bought the Beach Service from
11 was Vernon Penner, and he also manufactured beach equipment.
12 So in buying the Beach Service in 1969 -- 1979, then the
13 Outdoor Furniture was just a derivative of it.

14 **Q** Yes, sir. Okay.

15 Now, your email address -- your personal email address,
16 is it the Outdoor Furniture?

17 **A** Yes, sir.

18 **Q** And so what is that email address?

19 **A** George@lacksoutdoorfurniture.com.

20 **Q** Have you ever had an email address associated with Lack's
21 Beach Service, the lifeguard concession company?

22 **A** I am not electronically savvy, so I don't think I have.
23 I actually have someone that checks my emails and sends my
24 emails for me.

25 **Q** Yes, sir. How long have you had the email address at the

1 furniture store email address?

2 A Probably 20 years.

3 Q Okay. And I think you shared with the jury that the
4 furniture company -- does the furniture company rent the
5 chairs to the beach company on a daily basis? A monthly
6 basis?

7 A It's a lease agreement on the amount of furniture they
8 use.

9 Q So just share with me, please, sir, how that works.

10 A They own the beach equipment. We have a staff that takes
11 care of that equipment and a staff that delivers it to the
12 beach.

13 Q Okay. And what is the rental rate between the furniture
14 company and Lack's Beach Service?

15 MR. THOMPSON: Objection, Your Honor. Relevance.

16 THE COURT: Do you want to respond to that?

17 BENCH CONFERENCE

18 (The following bench conference was held outside the hearing
19 of the jury and others:)

20 MR. McLEOD: It's hard to serve two masters. That's all,
21 Your Honor.

22 THE COURT: I'm going to sustain that objection.

23 (Open court resumes:)

24 BY MR. McLEOD:

25 Q Let me show you a letter dated September 11th, 2007, and

1 ask you, is that a letter to you, sir?

2 A Yes, sir.

3 Q And what address is on that letter for you, sir?

4 A P.O. Box 2365, Myrtle Beach, South Carolina.

5 Q Was that your address the date that letter was sent?

6 A Yes, sir.

7 Q And who is the letter from?

8 A Eric Bower.

9 Q And who is Eric Bower with?

10 A He is -- at that time, he was the certification chairman
11 for USLA.

12 Q Okay. And, so, in 1996, there was some correspondence
13 between you and the USLA about certification that we have
14 already talked to the jury about that; is that correct?

15 A Yes, sir.

16 Q All right. And then if we come forward, until 2007,
17 there's more correspondence; is that right, sir?

18 A Yes, sir.

19 Q And the correspondence that is marked as Plaintiff's 13,
20 I believe --

21 A Yes, sir.

22 Q -- that also relates to the certification of open-water
23 lifeguards; is that correct?

24 A To be a certified agency in the United States Lifesaving
25 Association.

1 MR. McLEOD: Okay. At this time, I'd move 13 into
2 evidence, Your Honor.

3 MR. THOMPSON: Objection, Your Honor. This is hearsay.
4 This witness is not a witness in this case.

5 THE COURT: Can I see it?

6 MR. McLEOD: And if -- it's a business record, so it's
7 not hearsay.

8 THE COURT: And you're offering it under the business
9 records' exception; is that right?

10 MR. McLEOD: Yes, that's correct.

11 MR. THOMPSON: Your Honor, foundation has not been laid
12 for a business records' exception. It would have to come from
13 the individual that prepared it and created it and made it a
14 business record.

15 MR. McLEOD: Your Honor, he received that. And then it
16 was kept in the regular course of his business as Lack's Beach
17 Service.

18 MR. THOMPSON: That foundation hasn't been laid, Your
19 Honor.

20 MR. McLEOD: I'm happy to do that.

21 THE COURT: Yeah, I think we need a foundation.

22 BY MR. McLEOD:

23 Q Mr. Lack, on September 11, 2007, when you received this
24 letter, was there a link there at the bottom of Plaintiff's
25 Exhibit No. 13?

1 A Again, sir, I see USLA and guidance lines [verbatim] PDF,
2 but I'm not -- again --

3 Q Does it say "guidelines" there?

4 A Yes, sir.

5 Q And so the letter that you received on September 11th,
6 2007, related to the USLA guidelines; isn't that correct?

7 MR. THOMPSON: Objection, Your Honor. There's no
8 foundation.

9 MR. McLEOD: Well, you can read the letter. I'll let him
10 read the letter.

11 MR. THOMPSON: It's just an address.

12 THE COURT: Again, I don't think there's a foundation yet
13 for the contents of the letter.

14 BY MR. McLEOD:

15 Q Take your time and read that letter, please, sir, and
16 then I'll ask you.

17 THE WITNESS: I didn't understand that. Do I read the
18 letter?

19 THE COURT: To yourself.

20 THE WITNESS: Oh, I'm sorry. (Reviewing document.)

21 BY MR. McLEOD:

22 Q Now, having had a chance to review the letter, does it
23 relate to certification guidelines at USLA?

24 A It -- it relates to certification guidelines that have
25 been adjusted prior to August 2007. I was recertified in

1 November of 2006.

2 Q Yes, sir.

3 A And I was approached at that time and asked if all of my
4 lifeguards were now watching -- lifeguards-only by Mr. Chris
5 Brewster. I explained to Mr. Brewster that I was doing the
6 same thing that I was doing when I was certified and Mr. Mike
7 Hensler came down the summer of 2006 and verified that we were
8 still doing the same thing that we had agreed to do.

9 Q Does this letter, Plaintiff's 13, relate to certification
10 guidelines in the USLA?

11 A It doesn't relate to the ones I was accustom to.

12 Q I was asking you whether it related to USLA --

13 A I have no idea of what you're saying, sir.

14 Q Do you believe you received this in your personal
15 capacity or as the sole owner of Lack's Beach Service?

16 A Being that it was inspired by Mr. Brewster, I think it
17 was to me personally.

18 Q Is the P.O. Box 2365, is that a personal P.O. Box or is
19 that associated with the for-profit Lack's Beach Service?

20 A It's related to Lack's Beach Service.

21 MR. McLEOD: Your Honor, he received this letter at the
22 business address, and it's his business record, and we're
23 allowed to offer it. If you want -- I mean, Mr. Brewster is
24 coming tomorrow; I guess we can do it that way. I just don't
25 know why --

1 THE COURT: Can I get y'all to approach a minute?

2 MR. McLEOD: I don't know what the prejudice is.

3 BENCH CONFERENCE

4 (The following bench conference was held outside the
5 hearing of the jury and others:)

6 THE COURT: Where did this come from?

7 MR. McLEOD: Well, here's the thing: We asked. Okay?
8 He didn't give us anything. We sent a subpoena to USLA.
9 That's the only way we would have ever gotten it, just like
10 most of the discovery in this case. He didn't give us squat.
11 And I'm sorry, Your Honor --

12 MR. THOMPSON: He's already just now said he didn't have
13 it. It came from USLA.

14 MR. McLEOD: Well, no, he had it.

15 MR. THOMPSON: It's not kept by a business record. He
16 got it from USLA. That's not even Chris Brewster.

17 MR. McLEOD: And, Your Honor, here's the thing: The
18 whole point of their defense is this franchise agreement --
19 and I'm going to get into that -- and the franchise agreement
20 requires him to train per USLA standards.

21 Well, if he is not in compliance with the standards and
22 the certification is revoked, he has to know whether or not he
23 knows what the standards are, and I'm going to get there,
24 where he's testified that he doesn't.

25 THE COURT: I understand. I have already ruled that his

1 letters can come in because it's his own letter, but that one
2 from somebody else that he didn't even have it in his business
3 records, it came from USLA --

4 MR. McLEOD: The USLA will be here tomorrow, so we'll put
5 it in through them.

6 (Open court resumes:)

7 THE COURT: The objection is sustained.

8 MR. McLEOD: And just for the record, Your Honor,
9 Plaintiff's 13 and Plaintiff's 14 have been marked for
10 identification purposes, and we'll leave them with Madam Court
11 Reporter and pick them up with Mr. Brewster tomorrow.

12 MR. THOMPSON: Your Honor, for clarification, what is
13 Exhibit 14?

14 MR. McLEOD: That is the revocation.

15 BY MR. McLEOD:

16 Q Now, I believe you just testified, sir, that the way
17 certification of USLA works is that, once certified, your
18 certification is renewed every two years; is that correct?

19 A I believe that is correct.

20 Q And I believe you just shared with the jury that you were
21 recertified in approximately -- was '06 or '07?

22 A It was November of '06. The only place you can be
23 certified is at a national meeting. It was a national meeting
24 in California.

25 Q Isn't it true, sir, that, on the application for

1 recertification at that time, you represented to the USLA that
2 your lifeguards were responsible for water observation only;
3 isn't that true, sir?

4 **A** In reference to the lifeguard-onlys, yes, sir.

5 **Q** And so your company submitted a recertification
6 application to the USLA; is that correct?

7 **A** Yes, sir.

8 **Q** And you attested that in that application that your
9 lifeguards were in charge of water observation only; isn't
10 that correct?

11 **A** The ones assigned to water observation only. And their
12 determination was LGO, lifeguard-only. And when we were
13 certified, we actually had that language built into our
14 franchise, so the City would be also advised of what we were
15 doing.

16 **Q** What does the word -- what does "lifeguard-only" mean to
17 you?

18 **A** That that's all they do.

19 **Q** What does the word "lifeguard" mean to you?

20 **A** In our role, it's a dual person.

21 **Q** So explain that, please, sir. A lifeguard-only is only
22 responsible for safety, and a lifeguard is responsible for
23 what?

24 **A** Safety.

25 **Q** Anything else?

1 **A** Yes, sir. The rental of umbrellas and chairs,
2 administration of first aid, relocating lost children. And,
3 at that point in time, the City also had us providing handicap
4 wheelchairs on the beach.

5 **Q** Yes, sir. Have you ever heard of a police officer-only?

6 **A** I mean, I could see that you're only a police officer. I
7 really don't understand the question.

8 **Q** Have you ever heard, sir, of a teacher-only?

9 **A** Well, I have several teachers that work off-season with
10 me. Again, I don't understand your question.

11 **Q** Have you ever heard the term "teacher-only" used at any
12 time in your life?

13 **A** No, sir.

14 **Q** Have you ever heard the term "nurse-only" at any time in
15 your life?

16 **A** Not that I can recall.

17 MR. McLEOD: Your Honor, do you want to take a break or
18 keep going?

19 THE COURT: Why would we -- is there a reason we would
20 take a break right now?

21 MR. McLEOD: No. I just wanted to be mindful of the
22 Court.

23 THE COURT: Go right ahead.

24 MR. McLEOD: Thank you.

25

1 BY MR. McLEOD:

2 Q Now --

3 BENCH CONFERENCE

4 (The following bench conference was held outside the
5 hearing of the jury and others:)

6 MR. McLEOD: Your Honor, we just redacted this, just so
7 the Court's aware.

8 (Open court resumes:)

9 (Plaintiff's Exhibit No. 15, Franchise Agreement, was
10 marked for identification.)

11 BY MR. McLEOD:

12 Q Mr. Lack, I want to show you what we have marked as
13 Plaintiff's 15, I believe. And, Mr. Lack, let me ask you: In
14 2018, there was a contract in place between the City of Myrtle
15 Beach and Lack's Beach Service; is that correct?

16 A Yes, sir.

17 Q Okay. And the 2018 contract was an amendment to a prior
18 version that was dated in 2015; is that right?

19 A No, sir. I think the contract was dated 2017.

20 Q Yes, sir. Okay. And let me show you Plaintiff's Exhibit
21 No. 15. Is that the contract between the City of Myrtle Beach
22 and Lack's Beach Service?

23 A Yes, sir.

24 Q And is that -- now, we have redacted some portions, but
25 is that the franchise agreement or the contract between the

1 City?

2 **A** It appears to be. I haven't looked through every page.

3 **MR. McLEOD:** Trey, will you agree on this one?

4 **MR. THOMPSON:** Now, you did move it in, so I don't have
5 any objection.

6 **MR. McLEOD:** All right. So Plaintiff's 15, we'd move
7 into evidence.

8 **THE COURT:** And no objection?

9 **MR. THOMPSON:** No objection, Your Honor.

10 **THE COURT:** 15 is admitted.

11 (Plaintiff's Exhibit No. 15 was received into evidence.)

12 **BY MR. McLEOD:**

13 **Q** So, Mr. Lack, let me first ask you: The first paragraph
14 of Plaintiff's 14, would you read that for the ladies and
15 gentlemen of the jury? Is it 15?

16 **A** I don't have a 14.

17 **Q** This is 15.

18 **A** Then you can only imagine where I'm at.

19 **Q** I apologize. If you need me to slow down, just say,
20 "Hey, stop." Okay?

21 **A** Yes, sir. Okay. Now, what was the question?

22 **Q** Would you please read for the ladies and gentlemen of the
23 jury the first paragraph of this document.

24 **A** "Whereas, the City of Myrtle Beach requires the
25 protection of its tourists and residential population to

1 effect to efficient and effective water safety program."

2 Q Is that, in fact, true that the purpose behind this
3 contract was to provide protection to the City of Myrtle
4 Beach's tourists and its residential population?

5 A Yes, sir.

6 Q And the third paragraph, could you please read for the
7 ladies and gentlemen of the jury what that reads?

8 A "Whereas, these goals can be ultimately achieved through
9 the corporation of the City of Myrtle Beach and the
10 concessionaires of the beach equipment."

11 Q Okay. And isn't it true, sir, the City gave you a
12 franchise, a privilege, to make money on the public beach?
13 Isn't that one of the things this document does?

14 A That's what pays for everything, yes, sir.

15 Q And, in exchange for that privilege, the City required of
16 you to provide non-profit public safety; isn't that true, sir?

17 A I don't think it says anything about that in here.

18 Q Well, isn't it true, sir, that, in exchange for the City
19 giving you this privilege to make money on the public's beach,
20 you agree to provide lifeguard protection on that same public
21 beach?

22 A Yes, sir.

23 Q Now, will you please tell me or this jury where in this
24 document there is language that says lifeguards may sell --
25 may rent umbrellas or chairs? And take your time, sir.

1 A I think it's implied through most of the contract.

2 Q My question, sir, was: Can you find any language in
3 there that says lifeguards are allowed and authorized to rent
4 beach umbrellas or beach chairs?

5 A If you know where it's at, I'll certainly read it,
6 instead of me going through this whole thing.

7 Q It's not in there.

8 A Okay.

9 Q Well, I want you to take your time. It doesn't matter
10 what I think. I want you to take your time.

11 A Well, the reason I said that, I have never seen anything
12 like that in any of the previous franchises I have had.

13 Q So you're not aware of the four corners of this document
14 containing any language that says lifeguards are allowed to
15 engage in concessions on the public's beach; is that correct?

16 A Paragraph No. 3, 10 through 11.

17 Q Which page are you on, sir?

18 A The very first one.

19 Q Okay. Let me see exactly where you are.

20 A Right here where it says, "Concessionaires of beach
21 equipment."

22 Q Okay. Does the language in the third paragraph contain
23 the words "lifeguard" and "concessions" in the same sentence?

24 A No, sir.

25 Q Let's go down to the next-to-last paragraph.

1 **A** Can you clear up what that was -- what the question that
2 you asked me?

3 **Q** Yes, sir. My first question was -- and, look, I want you
4 to take as long as you want.

5 **A** Yes, sir.

6 **Q** Is there any language in the four corners of this
7 document that says that lifeguards are allowed to be engaged
8 in beach concessions?

9 **A** I think I understood the question you asked me, is there
10 anything in here that gave them the right to rent umbrellas
11 and chairs?

12 **Q** Yes, sir.

13 **A** And I would have to say, what is a concessionaire other
14 than the concessionaire?

15 **Q** In the third paragraph, does the word "lifeguard" appear
16 in the same sentence as the sentence that contains
17 "concessionaires of beach equipment"?

18 **A** No, sir.

19 **Q** Now, let's go down to the bottom of page 2. Okay?

20 **A** Yes, sir.

21 **Q** And do you see the highlighted portion of the contract?

22 **A** No, sir.

23 **Q** I'm sorry; you don't have a highlighted copy. I
24 apologize.

25 Could you please read for the ladies and gentlemen of the

1 jury --

2 A So that's line 46 through 49?

3 Q Yes, sir.

4 A "Franchisee may rent beach equipment outside said period
5 of operation provided, however, that lifeguards must be on
6 duty at all times that beach equipment is on the beach. The
7 franchisee shall provide lifeguards as deemed necessary in
8 consultation with the City."

9 Q Okay. And so the first part of that sentence says,
10 "Franchisee may rent beach equipment"; isn't that correct?

11 A Concessionaire.

12 Q The first part of that sentence, does it not say,
13 "Franchisee may rent beach equipment"?

14 A Oh, yes. Yes, sir. Yes.

15 Q It doesn't say "lifeguard may rent beach equipment," does
16 it?

17 A No, sir, it doesn't.

18 Q Okay. And read that sentence one more time.

19 A Which one, sir?

20 Q That begins at line 46 and ends at line 49.

21 A "Franchisee may rent beach equipment outside said period
22 of operation provided, however, that lifeguards must be on
23 duty at all times that beach equipment is on the beach. The
24 franchisee shall provide lifeguards as deemed necessary in
25 consultation with the City."

1 Q Well, Mr. Lack, if lifeguards were allowed to do the
2 concessions, why would there be that language in the contract
3 requiring that lifeguards be present if the concessions are
4 sold after hours?

5 A They're not sold after hours.

6 The language has been put in the franchise [verbatim] for
7 several different franchises, but it was drawn up from the
8 fact that, at one time, there were five concessionaires in the
9 City of Myrtle Beach and that several of them would come out
10 before contract time and rent umbrellas and chairs, but they
11 would not provide lifeguards at the same time. The people who
12 rented the umbrellas and chairs were not certified lifeguards.
13 So the City added this language that said, if you're going to
14 go out and rent an umbrella, a lifeguard has to be on duty --
15 a certified lifeguard.

16 Q And that's my question. If the lifeguards are allowed to
17 rent umbrellas, why do you have to have that language
18 requiring lifeguards? Because he's already there, renting the
19 umbrellas; right?

20 A Sir, I didn't write the contract. The attorney for the
21 City wrote the contract.

22 Q Yes, sir. And this is the contract that was in place on
23 August 24th, 2018, when Mr. Wolde lost his life on a beach
24 guarded by your company; isn't that correct, sir?

25 A Yes, sir.

1 Q All right. Now -- and that Section 1 of the contract is
2 entitled "Period of Operation"; isn't that right?

3 A At what page are you?

4 Q Yes, sir. Going back to this -- the language that we
5 just shared with the jury.

6 A Oh, I'm sorry. Yes, sir.

7 Q Is in Section 1 of the contract; is that right?

8 A Yes, sir.

9 Q Now, let's go, please, sir, to page 4 of the same
10 document. All right? And we're now in Section 2 of the
11 contract; are we not, sir? Just look at the prior page.

12 A Oh. Yes, on page 3 it says, "Section 2."

13 Q Okay.

14 And Section 2 is entitled, "Standards of performance and
15 lifeguard certification"; is that correct?

16 A Yes, sir.

17 Q All right. So then turn to page 4, sir.

18 A Yes, sir.

19 Q Do you see the fourth -- do you see line 28?

20 A Yes, sir.

21 Q Could you please read for the ladies and gentlemen of the
22 jury line 28 through, I believe, it's 31.

23 A "Franchisee, all lifeguards, and other franchise
24 employees are prohibited from consuming alcoholic beverages
25 while on duty or from reporting to work under the influence of

1 alcohol or other controlled substances."

2 Q And, Mr. Lack, in 2018 when this contract was signed, did
3 the for-profit beach service have any employees that weren't
4 lifeguards?

5 A Lack's Outdoor Furniture -- I mean, excuse me, Lack's
6 Beach Service? I couldn't answer that. I know, during COVID,
7 we made some changes, but I don't think, in '18, we made any
8 changes.

9 Q Okay. And that sentence specifically relates to
10 franchisee; correct? Is that correct?

11 A Yes, sir.

12 Q Employees?

13 A Yes, sir.

14 Q And then lifeguards?

15 A All lifeguards and other franchise employees.

16 Q Okay. And then, if you would, come down to line 50. And
17 if you would please read that for the ladies and gentlemen of
18 the jury.

19 A "Franchisee shall not employee any individuals as a
20 lifeguard or a beach concession employee who has been
21 convicted of or pled guilty" -- whatever, however you say
22 that. The Latin word.

23 Q Yes, sir. Oh, yes, that's a tough one there. We can
24 stop at "pled guilty."

25 JUROR: Can we see it?

1 MR. McLEOD: I'm sorry. I apologize.

2 BY MR. McLEOD:

3 Q Read for the ladies and gentlemen of the jury line 50.

4 And you can stop at "employee" at line 51.

5 A Does that mean no contest or something like that?

6 Q Yes, sir. I'm just going to make it easy.

7 A "Franchisee shall not employ any individual as a
8 lifeguard or beach concession employee who has been convicted
9 of or pled guilty..."

10 Q And, Mr. Lack, would you agree with me that words have
11 meaning?

12 A Yes, sir.

13 Q Would you agree with me that this contract states
14 lifeguard or beach concession employee?

15 A Yes, sir.

16 Q And a beach concession employee would be a beach
17 attendant engaged in the sale or service of umbrellas or
18 chairs; isn't that correct, sir?

19 A In the broad term, yes.

20 Q Beach concession employee doesn't mean lifeguard, does
21 it? Because lifeguard was earlier in the same sentence; isn't
22 that correct, sir?

23 A Well, and under this document, the concessionaire is also
24 the lifeguard.

25 Q Let's go to paragraph or line 21.

1 A Same page?

2 Q Yes, sir.

3 A Yes, sir.

4 Q And if you would please read from line 21 to line 26.

5 A "Franchisee shall prepare a lifeguard training curriculum
6 meeting City requirements and ensure that all lifeguard
7 personnel qualify thereunder prior to beginning work and meet
8 all in-service training requirements. Franchisee or
9 designated representative and all franchised lifeguards shall
10 attend all pre-certification and in-service training services.
11 Failure to attend shall result in suspension of service until
12 requirement is met."

13 Q Yes, sir. And in line 32, does the contract again
14 delineate between franchisee, employees, and lifeguards?

15 A Do you want me to read it aloud?

16 Q Oh, I'll just ask you whether line 32 also delineates
17 between franchisee, employees, and lifeguards.

18 A It lists all three, yes.

19 Q Okay. Now, on page 5, isn't it true, sir, that in
20 exchange for the City giving you that privilege to make money
21 on the public beach, they relied and depended upon you to be
22 solely responsibility for any required disciplinary action of
23 its lifeguards?

24 A As it pertains to -- that wouldn't have been -- if it
25 pertained to an ordinance violation or any other breach of the

1 law. But if it was a company violation, then we would be
2 responsible to take care of that, yes.

3 Q And when you say "company violations," meaning violations
4 of lifeguarding roles and responsibilities; is that correct?

5 A Yes, sir.

6 Q Okay. Because the lifeguards that you put on the beach,
7 they weren't employed by the City, were they?

8 A No, sir.

9 Q And your company made the commissions off those sales,
10 didn't they? And it still does today?

11 A Yes, sir. That's the way the business is set up.

12 Q And so, if the City doesn't employ the lifeguards, they
13 don't have the mechanism to discipline the employees, do they?

14 A No, sir.

15 Q That responsibility belongs to you, doesn't it, sir?

16 A Yes, sir.

17 Q Did you interview Alexandr Dineev at any time after
18 August 24, 2018?

19 A No, sir.

20 Q Did you ever interview a gentleman named Kacper Palacz,
21 P-a-l-a-c-z, at any time after August 24th, 2018?

22 A That would have all been handled by Human Resources and
23 Training.

24 Q I'm asking whether you were involved.

25 A No, sir.

1 Q Do you have any personal knowledge of anybody at your
2 company being involved with interviews with either of those
3 two individuals at any time after August 24th, 2018?

4 A All I could make was an assumption.

5 Q Well, I don't want you to assume. Do you have any
6 personal knowledge of anybody at your company having done
7 that?

8 A No, sir.

9 Q How about a gentlemen names Lucasz Jaworski? Did you or
10 do you have any personal knowledge of any interviews with
11 Mr. Jaworski any time after August 24, 2018?

12 A Nothing that I can recall.

13 Q Okay. Now, let's turn to page 6, please, sir. And does
14 page 6 contain a new section of the contract? In particular,
15 Section 4?

16 A Beach service equipment.

17 Q Yes, sir. And we have already gone over Section 1, which
18 is -- are you okay, sir?

19 A Yes, sir.

20 Q We have already gone over Section 1, which is Period of
21 Operation; have we not?

22 A Yes, sir.

23 Q And we have already gone over Section 2, which is
24 Standards of Performance and Lifeguard Certification; correct?

25 A Yes, sir.

1 Q And we actually didn't cover yet Section 3, which is
2 Lifeguard Uniforms and Equipment; correct?

3 A No, sir, we have not.

4 Q Okay. So now with regard to Section 4, because it will
5 probably work better without that clip; sorry. This is a
6 section that deals specifically with beach service equipment;
7 does it not?

8 A And -- yes, sir.

9 Q Okay. Could you read for the ladies and gentlemen of the
10 jury the very first sentence of Section 4 which specifically
11 deals with beach service equipment?

12 A That's starting with line 19?

13 Q Line 16. I'm sorry.

14 A Oh, okay. "No commercial or retail activities, except as
15 authorized herein, shall be permitted on the public beach."
16 How far do you want me to go?

17 Q That's good.

18 Now, I want to ask you, please, sir, to review the rest
19 of Section 4 and tell me any language that says that
20 lifeguards are allowed to be engaged in concession business on
21 the public's beach.

22 A It says, "The franchise is hereby authorized." And so
23 the franchise is a dual-role franchise, which includes the
24 lifeguards having a dual-role purpose.

25 Q Does the words "dual-role" appear anywhere in Plaintiff's

1 Exhibit No. 14?

2 A No, sir. It's in franchise and concessionaire.

3 Q Is it anywhere in this exhibit, sir?

4 A Well, they're -- I guess it would depend on the attorney
5 reading it. The attorneys that put this together knew full
6 well what we were doing.

7 Q Would you agree with me, sir, that words have meaning?

8 A Yes, sir. And -- but I would also say that words can
9 also be misinterpreted.

10 Q And that's why I'm asking you -- take as much time as you
11 want --

12 A I don't need time. When this contract was developed and
13 the ones prior to this, going back to 1976, it's always been
14 understood that the City of Myrtle Beach was a dual-role
15 system, and they were called franchisee and they were called
16 concessionaires.

17 Q Do the words "dual" and "role" appear anywhere in that
18 contract, sir?

19 A No, sir.

20 Q Okay. And, in fact, what the contract says, if words
21 have meaning, is that the City wanted a tower system in place
22 in different zones along the 12 miles of beach known as Myrtle
23 Beach; isn't that correct?

24 A Yes, sir.

25 Q And what the City required was lifeguard protection on

1 those towers; isn't that correct, sir?

2 A Yes, sir.

3 Q Now, let me turn you to page 10 of the same exhibit.

4 A Sir, some of my pages are completely redacted.

5 Q Yes, sir. And that was by agreement and for court
6 purpose. Page 10 is not redacted?

7 A Well, I haven't gotten there.

8 Q Yes, sir.

9 A It's redacted. Okay.

10 Q Section 9, could you read for the ladies and gentlemen of
11 the jury the second paragraph of Section 9?

12 A "Transfer of Franchise. A franchisee may transfer his --
13 a franchisee may transfer his or her franchise to another
14 franchise holder subject to 60-day notice to and upon approval
15 of the City manager. City Council must approve by resolution
16 any franchise transfer. All such approvals shall not be
17 unreasonably withheld."

18 Q And, Mr. Lack, I may have misspoke; I wanted you to read
19 lines 14 through 16 for the jury, please, sir.

20 A Happy to, sir. "Violation of any provision of this
21 franchise agreement shall result in the suspension of the
22 franchise agreement or in the permanent revocation of the
23 franchise by City Council."

24 Q Okay. And I just want to make sure that I understand
25 your testimony. One is, the plain language that appears in

1 the four corners of this document does not authorize
2 lifeguards to be engaged in beach concessions; isn't that
3 correct, sir?

4 A No, sir.

5 Q Is it your testimony that, although it's not stated in
6 the contract, the City allowed it? Is that -- I just want to
7 understand.

8 A Right, yes, sir. And I'm trying to think how to answer
9 you. I would have to say to keep it as -- the City and each
10 of us sat down, made an agreement. So the theory of what our
11 agreement was is the same as the theory was in 1979 when I
12 bought this business, is that the lifeguards were a dual-role
13 system. In my mind, this is the exact way the contract's been
14 written with few differences, but the franchisee, the
15 concessionaire has always been the dual-role lifeguard.

16 Q When you sat down with these people, who was that, when
17 y'all came to this agreement?

18 A Which year?

19 Q In 2018, before this document was signed by both you and
20 the City.

21 A The changes that prompted the -- we signed the contract
22 in the first season. The first season of the contract was
23 2017.

24 Q Yes, sir.

25 A Then there were meetings between me and John Pedersen,

1 Chief Warren Gall (ph), Chief Andy Propp (ph), the fire chief,
2 on ways to enhance different things. And one of those was to
3 increase the number of LGOs, that they would give us credit
4 against our franchise fee for every mobile lifeguard we added,
5 they would give us money -- they would give us credit against
6 our franchise fee for each additional LGO. So agreements were
7 made to do that.

8 Agreements were also made to change the color of the
9 lifeguard stands from white to orange, thinking that they
10 ought to be a more visible sign. Also, the agreement was made
11 to change from the flag system that had been developed by the
12 City and the County a number of years ago -- probably in the
13 late '60s or early '70s -- to the international flag system,
14 which was our recommendation to do that.

15 Q Yes, sir.

16 A I can't think of a lot more.

17 Q And Mr. Pedersen was the City manager; is that right?

18 A City administrator, yes, sir.

19 Q Yes, sir. And he's, like, the equivalent of a CEO when
20 it comes to the City and its affairs; is that right?

21 A Yes, sir.

22 Q And he's since retired?

23 A Yes, sir.

24 Q And this agreement that you-all had, is it reduced to
25 writing anywhere?

1 **A** (Picks up paper.)

2 **Q** That's the agreement?

3 **A** Yes.

4 **Q** Now --

5 **A** But it doesn't -- I don't think it states in here that
6 the lifeguard towers have to be painted a certain color. And
7 I don't know that it addressed the flag system. I think those
8 things were just agreements that were made to do.

9 **Q** When you had this meeting with Mr. Pedersen, was he aware
10 that your certification -- USLA certification had been revoked
11 many years earlier?

12 **A** My certification was revoked in November of 2007. So Tom
13 Leath was still the administrator, but Mr. Pedersen was an
14 assistant administrator. So I would have to assume that he
15 was very much aware.

16 **Q** Let's just assume for the sake of argument that the plain
17 language in that contract did say lifeguards are allowed to be
18 involved in beach concessions. Let's just assume that's the
19 case. Is that fair?

20 **A** That -- in my mind -- and I can't speak for the City, but
21 I can't see them letting this operate for all these years and
22 that not be in their mind.

23 **Q** So when you go to the four-way stop sign -- you're
24 allowed to drive a car; correct?

25 **A** Pardon me?

1 Q If you have a license and you're in your car and you
2 approach a four-way stop sign and you're allowed to drive your
3 car if you're licensed; correct?

4 A Yes, sir.

5 Q If you're allowed to do something, does that mean you're
6 allowed to do it in a dangerous and unsafe manner?

7 A If you're referring back to the franchise, it wasn't done
8 in an unsafe manner.

9 Q I'm asking you about the four-way stop sign analogy
10 first, please, sir.

11 A Yes, sir, but this is kind of like digging a sandy ditch.
12 It's just not getting anywhere.

13 Q I don't think she would agree with that, but I
14 understand. So...

15 MR. McLEOD: Your Honor, can we take a quick break just
16 so I can get reorganized for the next part?

17 THE COURT: Ladies and gentlemen, we'll take about ten
18 minutes, since we've had you in here for a little while.
19 Please don't begin discussing the case.

20 (The jury exited the courtroom at 4:33 p.m.)

21 THE WITNESS: Sir, do I just leave this stuff up here?

22 MR. McLEOD: Yes, sir.

23 (A brief recess was taken at 4:34 p.m. to 4:47 p.m.)

24 (Plaintiff's Exhibit No. 16, Enlarged Chart, was marked
25 for identification.)

1 MR. THOMPSON: Your Honor, we discussed some logistical
2 issues for the rest of the afternoon. I'm concerned
3 Mr. McLeod is just getting warmed up, and it's 4:45. We will
4 break for the day whenever he's finished and then resume cross
5 in the morning?

6 THE COURT: How long do you anticipate?

7 MR. McLEOD: I hope I don't have more -- I don't want to
8 say an hour and go longer. I mean, whatever the Court wants
9 to do, I'll work around those hours. The last thing I want to
10 do is inconvenience you or the jury.

11 THE COURT: I'm here all week. I'm not your concern at
12 all. It's really just the jury and the court personnel. I
13 don't mind keeping the jury until 5:30. I really don't want
14 to keep them past 5:30.

15 MR. THOMPSON: He may not be finished by then, so I guess
16 we'll just carry it over until the morning.

17 THE COURT: I hate to split up a witness, but I mean,
18 there's no way we're going to get through cross and your -- or
19 direct and cross.

20 MR. THOMPSON: No, not today.

21 THE COURT: So I guess we'll just have to split it up.
22 Okay. Let's bring them back in. I will tell them I'm going
23 to keep them until 5:30.

24 (The jury entered the courtroom at 4:49 p.m.)

25 THE COURT: Ladies and gentlemen of the jury, just so you

1 know, our plan for the afternoon, we're going to resume
2 Mr. Lack's testimony, and we're going to keep going until
3 about 5:30. But I don't want you to get -- it to get past
4 5:00 and you think, well, there's no end to this in sight.

5 So, at 5:30, we're going to go ahead and adjourn for the
6 day. We'll start back up again tomorrow at 9:00. I
7 anticipate tomorrow we're going to bring lunch in for you so
8 that we can adjourn for about a 30-minute lunch break and then
9 we'll go right back in.

10 Go right ahead, Mr. McLeod.

11 BY MR. McLEOD:

12 Q Mr. Lack, I want to show you a small version of what's
13 been marked as Plaintiff's 16 and ask you: Is that a document
14 entitled, "Lack's Beach Service Lineup 2018"?

15 A Yes, sir.

16 Q And every day that the lifeguards or they go on the
17 beach, there's a lineup set for that particular day; is that
18 right?

19 A Yes, sir.

20 Q And this is the lineup for August 24, 2018; is that
21 right?

22 A Yes, sir.

23 Q And does it list the different towers -- lifeguard towers
24 from 1st Avenue to 30th Avenue?

25 A Yes, sir.

1 Q Okay. And does it also have the corresponding personnel
2 who is to occupy that tower that day?

3 A Yes, sir.

4 Q And is this the lineup from August 24, 2018?

5 A Yes, sir.

6 Q All right.

7 MR. McLEOD: I move to have this in evidence, Your Honor,
8 as Plaintiff's Exhibit No. 16.

9 MR. THOMPSON: No objection.

10 THE COURT: It's admitted.

11 (Plaintiff's Exhibit No. 16 was received into evidence.)

12 BY MR. McLEOD:

13 Q Now, Mr. Lack, in your system, is the purpose of the LGO
14 to provide supervision for the personnel who occupy the
15 lifeguard towers?

16 A No, sir. They're on a tower by themselves.

17 Q And, at that tower, they aren't allowed to engage in any
18 commercial sales; is that right?

19 A Correct.

20 Q And is the way that the tower system was run on August
21 24th, did the contract require for noncommercial sales towers
22 throughout the tower system?

23 A There was a schedule for those, yes.

24 Q Okay. Do you know how many non-concession towers there
25 were from 1st Avenue to 30th that the contract required?

1 A Well, I can count them. Seven.

2 Q Okay. The streets and the lifeguard stands L [verbatim]
3 through L-27, do those stands encompass Zones 1, 4, 8, 12, 16,
4 22, 23, and 27?

5 A I'm going to have to get you to repeat because you didn't
6 give me a beginning.

7 Q Yes, sir. What I'm trying to figure out is, in the
8 contract, page 3, it states, "Franchisee shall, in addition to
9 their required permanent stands, provide mobile lifeguards or
10 additional personnel approved by the City in the following
11 areas: In Zones, 1, 4, 8, 12, 16, 22, 23, and 27,
12 lifeguard-only for each zone." Did I read that correctly?

13 A Yes, sir.

14 Q Are the lifeguard stands in this exhibit --

15 A Corresponding to those zones. They do, but this exhibit,
16 they're into avenues.

17 Q Yes, sir.

18 A I don't know that anyone has ever understood the City's
19 zones.

20 Q Yes, sir.

21 A That was a zoning and code enforcement thing.

22 Q Does -- on page 3, could you count the different zones
23 that the contract calls for a non-concession tower to be?

24 A Yes, sir.

25 Q Thank you.

1 A Eight.

2 Q Now, if you would please, sir, let's go to Exhibit 16,
3 and I'll ask you the lineup -- when is the lineup done? Is it
4 done in the mornings?

5 A Yes, sir.

6 Q Do you generally --

7 A They do a lineup in the evening on the present day, but
8 depending on sick and call-in and different things, yes, sir.

9 Q Okay. I understand.

10 And so, August 24th, according to the lineup, could you
11 share with the ladies and gentlemen of the jury how many LGOs
12 were even scheduled to be in the tower system that day
13 beginning with on 29th Street?

14 29th Street being one; is that correct?

15 A Yes, sir.

16 Q 27th Street being the second; is that correct?

17 A It looks like there were four.

18 Q I want to first ask you, sir: How many total lifeguards
19 stations, according to this lineup, were to be occupied on
20 that day? The first being at 29th Street; do you see that?

21 A Yes, sir. Between June 1st and the 2nd week of August,
22 we were at 100 percent starting. Starting on the third week
23 of August, we had a decreasing number of lifeguards, agreed by
24 with the City, simply for the fact that college is restarting
25 and our crowd is decreasing.

1 Q According to this lineup, could you count for the ladies
2 and gentlemen of the jury how many LGO towers appear on
3 Plaintiff's No. 16?

4 A It would appear to be four.

5 Q Well, is 29th Street one?

6 A No, sir. The first one -- yeah, 29th Avenue, yes, sir.

7 Q I'm sorry. And then 27th being the second?

8 A Yes, sir.

9 Q And then 23rd being the third?

10 A Yes, sir.

11 Q And then 17th being the fourth?

12 A Yes, sir.

13 Q And then 6th being the fifth?

14 A Yes, sir.

15 Q And then 3rd being the sixth?

16 A Yes, sir.

17 Q And then 1st Street being the seventh?

18 A Yes, sir.

19 Q Okay. So the most that you-all intended to put on the
20 beach that day was seven, according to Plaintiff's Exhibit No.
21 6; is that right?

22 A Sir, I wasn't there for the roster or any of that, so I'm
23 not sure what the logic that was being used was.

24 Q Okay. Well, the LGO -- there was no LGO at 29th on that
25 day, was there, sir?