

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 II**

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Certificate of Counsel

1 A No, sir.

2 Q And there was no LGO as required at 27th, was there, sir?

3 A No, sir.

4 Q And there was no LGO as required at 6th; isn't that

5 correct, sir?

6 A No, sir.

7 Q And there was no LGO at 3rd as required; isn't that

8 correct, sir?

9 A Yes, sir.

10 Q Okay. So, on this day, August the 24th, how many LGOs

11 were in the tower system of this 7 1/2 miles of beach that

12 your company guards?

13 A This area that we're speaking of is not 7 1/2 miles.

14 Q I'm sorry; how big is this area?

15 A About 2 3/4 miles.

16 Q I appreciate you correcting me.

17 Do you guard 7 1/2 miles including the area to the north

18 of this?

19 A And to the south.

20 Q Okay. So how many LGOs were provided on August the 24th,

21 according to Plaintiff's 16?

22 A Four.

23 Q Okay. And where do they appear? I see one at 23rd.

24 A Yes, sir.

25 Q And then I see another at 17th.

1 A Yes, sir.

2 Q And I see another at --

3 A 27th.

4 Q 1st. I count three.

5 A Yes, sir, three.

6 Q So there were only three personnel working for you that
7 day whose sole responsibility was water observation; isn't
8 that correct, sir?

9 A Yes, sir. As LGOs, yes, sir.

10 Q And do you know the lifeguard stand where Mr. Wolde and
11 his daughter and son went in the water?

12 A I was told it was at L-21, which would have been 9th
13 Avenue South.

14 Q Let's work off of 9th Avenue South. So L-21, 9th Avenue
15 South. Do you see that?

16 A Yes, sir.

17 Q Share with the ladies and gentlemen of the jury how many
18 city blocks to the north was the first person whose sole
19 responsibility was water observation on that day.

20 A L-27.

21 Q Would that be eight city blocks --

22 A No, I'm sorry. Yes, sir. L-27.

23 Q And would that be eight city blocks to the north or eight
24 city blocks to the south?

25 A That would be going to the north. And then there's a

1 two-block area in that section that's not a swimming area.

2 Q Okay. And let's look in the other direction, sir, and
3 share with the ladies and gentlemen of the jury how many city
4 blocks the LGO was on that day whose sole responsibility was
5 water observation.

6 A It would have been at 17th Avenue South, L-14.

7 Q Okay. And how many city blocks is that from L-21, sir?

8 A Sixteen.

9 Q I think it's seven. I don't want to -- so starting from
10 L-21, I'm sorry, and let's count one, two, three, four, five,
11 six...

12 A Okay.

13 Q And about -- do you know approximately how wide a city
14 block is?

15 A They vary. On the south end of Myrtle Beach, the blocks
16 are wide and, I call it, fat. They're from the boulevard to
17 the ocean. They're not as far as it is on the north end of
18 the beach where the blocks are real long and narrow.

19 Q Do you know if there's an average distance of the city
20 blocks near L-21?

21 A All of those blocks are pretty uniform. I would have to
22 say they're probably 75 yards.

23 Q Okay. And did you, after the drowning, interview anybody
24 or require that the company interview anybody to find out why
25 you-all did not require the protection that the contract

1 required on August 24, 2018?

2 A Well, as the lifeguards decrease and then you have to
3 have a lifeguard for each six, that, in itself, would cause a
4 decrease in all personnel.

5 Q Was this time of year considered peak season or off
6 season?

7 A Well, it's slow-down season.

8 Q Well, let's look at the contract and see if the contract
9 defines that, please, sir.

10 A Page 1, line 33.

11 Q Okay. And on line 37, does it indicate, from June the
12 2nd to the second week of August, full complement?

13 A Yes, sir.

14 Q And then the third week of August, 75 percent of
15 complement; is that right?

16 A Yes, sir.

17 Q Is it now your testimony that three lifeguards throughout
18 the tower system on 8/24/2018 complied with the City's
19 requirements, is it?

20 A I'd have to do the math. So that would be 25 percent.

21 No. Let's just say no. I'm not sure who called in sick or
22 who had other -- I mean, there's all reasons for personnel not
23 to show up.

24 Q But, nonetheless, the amount of protection required of
25 your for-profit that day wasn't provided, isn't that correct,

1 sir?

2 A I'm sorry, sir?

3 Q The amount of protection required of your for-profit
4 wasn't provided on that day; isn't that correct, sir?

5 A Well, there was a full complement of dual-role lifeguards
6 in the middle there, but, yes, we were short an LGO.

7 Q Okay. Now, when it comes to rip currents, your training
8 manual has some pretty specific language about rip currents
9 and the hazard that they can become for swimmers; does it not?
10 And let me -- I'll turn you back to plaintiff's -- if I refer
11 you back, sir, to the training manual.

12 A Yes, sir.

13 Q I believe it's in as Exhibit 10.

14 A Yes, sir.

15 Q Now, isn't it true, sir, that, as a -- that Lack's, when
16 it comes to rip currents, has superior knowledge with regard
17 to rip current activity as compared to a beachgoer?

18 A Yes, sir.

19 Q And, in particular, if you would, please, sir, turn to
20 page -- Bates No. 00027. Do you see that?

21 A Yes, sir.

22 Q And, in particular, you're aware that the time that rip
23 currents can form is between two hours before low tide and the
24 four hours of the first incoming water; isn't that correct?

25 A Basically, the rule is two hours before and then two

1 hours after, but I have seen rip currents form after
2 thunderstorms where outfalls breach the berm and it's out in
3 the ocean where the sandbars form.

4 Q Yes, sir.

5 A I have seen rip currents that actually, the wind blowing
6 from the southwest or the west or the northwest would breach
7 them even on a rising tide.

8 Q And is that one of the reasons why it's important to
9 maintain constant water observation, to detect that life
10 safety hazard so that you can then warn against or guard
11 against that life safety hazard if you're in the lifeguard
12 business; isn't that correct?

13 A Yes, sir.

14 Q Okay. In particular, if you would, please, sir, on
15 page -- it's Bates No. 00027 but it's page 20 of the training
16 manual.

17 A Yes, sir.

18 Q Could you read for the ladies and gentlemen of the jury
19 the paragraph that begins with "rip currents"? Do you see
20 that, sir?

21 A Yes, sir. "Rip currents make up at least 80 percent of
22 all rescues. As lifeguards, your day will be filled with
23 preventive actions. Being aware of rip currents, you will be
24 able to clear the water when a rip current opens to help
25 prevent rescues and even drowning. Working for Lack's, you

1 will continue your education on rip currents throughout the
2 season during the surf schools. The greatest safety
3 precaution is education."

4 Q And so a lifeguard who is maintaining constant water
5 observation, one of his or her roles is to clear the water
6 when a rip current opens; isn't that correct, sir?

7 A We remove the swimmers out of the rip current area.

8 Q And that's in your policy; isn't that right?

9 A Yes, sir.

10 Q Isn't it true, sir, that the way your company operates,
11 if there's a rip current, the supervisors should not allow
12 swimming; isn't that correct?

13 A No, sir.

14 Q That's not correct?

15 A No, sir. We can't close the whole beach if we're having
16 a rip current at 10th Avenue South. You wouldn't shut the
17 whole beach down. What we do, we would flag -- if we have a
18 place where we have a rescue, we'll flag that area with a
19 double red flags until that rip current subsides. There are
20 occasions where, through the National Weather Service, the
21 police department, or the fire department that they can order
22 us to close the beach.

23 Q Isn't it true, sir, that you testified before that, if it
24 were a rip current, they would order that area to be flagged
25 off for no swimming?

1 A Yes, sir. That's what I just said.

2 Q So if there's a rip current, it's supposed to be flagged
3 for no swimming?

4 A If there's a -- if there is an active rip current there
5 that you can see, yes, sir, we will flag that area until that
6 rip current subsides.

7 Q Okay. And on this day, August 24th, you-all received a
8 warning from NOAA that morning about rip currents in Myrtle
9 Beach that day; did you not?

10 A I was not there that day. If it was a moderate case of
11 cause of rip, we would have a single red flag, and we would be
12 at waist deep.

13 Q Mr. Lack, this is a flag that Mr. Thompson used in his
14 opening. Do y'all have one that looks like this that says "no
15 swimming" on it?

16 A We do have some single "no swimming" flags that we use in
17 areas that are closed to swimming every day, but the way the
18 system works on the international flag system is the flag
19 below it -- when you go double red flag, that is the
20 international flag system for no swimming.

21 Q My question, sir, is do you-all -- isn't it true that
22 you-all have flags that look like that except the words "no
23 swimming" are in that red flag?

24 A In the second flag?

25 Q Yes, sir.

1 A Well, when we switched to the international flag system
2 from what we had, we had many red flags that said "no
3 swimming." So what we did with those, as far as that stock of
4 flags went, but on the international flag system, it's the
5 double red, not necessarily the verbiage of "no swimming."

6 Q Okay. Do your lifeguards have available to them flags
7 that say "no swimming"?

8 A That, you just had.

9 Q This red flag?

10 A Yes, sir. If you take and open the bottom flag, then
11 you'll have two flags, and under the international flag
12 system, that is no swimming.

13 Q My question, sir, is --

14 A Yes, sir. And I answered your question. We don't have
15 to put -- the international, you don't have to put no
16 swimming. The international symbol of two red flags is no
17 swimming. We had red flags left over from when we switched
18 that said "no swimming" because our flag system in Horry
19 County was using, it had "no swimming," it had "caution," and
20 it had "safe."

21 Q So -- and I just want to make sure I understand your
22 testimony. When your lifeguards went out on the beach on
23 August 24th, 2018, did they have equipment available to them,
24 a flag that had the words "no swimming" on it?

25 A So I'm going to repeat myself. What you just held up is

1 the international flag system for no swimming.

2 Q Okay. Now --

3 A The flags were made by the City of Myrtle Beach.

4 Q Now, what about rip current flags? Were the lifeguards
5 that were on the beach that day on August 24, 2018, were they
6 equipped with a sign that warned specifically of rip currents?

7 A No, sir. The single red flag is the flag for rough water
8 and rip currents. We have a blue flag that's for aquatic
9 hazards such as jelly --

10 Q Okay.

11 A -- such as jellyfish. We also use that blue flag and a
12 "no swimming" flag when we have sharks in the surf line.

13 Q Yes, sir. Just bear with me. We're almost done for the
14 day.

15 All right. Could you please, sir, go back to
16 Plaintiff's 10. This is the training manual again.

17 Are you okay, sir?

18 A Yes, sir.

19 Q Page 9 of the training manual has Bates No. 0016 on it.
20 Could you turn to that, please, sir?

21 A Yes, sir.

22 Q Okay. Now, there's a section in the training manual that
23 deals with daily requirements. Do you see that, sir?

24 A 009?

25 Q No, sir. It's --

1 A Isn't this the number I'm supposed to be looking at?

2 Q Hold on. It's page 9. I'm sorry. It's confusing
3 because the manual has page numbers and the Bates numbers.

4 A Yes, sir, I'm on board.

5 Q And does page 9 have a section entitled, "Daily
6 Requirements"?

7 A Yes, sir.

8 Q And could you please read for the ladies and gentlemen of
9 the jury the second highlighted star that begins with "If you
10 have any"?

11 A I don't have any highlighted --

12 Q Oh, I'm sorry. Yes, sir. Could you please just read for
13 the jury this star. "If you have any..."

14 A "If you have any -- set up emergency access signs, rip
15 current flags, no swimming flags." Okay. The emergency
16 access signs are placed at the end of each avenue.

17 Q Yes, sir.

18 A Do you want me to --

19 Q Well, does it say -- does it specifically refer to a rip
20 current flag?

21 A That would be the single red flag.

22 Q Okay. Does it specifically refer to a "no swimming"
23 flag?

24 A That would be a double red flag.

25 Q Why does it say, "if you have any"?

1 A Well, I'm not sure. They all have them.

2 Q Doesn't the preceding star refer to a red flag?

3 A Mine says that you have your buoy with you at all times.

4 Q Yes, sir.

5 A Well, this is where we're reading.

6 Q Right here.

7 A "Set up your guard tower with all equipment: First aid

8 kits, red flags, blue flags, yellow flags, and guard

9 umbrellas."

10 Q All right. And what's the red flag for?

11 A The red flag is for waist deep rough water.

12 Q What is the blue flag for?

13 A Aquatic hazard.

14 Q And what is the yellow flag for?

15 A Normal swimming.

16 Q And then the next paragraph specifically references rip

17 current flags; is that right?

18 A Going back to what I read previously?

19 Q Yes, sir.

20 A Yes, sir.

21 Q Now, the lifeguards are required to check in at the

22 warehouse each morning before they go out to guard the towers;

23 is that correct?

24 A Yes, sir.

25 Q And the warehouse, is the -- that's the Robert Grissom

1 Parkway address?

2 A Yes, sir.

3 Q 5331?

4 A No, sir. 531.

5 Q I'm sorry. 531.

6 And does the warehouse -- does the furniture company own
7 the warehouse or does the beach company own the warehouse?

8 A The furniture company.

9 Q So they come to the furniture company and that's the
10 first requirement in the morning. What time --

11 A There's a lifeguard room in that building. There's an
12 equipment room in that building for the lifeguards, and
13 there's training and conference space in that building for the
14 lifeguards.

15 Q Yes, sir. And what time in the morning are they required
16 to be there at the furniture warehouse to get their
17 instructions for that day of public safety?

18 A The instructions will be on the chalkboard when they walk
19 in the office. Some people get there extremely early. Some
20 people get there in time to get to the beach by 8:00. The
21 office generally opens around 6:15 to 6:30.

22 Q Would you agree with me, sir, that on a day when your
23 company has received a warning of rip currents, you would want
24 to ensure that the guard manning that tower at least had a rip
25 current or a "no swimming" flag as indicated in your training

1 manual, sir?

2 A Every storage box on every avenue that we man has a
3 storage box in it with all the flags, first aid equipment, and
4 torpedo buoys. So, when they get there, if, on the chalkboard
5 that day it says "moderate risk of rip," then they would know
6 to set up a single red flag.

7 MR. McLEOD: I think those are all I have for now,
8 considering we're on the hour.

9 THE COURT: But you're not done with your direct.

10 MR. McLEOD: No, Your Honor.

11 THE COURT: Okay. Ladies and gentlemen, we're going to
12 go ahead and break for the evening. If you'll please plan to
13 be back at 9 a.m. tomorrow morning, we'll resume.

14 Once again, please don't discuss the case with anyone
15 overnight or amongst yourselves. And again, tomorrow, we will
16 bring in lunch for you.

17 All right. Have a good evening.

18 (The jury exited the courtroom at 5:22 p.m.)

19 MR. McLEOD: I hope I'll be hopefully half an hour in the
20 morning. I apologize.

21 THE COURT: Well, it's y'all's case. I have talked about
22 the time constraints.

23 MR. McLEOD: Yep. I believe we're going to be able to
24 rest tomorrow, Your Honor. I mean, that's the goal. Because
25 the coroner will not be long. We have got Dr. Griffiths. We

1 have got Brewster.

2 MR. THOMPSON: Griffiths is four hours.

3 THE COURT: Did we --

4 MR. WILSON: We cut a lot.

5 MR. THOMPSON: I withdrew all my objections, so there's
6 not a lot that's been cut, so it's going to be a solid four.

7 THE COURT: Okay. And then we still have Brewster.

8 MR. TRAINOR: You-all want to call Holly Robinson,
9 apparently?

10 MR. McLEOD: It depends.

11 MR. THOMPSON: Judge, we're really --

12 THE COURT: I mean, we have cracked the egg now. There's
13 nothing to do but keep going.

14 MR. THOMPSON: I understand.

15 MR. McLEOD: We intend to try to rest tomorrow afternoon
16 to give him two days. You said you had six witnesses?

17 MR. THOMPSON: More than likely. I mean, George is one.
18 If you were going to call Holly, that's another. I haven't
19 even gotten into George yet. That's going to be some
20 significant amount of time. The expert is four hours. We're
21 already talking about most of tomorrow, and I haven't heard
22 from the children yet.

23 MR. McLEOD: They'll be short, Your Honor.

24 MR. THOMPSON: Chris Brewster. I mean, we are
25 absolutely, without question, into Thursday in Plaintiff's

1 case.

2 THE COURT: Well, I mean, what's your plan if we don't
3 finish the case this week?

4 MR. McLEOD: Well, I don't see any reason why we won't
5 finish. If we rest tomorrow, Your Honor, that's Wednesday.
6 This is a death case. I mean, I don't think we're doing
7 anything unreasonable.

8 THE COURT: Hey, listen, I have no -- I'm not trying to
9 blame anybody or push anybody. I'm just -- I feel like I'm
10 the only one who's worried about what's going to happen on
11 Friday when I am gone and y'all cannot bring this jury back on
12 Monday. I just want to make sure --

13 MR. THOMPSON: If he rests tomorrow, Wednesday, we will
14 get it done this week. I just am having a real difficult time
15 seeing that happen knowing what George Lack is and what's left
16 of him and then knowing that Griffiths is four hours and then
17 knowing we have all the children to testify and quite a number
18 of other witnesses. That's their case. I'm going to root for
19 them to get it done tomorrow, Judge. I really am.

20 MR. McLEOD: That makes me feel so good that somebody is
21 finally rooting for me instead of beating up on me all the
22 time.

23 MR. THOMPSON: I'm pulling for you.

24 MR. McLEOD: I'm out here sweating and working, and
25 everybody is beating up on me.

1 THE COURT: I guess I want to feel that y'all feel the
2 same urgency that I do.

3 MR. McLEOD: We do, Your Honor.

4 THE COURT: You know, I'm concerned because I don't know
5 what you're going to do if you don't finish this case. So I
6 want to know that y'all feel this pain along with me and I'm
7 not the only one who is worried about this.

8 MR. McLEOD: We do, Your Honor. And Trey thinks, if we
9 rest tomorrow, we'll be fine, and that's exactly what we
10 intend to do.

11 Brewster won't be -- I mean, all we can control is the
12 directs. The direct on Brewster won't be long. The direct on
13 the children won't be long. The coroner won't be long at all.
14 You know, I probably have a half hour here. And one of the
15 reasons why the expert deposition is so long is because --
16 maybe we just go cut more of our stuff.

17 THE COURT: Well, I mean, y'all have tonight to think
18 about how you're going to use your day tomorrow.

19 MR. THOMPSON: Your Honor, I don't want to push them or
20 do anything, but I just don't want to be compromised in my
21 case.

22 THE COURT: I understand.

23 MR. THOMPSON: And if they roll into Thursday and then I
24 have still got witnesses into Friday afternoon, I'm not
25 going -- I don't think I need to apologize to anybody at that

1 point.

2 THE COURT: No, absolutely not.

3 MR. McLEOD: And our crosses of their witnesses will not
4 be long, I can't imagine.

5 THE COURT: All right. I mean, I don't feel like y'all
6 have been crazy long or anything like that. I'm not trying to
7 make you feel bad.

8 MR. THOMPSON: It's just a lot.

9 THE COURT: Again, if it were not for the fact that I'm
10 leaving town on Saturday, then I wouldn't be overly concerned.
11 Okay.

12 MR. WILSON: Are you bringing lunch tomorrow for the
13 jury?

14 THE COURT: Yes.

15 MR. WILSON: It's just the video. I mean, we're going to
16 move quickly with the other ones. I'm trying to figure out a
17 way to get the video. Can they eat lunch and watch?

18 MR. TRAINOR: That's a real stretch.

19 THE COURT: First of all, I don't know that the clerk
20 wants us to have them dragging their lunch into the courtroom.
21 I'm glad to bring lunch in and then we just take, like, 30
22 minutes for lunch. And then we can do that Thursday, we can
23 do it Friday.

24 MR. THOMPSON: Thank you, Your Honor.

25 THE COURT: All right. See y'all in the morning.

1 (At 5:28 p.m., the trial adjourned until Wednesday, July
2 27, 2022, at 9:00 a.m.)
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1 CERTIFICATE OF COURT REPORTER

2
3 State of South Carolina)
4 County of Horry)

5 RE: *Meswaet Abel v Lack's Beach Service*

6
7 I, Bobbi J. Fisher, Registered Professional Reporter
8 (RPR) and Official Court Reporter III for the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the proceedings
11 had and evidence introduced in the trial of the captioned case
12 in the *Court of Common Pleas for Horry County*, South Carolina,
13 on the *26th of July, 2022*.

14
15 Submitted: *August 10, 2022*

16
17 *Bobbi Fisher*

18
19
20 /s/ *Bobbi Fisher*

21 Bobbi J. Fisher, RPR

22 Official Court Reporter III

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF HORRY) TRANSCRIPT OF RECORD
3 -----x
4 MESWAET ABEL, AS PERSONAL)
5 REPRESENTATIVE OVER THE)
6 ESTATE OF ZERIHUN WOLDE AND)
7 AS NATURAL PARENT AND LEGAL)
8 GUARDIAN FOR ADAM WOLDE,)
9 AND WUBIT WOLDE,)
10)
11) Case No. 2019-CP-26-07075
12) vs.
13 LACK'S BEACH SERVICE, CITY)
14 OF MYRTLE BEACH, AND JOHN)
15 DOE LIFEGUARD,)
16)
17) Defendants.
18 -----x
19 Wednesday, July 27, 2022
20 TRIAL DAY 3
21
22 B E F O R E:
23 The Honorable Kristi Curtis, Presiding Judge; and a jury.
24 A P P E A R A N C E S:
25 Mullins McLeod, Esq.
26 Christopher Pracht, Esq.
27 Harry Cooper Wilson, III, Esq.
28 Attorneys for the Plaintiffs
29 Joseph "Trey" Thompson, Esq.
30 Paul Trainor, Esq.
31 Attorneys for the Defendants
32
33
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35 Court Reporter: Bobbi Fisher, RPR
36 SC Official Court Reporter III

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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
13			491
14			492
17	Chart of Stands	384	384
18	Stand Totals	388	392
19	Death Certificate	454	469
20	Coroner Report	458	461
21	Autopsy Report	463	464
22	3/26/08 Letter	494	495
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Court's Exhibits

No.	Description	ID.
2	Chandler Video Deposition	384
3	Jury Note	515

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:10 a.m.):

THE COURT: Anything we need to address?

MR. McLEOD: Your Honor, the only thing -- last night, in an effort to try to save time, I went back over Griffiths' testimony, and I was able to take out 25 minutes. And what I did was just took out 25 minutes that Your Honor had already ruled was inadmissible in my questions and his answers, and we have edited the video to reflect that. And so as long as that's okay with Mr. Thompson, I'm at least giving us an extra 25 minutes, taking out my evidence.

MR. THOMPSON: Your Honor, the only issue is I haven't seen what he's taken out, and then I may want to take out some amount of my cross that might relate to the amount of material that was addressed or taken out. So I have to figure that piece of it out, but, outside of that, obviously, I don't have any problem with cutting down the time.

MR. McLEOD: So we just emailed it to Mr. Thompson. If you want to make changes, can you get your folks to edit the video, to create the third version?

MR. THOMPSON: We don't have any folks to create or edit the --

THE COURT: What I'll say is if we can -- are you doing his deposition first?

MR. McLEOD: No, Your Honor. We're going to finish

1 Mr. Lack and then the coroner will be brief and then Brewster
2 and then the expert depo and then the two kids and we'll rest.

3 THE COURT: So it may be during lunch.

4 MR. McLEOD: Probably so.

5 THE COURT: I'll make sure we have a break for you to
6 take a look.

7 MR. THOMPSON: With regard to the coroner, I don't know
8 if it's the coroner or the M.E. that is planning on being --

9 MR. McLEOD: I'm sorry; I misspoke. It's the deputy
10 coroner.

11 MR. TRAINOR: Was it Michelle McSpadden or is it
12 Dr. Proctor?

13 MR. WILSON: Michelle McSpadden.

14 MR. THOMPSON: If she's being called to testify about the
15 cause of death, we can stipulate to that for the purposes of
16 the case to prevent having the coroner come and really
17 streamline things more.

18 MR. McLEOD: Her testimony will be very short.

19 THE COURT: Okay.

20 MR. WILSON: It will be very short. That's just one
21 piece. She'll be up and down in 15 minutes.

22 THE COURT: Okay. But we'll make sure that you get a
23 break before so you can determine what you want to present in
24 the cross or if there's anything further you want to go in
25 from the direct.

1 MR. THOMPSON: Your Honor, based on their -- what they're
2 talking about, the lineup, before they rest, even if there's
3 just a lead in tomorrow, we should be able to put up our case
4 and down by the end of Thursday, maybe a little into Friday,
5 so, hopefully, we should be able to try to have both sides
6 rested by mid-morning Friday.

7 THE COURT: Okay. And Mr. Lack is here?

8 (A brief recess was taken at 9:14 a.m.).

9 (Plaintiff's Exhibit No. 17, Chart of Stands, was marked
10 for identification and received into evidence.)

11 (Court's Exhibit No. 2, Chandler Video Deposition, was
12 received into the record.)

13 GEORGE LACK,

14 after having been previously duly sworn, was examined and
15 testified to as follows:

16 CONTINUING DIRECT EXAMINATION

17 BY MR. MCLEOD:

18 Q I have a couple more areas I want to visit with you this
19 morning. Is that okay?

20 A Yes, sir.

21 Q The first question I have is: When the kids get here
22 from overseas, they live in housing that you provide; is that
23 right?

24 A Yes, sir.

25 Q How many square feet is the house that you own where the

1 kids are put up once they get here?

2 MR. THOMPSON: Objection, Your Honor. Relevance.

3 THE COURT: Is there some relevance to that?

4 MR. McLEOD: Well, there is, Your Honor. He charges them
5 rent at the house that he owns.

6 THE COURT: I don't find that that's relevant to this
7 action. That's sustained.

8 BY MR. McLEOD:

9 Q We talked yesterday, do you remember, about one thing
10 that you could do would be to have the concession employees
11 wear blue shirts and the lifeguards wear yellow shirts; do you
12 remember that?

13 A I remember the question, yes.

14 Q And I want to visit with you a little bit about that.
15 Isn't it true, sir, that, when the kids from overseas get
16 here, you save money on payroll taxes because they don't
17 contribute to social security and FICA; isn't that true?

18 MR. THOMPSON: Objection, Your Honor.

19 THE COURT: What's the basis?

20 MR. THOMPSON: Your Honor, there's no -- there's no rule
21 against J-1s being employed in the United States.

22 MR. McLEOD: That wasn't the question.

23 MR. THOMPSON: And the idea about saving on taxes or
24 otherwise, there's not a foundation for that.

25 MR. McLEOD: And I'll prove it right here.

1 MR. THOMPSON: And/or relevance, Your Honor.

2 THE COURT: Yeah, I don't see the relevance for how he's
3 paying the employees, so I'm going to sustain that.

4 BY MR. McLEOD:

5 Q Now, the sales records -- the company keeps sales records
6 on a daily basis; is that right?

7 A Yes, sir.

8 Q And the kids are required to come to the furniture
9 warehouse every afternoon. They have to leave the beach at
10 5:00; is that correct?

11 A The contract calls for them to leave at 5:00.

12 Q Yes, sir. And then they come to the warehouse and
13 somebody does an accounting of the cash, of the credit card
14 totals; is that correct?

15 A Yes, sir.

16 Q Let me show you what's right now Plaintiff's 17 and ask
17 you if -- you have seen that document before; have you not,
18 sir?

19 A Sir, I may have, but I -- this is not part of what I do.
20 This would be handled by my office manager and I -- I couldn't
21 testify that that's mine or someone else's.

22 Q You don't remember talking about this in your testimony
23 in this case, the totals?

24 A Yes, sir. I know we keep totals, yes, sir, every day.

25 Q And this was produced to us?

1 **A** Yes, sir. Obviously.

2 **Q** And the totals for each day -- this is for the month
3 of -- well, the days beginning July 30th going to September
4 2nd; is that correct?

5 **A** Yes, sir. That would be sent to our accounting for sales
6 tax purposes.

7 **Q** Yes, sir. And the sales totals on Plaintiff's Exhibit
8 No. 7 are only the totals for L-19, 20, 21, L-22 and L-23 and
9 L-24; is that correct?

10 **A** Yes, sir. They break them down probably into page-size
11 documents.

12 **Q** And Plaintiff's Exhibit No. 17 documents the sales on the
13 date of August 24, 2018, at L-20, L-21, and L-22; does it not,
14 sir?

15 **A** Yes, sir.

16 MR. McLEOD: At this time, I move 17 into evidence.

17 MR. THOMPSON: Your Honor, we object on relevance
18 grounds. Additionally, their matters are numbers that aren't
19 relevant at all to this case, whether lifeguard stand --

20 THE COURT: May I take a look at it?

21 MR. McLEOD: I think Your Honor has already ruled on it.

22 (Pause in the proceedings while the Court reviews
23 documents.)

24 THE COURT: I'm going to allow it. Thank you.

25

1 BY MR. McLEOD:

2 Q Now, Mr. Lack, the sales totals -- in addition to the
3 sales totals on a monthly basis, you keep reports of the total
4 sales in a given year and a given month; is that right?

5 A Yes, sir.

6 Q And you're required to do that per the contract with the
7 City. And you're also required to do that as a taxpayer; is
8 that correct?

9 A Absolutely, yes, sir.

10 Q All right. And --

11 (Plaintiff's Exhibit No. 18, 2018 Stand Totals, was
12 marked for identification.)

13 BY MR. McLEOD:

14 Q Let me show you Plaintiff's Exhibit 18. And these are
15 the stand totals for Lack's Beach Service for the year of
16 2018. Do you see that?

17 A Let me say, I assume that we do something similar to
18 this, but I'm not sure that this is the item.

19 Q Well, let's look. First off, these stands, 1st Street
20 through 31st Street, those are the same stands that we talked
21 about the ladies and gentlemen of the jury yesterday where
22 there weren't enough lifeguard-only's; isn't that true, sir?

23 A Yes, sir. I suppose that is. Okay. Yes, sir.

24 Q And then let's look further in Plaintiff's 18. This is a
25 letter, is it not, from Lack's Beach Service, by a lady named

1 Karen Holland?

2 A Right.

3 Q And is that a letter reporting the sales?

4 A Yes, sir.

5 Q Okay. And the letter indicates -- well, in addition,
6 there are tax filings done by your company; isn't that
7 correct, sir?

8 A Yes, sir.

9 MR. McLEOD: At this time, we'd move Plaintiff's 18 into
10 evidence, Your Honor.

11 MR. THOMPSON: Objection. Your Honor, we have -- there's
12 a lot of material in Exhibit 18 that is objectionable.

13 MR. McLEOD: We took out the emails and I took out 2019.
14 The only thing that's in there is 2018.

15 MR. THOMPSON: I have been handed 2019 materials. I have
16 also been handed --

17 MR. McLEOD: I took this out, and I took the emails out.

18 THE COURT: Can you show him exactly what you got in
19 there now?

20 MR. McLEOD: This is Exhibit 18.

21 THE COURT: I'm sorry. If you can let Mr. Thompson see
22 exactly what you're seeking to introduce.

23 (Counsel confers off the record.)

24 MR. THOMPSON: Your Honor, may we approach?

25 BENCH CONFERENCE

1 (The following bench conference was held outside the
2 hearing of the jury and others:)

3 MR. THOMPSON: Your Honor, I believe -- I don't know
4 where these documents came from. I don't believe these are
5 Lack's. These are -- this is, obviously, the stand totals.
6 The rest of those --

7 MR. McLEOD: He has to file local sales and use tax. And
8 these documents were produced to us. Maybe it's the City that
9 produced this to us. But those are his documents showing his
10 totals. And I think the Court -- Your Honor already ruled on
11 the finances in a motion in limine.

12 MR. THOMPSON: Sales tax documents, Judge, I mean, the
13 materials demonstrate whatever sales. The rest of those, I
14 don't believe those are Lack's documents. I believe that came
15 from the City and those are City documents.

16 THE COURT: Is there a reason you can't just introduce
17 this?

18 MR. McLEOD: Yes, because this has the \$489,000 of gross
19 revenues in the month of July, the same month -- I mean, of
20 2018.

21 MR. THOMPSON: July or August?

22 MR. McLEOD: July of 2018.

23 MR. THOMPSON: August is when it happened.

24 MR. McLEOD: This cross-examination -- this is about blue
25 and yellow, it's about feasibility, and it's about his motive,

1 and I have every right to go into this.

2 MR. THOMPSON: Your Honor, if he's talking about stand
3 totals in two-thousand -- I mean, in July, I mean, we're
4 really getting -- my understanding, with regard to the
5 financials, was from the date of loss, showing that there was
6 financial activity done that they may have been doing some at
7 the time.

8 THE COURT: So here's one June to July. And I think
9 there's one from July to August. This one is July 31st.

10 MR. McLEOD: Yes. And, specifically, that's the page I
11 can use. I can just move that in.

12 THE COURT: And then July 31st. This is for the period
13 ending August 31st, 2018. And that's for the period ending
14 September 30th. This was on August 24th?

15 MR. THOMPSON: Yes, Your Honor.

16 THE COURT: So your objection is to the July --

17 MR. THOMPSON: July and September. Those are not
18 relevant to anything that happened in August. Again, I'm
19 still objecting overall on the financial data and gross sales.
20 That's more of an argument for punitives. The issue simply
21 was the financials, what was happening on August 24, you know,
22 showing that there was financial activity. I understand your
23 ruling there, but when we get outside of August 24, you're
24 just throwing numbers in front of a jury.

25 MR. McLEOD: I could not disagree more.

1 THE COURT: I'm going to let it in because this looks to
2 me like it's limited to July, August, and September and that
3 these are only 2018.

4 MR. McLEOD: That's correct.

5 THE COURT: There's nothing in here pertaining to 2017.

6 MR. McLEOD: That's correct.

7 THE COURT: Or pertaining to any time after, it looks
8 like, the end of September of 2018.

9 MR. McLEOD: That's correct.

10 THE COURT: Thank you.

11 (Open court resumes as follows:)

12 MR. McLEOD: Your Honor, at this time, we'd move
13 Plaintiff's 18 into evidence.

14 THE COURT: It is admitted subject to -- of course your
15 objection is noted for the record, Mr. Thompson.

16 MR. THOMPSON: Thank you, Your Honor.

17 (Plaintiff's Exhibit No. 18 was received into evidence.)

18 BY MR. McLEOD:

19 Q So, Mr. Lack, first off, if you had beach concession
20 employees wearing blue shirts, they could generate revenue for
21 your company; could they not?

22 A I assume so.

23 Q And if you had professional lifeguards wearing yellow
24 shirts, they would not be making money for your company
25 because they would be in charge of public safety; is that

1 true, sir?

2 A Sir, the contract that I was operating under for all the
3 years I've been operating didn't call for anything like that.
4 And, so, for me to speculate on what could have been or would
5 have been, I'm just not comfortable doing that.

6 Q My question is: In your 40-plus years of experience,
7 have you ever heard of lifeguards making commissions on
8 performing public safety responsibilities?

9 A Yes, sir.

10 Q Making commissions on public safety responsibilities?

11 A No, sir.

12 Can I bring up one point to you?

13 Q I'd just ask you --

14 A I don't understand exactly what you're saying. The
15 County gets paid for everyone they transport. The police
16 department, they get revenues from jailing people. So I'm not
17 sure what you're trying to lead me into saying.

18 Q I'm not trying to lead you --

19 A Oh, yes, sir. You're trying to --

20 Q I'm just asking you, do you believe that lifeguards make
21 commissions on performing public safety responsibilities?

22 A We have never charged one person for wrapping up a cut
23 foot. We have delivered babies on the beach; we have never
24 charged for that. We have never charged for giving CPR. We
25 don't charge a surcharge for all the medical equipment that we

1 go through every year.

2 Q Yes, sir.

3 A No, sir, we don't charge for public safety.

4 Q And that's what I thought. I just wanted to make sure I
5 understood.

6 And so, if we look at the stand totals, the first page
7 of Plaintiff's 18, by each stand, beginning with L-27 at the
8 top, you have stand totals for the year; do you not, sir?

9 A Sir, on -- yes, sir.

10 Q Okay. And so, for every lifeguard tower, there are
11 revenues that total \$1,520,918 for the fiscal year 2018; isn't
12 that true, sir?

13 A So this is for the whole season?

14 Q These are stand totals for 2018.

15 A Yes, sir, that very well could be the price, yes.

16 Q And when you say "the season," describe for the ladies
17 and gentlemen of the jury what you mean by "the season."

18 A Our contract requires us to open up by April 15th --

19 Q Yes, sir.

20 A -- with 20 percent of our full-time staff and that -- so
21 we normally do try to open up around April -- by April 15th.

22 Q Yes, sir.

23 A We're asked to stay open through the last day of
24 September. So these figures would represent, basically, June
25 1st through Labor Day weekend.

1 Q So that would be all of June, that would be all of July,
2 that would be all of August, and basically all of September?

3 A A normal prime season is 100 days, yes, sir.

4 Q All right. And so, in order for the beach service
5 company to make its money, it's got to make it in that
6 four-month window; isn't that true, sir?

7 A No, sir. April, we make money. If the weather is
8 pretty, we open in March with lifeguards. There's revenues to
9 pay the lifeguards. If we stay open in October, there's
10 revenues to pay the lifeguards.

11 Q Would you agree with me, sir, that the vast majority of
12 your company's revenues are derived from sales made in June,
13 July, August, and September?

14 A Yes, sir, I would.

15 Q Okay. Now, on Plaintiff's 18, there is an LGO stand at
16 3rd Avenue; do you see that?

17 A Yes, sir.

18 Q And there's zero revenue; isn't that right, sir?

19 A Correct.

20 Q In fact, for each LGO stand, there's zero revenues; isn't
21 that right, sir?

22 A Yes, sir.

23 Q So if you had all yellow shirts, the total at the bottom
24 of this page would be zero; wouldn't it, sir?

25 A Yes, sir.

1 Q Okay.

2 A And then that would turn that into a taxpayer event.

3 Q Now, let me show you -- you have this? I'm going to get
4 it for you. All right. This is a page of Exhibit 19, and
5 this is a state sales and use tax summary. If you'd share
6 with the ladies and gentlemen of the jury the dates captured
7 in that sales and use tax summary. At the top, does it say
8 July 31, 2018, and it needs to be filed by August 20 of 2018?

9 A Yes, sir.

10 Q Okay. And these totals would be the sales for the month
11 of July 2018; isn't that true, sir?

12 A Yes, sir.

13 Q Okay. And so, in the month of July, the company
14 generated \$489,516.06 in revenue from the lifeguard towers
15 where the City required lifeguard protection; isn't that true,
16 sir?

17 A Yes, sir.

18 Q All right. Now, I want to visit with you about another
19 option that was available to you. Going back to -- again, you
20 can have a blue shirt and you can have a yellow shirt;
21 correct?

22 A That's your statement, sir.

23 Q I want to just work through a couple of numbers. The
24 month of July has how many days, sir?

25 A Thirty-one.

1 Q Okay. And in the month of July, if you manned 31
2 lifeguard towers and you had blue shirts that were paid \$8 an
3 hour or \$10 an hour, could you compute for us with a
4 calculator how much that would cost your money?

5 A No, sir, because that's not how we pay.

6 Q Well, tell me how y'all pay. We'll do it exactly the way
7 you do it.

8 A If it were a beach concessionaire, it had no lifeguard
9 duties, they would get paid commission by the rentals that
10 they, just like the dual lifeguards do.

11 Q So it wouldn't cost you anything?

12 A Pardon me, sir?

13 Q Well, if -- my question is, if you have a blue shirt and
14 he or she is hired to be a beach attendant, you could pay them
15 an hourly wage --

16 A Right.

17 Q -- or, according to you, you could pay them a commission?

18 A Right.

19 Q So if you paid them a commission, then you'd never have
20 to take a dollar out of your pocket because they're taking the
21 cut out of the dollar that goes in your pocket; isn't that
22 correct?

23 A I guess in a world where your business model works that
24 way, but in our business model where we're spending \$350,000
25 to \$500,000 a year on beach equipment plus the insurance plus

1 everything that a normal business would have to pay, no, sir.
2 At the end of the day, if they take a dollar, I don't put 99
3 in my pocket, no, sir.

4 Q You have to have -- in 2018, you had to have 11
5 supervisors; is that right, sir?

6 A Yes. As best I remember, yes.

7 Q And the supervisors are paid approximately \$600 a week;
8 is that right?

9 A They're paid more than that. It's basically about
10 \$42,000 a year.

11 Q Okay. \$42,000 a year.

12 And \$42,000 a year divided by 12 months out of the year
13 totals much a month?

14 A Can we also put in there equipment?

15 Q I want you to put in whatever --

16 A I'm going to let you do that. Okay? I'm going to let
17 you do that.

18 Q Yes, sir.

19 A Okay. So for a manager --

20 Q Supervisor. Let's start there. For the 11 supervisors.

21 A Well, part of them are managers, but they also supervise.
22 They supervise the supervisors, and they supervise the
23 lifeguards.

24 Q Okay.

25 A Okay. So a manager, okay, he's driving a truck that's no

1 older than three years old. Department of Transportation
2 certified, so the salt and wear and tear of trucks on the
3 beach determine we trade them every three years. He's going
4 to have all the rescue equipment he needs. He's going to have
5 a defibrillator, a Stokes basket, backboards, oxygen units,
6 advanced first aid kits, two-way radios in the truck, two-way
7 radios to take personally, laptop computers. So, no, sir,
8 your 24,000 doesn't come to touch it.

9 Q My question, sir, is the labor cost.

10 A That's what I'm talking about.

11 Q The labor cost that you -- the wage that you pay the blue
12 shirts, that's what I want to understand.

13 A I don't pay the blue shirts. But let's say,
14 hypothetically, if I did --

15 Q Does John's Beach Service pay the blue shirts?

16 A I have no idea what John's Beach Service does.

17 Q Are you sure about that?

18 A Pretty much. I don't meet with those guys regularly.
19 I'm busy. They're busy. We all go by the City contract. So
20 whatever the City contracts calls for John's Beach Service to
21 do, then I rest assured that the City waterfront director is
22 making sure that they're doing that.

23 Q John's Beach Service is the other franchisee in the
24 contract that we showed the jury yesterday; are they not?

25 A Yes, sir.

1 Q Isn't it true, sir, that, at John's Beach Service, he has
2 blue shirts and yellow shirts?

3 MR. THOMPSON: Objection, Your Honor.

4 A No, that's not true.

5 THE COURT: Hang on just a minute.

6 MR. THOMPSON: Relevance and foundation.

7 THE COURT: I'm going to sustain that.

8 A In 2018 -- is that what we're talking about? 2018,

9 BY MR. McLEOD:

10 Q Let's do it this way.

11 A No, sir. You're confusing me between past and future.

12 Q Past and future?

13 A Yes, sir. We're here to talk about the past, I assume.

14 Q What I'm trying to understand and I want this jury to
15 understand is the feasibility of having blue shirts and yellow
16 shirts and the money that you still would have made had you
17 run the operation that way. Let's just --

18 A Sir --

19 Q -- work through.

20 If you'd let me ask the question and you answer, sir.

21 How much did the supervisors make in 2018?

22 A I could not tell you to a number.

23 Q Okay. How much did the LGOs make in 2018?

24 A I can't tell you to that number. It was over \$700 a
25 week.

1 Q Okay. So the LGOs are \$700 a week. And you're required
2 to have how many LGOs?

3 A One per every six lifeguards.

4 Q And so how many LGOs is that through the tower system?

5 A It would have been seven or eight, as best I figured.

6 Q Do you want to use eight?

7 A Okay. Yes, sir.

8 Q And you can check my math.

9 A I have no idea what you put in there, sir.

10 Q Tell me how much they make, sir.

11 A No, sir. I'm not going to do that. You do that.

12 Q You do have to do what I ask you to do, sir. You have to
13 answer to this, with all due respect.

14 A I'm dyslexic, and I could make all kinds of mistakes.

15 Q How much do the yellow shirts make?

16 A A percentage.

17 Q The yellow shirts make a --

18 A They're dual-role lifeguards, sir.

19 Q So the LGOs make a commission on the sales?

20 A All lifeguards wear yellow shirts. There's no
21 differentiation between the lifeguards and the LGOs.

22 Q So you pay your LGOs a commission?

23 A No, sir.

24 Q Okay. So how do you pay them?

25 A They make a daily wage.

1 Q And what is the daily wage?

2 A At that time, I couldn't tell you. The daily wage has
3 changed since 2018. I could not give you an accurate answer.

4 Q What's the daily wage now?

5 A I think it's \$135 a day.

6 MR. THOMPSON: Objection, Your Honor. Relevance.

7 THE COURT: Hang on just a minute.

8 You're objecting to the daily --

9 MR. THOMPSON: -- wage now.

10 THE COURT: That's sustained.

11 BY MR. McLEOD:

12 Q So you're telling this jury that you don't know how much
13 the lifeguard-onlys were paid in 2018?

14 A I can give you an assumption.

15 Q And what is that?

16 A I would say probably \$120.

17 Q For?

18 A A day.

19 Q A day. Okay.

20 So let's do seven LGOs for a 30-day month --

21 A Let's do it for a seven-day week.

22 Q Seven-day week.

23 So you have got seven LGOs, and you have got -- what is
24 the wage per day?

25 A Again, let's -- \$120.

1 Q \$120 per day. All right.

2 And you want to use a 31-day month or a 30-day month?

3 A No, sir. You did, sir. I said a seven-day week.

4 Q Okay. So a seven-day week, all right, times four weeks

5 is what?

6 A Well, there's basically 13 weeks in the regular season.

7 Q Would that be 28 days? Seven-day week, okay --

8 A Sir, I guess it would depend on if it was a 30-day month

9 or a 31-day month.

10 Q Are there four weeks in a month?

11 A That's a general thumb, unless it's February.

12 Q Okay. And if they make \$120 a day --

13 A In seven days.

14 Q And you want to do a seven-day week.

15 A Yes, sir.

16 Q Okay. How many days are there in a month?

17 A It depends on the month.

18 Q Can we use a 30-day month?

19 A Yes, sir.

20 Q Okay. So at 30 days at -- and you have got 30 days and

21 they work an eight-hour day; is that right?

22 A Yes, sir.

23 Q So you have got 30 days times an eight-hour day gives us

24 240 labor hours; is that correct?

25 A Yes, sir. Okay.

1 Q Okay. And --

2 A Not in a week.

3 Q That is per day.

4 A Yes, sir.

5 Q Because you have 30 days --

6 A Yes, sir.

7 Q -- that you're paying them the daily rate of \$120; is

8 that right?

9 A Yes, sir.

10 Q Okay. And, then, if we take that daily rate and multiply

11 it times 30 days, what do we get?

12 A \$7200.

13 Q Okay. All right. And that would be the labor for the

14 LGOs in a month at a daily rate of \$120; isn't that correct?

15 A No, sir. See --

16 Q I want you to do the math because I don't want to be

17 wrong.

18 A Oh, okay.

19 Q I mean, you know, the numbers are what they are, sir.

20 A Well, yes, sir, I know, but the way you ask your

21 questions are extremely confusing.

22 Q Well, let's do it this way --

23 A No, let's do it this way.

24 Q \$120 a day. Do you agree with that?

25 A According to my math, \$120 a day would be \$840.

1 Q \$840 in a week?

2 A That would be for a day with eight.

3 Q Okay. 840?

4 A 840.

5 Q So \$840 a day would be the total labor costs for all the

6 LGOs across the tower system; is that correct, sir?

7 A I'm trying to figure out your computer. All right, sir.

8 Unless I have made a mistake, if I have eight LGOs and it's

9 \$120 a day, it's \$960 per day.

10 Q So \$960 per day in costs for the LGOs; is that right,

11 sir?

12 A Yes, sir.

13 Q Now, let's multiply 960 times a 30-day month. Could you

14 do that for the jury, please sir?

15 A Yes, sir. You're coming up to \$28,800.

16 Q \$28,800. Okay.

17 Now, the supervisors, do they get paid a salary or do

18 they get paid on a commission basis?

19 A They get commission plus bonus.

20 Q Okay. So let's just assume a different world where we

21 had the tower system completely occupied with lifeguards.

22 Okay? And those lifeguards' wages were \$120 per day.

23 A You couldn't hire lifeguards for \$120 a day.

24 Q How about a beach attendant? Could you hire a beach

25 attendant for \$120 a day?

1 A They make commission.

2 Q Let's do it that way. If you have a beach attendant at
3 all 31 stands. Okay?

4 A Just --

5 Q No, sir. If you have beach attendant at all 31 stands --

6 A Let me --

7 Q Yes, sir.

8 A There's not 31 stands at Lack's Beach Service. At Lack's
9 Beach Service, there's probably 27.

10 Q Okay. 27 stands?

11 A Yes, sir.

12 Q All right. If you have 27 stands and you have a beach
13 attendant at all 27 stands, so the lifeguard can perform his
14 or her job, how much would that cost? 27 stands --

15 A Well, it would depend on the commission.

16 Q 27 stands.

17 A Yes, sir.

18 Q At 960 -- how many a day?

19 A No, sir. You can't hire lifeguards for \$120 a day.

20 Q Tell me how, if you had the beach attendants, how much it
21 would cost you per those 27 stands to put the blue shirts on
22 the ground so that the yellow shirts can do their job?

23 MR. THOMPSON: Objection, Your Honor. Relevance and
24 foundation. Are we talking about now or in 2018?

25 MR. McLEOD: 2018. That's fine.

1 THE COURT: I'm sorry. Did you say 2018?

2 MR. McLEOD: Yes, sir [verbatim].

3 THE WITNESS: Your Honor, can I speak?

4 THE COURT: Well, your attorney has made an objection on
5 relevance, and I guess I'm going to ask you to -- you're
6 asking him to speculate a fair amount.

7 THE WITNESS: Yes.

8 THE COURT: So I'm going to ask you to --

9 MR. McLEOD: Yes, Your Honor.

10 THE COURT: -- wrap this up on this point.

11 MR. McLEOD: Okay.

12 BY MR. McLEOD:

13 Q If you had 27 stands --

14 A Can I say something that may not be relevant at all?

15 Q You can say whatever you'd like, sir.

16 A And then you can go on there from.

17 Q You can say whatever you'd like.

18 A I was invited to an executive session to the City Council
19 probably in 19 -- excuse me, in 2004 or '5, and Councilman
20 John Charles asked me to be prepared to talk to them about the
21 City of Myrtle Beach taking over the lifeguard system. So
22 when we went in the executive session, I was asked about that.
23 And the numbers that they had asked me to work with was that
24 if -- hypothetically, if the City hired the lifeguards and the
25 machinery and the equipment to work the lifeguards and if they

1 used the same basic numbers that we were using at that time,
2 which was around 75 lifeguards in the city limits of Myrtle
3 Beach proper, that what, by my math, would that have been.

4 I solicited the City's budget director to help me with
5 that program. We presented the facts that it would cost the
6 City over two-and-a-quarter-million dollars to perform the
7 service. They asked me, in turn, to also bring in, which I
8 voluntarily did, P&Ls for three years.

9 Q Okay.

10 A And if the City of Myrtle Beach charged me 40 percent of
11 my gross, it still wouldn't pay the City's expenses on the
12 lifeguards.

13 Q So is it your testimony that the City of Myrtle Beach
14 cannot afford to provide lifeguard protection and that's why
15 that privilege was given to you?

16 A No, sir. My testimony is just what I said. You know, I
17 was asked to do something as a beach service operator in the
18 City of Myrtle Beach, and I did that.

19 Q So I'm going to wrap this up. If you would just please
20 do this math for the ladies and gentlemen of the jury. Okay?
21 If you have 27 stands throughout the tower system --

22 A Yes, sir.

23 Q -- and there is an eight-hour day for each stand --

24 A Yes, sir.

25 Q -- that equals 216 hours that beach attendants would work

1 those stands; isn't that correct, sir? In a day. Those are
2 216 hours in a day.

3 A I'm not doing the math, sir, but I'll give you the honor
4 of going with your numbers.

5 Q Okay. And, then, if you take the 216 and you multiply
6 that times 30 days, that gives us \$6,480; isn't that right,
7 sir? If you want to do the calculations --

8 A But what are we talking about?

9 Q We're talking about the answers to my questions, sir.

10 A Yes, sir, but it's so convoluted now, I'm not sure. Can
11 you re-ask the question?

12 Q Okay. So there are 27 towers; is that right, sir?

13 A Yes, sir.

14 Q And they all have eight-hour days if they were beach
15 attendants; isn't that right; sir?

16 A It would seem so, yes.

17 THE COURT: Mr. McLeod, will you angle your easel so that
18 Mr. Lack can see what you're writing? I think that might make
19 it a little more clear.

20 BY MR. McLEOD:

21 Q So there are 27 stands, eight hours per day.

22 A Yes, sir.

23 Q That gives you 216 hours of labor in a given day across
24 27 stands; isn't that correct?

25 A As your computer says, yes.

1 Q Now, if we multiply those hours per day times a 30-day
2 month, what do we get? How many hours per month would the
3 beach attendants be working along the tower system?

4 A Your number: 6,480.

5 Q Do you want to check my math, sir?

6 A No, sir. Again, I honor you.

7 Q Okay. Now, what do you believe a fair wage would be for
8 a beach attendant?

9 MR. THOMPSON: Objection.

10 THE COURT: I'm going to allow that question, but thank
11 you.

12 A It would be somewhere between 17 and 20 percent of the
13 gross.

14 BY MR. McLEOD:

15 Q I'm asking you, sir --

16 A Sir, how do I figure when it's a 17 or 20 percent of the
17 gross?

18 Q If we assigned a \$10 hourly wage --

19 A But, sir, that's not how they're paid.

20 Q If we assign a \$10 wage for the blue shirt, what's the
21 total cost in that one month?

22 MR. THOMPSON: Objection, Your Honor.

23 BY MR. McLEOD:

24 Q Doesn't the math come out to \$6,480?

25 MR. THOMPSON: Objection.

1 THE COURT: Okay. The objection is sustained. This
2 sounds like great argument for closing. Again, you're asking
3 him to speculate, and so I'm going to ask you to move on.

4 BY MR. McLEOD:

5 Q Mr. Lack, what is 489,000 minus 64,800?

6 A Can I propose a different scale that we may be able to
7 get through this portion?

8 Q What is 489,000 --

9 A Sir, you'll have to do the math.

10 Q -- minus 64,800? Is it \$424,200?

11 A There's nothing on the screen.

12 Q You don't see that, sir?

13 A Well, I did but it went off. 424,200, yes, sir.

14 Q So the company would still net over \$400,000 if they had
15 blue shirts in the tower system and on the beach concessions;
16 isn't that right, sir?

17 MR. THOMPSON: Objection, Your Honor.

18 A I can't speculate that, because that's a hypothetical
19 situation, sir.

20 BY MR. McLEOD:

21 Q Now, Mr. Lack, isn't it true, sir, that, in another
22 proceeding, you took the position that your employees
23 performed beach concession responsibilities 99.995 percent of
24 the time?

25 MR. THOMPSON: Objection, Your Honor.

1 THE COURT: This is pertaining to the order we spoke
2 about yesterday?

3 MR. THOMPSON: Yes.

4 THE COURT: You're going to have to lay a foundation for
5 that.

6 MR. McLEOD: I was using it first for impeachment
7 purposes to see what his answer was, and if we -- if you want
8 to do it outside the presence of the jury, I'm happy to, Your
9 Honor.

10 THE COURT: Let's take a short break. Ladies and
11 gentlemen, please don't begin discussing the case.

12 (The jury exited the courtroom at 10:03 a.m.)

13 THE WITNESS: Your Honor, can I speak to you off -- this
14 has nothing to do with this.

15 THE COURT: Yeah, let's let the jury --

16 THE WITNESS: Oh, I'm sorry. My conscious is bothering
17 me; I have been directly exposed to COVID on three occasions
18 within the last four days. Would I be better to wear a mask?

19 THE COURT: That would be fine. At this point, I think
20 if there's anybody who hasn't been exposed to COVID in the
21 last three days --

22 MR. TRAINOR: (Overlapping conversation) -- unicorn.

23 MR. THOMPSON: We're not concerned about you putting it
24 on now after having --

25 THE WITNESS: Well, I have apologized to this lady

1 already. I just wanted to make you aware.

2 THE COURT: Sure.

3 Okay. So if you want to go ahead and state your
4 objection.

5 MR. THOMPSON: Your Honor, this is what we addressed
6 yesterday. This is a 1994 -- that's when it started, and
7 Lack's agent submitted an application for workers' comp
8 concerns and submitted it with a co-designation -- I can't
9 remember exactly what it is. Let's say 8,000. That was the
10 same code designation that Lack's had been paying comp for 17
11 years prior to that.

12 The new insurance company looked at it and said, "We
13 don't agree with that," and then challenged it. And so, then,
14 after that, there was a discussion -- a litigation about what
15 the designation for insurance workers' comp purposes,
16 obviously, to determine, frankly, what they're exposed to.
17 Are they exposed to lifeguard risks? Are they exposed to
18 concession risks? And it's more for the purposes of insurance
19 company's ratings to determine whether and how they should
20 underwrite Mr. Lack's service and trying to find out what they
21 were doing on a full-time basis.

22 Now, in the course of that litigation, of course, if
23 you think about one of the things that the lifeguards do is
24 they're constantly moving equipment, they're constantly
25 pushing lifeguard towers up and back, they're seating

1 umbrellas, they're doing a lot more physical activities with
2 regard to their beach concession concepts as opposed to the
3 lifeguarding concepts. Where are you going to be at risk as a
4 lifeguard sitting on a stand?

5 The only opportunity for risk on a lifeguard is workers'
6 comp is that in a rescue or a saving. Well, that doesn't
7 happen that often. It happens very little. And I think that
8 was the argument and that was the concept there. Generally
9 speaking, the beach attendants -- the lifeguards, they
10 were more exposed to the risk of being injured during the
11 times that they were doing beach concessions than they would
12 be injured during the times they were a lifeguard.

13 Now, that was litigated. At the end of the day, the
14 insurance company got an order in 2002 saying that they should
15 be underwritten as a lifeguard, and that's the way it's been
16 underwritten ever since.

17 So I don't understand what that gets anybody anywhere in
18 this case with regard to what they are and what they do. This
19 was an insurance company's issue and an insurance company's
20 rating and underwriting issue that brought this to the
21 forefront.

22 So I don't know how, you know, the cross-examination or
23 impeachment or anything else for something that happened back
24 in 1994 that was ultimately resolved in 2002 and ever since --
25 and, obviously, in 2018, the workers' comp has all been

1 lifeguards.

2 THE COURT: I guess where I'm struggling with is you --
3 you said you want to use it for impeachment purposes, but you
4 haven't asked him yet anything about how lifeguards spend
5 their time.

6 MR. McLEOD: If I could -- I have been patient with most
7 of his objections. I just want to move the case along. Okay?

8 THE COURT: And I would join in that. But, again, when
9 you're impeaching somebody, you ask them a question, you get
10 an answer, and then you go to impeach them with a prior
11 statement. Where's the question that you've asked him that
12 you're now going to impeach him with?

13 MR. McLEOD: The issue before this Court -- everything
14 that I have shared with Your Honor last week, I have proven.
15 Okay? And they sold you a bill of goods that is not what they
16 said it was. The issue of whether or not these are lifeguards
17 or beach concessionaires is a critical issue of fact in this
18 case. Now, our Supreme Court said --

19 THE COURT: I don't need you to lecture me about the
20 entire case. All I'm saying is, you have to ask him a
21 question first, and then, if you don't like the answer, then
22 you can impeach him with it.

23 MR. McLEOD: Okay. So I'm going to ask him: Isn't it
24 true, in another proceeding, you took the position that these
25 employees performed concession duties 99.995 percent of the

1 time? And our courts -- Supreme Court --

2 THE COURT: And all I'm saying, Mr. McLeod, is before you
3 ask that, you first have to ask him how much time do you think
4 they spend doing concessions versus lifeguarding.

5 MR. McLEOD: Okay. Fair enough.

6 And just for the Court's benefit, you know, we have every
7 right to move for a directed verdict on that issue of fact
8 under the doctrine of judicial estoppel, which was adopted by
9 our Supreme Court in *Hayne v. Bailey*.

10 THE COURT: And I'm very familiar with judicial estoppel.

11 MR. McLEOD: And we're not even asking for that.

12 THE COURT: However, this is not exactly the same thing,
13 and I understand. You know, you can't plead guilty to a DUI
14 and then come in a civil trial and say, I wasn't the driver.
15 That's judicial estoppel. It's got to be the same set of
16 facts.

17 So I'm going to allow you to cross-examine him with it
18 or to impeach him with it, depending on what his answer is,
19 and then we'll go from there. And then you have the right,
20 when you are doing your cross-examination, to go into anything
21 about how you think this is apples and oranges or however you
22 want to address it.

23 Anything else that we need to address?

24 MR. McLEOD: No, Your Honor.

25 THE COURT: Okay. We're ready for the jury.

1 (The jury entered the courtroom at 10:11 a.m.)

2 THE COURT: Yes, sir.

3 BY MR. McLEOD:

4 Q Mr. Lack, you have been involved in another proceeding
5 that related to workers' compensation premiums; is that
6 correct?

7 A Yes, sir.

8 Q And, in that proceeding, the workers' comp premium for a
9 lifeguard was higher than the workers' comp premium for a
10 beach attendant; isn't that correct, sir?

11 MR. THOMPSON: Objection, Your Honor. May we approach?

12 THE COURT: Sure.

13 BENCH CONFERENCE

14 (The following bench conference was held outside the
15 hearing of the jury and others:)

16 MR. THOMPSON: I thought Your Honor said he needed to
17 establish a foundation and ask him how many hours or what the
18 percentage was, and he's gone right into --

19 MR. McLEOD: I'm laying a foundation.

20 MR. THOMPSON: He didn't ask the first question.

21 THE COURT: I'm not trying to tell you how to do your
22 case, but, again, you haven't asked him first how much time do
23 you think --

24 MR. McLEOD: Okay.

25 (Open court resumes as follows:)

1 BY MR. McLEOD:

2 Q Mr. Lack, how much time do you think your employees spend
3 performing lifeguard services as compared to performing beach
4 concessions?

5 A They're lifeguards all day from 8:00 to 5:00, so there's
6 nothing to keep them from being a lifeguard at any time.

7 Q My question, sir, is: How much time -- percentage of
8 time do your lifeguards lifeguard compared to the percentage
9 of time that they do beach concessions?

10 A Sir, when we -- we're required to be on the beach by
11 8:00, put a flag up, pull the lifeguard stand down, and put
12 our rescue equipment on that stand. Until that point until we
13 actually have a blow-down situation or where we notify the
14 people on the beach that we're leaving at 5:00, they are
15 considered to be lifeguards.

16 Q So it's your testimony that your employees perform
17 lifeguard responsibilities 100 percent of the time; is that
18 right?

19 A They have a responsibility to perform lifeguard duties
20 100 percent of the time.

21 Q Okay. Isn't it true, sir, that you took the opposite
22 position in another proceeding?

23 A No, sir.

24 Q It's not true?

25 A No, sir.

1 Q You were involved, sir, were you not, in a matter that
2 involved workers' compensation premiums; is that right?

3 A Yes, sir, I was.

4 Q And the premium for a beach concession employee is lower
5 than the premium for a lifeguard; isn't that correct, sir?

6 A Yes, sir.

7 Q And, in fact, you challenged that and believed that your
8 employees were being charged a higher premium than what you
9 wanted to pay. And I think it was roughly \$26,000 more. Do
10 you remember that?

11 A Oh, yes.

12 Q Okay. Now, right here, you are the appellant in this
13 matter; correct? Your other wholly owned company. And could
14 you read for the ladies and gentlemen of the jury the
15 highlighted portion right here?

16 MR. THOMPSON: Objection, Your Honor.

17 THE COURT: And your objection is noted for the record.
18 I'm going to allow it. Thank you.

19 BY MR. McLEOD:

20 Q If you would just....

21 A It says, "Appellant, however, argues that its employees
22 perform their beach chair concession duties 99.995 percent of
23 the time and that the lifeguard duties only have the potential
24 to be performed 0.0047 percent of the time." Is that it?

25 Q Yes, sir.

1 **A** Okay.

2 **Q** And that was, in fact, the position you took in that
3 proceeding as it related to the workers' compensation
4 premiums; isn't that correct, sir?

5 **A** Yes, sir.

6 MR. McLEOD: Those are all the questions I have, Your
7 Honor.

8 THE COURT: Do you need a minute before you...

9 MR. THOMPSON: Yes, Your Honor. May we take a break?

10 MR. McLEOD: Thank you, Mr. Lack.

11 THE WITNESS: Yes, sir.

12 THE COURT: Ladies and gentlemen, I know we just sent you
13 out, but we're going to break for about ten minutes before we
14 start back with Mr. Lack. Again, please don't begin
15 discussing the case yet.

16 (The jury exited the courtroom at 10:16 a.m.)

17 THE COURT: Mr. Lack, you are welcome to take a break as
18 well. If you'll just remember, you're still under oath, so
19 don't discuss your testimony with anyone, but you're welcome
20 to take a break as well.

21 THE WITNESS: Thank you.

22 (A brief recess was taken at 10:17 a.m.)

23 MR. McLEOD: Your Honor, could I put one thing real quick
24 on the record?

25 THE COURT: Sure.

1 MR. McLEOD: Plaintiff's 18 were the stand totals for
2 2018. It was about a 15-page document. I have only used two
3 of those pages in front of the jury, so I have just taken out
4 all those other pages, and we're just going to move into
5 evidence the two pages that I used for the jury.

6 THE COURT: You've taken a look?

7 MR. THOMPSON: Yes, sir [verbatim].

8 THE COURT: Okay. That's fine.

9 MR. THOMPSON: Over my prior objections.

10 THE COURT: Yes, sir. Absolutely.

11 MR. THOMPSON: Thank you, Your Honor.

12 (A brief recess was taken at 10:18 a.m. to 10:28 a.m.)

13 THE COURT: Okay. Are we ready for the jury?

14 MR. THOMPSON: Yes, Your Honor.

15 (The jury entered the courtroom at 10:28 a.m.)

16 THE COURT: Okay. Mr. Thompson?

17 MR. THOMPSON: Yes, Your Honor. May it please the Court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. THOMPSON:

21 Q George, I'm going to stand over here while I ask you some
22 questions so that I know I can hear you, you can hear me, and
23 I know the jury can hear us. Okay?

24 A Yes, sir.

25 Q Now, George, I want to go back and first talk about you.

1 Can you tell this jury -- you said you came here in 1956. How
2 old were you?

3 A I was six years old.

4 Q And you came here to Myrtle Beach how or why?

5 A My father had just gotten -- after World War II, he moved
6 from the Navy to the Air Force, and we were stationed in
7 Lubbock, Texas, and he got transferred to Myrtle Beach when
8 they reopened the Air Force base.

9 Q And did you go to school in the Myrtle Beach area?

10 A Yes, sir, I did.

11 Q Where did you go to school?

12 A Myrtle Beach Elementary, Junior High, High, and Coastal
13 Carolina.

14 Q And, then, tell the jury about how long you have been on
15 the beach.

16 A I was fortunate enough to get a summer job when I was 14
17 as a -- what was referred to back then as a beach monkey, and
18 I assisted the lifeguard in his activities during the day.

19 Q And just continue, describe on a going-forward basis
20 until we get to today.

21 A Wow. I did that for two summers. I went out. I went to
22 -- this Air Force base had two pools. I went and took
23 swimming lessons when I was 13. I guess, when I turned 16, I
24 went through a senior lifesaving course, which, at that time,
25 qualified me to work for a beach service. And Vernon Penner

1 owned the beach service that I went to work for, and my first
2 location was Myrtle Beach State Park.

3 Subsequent years, I worked during the summers on the
4 beach, managed the beach service in 19 -- I just lost my
5 train -- in 1969, 1970, and '71. I was married in '71 and
6 moved to Columbia, South Carolina. Was living in married
7 housing. My wife was aspiring to be a schoolteacher. I
8 basically missed the beach so bad that she agreed to move in
9 with a cousin in Columbia and finish her education. I came
10 back to Myrtle Beach and went to work for the City of Myrtle
11 Beach.

12 And I was commissioned and assigned to the Beach Patrol from
13 1972 to February of 1974. I had the opportunity at that time
14 from Mr. Vernon T. Penner, who owned what is now Lack's Beach
15 Service, in the south end of Myrtle Beach, to go into business
16 with him. In the area of Shore Drive, between the City of
17 Myrtle Beach and North Myrtle Beach, was starting to build,
18 and he had been invited to put a beach service in that area,
19 and we became partners in that in 1974.

20 Q And how old were you then, George?

21 A Twenty-four.

22 I ran North Beach Service from the summer of '74, and,
23 then, in the winter of '79, Mr. Penner had been appointed to
24 be the grandmaster of the Masonic Lodge for the State of South
25 Carolina, and he didn't feel like he could carry out his

1 duties for both institutions, so he asked me if he thought .
2 that I could come up with the revenues to purchase that Beach
3 Service.

4 We met with several bankers. Finally, a banker agreed,
5 if I could get personal references, that he would consider
6 doing an SBA loan where the bank didn't have all the risks
7 themselves. I was introduced to Senator Strom Thurmond and
8 spent several afternoons with him, and he wrote my
9 recommendation to the SBA, and I was able to obtain the funds
10 to purchase Lack's Beach Service in June of 1979.

11 Q And, George, I want to close the loop. We're all, I
12 think, interested: Did you get your wife back from Columbia?

13 A Yes, I did. I'm sorry; I'm being self-centered. She
14 returned after graduating from the University of South
15 Carolina and become a schoolteacher in North Myrtle Beach.
16 And we -- and she would help me in the summer with the
17 businesses. And then --

18 Q George, how long have you been married?

19 A In my first life, I was married 31 years.

20 Q And your second life?

21 A Twenty-one.

22 Q If you'll continue. In '79, you purchased Lack's Beach
23 Service?

24 A Lack's Beach Service, yes, sir.

25 Q And then tell the jury how the business has expanded over

1 time.

2 A Probably -- in North Beach Service at that time, I think
3 they had nine employees. Lack's Beach Service had probably
4 16. With -- with Lack's Beach Service came the -- to the
5 south of the city limits of Myrtle Beach to the north city
6 limits of Surfside. There were several campgrounds. There
7 was Pebble Beach Campground, Pirate Land Campground, Myrtle
8 Beach State Park, the Lakewood Campground, and Ocean Lakes
9 Campground. Ocean Lakes was pretty much under construction,
10 but we guarded those areas. We started expanding and guarding
11 those areas also.

12 And, at that point in time, the campgrounds, really
13 couldn't support lifeguards, so they paid a subsidy each week
14 for us to keep the lifeguards down in those areas.

15 Later on, fast-forwarding a number of years, a
16 gentleman had a lifeguard service that got in trouble with the
17 police and had to serve a period of time in jail, and we
18 acquired his area, which would have been from 2nd Avenue North
19 to 14th Avenue North, which would have been another 12
20 lifeguards.

21 And when the Marriott hotel and the Marriott Ocean
22 Watch condominium complexes became permitted, they basically
23 had the right to choose whom they wanted to be added to the
24 franchise in that area because, at that point in time, before
25 renourishment, they still controlled to the mean high-water

1 mark, is where there were never any eastward irons given to
2 the properties. They only had westward irons. So we were
3 chosen to take that area, and we still operate there today.

4 And then, with the Shore Drive area, we go -- except
5 for the residential area of Briarcliff, we go to the south
6 city limits of Myrtle Beach.

7 Q Now, George, we talked about the lineup earlier. That
8 area of beach, I think you mentioned, was about two and a half
9 miles; is that right?

10 A Yes, sir.

11 Q And, in 2018, was Lack's also responsible for other areas
12 of the Myrtle Beach beach area, if you will?

13 A Yes, sir. Going south, everything to the south -- to the
14 north city limits of Surfside. And once you went up to 82nd
15 Avenue, we were responsible for everything from there to the
16 south city limits of North Myrtle Beach.

17 Q And, again, we have seen the franchise agreement, and
18 we'll talk about that more in a bit. The franchise agreement
19 you had in 2018 was with the City of Myrtle Beach; is that
20 correct?

21 A Yes, sir. I had one with the City of Myrtle Beach and
22 Horry County.

23 Q And you jumped my question.

24 A I'm sorry, sir.

25 Q That's all right. In 2018, you also had agreements with

1 Horry County?

2 A Yes, sir, I did.

3 Q To provide lifeguard services for Horry County's beaches?

4 A The unincorporated areas.

5 Q And the work that you did for Horry County in 2018 and
6 the contracts you had with Horry County in 2018, those
7 included dual-role lifeguards; is that correct?

8 A Yes, sir. Pretty much the contracts were identical.

9 Q So you were providing the same services for Horry County
10 as you were providing for the City of Myrtle Beach in 2018?

11 A Yes, sir.

12 Q Okay. Now, George, I want to work through, I think in
13 mostly reverse chronological order, some of the things that
14 you were talking about with Mr. McLeod. Okay?

15 A Yes, sir.

16 Q And we'll start at the end, and you were being asked
17 questions about a dispute that you had or some litigation that
18 you had with the workers' comp insurance company. And that
19 looks like that started in about 1994. Does that sound about
20 right?

21 A Yes, sir.

22 Q And, at that time, you told the -- or the position was
23 that, in 1993, 1994, and 1995, 35/10,000ths percents -- that's
24 .0035; 47/10,000ths percent, .0047, that would be 1994;
25 35/10,000ths percent, .0035, of your business in 1993, 1994,

1 and 1995 consisted of executing water rescues.

2 So when those numbers were provided in that litigation
3 about lifeguarding business or lifeguarding responsibilities,
4 it was in the nature of the time spent in water rescues; is
5 that correct?

6 A When -- when that was brought up, there was a glitch in
7 the company that sets all workers' comp rates. I can't
8 remember the -- NCCI in Boca Raton, Florida. And when my
9 agent, Bob Betters with Watson's Insurance Company in
10 Gastonia, it was the first year that we had purchased our
11 package insurance through them, so everything was taken at
12 face value.

13 And so when this hearing came down, I was represented
14 by Fred B. Newby of Newby, Sartip, Masel in Myrtle Beach. And
15 they had given Fred a very complicated math problem at one
16 time showing their side of the story. He, in turn, gave them
17 a very complicated math problem back that he said stated our
18 side of the story.

19 Q So that was Mr. Newby's calculations?

20 A Yes, sir. It was a chalkboard full.

21 Q But, at the end of the day, the discussion was and the
22 calculation was based on actual water rescues, the small
23 percentage of time, and the fact was, in that timeframe again,
24 in 1994, there would be an amount of time where lifeguards
25 would physically move lifeguard towers, physically put up

1 umbrellas, physically put up chairs?

2 A And water surveillance.

3 Q Right. So, for workers' compensation purposes, you're
4 talking about -- that's your physical activity. That's the
5 risk for these workers, what they're doing at that time?

6 A This started when I did a first report of injury for a
7 lifeguard who jumped off of his lifeguard tower to assist in a
8 rescue. He broke his ankle, and the first report of injury,
9 it was straight out that he was a lifeguard and how the
10 accident happened. There's steps that go down the lifeguard
11 towers. He missed a step and he broke his ankle. Never
12 dreamed one ounce that that was not covered. Never dreamed
13 one ounce that I was not paying for it.

14 We actually then got a visit from the labor -- the labor
15 people that come around to make sure you're operating your
16 business safely, department of the government, and they
17 required us to paint the second step a different color than
18 the first step in order to prevent that accident from
19 happening again.

20 Q And, George, ever since -- certainly in 2002, by the time
21 that litigation was all figured out, there was an order saying
22 that your lifeguards were, in fact, lifeguards, not beach
23 attendants?

24 A Yes.

25 Q That was the ultimate ruling?

1 **A** Yes, sir.

2 **Q** So, as an order of the Court, back in 2002, your
3 lifeguards are lifeguards. They're not beach attendants.

4 **A** We changed the classification on the next renewal of
5 insurance. We didn't wait until -- basically, what the
6 Travelers Insurance Company to us, they had been heard twice.
7 Administrative court judge agreed us with twice for the
8 discrepancy in the rules.

9 The South Carolina insurance commissioner overruled them
10 twice. Then they came -- the Travelers Insurance met with us,
11 my attorney and myself, and said, "Look, we can do this all
12 day. Would you pay \$10,000 that we could apply towards this
13 higher premium?" And we agreed, and we paid them \$10,000.

14 **Q** And ever since the government said you have lifeguards
15 and not beach attendants --

16 **A** Yes, sir.

17 **Q** -- you have been paying workers' comp premiums, the last
18 10, 12, 15 years, those are lifeguards; correct?

19 **A** Absolutely.

20 **Q** And, in 2018, you paid premiums to workers' comp that
21 your lifeguards are lifeguards and not beach attendants?

22 **A** Yes, sir.

23 **Q** Now, George, I want to go, as we begin to work back
24 through the things that we heard from Mr. McLeod asking you
25 questions, the first part of today was spent talking to you a

1 lot about numbers; right?

2 A Right.

3 Q And, at the end of the day, the City contracts with you
4 to provide lifeguard services; correct?

5 A Yes, sir.

6 Q And if the City doesn't contract with you, then the City
7 has to do it itself?

8 A Yes, sir.

9 Q Or contract with somebody else?

10 A Yes, sir.

11 Q And I think that was something that you described earlier
12 that there was a discussion sometime ago where the City was
13 thinking about bringing in housing, but the discussion was how
14 expensive it was going to be for the City to do that.

15 A Yes, sir.

16 Q All right. And so you have been able to provide a
17 service to the City instead of the City having to do it
18 itself?

19 A Yes, sir.

20 Q The City doesn't pay for any lifeguards, does it?

21 A No, sir.

22 Q It doesn't pay anything to you, does it?

23 A No, sir.

24 Q Now, you were asked a question about whether you were
25 religious and asked a question about serving two masters.

1 Have you heard the expression: Render unto Caesar that which
2 is Caesar's?

3 A Yes, sir, I have.

4 Q And did you, Lack's Beach Service, have to pay the City,
5 right, a commission or an amount of money for the work and the
6 concessions that you received on the beach?

7 A Yes, sir, we did, and for a certain amount, which was a
8 full contract period of seven years. We actually had to
9 provide them with certified audits.

10 Q So the point being that the City wasn't allowing you to
11 do this business free, were they?

12 A No, sir.

13 Q You, Lack's Beach Service, had to provide to the City an
14 amount or a percentage of your revenue.

15 A Yes, sir.

16 Q So the City not only did not have to pay for lifeguards,
17 they did not have to pay you for anything, you were actually
18 paying the City.

19 A Yes, sir.

20 Q All right. I'm trying to, I think, go back through what
21 I remember from yesterday and some of the topics. And we'll
22 go through these. Talk about rips.

23 A Rip currents?

24 Q Yes, sir.

25 A Yes, sir.

1 Q I mean, you have had an amount of experience on the
2 beach; right?

3 A Yes, sir.

4 Q Okay. Are rips something that are predictable?

5 A No, sir. The geographic location of a rip is not
6 predictable.

7 Q Are the duration of rips predictable?

8 A No, sir.

9 Q Do they always happen at the same time?

10 A No.

11 Q Do they always happen at the same place?

12 A No.

13 Q Do they move around?

14 A Yes.

15 Q Do they move around in the same day?

16 A Yes, sir.

17 Q In other words, you can have a rip in one location and,
18 then, maybe very shortly thereafter, have a rip somewhere
19 else?

20 A Yes, sir.

21 Q All right. Is any of that predictable?

22 A No, sir.

23 Q I mean, can you go, as a lifeguard service, and today
24 find a weather bulletin and say, I know for sure there's going
25 to be a rip current at 10th Avenue?

1 A No, sir.

2 Q Or a rip current at 8th Avenue?

3 A No, sir.

4 Q That's not information that's provided to you, is it?

5 A No, sir.

6 Q And from the National Weather Service, the National

7 Weather Services provides you information on a daily basis

8 about winds and surf conditions; correct?

9 A Yes, sir.

10 Q And, at the end of the day, identifying a rip, that's

11 something that has to be done on the beach; correct?

12 A Yes, sir.

13 Q In other words, the National Weather Service can't look

14 at a report or a screen and say, "I can see that rip at 10th

15 Avenue." They're not going to tell you that, are they?

16 A No, sir.

17 Q Again, that's something that the lifeguards, the

18 managers, the supervisors, when they're on the beach, they

19 have to identify that themselves?

20 A Yes, sir.

21 Q Right? Speaking of, on a daily basis in 2018, who else

22 was on the beach other than Lack's Beach Service, officially?

23 Was Beach Patrol?

24 A I'm sorry; I didn't follow the question. Yes, sir. City

25 of Myrtle Beach Beach Patrol and the fire department has an

1 Ocean Rescue Division.

2 Q So the Beach Patrol, that's the City police department;
3 correct?

4 A Yes, sir.

5 Q They have a presence?

6 A Yes, sir. And they're also trained as first responders
7 and lifeguards.

8 Q And then the fire department has a presence on the beach;
9 is that correct?

10 A Yes, sir.

11 Q And that's Ocean Rescue?

12 A Yes, sir.

13 Q So the Beach Patrol and Ocean Rescue are on the beach
14 when you're on the beach?

15 A Yes, sir.

16 Q Providing an extra layer of protection; correct?

17 A Yes, sir.

18 Q All right. Do you, Lack's Beach Service, train against
19 distraction?

20 A Yes, we do.

21 Q And what does that mean?

22 A We have class time for new employees. They come in and
23 we give them illustrations of distractions, give them
24 instructions on how to practice against the distractions, what
25 the public perception of them would be, if they were sitting

1 or standing and not having their back to the water. And they
2 would be instructed to understand that everyone down there has
3 a video camera and everyone is going to take videos of them.
4 So, as humanly possible, they need to be aware every moment of
5 their activities.

6 Q And watch the water?

7 A Oh, yes, sir, exactly.

8 Q And when you say "train against distractions,"
9 specifically with regard to the dual role?

10 A Yes, sir.

11 Q Are the lifeguards trained to conduct the rental
12 transaction in a manner to minimize distraction?

13 A Yes, sir, they are.

14 Q And is that so that, when a receipt is being filled out,
15 they can look at the water?

16 A Yes, sir.

17 Q Have you seen the receipt?

18 A Yes, sir.

19 Q In the training manual?

20 A Yes, sir.

21 Q I think it's exhibit -- I'm not sure where it's gotten
22 off to. Oh, you have it right there. Okay. If you'll turn
23 to the training manual on page 10 of the manual.

24 A Yes, sir.

25 Q Okay. And I have got it up on the screen. That's from

1 the 2018 training manual. That's a receipt that the
2 lifeguards would use when filling out a rental; is that
3 correct?

4 A Yes, sir.

5 Q And do you see on that receipt the very little amount of
6 information that has to be input?

7 A Yes, sir.

8 Q And is that the receipt that you were using back in 2018?

9 A Yes, sir.

10 Q Okay. And, again, you keep the receipt and the
11 information in the receipt as minimal as necessary to prevent
12 distraction; correct?

13 A Yes, sir.

14 Q Now, to be clear, the lifeguards aren't like a 7-Eleven
15 clerk. They're not constantly engaging in commercial
16 activity, are they?

17 A No, sir.

18 Q It's not like they're constantly checking people out, is
19 it?

20 A No, sir.

21 Q Are the beach chairs, umbrellas, are they rented on a
22 multiple-day basis?

23 A Yes, sir. Single day or multiple day.

24 Q Maybe weeks at a time?

25 A Yes, sir.

1 Q And so there may be an amount of umbrellas or chairs in
2 any given location that have been rented already for that
3 particular day?

4 A Yes, sir.

5 Q In other words, a lifeguard doesn't have to come out
6 every day and write a rental transaction or a rental receipt
7 for every umbrella or chair that's in the stand or in the
8 line?

9 A Yes, sir.

10 Q That doesn't have to happen?

11 A No, sir.

12 Q Because there may be chairs and umbrellas that have
13 already been rented?

14 A Correct.

15 Q We were talking about training against distraction. Who
16 is Julius Duke Brown?

17 A Duke Brown is the county's waterfront director. He's
18 very involved in the United States Lifesaving Association. He
19 was one of the editors of their very first training manual,
20 and he was -- I'm not sure if he was the chief editor of their
21 last training manual but certainly was on the staff that wrote
22 it.

23 Q And Duke Brown is employed with whom?

24 A Horry County Police Department.

25 Q And he's Horry County Police Department, their Beach

1 Patrol or their Beach Division; if you will?

2 A His title is beachfront safety or beach safety director.

3 Q And, so, do you interact with him on a regular basis in
4 dealing with Horry County?

5 A Yes, sir.

6 Q The Horry County work that you do?

7 A Yes, sir.

8 Q So Duke Brown is still with the USLA; is he not?

9 A Yes, he is.

10 Q In other words, he's still affiliated with the
11 organization?

12 A Oh, yes, sir.

13 Q Are you aware that he's involved in the certification for
14 USLA?

15 A Duke is a certification agent.

16 Q In other words, USLA has asked Duke Brown to be on its
17 certification process --

18 MR. McLEOD: Objection, Your Honor.

19 THE COURT: What's the basis?

20 MR. McLEOD: The basis is USLA told him, Mr. Brown, I
21 guess who then told Mr. Lack. It would be hearsay, Your
22 Honor.

23 THE COURT: If you can rephrase it.

24 BY MR. THOMPSON:

25 Q So, George, Duke Brown is essentially your overseer or

1 one of your overseers on Horry County beaches; correct?

2 A Yes, he is.

3 Q Do you deal with him on a daily basis?

4 A Yes, sir.

5 Q And he sees you and knows you are providing dual-role
6 lifeguards for Horry County?

7 A Yes, sir, he does.

8 Q No question about that?

9 A None.

10 Q Now, Duke Brown also provides some consulting work or
11 some services for Lack's Beach Service?

12 A Yes, he does.

13 Q And has he, in the past, provided outlines? Has he
14 provided agendas for Lack's Beach Service training programs?

15 A Yes, sir. We have to submit to the City and County our
16 in-service schedules throughout the summer and also our first
17 of the summer education program for training lifeguards. And
18 Duke assists us with that each year.

19 Q In 2018, Duke provided the outline or agenda for your
20 surf school?

21 A Yes, he did.

22 Q And he provided the outline or the information of the
23 things that you needed to train to that you then submitted to
24 the City?

25 A Yes, he did.

1 Q And Duke Brown, at that time, he wasn't providing the
2 training. He was just providing the outline of the training;
3 correct?

4 A Yes, sir.

5 Q Because you -- at that time, Lack's Beach Service had
6 in-house training?

7 A Yes, sir. We had people that had gone through USLA
8 programs and had been -- actually, one person that was on our
9 training staff was a lifeguard instructor instructor and
10 there's not but a few of those in the United States.

11 Q And, so, since that time, has Duke Brown provided
12 additional training and assistance to Lack's Beach Service?

13 A Daily.

14 Q And does Duke Brown, who is affiliated with USLA, have
15 knowledge of your dual role -- Lack's Beach Service dual-role
16 capacity lifeguards in the City of Myrtle Beach?

17 MR. McLEOD: Objection, Your Honor. This witness can't
18 testify about what somebody else's knowledge is.

19 THE COURT: He can testify as to what communication he's
20 had with the person about the dual role.

21 BY MR. THOMPSON:

22 Q Mr. Brown is providing -- Duke Brown is providing the
23 information to Lack's Beach Service for the purposes of its
24 training of its lifeguards; correct?

25 A Yes, sir. In 1996, when we were coming up with the

1 process that would allow us to go into a certification
2 program, Mr. Brown was a consultant, along with several other
3 USLA officials.

4 MR. THOMPSON: Beg the Court's indulgence for a moment.

5 BY MR. THOMPSON:

6 Q George, do you have a copy of the franchise agreement?
7 Here it is. It's Exhibit 15.

8 A Yes, sir.

9 Q There were some things that were discussed in your
10 examination by Mr. McLeod. I want to go back through some of
11 those things. Okay?

12 A Yes, sir.

13 Q In the first page, it talks about the period of
14 operation, and there is the expressed provision at line 39
15 that the third week of August, you would be to 75 percent of
16 your full complement; is that correct?

17 A Yes, sir.

18 Q In other words, you didn't have to be at 100 percent.
19 The City said, We understand you're going to have to trouble
20 getting your guards. The American guards have to go back to
21 school. You're down to 75 percent.

22 A Correct.

23 Q By the fourth week, then you're down to 50 percent full
24 complement; right?

25 A Yes, sir.

1 Q And that was provided by contract, by the City?

2 A Yes, sir.

3 Q If you'll turn to page 3, line 25. The agreement states,
4 "Franchisee understands and agrees that additional stands and
5 lifeguard personnel may be deemed necessary by the City." Do
6 you see that?

7 A Yes, sir.

8 Q So the City had the opportunity to determine if
9 additional stands needed to be provided?

10 A Yes, sir.

11 Q Or if additional lifeguard personnel needed to be
12 provided?

13 A Yes, sir.

14 Q Is that correct?

15 A Yes, sir.

16 Q "And hereby agrees to provide such additional lifeguards
17 after consultation with the City." In other words, the City
18 says, "Hey, you need more personnel; Hey, we want you to have
19 more stands." And you say, "Okay. We're going to provide
20 them. We're going to talk with you about it, but we're going
21 to provide it as you deem fit."

22 A Yes, sir.

23 Q Is that right?

24 A Yes, sir.

25 Q All right. You talk about the lifeguard only; that's in

1 the next paragraph. An important point I want to get with
2 you, George, is the lifeguard-only doesn't sit in a stand and
3 stay there, does he or she?

4 A They're basically more foot-powered to be wherever they
5 seem to be needed or where a supervisor may send them.

6 Q Right. So a lifeguard-only -- your front-line lifeguards
7 and your dual-role lifeguards, they're all assigned to a tower
8 on a daily basis; is that correct?

9 A Yes, sir.

10 Q And they're not necessarily assigned to the same tower
11 day after day after day, are they?

12 A No, sir.

13 Q I mean, it can change?

14 A Right.

15 Q So whoever is in L-21 on August 24th might not have been
16 there on August 23rd, might not have been there on August
17 22nd; is that correct?

18 A Correct.

19 Q There was no set schedule, no set property interest, if
20 you will. None of the lifeguards had dibs on or had a right
21 to a specific stand?

22 A Correct.

23 Q They would be assigned their stands every morning; is
24 that right?

25 A Yes, sir.

1 Q And so, in addition to the dual-role lifeguards that are
2 on the stands, then you had these lifeguard-onlys?

3 A Yes, sir.

4 Q And the lifeguard-onlys then had a six-stand
5 responsibility?

6 A Yes, sir.

7 Q In other words, they didn't just sit in one stand. They
8 would be moving around from -- if we just say, for ease of
9 purposes, L-1 all the way to L-6; correct?

10 A Yes, sir.

11 Q So an LGO may be at Tower 6. If something happens at
12 Tower 1, there's nothing that LGO can do five or six stands
13 away, is there?

14 A Correct.

15 Q But the LGO has every right to be there at L-6.

16 A Yes, sir.

17 Q Isn't that right?

18 A Yes, sir.

19 Q Because, again, the LGO -- the point is, is to provide
20 support. If there is a beach party -- maybe one of the resort
21 hotels has got a big beach party, and you have a bunch of
22 people out on the beach, then that lifeguard only may stay at
23 a specific stand to provide support in that area.

24 A Yes, sir.

25 Q Is that fair?

1 A Yes, sir.

2 Q Is that the way that they're trained? The lifeguard-only
3 provides an additional amount of support in areas where it's
4 needed?

5 A Yes, sir.

6 Q So you may have a lifeguard-only that has a six-stand
7 responsibility, but in that day, they may actually stay at L-1
8 because there's a huge beach party there --

9 A Yes, sir.

10 Q -- and you need to have the extra protection.

11 A Correct.

12 Q So there's no set schedule. In other words, you don't
13 have a set schedule for the LGO to say, "I'm going to be at
14 L-6 at 12:00; I'm going to be at L-5 at 1:00; I'm going to be
15 L-4 at 2:00." That doesn't exist, does it?

16 A No, sir.

17 Q And with regard to lifeguard-onlys -- so Mr. McLeod was
18 asking you questions yesterday about lifeguard-onlys, and
19 asked you about teacher-onlys and police-onlys and firefighter
20 -onlys. Do you remember that?

21 A Yes, sir, I do.

22 Q Well, the reason you have to describe a lifeguard-only in
23 your contract is because your lifeguards are dual-role
24 lifeguards; correct?

25 A Yes, sir.

1 Q You don't have to have the LGO description, you don't
2 have to have the LGO definition but for the fact that the
3 lifeguards in that agreement are performing dual roles.

4 A Yes.

5 MR. McLEOD: Your Honor --

6 BY MR. THOMPSON:

7 Q Is that fair?

8 A Yes.

9 MR. McLEOD: I don't know if that's a discussion or an
10 argument. That's the basis of the objection. He can save
11 that for his closing, Your Honor.

12 THE COURT: I understand this is cross, but there does
13 need to be a question.

14 MR. McLEOD: Thank you, Your Honor.

15 BY MR. THOMPSON:

16 Q Isn't that correct?

17 A Yes, sir.

18 Q So when you were asked about a question whether this
19 contract says dual role or not, your answer is that LGO is the
20 answer for the question about dual roles; is it not?

21 A Lifeguard-only.

22 Q Right. Which then means that your lifeguards, by this
23 contract, are performing dual roles; correct?

24 A Yes, sir.

25 Q And, to be clear, how long have you and the City been --

1 well, I want to say a couple, but that's not right. How long
2 have y'all been in a relationship, providing the services that
3 you do for the City?

4 A When I started North Beach Service in 1974, it was an act
5 through City Council at that time. In 1976 -- prior to '76,
6 it was considered a City business license. And, in '76, it
7 was introduced as a franchise, and the first franchise that we
8 were given was for ten years.

9 Q And you have been providing dual-role lifeguards in a
10 dual-role system to the City of Myrtle Beach for how long?

11 A Since 1974.

12 MR. THOMPSON: Your Honor, I don't have any further
13 questions.

14 Thank you, George.

15 MR. McLEOD: Very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. McLEOD:

18 Q Mr. Lack, isn't it true, sir, that the LGO towers are
19 supposed to be towers where the personnel is only responsible
20 for observation? Isn't that true, sir?

21 A The LGO -- I don't know that I'm following you.

22 Q Isn't it true, sir, that, in a tower system, the LGO
23 towers are supposed to be designated for no commercial sales,
24 and the person's sole responsibility is water observation;
25 isn't that correct?

1 A I just told you: Their sole job is to be a lifeguard.
2 They may be escorting a lost child, they may be tending to a
3 medical emergency, they may be doing jellyfish, yes, sir.

4 Q And on the day that Mr. Wolde lost his life, with his
5 daughter floating on his back --

6 A Yes, sir.

7 Q -- the LGO responsible for that precise area of the beach
8 wasn't present that day, was he, or her?

9 A He was not on the schedule, no.

10 Q That's right. So that tower was empty.

11 Now, in addition, isn't it true, sir, that, had the
12 beach been properly staffed, that tower would not be able to
13 go to lunch until 1:45 because the LGOs on your system have to
14 go to lunch last; isn't that true, sir?

15 A If we were in our 100 percent personnel occupation, yes,
16 sir, you'd be correct.

17 Q Okay. So had it been properly staffed and had the
18 employees followed the rules, then there would have been a
19 person on that tower whose sole responsibility was to prevent
20 this man's death; isn't that true, sir?

21 A Sir, the City gave us the guidelines to cut our staff.

22 Q Now, on the franchise agreement, it says 75 percent of
23 full complement; is that right?

24 A Yes, sir.

25 Q Doesn't the second page of the contract require eight LGO

1 towers throughout the system?

2 A It provides eight towers through full occupancy.

3 Q So could you please multiply eight times .75, which would
4 be 75 percent? Could you do that?

5 A I can let you do that.

6 Q So 8 times .75 equals what?

7 A Six.

8 Q That's right.

9 And you only provided three on that day; isn't that true,
10 sir?

11 A We only had 24 lifeguard stands open.

12 Q Isn't it true, sir, that you only provided three LGOs:
13 One at 23rd, two at 17th, and three at 1st Street? Isn't that
14 correct, sir?

15 A We only had 24 lifeguard stands open.

16 Q Isn't that true, sir, that only three LGO towers were
17 occupied by your employees on the day that Mr. Wolde lost his
18 life from a rip current that your company was warned about
19 that morning? Isn't that true, sir?

20 A We only had 24 lifeguard stands open, sir.

21 Q My question is: Isn't it true, sir, that only three LGO
22 towers were occupied by your employees on that day?

23 A That's what it appears.

24 Q And 75 percent of eight is six; isn't that right?

25 A 75 percent of eight?

1 Q Of eight is six.

2 A I don't understand you.

3 Q We just did that math. 75 percent of full complement --
4 75 percent times eight is six.

5 A Right. But 25 percent of a full complement of 27 is
6 different math.

7 Q Would you agree with me, sir, that six minus three equals
8 three?

9 A Yes.

10 Q So you had half --

11 A No, sir, I had one --

12 Q -- of the lifeguard protection that was required?

13 A I had 24 stands. Six divided into 24 is four.

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

18 A Theoretically, yes.

19 Q That's what I thought.

20 Now, I want to understand, what benefit are you
21 providing the citizens of Myrtle Beach?

22 A On that particular day?

23 Q In general. What is the benefit that you believe you're
24 providing?

25 A Sir, I feel like you're being hostile with me and that

1 upsets me.

2 Q What benefit do you believe that you're providing the
3 citizens of Myrtle Beach?

4 A I think, for the past 48 years and also for the fact, in
5 2018, there were probably 17 million visitors in the City of
6 Myrtle Beach, which I had probably responsibility for a lot of
7 them, that I provided one heck of a doggone good service, yes,
8 sir.

9 Q And what is the service? That's what I want to
10 understand.

11 A Lifeguard, sir.

12 Q So you believe you provide the citizens of Myrtle Beach
13 lifeguard services?

14 A I know I do.

15 Q Okay. Do you derive a benefit yourself?

16 A Every job gets paid for a job.

17 Q I understand. Do you derive a significant financial
18 benefit yourself for the sole privilege to sell beach chairs
19 and umbrellas on the public's beach?

20 A You say what now benefit?

21 Q Well, isn't it true, sir, that if somebody else -- nobody
22 else can sell beach umbrellas and beach chairs on the beach
23 but you; isn't that correct?

24 A No, sir. They can apply every seven years to be doing
25 the same thing I'm doing.

1 Q Isn't it true, sir, there is an ordinance that says
2 nobody on the beach can provide the sale of beach chairs and
3 umbrellas other than you? Isn't that true, sir?

4 A That was an ordinance passed by the City of Myrtle Beach.

5 Q Right. And that ordinance exists; does it not?

6 A Yes, sir.

7 Q Do you understand what a monopoly is?

8 A Not totally.

9 Q Okay. Now, the last question: When did you get -- you
10 were first a police officer; right?

11 A I worked for the City of Myrtle Beach on the beach
12 patrol.

13 Q And your job was public safety, wasn't it, sir?

14 A Yes, sir.

15 Q Did you get paid commissions for concessions?

16 A No, sir, but I sold a lot of bucket cup coffee.

17 Q That's right. But through your role as a public safety
18 officer, you built relationships with the City, didn't you?

19 A Yes, sir.

20 Q Thank you.

21 THE COURT: Anything further, Mr. Thompson?

22 MR. THOMPSON: No, Your Honor.

23 THE COURT: Thank you, sir. You can step down.

24 THE WITNESS: Thank you, ma'am. Do I leave?

25 THE COURT: At this point, you can stay or you can leave.

1 It's up to you.

2 MR. WILSON: Would you like us to call our next witness
3 or do you want to give the jury a break?

4 THE COURT: My preference is to press on, unless you-all
5 need a break.

6 All right. Let's keep going.

7 MR. WILSON: At this time, Your Honor, the plaintiff
8 calls the deputy coroner, Michelle McSpadden.

9 (Plaintiff's Exhibit No. 19, Death Certificate, was
10 marked for identification.)

11 MICHELLE MCSPADDEN,

12 after having been duly sworn, was examined and testified
13 to as follows:

14 THE CLERK: When you get up there, just state your name for
15 the Court, please.

16 THE WITNESS: Michelle McSpadden.

17 DIRECT EXAMINATION

18 BY MR. WILSON:

19 Q Good morning.

20 A Good morning.

21 Q Finally get a chance to talk in front of the jury. Tell
22 everybody who you are.

23 A I work for the coroner's office. I'm a deputy coroner.

24 Q How long have you been there?

25 A I have been there for eight years.

1 Q And when you say you work for the coroner's office, is
2 that Horry County Coroner's Office?

3 A That's right.

4 Q Okay. And where were you born and raised?

5 A Here. Aynor.

6 Q Okay. And where did you go to high school?

7 A Well, I started at Aynor. I went to the Governor's
8 School for Science and Math. Graduated from there.

9 Q All right. And did you go to work for the coroner right
10 out of school or what did you --

11 A No, I worked for Conway Hospital for awhile, Loris
12 hospital for a little bit, but the majority of my career was
13 spent at Myrtle Beach Police Department. I have worked in the
14 forensics units there for nine years out of my 14 years there
15 before moving to the coroner's office.

16 Q All right. And as deputy coroner, I understand, under
17 our laws, you have the power of the coroner. You're allowed
18 to order autopsies and things like that.

19 A That's right.

20 Q Okay. And you have been authorized to do that by the
21 coroner of this county?

22 A That's right.

23 Q Tell the ladies and gentlemen of the jury -- we have all
24 heard the word "coroner." Tell us a little bit about what the
25 coroner's office does.

1 **A** Okay. The coroner in South Carolina is an elected
2 position, so Robert Edge, as our coroner, has been here for
3 40-something years now, I believe. He appoints deputies. The
4 job of the deputy is to investigate deaths -- some deaths. If
5 it occurs outside of a hospital or a nursing home or has some
6 element of something is undetermined or unknown or accidental.

7 **Q** Okay. And can the coroner's office order an autopsy, in
8 essence, to find out how somebody died?

9 **A** That's right.

10 **Q** Do you do that all the time?

11 **A** Not in every case. In fact, not in most cases.

12 **Q** In some cases you do.

13 **A** It is a tool that we have.

14 **Q** Okay. And one of the ways you do that, I understand, is
15 that you ask a pathologist, a medical doctor, to examine a
16 body; right?

17 **A** That's right.

18 **Q** And did you do that in this case?

19 **A** I did.

20 **Q** Okay. The ladies and gentlemen of the jury have heard
21 that Mr. Wolde lost his life on August 24th, 2018. Sound
22 about right?

23 **A** That's right.

24 **Q** And, on August 25th, 2018, it seems like there was an
25 autopsy performed?

1 A That's right.

2 Q And you were present for that autopsy, as I understand
3 it?

4 A I may have been. I have been to about a thousand. I
5 don't remember this one in particular as to whether or not I
6 was in the room. But I may have been.

7 Q Let me jump forward just a minute, and that is, at the
8 end of all this, do you sign a death certificate?

9 A That's right.

10 Q And that indicates how somebody died?

11 A Yes, cause and manner.

12 Q And in order to make that determination of cause of
13 death, do you review things like a patient's medical records?

14 A Yes.

15 Q And the results of the autopsy report?

16 A Yes.

17 Q And the results of any toxicology report?

18 A Yes.

19 Q And you take all that information into the matrix and you
20 give a death certificate?

21 A Yes.

22 Q And did you do that in this case?

23 A I did.

24 Q Do you also take notes, case summery?

25 A On occasion.

1 MR. WILSON: I'm going to mark for ID pages -- Coroner's
2 report 2, 3, 4. This will be Plaintiff's Exhibit 20.

3 (Plaintiff's Exhibit No. 20, Coroner Report, was marked
4 for identification.)

5 BY MR. WILSON:

6 Q Madam Coroner, can I hand you this? This is Plaintiff's
7 Exhibit for identification No. 20.

8 A Yes.

9 Q Can you tell us just briefly what that is?

10 A In every case that the coroner works, a coroner's report
11 is generated. This is my coroner's report for this case.

12 Q And this is a document that you filled out?

13 A Yes.

14 Q And that you put into your office records in the normal
15 course of business?

16 A Right.

17 MR. WILSON: Your Honor, at this time, we'd like to offer
18 Exhibit 20 into evidence.

19 MR. TRAINOR: Your Honor, I don't have an issue but for
20 one part of this. Can we approach?

21 THE COURT: Sure.

22 BENCH CONFERENCE

23 (The following bench conference was held outside the hearing
24 of the jury and others:)

25 MR. TRAINOR: The narrative which is information that is

1 purely hearsay. I get that the document itself is not
2 hearsay. These statements about what the police said, what
3 the --

4 THE COURT: That is page 4?

5 MR. TRAINOR: That's the only --

6 MR. McLEOD: It's part of a business report. It's
7 803(b).

8 MR. TRAINOR: It's hearsay within -- the document isn't
9 the issue. It's the statements from the police that are not
10 witnesses in this case. We don't even know where they got the
11 information. They weren't there.

12 MR. WILSON: She used it as part of her evaluation.

13 MR. TRAINOR: That doesn't overcome the hearsay. It's
14 multiple levels in this from a police officer who had heard it
15 from somebody else that we don't even know.

16 THE COURT: You are offering this as a business record?

17 MR. WILSON: As a business record. 803(b). She keeps
18 it. It's part of the coroner file. It goes to her at the end
19 of the day with the death certificate. It's the basis for how
20 she gets that.

21 MR. TRAINOR: I don't object to the rest of this or the
22 death certificate because all that is well within the business
23 records exception.

24 MR. WILSON: 803(8) and 803(9).

25 THE COURT: Let me read it real quick.

1 MR. TRAINOR: My issue is, I don't know where that
2 information came from, not only from the police but where they
3 got that, because nobody has even testified to that.

4 THE COURT: It sounds like this is consistent with what's
5 already been entered into the record.

6 MR. MCLEOD: The jury has heard that.

7 MR. TRAINOR: I don't think they have, and I don't think
8 that, from a police officer, which police officer, which
9 witness. I get the statement is from Ms. Abel. She's
10 testified, she said that what's she said. That's not really
11 my issue. It's the police officer's statements from somebody
12 we don't know.

13 THE COURT: Mr. Wilson, the only thing I see in this
14 that's not previously testified to is the medical history.

15 MR. WILSON: I'll take out -- I'll just ask her -- just
16 that one sentence.

17 THE COURT: Says he has health -- a diagnosis of
18 gastroenteritis. That's the only thing.

19 MR. WILSON: Can I introduce it subject to that redaction
20 and we'll redact that?

21 THE COURT: Yes.

22 MR. WILSON: The first sentence?

23 THE COURT: It's not the first, no. It's kind of
24 midway.

25 (Open court resumes:)

1 THE COURT: So I think you have moved it into evidence,
2 and I'm admitting it subject to the redaction that we just
3 discussed.

4 (Plaintiff's Exhibit No. 20 was received into evidence.)

5 BY MR. WILSON:

6 Q Now, did you make the determination before you got
7 involved or why you got involved to try to figure out what
8 happened?

9 A That's kind of the definition of what I do.

10 Q Sure. That's what I thought too.

11 And did you create something in this exhibit, the last
12 page, called a narrative?

13 A Yes.

14 Q Okay. Let's talk about that very briefly. Did you learn
15 that the patient -- that's Mr. Wolde -- was in the ocean near
16 9th Avenue South with two of his children?

17 A Yes.

18 Q Ages 9 and 12?

19 A Yes.

20 MR. TRAINOR: Your Honor, just -- I'm going to put an
21 objection to leading.

22 MR. WILSON: Your Honor, we can lead. We're under time
23 constraints.

24 THE COURT: The objection is sustained.

25

1 BY MR. WILSON:

2 Q Did you come to learn anything about what had happened to
3 Mr. Wolde that day that's set forth in your narrative?

4 A So I spoke to, I believe, two people in this case: One
5 being the girlfriend of Mr. Wolde and then a police officer.

6 Q And did you set forth your findings in your narrative?

7 A I did.

8 Q Okay. And did you learn that Mr. Wolde drowned while
9 attempting to rescue his children?

10 MR. TRAINOR: Same objection, Your Honor.

11 THE COURT: That's sustained.

12 BY MR. WILSON:

13 Q How did you -- what was your understanding of how
14 Mr. Wolde drowned, based on your narrative?

15 A Initially, there were some questions. So there were some
16 concerns about whether Mr. Wolde suffered a medical event,
17 because his girlfriend told me that he can swim. They
18 regularly go to the beach in Maryland.

19 So it was a little unclear to start with whether or not
20 something medically had happened to him that caused him to go
21 under, and that was the reason I ordered the autopsy. It was
22 later that I learned, from interviewing a police officer, that
23 there were reports of a rip current, where the children were
24 caught in a rip current, and Mr. Wolde was part of the rescue
25 of the children, and, in that, he went underwater.

1 Q He didn't have some sort of medical event that caused him
2 to drown, did he?

3 A There was not. No, we didn't find any evidence of that
4 at autopsy.

5 Q You found that he died of drowning due to trying to save
6 his children in the rip current, didn't you?

7 A I found that he died of drowning.

8 MR. TRAINOR: Objection, Your Honor.

9 THE COURT: I think she has clarified. That objection is
10 sustained, but I think she has clarified in her answer.

11 BY MR. WILSON:

12 Q Before you would sign a final death certificate, did you
13 review the results of the autopsy?

14 A I did.

15 Q Do you have a copy of the autopsy report?

16 A I do.

17 Q It's Wolde coroner's report page 9.

18 MR. WILSON: Plaintiff's 21.

19 (Plaintiff's Exhibit No. 21, Autopsy Report, was marked
20 for identification?)

21 MR. WILSON: Your Honor, what I have marked as
22 Plaintiff's Exhibit 21 is a copy of an anatomic autopsy report
23 for Mr. Wolde.

24 BY MR. WILSON:

25 Q Is that right?

1 A That's what I have.

2 Q And is this document kept in your -- in the coroner's
3 office?

4 A It is.

5 Q In the ordinary course of business?

6 A That's right.

7 Q And do you use this document and review this document to
8 come up with the findings of your death certificate?

9 A Yes.

10 MR. WILSON: Your Honor, at this time, we'd like to offer
11 Exhibit 21 as an exhibit.

12 MR. TRAINOR: No objection, Your Honor.

13 THE COURT: Sorry?

14 MR. TRAINOR: No objection, Your Honor.

15 THE COURT: 21 is admitted.

16 (Plaintiff's Exhibit No. 21 was received into evidence.)

17 BY MR. WILSON:

18 Q Turn to page 2. The case history is the first sentence.
19 If you can just read that to the jury, please.

20 A "This 41-year-old black male was pulled under water by a
21 rip tide while trying to rescue his children."

22 Q During the examination of Mr. Wolde, did the pathologist
23 look at and go through his various organs to see what had
24 happened?

25 A Yes.

1 Q And did he also look most prominently at his lungs?

2 A He did.

3 Q If you'd turn to page 4, please. If you'd read the first
4 sentence into the record for us, please, starting, "At
5 autopsy."

6 A "At autopsy, examination revealed prominent pulmonary
7 congestion and edema."

8 Q What does that mean?

9 A Fluid in and around the lungs.

10 Q Just very briefly, in your history of being a coroner,
11 just tell us very briefly how the process works. So as I
12 understand, the water enters the lungs; is that right?

13 MR. TRAINOR: Your Honor, lack of foundation. Not
14 qualified as a fact witness.

15 THE COURT: That's sustained as to any expert opinion
16 that she's going to give.

17 MR. WILSON: Sure.

18 BY MR. WILSON:

19 Q And your understanding of drowning is that water enters
20 the lungs, in general; right?

21 MR. TRAINOR: Your Honor, there's been no foundation
22 laid.

23 THE COURT: I mean, I'm going to allow you very little
24 leeway as to what any person on the street can testify to but
25 not any expert opinion.

1 BY MR. WILSON:

2 Q Okay. When a person drowns, water enters their lungs; is
3 that right?

4 A That is the method of drowning, yes.

5 Q And, at the end of the day, you sign a death certificate
6 indicating asphyxiation due to drowning; is that true?

7 A That's right.

8 Q All right. What does "asphyxiation" mean in your death
9 certificate?

10 A Asphyxiation means lacks of oxygen.

11 Q And with somebody who is drowning, how does that occur,
12 in your experience?

13 MR. TRAINOR: Objection, Your Honor. A lack of
14 foundation.

15 MR. WILSON: Your Honor, she's allowed to support just
16 the basis of what asphyxiation means.

17 MR. TRAINOR: She is not a medical doctor. We haven't
18 even having established that. They've not laid the foundation
19 for this.

20 THE COURT: Y'all approach for just a sec.

21 BENCH CONFERENCE

22 (The following bench conference was held outside the hearing
23 of the jury and others.)

24 MR. WILSON: Your Honor, she said he's died of
25 asphyxiation, and I'm just asking the basis of why.

1 MR. TRAINOR: And I didn't dispute the cause of death.
2 We could have avoided all of this, but he's now trying to get
3 into how this actually occurred. She's not qualified to
4 testify to that.

5 MR. WILSON: Just what "asphyxiation" means.

6 MR. TRAINOR: Yeah, but he already asked that and went
7 through it. Explain the process. That's a medical process --
8 that's a medical process that she does not have the training
9 or experience for.

10 MR. WILSON: I can ask her what "asphyxiation" is.

11 MR. TRAINOR: You did. That's been asked and answered.

12 THE COURT: I believe she said when water enters the
13 lungs.

14 MR. WILSON: I can ask how a patient drowns of
15 asphyxiation.

16 MR. TRAINOR: No, I don't think so.

17 MR. WILSON: Based on the autopsy report.

18 THE COURT: She can't tell us anything more than drowned
19 due to asphyxiation.

20 MR. WILSON: The water enters the lungs and stops the
21 oxygen.

22 MR. TRAINOR: She just said that already, so that's the
23 end of the question.

24 THE COURT: I'm going to let you ask that question, but
25 don't go any further than that.

1 MR. WILSON: Thank you.

2 (Open court resumes as follows:)

3 BY MR. McLEOD:

4 Q Very briefly. With asphyxiation, with someone who is
5 drowning, we have told the Court that water enters the lungs;
6 right?

7 A (Witness nodding.)

8 Q And asphyxiation is lack of oxygen to the blood; is that
9 right?

10 A Yes.

11 Q What is it about the water in the lungs that causes the
12 asphyxiation? Does it prevent the oxygen in the lungs from
13 going to the blood?

14 MR. TRAINOR: Your Honor --

15 THE COURT: That's sustained.

16 MR. TRAINOR: Thank you.

17 BY MR. WILSON:

18 Q Before you sign a death certificate, did you review any
19 of the toxicology reports?

20 A I did.

21 Q Okay. And what I wanted to establish was, was there any
22 evidence in any of the toxicology reports that Mr. Wolde had
23 been consuming any alcohol?

24 A No.

25 Q Consuming any recreational drugs?

1 A No.

2 Q He had one thing in his toxicology report. That was
3 caffeine; right?

4 A Right. The only finding was caffeine.

5 Q What I have identified as Plaintiff's Exhibit 19 for
6 identification is Mr. Wolde's death certificate. I'll hand
7 this to you. Have you seen this document before, ma'am?

8 A Yes.

9 Q And have you signed this document?

10 A I did.

11 Q And under "cause of death," what did you indicate?

12 A Looks different. It would be asphyxia due to drowning.

13 Q And this is a document that you signed?

14 A Yes.

15 Q That you're aware of?

16 A Yes.

17 Q And kept in the ordinary course of business at the
18 coroner's office?

19 A Yes, sir.

20 MR. WILSON: Your Honor, at this time, I'd like to offer
21 the death certificate into evidence as Plaintiff's Exhibit 19.

22 MR. TRAINOR: No objection.

23 THE COURT: It is admitted.

24 (Plaintiff's Exhibit No. 19 was received into evidence.)

25 MR. WILSON: I don't have anything else. Thank you very

1 much.

2 CROSS-EXAMINATION

3 BY MR. TRAINOR:

4 Q Ms. McSpadden, I only have maybe two questions for you.

5 A Okay.

6 Q Can you tell me the name of the police officer that you
7 got that information from?

8 A Chad Rose.

9 Q Okay. And who requested the autopsy in this particular
10 instance for Mr. Wolde?

11 A I ordered it after speaking to the girlfriend.

12 Q My question was, who requested it? You can turn to your
13 narrative, if you'd like.

14 A I probably elicited it at the request of the girlfriend.
15 Technically, she cannot. It is my call.

16 Q Sure. So she requested it?

17 A She did ask me to do it, yes.

18 Q Thank you, ma'am.

19 MR. WILSON: Nothing further from the plaintiff.

20 THE COURT: Thank you, ma'am, you can step down.

21 (A discussion was held off the record regarding
22 exhibits.)

23 THE COURT: Do you want to call your next witness? I
24 think we can possibly get one more in before lunch.

25 MR. WILSON: Your Honor, can we have five minutes? I

1 believe our next witness is in the break room. We just need
2 to check.

3 THE COURT: Sure.

4 Let me go ahead and let y'all take a break so you're not
5 having to sit here. Stretch your legs a minute. We are
6 having lunch brought in for you, but I don't think it's going
7 to be quite here. It's a little early yet, and then we'll all
8 be hungry in the afternoon if we break this early. So let's
9 just take a quick break.

10 (The jury exited the courtroom at 11:36 a.m.)

11 (A brief recess was taken from 11:36 a.m. to 11:51 a.m.)

12 THE COURT: Have a seat.

13 MR. WILSON: Your Honor, I don't think our direct will be
14 more than probably 30 to 40 minutes or so.

15 THE COURT: And which witness is this?

16 MR. WILSON: Christopher Brewster.

17 THE COURT: Okay.

18 MR. WILSON: President of the USLA.

19 THE COURT: Okay. Let's go ahead and bring the jury in.
20 Have they started eating?

21 THE CLERK: No.

22 (The jury entered the courtroom at 11:52 a.m.)

23 MR. WILSON: At this time, Your Honor, the plaintiff
24 calls Christopher Brewster.

25 BARTLETT CHRISTMAS "CHRIS" BREWSTER,

1 after having been duly sworn, was examined and testified
2 to as follows:

3 THE CLERK: State your name for the clerk when you get up
4 there, please.

5 THE WITNESS: My name is Bartlett Christmas Brewster.

6 DIRECT EXAMINATION

7 BY MR. WILSON:

8 Q Christmas Brewster.

9 A Yes. It's not Christopher, sir.

10 Q We have heard a lot about USLA this week. Tell us who
11 you are and where you're from.

12 A I am a volunteer. Currently, the chair of the National
13 Certification Committee for the United States Lifesaving
14 Association.

15 Q What is the United States Lifesaving Association?

16 A So the United States Lifesaving Association is the
17 national non-profit association of beach lifeguards and other
18 kinds of open water rescuers.

19 Q Is it a non-profit, sir?

20 A Yep, a 501(c)(3) non-profit.

21 Q And where do you currently live?

22 A San Diego, California.

23 Q And this summer, are up in the Northeast somewhere?

24 A Yeah. I grew up on the East Coast, so I summer in
25 Massachusetts.

1 Q Did you take time out of your week to come here and tell
2 these ladies and gentlemen of the jury who you are and what
3 USLA is?

4 A Yeah, it was a couple of days out of my vacation, but
5 that's okay.

6 Q Thank you for being here, sir.

7 A Yes, sir.

8 Q So the USLA, tell us a little bit more about it, just
9 briefly. When did it start approximately?

10 A 1964. And our goals are, basically, drowning prevention
11 nationwide, public education about drowning to help people
12 avoid it, and training lifeguards and creating national
13 standards that are recognized as the national standard for
14 open water lifeguards.

15 Q Does the USLA help set the national standard of care for
16 ocean lifeguards?

17 A Well, I think we do set the standard.

18 Q And you talked earlier about drowning prevention; is that
19 right?

20 A Yes, sir.

21 Q Tell the ladies and gentlemen of the jury what the CDC
22 is.

23 A The Centers for Disease Control and Prevention. I'm sure
24 most people are familiar; right? A federal government agency
25 that works on a variety of things, including disease

1 prevention but also accident prevention.

2 Q Has the CDC ever approached you and the USLA about
3 drowning prevention?

4 A Yes.

5 Q Okay. Tell us a little bit about that and what the CDC
6 asked you and what did you do.

7 A The Centers for Disease Control had been asked for many
8 years whether lifeguards were actually an effective way to
9 prevent drowning, and I think, for most people, the answer
10 would be sure, of course. If there's lifeguards at the beach,
11 they can prevent drowning if they're effective. But the
12 Centers for Disease Control works on research and
13 evidence-based information, so they wanted to do an actual
14 study comparing beaches with no lifeguards and beaches with
15 lifeguards to see if, in fact, lifeguards were an effective
16 way to prevent drowning.

17 So they brought us together. I was part of a national
18 working group probably 15 or 20 years ago, and not
19 surprisingly, I guess, to most people, the determination was
20 that lifeguards were an effective way to prevent drowning.

21 Q Properly trained lifeguards?

22 A Yes, sir.

23 Q And so it's been at least established objectively through
24 evidence and through the work with your organization and our
25 government that drowning can be prevented with properly

1 trained lifeguards; is that true?

2 A Absolutely, yes.

3 Q And you were involved in that study; correct?

4 A I was.

5 Q Now, how long have you been a member of the USLA?

6 A Since probably 1982, I guess.

7 Q Have you served various roles in that organization?

8 A Yes, a number. I was the president of the United States
9 Lifesaving Association for 12 years. I was the -- I think the
10 first chair of the National Certification Committee. I
11 stepped down from being president after that period of time
12 and then retook the role of chair of the National
13 Certification Committee. I volunteer as the editor of
14 *American Lifeguard* magazine and other things.

15 Q And at some time, whether it be in the '80s or the '90s,
16 did the USLA decide to start certifying lifeguard agencies?

17 A Yes. There was a study that was conducted in Galveston,
18 Texas, in, I believe, 1980, and there was a decision that,
19 among a variety of groups that were brought together,
20 including the U.S. Coast Guard, the CDC, the Boy Scouts, I
21 think the Girl Scouts were involved, it was sponsored by a
22 university there in Galveston, but the idea was that there
23 ought to be some sort of consistent national standard for
24 beach lifeguards. And that group decided that the appropriate
25 organization to create those standards was the United States

1 Lifesaving Association.

2 So stemming from that, in the early 1990s, I was
3 appointed by the then-president of the United States
4 Lifesaving Association to create a -- put together a committee
5 that would create those consistent national standards, and
6 that's what we have today from that.

7 Q And are you, in essence, a water safety advocate?

8 A Well, I -- yes, sir, I have pretty much dedicated my life
9 to drowning prevention.

10 Q And to try and keep the beaches that we all enjoy safe?

11 A Yes, sir.

12 Q Has the USLA always had a position that the lifeguard's
13 primary job is to prevent drowning?

14 MR. TRAINOR: Your Honor, objection. He's a fact
15 witness.

16 MR. WILSON: It's the USLA's position. He's the
17 president of the organization.

18 THE COURT: I'm going to allow the question.

19 A First, I'm not the president now. But could you ask the
20 question again?

21 BY MR. WILSON:

22 Q Has the USLA's position been, since you have been a
23 member, that the lifeguard's primary role is to prevent
24 drowning?

25 A Yes, sir.

1 Q And, throughout that time, through the training that the
2 USLA has provided and certified courses, have you consistently
3 taught that lifeguards should be not assigned any task other
4 than that, other than public safety?

5 A Yes, sir.

6 Q And has that been consistent since your time with the
7 USLA?

8 A Yes, sir.

9 Q Why is that? Why is it the USLA's position that a
10 lifeguard should not be assigned any task other than public
11 safety?

12 A Well -- excuse me. So the primary job of a lifeguard is
13 drowning prevention while they're on the stand. That's what I
14 think any of you, when you go to the beach, expect that the
15 lifeguard is there to do. And we do not want to see any
16 distractions whatsoever while a lifeguard is watching you in
17 the water when you're swimming or whatever it may be.

18 So there are a variety of things that we tell them not to
19 do: Never use a cell phone while you're in the tower, for
20 example. Not engage in long conversations with people who may
21 come up to the stand. Anything like that. Because it's
22 important to understand that people often in the water who are
23 in distress are so focused to keep themselves afloat that
24 they're not in a position, as you might imagine from cartoons
25 and movies or whatever, to wave their hand for help or yell or

1 scream or whatever, because they're trying to stay afloat.

2 So the job of the lifeguard the whole time is to be
3 watching and seeing those people and whatever the distress is
4 so that they can move quickly to assist them.

5 Q Would the USLA consider a lifeguard who is assigned to
6 watch the water in a tower, who is also assigned to sell
7 chairs -- would that be consistent with the goals of the USLA?

8 A Well, no, and it's not consistent with our standards
9 either.

10 Q Why not?

11 A I think simply for the reasons that I just explained.
12 That lifeguard who is on the stand who is watching the water,
13 their job is to watch everybody out there and see if anybody
14 is in distress and immediately respond and take preventive
15 actions if they can. If they're distracted in any way,
16 there's the potential that they're going to miss somebody who
17 is in distress.

18 Q Let's talk very briefly. We have heard for three days
19 now about rip currents. You understand what rip currents are;
20 do you not?

21 A Yes, sir. I have been on a national group that's done
22 public education on rip currents for over 15 years with the
23 National Weather Service.

24 Q Are rip currents, in general, easier to see from an
25 elevated position?

1 A Yes, sir.

2 Q Is it often difficult for people that are on the beach at
3 a sea level area -- tourists, citizens, people like me -- to
4 look in the water and see a rip current?

5 A The higher your vantage point, the easier it is to see.

6 Q And is that another reason why the USLA encourages
7 lifeguards to maintain water surveillance?

8 A Yes, sir, but -- yes, from an elevated platform.

9 Q You talked about you studied rip currents. Tell us
10 generally how a rip current works.

11 A Sure. I'll make it as brief as I can. Storms in the
12 ocean create waves. It's wind going in a consistent direction
13 that creates wave energy. As those waves arrive at the beach
14 and they get into shallow water -- and these are ocean swells
15 -- they become breaking waves and push water up the slope of
16 the beach. I mean, you've all seen it where those breaking
17 waves just push the water up the slope of the beach, and then
18 gravity pulls that water back to sea.

19 In some cases, that water going back to sea, being pulled
20 back by gravity, concentrates in certain areas, and those are
21 rip currents as those rip currents move in a concentrated way
22 back out into the ocean. Typically, they go out as far as the
23 breaking waves and a little bit beyond them.

24 Q Can that area on the rip current actually appear to the
25 beachgoer to be calm?

1 **A** Yeah. Often, because I think I mentioned that the
2 current tries to find the path of least resistance. So, in
3 some cases, there is a depression in the ocean bottom and
4 waves break in a consistent depth. So I guess I don't want to
5 complicate this too much. I can only say that, because that
6 channel is out there, the area where the rip current is
7 sometimes looks like the calmest place because there's no
8 waves breaking there.

9 **Q** And the USLA teaches about rip currents?

10 **A** Yes, sir.

11 **Q** How to look for them, to certified agencies; right?

12 **A** Yes, sir. And, also, we would -- the National Weather
13 Service have created signs and other -- and material online
14 and so forth that are available at beaches all across the
15 United States.

16 **Q** And if you have a lifeguard on the beach, in the USLA's
17 perspective, a sign is not enough, is it, to warn a beachgoer
18 about a rip current, is it?

19 **A** No, sir. I think there have been a number of studies and
20 certainly I haven't been involved in them, but I guess you
21 would know yourselves that some percentage of the population
22 reads signs and pays attention to them and some ignore them.

23 **Q** And that's why it's advisable, from the USLA, to have
24 active lifeguards?

25 **A** Well, yes, sir. I think, for two reasons, based on your

1 question. One of them is that a lifeguard's primary role
2 isn't to wait until somebody gets in trouble and go out and
3 rescue them. The lifeguard's primary role is to prevent the
4 distress in the first place.

5 So, for example, in our example of rip currents, if you
6 see a number of people going toward the water in an area where
7 a rip current is, to get off the stand, go down and say, "Hey
8 move away from here," just as an example of a preventive
9 action.

10 Q And one of the chapters in the book I believe you wrote
11 is about prevention; is it not?

12 A Yes, sir. I think one of the earliest chapters in the
13 book that I edited is completely about prevention because,
14 again, that's our primary focus.

15 Q And is that, again, why the USLA does not certify
16 agencies that have a lifeguard who is assigned to watch the
17 water and also be tasked to sell chairs at the same time?

18 A It would significantly interfere with preventive acts.

19 Q Now, as I understand it, does the USLA certify people?

20 A It does not. We certify and you might say accredit
21 lifeguard agencies. Those are mostly public employers.
22 They're typically cities, towns, states, but also private
23 employers.

24 Q Did, at some point, in 1995, Mr. George Lack attempt to
25 be -- have his agency, Lack's Beach Service, certified by the

1 USLA?

2 A Yes. Sometime in the -- I think 1995, he -- his -- he,
3 on behalf of his organization, submitted an application.

4 Q At that time, was there some discussion about that?

5 A Yes, there was. So the certification program had only
6 begun in, I think, 1993. And there were a number of lifeguard
7 agencies that had been certified, but we had never received an
8 application at that time from a private lifeguard operation
9 that was vending as well as providing lifeguards.

10 Q At that time, Mr. Lack was the first one to ever even try
11 to do this with your organization?

12 A Yes, sir.

13 Q No other organization in America, to your knowledge?

14 A Correct.

15 Q Please continue.

16 A So there was concern by many of the members of our board
17 of directors, as well as our National Certification Committee,
18 about whether we, the United States Lifesaving Association,
19 should certify any organization that had what you might call a
20 dual role of public safety and commerce. And those
21 conversations went on for some period of time.

22 And without getting into all the sides of the argument,
23 I'll only say that, at the end, a decision was made that we
24 would allow lifeguard agencies that allowed their lifeguards
25 to vend -- rent chairs and umbrellas and so forth -- to be

1 certified so long as the lifeguards who were assigned on the
2 stand to be watching the water, watching people out there in
3 the water, could never be involved in commerce while they were
4 assigned there on the stand.

5 Q You would never certify an agency that has one lifeguard
6 on the tower who is tasked to both watch the water and sell
7 chairs at the same time?

8 A That's correct. That is the standard that was set in, I
9 believe, 1996.

10 Q And back in the '90s, was there some back and forth
11 between you, as the certification office of the USLA, and
12 Mr. Lack about exactly what he was going to do with his
13 business?

14 A Well, yes. Could you be a little more specific?

15 Q Sure. I believe we have already marked into evidence
16 Exhibits 13 and 14.

17 This is Plaintiff's Exhibit 11, sir. And this is a
18 letter -- let me show it to you. It's already been admitted
19 into evidence.

20 A Yes, sir.

21 Q Did you write the letter?

22 A Yes.

23 Q Did you send it to Mr. Lack in 1996?

24 A January 21, 1996, yes.

25 Q Sounds like you received a letter from him, January 11th;

1 right?

2 A Yep. Yes, sir. Sorry.

3 Q And having made, based on your understanding, certain
4 representations about what his company was going to do?

5 A Yes, sir.

6 Q And did your letter of January 21st seek to clarify the
7 manner in which he was going to run his operation?

8 A Yes. Could you let me just read this for a second?
9 (Reviewing document.) Yes, sir. So, as I explained, the
10 United States Lifesaving Association, after considering
11 whether we should certify organizations of this nature, came
12 up with that standard that vending could take place by
13 lifeguards but not ever by the person who was assigned to
14 watch the water, the lifeguard on the stand.

15 And in reading this letter -- I mean, it's 1996, but in
16 reading this letter, it's clear that I was given the
17 impression verbally from Mr. Lack that they were going to
18 modify their operation accordingly. And I wrote this letter
19 to ask that he verify that.

20 Q The question I believe is: "May I ask who will be
21 responsible for rentals and other commercial activities and
22 not the lifeguards?"

23 A Yes, sir.

24 Q "Will any lifeguards be involved in commercial
25 activities?"

1 **A** Correct.

2 **Q** Following this letter, I understand you had a
3 conversation with Mr. Lack over the phone?

4 **A** Yes, sir.

5 **Q** And did he, at that time, tell you that none of the
6 lifeguards assigned to the tower would be responsible for
7 watching the water and vending goods at the same time?

8 **A** Yes, sir.

9 **Q** And in response to that conversation that he told you,
10 the USLA sent him a letter on January 27, 1996?

11 **A** Yes, sir. So just to explain what took place, at our
12 board of directors meeting, which I believe was in January of
13 1995, the language that I referred to before was placed in our
14 standard saying that an agency could be certified so long as
15 lifeguards assigned to water observation did not vend.

16 I was empowered by the board of directors, once I was
17 convinced that, indeed, Mr. Lack's Beach Service met that
18 standard, that I could extend certification to him. The board
19 approved that.

20 And, as a result of the conversations I had with Mr. Lack, I
21 became convinced from what he told me that, indeed, they were
22 operating that way, and, therefore, I extended certification.

23 **Q** And does your letter set forth your understanding of what
24 he told you?

25 **A** Yes, sir.

1 Q Will you read to the ladies and gentlemen of the jury the
2 entire paragraph starting with "in particular"?

3 A "In particular, you agreed to modify your operation in
4 such a way so as to ensure that lifeguards assigned to
5 supervise the aquatic area shall not be subject to duties that
6 would distract or intrude their attention from proper
7 observation of persons in the waterfront area or that prevent
8 immediate assistance to persons in distress in the water;
9 specifically, your lifeguards assigned to water surveillance
10 will not be assigned to any duties other than public safety.
11 As you know, this change is a critical aspect of your
12 certification."

13 Q Pretty straightforward, isn't it?

14 A Yes, sir. And that's verbatim language from the standard
15 that he was required to meet.

16 Q And from 1996 until 2007, did Mr. Lack have to seek
17 recertification with your agency?

18 A Yes. I think originally -- at that time, it was a
19 two-year period, and then you had to recertify. And then, at
20 some point, I think it became a three-year certification
21 period.

22 Q And is there a recertification application that an owner
23 of a business like Mr. Lack must sign?

24 A Yes, sir.

25 Q And does he actually, in fact, have to sign a portion

1 that says he will not have the lifeguards watching the water
2 while also vending?

3 A Yes.

4 Q And did he do that consistently from 1996 through 2007?

5 A Yes.

6 Q Was that true?

7 A Well, I didn't know at the time whether it was true or
8 not.

9 Q Did you come to learn after that that it was not true?

10 A I did.

11 Q Okay. Did you come to learn that what had been being
12 represented to you from '96 to 2007 from Mr. Lack was not
13 true?

14 A In that regard, yes.

15 Q How did you come to learn that?

16 A Mr. Lack was -- his organization was sued with respect to
17 a drowning case --

18 MR. TRAINOR: Your Honor.

19 THE COURT: That's sustained.

20 Ladies and gentlemen, prior cases have no relevance in
21 this matter, and so I'm going to ask that you disregard that.
22 It should be stricken and should be not part of your
23 deliberations.

24 BY MR. WILSON:

25 Q Would you explain to the ladies and gentlemen of the jury

1 how you came to learn on the beach that they were not
2 following what they told you. Just what you observed.

3 A Certainly. The United States Lifesaving Association
4 conducted a national lifeguard competition in Myrtle Beach. I
5 was president of the United States Lifesaving Association at
6 that time.

7 I had -- information had -- I had been given information
8 that led me to believe that possibly lifeguards who were
9 assigned to water observation were also vending before I
10 arrived in Myrtle Beach.

11 When I got there, I walked down the beach and just
12 observed a variety of things that led me to conclude that, in
13 fact, lifeguards who were assigned to water surveillance were
14 renting and vending.

15 Q Did it make you upset?

16 A Yeah. I felt like we had been bamboozled.

17 Q You had been lied to?

18 A That was my conclusion.

19 Q While you're out on the beach, did Mr. Lack come to learn
20 that you were there?

21 A Yes.

22 Q Did you have an interaction with him?

23 A Yes.

24 Q Did he yell and scream at you?

25 A Yeah.

1 Q Now, at that time in 2007, you singularly didn't have the
2 power to revoke Lack's certification, did you?

3 A No. To be clear, the process for revoking a
4 certification once it's been extended is very clearly laid out
5 in the guidelines, which is that the chair of the National
6 Certification Committee has to do some sort of an
7 investigation. If that person -- that chair determines that
8 the lifeguard agency is not meeting the standards, they're
9 obligated to suspend the agency. Then the certification
10 committee is expected to meet and come up with a decision and
11 there's a time frame involved, and ultimately, it's up to the
12 board of directors to decide whether to revoke the
13 certification or something else.

14 At that time, I was the President of the United States
15 Lifesaving Association, not the chair of the certification
16 committee, so I had no authority whatsoever to take action.

17 As a result, what I did was I conveyed my observations in
18 the form of a memo to the chair of the certification
19 committee, and then it was up to him to make the decision how
20 to proceed.

21 Q That was Mr. Eric Bower?

22 A Yes, sir.

23 Q Did Mr. Eric Bower have to discuss your findings with the
24 board?

25 A Well, he first had to do due diligence to determine

1 whether it appeared that, in fact, Lack's Beach Service was
2 violating the standard. And I don't recall what steps he
3 took, but he did come to that conclusion and consulted with
4 our legal advisor in that regard.

5 Then his next step was to get together with the National
6 Certification Committee, explain what his observations were.
7 The National Certification Committee voted -- and I don't know
8 what the vote was -- to revoke the certification, and then
9 ultimately that went to, I think, our executive committee in
10 place of the board of directors.

11 Q I'm going to hand you what's been marked as Plaintiff's
12 Exhibit 13 for identification. Can you tell the ladies and
13 gentlemen of the jury what that is?

14 A So this would appear to be Mr. Bower, who was the chair
15 of the National Certification Committee at the time, it would
16 appear to be a letter to Mr. Lack -- and this is the normal
17 thing we do when we get a complaint that a lifeguard is not
18 meeting the standards of the USLA.

19 So he has written a letter to Mr. Lack and said, "We have
20 received inquiries/concerns about the possibility your
21 lifeguards are engaging in commercial activities while
22 assigned to lifeguard water surveillance duties," and asked
23 Mr. Lack or provides Mr. Lack an opportunity to respond and
24 state yes, no, whatever he would like to say.

25 Q And this letter is from the USLA?

1 A It's from Eric Bower, certification chairperson, United
2 States Lifesaving Association.

3 Q And at the time the letter was sent, you were the
4 president of the organization?

5 A Yes, sir.

6 Q And this letter was kept by the USLA?

7 A Yes, sir.

8 MR. WILSON: Your Honor, at this time, we'd like to move
9 into evidence Plaintiff's 13.

10 MR. TRAINOR: Prior objections on relevance. It's still
11 hearsay.

12 THE COURT: I'm going to allow it as a business record.
13 Thank you.

14 (Plaintiff's Exhibit No. 13 was received into evidence.)

15 BY MR. WILSON:

16 Q If you would read the paragraph starting with "Concerns,"
17 please. And it's on your paper too.

18 A Okay. "The concerns that I have received indicate that
19 your lifeguards are engaging in vending activities while they
20 are supposed to be watching the water. This would be a
21 violation of the certification guidelines, and if true, your
22 certification would be suspended by the USLA as described on
23 page 4, No. 11 of the certification guidelines."

24 Q I'm going to hand you Plaintiff's Exhibit 14, which is
25 marked for identification only. Same question as before:

1 This letter is from the USLA -- from Eric Bower at the USLA?

2 A Yes. This is from Eric Bower, the chair of the
3 certification committee.

4 Q And you were president, again, of the organization at
5 that time?

6 A Yes, sir.

7 Q And is this a record kept in the ordinary course of
8 business at the USLA?

9 A Yes, sir.

10 MR. WILSON: Your Honor, at this time, I would like to
11 move Exhibit 14 into evidence.

12 MR. TRAINOR: Preserving my objection, Your Honor.

13 THE COURT: Yes, sir. Your objection is preserved for
14 the record. I am admitting it as a business record.

15 (Plaintiff's Exhibit No. 14 was received into evidence.)

16 BY MR. WILSON:

17 Q And the date of this letter is what, sir?

18 A October 24th, 2007.

19 Q And tell us -- does this appear to be a response from the
20 USLA to whatever Mr. Lack said about what he was doing?

21 A Yes, sir. As I read this, Mr. Lack had submitted some
22 material, and the committee had considered it and determined
23 that, in fact, the business practice was to assign lifeguards
24 who were assigned a water surveillance to be renting and
25 vending.

1 Q The first point says, "Mr. Lack advised there's an
2 existing agreement between USLA and Lack's Beach Service."
3 Was that true?

4 A Could you -- where are we?

5 Q First page, first bullet point.

6 A Yes, sir. And so you're asking me -- again, please?

7 Q Yes. Was there such an agreement, as Mr. Lack stated?

8 A No, sir. Just -- no.

9 Q Okay. Turn to page 2, please. See where it says No. 1
10 there?

11 A Yes, sir.

12 Q Can you read that paragraph for the ladies and gentlemen
13 of the jury?

14 A "There is no specific agreement 'worked out' between
15 Lack's Beach Service and the United States Lifesaving
16 Association. At the 1996 meeting in Myrtle Beach, when the
17 conduct of commercial activities by lifeguards was discussed,
18 there was, as a result of those discussions, language that was
19 included in the certification guidelines which prohibits
20 lifeguards from engaging in activities other than public
21 safety while assigned to supervising an aquatic area."

22 Q Nothing had been worked out with the USLA between Lack's
23 and USLA, had it?

24 A Sir, just to be clear, the standard that was put into the
25 certification guidelines went through the National

1 Certification Committee and was approved by the board of
2 directors. There's no authority for anybody on the side to
3 have some sort of side agreement.

4 Q Okay. Let me ask you this: We have heard this week
5 about the term LGO, lifeguard only?

6 A Yes, sir.

7 Q Have you ever heard that term before?

8 A Only from Mr. Lack. Or from Lack's Beach Service, I
9 should say.

10 Q To your knowledge, did Mr. Lack make up the term
11 "lifeguard only"?

12 A Yes.

13 Q And, to that point, would you read paragraph 6, please.

14 A This is page 2?

15 Q Yes, sir.

16 A "The USLA does not differentiate between a lifeguard who
17 rents beach equipment and a 'lifeguard only.' The USLA
18 requirements apply to all lifeguards equally."

19 MR. WILSON: Mark Exhibit 22.

20 (Plaintiff's Exhibit No. 22, 3/26/08 Letter, was marked
21 for identification.)

22 BY MR. WILSON:

23 Q Mr. Brewster, what I have as marked as Plaintiff's 22 for
24 identification is a letter dated March 26, 2008, from
25 Mr. Bower, who we have heard about, to Mr. Lack. Same brief

1 questions as before. Mr. Bower was a certification chairman
2 for the USLA?

3 A Yes, sir.

4 Q And this letter is kept by the USLA?

5 A Yes, sir.

6 Q And it's kept in the ordinary course of business; is that
7 right?

8 A Yes, sir.

9 MR. WILSON: Your Honor, at this time, I'd like to enter
10 that into evidence Plaintiff's Exhibit 22.

11 THE COURT: I'm sorry; what is the date on that?

12 THE WITNESS: It is March 26th, 2008.

13 THE COURT: And subject to the same objection.

14 MR. TRAINOR: Thank you, Your Honor.

15 THE COURT: And it is admitted.

16 (Plaintiff's Exhibit No. 22 was received into evidence.)

17 BY MR. WILSON:

18 Q Mr. Brewster, very briefly. Does the letter from 2008
19 revoke Mr. Lack's certification?

20 A Yes, sir.

21 Q And is that because his company had been violating the
22 industry standards?

23 A Well, as I indicated earlier, the USLA standards are the
24 industry standard, and he had been violating that particular
25 standard.

1 Q Okay. We are rounding third base. Okay?

2 Does the USLA have training requirements, training
3 manuals to how to train lifeguards?

4 A Yes, sir.

5 Q Is that called the "Open Water Lifeguard Agency
6 Certification"?

7 A Yes. That document sets out the minimum standards for a
8 lifeguard agency to become USLA certified.

9 MR. WILSON: Your Honor, at this time, we'd like to mark
10 USLA Open Water Lifeguard Agency Certification as Plaintiff's
11 Exhibit 23.

12 (Plaintiff's Exhibit No. 23, USLA Certification, was
13 marked for identification.)

14 BY MR. WILSON:

15 Q I'm handing you what I've marked for identification
16 purposes as 23. Do you see that?

17 A Yes, sir.

18 Q And is this the Open Water Lifeguard Agency
19 Certification?

20 A Yes. These are the standards that a lifeguard agency
21 must meet to become USLA certified.

22 Q And have you seen these before?

23 A Yes.

24 Q Did you help write them?

25 A Yeah, pretty much.

1 Q And are they kept in the ordinary course of business at
2 the USLA?

3 A Yes, sir.

4 Q And, in fact, are they available for anybody to find on
5 the internet too?

6 A Yes. They're on our webpage. In fact, this is our
7 guideline number 001.

8 MR. WILSON: Your Honor, at this time, I'd like to offer
9 into evidence Plaintiff's Exhibit No. 23.

10 MR. TRAINOR: Objection, Your Honor, on relevance. Can
11 we approach?

12 BENCH CONFERENCE

13 MR. TRAINOR: This is from this year.

14 THE COURT: I guess they were approved and revised this
15 year.

16 MR. WILSON: As far as the training. I can set a
17 foundation that none of the training requirements have
18 changed.

19 MR. TRAINOR: I mean, he said he couldn't tell us that he
20 doesn't know the substance, and he said, I know generally what
21 it is, but if he wants to talk about what the training is but
22 not admit this, that's fine.

23 THE COURT: Is he going to be able to tell what the
24 revision was?

25 MR. WILSON: I'll work him through the training and then

1 make that determination.

2 THE COURT: Before you enter it.

3 MR. WILSON: Before we enter it.

4 THE COURT: Okay.

5 (Open court resumes as follows:)

6 BY MR. WILSON:

7 Q You have seen this document before, sir?

8 A Yes.

9 Q All right. Turn to page 2.

10 A Yes, sir.

11 Q Turn to the -- starting with the "USLA does not."

12 A You want me to read that paragraph?

13 Q Yes, sir.

14 A "USLA does not 'certify' lifeguards or lifeguard
15 instructors. Instead, USLA certifies lifeguard employers,
16 including their training programs and standards which follow
17 USLA guidelines. The USLA certification system is, therefore,
18 in effect, an accreditation system for local lifeguard
19 training programs."

20 Q And we have talked about industry standards. Can you
21 read the next sentence in the record that I've highlighted?

22 A "We consider our guidelines consistent with those of the
23 highest quality open water lifeguard programs in the United
24 States today. Many agencies surpass them and are strongly
25 encouraged to continue providing the levels of excellence they

1 have achieved. Lifesaving can continue to progress only if
2 lifeguard agencies are willing to exceed the current norms,
3 experimenting with new techniques and advanced equipment, the
4 best of which will become the standards of tomorrow."

5 Q All right. I'm going to speed us up a little bit. Okay?

6 A Yes, sir.

7 Q So the next pages you have are the steps certification
8 that's under training requirements; is that true?

9 A Yes, sir.

10 Q Before we get to the training requirements to include 40
11 hours of ocean water safety, does the USLA have a preamble?

12 A Yeah. The introductory note here is actually -- and
13 that's the quoted language here -- is the decision of the
14 board of directors back there in 1995 about allowing lifeguard
15 agencies that vend as well as lifeguards to be certified.

16 So the requirement there is what you see in the quotes
17 that says, "Lifeguards assigned to water surveillance have the
18 primary responsibility of observing and managing persons in
19 the water as well as to provide assistance to persons in the
20 water and shall not be assigned to any duties other than
21 public safety."

22 THE COURT: I'm sorry; can I get y'all to approach just
23 one minute?

24 BENCH CONFERENCE

25 THE COURT: So are you showing the manual right now?

1 MR. WILSON: I'm showing them. It's not into evidence.

2 THE COURT: Well, I mean, you're showing it to them.

3 MR. WILSON: Well, I'll ask them whether this statement
4 has been consistent for 20 years.

5 THE COURT: Again, I need you to stop before you start
6 showing anything and establish this was what was in effect at
7 the time.

8 MR. TRAINOR: Thank you, Your Honor.

9 (Open court resumes as follows:)

10 BY MR. WILSON:

11 Q Mr. Brewster, this statement is introductory. Has this
12 been consistent with the USLA for a number of years?

13 A Well, that's the statement that was approved by the board
14 of directors back in '95 or '96 that allowed us to consider
15 Mr. Lack's application for certification.

16 Q And this statement in the introductory note has been
17 consistent since 1995 or '96 to the present?

18 A Yes, sir.

19 Q That would include the year 2018; is that right?

20 A Yes, sir.

21 Q Okay. Now, does the USLA differentiate between a
22 full-time lifeguard and a seasonal lifeguard?

23 A How so?

24 Q In the trade.

25 A Well, do you mean a full-time, year-round lifeguard?

1 Q Yes.

2 A Yes, there are some differentiations in training
3 standards.

4 Q Turn to page 7, please. And if you can, briefly, the
5 seasonal open water lifeguard standards over the next couple
6 of pages. Have these been consistent for the last ten years
7 or so?

8 A No.

9 Q When did they change?

10 A Oh, small bits have changed over the years about the
11 amount of medical aid certification, the titles of the
12 certification have changed, the CPR standards have changed
13 over time, and so on.

14 Q What about the swimming abilities?

15 A That's been -- the ability to swim 500 meters in ten
16 minutes or less has been the standard since we began the
17 program.

18 Q And that would have been the standard in 2018 as well?

19 A Yes, sir.

20 Q There's also a standard about health and fitness there?
21 Do you see that? 4.1.3?

22 A Yes, sir.

23 Q Would that have been the same standard that was in effect
24 in 2018?

25 A The -- I believe so. The initial part of the standard

1 has been consistent ever since. The only change that we have
2 made is to allow a physician's assistant, or ARNP, to do the
3 health and fitness exam, but the requirements within the
4 health and fitness exam have been the same since the
5 beginning.

6 Q And that would have been to include the year 2018?

7 A Yes, sir.

8 MR. WILSON: Your Honor, may I publish this top portion
9 to the jury that incorporates what we just discussed?

10 MR. TRAINOR: Your Honor, if it's in regards to those
11 two, no objection.

12 MR. WILSON: Thank you.

13 BY MR. WILSON:

14 Q And under "swimming ability," very briefly, does the USLA
15 require that each applying agency have a written policy in
16 place, detailing its swim test?

17 A Yes, we do.

18 Q And health and fitness, to determine whether -- the USLA,
19 to determine whether a lifeguard is physically fit and
20 healthy, what's required?

21 A Well, just what's written here. Did you want me to read
22 it?

23 Q Very briefly.

24 A Possesses adequate vision, hearing, acuity, physical
25 ability, and stamina to perform the duties of an open water

1 lifeguard.

2 Q As documented by whom?

3 A As documented by the medical authorities listed there.

4 Q Is it important to the USLA that the lifeguards be
5 healthy and physically fit?

6 A Yes, absolutely. And their vision is adequate to see
7 people in distress. For example, people with certain maladies
8 wouldn't be appropriate to be lifeguards, and so on.

9 Q Turn to the next page, page 8. See where it says
10 training? Read 4.1.6 to yourself very briefly.

11 A (Witness complies.) Yes, sir.

12 Q Has this requirement to successfully complete a course
13 consisting of not less than 40 hours open water been
14 consistent with the USLA?

15 A Yes.

16 Q And this would have been -- this requirement of 40 hours
17 open water would have been in effect in 2018; would it not?

18 A Yes, sir.

19 MR. WILSON: Your Honor, may I publish?

20 THE COURT: Yes, sir.

21 BY MR. WILSON:

22 Q Read for the jury, please, what it says for training.

23 A This is the 40-hour? 4.16?

24 Q Yes, sir.

25 A "Training: Certified as successfully completing a course

1 consisting of a total of not less than 40 hours in open water
2 lifesaving, which meets the curriculum requirements of the
3 United States Lifesaving Association. This shall not include
4 the minimal training hours required for medical aid or CPR."

5 Q And does the USLA have certain certifications or training
6 manuals to meet this 40-hour guideline?

7 A Yes, sir. There a number of training adjuncts, including
8 the manual that you just referenced.

9 Q And what does it mean by "40 hours of open water
10 training"? Give us some examples of some of the stuff that we
11 talked about.

12 A Oh, it would include recognizing what a victim in
13 distress looks like, learning about rip currents so they
14 understand what rip currents are and what somebody in distress
15 in a rip current might look like. Obviously, mock rescues
16 where lifeguards go out and learn to rescue victims. That
17 sort of thing. It's about half classroom and half practical
18 out on the beach.

19 Q Does that include things like water observation?

20 A Yes, sir.

21 Q And to look for rip currents?

22 A Yes.

23 Q And how to prevent drowning?

24 A Yes, sir.

25 Q Now, would an agency -- if they have a requirement of an

1 agency to successfully complete a course consisting of a total
2 of not less than 40 hours in open water lifesaving, which meet
3 the criteria of the USLA, would they be able to meet that
4 criteria if they were engaged in dual-role lifeguarding where
5 a lifeguard was tasked to watch the water and sell at the same
6 time?

7 MR. TRAINOR: Objection, Your Honor. This is a fact
8 witness. It's opinion testimony.

9 MR. WILSON: Your Honor, he's allowed to testify what the
10 guidelines are for the USLA.

11 MR. TRAINOR: That was certainly not the question.

12 THE COURT: Your question was kind of lengthy, so I'm not
13 entirely sure what it was. You can ask him exact questions
14 about the guidelines but not opinion testimony.

15 BY MR. WILSON:

16 Q Does the USLA have criteria that agencies must follow in
17 order to get 40 hours of open water lifesaving?

18 A Yes, sir.

19 Q And do those criteria allow the agencies to be engaged in
20 dual role?

21 MR. TRAINOR: Objection, Your Honor. This is the same
22 line of questioning.

23 MR. WILSON: It's the standard.

24 THE COURT: Well, I think the question is related to the
25 guidelines of the --

1 MR. TRAINOR: I think he's asking a slightly different
2 question.

3 THE COURT: I'm going to allow the question. Thank you.

4 A Well, to be clear, again, that standard allows dual role
5 so long as the person who is on the stand -- the lifeguard on
6 the stand watching the water is not involved in that -- those
7 commercial transactions.

8 So I think the -- the easiest way to answer your question
9 is -- or the most direct way to answer your question is
10 training in a manner that allows the person on the stand to be
11 involved in vending would be inconsistent with the USLA's
12 training standards.

13 MR. WILSON: Just one moment, Your Honor.

14 Nothing further. Thank you.

15 THE COURT: Mr. Trainor?

16 CROSS-EXAMINATION

17 BY MR. TRAINOR:

18 Q Mr. Brewster, do you know who Julian Duke Brown is?

19 A Yes, sir.

20 Q Who is that?

21 A He is -- I think he's an Horry County deputy, also a
22 member of the United States Lifesaving Association, a national
23 certification officer, and a friend of mine.

24 Q How long has he been with the USLA?

25 A As a volunteer. I don't know, but I'm going say 20

1 years.

2 Q Do you remember how he got -- what he did when he first
3 started with the USLA?

4 A Could you be more specific?

5 Q What was his role with the USLA?

6 A Oh, so the United States Lifesaving Association is broken
7 down into regions. There are nine regions across the country.
8 One of those is the South Atlantic Region. And then also
9 chapters, and I believe there's a local chapter here.

10 And, so, he probably was volunteering for the local
11 chapter and then became part of the regional leadership, and,
12 in some cases, he's been a member of the USLA board of
13 directors.

14 Q I was just about to ask. When was he a member of the
15 USLA board of directors?

16 A It's -- I can't answer that question well, but I'll
17 explain. At each board of directors meeting, which are twice
18 a year, the region appoints whomever they decide to be a
19 member of the USLA board of directors from their region. And
20 so he may have been some years and not others. I don't know.

21 Q At some point, he was on the board of directors for the
22 USLA, your organization?

23 A Yes, sir.

24 Q Has he had roles with the South Atlantic Division
25 specifically outside of being on the board?

1 A I don't personally know. I would assume so.

2 Q Has he written training manuals and instruction manuals
3 on behalf of the USLA before?

4 A The USLA as a national body?

5 Q Has he contributed to the publications by the USLA about
6 training or instructions, guidelines for lifeguarding
7 agencies?

8 A I think he was on our national textbook committee that I
9 chaired that resulted in that book being published.

10 Q This one?

11 A Yes, sir. And that's the third edition. He may have
12 been involved in the prior editions as well.

13 MR. TRAINOR: May I approach, Your Honor?

14 THE COURT: Mm-hmm.

15 BY MR. TRAINOR:

16 Q You're the editor of this book?

17 A Yes, sir.

18 Q Did Mr. Duke Brown contribute to this publication?

19 A Yep, uh-huh. Yes, sir.

20 Q Is he involved with the certification committee?

21 A Again, every six months, the regions put forth who is
22 going to be on the committee. So he's been a member of the
23 committee at times, and I think he is now.

24 Q You're the chair of the certification committee?

25 A Yes, sir.

1 Q You're the top of that group; right?

2 A Yes, sir.

3 Q And Duke Brown, therefore, I guess, works underneath you
4 in the certification committee currently?

5 A I wouldn't phrase it that way. The chair of the
6 committee's job is to chair the committee and oversee
7 certification in between meetings. The role of the committee
8 is as a democratic body to discuss views and come up with
9 standards and so on. And, so, that's his role.

10 Q Right. And his role also, that is to certify agencies
11 that may apply in his particular division, the South Atlantic
12 Division?

13 A No.

14 Q No?

15 A And just to be clear, I believe he is a national
16 certification officer.

17 Q Okay.

18 A And so what happens is, if a certification comes in, it's
19 typically sent to the most -- the closest certification
20 officer, to that agency. That person does a preliminary
21 review. Then that review goes to the National Certification
22 Committee to consider their findings. The certification
23 committee votes on whether to certify or not, and ultimately,
24 the board makes the decision.

25 Q Got it. Do you have any idea how long Duke Brown has

1 been working with your certification committee?

2 A Fifteen years.

3 Q Thank you, sir.

4 A Yep.

5 MR. WILSON: No redirect, Your Honor.

6 THE COURT: Thank you, sir, you can step down.

7 Okay. Ladies and gentlemen of the jury, I think this is
8 a good time for us to break for lunch because my stomach is
9 growling loudly over here. So your lunch is here. We'll take
10 about 30 minutes, and let y'all grab some lunch.

11 I'm showing it's 12:49, so let's say 1:20ish.

12 MR. McLEOD: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (A lunch recess was taken from 12:50 p.m. to 1:29 p.m.)

15 THE COURT: Mr. Trainor, Mr. Wilson, do y'all want to
16 pick out which pages were published to the jury out of this?
17 We never formally, I don't think, admitted it.

18 MR. THOMPSON: No, we didn't.

19 MR. McLEOD: It's okay. We'll just leave it for ID only.
20 That's fine. I'll leave it up here. Don't worry about it.

21 COURT REPORTER: Thank you.

22 THE COURT: Okay. Are we doing the video next?

23 MR. WILSON: Yes, ma'am. I hope you have some caffeine.

24 THE COURT: We have plied them full of fried chicken, and
25 now we're going to... [laughter]

1 So I think we just -- we're to keep this over here until
2 we get them seated so they don't trip over the cord. Is that
3 the plan?

4 MR. McLEOD: Yes, Your Honor.

5 THE COURT: Otherwise, we're kind of good to go?

6 MR. TRAINOR: And we'll dim the lights extra dark.

7 THE COURT: Turn the temperature up a little bit.

8 MR. TRAINOR: Do y'all have blankets for them, just in
9 case?

10 THE COURT: Are y'all ready for me to bring them in?

11 MR. McLEOD: Yes, Your Honor.

12 MR. WILSON: Yes, ma'am, we are.

13 MR. McLEOD: No snoozing. No snoozing.

14 (The jury entered the courtroom at 1:31 p.m.)

15 THE COURT: Okay. Ladies and gentlemen of the jury, this
16 next witness is also going to be by video. In our perfect
17 timing, we have given you fried chicken, and now we're going
18 to show you a video. [Laughter] So we will take some breaks
19 throughout this, just so we can all stretch our legs a little
20 bit. So I don't want you to think that it's going to be just
21 in terminal without a break. We will take some breaks along
22 the way.

23 Just like the testimony from, I think, Monday that we
24 heard by video, again, this is sworn testimony given by a
25 witness outside the presence of the courtroom with attorneys

1 for both sides present. It should be given the same weight
2 and the same consideration as a live witness. Again, you
3 evaluate the witness the same way you would a live witness.

4 MR. WILSON: Your Honor, at this time, the plaintiff
5 calls Thomas Griffiths.

6 DR. THOMAS GRIFFITHS (BY VIDEO DEPOSITION)
7 after having been previously duly sworn, was examined and
8 testified to as follows:

9 (The video deposition of Dr. Thomas Griffiths was
10 played.)

11 THE COURT: Okay. Ladies and gentlemen of the jury, we
12 have been going about an hour. Let's take about a ten-minute
13 break and let everybody stretch their legs.

14 (The jury exited the courtroom at 2:40 p.m.)

15 (A brief recess was taken at 2:40 p.m. to 3:05 p.m.)

16 THE COURT: Okay. Are we ready for them?

17 (The jury entered the courtroom at 3:07 p.m.)

18 MR. WILSON: May I begin, Your Honor?

19 THE COURT: Yes, sir.

20 (The video deposition of Dr. Thomas Griffiths continues
21 to play.)

22 MR. THOMPSON: Your Honor --

23 THE COURT: Can you pause it for a second?

24 MR. THOMPSON: May we approach?

25 THE COURT: Mm-hmm.

BENCH CONFERENCE

(The following bench conference was held outside the hearing of the jury and others.)

MR. THOMPSON: We did double-check, but there seems to be a big skip of our designated material from dealing with the rips to dealing with the training. There's a big skip.

THE COURT: I'm going to send them out. It's been about an hour anyway.

(Open court resumes as follows:)

THE COURT: Okay. We have had you about an hour. Let's take about a ten-minute break.

(The jury exited the courtroom at 4:03 p.m.)

MR. THOMPSON: Your Honor, in the transcript, it says "Examination by Mr. McLeod," and so it looked like there was some amount of material that was skipped. It looks like it was just an error in the transcript on who was asking the question. The edit was correct.

THE COURT: And we're now around page 180?

MR. TRAINOR: It's going to pick back up on 182.

MR. THOMPSON: I think we have another hour of his cross.

THE COURT: Well, let's keep going.

MR. WILSON: May we play the last question again? I don't think the jury heard it.

THE COURT: That's fine. And y'all are welcome to take a break.

1 (A brief recess was taken at 4:05 p.m.).

2 JUROR NOTE

3 THE COURT: We have a note from Ms. Schildtknecht.

4 (The Court shows note to attorneys).

5 MR. McLEOD: Which one is Ms. Schildtknecht?

6 THE BAILIFF: She's the alternate, I believe. She's the
7 alternate.

8 THE COURT: She's the alternate, with the short hair in
9 the back row.

10 MR. THOMPSON: She's the alternate?

11 THE COURT: She is.

12 I mean, I guess the only instruction that I would give
13 her -- I mean, they shouldn't be deliberating at this point
14 anyway. It's looking like she would be giving her expertise.
15 They shouldn't be having any discussion about the case.

16 MR. McLEOD: And when we close, we excuse her. I think
17 we're fine.

18 THE COURT: Yeah, I mean, she shouldn't even be going in
19 the room once we send the jury back. If we need her, then
20 we'll deal with it then. For now, I'm going to -- maybe I
21 need to bring her in and say thank you for that information, I
22 appreciate you disclosing it, and I have disclosed it to the
23 attorneys.

24 MR. McLEOD: And you know y'all aren't able to
25 deliberate.

1 THE COURT: Okay. All right. If you will mark this as
2 our next Court's exhibit.

3 (Court's Exhibit No. 3, Jury Note, was marked for
4 identification.)

5 THE COURT: Hi, Ms. Schildtknecht. Thank you for your
6 note. I appreciate you giving us that information. I have
7 disclosed it to the attorneys, so they're aware of it as well.
8 We have discussed it. Certainly glad for you to remain as the
9 alternate. Of course, at this point, there shouldn't be any
10 discussions going on about the case anyway.

11 JUROR NO. 344: Right. Of course.

12 THE COURT: If, for any reason, we are in a position to
13 use you as the 12th juror, then we'll have some additional
14 discussions. But, at this point, everybody is satisfied that
15 you remain as the alternate. Of course you're not going to
16 disclose anything in the note with the fellows jurors because
17 nobody is having any deliberations about the case.

18 JUROR NO. 344: I just wanted to let y'all know.

19 THE COURT: And I appreciate that.

20 Anything else you wanted me to discuss with her?

21 MR. McLEOD: No, Your Honor.

22 MR. THOMPSON: No, Your Honor.

23 THE COURT: Thank you again.

24 (Pause in the proceedings.)

25 (The jury entered the courtroom at 4:14 p.m.)

1 MR. WILSON: Ready, Your Honor?

2 THE COURT: We're ready. Actually, that flickering light
3 is about to drive me crazy. If not -- now we have to carry
4 on. I'm sorry.

5 MR. WILSON: Can't fix that, Your Honor.

6 (Video continues to play.)

7 MR. THOMPSON: Your Honor, may we approach?

8 THE COURT: Sure.

9 BENCH CONFERENCE

10 (The following bench conference was held outside the hearing
11 of the jury and others:)

12 MR. THOMPSON: We're playing stuff I didn't designate. I
13 said at page 241 or 243, and they're starting paging at 254.

14 MR. McLEOD: Do you want me to stop it here?

15 MR. THOMPSON: Yeah. It ended at Mullins's questions.

16 MR. WILSON: His questions haven't come out yet. There's
17 no answer.

18 MR. THOMPSON: I know, but it shouldn't have been read.

19 THE COURT: Okay. I mean, in our discussions --

20 MR. WILSON: Something about closing the beach. Talking
21 about closing the water.

22 THE COURT: I know we talking about page 254.

23 MR. McLEOD: That's why I have my light.

24 MR. THOMPSON: I never got through that page. I have
25 objections for his questions. Right? My question -- that

1 line of questioning, I didn't designate. Whatever that
2 question was. What page is that?

3 MR. WILSON: 254. I have it as you admitted.

4 MR. THOMPSON: I mean, I have excerpts right here, and
5 they go through 241, 242 through 243. That's where they end.

6 THE COURT: I understand. But I'm saying, when we had
7 our discussion Monday, I know we went through your objections
8 to, like, page 254.

9 MR. THOMPSON: Yes, Your Honor, to his, because after I
10 asked questions then he asked questions -- additional
11 questions.

12 THE COURT: But your -- this is the beginning of your
13 next section.

14 MR. WILSON: Right.

15 MR. THOMPSON: But I didn't designate them.

16 MR. WILSON: We can stop. There's no -- the question is
17 not even finished and there's no answer.

18 MR. THOMPSON: But I mean, I think that's it.

19 MR. WILSON: Yeah, that's it.

20 THE COURT: Okay. That's the end of what we have
21 designated in this video.

22 And, I'm sorry, can I have y'all approach one more
23 time? Let's talk about timing and our schedule.

24 THE COURT: You have the two children.

25 MR. WILSON: That's it.

1 THE COURT: I mean, I hate to start them at 5:15.

2 MR. WILSON: I believe you want to start testimony at 9.

3 MR. THOMPSON: I think we can get in all of my case, if
4 not tomorrow, by the first part of the morning. We should be
5 done by mid-morning Friday.

6 THE COURT: Come prepared tomorrow to talk about jury
7 charges.

8 MR. THOMPSON: Yes.

9 THE COURT: I didn't want to save that discussion for
10 Friday morning, and then we end up running through that. Talk
11 about jury charges. So just be ready to talk about jury
12 charges at some point tomorrow. If you have some proposed
13 charges, so I can be incorporating them.

14 MR. WILSON: And you have your standard charges.

15 THE COURT: And I can give you a copy of that. I know we
16 started a draft. I can give you that in the morning.

17 MR. McLEOD: We'll start walking through ours.

18 MR. THOMPSON: Thank you.

19 (Open court resumes as follows:)

20 THE COURT: Okay. Ladies and gentlemen of the jury,
21 we're going to go ahead and stop for the day. Same
22 instructions I'm going to give you today as in previous days:
23 If you'll be back at 9:00 tomorrow. Please don't begin having
24 any deliberations or any discussions about the case either
25 with each other or anyone outside of the courtroom. No

1 independent research, etc. And we will see you again in the
2 morning. We're going to follow a very similar schedule
3 tomorrow. We'll start at 9:00, we'll bring lunch in for you,
4 and we'll move right along. Thank you. Have a good evening.

5 (The jury exited the courtroom at 5:18 p.m.)

6 THE COURT: Okay. Anything else we need to address
7 before we adjourn?

8 MR. McLEOD: Nothing from the plaintiff, Your Honor.

9 MR. THOMPSON: No, Your Honor.

10 THE COURT: Okay. We'll see you in the morning.

11 MR. THOMPSON: Thank you, Your Honor.

12 (At 5:19 p.m., the trial adjourned until July 28, 2022,
13 at 9:00 a.m.)

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1 CERTIFICATE OF COURT REPORTER.

2
3 State of South Carolina)
4 County of Horry)

5 RE: *Meswaet Abel v Lack's Beach Service*
6

7 I, Bobbi J. Fisher, Registered Professional Reporter
8 (RPR) and Official Court Reporter III for the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the proceedings
11 had and evidence introduced in the trial of the captioned case
12 in the *Court of Common Pleas for Horry County, South Carolina*,
13 on the *26th of July, 2022*.

14
15 Submitted: *August 10, 2022*
16

17 *Bobbi Fisher*

18
19
20 /s/ *Bobbi Fisher*

21 Bobbi J. Fisher, RPR

22 Official Court Reporter III

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF HORRY) TRANSCRIPT OF RECORD
3 -----x
4 MESWAET ABEL, AS PERSONAL)
5 REPRESENTATIVE OVER THE)
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
20 Thursday, July 29, 2022
21 TRIAL DAY 4
22
23 B E F O R E:
24
25 The Honorable Kristi Curtis, Presiding Judge; and a jury.
A P P E A R A N C E S:
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Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

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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
24	Notes from Adam	525	525
25	Notes from Adam	525	525
26	Email Chain/John Pedersen	622	647
27	Email Chain/Philip Cain	622	655
28	Surf School Agenda 2018	835	835
29	Kacper Palacz Records	836	837
30	Lucakasz Jaworski Records	837	857
31	Aleksandr Dineev Records	837	838

Defendant's Exhibit

No.	Description	ID.	REC'D
3	Kacper Palasz Records	807	807
4	Luckasz Jaworski Records	808	808
5	Alexandr Dineev Records	810	810
6	Lack's Team Photo 2018	811	811
7	Narrative from Jaworski	824	824
8	Narrative from Palasz	826	826

Court's Exhibits

No.	Description	ID.
5	Video Deposition of Dr. Griffiths	525

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:14 a.m.):

(Court's Exhibit No. 5, Video Deposition of Dr. Griffiths, was marked for identification and received into the record.)

THE COURT: Anything we need to address before we bring the jury in?

(The jury entered the courtroom at 9:16 a.m.)

THE COURT: Good morning, ladies and gentlemen. We are ready to resume the testimony.

MR. McLeod?

MR. McLEOD: Yes, Your Honor. Our next witness will be Adam.

MR. PRACHT: Your Honor, this will be Plaintiff's --

COURT REPORTER: 24.

MR. PRACHT: And 25, please.

Your Honor, Plaintiff moves these into evidence by consent.

MR. THOMPSON: No objection, Your Honor.

THE COURT: They are admitted.

(Plaintiff's Exhibit No. 24 and 25, Notes from Adam, was marked for identification and received into evidence.)

ADAM ZERIHUN,

after having been duly sworn, was examined and testified to as follows:

DIRECT EXAMINATION

1
2 BY MR. PRACHT:

3 Q Good morning, Adam.

4 A Good morning.

5 Q Would use please state your full name and date of birth
6 for this jury here.

7 A I'm Adam Zerihun. I'm 15 years old, and my birthday is
8 August 15th, 2006.

9 Q And where were you born, Adam?

10 A Maryland.

11 Q Adam, I'm sorry; I have to ask you something. You said
12 Adam Zerihun; right?

13 A Correct.

14 Q Now, what was your dad's name?

15 A Zerihun Wolde.

16 Q Okay. Why is your last name Zerihun and your dad's last
17 name Wolde? Can you please explain that to the jury?

18 A So it's a tradition, where I'm from, to take my dad's
19 first name and keep it as my last name.

20 Q And you have lived in the United States all your life;
21 correct?

22 A Correct.

23 Q Do you want to have children some day, Adam?

24 A Yes.

25 Q When you have children, what is your plan to name them?

- 1 **A** To have their last name as Zerihun.
- 2 **Q** So you want to change the tradition that you have had?
- 3 **A** Yeah.
- 4 **Q** And why do you want to do that?
- 5 **A** To continue on his legacy.
- 6 **Q** And you're his oldest son?
- 7 **A** Correct.
- 8 **Q** Share with the jury about your father a little bit. What
9 kind of man was he?
- 10 **A** He was a selfless guy, caring, loving. He would do
11 anything to make us happy.
- 12 **Q** Share with the jury some of the things you did with your
13 father, Adam.
- 14 **A** We would go out a lot, play basketball. You know, just
15 activities.
- 16 **Q** What does your dad do for a living?
- 17 **A** He was a taxi driver.
- 18 **Q** What was his schedule like for most of your life?
- 19 **A** So whenever my mom would come home from school and work,
20 he would go work.
- 21 **Q** When your mom was working as a nurse, what would your dad
22 do?
- 23 **A** He would stay at home and take care of us. Cook, clean,
24 keep the house organized.
- 25 **Q** Would you guys eat dinner as a family often?

1 A Yeah, every night.

2 Q And you would do that where?

3 A In our dining room, in our kitchen.

4 Q And where at the dining room, Adam, would your father

5 sit?

6 A At the head of the table.

7 Q And what did you call your dad? What was y'all's

8 nickname for him?

9 A Baba.

10 Q And what does that mean, "Baba"?

11 A It's just like, in our language, dad.

12 Q Understood.

13 What did you do with your dad on Sundays?

14 A We would come home from church every Sunday, watch

15 football. Watch the Redskins play every week.

16 Q Tell me about how y'all would watch the Redskins.

17 Describe the scene for this jury here.

18 A We would just, you know, sit -- after we had our

19 breakfast, we'd just sit down, talk about the games, you know.

20 Watch. Most of the time we lost.

21 Q Did you have a lot of Redskins gear?

22 A Yes. I had RG3 jersey he bought for me.

23 Q So is it fair to say that Dad's primary role was the

24 family?

25 A Correct.

1 Q But he also worked as a taxi driver?

2 A Yes.

3 Q And, then, let's talk about your mom for a second. Share
4 with this jury a little bit about your mom.

5 A My mom, she's a hard worker. You know, she cares about
6 us.

7 Q Is it fair to say, in 2018, she was the one earning most
8 of the money?

9 A Correct.

10 Q All right. I want to talk about activities. Do you play
11 any sports, Adam?

12 A I play basketball.

13 Q Is that your favorite sport?

14 A Yeah, to play.

15 Q How about swimming? Do you know how to swim?

16 A Yeah, strong swimmer.

17 Q Okay. Tell me about that. Like, how did you become a
18 strong swimmer? How did you learn?

19 A When I was a kid, my parents would take me to practice,
20 swim lessons. I would go to Bowie, I think, and they had an
21 instructor to teach me how to swim.

22 Q How often would you guys go to the pool in your -- was it
23 a weekly thing or you tell me?

24 A During the summer, since we had a neighborhood pool, we
25 would go multiple times a week.

1 Q How about your father? What kind of swimmer was he?

2 A He was also a strong swimmer. You know, very good.

3 Q How do you know that?

4 A We would, like, go to the deep end together, and we would

5 both swim.

6 Q Do you know whether or not your father swam when he went

7 and exercised?

8 A I'm not sure, but there was a pool in his gym.

9 Q I see. Okay.

10 You didn't go exercise with him?

11 A No. I was too young.

12 Q Now, did you guys ever take some family vacations?

13 A Yeah.

14 Q Share with the jury some of the vacations y'all were

15 fortunate enough to do.

16 A So, since my mom didn't get that much time from work, we

17 didn't take it for granted. We went to Sweden as a family.

18 We have been to Florida. Ethiopia, we go a lot since that's

19 where I'm from.

20 Q How about the beach? Did you ever take any vacations to

21 the beach? And I'm not talking about when you came to Myrtle

22 Beach, just other vacations to the beach.

23 A Regularly, we went to Ocean City, since it was in the

24 same state. We would drive down there with family.

25 Q Tell me, what do you remember about the beach in Ocean

1 City, if anything?

2 A It was packed. You know, just your ordinary beach.

3 Q Did you have fun?

4 A Yeah.

5 Q Did you guys go a couple of times? Frequently? Do you

6 remember how many times y'all went?

7 A It was more than three times, I would say.

8 Q Gotcha. Any bad experiences at all that you can share

9 with the jury at Ocean City?

10 A No.

11 Q Okay. When you went to Ocean City, would you play in the

12 waves with your dad?

13 A Yeah, a lot.

14 Q All right. Adam, how old were you in 2018?

15 A Twelve, I believe.

16 Q And your birthday is in August?

17 A Correct.

18 Q And so tell me -- and when is your birthday?

19 A August the 15th.

20 Q August the 15th.

21 So take us to your home -- and where did y'all live in

22 2018 in Maryland?

23 A Silver Spring.

24 Q And describe for the ladies and gentlemen of the jury how

25 you came to know you were going to a vacation in Myrtle Beach.

1 A So, for my birthday that year, I was given the choice to
2 get an iPad or go to Myrtle Beach as a family.

3 Q And what did you choose?

4 A Myrtle Beach.

5 Q Why?

6 A So we can spend quality time together rather than just
7 getting a gift.

8 Q Did you enjoy vacations with your family?

9 A Yeah. A lot.

10 Q So let's take us through it. So you learn you're going
11 to Myrtle Beach. Do you get online and do any research?

12 A No, not much. I was a kid at the time.

13 Q Do you remember anything specific about any Googling you
14 did or any research?

15 A No.

16 Q Did you see any pictures of Myrtle Beach?

17 A I have seen pictures before, yeah.

18 Q Okay. Do you remember really what any of those pictures
19 were?

20 A No.

21 Q So do you know why y'all decided on Myrtle Beach? You
22 had never been there before.

23 A It was just their choice. I didn't really know.

24 Q So they said -- your folks were telling you, "Hey, this
25 is where we're going to go"?

1 A Yeah.

2 Q Do you remember the ride down?

3 A It was a long ride. You know, my dad was sitting next to
4 me in the back, my sister on the other side. My mom was
5 driving, and my grandpa was in the passenger seat. Sisters,
6 two ahead of us.

7 Q And so were the twins there?

8 A Correct.

9 Q So there were how many people total in the car?

10 A Seven, I believe, yes.

11 Q Because it was -- yeah, that would be right.

12 And all your gear?

13 A Yeah.

14 Q Did y'all bring beach gear?

15 A We had surfboards in the back, a cooler, and all our
16 luggage in the back.

17 Q Was it a cramped ride?

18 A Oh, it was. Very.

19 Q And so you drove down. Did you -- do you remember what
20 time y'all got to Myrtle Beach?

21 A When we got down there, it was dark. The sun had set.
22 It was very dark.

23 Q Okay. What was the first thing you did when you arrived
24 in town?

25 A We just unpacked the car, put everything in the hotel.

- 1 Q Okay. And then were you excited?
- 2 A Yeah. We all changed into our swim gear immediately.
- 3 Q And, at some point, did you place a phone call while you
4 were in the room?
- 5 A Yeah. I called the front desk to ask if the beach was
6 open.
- 7 Q And what did you learn?
- 8 A They said that it was open, but there were no lifeguards
9 on duty after a specific time.
- 10 Q Do you remember exactly what time they said?
- 11 A No.
- 12 Q And, by this point, was it completely dark outside?
- 13 A Yeah, it was very dark.
- 14 Q All right, Adam. I want you to, if you can, describe for
15 the ladies and gentlemen of the jury the pathway that you took
16 from your room, if you remember, out onto the beach. What was
17 the route?
- 18 A So, our hotel had access to the beach. So, when you're
19 in the front desk, you can go through a hallway, which will
20 lead you to the swimming pool of the hotel. And once you turn
21 right and go straight, you can access the beach.
- 22 Q And is that how y'all made your way that evening to the
23 beach?
- 24 A Yes.
- 25 Q At any point in that trip, did you notice or see any

1 signs?

2 A No.

3 Q So tell me -- take us there and describe for the ladies
4 and gentlemen of the jury, when you guys arrive on the beach
5 that night -- this is the night before -- describe what the
6 beach was like, if you remember.

7 A It was dark. I couldn't see much. But I remember
8 walking down on the sand, just didn't go in too deep. We just
9 got our feet wet.

10 Q What else do you remember about the beach?

11 A Not much.

12 Q Do you remember seeing any lifeguard stands out there?

13 A No. It was too dark to notice any.

14 Q Okay. Do you remember about how long you were on the
15 beach?

16 A Not long. We just, you know, didn't go deeper than our
17 knees. Just our feet. And then chose to go back.

18 Q And would you say you were out there for an hour?

19 A No, not that long.

20 Q How about 30 minutes?

21 A Maybe a little more.

22 Q When you came back in from the beach, did you take the
23 same pathway that you did to come out?

24 A Correct.

25 Q Tell me what you did when you came back in -- or share

1 with the ladies and gentlemen of the jury what you did when
2 you came back into the resort?

3 A We got in the pool that we passed. You know, I started
4 swimming in the pool. My mom was in the hot tub. Everyone --
5 my grandpa too. Everyone was inside.

6 Q And do you remember how long you swam at the pool?

7 A No.

8 Q Do you have an idea of whether it was longer or shorter
9 than when you were at the beach?

10 A No.

11 Q So tell me what happened after you guys have had enough
12 swimming.

13 A We went back inside and just slept. Not much. Took a
14 shower and slept.

15 Q Let's go to the following day, Adam. This is Friday,
16 August 24th, 2018. Share with the ladies and gentlemen of the
17 jury what you remember and what you did when you woke up.

18 A I woke up. The first thing I did was go to Walmart with
19 my dad to get groceries and food for breakfast.

20 Q All right. And did that take a little while?

21 A Yeah.

22 Q Do you remember what you purchased at Walmart, the gear
23 y'all got and the food?

24 A No.

25 Q What did you after you guys went shopping at Walmart?

1 **A** We went back, unpacked everything, and we started making
2 breakfast.

3 **Q** Do you remember who cooked breakfast for the family?

4 **A** I think it was my mom.

5 **Q** And share with the jury what you did after breakfast or
6 what the family did after breakfast?

7 **A** We just -- for a little bit, just sat there and just got
8 ready. So we didn't go in the water as soon as after we ate.

9 **Q** Understood.

10 And, at some point, did y'all change clothes and get
11 ready for the beach?

12 **A** Yeah.

13 **Q** Now, did y'all have beach gear with you?

14 **A** Yeah, we did.

15 **Q** Can you describe to the ladies and gentlemen of the jury
16 what beach items and equipment you had with you that day?

17 **A** We had two surfboards. And what we took down was we had
18 balls, cooler, an umbrella, and I think a chair.

19 **Q** Now, when you say "surfboards," is that like you lay on
20 like a boogie board?

21 **A** Yeah.

22 **Q** So you just call it a surfboard.

23 **A** Yeah.

24 **Q** Okay. I just want to make sure we're clear for the jury.

25 All right. So again, Adam, I want you to go back in

1 your memory and take us to the pathway you took onto the beach
2 that day.

3 A It was the same that we took the night before.

4 Q All right. Now, take me to the beach in your mind and
5 what you remember and what you observed, and describe where
6 you guys set up and how you went once you got onto the beach.

7 A So, we got onto the beach, and we sat either to the left
8 or to the -- we weren't directly ahead of where we stayed. We
9 chose a side, and we unpacked, put the umbrella down in the
10 sand.

11 Q Do you have a recollection of seeing any lifeguard stands
12 at that point?

13 A There was one to our right.

14 Q Did you pay it much attention?

15 A No.

16 Q And tell me about the process of setting up the gear.
17 What does that involve?

18 A We just stick the umbrella in the stand, the chairs. Set
19 it up so my mom can sit. We had the cooler so we placed that,
20 filled with waters.

21 Q When you arrived on the beach, did you see any big, large
22 red flags?

23 A No.

24 Q When you arrived on the beach, did you see any
25 lifeguards?

1 A No.

2 Q Now, just so we can share with the ladies and gentlemen
3 of the jury, make sure we're organized here, who all was on
4 the beach with your family? If you could just name everybody
5 that was on the beach.

6 A My mom, my dad, my grandpa, me, and my three sisters.

7 Q And how old were your twin sisters at that time?

8 A I'm not sure.

9 Q Okay. And did they primarily stay with your mom?

10 A Yeah. They stayed with her the whole time.

11 Q Now, take us and tell us what you did when you first got
12 to the beach and y'all got set up after that.

13 A After we got set up, me and my dad took the surfboards
14 and we just played in the waves a little bit. Not that deep.

15 Q Is it just the two of y'all at this point?

16 A Pretty sure, yeah.

17 Q Where was Wubit?

18 A She was with my sisters and mom, I believe.

19 Q Would Wubit come back and forth between you --

20 A Yeah. She was both with my mom and us.

21 Q And what was your mom doing at this time?

22 A She was watching over my twin sisters.

23 Q When you went down to the water from where y'all set up,
24 how did y'all go? Did y'all go straight towards the water?
25 To the left? To the right? Do you remember?

1 **A** We chose a side, but I don't remember which side.

2 **Q** Was it really far to a side?

3 **A** No, it was a little bit. Not a big difference.

4 **Q** Okay. When you were boogie-boarding with your dad, could

5 you see -- from your vantage point, could you see where your

6 family was set up on the beach?

7 **A** Yes.

8 **Q** And in relationship to when you were boogie-boarding --

9 and I know you're moving, okay. But, I mean, where was it

10 generally, if you could, like, in your vision? Was it

11 constantly moving, or were they always kind of in the same

12 place?

13 **A** It was moving.

14 **Q** Okay. All right. At some point, Adam, did the boogie

15 boards get brought back in?

16 **A** Yeah. I'm not sure who took them back, but after a

17 while, we just chose to put them down where my mom was.

18 **Q** And, at that point, share with the ladies and gentlemen

19 of the jury what you, Wubit, and your father did then.

20 **A** We just chose to jump, like, enjoy the waves in the

21 water.

22 **Q** And when you were jumping in these waves, about how deep

23 was it when you stood up when the waves weren't hitting you?

24 **A** About waist deep.

25 **Q** Did you feel comfortable?

1 A Yeah.

2 Q Did you have any indication, playing in the waves, that
3 something was wrong?

4 A No.

5 Q Did you see anything on the beach or in the water that
6 told you something was wrong?

7 A No.

8 Q Were there other people in the water?

9 A Yeah, a lot.

10 Q Were there other children in the water?

11 A Yeah.

12 Q What was the weather like, Adam?

13 A I don't remember, but it was a clear day.

14 Q No thunderstorms or anything?

15 A Nothing, no.

16 Q All right. So I want you to take us there, and I want
17 you to describe for the ladies and gentlemen of this jury -- I
18 know it's hard to talk about, but I want you to describe what
19 was going on when you first felt a pull in the water.

20 A So I couldn't feel much, but I noticed that I was
21 unintentionally getting deeper and deeper.

22 Q Okay. Tell me what happened next.

23 A So I was -- you know, got to my chest and eventually my
24 neck.

25 Q And how far away from you, while you were getting deeper

1 and deeper, from your dad and sister?

2 A He was behind me, so I was in front of them just out of
3 arm's reach.

4 Q Just out of arm's reach?

5 A Correct.

6 Q And was your sister -- where was your sister in
7 relationship to your father?

8 A She was right next to him. They were -- he was hugging
9 her.

10 Q They were touching?

11 A Yeah.

12 Q Did it eventually get deep enough to where you couldn't
13 touch?

14 A Yeah.

15 Q What did you initially do when you felt this sensation?

16 A Started treading water.

17 Q At any time did you try to swim back into shore?

18 A Yes, I tried.

19 Q Did you observe what your father and sister were doing?

20 A They were trying to do the same thing.

21 Q Did that work?

22 A No.

23 Q Did it seem like y'all were getting closer to shore or
24 you were getting further away from shore?

25 A We were getting further away.

1 Q What did you do after the swimming back in didn't work,
2 Adam?

3 A So, after we tried swimming straight, we started yelling.

4 Q Okay. Now, let's talk about that. What did you yell,
5 Adam?

6 A We were shouting "help," and we were waving our arms up.

7 Q How loud were you yelling; do you remember?

8 A As loud as we could in that emergency 'cause...

9 Q Now, when you were yelling, could you see the beach?

10 A Yeah.

11 Q Could you see people on the beach?

12 A Yes.

13 Q Okay. Do you have any idea, when you were yelling, how
14 far away you were from the beach?

15 A No.

16 Q Were you -- could you see the beach, though, easily?

17 A Yes.

18 Q Would you say you were 25 yards from the beach?

19 MR. THOMPSON: Objection, Your Honor. It's leading.

20 He's already answered the question too.

21 THE COURT: That's sustained.

22 BY MR. PRACHT:

23 Q All right. So you're yelling?

24 A Correct.

25 Q Was your father yelling?

1 A Yes.

2 Q And what was he yelling?

3 A "Help," the same thing all three of us were yelling.

4 Q And did you continuously yell for help?

5 A Yes.

6 Q After yelling for help for some period of time, what

7 happened next?

8 A So, after we yelled for help and noticed that it wouldn't

9 change nothing, I started swimming to the left.

10 Q Okay. Did you just decide to do that?

11 A Yeah. Since swimming straight didn't work, I chose to go

12 to the side.

13 Q Okay. And when you swam, how did you swim? Did you

14 swim -- did you just tread water and swim or did you do a

15 stroke?

16 A I freestyled. Swam freestyle.

17 Q And at the point you decided to swim to the left, were

18 Wubit and your father still yelling?

19 A Yeah. I looked back and they were still in trouble, and

20 I said, "Calm down, follow me."

21 Q And then you swam?

22 A Yeah.

23 Q All right. As you swam to the left, did that help?

24 A Yeah.

25 Q Okay. Tell me what happened next.

1 A So, as I was getting closer and closer to shore, I still
2 couldn't stand, but I passed a guy who was coming to save us.

3 Q Did it appear to you he had heard your screams?

4 A Yes.

5 Q And where was he going?

6 A He was going back past me to my dad and my sister.

7 Q Did he do anything or say anything to you as he passed
8 you by?

9 A He just said, "Continue on this way," and pointed more to
10 the left.

11 Q When you swam to the left, where was Wubit in
12 relationship to your father?

13 A She was still next to him.

14 Q Was she still holding onto him?

15 A Yes.

16 Q And he was still yelling?

17 A I'm not sure.

18 Q What about her?

19 A I don't know.

20 Q At that point when you swam away?

21 A Yeah.

22 Q How far away were they when you decided to swim left?
23 Had they gotten closer to arm's length or farther away?

24 A It was -- the reach was more. We were separated.

25 Q Were you as far from me to you?

1 A Maybe.

2 Q Okay. Do you think further or shorter?

3 A A little further.

4 Q Maybe here?

5 A Yeah.

6 Q All right. So take me, Adam, when you swam past the

7 bystander, tell me what you did next.

8 A So, eventually, I got to the point where I could stand,

9 and I saw more people were like, "What happened?" So I told

10 them, and then I ran back to the shore.

11 Q And when you got to the shore, where did you go?

12 A I ran to the right, to my mom.

13 Q And when you got to your mom, what did you say?

14 A I said, "We need to help."

15 Q And what do you remember about how your mom reacted to

16 that?

17 A She was like, "What happened?" And she was panicking.

18 Q And where did you and your mom go next?

19 A She went -- we saw a huddle, like, a circle around,

20 people, and she went to it, to the right.

21 Q Did you go with her?

22 A No.

23 Q What did you do?

24 A I stayed with my sisters.

25 Q Could you see the huddle from where you were?

1 A Yes, sir.

2 Q How far away was the huddle from you?

3 A I'm not sure.

4 Q Okay. Did you have an understanding that your father was

5 in the huddle?

6 A Yeah.

7 Q You knew he was in trouble?

8 A Mm-hmm.

9 Q And you were with your twin sisters?

10 A Correct.

11 Q How were they reacting to this?

12 A They didn't know what was happening.

13 Q All right. Now, at any point from the time you felt the

14 pull to the time you got out of the water, did any lifeguard

15 enter the water to assist you or your family?

16 A No.

17 Q At any point before you got your mom and returned to the

18 huddle, did you see a lifeguard at all?

19 A No.

20 Q Did you see anyone performing CPR on your dad?

21 A I couldn't see.

22 Q And, at some point, did you know that your dad had been

23 loaded into a medical transport vehicle?

24 A Yeah, a car.

25 Q Did you see that?

1 A Yeah.

2 Q All right. Adam, share with the jury what happened next.

3 A So, we got -- I gathered my sisters, my grandpa, got

4 everything, and went back to the hotel.

5 Q And did you see your mom at the hotel?

6 A Yeah. She ran in to change her clothes, and she went --

7 she left.

8 Q And when was the next time you saw your mom?

9 A I'm pretty sure at the hospital. Actually, I'm not sure,

10 because I didn't see her there either.

11 Q Did you go to the hospital?

12 A Yeah, but I stayed in a waiting room.

13 Q And what was your understanding of what was going on with

14 your dad while you were at the hospital?

15 A That, you know, he might not make it.

16 Q And then let's fast forward to the next day.

17 A Mm-hmm.

18 Q How did you and your family return home to Maryland?

19 A We flew.

20 Q And do you know or have any idea who got the cars back

21 and all the stuff?

22 A No.

23 Q So you flew back to Maryland the next day?

24 A Correct.

25 Q Adam, please share with the ladies and gentlemen of the

1 jury how you were first -- who first told you that your father
2 passed away.

3 A So after we got back to Maryland, I stayed at my uncle's
4 house, and my mom came with a priest, and she said what
5 happened.

6 Q Adam, I want to talk briefly -- and this is how we'll
7 wrap things up, but I want to talk briefly about the
8 difference in your life, in your family, and how it affected
9 your family between having your dad and not having your dad.
10 Do you understand?

11 A Mm-hmm.

12 Q Okay. So let's talk about that. Share with the ladies
13 and gentlemen of the jury some of the differences in your home
14 without your dad around.

15 A So, my mom couldn't work the same shifts since we needed
16 someone to be there when school was over to cook, do things
17 around the house.

18 Q Do you handle a lot of those things now?

19 A Yeah. I learned how to cook. I clean after my sisters.

20 Q Do your sisters have a lot of energy?

21 A Yeah.

22 Q And a lot to keep up with?

23 A Mm-hmm.

24 Q Do you help your mom with a lot of the chores, Adam?

25 A Yeah.

1 Q More than your sisters?

2 A Yeah.

3 Q Tell me, how is watching the Redskins different, Adam?

4 A I used to watch it by myself. You know, call some
5 friends while I'm watching. Now, I'm teaching my mom how
6 football works. She watches with me.

7 Q So she wants to watch the game with you?

8 A Yeah.

9 Q Now, tell me about basketball. I know you and your dad
10 played a lot of basketball together.

11 A Yeah. I continued practicing, got better.

12 Q And you're tall now. How tall are you?

13 A Five-ten.

14 Q But you were shorter back in 2018; right?

15 A Yeah.

16 Q How often would you play basketball with your dad?

17 A You know, every Saturday morning, we would go to a park.
18 We would practice, play against each other.

19 Q How about when you were on spring break? What would your
20 dad do with y'all then?

21 A So, since he worked in D.C., he knew around it. We would
22 go see the cherry blossoms, Potomac River, all the sites. The
23 White House, the monument.

24 Q Now, you mentioned earlier eating dinner as a family.

25 A Mm-hmm.

1 Q Did y'all attempt to do that some after your dad was
2 gone?
3 A Yeah, we still do that.
4 Q And share with the ladies and gentlemen of the jury what
5 y'all did to try and honor your father at your table.
6 A My sisters would just put a plate where he used to sit.
7 Q Did you continue doing that for awhile?
8 A For a little bit, and then we just stopped.
9 Q Why did you stop?
10 A It was just hard.
11 Q Hard to talk about?
12 A Yeah.
13 Q I want to talk briefly what your observations are, Adam,
14 on the impact we're talking about on some of your other family
15 members. You know, your mom, pretty sad after this?
16 A Yeah.
17 Q Did that have an impact on the family?
18 A Yeah, a lot.
19 Q How about your sisters? Tell me about Wubit?
20 A You know, just seeing my mom sad, it made all of us feel
21 different.
22 Q Did you feel the need to help your sisters?
23 A Yeah.
24 Q Lead your family?
25 A Mm-hmm.

1 Q Adam, the last thing is, I'd like you to share with the
2 ladies and gentlemen of the jury just in your own words what
3 your dad meant to you.

4 A You know, he was a mentor, a guide. You know, he helped
5 me with a lot.

6 Q Did you love your dad?

7 A Yeah, a lot.

8 Q Please answer any questions as truthfully as you have
9 answered for me for Mr. Thompson.

10 A All right.

11 MR. THOMPSON: Thank you, Your Honor. May it please the
12 Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. THOMPSON:

16 Q Adam -- may I call you "Adam"?

17 A Yes.

18 Q Good morning.

19 A Good morning.

20 Q Adam, you said you're five-ten now. Back in 2018, you
21 were about five-one; right?

22 A I don't remember.

23 Q Okay. Much shorter than you are now?

24 A Yes.

25 Q You're actually even taller than we were last together

1 last summer, aren't you?

2 A Yeah.

3 Q All right. Now, did you just finish -- what grade?

4 A I just finished 10th grade.

5 Q And all A's?

6 A On my resume, I have one B.

7 Q How did that happen?

8 A Spanish.

9 Q Now, you testified you had some experience in the water;

10 correct?

11 A Correct.

12 Q You have been to the beach before?

13 A Yes.

14 Q But you had never learned anything about rip currents?

15 A No.

16 Q Had never really done any research about oceans or surf

17 or anything like that?

18 A Never.

19 Q Did you rely on your parents to provide that information

20 to you?

21 A Yes.

22 Q And hoped that they would provide you a safe environment?

23 A Yeah.

24 Q And you relied on that; right?

25 A Yeah.

1 Q When you went to Myrtle Beach, that was your first time
2 there; right?

3 A Correct.

4 Q You talked with friends, heard it was a pretty good place
5 to be?

6 A Told a few people.

7 Q Anybody tell you about what to do in Myrtle Beach while
8 you were here?

9 A No.

10 Q And so, in August of 2018, did you conduct any research,
11 find out any information about Myrtle Beach?

12 A No.

13 Q What you might like to do while you were here? Whether
14 to play putt-putt or go-karts or something like that?

15 A No.

16 Q Did you look into any information about the resort where
17 you were going to stay?

18 A No.

19 Q Find out if they had a lazy river or something like that?

20 A No.

21 Q Had you taken boogie boards to Myrtle Beach -- I mean, to
22 Ocean City before?

23 A Yeah, all the time.

24 Q So you were planning to, obviously, use the boards here
25 at Myrtle Beach?

1 A Yes.

2 Q Did you know whether there was a surf here?

3 A No.

4 Q You just hoped there would be; right?

5 A Yeah.

6 Q All right. In your times in Ocean City, Maryland, in
7 your comings and goings, did you ever read any of the signs
8 that were posted in Myrtle -- in Ocean City?

9 A I would see some signs, yeah.

10 Q Did you read their signs about rip currents?

11 A Yeah -- not about rip currents, no.

12 Q Did you read their signs about flags or warning systems?

13 A Yes.

14 Q Are you familiar with that kind of concept?

15 A Yeah.

16 Q In other words, that ocean, a surf environment,
17 lifeguards may place flags out?

18 A Yeah.

19 Q To provide you information about what the surf condition
20 was?

21 A Yeah.

22 Q You knew that before coming to Myrtle Beach?

23 A Yeah.

24 Q So when you came to Myrtle Beach, as I understand, you
25 came down the evening -- you got here about the evening

1 before?

2 A Correct.

3 Q And you made a call to the front desk?

4 A I did.

5 Q And was that upon your own doing, or did your parents ask
6 you to do that?

7 A Well, I asked my parents because I thought it was good to
8 ask them.

9 Q To find out if it was okay to go on the beach?

10 A Yeah.

11 Q And so you called the front desk and were told the beach
12 was open, there just weren't any lifeguards?

13 A Correct.

14 Q Did you ask for any additional information, for example,
15 when the lifeguards would be on duty the next morning?

16 A No.

17 Q Did you ask for any information about the beach itself?

18 A No.

19 Q Whether you could go in or go to a certain depth or
20 anything like that?

21 A No.

22 Q Were you provided any information from the resort about
23 that?

24 A No.

25 Q While you were staying at the Sea Crest Resort, did you

1 receive -- your family receive any pamphlets, any brochures,
2 you know, kind of tucked under the door about what the weather
3 was going to be like the next day?

4 A I don't remember.

5 Q Did you ever see anything like that?

6 A No.

7 Q And did you -- the next morning, did you do anything to
8 look into the weather situation other than look out the window
9 and say it looks like a great day?

10 A No.

11 Q Did it look like a great day?

12 A Yeah, it was pretty clear.

13 Q Sunny?

14 A Yeah.

15 Q And, so, when your family went to the beach, you
16 described that you went from the resort hotel, lobby area,
17 through the pool area, through their front beach access;
18 correct?

19 A Correct.

20 Q And you didn't see any signs there providing information
21 about the beach?

22 A I don't remember.

23 Q About the surf?

24 A I don't remember.

25 Q About the flags?

1 A I don't remember.

2 Q Did you look for anything like that?

3 A No.

4 Q I mean, you were 12; right?

5 A Yeah.

6 Q I mean, you're really looking forward to get on the
7 beach.

8 A Mm-hmm.

9 Q Is that fair?

10 A Yeah.

11 Q I mean, were you really looking for any kind of signs?

12 A No.

13 Q And, so, you and your family went to the beach and just
14 went straight out and set up?

15 A Correct.

16 Q And, then, you and your father took the boogie boards and
17 went into the water and were in the surf area?

18 A Correct.

19 Q As I understand it, that day, the surf was breaking close
20 to shore?

21 A I don't remember.

22 Q You don't remember that?

23 A No.

24 Q Did you have to go deep in order to boogie board?

25 A No -- I don't remember.

1 Q You don't remember one way or the other?

2 A No.

3 Q All right. And then your sister, Wubit, she would come
4 and do some boogie-boarding, go back up to the beach, come
5 back to you, that sort of thing?

6 A Correct.

7 Q Before you went into the water, did you look to see if
8 there was a lifeguard?

9 A No.

10 Q Was that even a concern of yours?

11 A I -- no.

12 Q I'm sorry?

13 A No.

14 Q Okay. Did you look for any flags at that time?

15 A No.

16 Q Was that even a concern of yours?

17 A No.

18 Q So, again, you're 12.

19 A Correct.

20 Q And there's water in front of you, there's surf, and you
21 have got the boogie board.

22 A Yeah.

23 Q Isn't that what you're thinking about at that time?

24 A Yeah.

25 Q And your father is with you; right?

1 **A** Correct.

2 **Q** And so, at some point, you, your father, and your
3 sister -- the boards are on the beach, and then you three are
4 playing in the water; right?

5 **A** Correct.

6 **Q** And, then, as you're playing, you go deeper; right?

7 **A** As we were playing?

8 **Q** Yes.

9 **A** We didn't go that deep.

10 **Q** Well, do you remember telling me back last summer that it
11 wasn't fun to be in shallow water?

12 **A** I don't recall.

13 **Q** You don't remember that?

14 **A** No, sir.

15 **Q** And that it was more fun to be deeper?

16 **A** I enjoyed deeper water when I was a kid, yes, at the
17 pools.

18 **Q** And, so, did you and your family intentionally go deeper
19 into the water to enjoy the deeper water?

20 **A** No.

21 MR. THOMPSON: Your Honor -- one moment, Your Honor,
22 please.

23 May I approach?

24 (Mr. Thompson approaches the bench. The Court opens a
25 sealed transcript.)

1 BY MR. THOMPSON:

2 Q Now, Adam, sometimes people don't remember some of the
3 things that they have said in the past, and sometimes we have
4 these transcripts. And sometimes the transcripts are helpful
5 to remind you of things that you have said in the past.

6 So I'd ask you to pick up the transcript that we have
7 just put in front of you. If you'll turn to page 88 for me.
8 If you'd turn to page 88.

9 A Yes.

10 Q Okay. And if you look to -- we can start at line 2. I'm
11 going to ask you the question. Okay? And then you'll read
12 the answer that you gave. And this is a deposition that was
13 taken back in July of 2021. Do you remember that?

14 A Yes.

15 Q Do you remember me being in Maryland and taking your
16 deposition?

17 A Yes.

18 Q And asking you questions about what happened?

19 A Yes.

20 Q All right. So, on page 88, the question was at line 2:
21 "Now, how many rides do you think you did on the board?"

22 If you'll read the answer.

23 A "I don't remember."

24 Q "Was it a couple?"

25 A "I don't remember."

1 Q "Did you stop before you wanted to?"

2 A "I stopped when I just felt like I wanted to go deeper."

3 Q "So you stopped boogie-boarding because you wanted to go
4 deeper; correct?"

5 A "Correct."

6 Q And the next question: "Because being knee-deep, that's
7 not a lot of fun; right?"

8 A "Yeah."

9 Q So, does that help refresh your recollection that you and
10 your family stopped boogie-boarding because you wanted to go
11 deeper?

12 A Yes.

13 Q And that it was fun to go deeper?

14 A Yeah.

15 Q Okay. So, when you and your family went deeper, you got
16 to a point where you would be in a position where you could
17 stand, but you would have -- as a swell would come over, you
18 would have to either get up on your toes or have to kind of
19 jump; right?

20 A Not that much.

21 Q So, if you'll -- I'm going to help you with the
22 deposition. If you'll turn to page -- okay. If you'll turn
23 to page 90. Have to forgive me, because everything's....

24 So, page 90 at line 13, and I asked you the question:
25 "And then you were able, at that point, to go out deeper;

1 right?"

2 A Yeah.

3 Q And really, to put in context, I had asked you if the
4 boards had been put up. And, so, then the question was: "You
5 were able to, at that point, go deeper; right?"

6 A "Yes."

7 Q "And it was about chest-high for you?"

8 A "Yes."

9 Q "And how were the waves at that point where you were?"

10 A "It wasn't when they were breaking. It was just when
11 they were going up a little bit."

12 Q Okay. If you'll go further to page 91, line 21. Do you
13 see that?

14 A No.

15 Q Page 91. At the very bottom, line 21.

16 A Oh.

17 Q Do you see it?

18 A Yeah.

19 Q So the question was: "So there would be times when the
20 surf was coming in that you would have to jump up; right?"

21 And your answer was?

22 A "Yes."

23 Q And the question: "To keep your head out of the water?"

24 A "Yes --"

25 Q And your answer was?

1 A "Yes. But sometimes I would also go under when they were
2 breaking."

3 Q Right. So, again, at this point in time, you were in a
4 place where you would have to jump to keep your head out of
5 the water? This is what you testified to; correct?

6 A Yes.

7 Q Okay. So you were at a point, then, where it was deep
8 where you then couldn't just stand when a swell would come.
9 You would actually have to jump to keep your head out of the
10 water?

11 A No.

12 Q Is that not what we just --

13 A Yeah, but I wasn't that deep.

14 Q And did we just read that you were?

15 A Yeah, but, when I went under, that was just swimming
16 under.

17 Q So, page 92, line 13. And the question was: "And then
18 there were times when the water -- the swells were coming in
19 that you would have to either --"

20 And your answer?

21 A "Jump."

22 Q "-- jump to keep your head above the water; right? Is
23 that right?"

24 A "Yes."

25 Q "Or you would have to go under if you were going to keep

1 your feet on the floor; right?

2 A "Correct."

3 Q Does that help your recollection about how deep you were
4 at the time this event -- before it started to happen?

5 A Yes.

6 Q Okay. So, you and your family had gotten into a place
7 where we just described, before the trouble started, where
8 this was what you were doing. You were playing with your
9 father and sister in the water.

10 A Correct.

11 Q And, so, at that point in time in 2018, you were taller
12 than your sister; right?

13 A Correct.

14 Q She could not touch at all in that place.

15 A I don't know.

16 Q She was holding onto your father.

17 A Yes.

18 Q And, at that point, you didn't have any fears, any
19 problems, any concerns. You were playing with in the deep
20 water with your father?

21 A Correct.

22 Q And your sister was holding onto your father?

23 A Correct.

24 Q And then, at some point, you felt something; is that
25 right?

1 A Correct.

2 Q Initially, there was nothing -- it was a sensation you
3 hadn't felt before; right?

4 A Correct.

5 Q And so your first thought was to swim?

6 A Yes.

7 Q Your father's first thought was to swim. That's what
8 y'all were doing?

9 A Yes.

10 Q At that point, there wasn't a call for help or anything?

11 A No.

12 Q It was -- you just were, "Hey, we need to kind of swim
13 back toward shore"?

14 A Correct.

15 Q And you didn't make very good progress, did you?

16 A No.

17 Q And, so, do you know how deep you were then?

18 A When?

19 Q I'm sorry. When you figured out that you were not making
20 any headway toward the shore.

21 A No one could touch.

22 Q I'm sorry?

23 A No one could touch.

24 Q So you were deeper?

25 A Correct.

1 Q And so, then, at some point, there was -- your sister and
2 you and your father were yelling?

3 A Yes.

4 Q You don't know how long that was?

5 A No.

6 Q You have no clue, do you?

7 A I don't remember.

8 Q And you don't know how far away you were from the beach
9 at that point, do you?

10 A No.

11 Q Now, at some point, you decided to swim sideways?

12 A Yes.

13 Q How did you know to do that?

14 A It was just instinct. When swimming straight didn't
15 work, supposed to swim to the left.

16 Q Did you tell your father to swim to the side?

17 A Yes. I said, "Calm down, follow me."

18 Q And then you swam to the side, and the pulling sensation
19 was over?

20 A Yeah.

21 Q And then you were able to swim towards shore?

22 A Correct.

23 Q And when you got to shore, that's when you ran to your
24 mother; is that right?

25 A Yes.

1 Q And you didn't ever see what happened to your father and
2 your sister?

3 A No.

4 Q Before you and your family got into trouble in the water,
5 when you had been playing in the water and when you were in
6 the water with the boogie boards, you knew that you were
7 moving down the beach?

8 A Yes.

9 Q Right? You had that sensation?

10 A Yeah.

11 Q And, obviously, when trouble happened and then you were
12 able to come to shore, you had to then go a fairly long
13 distance back to where your mother was?

14 A Correct.

15 Q To the right?

16 A Yes.

17 Q I know this has been tough for you. Thank you for your
18 time and patience.

19 MR. PRACHT: Nothing from the plaintiff, Your Honor.

20 THE COURT: Thank you. You can step down.

21 MR. PRACHT: May it please the Court, our next witness
22 will be Wubit Zerihun.

23 WUBIT ZERIHUN,

24 after having been duly sworn, was examined and testified
25 to as follows:

DIRECT EXAMINATION

1
2 BY MR. PRACHT:

3 Q Give us your full name, Wubit.

4 A My name is Wubit Zerihun.

5 Q And what's your date of birth?

6 A My date of birth is January 27th, 2009.

7 Q Share with the jury where you were born?

8 A I was born in Maryland.

9 Q And where do you live now, Wubit?

10 A I still live in Maryland.

11 Q Okay. What town in Maryland?

12 A Oh, Silver Spring.

13 Q Is that outside Washington, D.C.?

14 A Yes.

15 Q Share with the jury your family. I know they have heard
16 their names before. Describe everyone in your family. Tell
17 them who you've got.

18 A I have a brother and two sisters. My brother's name is
19 Adam, and my sisters' name are Eden and Edom. They're twins.
20 And my mom.

21 Q What's your mom's name?

22 A Meswaet.

23 Q And, Wubit -- who are you named after, Wubit?

24 A My grandma on my dad's side.

25 Q Did you ever get to meet her?

1 **A** No.

2 **Q** Did she mean a lot to your dad?

3 **A** Yes.

4 **Q** And you were your dad's first-born daughter; correct?

5 **A** Yes.

6 **Q** Tell me a little bit briefly about growing up in Maryland
7 with your mom and dad.

8 **A** It was really peaceful. We lived in a townhouse, and it
9 was me and my brother and my mom until my sisters were born.

10 **Q** Okay. And after your sisters were born, where did
11 you-all live?

12 **A** We still lived in the townhouse.

13 **Q** Just a little more crowded, huh?

14 **A** Yeah.

15 **Q** Now, tell me what your mom did for a living or how she
16 earned money in 2018.

17 **A** My mom went to nursing school while she was pregnant with
18 my sisters, and my dad took care of us and went to work as
19 well.

20 **Q** So, tell me, after your mom was working as a nurse, who
21 was the main person that took care of y'all?

22 **A** It was my dad.

23 **Q** Tell me the things he would do with you guys to take care
24 of you.

25 **A** He would cook and clean, and he would also take us out

1 to, like, Washington, D.C. and parks.

2 Q And what did your dad do when he did work? What was his
3 job?

4 A He was a taxi driver.

5 Q Was that convenient for you guys?

6 A Yes.

7 Q Why is that?

8 A Because he could choose his own schedule.

9 Q And, Wubit, was it tradition in y'all's family to
10 celebrate big holidays at your home?

11 A Yes, it was.

12 Q And what holidays would y'all celebrate at your home?

13 A We would celebrate Christmas, Thanksgiving, and Ethiopian
14 Christmas as well.

15 Q And those holidays, would it just be your family or would
16 other families come over?

17 A It would be our family and our aunts and cousins.

18 Q So your extended family?

19 A Yes.

20 Q I see. And y'all would host at your home?

21 A Yes.

22 Q Tell me about your brother, Adam.

23 A He's 15, and he's my brother.

24 Q Do you guys get along pretty good or do you guys fight
25 sometimes a little bit?

1 **A** Yeah, we fight sometimes.

2 **Q** Okay. And tell me just a little bit about the twins.

3 **A** My sisters are nine, and they're twins. And I think I

4 get along more with them.

5 **Q** I gotcha. And do they have a lot of energy?

6 **A** Yes.

7 **Q** So as this family, this peaceful family you described,

8 would y'all go to the beach sometimes?

9 **A** Yes. We would go to Ocean City, like, every summer.

10 **Q** All right. And let's talk briefly about your dad as a

11 swimmer. Did he know how to swim?

12 **A** Yes, he was a strong swimmer.

13 **Q** Okay. How about Adam as a swimmer?

14 **A** He was also a strong swimmer.

15 **Q** Okay. And what about you as a swimmer in 2018?

16 **A** I wasn't as strong as I am now, but I could tread water.

17 **Q** And you had swam in the pool before?

18 **A** Yes.

19 **Q** And had you taken swim lessons before?

20 **A** Yes.

21 **Q** And were you scared in the water?

22 **A** No.

23 **Q** When you went to the beach in Ocean City, what were the

24 rules as far as, you know, what you guys could do and couldn't

25 do?

1 A We couldn't go in too deep, and we couldn't swim right
2 after we ate.

3 Q And when you went in, could you be alone?

4 A No.

5 Q Who did you have to be with?

6 A An adult.

7 Q And who was the adult you usually were with when you went
8 in the ocean?

9 A My dad or an uncle or aunt.

10 Q Gotcha. All right, Wubit. Talk to me about this trip to
11 Myrtle Beach. What do you remember about it as far as how it
12 came about and how you learned you were going to get to go to
13 Myrtle Beach on a vacation in 2018?

14 A I remember we were in the car. I don't remember where we
15 were going, but my mom and dad gave us the opt- -- gave my
16 sisters and brother the option, because they birthdays are
17 five days apart in August. So they gave them the option of
18 either getting an iPad or going to Myrtle Beach, and they
19 chose to go to Myrtle Beach because they decided that making
20 memories is better than using an iPad.

21 Q Okay. So when you first heard about the trip to Myrtle
22 Beach, did you do anything? Did you get online and look at
23 anything? Just tell me about what you did.

24 A I didn't do any research, but I did search up Myrtle
25 Beach and just look at photos.

1 Q And did you look at -- were there any photos of the
2 water?

3 A Yeah.

4 Q What do you remember about those photos?

5 A The water was clear, but when we went to Myrtle Beach, it
6 wasn't that clear.

7 Q Kind of felt like the photo wasn't accurate maybe? Sold
8 you a bill of goods? All right.

9 So tell me about how you got down to Myrtle Beach. How
10 did the family get from Silver Spring, Maryland, to Myrtle
11 Beach, South Carolina?

12 A We drove any mom's minivan.

13 Q Who all was in the minivan; do you remember?

14 A It was my dad, my mom, my two sisters, my brother, me,
15 and my grandpa.

16 Q So y'all were packed in there pretty tight?

17 A Yes.

18 Q And you had all your luggage and beach equipment as well;
19 right?

20 A Yes.

21 Q And when you arrived in Myrtle Beach, do you remember
22 what time it was?

23 A It was evening.

24 Q And were you excited?

25 A Yes.

1 Q How long had you been in the car? How long was the
2 drive?

3 A Seven hours.

4 Q Did you guys make a lot of stops on the way down?

5 A Yeah, we made a few steps.

6 Q Sure. So when you first got there, tell me what you
7 remember about the hotel and checking in and getting unpacked.

8 A I remember we went up to the hotel just to get ourselves,
9 like, ready or to unpack, and then we decided to go down to
10 the beach.

11 Q Okay. And do you know -- do you have a memory of
12 anything that happened in the room before you went down to the
13 beach? Did you have any conversations with your mom or dad
14 about "why are we going to the beach?" or did you want to go
15 to the beach?

16 A We didn't have a conversation specifically. We were just
17 eager, and so we just decided to go down because we were
18 impatient.

19 Q Understood. And so, now, Wubit, I want you -- and this
20 was the whole family the night before; right?

21 A Mm-hmm.

22 Q Is that correct?

23 A Yes.

24 Q Okay. And so the entire family went down to the beach.
25 Take me, in your mind, and tell me the pathway y'all went from

1 the room down, out through the hotel of the beach. Share that
2 with the jury.

3 A Once we left the hotel, there was a hallway, and there
4 was an elevator that led down to the lobby, and then, from
5 there, you can go to the beach, but you'd have to go through
6 the pool area.

7 Q Do you remember -- and I know you were nine, Wubit, but
8 do you remember any signs along your way out to the beach?

9 A No. But I remember that there were brochures on the...

10 Q Brochures?

11 A Yeah.

12 Q And what were the brochures? Were these, like,
13 entertainment brochures like Broadway at the Beach or do you
14 know?

15 A I think it was just information about the hotel.

16 Q Okay. So the night before, the whole family went out on
17 the beach?

18 A Yes.

19 Q All right. Now, did the family go swimming that night?

20 A No. We just played in the sand and got our legs wet in
21 the shore.

22 Q Okay. And your parents wouldn't let you go swimming that
23 evening, would they?

24 A No, they wouldn't.

25 Q Do you have an understanding of whether there were any

1 lifeguards on duty that evening?

2 A I know there weren't because we were told that there were
3 no lifeguards.

4 Q Do you know who told you that?

5 A My brother called the front desk.

6 Q Okay. Now, back in 2018, you're shorter than you are
7 now.

8 A Yes.

9 Q You probably have been growing a good bit.

10 A Mm-hmm.

11 Q So when you're remembering how deep you were in the
12 water, I want you to remember how tall you were then.

13 A Mm-hmm.

14 Q All right. After you went on the beach that evening with
15 your family, tell me about what you did next.

16 A After we went out to the beach, we just came back up, and
17 since we had a long car ride, we went to sleep.

18 Q All right. Tell me about waking up the next day, which
19 was Friday, August 24th, 2018.

20 A The next morning, I remember my dad making breakfast for
21 us, and we were really excited because we wanted to do down to
22 the beach.

23 Q Did you see the weather conditions outside your room?

24 A Yes. They were, like -- it was really cool and breezy
25 weather.

1 Q And what was the sky like? Was it cloudy? Was it blue
2 sky?

3 A It was a blue sky, and it was sunny.

4 Q When you looked out there and checked the weather
5 conditions, did you have any fear or concern about the
6 conditions?

7 A No.

8 Q All right. Now, take me -- let's talk about this beach
9 equipment y'all brought down. Do you remember any of it, what
10 it was?

11 A I remember that we brought an umbrella, two boogie
12 boards, and a cooler with water in it.

13 Q Was the umbrella solid or did it have stripes?

14 A The umbrella had a pattern on it with green, pink,
15 orange, and white stripes.

16 Q Okay. And did you have any boogie boards?

17 A Yes.

18 Q And you had a cooler?

19 A Yes.

20 Q Do you know about what time y'all got down to the beach?

21 A It was late morning.

22 Q And take the jury -- share with the jury, what was the
23 pathway, Wubit, that you took down to the beach from your
24 room.

25 A We went down the same path that we did that night. We

1 left the hotel room and went down the hallway, down the
2 elevator, into the lobby, and then we made a left to pass the
3 pool, and then went down to the beach.

4 Q Okay. When you got out to the beach, did you see any red
5 flags?

6 A No.

7 Q Were you really looking though?

8 A No.

9 Q Were you just excited about being at the beach?

10 A Yeah, I wasn't really worried about anything else.

11 Q Did you see any lifeguard stands or lifeguards on the
12 beach?

13 A I'm sure there were, but I didn't notice any.

14 Q Now, take me from when you entered the beach to where you
15 set up on the beach. If you could describe to the ladies and
16 gentlemen of the jury, to the best of your memory, where y'all
17 set up on the beach.

18 A When we got into the beach, we opened the gate to the
19 beach, and then we turned left a little bit.

20 Q Okay. And do you remember how far you walked forward
21 from the gate, like, into the beach towards the ocean?

22 A I don't know exactly, but I remember we were a little
23 close to the shore.

24 Q Okay. Was the sand dry?

25 A The sand was dry, and we were right ahead -- like, in

1 front of the wet sand.

2 Q Okay. Was there -- do you remember, Wubit, if there were
3 a long row of beach chairs and umbrellas near where y'all set
4 up?

5 A I do remember some beach chairs. I didn't know really
6 what they were for, but I do remember there being beach
7 chairs.

8 Q And were y'all set up near those?

9 A Not that close, but...

10 Q When you first got to the beach, what did you do?

11 A We set up the beach chairs and the umbrella, and my
12 sisters played with the sand and buckets in front of my mom,
13 and I was with my dad and my brother in the water.

14 Q And what were you, your dad, and your water -- what were
15 you, your dad, and your brother doing in the water when you
16 first went in?

17 A We were just -- we were on the boogie boards, and we were
18 laying on the boogie boards on our stomach and going over the
19 waves.

20 Q When you were on the beach, did you see other people on
21 the beach?

22 A Yes, I saw a lot of people on the beach.

23 Q And there were people in the water?

24 A Yes.

25 Q Were there children in the water?

1 A Yes.

2 Q Did you notice if any of these other beachgoers had
3 boogie boards like your family?

4 A Yes.

5 Q Was there anything that alerted you to, Hey, this is
6 dangerous or this is a problem?

7 A No.

8 Q Now, did you just stay down there with your dad and Adam,
9 or did you, at some point, come back and forth between your
10 family and the water?

11 A I alternated between my dad and my brother and my two
12 sisters in the sand.

13 Q When you were in the water with your dad and your
14 brother, could you see where your family was set up?

15 A Yes.

16 Q And could you see them clearly?

17 A Yes.

18 Q If you were looking back in to shore, where was your
19 family? Were they straight ahead of you? 1:00? Where were
20 they?

21 A 1:00.

22 Q Okay. And, of course, y'all were just playing in the
23 surf; correct?

24 A Yes.

25 Q All right. At some point, did the boogie boards come out

1 of the water and go up with the family?

2 A Yes.

3 Q Do you remember exactly when or how?

4 A No.

5 Q But you're confident that they were eventually moved back

6 up?

7 A Yeah.

8 Q When you put the boogie boards up, what was the plan?

9 What were you guys going to just do?

10 A We were just going to, like, play in the water but

11 without the boogie boards.

12 Q And when you guys would play in the water without the

13 boogie boards or play in the waves, what would you do?

14 A We would just jump over them or go under them.

15 Q Just let the waves crash over you?

16 A Yeah.

17 Q All right. While you were doing that, I want you to

18 describe who all was with you first.

19 A Oh, it was me, my brother, and my dad.

20 Q Okay. And when y'all were doing this, like when you were

21 boogie-boarding, could you see your family on the beach?

22 A Yes.

23 Q Could you see them clearly?

24 A Yes.

25 Q Were they in approximately the same position you just

1 described?

2 A Yes.

3 Q And while you were doing this, would you hold onto your
4 dad?

5 A Yes, occasionally.

6 Q And while you guys were doing this, when there wasn't a
7 giant wave hitting you or a wave hitting you, did you observe
8 how high the water was with your brother and your dad?

9 A Yes.

10 Q Okay. Do you remember how high the water was on your
11 brother?

12 A It was, like, at his knees and his waist.

13 Q And how about your dad?

14 A It was, like, really low for him.

15 Q Because he was taller than your brother.

16 A Yeah.

17 Q At that time. Okay.

18 And, at some point, as you were holding onto your dad,
19 jumping into the waves, did you start to feel that there was a
20 problem?

21 A No.

22 Q And tell me about, then, when the trouble started.

23 A When the trouble started -- well, we barely noticed
24 because we were having fun, and we weren't really paying
25 attention. And we just ended up being very deep in the water.

1 Q Did you go that deep in the water on purpose?

2 A No. It was unintentionally. We were just having fun in

3 the water, just brought us back.

4 Q And, of course, you were holding onto your dad during

5 this; right?

6 A Yes.

7 Q Well, how did you learn this wasn't normal fun anymore?

8 A I noticed that my dad was struggling to keep his head

9 above water.

10 Q Did somebody yell at some point?

11 A Yes. My dad started yelling.

12 Q Did he yell just one time?

13 A No, he yelled multiple times.

14 Q Do you know how many times he yelled?

15 A I don't know exactly.

16 Q Did he yell a hundred times?

17 A No.

18 Q Okay. Did he yell 20 times?

19 A Maybe. Somewhere around that.

20 Q Did you yell?

21 A Yes.

22 Q Were you scared at this point?

23 A Yes.

24 Q Is that why you were yelling?

25 A Mm-hmm. I was yelling, yep.

- 1 Q Were you yelling softly?
- 2 A No.
- 3 Q How were you yelling?
- 4 A I was yelling very loudly.
- 5 Q Is it fair to say you were yelling as loud as you
- 6 possibly could?
- 7 A Yeah, I was yelling very loud.
- 8 Q Were you the only one yelling?
- 9 A No.
- 10 Q Who else was yelling?
- 11 A My dad, my brother, and I. We were all yelling.
- 12 Q Did you observe your father or your brother wave their
- 13 arms at any time?
- 14 A My dad didn't wave his arms as much because he was
- 15 holding onto me, and he was trying to tread water. But I
- 16 didn't notice if my brother waved his arms at all.
- 17 Q And so you noticed your dad struggling.
- 18 A Yes.
- 19 Q All right. And after this yelling, at some point, did
- 20 you dad go underwater?
- 21 A Yes.
- 22 Q Did he come back up?
- 23 A Yes.
- 24 Q Tell the ladies and gentlemen of the jury what you
- 25 observed while he was going under and coming back up.

- 1 **A** My father was going under and coming back up, then he
2 would gasp and then yell for help.
- 3 **Q** And this went on for a period of time?
- 4 **A** Yes, a long period of time.
- 5 **Q** Is it fair to say you're not sure exactly how long?
- 6 **A** I do not know exactly how long.
- 7 **Q** Okay. Now, when the trouble started, how far away was
8 Adam from you and your dad?
- 9 **A** He was, like, just out of arm's reach.
- 10 **Q** And did he stay at that distance or did he get closer or
11 did he get further away?
- 12 **A** He got a little further away.
- 13 **Q** Okay. When you were yelling, could you see the beach?
- 14 **A** Yes.
- 15 **Q** Could you see people on the beach?
- 16 **A** Yes.
- 17 **Q** Did you see or could you get any sense if anybody was
18 reacting to your yelling?
- 19 **A** I don't remember that well, but I feel like people were,
20 like, trying to see what was going on.
- 21 **Q** Okay. And, at some point, did Adam swim away from you
22 and your father?
- 23 **A** Adam got out of the rip current eventually.
- 24 **Q** Did you see him swim away? Do you remember that?
- 25 **A** Yes.

1 Q Do you remember which direction he swam?

2 A He swam left from me and my dad.

3 Q And when he was swimming, do you remember was he doing,
4 like, a stroke or was he just treading water?

5 A He was doing that (indicating).

6 Q Is that freestyle?

7 A Yes.

8 Q And when he started to swim away or swim to the left, was
9 that after y'all had been yelling for some period of time?

10 A Yes. And we were still yelling.

11 Q At some point after your father was coming up and going
12 down and yelling and gasping, what happened next?

13 A We did that for, like, a while, and then I saw a lady
14 come into the water.

15 Q Okay. Hold on right there. Tell me where did you see
16 the lady come into the water from? From the beach?

17 A Yeah. She came from the beach, and she was knee deep.

18 Q Okay. And was your dad yelling at this point?

19 A No. His yelling stopped.

20 Q Were you still holding onto him?

21 A Yes.

22 Q Could you see if his face was in the water or if he was
23 out of the water?

24 A He was in the water.

25 Q Meaning his face was down in the water?

1 A Like, his whole body was underwater.

2 Q Okay. And what were you holding onto?

3 A I was holding onto his shirt, his top.

4 Q At this point when you saw the lady, were you still

5 yelling for help?

6 A No.

7 Q Were you scared?

8 A Yes, very.

9 Q What was your main goal at this point? What were you

10 trying to do, Wubit?

11 A I was trying to get out of the water and get my dad

12 medical attention.

13 Q And, so, the lady from the shore, did she eventually come

14 to you guys? Did you-all meet?

15 A Yes.

16 Q Share with the ladies and gentlemen of the jury what

17 happened then.

18 A At some point, people -- three or four people took my

19 dad, and the lady helped me to shore.

20 Q Did you get any water in your mouth?

21 A Yes.

22 Q Did you taste the salt water?

23 A Yes.

24 Q Did you see what the people on the beach were doing for

25 your dad?

1 **A** I saw people doing CPR on him.

2 **Q** Okay. And then, at some point, was your father
3 transported to a vehicle?

4 **A** Yes.

5 **Q** Describe that for the ladies and gentlemen of the jury.

6 **A** I didn't see him get transported onto the vehicle, but I
7 saw them doing CPR on him while he was in the back of a --
8 like a truck. I saw his legs, like, dangling from the back of
9 the truck, and I saw, like, someone on top of him doing CPR.

10 **Q** From the time you guys were playing in the surf -- let me
11 ask you this: Do you remember seeing a lifeguard at any time
12 on the beach there until your dad was transported into the
13 truck? At any time?

14 **A** No.

15 **Q** At any time when you were screaming for help and could
16 see the beach, did you see a lifeguard at that moment?

17 **A** No.

18 **Q** So, to walk through the process, Wubit, do you have an
19 idea, from the time you guys got in trouble until the time you
20 made it back to the beach, do you have any concept of how long
21 that was?

22 **A** I don't know exactly, but if I -- maybe 10 to 15.

23 **Q** And that's just your best guess.

24 **A** Yes.

25 **Q** All right. Take me from your dad gets taken off the

1 beach. Tell me what you remember next.

2 A I remember there were a lot of people crowding around us,
3 and they were asking for my mom's number, email. And my
4 brother was giving it to them.

5 Q Tell me what happened next.

6 A There were some people that helped us take our stuff back
7 to our room. And we -- and I saw my mom. She was putting her
8 clothes on, like, very quickly, so she could go to the
9 hospital.

10 Q Wubit, what was your understanding of how your dad was
11 doing at this moment?

12 A I didn't know. All I know is that, when they were doing
13 CPR, I saw, like, foam coming out of his mouth.

14 Q All right. So your mom leaves to go to the hospital.
15 Did you remember if you and your brother and your grandfather
16 ever went to the hospital?

17 A Yes. Our mom, like, got an Uber for us, and we went to
18 the hospital by Uber.

19 Q Tell the ladies and gentlemen of the jury what you
20 observed and what happened at the hospital.

21 A At the hospital, I never got to see my dad or my mom.
22 There was just this lady who was, like, worked with kids to,
23 like, console them while they're at the hospital.

24 Q Okay. And did you guys eventually go back to the hotel
25 room that evening or that afternoon?

1 A Yes.

2 Q And when did you see your mom again?

3 A I saw her at the hotel room the next morning. Oh, no,
4 no. That night.

5 Q And, you know, did she tell you anything about your dad?
6 Did y'all have a conversation? What did you learn about your
7 dad's condition?

8 A I didn't know anything at the time, but she was crying a
9 lot, so it wasn't good.

10 Q And the next morning when you woke up, tell me how you
11 guys got back to Maryland.

12 A When I woke up, there was a lot of family in the hotel
13 room, and my uncle had taken me and my siblings to a breakfast
14 restaurant. And we had breakfast, and we went to the airport
15 and we flew back to Maryland.

16 Q And so, on the flight back -- there were seven of y'all
17 on the trip down?

18 A Mm-hmm.

19 Q Is that right?

20 A Yes.

21 Q And then, on the flight back, there were six; is that
22 true?

23 A I don't remember.

24 Q Okay. Let's go through it real quick. Who was on the
25 flight back?

1 **A** My mom, me, my brother, my two sisters.

2 **Q** How about grandpa?

3 **A** I don't remember.

4 **Q** Don't remember if grandpa was with you or not?

5 **A** I don't remember.

6 **Q** Okay. So five or six.

7 **A** Yes.

8 **Q** And when you returned to Maryland, share with the ladies
9 and gentlemen of the jury how you learned your father passed
10 away.

11 **A** My uncle picked me up from the airport and took us to his
12 house, because our house had a lot of people in it and there
13 was, like, a lot of crying. And my mom came in and told me he
14 wasn't doing good, but then a few days later, a priest came
15 and told us that he was not -- I mean, he was dead.

16 **Q** All right. Wubit, I want to spend a little time, and I
17 want to talk about the difference in your family's life
18 without Baba versus with Baba. Okay?

19 **A** Okay.

20 **Q** So share with the ladies and gentlemen of the jury how
21 Baba not being here for your family has affected you, your
22 brothers, and sisters and your mother.

23 **A** It affected my mom the most probably because she was,
24 like, alone now, and she is very sensitive to a lot of stuff.
25 And it affected my brother because he became more responsible,

1 and he wasn't -- he acted more like a father figure rather
2 than a brother. And my sisters, they were way too young to go
3 through this, and it affected -- I had nightmares after it
4 happened.

5 Q Let's talk about the nightmares that you have had, Wubit,
6 because I know you have talked about that before. Share with
7 the ladies and gentlemen of the jury your nightmares.

8 A I had nightmares about the night and the screams, but I
9 also, like, had dreams about how we were in the water and we
10 were struggling and screaming for help and then a boat came up
11 behind us and saved us.

12 Q You wished that that had happened that day?

13 A Yeah.

14 Q Now, because of that, was there a period of time when you
15 had to sleep with the lights on?

16 A Yes.

17 Q Describe for the ladies and gentlemen of the jury that.

18 A In our house, we have bedrooms along, like, walls, and
19 there's a hallway, and there are hallway lights. So we slept
20 with the hallway lights on because of me.

21 Q Now, your room is pink, I understand?

22 A Yes.

23 Q Who painted that room?

24 A My dad and my uncle.

25 Q Have you thought about painting it some other color?

1 **A** Yes. I want it to be white now.

2 **Q** Have you done that?

3 **A** No.

4 **Q** Why not?

5 **A** I just -- I don't -- it doesn't feel right to paint over
6 the pink, because my dad is the one who painted it.

7 **Q** Let's talk about you, Wubit, specifically. How old are
8 you now?

9 **A** I'm thirteen.

10 **Q** Are there things you'd like to be able to talk to your
11 dad about?

12 **A** Yes.

13 **Q** Is there advice you'd like to be able to go to your dad
14 to get now?

15 **A** Yes.

16 **Q** Would you like your father to have been able to walk you
17 down the aisle one day?

18 **A** Yes.

19 **Q** Would you prefer it if your dad was there to help take
20 care of you guys when your mom worked?

21 **A** Yes.

22 **Q** Wubit, I want you, in your words, to share with the
23 ladies and gentlemen of the jury what your father meant to you
24 and what he meant to your family.

25 **A** My father was a great man, and he would never do anything

1 to put us in harm's way or to hurt us.

2 Q All right, Wubit. Please answer any questions that
3 Mr. Thompson has as truthfully as you have answered mine.
4 Thanks.

5 MR. THOMPSON: Thank you, Your Honor. May it please the
6 Court?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. THOMPSON:

10 Q Good morning, Wubit. May I call you "Wubit"?

11 A Yes.

12 Q You're 13 today?

13 A Yes.

14 Q A little bit older and quite a bit taller than you were
15 in 2018?

16 A Yes.

17 Q Back then, you were nine and less than five feet tall;
18 right?

19 A Yes.

20 Q You are quite a bit taller now, aren't you?

21 A Yes.

22 Q When you were in Myrtle Beach in 2018, when you were
23 nine, you were not a swimmer that enjoyed deep water, were
24 you?

25 A No.

- 1 Q You were fearful of deep water; were you not?
- 2 A Yes, I was, but my dad was with me.
- 3 Q So, normally -- again, back in that 2018 time frame, if
- 4 you went to a pool, for example, you'd stay in the shallow
- 5 end?
- 6 A Yes.
- 7 Q And if you went into the deep end, you had to have
- 8 somebody with you --
- 9 A Yes.
- 10 Q -- to hang onto?
- 11 A Yes.
- 12 Q In 2018, I think you described your swimming at that
- 13 point, it sounded like the dog paddle?
- 14 A Yes.
- 15 Q Keeping your head out of the water at all times; right?
- 16 A Mm-hmm.
- 17 Q Is that yes?
- 18 A Yes.
- 19 Q Okay. You didn't like to get your head underwater, did
- 20 you?
- 21 A No.
- 22 Q And when you went to Ocean City, you had been there maybe
- 23 once or twice before you came to Myrtle Beach?
- 24 A Yes, probably more.
- 25 Q And when you went to Ocean City, you would always stay on

1 the sand or in shallow water; correct?

2 A Yes.

3 Q You never went deep when you were in Ocean City?

4 A Not unless I was with an adult, but I would never go too
5 deep.

6 Q Okay. Wasn't there a family rule about going too deep?

7 A Yeah, that you couldn't go too deep unless you had an
8 adult with you.

9 Q And, in fact, wasn't it true that the rule was not to get
10 over either knee or waist deep, for the children?

11 A Yes.

12 Q That was the family rule?

13 A Yes.

14 Q That was the family rule in 2018 when you went to Myrtle
15 Beach?

16 A Yes.

17 Q And, again, prior to coming here, you were not
18 comfortable in deep water?

19 A No.

20 Q When you came to -- well, let me ask you this: When you
21 were in Ocean City, did you ever pay attention to lifeguards
22 there?

23 A No.

24 Q Pay any attention to signs or anything like that?

25 A No.

- 1 Q I mean, you were nine; right?
- 2 A Yes.
- 3 Q When you went to the beach, what were you interested in?
- 4 A Swimming and playing with the sand.
- 5 Q Having fun; right?
- 6 A Yes.
- 7 Q And, then, when you came to Myrtle Beach in 2018, was it
- 8 the same idea? In other words, you just wanted to have fun?
- 9 A Yes.
- 10 Q Did you pay any attention to any signs or any lifeguards
- 11 or anything like that?
- 12 A No.
- 13 Q In 2018, August 24, when you went to the beach, it was
- 14 sunny?
- 15 A Yes.
- 16 Q People were in the water?
- 17 A Yes.
- 18 Q It looked like a great day?
- 19 A Yes.
- 20 Q And you were going to have fun?
- 21 A Yes.
- 22 Q All right. And so, initially, your mother and twin
- 23 sisters, they were always going to be on the beach; right?
- 24 A Yes.
- 25 Q They were going to stay there --

1 A Or in the shore.

2 Q I'm sorry?

3 A Or in the shore, just where the water could touch them.

4 Q Right. And, then, you were kind of back and forth

5 between your father and brother and then your mother and your

6 two twin sisters?

7 A Yes.

8 Q And when you were playing in the boogie board in the

9 surf, it was always in a place where you were knee deep;

10 right?

11 A Yes.

12 Q And you could stand?

13 A Yes.

14 Q And if the waves came, you could continue to stand and

15 you didn't get knocked over, did you?

16 A Yes.

17 Q So while you were playing in the shallow water, you were

18 always able to stand, you were always able to keep your head

19 out of the water; correct?

20 A Yes.

21 Q And then, at some point in time, you and your father and

22 your brother, the boogie boards were up on the beach?

23 A Yes.

24 Q And you put them up on the beach so that you could go

25 deeper into the water?

1 **A** Well, that was not the intention.

2 **Q** And so did -- as you were getting in deeper, there was a
3 point where you couldn't touch anymore?

4 **A** Yes.

5 **Q** And so, then, did you tell your father, "We need to go
6 back, I can't touch"?

7 **A** No.

8 **Q** "I'm fearful"?

9 **A** No.

10 **Q** "I'm afraid"?

11 **A** No.

12 **Q** Okay. Were you a little afraid at that point when you
13 couldn't touch in the water?

14 **A** No, because my dad was there, and my brother was there.

15 (Mr. Thompson approaches the bench. The Court opens a
16 sealed transcript.)

17 BY MR. THOMPSON:

18 **Q** Now, Wubit, do you remember, last summer, I came to
19 Maryland, and we sat around a table, and you gave your
20 testimony, told me what happened; right?

21 **A** Yes.

22 **Q** And, at that time, your testimony was taken down, and
23 it's now in this written format, and it's called a transcript.
24 Sometimes people don't necessarily remember some of the things
25 they have said.

1 I have provided you a transcript. I'm going to ask you
2 to turn to a particular page to see if we can help. Okay?

3 If you could turn to page 54. Are you there?

4 A Yes.

5 Q Okay. And so, if you could -- there are numbers on the
6 side of the page. Do you see those?

7 A Yes.

8 Q I'm going to tell you a line number. That will be what's
9 on the side of the page, like, line 6. Do you see the 6?

10 A Oh, yes.

11 Q And what I'm going to do is I'm going to read the
12 question and then you'll read me your answer. Okay?

13 A Yes.

14 Q Starting at line 6, it says: "That was something you
15 experienced before. You had been in water where you couldn't
16 touch but your father was there to take care of you"?

17 A "Yes."

18 Q "And did you feel unsafe at this time before the trouble
19 started?" And your answer?

20 A "A little bit."

21 Q "Right?"

22 A "Yes."

23 Q "Because, I mean, you couldn't touch; right?"

24 A "Yes."

25 Q "And you were really counting on your father; right?"

1 **A** "Yes."

2 **Q** Last summer -- does that help refresh your recollection
3 that you were, in fact, a little fearful when you were in
4 water where you couldn't touch?

5 **A** Yes.

6 **Q** And did you ask your father to return to the beach, to
7 get to a place where you could stand?

8 **A** No.

9 **Q** Were you relying on him at that point?

10 **A** Yes.

11 **Q** So, before anything happened, before there was trouble,
12 you were in water that was too deep for you; correct?

13 **A** Yes.

14 MR. PRACHT: Objection. Asked and answered.

15 THE COURT: I'll allow it.

16 BY MR. THOMPSON:

17 **Q** And you were not feeling particularly safe at that point,
18 were you?

19 MR. PRACHT: Objection. Asked and answered.

20 THE COURT: Go ahead.

21 BY MR. THOMPSON:

22 **Q** Wubit?

23 **A** Yes.

24 **Q** You weren't feeling particularly safe, were you?

25 **A** No.

1 Q Okay. Now, when you first became aware that there was
2 something happening, there was trouble -- right, again, you
3 were in a place where you couldn't touch, you didn't think
4 that was trouble at that time. It was when your father
5 couldn't touch anymore; is that fair?

6 A Yes.

7 Q And you could tell that your father couldn't touch why?

8 A Because he was yelling for help and struggling to stand.

9 Q Did he say anything before that?

10 A No.

11 Q Did he say anything to -- that we needed to swim back?

12 A No.

13 Q So he just started yelling?

14 A Yes.

15 Q And, at that point, he couldn't touch?

16 A Yeah, he --

17 Q Do you know?

18 A Yeah, he couldn't touch.

19 Q And were you holding onto him?

20 A Yes.

21 Q Now, you testified earlier he wasn't waving, your brother
22 wasn't waving --

23 A Well, I couldn't see if he was waving or not.

24 Q But everybody was yelling?

25 A Yes.

1 Q And you don't know how long that lasted, do you?

2 A No.

3 Q I mean, you can't provide any estimate for that, can you?

4 A No. I mean...

5 Q And so, at some point, do you know how everything
6 stopped?

7 A Not exactly.

8 Q Is it the -- your testimony that you were yelling and,
9 then, really the next thing you knew is you were standing on
10 your feet?

11 A I don't remember anything in between that.

12 Q Okay. You don't remember anything from the time you were
13 yelling -- from the time the yelling started to the time you
14 were on your feet on the water; is that right?

15 MR. PRACHT: Objection, Your Honor. Mischaracterizes her
16 testimony.

17 THE COURT: Rephrase, if you would, please.

18 BY MR. THOMPSON:

19 Q Wubit, I thought I just heard you. You didn't hear
20 anything or remember anything from the time the yelling
21 started until the time that you could stand; is that correct?

22 A Yes.

23 Q Okay. And you don't know how much time passed from the
24 time the yelling started to the time that you could stand?

25 A I don't know exactly.

1 Q Well, you can't provide an estimate at all, can you?

2 A Well, I did.

3 Q I'm sorry?

4 A I did give an estimate.

5 Q If you'll turn to page 61. All right. Starting at line
6 12.

7 A Mm-hmm.

8 Q The question: "So you and your dad and brother got in
9 trouble. You called for help. And then the next thing you
10 realize or remember is that you could stand in knee-deep
11 water?"

12 A "Yes."

13 Q Your answer?

14 A "Yes. I don't remember it. I just remember yelling for
15 help and that I think I don't know how we got out of it,
16 honestly, but I just remember that, eventually, we were at the
17 shore, and I was walking towards the shore."

18 Q "Do you know about how long all of that lasted?"

19 A "No."

20 Q Okay. And does that help refresh your recollection?

21 A Yes.

22 Q Wubit, thank you for your time today and your patience,
23 and I'm very sorry for your loss.

24 REDIRECT EXAMINATION

25 BY MR. PRACHT:

1 Q Wubit, I have a couple of questions. Okay? You still
2 got that deposition that Mr. Thompson showed you?

3 A Yes.

4 Q Now, he read you where he said you testified that you
5 felt a little bit unsafe. Right?

6 A Yes.

7 Q Would you start at line 19 on page 54, Wubit.
8 Mr. Thompson didn't include this, and I want it for the
9 record. So go to page 54, line 19. And the question was,
10 "And you were really counting on your father?"

11 A "Yes."

12 Q Okay. And then Mr. Thompson -- this was the part that
13 was not published to the jury. The question was: "But he was
14 doing a good job standing and hanging on and everything was
15 good?" Please read your answer.

16 A "Yes."

17 Q Now, I want to go and talk about your testimony before.
18 When your dad was yelling, please remind the jury what
19 you observed your father doing as he was yelling.

20 A As he was yelling, he was also going under and coming
21 back up and gasping for air.

22 Q And would he yell when he came up?

23 A Yes, for help.

24 Q And although you don't know exactly how long, was it
25 instantaneous, Wubit? Was it very quick?

1 **A** No, absolutely not.

2 **Q** This process didn't happen very quick, did it?

3 **A** It didn't.

4 MR. THOMPSON: Objection, Your Honor. Leading.

5 THE COURT: I'll allow it.

6 BY MR. PRACHT:

7 **Q** Did you describe truthfully in your testimony what
8 happened out there on the water that day?

9 **A** Yes.

10 MR. PRACHT: Thank you, Wubit.

11 THE COURT: Thank you, ma'am. You can step down.

12 MR. McLEOD: Your Honor, at this time, the plaintiff
13 rests its case.

14 THE COURT: Okay. Ladies and gentlemen of the jury,
15 we're going to take about a ten-minute break. Again, please
16 don't begin discussing the case.

17 (The jury exited the courtroom at 10:57 a.m.)

18 THE COURT: Any motions that I need to hear?

19 MR. McLEOD: Nothing from the plaintiff.

20 MR. THOMPSON: Yes, Your Honor.

21 THE COURT: Do y'all want a break first or do you want to
22 go straight in?

23 MR. THOMPSON: It's up to Your Honor.

24 THE COURT: I'm fine to go straight in.

25 MR. THOMPSON: I am as well, Your Honor.

1 MOTIONS/MATTERS OF LAW

2 MR. THOMPSON: I have several motions for directed
3 verdict, Your Honor, at this time.

4 The first, Your Honor, has to do with any claim for any
5 economic loss for the wrongful death claim. There's been no
6 testimony, no evidence about any economic loss. There's no
7 numbers. There's no dollars. There's nothing about how much
8 he earned. There's nothing about how much was contributed to
9 the family or to the kids. So any economic loss claim at this
10 time is completely speculative and should not be charged to
11 the jury or allowed for the jury to consider that aspect of
12 the wrongful death claim.

13 THE COURT: Mr. McLeod?

14 MR. McLEOD: Your Honor, I believe the case law states
15 that the jury can presume economic loss when you have a parent
16 who is no longer able to provide. And there was testimony in
17 this case, Your Honor, that he was a taxi cab driver, that he
18 helped with the mortgage, and that he was not the breadwinner
19 in the family, but he was an income-producing member of the
20 family.

21 THE COURT: So, I mean, in my mind, there's two different
22 things going on. There's loss of income and then there's loss
23 of, like, services to the family. And we don't have any
24 direct evidence of any income loss that I think that the jury
25 can determine at this point, but I do think that there is loss

1 of services to the family that the jury could consider.

2 MR. THOMPSON: Right, Your Honor. And that's a concept
3 that has to do with the support. But anything economically --
4 you know, again, there was a time when there was a witness in
5 this case that did provide numbers for that kind of
6 information. That witness didn't testify in this case. So
7 there's absolutely nothing for a jury -- I mean, I don't
8 understand how they get up and say, okay, well, he was
9 providing X amount of dollars of services. You know, a butler
10 or a maid charges \$15 an hour, and we're missing all of that.
11 None of that is in this record and it shouldn't be argued to a
12 jury.

13 So if you can't provide a basis for the economic loss,
14 regardless of whether it's income or whether it's household
15 services, it would be speculative for a jury and certainly
16 speculative and without foundation for the plaintiff's
17 attorneys to argue to a jury some calculation of that loss.
18 There's just no evidence.

19 MR. McLEOD: Your Honor, I would just state that there is
20 evidence that the father was very active in the children's
21 life; that the father was the one that generally did homework
22 with the children. Those are absolutely services of real
23 value in this country.

24 And the mother has testified that she worked six days a
25 week at George Washington Hospital. And so the father's

1 contribution cannot be diminished by Mr. Thompson's argument,
2 and the jury has every right to assign, using their own
3 perspective, what a reasonable value is for the services for
4 the father who is no longer with them.

5 THE COURT: So tell me what you intend to argue to the
6 jury about economic loss.

7 MR. McLEOD: I'm not going to argue an economic loss to
8 the jury. What I'm going to argue to the jury is that each
9 statutory beneficiary is entitled to recovery and the elements
10 of those damages as a statutory beneficiary. In addition,
11 there's conscious pain and suffering, and the last thing is
12 the loss of services to the family, but I will not offer
13 computation on what the loss of services value is. The jury,
14 however, can infer and apply their own common sense
15 understanding to determine what a reasonable value would be.

16 MR. THOMPSON: Your Honor, I'm just concerned there's
17 going to be argument to get the jury to think about, in some
18 form or fashion, you know, what a nanny or, you know, live-in
19 assistant or something and/or, you know, what a maid service
20 would be for, you know, two or three times a week and that
21 somehow that's going to be some common sense thing that the
22 jury can bring to bear for an economic loss. There's just no
23 economic loss testimony in this case. Nothing a jury can sink
24 their teeth into or certainly base a verdict on.

25 And, again, I don't know what -- I don't want to

1 interrupt Mr. McLeod's closings on this issue, and so it's
2 very important that this concept be -- I think it should be,
3 frankly, directed verdict granted on the economic loss claim.

4 And, again, what Mr. McLeod has described is there are
5 very distinct elements that a wrongful death claimant can
6 make. Economic loss is the first on the list. And if there's
7 not evidence, then directed verdict would be appropriate at
8 this time.

9 THE COURT: I'm going to look at some of these cases.
10 I'm just seeing -- it says, "Where the relationship of husband
11 and wife or parent and child exists, pecuniary loss will be
12 presumed." I just want to take a look at exactly what those
13 say, and give y'all my final ruling.

14 MR. THOMPSON: Yes, Your Honor.

15 THE COURT: Go right, ahead.

16 MR. THOMPSON: Okay. Yes, Your Honor. The next-up issue
17 for directed verdict, Your Honor, is pain and suffering, the
18 conscious pain and suffering, and survival action. This was
19 something that was brought up on summary judgment before.
20 Your Honor, nothing has changed since that time. In other
21 words, there is a wealth of information. There are experts
22 who provide testimony about what a person experiences during a
23 drowning process. And nobody like that testified. Nobody.

24 And so the testimony is that they got in trouble and
25 then he drowned. But the pre-impact fear, that's what South

1 Carolina law has talked about, when you know something is
2 coming, when you know it's getting ready to happen, that's not
3 a compensable element. It's not.

4 So any of his yelling, that's the pre -- nothing happens
5 until he goes under the water. Nobody has described that
6 drowning process other than you asphyxiate due to water in
7 your lungs. That's what we have the evidence of. We don't
8 have evidence of what that experience or we don't have
9 evidence or the research or otherwise would suggest that is.

10 So, at this point in time, it's pure speculation for a
11 jury to then award pain and suffering. Again, I'm concerned
12 about the fact and the concept that somehow, you know,
13 plaintiff's attorneys are going to get up in closing and say,
14 you know, he was under the water and he was drowning and what
15 was going through his mind and what he was feeling. It's pure
16 speculation. There's nothing -- nothing in this record about
17 that. Again, there is the opportunity to provide that
18 information.

19 And, Your Honor, I'd refer back to the arguments from my
20 summary judgment motion. Again, there are -- there was kind
21 of the old school. There's actually a Supreme Court case --
22 a United States Supreme Court case back from the 1800s which
23 essentially says the drowning process, really, there's no
24 survival action because it's all one event. It's all tied
25 into the drowning.

1 Since that time, the sort of more modern theory is that
2 you can separate out the survival, but you have to that expert
3 testimony. And there's Dr. Mordel or Mortel or something like
4 that -- he's pretty popular in the case law at least -- he
5 provides that information and provides the testimony -- the
6 expert testimony.

7 Because, again, you know, nobody presumably on this jury,
8 certainly during voir dire, nobody suggested they had any kind
9 of drowning experience, any kind of family member with any
10 drowning experience. There's nobody that's going to have any
11 layperson knowledge of that. And without that information
12 being provided by an expert, then, we don't have any evidence
13 on which to base a survival action -- cause of action or claim
14 for damages.

15 THE COURT: Mr. McLeod?

16 MR. McLEOD: Yes, Your Honor. Respectfully, what
17 Mr. Thompson has argued to the Court is not our burden, and to
18 my knowledge, has never been our burden under our case law.
19 Certainly if what Mr. Thompson says is true, he had every
20 right to call an expert and testify to this jury that the
21 drowning process is instantaneous but it's not.

22 The testimony in this case is that it was very far from
23 instantaneous. There's testimony he was foaming at the mouth.
24 There's testimony he was gasping for air. There's testimony
25 it lasted 10 to 15 minutes.

1 The death certificate, which is in evidence, lists that
2 he died from asphyxiation. The jury absolutely can use their
3 everyday, ordinary common sense to conclude, more important,
4 infer that there was conscious pain and suffering.

5 Your Honor, in the *Croft vs. Hall* case, and that's at
6 37 S.E.2d 537, our Supreme Court found that, despite testimony
7 from doctors and nurses that the decedent was unconscious, the
8 Court found evidence that decedent talked, made terrible
9 noises, moved a hand and leg in her hospital bed, and opened
10 her eyes in response to her mother's voice.

11 And the Court went on to state that evidence was a scintilla
12 of evidence, and, therefore, it should have gone to the
13 fact-finder. And that's *Croft vs. Hall*.

14 In addition, Your Honor, *Singletary vs. Shuler*. That's
15 a Court of Appeals case, which is 861 S.E.2d 591, which also
16 cites the *Croft vs. Hall* case.

17 And, Your Honor, one last case for the Court is *Scott*
18 *vs. Porter*. It's a Court of Appeals opinion, 530 S.E.2d 389.
19 In this case, I believe the Court laid out that there only has
20 to be evidence for the jury to infer there was conscious pain
21 and suffering, and that's enough to be submitted to the
22 fact-finders.

23 With all due respect, Your Honor, we'd ask to deny his
24 motion as to conscious pain and suffering.

25 THE COURT: Again, I want to look at the case law before

1 I give you a final ruling.

2 MR. THOMPSON: Thank you, Your Honor.

3 The next, Your Honor, is any claim regarding the
4 resuscitative effort. Obviously, their expert didn't go
5 there. Nobody has offered any testimony about that. There's
6 been some suggestion that it was -- well, not any expert
7 testimony. It was done the wrong way.

8 And, Your Honor, to the extent any claims are made as a
9 result of the effort on the beach to resuscitate Mr. Wolde,
10 there's been no expert testimony to say that it was (A) done
11 wrong or (B) that it would have saved his life in any fashion.
12 So any resuscitative claim, Your Honor, we'd ask that judgment
13 be granted on those claims.

14 MR. MCLEOD: I'm not entirely sure what he's talking
15 about. I mean, we have a negligence cause of action. We
16 didn't bring a cause of action for resuscitative efforts.
17 And, in our negligence case, we have proved duty, breach,
18 causation, and damages, and there is an overwhelming amount of
19 evidence of those things.

20 This record, unfortunately -- and I don't believe it's
21 going to get any better in his case -- won't contain any
22 evidence from anybody on their side that anybody did anything
23 right. In my 25 years, I have never seen a case like this.

24 Your Honor, we'd ask that you dismiss -- deny the
25 motion.

1 THE COURT: So is your motion that he not be able to
2 argue to the jury that the CPR was done in a negligent manner?

3 MR. THOMPSON: Correct.

4 MR. McLEOD: We're not going to argue that, Your Honor.

5 THE COURT: Okay. Well, then, granted.

6 MR. THOMPSON: Your Honor, the next directed verdict has
7 to do with any claim that the dual role contributed to the
8 cause of this loss. Your Honor, again, going back to the
9 summary judgment motion and mirroring some of the arguments
10 there and adopting them, obviously, nothing has changed.

11 The evidence has not demonstrated any either -- certainly
12 not any direct evidence. That's uncontradicted. No direct
13 evidence. So then the consequential -- or the circumstantial
14 evidence is there's circumstantial evidence that they were
15 conducting commercial activity at the time of this loss, and
16 there just isn't. Their expert said, "I don't know what they
17 were doing." Don't. Nobody has taken the said what L-22 and
18 L-20 were doing at the time.

19 There are gross numbers of receipts for that day.
20 Again, no receipt specifically. There's no receipts showing
21 that any commercial activity was done at any particular time.
22 The evidence so far certainly has been that, you know, you
23 can't even rely on the numbers for that day as being numbers
24 that were actually rentals for -- that were done that day,
25 that they were actually taken over the course of days or had

1 been for two or three days. And so there's nothing in this
2 record that would provide -- certainly no direct evidence,
3 certainly no indirect or consequential or circumstantial
4 evidence of the dual role.

5 Your Honor, we also get to the concept, okay, when we
6 talk about the dual role, then the core incident there is
7 distraction. Right? And so, then, what was it that the
8 lifeguards could see? What was it the lifeguards could have
9 seen or should have seen? Right?

10 So what has the evidence been about what anybody else saw?
11 The only evidence that's been presented to this Court from
12 that witness stand is two witnesses from the beach, both of
13 whom heard yells from bystanders nearby, not from the family
14 members, both of whom looked for the first time and saw
15 Mr. Wolde unconscious.

16 There's been no evidence from anybody on the beach at all,
17 not a single person, that saw him struggle, saw the family
18 struggle, or would give any information to suggest that any
19 lifeguard at L-22 or L-20 had any amount of time to change
20 this outcome.

21 Again, by the time that any of the bystanders who have
22 testified in this case saw Mr. Wolde, he was already
23 underwater, face down, unconscious. Nobody has testified
24 about seeing the struggle. Nobody has testified about the
25 amount of time of that struggle and whether it could be seen

1 from the beach.

2 So you don't have any evidence to demonstrate to try and get
3 the circumstantial evidence of commercial activity. You don't
4 have the timing element to then say that, but for the
5 distraction, you would have been able to see, you could have
6 been able to see. The evidence doesn't exist.

7 So, Your Honor, on that basis, certainly the dual-role
8 issue, the dual-role element of negligence, there's no
9 proximate cause, and, therefore, Your Honor, we'd ask that
10 direct verdict be granted on any negligence claim arising from
11 the dual role.

12 THE COURT: I'm going to respectfully deny that motion.
13 I do think it's a jury question as to whether or not the
14 lifeguard was negligent. I mean, certainly whether or not
15 bystanders could see is relevant, but I don't think it's
16 dispositive because they are not in a position to have a duty
17 to keep a lookout.

18 So, again, it's relevant, but I don't think it's
19 dispositive. So I do think there is sufficient evidence for
20 that to go in front of the jury.

21 MR. THOMPSON: Thank you, Your Honor.

22 And then this will be a quick one, then, based on that
23 ruling, Your Honor. We would move for directed verdict on
24 proximate cause. Even if you establish the duty and the
25 breach, the evidence of proximate cause doesn't exist, either

1 direct or circumstantially, for the same or similar reasons
2 that I've just described with the dual role, the fact that
3 there's no amount of time that the family struggled, no
4 evidence that a lifeguard could get from his or her location
5 to Mr. Wolde to change this outcome.

6 Your Honor, there's just no direct or circumstantial
7 evidence to indicate proximate cause has been the -- you know,
8 has been proved or that should go to the jury. And for those
9 bases, and, again, sort of similar to what we have argued
10 before on summary judgment, we'd ask that directed verdict be
11 granted on proximate cause.

12 THE COURT: And, again, I'm going to respectfully deny
13 that. I do think there's sufficient evidence for it to go to
14 the jury.

15 MR. THOMPSON: Lastly, Your Honor, we move for directed
16 verdict on punitive damages. Your Honor, again, the
17 evidence -- there's -- the lifeguarding company, Lack's Beach
18 Service, was operating under state law, operating under City
19 law, operating in accordance with a franchise agreement that
20 was adopted by City law.

21 Your Honor, if there is an element of, again, negligence
22 here, there's no element of gross negligence. At best, the
23 argument is that there was some distraction of lifeguards.
24 That's not gross negligence. Just because somebody lost their
25 life, we're not going to say, "Okay. Now, we have gross

1 negligence." Just because someone had a greater loss, it's
2 not gross. It's still negligence.

3 There's no evidence, Your Honor, of gross negligence to
4 submit the case to the jury on punitives. Obviously, to the
5 extent that we are going to submit the punitives to a jury,
6 then, in the answer and by statute, we have asked that that
7 matter or that issue be bifurcated for this jury to consider.

8 THE COURT: Mr. McLeod?

9 MR. McLEOD: Yes, Your Honor. There is an overwhelming
10 amount of evidence for which the jury can determine punitive
11 damages. For this particular for-profit, it has had one owner
12 throughout its history, and that sole owner is George Lack.
13 And he knew, as early as 1996, that it was unsafe and it was
14 dangerous to have lifeguards on towers who were assigned
15 responsibilities other than water observation.

16 And I don't know if you caught it, Your Honor, when
17 Mr. Brewster testified, before Mr. Lack came along, they
18 didn't even have a guideline that said you're prohibited from
19 doing anything other than water observation because that is
20 just understood. But when -- Mr. Lack, as Mr. Brewster
21 testified, was the first person to ever come to USLA from the
22 private sector and try to get certification.

23 And so what the industry was concerned about was
24 whether or not they should let lifeguards do it at all because
25 of the temptation. But Mr. Lack was given certification

1 because he represented to the preeminent organization in this
2 country that his lifeguards would be assigned to water
3 observation only.

4 And Mr. Brewster started hearing complaints, and it was only
5 because he came to Myrtle Beach -- in, I believe, it was 2007
6 -- that he figured out that, as Mr. Brewster said, they had
7 been bamboozled.

8 And it is absolutely undisputed in this record that, if
9 lifeguards are distracted, it is foreseeable that you will
10 have a higher incidents of drownings. In addition to that,
11 Your Honor, there is the statute -- I don't want to go back in
12 the statute; it doesn't authorize them to do it. It doesn't
13 authorize them to do it in a dangerous and unsafe manner. Our
14 expert has testified that the way this particular lifeguard
15 operated its business, it did so in a dangerous and unsafe
16 manner, and it violated the standards of care, and all those
17 violations were causes.

18 THE COURT: I'm going to allow the punitives to go to the
19 jury. And tell me how y'all propose to handle that. With a
20 separate verdict form? I mean, an initial verdict form that
21 asks whether or not there's negligence?

22 MR. THOMPSON: Yes, Your Honor.

23 THE COURT: And then a --

24 MR. THOMPSON: A second deliberation.

25 MR. McLEOD: That would be fine.

1 MR. THOMPSON: Those are all the motions, Your Honor, at
2 this time.

3 THE COURT: Let's go ahead and take a break so y'all can
4 take a break before we start back. I'm going to look at some
5 of this on the break, but I may not give you a ruling right
6 away.

7 MR. THOMPSON: Thank you, Your Honor.

8 MR. WILSON: Thank you, Your Honor.

9 (A brief recess was taken at 11:21 a.m. to 11:45 a.m.)

10 (Plaintiff's Exhibit No. 26, Email Chain/John Pedersen,
11 was marked for identification.)

12 (Plaintiff's Exhibit No. 27, Email Chain/Philip Cain, was
13 marked for identification.)

14 THE COURT: Okay. As to the motion for a directed
15 verdict on the issue of economic losses, that motion is
16 granted to the extent that there is any -- I mean, there's no
17 evidence of loss of income or replacement value of services.
18 Certainly, there's questions about loss of companionship and
19 everything else that you get from a parent, and that's
20 absolutely a fair measure of damages, but nothing as to
21 replacement cost to hire somebody else to do those things that
22 the father did.

23 As to the survival action, I'm going to respectfully
24 deny the motion for a directed verdict. My feeling is that,
25 if you were discover a person unconscious in a pool and there

1 was no testimony about them struggling, then you might need
2 expert testimony, but because I think there's testimony as to
3 exactly what the events were, I think it's a jury question, so
4 I'm going to deny that.

5 MR. McLEOD: Thank you, Your Honor.

6 THE COURT: And I think we're ready for the jury.

7 MR. TRAINOR: Your Honor, I just do have one thing to
8 bring up.

9 THE COURT: Sure.

10 MR. TRAINOR: Obviously, a lot of these witnesses were
11 there the entire day that were going to testify. Your Honor
12 has already excluded any reference to the second incident,
13 which, by all accounts, was a medical incident. My fear,
14 obviously, is anyone on Mr. McLeod's side says, "Well, hey,
15 was the beach closed?" I just want to be careful about trying
16 to elicit that testimony. I want to make sure we're on the
17 same page about talking before Mr. Wolde's incidents and not
18 trying to elicit testimony, because I think the natural
19 response for some of these people that were out there may be,
20 "Well, yeah, it was closed after," and then the cat's out of
21 the bag and we can't take it back.

22 THE COURT: So I have already ruled about the -- no
23 testimony about any drowning that took place after Mr. Wolde
24 is admissible. So I guess we want to be careful about not
25 blundering into that inadvertently.

1 Have you discussed with the witnesses that they need to
2 not mention that, or do you need me to do that on the record?

3 MR. TRAINOR: I will make -- it would be great if it came
4 from Your Honor. And just when they get -- well, I'm happy to
5 do it outside the presence of the jury. I'm just asking, if
6 we get into any questions about -- open-ended, "Did the beach
7 close that day," which is inevitably going to prompt a
8 response a yes, and we all know why that was, and Your Honor
9 has already ruled that's not admissible.

10 MR. MCLEOD: Your Honor, the only thing I'd add for the
11 record -- and I understand the Court's ruling -- it's one
12 thing for us to be precluded from offering in our case in
13 chief that there was another drowning. The second drowning
14 was two hours, I believe, after this drowning.

15 But, see, that's the problem with the bed that they've
16 made for themselves. When they've offered testimony from
17 these supervisors, and if they elicit testimony that opens the
18 door to the fact that there was another drowning in a two-hour
19 window from this drowning is absolutely -- Your Honor, I
20 believe we're able to go into it in cross, because it's
21 evidence of the defect. It's not offered for notice. It's
22 evidence of the defect itself.

23 THE COURT: Well, not necessarily. I mean, if a person
24 has a heart attack and drowns in the ocean, I don't know that
25 that is opening the door to anything. I don't know what the

1 circumstances are, so I'm just speculating at this point.

2 So all I would say is y'all don't elicit any testimony
3 regarding that second drowning. None of us can control what
4 this witness says on the witness stand, so I'm glad if you
5 want to bring the witness in before we get the jury in and
6 tell the witness to exclude any mention of that.

7 MR. THOMPSON: And there's two of them waiting right now.
8 I'm happy to bring them in.

9 THE COURT: Any objection to that?

10 MR. MCLEOD: I'd say we just get started. Are y'all
11 doing Pedersen first?

12 MR. THOMPSON: Yeah, we're doing Pedersen first.

13 THE COURT: Why don't you go ahead and bring the witness
14 in.

15 MR. TRAINOR: I don't think it's in relation to him. The
16 following two witnesses.

17 MR. THOMPSON: Actually, it does relate to him, and I
18 will be handling Pedersen. So I know that he has testified in
19 the past that he was part of the decision to close the beach
20 after the second drowning that day, so it will be important to
21 discuss with him about that issue.

22 THE COURT: Okay. Why don't we go ahead and put him on
23 the stand, and I'll just go over that with him.

24 MR. THOMPSON: Actually, he's sitting in here.

25 THE COURT: If you would go ahead and come on up to the

1 stand. I'm going to have you swear him in and then I'm going
2 to have you swear him again in front of the jury panel.

3 JOHN PEDERSEN, JR.,

4 after having been duly sworn, was examined and testified
5 to as follows:

6 THE COURT: Okay. Mr. Pedersen, will you state your full
7 name for me, please.

8 THE WITNESS: My name is John Garden Pedersen, Jr.

9 THE COURT: Mr. Pedersen, you were in the courtroom where
10 we have had some discussion about the fact that I have
11 excluded any evidence or testimony about a drowning that
12 happened later in the same day as this drowning?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: And, so, sometimes witnesses don't know that
15 that has been excluded and may inadvertently wander into an
16 area that I have already said is inadmissible. So I just want
17 to make you aware of that, that I have excluded any mention of
18 that.

19 THE WITNESS: Thank you.

20 THE COURT: Anything else you'd like me to cover?

21 MR. THOMPSON: No, Your Honor. Thank you.

22 THE COURT: What we'll do is -- if we can bring the jury
23 in, and then, if you don't mind swearing him again just so the
24 jury can see that's was sworn.

25 Okay. We're ready for the jury.

1 And you can stay right there, Mr. Pedersen. That's
2 fine.

3 THE WITNESS: Okay.

4 (The jury entered the courtroom at 11:53 a.m.).

5 JOHN PEDERSEN, JR.

6 after having been duly sworn, was examined and testified
7 to as follows:

8 THE CLERK: Just state your name for the Court, please.

9 THE WITNESS: My name is John Garden Pedersen, Jr.

10 MR. THOMPSON: May it please the Court, Your Honor?

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. THOMPSON:

14 Q Mr. Pedersen, can you give the jury your name, age and
15 current address?

16 A John Pedersen. I'm now 68 years old. I reside at 860
17 Villa Rosa Drive in Myrtle Beach.

18 Q And if you could you explain to the jury the benefit of
19 your education starting in college and coming forward.

20 A I was a political science major at the University of
21 Delaware, and when I finished there in 1976, I went to
22 graduate school at the University of North Carolina, Chapel
23 Hill. I got a B.A. in political science from Delaware and a
24 master's in public administration from the University of North
25 Carolina.

1 Q And, if you would, tell the jury your last employment.

2 A I retired in 2021 as the city manager of Myrtle Beach.

3 Q And prior to being city manager -- well, let's take a
4 step back and go from college forward. If you could describe
5 to the jury generally your employment.

6 A I started -- my first full-time job in the profession was
7 1977 when I started working as an Administrative Assistant I
8 for the City of Durham, North Carolina. And I worked through
9 a number of positions there: Assistant -- Administrative
10 Assistant I, to II, to budget analyst, to senior budget
11 director, to budget director, to finance director, and
12 assistant city manager when I left in February of 2002.

13 Then I came to Myrtle Beach in -- basically for that
14 reason, when I left out of Durham, and took a job as the
15 assistant city manager for the City of Myrtle Beach in
16 February of 2002 and remained in that position through October
17 of 2014.

18 The beginning of November of 2014, I was appointed as the
19 city manager of Myrtle Beach.

20 Q So, from 2002 to 2014, you were the assistant city
21 manager for the City of Myrtle Beach?

22 A That's correct.

23 Q Who was the city manager during that period of time?

24 A The gentleman's name is Tom Leath.

25 Q Last name?

1 **A** Leath. L-e-a-t-h.

2 **Q** And then you were the city manager for the City of Myrtle
3 Beach from 2014 until your retirement in 2021; is that
4 correct?

5 **A** That's correct, sir.

6 **Q** And if you could, tell the jury what the city manager for
7 the City of Myrtle Beach does.

8 **A** By ordinance, the city manager is the chief executive
9 officer of the organization. A lot of people confuse the City
10 manager with the mayor. The mayor is the person who actually
11 sits on City Council, conducts the meeting, and generally
12 helps -- leads the City Council itself.

13 The city manager, again, is the CEO. I was responsible
14 for the -- all the operations of the city and helping to
15 achieve the policies of the City Council.

16 **Q** Okay. And, as city manager, would you be responsible for
17 contractual arrangements with parties with the City?

18 **A** Yes, sir.

19 **Q** And would that be part of your regular course of business
20 as city manager?

21 **A** Yes, sir.

22 **Q** And did you, while you were city manager in 2014, have
23 opportunity to do business with Lack's Beach Service?

24 **A** Yes, sir, I did at different points in time. I don't
25 remember specifically if it was 2014 or not, but I did at

1 different points in time.

2 Q Now, Mr. Pedersen, you're aware that we're here about an
3 incident that happened in 2018; correct?

4 A Yes, sir.

5 Q At that time, did the City have a franchise agreement
6 with the Lack's Beach Service?

7 A Yes, sir, we did.

8 Q And the franchise agreement -- if you could explain to
9 the jury what the franchise agreement was for.

10 A The beach itself is owned by the public, in this case,
11 under the care of the City, and in order for any company to do
12 business with the City, they had to have a franchise
13 agreement. We had to franchise that out and basically give an
14 exclusive contract.

15 In our case, the arrangement with the beach safety
16 services was that they had the right to rent chairs to the
17 public, rent umbrellas to the public, and I think boogie
18 boards as well, according to ordinance. They had the right to
19 do that, the exclusive right to do it. In exchange, they were
20 required to provide water safety services in the form of
21 lifeguards.

22 Q And did the City receive a franchise fee or money back
23 from Lack's Beach Service?

24 A Yes, sir. Historically, they had received it. There
25 was, I think, a 3 percent franchise fee with a cap for each of

1 the stands.

2 Q I'm going to show you what has been marked as Exhibit 15
3 in this case. And can you identify that document?

4 A Yes, sir. That is the most recent franchise agreement.

5 Q That's currently in effect; correct?

6 A Yes.

7 Q And that is a franchise agreement that you entered into
8 with Lack's Beach Service?

9 MR. McLEOD: Objection, Your Honor. He didn't enter into
10 this agreement. The City Council of Myrtle Beach did.

11 THE COURT: Sure. If you'll rephrase.

12 MR. THOMPSON: Yes, Your Honor.

13 BY MR. THOMPSON:

14 Q If you could, then, describe for the jury how this
15 franchise agreement came into being and was executed.

16 A This is actually an amendment to the previous franchise
17 agreement, one that we had entered into a couple of years
18 earlier. We amended the franchise agreement to add more
19 safety resources to the beach, and this recognized the
20 amendment from the previous agreement.

21 There was an advertisement for that original agreement, a
22 public advertisement. Different people that wished to be the
23 franchise holder could submit proposals to hold that
24 franchise. Then there would be a public hearing to go through
25 the results of that advertising, and then the City Council

1 would vote yes or no as to whether or not to accept that
2 franchise agreement -- the franchise agreement which was
3 proposed.

4 Q And then the franchise agreement, did it have to go
5 through a multi-step process to be adopted by the City?

6 A Yes, sir. It had to be advertised and had to be subject
7 to a public hearing and then it had to be reviewed in a first
8 hearing where it was introduced to the City Council and the
9 second hearing where it was actually adopted.

10 Q And, so, the City Council, then, is taking up the issue
11 of the franchise agreement and its terms?

12 A Yes, sir.

13 Q And that's over a course of a couple of readings or a
14 couple of discussions?

15 A Yes, sir.

16 Q There's, like, a first reading? Maybe a second reading?

17 A Yes.

18 Q And then it's finally adopted?

19 A Yes, sir, that's correct.

20 Q And the public is allowed to voice interest in that and,
21 again, information is provided about the City's meetings --

22 A Yes, sir.

23 Q -- talking about such things?

24 A Yes, sir. Each of the City Council meetings is publicly
25 advertised. The agenda for each meeting is made available

1 to -- basically just put online and also distributed to a list
2 of people who have signed up for it.

3 Q And, so, the City adopted, by ordinance, by law, that
4 franchise agreement that you have in front of you?

5 A Yes, sir, that's the case.

6 Q And that was in effect at the time of the incident that
7 we're here today about in August of 2018?

8 A Yes, sir.

9 Q All right. Now, as you and -- well, the City Council
10 really is responsible for adopting the ordinance; correct?

11 A That is correct.

12 Q And the information was provided to City Council about
13 the operation of Lack's Beach Service; correct?

14 A Yes, sir.

15 Q And that included how they rented umbrellas and chairs on
16 the beach?

17 A Yes, sir.

18 Q And, before 2018, you knew that Lack's Beach Service had
19 lifeguards that rented beach equipment; did you not?

20 A Yes, sir.

21 Q And City Council knew before 2018 that --

22 MR. McLEOD: Objection, Your Honor. This witness can't
23 testify about what the elected members of the City of Myrtle
24 Beach City Council knew or didn't know.

25 THE COURT: If you'll lay a foundation.

1 MR. THOMPSON: Yes, Your Honor.

2 BY MR. THOMPSON:

3 Q As the city manager responsible for developing these
4 contracts and discussing these matters with third parties, did
5 you provide the information to City Council about Lack's Beach
6 operations?

7 A Yes, sir.

8 Q Okay. And so, then, the information was provided to City
9 Council about the lifeguards providing dual role selling or
10 renting beach chairs or umbrellas when they were considering
11 adopting this 2018 ordinance?

12 A Yes, sir. We would actually review that in each City
13 Council meeting, and each member of the City Council would
14 have a copy of the proposed ordinance in front of them.

15 Q And, then, did City Council adopt the ordinance and adopt
16 the franchise agreement?

17 A Yes, sir.

18 Q And that franchise agreement allowed Lack's Beach
19 Service, the lifeguards on the beach, to rent beach equipment,
20 including umbrellas and chairs?

21 A Yes, sir.

22 Q And the City knew that they were doing that?

23 A Yes, sir.

24 Q And allowed them to do that?

25 A Yes, sir.

1 MR. THOMPSON: Your Honor, I have no further questions.

2 CROSS-EXAMINATION

3 BY MR. McLEOD:

4 Q Mr. Pedersen, good morning, sir. I will not be long.

5 First off, you have a masters in public administration;
6 is that right?

7 A That's correct.

8 Q And would it be safe to say that your entire adult life
9 has been spent in public administration?

10 A Yes, sir.

11 Q So you're pretty knowledgeable about the municipal
12 structure of power; are you not?

13 A Yes, sir.

14 Q And you're pretty knowledgeable about how a City goes
15 about providing services on behalf of its citizens; are you
16 not?

17 A Yes, sir.

18 Q And, as the city manager, you are in charge of all the
19 staff; is that right?

20 A Yes, sir, with the exception of the people that report
21 through the City attorney.

22 Q Yes, sir.

23 And so you are the top of the food chain at the staff
24 level; isn't that correct?

25 A Yes, sir.

1 Q All right. Now, you had served as the assistant city
2 manager in Durham; is that right?

3 A Yes, in Durham from about 2012 to -- no, I'm sorry; 1998,
4 rather, through the time I left in 2002, and then an assistant
5 city manager with Myrtle Beach from 2002 until my promotion in
6 2014.

7 Q Yes, sir.

8 And when you left the City of Durham, that was in 2002;
9 right?

10 A Yes, sir.

11 Q And isn't it true that you left because you were passed
12 over for the city manager job of Durham that became open while
13 you were the assistant city manager; isn't that true, sir?

14 A That was part of it. Part of it was that and part of it
15 was that I did not have the best relationship with the person
16 who became the city manager.

17 Q Now, just so the jury is clear, you have never been an
18 elected member of the Myrtle Beach City Council, have you?

19 A No, sir.

20 Q And you have never had the authority to speak on behalf
21 of the citizens of Myrtle Beach, have you, sir?

22 A No. On behalf of the organization, yes, but on behalf of
23 the citizens, no.

24 Q And, today, you have no authority to speak on behalf of
25 the citizens of Myrtle Beach, do you, sir?

1 A No, sir.

2 Q Okay. And Mr. Thompson asked you whether or not you gave
3 the people who do have authority to act and speak on behalf of
4 the citizens information about this for-profit selling beach
5 chairs through the use of lifeguards. Was that your
6 testimony?

7 A I'm sorry? Could you repeat the question?

8 Q I believe what you told Mr. Thompson was that you
9 informed the City Council, before the franchise agreement was
10 formed, that this for-profit was using lifeguards to conduct
11 commercial sales; is that correct?

12 A Yes. We told them, and the City Council was aware this
13 is a practice that's got at least 50 years.

14 Q Did you know, sir, that the franchise agreement that the
15 City Council voted on contains no language that says that
16 lifeguards are allowed to conduct commercial sales on the
17 public beach?

18 A I believe it gives the company the right to do that.

19 Q I want to show you a copy -- my copy of the franchise
20 agreement that's in evidence. Do you have it in front of you?

21 A Yes, sir, I do.

22 Q Just please, for the ladies and gentlemen of the jury --
23 take your time, sir. Flip through that contract, that the
24 citizens of Myrtle Beach, through their City Council, entered
25 into with this for-profit, and share with us the language that

1 you say gives lifeguards the right or permission to sell
2 commercial goods.

3 A In Section 4.

4 Q Okay. Which line, sir?

5 A Beginning in line 15. The section heading is "Beach
6 Service Equipment."

7 Q Yes, sir.

8 A It says, "No commercial or retail activity except as
9 authorized herein shall be permitted on the beach public."

10 Skipping to line 19, "In return for the provision of
11 water safety services and other consideration, in Section 6,
12 the franchisee is hereby authorized to rent the following
13 beach equipment: (1) chairs and foot rests, (2) umbrella/wind
14 breaks, (3) floats, (4) soft boogie boards.

15 And then beginning section, with line 26, it says what
16 they're not -- what they may not rent.

17 Q Okay. And so your understanding of this contract is, the
18 only authorization, as it relates to beach equipment, is
19 contained in Section 4; is that right?

20 A Yes, sir. Yes, sir.

21 Q And I agree with you.

22 And would you agree with me, sir, that Section 4, the
23 word "lifeguard" does not appear anywhere for lines 15 to
24 lines 47; isn't that correct, sir?

25 A That's correct.

1 Q All right. And have the citizens of Myrtle Beach ever,
2 at any time, passed a resolution or an ordinance that said
3 that this company is authorized to operate in a dangerous and
4 unsafe manner?

5 A No, sir.

6 Q Have the citizens of Myrtle Beach at any time passed a
7 resolution or an ordinance that says that this for-profit is
8 allowed to violate the professional standards of care that
9 relate to lifeguards?

10 A No, sir.

11 Q Have the citizens of Myrtle Beach ever passed a
12 resolution or an ordinance that says that this franchise
13 agreement contemplates or should be interpreted to mean that
14 lifeguards are allowed to engage in commercial sales?

15 A It says "the company."

16 Q All right. Now, as the city manager at the staff level,
17 you would have occasion to be involved in the administration
18 of city government; correct?

19 A That was my job.

20 Q And isn't it true, sir, that, in 2016, the people who
21 were elected to look out for the best interest of the citizens
22 of Myrtle Beach became concerned about the lack of safety on
23 the beach; isn't that true, sir?

24 A The citizens did? Would you repeat?

25 Q Their elected representatives became concerned about the

1 lack of safety on the public's beach; isn't that correct, sir?

2 A We had a rough summer in 2016, and I went to the City
3 Council with a plan to put more public safety resources on the
4 beach.

5 Q And describe for the ladies and gentlemen of the jury
6 what you mean by "a rough summer"?

7 A We had had a number of incidents where the lifeguards had
8 to go in and rescue people from the ocean more so than usual.

9 Q Let me show you Plaintiff's Exhibit No. 26 and just ask
10 you to take a look at that, please, sir.

11 A Mm-hmm.

12 Q Just take your time and look at that, please, sir.

13 A Okay.

14 Q Have you had a chance to look at it?

15 A Yes, I have.

16 Q And this email is an emailed dated August 27th, 2016; is
17 that right?

18 A That's correct.

19 Q And the email is from you?

20 A Yes, sir.

21 Q And the email address that you initiated this
22 correspondence was your City of Myrtle Beach email address; is
23 that correct?

24 A Yes, sir.

25 Q All right. And you sent this email to other members of

1 the staff level; is that right?

2 A Yes.

3 Q Okay. And you also sent it to
4 George@LacksOutdoorFurniture.com; is that correct?

5 A Yes, sir.

6 Q And you're aware, having been in public administration
7 all of your adult life, that the Freedom of Information Act
8 applies to emails and correspondence at the staff level and at
9 the elected level when people conduct the City's or the
10 people's business; is that right?

11 A Yes, sir.

12 Q And is this, in fact, an email that you received on August
13 27th, 2016, when you were still the city manager or the CEO
14 for the City of Myrtle Beach?

15 A I sent the email.

16 Q Right.

17 A Not received it.

18 Q Sent the email. I'm sorry.

19 A Yes.

20 MR. McLEOD: Your Honor, at this time, we'd move to have
21 Plaintiff's 26 into evidence.

22 MR. THOMPSON: Objection, Your Honor. We're going to
23 have some issues with some of it.

24 THE COURT: Do we need to send the jury out?

25 MR. THOMPSON: Yes, Your Honor.

1 THE COURT: Ladies and gentlemen, I know we're getting
2 close to the lunch hour. I'm going to send you out while we
3 take this up briefly. We're going to bring you right back in.
4 We do have lunch that we have brought in for you.

5 Again, please, don't begin discussing the matter during
6 the break.

7 (The jury exited the courtroom at 12:13 p.m.)

8 MR. McLEOD: Your Honor, could we ask the witness to be
9 excused while we argue over it? I don't know what his
10 objection is.

11 MR. THOMPSON: Your Honor, an excused witness is an
12 objection. I mean, this -- it has to do with what's in the
13 document and being redacted.

14 THE COURT: Sure. Is your --

15 MR. McLEOD: What's the issue? What are you objecting
16 to?

17 MR. THOMPSON: Your Honor, there's reference here to the
18 City adopting or not interested in adopting the North Myrtle
19 Beach model. The North Myrtle Beach model is not an issue in
20 this case. It hasn't come up. It hasn't been discussed.
21 It's not an issue.

22 THE COURT: Can I see what you're...

23 MR. McLEOD: Here's my copy, Your Honor.

24 THE COURT: And did I see that the portion that went to
25 Mr. Pedersen was redacted?

1 MR. McLEOD: No, Your Honor.

2 THE COURT: It looked like you had something that was
3 redacted.

4 So your concern is the language about adopting the North
5 Myrtle Beach model?

6 MR. THOMPSON: Correct.

7 THE COURT: And I think, in motions in limine, I had
8 excluded that.

9 MR. THOMPSON: Yes, Your Honor.

10 MR. McLEOD: He has now opened the door. Here's the
11 problem, Your Honor: For timing standpoint, this is August
12 27, 2016. That's two years before the franchise agreement
13 that is in place now was put into place.

14 He had this witness testify that he presented to the City
15 Council that this company -- lifeguards were engaged in
16 commercial sales. Okay?

17 And, in this email, he specially says that he -- "I" --
18 not the citizens of Myrtle Beach, Your Honor -- "I have
19 absolutely no," underlined "interest in the City adopting the
20 North Myrtle Beach model or in doing business with any new
21 companies."

22 And so, Your Honor, what happened here was, at the
23 staff level -- there's no question in my mind, at the staff
24 level, they knew that they were engaged in commercial sales.

25 What I don't believe now is that the City of Myrtle Beach,

1 the City Council knew that, because the only thing the City
2 Council knew that they passed on was the franchise agreement
3 itself.

4 THE COURT: I understand, but the City is not a party to
5 this anymore.

6 MR. McLEOD: In addition, Your Honor, Mr. Lack testified,
7 when I cross-examined him on this franchise agreement, he
8 said, Yeah, but me and Mr. Pedersen -- and I can't remember; I
9 think he said two other people -- had an agreement. That's
10 called a side deal is what that is.

11 THE COURT: Again, I'm going to require that you redact
12 the portion that says the City adopting the North Myrtle Beach
13 model.

14 MR. THOMPSON: It has to be -- I mean, really the
15 sentence --

16 MR. McLEOD: What is the prejudice?

17 THE COURT: We have already had this discussion. I'm not
18 going to replot. I have already ruled on that prior to trial.

19 MR. McLEOD: Okay.

20 MR. THOMPSON: We have to maintain some amount of
21 context.

22 THE COURT: I don't have any problem with you redacting
23 "adopting the North Myrtle Beach model."

24 MR. THOMPSON: If I --

25 THE COURT: They're going to know that something's

1 redacted.

2 MR. THOMPSON: I'm sorry?

3 THE COURT: I think the next portion "or in doing
4 business with any new company," I don't see the need to redact
5 that. I mean, that's a totally separate issue from adopting
6 the North Myrtle Beach model.

7 MR. THOMPSON: I'm trying to figure out what we're going
8 to redact.

9 THE COURT: Well, the jury is going to know that
10 something has been redacted here.

11 MR. THOMPSON: Correct.

12 THE COURT: So, again, I'm fine with basically redacting
13 from the words "adopting the North Myrtle Beach model."

14 MR. THOMPSON: Well, Your Honor, it says, "I have
15 absolutely no interest in the City adopting the North Myrtle
16 Beach model." That whole sentence is -- and the emphasis "no
17 interest" is with regard to adopting that model.

18 The "or" is then "in doing business with any new
19 companies." Again, "but I do think we have outgrown." I
20 mean, I think you can redact the first sentence down to "but"
21 and just says, "I do think we have outgrown the current model
22 of having the lifeguards."

23 Mr. McLeod is arguing to this Court that somehow City
24 Council didn't know? I mean, this says -- this went to City
25 Council, and everybody knows this is happening. I don't even

1 understand how --

2 THE COURT: I mean, I don't think it makes any sense to
3 delete the first part of that sentence. Again, my ruling is
4 that you can redact "adopting the North Myrtle Beach model."

5 MR. McLEOD: So interest in --

6 MR. THOMPSON: Your Honor, just for context --

7 MR. McLEOD: I want to make sure I did it right.

8 And the only reason why -- and I respect the Court's
9 ruling. I believe that, when it comes to government, that
10 these issues are important. And I don't understand -- so much
11 of Trey's objections in this case have been relevance.
12 Normally, what you argue is the prejudice.

13 I mean, how can this jury be prejudiced by knowing what this
14 gentleman did as the city manager of the City? I mean, it's
15 almost like, by definition, there's no prejudice. He is doing
16 the people's business.

17 THE COURT: I understand. Again, that's my ruling.

18 Before this comes to the jury, I think we need probably
19 do a little better job of redacting just because you can hold
20 it up to the light and see it. So before it goes to the jury,
21 if we can just --

22 MR. McLEOD: We will.

23 THE COURT: -- make another copy of that. I think that
24 usually will take care of that.

25 MR. THOMPSON: And, Mr. Pedersen, if he's going -- we're

1 going to continue, then, he doesn't read that part about North
2 Myrtle Beach; is that correct?

3 THE COURT: That's right. So the copy that you're going
4 to hand Mr. Petersen is going to have that redacted.

5 MR. McLEOD: That's correct, Your Honor. And I'm going
6 to redact it from my copy as well.

7 THE COURT: And I think this is -- that's your copy that
8 you gave me.

9 MR. McLEOD: Thank you, Your Honor.

10 MR. THOMPSON: Could we at least hand Mr. Pedersen --
11 that's a rough redacted so he won't read it?

12 MR. McLEOD: Yes.

13 THE COURT: Yes, sir.

14 Okay. Let's bring the jury back.

15 (The jury entered the courtroom at 12:21 p.m.)

16 BY MR. McLEOD:

17 Q Mr. Pedersen --

18 MR. McLEOD: At this time, we move Plaintiff's Exhibit 26
19 into evidence.

20 THE COURT: Yes. It's admitted.

21 (Plaintiff's Exhibit No. 26 was received into evidence.)

22 BY MR. McLEOD:

23 Q Now, Mr. Pedersen, you've got a copy of Plaintiff's
24 Exhibit No. 26 in front of you; do you not, sir?

25 A Yes, sir.

1 Q If you would, I want to start with -- please read the
2 first paragraph to the ladies and gentlemen of the jury.

3 A "Good afternoon, gentlemen. I hope that you're having a
4 good weekend. As you know, City Council has asked that staff
5 and Beach Advisory Committee to recommend some measures to
6 improve the level of safety on the beach. Jennifer will be
7 working with Skeeter to set up a time for the committee to
8 begin those discussions."

9 Q Okay. And so that's how City government works; does it
10 not, sir? The elected members of City Council, who look out
11 for the best interest of its citizens, have concerns, and then
12 they share those concerns with the staff level; is that right?

13 A Not entirely.

14 Q Is that what happened here?

15 A No, sir. What would have happened in this case -- what
16 did happen in this case, as the CEO of the organization, it
17 was not my job just to simply wait until City Council voiced
18 an objection and then react to that objection.

19 It was also my job to identify any issue that I thought
20 was an important issue and bring that to their attention, tell
21 them the direction I thought that the organization needed to
22 go, and what the response should be.

23 If the City Council then agreed with that, then, they
24 would give me direction to proceed with what I had outlined or
25 modified what I had recommended to them.

1 In this case, that's what happened. I brought the
2 concern to their attention. They said, yes, we agree, and
3 asked that we -- asked that we address the issue that I raised
4 to them.

5 Q That's not what the first paragraph that you just read
6 for the ladies and gentlemen of the jury says; does it, sir?
7 And that's a paragraph typed by you at your computer; right?

8 A Yes, sir. And City Council did ask me that, after I
9 recommended that we bring that -- that we deal with that
10 issue. The City Council did recommend -- ask that we deal
11 with it. So that is the truthful statement.

12 Q Let's just read one more time that first paragraph.

13 A "As you know, City Council has asked that staff and the
14 Beach Advisory Committee to recommend some measures to improve
15 the level of safety on the beach. Jennifer will be working
16 with Skeeter to set up a time for the committee to begin these
17 discussions."

18 Q Okay. And those are the words you typed on August 29th,
19 2016; is that correct? August 27th. I'm sorry.

20 A Yes. After I had received that direction from City
21 Council, after I brought that issue to their attention.

22 Q Okay. Let's look at the next paragraph. And it begins
23 with the word "I." Do you see that?

24 A Yes, sir.

25 Q And read that paragraph for the ladies and gentlemen of

1 the jury, please.

2 **A** "I have absolutely no interest or in doing business with
3 any new companies, but I do think we have outgrown the current
4 model of having the lifeguards handle rentals as well as beach
5 safety. I'd like to begin discussions with you on what it
6 would cost the City, on a per-stand basis, to pay you to add
7 extra staff to handle the rentals. The intent of this request
8 is that it not cost you any more or any less than it does
9 now."

10 **Q** Okay. And so my first question is: Why did you use the
11 word "'I' have absolutely no interest"?

12 **A** As, again, the chief executive officer of the
13 organization, it's my job to develop a recommendation to take
14 to City Council for their approval. And I typically
15 negotiated those contracts and would present them to City
16 Council, and then the City Council would modify or make any
17 changes.

18 In this particular case, this was in 2016, and we had
19 had -- I had had a conversation with City Council and talked
20 to them about the desirability of changing the model, and they
21 had agreed. I wanted to provide some assurance to the
22 individuals that we already had a franchise agreement with
23 that it was not my intention to try to shove them out of the
24 business and to sit down and to just renegotiate the model.

25 **Q** Wouldn't you agree with me, sir, that City Council, what

1 they care about is safety, don't they?

2 A Yes, sir.

3 Q They don't -- why do you say "I have no interest in doing
4 business"? It ain't your business to do, is it, sir?

5 A It was my position and my responsibility to make
6 recommendation -- my best professional recommendation to the
7 City Council.

8 Q Would you agree with me, sir, that your responsibility
9 was to the citizens of Myrtle Beach and the City Council under
10 whom you served?

11 A Certainly.

12 Q Okay. Now, the last sentence of that second paragraph,
13 do you see that? The word "the intent"?

14 A Yes, sir.

15 Q Could you read that for the ladies and gentlemen of the
16 jury.

17 A "The intent of this request is that it not cost you any
18 more or any less than it does now."

19 Q Okay. I have never heard of a municipality being
20 concerned about saving a private citizen money. Were you ever
21 taught that principle in any of your years in public
22 administration?

23 A No. This was a -- this was in order to give some basis
24 for the discussion that I would have with two companies that
25 were already under agreement with the City.

1 Q Okay. Now, the last highlighted part, could you read
2 that for the ladies and gentlemen of the jury?

3 A "In advance of the committee meeting, can we meet Tuesday
4 at 3:00 to discuss?"

5 Q Okay. Have you ever heard that sometimes there's a
6 meeting before the meeting?

7 A Yes, sir. The 3:00 meeting or the meeting was the
8 meeting at the Beach Advisory Committee. That's a committee
9 that is appointed by the City Council.

10 Mr. Lack and the other beach service were not members of
11 that committee. They attended it, but they were not members
12 of the committee. So it's not -- it was not a meeting of a
13 public body.

14 Q Right. The meeting before the meeting was a meeting that
15 you had with this company; isn't that correct, sir?

16 A This company and another company.

17 Q That's right. That was the meeting before the safety
18 meeting; correct?

19 A Yes, sir.

20 Q All right. Now, I want to show you --

21 MR. McLEOD: I gave you the wrong one.

22 (Plaintiff's Exhibit 27 was removed and withdrawn, and a
23 new document was marked as Plaintiff's Exhibit 27.)

24 BY MR. McLEOD:

25 Q Mr. Pedersen, let me show you what's marked for

1 identification purposes right now. And this is Plaintiff's
2 Exhibit No. 27. And ask you, sir, on August 9th --

3 MR. THOMPSON: Your Honor, objection. May we approach?

4 BENCH CONFERENCE

5 MR. THOMPSON: This is a Casey Tritt video. There's been
6 no evidence or suggestion about any complaints. We talked
7 about this in motion in limine. Mr. Tritt, again, this is --
8 he's not here to testify. Even his -- his email is not even
9 in here. So, Your Honor, it's all hearsay.

10 MR. McLEOD: Your Honor, this is a public document
11 indicating public safety concerns that this gentleman
12 received --

13 MR. THOMPSON: Shh.

14 MR. McLEOD: -- as the city manager. It can come in, and
15 we would wait to see about the video. I'm not going to do the
16 video, but I do want to move this into evidence, Your Honor.

17 THE COURT: So I think the ruling is notice.

18 MR. McLEOD: It's close proximity in time.

19 THE COURT: And, of course, but I think that this was
20 forwarded to Mr. Lack.

21 COURT REPORTER: I can't hear. I'm sorry.

22 THE COURT: I'll put it on the record as soon as we --

23 COURT REPORTER: Okay. Thank you.

24 MR. McLEOD: That's correct. And that's in an email,
25 Your Honor.

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

2 MR. McLEOD: And it's the exact same stand. Sea Crest
3 Resort is mentioned there. That's where he stayed.

4 MR. THOMPSON: Your Honor, it is opening up a whole can
5 of worms about Casey Trent. He's not here to be
6 cross-examined on this. That's not even Casey Trent's email.
7 It's not. And it's going to be completely out of context.

8 MR. McLEOD: That is --

9 MR. THOMPSON: It's not a public record. It's an email.
10 It was not a public record.

11 MR. McLEOD: It's an exceptions record.

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

13 MR. McLEOD: Thank you, Your Honor. The only reason I'm
14 offering it is to just to move on, Your Honor.

15 (Open court resumes as follows:)

16 BY MR. McLEOD:

17 Q Mr. Pedersen, I don't have that many more, but let me
18 show you Plaintiff's No. 27. Okay? Now, that's an email that
19 you received while you were the city manager with the City of
20 Myrtle Beach; correct?

21 A Yes, sir.

22 Q And could you share with the ladies and gentlemen of the
23 jury the date of that email?

24 A August 9th, 2018.

25 Q And are your emails public record, sir?

1 **A** Yes, sir.

2 **Q** And there's a purpose behind that; is it not?

3 **A** Yes, sir.

4 **Q** And you were in a practice when you -- or the regular
5 practice of retaining your emails while you were the city
6 manager because they are public records and because citizens
7 have a right to know what their government does on their
8 behalf; isn't that correct?

9 **A** Yes, sir.

10 MR. McLEOD: Your Honor, at this time, I'd move 27 into
11 evidence.

12 THE COURT: It's admitted.

13 And, Mr. Thompson, your objection is noted for the
14 record, sir.

15 MR. THOMPSON: Thank you, Your Honor.

16 (Plaintiff's Exhibit No. 27 was received into evidence.)

17 BY MR. McLEOD:

18 **Q** Now, Mr. Pedersen, if you would, please, sir, I'd like
19 for you to publish to the ladies and gentlemen of the jury
20 that paragraph of the email that you received. If you would
21 just read that, please, sir.

22 **A** Beginning with "This person"?

23 **Q** Yes, sir. Yes.

24 **A** First, this is an email from our public information
25 officer, who was tasked with receiving complaints from

1 citizens. And the email that I received a copy of reads:

2 "This person called today about a lifeguard who spent six
3 minutes talking with a customer rather than watching the
4 water. It was at Sea Crest in the 800 Block of South Ocean
5 Boulevard. He called here, and I spoke directly -- spoke with
6 him directly about this, which is how we got to the email
7 stage of things.

8 "While he was pleasant with me, he, obviously, planned to
9 share this on YouTube from the get-go. He said other families
10 on the beach were disturbed by the lifeguard's lack of
11 attention to the water. See his YouTube link to the video
12 below and my initial email to him. Will you follow-up with
13 the lifeguard service and see what's up with this, please?
14 I'd like to be able to reply back to him with some sort of
15 information, although I doubt it will change his decision to
16 post this on the internet along with this comment."

17 Q Okay. And would you agree with me, sir, that this email
18 contains information about a complaint made from a citizen
19 about the lack of safety on the public's beach?

20 A Yes. It is a complaint that was forwarded by our public
21 information director to the person on the police department,
22 Philip Cain, who was responsible for monitoring the activities
23 of the franchisees, and I was copied on this email.

24 Q And it was also asked that this email and the video be
25 forwarded to this for-profit; isn't that right, sir?

1 **A** Yes, sir.

2 **Q** Okay. And the date on this email is about three weeks
3 before Mr. Wolde drowned on that public beach that was open;
4 isn't that right, sir?

5 **A** Yes, I believe so.

6 **Q** And doesn't this email refer to the exact same lifeguard
7 tower where Adam and Wubit and their family went to play in
8 the surf? Isn't that true, sir?

9 MR. THOMPSON: Objection, Your Honor.

10 THE COURT: What's the basis?

11 MR. THOMPSON: This is 404. It's not for the purpose
12 that it was initially being offered.

13 THE COURT: I allowed it in on notice issue., so I'm
14 going to allow the question.

15 **A** I think it is a same area. I could not tell you if it
16 was the same tower or not.

17 BY MR. McLEOD:

18 **Q** Now, you never bothered to look at that video; did you
19 see, sir?

20 **A** I don't recall looking at it, no, sir.

21 **Q** Did you ever determine whether or not this for-profit
22 looked at that video at the exact same tower at issue in this
23 case?

24 **A** My understanding was that Sergeant Cain and the
25 individuals to whom it was addressed referred it to Mr. Lack's

1 service.

2 Q Isn't it true, sir, that you didn't know, until about six
3 months ago, preparing for your deposition, that there was no
4 lifeguard presence where Mr. Wolde went in distress and
5 drowned; isn't that true, sir?

6 A Yes, I was -- I did not know if there was a lifeguard on
7 that stand -- that there was not a lifeguard on that stand at
8 that time.

9 MR. McLEOD: Thank you. I have no further questions.

10 REDIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q Mr. Pedersen, the lifeguard that was not on the stand was
13 at lunch at the time of Mr. --

14 MR. McLEOD: Objection, Your Honor. Lack of foundation.

15 BY MR. THOMPSON:

16 Q -- Wolde's drowning. Did you know --

17 THE COURT: Are you asking him that question?

18 MR. THOMPSON: I'm asking the question.

19 A That is my understanding.

20 BY MR. THOMPSON:

21 Q Right. Does the franchise agreement allow the lifeguards
22 to go to lunch?

23 A I don't -- may I take a second and look?

24 Q Sure. Mr. Pedersen, if you'll turn to page 5.

25 A Okay.

1 Q Second paragraph starts at line 8.

2 A Yes. Thank you.

3 "Franchisees in the City shall determine an appropriate
4 schedule for lunch breaks. Lunch breaks shall be staggered or
5 alternating so that only every third lifeguard will be off
6 stand during the designated lunch hours."

7 Q So lifeguards were allowed to go to lunch, leave the
8 beach; correct?

9 A Yes, sir.

10 Q And the stand to be empty?

11 A Yes, sir.

12 Q That was part of the agreement with the City?

13 A Yes, sir.

14 Q Okay. Now, Mr. Pedersen, you were asked some questions
15 about the email in 2016, and at that time, you brought to
16 Mr. Lack's attention your intent or interest in doing
17 something a little bit different.

18 A Yes, sir. After I had conferred with City Council.

19 Q Right. And so in -- I think you described earlier on
20 direct, in 2018, there was an amendment to the franchise
21 agreement; correct?

22 A Right. Yes, sir.

23 Q So there was a franchise agreement that was existing
24 before that time?

25 A Right.

1 Q And then was the 2018 amendment part of the response to
2 and the solution to the question that you posed back in 2016?

3 A Yes, sir, it was.

4 Q And, in 2018, the solution was to what?

5 A The solution was to add more lifeguard-only positions in
6 the franchise agreement, to make more requirements for that.

7 Q So the City, right, said we want more safety and we're
8 going to have lifeguard-onlys or more lifeguard-onlys;
9 correct?

10 A Yes, sir.

11 Q And that was the solution to the issue that you had
12 addressed in 2016?

13 A Not the complete solution. That was a solution that
14 would have to be dealt with in the franchise agreement. In
15 addition to that, we also put more of our own resources on the
16 beach to improve public safety.

17 Q And that's a good point. Because, in 2018, did the City
18 add additional resources to the beach?

19 A Yes, sir. We added -- prior to that, we had not had any
20 fire department units on the beach at all. We did provide our
21 firefighters, a number of them, with deep water rescue
22 training. And, in response to the circumstances that we had
23 in 2016, we also put squads of firefighters on the beach so
24 that there are, depending on the time of the year and the time
25 of the day, three or four different fire units, two-person

1 units on the beach going up and down looking for -- looking at
2 the safety of the beach and also, you know, communicating with
3 the lifeguards.

4 Q So there were a number of measures that were instituted
5 not only with Lack's Beach Service but also with the City?

6 A That's correct. The one I just described with the fire
7 department would have been outside the scope of the franchise
8 agreement.

9 Q But adding an additional layer of protection and safety
10 on the beach of the City.

11 A Yes, that was our response, was to do both: Make these
12 changes to the agreement that we had in 2016 and incorporate
13 that into in the amendment in 2018 and to do some internal
14 thing to put more of our -- particularly fire resources on the
15 beach.

16 Q And the amendment to the franchise agreement included the
17 LGOs, the lifeguard-onlys; correct?

18 A Yes, sir, it did.

19 Q And it was understood at that time that the amendment was
20 adding lifeguard-onlys, but it was still allowing the
21 front-line lifeguards to do the dual role?

22 A Yes, sir.

23 Q Okay. Thank you, Mr. Pedersen.

24 MR. McLEOD: Two questions, Your Honor.

25 RECROSS-EXAMINATION

1 BY MR. McLEOD:

2 Q Mr. Pedersen, you understand that the kids didn't need a
3 firefighter that day. You do understand that, don't you?
4 They needed a lifeguard.

5 A Our -- the individuals that we had on these teams were
6 all trained to be -- to do lifeguard services.

7 Q Okay. Could you turn to page 10 of the contract between
8 the citizens of Myrtle Beach through their elected members and
9 this for-profit?

10 A Yes, sir.

11 Q Do you see line 14?

12 A Yes.

13 Q Could you read from line 14 to 16 for the ladies and
14 gentlemen of the jury, please, sir?

15 A "Violation of any provision of this franchise agreement
16 shall result in the suspension of the franchise agreement or
17 in the permanent revocation of the franchise by City Council."

18 Q Did you ever tell the citizens of Myrtle Beach, their
19 elected officials, that this for-profit was drastically
20 understaffed on the day that Mr. Wolde lost his life?

21 MR. THOMPSON: Objection, Your Honor.

22 BY MR. McLEOD:

23 Q Did you ever tell --

24 THE COURT: Hang on just a minute.

25 MR. THOMPSON: What's the basis of the objection?

1 THE COURT: Outside the scope of the direct, the cross,
2 and the redirect. This is new.

3 THE COURT: That's sustained.

4 BY MR. McLEOD:

5 Q If the City Council knew about violations by this
6 for-profit, the terms of the contract could put the franchise
7 at risk; isn't that right?

8 A Yes, sir.

9 Q But you had no business -- you had no desire of doing
10 business with anybody other than this for-profit; isn't that
11 right, sir?

12 A We had previously suspended another franchise --

13 Q I didn't ask you about another one. I asked you about
14 this one. This is the one that's at issue here, sir.

15 MR. THOMPSON: Objection.

16 THE COURT: I'm going to allow the answer.

17 A We previously had suspended another franchise holder for
18 that. In this case, we were dealing with the two franchise
19 holders who we felt had had the best safety record of any of
20 the franchise holders that we had had on the beach.

21 BY MR. THOMPSON:

22 Q And so the other franchise holder that you're referring
23 to, y'all got rid of because of concerns about the lifeguards
24 not being trained; is that right?

25 A Yes, sir.

1 Q And who did you give that stretch of the beach to?

2 A This company, Mr. Lack's company.

3 Q Thank you, Mr. Pedersen.

4 THE COURT: Thank you, sir. You can step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Okay, ladies and gentlemen. I understand
7 that your lunch is here so we're going to go ahead and break
8 for lunch. We're going to try to resume at 1:15. We can do
9 this in about 30 minutes. Again, please don't begin
10 discussing this case during your break.

11 (The jury exited the courtroom at 12:45 p.m.)

12 MR. THOMPSON: Your Honor, we're going to be reading a
13 deposition transcript. There are a number of objections to
14 some of the designations. There are not many, but there's a
15 handful that we'll need to take up before that deposition is
16 read. This one is not video. It's just going to be read so
17 it's easier to deal with.

18 THE COURT: Okay. Let's put a couple of things on the
19 record.

20 In looking at the exhibit list, Exhibit 24 and 25, we had
21 some discussion during -- before Adam testified that those
22 were going to come in.

23 MR. PRACHT: And, Your Honor, I believe we did move them
24 in, but I didn't use them in my direct.

25 THE COURT: We did move them in, but --

1 MR. THOMPSON: There's no objection, Your Honor.

2 THE COURT: I just didn't know what they were.

3 MR. THOMPSON: He didn't use them, but they're in.

4 THE COURT: Then I also wanted to give you a chance to
5 put on the record -- I know we had a discussion at the
6 sidebar; the court reporter was having a difficult time
7 hearing what we discussed at sidebar with regard to the email
8 from the citizen, so I wanted to give you a chance to put that
9 on the record since I don't know that that picked up.

10 MR. THOMPSON: Right, Your Honor. It's not an email from
11 a citizen. It's --

12 THE COURT: I understand. It was an email regarding a
13 complaint from a citizen.

14 MR. THOMPSON: Correct. So it's hearsay about what
15 Mr. Pedersen had information about. We don't have Casey Trent
16 here. We don't have any of that information here to determine
17 the foundation for anything that he's saying.

18 So, you know, it's prejudicial to Lack's that this
19 information is now in. The additional problem is, is that it
20 is allegedly being offered for notice, but that's not any of
21 the questions that were asked. They are all directed to this
22 is what happened two weeks before, the same location, same
23 place.

24 The whole emphasis and the whole line of questioning was
25 the classic Rule 404, prior bad acts, prior bad incidents

1 being offered for or to demonstrate conformity therewith
2 sometime later. And so there wasn't this notice concept. It
3 was: This is what happened. It's exactly happened two weeks
4 later when Mr. Wolde drowned.

5 And so, Your Honor, it was highly prejudicial, the
6 testimony then, and the questioning that came out was highly
7 prejudicial. Obviously, it's in, and I understand your
8 ruling.

9 THE COURT: Anything you want to put on the record,
10 Mr. McLeod?

11 MR. McLEOD: Other than, Your Honor, the video is a
12 six-minute video. The only reason we didn't offer it is just
13 for the sake of time.

14 The video speaks for itself, and if you'd like us to make
15 it a Court's exhibit. The kid is in a Lacks's shirt and he is
16 clearly conducting commercial sales and not watching the
17 water. And it doesn't matter what Mr. Tripp's motive -- it
18 doesn't matter. The video speaks for itself.

19 The email is a public record, and it was admissible
20 through cross-examination for three reasons: Notice, the
21 defect, and the foreseeability piece, Your Honor. If you need
22 anything else from us, we're happy to address it.

23 THE COURT: Okay. And I understand both of your
24 positions. I just wanted to be able to put that on the
25 record.

1 Tell me how you want to handle addressing the
2 objections in the deposition. First of all, it's the
3 deposition of which witness?

4 MR. THOMPSON: Randy Smith.

5 THE COURT: Okay.

6 MR. THOMPSON: And it's plaintiff's objections.

7 MR. WILSON: Well, Your Honor, first of all, it's -- he's
8 not here. They're trying to publish a discovery deposition
9 that I took. I asked him at that time, "Where do you live?"
10 He said, "I live in Myrtle Beach."

11 I said, "Okay."

12 So then, apparently, defendants found out, six weeks
13 ago, that he, apparently, no longer lives here, and rather
14 than telling us to allow us to -- or noticing a trial
15 deposition where we could cross-examine and work through it,
16 they show up last night at 7 p.m. and say, by the way, we're
17 going to use the discovery deposition, that I took.

18 So I'm, obviously, not objecting to my own questions that
19 I'm asking, and there's hearsay throughout a discovery
20 deposition.

21 So my first objection is, the fact that he is a hundred
22 miles away, I don't know -- he's their employee, former. They
23 represented him in his deposition. I don't know if they told
24 him to go up there, why he went up there or moved up there.
25 But, either way, they have known for six weeks and failed to

1 tell me, and now want to publish a deposition to this jury
2 that's full of hearsay.

3 THE COURT: He's an employee of Lack's or he's an
4 employee of the City?

5 MR. WILSON: The former employee of Lack's.

6 MR. THOMPSON: He wasn't even employed with Lack's when
7 he was deposed.

8 THE COURT: Now, Your Honor, he's outside of the scope.

9 MR. THOMPSON: He lives in North Carolina. At the time
10 of his deposition when it was taken, he lived in South
11 Carolina. We have an email from him stating very specifically
12 that he lives in North Carolina. He does not have the address
13 in South Carolina any further.

14 The case law and the rule is very clear. We don't have
15 to get an affidavit from him. Just have to provide assurance
16 to the Court. We have got the email from him saying where he
17 lives, confirming that he lives in North Carolina.

18 MR. McLEOD: Can we see the email?

19 MR. TRAINOR: It should be in your inbox.

20 MR. THOMPSON: We have sent it to you.

21 MR. TRAINOR: I think Mr. Wilson just referenced it.

22 MR. THOMPSON: And so, Your Honor, I take some issue with
23 Mr. Wilson about whether he would call this witness or not.
24 Mr. Wilson has been very clear -- or McLeod Law Group has been
25 very clear about who they want from Lack's Beach Service.

1 They have communicated who they were going to subpoena. They
2 were asking if they would present them. Holly Robinson was
3 subpoenaed. George Lack was subpoenaed. Randy Smith was not.
4 Nobody said that they wanted him at all.

5 This is a -- I think I won't go any further on that,
6 Your Honor, but they have been very clear about who they want
7 and when they want them. And we have produced everybody in
8 accordance with subpoenas.

9 So the bottom line is, Randy Smith's deposition was taken.
10 He's not available pursuant to the rule. We have the
11 opportunity to publish his deposition as an unavailable
12 witness. And, Your Honor, that's where we are, and we need to
13 take up the objections so we can deal with those and be able
14 to publish them.

15 THE COURT: I'm going to allow the deposition. I totally
16 understand your objection. I'm going to allow it. So tell me
17 how y'all propose? Do you want to try to handle it on your
18 own or do you need me to go through it with you?

19 MR. THOMPSON: We're going to need to go through it. I
20 have looked at one or two, and I don't agree with the
21 objections.

22 MR. WILSON: I'll provide a copy of the transcript to the
23 Court.

24 THE COURT: Okay.

25 MR. THOMPSON: Your Honor, may I approach?

1 THE COURT: Yes, sir.

2 MR. THOMPSON: Now, Mr. Wilson, I understand, would have
3 the original, which we would use at the time that it's
4 published.

5 THE COURT: Okay.

6 MR. WILSON: Your Honor, I don't have very many
7 objections. I was just going to jump right into them.

8 The first one is page 52. The question in the discovery
9 deposition --

10 MR. THOMPSON: Page which?

11 MR. WILSON: My first objection is page 52. The question
12 is: "Tell me one more time."

13 "I interviewed the witnesses for several weeks. I think
14 some of them -- I talked to them. Some of them, they were
15 very emotional, so I think some of them had to have some days
16 off, just more or less counseling and talking to them."

17 He's speculating, Your Honor. He doesn't know that.

18 THE COURT: What was his position at the time?

19 MR. WILSON: He was a manager, I believe. And a lot of
20 this, starting here and throughout the next 10 or 15 pages, is
21 simply me starting to ask him about some incident report he
22 created that's full of hearsay.

23 MR. THOMPSON: Your Honor, Mr. Smith was -- he did quite
24 a bit of interviewing and investigation of the event
25 afterwards. He interviewed the lifeguards. He interviewed

1 witnesses. He did the investigation.

2 And specifically what Mr. Wilson is arguing about on page
3 54, the question is not objectionable. The answer is him
4 describing what he saw, how they reacted. He's not asking
5 them or speculating about that. It's what he saw.

6 THE COURT: Well, I think the first objection is page 52,
7 line 4.

8 MR. McLEOD: 3 through 9, yes, ma'am.

9 THE COURT: So I would -- "I think everything is fine.
10 He interviewed the witnesses and also talked to the lifeguards
11 for several weeks that were involved. I think some of them,
12 you know, were very emotional."

13 That last part, "So I think some of them had to have some
14 days off. Just more or less counseling them and talking to
15 them."

16 Is that the part that you're finding objectionable?

17 MR. McLEOD: Yes, ma'am. He doesn't know that. He's not
18 assigned to tasking them what to do.

19 MR. THOMPSON: He's describing --

20 THE COURT: I'm going to allow that. It looks like -- I
21 mean, he was over these people?

22 MR. THOMPSON: Yes, Your Honor.

23 THE COURT: Their supervisor?

24 MR. THOMPSON: Yes.

25 THE COURT: And it sounded like he's counseling them and

1 talking to them. I didn't get the impression that they --
2 that he knew they were going to counseling.

3 MR. THOMPSON: No, Your Honor.

4 THE COURT: So I think that's okay.

5 MR. McLEOD: Page 53, lines 1 through 7. He's saying
6 everybody was extremely upset. A witness is not allowed to
7 testify what somebody else is thinking or feeling. They can
8 call those witnesses. He can say what he was. "I was upset."
9 What someone else was thinking is the prototypical definition
10 of hearsay and speculation.

11 THE COURT: I mean, I'm going to allow it. You can
12 personally tell by looking at somebody if they're upset or
13 not.

14 MR. McLEOD: Okay. Thank you, Your Honor.

15 Page 60, lines 9 through 17. Your Honor, that's
16 definitively hearsay.

17 THE COURT: I'm sorry; you said 60, line 9 through 17?

18 MR. WILSON: Yes, ma'am.

19 The first part is what he checked, what he did. Did he
20 check that he was a distressed swimmer, etc.?

21 The second is, one of the witnesses said, "He was foaming
22 at the mouth, so I assumed it was water ingestion. The cause
23 of his accident was unknown at the time."

24 "Have you come to learn that he died of water ingestion?"
25 My hearsay.

1 "Yes."

2 "And does water, if you're having -- he ingested one gulp
3 of salt water."

4 He's not an expert, and this is hearsay and speculation
5 and not expert testimony by a fact witness.

6 THE COURT: Do you want to be heard on that,
7 Mr. Thompson?

8 MR. THOMPSON: Your Honor, I'm trying to figure out --
9 where does it start?

10 THE COURT: Looks like page 60, line 9, through 61, line
11 2 or 3.

12 MR. THOMPSON: I'm okay with bringing out No. 9 through
13 14.

14 MR. McLEOD: 15 through 16 is by hearsay.

15 MR. THOMPSON: Well, 15 through 17 was not designated.

16 MR. McLEOD: Oh, I'm sorry.

17 And then 18 through 23: "If you're having water
18 ingestion." We tried to ask the deputy coroner there
19 yesterday, who is trained on it, about this exact issue, and
20 now, they want to designate a fact witness on the exact same
21 issue. They can't have it both ways.

22 THE COURT: And, I'm sorry, this is line 18 through --

23 MR. WILSON: 23, yes, ma'am.

24 THE COURT: I'm going to exclude that.

25 MR. WILSON: Thank you, Your Honor.

1 MR. THOMPSON: Your Honor, he's testifying based on his
2 experience. Testifying based on his knowledge.

3 THE COURT: Is he a medical person?

4 MR. THOMPSON: No, Your Honor. It's, you know, as a
5 lifeguard and somebody on the beach, it's well known and it's
6 well understood, as a professional, that when, you ingest
7 water or inhale water, you're going to have foaming.
8 That's -- this is information -- there is nothing in here that
9 is medical. It is observable. It is experience.

10 THE COURT: I mean, I have never heard of that.

11 MR. WILSON: Thank you, Your Honor.

12 THE COURT: I'm not going allow that.

13 MR. THOMPSON: Your Honor, it's in the question. It
14 says, "In your experience, being on the beach, can that cause
15 you?" I mean, he's asked the question: In your experience,
16 this is what you have seen. This is what you have witnessed.
17 He's coming from a position of knowledge, not as an expert but
18 what he has seen on the beach. It's in the question.

19 THE COURT: I do not think that that's within the common
20 knowledge that would be outside of requiring expert testimony.

21 MR. WILSON: Thank you, Your Honor.

22 Page 63, starting at line 25.

23 THE COURT: Let's be clear on what we're excluding. On
24 page 60, we're excluding lines 9 through 14. And then 18
25 through -- tell me what y'all have designated.

1 MR. WILSON: 18 through 23. And I didn't object to 24
2 and 25.

3 THE COURT: Okay.

4 MR. THOMPSON: Your Honor, 24 and 25, that's the same
5 question.

6 THE COURT: It is. And so, since they have not objected
7 to that, I'm going to leave it in.

8 MR. WILSON: Page 63. He's now reading from an incident
9 record. "Note: Witnesses said man was hard to see because he
10 was under the water." I mean, that is hearsay. It's
11 definitively being offered for the truth of the matter
12 asserted. What witness are we talking about? They're not
13 here.

14 MR. THOMPSON: Where are we?

15 MR. McLEOD: We're on page 63, lines 21 through 25.

16 And then the entire next page is about what witnesses
17 allegedly told him. You can't backdoor in through a discovery
18 deposition hearsay through some witness.

19 MR. THOMPSON: Your Honor, the evidence is that Lack's
20 did an investigation and created incident reports of
21 documenting what the investigation revealed. It's a business
22 record. It will be established as a business record by
23 Weslyn.

24 And, so, Your Honor, this is -- I mean, they have gotten
25 in a lot of stuff through the business records, a lot of

1 hearsay. This is as classic an example of the
2 business-keeping records of its investigation of an event that
3 happened on the beach, and these records are classic business
4 records.

5 MR. WILSON: Your Honor, he's not putting a record into
6 evidence the way he would normally do it as in: Did you write
7 it, did you authenticate it, and offering for ID and
8 admission. He put a document into evidence. You can't
9 backdoor it in.

10 If they want to try to put it in through Ms. Weslyn,
11 we'll still have the same objection because it's chock full of
12 hearsay, number one.

13 Number two, the rule has an exception to include
14 subjective opinions and judgments. It's no different than a
15 medical record. You can't put a medical record into evidence
16 and include every single thing in there, includes objective
17 opinions of nurses. You call them to testify.

18 This is hearsay in an incident report asking some
19 witnesses about what they saw and him testifying to it.

20 MR. THOMPSON: Your Honor, they have got --

21 MR. WILSON: Witness No. 1 told me that. Witness No. 2
22 also told me that.

23 MR. THOMPSON: They have gotten in records with
24 subjective opinions from other people that aren't testifying
25 in this case, USLA people. And they have come in as business

1 records, Your Honor. It doesn't matter whether the record
2 comes in or whether you're allowed to talk about it. It does
3 not matter. It is referencing it, and it is the classic.

4 Again, more a foundation can be established for these
5 records than any others that have been admitted at this point.
6 They have got an investigation they conducted after this
7 event. They collected incident reports and statements. They
8 kept them in the regular course of their business, and this is
9 what they have. And this is the guy that did the
10 investigation.

11 THE COURT: I can't let that in. I mean, it's his
12 conversation that he had with the witness. It's clearly for
13 the truth of the matter asserted. So I'm going to exclude
14 page 63, line 21, through 64 -- looks like line 23.

15 MR. WILSON: Thank you, Your Honor.

16 65, I objected to speculation and foundation. I don't
17 think he knew that.

18 MR. THOMPSON: Which line?

19 MR. WILSON: 65, 1 through 3. "Who told you that?"

20 "According to the lunch schedule and the time he should
21 have been at lunch."

22 He doesn't know that. He didn't know whether he was at
23 lunch or not or whether he should have been. He doesn't know
24 that.

25 THE COURT: I'm going to allow it because he can testify

1 that that was his scheduled lunch break.

2 MR. WILSON: Yes, ma'am.

3 THE COURT: It was a live witness.

4 MR. WILSON: Yes, ma'am. Same objections to page 65,
5 lines 11 through 21.

6 THE COURT: I'm sorry? Page 65, line 11 through --

7 MR. WILSON: 21. "Your understanding..."

8 "Yeah, according to my witnesses, it was low tide. The
9 sand would have been a good ways from the water. They were
10 walking in the water's edge is the reason they heard..."

11 That's hearsay, Your Honor. It's the same as the
12 previous page.

13 THE COURT: Mr. Thompson, you have got the same?

14 MR. THOMPSON: Your Honor, Mr. Smith is reading from --
15 he's reading from the incident reports. That's where he's
16 getting this information. It's not, again, I'm sitting there
17 talking about and recalling what was said. This is the
18 business record from the investigation from the event that he
19 is repeating verbatim this is what these records show.

20 THE COURT: For the same reason, I'm going to exclude
21 page 65, line 11 through 21.

22 MR. WILSON: Page 66, lines 18 through 20. "You talked
23 to these two lifeguards who were supposed to be watching the
24 water, you said, off the record."

25 His response, I remember, was fairly smugly: "Well, they

1 were watching the water."

2 "Yes, sir."

3 It's pure speculation. He wasn't there. I think he
4 testified he was ten blocks away. He doesn't know that.

5 MR. THOMPSON: Your Honor, he got the information. He's
6 testified that this is what he knew. This is what Randy Smith
7 knew.

8 THE COURT: This is the other two who were not at lunch?

9 MR. THOMPSON: That's correct, Your Honor.

10 MR. WILSON: Yes, ma'am. He was literally ten blocks
11 away in his truck, driving in the opposite direction.

12 THE COURT: I'm going to exclude lines 18 through 20.
13 Again, that's page 66.

14 MR. THOMPSON: I'm sorry, Your Honor?

15 THE COURT: That's page 66, line 18 through 20.

16 MR. WILSON: Only three more, Your Honor. Page 68, lines
17 9 through 17 --

18 MR. THOMPSON: Your Honor, if we're going to take out
19 that section, then the next question doesn't make any sense.

20 THE COURT: So you want to take out lines 21 through 23?

21 MR. WILSON: That's fine, Your Honor.

22 MR. THOMPSON: Actually, Your Honor, we'll leave that.
23 That's fine.

24 THE COURT: Okay. Mr. Wilson?

25 MR. WILSON: I guess the fact that it's simply saying

1 that he talked to them about what they said.

2 THE COURT: I'm sorry; tell me what page again.

3 MR. WILSON: He's still on page 66, lines 21 through 23.
4 I guess I don't have a problem with the fact that he talked to
5 them.

6 THE COURT: Yeah, that's fine.

7 MR. WILSON: Page 68, lines 9 through 17. "Did you ever
8 talk to Kacper?" This was the gentleman at, allegedly, L-21
9 who was at lunch.

10 The objection is really -- I don't have a problem -- he
11 just said, "That's usually what I believe he did. He would
12 eat lunch close by, yes."

13 He doesn't know that. In fact, he didn't even testify
14 that Kacper said that. He just said that's what he usually
15 does, but I don't know. "That's usually what I believe he
16 did; he would eat lunch close by." I mean, that's pure
17 speculation. He doesn't know that.

18 MR. THOMPSON: Your Honor, he's testifying from personal
19 knowledge. He says about his habits, Kacper, "That's usually
20 what I believe he did. He would eat lunch close by. Yes."
21 That's from his personal knowledge.

22 You have to understand, Randy Smith is a manager on the
23 beach. He's responsible for these lifeguards. He knows their
24 lunch habits.

25 Now, first of all, Your Honor, on 68, line 9 through

1 11, we have already established that Mr. Smith knows the lunch
2 schedule. So that's -- Mr. Smith knows the lunch schedule,
3 knows he was at lunch.

4 And then, Your Honor, again, when the next question and
5 answer is -- you know, Randy Smith is providing his own
6 knowledge. It's not "this is what somebody else told me he
7 usually did. This is what I know that he usually did."

8 MR. WILSON: It starts with "I'm not sure."

9 MR. THOMPSON: "I'm not sure, but that's usually what I
10 believe he did." I mean, you can qualify, and it doesn't mean
11 that, all of a sudden, your answer is negated by it. "I'm not
12 sure," that means --

13 THE COURT: Y'all, I don't really think it's relevant
14 whether he had lunch close by or far away, so I'm going to
15 allow in 68, through line 11. I'm going to exclude lines 12
16 through 17.

17 MR. WILSON: Thank you, Your Honor.

18 69, this is what Kacper told him. There's no prejudice
19 to them now because the record that they're going to read in
20 is already going to establish that Mr. Smith somehow knew
21 Kacper was at lunch based on the schedule. This is what,
22 again, Kacper told you. There's no prejudice. The evidence
23 is already in.

24 MR. THOMPSON: What line?

25 MR. WILSON: 29 -- 23 through 25.

1 THE COURT: On page 69?

2 MR. WILSON: Yes, ma'am. "What he told you."

3 THE COURT: I'm going to allow that in. We have already
4 talked about the fact that he was supposed to be at lunch.

5 MR. WILSON: Okay. I'll withdraw on page 70. We have
6 already talked about this. I believe, over my objection, so
7 the record is clear, about his interpretation of Kacper being
8 upset. I'll still have my objection to that, but I understand
9 the Court's ruling.

10 THE COURT: Okay.

11 MR. WILSON: I believe, Your Honor, I only had two
12 designations. Page 26, 17 through 20.

13 MR. THOMPSON: And, Your Honor, I haven't had a chance to
14 look at that. Really fast, it won't take long.

15 MR. WILSON: No problem.

16 The context is that they're receipts and they took out
17 the part that "they're turned in to the company every day."

18 MR. THOMPSON: I don't have any problem with that.
19 There's nothing objectionable.

20 MR. WILSON: And then 31, 15 through 24.

21 MR. THOMPSON: Hold on. What page?

22 MR. WILSON: On page 31.

23 MR. THOMPSON: 15 through --

24 MR. WILSON: 24. It's about the commission of the
25 lifeguards. I believe that's already in evidence through

1 Mr. Lack that these lifeguards make commissions. He has
2 knowledge of that. Mr. Thompson's already established he's
3 over all these people: Supervisor, manager.

4 THE COURT: Any objection, Mr. Thompson?

5 MR. THOMPSON: I'm sorry?

6 THE COURT: Are you objecting to that designation?

7 MR. THOMPSON: Well, I'm reading it, Your Honor.

8 THE COURT: Sure.

9 MR. THOMPSON: I'm sorry.

10 THE COURT: No problem.

11 MR. THOMPSON: Your Honor, obviously, I don't have any
12 objection. I would -- don't know how -- normally, I have read
13 my designations and then, if they're counterdesignated, then
14 the other lawyer reads those designations. I don't want the
15 designations to suggest that that's information that I'm
16 eliciting from the witness, because I'm not.

17 THE COURT: Okay. So how do you propose we -- that you
18 read your portions?

19 MR. THOMPSON: When we get to that incident, then -- to
20 that portion, then Mr. Wilson can read the question and the
21 answer.

22 MR. WILSON: Your Honor, I believe the rule allows that
23 I'm allowed to designate any portions I want and allows
24 everything to be put into context. You can't pull out two
25 parts for me to come back up. It's not going to make any

1 sense to the jury. The rule is for completeness for the jury
2 to understand the entirety of the scope.

3 MR. THOMPSON: I don't have any problem with him -- when
4 we stop there, I mean, he can read the next question and the
5 answer is read, he can read the next question and the answer
6 is read, and then I'll pick back up.

7 MR. WILSON: Your Honor, that's silly.

8 THE COURT: I don't care who reads it as long as we start
9 at the beginning and go straight through.

10 MR. THOMPSON: Yes, Your Honor.

11 THE COURT: That's fine. If you want to have Mr. Wilson
12 read his designated portion and you read your designated
13 portion. That's perfectly fine.

14 Is Mr. Trainor going to read the part?

15 MR. THOMPSON: Yes, Your Honor. We have made the
16 designations. Your Honor, again, because I haven't designated
17 them, I believe Mr. Wilson, who designated them, should read
18 the questions.

19 THE COURT: Okay. That's fine. We have gone through all
20 of it now?

21 MR. WILSON: Yes, ma'am.

22 MR. THOMPSON: Yes, Your Honor.

23 MR. WILSON: Good work.

24 THE COURT: All right. I know I told the jury to come
25 back in at 1:15, but let's get a little bite to eat, shall we?

1 MR. THOMPSON: What time, Your Honor?

2 THE COURT: Can we say 1:30?

3 MR. THOMPSON: Yes, Your Honor.

4 (A lunch recess was taken at 1:16 p.m. to 1:40 p.m.)

5 THE COURT: Okay. Are we ready for the jury?

6 MR. TRAINOR: Your Honor, yes, but just real quick: All
7 three of our live witnesses are here. Maybe we can give the
8 same instruction we gave to Mr. Pedersen to all three of them
9 at once, and then we'll send out the two that aren't going to
10 be called right now.

11 THE COURT: Sure. So before the trial began, I addressed
12 some pretrial motions, and one of those was to exclude any
13 testimony regarding the subsequent drowning that took place
14 after Mr. Wolde's drowning. So I have ruled that inadmissible
15 in this trial. Neither party is going to try to elicit any
16 testimony from you regarding that later incident.

17 And so I wanted to bring that to your attention so you
18 don't unintentionally, not understanding that I have already
19 excluded that, offer testimony about that. Again, I have
20 determined that it's inadmissible in this trial.

21 Anything else, Mr. Trainor, you want me to cover?

22 MR. TRAINOR: No, Your Honor. Thank you.

23 THE COURT: Okay.

24 (The jury entered the courtroom at 1:42 p.m.)

25 THE COURT: Mr. Thompson?

1 MR. THOMPSON: Your Honor, may it please the Court?

2 Mr. Trainor is going to take it from here.

3 MR. TRAINOR: We'll call Patrick Flaherty.

4 PATRICK FLAHERTY,

5 after having been duly sworn, was examined and testified
6 to as follows:

7 THE CLERK: When you get up there, just state your name for
8 the Court, please.

9 THE WITNESS: Patrick Flaherty.

10 DIRECT EXAMINATION

11 BY MR. TRAINOR:

12 Q How are you doing, Tony?

13 A What's up? Good.

14 Q I'm going to stand over momentarily to make sure that the
15 jurors can hear you. If I know I can hear you, I'll move back
16 over there.

17 A Okay.

18 Q What's your full name?

19 A Patrick Aaron Flaherty.

20 Q How old are you?

21 A Fifty-eight.

22 Q And where did you grow up, sir?

23 A Miami, Florida.

24 Q How long have you been in the Myrtle Beach area?

25 A Since September 28th, 1985.

1 Q All right. And what brought you up here?

2 A Came down for vacation, met a little young lady, and

3 stayed.

4 Q Is that your wife?

5 A Ex.

6 Q You've got kids; right?

7 A Yes, sir.

8 Q How many?

9 A Five.

10 Q Where do you live?

11 A Two live here in Horry County; one lives in Charlotte,

12 North Carolina; one lives in Las Vegas; and one lives in Saint

13 Augustine, Florida.

14 Q Did you go to college?

15 A Technical college, yes, sir.

16 Q And where was that?

17 A Here at Horry-Georgetown.

18 Q What did you study there?

19 A EMT.

20 Q Emergency medical technician?

21 A Yes, sir.

22 Q And when you graduated from Horry-Georgetown, when did

23 you start with your career?

24 A Started with Horry County EMS in 1992.

25 Q And '92 until -- how long did you do that?

- 1 **A** Until 2018.
- 2 **Q** Seventy-seven years and change?
- 3 **A** Pretty close, yeah.
- 4 **Q** And that whole time, did you work as an EMT for Horry
5 County?
- 6 **A** Yes, sir. Well, yes, I was an EMT, but then, in 2006, I
7 was promoted to the health safety officer at the fire
8 defendant.
- 9 **Q** And I believe you retired from Horry County, you said, in
10 2018?
- 11 **A** Yes, sir.
- 12 **Q** What was your position at that time?
- 13 **A** I was captain. I was the health safety officer for the
14 fire department.
- 15 **Q** I assume, being an EMT, you were familiar with an AED --
- 16 **A** Yes, sir.
- 17 **Q** -- automated external defibrillator?
- 18 Probably had to use them a few times as an EMT?
- 19 **A** Yes, sir, mm-hmm.
- 20 **Q** You started working with Lacks's sometime in 2015?
- 21 **A** Yes, sir.
- 22 **Q** What was your job when you first started with them?
- 23 **A** They started a med program, and I was one of the meds. I
24 basically worked on the north end of Myrtle Beach.
- 25 **Q** And describe for the jury what that was.

1 **A** Basically, we had ATVs, we had our medical equipment with
2 us and everything. We would respond to medical calls on the
3 beach because, you know, stuff happens, and instead of waiting
4 on somebody get to there, we would get there and be able to
5 take care of it. And if they didn't need an ambulance or
6 something, we could always stop the ambulance, and everything
7 would be good to go at that point in time.

8 **Q** Do you recall roughly how long you did that with Lack's?

9 **A** Let's see, I did one full summer as just a med, and,
10 then, the second year, I did, like, a med/supervisor.

11 **Q** At some point, you were promoted to the manager, I
12 believe; is that right?

13 **A** Yes, sir, when I retired from the fire department.

14 **Q** So, as of August 24th of 2018, you were a manager with
15 Lack's; is that right?

16 **A** Yes, sir. Managed the City section of Myrtle Beach.

17 **Q** Talk to us -- let me ask you this: You never worked as a
18 lifeguard with Lack's, did you?

19 **A** No, sir.

20 **Q** Talk to us a little bit about what the managers did for
21 Lack's on a day-to-day basis.

22 **A** Well, daily, we'd go open up at the building, get
23 everything set up, get the scheduling done for the day, make
24 sure we knew who had where and we had enough people set up for
25 that.

1 The guards would come in, get all their books and
2 everything they needed to go out. They'd check the board
3 where we had already gone, and we'd put in for, like, the
4 daily weather and stuff like that. The other manager would
5 come in. He would usually go to the beach, and I'd stay there
6 until the last guard would come in. And then, once he was
7 done, I'd lock up our office, and I would head down to the
8 water.

9 Q What time would typically you get there?

10 A 7:45, 8:00.

11 Q And you mentioned a board? Weather board?

12 A We had a weather board where we'd go in. First thing I'd
13 do in the morning is I'd look up and check the weather, and
14 I'd put on today's date, you know, the highs and lows for the
15 weather, wind direction, sea levels, water temp, and all that
16 stuff.

17 Q Would Lack's communicate with National Weather Service
18 or --

19 A Yes, sir.

20 Q And what was the purpose of that, to your knowledge?

21 A Well, twice a day, they were calling to get a weather
22 report from us, you know, ask us longshore currents, what the
23 waves looked -- you know, how high the waves were, everything,
24 wind direction and all that stuff.

25 Q And, then, you said you would go out once everybody got

1 their equipment?

2 A Mm-hmm.

3 Q What type of equipment would the guards need to take out
4 with them on a daily basis?

5 A Well, they'd come in -- like I said, they'd get all their
6 -- you know, their books for their stand that they were at,
7 their radio, and anything that we needed to get, you know,
8 that we needed to relay to them for, like, their section where
9 they were at that day.

10 Q The schedule, the section or the tower assignments, is
11 that done the day -- the night before?

12 A Usually, it was done the night before. If somebody had
13 called me and said they weren't coming, I'd have to make
14 adjustments or whatever, so, you know...

15 Q Just very briefly, I'll just tell you that this is the
16 time sheet for August 24th.

17 A Mm-hmm.

18 Q Do you have any recollection of who made this time sheet?

19 A That handwriting? Probably Randy.

20 Q Do you have any specific recollection of why anyone may
21 be X'd out or the assignments at all?

22 A If we didn't have an LGO for that section there.

23 Q You had mentioned radios. Does everybody -- do the
24 lifeguards have radios?

25 A Yes, sir.

1 Q Every single one of them?

2 A Yes, sir.

3 Q You and Randy were managers at the time?

4 A Mm-hmm, yes.

5 Q Holly was a manager at the time?

6 A Yes.

7 Q When any of you were on shift, all of you would have

8 radios?

9 A Yes, sir.

10 Q In addition to the lifeguards and the managers, you had

11 supervisors out on the beach?

12 A Yes, sir.

13 Q Did they have radios?

14 A Yes.

15 Q How did you, as a manager, move around the beach?

16 A In a truck.

17 Q Pickup?

18 A Yes, sir.

19 Q How did the supervisors move around?

20 A ATVs.

21 Q So people come in, get their equipment. Guards go out to

22 the beach. Randy goes out. You go out at some point?

23 A Yes, sir.

24 Q It's fairly early?

25 A Yes, sir.

1 Q What are you doing at this point?

2 A Basically, I'm driving up and down the beach to make
3 sure, checking for any hazards that might be on the beach, to
4 start with. If there's anything that needs, like -- daily
5 occurrence, filling holes. You know, people go out, dig holes
6 all night and then leave them empty. It fills up real quick.
7 And make sure all my guards have what they needed. Make sure
8 nothing got -- if something was left on the beach, get it off
9 the beach. Make sure they have, like I said, their med box,
10 their buoys, their flags, and everything is up and ready to
11 roll.

12 Q When do the guards -- when are they required to have
13 their chairs and umbrellas set up?

14 A By 9:00.

15 Q And you had mentioned flags set up.

16 A Yes.

17 Q Is this half of the flag that would get set up?

18 A Yes, sir. The other part is the bottom that always stays
19 in the ground.

20 Q It's basically twice this height; right?

21 A Mm-hmm.

22 Q When were those required to be set up in the morning?

23 A Those would have -- as soon as they came on the beach and
24 they pulled the tower forward. They had to be on the beach by
25 8:00, and those towers and flags would be up.

1 Q And did you say chairs and umbrellas had to be up by
2 9:00?

3 A By 9:00, yes, sir.

4 Q When you're out on the beach, are you looking at the
5 water?

6 A Yes, sir.

7 Q Why would you be doing that?

8 A Well, for one, kind of checking for aquatic life, for
9 one, because it's more prevalent first thing in the morning,
10 and to kind of see what my current is going to look like and
11 make sure my waves are -- you know, how they look.

12 Q Are they out on the beach all day though?

13 A Yes, sir.

14 Q As the day progresses, for whatever reason, if you notice
15 a weather condition or a surf condition change, is that
16 communicated?

17 A Yes.

18 Q How would you do that?

19 A Be communicated over the radio, just let everybody know.

20 Q Is everybody able to -- it's a two-way radio?

21 A Yes, sir.

22 Q Everybody can hear everybody else?

23 A Mm-hmm.

24 Q Is that yes?

25 A Yes, sir.

1 Q How would you and Randy divide up kind of coverage as
2 managers for the beach?

3 A Usually 16th Avenue South, behind The Landmark is where
4 we kind of split it.

5 Q And, on August 24th of '18, do you recall which end you
6 had?

7 A I was on the north end.

8 Q Okay. And that would encompass where Mr. Wolde's
9 incident occurred?

10 A Yes, sir.

11 Q Do you recall how many supervisors were on duty that day?

12 A Should have been three.

13 Q Are you familiar with rip currents?

14 A Yes, sir.

15 Q Are rip currents predictable?

16 A We have three places that probably we had, you know,
17 subsequent rip currents usually occur, so...

18 Q They don't come in at the same place every single day?

19 A No.

20 Q Or at the same time?

21 A No.

22 Q They don't last for the same amount of time, do they?

23 A No, sir.

24 Q How do you guard -- do guards communicate if they observe
25 a surf change, a rip current? Would that be relayed to you?

1 A Yeah.

2 Q And what would your response be to that?

3 A We would usually just, like, kind of clear the water of
4 the area, make sure everybody knows it. If it's just that one
5 section, we'd go ahead and we would dump -- we would flag it
6 on both sides to where people would be able to actually
7 recognize there's something going on, because, you know,
8 you've got two flags up in the air and there's nobody out
9 there, so yeah.

10 Q How far apart roughly -- I'm not going to ask you by foot
11 or by yards -- but the lifeguard towers themselves? Where are
12 those positioned? And I don't mean this one at this place.
13 Roughly how far apart are they?

14 A Maybe a block.

15 Q One of the city blocks?

16 A Yes, sir.

17 Q Colored flags, would those guards set up their flags in
18 the morning?

19 A Yes, sir.

20 Q If a weather condition were to change, who would make the
21 call as to whether the flag color should change?

22 A Me. Excuse me, me or Randy.

23 Q So if you were at yellow and you were looking at the
24 ocean and saying, I think we may need to go to red, you or
25 Randy would make that decision?

1 A Yes, sir.

2 Q And then, changing the flag themselves, the guards
3 proceed to swap the flag?

4 A Yes, sir.

5 Q You also had -- let me ask it this way: Every public
6 beach access, there's a PVC pipe; right?

7 A Yes.

8 Q And would you put that same flag in each one of those?

9 A Yes, sir.

10 Q If the flag color had to be changed, who would go down
11 the beach and change each of those?

12 A The guards would do it.

13 Q Everybody would know what color the flag is, public beach
14 access and right next to the guard stands?

15 A Right, mm-hmm.

16 Q How do guards communicate that they went off duty for
17 lunch?

18 A They go across the radio and go 10-31.

19 Q And that was the signal that "I'm stepping off my tower"?

20 A Yeah, signal 31, yeah.

21 Q What's the busiest time in the 2018 time frame? Do you
22 recall when the beach got the busiest?

23 A Usually anywhere between 9:00 and 10:00 in the morning to
24 3:00 to 4:00 in the afternoon.

25 Q And I think you had told me that you believed there were

1 three supervisors on the beach that day?

2 A Mm-hmm.

3 Q Is that right?

4 A Yes, sir.

5 Q And you and Randy were both out there?

6 A Yes, sir.

7 Q Was the police department out there?

8 A I'm sure they were, yeah.

9 Q Ocean rescue?

10 A I probably seen them once or twice that day.

11 Q You were not present at the time of Mr. Wolde's incident;

12 right? You responded afterwards?

13 A I was about three or four stands down.

14 Q Can you tell us how you were first notified?

15 A Over the radio.

16 Q And do you recall what you were told?

17 A L-20, Code 2.

18 Q And Code 2 is?

19 A Water rescue.

20 Q L-20 was the tower that called it in?

21 A Yes, sir.

22 Q And where were you? You said you were a couple of blocks

23 away. Do you recall roughly where you were?

24 A I was heading south, probably around L-17.

25 Q Okay. What did you do in response?

1 **A** Called -- basically repeated Code 2, L-20, Code 2, L-20.

2 And I had to proceed south to get down to be able to turn
3 around and come back up the beach.

4 **Q** Because you were in a pickup?

5 **A** Yes, sir.

6 **Q** Roughly how long did it take you to make that turn and go
7 back to where everyone was?

8 **A** Maybe 30, 45 seconds to be able to get a clear enough
9 spot to be able to turn around.

10 **Q** What was going on when you first arrived? What did you
11 see?

12 **A** Well, as I pulled up, I saw a crowd of people down
13 towards the water. Got out and grabbed my medical equipment -
14 my O2 and my AED -- and headed down to the water.

15 **Q** Was there a gathering of people?

16 **A** Yes, sir. And they were pulling the gentleman out of the
17 water with the guard from L-20, bystanders, and one of our
18 supervisors.

19 **Q** As you got closer, had CPR already begun?

20 **A** They were trying to do it right on the water's edge. I
21 said, Let's pull him up -- let's pull him out of the water,
22 out of the waves, so we can go ahead and get to doing what
23 we've got to do.

24 **Q** When you say "they," who was doing the CPR?

25 **A** Brady was.

1 Q Okay. Brady being --

2 A Brady Oliver, the supervisor.

3 Q Okay. So Brady was on the scene at that point. Who else

4 was there when you arrived?

5 A Brady and Alex, the guard from L-20, and a ton of

6 bystanders.

7 Q All right. So you were roughly the third there?

8 A Yes, sir.

9 Q And they were doing CPR --

10 A Mm-hmm.

11 Q -- kind of in the water almost?

12 A In the breaks, yes. I wanted to get him up a little

13 higher.

14 Q Did you assist pulling Mr. Wolde further out then?

15 A Yes, sir.

16 Q What was the next step at that point?

17 A Basically, said get him up on little drier sand and just

18 assess him and go ahead and start CPR again. Get an oral

19 airway in him. Start bagging him. And then, at that point,

20 he kind of dried his chest off, put AED pads on him, and tried

21 to shock and nothing. So we tried to shock again. Nothing.

22 Pulled the pads off, put a second set of pads on to make sure

23 it wasn't a failure in the pads. Still nothing. So...

24 And then we just went from there.

25 Q The bystanders that were there, were they complicating

1 the efforts to perform the CPR?

2 A Everybody wants to try to jump in and give a hand, so...

3 Q Were they trying to rotate in or trying to offer advice?

4 A They were asking -- yeah, I mean, "Do you want us to
5 take over?" No, I mean, you know, we have got a job to do.

6 We know how to do our job, so...

7 Q You said put the AED pads on. What was the indication on
8 the AED?

9 A No shock.

10 Q And do you have an understanding as to why that is?

11 A Usually, it's asystole.

12 Q Asystole is pulseless?

13 A Pulseless, yes, sir.

14 Q Did you ever see Mr. Wolde conscious?

15 A No, sir.

16 Q Do you know of anybody that saw him conscious before he
17 got into trouble?

18 A No. I mean, other than people just saying that they saw
19 him and his daughter in the water.

20 Q And that was it?

21 A Yes, sir.

22 Q Do you have any knowledge or information about how long
23 he had been in the water?

24 A No, sir.

25 Q Did Randy ultimately come to the scene as well?

1 A At the end -- basically, towards the end, yeah, he tried
2 to get statements and stuff like that.

3 Q And what were you doing in and around that time?

4 A Trying to police up all my equipment and get everything
5 back together after we got him to the medic unit and
6 everything.

7 Q And Ocean Rescue did show up?

8 A Yes, sir.

9 Q And I believe everybody helped with the transport?

10 A Mm-hmm, yes.

11 Q Mr. Flaherty, I am certain that they will have some
12 questions for you, if you don't mind answering those. I may
13 have a few more afterwards.

14 A Okay.

15 Q Thank you, sir.

16 CROSS-EXAMINATION

17 BY MR. PRACHT:

18 Q Good afternoon, Mr. Flaherty.

19 A Good morning.

20 Q I just want to be clear for the jury. You were in a
21 truck --

22 A Yes, sir.

23 Q -- nearly four city blocks away when Mr. Wolde was pulled
24 out of the water by bystanders; isn't that true?

25 A Yes, sir.

1 Q When you finally arrived, it was bystanders that were
2 doing CPR on Mr. Wolde; isn't that true?

3 A Bystanders and Brady, my supervisor, yeah.

4 Q On August 24th, 2018, had Code 6 gone out amongst the
5 radio, amongst the lifeguards?

6 A I don't recall.

7 Q Do you know what Code 6 is?

8 A Yes, sir.

9 Q What is Code 6?

10 A Waist-deep water. Waist-deep water.

11 Q Waist-deep water.

12 And that indicates it's a high rip current; isn't that
13 true?

14 A No, sir.

15 Q Code 6 indicates that the guards are to keep people at
16 waist-deep water or lower; isn't that true, sir?

17 A Yes, sir.

18 Q And it was the lifeguards' responsibility, under Code 6,
19 to keep the public at waist deep or lower; isn't that true?

20 A Yes, sir.

21 Q And its lifeguards' responsibility to use their whistle
22 and their voice to keep the swimmers at waist deep or lower;
23 isn't that true?

24 A Yes, sir.

25 Q And it was that responsibility, on August 24th; was it

1 not, sir?

2 A Yes, sir.

3 Q How many LGOs were there on August 24th, 2018, sir?

4 A I'd have to look at that. I can't tell you.

5 Q Okay. Happy to do it.

6 A Three. No, wait. Let me see. Two. I think it's two.

7 Q Isn't it true, sir, there were only three LGOs on the
8 beach on August 24th, 2018?

9 A I guess, yes, sir.

10 Q And isn't it true, sir, that the requirements -- the City
11 contract required Lack's Beach Service to carry six LGOs on
12 the beach that day; isn't that true?

13 MR. TRAINOR: Objection. Lack of foundation.

14 THE COURT: Hang on just a minute.

15 MR. TRAINOR: Objection. Lack of foundation.

16 MR. McLEOD: If he knows, he knows, Your Honor.

17 THE WITNESS: I just said I don't know. That's the first
18 contract.

19 MR. TRAINOR: I'll withdraw.

20 MR. PRACHT: No further questions, Your Honor.

21 THE COURT: Mr. Trainor?

22 MR. TRAINOR: Nothing further, Your Honor.

23 THE COURT: Thank you, sir. You can step down.

24 MR. TRAINOR: Your Honor, the witness can be excused?

25 THE COURT: Sure.

1 MR. TRAINOR: You're all done.

2 Your Honor, we will call Holly Robinson. Do you mind if
3 I run out and grab her? Oh, I'm sorry; hold on.

4 We'll do Randy Smith real quick.

5 MR. THOMPSON: Your Honor, if you will --

6 THE COURT: So, ladies and gentlemen, we are going to
7 present you with some testimony by deposition. This is the
8 written deposition. Again, a deposition is sworn testimony
9 that is taken outside of the courtroom. Both attorneys are
10 present. We have a written transcript of that. And so,
11 again, you're going to evaluate that testimony the same way
12 you would as a live witness, only, in this instance, we are
13 going to have -- Mr. Trainor is going to read the part of
14 Randy Smith.

15 MR. THOMPSON: You're we're scrounging -- we're getting
16 an extra copy.

17 THE COURT: I have got mine if you want to use -- it's
18 the condensed, but you're welcome to.

19 MR. THOMPSON: There was an extra copy in the originals.

20 THE COURT: Go right ahead.

21 MR. THOMPSON: Thank you, Your Honor.

22 RANDALL SMITH (READ-IN)

23 after having been previously duly sworn, was examined and
24 testified to as follows:

25 (Mr. Trainor was duly sworn to read the deposition.)

1 MR. THOMPSON: This is the deposition and the testimony of
2 Randall Lee Smith. And I'll read the portions that I
3 designated. Plaintiff will read the portions they have
4 designated.

5 (The below testimony of Randall Smith was read in from the
6 prior deposition:)

7 DIRECT EXAMINATION

8 BY MR. THOMPSON:

9 Q Can you give me your full name for the record, please.

10 A Randall Lee Smith.

11 MR. THOMPSON: Turn to page 7.

12 BY MR. THOMPSON:

13 Q Okay. Now, the drowning death of Mr. Wolde occurred, as
14 we understand it, around L-21. Does that sound about right?

15 A That sounds correct.

16 Q And is it fair to tell -- to call that the north end of
17 the beach?

18 A Yes, sir.

19 Q You were the city manager on August 24th, 2018; is that
20 right?

21 A That's correct.

22 Q And you were assigned, I believe, based on what
23 Mr. Flaherty told us, to the south end of the beach; is that
24 fair?

25 A That's correct.

1 Q So you weren't on -- first of all, you weren't near I-21
2 when this drowning happened?

3 A No, sir.

4 Q And approximately how far away were you? How many city
5 blocks?

6 A Fourteen.

7 Q And was I right to call you the city manager for Lack's
8 Beach Service on August 24th, 2018?

9 A That's correct.

10 Q And what did that role for you entail, that you did? And
11 I understand that every day can be different, but, in general,
12 what would you do on a day-to-day basis?

13 A In a nutshell, I would arrive at 6:30. Check in the
14 lifeguards. Give them the radio, first aid supplies. And
15 then I would meet with George Lack. We'd have a meeting
16 concerning weather conditions, anyone who did not show up for
17 work, any concerns we had with any lifeguards.

18 We would go over the lineup to make sure the percentages
19 were correct. And then I would go load up my truck and head
20 to the beach.

21 There, I would meet with the other manager, Tony -- one
22 of three, I believe. We would discuss what was discussed in
23 the meeting and check on all the lifeguards, stop at each
24 stand, give them a little motivation speech, see if they had
25 any concerns, make sure they had their supplies.

1 Then I would meet with the three supervisors, make sure
2 they had everything they needed. And then Ocean Rescue would
3 come on the beach. I would meet up with them. We'd go over
4 everything that was discussed thus far that day, and then meet
5 up with Beach Patrol and discuss everything that needed to be
6 discussed.

7 Then I would proceed to enforce the City ordinances:
8 Tents, alcohol, whatever the water safety procedures were that
9 day, and make sure everybody complied. Talk to people and
10 just keep eye on the lifeguards, make sure they were doing
11 their job.

12 Also, we would, in the meetings, go over the lunch
13 schedules also. Then, about that time that lunch would start,
14 11:30, we would make sure everything was taken care of for
15 lunches, lunch schedules, and just enforce the ordinances and
16 prevent things from -- try to prevent things from happening
17 through prevention and safety and just take care of the
18 patrons on the beach.

19 And then I would check out around -- we do 10-42 around
20 5:00, is when the beach closed, and then I would head back to
21 the warehouse and catch up on all the paperwork and then go
22 home.

23 Q All right. Pretty full day for you, it sounds like.

24 A Yes, sir.

25 Q Now, when you're on the beach, going from lifeguard stand

1 to stand, were you in a truck?

2 A I was in a truck, yes, sir.

3 Q Like was it a Toyota Tundra or a Tacoma?

4 A It was a Dodge Ram.

5 Q Oh, the Dodge Ram.

6 And did it say "Lack's Beach Service" on the side?

7 A Yes, sir.

8 Q Did it have lights on the top and such?

9 A Yes, sir.

10 Q Did you have the power of arrest for citizens on the
11 beach?

12 A No, sir. I did have a police radio where I contacted
13 Beach Patrol if I needed that.

14 Q Okay. And you kept a daily log as a city manager?

15 A Yes, sir.

16 Q And with that daily log for August 24th, the one you
17 completed, be for the south end for the beach?

18 A Mine is for the south end of the beach, yes, sir, unless
19 I -- I've been -- if I'm involved in a call on the north end,
20 I would do an incident report.

21 Q And there should also be a daily log for the north end of
22 the beach; is that true?

23 A Should be, yes, sir.

24 MR. THOMPSON: Drop down to line 24.

25 BY MR. THOMPSON:

1 Q All right. Now, at the top here, this says -- and this
2 will be, I guess, Exhibit 1. It's Incident Report 0007. Did
3 you create this document, sir?

4 A Yes, sir.

5 Q And this is your name at the top: Randy L. Smith. And
6 your number for the summer was 101?

7 A 101, that's correct.

8 Q Now, these weather conditions on the left here of this
9 document at 8:00 a.m., 12 a.m., and 3 p.m., is 12 a.m. noon?

10 A Yes, sir.

11 Q I always thought that was 12 p.m.

12 Okay. Were these weather conditions for the south end of
13 the beach?

14 A Yes, sir.

15 Q And so, whatever the weather conditions were for the
16 north end of the beach, should be for a daily log for Lack's
17 Beach Service?

18 A Yes, sir.

19 Q Well, if I did one --

20 MR. THOMPSON: I'm sorry. And so what was -- wait a
21 minute. Did you read that or did I read that wrong?

22 BY MR. THOMPSON:

23 Q And so whatever the weather conditions were for the north
24 end of the beach should be a daily log for Lack's Beach
25 Service.

1 MR. THOMPSON: Line 19.

2 A Well, if I did one, it's -- I was kind of the top
3 manager, I would assume, so there could be just one, but I
4 would assume Tony did one also.

5 BY MR. THOMPSON:

6 Q And these water conditions, where it says, "Rip Current
7 Activity," it says, "strong." What does that mean?

8 A That means there's a possibility for strong rip currents
9 because of the longshore current, the wind and condition, and
10 depends on if it was low tide or high tide. It's an
11 assessment we make in the meetings in the morning, and George
12 stayed in contact with the National Weather Service and also
13 Libor, 115, and he would be in on that discussion, and we
14 would make a decision to go to single red flag due to the
15 strong possibility of rip currents.

16 Q And so when you say "strong," I mean, you're not looking
17 into the ocean at every lifeguard stand to say the rip current
18 activities at every lifeguard stand, are you?

19 A No. That would be impossible. They come and go and open
20 up in different spots, so that would be the whole beach.

21 Q But this water condition at 10 a.m., did you-all
22 establish that at the meeting with George Lack at 7:00 in the
23 morning?

24 A Well, what George does, he rides the beach in the
25 morning, from one end to the other, and assesses the water, so

1 that, when I get through checking the lifeguards in and we
2 meet, that he's aware of what the water looks like, and he
3 looks at the weather reports also. So he's very aware of the
4 water conditions.

5 Q The water conditions at 10:00 and 3:00 appear to be the
6 same or at least you have checked the same boxes on your form.
7 Is that based on what George told you?

8 A That's based on the National Weather Service and the
9 assessment of the water conditions, yes, sir.

10 Q I understand that, but you've charted, like, for example,
11 for longshore current, north to south, you charted that -- you
12 charted incoming wave direction, east; water attendance,
13 medium, at 10:00, and then the same charting at 3:00. Did
14 anything change between 10:00 and 3:00?

15 A Not that I'm aware of.

16 Q When determining whether anything changed on that south
17 end of the beach, is that based on your assessment or based on
18 what George told you the National Weather Service is saying?

19 A That's based usually on my assessment. I stay in contact
20 on the phone with George throughout the day, and I usually
21 call him and get permission to make any changes.

22 Q Now, there's a longshore current from north to south.
23 How did you make that determination?

24 A By usually watching people in the water. They'll move to
25 the south pretty quickly, and you can see the water kind of --

1 moving kind of like a river to the south, and you base it on
2 that.

3 Q So you basically see a person who gets into the water,
4 and if the longshore current is pushing, it will push them
5 sideways, basically?

6 A That's the best way to determine it, yes, sir.

7 Q And when you have incoming wave direction, is that east
8 northeast?

9 A Yes, sir. That was what -- that's from the National
10 Weather Service or the weather apps they had. In the morning,
11 that's what we had on the board: East northeast. That can
12 change throughout the day pretty much.

13 Q And how does that wave -- how does the wave direction
14 affect either the longshore current or the rip current
15 activity, if at all?

16 A Just depending on the wind. It's changes and shifts.
17 It's hard to determine.

18 Q And then the rip current activity was strong. Does that
19 mean the water pulling swimmers out?

20 A Well, rip currents usually, at Myrtle Beach, are due to
21 sandbars. So, if the low tide goes out or starts coming back
22 in, then, the water has to have some way to go out. So,
23 usually, if the wind is strong or the waves are rough, it will
24 create rip currents.

25 Q And rip currents, coupled with a longshore current,

1 present a dangerous condition to swimmers?

2 A Yes, sir.

3 Q And would the lifeguards at each stand be aware of these
4 water conditions prior to going on shift?

5 A Yes. They take the weather board when I check them in
6 and give them the radio. It's announced on the radio
7 throughout the day.

8 Q And because of the strong rip current activities in the
9 north to south longshore current, should the lifeguards be on
10 heightened sense of awareness for the swimmers in the water?

11 A Well, they should be on high awareness all the time, a
12 hundred percent of the time, but yes, sir.

13 Q But I'm saying, while that may be true, do you explain to
14 them anything that, when you have this rip current activity
15 and longshore current activity on the same day, that they adds
16 an extra level of danger to swimmers?

17 A Yes, sir. As I talk to each lifeguard a couple of times
18 a day, I keep all the lifeguards informed in my area.

19 Q And you tell them to be on, you know, basically, an extra
20 awareness because you have potential problems that day; true?

21 A True.

22 Q What are attendant's medium? Does that mean the
23 number -- the number of people in the water?

24 A That's correct.

25 MR. THOMPSON: Turn to page 20. I'm sorry. 19. Line

1 18.

2 BY MR. THOMPSON:

3 Q How many ocean rescues were there on the beach that day?
4 Was it one to four? One to six? Do you know?

5 A In that area? Two.

6 Q And do you know how many there were on the north end?

7 A North end? One.

8 Q And who was that; if you remember?

9 A I do not remember. There are different fire fighters and
10 EMS guys that do different shifts, so I do not remember all
11 the names, and I do not know all the names of those guys.

12 Q And what is the role of the lifeguard-onlys on the beach?

13 A Their role is to be lifeguard-onlys, watch the water.
14 They do not have a dual role. In the lifeguarding, they watch
15 the water. That's all they do.

16 Q Do the lifeguard-onlys stay in their tower the whole time
17 or do they move around?

18 A They move around.

19 Q And during lunch time, do the lifeguards-onlys help fill
20 in some of the stands where the lifeguards have gone to lunch?

21 A Yes, sir.

22 Q And is that something -- do the lifeguard-onlys, each
23 morning, know the lunch schedule of lifeguards?

24 A Yes, sir. Lifeguard-onlys always have the last lunch.

25 Q I think, when this happened to Mr. Wolde, he was at L-21,

1 and the lifeguard-only -- I'm sorry, the lifeguard was Kacper,
2 and he was at lunch at that time. Is that your memory?

3 A That's my memory.

4 Q Should there have been a lifeguard-only in that area to
5 have watched the tower that he had left to go to lunch?

6 A Let me think. I believe the closest one would be L-6.

7 Q It looked like there was a lifeguard-only at L-6 that
8 day. Is that your memory?

9 A No, sir. I can't remember if we had that position. I'm
10 assuming, that time of the year, that chair would be empty due
11 to percentages.

12 MR. WILSON: Mr. Thompson?

13 MR. THOMPSON: Yes?

14 MR. WILSON: The question (counsel confer off the
15 record.) Line 8.

16 MR. THOMPSON: All right. The question was:

17 BY MR. THOMPSON:

18 Q It looked like there wasn't a lifeguard-only at L-6 that
19 day. Is that your memory?

20 A No, sir. I can't remember if we had that position. I'm
21 assuming, that time of the year, that chair would be empty due
22 to the percentages.

23 Q Okay. Let's see here. You have got LGO 6, it looks
24 like. First of all, this will be Exhibit 2.

25 A Okay.

1 Q Did you fill out this lineup? And, for the record, on --
2 I'm straight, this is the Lack's Beach Service lineup 2018 for
3 date August 24th. Okay?

4 A Yes. I usually do the lineup, but that's not my
5 handwriting.

6 Q Because I was going to show you, it looked like there was
7 supposed to be a lifeguard-only at LGO-6, but it was
8 whited-out. Do you see that?

9 A Yes, sir.

10 MR. THOMPSON: Go to page 22.

11 BY MR. THOMPSON:

12 Q Do you know why that was whited-out?

13 A That would be because somebody called in sick or do the
14 lineup the night before and somebody called in or somebody had
15 to go to another section or something.

16 Q Yes, sir. Because, if you look at some of the
17 lifeguard-onlys, they have Xs, which would appear to mean that
18 Lack's expected them not to be there; is that fair?

19 A Yes. Those stands were closed.

20 Q But it looked like the one, LGO-6, was actually open.
21 They're just -- the lifeguard potentially had called in sick
22 the night before?

23 A Well, it could be various reasons. It could be that --
24 it could be not that somebody called in sick or somebody could
25 have called in sick at another section, another beach service,

1 something, or it could be a number of things.

2 MR. THOMPSON: Page 23, line 13.

3 BY MR. THOMPSON:

4 Q Who made out this list?

5 A Like I said, I usually do it 99 percent of the time, so
6 I'm not sure whose handwriting that is.

7 Q It looks like you had lifeguard-onlys at 23, 14, and 27
8 that day. So you had lifeguard-onlys on the beach?

9 A Yes, sir, according to the schedule.

10 Q And how was it determined to only have three
11 lifeguard-onlys on the beach?

12 A That, I'm not sure. That would be in the franchise
13 agreement, which I do not have anything to do with, but it's
14 with meeting with the George in the meeting -- in the
15 meetings. In the meetings, he has percentages, and we make
16 sure that we're well above the percentages.

17 Q Okay. So George made -- George Lack makes that
18 determination about how many lifeguard-onlys to have on the
19 beach on August 24, 2018?

20 A Either him or his daughter, Weslyn, yes, sir.

21 Q All right. And you don't make that decision; right?

22 A No.

23 Q And you weren't involved in negotiating the franchise
24 agreement with the City of Myrtle Beach, were you?

25 A No, sir.

1 Q And you don't know who whited-out this lifeguard-only at
2 6; right?

3 A That's correct.

4 Q So when Kacper goes to lunch at L-21, which
5 lifeguard-only is supposed to be moved over to his area to
6 monitor it?

7 A Well, the two guards, Alex and Luckasz, L-20 and L-22,
8 they scan his water. They cross-scan his water.

9 Q Yes, sir. And I said, Which lifeguard-only is supposed
10 to go down there and make sure everything is going okay?

11 A Well -- and I don't think that's their job to go over
12 there. They watch the section where they're at. I'm trying
13 to remember how far away that is.

14 Q Let me ask you this: Would you agree with me that there
15 was no lifeguard-only in the section that included L-21 to
16 watch Kacper's stand when he went to lunch?

17 A I would, according to the incident report, but L-6 is not
18 on the incident report, so I would agree.

19 Q And then, even looking at this handwriting here at the
20 bottom where it has your name written here, you don't
21 recognize that writing there, sir?

22 A No, sir.

23 MR. THOMPSON: Drop down to line 15.

24 BY MR. THOMPSON:

25 Q Going back a little bit, let me see here. Now, the

1 lifeguards -- did you ever work for Lack's as a lifeguard?

2 A Yes, sir.

3 Q And were you involved in selling commercial stuff,
4 per se?

5 A Yes, sir.

6 Q And that stuff would include umbrellas and chairs and the
7 like?

8 A Yes, sir.

9 Q And would you fill out a receipt for any chair that you
10 rented to a person?

11 A Not when I was a lifeguard. That's probably so, but in
12 recent -- recently now that we have to accept credit cards,
13 the supervisors do a majority of that.

14 Q All right. In 2018, was Lack's accepting credit cards?

15 A Yes, sir.

16 Q So let's say Kacper, at L-21, wants to sell a chair, and
17 the patron has a credit card. What's the process after that?

18 A He would just say "Signal 6" on the radio.

19 Q And what would happen?

20 A A supervisor would go by, walk up to the umbrella line,
21 and do the receipt and the transaction.

22 Q But would the super- -- I mean, is that an actual receipt
23 that's filled out?

24 A Yes.

25 MR. WILSON: Okay. And does -- and does -- are those

1 receipts turned in to Lack's Beach Service at the end of the
2 day?

3 THE WITNESS: Yes, sir.

4 BY MR. THOMPSON:

5 Q And do the supervisors have, like, a hand-held credit
6 card machine?

7 A Yes, sir.

8 MR. THOMPSON: Go to page 30, line 19.

9 BY MR. THOMPSON:

10 Q And talk to me about the rental rates, if you remember,
11 for August of 2018. If I wanted to rent a chair at Stand
12 L-21, do you I rent it by the hour or for the day? And how
13 much does that cost?

14 A We rent by the day only. A single chair would be \$10.

15 Q \$10 for the day? And what about --

16 A Now, as a set -- two chairs and umbrella, a set, I think,
17 was \$45 a day.

18 Q So two beach chairs and an umbrella was \$45 for the day?

19 A Yes. Now, by the week, you get a little discount. Most
20 people do it by the week or maybe two weeks at a time. The
21 majority of people do weekly and biweekly.

22 Q And, at the end of each day, do the lifeguards take those
23 chairs and beach umbrellas off the beach and put them
24 somewhere?

25 A Yes, sir. 15 minutes till five. Some bigger stands,

1 4:30. Anywhere from 4:00 to 5:00, depending on the number of
2 umbrellas they break -- we'll call it breakdown. They break
3 them down and put them in their float boxes.

4 MR. WILSON: Okay. And I think we talked to
5 Mrs. Robinson about it, but the lifeguards do get bonused on
6 the amount of commercial stuff they sell; is that true?

7 THE WITNESS: That's true.

8 MR. WILSON: And do you know what percentage that the
9 lifeguards get? So, for example, on August 24th at L-21, it
10 looks like \$571.50. Do the lifeguards get paid a percentage
11 that day or is it by the week or how?

12 THE WITNESS: It's by the week. Anywhere from 7 percent
13 to 12, 13 percent.

14 MR. THOMPSON: Pages 32, line 3.

15 BY MR. THOMPSON:

16 Q You were just straight salary?

17 A Yes, sir.

18 Q Were there any incentives built into your salary, sir?

19 A No, sir.

20 Q What about the supervisors?

21 A No, sir.

22 MR. THOMPSON: Line 18.

23 BY MR. THOMPSON:

24 Q And just so I'm clear, you, as a manager, you didn't get
25 any bonuses for any reason for your work at Lack's Beach

1 Service?

2 A No, sir, not while I was a manager. When I was a
3 lifeguard, I did.

4 Q Were you ever a lifeguard-only?

5 A Let me think. No, sir.

6 Q All right.

7 A I could have been for a week or two here and there.
8 That's possible.

9 Q And do the lifeguard-onlys, they are Lack's Beach Service
10 employees; are they not?

11 A Yes, sir.

12 Q And do they get training in addition to the lifeguard's
13 extra training?

14 A No. All the lifeguards get the same training.

15 Q And so, if you know, how do some people get chosen to be
16 lifeguard-onlys as opposed to lifeguards?

17 A Well, it's probably determined by -- there are different
18 factors. Their swim time when they test, their personality,
19 the best swimmers, the ones that we decide would make good
20 LGOs usually are just -- you know, according to their training
21 and their perspective and their goals. It's usually their
22 choice also.

23 Q But, in general, are the lifeguard-onlys the strongest
24 swimmers?

25 A I'd say all of them are strong swimmers, but, usually, we

1 tried to put strong swimmers in lifeguard-only positions, yes,
2 sir.

3 Q And who makes the determination from Lack's regarding
4 which lifeguards are going to be lifeguard-onlys?

5 A That would be a team effort.

6 Q Are you involved in that team effort, or were you
7 involved -- are you involved in that team effort, or were you
8 involved in that team effort?

9 A Yes, sir.

10 Q All right. Now, would the lifeguard-onlys get paid a
11 higher base salary to compensate for not getting a bonus?

12 A Yes, sir.

13 MR. THOMPSON: Drop down to line 18.

14 (Counsel confer off the record.)

15 MR. THOMPSON: Drop down to line 22.

16 BY MR. THOMPSON:

17 Q In the training of the lifeguards, did -- strike that.
18 Were you involved in the training of any of the Lack's
19 lifeguards?

20 A We had a training manager who trained them. We had the
21 water safety, Duke Brown, who trained them that worked for the
22 City or the County and --

23 Q And what was that person's name?

24 A Duke Brown.

25 Q Okay.

1 **A** And I was involved in training in the aspect of once
2 they're on the beach. When I oversaw them, I would make sure
3 that they were continuously trained.

4 **Q** Would you be involved in training the lifeguards on how
5 to interact with the public when they're making a sale?

6 **A** Somewhat, yes, sir.

7 **Q** Just in your own words, just sort of explain to me what
8 you would teach the lifeguards regarding how to interact with
9 the public and how to sell beach chairs and umbrellas.

10 **A** Okay. No. 1 would be to, of course, be nice and smile.
11 No. 2 would be to never, ever turn their back on the water
12 while they were interacting with the umbrella customers.
13 Number -- well, another thing would be to never take your eyes
14 off the water while you're doing an exchange or communicating
15 with them, and always keep it as brief as possible and to
16 answer any questions they have and to keep -- they always are
17 aware of where they are and to keep an eye on the customers
18 and take care of them as far as water safety and prevention.

19 **Q** And when you're a lifeguard on the beach, you know, one
20 of the ways that you teach lifeguards to help eliminate people
21 drowning is to try to help prevent the swimmers from getting
22 in trouble to begin with; is that true?

23 **A** Key number one.

24 **Q** Is prevention?

25 **A** Prevention.

1 Q And what are some of the ways you teach the lifeguards to
2 help prevent swimmers from getting in trouble?

3 A No. 1, always watch the water and try to determine the
4 activity and the water activity and look for possible dangers
5 of possible things that could happen in their section and be
6 aware of everything going on on the beach, around their
7 lifeguard chair, and in the water.

8 MR. THOMPSON: And then the rest of that, line 20.

9 A And enforce -- I'm sorry; I didn't mean to talk but
10 also --

11 BY MR. THOMPSON:

12 Q No, go ahead.

13 A If you enforce the City ordinances, which would be the
14 tents -- and I believe it was a fairly new ordinance, to make
15 sure they don't put tents up, to make sure they don't put
16 umbrellas up in front of the lifeguard stands so that they can
17 see the water, things like alcohol -- if they see any bottles,
18 contact me, and I'll call Beach Patrol. Like alcohol bottles
19 or beer cans or anything. No drinking on the beach. Anybody
20 doing anything that would jeopardize safety of anybody they
21 would take care of.

22 Q All right. You talked about visibility. I think I'm
23 back to Exhibit 1, but it looks like, at least on the south
24 end, of August 24th, fair to say that visibility was good that
25 day?

1 **A** It was sunny visibility. As far as weather would have
2 been okay. As far as rough water, it's very hard to see
3 people in the water when the water is rough and the waves are
4 big.

5 **Q** And that's why you wanted the people that day to be only
6 up to -- is it waist deep?

7 **A** Red flag is waist deep. I would tell them on the radio:
8 Let's make sure we can see the waistband of the swimwear.

9 **Q** And so, on this day, the visibility, at least due to the
10 weather was, would you say good?

11 **A** I would say good.

12 **Q** And then you encouraged the swimmers to be only up to
13 their waist --

14 **A** Yes, sir.

15 **Q** -- in the water.

16 And that would help the lifeguards be able to see them in
17 part; true?

18 **A** I think it was -- yeah, a single red flag, waist deep, so
19 that would enable them to not only see them but to get them
20 quick in case of an emergency. That would be a preventative
21 measure.

22 **Q** So if a swimmer was in a water waist deep on August 24th,
23 that would help the lifeguards in his section see him, number
24 one; correct?

25 **A** Number one is correct.

1 Q And then that would also help the lifeguards in his
2 section be able to respond if there were any emergencies;
3 true?

4 A Yes. If the swimmer, they were on their feet, yes.

5 Q Let me ask you this: I think I know the answer, but you
6 never saw Mr. Wolde in the water on August 24th, did you?

7 A No, sir.

8 MR. THOMPSON: Drop down to page 39, line 23.

9 BY MR. THOMPSON:

10 Q You're in North Carolina today?

11 A Yes, sir.

12 Q Are you from up that way?

13 A Yes, sir.

14 Q Where do you live now?

15 A I live in Myrtle Beach. I live in Myrtle Beach county.

16 Q Where are you sitting right now in that chair?

17 A I'm sorry; I live in the City of Myrtle Beach, but we
18 call that the county of Myrtle Beach, but it's still the city
19 of Myrtle Beach, close to the beach.

20 I'm sitting in Salisbury, North Carolina.

21 Q Why are you there?

22 A My business now is in Salisbury, North Carolina.

23 Q And what kind of business are you in?

24 A We have a learning center for kids, an after-school
25 program here with my twin brother and his wife. We drive

1 three buses, pick everyone up in Rowan, all the kids in Rowan
2 County that attend Sidekick Karate. And then we teach karate
3 from 4:00 to 7:00. We have the after-school program and
4 then -- that we add to the learning center. And then the kids
5 take karate. The majority of them are in the 4:00 class and
6 then we have people come in for the 5:00 and 6:00 class.

7 Q What is your address in Salisbury?

8 A 520 South Main Street, Salisbury, North Carolina.

9 Q Is that your business address?

10 A That's the business address, yes, sir.

11 Q I mean, do you live in Salisbury during the week?

12 A I live -- I stay with my twin brother in China Grove
13 during the week.

14 Q And your permanent address is in Myrtle Beach; is that
15 true?

16 A Yes.

17 Q And that address?

18 A 223 Mason Drive, Unit B-6, Box 4, Myrtle Beach, South
19 Carolina 29572.

20 Q Is that a condo?

21 A That is a condo, yes, sir.

22 Q And who do you live there with?

23 A I live there with my wife and my grandson. We have had
24 him since birth. He's 11 years old.

25 Q And what's your wife's name?

1 A Sherry Smith.

2 Q And is she employed in Horry County?

3 A Yes. She has a cleaning service.

4 Q What's the name of that business?

5 A It's a weird name. She named it Sherry Fairy Cleaning

6 Service.

7 Q Does she clean houses and buildings or one or the other

8 or what?

9 A Offices, condos, and houses.

10 Q All right. And the 11-year-old, I don't need to know

11 their name, but are they in school somewhere in Horry County?

12 A Yes, sir. Elementary.

13 Q What school are they in?

14 A Myrtle Beach Elementary.

15 Q Myrtle Beach Elementary? Okay.

16 Do you have any other relatives in Horry County?

17 A No, sir.

18 Q All right. Walk me through sort of your background.

19 First of all, date of birth?

20 A 4/13/59.

21 MR. THOMPSON: Drop down to line 25.

22 BY MR. THOMPSON:

23 Q And walk me through your life a little bit. You were

24 born and raised where?

25 A China Grove, North Carolina. Ten minutes from here.

1 Salisbury.

2 Q All right. Did you finish -- how far is Salisbury from
3 Horry County?

4 A Three and a half hours.

5 Q And did you finish high school up there?

6 A Yes, sir.

7 Q Which high school?

8 A South Rowan Senior High School where my mother taught for
9 34 years.

10 Q What year did you finish?

11 A '77.

12 Q Did you go to any post-high school education after that?

13 A Catawba College, which is here in Salisbury, North
14 Carolina. Graduated with a business degree and economics
15 degree.

16 Q Around '83 or so?

17 A Yes, sir. I graduated --

18 Q I had you start --

19 A '81.

20 Q '81.

21 I had you starting with Lack's about 2009. Does that
22 sound about right?

23 A No, sir. I started with Lack's in 1997.

24 Q Oh, man. Okay. Were you full-time with Lack's from '97
25 through whenever?

1 **A** No. I took some years off to open karate schools.

2 Probably maybe between '97 and now, maybe five years I took

3 off. I would work for Lack's in the summer and then teach

4 karate in the winter, but there were a few years, I think, in

5 that year, '18, I worked full-time throughout the winter

6 fixing umbrellas.

7 **Q** Are you still employed by Lack's?

8 **A** No, sir.

9 **Q** When did you stop working there?

10 **A** It would be -- I think 2019 was my last year.

11 **Q** And why did you stop working there?

12 **A** My twin brother was needing help with this school, and I

13 retired to help him with the karate school.

14 **Q** All right. When you started with Lack's in '97, were the

15 lifeguards on the beach dual purpose?

16 **A** Yes, sir.

17 **Q** When you were involved, they were?

18 **A** Yes, sir.

19 MR. THOMPSON: Page 46, line 9.

20 BY MR. THOMPSON:

21 **Q** Mr. Smith, I still have up -- I think this is Exhibit 1.

22 Down here at the bottom, you see there are sort of marks:

23 Called in. It looks like in increments of five. Five, five,

24 all the way down. Do you see those on page 2?

25 **A** Yes, sir.

1 Q Would those incidents include any type of incident? A
2 jellyfish sting or anything?

3 A No, sir.

4 Q What do those marks indicate?

5 A Those are the people I personally talked to each day.

6 Q Tell me that again. It says, "Called in," and then you
7 have all these marks.

8 A The reason I have "called in" is because, at various
9 times during the day, especially lunch, I would stop in the
10 truck, walk to the water, call somebody in myself, and talk to
11 them about water conditions. And then all the stuff I stopped
12 and talked to somebody on the beach about water conditions or
13 answered any questions.

14 Any time I had contact with a person on the beach other
15 than a lifeguard, I'd put a mark down. The reason I didn't
16 write it out is because that would take too long. Between
17 that and everything else going on, about all I had time to do
18 was mark the conversation I had. If the conversation needed
19 document, I would usually document it. It was just prevention
20 -- preventative measures conversations.

21 Q So these marks you have down here don't indicate who you
22 have talked to; is that true?

23 A That's true.

24 Q But it wouldn't have been lifeguards. It would have been
25 beachgoers?

1 A Beachgoers, yes.

2 Q And this would have been, again, on your south end of
3 your beach; is that true?

4 A That would be my south -- my section from Landmark to
5 29th, yes, sir.

6 Q And --

7 A Unless I was covering Tony during this launch. Usually,
8 we didn't take a lunch. Most days, we had a snack in the
9 truck, but if he would have taken a lunch -- 30-minute lunch,
10 I would go cover -- I would cover both ends of the
11 supervisors. So it's possible one, two marks could be in his
12 section, but I don't think so that day. I don't think we had
13 lunch that day.

14 Q All right. So these marks indicate you talking to
15 beachgoers on the beach about a multitudes of things, it could
16 be; right?

17 A Yes. It could be a tent. It could be somebody just
18 coming up to my truck and asking me what the water conditions
19 are. That's probably a majority of them because people would
20 always stop me and ask me what the water conditions are,
21 especially families with kids and stuff. They would want to
22 know what was going on in the ocean.

23 Q You see where it says "Code 4," and it looks the time
24 is -- a box there? What was that supposed to be; do you
25 remember?

1 **A** Code 4s are lost kids. That's another thing we dealt
2 with on a constant basis each day that everybody got involved
3 with Beach Patrol, Ocean Rescue. George Lack would be finding
4 lost kids.

5 MR. THOMPSON: Drop to 49 -- page 49, line 22.

6 BY MR. THOMPSON:

7 **Q** And how did you communicate with the lifeguards and such
8 on August 2018? Was it radio or in person or both?

9 **A** Radio and in person, yes, sir.

10 **Q** All right. And did all the lifeguards -- were you-all on
11 the same channel?

12 **A** Yes, sir.

13 **Q** And what channel was that?

14 **A** It seems to me it could have only been Channel 1.

15 **Q** And then what about cell phone? Would you carry a cell
16 phone with you?

17 **A** Lifeguards weren't allowed to have cell phones, but I was
18 allowed to have a cell phone. And with that cell phone, I
19 would communicate with Beach Patrol and George Lack.

20 **Q** All right. Was the cell phone you used your personal one
21 or provided by Lack's?

22 **A** They provided me with the cell phone.

23 MR. THOMPSON: Page 51, line 2.

24 BY MR. THOMPSON:

25 **Q** I understand that you arrived at the scene but by the

1 time Mr. Wolde was actually already out of the water and
2 getting CPR and such, wasn't he?

3 A I believe, when I arrived on the scene, they were putting
4 him in the back of the Ocean Rescue truck.

5 Q In the back of the Ocean Rescue truck?

6 A To transport him to the access.

7 Q They put him in the back of a pickup truck?

8 A Yes, sir.

9 Q On a board or something?

10 A Yes. He was boarded when they picked him up and put him
11 on the back of the truck.

12 Q When you got down there that day and saw that, did you
13 take pictures of Mr. Wolde or of the scene or anything?

14 A Not that I recall.

15 Q Did you interview anybody?

16 A Yes.

17 Q Who did you interview?

18 A I interviewed -- when I got there, I think there were
19 about 13 people, I think -- I'll have to look at the report --
20 involved in the accident. I interviewed the witnesses.

21 Q Did you interview any of the lifeguards?

22 A Yes, sir, for a period of two weeks prior to that
23 accident.

24 MR. THOMPSON: Drop down to line 10.

25 BY MR. THOMPSON:

1 Q And that was after Mr. Wolde's death, you're talking
2 about?

3 A Yes.

4 Q All right. That was after -- oh, I'm sorry. All right.
5 MR. THOMPSON: Line 14.

6 A That was after.

7 BY MR. THOMPSON:

8 Q Do you remember -- would you send text messages to
9 Mr. George Lack about things going on at the beach?

10 A He wasn't a text kind of person. If you did text him, he
11 would let you know he'd rather have a phone call.

12 Q Do you remember having any phone calls with Mr. Lack that
13 day about the drowning death of Mr. Wolde?

14 A I think I had a phone call or two with Weslyn, but I
15 think George Lack was pretty busy at that time, so I -- I'm
16 sure I did. Once, probably did.

17 MR. THOMPSON: Page 53, line 8.

18 BY MR. THOMPSON:

19 Q And did you have a chance to talk to Mrs. Wolde who
20 saw --

21 A Yes --

22 Q -- her husband drown in the ocean?

23 A Yes, I did. When I got to the scene, I saw that she was
24 pretty hysterical. She wanted to know if she could -- how she
25 could get to her husband and go to the hospital. I had Beach

1 Patrol. I remember the number was 266. I don't know if that
2 was Matt or not. I had Matt take the family or some of the
3 family members to the hospital. But I tried to get
4 information out of her, and I remember she ran off the beach.

5 Q What about his four children? Did you talk to any of
6 them?

7 A Not that I'm aware of.

8 Q She was, in your mind, understandably upset about her
9 husband; true?

10 A Of course.

11 MR. THOMPSON: Page 53 -- Page 55, line 23.

12 BY MR. THOMPSON:

13 Q All right. Do you have your incident report in front of
14 you, sir?

15 A Yes, sir.

16 Q Then I'll take it off share. I have got it as Incident
17 Report 3. And is your report just two pages, sir?

18 A Yes, sir.

19 Q This will be Plaintiff's Exhibit 5. At the top, it's got
20 Incident 8/24/18, and you've got the time as 1:45 p.m. It
21 actually happened about 12:45; right?

22 A Yeah. I think I filled this part of the report out at
23 1:45.

24 Q So -- okay. So this would have been when you filled the
25 report out?

1 A Yes, sir.

2 Q Responding lifeguards' agency, you listed. All the L's

3 represent lifeguards; is that right?

4 A L's are lifeguard stands and lifeguards at those stands,

5 yes, sir.

6 Q Yes, sir. And then 101 is you?

7 A Let's see if I have the -- 110 was Brady. Yes.

8 MR. THOMPSON: So going back to line 19.

9 BY MR. THOMPSON:

10 Q Yes, sir.

11 A Yes.

12 Q Then 101 is you?

13 A Yes.

14 Q Let's see if I have -- the 110 was Brady?

15 A 110 was Brady. 103 was Tony. 101, myself. Ocean Rescue

16 3. Ocean Rescue 4, 100.

17 Q Who was that? Who are Ocean Rescues 3 and 4?

18 A They're employed by the City. They're firefighters and

19 EMS guys who control the beach in the ocean rescue trucks.

20 Q Yes, sir, I understand that, but do you remember what

21 their names were?

22 A No, sir.

23 Q And the call signs 3 and 4, that's something that you-all

24 just give? I mean, that's just call for them? OR 3 and OR 4?

25 A Ocean Rescue 3 and Ocean Rescue 4, yes, sir.

1 Q And will there be a Lack's document that indicates who
2 that 3 and 4 were that day?

3 A The City that -- the City documents, their stuff, but
4 these are the documents that they responded. So the Ocean
5 Rescue team would document their stuff.

6 Q All right. Then it was 100 there. Who was 100? Was it
7 Weslyn?

8 A Weslyn, yeah.

9 Q And so did she arrive on the scene?

10 A She arrived on the scene after I did. She was the last
11 one.

12 Q Did Ms. Weslyn get any statements from any witnesses that
13 you saw?

14 A Not that I saw.

15 Q What was her role on the beach that day, if any?

16 A Her role was in the office, overseeing things, but in
17 extreme emergencies, she would respond from the office to the
18 beach.

19 Q Okay. How far away is the Lack's office from the beach
20 at L-21?

21 A Two miles.

22 Q And it says, "EMS." That's, obviously, Emergency Medical
23 Services?

24 A Yes.

25 Q And then BP, who is that?

1 **A** Beach Patrol.

2 **Q** Was that one specific Beach Patrol person?

3 **A** There was two Beach Patrol there. I didn't know the
4 guy's name. I know he was -- his unit number was 266. And
5 then Matt, I knew, but I did not know his unit number, so I
6 just put his name.

7 **Q** Did the Beach Patrol put Mr. Wolde on the back of their
8 truck and take him up to the access?

9 **A** I thought it was Ocean Rescue. I assumed it was Ocean
10 Rescue. I believe that Matt was in an SUV.

11 **Q** And that's Matt's last name?

12 **A** I don't remember -- do not remember.

13 **Q** Who is he employed by?

14 **A** City of Myrtle Beach.

15 **Q** All right. And then you had EMS, Beach Patrol. Dispatch
16 time, 1:41. Arrival time, 1:45. Is that correct?

17 **A** I don't think that's accurate, no, sir.

18 **Q** That's about an hour behind, isn't it?

19 **A** Yeah. I forgot to put the 12 in there or something.

20 **Q** So you think the arrive time for the Beach Patrol/EMS was
21 about 12:45?

22 **A** Yeah. That might have been what happened at the top too.
23 I think that that was supposed to be a 12. Again, there was a
24 lot going on. I was pretty upset, so I could have made that
25 mistake easily.

1 Q All right. Now, you were up on the south end of the
2 beach when this happened. How did you first become aware of
3 it?

4 A I'm not sure if it was L-20 or L -- one of the lifeguards
5 in that area called Code 2, which is a water emergency. And
6 then I think one called in Code 3 right after that, so I
7 assumed it as a cardiac arrest due to a water emergency, so I
8 put my sirens on around 29th South and went down the
9 boulevard, I believe 9th Avenue, and came out on the beach.

10 Q Okay.

11 A It's quicker than taking a chance going down the beach.

12 Q Yes, sir. This information regarding water rescues --
13 distressed swimmer, medical aids, water ingestion, unknown --
14 who would have given you that information?

15 A I'm sorry? Where is that?

16 Q Yes, sir. Do you see "incident description," first page?

17 A Yes.

18 Q You checked "distressed swimmer"?

19 A Yes.

20 Q Where did you get that information?

21 A From the witnesses.

22 MR. THOMPSON: Line 24.

23 BY MR. THOMPSON:

24 Q Yes, sir. And I understand that, but what I was saying
25 was, is it's been your experience that, if you see a person

1 that is foaming at the mouth, one of the things you think is
2 they have water ingestion?

3 A Yes.

4 Q Conditions at the time of the incident, do you see that?

5 A Yes.

6 Q It says low tide was at 12:49 a.m.?

7 A Correct.

8 Q Now, I may be off, but is that around midnight or is that
9 around noon?

10 A That's around noon.

11 Q So it should be 12:49 p.m.; right?

12 A Yeah. It looks like "a" should be a "p," yes, sir.

13 MR. THOMPSON: Line 18.

14 BY MR. THOMPSON:

15 Q All right. So that low tide would be 12:49 p.m. or a
16 little after noon; right?

17 A Yes, yes.

18 Q All right. It says, "We're at Code 6: Strict waist
19 deep"?

20 A Yes, sir.

21 Q Do you see that?

22 A Yes, sir.

23 Q And if Mr. Wolde was in the water and found to be in
24 waist-deep water, he'd be in compliance with the codes; would
25 he not?

1 **A** Yes, he would.

2 **Q** All right. This information about the conditions at the
3 time of the incident, the temperature, the direction, and the
4 speed, did you actually take measurements when you got out
5 there? Because those look pretty similar to what you had on
6 the south end earlier in the day. Or did you just remember
7 those from the morning?

8 **A** Both.

9 **Q** I mean, you've got -- did you bring out something
10 handheld to figure out the speed of the wind?

11 **A** No. That was according to the weather report.

12 **Q** And the temperature of the air?

13 **A** Yes. 83 was -- usually we had apps on our phone to
14 update us the day that we looked at that. Mine from the
15 Springmaid Pier. So that would be the weather conditions at
16 the Springmaid Pier.

17 **Q** How far is that from L-21?

18 **A** It's right there at the end of our -- close to 29th.

19 **Q** Pretty far away?

20 **A** Pretty far away. Not -- well, you know, a mile maybe.

21 **Q** And the surf, rough and 3 to 4 feet. Is that 3- to
22 4-foot waves?

23 **A** Yes.

24 **Q** And where were there 3- to 4-foot waves? All along the
25 beach?

1 A That would be the biggest size. Usually they calm down.
2 I can't remember, but it was probably during the time of the
3 incident, yes, sir.

4 Q Do you remember that one way or the other?

5 A About three feet, yes.

6 Q It looks like, on the second page, you have got three
7 witness statements. Does that sound about right?

8 A That's right.

9 Q But, on the front, you listed about 13 people. And so I
10 asked you: Did you get statements from all 13 people?

11 A No, sir, not the ones -- not the lifeguards, Beach
12 Patrol, those guys. I don't get statements from Ocean Rescue.
13 I don't get statement from Beach Patrol. They do all their
14 own reports.

15 MR. THOMPSON: Okay. Page 64, line 24.

16 BY MR. THOMPSON:

17 Q All right. Thank you. You noted here that it happened
18 between L-22 and L-21, and Kacper was at lunch.

19 A Yes.

20 Q And who told you that?

21 A According to the lunch schedule and the time, he should
22 have been at lunch.

23 Q And, so, if that's the case, then L-20 and L-22 should
24 have been watching his water?

25 A Yes, they would cover his water, correct.

1 Q Did you ask Alex or Luckasz whether they saw Mr. Wolde
2 ever in the water?

3 A No, sir.

4 MR. THOMPSON: Okay. Down at 22.

5 BY MR. THOMPSON:

6 Q These statements you got from these three witnesses, did
7 you take these on the beach?

8 A Yes.

9 Q And were these the only other three witness statements
10 that you took?

11 A The only three witnesses that I could find, yes, sir.

12 Q Let me make sure I'm clear before I close this loop. Did
13 you ever ask for statements from Alex and Luckasz regarding
14 what they saw?

15 A Yes. And I think Weslyn got their statements.

16 Q She did?

17 A Somebody did. I'm not sure if it was her, but they --
18 they would have done an incident report, yes, sir. That's
19 Tony's section, so Tony could answer that for you.

20 Q But there should be an incident report with the
21 statements from Alex and Luckasz; is that right?

22 A Yes. I did talk to them prior to and off the record, you
23 know, just consoling them, things like that for several weeks,
24 but nothing that was recorded that I know of.

25 Q Right. But you talked to them after Mr. Wolde died, and

1 you said off the record?

2 A Yes, sir.

3 Q After Mr. Wolde got into the back of t he truck, on the
4 board, and taken to the access and gone to the hospital, how
5 long did you stay in the areas of L-21 after that?

6 A Not long, because I needed to get back to my section.
7 And my experience, when something happens, usually something
8 else can happy pretty quick.

9 Q No, that's fine. I'm just asking, do you -- I mean, this
10 process of talking to witnesses and writing down statements,
11 how long did you spend doing that?

12 A By the look of this report, not long. Probably 30
13 minutes.

14 Q Okay.

15 A Maybe.

16 Q Maybe less than 30, you think?

17 A Let me think. I recall talking to witnesses, number one.
18 20 to 30 minutes, yes, sir.

19 Q Was anybody else out there from Lacks getting witness
20 statements besides you?

21 A I'm not aware of it. Beach Patrol would be. Yes, Beach
22 Patrol would do a thorough report. Ocean Rescue would do
23 thorough reports. I assume Weslyn came to the beach, too, so
24 she would probably have done a report maybe.

25 MR. THOMPSON: Page 68, line 2.

1 BY MR. THOMPSON:

2 Q Okay. Would you ever had -- and I think I asked you this
3 earlier, but what you ever be involved in any communication
4 with the City?

5 A No, sir, not the City, but an employee of the City as far
6 as Beach Patrol. I would be in touch with Beach Patrol on the
7 radio or by cell phone or in person on the beach.

8 MR. THOMPSON: Page 69, line 23.

9 BY MR. THOMPSON:

10 Q All right. And when you talked to Kacper, did he tell
11 you that he had been at lunch?

12 A Yes.

13 Q And if Mr. Wolde was in the water and found to be in
14 waist-deep water, he --

15 MR. THOMPSON: Oh, I'm sorry. Page 70.

16 BY MR. THOMPSON:

17 Q And did he tell you any -- did he have any memory of
18 seeing the Wolde family?

19 A No, sir.

20 Q Did he ever tell you any conversations he had with any of
21 the lifeguards about covering his stand while he was at lunch?

22 A No, sir. The only thing I can remember -- that I can
23 recall was he was extremely upset because he was at lunch when
24 the tragic accident happened.

25 Q But do you remember him having any -- telling you

1 anything about any conversations with fellow lifeguards about
2 watching his stand while he was at lunch?

3 A No, sir. If he did, I do not recall it.

4 MR. THOMPSON: Page 71, line 5.

5 BY MR. THOMPSON:

6 Q Did Lack's do any additional training for any of his
7 lifeguards following the death of Mr. Wolde?

8 A Not that I'm aware of. I know we had surf school every
9 week. I think that was training. Training was on schedule as
10 usual.

11 Q Were all the lifeguards required to go to surf school
12 every week?

13 A Yes.

14 MR. THOMPSON: Your Honor, that concludes the deposition
15 or the testimony of Mr. Smith.

16 THE COURT: Thank you.

17 MR. TRAINOR: Your Honor, may I go get Holly?

18 (Pause in the proceedings.)

19 HOLLY ROBINSON,

20 after having been duly sworn, was examined and testified
21 to as follows:

22 THE CLERK: When you get up there, just state your name for
23 the Court, please.

24 THE WITNESS: Holly Robinson.

25 DIRECT EXAMINATION

1 BY MR. TRAINOR:

2 Q How are you, Holly?

3 A Good.

4 Q I'm going to stand over here just so I can make sure
5 everyone on this end can hear you, and then I'll move back
6 around.

7 Where are you from?

8 A I'm originally from Gastonia, North Carolina, but moved
9 here about four years ago.

10 Q How old are you?

11 A Twenty-seven.

12 Q When you were back home -- did you go to college?

13 A Mm-hmm, yep. I went to the Gardner-Webb University in
14 Shelby, North Carolina.

15 Q Since that time, have you done any post-graduate
16 education?

17 A Yes. I'm about 30ish credit hours away from a master's
18 degree in clinical counseling, but that's currently on hold.

19 Q Where are you doing that?

20 A Liberty University.

21 Q You used to work with Lack's Beach Service; correct?

22 A Yes.

23 Q Do you recall when you started?

24 A It was May of 2016, I believe.

25 Q Okay. And did you start as a lifeguard?

1 A Yes.

2 Q How long were you a lifeguard?

3 A I was moved into a supervisor position, like, kind of
4 early that first summer.

5 Q Okay. Does 2017 sound about right?

6 A Mm-hmm.

7 Q Yes?

8 A Yes. Sorry. Sorry.

9 Q And what was your role as a manager? Was it different
10 than a lifeguard?

11 A Yes.

12 Q What did you -- what were you responsible for at that
13 point?

14 A So, when I first became a manager, I was more, like,
15 assisting the main beach manager in the City.

16 Q Okay. And I think -- were you a relief manager for a
17 period of time?

18 A Yes.

19 Q What made you -- what is a relief manager, just so the
20 jury can understand the difference from maybe Tony or Randy
21 and you.

22 A Yeah. So, all the beach managers worked six days a week,
23 one day a week off. And so I would be the one that would
24 cover whoever was off that day. So I was on a different beach
25 every day. And then there was one day of week that I was kind

1 of floating around and kind of -- mainly helping in the
2 office, and then I was off.

3 Q And how long did you work with Lack's?

4 A Total? Seven years.

5 Q And I think that brought you up until September of 2021?

6 A Mm-hmm, yes.

7 Q After that, where did you start working?

8 A I'm currently at Grand Strand Medical Center.

9 Q What do you do there?

10 A I'm a surgical liaison for the same-day surgery
11 department.

12 Q How long have you been over at Grand Strand?

13 A Since June. Sorry.

14 Q In your seven years with Lack's, I assume you have gained
15 some familiarity with the city beach?

16 A Yes, definitely.

17 Q Is there any part of the beach that is -- experiences
18 rougher surf conditions than another part?

19 A It really depends on the day. Sometimes, yeah.

20 Q Are there parts of the beach that typically involve more
21 rescues?

22 A Yes.

23 Q Which part is that?

24 A The northern area. I don't know if it's something with
25 the curve of the coast right there, but it just -- yeah.

1 Q While you were with -- and I'm going to focus more on
2 2018. When you were with Lack's then, did they have a hiring
3 manager?

4 A Yes.

5 Q Did they have a training manager?

6 A Yes.

7 Q And I believe, at some point while you were with Lack's,
8 you ultimately went into an HR sort of role; is that right?

9 A Yes. In 2019.

10 Q Okay. Do you remember roughly how the lifeguards stands
11 were placed? And, again, I'm not going to ask you this stand,
12 but, roughly, how far aware were placed?

13 A Roughly, like, a block. Roughly.

14 Q Okay. And do you have any understanding as to why the
15 stands were set up that way?

16 A No.

17 Q Would a tower -- was a tower here, a tower here, were
18 they close enough where, if a guard needed to leave a stand,
19 you be able to observe the neighboring tower's water?

20 A Yes.

21 Q Would that allow for multiple eyes on any given set of
22 water?

23 A Yes.

24 Q Do you recall, in 2018, public beach accesses and the
25 possibly signs that were out there?

1 **A** Yes.

2 (Counsel confer off the record.)

3 MR. McLEOD: Your Honor, may we approach?

4 THE COURT: Sure.

5 BENCH CONFERENCE

6 (The following bench conference was held outside the
7 hearing of the jury and others:)

8 MR. TRAINOR: He's had these for the entirety of this
9 case. I'm going to establish that all of these signs exist.
10 He seems to be caught up in the format of whether one sign
11 is -- whether this post is this sign itself.

12 MR. McLEOD: That's not true.

13 MR. TRAINOR: I'm going to establish that that sign
14 exists in substantially identical form in every public beach
15 access.

16 MR. McLEOD: Your Honor, here's the problem. They can't
17 introduce signs or warnings at other locations. Whether or
18 not they warned or failed to warn down the beach has nothing
19 to do with where our people came on the beach. They have got
20 to lay a foundation that a warning existed that our clients
21 could have seen.

22 MR. TRAINOR: That's absolutely not the law.

23 MR. McLEOD: The fact -- well, that is absolutely --

24 MR. THOMPSON: Your Honor.

25 MR. McLEOD: -- on a relevance issue. Whether y'all

1 warned down the beach has nothing to do --

2 MR. THOMPSON: The argument's been made over and over
3 again that there was any warnings anywhere to be found, and
4 that's not true.

5 MR. McLEOD: At this location.

6 MR. THOMPSON: This is actually -- this is the hotel next
7 to the Sea Crest. This is the public beach access. These
8 photographs were taken in a public beach access right next to
9 the Sea Crest hotel.

10 MR. TRAINOR: These at every public beach access.

11 MR. WILSON: She can't testify to that.

12 MR. TRAINOR: Absolutely.

13 MR. McLEOD: But where is this? This looks like it's up
14 on the north end by these condos.

15 THE COURT: I'm going to send the jury out.

16 (Open court resumes as follows:)

17 THE COURT: Okay. Ladies and gentlemen, I'm going to
18 send you out for a few minutes while we take up a legal issue.
19 Please don't begin any deliberations.

20 (The jury exited the courtroom at 2:58 p.m.)

21 THE COURT: Okay. Let me hear -- let's do a profer,
22 because I just want to hear what kind of foundation you're
23 going to lay before you introduce those.

24 MR. TRAINOR: Sure.

25 PROFFERED TESTIMONY

1 BY MR. TRAINOR:

2 Q Holly, are there various signs at every public beach
3 access on the stretch of beach that Lack's covered --

4 A Yes.

5 Q -- in 2018?

6 A Mm-hmm.

7 Q Yes?

8 A Yes.

9 MR. TRAINOR: May I approach?

10 THE COURT: Mm-hmm.

11 BY MR. TRAINOR:

12 Q I'm showing you a photo of a sign, and I'm not going to
13 ask you whether that specific sign is at any particular
14 location.

15 Was there a sign substantially identical to that sign at
16 every public beach access?.

17 A Yes.

18 MR. McLEOD: Your Honor, that's the issue right there.
19 She doesn't even know whether or not that sign was in the
20 relevant stretch of beach where we came on the beach. And so
21 if a defendant warns "well, two miles down the beach," that
22 has absolutely no relevance to whether they warned "well, in
23 this stretch of the beach." However, it is very prejudicial
24 because it confuses the jury and leaves them to believe that
25 this stretch of the beach was warned.

1 THE COURT: I thought I just understood her to say it was
2 at every beach access.

3 MR. McLEOD: She said she doesn't know.

4 MR. TRAINOR: She said that she -- every part of the
5 beach that Lack's covers, that that sign, in substantially
6 identical condition, with that same sign. The other -- I
7 mean, the reality is they have opened the door by saying the
8 entire case -- there's no warnings anywhere to be found, and
9 that's false.

10 MR. McLEOD: On the beach where Mr. Wolde drowned,
11 absolutely. That's been our case from the beginning.

12 MR. TRAINOR: But that's -- we're allowed to establish
13 there are warnings to the public. There are flag signs.
14 There are rip current signs. There are "enter at your own"
15 risk signs.

16 Whether they saw them or not is a question of fact. I
17 understand that he's saying that they came out of the resort.
18 I understand the resort doesn't have these signs, and I don't
19 think Ms. Robinson is going to testify to that, but I think
20 she's more than allowed to say, "I have seen these signs at
21 every public beach access that exists in the beach that we
22 have covered." She was out there for seven years.

23 MR. McLEOD: In addition, Your Honor, this defendant
24 didn't put those signs up.

25 THE COURT: I'm going to allow her to testify as to what

1 signs were -- or if there were signs present at the beach
2 access, and then you can cross-examine her however you want to
3 on that issue.

4 MR. McLEOD: Okay.

5 THE COURT: Do you-all need a little bit of a break,
6 since we've already sent the jury out?

7 MR. McLEOD: If you don't mind, Your Honor. Thank you.

8 THE COURT: That's fine.

9 MR. TRAINOR: We're going to take a couple of minutes.

10 THE WITNESS: Okay.

11 THE COURT: Since we're already out, we're going to take
12 a little break. You are welcome to have a break as well.
13 Just don't discuss your testimony with anyone since you're
14 basically still on the stand during the break.

15 THE WITNESS: Okay. Yep.

16 THE COURT: Thank you.

17 THE WITNESS: You're welcome.

18 (A brief recess was taken from 3:01 p.m. to 3:12 p.m.)

19 THE COURT: Are you ready for the jury?

20 MR. WILSON: We have worked out the problem. Thank you.

21 (The jury entered the courtroom at 3:14 p.m.)

22 MR. TRAINOR: May it please the Court?

23 THE COURT: Yes, sir.

24 BY MR. TRAINOR:

25 Q Ms. Robinson, you're familiar with the area of the beach

1 around Sea Crest Resort; right?

2 A Yes.

3 Q Do you remember the avenues that run on either side?

4 A Yes.

5 Q What avenues is the Sea Crest in between?

6 I caught you off-guard now, didn't I?

7 A Yeah. Oh, God.

8 Q Is it near 10th?

9 A Yes. It's either 8th or 9th.

10 Q And do you remember the lifeguard tower numbers that are
11 up in that area?

12 A Yeah. 21, 20, and 22 are all, like, you know, kind of in
13 front of and surrounding that.

14 Q And was that -- I know that -- again, I'm not saying this
15 tower was on this piece of sand every single year, but were
16 the towers placed in generally the same vicinity year after
17 year?

18 A Yes.

19 Q Who was in charge of doing the lineups and the tower
20 assignments?

21 A The beach manager. So, for that year, it would have been
22 Randy and Tony.

23 Q Okay. You wouldn't have any involvement in that?

24 A No, no, not unless I was covering that beach that day and
25 somebody called in the sick.

1 Q You were a lifeguard with Lack's and then you were a
2 relief manager; right?

3 A Yes.

4 Q When you were a lifeguard, was there a requirement with
5 regard to placing flags by your guard stand while you were in
6 the tower?

7 A Yes.

8 Q What is the Lack's policy on having a flag up?

9 A So the flag's got to be up by 8:00. Absolutely no later.
10 Stays up while you're out there on the beach. Comes down for
11 lunch and, you know, step backs. And then has to come down at
12 5:00 when we leave the beach.

13 Q This flag?

14 A Yes.

15 Q All right. Were there additional flags at public beach
16 accesses in 2018, to your recollection?

17 A I know that they were, like, in the early part of when I
18 was brought on. That was a thing that we added. I just don't
19 the exact year, but yes.

20 Q What other equipment do lifeguards take out on a
21 day-to-day basis?

22 A I mean, every tower had, you know, a first aid box, their
23 buoy. Obviously the rescue buoy. Their umbrella that goes on
24 top of the stand to provide them, you know, shelter from the
25 sun and whatnot.

1 Q Have you ever met Duke Brown?

2 A Yes.

3 Q Who is he?

4 A He's an officer with Horry County.

5 Q How did you have the occasion to meet him?

6 A He worked for the Beach Patrol, and he was, you know,
7 kind of involved in helping out with the training and what
8 not. He's very, very passionate about water safety and that
9 kind of stuff.

10 Q Did you see him multiple times a summer?

11 A Oh, definitely, yeah.

12 Q August 24th, 2018, is the date of the incident that we're
13 here today. You were a relief manager that day?

14 A Yes. If I'm remembering correctly, that was my day to,
15 like, float. So I wasn't covering anybody, so nobody was off,
16 so I was more in the office.

17 Q Do you remember what the surf conditions were that day?

18 A Rough.

19 Q And when you have rough surf conditions, my understanding
20 is that that flag is, what is referred for you, as are high
21 hazard flag?

22 A Yes.

23 Q When you have rough beach conditions, is that the flag
24 that you would hang?

25 A Yes.

1 Q And is that flag at every one of the lifeguard stands,
2 absent when they take their lunch break?

3 A Yes.

4 Q When you were a manager and you were driving around, was
5 it well known and was it routine and was it habit for every
6 lifeguard to do that every single time that they were out
7 there?

8 A Oh, yes, absolutely.

9 Q Would everybody remain in contact throughout the day
10 about weather conditions?

11 A Yes.

12 Q Even the people in the office? Would y'all keep the
13 radios on?

14 A Oh, yeah. I would wear my radio all the time, no matter
15 if I was on the beach or not.

16 Q So if somebody reported something at the ocean, you would
17 hear that. And that vice versa, if you heard something in the
18 office, you could relay that to folks on the beach?

19 A Yes.

20 Q My understanding is that you were not -- not physically
21 on the beach at the moment that this incident occurred, were
22 you?

23 A That's correct, yes.

24 Q Tell the jury, what were you doing that day?

25 A So, I was in the office helping the hiring manager at the

1 time. I believe we had gotten some new uniform shipments in,
2 and so I drove down to the beach around L-9, which is around
3 23rd Avenue, to drop off the uniform, have some guy try it on
4 that evening, and I was on the way back to the office when the
5 call came in.

6 Q Okay. What was the call that you received?

7 A It was either a -- Code 2 is a water rescue, but I
8 believe, if my memory serves correct, it came in as a Code 3,
9 which is a medical. It was one of those two.

10 Q Who called it in?

11 A I don't remember.

12 Q Do you remember what stand called it in?

13 A I believe it was L-20, I believe.

14 Q You just don't remember who was on that stand that day?

15 A That was Alex that day.

16 Q Okay. And, as best you recall, Alex called it from L-20.
17 What was -- you said there was a code called?

18 A Mm-hmm.

19 Q Did he provide you the location or everybody the location
20 of where that code was?

21 A Yeah. He, you know, told us where it was. And then
22 somebody else came across -- again, I don't remember who --
23 but gave more, like, detail of what exactly was going on.

24 Q What did you do when you heard that radio call?

25 A So, based on the tone of voice, I knew it was pretty

1 serious. So I was actually -- like I said, I was going back
2 to the warehouse, and I made a U-turn and went back down
3 there.

4 Q Did you get out on the beach with the truck?

5 A Yes.

6 Q When you got there, what did you see?

7 A So I kind of got on the beach a little bit south of where
8 the incident actually was. So I ended up driving up in front
9 of the umbrella line. It's kind of hard to miss; there was a
10 huge crowd of people down there.

11 Q You get out of your truck, run over. What's going on
12 when you get there?

13 A Well, after I, you know, pushed through everybody and was
14 able to get closer, they were moving him back to the dry sand
15 to be able to use the AED.

16 Q Did you -- when you say "they," who is "they"?

17 A I know that Tony and Brady were already there. Alex was
18 there. I believe that Luckasz was too. Kacper. And Morris.
19 I remember seeing him at some point. I'm not sure if he was
20 there when I got there, but I remember he was on the scene.

21 Q Guards have lunch shifts; is that right?

22 A Yes.

23 Q First lunch is 11:30; is that right?

24 A Mm-hmm.

25 Q To 12:45?

1 **A** Yes.

2 **Q** Or 12:15?

3 **A** Yes, 12:15. And then 12:15 to 1:00.

4 **Q** That's Lunch Shift 2?

5 **A** Yes.

6 **Q** And the third one is?

7 **A** 1:00 to 1:45.

8 **Q** Got it.

9 Do you have an understanding of where Kacper was, which

10 is at L-22? Do you know where he was? Do you what lunch

11 shift he had, by chance?

12 **A** I know that he was on lunch at the time of the incident,

13 and if I'm remembering correctly, he was up on the pool deck

14 of one of the hotels in that area.

15 **Q** You get to the scene. Brady and Tony are helping

16 Mr. Wolde further out of the water to place the pads for the

17 AED; is that right?

18 **A** Yes.

19 **Q** Is anybody doing CPR?

20 **A** Yes. As soon as they, obviously, got him moved back,

21 then CPR resumed.

22 **Q** What did bystanders -- were there was a lot of the

23 bystanders?

24 **A** Yes.

25 **Q** What are they doing while Tony and Brady are trying to

1 assist?

2 A A whole lot of screaming, a whole lot of chaos. I
3 remember that, when I took over airway, there was someone
4 hanging onto my arm, kind of pulling at me. I know that
5 somebody grabbed Brady and some point and tried to pull him
6 away while he was doing compressions. It was -- it was a lot.

7 Q Who is ultimately responsible to place the AED pads?
8 Tony?

9 A I think it was Tony, yeah.

10 Q And were you and Brady still working on airway and CPR?

11 A Yes.

12 Q Did Ocean Rescue ultimately get there?

13 A They did, yes.

14 Q Just kind of walk me through what happened. Did they
15 take over?

16 A I can't remember exactly when they got on scene, but I
17 know that when they did -- they brought in the backboard,
18 shifted him onto the backboard, and then we -- I think, at
19 that point, I had rotated out, and I was helping with crowd
20 control, because I was trying to get people out of the way so
21 they could get the Ocean Rescue truck to come in so that we
22 could put him on the truck and get him to the ambulance in the
23 access.

24 Q Do you recall -- were y'all near L-21 while you were
25 performing the rescue efforts?

1 A I believe so. I know that we were near a tower, but I
2 cannot remember the exact tower number.

3 Q Do you recall whether it was Kacper's tower?

4 A I believe it was.

5 Q Holly, give me one second.

6 Holly, I don't have anything for you at the moment. I
7 may have a few at the end.

8 A Okay.

9 Q Thanks.

10 CROSS-EXAMINATION

11 BY MR. WILSON:

12 Q Good afternoon.

13 A Hi.

14 Q You don't work for Lack's anymore?

15 A No, sir.

16 Q And on the day this incident happened on August 24th,
17 2018, tell the jury -- you weren't even on the beach, were
18 you?

19 A No, sir.

20 Q You were -- most of the day had been in the office?

21 A No, sir.

22 Q And you don't know what flags were flying at L-21 or
23 L-20, do you?

24 A Well, no. You know, that kind of stuff comes over the
25 radio, and as I said, I had my radio on all day.

1 Q But you didn't see them because you weren't on the beach,
2 were you?

3 A Well, I had been on the beach at 23rd Avenue, and there
4 were flags up.

5 Q At Kacper's tower, where Mr. Wolde started drowning, do
6 you know whether there was a red flag up?

7 A Well, no, because he was at lunch.

8 Q Now, when you drove to the beach, you entered through the
9 12th access -- 12th Road -- 12th Avenue?

10 A Yes.

11 Q And that was after Mr. Wolde had been pulled from the
12 water by the bystanders?

13 A I mean, he was already out of the water when I arrived on
14 the scene. I was one of the last ones there.

15 Q And did you come to learn that there were no -- not
16 Lack's lifeguards ever went in the water to save Mr. Wolde?
17 Did you come to learn that?

18 A No, I don't -- I don't know.

19 Q Okay. Now, you all do have LGOs, don't you?

20 A Yes, sir.

21 Q And, as I understand it, LGOs -- they're LGO towers; is
22 that right?

23 A Mm-hmm, yes.

24 Q And if this -- if a person happens to be at lunch, the
25 LGO in his area is supposed to monitor his tower; are they

1 not?

2 A If the beach is fully staffed, yes.

3 Q If the appropriate number of LGOs are there that day;
4 true?

5 A Yes.

6 Q Okay. And so where Kacper was at L -- can you see this?

7 A Yes, sir.

8 Q -- at L-21? Can you see this?

9 A Yes.

10 Q Who would have been the closest LGO to Kacper?

11 A It would have been LGO 6.

12 Q Was LGO 6 there that day?

13 A No. I mean, it appears to be whited-out, so, obviously,
14 either somebody called in sick or somebody didn't show up for
15 work.

16 Q Yes, ma'am. So I understand, at least from the LGOs,
17 that Lack's was understaffed that day?

18 A Yes. I mean, it was late August, so our American staff
19 had been going back to work -- or going back to school,
20 rather, so, yeah.

21 Q And on the day that Mr. Wolde drowned, the lifeguard-only
22 in the exact area that he drowned wasn't there that day?

23 A Yes, because we had to move that LGO to another stand to
24 cover for somebody.

25 Q As I understand it, the jury has heard more than enough

1 time, for all these stands, you had three LGOs; right?

2 A Yes.

3 Q And since LGO at 6 didn't come into work that day, for
4 whatever reason, what was the closest LGO?

5 A Then LGO 14.

6 Q And that's Barbara?

7 A Yes.

8 Q And that's eight city blocks away?

9 A Yes.

10 Q We have heard all about these people that responded, but
11 I didn't see, on any of the reports, anybody mention Barbara
12 responding.

13 A Well, no.

14 Q She's too far away?

15 A Yes.

16 Q And I didn't see an LGO who is ten blocks away, Lua, I
17 didn't see him respond or notice him showing up in any of the
18 reports either.

19 A I'm not sure if he was on scene that day or not.

20 Q Don't have any information that that lifeguard-only
21 responded either?

22 A I'm -- I'm not sure.

23 Q When you arrived on the scene, this was after the CPR and
24 everything had already been started?

25 A Yes.

1 Q And did you have a chance to see Ms. Wolde?

2 A There was -- like I said, there was a ton of people, and
3 I don't remember a ton of faces from that day, because, like I
4 said, it was very chaotic.

5 Q Do you remember telling me in your deposition that you
6 saw her and she was hysterical?

7 A Well, I mean, that -- there was a lot of the family
8 there, and they were all hysterical, yes.

9 Q But none of the LGOs were there?

10 A No.

11 Q No further questions. Thank you.

12 REDIRECT EXAMINATION

13 BY MR. TRAINOR:

14 Q Holly, the LGOs were, for lack of a better term,
15 floaters; right?

16 A Yes.

17 Q And do you have an understanding that they would cover a
18 six-stand area?

19 A Yes.

20 Q And so, in any given moment, you can't say, Well, I know
21 that the LGO is going to be assigned to this place or this
22 place or this place at any certain time; right?

23 A Yes, because, like, if somebody calls in sick, then...

24 Q And the LGO, at a six-person tower, there's three lunch
25 shifts; right?

1 **A** Yes.

2 **Q** And so, in any given six-stand, you're going to always
3 have two people that are on lunch at the same time; right?

4 **A** Yes.

5 **Q** And, I guess, if you have an LGO that's in an area with
6 that, you couldn't possibly be in two places at once or five
7 places at once; right?

8 **A** Yes.

9 **Q** Nothing further, Holly. Thanks.

10 MR. WILSON: Nothing further, Your Honor. Thank you.

11 THE COURT: Thank you, ma'am, you can step down.

12 MR. TRAINOR: I call Brady Oliver.

13 BRADY OLIVER,

14 after having been duly sworn, was examined and testified
15 to as follows:

16 THE CLERK: When you get up there, if you could state your
17 name for the Court, please.

18 THE WITNESS: I'm Brady Oliver.

19 DIRECT EXAMINATION

20 BY MR. TRAINOR:

21 **Q** Brady, how you doing?

22 **A** Doing well.

23 **Q** I'm going to stand over here for just a couple of
24 minutes, make sure everyone on this far end can hear you, and
25 then I'll move around.

1 How old are you?

2 A I'm 29 years old.

3 Q Can you tell us where you grew up?

4 A Originally from Ohio. The Akron-Cleveland area.

5 Q How did you make your way down here to Myrtle Beach?

6 A I was in the school. Came down for winter break. Ten

7 years later, I'm still on winter break.

8 Q Did you find a wife?

9 A I did.

10 Q Where does she work?

11 A She works at the hospital. Grand Strand.

12 Q Where do you work?

13 A Currently, I work at J. Reuben Long Detention Center.

14 I'm a corrections officer.

15 Q Do you do anything else for work?

16 A I do. I'm also an infantryman in the National Guard.

17 Q And I believe you're scheduled to be deployed in two

18 weeks?

19 A Actually next weekend.

20 Q Where are you headed?

21 A Kuwait.

22 Q You have worked for Lack's Beach Service; correct?

23 A I have, that's correct.

24 Q Do you remember when you started?

25 A That would have been the spring of 2014, originally.

1 Q And how long did you work with Lack's?

2 A Up until about halfway through the 2019 season.

3 Q So five years, give or take?

4 A Give or take.

5 Q When you started with Lack's, what was your job?

6 A I was just an ocean lifeguard. I was working on the

7 stands.

8 Q And you had been a lifeguard before even joining Lack's;

9 is that right?

10 A That's correct. I was a pool lifeguard, and I also

11 worked for the City of North Myrtle Beach.

12 Q Okay. And started with Lack's as a lifeguard and then,

13 ultimately, job title -- I guess you were promoted; is that

14 right?

15 A I was, yes.

16 Q What were you promoted to and when did that happen?

17 A I was a supervisor in the summer of 2018.

18 Q Was the summer of '18 the first time when you became a

19 supervisor, or were you a supervisor before that?

20 A I worked as a supervisor in the fall of 2017 as well,

21 just a brief period.

22 Q Okay. My understanding is that you were working on

23 August 24th of 2018; is that right?

24 A That's correct.

25 Q It's going to be kind of the time frame that we're

1 talking about. We'll talk to you a little bit about that
2 time, that summer and then, obviously, that date.

3 Can you talk to me a little bit about who from Lack's
4 would be out on the beach on any given day?

5 A Obviously, our lifeguards. Myself and the other
6 supervisors. I believe, that day, there was three
7 supervisors. I'm not entirely sure. And the beach managers.

8 Q Two of those?

9 A Two of those.

10 Q Three of y'all?

11 A I believe, at that time, there was three.

12 Q And then all your guards?

13 A All of our guards as well.

14 Q How would you divide up -- as supervisors, how would you
15 divide up the stretch of beach that y'all had?

16 A We were split into segments, so you had the south end,
17 the central area, and then the north end of that portion of
18 beach.

19 Q What was your -- as a supervisor, what was your
20 day-to-day -- what did you do?

21 A So I'd come in in the morning. I'd show up about an hour
22 early. So that would be about 6:00, 6:30ish. I'd get all the
23 paperwork and emergency equipment set up for the lifeguards,
24 made sure that they had radios and all that other equipment.

25 After they went out, I'd go out on the beach and cruise

1 up and down, make sure everything was all right, made sure
2 they were fine. While they're setting up, I was essentially
3 another set of eyes.

4 And then, after that, it was just, you know, ensuring
5 that everybody was doing what they were supposed to be doing,
6 helping out in any way that I can.

7 Q How often would you -- let me ask you this: You were out
8 on the beach. You're out all day?

9 A Yes.

10 Q So you would patrol your area -- zone, for lack of a
11 better term -- the whole day?

12 A The whole day, yes.

13 Q How often would people come up to you and ask you about
14 the flag system?

15 A Couldn't even dare to count. It was a lot.

16 Q What is your understanding of what the single red flag
17 means?

18 A The single red flag would mean Code 6, which, in Lacks's
19 terminology, would be waist deep.

20 Q And my understanding from other folks is you have got
21 some rougher surf conditions; is that right?

22 A That's correct.

23 Q Where would lifeguards put those flags?

24 A It would be set up in front of the lifeguard stand.

25 Q Were there additional flags that were placed at public

1 beach accesses?

2 A There were.

3 Q Is it that flag (pointing) just kind of cut in half? Is
4 it the same flag?

5 A Same flag. Exact same flag. Looks exactly the same.

6 Q And if flags needed to be changed for whatever reason --
7 if you went from yellow to red or red to yellow, would you be
8 involved in helping swap out flags as needed?

9 A Not necessarily. If there was an area where there was a
10 lifeguard, you know, a lunch or not present, that needed a
11 flag, then I would put up a flag in that situation.

12 Q How did you get around the beach?

13 A On a side-by-side, ATV.

14 Q ATV?

15 A Mm-hmm.

16 Q And then the managers had their pickup trucks; right?

17 A That's correct.

18 Q Do you recall -- well, let me ask you this: Who else --
19 were there City employees out there on the beach as well,
20 like, Ocean Rescue or Beach Patrol?

21 A Yes.

22 Q Did you see them?

23 A Yes.

24 Q Do you remember what zone, what area you had on August
25 24th of 2018?

1 **A** I had the north end of the City portion of Lack's Beach.

2 So that would be L-17 to L-24, I believe.

3 **Q** All right. And then, I guess, supervisors would divide
4 it the rest of the way down?

5 **A** Exactly.

6 **Q** Do you recall specifically when you got out there that
7 day?

8 **A** As far as a certain time? It would probably be around
9 that 7:30 area.

10 **Q** When you first get out there, are you looking at the
11 water conditions?

12 **A** Yeah, that's something we're looking at. It's important
13 to know.

14 **Q** Are your guards looking at the water conditions?

15 **A** They are.

16 **Q** Everybody's got two-way radio?

17 **A** That's correct.

18 **Q** So are you -- does everybody have an understanding as to
19 what the conditions are or are not? Are they changing? Are
20 they not changing? Is that regularly communicated throughout
21 the day?

22 **A** It is.

23 **Q** Who makes the ultimate decision whether to change the
24 color of the flag? Is that a manager?

25 **A** It's usually the manager, yes.

1 Q There was some -- there's been some testimony about beach
2 rentals and lifeguards would handle that for the majority of
3 the time. When -- let's talk about late August on a Friday.
4 How quickly would the chairs and umbrellas be rented out on a
5 Friday in late August? Did that happen pretty early?

6 A It's usually pretty quickly. Usually, by lunch time,
7 everything is pretty packed in.

8 Q You're sold out?

9 A Yes, sir.

10 Q Do you have any recollection of what the weather
11 conditions were, surf conditions were on August 24th of 2018?

12 A I know it was sunny. I don't recall the surf conditions.

13 Q What do you recall specifically about what occurred --
14 and, obviously, we're here to talk about an incident involving
15 Mr. Wolde.

16 A That's correct.

17 Q You responded to that; right?

18 A I did.

19 Q How were you notified? What were you told and how did
20 you learn about what happened?

21 A I received a call over the radio that there was an
22 incident occurring on the beach. I believe it originally came
23 out as a Code 2, which would have been a water emergency, and
24 it was quickly changed to a Code 3, and I responded from
25 there.

1 Q Where were you with that -- when you got that radio call?

2 A I was southbound from the L-17 area so that would be

3 about 17th Avenue. Something like that.

4 Q On your ATV?

5 A On my ATV.

6 Q U-turned?

7 A Correct.

8 Q Do you remember who made the call?

9 A For the emergency?

10 Q Yes.

11 A Not specifically at this moment, no.

12 Q Do you recall where the incident occasion was?

13 A I believe it was called out of L-20.

14 Q And do you recall -- so you turn around. Are you

15 radioing or are other people radioing as you're turning around

16 to go to the scene?

17 A I don't recall. I have a tendency to get locked in

18 pretty quickly. I do know that I answered that I was

19 responding.

20 Q Okay. And, as you're going, do you see anybody else

21 that's going in the same -- are there other people going

22 towards --

23 A As far as lifeguards?

24 Q Yeah?

25 A Yes.

1 Q Managers?

2 A Yes. I actually picked up Morris, was one of the
3 lifeguards at L-19, and I picked him up on the way there.

4 Q Okay. And then continued on?

5 A Straight on.

6 Q When you get there, when you arrive at the scene, what's
7 going on?

8 A So, initially when I arrived, there was a crowd of
9 people, and that's usually a pretty good indicator that
10 something is going on there. I arrived with Morris. We had
11 to park a bit ways -- a good ways away. We made our way
12 through the crowd and saw the incident which was occurring,
13 which was, at that time, CPR.

14 Q When you arrived -- just to get a scale of the
15 bystanders, are you talking ten bystanders or are you talking
16 a hundred? 200?

17 A I don't know if I would say 200, but it was -- there was
18 a lot of people. It could be considered a crowd.

19 Q And when you said, when you got there, CPR had already
20 begun?

21 A It had.

22 Q Who was doing the CPR?

23 A A couple of my lifeguards. I believe Luckasz and Alex at
24 the time, as well as some citizen bystanders.

25 Q It's cold in here, isn't it?

1 **A** It is cold, yes.

2 **Q** Bystanders. Talk to me about what the bystanders are
3 doing. Obviously, you said that your guards are in there.
4 They're doing CPR. What's going on with the bystanders?

5 **A** So they were -- so they were almost cycling out my
6 lifeguards, which, to explain it better, when you're doing
7 two-man-or-more CPR, you would either rotate or switch out.
8 And it -- there was a couple of people there that were trying
9 to get my lifeguards out of it. So I, you know, tried to
10 inform that, Hey, this is our responsibility. We took over.

11 **Q** There's been talk to that I think a nurse had tried to
12 assist. Do you recall that?

13 **A** Yeah, I do recall that.

14 **Q** Did you ultimately get your guards in position to
15 continue the CPR and try to do crowd control?

16 **A** I did.

17 **Q** Who did -- did people arrive after you?

18 **A** Yes. Tony. Tony arrived after me, and, eventually,
19 Holly as well.

20 **Q** When Tony got there, were y'all still doing CPR?

21 **A** We were, mm-hmm.

22 **Q** Talk to me about what happens when Tony gets there.

23 **A** So, by the time Tony got there, I was doing chest
24 compressions and also working the bag valve mask, which is a
25 breathing apparatus. Tony essentially took over chest

1 compressions, and I took over strictly the bag valve mask.

2 And we did that up until the point where Tony put in an

3 airway, and we just switched out.

4 Q Do you recall moving, at some point, Mr. Wolde further
5 away from the water?

6 A Yes. That happened promptly when Tony arrived.

7 Q Okay. And what was the purpose of doing that?

8 A To get him out of the water, and also, I mean, it's a
9 more solid surface as well.

10 Q Was Tony involved -- did y'all place an AED on him?

11 A Yes.

12 Q Who did that? Was that Tony?

13 A That was Tony.

14 Q I assume Tony did that because he's got 27 years as an
15 EMT?

16 A Yes. He's got a lot of experience. He also had access
17 to the AED, so...

18 Q Do you have any knowledge as to whether the AED advised
19 of a shock or no shock?

20 A It did not advise a shock.

21 Q Did Tony try to attach the pads or replug them in?

22 A He did.

23 Q What was the result? What did the AED say at that point?

24 A Even after he detached and reapplied the pads, the shock
25 was still not advised.

1 Q Did you and your guards continue with CPR until Ocean
2 Rescue arrive?

3 A Yes. And afterwards.

4 Q And afterwards.

5 Also, they transported Mr. Wolde?

6 A They did.

7 Q You weren't involved with getting statements from
8 anybody, were you?

9 A I was not.

10 Q Were you more involved, I guess, with crowd control and
11 kind of securing the scene at that point?

12 A I was actually pulled away and allowed to calm down.

13 Q That's a good point. What was everyone's -- the guards'
14 mental state. I assume everybody was really shocked.

15 A We was pretty distressed, yes.

16 Q Did anybody ever tell you that they saw Mr. Wolde
17 struggling in the water?

18 A As far as my colleagues?

19 Q Yes.

20 A No, sir.

21 Q Thank you, Brady. The other side is going to have a few
22 questions for you.

23 A All right.

24 CROSS-EXAMINATION

25 BY MR. McLEOD:

1 Q Mr. Oliver, I'm Mullins McLeod. I'm not going to be
2 long. We haven't had the pleasure of meeting before, have we,
3 sir?

4 A No, sir.

5 Q Well, let me first say I wish you safe travels and safe
6 service in Kuwait. Okay?

7 A Thank you, sir.

8 Q You mentioned two prior jobs before coming to work for
9 Lack's Beach Service?

10 A Yes, sir.

11 Q And those prior jobs, one of them was at a pool; right?

12 A That's correct.

13 Q And, at that pool, were you allowed to do anything other
14 than water observation when you were lifeguarding at that
15 pool?

16 A No, sir.

17 Q And the other job you mentioned ocean lifeguarding, and
18 that was a different employer than Lack's; is that right?

19 A That's correct.

20 Q When you were performing ocean lifeguarding services for
21 that employer, were you allowed to do anything other than
22 water observation when you were on the tower?

23 A No, sir.

24 Q Okay. How were you compensated -- and I don't want to
25 get into your personal business; I just asked Mr. Lack, and he

1 couldn't remember. What were you compensated as a supervisor
2 back then; do you remember?

3 A I do not, unfortunately.

4 Q Was it a base pay or was it commissioned based? You
5 ain't done nothing wrong.

6 A Oh, no, I'm fine.

7 Q I'm just curious what the number is.

8 A It was base pay. I didn't get any commission as a
9 supervisor.

10 Q Now, you weren't between 8th and 9th Street that day.
11 You were on a side-by-side?

12 A I was on a side-by-side, yes, sir.

13 Q Okay. So you had no personal knowledge about what, if
14 any, warnings were done between 8th and 9th Street in a
15 relevant time period that led to Mr. Wolde's death; correct?

16 A So all of our beach warnings were fluent throughout. So
17 if one section of the beach had a single red flag, so did the
18 other section of the beach.

19 Q Okay. Do you have any personal knowledge being on that
20 section of the beach at any time between 11 a.m. and the time
21 that you arrive after Mr. Wolde was dragged ashore?

22 A I'm sorry; can you repeat the question?

23 Q Do you have any personal knowledge of having been on the
24 beach from 11 a.m. until the time Mr. Wolde was dragged ashore
25 at the location where the family went in the water?

1 A At that location, no, sir.

2 Q I'm going to show you Plaintiff's Exhibit No. 10.

3 A Okay.

4 Q It's probably -- it's been a while since you have seen
5 that, I guess.

6 A It has been a long time.

7 Q You're probably glad to try to forget it, huh?

8 So is that the training manual that this company
9 for-profit had in place back in 2018?

10 A This is correct, yes, sir.

11 Q All right. And, in particular, I want to ask you just a
12 couple of questions. Do you see on page 14 of the manual?

13 A Yes, sir.

14 Q Do you see the first chart has codes, alerts, and
15 signals? Do you see that?

16 A That is correct, yes, sir.

17 Q Could you count for the ladies -- and these are the codes
18 and the alerts and the signals that the kids are trained on to
19 use when they're on the lifeguard tower; is that right?

20 A That's correct.

21 Q Could you share for the ladies and gentlemen of the jury
22 how many of those codes or signals relate to water safety?
23 And just take your time.

24 A Eight of them, sir.

25 Q For water safety?

1 A Yes, sir.

2 Q All right. Which ones are those?

3 A Code 2, water emergency. Code 3, medical shore

4 emergency. Code 6, waist deep. Code 7, object on beach and

5 water. Alert 4, severe weather warning. Signal 7, shark

6 citing.

7 Q Okay. Any others?

8 A No, sir.

9 Q And so that's one, two, three, four, five, six; is that

10 right?

11 A I'm sorry; Code 1 as well.

12 Q Okay. Code 1. All right.

13 Now, how many of those codes, alerts, or signals relate

14 to concessions? Do you see Signal 1?

15 A I'm sorry; I have not answered yet.

16 Q Yes, sir.

17 A Six, sir.

18 Q For concessions?

19 A Yes, sir.

20 Q Let's go -- do you see Signal 1?

21 A I do yes, sir.

22 Q Is that entitled, "Need umbrellas"?

23 A Yes, sir.

24 Q Would you agree that's concessions?

25 A Yes, sir.

1 Q Signal 2 was "need chairs." Would you agree that's
2 concessions?

3 A Yes, sir.

4 Q How about Signal 4, "Need receipt"? Would you agree
5 that's concessions?

6 A Yes, sir.

7 Q Signal 5, "customer concerns." Would you agree those are
8 concessions?

9 A Not necessarily.

10 Q And just explain for me why.

11 A We use Signal 5 for any general concerns as well. I
12 mean, we do have the Code 5, but they were kind of the same
13 thing.

14 Q Signal 5 is listed as "customer concerns." Do you see
15 that?

16 A I understand what it's listed as. I'm just trying to
17 explain what we used it for.

18 Q Yes, sir.

19 And then Signal 6 is credit card request?

20 A Yes, sir.

21 Q So, now, when a customer comes to pay with a credit card,
22 what do the kids have to do in that instance? How are they
23 trained and what do they have to do when a credit card is
24 presented?

25 A At that point in time, they would call over the radio

1 that they have a Signal 6, and a supervisor would respond.

2 Q And what would the supervisor bring the kids if the
3 customer had a credit card to pay for the chair or the
4 umbrella?

5 A Well, a credit card machine, sir.

6 Q Did the company not give the kids the credit cart
7 machine?

8 A No, sir. The managers and supervisors at that point in
9 time and the busier stands had those.

10 Q Yes, sir.

11 Do you know how many credit card machines the supervisors
12 had back in 2018?

13 A I only had one, so there would have been one per
14 supervisor, so three that day.

15 Q And a Signal 10 is "need change"?

16 A That's correct.

17 Q And then Alert 1 is "close all umbrellas"?

18 A Yes, sir.

19 Q And Alert 3 is "close only unrented umbrellas"?

20 A Yes, sir.

21 Q Now, do you see, sir -- you mentioned Code 1. Do you see
22 that?

23 A Yes, sir.

24 Q And Code 1 is "clear the water/no swimming"; is that
25 right?

1 A That's correct.

2 Q So let's go to the next page, please, sir. And, again,
3 this ain't your fault.

4 A That's fine.

5 Q I ain't fussing at you.

6 A You're fine.

7 Q The next page begins -- and it shows the procedures for
8 each code and signal; doesn't it, sir?

9 A It does.

10 Q Would you agree with me that the procedures begin with
11 Code 2?

12 A Yes, sir.

13 Q And there is no procedure for Code 1?

14 A The codes were universal, sir. The procedure is
15 universal, sir.

16 Q On page 15, there is no reference to the procedure for a
17 no swimming/Code 1; isn't that true, sir?

18 And, again, this ain't your fault.

19 A Well, sir, the procedure was the same. I believe these
20 are just for training purposes. I don't believe that it is
21 specific to these particular codes.

22 Q Well, on page 15, you see Code 2 and an explanation on
23 the procedure for Code 2; correct?

24 A Yes, sir.

25 Q And then we flip the page and Code 3. And there's a

1 procedure for Code 3?

2 A Yes, sir.

3 Q And then we flip the page, and there's Code 4. And the
4 procedure for Code 4; correct?

5 A Yes, sir.

6 Q And then we flip the page, and we get to Code 5? There's
7 a procedure for Code 5; right?

8 A Yes, sir.

9 Q And then we get to Signal 7. There's a procedure for
10 Signal 7; correct?

11 A Yes, sir.

12 Q Now, what are the -- other than the water being closed
13 for swimming, what's the other thing that's going to get
14 people out of the water quicker than anything?

15 A Probably a shark, sir.

16 Q That's right.

17 And so a shark is under a Signal 7. And isn't the
18 procedure at Lack's, they tell the kids that sharks often
19 travel with schools of fish; isn't that right?

20 A That's correct, sir.

21 Q And they tell the kids that, if you see a school of fish,
22 don't call it on the radio; isn't that right? On page 18.

23 A Yes, sir.

24 Q They can only call it on the radio if they actually see
25 the shark; isn't that right?

1 **A** Yes, sir.

2 **Q** And so, if you have got two guards on a city block and
3 there is a risk of shark because of a school of fish, the kids
4 aren't even allowed to put that on the radio to tell the kid
5 at the other stand, "Hey, there could be a shark in the area";
6 isn't that right?

7 **A** Not over the radio. We do have our own ways -- our own
8 hand signals for these things.

9 **Q** Yes, sir. Thank you.

10 MR. TRAINOR: Nothing further, Your Honor.

11 THE COURT: Thank you, sir. You can step down.

12 THE WITNESS: Thank you.

13 MR. THOMPSON: Your Honor, may we have a break?

14 THE COURT: Sure. All right, ladies and gentlemen of the
15 jury let's take about ten minutes. Again, please don't begin
16 deliberating.

17 (The jury exited the courtroom at 3:58 p.m.).

18 (A brief recess was taken at 4:00 p.m. to 4:10 p.m.)

19 THE COURT: I think we're ready for the jury.

20 MR. THOMPSON: Yes, Your Honor.

21 (The jury entered the courtroom at 4:10 p.m.)

22 THE COURT: Mr. Thompson?

23 MR. THOMPSON: Thank you, Your Honor. May it please the
24 Court? We call Weslyn Lack-Chickering.

25 WESLYN LACK-CHICKERING,

1 after having been duly sworn, was examined and testified
2 to as follows:

3 THE CLERK: When you get up there, just state your name.
4 And will you spell your last name?

5 THE WITNESS: Yes. My full name is Weslyn
6 Lack-Chickering. C-h-i-c-k-e-r-i-n-g.

7 DIRECT EXAMINATION

8 BY MR. THOMPSON:

9 Q Weslyn, I always hate to ask this question: Would you
10 tell the jury your age.

11 | A I'm 47.

12 Q Where do you live?

13 | **A** In Myrtle Beach.

14 Q Are you married?

15 | **A** Married.

16 || Q And how long?

17 | **A** Eighteen years.

18 Q Do you have any children?

19 | **A** I have a 15-year-old son.

20 Q Weslyn, take the jury through your education from college
21 coming forward.

22 **A** I went to Winthrop University, four years, got my
23 bachelor's in social work. Worked for a year. Was luckily
24 hired for my field placement. Worked for a year. Then went
25 to the University of South Carolina for two years to get my

1 master's in social work.

2 Q And after you got your master's in social work at the
3 University of South Carolina, what did you do?

4 A Came back to Myrtle Beach. Was hired as the adolescent
5 counselor at the rape crisis center. Spent two years there.
6 Went to Lighthouse Care Center. Spent three years there as
7 the therapist in the locked unit for the group for psychiatric
8 adolescents. Then I moved to Conway Medical Center for 12
9 years as their social worker.

10 Q What did you do after that?

11 A Then I took over the family business.

12 Q What year was that?

13 A I started in January of 2017.

14 Q Okay. And tell me about that a little bit. January
15 2017. How did you end up going from your social work and the
16 world that you had been trained for, how did you end at Lack's
17 Beach Service?

18 A I really -- I don't -- Daddy called. Dad's had the
19 business forever. George. He called. He, obviously, said he
20 was getting older. He was looking to retire, and would I be
21 interested in becoming -- taking over and becoming the general
22 manager.

23 That was in October of '16. It took me a couple of
24 months to make that decision. We talked a lot about it, if it
25 was something that I wanted to do, if it was something that I

1 could do, would it work for the business, and would it work
2 for the family. Lots of discussions.

3 Q Was the business kind of part of you growing up?

4 A All my life. There was never a day that a lifeguard
5 radio wasn't sitting on the bar on the island in the kitchen.

6 Q And so, in early 2017, you officially went to work with
7 Lack's?

8 A January of '17, yes.

9 Q Okay. And tell the jury about that. I mean, how did you
10 dive into learning about Lack's Beach Service?

11 A I was lucky enough that I already knew the staff just
12 because it's -- we're kind of one big family. So I was lucky
13 enough that I already knew them, but I completely immersed
14 myself in everything. Every meeting, every class we taught,
15 every training we did, every -- I sat with every manager and
16 had them tell me what they do. I rode the beach for hours and
17 hours, learning where the holes are, what hotel is what. You
18 know, everything. I just completely immersed myself.

19 Q In 2017, did Lack's Beach Service have on staff people
20 that had been there for years?

21 A Yes.

22 Q Did you learn from those people?

23 A Absolutely.

24 Q And tell the jury about the types of people that you had
25 as you were becoming part of Lack's Beach Service, who was

1 there, and what kind of things they provided to you.

2 A My -- one of the managers that runs the Marriott section
3 of the beach has been -- I remember growing up when he was at
4 Christmas and Thanksgiving. He's been with the company for
5 30-some-odd years. And I just would spend time with him. I
6 would watch him move equipment. I would watch him manage his
7 staff. Just everything.

8 All the way to we had a recruitment, an HR person at the
9 time who had been a lifeguard and moved into a full-time
10 position. I spent a ton of time with her learning the process
11 of recruitment and hiring. We employ a lot of J-1 students.
12 There was so much to learn. Like I said, I just -- every day,
13 it was something new.

14 Q How what about your father?

15 A He was a ton of help, of course. This is his business
16 for forever. This is his world. He tended to, in a dad
17 fashion, would point out more of what I did wrong than more of
18 what I did right. That first year in '17, he was with me a
19 lot of the time, but he really took a step back starting in
20 '18.

21 Q When you say really with you in 2017, kind of like an
22 apprenticeship almost?

23 A It really was.

24 Q He was shadowing you? You were shadowing him?

25 A He was shadowing me. He put me out there to do that, and

1 then would point out what -- what I didn't do right.

2 Q Threw you into the deep end, it sounds like.

3 A Pretty much.

4 Q But he was there to provide guidance as necessary?

5 A Absolutely.

6 Q So let's talk about in -- this incident happened in 2018.

7 Let's talk about the hiring process for the guards that would

8 be on the beach in 2018. When did the hiring process begin

9 for Lack's Beach Service for the 2018 summer?

10 A Recruitment would start pretty much as soon as the summer

11 completely wrapped up and we had no more guards on the beach.

12 So you're looking at October, November.

13 Our first step was we would reach out to all the guards

14 that we had that summer, who is coming back, "Do you have a

15 friend?" And kind of get that list rolling.

16 We're also working with our different sponsors that we

17 used to help recruit our J-1 visa students. We're working

18 with our different sponsors, going to get our job description

19 posted on their site and to meet all the needs that they have

20 -- the requirements that they have of us.

21 Q So the recruiting for the 2018 summer season started in

22 the fall of 2017; is that right?

23 A Yes, sir.

24 Q All right. Now, I want to talk to you about the J-1

25 visas and the foreign students that would come to work. You

1 mentioned the sponsors. Tell the jury about -- what are
2 sponsors?

3 A It's something I knew nothing about until I started with
4 the Beach Service. There are companies out there that work to
5 secure visas for -- particularly with J-1s. They work to
6 secure visas for students in other countries so that they can
7 come to the United States. They're university students in
8 their home country. They can come to the United States for
9 the summer, work, and then, at the end of that work, they get
10 to travel. It's a work travel visa.

11 Q And do you remember the names of any of those sponsors,
12 the names of the companies?

13 A CCUSA, InterExchange, Czech (ph) USA, Greenheart.

14 Q CCUSA, is that Camp Counselors USA?

15 A That's their formal name, yes.

16 Q And Camp Counselors USA was a sponsor; is that right?

17 A It is a company that is a sponsor for J-1 students.

18 Q And did Lack's use Camp Counselors USA to get J-1
19 students for the beach?

20 A Yes, we did.

21 Q Now, after -- if -- somehow the sponsor would provide you
22 with a match or an information about a match?

23 A Yes. We provide the sponsor with the complete job
24 description along with everything on the business side that
25 needs to be taken care of with business license and to make

1 sure that we're a legitimate company. So we provide them with
2 all that, and then we work with them on developing a job
3 description that talks about pay, if transportation is
4 provided, if housing is an option, all these different things,
5 requirements for the job. And then it's posted on their site.

6 So when a student signs up with InterExchange, they can
7 sign onto the portal and see the different -- if they want to
8 be a lifeguard, they can go to the lifeguard part, and it
9 lists all the different lifeguard agencies that are hiring,
10 and you can pick which one you might want to interview with.

11 Q So there would be options available on these sites to
12 then select for additional evaluation?

13 A Yes.

14 Q And so take me through. Well, first of all, in 2017 --
15 the fall of 2017, did Lack's Beach Service have an HR person?

16 A We did.

17 Q And who was that?

18 A Her name was Martina Zirosova.

19 Q Okay. And Martina Zirosova, did she have any particular,
20 specific qualifications or had she been trained in any
21 fashion?

22 A She had been a lifeguard. She had been a manager. She
23 originally started as a J-1 student, so she knew the system
24 quite well. She's from the Czech Republic.

25 Q How about with regard to first aid or CPR?

1 A She was a lifeguard instructor, so she was very well
2 trained.

3 Q So American Red Cross lifeguard instructor?

4 A Lifeguard instructor, yes.

5 Q So she could train lifeguards per the American Red Cross?

6 A She could certify lifeguards.

7 Q Okay. Now, Martina was married to who?

8 A She was married to Libor Jedlicka (ph), who was our
9 training officer.

10 Q So Libor was employed by Lack's Beach Service as well; is
11 that right?

12 A Yes.

13 Q And what was Libor's job?

14 A He was our training officer, so he conducted all of the
15 trainings, rookie schools, surf schools. He was also -- he
16 was actually a step ahead of a lifeguard instructor. I'm sure
17 it has a better name, but he was the lifeguard instructor
18 instructor. So he had the ability to teach lifeguard
19 instructors how to teach class.

20 Q So let's go back. And if you get a match from the
21 sponsor, what would be the next step for Lack's in the hiring
22 process?

23 A We would click on that particular student, and their
24 resume and all their information is there. And if it looks
25 like a pretty decent match, the job they're looking for is the

1 job that we do have, then we would reach out to them via
2 email. Communicated the first couple of times via email. If,
3 at that point, it still seems to be a good match for us, we
4 would set up a Skype interview.

5 Q And what was the purpose of the Skype interview?

6 A We needed to make sure that what was -- what the student
7 represented on their resume actually fit the student, and it
8 also allowed us to check their English to make sure that they
9 could speak. Not fluent English but understandable English.

10 Q And so you would judge or Martina would judge, by Skype,
11 the ability of the candidate to speak English or to
12 communicate in English?

13 A Their communication skills and their personality, if they
14 were the kind of student that would work well as an ocean
15 lifeguard.

16 Q Okay.

17 MR. THOMPSON: May I approach, Your Honor?

18 BY MR. THOMPSON:

19 Q Weslyn, I'm going to hand you a series of documents:
20 One, two, three, four, five, six, seven. And, if you will,
21 tell me what those documents are.

22 A They are forms for a specific lifeguard, Kacper, that
23 would have been in his employee file.

24 Q These are records from Kacper's personnel file; correct?

25 A Yes, sir.

1 Q Okay. Let's work through some of these. Okay? So
2 Kacper, at the time of this incident in August 2018 -- August
3 24, 2018, he was assigned to L-21; correct?

4 A Yes.

5 Q All right. So, turning to page 3, do you see the?
6 Certificate of Eligibility for exchange visitor status? I
7 think you have referred to that in the past as a DS form?

8 A It's a DS form.

9 Q And the DS form at Section 3, it says, "Program sponsor:
10 Camp Counselors USA." Is that correct?

11 A Yes.

12 Q And --

13 A Well, it says, "Camp Counselors USA/Work Experience USA."

14 Q And that would be the sponsor group that would provide
15 the information or would help with these J-1 visa candidates
16 to be able to come to America?

17 A Yes. This form is the DS form, and the sponsor fills
18 this form out for the student to go to the embassy to apply
19 for their visa.

20 Q On the front of the first page, this appears to be what
21 was referenced earlier in the case, Mr. -- I'll just call him
22 Kacper. Kacper's entry document; do you see that?

23 A Yes.

24 Q And it's dated what?

25 A I knew you were going to ask that. Can I go grab my

1 glasses? Sorry. (Witness retrieves her eyeglasses.)

2 Okay. Ask that again, now that I can see.

3 Q And, on the first page, there appears that Kacper entered
4 May 16th, 2018. Do you see that? Up at the top?

5 A Top?

6 Q First page.

7 A I can see now. Yes. May 16th, 2018.

8 Q And if you turn to page 4, the I-9 form. Do you see
9 that?

10 A Yes.

11 Q So, Mr. Kacper, he entered on May 16th, 2018, and then
12 there is an I-9 form that he would have signed on May 21,
13 2018; correct?

14 A Yes.

15 Q Five days later.

16 And there is a Red Cross Certificate of Completion; do
17 you see that?

18 A Yes.

19 Q And it's for lifeguarding, first aid, CPR, and AED. Do
20 you see that?

21 A Yes.

22 Q Now, this American Red Cross certification or Certificate
23 of Completion was March 11, 2018, and it says the instructor
24 was Martina Zirosova. We have heard that name before; right?

25 A She's my HR.

1 Q Tell the jury how Martina trained Kacper in March of
2 2018.

3 A There's a long story. It's very difficult to get a deep
4 water pool in Myrtle Beach to train lifeguards in. And for
5 the American Red Cross, it has to be at least 8 feet.

6 So, with so many Europeans coming over, Martina and Libor
7 took a trip to Poland and Czech Republic to certify lifeguards
8 there, so we didn't have to worry about it once they got here.

9 Q So this American Red Cross certificate is signed by
10 Martina. She was an instructor on all of those topics;
11 correct?

12 A Yes.

13 Q And, then, she did that while she was overseas in the
14 Czech Republic and/or Poland?

15 A Yes.

16 Q And then, the last page, Weslyn, is a lifeguard training
17 record. And does it show that Kacper swam for time on May 31,
18 2018?

19 A Yes.

20 Q So these documents demonstrate that Kacper came to the
21 United States, May 16th; signed his I-9 forms, May 21; and
22 swam for you on May 31, '18; is that correct?

23 A Yes.

24 MR. McLEOD: Your Honor, I just object to the leading
25 question.

1 THE COURT: I'm going to allow it, just to move it along
2 since she's got that form in front of her.

3 MR. THOMPSON: Thank you, Your Honor.

4 A Yes.

5 MR. THOMPSON: Your Honor, we will mark those as an
6 exhibit and move them into evidence.

7 MR. McLEOD: If you want to just move all of his employee
8 file in, you can do that.

9 MR. THOMPSON: I'll go with three. I'll mark them.

10 THE COURT: So you have introduced it?

11 MR. THOMPSON: Yes, Your Honor. I moved it into
12 evidence.

13 THE COURT: And there was no objection?

14 MR. McLEOD: No, I'm just saying, for the rule of
15 completeness, why don't we just enter all the employment file?
16 That way, I don't have to do it when I get up, instead of
17 parts of it? I have got extra copies if he needs it.

18 THE COURT: Is this just of this employee?

19 MR. THOMPSON: Your Honor, I'm going through the same
20 records for all three employees. So I don't know that the
21 rest of it -- I mean, there are a lot of copies in the
22 personnel file, so I have tried to get to the most important
23 ones.

24 THE COURT: Okay. That's fine. So --

25 MR. McLEOD: The selected portions without objection,

1 Your Honor.

2 THE COURT: These portions that he's introducing now.

3 MR. McLEOD: Yes, ma'am.

4 THE COURT: Okay. It's admitted.

5 MR. THOMPSON: Thank you, Your Honor.

6 (Defendant's Exhibit No. 3, Kacper Palasz Records, was
7 marked for identification and received into evidence.)

8 BY MR. THOMPSON:

9 Q All right. Weslyn, I'm going to hand you another set of
10 documents. And I'm going to ask you to rearrange those, just
11 for the purposes of consistency.

12 Do you see the entry page? Put that one on the top. So
13 let's talk about Luckasz. And Luckasz, in August of 2018 --
14 Luckasz, in August of 2018, was on Stand 22; correct?

15 A Yes.

16 Q And on August 24th; correct?

17 A Yes.

18 Q All right. So going through the same documents, Weslyn,
19 it appears that Luckasz entered the United States on May 29,
20 2018; is that correct?

21 A Yes.

22 Q And then we will -- he also has the DS form that we
23 described earlier?

24 A He does.

25 Q And it indicates the program sponsor is Camp Counselors

1 USA; is that correct? At the tope.

2 A Camp Counselors USA/Work Experience USA.

3 Q And so, again, Luckasz entered on May 29th, 2018, and
4 then it appears that he signed his I-9 form for Lack's on June
5 1, 2018; is that correct?

6 A Yes. 6/1/18.

7 Q So he entered May 29, 2018, and he signed his I-9 and W-4
8 forms June 1, 2018. And then he swam for Lack's for a time on
9 June 27th, 2018; is that correct?

10 A Yes.

11 Q And when Luckasz came, he had his American Red Cross
12 lifeguarding, first aid, CPR, and AED certificate; is that
13 correct?

14 A Yes.

15 MR. THOMPSON: Your Honor, I'll mark these documents as
16 Exhibit 4. And move these into evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. McLEOD: Without objection, Your Honor.

19 THE COURT: They are admitted.

20 (Defendant's Exhibit No. 4, Luckasz Jaworski Records, was
21 marked for identification and received into evidence.)

22 BY MR. THOMPSON:

23 Q Weslyn, I'm going to hand you another set of the
24 documents. Kind of familiar with the routine now.

25 All right. Do you see his entry page? I apologize

1 they're not in order.

2 A Yes.

3 Q Okay. So this would be for Alex. He was on stand L-20
4 on August 24, 2018; is that correct?

5 A Yes.

6 Q And he entered the United States, May 26, 2018; is that
7 correct?

8 A Yes.

9 Q And when he came, he had an American Red Cross
10 certification -- well, I'll check that.

11 So May 26 -- I'm sorry -- 2018, he arrived. And then,
12 Martina Zirosova trained him in lifeguarding, first aid, CPR,
13 and AED on May 31; 2018; is that correct?

14 A Yes.

15 Q And Alex signed his I-9 and W-4 documents with Lack's on
16 May 28, 2018?

17 A Yes, sir.

18 Q And then he swam for time for Lack's on May 28, 2018; is
19 that correct?

20 A Yes, sir.

21 Q Then, with the DS form for Alex, indicates that he had a
22 program sponsor of InterExchange, Inc.; is that correct?

23 A Yes.

24 MR. THOMPSON: Your Honor, we'd move Exhibit 5.

25 MR. McLEOD: Without objection, Your Honor.

1 THE COURT: It's admitted.

2 (Defendant's Exhibit No. 5, Alexandr Dineev Records, was
3 marked for identification and received into evidence.)

4 BY MR. THOMPSON:

5 Q So, Weslyn, we talked about these three lifeguards and
6 when they got here and when they signed their documents and
7 when they swam.

8 Let's talk about training in 2018. Okay? The surf
9 school, the rookie school, who was providing the training for
10 Lack's at that time?

11 A Duke Brown with Horry County developed the program for
12 us, and then my training officer, Libor, was physically doing
13 the training with the guards.

14 Q So Libor was your training office? He was in-house;
15 right?

16 A Yes.

17 Q And then he would provide the in-water training?

18 A The in-ocean surf schools, yes.

19 Q And who did the training in the classroom?

20 A Duke Brown.

21 Q So, in 2018, the guards, then, were receiving instruction
22 in the classroom from Duke Brown and then instruction from
23 Libor on the beach; is that right?

24 A Yes.

25 Q Okay. And then you had -- over the course of the summer,

1 you had instructor -- or there was a surf school, you had
2 training every week; is that right?

3 A Every week.

4 Q And then who provided those training sessions?

5 A Libor.

6 Q Do you recognize that photo?

7 A Yes.

8 Q Is that Lack's Beach Service complement from 2018?

9 A Yes.

10 MR. THOMPSON: Your Honor, we'd offer that as Exhibit 6.

11 MR. McLEOD: Without objection, Your Honor.

12 THE COURT: It's admitted.

13 (Defendant's Exhibit No. 6, Lack's Team Photo 2018, was
14 marked for identification and received into evidence.)

15 BY MR. THOMPSON:

16 Q Now, Weslyn, is Duke Brown in that photograph?

17 A Yes.

18 Q Which one is he?

19 A Up front in the gray uniform.

20 Q See if I can make this work. Well, it's going to be
21 sideways.

22 Is that him right there on the left?

23 A Yes.

24 Q In the gray?

25 A In the gray.

1 Q Now, Weslyn, the guards are depicted in their uniforms;
2 are they not?

3 A Yes.

4 Q Okay. By contract with the City, what color were the
5 uniforms?

6 A They have a gold top, navy blue bottoms with gold screen
7 printing.

8 Q So is this an example of the lifeguard shorts that the
9 guards were wearing in 2018?

10 A Yes.

11 Q And they're blue; correct?

12 A Navy blue.

13 Q Okay. And then the shirts they would wear, what color?

14 A Gold with navy blue screen printing.

15 Q And have the name of Lack's Beach on the back; correct?

16 A They say "lifeguard" on the front and the name on the
17 back.

18 Q And that was per the agreement -- the franchise
19 agreement? It was called for; correct?

20 A Yes.

21 Q Now, also, with regard to the uniforms, what was the
22 rule -- what was actually required under the agreement with
23 regard to wearing the uniform during the day?

24 A Guards have to wear their shirts between the hours of
25 10:00 and 2:00. And that's a big deal because they want to

1 take it off because they don't want tan lines.

2 Q But that was the hard-and-fast rule; correct?

3 A It was a very serious rule. 10:00 and 2:00. Gold
4 shirts.

5 Q So when this incident occurred with Mr. Wolde, the rule
6 was for the lifeguards to be in blue shorts and a yellow
7 shirt?

8 A Yes.

9 Q All right. So, Weslyn, take us through -- we talked
10 about how you get them, how they're trained. We have talked
11 about what they look like on the beach with their gear. Let's
12 start with what does a day look like. Back in 2018, can you
13 describe the typical day? How does it start?

14 A Lifeguards would come to the main office, check in in the
15 lifeguard room. The managers would be waiting on them, make
16 sure -- and it's multipurpose. We want to see them in the
17 mornings to ensure that they're in working condition -- they
18 are young adults -- and that they have their uniform.

19 They get their radios, their books. The board that
20 everyone's referenced is up that has -- it's got a bottom half
21 for any notes that they need to be aware of, but it's going to
22 have wind direction, high tide, low tide, temp, things like
23 that.

24 They head to the beach. The umbrella line and the flag
25 has to be established by 8 a.m. That's a fairly large issue

1 because serious beachgoers want to put their equipment out
2 fairly early so that they get the good spots. So if we don't
3 hurry up and establish that line, then it's a fight with the
4 beachgoers to them being in front of us, which would block the
5 lifeguard's view. Flags up at 8:00 because we start
6 lifeguarding at 8:00

7 Q And, Weslyn, I'm sorry; I want to just stop you right
8 there. I apologize for interrupting. And that's important.
9 The lineup of the beach umbrellas and chairs that Lack's set
10 out, they were behind the lifeguard tower; is that right?

11 A Yes. If the tide allows, we want the tower to be at
12 least 10 feet in front of the umbrella line.

13 Q And there's an ordinance, a law in the City of Myrtle
14 Beach about the umbrella line; correct?

15 A Yes.

16 Q In other words, it's the law of the City of Myrtle Beach
17 that beachgoers cannot set up umbrellas in front of that line
18 or in front of the lifeguard tower?

19 A Yes.

20 Q And that's to allow for the clear view of the lifeguards
21 without any other encumbrance from others' umbrellas?

22 A Yes. I think the ordinance even states there can be
23 nothing 10 feet around the lifeguard tower.

24 Q And, so, obviously, you want your guards to set up as
25 early as possible. Establish the ground, if you will.

1 **A** The space.

2 **Q** Right. And be able to establish a clear view for your
3 lifeguards over the water.

4 **A** Yes.

5 **Q** So we're at 8:00. Let's go from there.

6 **A** Most of my -- the equipment has to be set up by 9:00. It
7 has to be done by 9:00 so that that physical activity is done.
8 For the rest of the day, they're lifeguards. They do, yes,
9 rent chairs and umbrellas.

10 We go through three lunches. It's a rotation so that
11 we're spaced out as much as we can. 4:00, we start putting
12 equipment up. 5:00, we're off the beach.

13 **Q** Let's go back. When you're at the warehouse the first
14 part of the day, what is the discussed with the lifeguards at
15 the time? Weather?

16 **A** Weather. If the National Weather Service has already
17 issued a high risk for rips or something like that or we know
18 there's tropical storms sitting off the coast, we're going to
19 talk about those things.

20 A lot of times, the National Weather Service will issue a
21 high risk warning at night, and it's good for 24 hours, so
22 that way, we do know that morning what we're looking at. You
23 know, if there's a storm off the coast, if we're anticipating
24 late afternoon pop-up thunderstorms, anything, we'll talk
25 about it. Increased presence of jellyfish, that has been this

1 week.

2 Q Is the color of the flag decided at the warehouse that
3 morning or is it decided sometime later?

4 A It is decided by the first ride through a manager does
5 that morning, probably about 7:00, 7:30, but it's fluid. It
6 could change at any time.

7 Q And, again, I think we are heard today that everybody has
8 a two-way radio; is that right?

9 A Everyone has a radio.

10 Q And, so, if there's anything that needs to be
11 communicated about the flags or the changing of the flags,
12 that can be done over the two-way radio; correct?

13 A Absolutely.

14 Q And then, of course, you have seen several times the flag
15 that's over there on the other side of the room. Is that an
16 actual flag that you would put in ground on the breach?

17 A Yes.

18 Q Is it the same as from 2018?

19 A Yes. You can see it's tattered and been resewn. So it's
20 been flapping.

21 Q And the flags themselves are provided by the City; is
22 that right?

23 A When we switched to the universal flag system, the City
24 provided the flags.

25 Q And, to be clear, in the summer of 2018, was Lack's using

1 the international -- universal international flag system?

2 A We were.

3 Q All right. Weslyn, I want to talk to you about August
4 24, 2018. Okay? At that time, at L-22, that was Luckasz; is
5 that right?

6 A Luckasz, yes, at L-22.

7 Q And L-21 was Kacper; is that right?

8 A Yes.

9 Q And L-20 was Alex; is that right?

10 A Yes.

11 Q Okay. Now, when the lineup is set, it includes when each
12 lifeguard is going to go lunch; is that right?

13 A Yes.

14 Q And so, for example, if it is Lunch Period 1, that is --

15 A 11:30 to 12:15.

16 Q Period 2 then is...

17 A 12:15 to 1:00.

18 Q And then, obviously, Lunch Period 3 is...

19 A 1:00 to 1:45.

20 Q So on the lineup for August 24, 2018, do you see where
21 Kacper -- what his lunch period was?

22 A He was second lunch.

23 Q And that would be...

24 A 12:15.

25 Q To?

1 **A** 1:00.

2 **Q** Okay. So when was it that you first learned that
3 something was first going on?

4 **A** I was -- unfortunately, I was at the office, had my
5 radio, and I heard Code 3, which is a medical emergency. And
6 I could tell in the tone of the voice that it wasn't a small
7 issue, we were dealing with something a little bigger, so I
8 started gathering my stuff.

9 **Q** And was that from Alex at L-20?

10 **A** L-20.

11 **Q** And so, then, you went to the beach?

12 **A** I ran code to the beach, which I had lights and sirens on
13 me -- I have a Jeep.

14 **Q** And where did you access the beach?

15 **A** 6th Avenue South.

16 **Q** All right. Now, 6th Avenue South, that would be north or
17 south of the area where the incident occurred?

18 **A** North of the area. So I got on the beach and went south.

19 **Q** So when you accessed the beach at 6th Avenue South, then,
20 did you pass by lifeguard stands on the way to the area where
21 this incident occurred?

22 **A** I did. 23 and 22.

23 **Q** Okay. And when you passed by 23, was a red flag at that
24 stand?

25 **A** I know that the red flag was there because I wanted to

1 lay eyes on the lifeguard because, a lot of times, when we
2 have an emergency, they all tend to congregate, and I wanted
3 to make sure that my -- that my crew was getting back on their
4 stands because there were still swimmers in the water.

5 Q And did you, as you passed L-22, was there a red flag
6 flying there?

7 A His flag was up.

8 Q And, then, obviously, this event happened in front of or
9 near L-21, and Kacper was lunch; is that right?

10 A Kacper was at lunch, so his red flag would be down.

11 Q Okay. When you arrived on the scene, who all was there,
12 if you recall?

13 A When I pulled up, Brady was in the back of the Ocean
14 Rescue truck, leaving the beach. So I never was part of any
15 efforts with Mr. Wolde. Holly -- and Holly had Randy. I had
16 Tony. I saw Kacper. I believe Alex -- I don't remember
17 seeing -- it was kind of a chaotic moment, but that's who I
18 saw when I pulled up.

19 Q And did you endeavor or take on any investigation,
20 discussion with anybody while you were there?

21 A Minimally. I asked Randy to be my report-taker.

22 Q Randy Smith?

23 A Randy Smith, my manager, to be my report-taker.

24 Q And Randy Smith was a manager?

25 A Yes.

1 Q And then was he designated to conduct the investigation
2 for Lack's?

3 A Yes. There were people that had shared they were in the
4 water or had participated, and I said, I need you to make sure
5 that you speak to those people and get their information.

6 Q And did Randy obtain a statement from Luckasz at L-22 as
7 part of his investigation?

8 A Luckasz filled out an incident report.

9 Q How about a statement from Luckasz? I'm going to show
10 you a document, and ask if you can identify this.

11 A Yes, sir. This is the back of an incident report. It's
12 front and back.

13 MR. McLEOD: Your Honor, may we approach?

14 BENCH CONFERENCE

15 (The following bench conference was held out of the
16 hearing of the jury and others.)

17 MR. McLEOD: I'm assuming he's going to try to offer this
18 in through her, and it's clearly hearsay. She didn't do the
19 investigation herself. This is Kacper's written narrative,
20 and it's absolutely hearsay, and she doesn't even have
21 personal knowledge of the hearsay.

22 THE COURT: Are you trying to introduce it?

23 MR. THOMPSON: This is a business record, Your Honor.
24 They have a policy for investigating incidents. They went out
25 and obtained statements from the lifeguards, and this is part

1 of their regularly kept business records, part of their policy
2 investigating incidents.

3 MR. McLEOD: And she didn't perform the investigation.
4 And, Your Honor, the prejudice, aside from the fact it's
5 hearsay, is we have had no opportunity to cross-examine this
6 gentleman about that piece of paper, so it is clearly
7 prejudicial to us.

8 MR. THOMPSON: I didn't get to cross-examine the fellow
9 from USLA that his letter is in evidence and what he said. He
10 never testified in court. But it was a business record.

11 MR. McLEOD: You got to cross-examine Mr. Brewster. It's
12 clearly not admissible, Your Honor, I mean, it's got to go
13 both ways.

14 THE COURT: What are you trying to introduce?

15 MR. THOMPSON: Just this.

16 THE COURT: I do think they are definitely hearsay.

17 MR. McLEOD: If you want to refresh her memory with it,
18 he testified about what the investigation -- I mean, the
19 document doesn't come in because we don't have a right to
20 cross-examine the guy.

21 MR. THOMPSON: It's a business report. It fits within
22 the hearsay exception. We have been down this.

23 THE COURT: It's not used for the truth of the matter
24 asserted, just to put him on notice.

25 MR. THOMPSON: Your Honor, this happens in every case

1 where the defendant ends up with a statement from somebody,
2 the plaintiff is always, "Here is your record. This is what
3 these people said. It's part of your business. It's part of
4 your policy to keep these." Because when they're bad for us,
5 right, we don't want these things out there, but they come in
6 all the time?

7 MR. McLEOD: This is not a business record. This is just
8 a piece of paper that the kid wrote some stuff on.

9 MR. THOMPSON: A business record is not -- there's not a
10 form, there's not a law that says this is what a business
11 record is. They come in and all shapes of sizes, and if the
12 standard of met, it's kept as a part of your regular course of
13 business. This is what you do.

14 MR. McLEOD: I just want it to go both ways.

15 THE COURT: I'm going to give you some leeway on this,
16 because I've given you-all some leeway, so I'm going to allow
17 it in.

18 MR. THOMPSON: Allow it?

19 THE COURT: Yes, yes.

20 MR. THOMPSON: Thank you.

21 (Open court resumes as follows:)

22 BY MR. THOMPSON:

23 Q Now, Weslyn, the page you -- I think that's Luckasz's
24 statement; is that right?

25 A That is Luckasz.

1 Q And, to be clear, this was a statement that was gathered
2 in the regular course of Lack's Beach Service investigation of
3 an incident that happened on the beach; correct?

4 A Yes. When the boys came in that afternoon after work, I
5 asked them to sit down and write -- develop an incident
6 report. This is the back page of that.

7 Q Because that's your practice?

8 A Yes.

9 Q I mean, when there's an incident, you have the
10 lifeguards, to the extent that you have them available, they
11 fill out statements about what happened?

12 A Yes.

13 Q And then you keep those records; correct?

14 A Yes.

15 Q And you keep them to document what had happened; correct?

16 A Yes.

17 Q And it's part of your regularly kept business records; is
18 that correct?

19 A Yes.

20 Q All right. So Luckasz provided a statement on August 24,
21 2018; correct?

22 A Yes.

23 Q Okay. And can you read this statement for the jury,
24 please.

25 A "When I was explaining the meaning of different colors of

1 the flags to the mom, who inquired about it, I heard Code 3 on
2 the radio on L-20. I immediately started running that
3 direction. When I arrived on the scene, I saw lifeguards who
4 have been already doing CPR, so I took care about safely
5 around and waving people back from the victim. Then when I
6 heard that fire rescue was coming, so I went to make enough
7 space for them to come to the victim and show the exact place
8 of the accident."

9 MR. THOMPSON: Your Honor, we move that in as Exhibit 7.

10 THE COURT: I'm going to allow it. Your objection is
11 noted for the record.

12 MR. McLEOD: Just so you know, he just moved in a
13 document that we didn't discuss. Just so you know.

14 We discussed this one, Trey.

15 MR. THOMPSON: It's the same. She had both of them.

16 MR. McLEOD: I was looking at Mr. Palacz, and you're
17 moving in Mr. Jawroski.

18 I'm just pointing it out, Your Honor.

19 MR. THOMPSON: They're both the same.

20 THE COURT: I think I looked at all of them.

21 MR. THOMPSON: Yes, Your Honor.

22 (Defendant's Exhibit No. 7, Narrative from Jaworski, was
23 marked for identification and received into evidence.)

24 BY MR. THOMPSON:

25 Q Weslyn, I'm going to show you another statement. And can

1 you identify that statement?

2 A This is the incident report that Kacper filled out.

3 Q And Kacper was at L-21; is that right?

4 A He was the guard at L-21.

5 Q And, again, the same with Luckasz: This is a document
6 that you keep in your regular course of your business; is that
7 right?

8 A Yes, sir.

9 Q A document that's generated as a result of an incident?

10 A Yes.

11 Q And so that you can document what had happened and then
12 keep that record; is that right?

13 A Yes, sir.

14 Q All right. Can you read for the jury what Kacper's
15 statement included?

16 A [As read] "I went on my lunch at 12:15 a.m. I come back
17 at 12:59, and" -- it might say "a" -- "and a front of my tower
18 was victim and four guards. They did CPR. I found wife of
19 victim and tried to calm her down. After a few seconds, Ocean
20 Rescue was there, and they took over victim."

21 MR. THOMPSON: Your Honor, we move this in as Exhibit 8.
22 Defendant's Exhibit 8.

23 THE COURT: Again, I'm admitting it subject to your
24 objection, Mr. McLeod.

25 MR. McLEOD: Thank you, Your Honor.

1 (Defendant's Exhibit No. 8, Narrative from Palasz, was
2 marked for identification and received into evidence.)

3 BY MR. THOMPSON:

4 Q Now, Weslyn, you're the future of Lack's Beach Service at
5 this point?

6 A That is the plan, yes, sir.

7 Q Okay. I mean, have you been operating Lack's Beach
8 Service ever since 2017, essentially?

9 A Yes, sir.

10 Q And plan to do that on a going-forward basis; is that
11 right?

12 A Yes, sir.

13 Q Weslyn, I appreciate your time today. Thank you.

14 MR. McLEOD: May it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. McLEOD:

18 Q Good afternoon. How are you?

19 A Good afternoon. I'm good.

20 Q We have been across the table from each other for a week
21 but we haven't had a chance to speak. Good afternoon. How
22 are you?

23 A I'm doing well. Thank you.

24 Q When you came to work for your dad's business in 2017,
25 I'm assuming things were pretty well in place; were they not?

1 **A** Yes. Yes, sir.

2 **Q** It had been running for many, many years, and it had been
3 running for many, many years a certain way; had it not?

4 **A** Within making adjustments as needed, yes.

5 **Q** Yes, ma'am.

6 And you did your best to jump in there and learn exactly
7 how your dad had run his business for many, many years; is
8 that fair to say?

9 **A** I learned how he ran his business, and I added my piece
10 to it as well.

11 **Q** Yes, ma'am.

12 And, from 2017 until today, how much time would you say
13 your dad spends for Lack's Beach Service versus how much time
14 he spends at the furniture company?

15 **A** He doesn't spend any real time at the furniture company.

16 **Q** How much time does he spend at Lack's Beach Service in
17 comparison to the hours that you put in on an average week
18 during the summer, during the season?

19 **A** Like current?

20 **Q** Yes, ma'am.

21 **A** Currently, I have kind of dedicated my summer to work. I
22 usually work seven days a week. George is coming in two to
23 three. He's semi-retired.

24 **Q** And have you been working seven days a week during the
25 summer seasons for a few summers now?

1 A Last -- that's really started with COVID. Unfortunately,
2 in 2018, my day off was Saturday. George would cover my day
3 off.

4 Q Okay. So from 2017 to today, would it be fair to say
5 that you have put in a lot more hours at Lack's Beach Service
6 than your dad?

7 A Yes. But that was the plan when I took it off.

8 Q Yes, ma'am. And I'm not fussing. I just wanted to
9 establish that.

10 A Mm-hmm.

11 Q Now, from the time that you went to work for the family
12 business until today, has your dad given you any ownership in
13 the company?

14 A No.

15 Q Have you asked him about that?

16 A Yes.

17 Q And he has said no?

18 A No, he says -- his response was, "I'm not dead yet."

19 Q So only when he's dead you'll get any ownership of Lack's
20 Beach Service; is that right?

21 A That's what it's looking look.

22 Q That's what it's looking like?

23 A (Shrugs shoulders.)

24 Q Life isn't always fair; is it, ma'am?

25 The training that happened, did you say that -- was it

1 Jed Linka (ph)? Was that her name?

2 A The training officer is Libor Jedlicka, and that is a
3 man.

4 Q Okay. A man. I'm sorry.

5 And they went to Poland to train?

6 A In March of '18, they went to Poland and Czech Republic.

7 Q Did you go to Europe?

8 A No, I did not.

9 Q So you have no personal knowledge of the training that
10 happened in Europe?

11 A I have no personal knowledge except that they signed off
12 on a first aid -- or a Red Cross class.

13 Q And that was what I was going to -- so you weren't there.
14 You don't know what they were actually trained.

15 Who had the -- did that trainer have the authority to
16 create the American Red Cross certificate?

17 A I don't think anyone can create a certificate. You can
18 create a class and you put your members in the class, and
19 then, at the end of the class, you, as the instructor -- now,
20 this is my understanding; I'm not an instructor and have never
21 registered a class.

22 Q Yes, ma'am.

23 A But, at the end of the class, you sign off that the class
24 was completed and at what pool it was completed. And then the
25 Red Cross generates a certificate and sends that to the newly

1 certified person, who then can print it out and give it to me
2 or I can pull -- you know, we get that. I don't think a
3 person can generate a certificate.

4 Q I just didn't know if y'all's instructor had the ability
5 to create the American Red Cross lifeguard card?

6 A No, that would come from the Red Cross.

7 Q Okay. And you agree, ma'am, that an American Red Cross
8 lifeguard certificate is not applicable to an ocean rescue
9 lifeguard? You agree with that; do you not?

10 A I believe it is an excellent baseline for ocean water
11 rescuing.

12 Q An American Red Cross lifeguard certificate is
13 specifically for a pool aquatic environment; is that right?

14 A Yes.

15 Q Would you agree with me that it's similar to having a
16 driver's license and having a CDL? Those are two different
17 animals; aren't they, ma'am?

18 A They are.

19 Q And a pool and the ocean are two different animals;
20 aren't they, ma'am?

21 A They are.

22 Q Okay. Now, Mr. Thompson first showed you Kacper Palacz's
23 -- a few documents from his personnel file.

24 A Yes.

25 Q And that was Exhibit -- it was Bates No. 0008. But I

1 know he didn't ask you to read for the ladies and gentlemen of
2 the jury what the United States Government believed this
3 gentleman was coming to this country to be. And could you
4 read what's highlighted, please, ma'am?

5 A Yes, sir. It says, "Beach attendant."

6 Q Now, I'm going to show you Mr. Jaworski's. And, again,
7 Mr. Thompson didn't ask you to share with the ladies and
8 gentlemen of the jury what the United States Government
9 believed that gentleman was coming here to be. And could you
10 share with them what that document says?

11 A They used the same sponsor. It says, "Beach attendant."

12 Q Would you agree with me, ma'am, that a beach attendant
13 and an ocean lifeguard are different animals?

14 A Yes; however, the company and the lifeguard both knew
15 that they were hired to be an ocean lifeguard.

16 Q I asked you about the U.S. Government, ma'am. This is a
17 United States Department of State document; is it not?

18 A It is. And CCUSA fills that form out, that DS form.
19 Then the student then takes DS form to the embassy to apply
20 for the J-1 visa.

21 Q And you were in the courtroom earlier this week, and you
22 heard testimony about the Center for Disease and Control? Do
23 you remember that?

24 A Is that the USLA?

25 Q No, ma'am. The Center for Disease and Control is our

1 nation's --

2 A Yes.

3 Q -- center for disease and control. That's the federal
4 government. Do you recognize that?

5 A Yes.

6 Q And, in 2001, the CDC issued a report that stated
7 lifeguards on the beach are prohibited from doing anything
8 other than lifeguarding. Do you remember that testimony?

9 A Not specifically, but yes.

10 Q Do you think the United States Department of State would
11 authorize the kid to come over here to sell beach concessions
12 and lifeguard at the same time if the CDC had warned the
13 public, 16 years earlier, not to do that?

14 MR. THOMPSON: Objection, Your Honor. He's asking what
15 the government would do or not do.

16 THE COURT: That's sustained.

17 BY MR. MCLEOD:

18 Q The J-1 visa program, I mean, that's a cultural exchange
19 program, isn't it?

20 A Yes.

21 Q I mean, and when the kids get here, your company is their
22 host; right?

23 A Yes.

24 Q And the whole purpose behind the exchange is for the kids
25 to be exposed to our way of life, isn't it?

1 A Yes.

2 Q For us to share with them American values?

3 A Mm-hmm.

4 Q And they're excited to be here, aren't they?

5 A They love it.

6 Q But when they get here, they can't go anywhere else, can
7 they, because this company is the host; isn't that correct?

8 A Clarify "go anywhere else."

9 Q Yes, ma'am.

10 So once they arrive and they're approved for the program,
11 they can't decide, you know, this is not a safe environment,
12 I'm going to go somewhere else, because your company -- your
13 dad's company is the host; isn't that correct?

14 A They can call their sponsor. They can call CCUSA or
15 InterExchange and voice their concerns and if, need be, change
16 jobs.

17 Q Okay. There was a lot of turnover in staffing as far as
18 the lifeguard towers are concerned over the years, hasn't
19 there been? I mean, every year it's a struggle to get more
20 lifeguards, isn't it?

21 A Oh, you mean in terms of recruit lifeguards.

22 Q Yes, ma'am.

23 A Yes. It is difficult to recruit lifeguards.

24 Q Okay. And would the recruiting be made extra difficult
25 if you tried to recruit a lifeguard, say, at the University of

1 Georgia or the University of South Carolina or even Winthrop,
2 who knew from their training that it is unsafe to do beach
3 concessions and lifeguarding at the same time? That would
4 make recruiting really hard, wouldn't it?

5 MR. THOMPSON: Objection, Your Honor.

6 THE COURT: That's sustained.

7 BY MR. McLEOD:

8 Q Now, for the kids, when they get here, you have a thing
9 called surf school; is that right?

10 A We have surf school.

11 Q And is surf school the company's in-service training?

12 A Surf school runs from Memorial Day to Labor Day. It's
13 our summer training every week.

14 Q That's what the company refers to as the in-service
15 training; is that right?

16 A I don't know that I have used the word "in-service." I
17 don't -- but that is our training.

18 Q Is there any other training that occurs during the season
19 other than the surf school schedule?

20 A Rookie school.

21 Q Any other training other than that?

22 A No, sir.

23 Q Okay. If you will --

24 MR. McLEOD: I want to mark -- this is surf school in
25 2018.

1 (Plaintiff's Exhibit No. 28, Surf School Agenda 2018, was
2 marked for identification.)

3 BY MR. McLEOD:

4 Q And I'll ask you: Are you familiar with this, ma'am?

5 A Yes. Appears to be the surf school agenda for the summer
6 of 2018.

7 Q Okay. And that was the in-service training for the 2018
8 season that the three lifeguards at issue here worked for the
9 company; isn't that correct?

10 A Yes.

11 MR. McLEOD: All right. I move at this time, Your Honor,
12 that exhibit into evidence.

13 MR. THOMPSON: No objection, Your Honor.

14 THE COURT: And that is Plaintiff's --

15 COURT REPORTER: 28.

16 THE COURT: It's admitted.

17 (Plaintiff's Exhibit No. 28 was received into evidence.)

18 BY MR. McLEOD:

19 Q Now, let's go back, and I want to see whether or not
20 these kids attended all of the surf school training for that
21 season. Okay?

22 And let's first -- do you have their dates of entry that
23 Mr. Thompson gave you? Do you have that in front of you?

24 A No, sir.

25 Q Okay. I'll get you another one.

1 (Plaintiff's Exhibit No. 29, Kacper Palasz Records, was
2 marked for identification.)

3 MR. McLEOD: I have remarked Plaintiff's 29.

4 BY MR. McLEOD:

5 Q I have premarked Plaintiff's Exhibit No. 29. Could you
6 share with the ladies and gentlemen of the jury what that is?

7 A Kacper's employment file. I'm not sure if it's the whole
8 thing, but...

9 Q Please take your time and flip through it.

10 A He was with us for two years, but this is his employment
11 file, yeah.

12 Q Okay. And that was what was produced to us.

13 A Okay.

14 Q And that employee file documents all of the training that
15 that individual had for your dad's company in 2018; is that
16 correct?

17 A Can you ask that again, please?

18 Q Yes, ma'am.

19 Does that file contain all of the information regarding
20 any training that happened in 2018?

21 A It does not.

22 Q In fact, it doesn't contain any training records, does
23 it, ma'am?

24 A No, it does not.

25 MR. McLEOD: We'd move that into evidence, Your Honor.

1 BY MR. McLEOD:

2 Q Now, for this gentleman --

3 THE COURT: Hang on just a minute.

4 MR. McLEOD: Yes, ma'am.

5 THE COURT: Any objection to that?

6 MR. THOMPSON: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (Plaintiff's Exhibit No. 29 was received into evidence.)

9 (Plaintiff's Exhibit No. 30, Lukasz Jaworski Records,
10 was marked for identification.)

11 BY MR. THOMPSON:

12 Q Now, for Mr. Palacz, when did he enter the country?

13 A May 16th, 2018.

14 Q Okay. And so how many in-service training sessions did
15 that gentleman miss?

16 A Two.

17 Q Okay. And how about -- we'll go to Mr. Dineev.

18 (Plaintiff's Exhibit No. 31, Alexandr Jineev Records, was
19 marked for identification.)

20 BY MR. McLEOD:

21 Q This is Mr. Dineev's employment file; is it not, ma'am?

22 A Yes.

23 Q And just like the other gentleman's employment file,
24 that's what y'all produced to us in this case; is that right?

25 A Yes, sir.

1 MR. McLEOD: Your Honor, we'd move that into evidence.

2 THE COURT: Any objection?

3 MR. THOMPSON: No, objection, Your Honor.

4 THE COURT: And that's No. 30?

5 COURT REPORTER: That's No. 31.

6 (Plaintiff's Exhibit No. 31 was received into evidence.)

7 BY MR. McLEOD:

8 Q Now, let's look and see when that gentlemen got to
9 America. If you'd just look at his file.

10 A He arrived, May 26th of '18.

11 Q May 26th. All right.

12 Now, I'm going to go back to Plaintiff's Exhibit No. 28,
13 the in-service training. Tell the ladies and gentlemen of the
14 jury how many sessions he missed of the required training.

15 A On this form, he missed three.

16 Q He missed three.

17 A But I also don't know when rookie school was this year.

18 Q It was June 11th. I'll show you.

19 A Okay. And, truthfully, yes, I know that I said that is
20 our training, but we normally do not start rookie school until
21 after Memorial Day, so I don't know why those were there.

22 Q According to Plaintiff's Exhibit No. 28, rookie school
23 was June 11th; correct?

24 A June 10th -- June 11th, classroom started. Yes, sir.

25 Q So how many training sessions did --

1 **A** He missed three.

2 **Q** He missed three. Okay.

3 **A** Now...

4 Okay.

5 **Q** Let's go to Mr. Jaworski. Okay? This is Defendant's
6 Exhibit 4 [verbatim]. And can you share with the ladies and
7 gentlemen of the jury when Mr. Jaworski got to America?

8 **A** May 29th of 2018.

9 **Q** Can you share with the ladies and gentlemen of the jury,
10 going back to 28, how many in-training -- in-service training
11 sessions he missed?

12 **A** He would have missed three, possibly four, but he was
13 also a veteran guard, just like Kacper. So he had done it the
14 year before. I mean, it's unfortunate that it was missed, but
15 it doesn't mean that I don't believe he's capable of the
16 skills.

17 **Q** Isn't it in violation of the contract with the citizens
18 of Myrtle Beach?

19 **A** Can I see that?

20 **Q** Yes, ma'am.

21 How about, if you would, for the ladies and gentlemen of
22 the jury, going back -- this is Plaintiff's Exhibit No. 15.
23 Just read from line 21 to line 26 for the jury, please.

24 **A** "Franchisee shall prepare lifeguard training curriculum
25 meeting City requirements and ensure that all lifeguard

1 personnel qualify thereunder prior to beginning work and meet
2 all in-service training requirements. Franchisee or
3 designated rep -- representative and all franchise lifeguards
4 shall attend all pre-certification and in-service training
5 sessions. Failure to attend shall result in suspension from
6 service until requirement is met."

7 Q Okay. So your dad's company's agreement with the
8 citizens of Myrtle Beach required that these gentlemen attend
9 all in-service training; isn't that correct, ma'am?

10 A And once they arrive, they attended all the in-service
11 trainings.

12 Q You just shared with this ladies and gentlemen of the
13 jury that they missed several sessions apiece; isn't that
14 correct?

15 A Because they were not in the country, yes.

16 Q Okay. Did you or your father ever report to the City
17 that these beach attendants had not completed that season's
18 in-service training? I'm just asking if y'all ever told the
19 City that.

20 A No. You called them beach attendants, and they're
21 lifeguards. And Alex's DS form actually does say lifeguard,
22 so...

23 Q So y'all got one out of three.

24 A We got one out of three, yeah.

25 Q Well, that ain't bad. Okay.

1 Now, will you please, ma'am, tell the ladies and
2 gentlemen of the jury the first time the word "rip current"
3 appears anywhere in the in-service training for the 2018
4 season. Just take your time.

5 MR. McLEOD: Almost done.

6 A I do not see it. I scanned it quickly, but I do not
7 believe I see the words.

8 BY MR. McLEOD:

9 Q How about go to the last page, ma'am.

10 A Yes.

11 Q And could you read for the ladies and gentlemen of the
12 jury what it says?

13 A The whole page?

14 Q Where you see the words "rip current."

15 A Oh, I do -- I'm sorry; I do see it now. It says,
16 "Videos: Rip currents, drowning."

17 Q And is that session the one after August --

18 A It was held on August 28th.

19 Q Okay. And that was --

20 A Oh, wait. Hold on. Misinterpretation. Actually, it
21 wasn't held August 28. It's under No. 16, which is warehouse
22 activity due to weather. So it's an activity that could have
23 occurred if it rained and we weren't able to be in the ocean.

24 Q Okay. So if it rained, then, they would get trained on
25 rip currents? And if it was sunny, then you would not have

1 that warehouse training, would you?

2 **A** If it's a veteran guard, they would have already been
3 trained on rip currents. If it is a rookie guard, meaning
4 it's their first summer, they're going to spend a week with a
5 training guard, and they would learn everything they needed to
6 know about rip currents at that point.

7 **Q** Can you look through the employee files of either three
8 of three of these guards and tell me whether there's any
9 evidence that your dad's company gave these kids any training
10 on how to identify a rip current, how to guard against a rip
11 current, or how to warn beachgoers of that life safety hazard?

12 **A** I can go through them, but I can go ahead and answer that
13 there is no sign-up sheets or proof of the training as, when
14 this started, I went to go find the information and have been
15 unable to find the sign-in sheets.

16 **Q** Thank you, Ms. Chickering.

17 **A** Mm-hmm.

18 **MR. THOMPSON:** Your Honor, I don't have any further
19 questions.

20 **THE COURT:** Thank you, ma'am. You can step down.

21 Can y'all approach just a minute?

22 **BENCH CONFERENCE**

23 (The following bench conference was held outside the hearing
24 of the jury and others.)

25 **THE COURT:** How are we doing?

1 MR. THOMPSON: We're done. We rest.

2 THE COURT: Do you want to rest on the record and then
3 I'll release the jury until tomorrow and then we'll have some
4 discussion about charges?

5 MR. THOMPSON: Yes, Your Honor.

6 THE COURT: Thank you, Your Honor.

7 (Open court resumes as follows:)

8 THE COURT: Mr. Thompson?

9 MR. THOMPSON: Yes, Your Honor. The defense rests.

10 THE COURT: Okay. Ladies and gentlemen, I'm going to go
11 ahead and release you for the evening and ask you to be back
12 tomorrow at 9 a.m.

13 When you come back tomorrow, we will probably be going
14 straight into closing arguments and then my jury instruction.
15 So we'll sort of be in the home stretch.

16 Again, please don't begin discussing the case with any
17 overnight, and we'll see you back in the morning at 9 a.m.

18 (The jury exited the courtroom at 5:25 p.m.)

19 THE COURT: Okay. Anything y'all want to hand me up with
20 respect to the jury charges or verdict forms?

21 MR. McLEOD: Has Your Honor given any thought to the
22 verdict form, or would you like us to submit one? If we could
23 have the verdict form figured out before we close, I would
24 certainly appreciate it.

25 THE COURT: Sure. Let's have some discussion about the

1 verdict form.

2 So, in looking at the statute on bifurcation -- let me
3 just pull it up.

4 Mr. Thompson, I can't remember: Did y'all plead comparative
5 negligence or are you waiting a comparative negligence verdict
6 form?

7 MR. THOMPSON: Yes, Your Honor.

8 THE COURT: So I guess my thought is, in the initial
9 verdict form, would just be your standard comparative
10 negligence verdict form. And then, if they come back with
11 damages -- compensatory damages, then we would send a -- we
12 have additional discussion and send it back with a second
13 verdict form that addresses gross negligence, reckless,
14 willful conduct, etc.

15 MR. McLEOD: Is that what the statute says? It's just
16 been awhile since I looked at it.

17 THE COURT: It's not really clear to me. It says, "All
18 actions tried before a jury involving punitive damages, if
19 requested by a defendant, must be conducted in a bifurcated
20 manner. In the first phase of a bifurcated trial, the jury
21 shall determine liability for compensatory damages, and the
22 amount of compensatory or nominal damages. Evidence relevant
23 only to the issues of punitives is not admissible at this
24 stage."

25 And then it says, "Punitives may be considered if

1 compensatory or nominal damages have been awarded in the first
2 stage of the trial."

3 And then the next section says, "Punitive damages may be
4 awarded only if the plaintiff proves by clear and convincing
5 evidence that his harm was the result of the defendant's
6 willful, wanton, or reckless conduct."

7 And then it goes down to say, "In the second stage of a
8 bifurcated trial, the jury shall determine if the defendant is
9 liability for punitive damages, and if determined to be
10 liable, the amount of punitive damages."

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

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

19 MR. McLEOD: Right. And we don't make punitive damages
20 arguments to the jury in the first phase, but the evidence of
21 recklessness comes in, and if they make that determination,
22 then I guess we bring them back in, and then we would argue
23 the Gamble factors.

24 THE COURT: What are your thoughts, Mr. Thompson?

25 MR. THOMPSON: Your Honor, I think that's correct. I

1 mean, the first question is liability, damages, actuals. And
2 then the question to the jury is: Do you find evidence,
3 whatever the question would be, for the punitive conduct. And
4 then it's just yes or no.

5 And then, if yes, there will be a second receiving or a
6 second -- something along the lines. Because it has to be
7 explained to them what's going to happen. If they just say
8 yes or no, they're not going to know what's going to happen
9 next.

10 If yes, there will be an additional proceeding or
11 additional -- whatever the language the Court would like to
12 enter. But just saying yes or no doesn't give them any
13 information about what happens next. So they need to know
14 there's another --

15 MR. McLEOD: And it probably is fair to the defendant to
16 do it that way because what you don't want is for a punitive
17 verdict to show up in the compensatory. You follow me? And
18 one way to prevent that is by doing it the way Trey has
19 suggested it.

20 THE COURT: So my general, just, comparative -- if y'all
21 want to kind of take a look at it. Was the defendant
22 negligent? Was his negligent a proximate cause of his
23 injuries? Was the plaintiff negligent? Was the plaintiff's
24 negligence a proximate cause? And then you have got the
25 division. So, somewhere in there, we need to include the

1 gross negligence.

2 MR. McLEOD: Could you scroll down a little bit more to
3 actual damages? So --

4 THE COURT: Yeah, this one, obviously, we wouldn't have
5 the punitives on there.

6 MR. McLEOD: On the damages, I think the best way to do
7 it is we need to have a line for conscious pain and suffering.
8 Okay? And then, under 15-51-40, the statute says that the
9 jury may award damages respective to the statutory
10 beneficiaries and on whose benefit it's brought.

11 And, look, I learned this the real scary way. I got the
12 \$97 1/2 million verdict in front of Judge Norton, and I just
13 had that line. Well, in Federal Court, they had the plain
14 error doctrine, which I had forgotten.

15 So the first motion they made was the verdict is
16 excessive and we can't tell how much of the verdict went to
17 this kid versus that kid.

18 THE COURT: I mean, what I would say is, if you have the
19 proposed verdict form that you want us to take a look at,
20 let's take a look at it.

21 MR. McLEOD: Okay. We'll do that. Could you please
22 email us that and then we'll work off of that? Is that fair
23 enough?

24 THE COURT: Sure.

25 MR. McLEOD: Thank you.

1 THE COURT: Give me you email real quick so I don't have
2 to look it up.

3 MR. McLEOD: I think Jack has ours.

4 MR. THOMPSON: Mine is JThompson@hallboothsmith.com.

5 THE COURT: Booth is B-o-o-t-h?

6 MR. THOMPSON: That's the law firm.

7 THE COURT: .com?

8 MR. THOMPSON: Yes, ma'am. Thank you.

9 MR. McLEOD: And mine is on here, Your Honor.

10 THE COURT: (Mr. McLeod hands the Court his business
11 card.) Thanks.

12 MR. McLEOD: Thank you.

13 THE COURT: Do y'all want to talk about specific charges
14 now?

15 MR. McLEOD: I know one specific charge we'll need, Your
16 Honor, is a mortality table for the kids. And they're doing
17 the computation now.

18 THE COURT: There is an old case that I just -- when I
19 was looking at the other stuff -- that does address the
20 mortality tables in the absence of pecuniary damages that said
21 there was no -- no evidence was admitted of loss of income,
22 but it did say that the mortality tables are still to be
23 charged.

24 MR. THOMPSON: Right. But I would assume that's for
25 Mr. Wolde, because if you're going to get the mortality tables

1 for the kids -- it's Mr. Wolde.

2 MR. McLEOD: But it's the kids' mortality, because that's
3 the injury. Every day of their life, they have that injury.
4 That's the purpose.

5 THE COURT: I've never --

6 MR. THOMPSON: I'm not aware of that at all, Your Honor.

7 THE COURT: -- heard of that.

8 MR. THOMPSON: I understand the victim is always -- that
9 mortality table, that lifespan, because that's the measuring
10 stick. It's not the kids' lives.

11 MR. McLEOD: I certainly don't want to do it the wrong
12 way, so we'll look at it tonight too.

13 THE COURT: Look at it. My understanding was that it
14 would -- they are missing out on these remaining years. He
15 would have been alive on these many years, and that's what
16 they're missing out on. It's not diminishing. I mean, I
17 understand. But their brief at the loss is a separate measure
18 of damages, and they're not going to get his -- him for this
19 many years.

20 MR. McLEOD: I understand. I'll look at it tonight and
21 get on Westlaw just to check.

22 THE COURT: Okay. Otherwise, just to tell you kind of
23 generally what -- I have started one. I mean, it's very
24 standard. The jury charge is: Preponderance of the evidence.
25 Direct evidence and circumstantial evidence. Credibility of

1 witnesses. I have got one on deposition testimony. I had it
2 just on video, but we'll put in the language on written
3 deposition testimony as well. Expert witnesses. Negligence.
4 Proximate cause. Gross negligence. Actual damages. Wrongful
5 death. Comparative negligence. And then I have got a
6 specific charge on damages in a wrongful death action.

7 MR. McLEOD: Your Honor, I don't think we need a gross
8 negligence charge. You know, there's simple negligence,
9 there's gross negligence, and then there's willful and wanton.
10 I think what we need is the negligence and then the willful
11 and wanton against a private defendant.

12 THE COURT: Okay.

13 MR. THOMPSON: Your Honor, I'm not aware of that. I
14 mean, it's gross negligence is the standard.

15 MR. McLEOD: For what?

16 MR. THOMPSON: For punitives.

17 MR. McLEOD: Well, if you want gross negligence to be the
18 standard for punitives, then we'll stipulate to that.

19 THE COURT: Why don't y'all give me what you're
20 proposing.

21 MR. THOMPSON: Your Honor, the question is with regard to
22 the standard.

23 THE COURT: Here's what I have got on punitives: "The
24 plaintiff claims the defendant acted with recklessness,
25 willfulness, and wantonness, and that, therefore, the

1 plaintiff is entitled to punitive damages from the defendant.

2 Recklessness means a conscious failure to use reasonable
3 care. A person who is negligent acts carelessly; however, a
4 person who acts recklessly, willfully, and wantonly is not
5 only careless but is also aware that he is being careless.

6 If you award actual damages, then you may also consider
7 an award of punitives. Punitives are intended to punish the
8 defendant for extraordinary and outrageous misconduct."

9 So I guess we're going to have to figure out what of this
10 is -- because we're another addressing punitives prior to it
11 going to the jury. So we need to figure out how we're going
12 to craft that language without going into punitives.

13 MR. THOMPSON: It sounded, like the first part of it was
14 good until right when you started talking about damages.

15 MR. McLEOD: Your Honor, if it pleases the Court, is the
16 jury coming in tomorrow at 9:00?

17 THE COURT: Mm-hmm.

18 MR. McLEOD: Why don't you let us work on it tonight, and
19 if maybe the Court can see us a little bit early in the
20 morning, I would imagine we could get it worked out before we
21 close.

22 MR. THOMPSON: I think we can get most of it worked out
23 right now. I mean, there are some others.

24 Is there more left for yours.

25 THE COURT: And what I can do is go ahead and email what

1 I have got.

2 MR. THOMPSON: That will help, yes.

3 THE COURT: But I think you're right, that that first
4 part is probably good without going into "if you award actual
5 damages, you may also consider an award of punitives."

6 MR. McLEOD: Right.

7 THE COURT: But then we also need to address the clear
8 and convincing, that it's got to be -- the reckless conduct
9 has to be proven by clear and convincing evidence.

10 MR. THOMPSON: Charge on what clear and convincing is?

11 THE COURT: So after it talks about "if you find actual,
12 then you can also find punitive," "the evidence must establish
13 that the defendant's acts were reckless, willful, and wanton,
14 meaning there was a conscious failure to exercise due care; if
15 you find that the conduct was willful, wanton, or reckless" --
16 I'm sorry, "Clear and convincing evidence: The plaintiff must
17 prove by clear and convincing evidence that the conduct
18 complained of included a consciousness of wrongdoing at the
19 time of the conduct." And then it goes into a definition of
20 clear and convincing evidence.

21 So I guess I'll play with this some tonight. I will
22 email you the draft that we have got so that we're not just
23 starting off from zero tomorrow morning and then we can go
24 from there.

25 MR. McLEOD: Thank you, Your Honor.

1 THE COURT: If there's specific language that you'd like
2 to send and you want to email it, I will do my best to take a
3 look at it tonight.

4 MR. THOMPSON: Your Honor, we -- the defense will ask
5 that S.C. Code 5-7-145 be charged.

6 THE COURT: And what is that?

7 MR. THOMPSON: That's the ability to provide lifeguard
8 services on the beach and the Beach Service being able to
9 provide rentals and activities such as that. So that's
10 5-7-145.

11 THE COURT: Okay.

12 MR. THOMPSON: Your Honor --

13 MR. McLEOD: I was just going to say, Your Honor, I don't
14 think Your Honor can charge that to the jury just based upon
15 the plain language of the statute. The statute was passed not
16 for the benefit of the private beach company. It was passed
17 to give authorization to the City. And it does not contain
18 the language that they say it does, and so it would be very
19 misleading to the jury because they can't decide what it
20 means, and the Court can only charge the plain language.

21 And so our case is not based upon the statute. The
22 public duty rule is not applicable. And we'd object, Your
23 Honor, to you charging that to the jury.

24 THE COURT: I'm going to take a look at it.

25 MR. THOMPSON: Yeah, it's very clear. I mean, it says,

1 for example, among other things, "Section 4: Lifeguard
2 personnel employed by the private beach safety company must
3 tested and certified as required by the municipality."

4 That's huge in this case. It's part of -- you know, I'm
5 telling the jury that, you know, we don't have to be USLA
6 certified. We don't have to be USLA anything. This is the
7 instruction to the jury that says, yeah, you got to meet up
8 with the municipality's requirements. And if this isn't
9 charged, the jury doesn't have the very basic concept, which
10 is the reason we are here, the reason we can do what we can is
11 because of this statute.

12 THE COURT: Again, I'm going to look at the language of
13 the statute tonight. Do you have something you want to hand
14 up to me?

15 MR. THOMPSON: Your Honor, there are two others. There's
16 what I would call -- we have called it a safer alternative
17 charge. I'll hand it up to you. It talks about the concept
18 of duty will not extend beyond reasonable limits. The sole
19 fact that a safer method of performing some act may have
20 existed is not sufficient to establish negligence. The fact
21 that there may have been a safer method than that employed or
22 that danger might have been avoid by action in a different
23 manner does not make an act negligent.

24 There's three cases cited for that prospect. Your Honor,
25 obviously, that is significant in this situation. Mr. McLeod

1 kept arguing or talking with the witnesses about putting beach
2 attendants in yellow shirts and blue shirts, and this goes to
3 that concept.

4 MR. McLEOD: Trey, let me see the cases, please.

5 THE COURT: Do you have a copy for him and a copy for me?

6 MR. THOMPSON: I, unfortunately, do not, but we will make
7 sure he gets a copy. I'd rather -- I mean, he can --

8 THE COURT: If you have got it that you can just email it
9 to me, that's fine.

10 MR. THOMPSON: Yes, Your Honor. We'll make sure he gets
11 it.

12 And the only other charge is unavoidable accident, Your
13 Honor. I'll hand it up. And this is a quote: "A defendant
14 cannot be held liable for what is called a mere accident or an
15 unavoidable accident, which may be defined as an occurrence
16 not proximately due to or caused by, either in whole or in
17 part, any negligence or wilfulness on the part of any person.
18 In other words, such occurrence as is free from fault arising
19 from human agency. So that's unavoidable accident.

20 MR. McLEOD: Your Honor, just on the one on safer
21 alternatives, my guess is these are going to be product
22 liability cases where that is part of the plaintiff's burden
23 of proof. But I'll look at these cases, and if I could just
24 get to Your Honor in the morning on this one.

25 THE COURT: Yeah, I'll look at it as well.

1 MR. THOMPSON: Can I hand them up, Your Honor?

2 THE COURT: My thought is unavoidable accident is
3 probably something when we need to charge. Do you have any
4 thoughts about that?

5 MR. McLEOD: I want less issues, I mean, you know, let me
6 see what it says. Generally, I just say charge whatever you
7 want to, because I don't want to have to deal with it up the
8 road, you know? Well, I think unavoidable accident, that's
9 covered in your proximate cause charge. I mean, that's what
10 proximate cause is.

11 THE COURT: I mean, we charge this a lot.

12 MR. McLEOD: Then charge it. If you charge it a lot and
13 he wants it, then charge that one.

14 THE COURT: Pretty much every car wreck case I have.

15 MR. THOMPSON: We may have one more, Your Honor, with
16 regard to the pre-impact fear concept, that it's not
17 recoverable. We'll work on that one. Because the one case I
18 have, it just says it's not recoverable but doesn't explain
19 it, so we'll see if we can get a better explanation of that.

20 THE COURT: Anything y'all want to talk about tonight?

21 MR. McLEOD: No, Your Honor. We'll work on the mortality
22 table tonight and look at the charge and the verdict form and
23 see you in the a.m.

24 THE COURT: All right.

25 MR. McLEOD: Thank you.

1 THE COURT: Thank you.

2 MR. THOMPSON: Thank you, Your Honor.

3 MR. McLEOD: Your Honor, this is Plaintiff's 30. This is
4 the Jaworski file. I did it for ID and I intended to move it
5 in. Do you have any problem? The court reporter tells me I
6 forgot.

7 THE COURT: Yeah, we have 29 and 31. We didn't have 30, but
8 she did read from it.

9 MR. McLEOD: So this is in.

10 (Plaintiff's Exhibit No. 30 was received into evidence.)

11 (At 5:55 p.m., the above trial was adjourned until July 29,
12 2022, at 9:00 a.m.)

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1 CERTIFICATE OF COURT REPORTER

2
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4 County of Horry)

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6
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14
15 Submitted: *August 10, 2022*

16
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18 /s/ *Bobbi Fisher*

19 Bobbi J. Fisher, RPR

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