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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2018-CP-10-4083
Appellate Case No.: 2022-001114

Charleston Carriage Works, L.L.C., Appellant,

v.

Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc., Respondents.

RECORD ON APPEAL
Volume 3 of 4

June 21, 2023

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-04083
Charleston Carriage Works, L.L.C.,)	
)	
Plaintiff,)	
)	**MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION**
vs.)	Rule 59(e), *S. C. Rules of Civil Procedure*
)	Rule 60, S. C. *Rules of Civil Procedure*
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,)	
)	
Defendants.)	
)	

The plaintiff seeks an Order amending or altering the Court's May 5, 2022, Order denying sanctions on two broad grounds: First, the Order is ambiguous as to whether it is a decision on the merits that the Court finds the defendants Harley and Charleston Carriage Horse Advocates have properly responded to discovery requests in accordance with Rule 26 of the *South Carolina Rules of Civil Procedure*, or whether, in the alternative, the Court is finding that the plaintiff's motion for sanctions is premature for failing to renew or replead the Plaintiff's original September 27, 2019, Motion to Compel. Either way, the Order is controlled by a palpable errors of law on the facts and on the law; to wit, that a party must exhaust multiple motions to compel prior to invoking an application for sanctions and that the Plaintiff acquiesced to Defendants' deficient responses. Moreover it is based on an inaccurate and unsupported timeline and conclusions reached without participation by the Plaintiff, which deprives the Plaintiff of substantial procedural due process by deciding an important motion without affording the Plaintiff an opportunity to be heard.

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1. Ambiguity

At the outset, the Plaintiff is not confident of his reading of the Order under review and requires clarification. The Court reaches a conclusion on page 5 that: ". . . the court[1] indicated that Plaintiff should return for another motion to compel to compel hearing if physical access to the computers could not be worked out. Rather than seek a court order via a motion to compel, Plaintiff is hoping the Court will bypass this step and award access as a sanction under Rule 37(b)." This ruling leaves the plaintiff in a quandary because it is unclear if the Court is saying:

A) The motion for sanctions is premature, or

B) A second motion to compel is required,[2] or

C) The parties must return to Judge Price and seek a successive application to compel, or

D) Some combination of A) through C).

It is Court's conclusion that "the court indicated that Plaintiff should return for another motion to compel hearing if physical access to the computers could not be worked out" (Order under review at page 5) is neither a prohibition against filing a motion for sanctions, or a judicial imposition of a condition precedent, discussed in detail below, not found in the *Rules of Civil Procedure*. The error in the Order under review is that it ignores the overwhelming evidence of the Defendants, Harley and Charleston Carriage Horse Advocates, consistent interference in discovery.

In addition to requiring clarification of the Court's holding, the Court's reliance on the legal authority cited by the Court in denying Plaintiff's motion demonstrates the Order under review is controlled by a palpable error of law. The Opinion cited by the Court stands for the opposite proposition for which it is cited and supports the Plaintiff's position, not the Defendants'.

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[1] This sentence is unclear but appears to be a reference to a statement of Judge Price on May 28, 2020 at the Zoom motion to compel.

[2] Plaintiff believes this is the Court's ruling, but it is not clear.

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To reach its conclusion that the Plaintiff's motion for sanctions is premature, the Court relies on a civil forfeiture drug case, *Richardson on Behalf of 15th Circuit Drug Inf't Unit v. Twenty-One Thousand and no/100 Dollars*, 430 S.C. 594, 846 S.E.2d 14 (Ct. App. 2020), which is a curious selection of authority because that case holds the exact opposite of the principle for which it is cited. In *Richardson*, the claimant served both standard and specifically tailored interrogatories on the Solicitor's office on August 3, 2015. The Solicitor never provided a formal response, and the Clerk's office called the case for a Bench Trial on December 6, 2016. At the beginning of trial, the Claimant's lawyer asked to be relieved in the case and a second lawyer substituted in. The trial court decided it would grant the substitution, but deny the continuance, and the Claimant's lawyer asked for sanctions against the Solicitor (excluding his witnesses and exhibits) because the Solicitor never responded to discovery. The trial judge then asked counsel why he did not file a motion for sanctions under Rule 37. Of course, here the Plaintiff **did** file a motion for sanctions under Rule 37. The claimant in *Richardson* did not. The case proceeded to trial, and the Solicitor used evidence he never provided the claimant, and the Court forfeited the $21,000.00.

When the Claimant in *Richardson* asked the trial judge to exclude evidence not produced, the Court made a finding:

> I am going to go ahead and allow the case to go forward. . . . I don't know what to do in a case like this when [the Solicitor] has, as an officer of the Court, said he never received the discovery request. . . . [A]nd I've got a certificate of mailing that says that [White] sent the document request. Then no motion to compel was ever made where this could have been straightened out. I don't know what else to do but allow the case to go forward.

The case went forward, and the Solicitor relied on documents he never provided to the Claimant. The Court of Appeals reversed stating in applicable part: **"The text of Rule 37, SCRCP, tells us a party does not need to file a motion to compel to requires a sanction for another party's failure to answer a properly served discovery request."** (emphasis added)

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This holding is the precise opposite of this Court's finding that the plaintiff forfeited the right to seek sanctions by not applying for a successive motion to compel prior to seeking sanctions. As discussed more fully below, the Plaintiff made many requests to obtain the information he sought and the Defendants, Harley and Charleston Carriage Horse Advocates, did nothing but obstruct the Plaintiff. In *Richardson*, the Court of Appeals went on to explain the various options available to a party when Defendants refuse to provide discovery:

A. Rule 37, SCRCP

The text of Rule 37, SCRCP, tells us a party does not need to file a motion to compel to request a sanction for another party's failure to answer property served discovery request. A party served with written discovery has a duty to answer it, unless the party objects based on a stated reason or moves for a protective order. *See* Rules 26(c), 33(a), and 34, SCRCP ; *CFRE, LLC v. Greenville Cty. Assessor,* 395 S.C. 67, 83, 716 S.E.2d 877, 885 (2011) ("An affirmative duty does exist to answer interrogatories and respond to requests to produce."). If no answer, objection, or motion is received, the discovering party may—but is not required to—move for a court order compelling discovery. Rule 37(a)(2), SCRCP. The discovering party may also make such a motion if it believes, in good faith, the answers it has received are incomplete or the objections improper. *Id.* ; Rule 37(a)(3), SCRCP. The court may then issue an order compelling discovery; if the order is not obeyed, the court may take appropriate action, including imposing sanctions pursuant to Rule 37(a) and (b), SCRCP. But if a party simply fails to respond to discovery, the discovering party need not proceed under Rule 37(a) and (b); instead a remedy awaits in Rule 37(d), which allows "the court ... on motion" to "make such orders in regard to the failure as are just." Rule 37(d), SCRCP. The sanctions authorized by Rule 37(d) are therefore available even to a discovering party who has not spoken up about his adversary's silence. As we explained in *Downey v. Dixon* :

> Rule 37(b) provides sanctions for the violation of an order of the Court to provide or permit discovery. Rule 37(d), on the other hand, provides for sanctions against a party who fails to answer interrogatories or attend his own deposition. The distinction between the two subdivisions is that there must be an order of the Court before sanctions are imposed under subdivision (b), while under subdivision (d) a party may move directly for the imposition of sanctions. *See* H. Lightsey & J. Flanagan, *South Carolina Civil Procedure* 316 (1985) ("[Under Rule 37(d)] sanctions may be imposed without obtaining an order compelling discovery ...."); 4A J. Moore, J. Lucas & D. Epstein, *Moore's Federal Practice* § 37.05 at 37–100 (2d ed. 1984) (addressing the comparable Federal Rule: "In short, if the party from whom discovery is sought complies with the rule in question by making the initial response, he has a right to refuse discovery until compelled by court order, subject to the expenses of determining the justification of his refusal; but if he does not comply with the rule, he is subject to the sanctions set forth in Rule 37(d)."); 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2291 at 807 (1970) (addressing the comparable Federal Rule: "No court order is required to bring Rule 37(d) into play.").

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294 S.C. 42, 44, n.1, 362 S.E.2d 317, 318 n.1 (Ct. App. 1987) (alterations in original). **Rule 37(d), SCRCP, therefore empowered White with the right to request sanctions against the Solicitor for failing to respond to White's discovery requests without first filing a motion to compel.** *Id.* at 44, 362 S.E.2d at 318; *Callen v. Callen*, 365 S.C. 618 627, 620 S.E.2d 59, 63-64 (2005) (finding trial court has duty to delay trial to determine whether exclusion of an undisclosed witness is appropriate, "regardless whether the proponent of the testimony is allegedly in violation of a pre-trial order or a court rule").

Richardson v. Twenty-One Thousand and No/100 Dollars, 430 S.C. 594, 846 S.E.2d 14 (Ct. App. 2020) (emphasis added)

The Court of Appeals reversed the forfeiture and remanded the case back to the circuit court holding: "We reverse the trial court's forfeiture order and remand to allow discovery to be completed before a new trial. On remand the trial court may revisit White's sanction if necessary." Thus the Court's May 5th Order is controlled by an error of law because *Richardson* makes clear that an aggrieved party is not required to file multiple motions to compel—or even a single motion to compel—in order to be eligible to apply for sanctions. As demonstrated in the following section, the defendants, Harley and Charleston Carriage Horse Advocates have been nothing but frauds and obstructionists from the inception of this case.

2. Material Misrepresentations

Both the timeline and representations about Plaintiff's alleged acquiescence provided by the defendants, Harley and Charleston Carriage Horse Advocates, are materially false, refuted by the record, and by relying on them to reach conclusions about Plaintiff's efforts to gain discovery, the Court erred. This error is compounded by the fact that Plaintiff has not been afforded an opportunity to be heard on this issue. For example, the Court makes several findings about the Plaintiff's state of mind regarding discovery which it cannot possibly do without affording the parties an evidentiary hearing and right to be heard. However, the Court makes these findings solely on the basis of an unsolicited proposed Order without an evidentiary basis. For example, the Court finds: "Plaintiff received what it understood it would receive from CCHA and Harley."

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There is no evidence to support this finding on the Plaintiff's state of mind, especially when there is copious evidence contradicting it, and had the Plaintiff been afforded an opportunity to be heard on its Motion for Sanctions, it could provide such evidence to the contrary. More importantly, an unsupported assertion is not a sufficient basis to reach a conclusion about a party's state of mind, especially where the record demonstrates the opposite. Consider, for example, the Plaintiff's October 28, 2020, correspondence to counsel for the Defendants, attached here as Exhibit 1. This correspondence makes clear that the Plaintiff's proposed search terms was only a small part of the material it was seeking: "I agree that search terms pay a minimal role our case, but we know from the thousand or so e-mails turned over from the Charleston Animal Society that your client has been thoroughly dishonest in providing discovery." (October 28, 2020 correspondence, Exhibit 1) The correspondence goes on to summarize Ellen Harley's deployment of dirty tricks and utter contempt for court process. Nowhere is this commitment to fraud demonstrated more clearly than in the Defendants', Harley's and Charleston Carriage Horse Advocates') misrepresentations made to this Court regarding the Plaintiff's efforts to secure bank records.

At the second hearing before Judge Price on June 15, 2020 (the first hearing was on May 28, 2020), the Defendants, Harley and Charleston Carriage Horse Advocates stated on the record that they would produce the Defendant's monthly bank statements:

MR. THOMPSON: Your Honor . . . [Plaintiff] is seeking at this point in time . . . bank statements from CCHA, **the monthly bank statements just as they would be delivered to the client from the bank**. We are going to present those, Judge.
THE COURT: So, are y'all consenting to the bank statements?
MR. THOMPSON: Yes, your Honor.

Transcript page _____, lines ___-____ (emphasis added)

Immediately following the June 15th hearing, the Court entered an Order on June 17, 2020, which says in its entirety:

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> The Plaintiff's motion to compel discovery against Defendants is granted. The Defendants will produce the bank statements. As to the search terms issue, we will take this under advisement for thirty days. If a formal order is desired the parties are free to submit one. June 17 2020

As may be seen by reference to Exhibit 2, which is a sample of the documents provided by Harley and Charleston Carriage Horse Advocates, whatever the documents are as produced by Defendants—and Plaintiff suspects they are homemade—they are not "**monthly bank statements just as they would be delivered to the client from the bank.**" When the Defendants (Harley and Charleston Carriage Horse Advocates) produced the putative "bank statements," Plaintiff wrote to counsel on August 13, 2020, pointing out that whatever they produced, they were not bank statements. This correspondence is attached as Exhibit 3, and states in applicable part:

> I am writing to you about the obvious deficiencies in your third supplemental responses to our request to produce. Your production of putative "bank statements" are not bank statements. . . . In the meantime, I have provided you with a copy of my subpoena to South State Bank to get the records directly from them. Let me know if one of you wishes to discuss this."
> Exhibit 3, Correspondence Goldstein to Thompson and Mann

Because the Plaintiff tired Harley's willful disobedience to court process, it took a different tack and, to break the impasse and as set forth in the correspondence quoted above, issued on August 13, 2020, a subpoena to South State Bank, attached here as Exhibit 4 for the same documents Harley and Charleston Carriage Horse Advocates said they would turn over. The defendants, Harley and Charleston Carriage Horse Advocates responded to this effort to get basic financial information by filing on August 19, 2020, a demonstrably frivolous motion on to quash the subpoena on three grounds:

1. South State is a foreign corporation not subject to a subpoena;

2. The Bank statements are not relevant

3. The scheduling Order had expired. (In four decades of practice, these defendants are the first to attempt to run out the clock on a case delayed by first a serious medical emergency and

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thereafter by a worldwide pandemic. As will become clear in the discussion following, the Plaintiff has pursued discovery in a timely manner, while the Defendants, Harley and Charleston Carriage Horse Advocates have been nothing by dilatory and obstructionists.)

This motion to quash a properly issued subpoena has never been resolved, but if it is obviously frivolous because it seeks to thwart the discovery of the identical documents the Defendants agreed they would turn over. The Defendants, Harley and Charleston Carriage Horse Advocates, cannot seriously object to a subpoena because South State Bank is a "foreign corporation" and therefore not subject to subpoena. First, its home office is located at 520 Gervais Street in Columbia, and second, even if it were a foreign corporation, it is still subject to a properly issued subpoena. (South State Bank was organized in Florida and operates in six Southern states.) Under the Defendants' theory no out-of-state corporation doing business in South Carolina is subject to a subpoena. Plaintiff's counsel made the Defendants' contumacious conduct clear in August 31, 20020 correspondence, attached here as Exhibit 5, which states in applicable part:

> 5) Ms. Harley's interference in a lawfully issued subpoena to South State Bank is frivolous and unethical. First, she provided me what she calls "bank statements." Whatever they are, they are not "bank statements," and she must have gone to considerable effort to persuade South State Bank to create the computer printout she provided because it reveals nothing about the source of her funds or the manner in which they are spent. Second, assuming arguendo, that what she produced are, in fact, her "bank statements," then how can she object to a subpoena **for the same documents**? And third, her assertion that South State Bank is a "foreign corporation" is preposterous. If I made that assertion, I have no doubt you would file a second complaint against my license, and I have no doubt that Disciplinary Counsel would have an opinion on the matter. Just because South State Bank (which is up the street from me) utilizes a central clearing house for its subpoena response in Georgia does not transform it into a "foreign corporation." South State Bank (which is up the street from me) asked me to send the subpoena to their Legal Department, which I did.
>
> Exhibit 5, August 31, 2020, Goldstein correspondence to Thompson and Mann

There are other such examples of the Defendants' contumaciousness, but the point is that there is nothing in this record to support a finding that the Plaintiff acquiesced to the Defendants'

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deficient responses, and it is a denial of fundamental procedural due process to make such findings without affording the Plaintiff an opportunity to be heard to refute them.

3. Incorrect timeline

Not only have the defendants misled the Court on Plaintiff's alleged acquiescence of demonstrably insufficient discovery responses, but also the Order under review promulgates an incorrect timeline of events that creates a false impression of the sequence of material events. The correct timeline is as follows:

On **September 30,2018**, the Plaintiff sent Requests for Production to Harley and Charleston Carriage Horse Advocates asking for various documents, including bank statements. This request for production is attached here as Exhibit 6. The Defendants responded to this Request for Production on **February 22, 2019** as follows:

> CCHA objects to this request on the grounds that it seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. CCHA's financial condition is not at issue in this lawsuit and any discovery by Plaintiff into these matters plainly exceeds the scope of Rule 26, SCRCP

On **July 31, 2020**, the Defendants, Harley and Charleston Carriage Horse Advocates, delivered the putative "bank statements" to Plaintiff. A sample of one of these "bank statements" is attached here as Exhibit 7. The Court can view it and determine for itself if it constitutes a monthly bank statement "just as they would be delivered to the client from the bank." Whatever it is, it is not a "bank statement."

13 days later, on **August 13th**, Plaintiff gave up on the Defendants, Harley and Charleston Carriage Horse Advocates, voluntarily complying and issued a subpoena directly to South State Bank. This subpoena was discussed above and previously attached as Exhibit 4.

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On **August 19, 2020**, the Defendants, Harley and Charleston Carriage Horse Advocates, filed a motion to quash the subpoena for the records they said they would voluntarily produce. This motion remains pending.

October 5, 2020, Plaintiff files a Motion for Sanctions alleging the defendants, Harley and Charleston Carriage Horse Advocates are willfully refusing to participate in discovery.

December 12, 2020, the Defendants produce some bank statements but these are both illegible—because they are deliberately produced at a low resolution—and redacted and again are not "just as they would be delivered to the client from the bank." A sample of this December 12th production is attaches as Exhibit 8. The Court can see for itself that the documents are doctored to make them illegible.

After Plaintiff called deficiencies in the production to opposing counsel, the Defendants, Harley and Charleston Carriage Horse Advocates, supplemented their responses on **February 2, 2021**. The Order under review incorrectly finds "On December 2, 2020, counsel for CCHA and Harley, and counsel for the Plaintiff agreed by telephone to resolve the dispute regarding the bank statements by the production of these very same bank statements in their entirety, redacting only the portion of the deposit tickets which could indicated the pledge source of the deposit." There are two important erroneous points about this finding: the first is that it is grounded on nothing more than an unsolicited proposed Order, and second, the inaccuracy of the Court's conclusion is demonstrated in the next exhibit.

On January 31, 2021, Plaintiff once again wrote to counsel in an effort to exact compliance with discovery. That letter is attached here as Exhibit 9, and it says in applicable part:

> Since I have not received a response to my December 22nd letter (including to provide the limited discovery you agreed to provide), which is another in a long line of attempts to narrow and solve the outstanding discovery issues, let me try another time.
>
> . . .

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In addition, we are confident that many of the self-serving posts on the Charleston Carriage Horse advocates' page are Ellen Harley masquerading as fictional, third party posters. Once again, this is something we can prove only when your client provides us the computer forensic access to which we are entitled. Likewise with the large, redacted deposits: it is more probable than not that some of these large deposits are either from the Charleston Animal Society or its principals. Once again, this is basic information that your client should have provided long ago. At some point, we are going to end up in front of some judge to resolve all these things. The Court is either going to compel you to provide computer access and full financial disclosure or not. Based on your long trial experience, which do you think it will be?

. . .

I have repeatedly offered confidentiality agreements, which satisfied Beth Palmer, and which we have adhered to rigorously, Please let me know if there are any additional assurances or other mechanisms I can offer you to allow us to break this discovery impasse.

Exhibit 9, January 13, 2021 correspondence

The **December 22nd** letter referenced was a letter informing counsel that, among other things, the copies provided were not legible even under a bright light with a magnifying glass. See Exhibit 9 for the complete copy of this letter.

On **February 8, 2021**, the Plaintiff sent another letter, attached here as Exhibit 11, demonstrating that the Court's finding in the Order under review that the parties reached an accord on discovery deficiencies is incorrect:

. . . your cover letter [transmitting 14 pages] inaccurately posits that we reached an "agreement" on your clients' discovery responses. You state: "As we have agreed, we have redacted the portion of the statements' deposit tickets which could indicate the pledge source of the deposit." To be clear, we have not reached that agreement. We have, however, made several proposals and counter-proposals in an effort to narrow the issues.

. . .

As to fundraising, the law requires that the Charleston carriage Horse Advocates to maintain a list of each contribution, including the amount contributed and identifying information of the contributor. See § 33-56-75, S. C. Code, ann. "Donor list; professional fundraising counsel, professional solicitor; responsibilities and prohibitions; violations; fines." I trust we can agree that the purpose of these statutory obligations is not to promote secrecy.

As for our putative "agreement," what I told you was that we have no interest in the identities of small contributors, but I have asserted numerous times that the identity of a large contributor is both relevant and material information. If, for example, Charleston Animal Society donates $20,000.00 to the Charleston Carriage Horse Advocates, whether such donation is direct or indirect is a significant and relevant fact. Our willingness to enter into a confidentiality agreement to protect the dissemination of this information should satisfy your client and put an end to her obstruction and delay. At this juncture, I have no realistic expectation that Ms. Harley will comport herself in accordance with the rules governing discovery, and while I remain willing

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to consider any reasonable proposal to bridge this gap, her continued contumaciousness suggests that only a court can break this impasse. I do appreciate, very much, your efforts to find a solution."

Exhibit 10, February 28, 2021 correspondence

Thus, when the Court makes a finding that "physical access to the computers is unnecessary because CCHA and Harley have nonetheless run the proposed search and provided Plaintiff in excess of 10,000 responsive documents," (Order under review at page 5), the Court not only ignores the Plaintiff's filings and central theory of the case, but also turns the rules of discovery on their head. The Court's determination that "physical access to the computers is unnecessary" kills the case and returns a verdict for the Defendants before the Plaintiff has called a single witness. In essence, the Court is limiting the Plaintiff's evidence to accepting the word of a demonstrable prevaricator that she has faithfully responded. As the above analysis demonstrates, the Court's erroneous conclusion that Plaintiff has no need for an evaluation of the Defendants' conduct online ends the case before it began and rewards a fraudster for fraudulent behavior. The Court compels the Plaintiff to accept the word of a demonstrable perjurer. Finally, among the many filings overlooked by the Court, there is no greater fraud than inducing the Court to accept the Defendants' 10,000 page production as conforming to the rules of discovery. Plaintiff's Third Supplemental Affidavit filed September 29, 2021, carefully breaks down the bogus production and demonstrates how deliberately bogus it is. This affidavit shows that the putative 10,000 pages of discovery material consists of:

> 2913 pages (35.3%) are duplicate pages. (This is shocking because the defendants have been telling us for months that the delay was caused by their efforts to avoid duplication.)
> 1604 pages (19.4%) are copies of documents filed in the case
> 1192 pages (14.4%) are signatures of persons advocating for the ban of carriages
> 726 pages (8.8%) are Google Analytic Performance Statistics
> 190 pages (2.3%) are e-mails. What is noteworthy about this figure is that the 182 pages represents 37 e-mails that we have not previously seen. By contrast we previously obtained 689 pages of e-mails from Charleston Animal Society communicating with Charleston Carriage Horse Advocates and Harley.
> 174 pages (2.1%) are documents previously submitted in response to the 30(b)(6) deposition. (articles of incorporation, secretary of state filings, etc.)

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163 pages (2%) are news articles
143 pages (1.7%) are comments from ban petitions
136 pages (1.6%) are random letters of support and miscellaneous topics
125 pages (1.5%) are miscellaneous ordinances, PETA Carriage Incidents, Police Reports and Ellen Harley slides used in her various presentations
119 pages (1.4%) are F.O.I.A. requests and protest permits
102 pages (1.2%) Billboard agency spec sheets
84 pages (1%) Insurance Policy Documents
77 pages (0.9%) Social Media performance statistics
73 pages (0.9%) 4 horse care manuals
55 pages (0.7%) Chicago Defamation Suit
54 pages (0.6%) Charleston Carriage Works (my) Facebook Posts
51 pages (0.5%) City of Charleston Incident Reports, Agendas, and Minutes
44 pages (0.5%) blank pages
43 pages (0.4%) City of Charleston public information
35 pages (0.4%) Charleston Carriage Horse Advocates e-blasts
34 pages (0.4%) Facebook screenshots
33 pages (0.2%) Charleston carriage horse records supplied to Charleston Carriage Horse Advocates, *et. al.*
18 pages (0.2%) Chicago city ordinances
15 pages (0.2%) Charleston Animal Society Publications
15 pages (0.1%) 2017/2018 Profit and Loss statements and Schedule B's
14 pages (0.1%) Screenshots of miscellaneous summons
9 pages (0.1%) Book-keeping and social media invoices
6 pages (0.0%) Veterinarian reports
5 pages (0.0%) C.C.H.A. GuideStar info
3 pages (0.0%) Ellen Harley 2008 other charity "Campaign for Charleston's Future"
3 pages (0.0%) Screenshot of Charleston Carriage Web
Third Supplemental Affidavit filed September 24, 2021

The Court can see at a glance that such contrived production is designed to keep the Plaintiff off balance and create a false appearance of cooperation. It is everything but compliant. The Defendants forced the Plaintiff to pay for printing 1,604 pages of filings in this case! 2,913 pages are duplicates. 726 pages are pages of Google Analytic reports, which could be incredibly important documents, but to date, the Defendants, Harley and Charleston Carriage Horse Advocates, have held the Plaintiff's expert at bay because they know a forensic investigation will expose their manipulation of social media to target the Plaintiff and paint him in a false light and demonstrate how they go about banning any truthful information in order to stoke the false narrative and keep the pressure on the Plaintiff. See affidavit of Katherine Vaughn filed September

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28, 2021. In addition, such an investigation will probably reveal that Ms. Harley has created documents after-the-fact to cover her tracks and Mr. Abram's examination of metadata can easily reveal this. Thus the Court's erroneous conclusion that "Plaintiff received exactly what Defendants said they would provide and what Plaintiff knew they would provide" is both inaccurate and wholly unsupported by the record in this case. Moreover, making a finding about the Plaintiff's state of mind without affording the Plaintiff an opportunity to be heard, discussed in the next section, is a palpable error of law.

4. Procedural Due Process

For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified." [citations omitted] It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." [citation omitted] *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972)

As the Court noted when the parties were before the Court on September 29, 2021, the Court tabled the discovery issue, and the transcript of the hearing demonstrates that the hearing took up the issue of the Court's "six questions" from the *Erickson* case and reminded counsel the Court, not the lawyers, set the agenda for discussion. *Erickson v. Jones Street Publishers*, 368 S.C. 444, 629 S.E.2d 653 (2006) **The Court never took up the Plaintiff's motion for sanctions,** instructing counsel to concentrate on the six questions. See Transcript of September 29, 2021 hearing at pages 53 and 78:

THE COURT: Let's talk abut the statements themselves and which statements, and let's start there, and then let's work back around on some of these other issues.

MR. GOLDSTEIN: All right. I'm happy to do that, but before we do that, let me remind the Court that under *Doe versus Batson*, the Court can't even entertain a motion for summary judgment until the party resisting it has had a full and fair opportunity to to conduct discovery. That did not happen in this case.

THE COURT: Got it.

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. . .

THE COURT: I just need the questions answered. I got your—I acknowledge your position. But let's talk about the statements.

Transcript page 53, line 7—page 54, line 9

. . .

MR. GOLDSTEIN: . . . So I think that I've answered all of the Court's six questions. But, again, at the risk of being repetitious, I say again, under *Doe vs. Batson*, they can't' even move for summary judgment yet. I'm entitled to get all my discovery.

Transcript, page 78, line 1-5

When the Plaintiff attempted to guide the discussion back to the unresolved discovery issue, the Court directed counsel to focus on the Court's issue; to wit, the six *Erickson* questions. Therefore, while the Court acknowledged the Plaintiff's position on discovery, it never provided the Plaintiff an opportunity to be heard on the issue, even reminding counsel that the Court leads the discussion, not the other way around. "After 40 years, I know my place. So yes, you [the Court] direct us. You frame the questions." Transcript page 54, lines 3-5 The first notice the Plaintiff had that the Court was considering denying the Plaintiff's motion for sanctions was when opposing counsel provided an unsolicited proposed Order to the Court, which the Court adopted. This deprived the Plaintiff of a meaningful opportunity to be heard and is a substantial denial of procedural due process and error of law.

Conclusion

In conclusion, the Plaintiff respectfully submits that in adopting defendants' unsolicited Order in total, the Court relied on unsupported statements of opinion, overlooked the correct sequence of events including the Plaintiff's numerous efforts to exhort the Defendants, Harley and Charleston Carriage Horse Advocates to conform to the rules and grounded its ruling denying the motion for sanctions on the misapplication of the controlling case, *Richardson on Behalf of 15th Circuit Drug Inf't Unit v. Twenty-One Thousand and no/100 Dollars*, 430 S.C. 594, 846 S.E.2d

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14 (Ct. App. 2020) If the Court is not inclined to revisit and amend its Order, then the Plaintiff requests clarification as to whether the Order is a denial with prejudice or if it is the Court's statement that the application for sanctions was premature.

Respectfully submitted,

May 12, 2022

/s/ Thomas R. Goldstein
Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554 4291; (843) 554 5566 (fax)
tgoldstein@cobblaw.net

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EXHIBIT 1

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BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

October 28, 2020

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

Mr. Jenkins M. Mann, Esq.
Rogers Lewis
P. O. Box 11803
Columbia, S. C. 29211

Dear Jenkins,

I am responding to your recent e-mail regarding your request for a list of search terms. In your e-mail, you criticize me for dragging my feet on providing search terms for you. Just so we are clear, here is what you wrote:

> *I'm following up again to see if you have a list of search terms that you want run through CCHA's computer. I cannot conduct a search unless and until I have that. This is akin to a discovery request – it comes from the lawyer, not the expert. Certainly if you want to consult with your expert regarding the terms to be search, I understand. If that's the case, please do so this week and get back to me.*
>
> *I need to memorialize that I've been asking you for this list of search terms now for several months and repeatedly telling (as below) that I am prepared to respond to your request for information off of CCHA's computer (and any other databases you tell me you want us to search, if any) as soon as you tell me what it is us to look for and where you want us to look.*
>
> *I remain concerned that this is an issue you don't want to resolve because you want to argue that you don't have documents or information to defeat summary judgment 2+ years into this case because of a failure by CCHA and Harley to respond to your discovery requests. I intend to show the court this repeated correspondence asking you to provide me with what it is you want and attempting to resolve this "dispute." So, again, I need to know what it is you want off of their computer.*

I did tell you I would provide you a list of search terms, which should be obvious to any one of us these days:

Brody
Broderick
Christoff
Big
John
Joe
Elmore
Dan

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Krosse
Riccio
CAS
Animal
Society
Cruel
Cruelty
Pocketbook
Income
PETA
HSUS
ASPCA
Aldwin
Roman
City of Charleston
City Council
Wagon
Abuse
Abusive
Temperature

However, what frustrates me—hence my preference for letters, which require composition, review, editing for clarity, rather than e-mails, which are little more than gossamer thoughts—is my inability to articulate our theory of the case. I agree that search terms play a minimal role in our case, but we know from the thousand or so e-mails turned over from the Charleston Animal Society that your client has been thoroughly dishonest in providing discovery. I will not call her a "liar" again since that term so upset you, but, for the record, Ms. Harley's effort to gain a collateral advantage by securing a disciplinary finding against me failed to find its mark. It did, however, provide additional cogent evidence of her pattern of dishonest behavior, which a jury may find revealing. You already have a copy of her complaint against me, and I am attaching the Supreme Court's decision, which I plan on using as evidence in the trial of this case, so please consider this letter a supplemental response to request to produce. Our theory of the case is that Ms. Harley, like many dishonest and fraudulent hucksters populating social media, deliberately created a false impression of Brody as an animal abuser. So while the search terms will generate additional evidence of Ms. Harley's conspiracy with Charleston Animal Society as amply demonstrated by the e-mails turned over by the Charleston Animal Society, the more important evidence is the manipulation of her social media presence, which we cannot examine without access to her devices and the administrator keys. As you are aware, when a person takes action on a computer, there is a metadata record of who did what when. This is critically important as it relates to edited and deleted items. And we can be confident in our inference, based on Ms. Harley's demonstrated dishonesty and unethical conduct to date, that she has deleted anything that will be helpful to our cause. I have not even deposed her yet, and we have her in so many lies, I cannot keep them straight.

Now, here's the thing: you are an accomplished, savvy, and effective lawyer. In brainpower, I am operating at about 40 watts while you are a laser, burning with phosphoresce

intensity. So, when you pretend you do not know what I am looking for, not only do I not buy it, but also I acknowledge that you are playing a delaying game, hoping to run out the clock on me, just like Trey did in asserting that I cannot subpoena records from SouthState Bank because it is a "foreign corporation." I know that I do not match up with the legal talent arrayed against me but come on.

Sure, the search terms will turn up e-mails your client said she did not have, but that is not the heart of my case. The heart of my case is her manipulation of social media to attack Brody economically and which could have gotten Brody or Amber or one of their employees killed. The consistent expurgation of truthful information demonstrates an intent to cast Brody in a false light, and this is a foundation of our case. Your refusal to make the devices available for forensic examination is designed to thwart our search for truth. Whether Ms. Harley was acting in her individual capacity or as the principal of Charleston Carriage Horse Advocates, she is prohibited from publishing false information, and deleting true statements to create and convey a false message.

In conclusion, please reconsider this intransigence and please provide Steve Abrams the access to the Charleston Carriage Horse Advocates devices so he can do a forensic study just like he has done in hundreds of cases. Can we please cut through the posturing and give Steve access to the devices and the Administrator keys? Obviously, we will agree that any proprietary information—such as the Administrator keys—will not be disclosed to me or Brody. This is not your first experience with computer forensics, and it is obvious what we are seeking to discover. I look forward to hearing from you. With kind regards, I am

Very truly yours,

TRG/

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

enclosure: Supreme Court letter, Oct. 22, 2020

cc:
Beth Palmer
Trey Thompson

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EXHIBIT 2

(June 16, 2020, transcript being prepared)

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EXHIBIT 3

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BELK, COBB, INFINGER AND GOLDSTEIN, P.A.
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August 13, 2020

Mr. Joseph Thompson
Hall Booth & Smith, P.C.
111 Coleman Boulevard
Mt. Pleasant, S. C. 29464

Mr. Jenkins M. Mann
Rogers Lewis
P. O. Box 11803
Columbia, S. C. 29211

Re: Charleston Carriage v. Harley, *et. al.*, 2018-CP-10-04083

Dear Lawyers,

I am writing to you about the obvious deficiencies in your third supplemental responses to our request to produce. Your production of putative "bank statements" are not bank statements. I do not by what mechanism your client persuaded South State Bank to create the documents you provided, but whatever they are, they are clearly not bank statements. Because of her continuing lack of responsiveness, I am in the process now of preparing a third motion for sanctions, in which I will ask for Ms. Harley's pleadings to be struck and the matter set for a damages hearing as to her and her group. She has made it Hubbell telescopic clear that she will not participate in discovery, and nothing I do or say dissuades her from her continuing contumacious conduct. As always, I am open to discussing this matter in the hope that we can resolve the continuing discovery disputes without further involving the Court, but since she has not conformed her conduct to acceptable standards to date, I am not optimistic that either one of you can persuade her to do otherwise. Moreover, I do not know who to call since she has a platoon of lawyers handling the case. It would be helpful if you all could take a vote and let me know who is speaking for the defendants. In the meantime, I have provided you with a copy of my subpoena to South State Bank to get the records directly from them. Let me know if one of you wishes to discuss this. With kind regards, I am

Very truly yours,

TRG/

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

encl.: South State Subpoena

cc: Elizabeth Palmer

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EXHIBIT 4

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.
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Fax: (843) 554-5566

August 13, 2020

South State Bank
ATTN.: LEGAL DEPARTMENT
P. O. Box 1900
Cornelia, Georgia 30531

RE: Charleston Carriage Works v. Charleston Animal Society, et. al.
Case No.: 2018-CP-10-04083

Dear Sir or Madam,

Enclosed please find a Notice of Deposition and a subpoena for bank records. It is not necessary to produce a live witness if, prior to the date scheduled for the deposition, the bank furnishes the records on or before the date of deposition along with a certificate attesting that the records provided are the true and complete records of the account. Please let me know if you have any questions or concerns. I am also enclosing the witness fee required by the rules, but if there are additional copying charges, please let me know, and I will promptly send payment. If for any reason, you think the costs associated with this request might exceed $200.00, please let me know in advance. With kind regards, I am

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/
encl: Notice of deposition, subpoena, check No. 19244

cc:

Beth Palmer (with enclosure)
Trey Thompson (with enclosure)

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Charleston Carriage Works, LLC, Plaintiff, vs. Charleston Animal Society, Ellen Harley, and Charleston Carriage Horse Advocates, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-04083 **PLAINTIFF'S NOTICE OF DEPOSITION 30(B)(6) SOUTH STATE BANK**

TO: South State Bank:

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the *South Carolina Rules of Civil Procedure*, the undersigned attorneys for the Plaintiff will take the deposition of the person or persons designated by the South State Bank to produce the bank records of Charleston Horse Carriage Advocates pursuant to Rule 30(b)(6) of the *South Carolina Rules of Civil Procedure.* The Bank shall designate:

Such director(s), manager(s), officer(s), employee(s), agent(s), or person or persons of authority for the Charleston Carriage Horse Advocates, Inc. who shall bring to the deposition such records and documents and has the knowledge and ability to identify such documents and testify as to the following:

(A) The identification of Charleston Carriage Horse Advocates banking records, including checking, savings, or other financial accounts, and provide records for photocopying;

(B) The identification of Charleston Carriage Horse Advocates signature cards or other corporate resolutions for the person or persons who have signatory authority of the Charleston Carriage Horse Advocate's financial accounts.

This deposition will take place at the law offices of Belk Cobb Infinger & Goldstein, P.A., 2344 Cosgrove Avenue, Charleston, SC 29405. The deposition will begin on Friday, August 28, 2020, at 10:00 a.m. This deposition will take place before a duly authorized Notary Public or other person authorized by law to administer oaths. This deposition will continue from

day to day until completed. Any document exchanged in discovery between the parties may be show to the witness or marked as an exhibit. The witness must bring a current passport or other current identification document issued by a federal or state government agency bearing a photographic image of the individual's face, signature, and a physical description. You are invited to attend and take part as permitted by the *South Carolina Rules of Civil Procedure.*

This deposition is to be taken either for discovery purposes or for evidence at the trial of the above cause of action.

If South State Bank produces the records ahead of the date and time scheduled for the deposition along with a certificate of the Bank's custodian that the production contains the full and complete records maintained for Charleston Carriage Horse Advocates, then no person need appear at the date and time set for the deposition.

August 13, 2020

Thomas R. Goldstein, S. C. Bar No. 2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
843-554-4291; 843-554-5566 (fax)
tgoldstein@cobblaw.net; rlambooy@cobblaw.net
ATTORNEYS FOR THE PLAINTIFF

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 13th DAY OF AUGUST, 2020.

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STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF CHARLESTON

CHARLESTON CARRIAGE WORKS, L.L.C., **CASE NO. 18-CP-10-04083**

Plaintiff,

v. **SUBPOENA IN A CIVIL CASE**

CHARLESTON ANIMAL SOCIETY, *et. al.*,

Defendants.

Pending in Charleston County

TO: South State Bank
1309 Rittenberg Blvd.
Charleston, S. C. 29407

South State Bank
P. O. Box 1900
Cornelia, Georgia 30531

subpoenas@southstatebank.com

( ) YOU ARE COMMANDED to appear in the above-named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY:	**COURTROOM:** **DATE AND TIME:**

(X) YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: Law offices of Belk, Cobb, Infinger & Goldstein, P.A., 2344 Cosgrove Avenue, N. Charleston, S.C. 29405	**DATE AND TIME:** Friday, August 28, 2020 10:00 a.m.

(X) YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects): Bank Statements and Bank Records for **Charleston Carriage Horse Advocates**, c/o Ellen Harley, Elizabeth Slagsvol, including cancelled checks, deposits, transfers for any and all financial accounts maintained at South State Bank in the name of **Charleston Carriage Horse Advocates**

PLACE: same as above	**DATE AND TIME:** same as above

( ) YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES:	**DATE AND TIME:**

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(B)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER:
Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Avenue
Charleston, SC 29405
(843)554-4291

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(C) AND THAT NOTICE AS REQUIRED BY 45(B)(1) HAS BEEN GIVEN TO ALL PARTIES.

_____
ISSUING OFFICER'S SIGNATURE AND TITLE- DATE: August 13, 2020
(Indicate if Attorney for Plaintiff or Defendant)
ATTORNEY FOR PLAINTIFF

PROOF OF SERVICE

SERVED: DATE: August 13, 2020 FEES AND MILEAGE TENDERED TO WITNESS (X)YES ( )NO AMOUNT $35.00

PLACE: P. O. Box 1900
Cornelia, Georgia 30531 subponeas@Southstatebank.com

SERVED ON (PRINT NAME): South State Bank Legal Department MANNER OF SERVICE: mail and electronic mail

SERVED BY (PRINT NAME): Thomas R. Goldstin TITLE: Attorney for Plaintiff

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on August 13, 2020
Date

Signature of Server

2344 Cosgrove Avenue
Charleston, SC 29415

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.
(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:
(i) fails to allow reasonable time for compliance; or
(ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provision of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or
(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
(iv) subjects a person to undue burden.
(B) If a subpoena:
(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
(iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is address will be reasonably compensated, the court may order appearance or production only upon specified conditions.
(d) Duties in Responding to Subpoena.
(1) a person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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19244

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
ATTORNEYS
P.O. BOX 71121
NORTH CHARLESTON, SC 29415-1121

FIRST CITIZENS BANK
67-148/532

8/13/2020

PAY TO THE ORDER OF South State Bank $ **35.00

Thirty-Five and 00/100********** DOLLARS

South State Bank
1309 Sam Rittenberg Blvd.
Charleston, S. C. 29407

MEMO subpoena

AUTHORIZED SIGNATURE

[redacted]

BELK, COBB, INFINGER & GOLDSTEIN, P.A. - ATTORNEYS

19244

South State Bank		8/13/2020	
8750 · Client Expenses	subpoena fee for documents; Charleston Carriage		35.00

First Citizens Bank subpoena 35.00

BELK, COBB, INFINGER & GOLDSTEIN, P.A. - ATTORNEYS

19244

South State Bank		8/13/2020	
8750 · Client Expenses	subpoena fee for documents; Charleston Carriage		35.00

First Citizens Bank subpoena 35.00

PRODUCT SSLT104 USE WITH 91663 ENVELOPE MCBEE To Reorder: 1-800-882-2331 or www.mcbeeinc.com
5561140501
FF1DA3 STKDK04 06/04/2018 00:38 -159-

ELECTRONICALLY FILED - 2022-May-13 02:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

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EXHIBIT 5

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BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

August 31, 2020

Mr. Joseph Thompson
Hall Booth & Smith, P.C.
111 Coleman Boulevard
Mt. Pleasant, S. C. 29464

Mr. Jenkins M. Mann
Rogers Lewis
P. O. Box 11803
Columbia, S. C. 29211

Re: Charleston Carriage v. Harley, *et. al.*, 2018-CP-10-04083

Dear Jenkins,

I am in receipt of your e-mail request to conduct a Zoom meeting to discuss discovery deficiencies. I am **always** available to discuss any aspect of any case, but I do not need to conduct a conversation tethered to a computer. In my humble view, computers do not enhance the efficacy of practicing law nor do they enhance personal communication. Moreover, as I have protested several times, your side needs to elect a spokesperson as it is not fair to require me to conduct a case with different points of view, especially where the points of view are not always unified.

Let me be clear: I want to address any remaining claims of alleged deficiencies thoroughly, fairly, and quickly. The reason I want to do this is because we know Ms. Harley is using manufactured controversies to provide cover for her continued contumacious conduct and trying to run out the clock on me. You will recall that I previously characterized her as a "liar" and a "fraud," two statements I intend to prove in a trial. As a result of that communication to you, you decided to assert my characterization of your client's contumacious behavior as grounds for a disciplinary complaint against my license. (None of us are surprised by this tactic, having been employed against Dr. Miller, Tyler Jones, and several witnesses on our witness list.) So, while I am ready, willing, and able to discuss any aspect of the case with Ms. Harley's legal representative, we have reached a point where:

1) Ms. Harley has a platoon of lawyers speaking for her without consistency. I want to deal with a single representative.

2) Ms. Harley is not participating in discovery, and neither you, nor Trey Thompson, nor Nick Green, nor any other members of her legal platoon can convince her otherwise.

3) Ms. Harley is the head of a putative charitable organization that is required by law to be transparent and honest.

4) As an example of her contumacious conduct, which you are powerless to correct, Ms. Harley has produced exactly one e-mail in response to discovery. However, in the approximately 900 e-mails provided by Charleston Animal Society, we find her involved in daily coordination with the Charleston Animal Society. So how is it she has no e-mails or text messages?

5) Ms. Harley's interference in a lawfully issued subpoena to South State Bank is frivolous and unethical. First, she provided me what she calls "bank statements." Whatever they are, they are not "bank statements," and she must have gone to considerable effort to persuade South State Bank to create the computer printout she provided because it reveals nothing about the source of her funds or the manner in which they are spent. Second, assuming *arguendo*, that what she produced are, in fact, her "bank statements," then how can she object to a subpoena **for the same documents**? And third, her assertion that South State Bank is a "foreign corporation" is preposterous. If I made that assertion, I have no doubt you would file a second complaint against my license, and I have no doubt that Disciplinary Counsel would have an opinion on the matter. Just because South State Bank utilizes a central clearing house for its subpoena response in Georgia does not transform it into a "foreign corporation." South State Bank (which is up the street from me) asked me to send the subpoena to their Legal Department, which I did.

In short, I am available 24/7 to discuss discovery or any other issue, including settlement, but I ask that Ms. Harley's platoon of lawyers designate a single spokesperson who is authorized to speak for her, and I ask that you not obstruct the process with further dilatory tactics. And as for the manner of communication, a simple phone call or letter is more efficient than a Zoom meeting, which results in numerous interruptions as the technology fails. Neither one of us needs to spend another minute staring at a computer screen. With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/

ELECTRONICALLY FILED - 2022 May 12 4:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

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EXHIBIT 6

ELECTRONICALLY FILED - 2022 May 12 4:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.
ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net
Thomas R. Goldstein
tgoldstein@cobblaw.net

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

September 20, 2018

Mr. Joseph D. Thompson, III
Hall Booth & Smith, P. C.
111 Coleman Blvd.
Suite 301
Mt. Pleasant, S. C. 29464

Re: Charleston Carriage Works L.L.C. vs. Charleston Animal Society, *et. al.*
Case No.: 2018-CP-10-4083

Dear Trey,

I enclose the plaintiff's first Interrogatories and First Requests to Produce to the Defendants, Ellen Harley and Charleston Carriage Horse Advocates. With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/
enclosure: Interrogatories and Requests To Produce to Defendants, Harley and Charleston Carriage Horse Advocates, Inc.

cc:
Jenkins M. Mann, Esq.
Nicholas G. Green, Esq.
Elizabeth J. Palmer, Esq.

ELECTRONICALLY FILED - 2022 May 12 4:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-4083
)	
Charleston Carriage Works, L.L.C.,)	
)	
Plaintiff,)	
)	**PLAINTIFF'S INERROGATORIES TO ELLEN HARLEY AND CHARLESTON CARRIAGE HORSE ADVOCATES, INC.**
vs.)	
)	
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,)	
)	
Defendants.)	
)	

TO: Joseph D. Thompson and Jenkins M. Mann, Attorneys for Ellen Harley and Charleston Carriage Horse Advocates, Inc.:

1. Give the names and address of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

   ANSWER:

2. For each person known to you or your counsel to be a witness concerning the facts of the case, set forth a summary of the important facts known to or observed by such witness, or provide a copy of written or recorded statement taken from such witness.

   ANSWER:

3. Identify all writings, documents, photographs, plats, sketches, letters, memoranda, diagrams, charts, legal documents, etc. that relate to this case.

   ANSWER:

ELECTRONICALLY FILED - 2022 May 12 4:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

   ANSWER:

5. Give a summary of the qualifications and any relevant opinions held by any expert witness identified above.

   ANSWER:

6. If you have been a party to any other lawsuit, state the nature of the lawsuit, all parties involved, the county and state of filing, and the disposition.

   ANSWER:

7. Provide the following information:
   a. Your full legal name, and any nickname, prior name, or alias that you have used or been called;
   b. Your current home address;
   c. Your date of birth;
   d. Your social security number;

   ANSWER:

8. Please give the name and address of each person or organization by whom you have been employed for the past 8 years, giving the dates of such employment, the position held and the rate of pay received.

   ANSWER:

9. List all email addresses utilized by you or by Charleston Carriage Horse Advocates, Inc.

   ANSWER:

10. List every Social Networking Website (SNW) utilized or accessed by you for the past 3 years. For any SNW identified in response to this or any other interrogatory, provide the following information:

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a. Name and internet address of the SNW;
b. Name, address, SSN, and date of birth of the SNW account subscriber, and, if different, the individual financially responsible for the SNW account;
c. Every user name, screen name, friend ID#, email address, or alias affiliated with the SNW account;
d. Full URL to each SNW profile;
e. The last time you accessed the SNW account;
f. Whether you post photographs or updates on the SNW account.

ANSWER:

11. Identify each code, ordinance, regulation, statute, rule, custom, practice, or standard that you contend Charleston Carriage Works has violated in the operation of its carriage tour business.

ANSWER:

12. List the name and address of your current cellular/mobile telephone provider.

ANSWER:

13. Provide your current cellular/mobile telephone number.

ANSWER:

14. List the name and address of Charleston Carriage Horse Advocates, Inc. current cellular/mobile telephone number.

ANSWER:

15. List the current cellular/mobile telephone number for Charleston Carriage Horse Advocates, Inc.

ANSWER:

16. List each person's name and address who is now serving or who has served on Charleston Carriage Horse Advocates' Board of Directors.

ANSWER:

17. List the current officers of Charleston Carriage Horse Advocates, Inc.
ANSWER:

18. Set forth the names and addresses of all insurance companies which have general liability insurance coverage relating to the operation of Charleston Carriage Horse Advocates, Inc.
ANSWER:

19. Set forth the names and addresses of all insurance companies which have general liability insurance coverage for Ellen Harley.
ANSWER:

20. For all policies of insurance providing liability coverage for Charleston Carriage Horse Advocates, Inc., and/or Ellen Harley, set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
ANSWER:

21. Please list all banks and their addresses with account numbers maintaining accounts of any description for Charleston Carriage Horse Advocates, Inc.

ANSWER:

22. Please list the name and address for each organization, society, advocacy group or other association or organization of which Ellen Harley is currently a member or had been a member in the past ten years.

ANSWER:

23. Please list each school attended by Ellen Harley and the degree or certificate obtained.

ANSWER:

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This the 20th day of September, 2018

Belk Cobb Infinger & Goldstein, P.A.
Thomas R. Goldstein, S. C. Bar #2186
P.O. Box 71121
N. Charleston, SC 29415-1121
843-554-4291; 843-554-5566 fax
tgoldstein@cobblaw.net

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 20th DAY OF SEPTEMBER, 2018.

BY:

ELECTRONICALLY FILED - 2022 May 12 4:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-4083
)	
Charleston Carriage Works, L.L.C.,)	
)	
Plaintiff,)	
)	**PLAINTIFF'S REQUESTS TO PRODUCE TO ELLEN HARLEY AND CHARLESTON CARRIAGE HORSE ADVOCATES, INC.**
vs.)	
)	
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,)	
)	
Defendants.)	
)	

TO: Joseph D. Thompson and Jenkins M. Mann, Attorneys for Ellen Harley and Charleston Carriage Horse Advocates, Inc.:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorneys, hereby requests pursuant to Rule 34 of the *South Carolina Rules of Civil Procedure* the production of the following documents, papers, books, accounts, letters, photographs, objects and tangible things not privileged, which constitute or contain evidence relating to any of the matters within the scope of Rule 26(b) and which are in the possession, custody and control of the Defendant or any of its agents:

1. Any and all photographs, plats, sketches or documents in possession of defendant or the defendant's attorney that are in any way related to the claim of this case.

2. Any and all photographs, plats, sketches or prepared documents or drawings which defendant or the defendant's attorney intend to offer into evidence in the trial of this case.

3. All statements of any person, whether written, summarized or recorded, relating to this matter.

4. Any and all reports of those persons the defendant or the defendant's attorney has either consulted or intends to call as an expert witness in the trial of this matter.

5. Any and all documents listed in your Answers to Interrogatories.

6. Tax Returns, including all Form 990's and Schedule Bs for Charleston Carriage Horse Advocates, Inc.

7. Articles of Incorporation, By-Laws, and Minutes of Charleston Carriage Horse Advocates, Inc.

8. Bank Statements for Charleston Carriage Horse Advocates, Inc.

9. Any and all documents which you intend to introduce at trial.

Charleston, S. C.
September 20, 2018

Thomas R. Goldstein, Bar No. 2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
P. O. Box 71121
Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net
Attorneys for the Plaintiff

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 20th DAY OF SEPTEMBER, 2018.

BY: _____

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ELECTRONICALLY FILED - 2022 May 12 4:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

EXHIBIT 7

ELECTRONICALLY FILED - 2022 May 12 4:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

001 00085 01

PAGE: 1 ACCOUNT:
01/31/2018
TELEPHONE:800-277-2175 CHARLESTON CARRIAGE
HORSE ADVOCATES ELLEN ANDERSON HARLEY
ELIZABETH A SLAGSVOL 30
P O BOX 22827 3
CHARLESTON SC 29413-2827 5

==========

========== COMMUNITY CHECKING ACCOUNT

==========

========== MINIMUM BALANCE 11,887.02 LAST STATEMENT
12/29/17 20,487.02 AVG AVAILABLE BALANCE 20,058.50
6 CREDITS 21,516.72 AVERAGE BALANCE 20,703.74
5 DEBITS 13,312.68
THIS STATEMENT 01/31/18 28,691.06 - - - - - - - -
- - DEPOSITS - - - - - - - - - - REF #.....DATE.....AMOUNT REF
#.....DATE.....AMOUNT REF #.....DATE.....AMOUNT 01/17
20,000.00 01/23 1,050.00 01/29 243.00
- - - - - - - - OTHER CREDITS - - - - - - - - - DESCRIPTION
DATE AMOUNT STRIPE TRANSFER
01/22 128.74 STRIPE TRANSFER
01/23 94.80 INTEREST
01/31 .18 - - - - - - - - - - CHECKS - - -
- - - - - - - CHECK #..DATE.....AMOUNT CHECK #..DATE.....AMOUNT
CHECK #..DATE.....AMOUNT 139*01/02 8,400.00 144 01/19
210.00 147 01/18 302.68 143 01/11 200.00
145*01/22 4,200.00 (*) INDICATES A GAP IN CHECK NUMBER SEQUENCE
- - - - - - - - - - I N T E R E S T - - - - - - - - - - AVERAGE LEDGER
BALANCE: 20,703.74 INTEREST EARNED: .18
AVERAGE AVAILABLE BALANCE: 20,058.50 DAYS IN PERIOD:
33 INTEREST PAID THIS PERIOD: .18 ANNUAL PERCENTAGE YIELD
EARNED: .01% INTEREST PAID 2018: .18 INTEREST PAID
2017: .58 - - - - - - - - DAILY
BALANCE - - - - - - - - DATE.....BALANCE
DATE.....BALANCE DATE.....BALANCE 01/02
12,087.02 01/11 11,887.02 01/17 31,887.02
* * * C O N T I N U E D * * *

001 00085 01

PAGE: 2 ACCOUNT:
01/31/2018
CHARLESTON CARRIAGE HORSE ADVOCATES ELLEN ANDERSON HARLEY
ELIZABETH A SLAGSVOL

==========

========== COMMUNITY CHECKING ACCOUNT

==========

========== - - - - - - - - DAILY BALANCE - - - - - - - -
- DATE.....BALANCE DATE.....BALANCE
DATE.....BALANCE 01/18 31,584.34 01/22
27,303.08 01/29 28,690.88 01/19 31,374.34 01/23
28,447.88 01/31 28,691.06 -
END OF STATEMENT -

CCHA_Bank Statements_0001

ELECTRONICALLY FILED - 2022 May 12 4:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

```
            SOUTH STATE BANK                    101 00085 01
PAGE:    1           P O BOX 118068                    ACCOUNT:
09/28/2018           CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175                       CHARLESTON CARRIAGE HORSE
ADVOCATES          ELLEN ANDERSON HARLEY          ELIZABETH A SLAGSVOL
30          P O BOX 22827
1          CHARLESTON SC  29413
4
================================================================================
=========                      COMMUNITY CHECKING ACCOUNT
================================================================================
=========   MINIMUM BALANCE              12,066.87  LAST STATEMENT
08/31/18      13,135.02 AVG AVAILABLE BALANCE         12,703.81
4 CREDITS               431.81 AVERAGE BALANCE               12,707.39
5 DEBITS              1,498.99
THIS STATEMENT 09/28/18      12,067.84                  - - - - - - -
- - - DEPOSITS - - - - - - - - - - - REF #.....DATE......AMOUNT REF
#.....DATE......AMOUNT REF #.....DATE......AMOUNT          09/24
100.00                    - - - - - - - - - OTHER CREDITS - - - - - - - -
- DESCRIPTION                                                    DATE
AMOUNT STRIPE TRANSFER
09/06          50.09 FACEBOOK PAYMENTRMR*IK*FACEBOOK PAYOUT B5WDYAGVCO\
09/10         280.75 INTERNET
09/28            .97                    - - - - - - - - - - -  CHECKS - -
- - - - - - - - -  CHECK #..DATE......AMOUNT  CHECK #..DATE......AMOUNT
CHECK #..DATE......AMOUNT      195 09/14      590.00      197 09/14
359.00      196 09/12      225.00      198 09/27      200.00
- - - - - - - - - OTHER DEBITS - - - - - - - - - DESCRIPTION
DATE          AMOUNT CARDMEMBER SERV ELECT PYMT ***********9221
09/25          124.99              - - - - - - - - - - - I N T E R E S T -
- - - - - - - - -   AVERAGE LEDGER BALANCE:        12,707.39  INTEREST
EARNED:                  .97 AVERAGE AVAILABLE BALANCE:     12,703.81
DAYS IN PERIOD:                    28 INTERNET PAID THIS PERIOD:
.97  ANNUAL PERCENTAGE YIELD EARNED:   .10% INTERNET PAID 2018:
8.70                    - - - - - - - - -  DAILY BALANCE  - - - - - - - -
DATE..........BALANCE      DATE..........BALANCE
DATE..........BALANCE 09/06        13,185.11      09/10
13,465.86      09/12        13,240.86                          * * *  C
O N T I N U E D  * * *
            SOUTH STATE BANK                    101 00085 01
PAGE:    2           P O BOX 118068                    ACCOUNT:
09/28/2018           CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175               CHARLESTON CARRIAGE HORSE ADVOCATES
ELLEN ANDERSON HARLEY          ELIZABETH A SLAGSVOL
================================================================================
=========                      COMMUNITY CHECKING ACCOUNT
================================================================================
=========                    - - - - - - - - -  DAILY BALANCE  - - - - - - - -
- DATE..........BALANCE      DATE..........BALANCE
DATE..........BALANCE 09/14        12,291.86      09/25
12,266.87      09/28        12,067.84 09/24        12,391.86      09/27
12,066.87                                  - END OF STATEMENT -
```

ELECTRONICALLY FILED - 2022 May 12 4:24 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

```
            SOUTH STATE BANK                    101 00085 01
PAGE:    1           P O BOX 118068                    ACCOUNT:
09/30/2019           CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175                      CHARLESTON CARRIAGE HORSE
ADVOCATES          ELLEN ANDERSON HARLEY          ELIZABETH A SLAGSVOL
30          P O BOX 22827
0          CHARLESTON SC  29413
4
================================================================================
=========      Please be aware, effective September 10, 2019, the
transaction posting      order will be updated so that Debit Card
Transactions post with      ATM Withdrawals from lowest to highest
dollar amount. If you      have any questions, please call us at (800)
277-2175.
================================================================================
=========                      COMMUNITY CHECKING ACCOUNT
================================================================================
=========   MINIMUM BALANCE                28,177.56  LAST STATEMENT
08/30/19      32,098.81 AVG AVAILABLE BALANCE          31,075.51
7 CREDITS                444.23 AVERAGE BALANCE                31,075.51
6 DEBITS               4,364.16
THIS STATEMENT 09/30/19      28,178.88                      - - - - - - -
-  OTHER CREDITS - - - - - - - - - DESCRIPTION
DATE          AMOUNT FACEBOOK PAYMENTRMR*IK*FACEBOOK PAYOUT B5W845PPVM\
09/04          170.18 STRIPE TRANSFER ST-G5R0D1S5S9R6
09/05          100.52 STRIPE TRANSFER ST-K6X4W3W5N3M0
09/19           10.05 FACEBOOK PAYMENTRMR*IK*FACEBOOK PAYOUT B5VY908QNO\
09/23          162.00 PAYPAL VERIFYBANK 1006706682563
09/27             .06 PAYPAL VERIFYBANK 1006706682564
09/27             .10 INTEREST
09/30            1.32                    - - - - - - - - - - CHECKS - -
- - - - - - - - - CHECK #..DATE......AMOUNT  CHECK #..DATE......AMOUNT
CHECK #..DATE......AMOUNT      2260 09/11    1,290.00      2262 09/13
359.00      2261 09/16       135.00      2263 09/30     2,000.00
- - - - - - - - - - OTHER DEBITS - - - - - - - - - - DESCRIPTION
DATE          AMOUNT CARDMEMBER SERV ELECT PYMT ***********9221
09/24          580.00 PAYPAL VERIFYBANK 1006706682566
09/27             .16                          * * *  C O N T I N U E D
* * *
            SOUTH STATE BANK                    101 00085 01
PAGE:    2           P O BOX 118068                    ACCOUNT:
09/30/2019           CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175                CHARLESTON CARRIAGE HORSE ADVOCATES
ELLEN ANDERSON HARLEY           ELIZABETH A SLAGSVOL
================================================================================
=========                      COMMUNITY CHECKING
ACCOUNT=========================================================================
================                - - - - - - - - - - I N T E R E S T - - -
- - - - - - -   AVERAGE LEDGER BALANCE:         31,075.51  INTEREST
EARNED:                  1.32 AVERAGE AVAILABLE BALANCE:      31,075.51
DAYS IN PERIOD:                        31 INTEREST PAID THIS PERIOD:
1.32  ANNUAL PERCENTAGE YIELD EARNED:    .05% INTEREST PAID 2019:
14.87                    - - - - - - - -  DAILY BALANCE  - - - - - - - -
DATE..........BALANCE      DATE..........BALANCE
DATE..........BALANCE 09/04        32,268.99      09/16
30,585.51      09/27        30,177.56 09/05        32,369.51      09/19
30,595.56      09/30        28,178.88 09/11        31,079.51      09/23
```

30,757.56	09/13	30,720.51	09/24	30,177.56

- END OF STATEMENT -

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```
            SOUTH STATE BANK                    101 00085 01
PAGE:    1           P O BOX 118068                    ACCOUNT:
07/31/2019           CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175                        CHARLESTON CARRIAGE HORSE
ADVOCATES          ELLEN ANDERSON HARLEY          ELIZABETH A SLAGSVOL
30          P O BOX 22827
1          CHARLESTON SC  29413
3
================================================================================
=========                    COMMUNITY CHECKING ACCOUNT
================================================================================
=========   MINIMUM BALANCE              39,631.05  LAST STATEMENT
06/28/19      41,854.97 AVG AVAILABLE BALANCE         40,590.93
13 CREDITS             2,094.97 AVERAGE BALANCE               40,592.45
5 DEBITS               3,131.78
THIS STATEMENT 07/31/19      40,818.16                  - - - - - - -
- - - DEPOSITS - - - - - - - - - - REF #.....DATE......AMOUNT REF
#.....DATE......AMOUNT REF #.....DATE......AMOUNT          07/01
50.00                    - - - - - - - - -  OTHER CREDITS - - - - - - - -
- DESCRIPTION                                                    DATE
AMOUNT STRIPE TRANSFER ST-L5M7A8R1G1L0
07/01           5.03 FACEBOOK PAYMENTRMR*IK*FACEBOOK PAYOUT B5WE0BLBPQ\
07/02         335.00 STRIPE TRANSFER ST-Q2F5H1Q9Y8Q5
07/05          25.13 STRIPE TRANSFER ST-K7O6S9N0C9E2
07/09           5.03 STRIPE TRANSFER ST-K7B4L1S8N6L4
07/16         114.28 STRIPE TRANSFER ST-N7Y7N9O4A6V6
07/19          35.18 STRIPE TRANSFER ST-F4K1F8J8C1C4
07/22         201.04 STRIPE TRANSFER ST-F2Q0K9K8E1O0
07/24          96.80 FACEBOOK PAYMENTRMR*IK*FACEBOOK PAYOUT B5WC1RR47P\
07/25         716.19 STRIPE TRANSFER ST-K6E8Y2J1C3T3
07/26         502.59 INTEREST
07/31           3.67 STRIPE TRANSFER ST-R7P3H6Y9N5L9
07/31           5.03                  - - - - - - - - - -  CHECKS - -
- - - - - - - -  CHECK #..DATE......AMOUNT  CHECK #..DATE......AMOUNT
CHECK #..DATE......AMOUNT     2247 07/09    1,290.00     2248 07/09
172.50     2249 07/11      359.00                  - - - - - - - - -
OTHER DEBITS - - - - - - - - - DESCRIPTION
DATE          AMOUNT CARDMEMBER SERV ELECT PYMT **********9221
07/02          822.61 CARDMEMBER SERV ELECT PYMT **********9221
07/29          487.67                          * * *  C O N T I N U E D
* * *
            SOUTH STATE BANK                    101 00085 01
PAGE:    2           P O BOX 118068                    ACCOUNT:
07/31/2019           CHARLESTON SC 29423-9910
TELEPHONE:800-277-2175                CHARLESTON CARRIAGE HORSE ADVOCATES
ELLEN ANDERSON HARLEY           ELIZABETH A SLAGSVOL
================================================================================
=========                    COMMUNITY CHECKING ACCOUNT
================================================================================
=========                - - - - - - - - - - I N T E R E S T - - - - - -
- - - -   AVERAGE LEDGER BALANCE:         40,592.45  INTEREST EARNED:
3.67 AVERAGE AVAILABLE BALANCE:      40,590.93  DAYS IN PERIOD:
33 INTEREST PAID THIS PERIOD:           3.67  ANNUAL PERCENTAGE YIELD
EARNED:   .10% INTEREST PAID 2019:                 11.17
- - - - - - - -  DAILY BALANCE  - - - - - - - - DATE..........BALANCE
DATE..........BALANCE      DATE..........BALANCE 07/01
41,910.00      07/16        39,745.33      07/26        41,297.13 07/02
```

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EXHIBIT 8

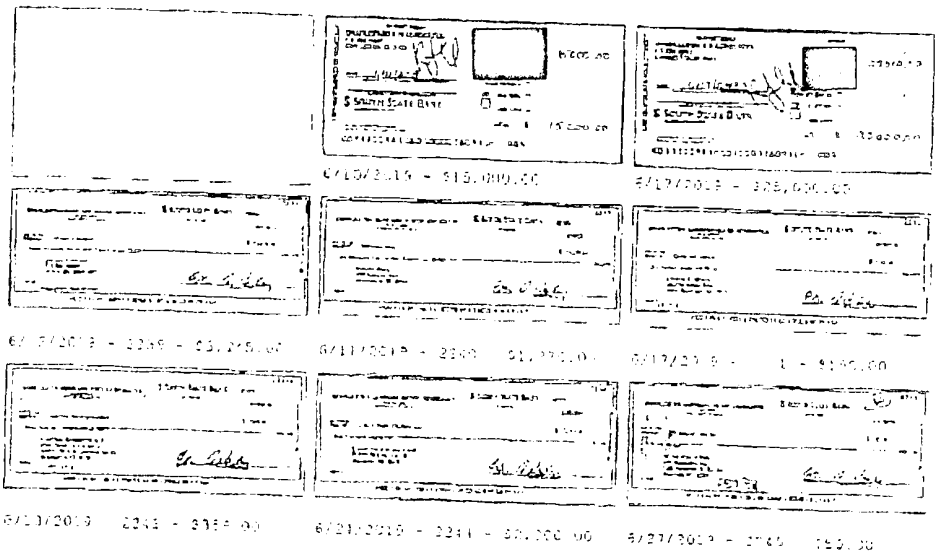

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EXHIBIT 9

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January 13, 2021

Mr. Jenkins M. Mann
Rogers Lewis
P. O. Box 11803
Columbia, S. C. 29211

Re: Charleston Carriage v. Harley, *et. al.*, 2018-CP-10-04083

Dear Jenkins,

Since I have not received a response to my December 22nd letter (including to provide the limited discovery you agreed to provide), which is another in a long line of attempts to narrow and solve the outstanding discovery issues, let me try another time.

By a purely mechanical process, sort of like Archimedes' mechanical effort to calculate the area of circle by squaring it, we have derived at least 43 commentors that the Charleston Animal Society and/or the Charleston Carriage Horse Advocates deleted and banned after they posted truthful comments correcting C.C.H.A.'s and the C.A.S.'s false messages. We have assembled these via a laborious mechanical process akin to Archimedes trying to calculate the area of a circle by squaring it. If you were to provide our computer forensic expert the access to which we are entitled, he could assemble this information in minutes. I do not think I am required to turn this information over to you because it is intended as impeachment. When I cross examine your client, she will either deny banning commentators or claim that she did so because they posted in violation of their standards. Then I will go down the list of 43 she has banned (and we know there are many more) and read out loud their comments to demonstrate that the posts were not offensive and were nothing more than accurate factual statements. At that point, you will probably object on the ground of authenticity, which is the neat procedural cul-de-sac you built by refusing me access to the proof to which I am entitled. I know I sound like a broken record, but your client represents herself as a public charity, and she is supposed to be transparent in exchange for tax exempt status.

In addition, we are confident that many of the self-serving posts on the Charleston Carriage Horse Advocates' page are Ellen Harley masquerading as fictional, third party posters. Once again, this is something we can prove only when your client provides us the computer forensic access to which we are entitled. Likewise with the large, redacted deposits: it is more probable than not that some of these large deposits are either from the Charleston Animal Society or its principals. Once again, this is basic information that your client should have provided long ago. At some point, we are going to end up in front of some judge to resolve all these things. The Court is either going to compel you to provide computer access and full financial disclosure or not. Based on your long trial experience, which do you think it will be?

I know you are tired of this case, and I think it is clearly going to be resolved only by trial (although I think if mediation had been in person rather than over a computer screen, it would have settled), so once again, I am urging you to reconsider your client's obstruction. I have been involved in many of these cases as have you, and I have yet to see a judge refuse to require a corporate entity to turn over its internal operations and finances. I have repeatedly offered confidentiality agreements, which satisfied Beth Palmer, and which we have adhered to rigorously. Please let me know if there are any additional assurances or other mechanisms I can offer you to allow us to break this discovery impasse.

With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/

cc:
Trey Thompson
Beth Palmer

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EXHIBIT 10

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December 22, 2020

Mr. Jenkins M. Mann
Rogers Lewis
P. O. Box 11803
Columbia, S. C. 29211

Re: Charleston Carriage v. Harley, *et. al.*, 2018-CP-10-04083

Dear Jenkins,

I am in receipt of your December 11th submission of discovery documents (bank records). Let me begin by thanking you for your effort to overcome this discovery impasse, and I know that you are exercising good faith in your attempts to persuade your client to conform to rules. However, as I have noted on more than one occasion, Ms. Harley does not operate in good faith nor does she conform to the sublunary rules that govern the rest of us. [Insert Fitzgerald reference here.] Thus, despite your Herculean efforts to bridge this gap, we still remain short. We are, however, thanks to you, narrowing the gap.

First, the documents you have produced have been run through a printer at the lowest possible resolution, making them largely illegible. (The Charleston Animal Society deployed this technique—not Beth Palmer—the Animal Society.) Despite my looking at the copies of the checks under the brightest light available in my office with a strong magnifying glass, I am unable to make out about half of the checks. There are two ways, at least, to fix this. One, you can withdraw your objection to my subpoena to South State Bank and allow me to obtain "original" copies, which will be legible. Two, you can provide the records digitally (although, as a senior, I appreciate the paper copies you provided—and that is my preferred way of receiving documents). In addition to illegibility, I note other deficiencies:

2. The first bank statement is dated April 6, 2017, but it suggests there are earlier records. If my assumption is incorrect, and the April 6, 2017-April 28, 2017 statement is the first one, then if you confirm those dates, the matter is ended.
3. The statement for November 2017 is omitted.
4. March, April, and November 2018 checks are omitted
5. $20,000.00 deposit January 22, 2019 redacted
6. $ 4,996.72 deposit January 12, 2019 redacted
7. $12,000.00 deposit January 23, 2019 redacted
8. $25,000.00 deposit March 21, 2019 redacted
9. $15,000.00 deposit June 10, 2019 redacted
10. $25,000.00 deposit June 27, 2019 redacted
11. $25,000.00 deposit February 3, 2020 redacted
12. $25,000.00 deposit June 22, 2020 redacted

As a plaintiff's lawyer, I am sure you are familiar with the frustration of providing defense counsel with all the records relevant to a suit and then having defense counsel send out subpoenas for the same information. I never understood that. Until now. I know that you did not withhold documents and that you provided to me what Ms. Harley provided to you. In light of her conduct in this case, including, but not limited to, providing false information under oath, there can be no doubt that I find any reliance on her trustworthiness not reliable. Therefore, I respectfully suggest you withdraw your objection to my South State subpoena and let me obtain these records directly from the source. On the other hand, should you wish to propose a solution I am open to any suggestion you have because, as I said at the beginning, I have no doubt that **you** are operating in good faith. As to the production of e-mails, *etc.*, I will respond to that when you provide it. With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/

cc:
Trey Thompson
Beth Palmer

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EXHIBIT 11

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February 8, 2021

Mr. Jenkins M. Mann
Rogers Lewis
P. O. Box 11803
Columbia, S. C. 29211

Re: Charleston Carriage v. Harley, *et. al.*, 2018-CP-10-04083

Dear Jenkins,

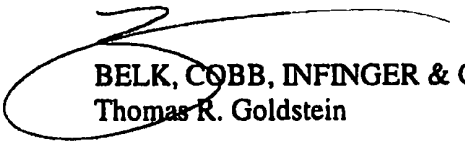
I received the paper copies of selected bank records (14 pages comprising records from November 20, 2017—November 18, 2018). These copies are more legible than the first edition you sent me, and I thank you for that. However, your cover letter inaccurately posits that we reached an "agreement" on your clients' discovery responses. You state: "As we have agreed, we have redacted the portion of the statements' deposit tickets which could indicate the pledge source of the deposit." To be clear, we have not reached that agreement. We have, however, made several proposals and counter-proposals in an effort to narrow the issues.

As you are aware, your client fears (allegedly) disclosing contributors because she says we will harass them. This assertion is what psychologists call "projection." She projects her own thoughts and ideas on us. We have repeatedly stated our willingness to adhere to confidentiality of this information, which is the way such concerns are always resolved—until now. There is another component to your clients' duties that sheds light on their recalcitrance and it is this: the Charleston Carriage Horse Advocates is a South Carolina charity. As a charity, it receives favorable tax treatment. In exchange, it agrees to conform to the requirements of the Secretary of State, and this includes an obligation to be transparent and not make misleading statements. As to fundraising, the law requires that the Charleston Carriage Horse Advocates to maintain a list of each contribution including the amount contributed and the identifying information of the contributor. See § 33-56-75, S. C. Code, ann. "Donor list; professional fundraising counsel or professional solicitor; responsibilities and prohibitions; violations; fines." I trust we can agree that the purpose of these statutory obligations is not to promote secrecy.

As for our putative "agreement," what I told you was that we have no interest in the identities of small contributors, but I have asserted numerous times that the identity of a large contributor is both relevant and material information. If, for example, Charleston Animal Society donates $20,000.00 to the Charleston Carriage Horse Advocates, whether such donation is direct or indirect is a significant and relevant fact. Our willingness to enter into a confidentiality

agreement to protect the dissemination of this information should satisfy your client and put an end to her obstruction and delay. At this juncture, I have no realistic expectation that Ms. Harley will comport herself in accordance with the rules governing discovery, and while I remain willing to consider any reasonable proposal to bridge this gap, her continued contumaciousness suggests that only a court can break this impasse. I do appreciate, very much, your efforts to find a solution. With kind regards, I am

Very truly yours,



BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/

cc:
Trey Thompson
Beth Palmer

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-04083
Charleston Carriage Works, L.L.C.,)	
)	
Plaintiff,)	
)	**MEMORANDUM IN SUPPORT OF MOTIONS FOR RECONSIDERATION**[1]
vs.)	Rule 59(e), *S. C. Rules of Civil Procedure*
)	Rule 60, S. C. *Rules of Civil Procedure*
Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc.,)	
)	
Defendants.)	
)	

The plaintiff seeks an Order amending or altering the Court's three May 12, 2022, Orders denying Plaintiff's request to amend the scheduling Order, amend the complaint, and granting summary judgment for all causes of action. The memorandum will address each Order separately.

1. May 12th Order Denying Plaintiff's Request to Amend Scheduling Order

As demonstrated by reference to the Court's May 12th Order denying an extension of the scheduling Order, the Court has applied an inequitable standard to the parties, allowing on one hand, the defendants leave to conduct discovery beyond the February 7, 2020 deadline imposed by the original (and only) scheduling Order while holding the Plaintiff to an absolute time bar despite Plaintiff's counsel being hampered by: (1) intentionally dilatory conduct by the defendants, (2) a heart attack followed by open heart surgery, and (3) a worldwide COVID pandemic.

[1] In order to promote judicial economy, this memorandum addresses Plaintiff's three motions for reconsideration for the three Orders filed May 12, 2022

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As set forth above, it is clear that the Plaintiff's prosecution of the case has been prolonged by: (1) the Defendants', Harley and Charleston Carriage Horse Advocates', continuing dilatory and improper behavior, (2) Plaintiff's counsel's April 2019 heart attack followed by August 2019 open heart surgery, and (3) a world-wide epidemic that imposed considerable restrictions on in person contact and quarantine.

As to the first, the discussion of Harley's and Charleston Carriage Horse Advocates' obstructionist behavior is well documented in the filings in this case, including Plaintiff's May 5, 2022, Motion for Reconsideration, and requires no further discussion. As to the second, the Court labors under a misapprehension that open-heart surgery is a temporary inconvenience. In this case, the April heart attack revealed a more serious underlying problem, and the Medical University spent months from April to August with in-patient and out-patient surgical procedures designed to strengthen the heart to withstand the upcoming procedure. During this pre-surgical workup period, Counsel could not work at full strength during the intervening months between initial illness and the ultimate August surgery, which involved its own lengthy rehabilitation period, including subsequent hospitalization. Moreover, the Court is not aware that in addition to the normal lengthy recovery associated with open heart procedures, Plaintiff's counsel suffered damage to the laryngeal nerve. This seriously impaired the ability to speak as a result of that trauma during surgery. For approximately six months, Plaintiff's counsel could speak with difficulty for only short periods of time and initially barely above a whisper. If the Court cannot take judicial notice of the fact that open heart surgery is a seriously debilitating procedure, then third, the Court can at least take judicial notice of the fact that an older person recovering from a serious surgical procedure is the precise person for whom COVID restriction are most designed to protect. The Court's May 12th Order states: " Additionally, the difficulties caused by COVID did not prevent Plaintiff from conducting meaningful discovery." (Order at page 2). There are four important

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unsupported conclusions in this statement. First, as the Governor's and the Supreme Court's numerous Orders restricting court activity demonstrate, the Courts themselves were imposing serious restriction on access to the Court to protect staff, litigants, witnesses, and lawyers. Second, as demonstrated by numerous affidavits and memoranda of law and exhibits, the Defendants, Harley and Charleston Carriage Horse Advocates, continuously—and continue to—obstruct Plaintiff's discovery efforts. Third, Plaintiff's counsel's rehabilitative process took months, impacted by residual damage to the ability to speak. Fourth, the Court ignores the fact that COVID presented an unreasonable danger to all lawyers, litigants and witness, especially elderly persons with serious underlying medical conditions from appearing in closed spaces with numerous persons until such time as vaccines became widely available in 2021.

Under the **only** scheduling Order entered in this case, discovery was capped as of February 7, 2020. However, as the record shows, the Defendants took at least two depositions after the expiration of the Scheduling Order without objection from the Plaintiff, Dr. Miller on February 27 2020, and Dan Riccio on March 11, 2020, and thus it is impossible to square the Defendant's waiver of strict adherence to the case's first and only scheduling Order with the Court's tacit endorsement of the Defendants' running out the clock on the Plaintiff. This issue is additionally briefed in Plaintiff's motion for reconsideration on the issue of discovery sanctions filed May 12, 2022.

2. May 12th Order Denying Plaintiff's Request to Amend Complaint

The Order under review contains a salient internal inconsistency, which obligates the Plaintiff to bring the inconsistency to the Court's attention. "When an order is internally inconsistent, that inconsistency must be raised to the trial court by way of a post-trial motion before it is preserved for appellate review." *Garrison v. Target Corp.*, 429 S.C. 324, 838 S.E.2d 18 (Ct.

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App. 2020), affirmed in part and reversed in part by Supreme Court on January 26, 2022 at Opinion Number 28080, ____ S.C. _____, _____ S.E.2d _____ (2022)

On pages 4-5 of the May 12, 2022 Order under review, the Court denies the Plaintiff's motion to amend based on its conclusion that:

" . . . these new claims have elements distinct from those of the original Complaint and thus would require additional discovery."

However on page 6 of the same Order under review, the Court concludes that

"A comparison of the original Complaint and the proposed Amended complaint is based on the same facts. Given that all claims are based on the facts as set forth in the original Complaint, the statute of limitations begin to run at the very latest on August 17, 2018, when Plaintiff filed its Complaint."

These findings are inconsistent and mutually exclusive.

Moreover, the Court overlooks that a statute of limitations defense is an affirmative defense that must be plead and proved, and where facts are disputed, it is not something that can be decided under the "drastic remedy" of summary judgment. See Rule 8(c) of the *South Carolina Rules of Civil Procedure*: "Affirmative Defenses; Reply."

Even if the statute of limitations is available as a defense, the time does not begin to run until discovery, which was at Ellen Harley's 30(b)(6) deposition on January 31, 2020, and even when a statute has technically expired, our Supreme Court has been clear that statute of limitations can be equitably tolled when parties interfere with a Plaintiff's efforts to gain access to information, and this record is replete with evidence of the Defendants, Harley and Charleston Carriage Horse Advocates,' willful interference with Plaintiff's discovery efforts. In *Hooper v. Ebenezer Senior Services and Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 687 S.E.2d 29 (2009), the trial court granted

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summary judgment for the defendant on the ground that the statute of limitations expired, and the Court of Appeals affirmed. The Supreme Court granted certiorari and reversed, holding:

B. Equitable Tolling

On appeal, we first consider Hooper's argument that the statute of limitations should be equitably tolled for the delay in service that occurred while Hooper was trying to serve Ebenezer's nonexistent agent. Hooper asserts she was entitled to rely upon the public records and Ebenezer's failure to name a viable registered agent with the South Carolina Secretary of State as required by state law thwarted her repeated attempts to effect service. Hooper asserts that, under all the circumstances, it would be inequitable for Ebenezer to be allowed to benefit from its conduct by obtaining a complete dismissal of her claims. We agree.

"`Tolling' refers to suspending or stopping the running of a statute of limitations; it is analogous to a clock stopping, then restarting." 51 Am. Jur. 2d *Limitation of Actions* § 169 (2000). "Tolling may either temporarily suspend the running of the limitations period or delay the start of the limitations period." *Id.*

South Carolina law provides for tolling of the applicable limitations period by statute in certain circumstances. *See* S.C.Code Ann. § 15-3-30 (2005) (stating exceptions to the running of the statute of limitations when the defendant is out of the state); *id.* § 15-3-40 (providing exceptions for persons under a disability, including being underage or insane).

In addition to these statutory tolling mechanisms, however, "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." 54 C.J.S. *Limitations of Actions* § 115 (2005). "Equitable tolling is a nonstatutory tolling theory which suspends a limitations period." *Ocana v. Am. Furniture Co.*, 135 N.M. 539, 91 P.3d 58, 66 (2004).

Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Rodriquez v. Superior Court, 176 Cal. App 4th 1461, 98 Cal.Rpt. 3d 728 (2009). "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period `to ensure fundamental practicality and fairness.'" *Id.* at 736 (citation omitted).

The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Ocana*, 91 P.3d at 65; *see also* 54 C.J.S. *Limitations of Actions* § 115 ("The party who seeks to invoke equitable tolling bears the devoir of persuasion and must, therefore, establish a compelling basis for awarding such relief.").

It has been observed that "[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her contr3dol." Ocana, 91 P.3d at 66. However, jurisdictions have considered tolling in a variety of contexts and have developed differing parameters for its application. See, *e.g., Irby v. Fairbanks Gold Mining, Inc.*, 203 P.3d 1138, 1143 (Alaska 2009) ("Under the doctrine of equitable tolling, when a party has

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more than one legal remedy available, the statute of limitations is tolled while the party pursues one of the possible remedies."); *Abbott v. State*, 979 P.2d 994, 998 (Alaska 1999) ("Federal precedent equitably tolls the limitations period in three circumstances: (1) where the plaintiff has actively pursued his or her judicial remedies by filing a timely but defective pleading; (2) where extraordinary circumstances outside the plaintiff's control make it impossible for the plaintiff to timely assert his or her claim; or (3) where the plaintiff, by exercising reasonable diligence, could not have discovered essential information bearing on his or her claim." (footnotes omitted)); *Kaplan v. Morgan Stanley & Co.*, 2009 Vt. 78, 987 A.2ds 258 (2009) (2009 WL 2401952) ("Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum.") (citing Beecher v. Stratton Corp., 170 Vt. 137, 743 A.2d 1093, 1098 (1999); *cf. Machules v. Dep't of Admin*, 523 So.2d 1132, 1134 (Fla. 1988) (stating the doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits).

In our view, the situations described above do not constitute an exclusive list of circumstances that justify the application of equitable tolling. "The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006). Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.

We have previously tolled a statute of limitations based on equitable considerations. In *Hopkins v. Floyd's Wholesale*, 299 S.C. 127, 382 S.E.2d 907 (1989), a workers' compensation case, we tolled the running of the statute of limitations for the time that the employee was induced by the employer to believe the claim would be taken care of without filing a claim (the "reliance period"). In reaching this result, we considered two methods of treating the claim: (1) requiring that the claim be filed a "reasonable time" after the reliance period, or (2) tolling the statute of limitations during the reliance period. *Id.* at 129, 382 S.E.2d at 908-09. We held the better rule was to toll the running of the statute of limitations during the reliance period, as this "rule estopping employers from asserting the statute of limitation[s]" provided greater certainty and gave the employee the greatest benefit of the equitable rule. *Id.* at 130, 382 S.E.2d at 909.

It is unnecessary to point out the numerous instances of Harley's and Charleston Carriage Horse Advocates' willful interference with Plaintiff's discovery efforts as the numerous affidavits, exhibits, and memoranda identify it. See Plaintiff's May 5, 2022 Motion for Reconsideration and Supporting Memorandum, which contains specific examples. It is worth revisiting the obvious, however, which is that Harley and Charleston Carriage Horse Advocates resisted efforts to conduct

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minimal discovery, and after considerable dilatory and obstructive delay, the Charleston Carriage Horse Advocates and Harley identified, on January 31, 2020, for the first time, that third parties were allegedly responsible for its acts. (Obviously, as the principal directing its agents, the Defendants remain liable.) The Plaintiff's motion to amend followed April 6, 2020, 55 days later. As a result, by short-circuiting the process, the Court rewards the contumacious conduct of the Defendants. Additionally, the acts complained of by the Plaintiff are ongoing, which eliminates any discussion of a time-bar. Finally, the proposed additional defendants are all out-of-state defendants making the application of the statute doubtful. § 15-3-30, S. C. Code, ann. Questions of a statute of limitations are questions that can be raised as affirmative defenses under the *Rules of Civil Procedure*, but cannot be deployed in a vacuum as a peremptory bar to a litigant amending his pleadings. Thus the Order under review is controlled by an error of law.

As to the Plaintiff's efforts to add the principals of Charleston Carriage Works as party plaintiffs, that amendment sought only to address the Defendants' allegations that some of the claimed damages were personal to the principals and not to the company. As the Court found, "A comparison of the original Complaint and the proposed Amended complaint is based on the same facts." (May 12, 2022 Order under review)

3. May 12, 2022 Order granting summary judgment

While it is impossible for the Plaintiff to address each and every material error in the May 12, 2022, Order under review with particularity without swelling this memorandum to an inappropriate length, the Plaintiff identifies the most salient controlling errors requiring reconsideration.

A. The summary judgment standard

The Court fails to apply the summary judgment standard, a standard that is discussed in the Plaintiff's motion for reconsideration filed May 12, 2022, discussing the Court's failure to

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apply the Supreme Court's holding of *Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2001), which holds:

B. Full and Fair Opportunity to Complete Discovery

The Court of Appeals held the trial court abused its discretion in granting summary judgment before Doe had a full and fair opportunity to complete discovery. We agree.

Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.*

In *Baughman,* we ruled summary judgment premature because (1) plaintiffs demonstrated a likelihood that further discovery would uncover additional relevant evidence, and (2) plaintiffs were not dilatory in seeking discovery. Although three years had elapsed between filing the action and summary judgment, the delay could not fairly be attributed solely to plaintiffs' inaction, and the delay was tempered by the complexity of the case. *Id.* at 112-114, 410 S.E.2d at 544.

The record here does not support a finding that Doe was dilatory in pursuing discovery. Depositions, including Donald's, were scheduled for the week following the hearing. Doe had noticed Batson's deposition on January 31, 1998, but postponed it at the request of defense counsel in two related cases, in order to consolidate the discovery process. Although the delay was in no way attributable to Batson, it was not solely attributable to Doe either. Doe should have been permitted to complete discovery. See *J.S. v. R.T.H.*, 155 N.J. 330, 714 A.2d 924, 936 (1998) (summary judgment entered five months after defendant's answer was filed was premature; "plaintiffs should have been given the opportunity to depose [molester] and others to try to discover further evidence bearing on [defendant's] knowledge of [molester's] conduct or sexual proclivities").

In addition, the Plaintiff filed extensive memoranda both discussing the summary judgment standard and delineating specific important evidence on February 25, 2020, October 12, 2020 (detailing improper interference in Plaintiff's discovery efforts), December 2, 2020 (detailing specific false statements of Defendants). The Plaintiff's May 12th Memorandum addressing the Court's decision to deny discovery sanctions quotes from the colloquy with the Court on September 29, 2021, where the Court directed Plaintiff's counsel away from a discussion of the *Doe v. Batson* standard and directed counsel to address the six questions raised by *Erickson.*

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Whatever evidentiary standard the Court settles on after a trial in which the Plaintiff is afforded an opportunity to present its evidence, at summary judgment, the standard requires the Court to construe facts and inferences in the light most favorable to the party resisting summary judgment, which this Court failed to do.

The Court's legal errors in granting summary judgment, both on the facts and on the law, is nowhere better illustrated than in our Supreme Court's holding in *Erickson v. Jones Street Publishers*, 368 S.C. 444, 629 S.E.2d 653 (2006), starting with the standard of review:

> STANDARD OF REVIEW
>
> In ruling on a motion for directed verdict, the trial court must view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. The trial court must deny the motion when either the evidence yields more than one inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. *Creech v. S.C. Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). The appellate court must determine whether a verdict for a party opposing the motion would be reasonably possible under the facts as liberally construed in his favor. *Bultman v. Barber*, 277 S.C. 5, 7, 281 S.E.2d 791, 792 (1981). If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury. *Quesinberry v. Rouppasong*, 331 S.C. 589, 594, 503 S.E.2d 717, 720 (1998).
>
> When ruling on a motion for summary judgment or directed verdict in a defamation action, the court must review the evidence using the same substantive evidentiary standard of proof **the jury** is required to use in a particular case. *George v. Fabri*, 345 S.C. 440, 451-54, 548 S.E.2d 868, 874-75 (2001). An appellate court reviews the granting of such a motion using the same standard. Id.
>
> *Erickson v. Jones Street Publishers*, 629 S.E.2d 653, 368 S.C. 444 (S.C. 2006) (emphasis added)

As the Supreme Court makes clear, the standard is the standard applied by a jury after a fully developed record consisting of all Plaintiff's witnesses and all of Plaintiff's evidence. Then, and only then, does a **jury** apply a standard given them by the Court whether the Plaintiff is a private person, a limited public figure, or a public figure. This determination occurs only at the close of the evidence and are not decisions the Court makes at a summary judgment where the facts are highly disputed, especially where the Court overlooks Plaintiff's copious evidence of

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defamatory **conduct**. At summary judgment, the parties have not tried the case, which is why the summary judgment standard is no different than the directed verdict standard set forth in *Erickson*. This standard requires the Court to construe the facts and the inferences drawn from them in the light most favorable to the Plaintiff, which is identical to the directed verdict standard in which the Court is only concerned with the existence of evidence, not its weight:

> Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. However, summary judgment is improper if the parties dispute the inferences to be drawn from the facts even if the facts themselves are not in dispute. *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." *Osborne ex rel. Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).
> *CEL PRODUCTS, LLC v. Rozelle*, 357 S.C. 125, 591 S.E.2d 643 (S.C. App. 2004)

Here, the Court not only construed the facts AGAINST the Plaintiff, but compounded its error by ignoring a record overflowing with evidence of malice even if Plaintiff were a public figure, which it is not.

Throughout the Order under review, the Court takes considerable pains to suggest, erroneously, that the Plaintiff must meet a "clear and convincing" evidentiary standard, which is not only incorrect, but also and more importantly, inapplicable at a summary judgment stage, especially where two of the Defendants have willfully impeded discovery. It is a form of legal chutzpah to suppress access to the Defendants' internal communications and then claim the Plaintiff has no evidence of malice. In addition, the Court concludes that the Plaintiff is a limited public figure, again not only misconstruing facts and inferences against the Plaintiff, but also ignoring evidence in the record. In *Erickson*, the Supreme Court spent a considerable amount of time emphasizing the method of analyzing whether a plaintiff is a public or private figure:

> Thus, an important initial step in analyzing any defamation case is determining whether a particular plaintiff is a public official, public figure, or private figure. **This determination is a matter of law which must be decided by the court, on a case by case basis after a careful examination of the facts and circumstances, before the jury is charged on the law or asked**

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to resolve a case. This ruling is needed in order for the court to determine whether to instruct the jury on law applicable to private-figure or public-figure and public-official plaintiffs. *See Rosenblatt v. Baer*, 383 U.S. 75, 87, 86 S.Ct. 669, 677, 15 L.Ed.2d 597, 606 (1966) (trial judge generally has duty of in first instance to determine whether allegedly libeled party is a public official); *Foretich v. Capital Cities/ABC, Inc.*, 37 F.3d 1541, 1551 (4th Cir. 1994) (question of whether defamation plaintiff is a limited-purpose public figure is an issue of law for the court); *Mead Corp. v. Hicks*, 448 So.2d 308, 310 (Ala.1983) (stating same principle); Tracey A. Bateman, Who is a "Public Figure" for Purposes of Defamation Action," 19 A.L.R.5th 1, 57 (1994) (stating same principle); *cf. Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640 (1991) (directing trial judge to charge only constitutional actual malice principles in retrial of case involving public official, and forbidding charge on inapplicable principles of common law malice).

A. PUBLIC OFFICIAL

Neither the Supreme Court nor this Court has provided a precise or all-encompassing definition of "public official," although it is clear the category does not include all public employees. See *Hutchinson*, 443 U.S. at 119 n. 8, 99 S.Ct. at 2680 n. 8, 61 L.Ed.2d at 421 n. 8. In general, a public official is a person who, among the hierarchy of government employees, has or appears to the public to have "substantial responsibility for or control over the conduct of governmental affairs." *Holtzscheiter II*, 332 S.C. at 520 n. 4, 506 S.E.2d at 507 n. 4 (Toal, J., concurring) (quoting Rosenblatt, 383 U.S. at 85, 86 S.Ct. at 676, 15 L.Ed.2d at 605). "In considering the question of whether one is a public official, the employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy." *Id.* (quoting Rosenblatt) (internal quotes omitted). "The status of a public official may be deemed sufficient to warrant application of the New York Times privilege, not because of the government employee's place on the totem pole, but because of the public interest in a government employee's activity in a particular context." *McClain v. Arnold*, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980) (holding that police officer wrongly identified in lawsuit as officer who falsely arrested plaintiff while working as agent of grocery store was a public official required to prove newspaper acted with actual malice); see also *Miller v. City of West Columbia*, 322 S.C. 224, 471 S.E.2d 683 (1996) (treating assistant police chief as public official for purposes of defamation action); Goodwin v. Kennedy, 347 S.C. 30, 43-45, 552 S.E.2d 319, 326-27 (Ct.App.2001) (concluding assistant school principal was not public official under circumstances of case).

The parties have not cited, nor have we found, any authority directly addressing whether a private guardian ad litem in a family court case is a public official. Newspaper relies on *Press, Inc. v. Verran*, 569 S.W.2d 435 (Tenn.1978), *Villarreal v. Harte-Hanks Commun., Inc.*, 787 S.W.2d 131 (Tex. App.1990), and *Kahn v. Bower*, 232 Cal. App.3d 1599, 284 Cal.Rptr. 244 (1991). Those cases are distinguishable from the case sub judice. The plaintiffs in those cases were found to be public officials because they were employees of state social service agencies who had the authority to investigate allegations of child abuse, decide which version of events to believe, and take actions such as removing a child from a home. In contrast, Appellant is a guardian who investigates a case on behalf of the family court and makes recommendations when asked, but has no unilateral authority to resolve care or custody issues. See *Patel v. Patel*, 347 S.C. 281, 287, 555 S.E.2d 386, 389 (2001) ("GAL functions as a representative of the court, appointed to assist the court in making its determination of custody by advocating for the best interest of the children and providing the

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court with an objective view"; Court set forth base-line standards on duties and responsibilities of a GAL); *Fleming v. Asbill*, 326 S.C. 49, 53, 483 S.E.2d 751, 753-54 (1997) (private guardian ad litem is not an agent or employee of the State, but functions as a representative of the court to assist the court in properly protecting the interests of an incompetent person; guardian does not create or resolve legal relationships between the court and third parties); S.C.Code Ann. §§ 20-7-1545 to -1557 (Supp.2005) (South Carolina Private Guardian Ad Litem Reform Act, enacted in 2002 and establishing duties and responsibilities of guardian).

Newspaper further urges us to find Appellant is a public official because a private guardian ad litem generally enjoys immunity from lawsuits. See *Fleming*, 326 S.C. at 54-58, 483 S.E.2d at 754-56 (private persons appointed as guardians ad litem in private custody proceedings are afforded absolute quasi-judicial immunity for acts performed within scope of their appointment). Newspaper argues that a private guardian should be deemed a public official because, given that a person affected by the guardian's allegedly offensive or wrongful statements or actions likely is prohibited from suing the guardian, then the wronged person is left without a remedy. He will not only be unable to sue but also forced to stand silent, prevented from criticizing or opposing the guardian for fear of prompting a defamation suit brought by a guardian who enjoys the less rigorous standard of proof afforded private-figure plaintiffs.

Immunity to suit is an appropriate factor to consider in analyzing whether a particular individual is a public official for purposes of a defamation action, and immunity may lend support to reaching such a conclusion in an appropriate case. However, no one factor is dispositive in the analysis and Newspaper's argument is not persuasive in the present case. It is not necessary to take the unwarranted step of designating a private guardian ad litem as a public official to enable litigants or persons who believe they have been wronged sufficient latitude to criticize or oppose the guardian's statements or conclusions. The law of defamation does not prevent a person from expressing and publishing truthful or non-defamatory statements — including pointed criticisms — of a guardian's actions in a particular case, regardless of whether the guardian is designated a public official, public figure, or private figure. Furthermore, as we explained in Fleming, other safeguards exist to control a wayward guardian. Such safeguards include the fact a guardian is not immune from suit for actions beyond the scope of her duty; the fact an opponent may cross-examine the guardian and supporting witnesses at a deposition and at trial, as well as present his own evidence in opposition; and the review and oversight powers which both trial and appellate courts wield over a guardian. *Fleming*, 326 S.C. at 56-57, 483 S.E.2d at 755-56.

Accordingly, we conclude Appellant, a private guardian ad litem who represented children in a divorce and child custody dispute, is not a public official. **Appellant is not a government employee, much less an official who has or would appear to the public to have substantial responsibility for or control over the conduct of government affairs. The position of a private guardian ad litem is not one which invites public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy.**

B. PUBLIC FIGURE

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The United States Supreme Court generally has defined a public figure as follows: "For the most part those who attain this status [of public figure] have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment." *Gertz*, 418 U.S. at 345, 94 S.Ct. at 3009, 41 L.Ed.2d at 808 (an attorney was not a public figure even though he voluntarily exposed himself in a case certain to receive extensive media exposure); Time, 424 U.S. 448, 452-55, 96 S.Ct. at 964-66, 47 L.Ed.2d at 161-63 (New York Times actual malice standard did not apply to wife of wealthy industrialist allegedly defamed by media defendant in high-profile divorce case because she was not a public figure); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001) (plaintiff candidate's engineering firm was a limited public figure under Gertz test in defamation action arising from statements made during political campaign); *Holtzscheiter II*, 332 S.C. at 523 n. 8, 506 S.E.2d at 508 n. 8 (1998) (Toal, J., concurring and discussing *Gertz*)

A limited public figure, the type more commonly found, is an individual who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions." Gertz, 418 U.S. at 351, 94 S.Ct. at 3013, 41 L.Ed.2d at 812. In determining whether a claimant is a private or public figure, the court must focus on the "nature and extent of an individual's participation in the particular controversy giving rise to the defamation." Gertz, 418 U.S. at 352, 94 S.Ct. at 3013, 41 L.Ed.2d at 812; Wolston v. Reader's Digest Assn., Inc., 443 U.S. 157, 167, 99 S.Ct. 2701, 2707, 61 L.Ed.2d 450, 460 (1979); Parker v. Evening Post Pub. Co., 317 S.C. 236, 243 n. 3, 452 S.E.2d 640, 644 n. 3 (Ct. App.1994) (automobile dealer invited public's attention through extensive media advertising and, as to statements regarding his dealership, was a public figure).

The United States Supreme Court identified a third category of involuntary public figures who become public figures through no purposeful action of their own. However, "the instances of truly involuntary public figures must be exceedingly rare." *Gertz*, 418 U.S. at 345, 94 S.Ct. at 3009, 41 L.Ed.2d at 808.

All three types of public figures, just as public officials, must meet the New York Times standard of actual malice in order to recover damages for defamation. Public figures and public officials are entitled to less protection from defamation than private figures because they enjoy greater media access and are less vulnerable to injury from defamatory statements due to their ability to publicly rebut such statements. Furthermore, both public figures and public officials are less deserving of protection because they have voluntarily exposed themselves to the increased risk of defamation. *Foretich*, 37 F.3d at 1552 (discussing *Gertz*).

The court must focus on facts and circumstances relating to the claimant's status at the time the issue of public concern or controversy arose. **"A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention."** *Wolston*, 443 U.S. at 167, 99 S.Ct. at 2707, 61 L.Ed.2d at 460. **"[T]hose charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure."** *Hutchinson*, 443 U.S. at 134-135, 99 S.Ct. at 2687-88, 61 L.Ed.2d at 430-32 (focusing on whether plaintiff research professor was a public figure prior

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to controversy engendered by senator's awarding of "Golden Fleece" to claimant's research project). A defendant may not transform a private figure into a limited public figure by dragging an unwilling participant into the spotlight of a public controversy through the defendant's own words or actions. *Wolston*, 443 U.S. at 166, 99 S.Ct. at 2706-07, 61 L.Ed.2d at 459-60, 443 U.S. 157, 167 (claimant, by refusing to comply with grand jury subpoena in espionage case, did not voluntarily thrust himself into the public controversy; "It would be more accurate to say that petitioner was dragged unwillingly into the controversy."). These principles do not, of course, mean a private figure may never become a limited public figure; such a transformation may occur by virtue of a private figure's own actions or words during the course of a public controversy.

Appellant does not fall into the first category of public figure. Appellant did not occupy a position of such persuasive power and influence that she is a public figure for all purposes. It is equally obvious that hers is not one of the exceedingly rare cases in which Appellant somehow became an involuntary public figure through no purposeful action of her own.

We agree with the analysis set forth by the Fourth Circuit in *Foretich*, 37 F.3d 1541, **to determine whether Appellant is a limited public figure which, as we previously noted, is a matter of law for the court to decide before submitting a case to a jury.** In order for the court to properly hold that a plaintiff is a public figure for the limited purpose of comment on a particular public controversy, the defendant must show: (1) the plaintiff had access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation. *Foretich*, 37 F.3d at 1553.

In the present case, Appellant had no more access to channels of effective communication, such as the media, than any ordinary, private person. Appellant did not voluntarily assume a role of special prominence in the controversy over reforming the guardian system, and she did not seek to influence the outcome of that controversy. In fact, the record shows Appellant tried to avoid the spotlight and the controversy. The private letters Appellant wrote to the Governor's Office were intended to correct misinformation about her alleged lack of education and training, and to express concern over false accusations made by people upset about particular family court cases. The public meetings which Appellant's friends secretly tape-recorded for her do not constitute attempts to thrust herself into the controversy. Appellant simply was trying to learn what admittedly angry participants in a divorce and custody dispute were saying about her. The public controversy regarding the guardian system existed before Newspaper published the article. But neither the person who made the statements (Pat Beal) nor the publisher (Newspaper) may, by their own words and actions, transform Appellant into a limited public figure by dragging her unwillingly into the controversy over reform of the guardian system.

The trial judge erred in ruling Appellant is a limited public figure. Appellant, under the facts and circumstances of this case, is a private-figure plaintiff as a matter of law. As such, she is entitled to recover under the common law defamation principles set forth above. . .
Erickson v. Jones Street Publishers, 629 S.E.2d 653, 368 S.C. 444 (S.C. 2006)

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Here, the Order under review concludes without analysis that (1) "the plaintiff had access to channels of effective communication," or whether (2) "the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation. The Court ignores the Supreme Court's requirement that the issue be a matter of law to be determined **prior to submitting the case to the jury.** The Court improperly blurs the concepts of debate over horse carriages with the defamatory statements leveled at the Plaintiff that he abused Big John to "collapse" from "exhaustion," which is an allegation of a crime in South Carolina. The Court never addresses the context in which the Defendants' numerous false statements and coordination worked to paint the Plaintiff in a false light and "depress his income." Instead, the Court simply reverses the summary judgment standard and accepts the Defendants' characterization of the Plaintiff without affording him an opportunity to prove otherwise, which is what a trial provides. *Erickson, ibid.* There is not a scintilla of evidence in this record that the plaintiff "had access to channels of effective communication" that differs from that of any other citizen. Not to put too broad of stroke on the case, but all of Plaintiff's efforts identified by the Defendants were nothing more than his effort to prevent the torrent of abuse unleashed on him flowing from the Defendants' coordinated false statements about Big John. His affidavit of February 25, 2020, details the emergency steps Plaintiff undertook to protect the company, the employees, and the horses from attack by installing security, arming himself, and standing guard to defend against the transmission of death threats and hate mail unleashed by the Defendants—and none of this transforms the Plaintiff into either a public or a limited public figure as set forth by the Supreme Court in *Erickson*.

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For example, the Court cites multiple examples of allegedly "effective communication channels" available to the Plaintiff but neglects to apply the *Erickson* standard because these putative "effective channels" occurred after the defamation and represented Plaintiff's efforts to correct Defendants' misstatements. The Plaintiff's efforts to protect his business interests did not in any way make himself or his family or his employees public or limited public figures, just as Erickson did not transform herself into a public figure when she wrote to the Attorney General. Under that analysis adopted by this Court on summary judgment, any citizen who defends himself or herself against vicious attacks transforms into a limited public figure. This legal conclusion is at variance with all of the cited South Carolina and U. S. Supreme Court cases on defamation and limited public figures. The particular controversy giving rise to the defamatory statement in this case did not involve the carriage community in general; it involved only the statements leveled against the Plaintiff accusing him of working Big John to exhaustion and collapse. The Court fails to recognize that this context is the matter giving rise to this action. Before the publication of the Big John video and what followed, there was zero public interest in how the Plaintiff cared for his horses. In short, the holding of *Erickson* requires this summary judgment question be resolved in the Plaintiff's favor. See *Kirby v. City of Elizabeth City N.C.*, 388 F.3d 440 (4th Cir. 2004) (maintenance of particular car did not rise to the level of public concern)

As an example of the difference between matters of "public concern" and defamation, consider, as was the case in *Erickson*, a charitable organization devoted to the reform of the judicial system. While reform of the judicial system is a matter of "public concern," if such a group published a false statement suggesting that Tommy Goldstein is unethical, such a false statement would be actionable even though judicial reform might be a matter of public concern.

What is more—and completely overlooked by the Court in the Order under review—is the overwhelming evidence of malice, whether it is Ellen Harley's e-mail soliciting the Charleston

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Animal society to join with her to "depress their income," or the evidence of Katherine Vaughn who explains how the Defendants deliberately suppressed truthful information and banned sources of it in order to further their joint effort to damage the Plaintiff by casting him in the false light as an animal abuser. The evidence of malice—and evidence of defamatory **conduct**—is summarized by Ms. Vaughn's affidavit filed September 28, 2021:

I am Katherine Vaughn, and I am over the age of 18 years. Mr. Goldstein asked me if I would offer a brief summary of my efforts to post truthful and polite comments on the Facebook page of the Charleston Carriage Horse Advocates. I have attempted several times to post accurate, truthful, and polite information, and almost immediately the Administrator of the page deletes my comments, bans me from the site, and blocks me from posting additional information.

For example on or about April 8, 2021, I posted in response to a comment urging viewers to contact the governor because carriage tours are "animal abuse." My direct comment was:

Can you explain to me how this is animal abuse? I don't understand.

On April 21, 2021, I posted in response to a comment that accused the City of being "bought and paid for to do nothing." In response, I wrote:

Please stop spreading lies.

Charleston Carriage Horse Advocates deleted both posts and blocked me from commenting further. (The way Facebook works is when the Administrator blocks me, that immediately deletes all of my comments even though my comments were accurate, truthful, and were not inflammatory.)

The above two comments were posted under my account in the name of "Katievaughn." Charleston Carriage Horse Advocates blocked this account within two weeks, and this account is just one of many I have attempted to set up in order to be allowed to provide accurate, truthful, and non-inflammatory information of a public charity's home page.

For example, I attempted to post a correction about misinformation being disseminated about parking brakes. I posted:

Charleston City ordinance . . . nothing to do with the individual carriage companies. As for the brakes this is not completely true. There is a parking brake but during operation the driver is the "brake." Let's use our common sense people and think what we would happen if a runaway carriage came to a complete abrupt stop all of the sudden. I thought this page was advocating less accidents and not want to cause more. The drivers are trained to handle the situation if a horse were to spook.

This completely accurate post got me banned and my comments deleted.

I have previously posted under the name Kat Neal (I changed to Kat Vaughn after the Charleston Carriage Horse Advocates banned me under Kat Neal). After the Charleston Carriage Horse Advocates published a photo of a horse on the ground with no information, I posted the following:

Haha. Your picture shows misinformation. You just violated your own rules.

After a Charleston Carriage Horse Advocate supporter, Samantha Suiter, told me my post was "not necessary," and to "move on pls," I responded as follows:

Samantha Suiter it's not necessary to let people know the correct information? If they had just posted the rules that would have been fine but they added the picture without any information.

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That post got me banned. Here is another one that got me banned: A supporter named Patty McBride posted a comment of a photo of a carriage horse that "He/she looks so sad." Under the name, Katherine Anna, I replied:

Patty McBride why do you say that?

McBride responded: "Because he/she does to me." This did not seem to be an objective response, so I attempted to furnish some truthful information about horses:

Patty McBride well you are 100% wrong. A horse with his head down is a sign of relaxation and complete trust in his environment. Notice his back hoof propped up. They shift their weight back and forth while relaxing. Just wondering how many times you've ridden a horse?

Anyone who has the slightest familiarity with horses knows that horses in the wild do not drop their heads because they are prey animals and constantly on guard for threats. The only defense a horse has to a predator is to run, and so you will never see a horse in the wild who is not alert and ready to run at the slightest hint of danger, and they certainly do not take their weight off their feet. This is why it is so rare to see a horse lying down. Only a domesticated horse who is comfortable with his or her surroundings and feels no fear is going to relax enough to lower his or her head and take some weight off a leg.

The posts listed above are just a few of the posts that got me banned, and when the Facebook Administrator bans a commenter, all the posts are immediately and permanently deleted. This means that no message is ever disseminated unless it meets the approval of the Facebook Administrator. I am not a lawyer, but that seems like the opposite of free speech to me.

The Charleston Carriage Horse Advocates lists its publication rules and policies as follows:
No profanity
No misinformation
No off-topic/irrelevant
No personal attacks
No promoting violence
No promoting illegal or questionable activities
No rallying on behalf of people or organizations which support animal abuse.
If you repeatedly violate this policy, you will be removed from our page. If you become a bother to our supporters, since this is a supporter page first and foremost, you will be removed.

As the Court can see from the above representative posts, I never used profanity. I never provided misinformation—in fact, I tried to correct the misinformation being disseminated by the Charleston Carriage Horse Advocates. I never promoted violence, *etc.* In short, all of my posts were short, correct, truthful, and respectful. By deleting my posts and banning me (and I am aware of others who have been likewise banned), the Charleston Carriage Horse Advocates is creating the false impression that a horse pulling a carriage is animal abuse.

Charleston Carriage Horse Advocates was not done with me by deleting my posts and banning me from being the Facebook page. On December 16, 2020, the Charleston Carriage Horse Advocates' lawyer, Jenkins Mann, wrote to me and threatened to sue me for what Charleston Carriage Horse Advocates alleges is an unlawful use of their "trademark." The letter, which is attached to my affidavit as Exhibit 1, reads in part:

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> Please accept this letter as a final notice that you must immediately cease and desist from interfering with Charleston Carriage Horse Advocates' service mark. If you do not take all steps necessary to immediately cease and desist this conduct, including withdrawing any false statements that you published, please know that I will promptly proceed to take all necessary and legal steps on behalf of my clients to ensure your compliance with this demand and to recover all remedies and damages available to them at law, including the recovery of monetary damages and the issuance of an injunction and restraining order.
> /s/ Jenkins Mann

I asked Mr. Goldstein to respond for me, and on December 30, 2020, he sent a letter to Charleston Carriage Horse Advocates on my behalf. This reply is attached here as Exhibit 2. I have no firsthand knowledge of complaints against others (other than I know other people who Charleston Carriage Horse Advocates have banned), but I am informed that Ms. Harley has a pattern of filing complaints against persons who do not share her views. All I know firsthand is that I was shocked and intimidated by the letter written to me on December 16, 2020, which I assume was the intent. All of the comments I posted on the Charleston Carriage Horse Advocates' Facebook page that it banned were truthful, accurate and did not violate any of their published guidelines for participation.

Interestingly, the Plaintiff disclosed Ms. Vaughn and the substance of her testimony on June 3, 2020, and Ms. Harley and the Charleston Carriage Horse Advocates directed their lawyer to threaten her six months later, which is consistent with Ms. Harley's pattern of filing complaints against people who disagree with her, including Plaintiff's counsel, Dr. Miller, and the Plaintiff.

The Order under review ignores substantial evidence of malice and defamation conduct and does not adhere to the *Erickson* standard. The Court's conclusion that the Plaintiff is a "limited public figure" is not only premature (and probably irrelevant as a result of the volume of evidence of malice), but also erroneous because *Erickson* directs the Court on the procedure for determining such questions. The Order under review commits the same error repeatedly by construing disputed evidence against the nonmoving party, and like all the questions of fact raised, only a jury can determine disputed issues of fact, not the Court at summary judgment. In short, the Order under review is controlled by a fatal error of law by failing to apply the correct standard of *Erickson* quoted above. When the Court concludes (on page 13) that "Plaintiff has not presented evidence sufficient to create a question of fact on the issue of actual malice," it can only reach this conclusion by either ignoring the evidence in the record or by construing it against the Plaintiff, neither of

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which it can do and by misapplying the well-developed law of defamation in South Carolina as set forth in *Erickson*. Apparently, the Court erroneously believes that for a statement to be actionable, every person on the planet must universally interpret it to be false when the Plaintiff is only required to meet the burden of proof to a jury of twelve persons who evaluate the believability and credibility of the witnesses and evidence in totality and in the context in which the statements were made. The Plaintiff is not required to demonstrate that every person on the planet interprets the statements as false under every possible context. Juries apply a reasonable man standard, not a universal standard. Under the Court's theory, no case for defamation would ever lie because each and every defamatory statement can be rationalized by the tortfeasor. This misapplication of state law is another example of the Court erroneously construing facts and evidence against the Plaintiff instead of for the Plaintiff as required by the summary judgment standard. On page 15 of the Order under review, the Court dismisses the Plaintiff's case and evidence, characterizing it as "baldly" making claims without evidence. In contrast, the Court finds that the Defendants' affidavits are "uncontroverted." (Order at page 15) The only way to reach such a conclusion is to ignore all the Plaintiff's evidence or construe it improperly against him. This the Court cannot do, especially when the Defendants' affidavits, memoranda, and exhibits demonstrate demonstrably false statements and defamatory conduct. For example, the Court quotes Harley that neither she nor Charleston Carriage Horse Advocates "shot video" that was either posted or edited. The record refutes this assertion. On April 23, 2017, five days after the Big John incident, Joe Elmore wrote to Ellen Harley to congratulate her that the video had already gained 10,700,000 (ten million, seven hundred thousand) views and hoped it would be over eleven million by the next City Council meeting. This email is Exhibit 4 to the memorandum filed December 2, 2020, but for the Court's convenience, here it is:

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April 23, 2017 from Joe Elmore to Ellen [Harley], Beth [Slagsvol] and Amy [Dye]:

Kudos to Charleston Carriage horse Advocates (CCHA for immediately uploading the video, which has not been viewed by 10,700,000+ people, perhaps it will top 11 million by Wednesday's tourism commission.

The video suppled by Charleston Animal Society in discovery demonstrates that not only was the video edited—how else did Dan Krosse's subtitles appear—but also video supplied by Charleston Animal Society depicting Ellen Harley aggressively interfering and taking video of Big John. See the attached Exhibit 1. Moreover, she testified under oath that she took video of Big John on April 19, 2017:

Q. Did you take a video of the incident that day?

A. I did.

Transcript of Ellen Harley deposition January 31, 2020

On May 31, 2018, Dave Munday of the Charleston *Post & Courier* published a news story about this very case and interviewed Ellen Harley. The Court can, of course, take judicial knowledge of a newspaper article, but for the Court's convenience, here is the applicable parts:

Harley called the lawsuit "yet another baseless attempt to shift the focus away from the real issue, which is the humane treatment of these animals."

"At no time will these tactics distract us from our continued advocacy for these animals and the community in Charleston we represent that cares for them," she said.

. . .

Charleston Carriage Horse Advocates posted a video clip on their Facebook page showing the horse [Big John] lying in the street, **claiming that the animal had collapsed from exhaustion.**

Similarly, on April 20, 2017, the day after the incident, the Channel 5 broadcast station released a story about the incident containing the following:

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"Riccio said immediately after the fall, the horse sat up and helped back to its feet."

But Ellen Harley, a witness **who sent video of the incident to the Charleston Animal Society, disputed that**.

"A horse that slipped would get up quickly," she said. "This horse could not get up immediately or for over 30 minutes."

(emphasis added)

In his Third Supplemental Affidavit, filed September 24, 2021, the Plaintiff specifically details numerous instances of Harley's false statements in the very affidavit identified by this Court as the basis for ending the case. Moreover, in the production of documents from Charleston Animal Society, the Plaintiff obtained an email dated April 20, 2017, page 237, attached here as Exhibit 2, demonstrating the Defendants continuing to lobby the media to convince them to alter the true story of Big John and characterize the incident as a "collapse" rather than a "fall." See Exhibit 2. An April 23, 2017, email from Katherine Poag, a Charleston Carriage Horse Advocates Director, to Joe Elmore, Dan Krosse, Kurt Taylor and many others at the Charleston Animal Society, states:

Carriage Company owners now have backs to wall—Look at that letter from Broderick—And like any cornered animals, their natural actions will be desperate ones—The drivers will all be on edge about what if they are the next carriage with a runaway horse **or one that stumbles** and end [sic.] up in international views. (emphasis added, Exhibit 3)

Ms. Harley's lack of familiarity with the truth should be well established by the copious evidence of her numerous prevarications in this case, including the bullet points in the Plaintiff's several affidavits and memoranda, especially as summarized in Plaintiff's Third Supplemental Affidavit filed September 24, 2021, an affidavit the Court has either ignored or rejected. For unexplained reasons, the Court dismisses all of the Plaintiff's evidence as unreliable or conclusory, describing the Plaintiff's affidavits contained nothing but "bald statements." (Order at page 15) In contrast, the Court relies heavily on the affidavits of Ellen Harley and Joe Elmore, making improper credibility determinations in violation of the summary judgment standard. The Court deviated from the summary judgment standard and determined credibility, which it cannot do:

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All issues in this appeal arise from an order of summary judgment and are reviewed de novo. *Pueschel v. Peters*, 577 F.3d 558, 563 (4th Cir. 2009). Summary judgment is properly granted where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P.* 56(a). The burden is on the nonmoving party to show that there is a genuine issue of material fact for trial. *Liberty Lobby,* 477 U.S. at 248-49, 106 S.Ct. 2505. The nonmoving party must do so by offering "sufficient proof in the form of admissible evidence" rather than relying solely on the allegations of her pleadings. *Mitchell v. Data General Corp.*, 12 F.3d 1310, 1316 (4th Cir. 1993).

The court must "view the evidence in the light most favorable to the [nonmoving] party." *Tolan v. Cotton* , ___ U.S. ____, 134 S.Ct. 1861, 1866, 188 L.Ed.2d 895 (2014) (internal quotation omitted). **"The court ... cannot weigh the evidence or make credibility determinations."** *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d. 562, 568-69 (4th Cir. 2015). **"In general, if "an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate."** Fed. R. Civ. P. 56 advisory committee's note to 1963 amendment

Guessous v. Fairview Prop. Invs., LLC, 828 F.3d 208 (4th Cir. 2016) (emphasis added)

This standard is identical in the state courts:

In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). ". . . [T]he non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 370 S.C. 131, 634 S.E.2d 12 (2009)

The South Carolina Supreme Court has stated that great care should be used in the consideration of summary judgment motions. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." *Carolina Alliance for Fair Employment v. S. Carolina Dept. of Labor, Licensing, & Regulation*, 523 S.E.2d 795, 799 (S. C. App. 1999).

Further, our courts have held that "questions of credibility make summary judgment inappropriate." *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 450 S.E.2d 624 at 628 (Ct. App. 1994), cert. granted, decision aff'd, 319 S.C. 79, 459 2d 850 (1995) (emphasis added)

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Not only does the Order under review improperly resolve all credibility inferences against the Plaintiff resisting summary judgment, but also the Court directly violates the controlling legal principles established by our Supreme Court in *Erickson, ibid.* In short, the Court conflates matters of public importance with the specifically tailored attacks—both speech and conduct—on the Plaintiff. Although the Plaintiff concedes that the general topic of carriage tours has been a matter of public debate for years (along with bus tours, walking tours, hotel development, public restrooms, and any number of topics related to tourism), the Plaintiff vigorously disputes that **his treatment** of **his horse** has ever been a matter of public debate, and it was the Defendants' concerted efforts to defame the Plaintiff to damage him to the point that he had to abandon his business. See *Kirby v. City of Elizabeth City, N.C.* discussed in detail above on page 16. In *Erickson*, the group pushing for judicial reform of the guardian ad litem system had a legitimate interest in a matter of public concern yet a jury found them liable for defaming the Plaintiff even though they **never identified her by name**.

The public controversy regarding the guardian system existed before Newspaper published the article. But neither the person who made the statements (Pat Beal) nor the publisher (Newspaper) may, by their own words and actions, transform Appellant into a limited public figure by dragging her unwillingly into the controversy over reform of the guardian system.

Erickson v. Jones Street Publishers, 368 S.C. 444, 475, 629 S.E.2d 653 (2006)

The Defendants' publications of numerous statements that the Plaintiff's horse "collapsed" from overwork, heat, or exhaustion are statements the Court must submit **in context** to a jury. *Erickson, ibid.* The Court cannot substitute its view of a jury's view of the evidence precisely because South Carolina law requires that such statements be taken in context as occurred in *Erickson, ibid.* In granting summary judgment across the board, the Court ignored both the Plaintiff's Supplemental Affidavit filed December 2, 2020 and Fourth Supplemental Affidavit filed April 22, 2022. The Supplemental Affidavit detailed how the Defendants specifically

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attacked the Plaintiff by name and by purchasing Google ads to overwhelm customers looking for him, and only for him. The Fourth Supplemental Affidavit contains actual screen grabs demonstrating that the Defendants singled out the Plaintiff and only the Plaintiff. The Supplemental Affidavit contains a list of actions taken against the Plaintiff, and in evaluating summary judgment, the Court is required to view the statements about Big John **in this context**:

[The Defendants] published identifiable pictures and videos of my business, and it engaged in a course of conduct on multiple levels designed to defame me and put me out of business:

- Making false statements to the Tourism Commission and its committees
- Creating a false impression of me as an animal abuser.
- Creating a false impression of me as ignoring the law.
- Creating a false impression of me as overworking horses.
- Publishing statements calling me out by name and saying that "Christoff's statement is a reaction to the fact that more than 11-million people saw the video of his horse "Big John" collapse . . ." and further suggesting I am hiding something that should raise a "red flag" with the public.
- Controlling the messaging on social media by deleting accurate information and banning commenters who provide it.
- Publishing numerous false statements, as evidenced in their discovery production, including:
    - Horses are only given rest in the hot sun and often without water
    - They witnessed carriage horses worked to exhaustion
    - Carriage horses in Charleston are dying as a result of the City not enforcing the ordinances
    - Carriage horses in Charleston are dying as a result of mistreatment

Once the Animal Society published the Big John video and edited the comments to fit their false narrative, all the above was leveraged against me. Then, Amber and I received death threats, arson threats and threats from people that they were coming to get Big John and "rescue" him. (Big John, by the way, remains happy and healthy on an undisclosed farm.) All this occurred in spite of the fact that a qualified veterinarian and the City Equine Manager examined Big John on April 19th and pronounced him fit and unharmed. Both CCHA and CAS possessed this information the same day of the event. As a result of the CCHA and CAS' efforts, I had to cut off entire countries from viewing our Facebook page due to the volume of hate mail and threats. Amber and I took turns sleeping in shifts for weeks as one of us stood guard against threats of violence. We considered temporarily moving out of our house after someone fired shots down our driveway. We filed a report of the threats with both the Charleston County Sheriff's Department and the FBI.

When the efforts to paint me as an animal abuser did not work fast enough for the

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defendants' coordinated effort to put me out of business, they stepped up their campaign against us by spending taxpayer money to purchase Google ads to divert my customers to their web page. As a result, when a customer would search for me under "Charleston Carriage Works," instead of my web site coming up, the first result the customer would see was a paid ad from the CAS diverting them to the CAS' web site and a picture of Big John on the ground subtitled with the false "collapse" narrative. As a result of the Animal Society's web campaign, I had to spend thousands of dollars to bid against this Internet search redirection. The CAS purchase of these ads is clear evidence demonstrating how the CAS was targeting no other carriage company—only me.

Supplemental Affidavit of Broderick Christoff, filed December 2, 2020

The manipulation of Google ads is demonstrated to the Court in Christoff's Fourth Supplemental affidavit, which demonstrates that only his company is affected by the Defendants' deployment of taxpayer money to "leverage" social media to target him. This is strong evidence of defamation, both by speech and by conduct, civil conspiracy, and intentional interference with business relations.

Moreover, despite Plaintiff furnishing the applicable case law to the Court, it overlooked settled law that provides an insinuation is just as actionable as a direct statement. This settled principle of law is unmistakably explained in *Milkovich v. Lorain Journal*, 497 U.S. 1, 110 S.Ct. 2695 (1990) as well as by our Court of Appeals in *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (2001) discussing *Gertz, ibid.* and *Milkovich, ibid*, among others:

At trial, Kennedy argued he was entitled to a directed verdict because there was no evidence the comments were anything other than epithets. The trial judge denied the motion for a directed verdict, stating "all of the words have to be considered in the context with which they are used." The court stated whether the words were defamatory or not presented "factual questions" for the jury. We agree with the trial judge that, viewing all the evidence in the light most favorable to Goodwin, as we are required to do, whether the comments were defamatory presented a question of fact for the jury to determine. Thus, we find no error in the denial of a directed verdict on this basis.

. . .

We also reject Kennedy's argument that the context in which the statement was made cannot be considered when determining if it is defamatory. Kennedy also misguidedly argues that if the context of the words is considered, then the statement cannot, as a matter of law, be actionable *per se*. Kennedy has cited no authority for this proposition. To the contrary, the law in South Carolina allows the context of the words themselves and the circumstances under which the words are spoken to be considered in determining whether there is a defamatory meaning and whether it is actionable *per se. Herring v. Lawrence Warehouse Co.*, 222 S.C. 226, 235, 72 S.E.2d 453, 455

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(1952) (holding that when considered in light of circumstances, employer's statement that employee was "short" was clearly defamatory and actionable per se because it alleged the commission of a crime, namely theft); *Lily v. Belk's Dept. Store*, 178 S.C. 278, 182 S.E. 889 (1935); *Turner v. Montgomery Ward & Co.*, 165 S.C. 253, 163 S.E. 796 (1932); see *Sandifer v. Electrolux Corp.*, 172 F.2d 548 (4th Cir.1949) (holding under South Carolina law, where words themselves do not impute the commission of a crime, the jury may consider surrounding circumstances to determine whether statement was defamatory because it charged the commission of a crime). Therefore, we dismiss Kennedy's arguments in that regard as unsupported by the law of defamation in this State.

Moreover, as our Supreme Court also explained in *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 633 (1980), an insinuation is as actionable as a positive assertion if it is false and malicious and its meaning is plain. "It is established that a defamatory insinuation may be made **by actions or conduct** as well as by word." (emphasis added) Here, the Defendants' conspiracy to control the narrative, control and cast the Plaintiff in a false light is something the Court simply ignores in reaching its conclusions. Likewise, the Court completely overlooks the "conduct" of the Defendants such as deleting truthful information, banning commentators who failed to hew to their vision, disrupting the Plaintiff's web presence, and publishing demonstrably false information. As the Supreme Court said in *Eubanks*, "A novel issue such as here presented is best decided in light of the testimony to be adduced at trial."

As part of the Court's continuing error in improperly construing evidence against the non-moving party, the Court cites the affidavit of Ellen Harley, whom, as discussed above, the evidence shows, is untrustworthy. After providing the Court numerous instances of Ms. Harley's prevarications in affidavits and memoranda, the Court cites her affidavit as saying she did not shoot the video of Big John: "Defendants CCHA and Harley likewise presented testimony that they neither shot the video that was posted regarding Big Johns collapse on April 19, 2017, nor did they edit or delete footage of the scene that day. Aff of Harley ¶ 17." (Order at page 15) This is a shockingly bold and deliberate misrepresentation because the Charleston Animal Society provided the video to the Plaintiff in discovery, and even though it is impossible to file a video

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with the Clerk's office, the attached still photograph, Exhibit 1, from the video supplied by Charleston Animal Society clearly shows Ms. Harley, not only hovering over Big John with her phone recording video, but also impeding the efforts to unharness him. See attached still photo, attached here as Exhibit 1.

The Plaintiffs first affidavit filed February 25, 2020, details numerous false statements, lies, and suppression of truthful information, and there is no mention of the Plaintiff's first, second, third, or fourth affidavits filed in this case. Not to put too fine a point on it, but the Court cherry picked controverted evidence and construed inferences AGAINST the non-moving party to reach an erroneous conclusion that Plaintiff failed to create a genuine issue of material fact as to the necessary elements to recover in defamation. The Court determines that the Plaintiff failed to provide "admissible evidence" or anything other than "conclusory statements." (Order at page 15) Certainly statements about the temperature on April 17th, or the regulations governing the operation of carriages, or the health of Big John are not "conclusory statements," and they are certainly "admissible." Likewise, the undisputed testimony of the veterinarian who examined him and found him uninjured and "fit for work." Once again, the Court errs in turning a blind eye to the evidence in the record and applying the incorrect standard of review.

The Court also concludes that calling the Plaintiff an "animal abuser" is a statement of "rhetorical hyperbole." Because both the City and a qualified veterinarian examined Big John immediately after he tripped and sat down and pronounced him not only free from serious injury, but also fit for work, and because the Defendants were in possession of these records, they knew they were publishing a deliberately false statement in describing him as having "collapsed" from overwork or exhaustion. Under the Court's analysis, no statement by anyone anywhere is actionable because every statement by every human being is the product of the speaker's "opinion." The Court's conclusions are based on an incorrect understanding of the jurisprudence

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of defamation, and this point is emphatically made in the Supreme Court's analysis of the same theory in *Milkovich, ibid.*

Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. 10A Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983); 6 Moore's Federal Practice ¶ 56.02[6], p. 56-39 (2d) ed. 1990); see, e.g., *First Chicago Int'l v. United Exchange Co.*, 836 F. (2d) 1375 (D.C. Cir.1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F. (2d) 230 (2d Cir.1985); Tyler v. City of Enterprise, 521 So. (2d) 951 (Ala. 1988); *Gangadean v. Leumi Fin. Corp.*, 13 Ariz. App. 534, 478 P. (2d) 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So. (2d) 564 (Fla. Dist. Ct. App. 1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W. Va. 140, 267 S.E. (2d) 440 (1980); cf. Rule 56(f), S.C.R.C.P

Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)

Nowhere is the Court's error in construing facts against the non-moving party more salient than in the Court's effort to apply the five factors on page 7 of its Order, citing *Erickson, ibid*, to decide that the Plaintiff is a "limited public figure." In reaching this erroneous conclusion, the Court construes all the inferences against the Plaintiff and reaches conclusions not only not supported by evidence, but more importantly novel conclusions of law unsupported by any caselaw in any state. Citing *Erickson*, the Court lists the five factors as:

(1) the plaintiff has access to channels of effective communication;

(2) the plaintiff **voluntarily** assumed a role of special prominence in the public controversy (emphasis added);

(3) the plaintiff sought to influence the resolution or outcome of the controversy;

(4) the controversy existed prior to the publication of the defamatory statement; and

(5) the plaintiff **retained public-figure status** at the time of the alleged defamation (emphasis added).

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First, as *Erickson* holds, the determination of Plaintiff's status occurs at the close of the evidence in order to arrive at the proper charge to the jury. Notwithstanding that the inquiry is premature under *Erickson, ibid*, the Court sweeps all five of these factors away by adopting the Defendants' unsupported argument—again construing the evidence in the light most favorable to the moving party, that the Plaintiff's attendance at Commission meetings transformed him into a public figure. First, there is not a case anywhere in American jurisprudence that holds attendance at a City Council Tourism Commission meeting transforms the Plaintiff into a public figure, and the cases discussed in detail above hold exactly the opposite. In fact, this is the holding of *Erickson* where our Supreme Court rejected this very notion when the Defendants argued that Erickson was writing to the Attorney General to address her concerns. If contacting government were the test for transforming a private person into a public person, then every citizen is a public citizen by participating in Council meetings, obtaining a driver's license, registering to vote, *etc.* As is undisputed in this case, the Plaintiff did nothing to insert himself in the torrent of hate mail, death threats, and waves of intimidation that followed the publication of the Big John video with the demonstrably false language across it and the subsequent coordinating reinforcement to promulgate the lie. As *Erickson, ibid.* holds, when Brody tried to defend himself against the onslaught of allegations that he abused his horse—a crime—which the Defendants unleashed in a joint enterprise to destroy him, the Plaintiff was not trying to influence the resolution of a public controversy, but rather he was struggling to keep himself and his employees safe, combatting the lies and preventing his business from failing. The caselaw is unanimous that defending oneself against libelous comments does not transmit a person into a public figure. See *Erickson, ibid*, and *Milkovich, ibid.* Finally, the Order under review neither addresses nor explains how the Plaintiff's efforts to stay afloat transforms him into a public figure. The Court's reliance on cases such as *McGill v. Parker*, 179 A.D.2d 98, 107, 582 N.Y.S. 91, 96 (1992) on page 17 and *Atlanta Humane*

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Soc. v. Mills, 274 Ga. App. 159, 618 S.E.2d 18 (Ga. Ct. App. 2005) on page 10 is curious and inapposite. In *McGill*, the Court dismissed slander claims against the plaintiffs on the ground that the letters they complained about were matters directed to the care of horses in general and did not contain specific allegations of animal abuse against a specific person here. Moreover, the communications were letters to the *New York Times* and to City Officials, a much different set of facts than the present case. Here, the Defendants are public charities—not media defendants—and in exchange for favorable tax treatment and taxpayer support, the General Assembly statutorily prohibits them from disseminating false or misleading information, a controlling principle of law completely ignored by the Court. Additionally, the statements leveled against the Plaintiff alleged animal abuse to a specific horse at a specific time followed by intentional interference in the Plaintiff's web presence. In short, like the attack on the Capitol on January 6th, the Defendants in this case were whipping up a crowd to attack the Plaintiff and to this day have refused to publish a correction or call for calm. As Exhibit 1 demonstrates, Ellen Harley is a close follower.

What is most important, however, about the Court's reliance on the *McGill v. Parker* Court is the fact that the decision in that case specifically rejected the notion that a carriage operator transformed himself into a public figure by defending his business: **"We reject defendants' argument that plaintiffs are public figures because they have voluntarily involved themselves in an industry that is the subject of public controversy."** (emphasis added). Thus, the case relied on by this Court in ending a case stands for the opposite proposition for which the Court cites it.

Harking back to the undisputed fact that the Defendants here are charities receiving favorable tax treatment and taxpayer support and that South Carolina law statutorily prohibits them from disseminating "misleading" speech. In the *Atlanta Humane Society* case, the Georgia Court of Appeals granted summary judgment for the Defendant there **because the Society was the**

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plaintiff, an entity supported by government subsidies, and the Georgia Court pointed out the obvious: a government entity cannot maintain an action for slander! The Court equated the Humane Society as an arm of the government. The legal issues presented in *Atlanta Humane Soc.* are the precise opposite of the facts before this Court. As all the parties agree, this controversy begins with the demonstrably false and slanderous statement by the Defendants that the Plaintiff worked Big John to the point of exhaustion and collapse, and as the attached photo of Ellen Harley hovering over Big John demonstrates, Exhibit 1, she was on the scene in seconds pushing her way forward to lay the groundwork for what followed. The "context" of this case and the "context" in which the Defendants' statements and conduct must be evaluated create highly disputed genuine issues of material fact that cannot be summarily dismissed by the Court before trial.

Another salient error in the Order under review is the erroneous conclusion that the Defendants are "media defendants." A "media defendant" is a broadcast or print medium, which operate under a journalistic code of ethics and are charged with the duty of reporting the news. The definition of "media defendant" originates with the U. S. Supreme Court in *Gertz v. Robert Welch*, 418 U.S. 323, 94 S.Ct. 2997 (1974), where the Supreme Court held that a private figure need not meet the "actual malice" standard of *New York Times v. Sullivan*, :

> The need to avoid self-censorship by the news media is, however, not the only societal value at issue. If it were, this Court would have embraced long ago the view that publishers and broadcasters enjoy an unconditional and indefeasible immunity from liability for defamation. *See New York Times Co. v. Sullivan, supra,* at 376 U.S. 293 (Black, J., concurring); *Garrison v. Louisiana,* 379 U.S. at 379 U.S. 80 (DOUGLAS, J., concurring); *Curtis Publishing Co. v. Butts,* 388 U.S. at 388 U.S. 170 (opinion of Black, J.). Such a rule would, indeed, obviate the fear that the prospect of civil liability for injurious falsehood might dissuade a timorous press from the effective exercise of First Amendment freedoms. Yet absolute protection for the communications media requires a total sacrifice of the competing value served by the law of defamation.
>
> The legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted on them by defamatory falsehood. We would not lightly require the State to abandon this purpose, for, as MR. JUSTICE STEWART has reminded us, the individual's right to the protection of his own good name "reflects no more than our basic concept of the essential dignity

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and worth of every human being—a concept at the root of any decent system of ordered liberty. The protection of private personality, like the protection of life itself, is left primarily to the individual States under the Ninth and Tenth Amendments. But this does not mean that the right is entitled to any less recognition by this Court as a basic of our constitutional system." *Rosenblatt v. Baer,* 383 U.S. 75, 383 U.S. 92 (1966) (concurring opinion).

Some tension necessarily exists between the need for a vigorous and uninhibited press and the legitimate interest in redressing wrongful injury. As Mr. Justice Harlan stated, "some antithesis between freedom of speech and press and libel actions persists, for libel remains premised on the content of speech and limits the freedom of the publisher to express certain sentiments, at least without guaranteeing legal proof of their substantial accuracy." *Curtis Publishing Co. v. Butts, supra,* at 388 U.S. 152. In our continuing effort to define the proper accommodation between these competing concerns, we have been especially anxious to assure to the freedoms of speech and press that "breathing space" essential to their fruitful exercise. *NAACP v. Button,* 371 U.S. 415, 371 U.S. 433 (1963). To that end, this Court has extended a measure of strategic protection to defamatory falsehood.

The *New York Times* standard defines the level of constitutional protection appropriate to the context of defamation of a public person. Those who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures and those who hold governmental office may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth. This standard administers an extremely powerful antidote to the inducement to media self-censorship of the common law rule of strict liability for libel and slander. And it exacts a correspondingly high price from the victims of defamatory falsehood. Plainly, many deserving plaintiffs, including some intentionally subjected to injury, will be unable to surmount the barrier of the *New York Times* test. Despite this substantial abridgment of the state law right to compensation for wrongful hurt to one's reputation, the Court has concluded that the protection of the *New York Times* privilege should be available to publishers and broadcasters of defamatory falsehood concerning public officials and public figures. *New York Times Co. v. Sullivan, supra; Curtis Publishing Co. v. Butts, supra.* We think that these decisions are correct, but we do not find their holdings justified solely by reference to the interest of the press and broadcast media in immunity from liability. Rather, we believe that the *New York Times* rule states an accommodation between this concern and the limited state interest present in the context of libel actions brought by public persons. For the reasons stated below, we conclude that the state interest in compensating injury to the reputation of private individuals requires that a different rule should obtain with respect to them.

Theoretically, of course, the balance between the needs of the press and the individual's claim to compensation for wrongful injury might be struck on a case-by-case basis. As Mr. Justice Harlan hypothesized, "it might seem, purely as an abstract matter, that the most utilitarian approach would be to scrutinize carefully every jury verdict in every libel case, in order to ascertain whether the final judgment leaves fully protected whatever First Amendment values transcend the legitimate state interest in protecting the particular plaintiff who prevailed." *Rosenbloom v. Metromedia, Inc.,* 403 U.S. at 403 U.S. 63 (footnote omitted). But this approach would lead to unpredictable results and uncertain expectations, and it could render our duty to supervise the lower courts unmanageable. Because an *ad hoc* resolution of the competing interests at stake in each particular

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case is not feasible, we must lay down broad rules of general application: such rules necessarily treat alike various cases involving differences as well as similarities. Thus, it is often true that not all of the considerations which justify adoption of a given rule will obtain in each particular case decided under its authority.

With that caveat, we have no difficulty in distinguishing among defamation plaintiffs. **The first remedy of any victim of defamation is self-help -- using available opportunities to contradict the lie or correct the error, and thereby to minimize its adverse impact on reputation. Public officials and public figures usually enjoy significantly greater access to the channels of effective communication, and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater.**

More important than the likelihood that private individuals will lack effective opportunities for rebuttal, there is a compelling normative consideration underlying the distinction between public and private defamation plaintiffs. An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case. And society's interest in the officers of government is not strictly limited to the formal discharge of official duties. As the Court pointed out in *Garrison v. Louisiana,* 379 U.S. at 379 U.S. 77, the public's interest extends to "anything which might touch on an official's fitness for office. . . . Few personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character."

Those classed as public figures stand in a similar position. **Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare. For the most part, those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.**

Even if the foregoing generalities do not obtain in every instance, the communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them. No such assumption is justified with respect to a private individual. He has not accepted public office or assumed an "influential role in ordering society." *Curtis Publishing Co. v. Butts,* 388 U.S. at 388 U.S. 164 (Warren, C.J., concurring in result). He has relinquished no part of his interest in the protection of his own good name, and consequently he has a more compelling call on the courts for redress of injury inflicted by defamatory falsehood. Thus, private individuals are not only more vulnerable to injury than public officials and public figures; they are also more deserving of recovery.

For these reasons, we conclude that the States should retain substantial latitude in their efforts to enforce a legal remedy for defamatory falsehood injurious to the reputation of a private individual. The extension of the *New York Times* test proposed by the *Rosenbloom* plurality would abridge

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this legitimate state interest to a degree that we find unacceptable. And it would occasion the additional difficulty of forcing state and federal judges to decide on an *ad hoc* basis which publications address issues of "general or public interest" and which do not -- to determine, in the words of MR. JUSTICE MARSHALL, "what information is relevant to self-government." *Rosenbloom v. Metromedia, Inc.,* 403 U.S. at 403 U.S. 79. We doubt the wisdom of committing this task to the conscience of judges. Nor does the Constitution require us to draw so thin a line between the drastic alternatives of the *New York Times* privilege and the common law of strict liability for defamatory error. The "public or general interest" test for determining the applicability of the *New York Times* standard to private defamation actions inadequately serves both of the competing values at stake. On the one hand, a private individual whose reputation is injured by defamatory falsehood that does concern an issue of public or general interest has no recourse unless he can meet the rigorous requirements of *New York Times.* This is true despite the factors that distinguish the state interest in compensating private individuals from the analogous interest involved in the context of public persons. On the other hand, a publisher or broadcaster of a defamatory error which a court deems unrelated to an issue of public or general interest may be held liable in damages even if it took every reasonable precaution to ensure the accuracy of its assertions. And liability may far exceed compensation for any actual injury to the plaintiff, for the jury may be permitted to presume damages without proof of loss and even to award punitive damages.

We hold that, so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual. This approach provides a more equitable boundary between the competing concerns involved here. It recognizes the strength of the legitimate state interest in compensating private individuals for wrongful injury to reputation, yet shields the press and broadcast media from the rigors of strict liability for defamation. At least this conclusion obtains where, as here, the substance of the defamatory statement "makes substantial danger to reputation apparent." This phrase places in perspective the conclusion we announce today. Our inquiry would involve considerations somewhat different from those discussed above if a State purported to condition civil liability on a factual misstatement whose content did not warn a reasonably prudent editor or broadcaster of its defamatory potential. *Cf. Time, Inc. v. Hill,* 385 U.S. 374 (1967). Such a case is not now before us, and we intimate no view as to its proper resolution.

IV

Our accommodation of the competing values at stake in defamation suits by private individuals allows the States to impose liability on the publisher or broadcaster of defamatory falsehood on a less demanding showing than that required by *New York Times.* This conclusion is not based on a belief that the considerations which prompted the adoption of the *New York Times* privilege for defamation of public officials and its extension to public figures are wholly inapplicable to the context of private individuals. Rather, we endorse this approach in recognition of the strong and legitimate state interest in compensating private individuals for injury to reputation. (emphasis added)

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As *Gertz* (and *New York Times* before it) makes clear, "media defendants" are independent sources of news, what the Court calls "broadcast media" or "press," not charities looking to increase collections by whipping up anger. First, just because someone creates a Facebook page, he or she is not elevated into a "media defendant." As *Gertz* makes clear, it is "inequitable" to bestow *carte blanche* on any person who chooses to slander or libel: "We hold that, so long as they do not impose liability without fault, **the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual. This approach provides a more equitable boundary between the competing concerns involved here. It recognizes the strength of the legitimate state interest in compensating private individuals for wrongful injury to reputation, yet shields the press and broadcast media from the rigors of strict liability for defamation."** *Gertz, ibid.*

The elephant in the room, and a fact wholly ignored by the Order under review despite being urged to consider it, is that the General Assembly imposes restrictions on charities in South Carolina. They are not "media defendants." Rather, in exchange for favorable tax treatment not afforded to "media defendants," the Defendants are statutorily prohibited from "mislead[ing], knowingly and willfully, a person by any manner, means, practice, or device." § 33-56-120, S. C. Code, ann. The very next section prohibits a charity from leading "the public to believe the registration in any way constitutes an endorsement or approval by the State," yet almost every publication (until this case) by the Charleston Animal Society proclaims, unlawfully, "South Carolina Most Honored Charity," falsely implying that the Government has bestowed a special recognition upon it. Every time the Defendants publish and republish false information about Big John, it is always accompanied by a "donate here" button, and even Dr. Miller in his February 11, 2020, deposition explained that when he asked Joe Elmore why he used such inflammatory language, Elmore answered it was to get people to listen:

Q What three things did you ask from them [Charleston Animal Society]?

A I asked if they would meet with me and go downtown and inspect the barns. Meet the operators. Meet the staff. Look at the horses. Look at the horses in work. Watch the current regulations being

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implemented, and they agreed to that. I asked that there would be a ceasefire in terms of no more negative publications, billboards, articles in the newspaper. They agreed to that. And I agreed that they would stop using inflammatory language like inhumane treatment of horses. Collapse, in my opinion, would be another example, although that wasn't an issue at the time, or we didn't bring it up. And they agreed to that. Although, Joe [Elmore] said that that was how he was able to get people to listen. That's how he was able to get the City to listen. By using that type of language. But they agreed to those things, and I was hopeful, and they were hopeful that we would be able to meet and possibly do something.

Deposition of Dr. Justin Miller, page 89, line 8—90, line 3

Thus the Order under review applies the wrong evidentiary standard and is controlled by material errors of law.

In addition, the Court grants summary judgment on the Plaintiff's other causes of action, civil conspiracy and tortious interference with the Plaintiff's business relations. A detailed analysis of the Court's errors on these causes of action is not necessary since the evidence and caselaw discussed above applies equally to the Plaintiff's other causes of action. The record in this case, as discussed in detail above, and as demonstrated by the Plaintiff's affidavits and supporting memoranda and exhibits demonstrates far more than a genuine issue of material fact that the Defendants conspired to disseminate false and misleading information to damage the Plaintiff, or as Ms. Harley terms it, "depress their income." Almost everything the Defendants do is illegal because, also as discussed in detail above, they are taxpayer funded public charities, and public charities voluntarily agree to restrictions on behavior in exchange for government support. The Charleston Animal Society is so entwined with Charleston County and other local governments as to become a quasi-governmental entity. In granting summary judgment across the board, the Court devotes considerable detail to analyzing whether Plaintiff is a public or private figure and whether the statements about Big John are protected by the First Amendment, but gives no attention to the conduct of the Defendants when the record demonstrates they manipulated social media to prevent disclosure of truthful information or the money they spent to "leverage" social media and interfere with the Plaintiff's web presence. The Court ignores the affidavits of

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Katherine Vaughn and the exhibits attached to Plaintiff's Fourth Supplemental Affidavit, which demonstrate that the Plaintiff—and the Plaintiff alone—is the target of the Defendants' manipulation of misinformation and Google advertising to cast the Plaintiff in a false light. The manipulation of Google ads of Google ads—as demonstrated in Plaintiff's Fourth Supplemental Affidavit—is to prevent customers from reaching the Plaintiff. As the evidence shows, only the Plaintiff's web page is affected, and this is "clear and convincing" evidence of defamatory conduct specifically tailored to affect the Plaintiff's business. As Dan Krosse, media specialist for Charleston Animal Society and Ms. Harley so eloquently characterized their conduct when discussing another strategy of buying up domain names related to carriage tours: "They're going to sh!#t their pants," to which Ms. Harley replies "Done!" (May 3, 2018, Email exchange attached as Exhibit 8 to Plaintiff's Fourth Supplemental Affidavit.) The evidence in this record creates much more than a genuine issue of material fact as to all of the elements of civil conspiracy and tortuous interference. For reasons that the Court does not explain, it concludes that such interference only relates to the Plaintiff's franchise agreement. It can, of course, but the record shows that the Defendants set out on a course to interfere in the Plaintiff's day-to-day operation to "depress their income," interference that continues to this day. The Plaintiff discovered an email dated July 15, 2016, in which the Defendants discuss a strategy of eliminating the City's Franchise Agreements, and it is telling that when Joe Elmore distributed it, he warned the other correspondents not to share it outside of the Animal Society even though they included city officials on the communication. See Exhibit 2.

Finally, the Court misapprehends the Plaintiff's claim for a civil rights violation. As set forth above and as established by the record, the Defendants operate a registered South Carolina charity, which requires the Defendants to adhere to certain regulations. Charleston Animal Society is heavily subsidized by several local governments, receiving $175,000.00 a month from

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Charleston County and just in the last month a donation of four commercial property acres from the City of North Charleston. Anyone who deprives a party of his or her civil rights acting in concert with a government is amenable to suit for violations under color of law. See *Dennis v. Sparks*, 449 U.S. 24 (1980), and here the Charleston Animal Society is functionally equivalent to the Government:

> As the Court of Appeals correctly understood our cases to hold, to act "under color of" state law for § 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state official in the challenged action, are acting "under color" of law for purposes of § 1983 actions. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 398 U.S. 152 *(1970)*; *United States v. Price,* 383 U.S. 787, 383 U.S. 794 (1966).

Here, the Plaintiff alleges that Charleston Animal Society is a quasi-governmental agency, and the Order under review acknowledges this fact on pages 33 and 34. The Elmore affidavit attests that it must use "reserves, donations, and grants to fund the shortfall," (Order at page 34) This is a dubious statement since the Charleston Animal Society, as of its last public tax filing, reports over 15 million dollars invested in the stock market. This record requires further development into the Charleston Animal Society's use of taxpayers money (although publicly disclosed tax returns recited in Plaintiff's affidavit) demonstrate Mr. Elmore's salary has gone from a base salary of $90,000.00 in 2012 to $243, 123.00 in 2019, not including benefits. Further inquiry into the Charleston Animal Society's activities as a quasi-governmental entity are warranted, and under South Carolina law, summary judgment is inappropriate where further inquiry into the facts is required:

> Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). See Rule 56, SCRCP. In determining

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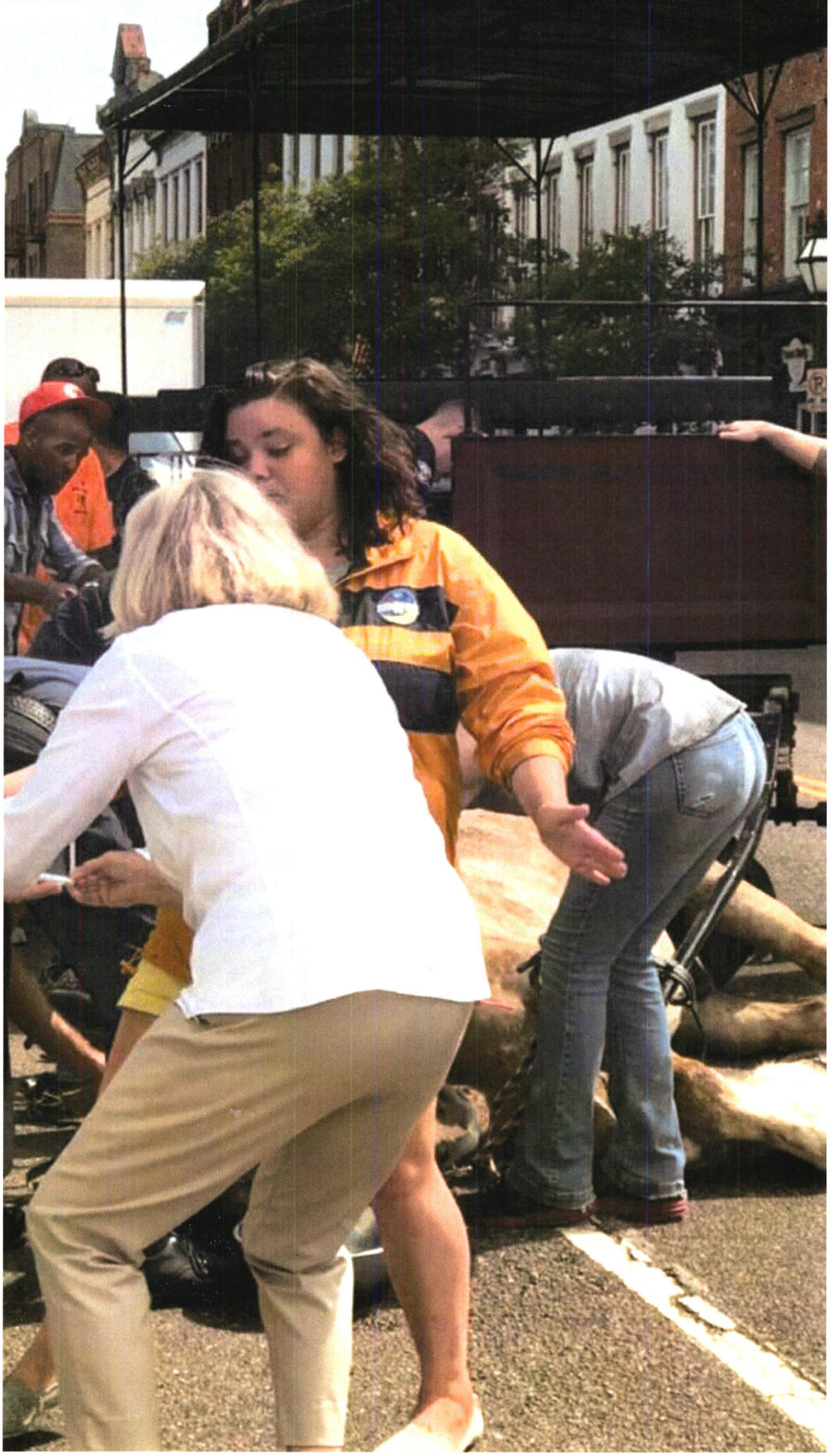
whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *City of Columbia, supra.* Summary judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. *Byerly v. Connor*, 307 S.C. 441, 415 S.E.2d 796 (1992). Summary judgment is not appropriate, however, where further inquiry into the facts of the case is desirable to clarify application of the law. *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991). It should not be granted even where there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from such facts. *Id.*

Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (1997)

Conclusion

In conclusion, the Plaintiff respectfully submits that in adopting defendants' three proposed Orders without material amendment, the Court improperly adopts the Defendants' unsupported and demonstrably false representations and misapplies the well-developed standard for summary judgment. In ending the case, the Court relies on unsupported statements of opinion, overlooks the correct sequence of events including the Plaintiff's numerous efforts to exhort the Defendants, Harley and Charleston Carriage Horse Advocates, to conform to the rules and participate in discovery and grounds its ruling denying the Plaintiff's request to extend the scheduling Order and amend the complaint in violation of the clear procedural rules that require the Court to construe facts and the reasonable inferences deducible from them in the light most favorable to the Plaintiff. The Court concludes the Defendants' speech is protected by misapplying controlling authority, especially, *Erickson, Gertz, and Milkovich, ibid.* The Court overlooks the Defendants' conduct and fails to examine the record as it is developed for the creating of genuine issues of material fact related to the Defendants' conduct. It improperly conflates matters of "public concern" with "context," the error being that almost everything is a matter of public concern, but the speech and conduct Plaintiff challenges relates only to a specific subject: **his** horse and **his** company. As set forth in the Plaintiff's May 5, 2022, motion for reconsideration on the issue of discovery, the Plaintiff never had an opportunity to complete discovery as a result of the Defendants' contumaciousness (Harley and Charleston Carriage Horse Advocates'), then a serious health



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From: ellen.harley@gmail.com
To: Joe Elmore
Cc: julia elizabeth bradham; Dan Krosse; Kay Hyman; Debbie OHara; Aldwin Roman
Subject: Re: animal-drawn carriage regulation
Date: Monday, July 18, 2016 3:30:52 PM

Where did these recommendations come from? I was not aware of discussions about what CAS would be recommending.

Sent from my iPhone

On Jul 18, 2016, at 2:41 PM, Joe Elmore <jelmore@charlestonanimalsociety.org> wrote:

> FYI – please do not share outside of the Animal Society. Thanks.
>
> **From:** W. Kurt Taylor [mailto:ktaylor@charlestonanimalsociety.org]
> **Sent:** Friday, July 15, 2016 1:17 PM
> **To:** ricciod@charleston-sc.gov
> **Cc:** jeruer@charleston-sc.gov; Joe Elmore <jelmore@charlestonanimalsociety.org>
> **Subject:** animal-drawn carriage regulation
>
> Hello, Dan. I hope all is well with you and your department in the City.
>
> Thank you again for meeting with us, Mayor Tecklenburg and City staff on June 7. As we discussed in that meeting, and as I confirmed with Mayor Tecklenburg the following Monday when he spoke to our Rotary Club in North Charleston, I look forward to working with the City on issues regarding the animal-drawn tour business.
>
> In this email, I am sharing with you some ideas regarding issues which should be addressed with animal-drawn carriage operations downtown. First are some ideas for enforcement of existing ordinance provisions, followed by other suggestions regarding changes in regulation of the industry. Finally, I have looked through the existing ordinance, and include in an attachment some suggestions for edits which might make items more clear or efficient. I would be delighted to meet with you and/or Janie Borden (if she is the staff attorney still assigned to this ordinance) to discuss these ideas and other items for study.
>
> Finally, I have looked at several ordinances from other cities around the country. I have not attached them here but you can find them on the internet rather easily. These cities include: Helen, GA, Sacramento, CA, Philadelphia, PA, Savannah, GA (where the carriage regulations and heat policy are currently under review), New Orleans, LA, Indianapolis, IN, Cleveland, OH, New York, NY and St. Augustine, FL. Each has some interesting ways to address regulatory issues.
>
> **Ways to enforce items in the existing ordinance for which there is difficulty in current enforcement:**
>
> **Hours horses are working.** As you explained to us at the meeting, all horses and

mules are microchipped. If they are not doing so already, the chips could be read by city staff at the medallion gate at the beginning of each trip. Since city staff must keep logs of the issuance and return of medallions under City Code Section 29-208(c), reading the microchips could provide an additional level of accuracy and protection for individual horses/mule teams.

Weight of loaded carriages. The combined weight of carriage, passengers and drivers cannot exceed three times the weight of the animal(s). The city should acquire and use appropriate scales to weigh carriages before each trip. CAS has offered to assist with the cost, and provided examples of portable scales. We will be happy to provide additional research and implementation of this low-cost, simple solution. In order to meet the letter of the ordinance (for example, the three-times multiplier, plus Section 29-212(e)(11) "Animals...shall not weigh less than nine hundred fifty (950) pounds..." horses/mules should also be weighed more frequently than is now done.

Items which should be implemented:

As you mentioned, a rapid response triage team is being established by the City, which includes veterinarians and which can come quickly to the scene of accidents or incidents with horses or mules. City has agreed to call CAS for veterinarians which can be part of this team, and we are happy to participate.

The "Official thermometer" should be relocated closer to street level in the Market area in order to measure the temperature in the actual environment in which the horses are operating. Another, more complicated suggestion would be to establish more Weatherbug stations along the carriage routes, at low costs, in conjunction with the Charleston Digital Corridor's free Wi-Fi in City parks initiative. Temperatures could be measured in multiple areas, rather than just in the Market area. This may prove impractical or undesirable, but is an idea.

The maximum temperature/heat index at which carriages must cease operating should be lower than $98^0/125^0$. When adopted (over objections from the CAS representative on the committee) the 98/125 threshold was supposed to be temporary while the issue was studied further. We are communicating with expert resources which can provide assistance in establishing a more appropriate heat limit.

As you also mentioned, daily reroutes to prevent horses from coming across street and building construction noises and hazards should be made, and publicly posted on the Internet.

As to the issue of increased traffic due to the booming tourism and development downtown, a study should review whether the number of carriages or carriage companies operating under franchise agreements with the City should be reduced, due to the dramatic increase in traffic in the historic district. Numbers could be reduced as franchise agreements expire. A franchise agreement is not a perpetual right to use the public right of way, and should be modified when in the best interests of the public. An alternative/companion action to the limit of franchises could be a reduction in the maximum number of medallions from 20 to a lower

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number.

Attached are suggested edits to the City Code of Ordinances sections dealing with "Transportation by Animal-Drawn Vehicles for Purposes of Touring".

Thank you again for the opportunity to provide suggestions in the most important matter. Please call or email at your convenience so that we may set up a meeting to discuss them further.

W. Kurt Taylor, Esq.
Director of Government Relations
Charleston Animal Society
2455 Remount Rd.
North Charleston, SC 29406

P: 843-329-1567
C: 843-670-3344

www.CharlestonAnimalSociety.org

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ELECTRONICALLY FILED - 2022 May 20 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

From: ellen.harley@gmail.com
To: Joe Elmore
Cc: julia elizabeth bradham; Dan Krosse; Kay Hyman; Debbie OHara; Aldwin Roman
Subject: Re: animal-drawn carriage regulation
Date: Monday, July 18, 2016 3:30:52 PM

Where did these recommendations come from? I was not aware of discussions about what CAS would be recommending.

Sent from my iPhone

On Jul 18, 2016, at 2:41 PM, Joe Elmore <jelmore@charlestonanimalsociety.org> wrote:

> FYI – please do not share outside of the Animal Society. Thanks.
>
> **From:** W. Kurt Taylor [mailto:ktaylor@charlestonanimalsociety.org]
> **Sent:** Friday, July 15, 2016 1:17 PM
> **To:** ricciod@charleston-sc.gov
> **Cc:** jeruer@charleston-sc.gov; Joe Elmore <jelmore@charlestonanimalsociety.org>
> **Subject:** animal-drawn carriage regulation
>
> Hello, Dan. I hope all is well with you and your department in the City.
>
> Thank you again for meeting with us, Mayor Tecklenburg and City staff on June 7. As we discussed in that meeting, and as I confirmed with Mayor Tecklenburg the following Monday when he spoke to our Rotary Club in North Charleston, I look forward to working with the City on issues regarding the animal-drawn tour business.
>
> In this email, I am sharing with you some ideas regarding issues which should be addressed with animal-drawn carriage operations downtown. First are some ideas for enforcement of existing ordinance provisions, followed by other suggestions regarding changes in regulation of the industry. Finally, I have looked through the existing ordinance, and include in an attachment some suggestions for edits which might make items more clear or efficient. I would be delighted to meet with you and/or Janie Borden (if she is the staff attorney still assigned to this ordinance) to discuss these ideas and other items for study.
>
> Finally, I have looked at several ordinances from other cities around the country. I have not attached them here but you can find them on the internet rather easily. These cities include: Helen, GA, Sacramento, CA, Philadelphia, PA, Savannah, GA (where the carriage regulations and heat policy are currently under review), New Orleans, LA, Indianapolis, IN, Cleveland, OH, New York, NY and St. Augustine, FL. Each has some interesting ways to address regulatory issues.
>
> **Ways to enforce items in the existing ordinance for which there is difficulty in current enforcement:**
>
> **Hours horses are working.** As you explained to us at the meeting, all horses and

mules are microchipped. If they are not doing so already, the chips could be read by city staff at the medallion gate at the beginning of each trip. Since city staff must keep logs of the issuance and return of medallions under City Code Section 29-208(c), reading the microchips could provide an additional level of accuracy and protection for individual horses/mule teams.

Weight of loaded carriages. The combined weight of carriage, passengers and drivers cannot exceed three times the weight of the animal(s). The city should acquire and use appropriate scales to weigh carriages before each trip. CAS has offered to assist with the cost, and provided examples of portable scales. We will be happy to provide additional research and implementation of this low-cost, simple solution. In order to meet the letter of the ordinance (for example, the three-times multiplier, plus Section 29-212(e)(11) "Animals...shall not weigh less than nine hundred fifty (950) pounds..." horses/mules should also be weighed more frequently than is now done.

Items which should be implemented:

As you mentioned, a rapid response triage team is being established by the City, which includes veterinarians and which can come quickly to the scene of accidents or incidents with horses or mules. City has agreed to call CAS for veterinarians which can be part of this team, and we are happy to participate.

The "Official thermometer" should be relocated closer to street level in the Market area in order to measure the temperature in the actual environment in which the horses are operating. Another, more complicated suggestion would be to establish more Weatherbug stations along the carriage routes, at low costs, in conjunction with the Charleston Digital Corridor's free Wi-Fi in City parks initiative. Temperatures could be measured in multiple areas, rather than just in the Market area. This may prove impractical or undesirable, but is an idea.

The maximum temperature/heat index at which carriages must cease operating should be lower than $98^0/125^0$. When adopted (over objections from the CAS representative on the committee) the 98/125 threshold was supposed to be temporary while the issue was studied further. We are communicating with expert resources which can provide assistance in establishing a more appropriate heat limit.

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ELECTRONICALLY FILED - 2022 May 23 5:06 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2018-CP-10-04083
Charleston Carriage Works, L.L.C.,)	
)	
Plaintiff,)	
)	
vs.)	**NOTICE OF FILING CORRECTED EXHIBIT**
)	Rule 59(e), *S. C. Rules of Civil Procedure*
Charleston Animal Society, Ellen)	Rule 60, S. C. *Rules of Civil Procedure*
Harley and Charleston Carriage)	
Horse Advocates, Inc.,)	
)	
Defendants.)	
)	

On May 20, 2022, the Plaintiff filed a memorandum of law in support of Motion for Reconsideration, which contains 11 exhibits. Exhibit 2 was supposed to be a 2-page exhibit, and only one page was filed. Plaintiff submits the attached exhibit as page 2 as a Supplement to Exhibit 2 to correct this deficiency.

May 23, 2022

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar No. 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554 4291; (843) 554 5566 (fax)
tgoldstein@cobblaw.net

ELECTRONICALLY FILED - 2022 May 23 5:06 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004083

From: Ellen Harley
To: Dan Krosse; Joe Elmore; Hank Greer; Elizabeth Bradham; Peter Waters
Subject: Fwd: Collapsed horse
Date: Thursday, April 20, 2017 8:44:35 AM

I read, with dismay, the Channel 2 report on the collapsed horse.
http://counton2.com/2017/04/19/carriage-horse-falls-during-tour-in-downtown-charleston/
I sent this note to the Channel 2 interviewer. Dan, I hope it is "nice" enough. I think the record needs to be constantly set straight. There is so much confusion and that is where Riccio and the Industry are allowed to say whatever makes the Industry look like they are not at fault.

Begin forwarded message:

From: Ellen Harley <ellen.harley@gmail.com>
Subject: Collapsed horse
Date: April 20, 2017 at 8:37:31 AM EDT
To: sarazoza@wcbd.com

Sophia; Thank you for interviewing us yesterday on the collapsed horse incident. I enjoyed meeting you.
Just a couple of things of which you may not be aware;
1) the Equine Manager for the City has no veterinary science education. She apparently has some online courses on animal issues but no formal schooling in veterinary science (she's not a vet nor a vet tech).
2) the police are apparently relying on what happened not by interviewing witnesses or passengers to corroborate the story, but rather relying on the Industry employees/owner for information. As you are well aware, typically in auto accidents (and this was an accident on city streets affecting traffic and pedestrians) witnesses are asked (or should be!) what happened.
3) The City's vet as well as the Industry's vet both have financial interests with the for-profit Industry and the City, who financially benefits from the Industry, and therefore are not Independent.
4) Dan Riccio, the Livability Officer was not present at the scene. I was present at the scene as were others including Elizabeth Fort whom you interviewed, and the horse did not get up immediately nor did he raise his head immediately. If you would like for us to re-send the videos to you proving that the horse did not raise its head immediately or get up immediately, as Riccio claims, please let me know and I am happy to provide.
5) Horses do not typically fall nor do they typically stumble over their feet. To do so would be subject to a thorough investigation of the horse's health.
6) The pavement was dry and flat indicating no danger for a slip. If the pavement was unsafe, then the City and Industry are supposed to have requirements for animals to avoid that area.
7) There is no protocol established by the City and Industry for handling carriage accidents. The Charleston Animal Society has repeatedly asked the City to establish a protocol but to no avail.

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
9TH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO. 2018-cp-10-04083

CHARLESTON CARRIAGE WORKS, LLC,

Plaintiff(s),

-vs-

CHARLESTON ANIMAL SOCIETY, ELLEN HARLEY, AND CHARLESTON CARRIAGE HORSE ADVOCATES, INC.,

Defendant(s).

THE VIDEOTAPED DEPOSITION OF ELIZABETH FORT, taken on behalf of the Plaintiff on the 3rd day of May, 2019, commencing at 10:06 a.m. at the Law Offices of Belk, Cobb, Infinger & Goldstein, P.A., 2344 Cosgrove Avenue, Charleston, South Carolina 29405.

REPORTED BY: Nicole D. White

LIVE OAK REPORTING

P.O. BOX 21119

Electronically signed by Nicole White (301-070-154-1752) d6bc1ad1-3e00-4bb4-a980-6d1e3688d733

CHARLESTON, SOUTH CAROLINA 29413

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

Appearances for the Plaintiff:
By: Thomas R. Goldstein, Esquire
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
2344 Cosgrove Avenue
Charleston, SC 29405
(843) 554-4291
Tgoldstein@cobblaw.net

Appearances for the Defendant:
By: Spencer Craig, Esquire
HALL BOOTH SMITH, P.C.
111 Coleman Boulevard, Suite 301
Mount Pleasant, SC 29464
(843) 720-3468
Scraig@hallboothsmith.com
and
By: Elizabeth Palmer, Esquire
ROSEN HAGOOD
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
Epalmer@rrhlawfirm.com
and
By: Jenkins M. Mann, Esquire
ROGERS LEWIS
1901 Main Street, Suite 1200
Columbia, SC 29201
(803) 978-2831

Also Present:
Broderick J. Christoff
Aldwin Roman
Zachary White, Videographer

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I N D E X

TESTIMONY OF ELIZABETH FORT
EXAMINATION BY MR. GOLDSTEIN 04

REPORTER'S CERTIFICATE 75

E X H I B I T S

Number	Description	PG
Exhibit No. 1	Plaintiff's Notice of Deposition	11
Exhibit No. 2	Screen Printout	21
Exhibit No. 3	Screen Printout	31
Exhibit No. 4	Article - City releases official report on Charleston carriage horse incident	39
Exhibit No. 5	Photograph	43
Exhibit No. 6	WMBF News FB Page Post	49
Exhibit No. 7	Screen Printout	50
Exhibit No. 8	Screen Printout	51
Exhibit No. 9	Screen Printout	51
Exhibit No. 10	Screen Printout	53
Exhibit No. 11	Letter dated 04/25/17 to Ms. Harley from Thomas R. Goldstein	53

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VIDEOGRAPHER: The date today is May 3rd, 2019 and the time is 10:06 a.m. This is the video deposition of Elizabeth Fort in the matter of Charleston Carriage Works, LLC versus Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, Inc., being heard in the Court of Common Pleas, case number 2018-CP-10-04083.

This deposition is being held at the law offices of Belk, Cobb, Infinger & Goldstein, P.A. located at 2344 Cosgrove Avenue, Charleston, South Carolina 29405. Will the counsel please identify themselves for the Record.

MR. GOLDSTEIN: Tommy Goldstein for the plaintiff.

MS. CRAIG: Spencer Craig, here on behalf of Ellen Harley and Charleston Carriage Horse Advocates, Inc. and Elizabeth Fort today.

MS. PALMER: Beth Palmer on behalf of Charleston Animal Society.

MR. MANN: Jenkins Mann on behalf of Ellen Harley and Charleston Carriage Horse Advocates, Inc.

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VIDEOGRAPHER: All right. Will you please swear in the witness.

(ELIZABETH FORT, having been first duly sworn, testified as follows:)

E-X-A-M-I-N-A-T-I-O-N

BY MR. GOLDSTEIN:

Q. Okay. Ms. Fort, my name is Tommy Goldstein. I introduced myself to you in the lobby. And you are here today for your deposition. And I know it seems very formal and it's really not. The expectation -- it's like going to the dentist, the expectation is worse than the reality. I don't take long depositions, so I don't anticipate we'll be here a long time.

If you need me to speak up, tell me. As a result of certain events last week, I had all sorts of instruments put down my throat, which has left me a little hoarse, so you may have trouble hearing my question. If you do, speak up, say I didn't hear you, can you repeat that.

A. Understood.

Q. Fair enough?

(Off-the-Record conversation.)

Q. If you don't understand a question,

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stop me and ask me to repeat it, because sometimes lawyers ask just nonsensical questions and when that happens, the burden kind of shifts to you to say Goldstein, I hear the words you're saying, but they don't make any sense to me, can you rephrase the question, and I will do that for you.

A. Okay.

Q. Unlike Mr. Mann's marathon session of ten hours, this is not a marathon. You can take -- he's on the phone, but I'm teasing him. You can -- that was probably him muting us. You can take a break anytime you like.

A. Okay.

Q. And we can get -- we have water, we have sweet tea, unsweet tea and I guess that's about it.

A. Okay.

Q. But anytime you want to take a break, you just let us know.

A. Thank you.

Q. The rules do require that if you have a question during the conduct -- the taking of your deposition, the rules require that you direct your inquiry to me. Here now that the

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deposition has started, you're not allowed to consult with counsel.

A. Understood.

Q. So let me say a word for your counsel on that regard, because a lot of people misunderstand that. They think, well, what am I paying a lawyer for, my lawyer's just sitting here not saying a word. Well, there's a reason for that and these lawyers are too young, but those of us who are older remember in the old days when the rules were different, lawyers would get very, very involved in depositions. And the Supreme Court clamped down on it. They said y'all gonna act like children, we're gonna treat you like children. New rules, you've just got to sit there quietly. And all she's allowed to say is object to the form of the question or direct you not to answer a question if it invades a privilege. Other than that, because older lawyers like I am, acted like jerks, she's got to sit there pretty quietly. All right. Now, do you have any questions for me?

A. No, sir.

Q. Do you feel well enough to give your deposition?

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A. I do.

Q. Is today a bad day for you for any other reason?

A. No, sir.

Q. Okay. Well, the court reporter's already told me that her son has a prom date this afternoon --

A. That's exciting.

Q. -- so we have to get her out of here.

A. Okay.

Q. If you don't mind, would you just tell me a little bit about your background, where you grew up, and where you were educated?

A. Sure. I grew up outside of Chicago. I went to college in Iowa. I moved to -- I worked in Chicago after graduating. I don't know how in-depth you want me to go. I --

Q. Well, what did you graduate from Iowa in?

A. Drake University, liberal arts.

Q. Liberal arts?

A. Yes, sir. Yeah.

Q. Uh-huh.

(Off-the-Record conversation.)

Q. Okay.

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A. I worked in Chicago at John Nuveen & Company and then transferred out to San Francisco with the company. Moved to Boston for a year with Goldman Sachs and transferred back out to San Francisco with Goldman Sachs and then met my husband, moved to Spartanburg, South Carolina. Had two girls. Volunteered at the school and then moved to Charleston in 2014.

Q. Your husband's from Spartanburg?

A. He is -- no, actually his father was an Episcopal priest. He grew up in Cheraw and went to boarding school and then had a book store in Spartanburg.

Q. So you married a South Carolina boy?

A. I did.

Q. And then you ended up in South Carolina?

A. That's correct.

Q. You never thought that was gonna happen, did you?

A. No, but I'm glad it did.

Q. Good. What year did you graduate from Drake?

A. In '91. I actually was on the four-and-a-half-year plan, much to my parents'

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dismay.

Q. Now, I'm gonna ask you a series of questions about Charleston Carriage Horse Advocates.

A. Yes.

Q. But before we turn to that, do you belong to any other animal welfare organizations?

A. No, sir.

Q. Are you -- you know, I know so little about computers and Facebook and all that stuff, but when you are a fan of a Facebook page, I think they call that a "like", is that what they call it?

A. I believe so.

Q. All right. Okay. Are you -- have you signed up to be a like of any other animal welfare organizations?

A. Not to my knowledge, no. I -- no.

Q. Okay. Now, I'm gonna ask you about the beginnings of Charleston Carriage Horse Advocates. You were involved in it from the beginning, correct?

A. When you say "beginning," when I moved in May of 2014, I was surprised at the congestion on the streets and long story short, I just --

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the horse carriages being in Charleston was a concern because I was a mother and so long story short, my neighbor said this woman, Ellen Harley, is very active in, you know, humane treatment of horses, you should get in touch with her. So Ellen and I went for coffee a couple of times just to talk and chat.

Q. Were you on the board of directors of -- do you want me to call it CCHA?

A. Sure. That's probably easier for you and easier for me, yes.

Q. Well, when you're just talking casually about the organization, what do you call it for shorthand?

A. To be perfectly honest, I don't -- I've never -- maybe the Charleston Carriage Horse Advocate Group, but that -- yeah Charleston Carriage Horse Advocate Group. I mean, I -- and it's not like I chatted about it a lot with my friends. It was more just I chatted about it with Ellen.

(Deposition Exhibit 1 was marked for identification.)

BY MR. GOLDSTEIN:

Q. Okay. Now, in front of you are a

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group of exhibits that we have marked and circulated. And the first one, and when we say Exhibit Number 1, it's that little sticker --

A. Gotcha.

Q. -- that the court reporter puts on there.

A. Yes.

Q. And the only reason we do that is so when we get your deposition back, it's typed up and we're reading it, we can go back and see what number one was.

A. Okay.

Q. Now, Number 1 is your notice of deposition and subpoena to be here today.

A. Yes.

Q. Did you review that prior to coming today?

A. I did.

Q. Okay. The subpoena asks you to bring certain documents. Did you bring any of the documents listed in the subpoena?

A. I gave them to my lawyer.

Q. Okay. And who is that?

A. Spencer.

Q. Okay. So any documents that you have

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related to Charleston Carriage Horse Advocates you have turned over to Spencer?

A. Yes. Yes.

Q. Okay. All right. So that brings us back to formation of Charleston Carriage Horse Advocates. Were you -- you were on the original organizing board of directors?

A. I was a board member. It -- the organization -- it was a grassroots organization and so I was interested in getting involved from kind of a safety perspective, just because my daughters go to Ashley Hall and so I'm driving downtown a lot south of Broad and I just was noticing a lot of safety concerns.

And so yes, and so when you say like a formalized board of directors, it was more grassroots and it wasn't really a formal board. As far as I remember, there were no bylaws drafted until maybe the summer of 2018. Around that time, so --

Q. Do you know who drafted the bylaws?

A. I believe Ellen, but I have to -- I can't -- I need to find those. I don't have those. So when you say I'd given everything to Spencer that I have thus far, but this is an on

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-- I have two teenage daughters, so I'm just trying to find as much as I can. And as I find anything in addition, I will be sure to give to Spencer.

Q. Okay. Were you ever an officer of CCHA; president, vice president, secretary, treasurer?

A. No, sir.

Q. But you were on the board of directors? You did have -- y'all did have a board of directors?

A. I don't think we had necessarily a board of directors. It was my understanding I was on the board, but I never -- I just I never felt like I was -- I didn't have a specific role.

Q. Did y'all have regular meetings?

A. We had like -- we gathered, the four of us, at Ellen's house. And so if that was like a formalized meeting, yes, but it was nothing like a board that I've been on in the past in terms of like we had a space. We'd just go to Ellen's. It was probably, I mean, if I remember correctly, I was over there maybe twice.

Q. And when you say the four of us, who are you talking about?

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A. I'm talking about, if I remember, it was Beth Shovgal (ph), I think is how you pronounce her last name. Catherine Pogue (ph), myself, and Ellen. And then there was a time where we gathered where there were a couple other people, but again, it never felt like we were kind of gaveling into this formal board. It was more people who were sharing information about concerns they had, so yes.

Q. Okay. But the organization did fundraise, it did -- it did bring in money?

A. Yes, like we had -- there was something like a chili cook off. And then the organization had like bumper stickers, but they didn't say the organization. And so it was just like a, you know, humane treatment for animals. Like it didn't formally have -- it's my understanding, it didn't have a formal board.

Q. Who was in charge of the money that y'all raised?

A. I think it was Ellen, but I think it was, but I don't -- I mean, again --

Q. Did you have signatory authority over a checking account or any kind of financial account?

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A. No, sir. Not to my knowledge, no.
Q. Do you know where CCHA maintained its banking and financial information?
A. No, sir.
Q. Who would you say, in your judgment, who -- are you still affiliated with Charleston Carriage?
A. No.
Q. You're not?
A. I am not, no.
Q. When did you disassociate?
A. I disassociated September of 2018.
Q. Why did you do that?
A. Because I have two teenage daughters. I joined with Ellen because I was concerned about the safety on the downtown streets, but I felt like I couldn't put in the time or the focus to really embrace it. It was I was a concerned citizen and I just didn't feel comfortable taking up a spot on, you know, within the organization if I wasn't gonna kind of be more involved.
Q. Did you make any contributions to Charleston Carriage Horse Advocates?
A. I made a donation with my husband, I believe, to fund a billboard early on. Maybe

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the --

Q. Yeah, how much did you contribute?

A. I can't remember.

Q. Do you know what that billboard costs?

A. No, sir.

Q. Now, as a member of the informal board of directors, as you've described it, did you have any -- did you have any specific duties with regard to the organization?

A. No, I did not. I think Ellen expressed interest in maybe me like focusing on the safety concerns, but I never -- that was my concern, but I never formally rallied people around that.

Q. Now, do you know who are the directors of the organization today? I know you said you disassociated yourself. Do you know who runs the organization today?

A. I do not.

Q. Okay.

A. I mean, I would assume Ellen, but I'm not a hundred percent sure.

Q. Now, did -- while you were involved with Charleston Carriage Horse Advocates, did it have any joint undertaking or coordination with

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PETA or with the American Society For Prevention of Cruelty to Animals or any -- American Society for Humane...

A. Not that I recall.

Q. Okay. Does the -- the Charleston Carriage Horse Advocates, it is a 501(c)3 organization, correct?

A. I believe so. I mean, I think so.

Q. Well, does it maintain a list of members? I mean, do y'all know who your members are?

A. Again, this is part of the reason why I'm not involved anymore, because I never really was able to be a hundred percent in, in terms of how it all functioned. From my -- from my perspective, I was a concerned mother who just, you know, has a lot of time on the downtown roads and so I'm sorry, I can't answer a lot of these questions.

Q. Okay. Did you have the administrator password to modify and edit the Charleston Carriage Horse Association's Facebook page?

A. No, sir.

Q. So you couldn't go into their Facebook page and set up the way, what it was said or how

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it was said or --

A. No.

Q. Okay. You told me the names of the board of directors and I've already forgotten them. Was Kay Chandler one of the board of directors?

A. I don't -- I don't know.

Q. You know who she is, though?

A. I have heard of her because I believe she has spoken out in meetings, but I -- I probably could not, if I met her in a crowded room, I would not be able to point her out.

Q. Do you know who the administrator for the Charleston Carriage Horse Advocates web presence is? Do you know who -- what person or persons has authority to --

A. I believe Amy Die.

Q. Okay. And is she a paid employee?

A. I would assume so.

Q. Okay.

A. I mean, I --

Q. And where does she live, do you know?

A. I do not know.

Q. Okay. But she was the person, Amy Die is the person who is in charge of the web

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presence of CCHA?

A. That was my understanding.

Q. Okay. Do you know where -- is she -- is her association with Charleston Carriage Horse Advocates a full-time position or does she just come in as needed?

A. I don't know. I'm not sure.

Q. Do you know how I would get in touch with her?

A. I would assume maybe contacting Ellen.

Q. Okay. Now, I think you've already answered these questions by implication. As a 501(c)3 organization, you're aware that Charleston Carriage Horse Advocates has to file specific tax returns with the IRS as a charitable organization?

A. Yes, sir.

Q. Do you know where those are maintained?

A. I do not, I'm sorry.

Q. Do you know who prepares them?

A. No.

Q. Okay. Do you know who the accountant for CCHA is?

A. I don't.

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Q. But you didn't prepare any of the --
A. No, sir.
Q. Okay. All right. Now, are you a member of the Charleston Animal Society?
A. No, sir.
Q. Okay. Do you contribute to them?
A. I think my daughter went with a friend one time to -- they did a camp there, but I -- not that I remember. I mean, I -- I don't know whether signing up for camp, I don't remember. I don't know.
Q. Okay. Just to let you know what a small world it is, so did my daughter and my God daughter.
A. Okay.
(Deposition Exhibit 2 was marked for identification.)
Q. Now, I'm gonna show you in a few minutes just some brief clips from some video and I've got the screen grabs there in front of you. And it might be easier just to work off them --
A. Okay.
Q. -- and show you Deposition Exhibit 2, do you see that? That's a screen grab.
A. Yes, sir. Yeah.

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Q. And the printer cutoff the bottom of it for some reason, because I don't know much about computers, but as you can see, it says, "Source, Elizabeth Fort".

A. That's unfortunate, yeah.

Q. Okay. Did you take that video from which that screen grab is taken?

A. I did. And I -- I did. And I was really concerned that my name was gonna be affiliated with it. I was worried about backlash.

Q. Okay. Now, how did it come to your attention that Big John was on his side?

A. My daughter and I had just left, I think buying some undergarments from Victoria's Secret and we were coming up Hazel. We live downtown and I was gonna take a right on meeting and I came upon Big John on the ground.

Q. Okay. And I was gonna play you the video from that, because there's a voice on the video that says, "This is why you should take walking tours."

A. Uh-huh.

Q. Is that your voice?

A. It is.

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Q. Okay. Now, at the time, did you think that Big John had collapsed?

A. At the time, yes. In my mind, when something or someone is on the ground, they have collapsed.

Q. Okay. Well, you know, I anticipated that we would reach this point in the deposition, so as a 17-year-old freshman at University of South Carolina, this is the first book I ever purchased. So let me slide it over to you. And I've marked -- that's Webster's Dictionary from a naive 17-year-old freshman at University of South Carolina. Can you read the definition of "collapse" into the Record?

A. Oh, no, that's collar. So sorry. "To fall, slide, more asleep, to breakdown completely, disintegrate. To fall or shrink together abruptly and completely. To cave or fall in or give way. To suddenly lose force, significance, effectiveness or worth." Do you want me to continue?

Q. Sure. Keep going.

A. Okay. "To breakdown in vital energy, stamina, or self control through exhaustion or disease. To fall helpless or unconscious. To

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fold down into more compact shape."

Q. Okay. So when you came upon Big John, you formed an opinion that he had collapsed based on your -- just your visual intake of the scene?

A. Big John was on the ground.

Q. Right.

A. In my mind, that was collapse. He was -- he had fallen down.

Q. Okay. Do you have any expertise with horses?

A. No.

Q. Okay. Is it your understanding that a horse can trip and fall, just like a human being, or do you think that's impossible because they have four legs?

A. Sure, I think a -- probably a horse could trip and fall.

Q. Okay. Now, the horses that pull the carriages, they pull the carriages by means of a harness, correct?

A. Correct.

Q. That's how they're connected to the carriages, by means of a harness, correct?

A. Correct.

Q. Okay. And so when you came upon Big

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John, you saw that he was in his harness; is that right?

A. Yes.

Q. Okay. And you've already told us you don't have any expertise with horses?

A. (Indicating).

Q. You're nodding yes.

A. Yes.

Q. But you got to say -- and I'm not picking on you, just they got to have an audio response.

A. That is correct.

Q. So as to the issue of Big John collapsing, would you defer to an expert in veterinary medicine or somebody who had a lot of experience with horses?

MS. CRAIG: Objection.

THE DEPONENT: Would I defer what?

BY MR. GOLDSTEIN:

Q. A judgment as to whether he collapsed or tripped?

A. At the moment when I took the video, the horse was on the ground and so I thought it had collapsed.

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Q. All right. Have you interviewed any of the persons who were on the carriage at the time that Big John went from standing to being on the ground?

A. No, they were all escorted off.

Q. Okay. Now, I'm really jumping ahead. I'm going to try to make this easy on you. You're aware what this lawsuit is about, correct?

A. Generally.

Q. Okay. You know that Charleston Carriage Horse Advocates has an absolute privilege first amendment right to petition the government for redress of its grievances and can take any political position it wants, you know that, right?

MS. CRAIG: Objection.

THE DEPONENT: Yes.

BY MR. GOLDSTEIN:

Q. When she objects, it's that thing -- we argue about it later when you're not here.

A. Understood.

Q. But she's putting a bookmark in the Record that that was not a proper question.

A. Okay. Okay.

Q. Now, you understand as a result of the

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postings that I'm going to ask you about in more detail, that Brody and his employees receive horrible, horrible death threats and threats of violence and threats of arson and are you aware of that?

A. I am.

MS. PALMER: Object to form.

Q. Go ahead.

A. I'm aware.

Q. Okay. Now, it was -- I'm assuming, because you certainly seem like a nice person, I'm assuming it was never your intention to put Brody or his employees or his business or his property in the -- in the -- in harms way?

MS. CRAIG: Objection.

THE DEPONENT: That's correct. And frankly, that's why I didn't want my name affiliated.

BY MR. GOLDSTEIN:

Q. Okay.

A. Because I was concerned about issues on my end.

Q. All right. I mean, and I'm not trying to associate with you this any way, but just -- just in the past few days a 19-year-old goes into

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a synagogue in San Diego and shoots the place up. No one knows why, but it could be somebody who was motivated by social media. Not that you're involved in that in any way, but you understand that there is a -- there is a potential for harm in social media?

A. Absolutely.

MS. CRAIG: Objection.

THE DEPONENT: And I've suffered the harm with my home being posted with awful comments about me.

BY MR. GOLDSTEIN:

Q. Okay.

A. And so I've -- understand that personally.

Q. Right. And you know -- well, I hope that -- they'll probably object to this question because you probably have no way of knowing, but I hope you know that Brody would never be behind anything like that.

MS. CRAIG: Objection.

THE DEPONENT: Right. And I would never be behind anything like that.

BY MR. GOLDSTEIN:

Q. So when this post goes out with the

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word "collapse," did you make any effort to reach out to the sources that you sent the video to to say no, no, it wasn't collapse, the horse was just on its side. Did you make any effort to correct it?

A. I still maintain that the horse collapsed, because it was on the ground so no, because in my mind, the horse collapsed. It had fallen down and was on the ground.

Q. What you told one news outlet that you thought the horse "looked dead to you".

A. It absolutely did when I came up. But I never followed through with that, but that's exactly what it looked like. When my daughter and I came upon the scene in a car and got out, my daughter immediately started crying. I started crying. It was very upsetting and emotional. And so at that moment it looked like it had died. But clearly it had not.

Q. Okay. What led you to the conclusion that the horse had died, just because it was on its side?

MS. PALMER: Object to the form.

MS. CRAIG: Objection.

MR. GOLDSTEIN: Well, I'll

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rephrase it. I understand that objection.
BY MR. GOLDSTEIN:
Q. What led you to the conclusion that the horse had died?
A. When we were driving down Hazel crossing meeting, the horse was -- it just wasn't moving, but I was in the car. And so when I initially saw it, it looked like it was not moving.
Q. Okay.
A. And so when I got out of the car and started filming, I realized, obviously, thankfully, it was fine.
Q. All right. Are you aware that the horse was evaluated by a doctor of veterinary of medicine?
A. Yeah, I would assume because -- yes.
Q. And do you have pets?
A. Yes.
Q. And when your pet has a medical problem, do you take your pet to a doctor of veterinary medicine?
A. It depends. Sometimes, you know, let it -- see what happens, but it's if serious enough, yes.

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Q. Well, what I'm -- I guess what I'm getting at is you have confidence in people who are properly qualified to treat animals?

A. Yes.

(Deposition Exhibit 3 was marked for identification.)

Q. Okay. Now, Exhibit 3 is -- and I've attached that twice, the same exhibit twice, because what I've tried to do is I tried to increase the size of the print, but when I did, it cut it off the edge of the page.

A. I understand. Okay.

Q. So you have the original and then you have my -- my scratching trying to make it legible.

A. Uh-huh. Yes.

Q. That is a comment that you made, correct?

A. That's correct.

Q. Okay. Can -- for the Record, can you read your comment into the Record?

A. "Industry says they have never had a heat-related incident. Since they are a self-regulated industry and since they keep their own records and the animals are not microchipped

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or" I can't read your writing.

Q. Banded.

A. "Banded as are race horses and others," sorry. "Performed horses."

Q. I think you said, "other performer horses."

A. "Other performer horses, no one knows their whereabouts or their condition. If they have nothing to hide, then microchip the animals, let an independent, not an industry or city vet keep records and offer them to the public."

Q. Okay. Now, that was a statement that you posted, correct?

A. Correct.

Q. And that was on the CCHA, Charleston Carriage Horse Advocates, web page, Facebook page?

A. That's what it looks like, yes.

Q. Okay. Now, there's not a single statement that you posted that's true; isn't that correct?

MS. CRAIG: Objection.

THE DEPONENT: I think there have been heat-related incidents.

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BY MR. GOLDSTEIN:

Q. Okay. Where -- when and where?

A. I think Blondie maybe. Again, I'm gonna have to research, but it's my understanding, I think there have been heat-related incidents.

Q. Okay. Is that the only one you know?

A. As of now, yes.

Q. Yeah. How did you become aware of Blondie?

A. Blondie collapsed on East Bay Street, which was a couple blocks from our house. My husband and my other daughter were out and they came upon Blondie.

Q. Okay. And what led you to the conclusion that that was a heat-related incident?

A. It was hot. The horse was down for a long time. I would have to -- I would have to look back, but in my mind, I thought it was a heat -- I believed it was a heat-related incident.

Q. Now, the next sentence, "Since they are a self-regulating industry" you're aware that they are not a self-regulating industry; am I

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correct?

A. It's my understanding they keep books in terms of weight, logs in their barn.

Q. You've been to tourism commission meetings?

A. Yes.

Q. How many would you say you've been to, 10, 20, 50?

A. One or two.

Q. Oh, one or two?

A. Yes.

Q. Okay. So you're familiar that City of Charleston has a tourism commission?

A. Yes. I know Dan Riccio, yes.

Q. And you're aware that the tourism commission has a whole series of regulations that govern the operation of carriage tours?

A. I'm aware of that, but I believe the bookkeeping is done by the horse carriage industry in their barn.

Q. Now, the veterinarian, are you suggesting that because the carriage company pays the vet bill, that that somehow purchases the vet's opinion?

MS. CRAIG: Objection.

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THE DEPONENT: I would say it was a conflict of interest.

BY MR. GOLDSTEIN:

Q. You do? Okay?

A. I mean, I just -- yes.

Q. Okay. So when I go to Med U to be evaluated by a cardiologist, because I'm ultimately responsible for the bill, you -- that cardiologist is going to adjust her opinion of my medical condition based on the fact that I'm paying the bill?

MS. CRAIG: Objection.

THE DEPONENT: No, it's like if I was a company owner and I had an inside tip. Or I mean, I just feel like it's just -- I mean, I -- it may not be valid, but I feel like there is room to be -- you know, in my opinion, it would be better to have a third-party that's not affiliated with anyone -- a licensed third-party. Just like you would go for a second or third opinion if you have a medical condition, it's always helpful to get a couple different opinions.

BY MR. GOLDSTEIN:

Q. Okay. But under your theory, who

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would choose the third-party?

A. It wouldn't -- I mean, I don't have a preference.

Q. Okay. Now, microchip, where did you get the idea the horses are not microchipped?

A. I -- I don't recall.

Q. Do you know one way or another?

A. I -- I don't believe they are, but I have nothing to base that on, so...

Q. Okay. Well, if you had nothing to base it on, do you think it was sort of reckless to put that out there and stir up animosity?

MS. CRAIG: Objection.

THE DEPONENT: No. I feel like I -- I feel like that was communicated to me, but I don't know by whom. I don't -- I would not put anything out there that I would have no -- I mean, I just wouldn't say that.

BY MR. GOLDSTEIN:

Q. Okay. Well, let's be fair and honest with each other.

A. Okay.

Q. Let's be completely transparent.

A. Well, that's why I'm here.

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Q. I mean, we're sitting here having a conversation under artificial conditions, there's no doubt about it, but you certainly seem like a nice, honest --

A. So do you.

Q. Okay.

A. Yeah.

Q. Okay. So we're communicating.

A. Yep.

Q. And you know Brody?

A. I don't know Brody.

Q. You don't know him at all?

A. No, sir. No.

Q. You've never spoken to him at tourism commission?

A. I don't believe so, no.

Q. Well, I just wondered why you never picked up the phone and called Brody or somebody and said, hey, are y'all's horses microchipped?

A. Because I was targeted on Facebook. I'm not comfortable reaching out. I would reach out -- I probably -- I would feel comfortable reaching out to Dan Riccio.

Q. Okay.

A. But I would not reach out to anybody

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in the horse industry.

Q. That is a fair answer. And so your -- the answer you just gave, you understand how Brody feels, because y'all were experiencing the same thing?

A. The same thing, yes.

MS. CRAIG: Objection.

BY MR. GOLDSTEIN:

Q. You agree with that?

A. Yes.

Q. Sort of the dark side of social media?

A. Yes.

Q. Now, you -- Brody has never posted anything negative about you?

A. I think he's --

MS. CRAIG: Objection.

THE DEPONENT: -- referenced my name.

BY MR. GOLDSTEIN:

Q. Okay. He may have referenced your name, okay, fair enough. But as far as you're not aware of him ever saying anything untoward or questioning your --

A. I think he was questioning me, if I

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remember correctly. I would have to look into that.

Q. All right. And when and where did that happen?

A. I think he put out a statement -- I just saw my name, that he had mentioned my name, so I would have to find that.

(Deposition Exhibit 4 was marked for identification.)

BY MR. GOLDSTEIN:

Q. Now, the next exhibit, number four, is the -- where you were quoted by name to the Live 5 News. I assume that's where you sent the video is Live 5 News?

MS. CRAIG: Objection.

THE DEPONENT: I assume I did.

BY MR. GOLDSTEIN:

Q. I mean, the better way of asking it is where did you send the video, a better way of asking it?

A. I don't recall. I probably did, but I would have to -- to be sure, I mean, I believe that is correct.

Q. Do you remember how you did that? Was it just a -- is there just a portal that people

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can send in stuff?

A. I don't -- I think I was so upset and emotional and my daughter was struggling, as well, I think we -- I am of the thought that, you know, knowledge is power and I wanted people to understand that this had happened. So I probably, I don't know, I probably sent it via e-mail maybe.

Q. Okay. And we've already talked about this, but you're quoted as saying, "There was a horse that was down on the ground. It looked dead to me. I know it's not, but it looked dead." Is that an accurate quotation?

A. That is an accurate quotation.

Q. Okay. And you've already explained that the reason it looked dead is because it was on its side on Meeting Street?

A. It was not moving on its side on Meeting Street.

Q. Now, do you know the equine -- the city equine manager, Sharon -- Shannon Tillman is quoted in this article. Do you know Shannon Tillman?

A. I do not.

Q. Never spoken to her?

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A. No, sir.

Q. Okay. And then you see that the veterinarian is quoted, as well. Do you know the veterinarian?

A. No, sir.

Q. Okay. Now, you're also quoted as saying, although it's not in quotation marks, you're quoted as saying, Fort, that's you, "Fort does not think that these sanctions and the investigations are enough." Why do you -- why do you think the sanctions and investigation are not enough?

A. Well, I think as the next sentence is I just wanted there to be a third-party, you know, to give it a -- I just would -- I was advocating for a third-party to come in.

Q. Okay.

A. With a fresh lens.

Q. Have you ever gone by Charleston Carriage Works and asked to see the horses or examine the records or anything like that?

A. No.

Q. Okay. Do you know that those records are open to you?

A. Yes.

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Q. Okay. And nobody from Charleston Carriage Works has ever threatened or intimidated you in any way, have they?

A. Not that I know of.

Q. Okay. Would you be interested in that? Would you be interested in taking a tour of the barn and meeting the employees and looking at the records?

A. At this juncture, no, because I just -- it's been -- there's been too much history in terms of what's transpired.

Q. Okay.

A. I think it's great that they make them public and had I just moved here with none of this happening, I probably would have been more likely to go.

Q. Have you ever taken a tour?

A. I have.

Q. And which company did you go?

A. Palmetto.

Q. How did you like it?

A. I liked it. It was a few -- it was right when we moved, but I now, in living here, it's just -- no.

Q. And I'm getting off my outline a

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little bit, which is okay. What exactly is it about the tour, is it the weight that you're worried about?

A. It's the traffic congestion. I can't -- every day I see carriages that are being passed. What happens is there is a car from out of state or a car that doesn't know they can pass carriages and so cars two or three deep will try to go around the carriage into intersections. I've seen carriages at Meeting and Broad on each intersection that inhibit the flow of traffic and create dangerous situations.

Q. Are you aware that the city of Charleston regulates the number of tours that can be on the street at any given time?

A. I know they try, but they still back up. I've talked to Dan Riccio about it.

Q. You're aware that a carriage can't go on tour without a medallion?

A. There's a lottery system, yes.

Q. Do you know what the maximum number of tours allowed is?

A. Not offhand.

(Deposition Exhibit 5 was marked for identification.)

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BY MR. GOLDSTEIN:

Q. Okay. The next Exhibit Number 5 is a photo of your house. And the reason I wanted to ask you about that is displayed on your second floor -- well, first of all, is that your house?

A. Yeah.

Q. Okay. Displayed on the second floor is a banner and you have the original so you have the clearest copy. Can you read the banner? Humane --

A. "Charleston humane treatment for carriages now."

Q. Okay. Now, in the previous set of questions I didn't hear you really addressing any concerns with humane treatment, but more concerns with traffic and safety; is that a fair statement?

A. That's a fair statement.

Q. Okay. So do you think displaying a banner, humane treatment, do you think that that creates the implication that Brody, and others like him, treat their horses inhumanely?

MS. CRAIG: Objection.

THE DEPONENT: I think that in having that banner it creates a conversation

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about horse carriages and it allows people to, I think, be more mindful of carriages.

BY MR. GOLDSTEIN:

Q. Okay. Now, does Charleston Carriage -- does Charleston Carriage Horse Advocates pay for any part of your house as an office, an adjunct office of CCHA?

A. No, sir.

Q. So you don't derive any financial or economic benefit from your association with Charleston Carriage Horse Advocates?

A. That is correct.

Q. Okay. So that banner is -- is that -- would you say that that is an expression of your opinion or the opinion of CCHA or both?

MS. CRAIG: Objection.

THE DEPONENT: It is a reflection of my concern about carriage horses.

BY MR. GOLDSTEIN:

Q. Okay. Now, let me -- let me be clear. I know I sound like a broken record, but I want to be clear. Lawyers are very tedious about this sort of thing. As speaking on your behalf, behalf of Elizabeth Fort, your concerned about

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the carriages is traffic and safety?

A. My main concern -- obviously like I have three dogs and I would like every animal to be treated humanely. But if you were to ask me what my main concern would be regarding carriages, it would be the traffic and safety. And I think underneath that would be humane treatment. And that's universal, I think.

Q. All right. Fair enough. What is it about the carriage tour program use of the horses to pull carriages, what is it about that that's inhumane, that's not humane?

A. I think when it's extremely hot, I think the three temperature readings that are required is a lot. I think it should just be one temperature.

Q. Okay.

A. And I just think it's not fair, in my mind, for the horses to be working with cranes, traffic, UPS, rickshaws, all -- I mean just the congestion of an urban environment.

Q. Okay. So there's nothing inhumane about working a horse, there's nothing inhumane about that, you're just objecting to the conditions under which they work; is that a fair

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statement?

MS. CRAIG: Objection.

THE DEPONENT: Yeah.

BY MR. GOLDSTEIN:

Q. I'm really not trying to --

A. Yeah, I know, I know, I know. I'm just trying to think, because it is --

Q. I'm not trying to trick you.

A. Oh, I know and I don't think you are. I'm just trying to think about what you're asking.

Q. You take all the time you need.

A. Thank you. I think that is a fair statement.

Q. Okay. Well, that cuts out a lot of questions, because I was gonna ask you if you were aware of the age of these horses at the time that Brody acquires them. Do you know?

A. Well, are you gonna ask me or are you asking me?

Q. I guess I'll ask you. Do you know how old they are when he gets them?

A. I do not.

Q. Do you know what would happen if he didn't provide a home and a job for them?

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MS. CRAIG: Objection.

THE DEPONENT: I know what people say. I mean, I just don't know, but no.

BY MR. GOLDSTEIN:

Q. Okay. But will you meet me half way and say that there can at least be a difference of opinion about whether or not they are or not treated humanely?

A. There can be a difference of opinion.

Q. Okay. And if the regulations were tweaked, the more they're tweaked in accordance with your view, the more comfortable you get with them pulling carriages; is that a fair statement?

A. It depends on how they're tweaked.

Q. Okay. And of course, you as a citizen and Charleston Carriage Horse Advocates both and everybody has the right to go down to city council and go to the tourism commission meetings and advocate for that; is that correct?

A. That's correct.

Q. There's nothing wrong with that, you agree?

A. I agree.

Q. But there is something wrong with

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deliberately knowingly posting a false message designed to inflame hatred for something; you would agree with that?

MS. CRAIG: Objection.

THE DEPONENT: I would agree with that.

(Deposition Exhibit 6 was marked for identification.)

BY MR. GOLDSTEIN:

Q. Okay. Now the next one, Exhibit 6, is a screen grab from another News 5. Says, "Thankfully the carriage horse is okay after slipping in downtown Charleston." Now, you didn't write that, the news desk wrote that, correct?

A. Correct.

Q. Okay. And knowing everything that you know about this event now, would you say that that's a more accurate description of what happened, rather than the horse collapsed?

MS. CRAIG: Objection.

THE DEPONENT: Again, I don't take issue with the fact that I said collapsed, because I truly -- it had fallen down and it was collapsed.

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BY MR. GOLDSTEIN:

Q. Okay. So the way that you use the verb collapse, if I slip and fall, you would say that I collapsed?

A. That's correct.

(Deposition Exhibit 7 was marked for identification.)

BY MR. GOLDSTEIN:

Q. Okay. Now, the next one, Exhibit 7, is another screen grab and that -- I think this is the chili cook off you were telling us about earlier?

A. I believe so, yes.

Q. Okay. Can you identify the two people in the -- there's three people in the photo there. I think one of them I'm pretty sure you know.

A. I see Catherine Pogue (ph).

Q. She's in the middle?

A. Yes.

Q. Okay. I thought that was a relation of yours on the right?

A. I don't see that, no.

Q. Okay. So you don't know who the other two people are?

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A. I mean, I know that's Catherine in the center, but I can't identify the other two.

Q. Well, now the court reporter has the original of what you're looking at. It might be a clearer --

A. Okay.

Q. -- than a number 7.

A. Thank you.

Q. Does that help you?

A. Let me see. I'm not quite there yet. I see Catherine. I can't --

(Deposition Exhibit 8 was marked for identification.)

BY MR. GOLDSTEIN:

Q. How about number eight?

A. Is that okay if I hold.

COURT REPORTER: That's fine.

A. Okay. Thank you. Yeah, I know those are the Goldmans.

(Deposition Exhibit 9 was marked for identification.)

BY MR. GOLDSTEIN:

Q. Okay. And then Number 9?

A. I see my daughter's forehead.

Q. Okay. Really what I was more

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interested in, how about the lady in the bottom right?

A. I don't know who that is.

Q. Okay. You see the sign -- the sign appears in almost all of these in the background, says, "Horse carriages are abuse."

A. Oh, yeah, I see that.

Q. Okay. Do you still -- as you sit here today, do you still think that horse carriages -- horses pulling carriages are abuse?

MS. CRAIG: Objection.

THE DEPONENT: Well, I didn't do that sign, so I never --

BY MR. GOLDSTEIN:

Q. Right. But this is -- this is taken from a, I think you called it a chili cook off?

A. No, this is a -- this is a rally.

Q. Oh, a rally?

A. Yeah.

Q. Put on by Charleston Carriage Horse Advocates?

A. Yes.

Q. Okay. So that -- that -- that is -- I mean, who prepared the sign, somebody at CCHA?

A. No, I think people -- I don't know.

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(Deposition Exhibit 10 was marked for identification.)

BY MR. GOLDSTEIN:

Q. Okay. All right. The next one is Number 10.

A. That's me and my daughter.

Q. Right. I thought that's what you would say.

A. Yes.

(Deposition Exhibit 11 was marked for identification.)

BY MR. GOLDSTEIN:

Q. All right. Now, how about Number 11, that's a letter I mailed to Ellen Harley back before this lawsuit was filed. Did you ever see that letter?

A. I don't recall seeing it.

Q. Okay. You don't recall?

A. I don't recall.

Q. Okay.

A. She may have sent it. I mean, I want to be fair to Ellen. I just I don't recall seeing it.

Q. Now, you've already told us based on the experience, your own personal experience

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about the dark side of social media, you're aware that these videos that you shot and that you forwarded --

A. I'm sorry, what is farded (ph).

Q. Forwarded.

A. Oh, forwarded. Okay. Sorry. I apologize. I thought that was some legal term that was like very -- I did not know what that meant.

Q. You've been in the south long enough.

A. I know. Sorry. My apologies.

Q. Sorry about that. Forwarded. You're aware that these videos that you shot and forwarded have garnished millions of views, correct?

MS. CRAIG: Objection.

THE DEPONENT: Yes.

BY MR. GOLDSTEIN:

Q. Okay. And the reason you know that is number one, it tells you when you look at it how many views there are.

A. Uh-huh.

Q. And also, based on your own experience of people coming back at you?

A. Uh-huh.

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Q. Right?
A. That's right.
Q. Okay. Now, you've already told us you do not have the administrator key in order to edit, change, or set up the CCHA Facebook page?
A. That's correct.
Q. Okay. Are you aware that there were a number of people trying to log on to the Facebook page to correct the misapprehension that the horse had collapsed or suffered a serious injury?
A. I did not know that.
Q. Okay. You agree that as a charitable organization -- and I understand you're no longer there -- but you agree as a charitable organization, that Charleston Carriage Horse Advocates has a duty to convey accurate and truthful information, correct?
A. Correct.
MS. CRAIG: Objection.
BY MR. GOLDSTEIN:
Q. Now, by the same token, Charleston Carriage Horse Advocates has an absolute duty to advocate any political position it cares to promote, agreed?
MS. CRAIG: Objection.

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THE DEPONENT: Agreed.
BY MR. GOLDSTEIN:
Q. Yeah. Okay. But Charleston Carriage Horse Advocates does not have a license to knowingly publish false information designed to damage a business?
MS. CRAIG: Objection.
THE DEPONENT: Yeah, I guess I'm -- if we're talking -- are we talking about the video.
BY MR. GOLDSTEIN:
Q. The video and the comments to the video.
A. Because yeah, the video, in my mind, there was nothing false about the video that I took. That's what I -- that's what happened.
Q. Right.
A. And so, yes, but everything -- I mean, everything that's posted needs to be factual and true.
Q. Well, you know, since you're married to a lawyer, you probably are familiar with hypotheticals. We love hypotheticals.
A. Well, let's be clear, he went to law school, but he's not a lawyer.

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Q. He's got the makings of a lawyer. Lawyers love hypotheticals, so let me ask you a hypothetical. Suppose I created some organization, Save the Children Charleston, and I posted a video of your house and maybe you and your husband going into your house and coming out of your house and I posted it online and said should these people be on the registry for sexual offenders. Just the question.

A. Uh-huh.

Q. In your view, would that be a proper posting?

MS. CRAIG: Objection.

THE DEPONENT: That's already happened. A picture of my house has been posted with excuse my language, a rich bitch with a crockity -- crotchety ass needs to be paid a visit by a horse carriage person and you know, fix her old crotchety ass, so that's already happened.

BY MR. GOLDSTEIN:

Q. Okay.

A. So I guess it's fair that that stuff is out there.

Q. Let's use that as an example.

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A. Okay.
Q. Let's use that very example. Do you know who posted that?
A. Charleston carriage horse caretakers website.
Q. Okay. Now, do you -- do you know if that's a 501(c)3 organization?
A. I do not.
Q. Okay. Well, let's suppose for a minute it is and that they're getting -- they're set up with the IRS and all that sort of stuff. Do you think that would be a fair thing to post out on the Internet?
MS. CRAIG: Objection.
THE DEPONENT: It doesn't matter, because it's posted.
BY MR. GOLDSTEIN:
Q. Yeah. And hard to get back, isn't it?
A. (Indicating).
Q. Okay. Now, you're not aware personally, you're not aware of Brody or anyone at Charleston Carriage Works abusing a horse?
A. That's correct.
Q. Okay. And if you saw someone mistreating a horse, I'm sure you would report it

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immediately, as would I?

A. Yes.

Q. Okay. Do you know what device you recorded that video on, was it your iPhone?

A. It was my phone, yes, sir.

Q. And do you still have that original video?

A. I do.

Q. Would you do me a favor and just transmit it to your lawyer, just your version of the video?

A. Yes.

Q. Okay. I mean, not your version, that's the original video?

A. (Indicating.) Right. Yes.

Q. Okay. And so you don't have any objection to sending that to her?

A. No, sir, not at all.

Q. Good. And that would contain the complete and unedited version of everything that you recorded?

A. Up until I was told to stop recording.

Q. Who told you to stop recording?

A. Someone from the carriage horse company.

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Q. Who was it?
A. I have no idea.
Q. Male, female?
A. Female.
Q. What did she say to you?
A. She put her hand in my face and said you stop recording or I mean, I captured it on video and I stopped.
Q. Oh, you're talking about in the video, the girl in the yellow shirt?
A. Yes, sir.
Q. Okay. Because it cuts off?
A. That's what -- yeah.
Q. So there's no more after that?
A. No, I have another video that I took I think by accident, I was talking to my husband and of the horse, yes.
Q. Would you mind sending that to your lawyer, too?
A. I'm happy to.
Q. Was Ellen Harley on the scene, as well?
A. I believe she was, but I don't -- I don't -- I never had contact with her because I was so upset.

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Q. So you don't know one way or another if she took video?

A. I don't know whether she took video.

Q. Okay. Now, when you sent the video to Channel 5, you didn't edit it in any way?

A. No, sir.

Q. You just sent what you had?

A. That's right.

Q. You told me you graduated from Drake in liberal arts?

A. Uh-huh.

Q. I'm assuming it was not mathematics or physics, right?

A. Yeah, that's a correct assumption.

Q. So do you have any capacity -- not capacity, do you have any understanding as a lay person of the amount of force necessary to move a fully loaded carriage with a 40-inch wheel?

A. I have no --

Q. Okay.

A. -- capacity to understand, no.

Q. Okay. And you've already told us your dissatisfaction with the method in which the ambient temperature is recorded?

A. That's correct.

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Q. You think it should be one reading, not three?
A. That's correct.
Q. And 95?
A. That's correct.
Q. All right. That was a terrible question. You think 95 is too high?
A. I think the three readings is too many.
Q. Okay.
A. I know -- I believe they -- they lower the temperature, but they increase the number of readings.
Q. Okay. Do you know what the -- a normal healthy horse's internal temperature is?
A. I do not.
Q. And are you aware that at the completion of each tour, each horse is measured for temperature?
A. Yes.
Q. Okay. And that temperature is recorded?
A. Logged by the carriage industry, yes.
Q. Right. And when you point that out, what you're saying is that you're not -- you're

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worried they might be fudging the figures a little bit?

MS. CRAIG: Objection.

THE DEPONENT: I would never -- I just think it would -- like anything, like the IRS, like any third-party that oversees, it's helpful and healthy to have a third-party oversee sensitive information.

BY MR. GOLDSTEIN:

Q. Okay. The temperature, do you think that the temperature is rendered more accurate or less accurate or not affected at all if there's wind?

A. I can't answer that.

Q. Okay. Now, you've addressed the tourism commission before, correct? You've spoken?

A. Correct.

Q. And you identified yourself as a representative of Charleston Carriage Horse Advocates, which you were?

A. That's correct.

Q. And at the meeting, I think it was a meeting right before this or right the day after this letter, as a matter of fact, you told the

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tourism commission that the industry needed to clean up its act, right?

MS. CRAIG: Objection.

THE DEPONENT: I don't remember what I said.

BY MR. GOLDSTEIN:

Q. Okay. Now, when you made those comments to the tourism commission, did you reference Big John specifically?

A. I believe I did.

Q. You know Big John's retired?

A. That's great.

Q. Did you know that?

A. I did not know that.

Q. You want to go visit him?

A. Bring some carrots, sure.

Q. No, he's retired. He really is. And he's actually gone down in the horse hierarchy since he's retired. But you're welcome, we would love for you to come visit him to see with your own eyes that he's happy and healthy and doing well. I mean that in good faith. I'm not being a smart alec.

A. No, thank you. That's very kind.

Q. All right. I think I've completed my

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outline, but I would like a moment to confer with my client, but in the meantime, if y'all have any questions, you know --

MS. PALMER: I don't have any.

MS. CRAIG: Why don't we take a few minutes to go off the Record.

MR. GOLDSTEIN: Oh, I'm sorry, I've got to wait for you.

VIDEOGRAPHER: All right. This is the end of media number one in the deposition of Elizabeth Fort. We are off the Record at 11:10 a.m.

(Whereupon, there was a short break in the proceedings.)

VIDEOGRAPHER: All right. This is the beginning of media number two in the deposition of Elizabeth Fort. We are on the Record at 11:17 a.m.

BY MR. GOLDSTEIN:

Q. Thank you, Ms. Fort. I appreciate you giving us the opportunity for a short break. I've conferred with my client. I just have just a couple of questions I missed.

A. Excellent.

Q. We're not gonna be here more than five

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minutes.

A. Okay.

Q. I wanted to -- how am I gonna do this?

(Video Playing.)

VIDEOGRAPHER: Are you wanting to show her the video?

MR. GOLDSTEIN: Actually really it's just listening. Well, you know what I can do, how about if I put it like that? Is that okay?

THE VIDEOGRAPHER: That will work, yes, sir.

BY MR. GOLDSTEIN:

Q. It's really the voices that I'm gonna ask you about, more so than the video. I'm gonna play you two videos and -- and you can explain. The question is who shot them?

A. Okay.

Q. I'm gonna tell you and I don't know, you're the witness, not me.

A. Sure.

Q. I'm gonna tell you, I think one of them is your video and I think one of them is a video somebody else shot that's attached to your video.

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A. Okay.
Q. But I could be wrong about that.
A. Okay.
Q. But that's my question.
A. Okay.
Q. All right. So you ready?
A. Yes.
Q. And I also want to ask you who the voices are, so I'll try to stop it on the voices.
A. Okay.
Q. All right. 130 -- well, this is your video down here, 874, so we're gonna start with that one. And I'll try to stop it on the voices.
A. Okay.
(Video playing.)
Q. Children --
A. That's me, "children on the carriage".
Q. Okay.
A. That's me.
Q. Okay. That's my question.
A. The guy saying, "fuck y'all," I don't know who that is. "He should not be working," that's me. "He's on the ground." Yes.
Q. Okay, but that's you?
A. That's me saying, "He should not be

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working because he's on the ground." Someone called me a bitch.

Q. So that's your voice?

A. That's my voice.

Q. So whoever attacked was attacking you?

A. Yes. That's me.

Q. Okay.

A. Okay.

Q. She said, "Excuse me, I'm gonna have to ask you to" --

A. Stop filming.

Q. Why did it cutoff right there?

A. Because she asked me to stop filming.

Q. Okay. Now, this next video I think is your video glued, not a very good term. What's the word I'm looking for?

MR. ROMAN: I don't know how -- I'm not a video editor.

MR. GOLDSTEIN: What's the word I'm looking for where two videos tied together?

VIDEOGRAPHER: Synced together.

BY MR. GOLDSTEIN:

Q. Synced together. I think these are two videos synced together and so I was gonna --

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hopefully you can shed some light on who the other videographer is.

(Video Playing.)

A. I was so emotional, I don't remember. I mean, I will try my best, but I --

Q. Okay. So that's this one right here. I think it starts out with somebody else and then goes back to yours. I think, I don't know. You're the witness. You have to tell us.

A. Right. I don't know who that is. I don't know. That "unbelievable" "I'm gonna have to ask you..." that was -- she was approaching me.

Q. But the voice, "You're gonna have to let go of my phone, that's what you're gonna have to do," you don't know who that is?

A. I can't say a hundred percent. I have an idea.

Q. What's your best guess?

A. It's --

Q. Let's go back and I'll let you listen to it again.

(Video playing.)

A. I don't -- I can't say a hundred percent.

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Q. Do you know who put that edits in there?
A. I do not.
Q. "Because they need to change the laws for the horses" you don't know who that is?
A. Not a hundred percent, no.
Q. What's your best guess?
MS. CRAIG: Objection.
THE DEPONENT: I don't want to -- I mean, I -- without being a hundred percent sure, I don't want to say.
(Video Playing.)
THE DEPONENT: That's me.
BY MR. GOLDSTEIN:
Q. Aren't we back to your video now?
A. Yes, that's my video.
Q. Okay. Was the first part of this not your video?
A. That's correct.
Q. Do have any information on how the two got linked together?
A. I do not. No.
Q. Okay. So you don't know who that other voice is, "You're gonna let go of my phone, that's what you're gonna do"?

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A. I'm not a hundred percent sure, no.
Q. Now, the video that you shot, did you send it to Charleston Animal Society?
A. I sent it to Ellen. I'd have to look. I sent it to Ellen and I sent it to probably the Post and Courier and news outlets and I -- I don't remember if I sent -- I don't believe I did, but I don't want to say I didn't.
Q. Okay. And would you have sent it by e-mail, is that how you --
A. Every -- yes, everything that I have, that I sent regarding that video was sent via e-mail.
Q. Okay. Did you edit any of the video that you sent?
A. No, sir.
Q. And you didn't add the language?
A. No, sir.
Q. Do you know who did?
A. I do not.
Q. Okay. So you and your daughter shopping, you go down Hazel Street, you come up on Meeting, you see the horse down, you get out, you film. Whatever you filmed, you sent by e-mail to Ellen Harley or news outlets. What

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about Charleston Animal Society?

A. I don't believe -- I -- I don't know for sure.

Q. You could go back in your e-mails and you could see?

A. Yes, I will look for that for sure.

Q. And send that to your lawyer?

A. Yes, sir. I will definitely do that.

Q. Okay. But obviously somebody else, you don't know who, added this language in this?

A. That's correct.

Q. Okay. The very end of this video, is this your video or somebody else's?

(Video playing.)

Q. Now we know this is you here.

A. That's me, yes. That -- I was so shaken that, no, that's not mine.

Q. So starting at 140, that's somebody else's video?

A. That's correct.

Q. And you don't know who?

A. That's correct.

Q. Were you still on the scene when Big John stood up?

A. I may have been. I was so rattled

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when that woman approached me and my daughter was upset and so I don't -- I can't remember whether I stuck around for that or we got in the car and just drove.

Q. Okay. But everything past approximately the 140 mark that we're looking at now, that's somebody else's video that's synced to your video?

A. Yes.

Q. So really, your video's in the middle, there's a beginning from somebody, some other source and an end from some other source?

A. That's correct.

Q. Okay. And you don't have any information on who edited these?

A. No, sir. No.

MR. GOLDSTEIN: Thank you, Ms. Fort.

THE DEPONENT: Thank you.

MR. GOLDSTEIN: It was a pleasure meeting you. I'm sorry it was under this particular circumstance, but --

THE DEPONENT: It was nice meeting you.

MR. GOLDSTEIN: -- it was a

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pleasure nonetheless and that concludes the deposition.

VIDEOGRAPHER: All right, this concludes the deposition of Elizabeth Fort. We are off the Record at 11:26 a.m., media number two.

(This deposition concluded at 11:26 a.m.)

(Signature waived.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

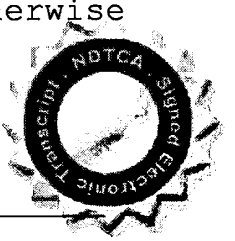
I, Nicole D. White, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me.

That the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction.

That I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken.

And further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This, the 18th day of May, 2019.



Nicole D. White
Notary Public in and for the
State of South Carolina

My Commission expires September 8, 2027

Electronically signed by Nicole White (301-070-154-1752) d6bc1ad1-3e00-4bb4-a980-6d1e3688d733

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Broderick

THE LOWCOUNTRY'S NEWS LEADER

INVEST ATION INTO CARRIAGE HORSE CO LAPSE

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stopped. It's not cute

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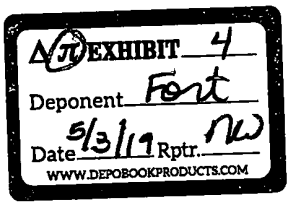
Elizabeth Badgley Fact Industry says they have never had a heat related incident. Since they are a self-regulating industry and since they keep their own records And the animals are not microchipped or branded (As are race horses and other performance horses). no one knows their whereabouts or their condition. If they have nothing to hide, then microchip the animals, let an independent (not Industry or City) vet tech keep records And offer them to the public!

Like Reply 1y

Mary Loveless Den
Canada. Great cause
for these poor souls!

City releases official report on Charleston carriage horse incident



Published: Thursday, April 20th 2017, 1:49 pm EDT
Updated: Saturday, April 22nd 2017, 10:58 am EDT

By Sydney Ryan, Anchor/Reporter CONNECT

By Patrick Phillips, Digital Content Manager CONNECT

CHARLESTON, SC (WCSC) - Did Big John slip while turning a corner or just decide to stop, lie down and wait? The City of Charleston released an official report and answered questions about the incident and regulations for the carriage industry.

"When it fell to its rear, it decided to lay on its side," Dan Riccio explained. Riccio is the director of the City of Charleston Department of Livability and Tourism. "If a horse attempts to get up with the equipment on, it can cause more harm than good. Based on yesterday's event, it appears the horse knew what to do."

The official report from the City of Charleston says it "stumbled and fell" to the pavement. The report, released Thursday afternoon, tracks the horse's journey from North Market Street to Church Street to Pinckney Street and then onto Meeting Street traveling North.

"At approximately 323 Meeting St. (in front of FIG restaurant) the horse stumbled and fell to the pavement," the report states.

"There was a horse that was down on the ground. It looked dead to me, I know it's not, but it looked dead," witness Elizabeth Fort said.

The Charleston Carriage Works driver called the company barn for help and passengers exited the carriage, the report states. Livability officers said the horse was on its right side and barn hands were attempting to release the horse from the harness and tack equipment. Firefighters from the nearby Meeting Street Fire Station also helped lift the horse to free it from the entanglement, at which point the horse sat up on its rump.

"A large strap from the harness was used to lift the horse so it could get its rear legs from under its body and Big John stood up on all fours," the report states.

Big John was then walked back to the CCW barn and the entire incident lasted 11 minutes, the report states.

"I don't believe that anyone in the carriage industry would do harm to their own animals. It's their livelihood," Riccio said. "Our ordinance is very detailed and very strict. I have an equine manager that monitors the carriage animals just about daily."

Equine Manager Shannon Tilman examined the horse with the carriage company staff and found two minor abrasions on the horse's rear left hock and right front elbow and an independent vet was immediately called, the report states.

A second report from Tilman indicates a "trot test" was performed and recorded on video and the horse showed no signs of lameness. The horse's temperature was normal before the tour and at the time of his return to the barn, the report states.

Veterinarian Tara Byrd's report indicated recommendations for topical treatment for the superficial abrasions. Byrd's report stated the horse was "fit to return to work immediately, no restrictions."

Charleston Carriage Works, however, did not return Big John to work. The horse had the rest of Wednesday off, Thursday off entirely and will perform mock carriage rides (no passengers) on Friday. He will return to work Saturday.

Fort does not think that these sanctions and the investigation are enough.

"I just would like there to be a third party that could come in and give an unbiased study and the facts will speak for themselves," she explained, adding downtown Charleston should no longer have carriages period. "It is a crowded, congested environment where these horses are having to maneuver around cars, rickshaws, skateboards, bicycles."

Jack O'Toole, the communications director with the City of Charleston, says the city is open to conducting more research studies on the matter.

City has official policy on handling carriage accidents

O'Toole says there is an official procedure whenever an incident involving a carriage horse occurs.

By law, he says, all incidents must be reported immediately.

City tourism enforcement officers are then dispatched to the scene to investigate the incident, work to ensure the horse's well-being, and file an official report, which is then made available to the public, he said.

In this case, the city released its full report the day after the incident. The report included an incident report and a report from the city's equine manager, who O'Toole says is one of only two people in the county who has been trained as a certified animal abuse specialist who can detect incidents of abuse or mistreatment. The city's release also included a report from the veterinarian, who was summoned by the carriage company to examine the horse, provide recommendations for treatment and determine how soon the horse could return to service.

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WMBF News
April 19

Thankfully, this carriage horse is OK after slipping today in downtown Charleston. Find out more HERE >> http://buff.ly/2oMwtNU Photo courtesy of Elizabeth Fort

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Elizabeth Rose The city really needs to stop the whole horse and carriage thing,let the horses be horses away from all the noise of Charleston.Way past time.Really Charleston have some respect.

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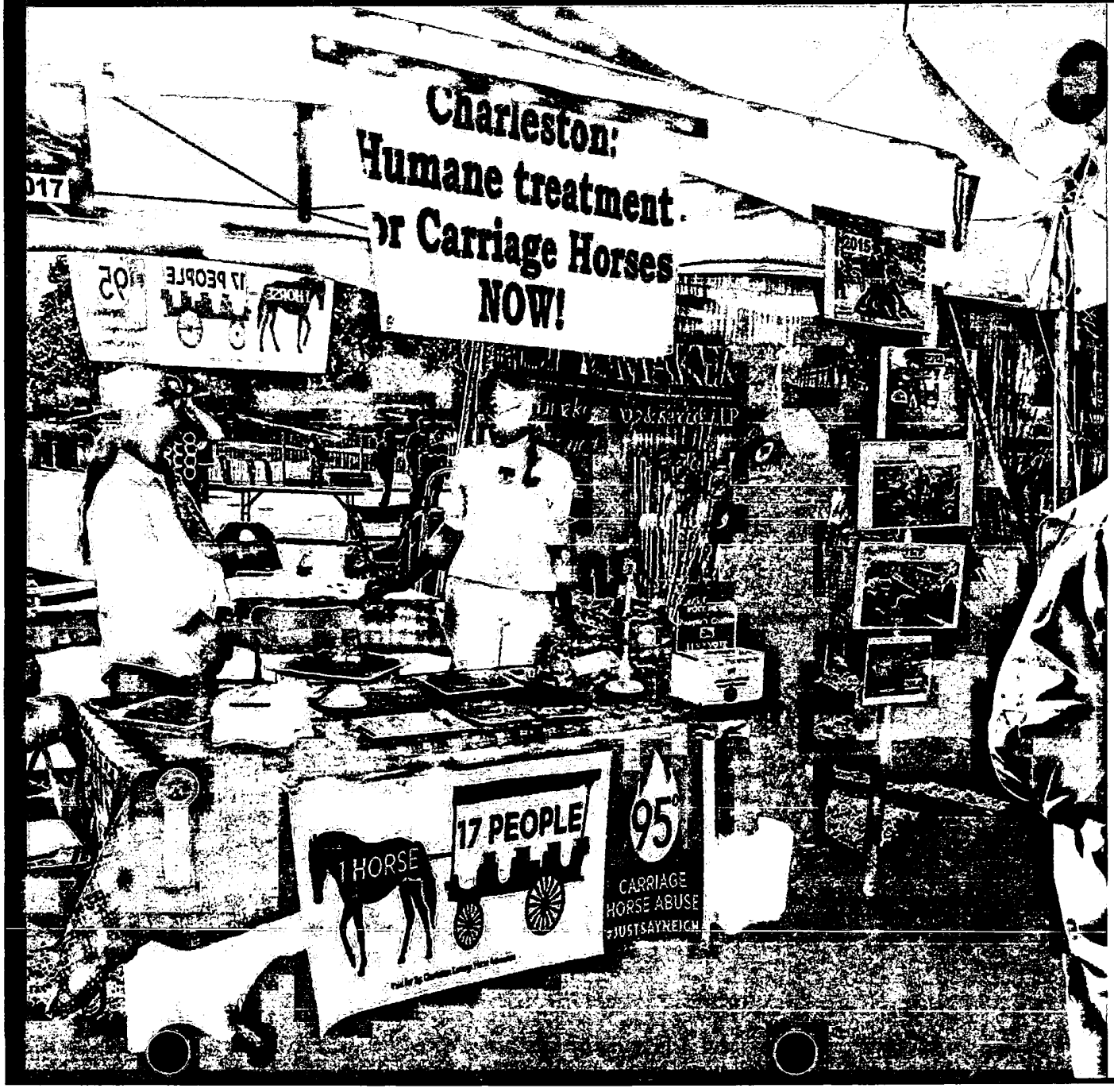

Charleston Carriage Horse Advocates •••
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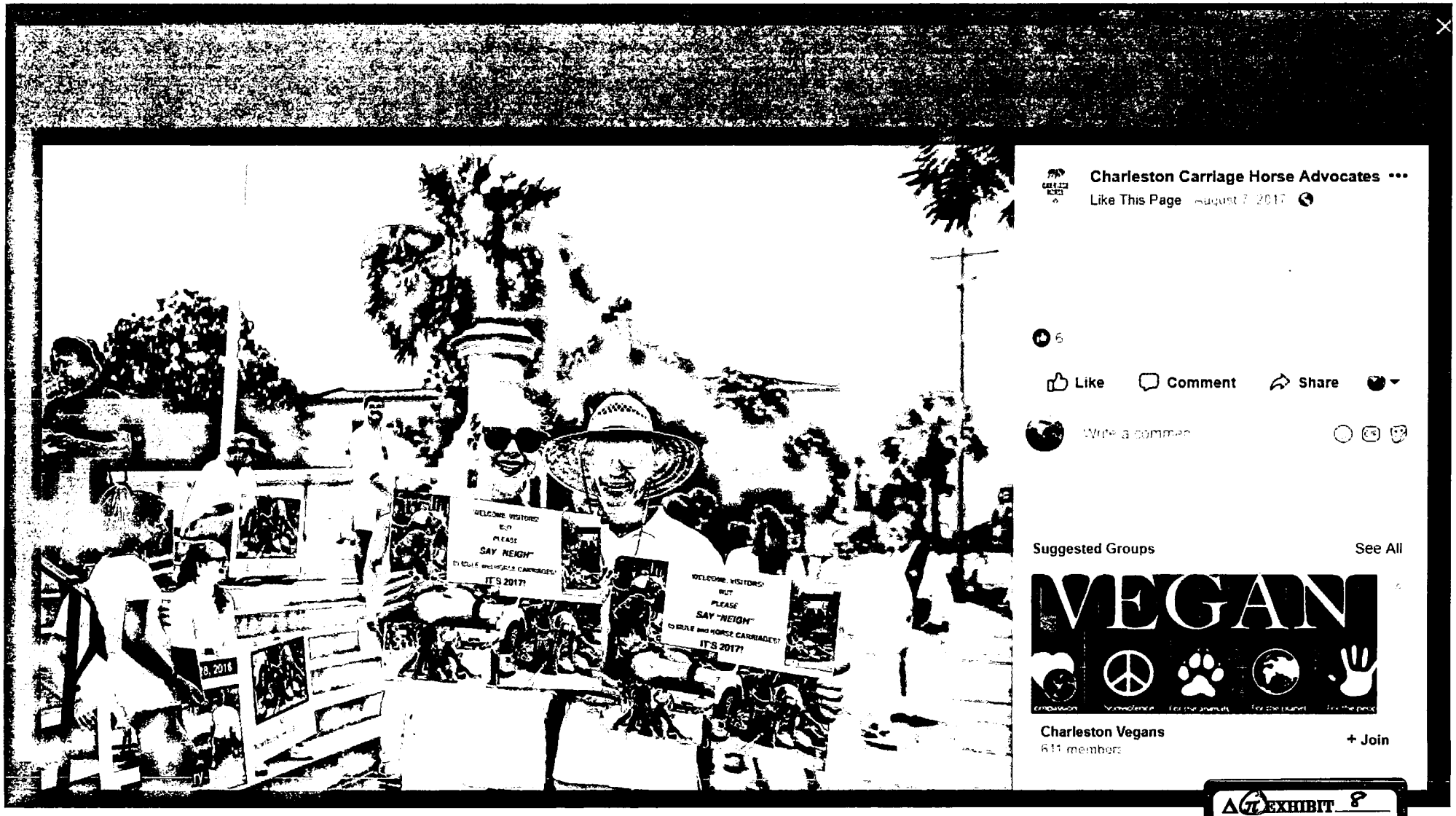

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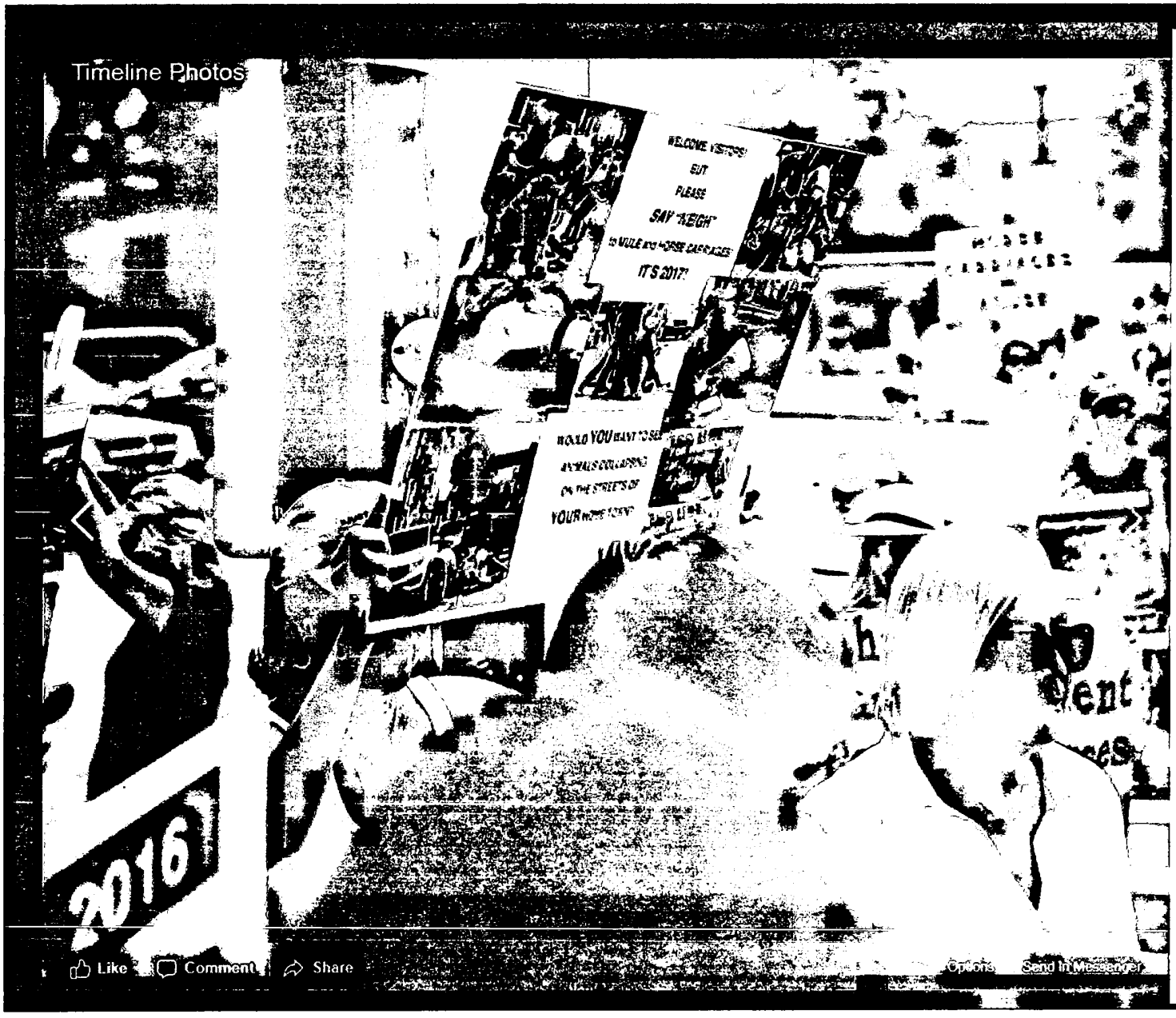

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BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

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Charleston, SC
zip 29415-1121
Ph (843) 554-4291
Fax (843) 554-5566

April 25, 2017

Ms. Ellen Harley
23 Wentworth Street
Charleston, S. C. 29401

Re: Charleston Carriage Works

Dear Ms. Harley,

This office represents the interests of Charleston Carriage Works and Broderick Christoff. I have reviewed the false and libelous material you published concerning my client and his business, falsely implying that a healthy and uninjured horse collapsed from neglect and misuse. I am also aware that you spend a considerable amount of time following various tours, harassing companies, their employees and guests. I know you are a part time resident of South Carolina and therefore, you may be unaware of South Carolina laws. South Carolina allows suits for slander/libel, and under South Carolina law, "words that falsely charge a person with conduct, characteristics or a condition incompatible with the exercise of a lawful business, trade, profession or office are slander/libel *per se*." Moreover, your reckless and false statements have generated numerous serious threats directed against Broderick, his family and his employees. In addition, Congress responded to tactics such as yours by passing the *Animal Enterprise Terrorism Act* (AETA), 18 U.S.C. § 43. This act prohibits any person from engaging in certain conduct "for the purpose of damaging or interfering with the operations of an animal enterprise." The statute covers any act that either "damages or causes the loss of any real or personal property" or "places a person in reasonable fear" of injury."

In South Carolina, we consider it courteous to approach directly someone in order to express concerns with his or her activities. Should you have any concerns about the well-being of Charleston Carriage Works' horses, all you have to do is request information. You may not be aware, but the City of Charleston has rigorous regulations governing the care and conduct of the horses, including the number of hours they can work and the maximum temperature during which they can work. Broderick, the employees of Charleston Carriage Works and their guests love the horses, and the care and affection for their horses is second to none. It is extremely reckless of you to disseminate information that you know is false. You are aware that the horse that tripped, easily regained his feet as soon as he was unharnessed and walked back to the barn unassisted and was thoroughly checked by a doctor of veterinary medicine who cleared Big John to return to work. If you had real concerns about the horse—as opposed to publishing knowingly false information to suit your agenda—it would have been simple for you to request the veterinary records from the examination in order to determine accurate information about the horse's well-being. You did not do this because you chose to turn a blind eye to the facts in order to publish libelous material. Instead of making an effort to determine whether the horse was or was not injured, you published false information with the view of whipping up anger and hostility toward Charleston Carriage Works. In this you have succeeded, and if anyone there is attacked, injured, or killed as a result of your intentionally false publication, you will be responsible for this.

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In the meantime, in the spirit of the Southern tradition of courtesy, we are happy to answer any relevant questions about the health, maintenance, and care of any animal. We expect you to do the right thing and immediately publish a retraction and correct the false impression that you created that the animal was injured in any way. Please provide evidence that you have published a retraction and correction. I am in no position to give you legal advice, but I suggest that you get legal advice from any of the excellent lawyers in Charleston who can advise you on what is and is not permissible under South Carolina tort law and under the *Animal Enterprise Terrorism Act*. I also ask that you notify your Homeowner's Insurance Carrier of our intent to make a claim. Your failure to do so could void your coverage. As always, you can contact me at the above telephone number, e-mail address, or street address to discuss this matter. I hope you will do so.

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

cc: Broderick Christoff

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 2018-CP-10-4083
CHARLESTON CARRIAGE WORKS, LLC, Plaintiff, versus CHARLESTON ANIMAL SOCIETY, ELLEN HARLEY and CHARLESTON CARRIAGE HORSE ADVOCATES, INC., Defendants.	***CONDENSED AND INDEX*** (VIDEO) DEPOSITION TRANSCRIPT

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION
COUNTY OF COLUMBUS	FILE NO.: 19 CvD 1218
CHARLESTON CARRIAGE WORKS, LLC, Plaintiff, versus CHARLESTON ANIMAL SOCIETY, ELLEN HARLEY and CHARLESTON CARRIAGE HORSE ADVOCATES, INC., Defendants.	

Testimony of **TARA NICOLE BYRD LITTLE, DVM,**

was taken before Kimberly L. Altman, a Notary Public,

in the Chadbourn Community Library, 301 North Wilson Street,

Chadbourn, North Carolina, on October 30, 2019, beginning at 1:05 p.m.

KIMBERLY L. ALTMAN
Court Reporting Services
7327 Coastal Avenue
Wilmington, North Carolina 28409
(910) 617-1703

Appearances Page 3

Stipulations Page 4

Direct Examination of the Witness
by Elizabeth J. Palmer Page 6

Cross-Examination of the Witness
by Joseph D. Thompson, III Page 32

Cross-Examination of the Witness
by Thomas R. Goldstein Page 50

Redirect Examination of the Witness
by Elizabeth J. Palmer Page 70

Recross-Examination of the Witness
by Joseph D. Thompson, III Page 71

Signature of the Witness Page N/A

Certification Page 73

Exhibits:

For the Defendant Charleston Animal Society:	Identified	Attached
Exhibit No. 1	13	74
Exhibit No. 2	14	75
Exhibit No. 3	30	76

APPEARANCES

For the Plaintiff:

Thomas R. Goldstein
Belk, Cobb, Infinger and Goldstein, P.A.
2344 Cosgrove Avenue
P. O. Box 71121
Charleston, SC 29415

For the Defendant
Charleston Animal Society:

Elizabeth J. Palmer
Rosen Hagood, L.L.C.
151 Meeting Street, Suite 400
Charleston, SC 29401

For the Defendants
Ellen Harley and
Charleston Carriage Horse
Advocates, Inc.:

Joseph D. Thompson, III
Hall, Booth, Smith, P.C.
111 Coleman Boulevard, Suite 301
Mount Pleasant, SC 29464

Also Present:

Broderick Christoff, Principal for
Charleston Carriage Works

It is hereby stipulated and agreed between the parties to this action, through their respective counsel of record:

1. The deposition of **TARA NICOLE BYRD LITTLE** may be taken on October 30, 2019, beginning at 1:05 o'clock p.m., in the Chadbourn Community Library, 301 North Wilson Street, Chadbourn, North Carolina.

2. Said Deposition shall be taken for the purpose of discovery or for use as evidence in the above-entitled action, or for both purposes.

3. Any objections of any party hereto as to notice of taking of said Deposition or as to the time or place thereof, or as to the competency of the person before whom the same shall be taken, are deemed to have been met.

4. Objections to questions and motions to strike answers need not be made during the taking of this Deposition but may be made for the first time during the progress of the trial of this case, or at any pretrial hearing held before any judge for the purpose of ruling thereon, or at any other hearing of said case at which said Deposition might be used, except that an objection as to the form of a question must be made at the time such question is asked or objection is waived as to the form of the question.

5. Rule 26 of the North Carolina Rules of Civil Procedures shall control the taking of said Deposition and the use thereof in court.

6. Except as waived by this stipulation, the provisions of Rule 30 of the North Carolina Rules of Civil Procedure shall apply to the taking of said Deposition and as to their submission to the respective deponent, certification and filing, except that notice of filing is hereby given.

7. It is stipulated and agreed between the parties hereto that Kimberly L. Altman shall be Commissioner for the purpose of taking this Deposition.

8. It is further stipulated that the signature of the witness to the Deposition is waived.

Page 6

TARA NICOLE BYRD LITTLE, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, on her oath, testified as follows:

DIRECT EXAMINATION BY MS. PALMER:

Q. Dr. Little, we met off the record, but, again, I'm Beth Palmer, and I represent Charleston Animal Society. Thank you very much for being here today. I'm sorry to disturb your day, but we're going to try to get you out of here as quickly as possible.

A. Okay.

Q. A couple of ground rules I have to tell you. If you have any questions about anything I ask or documents I show you, please let me know, and I'll rephrase the question or try to explain it.

If you answer my question, I'm going to understand that you understood it. Try not to say "uh-huh" or "unh-uh." Use "yes" or "no," because we've got our court reporter trying to take everything down, and same with nodding. We need to have verbal responses. And I'll try to remind you, but I'm horrible about it and forget all the time.

A. (Nods head in the affirmative.

Q. And if you want to take a break, just let us know. But, again, I'm hoping this is going to be quick.

A. Okay.

Q. Will you please state your full name, for the record?

Page 7

A. Tara Nicole Byrd Little.

Q. Okay. And what is your address?

A. I rent locally, so that address or my --

Q. Uh-huh.

A. Okay. 305 Edwards -- David Edwards Lane -- there we go -- and that's Fair Bluff, North Carolina, 28439, I believe.

Q. And so, you're a full-time resident of North Carolina?

A. Yes.

Q. Okay. Have you talked to anyone about your deposition today?

A. Yes.

Q. Who did you talk to?

A. Mr. Goldstein.

Q. And what did y'all talk about?

A. That I was having a deposition today, and I asked him for my record -- my medical record pertaining to the case, and then chit-chat. I asked him how the horse was doing. He said, "Well." That's -- that's the gist of it, yeah.

Q. Did -- did he talk at all about what this lawsuit is about?

A. Yes, I asked him that, as well.

Q. And what did he tell you?

Page 8

A. He told me it was a defamation case brought by the carriage company, about, I think social media -- that post, and that was the -- that was the reason for the case.

Q. Was there anything else that y'all talked about?

A. Not that I remember.

Q. Okay. Let's see. Aside from talking with Mr. Goldstein, do you know anything independently about this lawsuit? Did you do any research or look into it yourself?

A. I Googled myself, and so, there was a newspaper article I read online, yes.

Q. Okay. When is the last time that you communicated with Mr. Christoff?

A. Before today?

Q. Uh-huh.

A. It would have been before I resigned from my associate position at Charleston Equine Clinic, and I resigned from there at the end of September, 2018. So, it would have been before that.

Q. Have you ever talked with Mr. Christoff about this lawsuit?

A. No.

Q. Will you tell us -- give us your educational background, starting with college and going forward, and

Page 9

your degrees --

A. Sure.

Q. -- and sort of the years you were there, if you --

A. Okay, sure.

Q. -- remember.

A. I graduated from college, undergrad UNC Charlotte, 2015. And then I -- I went into work in pharmaceutical research. Then I went to work -- and that was approximately for a year. And then I went to work at the university at North Carolina at the teaching hospital in the equine unit. That was approximately four to five years. Then I went to vet school beginning in 2012, in -- at Ross University. That's in the Caribbean. I was there for 28 months. I did a clinical rotation year in Oklahoma, at Oklahoma State University. That was followed by an internship, and that would have been 2015 to 2016, and my internship was in Ocala, Florida, at Ocala Equine Hospital. And following that, I went to work at Charleston Equine Clinic and was there for approximately two years, --

Q. Okay.

A. -- until the end of September, 2018.

Q. All right.

A. And now I work for myself in this past year, as a equine veterinarian.

Page 10

Q. Okay. Do you have -- can you give us an idea of what your degrees are, if you have any -- like, you know, your license, any specializations, that sort of thing?
A. Sure. I was licensed in Florida while I'm there -- while I -- excuse me, while I was there. I'm licensed in North and South Carolina as a veterinarian. I'm certified as a equine spinal manipulation practitioner. And I do acupuncture, as well, on horses.
Q. I was doing a little reading and saw that there are specializations like internal medicine or -- or things like --
A. Uh-huh.
Q. Do you have any of those types of specializations?
A. No, I'm not specialized. I'm not Boarded, is what you're asking.
Q. Okay.
A. Yeah.
Q. Thank you.
A. In a specialty. That's what I should say. I'm not Boarded in a specialty.
Q. Okay. Do you have -- are you a member of any professional veterinarian organizations, like the American Veterinary Medical Association?
A. Yes. I'm a member of the AVMA,

Page 11

American Medical Veterinary Association.
Q. Okay. Any others?
A. Also the AAEP, American Association of Equine Practitioners.
Q. Do you subscribe to or regularly read any, like, academic or medical journals dealing with equine health?
A. Yes. That's part of my memberships. I receive those -- I receive that literature that's published. And then, I am required to do CE, so that's -- you know, for my license. So, that requires quite a bit of reading, as well, and studying. And so, yes. And, depending on my cases, I may be doing research at any given time. So, yeah, quite a bit.
Q. Have you ever written any articles yourself that have been published?
A. Have I written?
Q. Yes, ma'am.
A. No, I haven't written any published articles.
Q. All right. Why did you leave Charleston Equine?
A. Personal reasons.
Q. And you were there for two years?
A. Yes.
Q. Do you mind me asking what those reasons were?

Page 12

A. Yes. Location, for one. My family is here, and North Carolina is my home. And lifestyle. So, yes.
Q. Okay. What does your practice consist of now?
A. I do mostly lameness work on performance horses.
Q. What -- can you explain what that means?
A. Lameness and soundness are pertaining to the performance of horses, and they must go in a cadenced gait and with equal, balanced loading on each limb. That would define a lameness. And I work with horses mostly for that -- that's ninety percent (90%) of my practice.
Q. Has your practice always been confined to equines?
A. Yes.
Q. Before you were at Charleston Equine, did you have any experience with carriage horses?
A. Draft horses that -- horses that pull carts?
Q. Yes, ma'am.
A. Yeah. I have not worked with a carriage company in the industry before, but I have worked on draft horses, and I have experience -- personal experience with carriage horses.
Q. Okay. Have you worked with any carriage horses, draft horses since Charleston Equine?

Page 13

A. No, partially because they're not in my group of -- or, they're not in the group of horses that I generally practice on, yeah.
Q. I meant to do this at the beginning. Is this the letter that you received from my office, with the subpoena to appear today?
A. This is what it looked like.
Q. Okay.
A. It was on your letterhead -- letterhead and, yes, this is what it looks like, yeah.
MS. PALMER: Okay. Can we mark that as Exhibit 1?
COURT REPORTER: Yes, ma'am.
(DEFENDANT CHARLESTON ANIMAL SOCIETY'S EXHIBIT NUMBER 1 MARKED FOR IDENTIFICATION)
By Ms. Palmer:
Q. And do you recall Big John, a draft horse owned by Carriage -- I mean, Charleston Carriage Works?
A. Yes, I remember the horse.
Q. I'm going to hand you what I'd like to be marked as Exhibit 2. These are the Charleston Equine Clinic records, and they are Bates stamped -- when I say Bates stamped, that's the number down at the bottom right-hand corner.
A. Okay.

Page 14

Q. CEC 1 through 42.
(DEFENDANT CHARLESTON ANIMAL SOCIETY'S EXHIBIT NUMBER 2 MARKED FOR IDENTIFICATION)
By Ms. Palmer:
A. Is this his entire medical record?
Q. Yes, ma'am.
A. Okay.
Q. We sent a subpoena to Charleston Equine Clinic, and they sent us this back, along with a certification that these were any and all records related to Big John.
If you would, turn to CEC 12. Now, I realize that this record, dated August 13th of 2014 predates when you were at Charleston Equine, but I was hoping you could help me understand what some of the stuff written on here means.
It looks like Big John was given an endoscopy. Do you have any idea why he would have had an endoscopy?
A. So, endoscopy is a scope. It's a camera that -- inserted up the nostril to look in the -- this looks like it would have been in -- through -- into his airway and down in -- at some length, depending on the length of the camera, into his lungs. But there would -- it would be limited, based on the length of the endoscope. That's what this looks like it's for.
Q. All right. And those medications on the right-hand side -- can you -- briefly, can you explain, if -- if you can tell from the writing, what they are and why they

Page 15

would be prescribed?
A. Yes. So Sedivet is a sedation. That was for the procedure, probably. And, again, I was not present for this.
Q. Sure.
A. I didn't do this exam, and it was three years -- this is before I graduated from vet school, in fact.
Q. Sure.
A. So, I'll just interpret it the way I think it -- what it means. The Dex -- where it says Dex, there are three listings -- that is a ster-- steroid medication, and that's the medical therapy, and then the dispensed medications, Dex, which is, Dex is short for Dexamethasone -- Dexamethasone powder. Breathe Ease is a medication for a respiratory complications, I guess. We use it for different things. Anhydrous is heaves. And then one -- 1AC is a medication which I think is -- I'm pretty sure is over the counter, and that is for anhidrosis, so nonsweating. Breathe Ease, I'm not sure if it is over the counter or not. It's a -- that's a name brand. I'm not sure.
Q. Okay. And then under -- at the bottom, the comments/instructions/reminders, what are these two things that are listed?
A. Anhidrosis is nonsweating, and COPD is the same as in humans, and I'm drawing a blank. In horses,

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we call this heaves or recurrent airway obstruction or recurrent obstructive airway.
Q. What -- what kind of effect does that have on a horse?
A. This is respiratory. Many times, it's associated -- it's seasonal, and many times it's associated with allergies, which is also usually seasonal.
Q. Do you know, independently, if Big John had anhidrosis or COPD?
A. In my care, I don't remember that, no.
Q. Okay.
A. I don't remember treating him for that. And -- or if -- if I had examined him and thought he had that, that would be here. I would have made a note.
Q. Okay. Do you recall the -- there being an incident on April 17 -- or April 19th, 2017, when Big John, the horse, fell during a carriage tour?
A. Yes. That's the day I think I examined him.
Q. All right. If you would, turn to CEC 8.
A. Okay. (Witness complies.)
Q. And can you identify that document?
A. Yes. Oh, tell you what it is?
Q. Yes, ma'am.
A. This is the medical record and invoice for

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the exam that I did on April 19th.
Q. Of Big John?
A. Yes, for Big John.
Q. And that's your signature on the bottom right-hand side?
A. Yes.
Q. Can you go through this bottom part, where you've got comments, instructions, and reminders, and just walk us through what all this means, what you did, that sort of thing?
A. Sure. So, the first line is "Hx." That's shorthand -- shorthand for history. "Slipped while in harness pulling carriage." And that was the history that was provided to me.
And then, Physical Exam. This is the exam that I performed. "BAR" means bright, alert, responsive. "T=100.3øF." That's temperature. That's a normal temperature for a horse. Heart rate equals 36. That's 36 beats per minute. That is a normal heart rate for a resting horse. Respiratory rate equals 12. That would be breaths per minute, and that is also within normal range for respiratory rate for a horse at rest. "MN" stands for mucus membranes, and the shorthand means it's P/moist. That means pink and moist for mucus membranes. "CRT" is cutaneous refill time, and that's less than two seconds. GI equals -- and then there's, like, four

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quadrants of plus marks, and that means that he had gut sounds in all four quadrants in his gut. Then, "Superficial abrasion distal to right elbow and small superficial abrasion on left hind point of hock," and that is a visual exam notes I made. And, "No apparent lameness."

Q. Okay. And your recommendations were topical treatment for the abrasions and --

A. Excuse me, yeah.

Q. -- and that he was fit to return to work immediately, with no restrictions?

A. Correct.

Q. Okay. All right. We're going to break some of that down.

How did you end up examining Big John that day? Did you get a call?

A. Yeah. So, the way that worked is, I had a normal schedule, and so, calls come into the clinic, and then they determine which veterinarian goes out to which calls, based on where we were or who's finished, not finished, whatnot. So, I was called and told to go.

Q. Who called you?

A. Someone from the practice, but I don't know --

Q. Okay.

A. -- I don't know who it was. I mean, it

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would be someone from the office who received the call.

Q. What were you told at that time?

A. To go examine a carriage horse.

Q. Were you told anything about what had happened?

A. I don't recall the phone call. I mean, I know I -- I was called to go, because I went, but --

Q. Sure.

A. -- I don't even know who it was that called me.

Q. Where were you at the time that you got that call?

A. I have no idea.

Q. All right. I mean, --

A. I mean, I don't -- I would have been working, but I don't know.

Q. Okay. I mean, in --

A. In --

Q. Edisto, or, I mean, you know, what -- what area, generally, did you work?

A. All over the low country, wherever they had sent me that day.

Q. Okay.

A. And I don't remember.

Q. When you got the call, did you leave

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immediately to go downtown?

A. I don't remember that. I mean, I would have gone -- if they said "Go now," I would have gone now. But if they said, "Go at the end of this appointment or next," I would have done that.

Q. Okay. And so, you went to examine Big John, and --

A. Uh-huh.

Q. -- was he already back at the barn?

A. And he was in the barn. Uh-huh.

Q. And that's when you performed the examination?

A. Yes.

Q. How long did your examination take, approximately?

A. I would estimate 15 or 20 minutes.

Q. Did you talk to Mr. Christoff that day?

A. I don't remember, but I may have called him afterwards, or even said, "I'm on my way," but I don't remember talking -- you know, I don't remember my phone conversations from the day.

Q. Did you talk to the driver of the carriage?

A. I'm not sure if the driver was there. I don't think the driver was there, honestly.

Q. Okay.

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A. But I'm not sure if -- I don't even know who the driver was, so, I'm not sure.

Q. What were you -- what I'm trying to figure out is --

A. Yeah, I know.

Q. -- what you were told when you got there and how, you know --

A. Okay. The best I can say is just refer to what I was -- what I wrote -- that he slipped while he was in the harness, pulling. That's what I was told.

Q. Okay. And do you recall who told you that?

A. No. There were a couple of people, that work at the barn, there that day. So, someone -- you know, whoever was standing around to help me with the horse.

Q. Were you there to try to diagnose the cause of the fall or there just to examine Big John?

A. Just to examine Big John.

Q. You were -- were you asked to opine on why he fell?

A. Give my opinion about why he fell down?

Q. Yes, ma'am.

A. No.

Q. Do you have any idea how long it was between when he fell and when you examined him?

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A. I know it was earlier in the day, but I don't know what time, and I actually don't even know what time I arrived.
Q. Okay. So, did you see any video of him falling or pictures of him on the ground, or anything like that?
A. No.
Q. So, you can't really say, with any certainty, why he fell?
A. No. I did not find anything that would allude to that, based on my exam.
Q. Were you told anything about the mechanics of the fall? Like, how he fell or what he was doing immediately before or after? Anything like that?
A. No. I know that he was in the harness, I know that he was pulling a carriage, and that he slipped. That's what I know.
Q. All right.
A. Yeah.
Q. So, you don't know if his forelimbs went down first or his hind limbs down --
A. No.
Q. Okay.
A. I don't know.
Q. Do you know anything about his demeanor immediately preceding the fall?

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A. No.
Q. Or while he was down on the pavement? Do you know anything about what his demeanor was or his movements were at that point?
A. No. I wasn't there for the incident.
Q. Okay.
A. So I examined the horse as he was when he was in the barn when I examined him.
Q. Have you ever done any research on equine collapse?
A. Can you be more specific about collapse?
Q. The causes of horses collapsing.
A. Collapsing, in the regard -- fall down?
Q. Yes, ma'am.
A. And reasons for falling?
Q. Yes, ma'am.
A. Specific research on why horses fall down, no.
Q. Okay. I just -- I was doing some research, and I saw that --
A. Yeah.
Q. -- there's a lot of research out there about diagnosing the cause of equine collapse. And there's -- are you familiar with the Journal of Veterinary Internal Medicine?

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A. I'm aware of it. I know about it.
Q. Okay. I saw a definition from that journal that defines equine collapse as, quote, "An incident in which the horse fell suddenly and involuntarily, resulting in a loss of posture, with or without progression to recumbency and with or without loss of consciousness." Is that an accurate definition, in your mind, of equine collapse?
A. If that's what that journal believes, that's most likely correct.
Q. Okay. Do you -- is there anything about that definition that you find problematic or you would disagree with?
A. No.
Q. Okay. Do you agree with the statement that horses that have experienced an episodic collapse can appear normal at examination minutes afterwards?
A. I think the way they appear minutes later depends on the etiology of the fall.
Q. All right.
A. The reason for the fall.
Q. Is it accurate to say sometimes it's just not possible to determine why a horse has collapsed?
A. That would be accurate.
Q. There are a number of things that can cause a horse to collapse, correct?

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A. I believe so, yes.
Q. What are some of the things that come to your mind when you hear equine collapse, as far as the -- the cause of it?
A. Well, a number of things. So an ataxia, workload, you know, exercise. There's -- exercise intolerance is not an uncommon thing in racehorses or in any performance horse. Those would be probably the first two, or at least in the top of the list. Any misstep will cause a horse to fall. And I think the definition that you read me, that any -- just -- a trip or a fall could fall into that definition.
Q. And it doesn't appear from this, but did you do any blood work on Big John that day?
A. I did not.
Q. All right. Could inflammation cause a horse to collapse?
A. I think it would depend on where the inflammation was. I think it would depend on how much pain was associated with inflammation.
Q. All right. How is inflammation diagnosed?
A. Generally, blood work determines. Inflammation implies that the immune system has responded, and that can be secondary to injury, or it can be secondary to infection.

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Q. Okay. Is it correct that your examination of Big John did not reveal whether or not he had any inflammation at that time?
A. I did not -- I did not record any swelling, and swelling is associated with inflammation, and so, I did not record any blood work, either, so I didn't -- I can only allude from that, that I didn't think there was any inflammation.
Q. Can a temporary loss of consciousness cause equine collapse?
A. I would assume that that would be possible. I have no experience with that.
Q. Okay. And, to follow up on that, did your exam rule out the possibility that Big John experienced a temporary loss of consciousness, causing him to fall?
A. I can't speak to that. I wasn't there when the event happened.
Q. Okay. And -- and so my -- I can phrase that better.
A. Okay.
Q. Did your exam -- would it have revealed whether or not he had a temporary loss of consciousness? Is that something you would have been able to tell from your exam?
A. Not at the time that I examined him.
Q. Okay. Did you perform any type of

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neurological exam?
A. Yes. I had him taken from the stall.
Q. And what --
A. That's how I would tell about the lameness.
Q. Okay.
A. Yeah.
Q. And so, that was just watching him walk?
A. And turn, and place his feet.
Q. Okay. Was there anything else that you did that would be considered a neurological exam?
A. No. That would encompass it.
Q. Okay. And you did a cardiac exam, to the extent you took his heart rate, correct?
A. Yes.
Q. Now, the heart rate --
A. And I did not comment on a rhythm or arrhythmia or anything, but there -- I didn't find that to be a problem.
Q. Okay. And that would have been his heart rate and respiration rate at the time you examined him, correct?
A. Yes.
Q. Not at the time he fell?
A. No. I wasn't present for that.

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Q. All right. Was it your conclusion that he slipped, or was that just something somebody else told you?
A. That was -- what I recorded was what I was told and understood that happened, --
Q. Okay.
A. -- because I was not there. So, when I asked for the history of what happened, that's what I recorded.
Q. All right. What size of a stall is standard for a 1,900-pound draft horse -- or recommended, I would say?
A. I have to admit, there are -- I think that there are recommendations for sizes, and I do not know them off the top of my head.
Q. I would assume that's not something that really comes within your practice often.
A. No. This is --
Q. You're not being asked that.
A. This is an uncommon situation.
Q. All right. When did you prepare this -- this report that we were looking at?
A. I would have done this when I was finished examining the horse.
Q. Okay. Contemporaneously, like at the barn?
A. Yeah.

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Q. All right.
A. Or maybe at the truck, like, when I was finished and was putting my things away, I would have written what happened.
Q. Did you give Mr. Christoff a copy of it, at that time?
A. I might have left a copy of this there. Most of my records -- it's my understanding that they're sent to the City, so I probably left one there, but I don't remember if -- and I don't think he was there. I don't -- Brody wasn't there that day --
Q. Okay.
A. -- at the time that I was there. I'm sure he was there sometime, but he was not there when I was there.
Q. At any point, have you talked to Mr. Christoff about this incident with Big John?
A. Repeat? I'm sorry.
Q. At any point, did you talk to Mr. Christoff about the incident with Big John falling?
A. I'm sure I probably spoke with him on the phone, but I don't recall the conversation or anything. I'm sure I said, "I examined the horse. I left a receipt. This is what I found."
Q. Okay.
A. That -- that would be a reasonable thing to

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assume, but I do not know. I can't tell you I spoke to him a certain time or our conversation.
Q. If you had been asked to try to determine if there was any -- some medical reason that Big John collapsed, what would you have done? What kind of exam would that require?
A. I would have done very sim-- a very similar exam to what I did. Part of the reason for doing this exam was to determine, is the horse okay now? Was -- is there severe injury after what happened? And is there any risk of this happening again with him? Is there something that I can see outwardly or determine, that would put him at risk for this?
Q. All right. I'm going to hand you what I'd like to be marked as Exhibit 3. This is the Carriage Animal Certificate of Serviceability for Big John, dated October 12, 2017.
(DEFENDANT CHARLESTON ANIMAL SOCIETY'S EXHIBIT NUMBER 3 MARKED FOR IDENTIFICATION)
By Ms. Palmer:
Q. And, Dr. Little, is that your signature at the bottom of this document?
A. Yes.
Q. Did you fill this document out?
A. Yes, most of it. Yes. I think I did not

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write the weight and the breed, the name or age or sexed -- sex, excuse me. And also not -- I don't -- it doesn't look like -- this looks like a separate pen, "Microchip."
Q. Okay. And you circled "Serviceable."
A. Uh-huh.
Q. What does that mean?
A. That means he, based on my exam, is able to do the job of a carriage horse.
Q. Give me one second. That might be all I have.
A. Okay.
(Pause on the record.)
MS. PALMER: That's all I have, and then I'll let Trey have his turn, or Mr. Goldstein.
And I would like to put on the record that there's a possibility that, at trial, we'll be using Dr. Little's testimony and qualifying her as an expert. And I'm saying that for y'all's benefit in case there are any additional qualification questions you'd like to ask.
MR. GOLDSTEIN: We'll stipulate on behalf of the Plaintiff. Sorry about my voice. We'll stipulate as to Dr. Byrd's qualifications as a properly licensed doctor of veterinary medicine, and that's she's fully qualified to give medical opinions in the area of veterinary science.

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MS. PALMER: All right.
MR. GOLDSTEIN: I don't know if Charleston Carriage Horse Advocates agrees with that or not, but the Plaintiff agrees that she is so qualified.
MR. THOMPSON: For my clients, I don't know that I agree with the qualification that Mr. Goldstein has outlined, but I would agree she is qualified based on the testimony that she has provided today, and the -- and the area to be determined.
MR. GOLDSTEIN: Do you have any questions?
MR. THOMPSON: I do.
MR. GOLDSTEIN: Okay. It's your turn.
MR. THOMPSON: Are we done with the --
MR. GOLDSTEIN: Yes.
MR. THOMPSON: -- expert qualification?
MR. GOLDSTEIN: Correct. Okay.
CROSS-EXAMINATION BY MR. THOMPSON:
Q. Is it Dr. Little?
A. That's fine.
Q. Well, I don't want "That's fine." Is it Dr. Byrd or Dr. Little?
A. Either. Byrd and Little are part of my name, so they're fine.
Q. Okay. All right. Well, Dr. Little, then. My name again is Trey Thompson and I represent Ms. Harley

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and -- and the Charleston Carriage Horse Advocates group.
My understanding from your direct examination testimony is that you were called in simply to examine a horse that had been involved in an accident; is that right?
A. Yes.
Q. In other words, client calls, says, "Horse has been involved in some event. I need to you come check him out."
A. Correct.
Q. All right. And so, at the time that you arrive and -- and then examine the horse, your purpose for being there is to simply check out the well-being and the health of the horse, correct?
A. Correct.
Q. All right. You weren't called in to forensically examine the event in which the horse was involved, were you?
A. No.
Q. In fact, as I understand your direct testimony, you weren't -- you didn't perform any kind of forensic examination to determine what led to Big John's fall or collapse, did you?
A. No, correct. I wasn't present for that.
Q. Right. But, I mean, when you say you weren't present -- and you keep -- and you continue to -- to

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press upon that in this deposition -- you weren't -- when you say you weren't present, you weren't present for the event?
A. Correct, yes. Correct.
Q. When Big John --
A. I was not present at -- during the -- at the event.
Q. When Big John collapsed. You weren't there.
A. Correct. I was not there.
Q. And have you reviewed or seen any video or photographs of the event, or anything involving Big John, that occurred on April 19, 2017?
A. No.
Q. All right. And today is October 30, 2019, and you have not reviewed any video or any photographs?
A. No. Like I said, I have read a newspaper article and my record.
Q. All right. I also understand from your direct examination, you did at least some amount of Google research -- Internet research prior to this deposition, correct?
A. Where I found that article, yes.
Q. And did you find a video of Big John and this event that occurred on April 19, 2017?
A. I did not.
Q. What did you Google?

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A. My name and Charleston and Big John.
Q. Okay. And the video didn't come up?
A. If it did, I didn't read -- I read the article in the newspaper.
Q. Okay. And no photo--
A. And I don't even know which newspaper it was.
Q. All right. And no photographs came up?
A. I don't remember seeing any photographs.
Q. All right. The job that you had in Charleston at the Charleston Equine or the equine clinic, is that your first job out of school?
A. No. I did an internship in Ocala --
Q. Okay.
A. -- before that.
Q. How long was the internship?
A. One year.
Q. All right. Paid internship?
A. Yes.
Q. And was that to specialize in something, or was that just --
A. No. An internship can be part of the Boarding process in a specialty, but I did not pursue a residency. I went into private practice.
Q. Okay. So, your -- then your first private

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practice job was at Charleston Equine?
A. Correct.
Q. All right. And how long had you been on the job there before the event occurred with Big John?
A. I -- I need to amend what I said. The -- my internship was in private practice, but I was an intern there, not an associate. As an associate, that was my first job, at Charleston Equine Clinic.
And how long had I been working there?
Q. Uh-huh.
A. I started work there in June or July, I believe, of 2016. So, it would have been the year following the -- immediately following my internship.
Q. So you had been with Charleston Equine Clinic 9, 10, 11 months before Big John's fall?
A. 16 to 17. That would be correct, yeah.
Q. Okay.
A. I can get the specific dates, if needed.
Q. You indicated that you spoke with Mr. Goldstein prior to this deposition, correct?
A. Correct, yeah.
Q. Did you speak with Ms. Palmer?
A. No.
Q. Or anybody who represents the Charleston Animal Society?

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A. Only the office -- her office, to set this up. It was -- it took awhile.
Q. For scheduling purposes?
A. Yes, yes.
Q. All right. Did you speak with anybody at my office or anyone on behalf of Ms. Ellen Harley or the Charleston Carriage Horse Advocates group?
A. No.
Q. All right.
A. I don't -- I haven't spoken with you before.
Q. Right. When did you speak with Mr. Goldstein?
A. Last week.
Q. Okay. Monday? Tuesday? Thursday? Friday?
A. Monday, I -- Monday morning, I believe.
Q. How -- how long did you spend with Mr. Goldstein?
A. Ten minutes, maybe. I don't know. I just -- we -- I just called him back. He left a message, and I returned his call.
Q. All right. And then, you indicated that you asked for the medical records for Big John?
A. Just that form -- the medical record from the day that I did -- the exam that I did.

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Q. Okay. Did -- did you have it when you spoke with Mr. Goldstein?
A. No. I asked him to send it to me.
Q. And did he subsequently send it to you?
A. He did.
Q. Did he send you any other records?
A. There was the record that the horse had also been examined by a representative from the City, I believe. And I did not bring that document, but I have the e-mail, if I need to be more specific.
Q. I'm just trying to figure out --
A. Okay.
Q. -- what -- what you reviewed before you came in here today.
A. Okay. Yeah, that's -- that was it.
Q. All right. Were you provided any other records from Big John's chart?
A. No, not this. (Indicating) I don't have access to his chart, because I'm not an employee anymore.
Q. Well, I understand, but --
A. Yeah. No, and I wasn't provided anything further.
Q. Okay. And I think you asked Mr. Goldstein how the -- the horse was doing.
A. Oh, that's right, yeah.

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Q. And what did he tell you?
A. That he was doing well on the farm.
Q. Okay. Do you know if he was still working?
A. He's retired.
Q. Do you know when he retired?
A. I don't know.
Q. Do you know why he retired?
A. I don't know.
Q. Just catching up on a couple of things from your direct examination, with regard to the April 19, 2017, incident and the report that you filled out, you indicated the history, that is something that was provided to you; is that correct?
A. That's correct.
Q. That was not something you independently came up with yourself, is it?
A. Well, I came up with the words, but I was -- it was described to me. So I didn't write it verbatim as someone spoke.
Q. Okay.
A. Yeah.
Q. And did you write on the report who told you that information?
A. I did not.

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Q. As you -- as we sit here today, do you know who it was that told you that information?
A. No. I remember there were two employees there, and I don't remember their names. And they would have been the people who took care of the horses in the barn.
Q. You have Big John's records in front of you?
A. Yes.
Q. Okay. Could you turn to, let's see, CEC 6?
A. (Witness complies.) Okay.
Q. All right. April 19, 2017, was the event involving Big John, that you examined him for in the barn, correct?
A. Will you --
Q. April 19, 2017, correct?
A. I think that's correct, yes.
Q. All right. And when we say "the barn," was that in the city or on the farm?
A. Oh, the barn -- I examined him in the barn at the city.
Q. Okay.
A. Yeah.
Q. Downtown?
A. Yes.
Q. All right. On CEC 6 -- first of all, do you

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recognize what that is -- what that printout is?
A. This looks like a -- this is a printed -- part of his printed record, as it comes from the computer, yeah.
Q. All right. The next entry after this event is June 14, 2017, and it references RH lameness. Do you know what that means?
A. Right hind.
Q. Okay. And do you have any information or knowledge as to what was going on with Big John, to have right hind lameness two months after this event occurred?
A. No. I don't know what caused that. I don't -- I don't have any further medical notes to go on, except that it was almost resolved with two grams of Bute twice a day for four days.
Q. Okay. So, correct me if I'm wrong, but at least from this record, June 14, 2017, the right hind lameness was actually existing before that date, for that note to say that it was almost resolved, correct?
A. Well, it implies that it was for four days.
Q. So, for the four days prior, going back to, say, June 10, 2017, Big John was receiving Bute?
A. Yes.
Q. And Bute is?
A. It's an anti-inflammatory.
Q. Okay. Prescription medication or over the

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counter?
A. Prescription medication.
Q. All right.
A. It's --
Q. And for the record, what is lameness?
A. Similar to what I previous said -- previously said. It is an asymmetry in a gait due to pain or mechanical reasons in the gait -- in the -- in the horse's movement.
Q. Okay. And not to state the obvious, but is lameness normal?
A. No. Soundness is normal.
Q. Okay. So lameness means something is wrong with the horse?
A. Correct.
Q. And specifically with lameness, something wrong, in Big John's instance, with the right hind?
A. In -- in this case, yes.
Q. And that's one of his legs?
A. Yes, right hind leg.
Q. Okay.
A. Sorry.
Q. All right. I just want to make sure we all know what the --
A. Yes.

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Q. -- everything means, right?
A. Yes, yes.
Q. Okay. All right. So then, the next entry is on August 13, 2017, about two months later, and it looks like there was -- somebody had spoken with Mr. Christoff about Big John being lame in the left front, presumably -- F --
A. Yeah.
Q. -- F -- LF; is that right?
A. Yeah, left front. Correct.
Q. Okay. And did you take that call? Do you know anything about that event?
A. I'm not sure if I did or not, because this is -- like, this printout doesn't say who spoke with whom. Oh, I probably did, actually, because this is 15, and I -- do you see, on the record, it says 15 colon?
Q. Uh-huh.
A. I think 15 was my number, so that was -- I would have entered that. I would have made this note.
Q. Okay. Just like the June 14, 2017, note?
A. Yes, yes.
Q. I mean, in this -- in this record, CEC 6, at the top, it says -- and obviously the date and then "by," and I think that number --
A. Right. Now I -- yes, I see that now, yeah. I was looking at the note. Do you see the note has the colon?

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Okay.
Q. I see that.
A. Okay.
Q. But, more generally, the -- the record itself indicates "by," correct?
A. Yes, the column. Yes. That's me.
Q. And is number 15 is -- was that your employee number or identification number?
A. That was the number on the computer, yeah.
Q. Right.
A. Yeah.
Q. Okay.
A. Now I see that, yes.
Q. So, in other words, again, according to this record, on April 19, 2017, you were the one that performed the -- the call to examine Big John, correct?
A. Yeah, I --
Q. April 19, 2017?
A. I spoke to --
Q. I'm -- I'm sorry. I'm going back. Okay?
A. Okay. I'm sorry.
Q. I just want to make sure, because these records, right?
A. Okay.

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Q. April 19, 2017, there's a number 15. That's you, right?
A. Yes.
Q. All right.
A. And that's the record that I handwrote.
Q. We talked about --
A. Uh-huh.
Q. -- you going to see --
A. Correct. That's --
Q. -- Big John after the fall?
A. -- the same handwritten record, yes.
Q. All right. Then, June 14, 2017 -- we talked about it, but we didn't talk about the fact that that was actually you, meaning --
A. Correct.
Q. -- it's number 15?
A. But it is, because I entered this, yes.
Q. All right. So, you would have examined Big John in June, approximately two months after this event, and discovered or would have evaluated him for right hind lameness?
A. Correct.
Q. An abnormality?
A. Correct.
Q. And then, in August of 2017, two months

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later, you were speaking with Mr. Christoff about left front lameness in Big John, correct?
A. Correct.
Q. Another abnormality?
A. Yes.
Q. Okay.
A. Yes.
Q. And, again, similar to the -- the right hind lameness, it looks like Big John was prescribed some amount of anti-inflammatories?
A. Yes.
Q. Then --
A. And, on the August 13th, record, I wrote, "Suspect Cellulitis."
Q. Right.
A. And that's the -- that would be the same or similar to the skin infection. Cellulitis is informa-- or, inflammation of the skin.
Q. Okay. Well, go back one page to CEC 5 for me, please.
A. Okay. (Witness complies.)
Q. Because that also has to deal with your August 13, 2017, --
A. Oh, okay, yes.
Q. Correct?

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A. Yes.
Q. And at that point, there was not just cellulitis of the skin, but it was associated with the left front knee, correct?
A. Yes, yes.
Q. Big John had swelling in the knee?
A. Yes.
Q. Left front?
A. Yes.
Q. You spoke with Mr. Broderick the next day, August 14th; is that right?
A. Yes.
Q. And there was some improvement in the swelling of the knee; is that right?
A. Yes. Decrease in knee swelling, improved mentation, willing to -- willingness to walk, yeah.
Q. What does that mean, when you write, "improved mentation and willingness to walk"? Does that mean that it was impaired in some fashion before then?
A. Yes, which is expected with this previous exam. On the 13th, temperature 102 -- that's a fever, for a horse. So, that -- usually a horse with a fever doesn't feel well. And that would go with the improved mentation. And the improved willingness to walk means he was more willing to walk around when -- when he felt better, with the improved

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mentation and a decrease in the swelling in the knee.
Q. All right. So, two days after that, August 16, 2017, you were again responding to a call for Big John; is that right?
A. Yes.
Q. And left front swollen carpus means what?
A. That's knee, in layman's terms.
Q. Okay.
A. Front leg.
Q. It was still being treated; is that right?
A. Yes, because I was -- he was getting Excede, which is given once, and then again in four days. It's an antibiotic.
Q. So then, the next entry in Big John's record is October 12, 2017, again by you; is that right?
A. Yes.
Q. And, at that time, Big John was having right front lameness; is that right?
A. Yes.
Q. All right. So, if I'm keeping score here, since the time of the event involving Big John on April 19, 2017, you reported and recorded right hind lameness two months after the event, correct?
A. Correct.
Q. Left front lameness approximately four

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months after the event, correct?
A. Correct.
Q. And then right front -- well, let me make sure -- did I say it right? It was left front lameness in August of '17, and then right front lameness in October of '17, correct?
A. Yes.
Q. So, that's three separate limbs?
A. Correct.
Q. Within six months of the fall?
A. Correct.
Q. All right. And on October 12, 2017, was the determination made at that time to retire Big John?
A. I'm not sure if it was. I wrote a note here, "Plan to send Big John" -- oh, yes, "Plan to" -- yes, correct. Yes.
Q. All right.
A. "Plan to send Big John to retirement at local farm, not scheduled to resume City tours."
Q. Okay. So, six months after Big John fell involving this event that we're here about today, Big John was retired; --
A. Yes.
Q. -- is that correct?
A. That -- it looks -- that's the note I wrote. I

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-- I don't know if he was or not.
Q. All right. And, in that six-month period of time, he had three separate lameness issues with three separate limbs?
A. Yes, and it appears that they were for separate reasons.
Q. Okay. And -- and just really to -- to wrap things up, you're not offering any opinion in this case as to why or what caused Big John to collapse on April 19, 2017, are you?
A. No.
Q. You didn't perform that investigation in order to come up with that opinion, did you?
A. Not for forensically why he fell down, no.
Q. Okay.
A. I examined the horse.
Q. Dr. Little, thank you for your time today. I appreciate your patience.
CROSS-EXAMINATION BY MR. GOLDSTEIN:
Q. Okay. Dr. Little, my name is Tommy Goldstein. I'm --
MS. PALMER: Tommy, do you want to switch with me, so you don't have to yell as much?
MR. GOLDSTEIN: Do you want me to get closer, or can you --

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THE WITNESS: I'm okay.
MR. GOLDSTEIN: You can hear me?
THE WITNESS: Uh-huh.
MR. GOLDSTEIN: Okay. And you're okay?
COURT REPORTER: (Nods head in the affirmative.)
By Mr. Goldstein:
Q. I apologize for my voice.
A. It's okay.
Q. I had a little surgical procedure, and they -- things didn't go exactly as planned. So, anyway, thank you for being here today, and it's nice to meet you. I'm sorry it's under this circumstance.
Before I forget, you used the medical term -- and, of course, we're not medical people -- ataxia. Is that the --
A. Yes.
Q. Could you explain that, in -- in layman's terms, so we can understand that?
A. Yes. Ataxia means -- it -- it's -- I would mean the horse not having an awareness of where he's placing his feet. Neurologic would be another term that you could use in place of it.
Q. Okay. Now, I just wanted to ask you that before I forgot.
A. Yeah.

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Q. So let me back up. I asked you before we began the deposition, and I'd like to ask you now, on the record, when did you decide you wanted to be a veterinarian?
A. Wow. I -- I can't say I know exactly the moment, but I always had a tendency to want be a veterinarian and work with horses.
Q. Okay.
A. Since I was a child.
Q. Can we draw an inference from that, that you like animals?
A. I do like animals.
Q. Okay. And, as a result of your practice as a doctor of veterinary medicine, do you come in contact with all sorts of people who own animals?
A. Yes.
Q. Okay. And, in your experience as a veterinarian -- a doctor of veterinary medicine, do you sometimes encounter people who are neglectful -- neglectful or inattentive to the welfare and health of their animals?
A. I have -- I have contacted those people before, yeah --
Q. Okay.
A. -- been in contact with them.
Q. And, similarly, on the other side, do you also encounter, I hope more frequently, people who are

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devoted to their animals, and love them and care for them?
A. Yes.
Q. Okay. Where would you put Brody in that continuum of animal owners? Where would you -- how would you characterize Brody's attitude toward the horses that he owns?
A. In my experience, he's always wanted the best for the horses and has cared for them. That was his priority, was caring for the horses.
Q. Okay. As a doctor of veterinary medicine, have you ever encountered animal abuse or animal neglect in your practice?
A. Yes.
Q. Okay. And, if you encounter what appears to be obvious animal abuse or animal neglect, what steps do you take, as a doctor of veterinarian medicine, when you see something like that?
A. In my experience, I have been called to assess the situation, and it was my role in that -- those situations, to make recommendations to the clients and educate them and then follow up. Those circumstances have been with the animal control groups.
Q. Okay. If you saw such a -- an incident, where you were concerned about the welfare of an animal, would you ever hesitate to call law enforcement, if you

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thought that was the appropriate thing to do?
A. Yes, if I felt that that was the appropriate thing to do.
Q. Okay. Did you ever see any sign -- well, let me back up.
In treating Big John, you didn't just treat Big John; you treated all of Brody's horses, correct?
A. Yes.
Q. Okay.
A. He was a client of the practice where I worked.
Q. In treating all of those animals, did you ever see any sign of abuse or neglect?
A. No.
Q. Okay. Would you -- how would you characterize the care of the animals in -- in Brody's custody? Would you say they got excellent care? Good care? Fair care? Poor care? Terrible care? What -- how would you describe it?
A. I think that the horses got excellent care and everything they needed and -- yeah.
Q. Okay. Do you -- is it possible that a horse can slip and fall?
A. Yes.
Q. How is that possible? They have four legs.

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I don't understand how they can slip and fall.
A. Well, it's possible for us to slip and fall.
Q. Well, okay. Is there any --
A. It happens.
Q. Is there anything particularly unusual about a horse slipping or falling?
A. No. Horses -- they trip, similar to people. They can do that.
Q. Okay.
A. There can be other etiologies similar to people.
Q. Okay. You anticipated my next question.
A. Oh, excuse me.
Q. Very good.
A. Yeah.
Q. No, that's a good thing.
So, as a doctor of veterinary medicine, if someone reports to you that a horse fell, when you're called to examine the horse, you would like to know why the horse fell, correct?
A. Correct.
Q. Okay. Now, in this case --
A. Or I would like to know what happened.
Q. You would like to know what happened.
A. Yes.

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Q. Sure.
A. Yeah.
Q. It's part of your care.
A. Correct.
Q. Okay. Now, in this case, you did not see Big John fall on April the 19th --
A. No.
Q. -- when you were -- you arrived sometime after he fell?
A. Correct.
Q. Okay. Is it possible that he slipped and fell?
A. That's possible.
MR. THOMPSON: Objection.
By Mr. Goldstein:
Q. Okay. Now, etiology is a -- is a medical term for causation; is that fair?
A. Correct, yes.
Q. Okay. All right. So, it's possible that Big John fell because he had a heart attack? That's possible, isn't it?
MR. THOMPSON: Objection.
THE WITNESS: Well, I'm not sure he would -- I'm not sure that's possible.
By Mr. Goldstein:

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Q. Okay. All right.
A. I'm not sure that's possible.
Q. Okay.
A. But, again, I -- speculation. I don't know. I mean, I'm not -- I was not there.
Q. Right. But when you examined him, did he show any signs of having a heart attack?
A. No.
Q. Did he show any signs of having a neurological defect -- the --
A. Not that I found.
Q. -- the ataxia that you were telling us about earlier?
A. Not that I found.
Q. Okay. Did he show any signs of being abused or neglected?
A. No.
Q. How about starved?
A. No.
Q. Did he show any signs of being poisoned?
A. Not -- no.
Q. Did he show any signs of being overworked?
A. No.
Q. Okay. If a horse is overworked, as a

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doctor of veterinary medicine, can you detect that?
A. There are tests that we can do to -- to investigate that and the cause of it. Usually, that's reported to the veterinarian because we're not present during the exercise, typically, unless we're investigating that.
Q. Okay. Now, you talked -- in -- in response to some questions from Mr. Thompson, you -- we -- we talked a little bit about lameness.
A. Correct.
Q. Okay. Now, lameness can mean a lot of things, correct? I mean --
A. Yes.
Q. I mean, I'm not a doctor of veterinary medicine, --
A. Right.
Q. -- but I've seen the movies where horses go lame and they shoot them. So, as a -- I mean, that's sort of an impression non-doctors have, is that when a horse goes lame, it's just finished. Is that -- is that the kind of lameness that we've been talking about?
MR. THOMPSON: Objection.
THE WITNESS: Lameness is a broad descriptor.
By Mr. Goldstein:
Q. Okay.
A. It -- it's that -- the word lameness is not

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quantitative.
Q. It's not a medically significant term; is that fair?
A. It is medically significant.
Q. Okay.
A. But it doesn't say how is it lame or how much -- how much is it lame or --
Q. I got you. Okay.
A. Yeah.
Q. Now, in Big John's case, the lameness that you observed and treated, was it -- was it the kind of lameness that would cause the horse to need to be put down or destroyed?
A. No, not on the -- the dates that we reviewed.
Q. Okay.
A. No.
Q. Can lameness be caused by swelling?
A. Yes, because of the inflammation that causes pain, as I previously spelled out.
Q. And is that -- in your records, is that the medical term that you use when you use the term "cellulitis"?
A. Lameness due to cellulitis? Is that -- is that what you're asking?
Q. Yes, right.

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A. Okay. Yes.
Q. In other words, to a non-medical person --
A. Yeah.
Q. -- such as me, when I read cellulitis, I'm assuming that means swelling, but I don't know, because I'm not qualified to know.
A. Yes.
Q. So, is that -- if I characterize cellulitis as swelling, is that a fair --
A. Yes.
Q. -- non-doctor assessment of the term?
A. Yes. I would --
Q. Okay.
A. -- understand what you meant, if you said that to me, --
Q. Okay.
A. -- yes.
Q. All right. Fair enough. And -- and the jury would understand that, in this case?
A. Yes.
Q. Okay. In other words, it -- would it be fair to say to a jury that lameness can mean swelling?
MR. THOMPSON: Objection.
THE WITNESS: Swelling means swelling.
By Mr. Goldstein:

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Q. Okay.
A. Lameness means that they're not -- their gait is improper.
Q. Their gait is improper?
A. Yeah.
Q. And that can be caused from anything? The etiology of that can be --
A. It can range.
Q. It can be --
A. The etiology of lameness can range.
Q. Okay.
A. Vary. It can vary.
Q. All right. And so, on that continuum of range, where would you put Big John's lameness that you observed after the fall?
A. I didn't observe lameness after the fall.
Q. Okay. All right. That --
A. In my medical record.
Q. All right. That you treated.
A. I didn't treat lameness after the fall.
Q. Okay.
A. I did not -- in my medical record.
Q. All right.
A. Yeah.
Q. What -- what did you treat, then?

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A. There was no treatment.
Q. Okay. Fair enough. Now, --
A. A top-- I recommended topical treatment for the abrasions.
Q. Okay.
A. And --
Q. All right.
A. -- I documented that.
Q. And do you know why Big John was retired?
A. I don't know.
Q. Okay. Do you know that horses retire from time to time?
A. Yes, they do.
Q. Okay. Now, your records that we've been reviewing -- get ready, because this question is going to sound really elementary and dumb, but for purposes of a jury who might be someday listening to this or viewing this video -- why do y'all keep records?
A. Well, the primary reason is because of memory. I cannot remember two years back. I -- you know, I see many horses. I see many clients. I cannot remember conversations. That's why we document what we document. And also so that we can follow a history for a horse.
Q. Okay. And is it fair to say that, when you

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make a -- a record contemporaneous with seeing the patient, that that's the best evidence of what you observed on that day?
A. Yes.
Q. And is that the reason that you keep records?
A. Yes.
Q. And were these records kept in your normal course as a doctor of veterinary medicine?
A. Yes.
Q. In other words, you didn't create a record to try to help Brody in some way; these are just your records of your actual treatment, contemporaneous as you delivered the treatment; is that right?
A. Correct.
Q. Okay. Now, if you -- in treating a patient -- not just Big John, any patient -- in treating a patient, if you see something significant, are you going to make a -- a physical notation of it in your records?
A. Yes.
Q. Okay. So if you had seen anything significant on April 19th, when you examined Big John, would you have written it down?
A. Yes.
Q. And did you write down everything that

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you saw that was significant?
A. Yes.
Q. Did you see anything significant about Big John that you thought constituted a threat to his health or impaired his ability to pull a carriage?
A. No.
Q. Okay. Now, I know you don't know exactly, and just -- it's not exactly, but what breed of horse is Big John? Is it a Belgian?
A. Belgian, yeah.
Q. Okay. And, approximately, what is the size of a gelding Belgian? What do they weigh, approximately?
A. Two thousand to 2,500 pounds.
Q. Okay.
A. They -- their sizes vary, based on their height and their body shape.
Q. And would you say that, in terms horse breeds, they're on the larger end of horse breeds?
A. Yes. The draft horses are heavy --
Q. Okay.
A. -- horses, yes.
Q. How much effort does it take a -- a fully grown, healthy Belgian draft horse to pull a carriage?
MR. THOMPSON: Objection.

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THE WITNESS: How much effort does the --
By Mr. Goldstein:
Q. Yeah, yeah.
A. I don't know how much effort the horse uses. I don't know how to measure that.
Q. Okay. Is it -- does it constitute abuse or neglect or mistreatment of a horse, to expect a Belgian draft horse to pull a carriage?
MR. THOMPSON: Objection.
THE WITNESS: I don't -- in my experience, no.
By Mr. Goldstein:
Q. Okay.
A. Belgian -- draft horses pull carriages, historically.
Q. Okay. And you told us earlier that, if you saw a horse being abused or neglected, you wouldn't hesitate to take steps to protect it, correct?
A. Correct.
Q. Okay. Because the reason you became a veterinarian is because you love animals?
A. Correct.
Q. Okay.
A. Yes.
Q. Absolutely.
A. Yes.

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Q. All right. Now, you know, you were asked earlier if you had any contact with me, and -- and you -- you've answered fully and completely?
A. Yes.
Q. Have you had any contact with Charleston Carriage Horse Advocates?
A. Not that I'm aware of. I haven't --
Q. Okay.
A. -- no.
Q. Do you -- do you know who Charleston Carriage -- Charleston Carriage Horse Advocates are?
A. I assume it's a carriage horse advocate group, but --
Q. Okay.
A. -- I don't -- I'm not familiar with them.
Q. Okay. Has anybody ever contacted you, as a doctor of veterinary medicine, to express concerns about Belgian draft horses pulling carriages?
A. No.
Q. Okay. If someone did contact you -- just anybody, hypothetical, citizen on the street, said, "Doctor, I saw a Belgian draft horse pulling a fully-loaded carriage. I think that's animal abuse." Would you have any response to that at all?
MR. THOMPSON: Objection.

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THE WITNESS: What's the question? I mean, what -- what -- I mean, I'm not sure what they're asking me.
By Mr. Goldstein:
Q. Have you ever seen a Belgian draft horse pull a carriage?
A. Yes.
Q. You've seen that with your own eyes?
A. Yes.
Q. As a doctor of veterinary medicine, not Big John, just the -- the hypothetical average Belgian draft horse of average height and weight --
A. Right.
Q. -- in your mind, as a doctor of veterinary medicine, does that strike you as being animal abuse?
MR. THOMPSON: Objection.
THE WITNESS: Draft horses pull carriages.
By Mr. Goldstein:
Q. Okay.
A. They're capable of doing that, and have done that, historically.
Q. All right. I may have already asked you this, and I apologize if I'm being repetitive, but when you examined Big John on April 19th, did you see any signs of ill treatment or mistreatment to Big John?

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A. No.
Q. If you had, would you have noted it?
A. Yes.
Q. Okay. Does the word "collapse" have a medically significant term to you, as a doctor of veterinary medicine?
A. The word "collapse," in medicine, can mean something different than fall down.
Q. Okay. And -- and how would you characterize that difference between fall down and collapse?
A. The horse could fall, could trip, and that would be fall down. Collapse could have many other etiologies.
Q. Okay. If you -- if you had seen -- that was going to be a bad question. Let me just start it completely over.
A. Okay.
Q. If Big John had collapsed on April the 19th, from a medically significant condition, whatever, would you have expected to see other injuries on him than the ones that you did see?
A. If -- if he had collapsed due to an internal medical problem, I would expect to have some indication on his physical exam.
Q. Did you see any such indications?

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A. I did not.
Q. Okay. Did you -- and I'm going to ask the same question a different way.
A. Okay. Okay.
Q. And then I'm done.
A. Okay.
Q. I know you'll be relieved. Did you see any injuries on Big John on April the 19th that were inconsistent with him slipping and falling?
A. No. I recorded what I saw, and those were the superficial abrasions.
Q. Okay.
A. And, again, that --
Q. And medically, --
A. -- seemed to go along with him falling.
Q. Okay. I'm sorry.
A. Okay.
Q. I didn't mean to cut you off.
A. That's okay.
Q. Medically, what does the word "superficial" mean, as a doctor of veterinary medicine?
A. Just the skin, --
Q. Okay.
A. -- and that's what that would have meant.
MR. GOLDSTEIN: Okay. Thank you. That's

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all the questions I have.
THE WITNESS: Okay.
MR. GOLDSTEIN: And, unfortunately, they may -- they're --
THE WITNESS: There are more questions.
MR. GOLDSTEIN: They're allowed to go around the table --
THE WITNESS: Okay.
MR. GOLDSTEIN: -- again, so hold on --
THE WITNESS: -- Okay.
MR. GOLDSTEIN: -- and see if there are any more questions.
THE WITNESS: Okay.
MR. GOLDSTEIN: Thank you.
REDIRECT EXAMINATION BY MS. PALMER:
Q. Dr. Little, we've talked about --
A. Yes.
Q. -- the word "collapse" --
A. Yes.
Q. -- and that it has many meanings. And I think before, you said that there -- you listed some medical reasons and then said also that the horse can just trip.
Is that your understanding, that Big John collapsed because he slipped or tripped?
A. Yes. I record -- well, I recorded that he

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slipped, and that's what I understood.
Q. Okay.
A. Yeah.
Q. And that's a reason that will -- slipping will cause a horse to collapse?
A. Yes.
Q. Okay.
MS. PALMER: Those are all the questions I have.
RECROSS-EXAMINATION BY MR. THOMPSON:
Q. And, Doctor, if I recall correctly from direct, you agreed that the definition of collapse is partial or complete loss of posture that can occur either at rest and/or at exercise, correct?
A. If that's what was read to me before, yes.
Q. And tripping and falling fits that definition, correct?
A. It -- it does.
Q. A partial or complese -- complete loss of posture?
A. Correct.
Q. That's tripping and falling?
A. It can be.
Q. And that's the definition of collapse?
A. It can be, yes.

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Q. In a --
A. In the internal medicine journal.
Q. Right. A -- a highly respected journal in your field of expertise, correct?
A. Yes. I agree, yes.
MR. THOMPSON: Thank you.
MR. GOLDSTEIN: Yeah, I don't have any -- I don't have any other questions. I'm sure you're glad to hear that.
THE WITNESS: Yes, thank you.
(Off-record discussion.)
MS. PALMER: It's come to our attention that our videographer did not have available the section of Rule 30 of the South Carolina Rules of Civil Procedure that are required to be read into a record, but everyone here has stipulated that we will allow him to read them into the record when we provide him with the same, and that no one is going to contest the validity of that video.
MR. GOLDSTEIN: That's correct on behalf of the Plaintiff.
MR. THOMPSON: That's correct.
(WHEREFORE, the Deponent saith not.)
(Deposition concluded at 2:20 p.m.)

In the Matter of:

CHARLESTON CARRIAGE WORKS, LLC

vs.

CHARLESTON ANIMAL SOCIETY, ET AL

Dan Riccio

December 18, 2019

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

VIDEOTAPED DEPOSITION OF DAN RICCIO

CHARLESTON CARRIAGE WORKS, LLC,

Plaintiff,

vs. CASE NO. 2018-CP-10-04083

CHARLESTON ANIMAL SOCIETY;
ELLEN HARLEY and CHARLESTON
CARRIAGE HORSE ADVOCATES,

Defendants.

DEPONENT: DAN RICCIO

DATE: December 18, 2019

TIME: 10:05 A.M.

LOCATION: HALL, BOOTH, SMITH, P.C.
111 West Coleman Boulevard
Suite 301
Mount Pleasant, South Carolina

REPORTED BY: TRISHA RARICK

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ELLEN HARLEY (BY TELEPHONE)

I N D E X

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VIDEOGRAPHER: The date today is December 18th, 2019. The time on video record is 10:05 a.m. This is the video deposition of Dan Riccio in the matter of Charleston Carriage Works, LLC, versus Charleston Animal Society, Ellen Harley and Charleston Carriage Horse Advocates, in the Court of Common Pleas for the Ninth Judicial Circuit. Case Number 2018-CP-10-04083.

This deposition is being taken at Hall, Booth, Smith, PC, located at 111 Coleman Boulevard, Mount Pleasant, South Carolina. At this time, would you please swear in the witness?

DAN RICCIO,

having been first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

VIDEOGRAPHER: Also, could all attorneys please state their presence for the record?

MR. GOLDSTEIN: Which direction do you want us --

VIDEOGRAPHER: You can go ahead.

MR. GOLDSTEIN: Tommy Goldstein for the plaintiff, Charleston Carriage Works.

MS. PALMER: Beth Palmer for the defendant, Charleston Animal Society.

MR. THOMPSON: Trey Thompson for Defendants, Ellen Harley and Carriage Horse Advocates.

EXAMINATION

BY MR. THOMPSON:

Q Could you state your full name for us?

A Daniel Mark Riccio.

Q Mr. Riccio, we met ever so briefly just a minute ago when you walked in the office. My name again is Trey Thompson. I represent defendants, Ellen Harley and Charleston Horse Advocates, in a lawsuit brought by Charleston Carriage Works. Have you ever been through a deposition before?

A Yes, sir.

Q Okay. How many times?

A Twenty.

Q All right. So you know how this works, right?

A Right.

Q Yes, sir.

(Off-the-record discussion.)

BY MR. THOMPSON:

Q So you know how this works, right?

A Yes.
Q I'm going to ask you questions. You're going to give me answers to the best of your ability. If at any time you don't understanding something I've asked you, please let me know.
A Yes.
Q Is that fair?
A Yes, sir.
Q Today, if you give an answer to a question, I'm going to assume that you heard it, you understood it and you're giving me a truthful response. Is that fair?
A Yes.
Q All right. If at any time you need to take a break, please let me know.
A Okay.
Q Okay? I'm going to take a break if I want one. Tommy is going to take one if he wants one. That means, you can take one however you want one. Okay?
A All right.
Q If you continue to answer my questions without asking for a break, I'm going to assume that you're comfortable and willing to continue. Is that fair?

A Yes.

Q Very good. Mr. Riccio, you have been identified as a potential witness by the plaintiff, Charleston Carriage Works, in this case. Do you have any information or knowledge as to why you have been identified as a witness in this case?

A I do not.

Q Okay. At any time prior to the filing of this lawsuit or since the filing of the lawsuit, have you had any discussions with Charleston Carriage Works' lawyer, Tommy Goldstein?

A No. I have not.

Q All right. How about with regard to any of the principals or employees of Charleston Carriage Works with regard to the lawsuit?

A I have not.

Q Okay. Did you do anything to prepare for your deposition today?

A I had no idea what I needed to prepare for.

Q Okay. Do you have any idea what this lawsuit is about?

A I do not.

Q Okay. Have -- you understand there is a civil suit, right?

A I know there is a civil suit, but I have not looked into it.
Q All right. Did you have an awareness of the civil suit before today?
A Yes. I did.
Q All right. Have you ever reviewed the complaint?
A No. I have not.
Q Or any of the pleadings filed by any of the parties?
A No. I have not.
Q All right. A little bit of background about yourself. What is your current employment?
A I'm a director for the City of Charleston Department of Livability and Tourism.
Q How long have you held that position?
A That position, ten years now.
Q And you're an employee of the City; is that correct?
A Yes, I am.
Q I mean, it's not an appointed position, is it?
A No.
Q Or volunteer?
A No. Well, yeah. Volunteer.

Q Well, I mean, if you want a job --
A Yeah.
Q -- and you continue to work, right, it's volunteer?
A Yeah. Right. It is volunteer.
MR. THOMPSON: Okay. Actually, can we take two seconds. I forgot to get Ellen involved.
VIDEOGRAPHER: Off the record at 10:09 a.m.
(Off-the-record discussion.)
VIDEOGRAPHER: On the record at 10:11 a.m.
MR. THOMPSON: My apologies to all --
A Good.
MR. THOMPSON: -- to connect to a conference call.
BY MR. THOMPSON:
Q So you have been with -- the director of the Department of Livability and Tourism for 10 years?
A Yes.
Q Held that position, correct?
A Yes. Just that position.
Q And what did you do before that?
A I was a lieutenant for the Charleston

Police Department.

Q And how long did you work with the Charleston Police Department?

A 24 years.

Q How old are you?

A I'm 55.

Q How did you end up getting the job as director of the Department of Livability and Tourism?

A While I was assigned as a police officer, the creation of the livability court was formed. I was asked to be a liaison for the court. The court dealt with quality of life issues and only quality of life issues. So I was asked to train code enforcement officers for court preparation and court testimony, and other duties were also following up on each case that was heard in the court and ensured that the judge's order was fulfilled by the defendant.

Q Is that it?

A No.

Q I'm sorry. Go ahead.

A I'm sorry. I lost my train of thought real quick. I was briefly taken out -- I was with livability for about eight years. I was promoted to

lieutenant. I took the command of Daniel Island and another supervisor was put in my place. I was ready for retirement. After a few years, back on the street because law enforcement had greatly changed, and I -- I wanted to stay with the City.

And Mayor Riley was in the process of creating a livability division, which was an idea I had prior to leaving livability. And that was going to encompass all code enforcement under one division. They were spread out prior to that, and the division was formed and hiring process went out. And I was interviewed and hired, and then, I retired and came right back as the director of livability.

Q Prior to the development of the Livability and Tourism Department, if you will --

A Uh-huh.

Q -- who was responsible for those sorts of things? Code enforcement for the City?

A Well, code enforcement was handled by each separate department, and it -- depending on which supervisor. For example, Sanitation Department had their own. Public service had their own. Building inspections had their own. So they would report to their respective supervisor.

Q And did that change after your department

was created?

A It did. It consolidated all code enforcement under one umbrella, and then, I was made as the -- or hired as the primary supervisor for code enforcement officers.

Q And that's across all departments across the city?

A Across all departments except for revenue and collections. They have -- they are considered code enforcement in the revenue collections because they have to collect unpaid taxes. Hospitality taxes. So they have the ability to issue summons, and the other component is the fire marshals, who have their own division. And they have livability ticket writing, I guess, grace from the City Council. So other than those entities, all code enforcement comes under me.

Q Okay. That sounds like a wide range and variety of responsibilities within your realm.

A It's even wider.

Q Okay. How big is your department?

A Currently, I have 29 people.

Q And when you say 29 people, do they have titles? For example --

A Yes.

Q -- three are managers, three are workers, three are reporters, whatever?

A Yes. I have deputy director of livability and tourism. I have a tourism commission manager. I have a special events manager. I have a code enforcement or senior code enforcement officer. Then, you have tourism enforcement officers. You have residential -- a commercial residential property standards code enforcement, and then I have short-term rental officers.

And also, there are certain clerks that I have that work and maintain the visitor center bus barn for issuing permits for coach buses and the medallion booth in the market to issue the medallions and the GPS devices to the carriages as they come up.

Q Okay. Perhaps as a general bit of knowledge, you understand this lawsuit is about horse-drawn carriages --

A I do know that.

Q -- and that industry, correct?

A That's it.

Q How many of the folks in your department would have any interaction or have any responsibility for that industry?

A Well, including myself?
Q Outside of yourself.
A Outside of me.
Q I understand you're over the whole thing, right?
A Right. Seven. I have six tourism enforcement officers and one equine manager.
Q All right. Of those seven people, I want to know their names and their titles and how they each interact or have responsibility for this industry. So we can take one at a time.
A Okay. Arnold Jeffers, he is strictly tourism enforcement. Tim Coghill, tourism enforcement. What I mean -- tourism enforcement is the entire tourism industry. Coach, buses, pedicabs, certified buses and carriages. So it's not just carriages but all six of the TOs have some interaction with carriages. They issue citations for violations to the carriages.
Q Okay.
A Renice Wildes.
Q I'm sorry. The first name?
A Renice.
Q How do you spell that? Do you know?
A R-e-n-i-c-e. Liz Brown.

Q What does Renice Wildes do?
A Tourism enforcement. They -- like I say, they -- they enforce all the tourism code applicable to the entire industry.
Q Okay. Who else? I've got three so far. Arnold, Tim and Renice.
A Renice. Oh, Liz Brown. Elizabeth Brown.
Q What is her job?
A Tourism enforcement officer.
Q Okay.
A Did I say Tim Coghill yet?
Q You did.
A Okay. God, I'm getting older. James, and I just hired a new one. That's why my names are getting confused. James, and let me see. Give me the ones I have got.
Q I have got Arnold Jeffers, Tim Coghill, Renice Wildes, Elizabeth Brown.
A Elizabeth Brown.
Q And James somebody.
A Okay. God, what is James' last name? I know that's bad, but he's a new guy. I know. James is all I got. That's all I'm feeling. And Zachary Kee.
Q Last name?

A K-e-e. Lentini.
Q Lentini?
A Yeah. James Lentini.
Q What is James Lentini's job?
A Tourism enforcement officer.
Q And Zachary Kee?
A Tourism enforcement officer, and the final one is Shannon Tilman. She is the equine manager that deals solely with the carriage industry.
Q All right. The six tourism enforcement officers that you have identified, do they wear uniforms?
A Yes. They do.
Q What kind of uniforms they wear?
A Typically, they wear khaki either shorts or pants, and they wear a navy blue shirt with the City of Charleston Livability emblem with -- on the rear side would say tourism enforcement officer or tourism officer.
Q And then, how do they get around?
A They either patrol on foot, bicycle and then vehicle. Trucks.
Q Okay. City trucks?
A City trucks.
Q All right. At any given time during a

week, how many of these officers are working?

A At any given time, they have rotating schedules seven days a week. Seven -- 364 days a year. So my strongest days, when I have most maximum of six is Wednesday, and then, on any given day, there are -- three is probably the lowest I'll have. Up to all six.

Q And why Wednesdays?

A Just the way their schedules rotate. It just -- there's stronger on -- like, Tuesday, Wednesday and Thursday are my stronger days.

Q I mean, is there a reason why you've scheduled it that way?

A No. We tried many different ways. We just -- it's trying to accommodate all the schedules and all the days.

Q But is that when most tourist activity occurs, Tuesday through Thursday?

A Quite frankly, it's -- it's hard to pin down what is your busiest day because any day could be a busy day. It doesn't matter. We are currently looking at the structure to spread them out more, but that would require more individuals to hire.

Q More bodies?

A More bodies.

Q Okay. More costs?
A Yes.
Q You have -- your department have a budget?
A Yes, I do.
Q And it's assigned or developed by City Council or --
A Yes. Yes.
Q What is your budget for this year? 2019?
A Approximately, I guess, 1.5 million. That's including salaries, retirements, insurance. All of the above.
Q That's the all-end number?
A Yeah. I don't see all of that because the salaries -- my -- my operating budget, what I get to operate the whole department is probably -- it's under 100,000 maybe. Right at 100,000.
Q So that 1.5 million allocated to your department, only 100,000 of that or so, plus or minus is your operating --
A I'm guessing. A lot of it's the personnel. Paying for the benefits and salaries and things of that nature, but that's the bulk of it.
Q And then, what kind of expenses come out of the operating budget?
A Operating budget is going to be any

supplies and the uniforms that I need. Training costs. Anything from the Xerox machine to -- to the paper. Anything I need for the department to operate it.

Q Your office is physically located where?

A 75 Calhoun Street.

Q How about the tourism enforcement officers? Do they have a starting location?

A 75 Calhoun Street.

Q Okay. How was your budget in 2009 compared to your budget in, say, 2015?

A 2009?

Q 2019.

A Oh, '19.

Q Sorry. If I said 2009, I meant 2019. This year as compared to, say, four or five years ago.

A It's close. I have got about the same number of employees. The budget's basically the same.

Q Okay. In the last four or five years, what would you say the tourism industry in the city -- is it grown, stagnated or declined?

A Tourism industry has grown.

Q Okay. But your -- your department stayed

the same?

A No. My department has progressed and grown from 2010 till recently as this year.

Q Okay. I was asking about the last five years.

A Uh-huh.

Q I got the impression your budget was about the same.

A Budget was -- it's hard to explain because when I first was hired for the division of livability director, I had eight employees. That was 2010. 2014, the tourism management plan committee was formed. That's when my department started to -- to really grow.

I only had code enforcement officers for residential and commercial property standards at that time. Extremely small budget. I was a division head. Not a department head.

In 2014, before the plan was even completed, Mayor Riley asked that I hire three officers and designate them as tourism enforcement officers because there were no enforcement officers for the industry at that time. It was a full-time police officer, with part-time tourism enforcement duties, and that was one of the biggest frustrations

from citizens. That, one, we didn't have enforcement. Two, if they completed the plan and had a plan, it would fail because there was no enforcement component.

So in 2014, I hired three tourism enforcement officers. That's when we began to grow. 2015, the plan was adopted. When the plan was adopted, there were many recommendations in that plan. The first -- one of the first ones was enforcement. Then, it was anything from combining tourism with another department in the city to better create an enforcement component. So that was me.

That's -- in 2015, it went from the livability division, and we merged the tourism division and created the department of livability and tourism. And from 2015 up until 2019, I gradually was gaining staff to complete what I needed.

So over the last couple of years, I would request the three additional officers for tourism, but then -- 2015 to 2019, so that's total of six now. Then, I acquired the special events -- all special events in the city. So they gave -- or they allotted -- allocated a tourism commission

manager.

Obviously, I had the deputy director to help with the tourism management side. And then, in 2019, again, I was given the tourism commission manager. So just in between them couple of years, we've grown. My budget has only really been because of personnel the last couple of years. Up until that, I was -- you know, till 2015, I was falling under planning and sustainability. I was under their department, and now, I was -- 2015 was my own department.

Q Do you believe that you have enough tourist -- tourism enforcement officers currently employed?

A I believe I have adequate. I would always like more. Anybody would like more.

Q Have you asked for more?

A Not this year, no.

Q How about last year?

A No. I did not.

Q Okay. When was the last time you asked for more enforcement officers?

A Probably three years ago. Three years ago, I think, we topped at six.

Q And your enforcement officers, are they

assigned zones, divisions, areas of the city where they operate generally?

A Well, they are. Maybe not as conducive like a patrol team in a police department. Okay? We -- we come up with assignments. We designate officers to certain areas of the downtown area. You got to remember, the best way to kind of get your mind wrapped around it, the tourism officer is only focused -- and the area is pretty small. I mean, if you think about it, for tourism, it's downtown. My other officers are spread -- Daniel Island, James, Johns, West Ashley, downtown. So, you know, they're filtered out.

So to have six officers in a pretty -- to me, I call it small. The lower peninsular area is 99 percent of the tourism activities. So when they're assigned, they are either assisting at the gate with the -- they coordinate at the gate, and when I say the gate, the booth for the medallion booth, or they -- sometimes they do lunch break to relieve the clerks at either the gate or the bus barn we call it.

But their primary is in the five zones of the carriages because we spend a lot of time on monitoring the carriage industry. Probably

more so than any other aspect of the industry.

Q Why is that?

A It's -- there's more -- more carriages, I believe. The buses are -- again, carriages are, basically, confined to five zones. Okay? When all other buses and walking tours are spread all out. So the concentration is within those five zones. However, they do patrol the parking areas for the buses, which Concord Street area. Places like that for the big coach buses.

The certified buses, all of them group and stage at the bus barn. So they're pretty easy to monitor, but we do -- they go into, basically, the zones that the carriages go to because they're looking at mostly the same things.

So there will be some intermingling with -- with the certified buses within the carriage zones and the carriages, and, also, the other aspect is these guys -- the pedicabs. They tend to like to tour when they're not allowed to. They're only allowed to transport from Point A to Point B.

So, again, the -- if you want to say the five zones, they're concentrated in that area of tourism, the most popular and condensed area of tourism.

Q You indicated that the City monitors the carriage industry. Is there any particular importance or why is it that you, quote, monitor the carriage industry?

A That's probably a loose term. We monitor because the -- we're concerned about obstructions that can interact with the horses and spook them. So my officers, the first thing they'll do in the morning is they'll patrol each zone that's open. They look for obstructions. They confer with traffic and transportation, which they usually send us permits for street blocking areas of the city or they're having construction and are given permits to, you know, dig with big machines or cement mixers and things like that.

I mean, they're animal-drawn vehicles. We spend a lot of time to ensure that, you know, these animals are not spooked. So we -- we're trying to prevent accidents and things like that from happening. So a lot of their time is in these zones, but they're still looking not just at the carriages, but they're looking for any other aspect because you're walking tours are in these same zones. Your certified buses are in these zones. The coach buses go down to the Battery, and

they park, drop the tourists off in the same zones.

So referring to the carriage industry, there is -- to me, there's more carriage activity, I think, than -- than the other activities.

Q You mentioned concern for the horses and being spooked.

A Yeah.

Q Is that sort of a -- a possible consequence of having horses in the City? It's recognized, is it not?

A I would have never thought.

Q That horses could be spooked?

A I mean, it wasn't on my radar when I took this job to be honest with you. I mean, I -- I learned quickly that it was -- it was an area of tourism that a lot of passionate people were concerned about. The health and welfare of the animals, and, therefore, you got to understand, being the City, you're not a very -- you're not considered of -- for one, we're neutral. People don't see that. People think we're one sided to the other and -- but we're not. And we're looked upon as no matter what we do, we're not doing our job. I mean, that's just the stigma out there.

And me being a police officer, former police officer, I strive on ensuring that any aspect that I'm over is given as much attention as possible to keep complaints down, to ensure the community that we're doing what we're supposed to be doing either by changing ordinance or recommending ordinances or whatever have you.

So we're -- being a public servant is a very unique position. So it's -- I take things personally, if you will. So I -- when there is issues that come my way, and a lot of them are the horses, it's -- I'm just saying. We get a lot of e-mails about the animals not being taken care of and things of that nature, and the blame is Dan Riccio. I mean, it's always me.

When -- so I take those things personal, and I ensure that we're doing everything we can do to let the public know that we're doing what we -- we can do.

Q Okay. I'm curious about before you finished that statement, at the very beginning, you didn't -- you indicated you didn't have any knowledge of horses before you took your job. Is that fair?

A I had knowledge of horses, but I didn't

realize that it would be so controversial.

Q All right. And I'm not asking you about what people's thought and opinions are about the horses. I'm asking you about just simple knowledge of horses and horse behavior because I was asking you a question about whether you knew horses might get spooked --

A Well --

Q -- as a result of noises and activity on the streets and you said you didn't know that.

A To me, that's common knowledge. Okay. Yes. I do know a little bit about horses. Actually, I'm allergic to them. I am.

Q Well, that's a good thing to know.

A I found out I was allergic after I took this job, and it's not a fun thing.

Q Right.

A So I can't get too close to them. I just know they're animals. Any animal. A dog or a cat or whatever is -- you know, there is -- yeah. I have some knowledge of them.

Q Right. But the City licenses the carriage companies, correct?

A Yes.

Q To operate on the streets, right?

A Yes.
Q And to have these animals on the streets of Charleston, correct?
A Yes.
Q And then, it's your job to -- to regulate that activity?
A Yes.
Q Or to enforce the regulations and the ordinances that City Council has put on?
A Uh-huh.
Q Is that fair?
A Yes.
Q I mean, do you create any laws or regulations yourself or your department?
A No.
Q Okay. You're strictly just enforcing what's already there?
A That is correct.
Q Do you ever champion or maintain or advocate for any changes to the ordinances or regulations that are currently in place?
A Yes.
Q Okay. And why would you do that?
A We -- as a part of the tourism management plan, it was -- it's -- basically, that's our Bible

when I took this job was to kind of adhere to the recommendations of the plan and many -- I was on the committee actually, one of the subcommittees for that plan, and it was impressed that, you know, the ordinances were outdated. All -- I mean, just all the tourism ordinances was outdated, and it needed attention. And that really needed to be a focus for us, and that's -- that's what we do.

We review the ordinances to see if there's any updates that we can recommend to our attorneys to maybe amend the ordinance to coincide with today's, you know, standards.

Q All right. Are there any ordinances or regulations that you enforce currently that are ordinance or regulations that you or your department advocated for or brought before the City?

A Repeat that.

Q Yeah. The ordinances and/or regulations, whatever it is that you're enforcing now as your department. Okay?

A Uh-huh.

Q Are any of those -- any of those ordinances, regulations or otherwise, any that you or your department advocated for or brought to the City as these are changes that should be made?

A Yes.

Q And which of those did you -- or would you say that you were the originator of or were -- were primarily responsible for bringing about?

A This year, we -- we were looking at several -- several issues with the ordinance applicable to insurance for -- for -- for vehicles that were touring that were not certified by the City. You know, insurance for the operators that were, like, either private -- private passenger vehicle, the carriages, the certified buses. We looked at that, and we -- we amended those ordinances applicable to the insurances. And also, the type of passenger vehicles that were acceptable by the City, that was changed.

The others were -- oh, no. I'm drawing a blank. We did five this year. The insurance, private, auto, passenger. Several more.

Q All right. And if I can help you with that too. I'm really concerned more with the carriage industry.

A Oh, okay.

Q And any ordinance and regulations that over the course of time, your department or you, yourself, have been involved in --

A Uh-huh. Okay.
Q -- amending the ordinances or --
A Got it.
Q -- changing them in any fashion --
A Yeah.
Q -- over the course of time.
A One of the first things was the heat temperature for the -- for suspending the carriage tours. The temperature and the heat index. The other was the regulating Zone 4 and 5, what we refer to. When I took over, only one -- Zones 1, 2 and 3 were -- were regulated by ordinance. Zones 4 and 5 were created prior to me coming. There were no regulations. It was a free-for-all, and that needed to be changed because of congestion. So we changed that as well. Those are the two major ones that we changed for the carriage industry.
Q All right. So give me an idea of what the regulations ordinances were with regard to heat temperature for the horses before and then how they've changed over the course of time.
A The past ordinance was the ambient temperature had to reach 98 degrees, four consecutive readings, I believe, and/or heat index of 125 degrees before you could suspend the carriage

activities. We convened a committee, and it took several months. And a compromise, I guess you could say, was made to lower the temperature -- threshold temperature at 95 degrees Fahrenheit and/or a heat index of 110 degrees, whichever registered first as the highest number.

Q And what was the purpose of having the heat temperature ordinance or regulation?

A Many concerns and complaints from -- e-mail complaints from citizens that is -- their concept was that it was just too -- that was too high of a temperature and a heat index to -- to have for the -- for the industry.

Q So you set a technical regulation ordinance based just on complaints from citizens?

A That's -- at the time, yes.

Q In other words, did you have any information regarding the impact on the horses as far as their internal temperature or the temperatures they were operating, and did you have any science behind any of that?

A When we convened the committee, I ensured that we had all aspects of possible at the table to include two equine veterinarians; a member of the animal society; a representative from a carriage

company; representatives from the neighborhoods and representative from NOAA, the weather NOAA; and that was -- during the committee, it was heavily discussed about the temperature -- internal temperature to the horses, the exterior -- or the ambient temperature, and it was a big deciding factor on lowering the heat index and temperature. And what I mean by that, the -- we monitor the weather by WeatherBug app. I don't know if you heard of it.

Q I'm familiar with it.

A Okay. The City has four thermometers located throughout the city that are monitored by WeatherBug, and it's a -- the same system that's used by NOAA and weather stations that are local. Very accurate. We felt that that was a better tool to use instead of the -- the old way of doing things several years ago was a little box at the police department with a thermometer in it, and we felt we needed technology. And that was introduced -- actually, it was being introduced prior to me taking over.

But we monitor these by our cell phones. We have alerts on the cell phone that we get the -- the temperatures and the -- the heat

index. And we get alerts during the summer that it's approaching that -- that threshold, and we -- we begin monitoring it during that time.

Q All right. And I appreciate that explanation, but I'm really asking -- and what I asked you about was the science behind --

A Yeah.

Q -- the numbers that you use --

A Okay.

Q -- the 95 degrees that --

A And that's what I was getting to.

Q And you described monitoring those temperatures. I want to know how they were set other than simply there was a discourse among various individuals who offered opinions, and then it was, as you described, a compromise of 95 degrees. I'm asking about what was the science behind that.

A The science behind it was -- and I was getting to that with the WeatherBug. With the app, our IT department is able to obtain statistics from WeatherBug of every day and every temperature. So what we did, it was decided as a group as a committee to gather -- and I could be wrong about the exact number. I believe it was 6 months. Maybe

a little bit longer -- or during these -- we did four summers of -- of the heat index and the temperature.

And what we did is my equine manager was able to get four summers of temperatures and readings from -- from -- from the WeatherBug app. Also, what we did was -- with the equine manager doing that, we compiled -- she went to -- we get the records from the barns and the companies. She went to each barn and went through all the records for those dates that were indicated. I don't know the exact dates right off hand, and what we did was a comparison. And the comparison was at what temperature did the internal temperature of the horse rise? At what -- you know, what degree and at -- at what weather -- what weather temperature ambient and/or heat index was. I don't know if that's making sense.

So at what temperature -- the temperature was reading compared to the internal temperature of the horses did the internal temperature spike to a dangerous degree? And the ordinance kind of prescribes in there. They began checking the ambient tem- -- or the internal temperature of the horses, I believe, at 85 degrees.

So they have records of them.

We compiled all that data and the veterinarians -- we have a City-contracted veterinarian that actually is not a local veterinarian because of conflict of interest because the industry is so small, and they use the same veterinarian. So we have one out of Aiken who came down during that time.

And she compiled all the statistics, and it was scientifically shown that at 95 degrees Fahrenheit was a temperature where the internal temperature of the horses would spike higher. And at 110 degrees Fahrenheit, same thing. The same result happened, and we -- and it was all in statistical form and all that stuff. And that was -- to us, as a committee, was scientific evidence that these temperatures and heat indexes were accurate for the welfare of the horse.

Q Okay. Had anybody in the industry come up with any kind of paradigm or science that was in opposite to what your conclusions were?

A Carriage industry?

Q Yes. Have they done anything like that to figure out what temperature would be damaging to the horse to your knowledge?

A Not to my knowledge.
Q All right. To your knowledge, when these -- this ordinance was being considered or these thresholds were being considered, did the industry -- the carriage industry provide any science as to when a horse might be injured or damaged if they operate in a certain temperature? Did they provide any science?
A No.
Q Okay. It was something that you actually --
A Well --
Q -- your committee --
A Committee.
Q -- your group --
A Yes.
Q -- had to actually to go in and study, and as a result of the study, you found that there were dangerous spikes in the horses' internal temperature if they worked in certain heat levels, temperatures or heat indexes --
A Right.
Q -- correct?
A Yes.
Q That was something you found?

A Yes.

Q The industry didn't provide that information to you, did they?

A No.

Q Okay. To your knowledge, prior to the implementation of the City for heat threshold, if you will, or temperature threshold, are you aware of any of the carriage companies implementing any policies and procedures for themselves with regard to the operation of their businesses during certain temperatures of the day?

A Not that I know of, no.

Q Okay. So in reality, while you indicated that the implementation of the temperature or heat index threshold was something that maybe folks from the community inquired about, at the end of the day, it's a safety and concern for the welfare of the horse that your department agreed to implement something like that, correct?

A Correct.

Q I mean, you didn't just do it because some concerned citizens were upset because horses were walking down the street when it was hot?

A No. Not just for that, no.

Q Okay. And you undertook the effort or

undertook the time and effort to study and then determine that, in fact, when horses work within a certain set of circumstances, that they can experience ill-health effects, correct?

A I can't comment to ill-health effects. I can comment that --

Q Well, dangerous internal temperatures. That's a --

A Internal temperature spike. That's all I know. I'm not an equine veterinarian. Nor I claim to be one on TV or anything like that, but I -- you know --

Q Well, did any of the equine vets that were on the commission say no? That's not important? That an internal spike is not a big deal, or did they say yeah. That makes sense?

A Well, we went -- no. Everyone did. Even including the industry.

Q Said what?

A That it is a big deal to -- to be concerned about the spiking of an internal temperature of a horse.

Q And it needed to be regulated?

A It needed to be lowered. They all -- yes.

Q And the carriage industry itself did

nothing about it before your department got involved with regard to the monitoring and/or the restriction of the horse activity during certain levels of heat during the day?

MR. GOLDSTEIN: Object to the form of the question.

BY MR. THOMPSON:

Q Did they -- did they?

MR. GOLDSTEIN: Object to the form of the question.

BY MR. THOMPSON:

Q And you can answer the question.

A Repeat the question, please.

MR. THOMPSON: Can you read the question back.

(The reporter read back as requested.)

BY MR. THOMPSON:

Q And that may not make any sense. I'm asking you about -- your department got involved and a commission was formed -- or a committee was form?

A Right.

Q And as a result of that, temperature and heat index thresholds were established, correct?

A Yes.

Q Prior to your department's involvement,

that had not been established --

A No.

Q -- by the industry, had it?

A No.

Q And, to your knowledge, had the industry -- and, again, when I say that right, I think we understand what we're talking about today.

A Yeah. I got you.

Q Okay. Had they ever, to your knowledge, voluntarily pulled horses off the street based on temperature?

A No. Not to my knowledge.

Q Okay. And how long has the temperature and heat index thresholds been in effect?

A I believe three years now.

Q Okay. And in that period of time, how many times have the carriage horses been pulled off the street due to the temperature or the heat index?

A Last -- this past year, it was quite a bit. I think it was six times this year, maybe seven, which was really unprecedented. Prior to that, the year before, it was not as -- it wasn't -- never got that threshold, and I believe twice during that summer that year. The year before that, it was probably, just guessing, five times.

Q Does your office keep a record of how and when the horses are pulled off the street due to temperature?

A I say yes. We do.

Q Is there a heat index or a temperature file that -- where that's filed away, or how would you keep track of that sort of thing?

A We normally -- it's -- it gets a little complicated because what they do is on their phone, when they're -- whoever is -- I assign two people instead of having all of them do it. I assign two people. One is a backup, and they're on their phone, and they're getting this realtime. And when the WeatherBug app indicates -- meets a threshold, they copy it. They -- whatever you call that thing. They take a picture of it. So we do have some files with pictures of and -- because we have to prove it and, yes. But there's always human error involved. So I won't say that we have a file just for that, but I know we have particular files for the temperature.

Q In other words, is there a way -- if you went back to your office after this deposition --

A Yes. I can.

Q And would be able to identify each and

every day --

A Yes.

Q -- that the carriage horses were pulled off the street --

A Yes.

Q -- you would be able to do that?

A I can do that.

Q Since the ordinance was implemented three years ago?

A Yes.

Q And you would have all that information since that time?

A Yes.

Q Okay. If I wanted to obtain that information, would I direct my request to you or somebody else within your department?

A Legal department, FOIA.

Q And that would be something that would be subject to a FOIA request to your knowledge?

A Yes, sir.

Q Okay. To your knowledge, does anybody in the carriage industry have access to the information from the WeatherBug app, in other words, realtime information as to what the temperatures are?

A Anybody does. You can get it.

Q Okay. In other words, Mr. Christoff, he would be able to independently look at the same information that you're looking at with regard to the temperatures and whether you're going to pull the horses off or not?

A Yes.

Q At any time, has Mr. Christoff ever contacted you or anybody in your department and said, hey, the temperatures are too high. We're pulling the horses off.

A Yes. They have.

Q He has?

A These people in the industry have pulled horses, yes.

Q Without your direction?

A Yes.

Q Okay. Do you know if Mr. Christoff has?

A I want to say yes. And, again, on some days, I'm not exactly over that closure. Okay? People are assigned to that, and I'm trying to think really quick because I know there was some issues last year with weather that we got e-mails from Broderick that they were closing early because of the weather, and I want to -- I can't concretely say yes.

Q Okay. And I'm not asking about weather. I'm asking about --

A Yeah. I know.

Q -- temperatures specifically because I understand if a bad storm is coming, lightning, thunderstorms, that sort of thing, you may pull the horses off. But I'm asking you specifically do you have knowledge or awareness of Mr. Christoff contacting your office and saying we're pulling the horses off the street because the temperature is too high or the heat index is too high?

A I do recall. I don't know if it was documented. It could have been an e-mail, or it could have been a call to one of my personnel.

Q All right. And that would be sort of anticipating my next question, though.

A Yes.

Q How would I know if that ever occurred? Would there be any documentation of such thing?

A I -- I would hope so. I would think so. There would be.

Q Okay. So, again, same concept. I can send you a FOIA request?

A Yeah. Send a FOIA, and I'll -- I'll look through it, and I'm 90 percent sure that he -- he's

one of the ones that have called.

Q Okay. And you would be able to produce any communications that -- that he sent to you or your office or your officers --

A We usually keep everything that we get, but, again, my only -- I won't say concern, but if it was just a call -- you know what I'm saying?

Q Uh-huh.

A And we're all okay, that's what I -- I would have to speak to my staff because I'm not the only one they call. They call -- he would either call -- or any of them would either call the equine manager direct, or they would call Lee Burbage, my commission manager, or they would call Amy Southerland, my deputy.

Q Have you ever received -- and when I say you, you or your office, received any contacts from the community that's monitoring the WeatherBug app and said that the temperature is too high or the heat index is too high?

A Yes.

Q Okay. And as a result of any community contacts, have you pulled horses off the street?

A No.

Q Okay. Why not?

A Because if it didn't meet the threshold of the ordinance -- oh, well, repeat that.

Q No. I was just asking if --

A Yeah. Have I -- if I've ever pulled horses off the street based on a complaint from a citizen?

Q No. A citizen -- you've indicated -- I mean, even I could go monitor the WeatherBug app, correct?

A Yes.

Q All right. So if a citizen had nothing better to do and was monitoring the WeatherBug app and identified that the temperature was above 95 degrees and the threshold was met, have you ever received that kind of communication from a citizen?

A Yes. And I wouldn't rely on the citizen. I'd have to rely on what we have in front of us. I don't know what thermometer they're looking at. There's several that they can look at. Joe Riley Stadium. Gaillard. The DoubleTree. The DoubleTree is our primary one we -- we look at. The dock street is our backup. I don't know what -- they vary. They vary in temperature.

So a citizen could be looking at Gaillard, which is 92 degrees, and the DoubleTree,

which is the legal or the required thermometer could read 94, 95. So I would not base my decision on a contact from a citizen, nor from anybody in the industry. I would -- I would base it on what we see and what the evidence we have.

Q Okay. And that begs a question with regard to the variability among the various stations.

A Uh-huh.

Q Do all of them have to be above the threshold to the pull horses off or just one of them?

A No. Just one of them.

Q Okay. So if the Gaillard is in excess but the DoubleTree is not, that would still call for the removal of horses from the street?

A No. We -- the DoubleTree -- is that what you're saying?

Q Well, that's what -- I got the impression --

A Yeah. We look at the Doubletree.

Q At the end of the day, it's the DoubleTree reading --

A Yeah.

Q -- that's going to just make your decision

whether to pull the horses or not?

A No. I can't say that either.

Q Well, that -- I'm trying to figure out what the answer to that question is then.

A The answer to that question is I have pulled horses prior or if I felt it was -- the spiking of the temperature was rising too fast. So -- and on the flip side of that, I have failed to return them back when the ambient temperature dropped below because of the influx of the temperature decreasing and increasing, I didn't feel comfortable. I've done that several times.

Q Right. And at the end of the day, you indicate that there are multiple thermometers or temperature readings, but it sounds to me like the deciding thermometer or temperature reading is the DoubleTree.

A In accordance with the ordinance.

Q Okay. So, again, if -- if the Gaillard said 95 or 96 and DoubleTree says 93, you're not going to pull the horses in that context?

A I can't answer that I would or wouldn't. It depends.

Q Why not?

A It depends on that day and that time and

that situation.

Q Well, I got the impression that the ordinance -- again, I thought I just heard you say the ordinance is determined at the DoubleTree.

A It is.

Q And so it really doesn't matter what others around the center say?

A It does if I'm making the decision.

Q But, ultimately, then, it's your subjective call?

A Say subjective. It's error on the side of caution sometimes.

Q For the welfare of the horse?

A Yes, sir.

Q Is there any discussion about the current temperature or heat index ordinance within your department and whether it needs to be amended at all?

A No. Not that it needs to be amended.

Q Or changed?

A No.

Q You believe it's a satisfactory ordinance for regulation of the horses on the street during --

A Yes.

Q -- periods of high temperature?

A Based on the scientific evidence that we did, yes.

Q Okay. What are Zones 4 and 5?

A Zones 4 and 5 are considered, prior to me coming on, were like an overflow. The manager at that time decided to create those two zones to -- if there were too many carriages in 1, 2 and 3, they would open those zones up. When we regulate the -- those zones, Zone 5 stays open -- could stay open all the time, but, really, the two are designed to act as -- I won't say overflow, but in the event -- for example, there's a parade or special event which impacts the other two zones or three zones, we will open up 4 and 5 to accommodate for those zones closing.

So Zone 4 is really the overflow valve, if you will, that we use for special events. Any kind of construction that -- that closes a zone, then we open another zone to compensate for that closure.

Q Is there a special file or a location where any code violations where citations or tickets are given by your office are kept --

A Uh-huh.

Q -- with regard to the carriage horse

industry?

A Yes.

Q In other words, not short-term rental stuff or anything else, but there -- is there a file where all citations are kept?

A It would be kept with each individual officer that issues those -- those -- in their case files, if you will. We don't have a file -- each group has their own files that if I need them, I go to that individual.

Q You're talking about the individual officer?

A Yes.

Q Is -- is there anything that you keep in your office and, again, I'm talking about your department --

A Uh-huh.

Q -- that would be business specific? Like, Charleston Carriage Works has a file.

A Yes.

Q Palmetto Carriage has a file.

A Yes.

Q What would you keep in the Charleston Carriage Works files --

A Certificates of service abilities for the

animals and certificate of appropriateness for the vehicles or the carriages would be their file.

Q How about their citations, if any?

A The equine manager would probably be the best person to say would have those.

Q The equine manager would have copies of the citations issued to Charleston Carriage Works?

A Any incident that -- that was reported, but, again, if the officer makes a case, it would be in their file.

Q Okay. You described the equine manager might have a file on incidents or accidents. Is there an incident and accident file, or is there some central location where your department documents and/or records incidents involving the carriage horse industry?

A The equine manager would have that.

Q Are they stored anywhere else?

A No.

Q Okay. So for any incident or accident involving a horse-drawn carriage in the last five years, it would be within the realm or control of the equine manager?

A Yes.

Q Do you know how she keeps track of such

things?

A On the computer. Computer files. All computer documents.

Q Who is the outside equine vet?

A I'm losing my train of thought. Her name just escaped me, and I don't know why. I'd have to look it up. I'm sorry.

Q How long has that person been the City's equine vet?

A Technically, she or her designee would come once a year. The role of having her -- the role of having the outside vet is to conduct the yearly inspections for the barns. The last time I have seen her was probably -- wow, probably at the -- with the temperature readings. She would send another equine or veterinarian to conduct the inspections at the barn. She'd done that for the last three years, I believe.

Q But my question is really more broadly. The person who is currently performing those services for the City, how long has that person or that person's business or entity been involved for the City?

A Oh, okay. Well, since I've been there. So that would be -- well, prior -- prior to that, at

least since 2013 maybe.

Q In other words, the City's vet, the outside vet, has been the same person or entity since 2013?

A Yes.

Q Do you know who it was before that?

A No. I don't think they had one then. I'm not certain, though. I don't know who they used. Whether it was somebody local, I'm not sure.

Q And what was the purpose of bringing in an outside equine vet in 2013?

A I was informed because as a possible conflict of interest. The equine veterinarian community, if you will, is very small, and it was -- it's common that every company would use one of those vets. So not to show favoritism or conflict, someone that was outside of Charleston was hired to come in on that yearly basis and would not have a conflict of interest with a local vet.

MR. THOMPSON: Okay. And we're running out of tape. So we'll take a break.

VIDEOGRAPHER: This is the end of Media Number 1 in the deposition of Dan Riccio. We're off the record at 11:12 a.m.

(There was a pause in the

proceeding.)

VIDEOGRAPHER: This is the beginning of Media Number 2 in the deposition of Dan Riccio. We're on the record at 11:23 a.m.

BY MR. THOMPSON:

Q Okay. We're back on the record. Mr. Riccio, I understand you may have recalled a name?

A Yes. Sabrina Jacobs.

Q And she is?

A She's our contracted equine veterinarian.

Q And when we were -- right before taking a break, my question was why was -- why was she brought in in the first instance, I guess, in 2013? What was the need or the determination that the City needed someone?

A I was informed by the past manager that to avoid a conflict of interest because so many -- there was just a few amount of equine vets in the Tri-county area that -- that are hired by the industry for -- to treat their animals, it was better to have a veterinarian outside of the Tri-country area to -- to do the required yearly bond inspections for each company.

Q I mean, was there a concern that a local vet might err on the side of the industry or the

people that they work for?

A I don't know. I don't know that answer.

Q Well, I guess, I don't either. That's why I'm asking you the question because it was your department that brought them in.

A No. Well, prior to me coming, they were brought in. I don't know the answer to that.

Q Okay. Prior to 2013, you were the department head, right?

A No.

Q Okay. What did I miss?

A Okay. 2015, I became the department head over tourism and --

Q Okay.

A -- livability.

Q Prior to that, you were --

A The director of livability.

Q And that didn't have anything to do with the horses?

A Nothing.

Q Okay. So, really, the first time you had to deal with the -- or were responsible for anything associated with the carriage horse industry or the carriage -- horse-drawn carriage industry was in 2015?

A 2015, and I can back up to when I started training the tourism enforcement officers, probably the attention was on my radar, but I did not oversee that -- the industry.

Q Well, in other words, Sabrina Jacobs, she preexisted your --

A Yes.

Q -- time at least with regard to the regulation of that industry?

A Yes.

Q Correct?

A Yes.

Q Okay. Taking a couple of steps back. The tourism enforcement officers, do you use any acronym for them? Do you say --

A TEOs.

Q Okay. Good. Because I was going to use them as well --

A Yeah.

Q -- but I don't want to use it if you don't use it so --

A Yes. It's easy. TEO.

Q All right. The TEOs, what training do they receive with regard to equines?

A They don't.

Q Okay. Are they -- do they have any responsibility while they are on duty while they're patrolling to visually take a look at the horses as they're walking down the street?

A Uh-huh. Well, no. They don't.

Q To see if they're breathing heavy, if they're walking funny, if they're perspiring too much? Is any of that within the purview of the TEO's responsibility?

A I would not say in the purview of their responsibility. However, they're looking for any and every -- I won't say violation, but they look to make sure that every part of the ordinances is adhered to by any member of the industry. So I would have to believe that if they did feel that an animal was in a compromising position, they would call the equine manager.

Q But isn't that something that just, as part of their job, and --

A Yes. I mean, they're observing.

Q Right.

A They observe the entire industry and able to notify our equine manager, who is more skilled.

Q Right. And that's my question. Is any training provided to these TEOs so that when they

are on the street and they see a horse, and they can say, you know what? That looks -- I know that looks wrong, or I know that looks off, or I know that -- looks like that horse is struggling. They don't have any training for such determinations, do they?

A Not as of yet, no.

Q Okay. Is there any plan for such a thing?

A Yes. There is.

Q And tell me about that.

A We have discussed in our staff meetings that it would be a very good idea for the equine manager, who is certified in many aspects of equine management, to train the -- each officer really for the nomenclature of the equipment. You know, I don't think they -- they can observe, you know, if an animal maybe is -- appears to be hurt, I guess, but I don't know if there is such a training that could provide if a horse is in -- in a compromising position other than if they've fallen or in an accident.

Q Like, for example, what a normal horse's leg looks like, whether it's swollen or not?

A Correct. I mean, they --

Q There's no training for that?

A It would have to be a commonsense kind of

thing if you ask me.

Q Okay. But you're not aware of any discussion or thought process on training your TEOs in the anatomy of a horse and determining abnormalities just by visual inspection?

A I'd have to look into that more. You know, you still have liability, in my mind. I -- I instruct them as an observation point, if you will, if they observe maybe if a piece of equipment doesn't look normal, we want to train them in that aspect. To me, I think if they see a scratch or if there is some kind of physical abnormality on a horse, that would be a common sense approach to contacting us.

Q Okay. But, for example, the TEOs, as we sit here today, they're not trained on, for example --

A No. They're not.

Q -- the equipment --

A No.

Q -- that is used?

A No.

Q And whether -- just looking at whether the equipment is attached correctly or not?

A No.

Q They don't have any training, do they?
A No.
Q Okay. The -- and, again, I apologize. Sometimes when we take breaks, you kind of go back through some of the things that you've asked questions for and some things come back up. We talked about the establishment of the temperature, the 95 degrees and the 110 heat index thresholds --
A Uh-huh.
Q -- right?
A Uh-huh.
Q Remember that testimony? Those questions?
A Yes.
Q All right. The other part of that ordinance has to do with how long that temperature or that heat index is manifested, correct?
A Yes.
Q And -- and as I understand, it's four consecutive readings over consecutive 15-minute time frames?
A 15 minute -- it's really a 15-minute period -- every 15 minutes, the temperature is taken. If it maintains that or exceeds that, then it's -- after the fourth reading, then you pull that horse off.

Q So it's really -- the temperature of the heat index has to maintain for an hour?
A Correct.
Q Consecutively?
A Yes.
Q In order to pull the horse?
A It can -- if it fluctuates too. For example, if it fluctuates within the time frame of that reading lower, then we stop. You're really starting over because if it doesn't maintain within that 15-minute period, the 95, and it stays below 95, you're kind of waiting for it to turn 95 again.
Q Right. So let me ask you this: If -- if you're monitoring the WeatherBug system and at 10:00, it's 95.
A Uh-huh.
Q Okay? And then at 10:05, it's 94.
A Uh-huh.
Q Okay? Now, does then the 15-minute period start over at 10:04?
A No. Still have that 15-minute period.
Q Okay. So at 10:15, if it's 95 then, it doesn't it matter that it was 94 at 10:05. You still have a 95 reading a 10:00 and a 95 reading at 10:15?

A Yes.
Q And so then, again, if you go to 10:30, if there had been one or more readings between 10:15 and 10:30 that are, say, 92, 93, but if at 10:30, it's, again, back to 95, then that's your third consecutive --
A It's maintained --
Q -- reading.
A -- that 95 within the allotted 15-minute time frame.
Q Okay. Well, is it maintaining or just simply a reading at that moment, right, every 15 minutes?
A Repeat that.
Q Yeah. So what I've just described to you, it's not maintaining, right, from 95 at 10:00 to 95 at 10:15? It's not maintaining. It's actually fluctuating?
A It's fluctuating.
Q Okay. So really, the threshold issue is simply a static reading. Whenever it turns that 95 number, then that starts the clock, right?
A Yes.
Q And then, 15 minutes later, regardless of what's happened between the first reading and the

second reading, if the second reading at 10:15, right --

A Uh-huh.

Q -- is 95, then that -- you now have two consecutive, correct?

A Right.

Q And consistently going forward, then at 10:30, if it reads 95 again, that's three because you got 10:00, 10:15 and 10:30?

A Uh-huh.

Q Is that right?

A Yes.

Q Am I interpreting that correctly?

A Uh-huh. If it maintains it, yes.

Q Well, you keep saying if it maintains it. We talked --

A If --

Q -- about it being --

A If within those time frames, it's 95, when it reaches that's next -- the 16 minute and it's still 95, it's going through that process. If it's 94 when it gets to that 29 minutes to 30 minutes, then it will start over. It's not 95 degrees.

Q So it could be 95 reading at 10, 95 reading at 10:15, 95 reading at 10:30, and then at

10:44, if it's 94, the clock starts over?

A Uh-huh.

Q Is that right?

A Well, no. It's if -- it's 95 degrees when the final reading is taken, you pull them.

Q Okay. How was that timing that we've just described -- how was that scientifically established in your committee?

A Scientifically? I don't think it was scientific on that -- that aspect of it.

Q We talked about, obviously, there was some science behind --

A The science behind, you know, the temperatures, but it was a -- what I recall, it was trying to have a time frame to where the -- or sufficient time frame to determine that -- in other words, it kind of coincided with the old way of doing things, but then, it was a measurement to try to ensure that the -- if the temperature maintained that 95 degrees. I don't think it was scientific.

Q Okay. It was just something that was negotiated and --

A Negotiated. It was discussed, and as a method of tracking and/or timing the frame, you know, the temperature.

Q Okay. The outside vet, the Ms. Jacobs, does she have any responsibilities here to the City or to your department other than for the yearly inspections?

A We'll consult with her if we have an issue. I haven't in quite some time, and the reason for that is if there's an issue with the animal and I have to send my equine manager, if they're involved in an accident, any accident, then I require them to have a vet come out and inspect -- or do a -- not inspection. To treat a --

Q Examination?

A Examination. Thank you. Examine the individual -- or the horse, and I will not allow the horse to go back out until that veterinarian sends me a letter or some type of notation on paper to say that I have -- I have examined the horse, and there are no issues with that horse. Then, that kind of mitigated me from having to consult with our vet all the time.

Q Right. But the vet that does follow up after an accident is, in fact, the individual industry --

A Yes.

Q -- representative's vet, correct?

A Yes.
Q The local vet that you testified earlier, you would be concerned about conflicts and why you had an outside vet come in, correct?
A Yes. At least there's documentation showing that they -- if they want to perjure themselves or whatever, then that's on them. I'm going by a licensed equine veterinarian to give a determination. I certainly would not hope -- hope that they would not falsify any records pertaining to that.
Q Right. But you don't trust the equine -- equine vets or you have concerns about conflict --
A Oh, no. I don't have problems with them.
Q -- on the yearly inspections?
A No. I -- it's -- that was a practice that was done before me and it made sense to me.
Q I mean, you can stop it if you want?
A I guess, I could.
Q Right. So why do you continue to have an outside vet to perform the yearly inspections?
A Because that's the way I'm doing things. Does this have anything to do with this case?
Q I'm asking you questions --
A No. I'm really concerned. I mean, do I

need to call my legal staff and have my attorney present because I'm concerned now?

Q What are you concerned about?

A I'm concerned that if this does not have anything to do with this case -- you know, I get a lot of input from the community because -- and e-mails from advocates basically cursing me out because I'm not doing what they say I'm supposed to do. And if this doesn't pertain to that case, I feel like I'm being set up, and that's how I feel.

Q Okay. What do you know about this case?

A I don't know anything.

Q So how do you know that the questions I'm asking you have anything to do or not to do --

A And I'm asking you does this question have anything to do with this case.

Q And I -- I am not the witness, and so I'm asking the questions --

A And I have heard Big John, and I'm familiar with the Big John fall.

Q Uh-huh.

A But other than that, I didn't know -- I didn't look into this and see what this case was about. I have a lot to do and a lot to go on. I don't spend my time worrying about every individual

company in any part of the industry. So I'm just wondering do I need to get my attorney and come down here and protect my rights because I just don't feel that this is being done in a manner that it should be.

Q Right. I will say for the record I am not your attorney, and I cannot provide you advice of counsel with regard to what you should or shouldn't do with regard to having your own lawyer available for this deposition. You have that right if you chose to.

A I want to choose that.

Q Okay. I don't know that this is a criminal matter and --

A I don't know. I --

Q -- a criminal investigation, and I don't know that it has to stop but as a result --

A Well, I'm protected. You know --

Q -- of your request --

A -- I'm a neutral party here. All I do is regulate the industry. I ensure that the ordinance is enforced. That's it. So I'm being treated like -- training and -- I mean if it's not got anything to do with this case, what do I need to be here for?

Q My question to you is simple. Do you want a lawyer here?
A Yes.
Q If you do, then we're going to need to reconvene --
A Yep.
Q -- at another -- either later this afternoon or today or --
A That's going to be --
Q -- depending upon what your attorney's availability is.
A Absolutely.
Q Is that your choice?
A That's what I want, yeah. I just feel --
MR. GOLDSTEIN: Can I make a suggestion?
MR. THOMPSON: Absolutely.
MR. GOLDSTEIN: This is a suggestion. It has no --
MR. THOMPSON: You can --
MR. GOLDSTEIN: No. Make it on the record. I want it on the record.
MR. THOMPSON: No, no, no. I'm talking about the video record, but that's fine.
MR. GOLDSTEIN: Yeah.
MR. THOMPSON: No. I didn't say go off

the record, my friend.

MR. GOLDSTEIN: Yeah, no, no. Okay. This is only a suggestion. It carries no weight. It's just my comment and my view. I'm not the witness' lawyer. I cannot give him legal advice. His growing uncomfortableness with your questions does appear to arise -- I mean, you haven't asked him a single question about the case yet. Not one. It's your deposition. You can ask whatever you want, but I can certainly understand, and I cannot give you advice, Mr. Riccio. I'm not your lawyer. But I can certainly understand why the witness feels uncomfortable because it does seem like the thrust of the deposition is more toward some sort of political investigation into the policies and procedures of the City of Charleston, and to that extent, maybe he does want counsel.

So what I was going to suggest, since we're all here, without you waiving any rights, without anybody waiving any rights, you know, maybe you just want to get to the questions about this case because the witness is right. This case is primarily about the Big John fall.

That's what the case is about, and you haven't asked him any questions about that because he did investigate the Big John fall. And that's why he's designated as a witness. He's not designated as a witness to give the history of the City of Charleston's enactment of the tourism commission carriage regulations.

Only a suggestion since we're all here. Without you waiving any rights to ask further questions, do you want to just focus in on this case and ask him if he wants to go on? Of course, if he -- you know, if he wants to have a lawyer, he's entitled to have a lawyer. I'm not making a recommendation one way or another. It's not for me to weigh in on that issue. It's just a suggestion to save -- since we're all here. That's all I wanted to say.

MR. THOMPSON: Mr. Goldstein, one of the first things that you said is probably the most important. It's my deposition.

MR. GOLDSTEIN: That is correct.

MR. THOMPSON: And I have the right to ask whatever question I deem is appropriate.

MR. GOLDSTEIN: Well, within the rules.

MR. THOMPSON: And -- I understand. We

all know -- we all know the rules are very liberal with regard to the scope.

MR. GOLDSTEIN: I won't interrupt.

MR. THOMPSON: The scope of the questioning, and with all due respect, you may understand what you think the case is about and you may think that you know what all the questions should be, but I may have a difference of opinion on that. And I may have a different way of getting to the information that I need or want in my case.

So that's why the court -- you know, our courts and the rules allow that latitude, and I'm taking that latitude. And I don't think, frankly, I have gone far afield at this point in time because this case is about the industry with regard to how it's operated and how this particular plaintiff operated. Your client put this case in the court system.

MR. GOLDSTEIN: There's no doubt about that.

MR. THOMPSON: And as a result, the question becomes what is going on? What is happening? How it's regulated. All of these are germane because your client is taking the

position that in some fashion, my clients are suggesting and taking positions that are false.

MR. GOLDSTEIN: Yeah. That you defamed him.

MR. THOMPSON: And so part of that process and part of that defense is to figure out what the regulations are and whether they're being followed or not and things like that. I think those are very germane to this case. So I'm going to pursue and proceed in my deposition the way I choose to do so. You have every right to stop it if you think that it's being abusive. You haven't. So at this point in time, I intend to proceed. Now, if you want counsel, that's your prerogative. Okay?

THE WITNESS: Yes.

MR. THOMPSON: And I don't have any problem with that. So -- and with that, I am not going to then suggest or start asking questions just because Mr. Goldstein suggested I should be limited in some fashion. So with that, would you choose to have counsel available to you for this deposition?

THE WITNESS: Yes, I do.

BY MR. THOMPSON:

Q Who is your attorney that would appear for you in this circumstance? Do you know?

A Our corporate counsel is Susan Herdina. There are several attorneys. They --

Q And the reason -- I apologize for interrupting. I'm just trying to figure out is this something that you think that we can get somebody, like, in the next hour, or is this something that --

A I doubt it.

MR. THOMPSON: Could you -- why don't we go off the record at this point. Well, I want to make sure everybody has had their say so -- but my suggestion at this point in time is to go off the record for you to make that contact and see what the availability is for your attorney to participate today.

THE WITNESS: Yep.

MR. THOMPSON: Okay. If you would do that for me. Does anybody else -- before he does -- Mr. Riccio, if you will stop that for a minute, is there anything else anybody else wants to put on the record before we go off?

MR. GOLDSTEIN: No.

MR. THOMPSON: Thank you.

VIDEOGRAPHER: All right. Off the record at 11:45 a.m.

(There was a pause in the proceeding.)

MR. THOMPSON: Back on the record. At Mr. Riccio's request, we took a break for him to get advice of counsel, and he has decided he would like to proceed with this deposition with advice or with the presence of a lawyer, and the City's lawyer more specifically. And it's my understanding that the City lawyer or lawyers all currently engaged and not available to participate today. That's unfortunate so -- but it is what it is, and we will reconvene this deposition at a convenient time for Mr. Riccio and his counsel as well as all the other parties involved.

Does anybody have anything else to add at this time?

MR. GOLDSTEIN: Nothing from the plaintiff.

MS. PALMER: Nothing from me.

MR. THOMPSON: I appreciate everyone's time and happy holidays to all. Thank you, Mr. Riccio.

(Deposition was concluded at 11:55 a.m.)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

I, Trisha G. Rarick, a Court Reporter and Notary Public of the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on _____, 2019, at Charleston, Charleston County, South Carolina.

_____
Trisha G. Rarick
Court Reporter

My commission expires:

January 9, 2029

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In the Matter of:

CHARLESTON CARRIAGE WORKS, LLC.

vs.

CHARLESTON ANIMAL SOCIETY, ET AL

Dan Riccio

March 11, 2020

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY
VIDEOTAPED DEPOSITION OF DAN RICCIO

CHARLESTON CARRIAGE WORKS, LLC,

Plaintiff,

vs. CASE NO. 2018-CP-10-04083

CHARLESTON ANIMAL SOCIETY;
ELLEN HARLEY and CHARLESTON
CARRIAGE HORSE ADVOCATES,

Defendants.

DEPONENT: DAN RICCIO
DATE: March 11, 2020
TIME: 9:00 A.M.
LOCATION: HALL, BOOTH, SMITH, P.C.
111 West Coleman Boulevard
Suite 301
Mount Pleasant, South Carolina

REPORTED BY: TRISHA RARICK

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ZACH WHITE, VIDEOGRAPHER

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VIDEOGRAPHER: This is the video deposition of Dan Riccio in the matter of Charleston Carriage Works, LLC, versus Charleston Animal Society, Ellen Harley, and Charleston Carriage Horse Advocates, Inc., in the Court of Common Pleas for the Ninth Judicial Circuit, Case Number 2018-CP-10-04083.

This deposition is being held at Hall, Booth, Smith, P.C., located at 111 Coleman Boulevard, Suite 301, Mount Pleasant, South Carolina. At this time, will counsel of all parties please state their appearances for the record?

MR. GOLDSTEIN: Tommy Goldstein for the plaintiff.

MR. THOMPSON: Trey Thompson for Ellen Harley and the Charleston Carriage Horse Advocates.

MS. PALMER: Beth Palmer for Charleston Animal Society.

MS. HERDINA: Susan Herdina for Dan Riccio.

VIDEOGRAPHER: All right. Would you please swear in the witness?

DAN RICCIO,

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having been first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

EXAMINATION

BY MR. THOMPSON:

Q Mr. Riccio, this actually isn't the beginning of your deposition, is it?

A No. It's not.

Q This is a continuation of a deposition that was begun back in December of 2019, correct?

A Yes.

Q All right. Very good. At that time, you asked that the deposition be suspended until you had counsel available; is that correct?

A Yes.

Q And is counsel available for you at this time?

A Yes.

Q And are you ready to proceed again?

A Yes.

Q Very good. Mr. Riccio, I'm going to do my best not to retread any of the old ground, but there is going to be probably some overlap. So to the extent that that is -- that happens, I apologize, but at the same time, it has been a couple of months

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now so -- all right. The same rules apply, right, that we talked about at the beginning of the last deposition. If at any time you don't understand something that I've asked you, please let me know that. Okay?

A Uh-huh.

Q Is that yes?

A Yes.

Q Okay. We are videotaping this today. So when you do say uh-huh, we actually probably do know what you mean.

A Right.

Q But for the purposes of the written record, please be sure to give answers verbally. Okay?

A Yes.

Q Very good. Mr. Riccio, I'm going to ask you some additional questions about the regulation of the carriage horse industry and then talk to you a little bit about, obviously, the Big John incident. When last we were together, I asked you some questions about what you knew about this lawsuit, and you didn't seem to know much. Is that fair?

A Yes.

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Q All right. Since the time of your last deposition in December, have you done any investigation or research into what this lawsuit is about?

A No.

Q Okay. Haven't looked online, looked at the pleadings, anything like that to determine what this case is about?

A No.

Q Okay. So as we sit here today in March, you still know about the same about this case that you did back in December of 2019?

A Yes.

Q Okay. We talked about weather and temperatures, and, then, I'll probably circle back to that but moving on to a new topic with regard to loads. Can you describe for me what the City's regulations and policies are with regard to carriage horse loads?

A I'm -- I'm very familiar with the ordinance, the generalities of the ordinance. However, if you have a copy of the ordinance, I would like to have it in front of me so that I can refer to that to be more accurate.

Q Okay. Well, I want you to describe to me

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what your understanding of it is before you look at the ordinance. My understanding is that you are charged with an oversight of these ordinances. So I would anticipate you would have some familiarity with them. Is that right or wrong?

A Yes.

Q Okay. So tell me what your general familiarity is. Obviously, to the extent that it is contrary to this -- to the ordinance, we'll talk about that, but I'm asking you in general what your understanding is of the ordinances with regard to the load.

A I'd still like to have the ordinance in front of me because the ordinance mandates what actions to be taken by the City.

Q All right. Can you not answer my question that I've just asked?

MS. HERDINA: I believe he answered the question.

MR. THOMPSON: And I think that the rule allows you to object to the answer -- to the -- to the question to object to the form. I have asked him a question that he has not answered.

MS. HERDINA: Why don't you repeat the question then.

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BY MR. THOMPSON:
Q Sure. I asked you a question about your general understanding of the load ordinance, and, then, you've asked me to look at the ordinance. And I've asked you why you cannot answer the question about your general understanding of the load ordinances.
MS. HERDINA: I'm going to object to the way that was phrased.
MR. THOMPSON: Okay. Fair.
BY MR. THOMPSON:
Q You can answer the question.
A Rephrase the question.
Q Okay. I want to know why it is that you cannot answer the question about the general understanding --
MS. HERDINA: I'm objecting to the form.
MR. THOMPSON: Counselor, I get to finish my question before you object. If you continue to object during my question, we'll stop this and take it up with the judge.
MS. HERDINA: Same form I objected to before.
MR. THOMPSON: Okay.
MS. HERDINA: Same objection as before.

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MR. THOMPSON: I understand.
MS. HERDINA: Can you please rephrase it so it's not so subjective?
MR. THOMPSON: Professional courtesy and common sense allow for others to complete their sentences without being interrupted. I will provide you the same courtesy if you will provide that to me, which is allowing me to finish my question before you interrupt me. Is that fair or not fair?
MS. HERDINA: I am happy to let you answer a question as long as it's not phrased the same way it was when I just objected to it.
MR. THOMPSON: All right. You need to let me finish my question, not interrupt it --
MS. HERDINA: Yes, sir.
MR. THOMPSON: -- and, then, we can determine what my question actually was.
MS. HERDINA: Yes, sir.
MR. THOMPSON: Correct?
MS. HERDINA: Go ahead, and just answer an objective question. That's all I'm asking.
MR. THOMPSON: Are you going to continue to interrupt my questions today?
MS. HERDINA: Why don't you go ahead and

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ask your question.
MR. THOMPSON: I have asked my question. Court reporter, if you'll --
MS. HERDINA: Well, then, let's move on.
MR. GOLDSTEIN: Well, if it helps both of you-all, I've forgotten the question so --
MS. HERDINA: Thank you.
BY MR. THOMPSON:
Q Mr. Riccio, it's a very simple question. I'm asking you about what the load ordinance and/or what the load requirements or regulations are with regard to the carriage horse industry in Charleston. Okay? You understand there are ordinances that are applicable to that?
A Yes.
Q Okay. And my understanding is, from your first deposition, that you're in charge in the overall with the enforcement of those ordinances, correct?
A Yes.
Q All right. Now, my question to you is what is your general understanding of what those ordinances require with regard to load for these carriage companies?
A And my general answer is I would like to

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have the ordinance in front of me to be as accurate as I could possibly be.
Q And I have asked you the question why do you not -- why can you not answer my question in the general context of what your general understanding is?
A Because I want to be as accurate as possible. That's why I want to refer to the ordinance as it is mandated by City Council.
Q So -- and make sure I understand this. You're in charge of the enforcement of the ordinances with regard to the carriage horse industry, correct?
A Yes.
Q And as you go through your daily business, you can't make any decisions without actually reviewing the ordinance itself?
A Rephrase that, please.
Q Yeah. As you go through your daily business in charge of the enforcement of the ordinances with regard to the carriage horse industry, you cannot make any decision without referring specifically to the ordinance over and over again?
A I refer to the ordinance on a daily basis

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prior to making a decision. So I have to be as accurate as I can, that's why I do refer to the ordinance quite a bit.

Q All right. Have you ever answered a question from anyone, whether to the press or otherwise, regarding the ordinances and the requirements of the ordinances without actually having the ordinances in front or you?

A No.

Q Never?

A Never.

Q Okay. Did you bring a copy of the ordinances with you?

A I did not.

Q You knew from the last time that we were together that I was asking you questions about the ordinances, right?

A Correct.

Q And you at that time did not make any reference to or require review of the ordinances at that time, did you?

A I did not.

Q Okay. But you answered my questions at that time based on your general knowledge of the ordinances, correct?

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A Yes.

Q All right. And now, you're here today with counsel, and you won't answer any of my questions regarding the ordinances without having them in front of you. Is that fair?

MR. GOLDSTEIN: Object to the form of the question.

BY MR. THOMPSON:

Q Is that what you're telling me today?

A No.

Q Okay. Well, then, is it just about a load then that you can't answer my question without looking at the ordinance?

A No, sir. I want to be as accurate as possible so it's not misinterpreted in any other way other than what is factual in the ordinance.

MR. THOMPSON: All right. We're going to take a break because I do have a copy of the ordinance if you need it --

VIDEOGRAPHER: Off the record at 9:14 a.m.

(There was a pause in the proceeding.)

VIDEOGRAPHER: On the record at 9:14 a.m.

BY MR. THOMPSON:

Q Mr. Riccio, I'm going to hand you what I

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believe to be a full set of the ordinances with regard to the carriage horse industry. I want to make sure that you review them and that they are, in fact, what I say they are before I copy them and we waste more time. Okay?

A Absolutely.

MR. THOMPSON: While he is doing that, it sounded like some folks may have joined in on the conference call. If so, we need to identify who it is for the court reporter's sake. Anybody out there?

MS. HARLEY: Ellen Harley.

MR. THOMPSON: Okay. Thank you, Ellen. Anyone else?

THE WITNESS: If they were, they've already been amended. I believe it ends at that. Yeah.

MS. PALMER: If that -- if 240 is what you're concerned about because I was going to ask you about it because I thought it was in the process of being amended, you can rip that off of that exhibit, and I'll cover it in my questioning of you --

THE WITNESS: No. I'm good -- it's -- as a matter of fact, it's not amended yet. So

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it does -- we went to counsel at first reading, and it was -- there was some concern from the industry and counsel deferred it.

MS. PALMER: Okay. I'm going to ask you about all of that during my questioning so we'll --

THE WITNESS: It's currently in deferral. Yes. This is accurate.

MR. THOMPSON: Okay. We'll take a break, and I'll make quick copies of these.

VIDEOGRAPHER: Off the record at 9:20 a.m.

(Defendants' Deposition Exhibit No. 1 was marked for identification.)

VIDEOGRAPHER: On the record at 9:27 a.m.

BY MR. THOMPSON:

Q All right. Mr. Riccio, I have handed you what I believe to be the City of Charleston ordinances with regard to the operation and/or regulation of the carriage industry. I believe you've confirmed that they are the ordinances; is that correct?

A Yes.

Q All right. And are these ordinances that are currently in effect?

A Yes.

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Q Were they in effect back in the time of the Big John incident in 2017?
A Yes.
Q Okay. Have any of the ordinances that you have in front of you been amended or changed since the Big John incident in 2017?
A Yes.
Q Okay. What has been changed since the Big John incident in 2017?
A Since that incident, we've amended GPS. We added GPS to the -- the carriage operations. That has changed. We had several -- couple of amendments on -- or one amendment change to the weight of the -- the carriage. If there was a modification to that carriage, that they would have to be required to update at the time of the modification and I believe that's -- GPS. We had some other ones -- other ordinances, and we were going -- we requested an amendment to the accident reporting, but it has not been amended at this time.
Q All right. To be clear, for the purposes of my questioning, I really want to know, and I'll be asking you questions about the ordinances that were in effect at the time of the Big John incident back in 2017. Okay?

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A Yes.
Q So to the extent that any questions involve ordinances that have been amended since that time, I don't really -- I'm not concerned about how they're applied now.
A Okay.
Q I'm really concerned about what was in effect at the time.
A Yes.
Q Okay?
A Yes.
Q Do you understand that?
A Yes.
Q So is it fair when I ask you questions about the ordinances, that I'm asking you questions about those that were in effect in April of 2017?
A Yes.
Q Okay. All right. So we go back to what we originally started with, and that was loads of the carriages and what the ordinances allow by way of loads to be carried by the horses in Charleston. You have the ordinance in front of you. I suppose you're now going to read to me what the ordinance says?
A Yes.

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Q Okay. And when you do that, can you cite the ordinance number, please?
A Yes. It's -- go back to the beginning. 29-212, general health and care of management requirements. Section C-2. Correction. Sorry. C-5.
Q And if you'd read that for me, please.
A No carriage shall be operated having more passengers from what is permitted by a certificate of appropriateness or having a combined weight of carriage passengers and drivers that is more than three times the weight of the animals pulling the vehicle.
Q Okay. What is a certificate of appropriateness?
A Certificate of appropriateness is a certificate issued by the tourism commission after an applicant has filed the proper requirements of that carriage to the commission for approval. And that certificate of appropriateness will, basically, certify that that carriage is the make, the model, the weight and style of the carriage to be operated by that company.
Q And do all carriage companies -- or have all carriage companies submitted their carriages for

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certificates of appropriateness?
A To the best of my knowledge, yes.
Q Is every carriage, the wagon that's being used in the city of Charleston -- at least in 2017, did every one of them carry a certificate of appropriateness?
A To the best of my knowledge.
Q And what does the certificate of appropriateness include?
A It includes the weight of the carriage, the style, the make, which is basically the size -- you know, the size of the carriage.
Q And who provides the weight of the wagon or the carriage for the certificate of appropriateness?
A The carriage operators.
Q Okay. Does the City do anything to independently verify the weight that's being submitted by the carriage company owner?
A In 2017?
Q Yes, sir.
A I'm trying to remember where -- I'm not exactly sure if it was in -- any changes or if we were rechecking in 2017. I can't be for sure.
Q How about now?

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A Now, yes.
Q Okay. What do you do -- what does the City do to independently verify the weights being submitted by the carriage company?
A What we do now, in cooperation with the industry, we have each carriage weighed by a certified scale, and they either have to produce the receipt of the scale, and if there's any -- any issues with printing, like we had in the past, I would send a tourism enforcement officer or the equine manager to witness it personally as the carriage is being weighed and document it.
Q Okay. And so that's the practice now, correct?
A That's the practice now.
Q Do you know --
A I'm trying to remember 2017. I'm thinking probably more towards 2018. So it may not have been in 2017 when we were, like, fact-checking.
Q Okay. And then, for example, where are the certificate of appropriateness -- are those certificates kept?
A In the tourism -- liveability and tourism office.
Q Okay. Are they kept for each individual

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carriage company owner?
A Yes.
Q So, for example, Charleston Carriage Works would have a file that would include all of the certificate of appropriateness for all of their carriages that are operating in the city?
A Yes.
Q Are those updated at all, or is it you get it once and, then, that's it?
A Recently, we've -- I've actually gone to counselor and the tourism commission to ensure that if there's any modification to these carriages, that they must report it and come back to the commission and -- to be recertified, basically, or at least the updated weight and style, whatever it is -- it's usually the weight -- has been recorded and has been witnessed by either one or our officers or a receipt.
Q So absent any modifications, then, once a certificate of appropriateness is -- is applied for and provided, then there would be no updates to it?
A No. No. They would -- they -- but we have been rechecking.
Q Okay. Well, I guess I'm trying to figure out what -- what the practice and policy is. You

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know, for example, your car, you have to get it registered every year --
A Yeah.
Q -- and you get a new registration certificate.
A Typically, no.
Q Okay.
A They go into the file, and until there's a requested change, then, no. It would go into the file.
Q All right. Does the City do anything to independently verify whether any of the carriages that have received a certificate of appropriateness have been modified since they received that certificate?
A Yes.
Q Okay. What does the City do in that regard?
A We have a cooperation with the carriage companies that if we feel that just the identity -- or identifying a carriage, if it's -- if it's changed or the characteristics, if you will, seem to be changed, and we ask, they usually voluntarily let us re-weigh the carriage.
Q Okay. Have you had to do that?

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A Yes.
Q Do you know which companies were involved?
A I want to say it was Palmetto, and Old South is currently going through the process.
Q Have you ever asked Charleston Carriage Works to re-weigh or to have one of their carriages recertified?
A Re-weigh?
Q Re-weighed.
A Yes.
Q Okay. When did you ask Charleston Carriage Works to do that?
A I'm not certain. I would say between 2017 and 2018.
Q Okay. And why did you ask them to reweigh or recertify?
A Because there was a lot of concern about the number of passengers being carried by the carriages, and to, basically, quell the anxiety and have a more factual way to determine that that carriage is actually really pulling the weight it's supposed to, we implemented a policy that is now in effect to more closely monitor that and check -- and fact-check the weight of the carriage and the horse and --

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Q I guess my question was why did -- what was it that brought to your attention a Charleston Carriage Works' wagon or a carriage that it needed to be --

A Not just their company. It was like collectively.

Q Across the industry?

A Across the industry.

Q Okay. Well, I -- I had asked you the question specifically with regard to Charleston Carriage Works.

A Okay.

Q Do you have a recollection of any -- pulling any of their carriages aside or off and saying, hey, we need --

A No.

Q -- to reweigh or recertify any of your carriages?

A No. It was a collective process.

Q Okay. Now, the certificate of appropriateness, is it affixed to or carried on the carriage itself?

A What it is, is we have the application, and there is a stickered medallion -- or I say a medallion. It's a sticker. A certification number

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that's assigned to that carriage that's affixed to the carriage.

Q Okay.

A So we can cross-reference it.

Q Right. But, for example, if one of your enforcement officers are looking at a carriage, Charleston Carriage Works' carriage, just inspecting it on the street, would they be able to identify the weight of that carriage just by looking at it because it's got a certificate on it?

A No.

Q Would they have a number or something that they could look up on their -- on their phone or computer to determine, hey, okay, this is Carriage Number 355 and go to your databank and find out how much it weighed?

A Yes.

Q They could do that in the field?

A Yes.

Q Okay. But they would physically have to engage in or access some database --

A Yes.

Q -- that you have that identifies this specific carriage and identifies this specific weight?

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A Yes.

Q Okay. Are the certificates of appropriateness ever discarded in your office?

A Discarded?

Q Yeah.

A Not to my knowledge.

Q In other words, if you have one that's originally issued and then it's modified in some fashion, then you get a new one, does the old one go away or does it stay in your file?

A It would stay, to my knowledge, in the file.

Q In other words, what I'm trying to figure out is, if I went to the Charleston Carriage Works' file and looked at the certificates of appropriateness for those carriages, the dates would be the very first date that they were issued?

A Yes.

Q Is that correct?

A That is, like, on a form, correct.

Q Okay. In other words, we could figure out in your file --

A Yes.

Q -- materials when the materials were submitted to you by Charleston Carriage Works

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considering the weights of each of their individual carriages?

A Yes.

Q Okay. And we would be able to find or see the applications that were submitted?

A Yes.

Q Is there anything special that those things are called? In other words, if I send to your lawyer a request for the copies of these things --

A Uh-huh. Certificate of appropriateness.

Q Okay. And then, all the application forms and things that go along with it?

A Yes.

Q And I would be able to access those?

A Yes.

Q Okay. All right. In the enforcement of the ordinance with regard to load, how is it that the City determines the weight of the passengers?

A We use the model provided by the FAA for estimated average weight of male, female and child as opposed to the luggage they carry.

Q And do you know how the FAA model is calculated or calculates --

A I'd have to look at it, but, generally, a

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man's weight is usually more than a woman's, and, obviously, a child's less than a woman. And they do an average weight that is safe to either fly -- to fly on a plane because their industry estimates.

Q Okay. Do you do any boating?

A Voting?

Q Boating.

A Oh, boating?

Q Yeah.

A It's been a while.

Q Okay. Are you familiar with -- certainly smaller boats have stickers or plaques that indicate how many passengers you can safely have on the boat.

A Yeah.

Q Have you seen something like that?

A Yes.

Q Is there anything like that for carriages --

A Yes.

Q -- in the city of Charleston?

A Yes. There's a -- depending on the size of the carriage, it will tell how many passengers they can carry, along with the driver being included.

Q Who determines how many passengers can get

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on any particular carriage?

A Tourism commission.

Q I'm sorry?

A The tourism commission does when they give the certification.

Q Okay. The certificate -- certificate of appropriateness?

A Yes, sir.

Q Does the certificate of appropriateness indicate how many folks can be on any particular carriage?

A Yes.

Q Okay. For example, the application is submitted. It describes a carriage --

A Yes.

Q -- and it describes the capacity?

A Right. Yes.

Q Does the City go and verify the information provided by --

A Yes.

Q -- carriage company?

A Yes.

Q Okay. And then, in essence, the City signs off and says if the carriage company says this wagon or carriage can carry 16 people, you verify

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that?

A We verify, but it's -- it has to be approved by the tourism commission.

Q Okay. How do you determine the weight of the horses involved?

A Again, we've asked for voluntary compliance throughout the whole industry, and they -- with the same process with the carriage, we did the same process with the horses. And when a horse goes away or out of stock and a new one comes in, they're required to give us the weight, which is now a policy of ours to do it by certified scale.

Q Okay. What was it in 2017? What was the process?

A They -- we -- they accepted the information of what the company had applied for with the certificate of appropriateness.

Q Okay. So whatever the carriage company supplied to your office --

A Yes.

Q -- in 2017, that was accepted as the weight of the horse?

A Yes.

Q All right. No independent verification or certified scale required?

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A Not that I recall.

Q Okay. Is the weight updated on an annual basis?

A We -- we -- I want to say yes.

Q Do you have any knowledge of whether horses gain weight or lose weight?

A No. I don't, but I'm sure they do.

Q All right. So would it be important to know the horse's weight on an annual basis?

A Oh, yes.

Q Okay. Similar to the carriages, in -- in that they might be assigned a number that your enforcement officers could access to determine the weight, is there similar numbers or identifications assigned to each horse for each company?

A Yes.

Q So that, again, an enforcement officer in the field could look at the carriage number to determine its weight, correct?

A Yes.

Q Look at the horse or get the identifying information of the horse, correct?

A Yes.

Q And find out the weight of those horses?

A Yes.

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Q And then, could look at the number of individuals that are on the carriage and then use the averages for the FAA model that you've described?
A That's our daily protocol for the gatekeeper who is recording the information when the -- when the carriage comes to the gate to get a medallion. All that's done then. It's done each and every time they go out on tour.
Q Okay. So then, is that recorded somewhere?
A Yes.
Q And so where is that information kept?
A We have a main database with all the weights of the horses, the horses' names, the companies. We have every driver name is in the database. So all that information is accessible to either a TEO working the gate or a clerk working the gate. It's on their iPad.
Q Right. My question, though, is, is, for example, a -- a tour is going out, right?
A Right.
Q And hits the gatekeeper.
A Yes.
Q Right. Now, does the gatekeeper at that

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time do the calculation?
A It's already built. It's in the database. It's in their tablet. For example, a carriage comes up. The carriage number will indicate that the weight -- we predetermine the weight of the carriage, the weight of the horse and the passenger weight estimation through FAA, and when that carriage comes up with that horse, it says -- it could say 16, 15 or 17, and that tells them if there's too many passengers on there before it takes off. If there are too many, then they can catch it at the gate prior to departure.
Q Okay. And that information -- is it kept or stored somewhere?
A Yes.
Q In other words -- and I'm not asking about the data that goes into the calculation. I'm asking about on a daily basis when a tour is sent out --
A Yes.
Q -- it says, okay. It was this horse, this carriage and this many people, incapsulate that information?
A Every single day.
Q Okay. And where is that information kept?
A It goes in our database, to revenue and

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collections because of the tax on the -- the carriage.
Q So you want to know how many people are on that carriage, right?
A Right.
Q Make sure you're collecting the tax data?
A That is correct.
Q Okay. But is that information kept in your office somewhere? You said the database, it's kept electronically. Is it assessable to you?
A It's assess- -- not to everyone. It's for key personnel in the office only.
Q Okay. And then, maybe the tax assessor or the tax folks may have --
A They -- and the -- the revenue collections people, business license, all those guys, they have access to the same exact database because it will record that information for them as well.
Q Okay. Does the City do any kind of mechanical or engineering inspections of any of the carriages?
A Visual.
Q All right. Well, who knows what a carriage is supposed to look like?
A The equine manager is probably the most

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skilled at it with the nomenclature of the carriage and the horse equipment.
Q Okay. Are any of your enforcement officers trained in any kind of engineering or mechanics of the carriages?
A Not at this time, no.
Q Okay. The process that you described where the carriage, the horse, the passengers, all of that, would be weighed or calculated at the gatekeeper before it goes out. Was that a process in effect in 2017?
A I don't believe it was.
Q Okay. Do you know when that process was implemented?
A To the best of my knowledge, I believe it was 2018.
Q Okay. For example, for the Big John incident, would there be a -- a databank or information that would have been processed before Big John went out with that load to determine what carriage he was pulling, what its weight was, how many people were on it, what their weight were and what his weight was?
A 2017, I can't say that it was in effect then.

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Q Okay.
A Only the -- what was on the certificate of appropriateness.
Q Is there any limit with regard to the size of carriages?
A A limit to the size?
Q Yes.
A That's a good question. I can't answer that.
Q Okay. Is there any limit with regard to capacity? In other words, could you have a carriage that has 24 people?
A No.
Q 30 people?
A No.
Q Do you know the load requirement -- did that ordinance predate your employment?
A Yes.
Q And your position?
A Yes.
Q Has the load ordinance been changed or amended since you have been in your position?
A No.
Q Is there any intent or thought about changing it at all?

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A We have the policy in place to fact-check. It could be considered in some future date.
Q Okay. In other words, you didn't have anything to do -- you didn't have any input with the ordinance as it's currently drafted?
A No.
Q Or currently written and enforced?
A No.
Q Your department didn't at least under your current supervision?
A Correct.
Q Again, I think we talked about at the first deposition, you know, your job is to enforce what's written; is that right?
A Yes.
Q Has there ever been any study with regard to the safety characteristics of the carriages that are used in the city of Charleston?
A Not to my knowledge.
Q In other words, whether they're top heavy or could tip? Anything like that?
A Not to my knowledge, no.
Q Was there anything similar to that or anything like that in 2017?
A No. Not to my knowledge.

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Q Do you have any knowledge or awareness of whether there is any, I hate to say, but standard in the industry, the carriage industry, as to how they should be constructed or what should be included in their construction? Has that ever been referenced or researched?
A No. Not -- just what I've learned along the way. That there's certain styles. The larger carriages are pretty common. Basically, the same style, but the weights have changed because of modifications from heavy wood to fiberglass.
Q Okay. To lighten the load?
A To lighten the -- yeah.
Q Okay. I mean, that's obvious, right?
A Yeah.
Q If you have something that's wood and then something the same size as fiberglass, fiberglass generally is going to be lighter, correct?
A That is correct.
Q Okay. Has there been any maybe not formal change in policy but has there been any sort of push to have the carriages reworked to be lighter?
A Only what is being done voluntarily by the industry.
Q Okay. What is your awareness of that?

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What is being done, if anything?
A Well, the case with Old South Carriage Company, they're in the process of -- I believe they have an application in for their certificate of appropriateness for some new carriages that are going to be lighter. That's the only thing I can think of right at this time.
Q Okay. What about in 2017? Was there any -- any information out there or any push to -- to go to fiberglass?
A Not to my knowledge.
Q All right. Has any consideration been given to the safety characteristics of a lighter wagon?
A Not to my knowledge.
Q Okay. Is there -- or did the City in 2017 have any practice or procedure to inspect the carriages and give them, you know, clean bill of health, if you will, on a yearly basis?
A I'm not certain if it was 2017 or 2018, but other than what they informed the City, along with their certificate appropriateness.
Q And -- and you may not be old enough, I am, to remember when vehicles, cars used to be required to be inspected on a yearly basis.

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A I remember.
Q I didn't want to judge, you know. You're a lot -- young-looking guy, but is there anything similar to that in the carriage horse industry?
A Not to my knowledge.
Q In other words, where you go in and inspect the -- the carriage, the wagons themselves, to determine whether they can, you know, roll freely or stop appropriately? Anything like that?
A No.
Q Was there anything like that in 2017?
A No.
Q To your knowledge, has the -- the City been involved in any litigation, any lawsuits, where it was the defendant due to any carriage horse incident?
A I'm not certain, but I believe there may have been one. But I'm not familiar with it.
Q Do you have any knowledge of what that was?
A No.
Q Do you have any knowledge or understanding as to why the City would have been included in a carriage horse incident litigation?
A The City's always being sued for

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something. So every opportunity, it's -- people can get, they're going to sue the City.
Q Okay. Do you ever get involved in any claims process? In other words, where there's an incident involved and a claim is made against a -- a carriage company?
A No. Wait. You mean for an accident?
Q Yes, sir.
A No.
Q Okay. Is there any process, policy or procedure or otherwise that -- that you require or the City requires in the event that a claim is made against any of the carriage companies' owners for any incident?
A No. They're basically handled like any other traffic accident.
Q Okay. I just didn't know whether -- if they were sued because of an incident, whether you would want to know that or not.
A I guess it would be nice, but I'm sure we would find out eventually. But a lot of those go to legal, and I don't even know about them.
Q Okay. So that segues into the actual reporting of incidents and accidents involving carriage companies.

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A Uh-huh.
Q In 2017, what was the practice and policy of your department in reporting any incident involving a carriage company?
A Had to be reported within 24 hours, I believe. The driver of a vehicle, or licensed tour guide, governed by the tourism ordinance involved in any accident or occurrence resulting in injury or death of any person, animal and/or property damage shall within 24 hours of such accident or occurrence make written report thereof to the director of tourism.
Further, all carriage operators must maintain current liability insurance information on their carriages at all times. The information must include that -- the name of the insurance carrier, the policy number and the contact telephone number of the insurance carrier. And that's under 29-240.
Q All right. And so you just read Section 29-240 of the ordinance?
A Yes.
Q Is that correct?
A Yes.
Q And was that section in effect in April of 2017?

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A Yes.
Q Now, to be sure about what your office follows up with in regard to the enforcement of this section, it indicates that if a vehicle or tour guide is involved in any accident or occurrence resulting in injury, correct?
A Yes.
Q To any -- to any person, animal or property damage, correct?
A Yes.
Q Is there any threshold for that injury?
A Not at this time, no.
Q In other words, if I got my pinky scraped because of a tour and I reported it to the tour company or to the carriage company, would you expect or anticipate or require that tour company to provide that information to you?
A Through this ordinance, yes.
Q Okay. In other words, it doesn't matter how big or small the incident, correct?
A No.
Q If an incident or an occurrence happens and it involves injury to person, animal or property damage, regardless of size, it is supposed to be reported to you?

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A The police first in those situations and then us.
Q Okay. Well, and I understand that but under this --
A Yes. 24 hours, yes.
Q Under this ordinance, the -- the tour company is required to provide to your office --
A Yes.
Q -- information about the incident, correct?
A Yes.
Q And there's no threshold. In other words, if it's under $500 worth of property damage --
A Correct.
Q -- they don't have to report, that's not the case?
A That's not the case.
Q Okay. If it results in any property damage, correct?
A Yes.
Q If it results in any injury, correct?
A Yes.
Q And it doesn't matter to whether it's the tour -- the folks that are taking the tour, right, the clients? I mean, it includes them, right?

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A Uh-huh.
Q Is that yes?
A Yes.
Q It includes the driver of the carriage?
A Yes.
Q Correct? It includes the horse or horses involved, correct?
A Yes.
Q So any injury to any of those individuals or animals would require a report to your office?
A Yes.
Q Within 24 hours?
A Yes.
Q It says make a written report. Is there a form that you provide to the industry?
A Yes.
Q Is -- has the form changed over the course of time, or is it the one that you use today the same or similar to the one used in 2017?
A Generally the same, yes.
Q Okay. Can you recall any specific changes?
A I don't recall. I don't believe we have.
Q But, for example, in 2017, at the time of the Big John incident, you would -- and when, of course, I say you, your office would have had a form that you would have made available to the industry for them to fill out in the event of any accident?
A Correct.
Q Or incident?
A Correct.
Q And then, your office keeps those incident or accident reports?
A Yes.
Q How are they kept in your office?
A In the file with the carriage company.
Q So any incident or accident involving -- or reported incident or accident involving Charleston Carriage Works would be in the Carriage -- Charleston Carriage Works' file?
A Both electronically and in the file hard copy.
Q In other words, if I ask your office to produce that information --
A Yes.
Q -- regarding Charleston Carriage Works, would I ask for it from a general accident file or from Charleston Carriage Works' specific file?
A Charleston Carriage Works specific.
Q Okay. And then, if any accident or

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incident report form had been produced to you from Charleston Carriage Works, it would be in their file?
A Correct.
Q To your knowledge, have there been any incidents or occurrences involving Charleston Carriage Works that were not reported that should have been?
A Not to my knowledge.
Q Any incidents, accidents or occurrences where someone, you know, defined in the ordinance would -- suffered some injury but, yet, that incident was not reported to you by Charleston Carriage Works?
A Not to my knowledge.
Q Following the report of an incident or accident involving a carriage company, what, then, does your office do?
A Typically, we have a tourism enforcement officer respond. Whether or not the police department does their own report, we still do our own report. Oftentimes, we kind of cross over the police officer giving an accident report like you would in your vehicle, and, then, we would do -- just as extra precautionary measures, we do an

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incident report, basically, on each accident that's reported.

Q Well, what is the practice or procedure in your office as to who is to complete the incident report?

A It's basically which officer is working, and as we -- I won't say dispatched but called to that area to handle.

Q Is there any outline or any kind of document to go by, if you will, that your enforcement officer uses in the investigation of an incident?

A Yes. It's a narrative report.

Q But is there a checklist that, for example, that he or she follows to be sure that he or she interviews witnesses, inspects the carriage, that sort of thing?

A There is informational blocks on there for the -- the driver and things of that nature, but I'm not aware if it specifically is a checklist, no.

Q For example, in the time of the Big John incident back in 2017, would there have been any kind of checklist or form that the enforcement officer would follow in the investigation of that event?

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A Yes. I believe we did have it in effect, yes.

Q Okay. And -- and I'm not talking about the actual report form, but I'm talking about a checklist that when the officer's on the scene, oh, I need to do this first, I need to do this second and do this third, and, then, by doing those things, creates an incident report?

A No.

Q Nothing like that?

A No.

Q Okay. What are the enforcement officer -- or how were they trained in 2017 with regard to the investigation of any accident or incident involving a carriage company?

A I wouldn't say they investigate an accident. They're taking a narrative of the incident. Basic classroom training. On-the-job training basically.

Q Okay. And what would that consist of?

A Basically -- well, a lot of it's experience out in the field, and a lot of it's just direction from either myself, the deputy director or the equine manager of -- of obtaining information for a report.

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Q Well, I mean, are there a lot of accidents and incidents involving the carriage horse industry so that everybody has that experience on how to investigate or follow up following an incident?

A I wouldn't say a lot, but that's the best I can answer that question.

Q Okay. I assume if there was some kind of process, that -- that the enforcement officers could go by for each and every event to be consistent in their investigation.

A Other than direction from us, it's pretty common sense. Filling out a report, basically, and obtaining information, but we direct them how to do that.

Q For example, when an incident or an accident involving a carriage horse company is reported to your office, is there any standard practice or procedure that says, okay, you have to go interview the driver?

A We normally obtain just the basic information from the -- the incident. So the -- one of the main reasons is for the care of the animal because I make sure that each and every accident, whether the animal is impacted -- and that's our goal for this is to -- to make sure that the horse

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is okay. In good health. That's why we follow up on these incidents.

Q Well, also to prevent future occurrences -- similar occurrences, correct?

A Yes.

Q I mean, if something happened that could be prevented in the future, you would want to know that, correct?

A Yes.

Q Okay. So I'm trying to figure out what it is in 2017 your office's responsibility or what you were involved in with regard to the post-accident or post-occurrence investigation. Would it just be simply going and talking to the carriage company owner and ask what happened, or would you be actually involved in any kind of -- I hate to say detective work but --

A Incidents like that involving the police department were basically utilizing the information that the police department obtains.

Q Okay. With regard to the Big John incident, what investigation or follow-up did your office have with Charleston Carriage Works?

A I know my equine manager was involved because of possible injury to Big John.

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Q Anything else?
A She made sure she responded to -- I'm not sure if she was able to get to the location prior to Big John being brought back to its feet. I'm not sure if she was there then, but, regardless, she would follow up at the barn where the animal was taken back to and confer with their vet that we require a call to the scene. And the animal is not to return to work until we get a clear bill of health from the veterinary in writing.
MR. THOMPSON: Okay. And I just got a note that the video is about to run out. So we need to take a short break.
THE WITNESS: Okay.
VIDEOGRAPHER: All right. This is the end of Media Number 1 in the deposition of Dan Riccio. We are off the record at 10:10 a.m., Media Number 1.
(There was a pause in the proceeding.)
VIDEOGRAPHER: This is the beginning of Media Number 2 in the deposition of Dan Riccio. We are on the record at 10:24 a.m.
BY MR. THOMPSON:
Q All right. Mr. Riccio, we are back after

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a short break. At the time that we stopped, we were talking about the Big John incident back in 2017. I was asking you about your office's involvement or follow-up. First of all, did you receive a report or -- in the proper format from Charleston Carriage Works about the incident?
A To the best of my knowledge, yes.
Q Okay. Was it received by your office within 24 hours?
A To the best of my knowledge, yes.
Q Okay. Is there -- and certainly, at that time, was there any -- I know it may not have been part of the ordinance, but was there any part of your policy within your office to learn about those things closer in time to the actual event? In other words, the carriage company has 24 hours.
A Right.
Q The scene is already cleared. The witnesses have gone away. Driver may be gone. All that kind of stuff.
A Yes.
Q And -- and what was, and, certainly, in 2017, what was your unwritten rule, if it was written, or if it was written, as policy, what did you want to do or be informed of when an incident

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occurred?
A I always like immediate. I want to get the facts quick. I don't like -- I didn't like the 24-hour period.
Q Right. You're a former police officer, correct?
A Yes.
Q And you understand that importance of immediate follow-up, correct?
A Yes.
Q Identifying witnesses, evidence, all that kind of good stuff?
A Yes.
Q All right. Do you have any recollection or knowledge or understanding of when your office first received information that the Big John incident had occurred?
A To my knowledge, on that day, I had TEOs assigned to the -- well, let me think about this for a second. Rephrase that, please.
Q Yes. I was just asking when it was that you first became aware -- and when I say you, I'm talking about either you or your office, aware of the Big John incident.
A I believe within 10 minutes, maybe 15

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minutes, the officers had a -- and I don't know this for sure, but we -- several methods we'll get called. A lot of times, the media will call us first, and we get notified -- my PIO has called me as soon as an incident has occurred, and you -- a lot of times, he calls in, what's going on with this incident? I say where? He goes, Channel 4 just called, boom, and we -- we find out on multiple -- multiple ways.
Q Okay. You said PIO. Your public information officer?
A Public information officer.
Q Okay. Do you have, as you sit here today, any recollection of how it was that you became aware of the Big John incident?
A I can't for sure other than being notified by another officer.
MR. THOMPSON: Hey, guys --
MR. GOLDSTEIN: Windy at Martha's Vineyard.
MR. THOMPSON: Okay. Hey, guys, whoever is calling in, you guys -- somebody is making a lot of noise across the -- the telephone. If you can mute your button or mute your telephone, but there's a lot of noise coming

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from the telephone. So please, if you would do that, I would appreciate it.
BY MR. THOMPSON:
Q Okay. I'm sorry.
A I don't recall the exact method of notification.
Q Would there be any record of how or when you were first notified about the Big John incident?
A Yes.
Q And -- and what would that look like or what form would it take?
A It was -- would be Shannon Tilman's follow-up report to the incident.
Q Okay. But, for example, would there be a call log or --
A No.
Q -- a handwritten note somewhere that would say I received a call from this enforcement officer at this time?
A I don't believe so. Not unless it states it in the report that -- how -- how she became known to the incident.
Q Okay. Do you have a recollection of whether Ms. Tilman became aware of the incident before you did?

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A I don't. I don't.
Q Okay. Did you personally have anything to do with the follow-up with regard to the investigation of the Big John incident?
A No.
Q In other words, did you go to the scene?
A No.
Q Did you interview anybody at Charleston Carriage Works?
A No.
Q Did you follow up with the police department?
A No.
Q Or the fire department or anybody that was at the scene?
A No. Not to my knowledge.
Q Did you write any reports about the Big John incident?
A No.
Q Okay. Did you sign off on or approve any reports that were authored as a result of the Big John incident?
A I believe I did, yes.
Q Okay. And would that be from one of your enforcement officers?

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A Shannon Tilman handled that one. So it would be her.
Q Okay. To your knowledge, did any of your enforcement officers write up or issue a written report regarding the Big John incident?
A It's possible. I don't know for sure, but I know it's possible.
Q Okay. Where would that report be kept?
A In our file at the office.
Q In -- in what file?
A It would be under the carriage -- we have a filing cabinet for each carriage company. It would be there and possibly electronically but definitely in that file.
Q Okay. Do you know who from your office was involved in any follow-up with regard to the Big John incident?
A Only one I know is Shannon.
Q Okay. Are you aware or have any recollection of any of your enforcement officers being involved in any investigation or follow-up?
A It's possible, but I don't -- I have not even read the report since from 2017.
Q Okay. Do you have any recollection or knowledge of the extent of Ms. Tilman's

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investigation?
A Only than other -- other than normal protocol.
Q What is the normal protocol?
A She was -- if she has time or if the scene is not clear yet, she -- she would respond to the scene. Typically, by the time we obtain the information, they're already gone and at the barn and wherever. So they will respond to the barn. First thing is to check the horse. She's knowledgable in the equines and health and welfare, and at that point, she would make her suggestions. And she would instruct the company have your vet respond to the scene and/or check the horse.
Q All right. Ms. Tilman's responsibility is equine manager; is that right?
A Yes.
Q That's her title?
A Yes.
Q Does she have any police or investigative background, to your knowledge?
A Not police, but she is certified animal cruelty investigator.
Q Okay. For investigating animals?
A She's also certified in specific equine

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animal cruelty investigations.
Q Okay. Is she responsible for investigating or determining the cause of any particular incident or accident involving a carriage horse?
A No.
Q Okay. Her job is to assess the condition of the horse; is that right?
A Yes.
Q After an incident or accident?
A Yes.
Q And that's the limited scope of her involvement?
A That's the limited scope of it.
Q Okay. You don't ask her to do anything else, do you?
A No.
Q All right. Who then from your office or department then is involved, if at all, in determining the cause of a particular incident or accident?
A I wouldn't say we determine it. Well, she would have input if she felt the evidence clearly showed, but a lot of times, she makes the determination based on what the witnesses would say,

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if any were interviewed.
Q Well, that's what I'm trying to figure out what's involved in that investigation. For example, if a horse gets spooked, right --
A Uh-huh.
Q -- who is conducting that investigation or that follow-up?
A Normally, her, but if she's not there, it would be a TEO to -- to go interview people and ask questions.
Q And that's what I'm trying to figure out. For example, in the Big John incident, was she the only one involved in that policy?
A I can't say. I haven't even looked at that report.
Q All right. Do you know if any of the witnesses to the event were interviewed by anybody in your office?
A It's possible, but I'm not sure.
Q Okay. What materials or documents would you have regarding the Big John incident that you would refer to in order to refresh your recollection?
A It would be the report written by Shannon Tilman.

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Q Anything else?
A She would have whatever pictures or whatever she did at the scene. She usually will go try to obtain -- I ask that they give photographs to show any injuries to the horse and document the injuries and confer, which they don't make -- she doesn't make any determination, but she confers with the vet that, hey, this is what I found, and, then, the vet would -- would do their assessment.
Q When you say the vet, what vet?
A Depends on -- it's the -- whoever the company's vet is.
Q Okay. So Shannon Tilman's background -- is she a vet?
A She's a veterinarian -- certified veterinary assistant. Not a vet.
Q And do you know what the difference is between a certified veterinarian assistant and a vet?
A Not to my knowledge, but I'm sure, as in any case, the assistant is not as qualified as a veterinarian would be.
Q Okay. What is the -- your office's practice, at least in 2017, with regard to a veterinarian involvement or review of a horse

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following an incident?
A I don't recall, but I want to -- I started making changes around that time. So I can't say for sure that we actually had the protocol in place in 2017.
Q In other words, did your office require a vet, for example, on the Big John incident to review the horse?
A To the best of my knowledge, yes. I would -- I would think so by then, yes.
Q Or do you know if it was just a voluntary thing undertaken by Charleston Carriage Works?
A Most of them are voluntary by the companies.
Q Okay. And with regard to the Big John incident, do you know what vet examined the horse?
A I don't recall that one.
Q Do you know if it was the company's vet?
A Yes.
Q Okay. Does the City have or engage any veterinarians?
A We have a contracted veterinarian.
Q Okay. My understanding, the contracted veterinarian is in Aiken?
A Aiken.

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Q Right? Does the contracted veterinarian with the City get involved in any evaluation of horses following accidents or incidents?
A I can state for certainty that we have conferred -- I say we, I directed Shannon if there was -- and I can't remember the incident, but there was an incident that I wanted her -- I do recall. I believe it was a polo horse that was in the queue, meaning -- the queue means that's where they're advertising carriages, and it just sits there. And there was a report of an animal, horse, with a -- some kind of scrape, and I had Shannon confer with Dr. Jacobs via pictures, texts and get her determination on it.
Q Okay. But that would have been communication by some kind of electronic format?
A Yes. Not personal.
Q To your knowledge, has the City vet ever come to --
A No.
Q -- Charleston to inspect or check out a horse following an incident or accident?
A Well, that's the reason for the vet is they conduct a yearly barn inspection, horse inspection, and pasture inspection. So yes, she has

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been --
Q Right. But that wasn't my question. The question was simply --
A For an incident, no.
Q Yes.
A Not to my knowledge, no.
Q To your knowledge, since you have been in -- in your position, has the outside vet ever been called in to perform a physical or examination of any horse that was involved in an incident or accident?
A Not to my knowledge.
Q Okay. That evaluation would be conducted by the individual carriage company owners' vet?
A Yes.
Q Is that right?
A Yes.
Q Okay. Is there any policy or procedure in your office for once that vet completes his or her investigation or evaluation to have that investigation or evaluation forwarded to the City vet for review?
A No.
Q And, of course, I'm referring to the City vet, and who is the City vet?

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A Dr. Sabrina Jacobs.
Q And is she referred to in some other format? I'm calling her the City vet, and that's probably too loose a lingo but --
A Just Dr. Jacobs.
Q Okay. Has Dr. Jacobs been the City equine vet since you have been in your position?
A Prior to me coming on.
Q Okay. I was asking you -- I got a little bit of sidetracked about the Big John investigation of that incident, and I was asking you what could help refresh your recollection. Other than the Tilman report, would there be anything else that you would review to refresh your recollection?
A I guess the newspaper article, I guess, but I would rely on that report over anything.
Q Okay. Following the Big John incident, in other words, it was April 17, 2017, did your office have any follow-up with Charleston Carriage Works regarding Big John?
A Other than the -- that day? You're saying after that day?
Q Yes, sir. In other words, two weeks from now, check in to see how the horse is doing?
A I'm not certain. I can't answer that.

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Q Okay. Is there any policy or practice at that time for following up?
A No.
Q Does your office and did your office in 2017 have any policy or procedure that you required any of the carriage companies to contact police in the event of an incident or accident?
A Not to my knowledge.
Q Okay. Are you aware of any from your former duties as a police whether the carriage company would have any kind of obligation to report an incident or accident involving person or property --
A No. I don't have that knowledge.
Q -- to the police?
A No. Usually people call in an accident and police respond.
Q Okay. For example, obviously, we know the ordinance requires reporting. I didn't know if there was any requirement to report to the police?
A There is not.
Q Okay.
A To my knowledge.
Q And, again, with regard to -- I mean, the ordinance says what it says, but were there any

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policies or procedures that your office required of the carriage companies back in 2017 with regard to their follow-up or investigation of an incident? For example, you need to interview the driver. You need to interview any witnesses. Anything like that?

A Repeat that one more time.

Q Yeah. Did you, your office, have any policies or protocols in effect back in 2017 that you then required or asked carriage companies to do certain things following an accident or incident? For example, interviewing the driver. Interviewing witnesses.

A Yes. They would -- the TEO or Shannon Tilman would respond as procedure.

Q Right. I'm asking whether your office implemented any policies or procedures that required the carriage companies themselves to conduct --

A No.

Q -- that internal investigation.

A Never.

Q Do you know whether anybody from your office interviewed the driver involved in the Big John incident?

A I'd have to see the report. I -- I don't

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recall.

MR. THOMPSON: Okay. Do we have the report handy?

MS. PALMER: Which report?

MR. THOMPSON: Where's the Tilman. Sorry. That's the one thing I don't have. Can we take a quick break?

THE WITNESS: I don't have it either.

VIDEOGRAPHER: Off the record at 10:43 a.m.

(There was a pause in the proceedings.)

(Defendants' Deposition Exhibit No. 2 was marked for identification.)

MR. THOMPSON: On the record at 10:49 a.m.

BY MR. THOMPSON:

Q Okay. Mr. Riccio, I have provided you two documents, and I want you to look at Exhibit 2 first.

A Okay.

Q And tell me what Exhibit 2 is.

A Looks like an equine management report form.

Q And is this the report form that the carriage company would have submitted to you?

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A No. It's not.

Q And what is the equine management form then, Exhibit 2?

A I -- I require a follow-up report regardless whether -- you know, when the company does their report, we always do an after-action, if you will, on our report of the accident.

Q Okay. And then, you will see about midway through, it says incident narrative by Tim Coghill?

A Oh, yes. I'm sorry.

Q Okay.

A Yeah.

Q All right. You see at the top, it says today's date, 4-19-17?

A Yes.

Q And that would have been the date the form was completed?

A Correct. So this is telling me Tim responded to the scene.

Q All right. The equine manager's signature is at the bottom. Do you see that?

A I do.

Q Does Tim Coghill sign this in any form?

A Apparently not.

Q Okay. And then, the information that is

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contained in the narrative, that's all information that was provided by Tom Coghill, correct? I mean, in other words, he put that information in the report?

A That is correct.

Q Is there anything -- and this equine management report form, this is -- certainly, in 2017, was a form that your office used?

A Yes.

Q Was there any other report form used to determine or describe witnesses and their contact information?

A No.

Q Do you know if Mr. Coghill interviewed the driver, Gabby Byrd?

A Well, not according -- reading this, it would indicate that, obviously, Gabby relayed the information to him that's in the report.

Q Or can you tell whether Gabby relayed information to somebody else that then related it to Mr. Coghill?

A That could be possible.

Q All right. My point is, is can you tell from this equine management report who Mr. Coghill actually spoke to?

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A No.
Q Okay. In other words, there is not a list of I spoke with this witness or I spoke with that witness, is there?
A No.
Q It's just a general narrative --
A Yes.
Q -- of information that Mr. Coghill collected?
A That's correct.
Q All right. And this report doesn't specify from where he received the information that he put into this report, does it?
A No. It does not.
Q Okay. Do you know if Mr. Coghill had any first-hand knowledge of the information? In other words, went to the scene where the event occurred?
A Not to my knowledge.
Q Do you know if he was on hand when the horse was on the ground?
A I do not.
Q Or if he was there at the scene when the horse was got back on its feet?
A I do not.
Q Would there be any additional data or

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information from Mr. Coghill concerning this event? In other words, if he took notes on a legal pad and put them in a file somewhere?
A Not to my knowledge.
(Defendants' Deposition Exhibit No. 3 was marked for identification.)
BY MR. THOMPSON:
Q The second document, Exhibit 3 --
A Yes.
Q -- is an equine management report form as well?
A Yes.
Q And it has a date of April 20, 2017. Do you see that?
A Yes.
Q And this says incident narrative by Shannon Tilman.
A Yes.
Q In Ms. Tilman's report, she described what she actually did.
A Yes.
Q Correct?
A Yes.
Q I arrived on scene at the barn, correct?
A Yes.

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Q She described her evaluation of Big John.
A Yes.
Q The horse, correct?
A Yes.
Q And described what she found physically with regard to the horse, correct?
A Correct.
Q Says, Dr. Bird was called to the scene to perform an examination on Big John. Who was Dr. Bird?
A I have no idea.
Q Do you have any reference or recollection of Dr. Bird being Charleston Carriage Works' equine vet at the time?
A I do not.
Q Okay. Do you know why Ms. Tilman would have called -- and I'm just going to tell you Dr. Bird is an equine vet. Do you know why she would have called Dr. Bird in for an evaluation of Big John?
A Whether she calls or the -- most likely was the company that called, and she obtained that information. I'm not certain if she actually made that call. Typically, she asks the -- the owner of company or representative of the company to call

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your vet and have them come to the -- to the barn.
Q Okay. And that's my question.
A Yeah.
Q For example, Ms. Tilman -- she was at the barn before the vet, right?
A Yes.
Q And was it the result of her inspection or evaluation that she then called the vet or had the company call the vet, or do you know?
A It's protocol with us that I would like to see a written clear bill of health from a vet anytime an animal is involved with anything. Even -- even an accident that doesn't even involve impact with the horse.
Q So fair to say then Ms. Tilman doesn't have, at least in your estimation, that experience and background to make that evaluation?
MR. GOLDSTEIN: Object to the form of question.
BY MR. THOMPSON:
Q Is that a fair assessment?
A Repeat that.
Q Yes. What you just said is, is that you would require a vet to come in and provide a written evaluation of a horse following any incident. I

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think that's what you just testified to.
A She's not a vet.
Q Well, I understand, and my question to you is why would you not allow her to do that? Why would you require a vet to come in and do that? Is it because she lacks some experience, training, or background or otherwise?
A I don't think she lacks that, but she lacks the credentials of a veterinarian doctor. So I would consider a veterinarian as a doctor more qualified than she is.
Q Okay. And, in fact, your practice and procedure is to have a vet, a doctor, right, to come in after --
A Right.
Q -- any event or incident to evaluate a horse in addition to what your equine manager is performing?
A Exactly, yes.
Q Okay. Is there any information in Ms. Tilman's report about anybody that she may have interviewed or discussed Big John with?
A No. It's not.
Q Aside from Exhibits 2 and 3, would there be any other records or reports kept in your office

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concerning the Big John incident?
A I would imagine, based on Ms. Tilman's report, that there's a video of the trot test, and I'm sure she has.
Q Okay. Would that be kept in your office's files in some fashion?
A Probably on her computer.
Q Okay. Would it be kept in an electronic file that would be referenced or attached to a Charleston Carriage Works' --
A I'm sure it would be.
Q -- folder in some fashion?
A To the best of my knowledge, I'm sure it would be.
Q Okay. Are you aware or have any knowledge of any photographs being taken?
A Not to my knowledge but I -- I would hope there was some taken. So I don't -- I'm not absolutely sure.
Q Right. Well, you see Ms. Tilman's report, and she describes some abrasions.
A Right.
Q Right?
A Right.
Q Would you generally expect, as -- as part

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of your office's policy to -- to have photographs of those injuries?
A I would -- either phot- -- either video and/or stills. So I'm -- not to assume, but there's a video -- I'm sure the video was taken of the horse's entire body while the test -- she was doing a test. So I -- based on the report, I would say that the video would indicate the abrasions.
Q How about the company's incident or accident report form? Would that be something you would have as well?
A Yes. That would definitely be in the -- their -- the carriage company's file.
Q Okay. The carriage company's report. Okay. You would anticipate or expect, as a result of the Big John incident, for there to be a -- an accident report form or an incident report form submitted by Charleston Carriage Works, correct?
A Yes.
Q That was the policy at that time?
A It was required by ordinance.
Q I was getting ready to say it wasn't just policy. It was required by law, correct?
A I was required by ordinance, yes.
Q All right. Do you know where that form

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may be in your office? I don't know that we have seen it.
A Really? Okay. I would say that it's in their file, and I'm sure we can get you a copy.
Q Who is their file? Charleston Carriage Works?
A Yes. Sorry. Charleston Carriage Co- -- Works.
Q Is that something readily accessible to you?
A I want to say yes.
MR. THOMPSON: Okay. I'll direct this to your lawyer. Can we get copy of that report form now?
MS. HERDINA: No. It's impossible, but we'll be happy to provide it at -- prior to Shannon's deposition.
MR. THOMPSON: Right. I think an appropriate FOIA has been issued to the City for this information, and to our knowledge, I believe that it hasn't been produced.
THE WITNESS: Really?
MS. HERDINA: I'd have to look at the FOIA request and check with our office.
MR. THOMPSON: All right.

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THE WITNESS: If you got a FOIA, you would have got that report.
MS. HERDINA: It just depends on what the scope of the FOIA was.
THE WITNESS: Right.
BY MR. THOMPSON:
Q I don't even know what that report form looks like.
A It's basic. That's why --
Q Okay.
A Yeah.
Q Would -- would the incident or accident report form submitted by Charleston Carriage Works concerning the Big John incident include a description of what happened?
A Yes.
Q All right. And that would have been submitted by the carriage company?
A By the driver or the carriage company. Usually, the driver.
Q Okay.
A And that's why --
Q And that -- that's required by law --
A Yes. It's required.
Q -- to do that?

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A Yes.
Q And it would be something that you would keep in the normal course of your business?
A And we do.
Q And if it hasn't been produced at this point in time with regard to the request, it was just an oversight probably?
A Yeah. We would have to look at the scope of FOIA but, yes.
Q Okay.
MS. HERDINA: We'll be happy to look into it for you. If you can send me the FOIA request.
MR. THOMPSON: I mean, that's a pretty important piece of information and document that we would have expected to receive and be able to talk with him about in this deposition.
MS. HERDINA: I can't really respond until I see the request and when it was submitted and what records we produced, and I just can't get to that today, I'm sorry, but we can do it before Shannon's deposition.
BY MR. THOMPSON:
Q Okay. Are there any other reports or forms that you would expect your office to have with

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regard to the Big John incident?
A Not to my knowledge, no.
Q Okay. If the police are called to a particular incident or accident involving a carriage company, would you, as a matter of course, receive or attempt to receive a copy of the police report?
A We would attempt to.
Q Okay. Would that be something you would request?
A Normally, no. We just take our own notes because once the police department gets involved, it's a different process. It's a -- typically, a TR-10 -- FR-10 form, the traffic document, and if you've ever been in an accident, there's not much information on there, and they do a follow-up report. So, typically, no.
Q Okay. Do you know if any police were summoned to the Big John incident?
A I'm not certain.
Q Do you know if the police created any kind of incident or accident report?
A Not to my knowledge.
Q Would that be something back at that time -- would you have requested it if the police were called?

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A No.
Q Would that be something that the police, at least in your experience, provides you voluntarily?
A No.
Q Because they know who you are and what your involvement is?
A Well, if I asked, yes.
Q But, for example, if the police are called to an event or incident involving a carriage company, would they send you just as matter of course a copy of any incident or accident report?
A No. I'd have to ask for it.
Q You would have to request it?
A Yes.
Q Okay. Did your office, anyone from your office, attempt to figure out what happened with Big John, why he ended up on the ground?
A Based on the report -- well, let me check the report again. I would -- I would base my response, if it's in the report, and this just basically said the horse dumped and fell onto the pavement.
Q Right. Where did that information come from?

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A It's in Tim Coghill's report. Whether he personally observed it, but not wanting to assume, he probably obtained the information either from the driver or another source.
Q I mean, you're assuming that, correct?
A I don't want to assume that.
Q Well, but you just did.
A Yeah.
Q So do you know where Mr. Coghill got the information --
A No.
Q -- that he included in his report that the horse stumbled and fell?
A No.
Q All right. And do you know what investigation, if any, he conducted in order to get that information?
A No.
Q Do you know if Mr. Coghill had any investigation or interviewed any of the firefighters that were on the scene?
A Not to my knowledge.
Q I mean, would you know?
A Not to my knowledge.
Q I mean, can you say one way or the other?

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I mean, he may have or he may not have, or are you telling me he didn't?
MS. HERDINA: I think he answered he didn't know.
A Yeah. I really don't know.
BY MR. THOMPSON:
Q Okay. I think we talked a little bit about this in the time of your first deposition. So I apologize. I just want to make sure I'm clear. If Charleston Carriage Works has received a citation from your office, where would that be kept?
A If they had received a citation, the court -- there would be a copy at the court, if -- the municipal court, and there would be a copy in the officer's file -- the case file.
Q All right. How about in the individual company's folder or --
A Not necessarily.
Q -- file cabinet, if you will?
A No. Not necessarily. If they make a case, they keep a file. It's not pertaining to -- it's not in the same paperwork as the certificate of appropriateness and stuff like that.
Q All right. Does your office not track citations to keep up with trends with any individual

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company if they're getting citations on a weekly, monthly basis kind of thing? Do you not track that?
A We track it, but it's more the officer's keeping their own notes in their own files, and they know and we discuss in meetings, and we have staff meetings and things like that. That's how we would -- would track that trend.
Q All right. But you don't have a repository where, for example, all of Charleston Carriage Works' citations are kept so that you can look --
A No.
Q -- to see their history?
A No. We could -- it's very easily obtained through the court.
Q What court?
A Municipal court. If they have been issued a citation for an event or a violation of a City ordinance, it would be in the court records.
Q What about warnings?
A Warnings, no. That would be in the officers' individual files.
Q Okay. Does your office or your enforcement officers issue warrants?
A Yes. They do.

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Q Okay. Again, to the carriage horse operators, correct?
A More -- yes.
Q All right. And the warnings that might be issued aren't in a court record anywhere, are they?
A No. They're not going to be in a court record.
Q Those things would be in an individual officer's what?
A Their case file. They normally keep a file for incidents.
Q How would -- how would I find or get copies of warnings that were issued to Charleston Carriage Works?
A What I would do is direct Shannon to coordinate with each officer to see which officer is -- had a history with any other companies and any -- any documentation, any warnings or anything of that nature.
Q All right. That's something your office could coordinate, though --
A Yes.
Q -- and obtain that information?
A Yeah.
Q Okay. Does your office have any policies

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or protocols with regard to, you know, following up with companies in the event that they have so many citations over a certain period of time?
A I wouldn't say follow-up if -- no.
Q Okay. Did you have any such policy or procedure back in 2017?
A No.
Q One of the things we talked about in the first deposition, we talked about temperatures and the horses' operation in the city during certain temperatures. Do you recall that?
A Yes.
Q All right. Now, the ordinance requires the carriage companies to take internal temperatures of their horses when?
A When the ambient temperatures reaches or exceeds 85 degrees Fahrenheit at any point during the carriage company's hours of operation, the carriage company operators shall implement a mandatory system of taking the rectal temperature of each working animal immediately after completing a tour.
Q And that is section what?
A That is Section 29-212(E). Wait a minute. G, Subsection 2.

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Q Okay. And then, are the companies required to keep those records?
A Yes. They are.
Q And how -- for how long?
A That's a good question.
Q I get one every now and then.
MS. HERDINA: He's asking the question.
A Right off, at the tip of my head, I don't -- there's a duration they have to keep them, but I'm not certain exactly how long.
BY MR. THOMPSON:
Q Okay. And then, do they have to continue to take the temperatures of the horse repeatedly until the temperature drops below 85 degrees?
MS. HERDINA: Did you say 85?
THE WITNESS: Yeah.
MS. HERDINA: Okay.
A According to this Subsection 2, in the event that the animal's temperatures reaches 103 degrees Fahrenheit or above, the animal's temperature shall be taken every 15 minutes.
BY MR. THOMPSON:
Q That's the animal's temperature. I'm asking about the ambient temperature.
A Oh, the ambient temperature.

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Q Right. I think we just talked about when the ambient temperature hits 85 --
A Yes. That's when they do the -- their system -- implement a mandatory system of taking the rectal temperature.
Q And, presumably, they have to continue to take those rectal temperatures until the ambient temperature drops below 85; is that right?
A Right.
Q In other words, if it -- it's 85 degrees at 8:00 in the morning, then until it gets back to 85 or below, they have to continue to take rectal temperatures?
A Below 85.
Q Okay. Below 85. And then, the carriage company operators keep those records, correct?
A Yes.
Q And they're available for your office's review?
A Yes.
Q Or your enforcement officers' review?
A It will be -- Shannon Tilman, the equine manager, would be only one reviewing it -- yes. Any -- any officer, but I would designate her only.
Q Right. While the carriage company

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operators are required to record -- or to take and record the horse temperatures, is there any requirement for them to send that documentation and/or records to your office --
A No.
Q -- in a contemporaneous basis, like within 24 hours or so?
A No. The records are kept at the barns and under their control, and it is reviewable by us on request.
Q Okay. In other words, they don't have to file anything with you or when they start taking it?
A No.
Q They just have to keep them?
A They have to keep them.
Q And then, make them available if you ask for them?
A Exactly.
Q Okay. How often do -- and let's just say in 2017. How often were your enforcement officers auditing or inspecting the temperature logs?
A None of my enforcement officers would have. However, the yearly inspection by the veterinarian -- or the City's vet would be every year, once a year.

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Q Okay. So the City vet, as part of his or her -- well, it's her, right --
A Her, yes.
Q -- annual inspection, she would review the temperature logs for each horse?
A Right. For as long -- I don't know the -- I can't remember the exact duration of they have -- they have to retain them, but, obviously, it's for that entire annual period. A year.
Q Okay. But that would be part of her review not only just a -- an inspection or evaluation of the horse physically but also --
A Correct.
Q -- an inspection of the records regarding the horse?
A Right.
Q And the horse's operation during the course of that year?
A Yes.
Q And then, that would include inspection of the temperature logs --
A Yes.
Q -- in the event that a -- any particular day hit the magic mark?
A Right.

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Q Okay. Do you know who at each carriage company takes the rectal temperature?
A I do not have knowledge of that.
Q Does it require any skill set, to your knowledge?
A Not to my knowledge -- I don't know. Wouldn't want to do it but --
Q Do you have any knowledge as to whether Charleston Carriage Works back in 2017 had one individual that would be responsible for taking rectal temperatures?
A I don't know.
Q Or do you know whether they used multiple different people in the course of a day?
A I don't.
Q Is there any policy or procedure in your office with regard to the carriage companies and how they either -- who they appoint to take the rectals or how they monitor that situation?
A No. There is not.
Q Okay. Do you know -- or what is the policy with regard to where the rectal temperature is taken? In other words, is it on the street, or is it in the barn?
A There is no policy or procedure for that.

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I -- I don't -- no. I don't know.
Q What does the ordinance require with regard to taking the temperature? How long after a tour is complete?
A If a rectal temperature of an animal reaches between 103 and 103.9 degrees Fahrenheit, the carriage company operator would require the animal to be removed from service and to be cooled down to a temperature of 101.5 degrees Fahrenheit before returning them to engage in work.
Q No. That was not the question.
A What's the question?
Q The question I asked is how long after a horse -- let's just say they hit 85 the degree temperature, right?
A Oh, okay.
Q So you have to take the rectal temperature?
A Right.
Q Right? So how long after a tour is complete does an operator have to complete the rectal temperature?
A I don't think that's specified in the ordinance. I'd have to go through it, but I don't think there is a time limit. There may be.

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Immediately.
Q How does your office interpret that?
A There's probably no way to -- to determine immediately.
Q Okay. Has there ever, to your knowledge, been an instance where a tour has ended and the rectal temperature of the horse has been taken on the street?
A Not to my knowledge.
Q Have you ever seen that?
A No.
Q Would that be something you would encourage or discourage?
A Well, no comment. I don't know.
Q I mean, is that something you would want the tourists to see is having the horse's temperature rectally taken --
MR. GOLDSTEIN: Object to the form of the question.
BY MR. THOMPSON:
Q -- on the street?
A I -- I don't have a -- an opinion either way.
Q Well, I don't know if that falls within your liveability --

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A No.
Q -- whether that would be something that you would prefer not to happen on the street or whether you'd prefer it to happen back in the barn.
MS. HERDINA: I think he referred to the ordinance.
MR. THOMPSON: Huh?
MS. HERDINA: I think he referred to the ordinance, and it doesn't speculate -- or excuse me. Doesn't stipulate one way or the other.
MR. THOMPSON: I'm asking him about his interpretation of his enforcement.
MS. HERDINA: And I think he -- I think he just said he doesn't have --
A I've never seen it, and there's not a -- it's not a violation --
BY MR. THOMPSON:
Q Okay.
A -- of the ordinance.
Q So to your knowledge, and based on your experience, the rectal temperatures are taken out of sight and in the barn area after a tour, correct?
A I can't answer that.
Q Who would be able to answer that question?

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A Shannon Tilman.
Q Okay. Do you have any understanding or knowledge about how long after a tour is complete whether a rectal temperature is taken on average?
A I don't.
Q Do you know or have any information about Charleston Carriage Works' practice or procedure for taking rectal --
A I do not.
Q -- temperatures after a tour?
A I don't.
Q How long it would be after the tour is physically concluded?
A I don't.
Q How do you enforce immediately?
A Obviously, you can't.
Q Okay. Does the City do any inspection or oversight with regard to the -- the equipment used to measure the rectal temperatures?
A Yes.
Q And what does the City do -- and, again, back in 2017, what was the City doing to manage or regulate the equipment being used by the carriage operators?
A Okay. Repeat it one more time. I'm sorry.

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Q Yeah. I'm just asking what does your office do, if anything, to inspect or regulate the equipment used by the carriage operators to determine the rectal temperatures?
A I'd have to defer to Shannon because I'm not there during these times.
Q Do you know if it's a consistence piece of equipment from carriage company to carriage company?
A I truly don't know.
MR. THOMPSON: Okay. All right. I need to take a break.
VIDEOGRAPHER: Off the record at 11:26 a.m.
(There was a pause in the proceeding.)
VIDEOGRAPHER: This is the beginning of Media Number 3 in the deposition of Dan Riccio. We are on the record at 11:43 a.m.
BY MR. THOMPSON:
Q Okay. Mr. Riccio, I appreciate your patience with me today. I have one more area of inquiry, if you will, and, then, I'll probably turn it over to Ms. Palmer here. I want to talk to you about your equine manager and that position. When

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was it first developed or instituted in your office?
A Shortly after the Blondie incident, I believe, in -- I take that back. Hold on. Blondie was in '15. We had just became a department. It was a recommendation of this. So it was somewhere after '15. Probably 2016.
Q Okay. Whose idea was it to have an equine manager?
A Mine.
Q Okay. And what was the thought process that you had at the time to have an equine manager? What do you want to accomplish?
A I wanted to ensure the public and animal lovers that the City would have a mechanism in place to monitor more frequently the habits of the horses and animals in the carriage industry.
Q And then, did you -- how did you decide on what the qualifications or the experience level would be of your equine manager?
A Well, I -- I didn't. I chose to -- just as a backdrop, Shannon was on staff. She was code enforcement, but she's raised horses, owns horses, and to this date, has them on her property. So she was one of the most experienced persons I knew. So I decided, based on -- I won't say complaints --

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well, complaints and concerns from the community that the animals aren't being taken care of and treated inhumane, I felt it was probably important to have her certified in the areas so that she could identify any signs of cruelty or distress on the horses and things like that.

Q Okay.

MS. HERDINA: Can I interrupt for a second? Did someone just get on or off?

MR. THOMPSON: Yeah. Ellen, did you just jump on? Ellen? Hello? Ellen. I know she's running around, and she's on and off from what I understand.

MS. HERDINA: So for the record, right now, no one is on the phone; is that right?

MR. THOMPSON: I guess. Ellen, if you're on the phone, please respond. Okay. Apparently, she's not. And just for the record, I understand that she is running around, literally. I just talked to her, and she was at the post office. So I think she's in and out.

MS. HERDINA: Okay.

MR. THOMPSON: So -- and she's the only one that I'm aware of that has been

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participating throughout the deposition or at least --

MR. GOLDSTEIN: I thought you said Ms. Poge (phonetic) was on the call.

MR. THOMPSON: I am not aware of her being on. Ellen?

MS. HARLEY: Excuse me. This is Ellen. I hit the wrong button. I tried to push the not mute, and I took it off so --

MR. THOMPSON: All right.

MS. HARLEY: -- I'm here.

MR. THOMPSON: Very good. Thank you.

BY MR. THOMPSON:

Q All right. Now, I don't even know what I was asking you. Okay. Yeah. Ms. Tilman. And my question, I guess, is at this point, did you -- did you devise or think of the equine manager position and then come up with those qualifications and then go hire somebody, or did you say we have somebody in -- on staff that has what could be the makings of an equine manager position?

A Yes. The last --

Q Which one is that?

A The -- I had someone on staff that could -- could possibly be the -- the candidate or a

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good choice to --

Q All right. And -- and then, I guess I'm trying to figure out what it was about her that led you to believe that she would be what you wanted in an equine manager.

A Well, equine -- anything equine was new to me just coming into it, and I had no idea. No knowledge. I knew of no one. I didn't think it was -- I knew there was no equine manager of its sorts that -- in the country. So I had to start something that hadn't been created yet.

So I just went on my -- I say my, professional relationship with her knowing that -- how she cares about animals. Full disclosure, I took my grandchildren to her little farm, whatever, and horseback ride, and I saw her interact with the -- the horses. So I felt this is a no-brainer.

Q Okay. Did you create the equine manager position and then hire Ms. Tilman into it?

A Well, it was pretty simultaneously. I -- I -- I had to get approval through -- through the mayor's office and budgeting because she was a -- a code enforcement officer. So what we did was split the duties. So at the beginning of all of this, she was just part-time equine management, part-time code

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enforcement. And that's what they budgeted -- they would budget for.

Q Did you have to create a job description for Ms. Tilman?

A Yes.

Q In other words, the equine manager's position?

A Yes.

Q And would that be -- I don't have it either in front of me, but that would have been something you would have submitted to the mayor or City Council for approval?

A Well, the -- well, no. It would go through human resources and budgeting and finance.

Q Okay. And then, you would have to have a -- a job description in order to -- to fill that position?

A Correct.

Q Okay. Has that job description changed over the course of time at all?

A No. It's basically the same, I believe, to my knowledge.

Q In other words, if I got a copy of the job description --

A No. It would be the same.

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Q As when the position was originally developed?
A Uh-huh.
Q Is that yes?
A Yes.
Q Okay. Do you have any recollection of what the educational or experience requirements were for that position?
A No.
Q Does it have any?
A No. Well, associate degree.
Q An associate's degree?
A All our TEOs and code enforcement is a minimum of an associate's degree.
Q Okay. But with regard to the equine management or manager's position, the job description would include a requirement of an associate's degree?
A Yes.
Q Would it include anything else?
A And/or related experience in the job.
Q Okay.
A If you don't have the associate's degree, if you could show that you have so many years of experience in whatever, then that would suffice per

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HR's requirement.
Q And clearly, your equine management or manager position doesn't require any kind of veterinarian degree?
A No.
Q That's correct?
A That's correct.
Q Okay. Does Ms. Tilman have any kind of certificates or similar educational training that she's achieved?
A Yes.
Q Concerning equines?
A Yes.
Q And what -- what experience or education has she obtained since becoming equine manager with regard to formal certificates or formal education?
A Formal certificates include animal cruelty investigator. It was a three-tier course around the -- several locations throughout the country, and I don't know the exact name. I don't have the list in front of me. She also attended another certification at, I believe, two in Denver, Colorado, for equine animal cruelty investigator. She's certified with that.
She attended a course at Clemson for

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equine management, obtained a certificate in that, and she also obtained a certification in veterinarian assistant, where she had to do externship and things of that nature to qualify for the certification.
Q Did she have any of these certifications before she took the role or took the job as equine manager?
A No.
Q These are certifications that she's obtained over the course of time?
A Yes.
Q Do you know how or have any information as to what certifications she had at the time of the Big John incident in April of 2017?
A No. I don't -- I don't have an idea, no.
Q And, presumably --
A I'd have to --
Q -- that would be in her personnel file somewhere?
A Yeah. It's there, yeah.
Q Okay. And, typically, you would expect her personnel file to include the dates when she obtained these certifications?
A Yes. Absolutely, yes.

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Q And copies of the certifications?
A Yes.
Q What is -- let me ask -- and let me ask you in 2017, what was Ms. Tilman's duties, obligations, responsibilities as equine manager for your department?
A Her duties were to patrol the area -- or the zones where the horses are routinely going out on tour. She looks for any deficiencies with the equipment on the horse and the carriage. She monitors the horse itself or the animal itself to see if there's any case -- any indications of stress.
She conducts barn inspections. I wouldn't say unannounced. The ordinance says we have to give them 30 minutes, I believe, notification, but she does that on a routine basis instead of yearly by the -- the vet -- veterinarian.
Q Okay. In 2017, what experience or training did Ms. Tilman have with carriage equipment?
A I believe she had -- if I'm not mistaken, she's got a lot of online courses that she's -- she's done, and it included these nomenclature of equipment and things. I just don't know the dates.

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Q Okay. Because you testified in 2017 she would have been responsible for identifying deficiencies in equipments and the carriages --
A Uh-huh.
Q -- that she would observe on the street; is that correct?
A Yeah.
Q So presumably, she has --
A Presumably, she does. I just don't know the date.
Q Okay. Did your office provide her any background, training or otherwise on the carriage equipment?
A No.
Q So whatever she has obtained by way of training or information has been on her own?
A No. We paid for it. We sent her to these schools to learn everything that she could about the horses.
Q Well, I guess a better question is, is how did she identify what she needed to go see or attend? Did you identify those things for her?
A She identified them based on her experience and with -- with carriage -- horses, raising horses, having horses, grew up with horses.

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So she was very familiar already with it. I don't believe she was -- I know she wasn't, per se, trained in 2016. I know in 2017, she started receiving training.
Q Okay. But did you, as her boss or department head, identify areas that you believed or required her to get education in?
A I would say yes.
Q Okay. Do you recall which -- which areas those were?
A First and foremost any -- the anatomy of the horse animals, and the -- any identification of equipment, I did say -- advise her concentrate on your courses that include, you know, taking care of an animal, identifying animals in distress or being able to give some type of aid and to know what the equipment does and how it should be installed or whatever on the horse.
Q Okay. And then, you mentioned initially Ms. Tilman was part-time equine manager?
A Yeah.
Q How long was she part time?
A Probably a year and a half. Probably close -- I think it was 2018 when she was full time.
Q Okay. So at the time of the Big John

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incident in 2017 --
A She was part time.
Q -- she was a part-time --
A Yeah.
Q -- equine manager and part-time enforcement officer.
A Yes.
Q Is that fair?
A Yes.
Q Okay. You described periodic barn inspections; is that right?
A Yes.
Q Who developed the protocol for the barn inspection?
A It would have to be her.
Q In other words, is there a list of things that she goes and checks?
A I believe she does have a -- a checklist.
Q All right. Is that something that, if she goes on a barn inspection, she would check the boxes, so to speak, and then keep that inspection somewhere?
A Yes. Uh-huh.
Q Is that a yes?
A Yes.

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Q Where would those inspections be kept?
A Should be in our inner gov -- what we call -- it's a tracking system for enforcement. If not there, it would be -- because we're transitioning to that program. She would have a -- an electronic file on it.
Q Would there not be -- for example, if Charleston Carriage Works had received a surprise or somewhat surprise inspection, barn inspection, the report that would be generated from that would not be kept in their file or folder?
A Not their name, no. It would be her individual inspections.
Q And where would that be kept? I mean, is it on a --
A She would have the -- possession of all those records.
Q And when you say she, she is part of your office, correct?
A Yes.
Q And so when you say she would have it, does that mean she would physically have it on a computer that she has control of?
A Yes.
Q Okay. Like a laptop or something?

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A No. It's a hard drive or a hard top, whatever.
Q A desktop?
A Something, yeah. Computer.
Q Okay. Would -- for example, though, would you have access to that -- those reports?
A I would go -- go to her and ask what I need information on this particular company, and she would give it to me.
Q Okay. Poor question, right? The better question being if it was on a network, that you could then pull it up yourself?
A I don't believe that's on a shared drive. We do have shared drives. It may be on a shared drive.
Q Okay. And to your knowledge, did you, in 2017, for example, have the ability to look up barn inspection reports?
A No. I wouldn't say probably until -- I can't say that. It's possible.
Q What was your or what was or what is your practice and policy for keeping those barn inspection reports? How long?
A Well, I hadn't -- really, forever. I don't think -- I don't anticipate purging them at

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all, but I'm sure there would be a cap at some point in time.
Q So, for example, you would anticipate that Ms. Tilman, if she performed any barn inspections of Charleston Carriage Works in 2017, that they would be kept by her in some form or fashion --
A Yes.
Q -- and still have?
A I feel confident she would.
Q Okay. You would not expect those things to be discarded --
A No.
Q -- or trashed?
A No. I would hope not.
Q Have you, yourself, or anybody else in your department reviewed the barn inspection protocols --
A I don't --
Q -- to determine whether you will add or subtract anything?
A I leave it at her direction.
Q Okay. Does Ms. Tilman inspect any of the temperature logs?
A Yes.
Q Would that be during a surprise barn

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inspection, or could that be just any given day of the week?
A Any given day of the week, but we have to notify them.
Q But you have to notify the company that you're coming?
A Yeah. Yes. That's what the ordinance indicates in the ordinance.
Q Okay.
A We have to give them notice. I want to say 15 minutes. 30 minutes. Something like that.
Q All right. Well, I understand that may be for a barn inspection, but as far as just simply looking at their records --
A Records. Any recordkeeping.
Q It doesn't matter.
A It doesn't matter.
Q You have to give notice or --
A You got to give notice.
Q To the company that you're coming before you get there?
A Yes.
Q Okay. Does your office have any guidelines for Ms. Tilman with regard to her periodic inspections, for example, of the rectal

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temperature logs?
A No guidelines that I'm --
Q In other words, I want you to go out, and I want you to look at these once every month?
A She -- I ask that she at least inspect -- I would say monthly. It's not in concrete in stone, but I would say she routinely checks and -- and inspects at least two of the companies once a week, and then, there may be more. There may be less. That's what I require.
Q And -- and those would include the temperature logs?
A No. We don't get to keep the temperature logs. Those stay with the company. We are allowed to review them because it's their property. So it gives us, you know, the opportunity to review them, but we leave them there unless we find a deficiency and she takes -- either gets a Xerox copy of the -- the record or takes a good photo of it, in case we have to pursue other methods.
Q Right. My question was simply an occasional audit or review of the temperature logs. Is there any policy or procedure that you have that says, Ms. Tilman, you need to be looking at the temperature logs every third week or every month or

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once every six weeks?
A It's my understanding that I've discussed with her when she does an inspection at any time, she needs to take care of that duty then. Not necessarily, okay, I want each one done a month, no. Not at this time, no.
Q Okay. Because I recall from your earlier testimony the annual inspection by the outside vet includes the annual -- or that City vet taking a look at the logs, temperature logs, correct?
A Yeah. That's once a year.
Q All right. And I understand. That's why I'm trying to figure out who is looking at them from the City's perspective --
A She's --
Q -- during the year?
A She -- Shannon is.
Q Okay. And how often is she seeing or reviewing the temperature logs from the companies?
A I'd -- I'd have to defer to her to ask her that.
Q Okay. And I -- fair. Just checking to see what your oversight is and what you know about her inspections.
A Yeah.

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Q Do you know anything more than that?
A She reports back to me. I don't direct her when, where, why. I -- I trust in her abilities to do so, and if I need something, I ask for it, and I usually get it, the answer I need.
Q Is Ms. Tilman responsible for enforcing the ordinance with regard to stall size?
A That would be part of her duty, yes.
Q Okay. The ordinance does include requirements for stall size?
A Yeah.
Q Correct?
A Yes. It does. I'd have to find it. Refresh my -- let me get to that because I know it's coming. Stall, stall, stall. Come on. Feedings. Stable and stalls. All right. Whatcha need?
Q Is she responsible for the enforcement of the stall sizes?
A Yes. She is.
Q Okay. Is there anything that your office has done, for example, to establish a baseline for these barns or stables? In other words, here is the layout. Here is the stall size. So that you don't have to do it every time you go in there.
A Right.

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Q Have you-all done anything like that?
A No. Rephrase that for me.
Q Yeah. Has your office -- does your office have a master layout or anything similar that you could refer to on a regular basis?
A Not what -- just what is required by the ordinance.
Q But -- right. The ordinance requires a certain stall size for the animals, correct?
A Yes.
Q Right. And the way to determine that is to go measure it, right?
A That is correct.
Q Okay. Well, my question is instead of measuring every time you go down there, is there a master sort of list where you have said, okay, we measured these stalls on this day and these -- Stall 1, 2, 3 and 4 were these sizes?
A I don't believe we do.
Q Okay. Is there any historical data in your office with regard to the barn or stable stall sizes downtown?
A That's a good question. I can't answer that.
Q Okay.

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A No.
Q Do you know when or if the stall sizes have been measured in the last three years?
A No. It's my understanding that the stall sizes were established at the time the companies were formed. I don't know where to put my hands on it. There could be documentation. I'm not sure.
Q Okay. Do you know or have any information as to when Ms. Tilman last measured a stall downtown?
A No. She would know that.
Q Has she ever, to your knowledge?
A I have no idea. I'm sure she has. I heard her mention about if the stall's adequate and just, you know, when she reports the hay, she talks about the hay size and padding and things like that. I have got a lot going on. So I just let -- I trust in her abilities to do that.
Q Right. And all of those requirements are in the ordinance, correct?
A Yes.
Q In other words, how big the stall should be?
A Yes.
Q Padding that should be supplied?

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A Yes.
Q Hay or other material that should be included?
A Yes.
Q All right.
A Yeah.
Q Is there any kind of monthly or annual audit that your office or that Ms. Tilman performs to confirm those requirements? In other words, stall size? The padding? Those sorts of things?
A I'd have to speak with her. I know she documents everything, and if I ask for something, I usually get it. So I don't -- I don't know.
Q All right. And I didn't know if there might be an annual inspection report or annual sort of compliance guidelines or --
A The annual inspect- the only thing I could say is it would be on the annual inspection report by the vet and, then, routinely, when she goes, it would be in her notes of inspections.
Q Does the outside vet have the obligation or duty to take measurements of the stalls?
A No. That's a good question. I don't know. I'm sure she does, but I'm not certain.
Q Do you know -- have you ever assigned her

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that task?
A I have not.
Q Or asked her to confirm the conditions of the stalls with regard --
A Conditions, yes. I've never concentrated specifically on stall sizes. That's something that I -- that I rely on her to have the knowledge to do because I'm not -- I know the generalities of the -- the ordinance, but I'm not doing it day by every day.
Q Well, I understand, but it's your job to enforce the ordinance, correct?
A It's my job to direct people to enforce the ordinance.
Q Right. And I'm just trying to figure out how -- how the sizes are enforced.
A I'm sure if I asked her, she would let me know.
Q Ms. Tilman?
A Yes.
Q Okay. How about with regard to the hours the horses are working and the rest the horses are receiving? Who -- who is responsible for enforcing those ordinances?
A Shannon Tilman.

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Q Okay. Are any of the other enforcement officers involved in that determination?
A No. Not -- not at all.
Q Okay. And then, what does she do to enforce that ordinance?
A I do know that she will inspect the records. She has indicated to me when she has to go to the pastures -- pastures. She'll visit the pastures to make sure that the horses are where -- you know, off of work or if they're there, to -- to check on them. She's -- she's gone to every one of them. I don't know how routinely, but I know she -- she cross-checks the records with the pasture visits, and she would have that in her -- in her notes.
Q Have you implemented any policies or procedures for her with regard to the auditing or confirmation of the work hours and/or rest periods for the horses?
A Not other than what's in the ordinance itself about days they work and rest times.
Q I understand, but do -- have you told Ms. Tilman you need to go to the pasture once every six months or once every three months --
A No.

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Q -- to determine whether the horses are resting in accordance with the ordinance?
A No. She -- she does that as part of her normal duties.
Q Okay. And in 2017, during the Big John incident, she was supposed to enforce these ordinances on a part-time basis?
A Yes.
Q At least with regard to the horses?
A Yes.
Q Okay. Is anybody else involved in overseeing or auditing the rest of vacation and the hours worked for the horses other that Ms. Tilman?
A Just Ms. Tilman.
Q Do -- do any of the other enforcement officers ever get involved in reviewing records or barn inspections? Anything like that?
A No.
Q It's just Ms. Tilman?
A Just her.
Q Okay. With regard to Ms. Tilman, you described that she had had some experience with horses in her lifetime.
A Yes.
Q Do you know if she had any experience with

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draft horses prior to becoming an equine manager?
A That, I don't know. A horse is a horse. That's all I know. I don't know the difference.
Q To you, a horse is a horse?
A To me, yeah. I --
Q Okay.
A I don't know if it's -- if it's a draft or a regular. I don't know the nomenclature.
MR. THOMPSON: All right. Mr. Riccio, I think I have had enough for now.
THE WITNESS: Thanks.
MR. THOMPSON: I appreciate your patience with me. I know this has been a time to go through. So I think Ms. Palmer has got some questions for you.
THE WITNESS: Okay.
MR. THOMPSON: But thank you.
THE WITNESS: Yep.
MS. PALMER: The ordinances have been marked as 1, correct?

EXAMINATION

BY MS. PALMER:
Q Are you ready, Mr. Riccio?
A Yes, ma', am.
Q All right. We've met before, but, again,

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I'm Beth Palmer, and I represent Charleston Animal Society. We discussed a little bit earlier -- you discussed with Trey the ordinance 29-240, and that's the last page of those ordinances that you have as Exhibit 1.
A Yes.
Q And it's correct this is the ordinance that dictates what reporting requirements exist for any type of incident or accident?
A Yes.
Q And it does require that the driver of the vehicle make the report; is that correct?
A Yes.
Q And Trey asked you about severity of injury. It's any bodily injury, correct?
A Yes.
Q Not limited to significant injuries?
A No.
Q Same with injury to animals. Any injury to animals should be reported?
A Yes.
Q And same with any injury to property, correct?
A Yes.
Q The carriage companies can't decide on

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their own that something isn't significant, an injury isn't significant enough to report, can they?
A No.
Q I'm going to hand you what I'd like marked as Exhibit 2, and this is.
MR. THOMPSON: It's Exhibit 4.
(Defendants' Deposition Exhibit No. 4 was marked for identification.)
BY MS. PALMER:
Q 4. I'm sorry. Is this the report form for -- that's supposed to be filled out by the driver when there's an incident?
A No.
Q What is this?
A This is our own internal tour vehicle accident report.
Q Okay.
A The one that the driver does -- well, wait a minute. That could be right. Hold on. You are correct. I'm sorry. This is the one. I confused it with the equine report, yes. This is. I'm sorry.
Q Gotcha. All right. So this Exhibit 4, this involves an incident occurring on -- it's right there in the middle, 8 -- I'm sorry. February 19th,

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2017.
A February 20th?
Q That was the today's day, and I looked down right in the middle of the page, incident/accident information. Time and date.
A Okay. Yes.
Q Would that be the accurate --
A Yes.
Q -- day of the incident?
A Yes.
Q Okay.
A Yes.
Q And do you recall this incident, a horse named Chief owned by Charleston Carriage Works, backed into a car, I believe, after being spooked by a parade?
A Oh, yes. I do. I do.
Q Okay. And is it correct that looking at this form that no bodily injury is reported?
A It says no animal injury. No bodily. No, it does not.
Q Okay. So if there were bodily injuries, you would expect that bodily injury to be circled, correct?
A Yes.

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Q Or otherwise indicated?
A Yes.
Q All right. If you turn -- and this was a horse owned by Charleston Carriage Works, correct?
A Yes.
Q If you would, turn to the second page of Exhibit 4. It's a typed narrative presumably from Mr. Christoff, or somebody at Charleston Carriage Works, and my question --
A Yes.
Q Let's see. That last paragraph on the first page of the narrative, afterwards, an abundance of caution and because he fell, we chose to send the driver with EMS to make sure there were no concussive injuries. Thankfully, Will was examined, cleared and released.
Does that indicate to you that -- that Will was fine?
A Afterwards --
MS. HERDINA: I'm going to object to the question.
A Yeah.
BY MS. PALMER:
Q Okay. But you can answer.
MS. HERDINA: You can answer. Object to

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the form of the question.
A Yeah. Can you rephrase that?
BY MS. PALMER:
Q Sure. Reading that first sentence starting afterwards, would you conclude from reading that that Will, the driver, was not hurt?
A Only thing I can conclude is that there was a caution -- precautionary decision of send him to the hospital. I don't know if he had any physical injuries. It doesn't say that, but I would think that in the -- it says here, in the abundance of caution, even though there's no visible injuries shown, it's indicating that, obviously, fell and they wanted to make sure that he was okay. That's -- that's all I get out of it.
Q Okay. But there's no indication that he was harmed?
A No.
Q That there was bodily injury, correct?
A Well, it depends on how you interpret it, but if there's no indication there was bodily -- no. Not to me. Not in this.
Q Okay. And then, we're going to come back to this. So please hold onto that. I'm going to hand you what I'd like to be marked as Exhibit 5.

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(Defendants' Deposition Exhibit No. 5 was marked for identification.)
BY MS. PALMER:
Q And that is a February 27th, 2017, e-mail from Will Green to Shannon Tilman, and the last sentence of the big paragraph in the middle, I was taken to MUSC, where I was diagnosed with a concussion, a bruised back and burns on my leg.
A Okay. Yes. It does.
Q Should Charleston Carriage Works have reported that as bodily injury?
MR. THOMPSON: Charleston Carriage Works.
BY MS. PALMER:
Q Charleston Carriage Works.
A I would assume so if there were indications at the time, yes.
Q Okay. Would it violate the ordinance if there are bodily injuries and an incident and they are knowingly not reported?
MR. GOLDSTEIN: Object to the form of the question.
A Repeat it.
BY MS. PALMER:
Q Would it violate the ordinance if at the time of the incident, injuries are apparent but not

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reported?
MR. GOLDSTEIN: Object to the form of the question.
BY MS. PALMER:
Q You can answer.
A Well, technically, yes. It would have to be, according to this, unless it was an oversight.
Q Okay. Looking back at Exhibit 4, which is this --
A Yeah.
Q The narrative. I'm going to read you a sentence above that last paragraph on the first page of the narrative.
A Uh-huh.
Q The impact, however, caused the driver to fall from the carriage, whereupon, he immediately went to the horse to control and settle the situation.
Reading that sounds like the driver got right up, correct?
MR. GOLDSTEIN: Object to the form of the question.
BY MS. PALMER:
Q What was your impression from reading that sentence?

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A Can I – can we –
Q Absolutely.
A – pause and let me just read through this?
Q Absolutely. And same for any of the documents I'm going to show you.
A Yeah.
Q Okay. So my question is the sentence in the Charleston Carriage Works' narrative of this incident, the impact, however, caused the driver to fall from the carriage, whereupon, he immediately went to the horse to control and settle the situation. What's your impression of how long the driver was down on the ground?
A It says immediately.
Q Okay. And then, if we go back to Exhibit 5, which, again, was the driver's e-mail, would you like the chance to read that entire thing? It's absolutely fine if so.
A I'll just do the highlighted. That's probably what you're going to ask.
Q Exactly.
A Go ahead.
Q All right. The narrative from the driver says, I hit the ground head first and was pulled out

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from under the carriage by a bystander. Once I reoriented myself, I stood up and walked over to my horse and held him until a young lady who assured me she had horse experience could hold him because of a physician on scene telling me I needed to lay down because she had watched me fall.
Do you think that the Charleston Carriage Works' narrative is consistent with what the driver --
MR. GOLDSTEIN: Object to the form of the question.
BY MS. PALMER:
Q -- is telling you?
MR. THOMPSON: Charleston Carriage Works.
MS. PALMER: Charleston Carriage Works, thank you.
MR. THOMPSON: Carriage Works.
MS. PALMER: Carriage Works.
MR. THOMPSON: You keep saying horse.
BY MS. PALMER:
Q Oh, Charleston Carriage Works. Do you believe that the narrative that they gave to the City -- that they gave to you describing that incident is consistent with the driver's?
MR. GOLDSTEIN: Object to the form of the

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question.
MS. PALMER: What's the basis of how --
MR. GOLDSTEIN: Pitting. You can't pit two statements against each other. That's crazy.
MS. PALMER: Pitting? I'm asking his impression. Does he believe this statement is consistent to that.
MR. GOLDSTEIN: Object to the form of the question. It's pitting.
MS. PALMER: All right. How about this, which, actually, I don't think it's a proper objection but --
MR. GOLDSTEIN: Well, we'll sort it out later. He can answer the question.
MR. THOMPSON: He just objected. It's all good. We don't have to talk about it.
MS. PALMER: Yeah. That's fine.
BY MS. PALMER:
Q Does the Charleston Carriage Works' statement narrative of this incident fully explain like the driver's does?
MR. GOLDSTEIN: Object to the form of the question.
A There's a – there is a difference between

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the two.
BY MS. PALMER:
Q All right. Does it appear to you that Charleston Carriage Works was attempting to minimize the severity of the injuries?
MR. GOLDSTEIN: Object to the form of this question.
A I can't answer that.
BY MS. PALMER:
Q To you -- in your personal opinion reading them.
MR. GOLDSTEIN: Object to the form of the question.
A All I can say is there is -- there is two different variations or two of those. I can't say that they're trying to minimize it, but that's all I can say.
BY MS. PALMER:
Q And who would -- Shannon Tilman, obviously, received this e-mail from the driver. When -- is there any procedure in place where she provides this to you or anybody else in the department?
A Normally, they -- it's done verbally. I don't – I don't read every report that's taken.

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I – I trust in her ability to take care of that, but if there's something that she's really concerned about, she would emphasize to me we need to really look at this, but that didn't occur.

Q Okay. If the -- if a report that is given by the company is drastically different than one given by a driver, would you expect her to go back to the company and say what's going on?

A Well, I can't say that – put words in her mouth, but if it were me, I would –

Q Okay.

A – double-check.

Q And I'm asking you as her boss --

A Yeah.

Q -- of overseeing, would you expect her to go --

A I – I think it's – it's – it's appropriate for her to find out.

Q Okay. On the first page of Exhibit 4, which is the report form, the cause of the incident is listed as the Charleston Police Department, and, then, you've read the narrative as well from Charleston Carriage Works. Does it appear to you that Charleston Carriage Works thought the incident was Charleston Police Department's fault?

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A Well, reading this narrative, I would say yes.

Q All right. Is it fairly common whenever there's an incident that a carriage -- with a carriage horse, that the carriage company puts blame on the City? Puts blame on your department?

MR. GOLDSTEIN: Object to the form of the question.

A There's always blame, but I – I wouldn't – I don't recall any other time –

BY MS. PALMER:

Q Okay.

A – that that has occurred.

Q All right.

(Defendants' Deposition Exhibit No. 6 was marked for identification.)

BY MS. PALMER:

Q I'm going to hand you what -- I think we're on Exhibit 6, and this is a -- another --

MR. GOLDSTEIN: Is that a photo?

MS. PALMER: No.

MR. GOLDSTEIN: Oh, is that part of 5?

MS. PALMER: It's -- I'm not going to use it.

MR. GOLDSTEIN: Oh, okay.

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MS. PALMER: It's part of that report, but we're not discussing it. I mean, it's -- I'm happy to. I'm trying to speed it up.

MR. GOLDSTEIN: Okay. So 6 -- 6 is dated 3-30-16?

MS. PALMER: Correct. Has today's date and it's an incident/accident report form.

BY MS. PALMER:

Q What I'm going to do is take you through a couple -- several incidents, actually, involving one horse, Luke. The next -- before we start, on this form, it says incident/accident. Is there a difference between an incident and an accident?

A Well, we want – our attempt is to capture anything that happens with a carriage, whether it be – an accident would be considered as a vehicle versus carriage, carriage versus vehicle. Some kind of situation where the police definitely has to take or gives the option to take a report. Sometimes it's just like two people that are involved in a collision if there's not a lot of damage.

A lot of times, people settle and then go on their way, but an incident would be in – someone falling off, you know, it didn't – wasn't caused by another car or any other object. They

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either fell off the carriage or some other type of situation.

Q Okay. So accident would be something typically where maybe the --

A Police.

Q Police.

A Accident would be police related.

Q Okay. Got you. All right. So this incident, it appears occurred with a horse named Luke owned by Charleston Carriage Works on March 29th -- Carriage Works on March 29th, 2016.

A Uh-huh.

Q And listed as an accident, that horse backed up and damaged a vehicle. Would you take a second and read the narrative of what happened?

A Uh-huh.

(Mr. Thompson left the room.)

A Okay.

BY MS. PALMER:

Q Okay. So this incident appeared -- Luke was spooked by construction crew, correct?

A Yes.

Q And Charleston Carriage Works has indicated that the cause was this time the City of Charleston construction crew. Is that --

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A I believe it is.
Q Okay. Is --
A With a City of Charleston crew? Wait a minute. No. You're saying City construction?
Q I'm looking at the first page, where it asks the carriage company to write in the cause of the incident. Right there in the middle.
A City of Charleston construction crew. It's not our construction crew.
Q Okay. I didn't think the City has -- City of Charleston has --
A It would be a road project that --
Q Okay.
A -- I don't -- it wouldn't be City of Charleston.
Q But it's fair to say that construction noises would -- is indicated as the cause of this horse spooking?
A Yes.
Q Is the amount of construction downtown increasing or decreasing?
A Construction?
Q Uh-huh.
A Increasing.
Q Right.

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A Yes. No offense.
Q Would it -- it'd be accurate to say that the carriage industry largely relies on the City, and specifically your department, to warn of situations that might spook horses?
A And we do.
Q And those are situations that are ever present in urban environments?
A If -- are not reported to us as approved for -- for road closure and/or obstruction, yes.
Q Okay. Do you -- well, let me rephrase that. Could the carriage companies operate safely downtown without the assistance of your department in giving them the warnings and the information that you give them?
A Well, I think it's a two-way street, but I think it's good for them to operate and know what's out there that they're not aware of. So it's -- I think it's an integral part for everyone involved. I won't say they can do it without us, but it's really good to know and be forewarned if there's obstructions, and that's why I have that protocol in place.
Q Okay. Looking at the report form, does -- it indicates that there was no animal injury, right?

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A You are correct.
Q Okay. I'm going to give you what I'd like marked as Exhibit 7.
(Defendants' Deposition Exhibit No. 7 was marked for identification.)
MS. PALMER: This is the --
MR. GOLDSTEIN: 5-27-17?
MS. PALMER: It's the equine management report form dated 3-29-16, and I'm also going to ask you to look at Exhibit 8.
(Defendants' Deposition Exhibit No. 8 was marked for identification.)
MS. PALMER: Which accompanied that report. Thank you. Short arms.
BY MS. PALMER:
Q So the equine management -- the equipment management report form for this incident, that was filled out by your equine manager, Ms. Tilman?
A Yes.
Q And it indicates there was animal injury, does it not?
A It was -- yes. It appeared to be so.
Q Okay. So, again, the Charleston Carriage Works violated the ordinance by not accurately reporting animal injury.

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MR. GOLDSTEIN: Object to the form of the question.
A Well, I'd have to put it all -- factors into play to say they actually violated the ordinance. I would really need to -- since Shannon responded, oftentimes, it's not -- just these reports you're showing me, they're not really filled out adequately, and -- which is commonplace. So we -- we do have to follow up like we did here. So I --
Q So it's commonplace that -- I'm sorry.
A I forgot your question.
Q I was asking if it -- Charleston Carriage Works, by not reporting animal injury, violated the ordinance regarding reporting.
A That would have to be determined by Shannon Tilman, who was following up. Whether it was an oversight or what, I can't answer that.
Q Okay. You said that it's commonplace that the reports filled out by the carriage companies aren't accurate --
A Well, a lot of them are the drivers, and they're just going so fast, it's -- it's not very legible.
Q Uh-huh.

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A And so we -- we do have that problem from time to time, yes.
Q All right. And we went over this a minute ago. The ordinance requires that the driver of the carriage fill out this form, correct?
A Yes.
Q But here, we have got Mr. Christoff filling out the form.
A That's -- yes. It is.
Q Is that something that should have been followed up with, gotten -- I mean, obtained a report from this particular driver?
A Well, yeah. It's -- it has been -- yeah. Yes. I would say yes.
(Defendants' Deposition Exhibit No. 9 was marked for identification.)
BY MS. PALMER:
Q Would you please mark that as Exhibit 9. Is it -- Exhibit 9 is the -- is the equine management report form dated 5-25 of '17. This is the second incident that I have given you documentation of concerning this horse Luke. If the City had an accident/incident report from this particular incident, it would have been produced in response to a FOIA request, a proper FOIA request

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that would ask for everything regarding this incident, correct?
A It should be, yes.
Q All right. Who's responsible for ensuring that the accident/incident reports are completed and turned in?
A Shannon Tilman, if she reported it. If she's not available, then it could be a tourism officer completing it.
Q Okay. If you would take a minute and read that -- those couple of paragraphs describing what happened.
A Okay.
Q So there is -- it describes Luke, the same horse, getting spooked for no apparent reason and becoming uncontrollable, running down the street, right?
A Yes.
Q Would you agree that that's not a safe situation, a horse on the loose?
A I would say it's not safe.
Q It puts not just the passengers and the animals at risk but also bystanders?
A Yes.
Q I'll tell you that when Mr. Christoff was

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deposed, he testified that the driver in this incident sustained a head injury and was hospitalized out of work for two months. Those are substantial injuries, I believe. So at this point, in your opinion, should this horse, Luke, have been taken out of the rotation after two incidents like this?
A I can't answer that.
Q Do you have the ability to take or order that a horse come out of the rotation?
A Not necessarily, no, unless there's injury to the horse that we feel that needs to be cleared by a vet.
Q Okay.
A These are -- they're private property, and they're operating a business. So we only have so much regulation over them.
Q Have you ever advised or recommended to one of the carriage companies that a particular animal be taken out of work?
A I don't recall right offhand, but I -- it's possible.
Q All right. So three weeks after this incident that we just read about when he ran down the street after being spooked by something, there

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was another incident with this horse, and I think you may remember the video of that when I show it real quick. This video I'd like to be Exhibit 10. The name of the video is horse on the loose, and I will send that to the court reporter.
(Defendants' Deposition Exhibit No. 10 was marked for identification.)
BY MS. PALMER:
Q I just need it to be turned on. I had it set up. It must have turned off. So -- I'm sorry. The name of this file, the video I'm about to show you that's going to be Exhibit 10 is Runaway Luke.
(Video playing.)
BY MS. PALMER:
Q So would you agree that what we just saw was not a very safe situation for the passengers?
A It's not a safe situation.
Q And that there was a substantial risk of injury to the passengers and driver?
A I would, yes.
Q All right. And, again --
MS. HERDINA: What was the date of that incident?
MS. PALMER: It was 6 -- June -- if you would like for me to replay it again, I can,

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just --
MR. GOLDSTEIN: I just was curious. That's all.
MS. PALMER: We've produced it in discovery.
MR. GOLDSTEIN: No. I know you did.
BY MS. PALMER:
Q Okay. Rather than go through this third incident, the paperwork again, although I can do it if there's going to be an objection -- actually, I'm just going to mark it.
(Defendants' Deposition Exhibit No. 11 was marked for identification.)
MS. PALMER: Can we mark that as Exhibit 11, and what we're marching -- marking is the tour vehicle incident/accident report form dated June 15th of 2017 regarding Luke and this particular incident we just saw the video of.
MS. HERDINA: Okay.
BY MS. PALMER:
Q Now, you would agree with me that the form does -- indicates that there was no bodily injury?
A Yes. Although, it's not circled.
Q Okay. And the description of what happened does not contain any information about

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bodily injury either, does it?
A No. I don't see any.
Q All right.
MS. HERDINA: Do you have an extra of that -- I mean -- never mind, attached to an e-mail; is that right?
MS. PALMER: Yes.
MS. HERDINA: Okay.
BY MS. PALMER:
Q So in this case, the -- and there's an equine management form report form filled out by Phil Ramsey. Is that one of your TEOs?
A He was a TEO. He's no longer employed.
Q Okay. He writes, after jumping the curb, Mr. Green was thrown from the carriage and the carriage left shaft became stuck in the adjacent chain linked fence, halting the movement of the carriage. During the fall to the ground, Mr. Green's left leg was run over by the carriage wheel.
MR. GOLDSTEIN: Okay. Can we back up because I'm confused. I thought -- I thought this was Number 11.
MS. PALMER: Uh-huh.
MR. GOLDSTEIN: It is?
MS. PALMER: It is.

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MR. GOLDSTEIN: Oh.
MS. PALMER: And we covered that bodily injury was not circled.
MR. GOLDSTEIN: Right. But what are you reading from now?
MS. PALMER: I said that I'm reading from the equine management report. I'm trying to speed it up. I can mark it as an exhibit. It's probably the next document in your stack.
MR. GOLDSTEIN: Oh, okay. So you're reading from what's going to be Number 12?
MS. PALMER: It can be. That's fine. Yeah. Let's mark it as 12.
MR. GOLDSTEIN: Okay. I'm fine. I'm just trying to get -- I'm just trying to write down what's what.
(Defendants' Deposition Exhibit No. 12 was marked for identification.)
MS. PALMER: This is 12, and we established that this was done, presumably, by Phil Ramsey, who was a TEO. Now, I want -- keep that in mind, and I'm going to give you the police report from this incident.
MR. GOLDSTEIN: That would be 13?
(Defendants' Deposition Exhibit No.

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13 was marked for identification.)
MS. PALMER: Yes.
BY MS. PALMER:
Q That will be 13. Thank you. Have you had a chance to look at that police report?
A I just glanced at it, yes.
Q Okay. Well, and I'll read the parts that I'm interested in. The officer reports that this driver had cuts to his left calf, blisters on his right hand and a cut to the back of his head. He writes that the driver was flown from the carriage. The carriage wheel ran over the driver's leg, and then, the last paragraph there, I then followed up at MUSC. The driver of the carriage was in good condition. He received a -- one staple to the back of his head.
Not to sound like a broken record, but, again, that's clearly bodily injury, is it not?
A Yes. It is.
Q All right. Mr. Christoff testified when asked about this -- I asked him these same questions. He testified he reported -- didn't report the bodily injury because it was not significant. What do you think about that?
MS. HERDINA: Object to the question. Is

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it you're asking him if the injury is significant or the failure to report?
MS. PALMER: Failure to report.
A Well, obviously, the police -- police report indicates that there was injury. You are correct.
BY MS. PALMER:
Q General speaking, when a FOIA request comes in -- I know it typically won't come in directly to your office, but if it involves something maintained by your office, are you asked, or anyone in your office asked to gather those documents, or is it done in a different department?
A No. It originates in the legal office.
Q Okay.
A They'll request it from our office, and, then, we'll do the check and find out any documentation to be sent, yes.
Q Trey went into this a little bit. Do you recall ever being asked to gather documentation, any e-mails, things like that, related to the Big John incident?
A It could be possible. I don't recall, but usually, Shannon handles all of that.
Q And if you had -- would you have e-mails

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concerning the Big John incident?
A I have probably e-mails -- that's probably what I could have sent for Big John is because we would get -- anytime there's an incident, we get a large number of complaints from all over the world being called really bad things for managing this industry, and I would respond to each one that I could and say -- as a matter of fact, I even -- to the Big John one, I believe it was that Big John's okay. They thought it was dead. I said, no. I -- I acknowledge that I -- you know, he was not dead. So -- did that answer your question?
Q Sure. And I was just trying to figure from my own personal knowledge how the FOIA request works and how --
A Yeah. We -- all of us, if we had something, we -- we should give it to you.
Q Okay.
A Yeah.
Q Are you aware -- well, first of all, are you aware of an occasion on which Charleston Carriage Works has had its franchise contract suspended?
A Not that I'm aware of.
Q Or revoked?

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A No. Not that I know of.
Q Has it ever been threatened to the best of your knowledge?
A Best of my -- no. I have no knowledge of that.
Q Okay. Would you know if any of those things had happened?
A I would hope so.
Q Okay. All right. By law, are the carriages required to follow traffic laws when they're on the streets?
A Yes. Yes. They are.
Q So they're supposed to stop at stop signs?
A Yes. They are.
Q I'm going to show you some videos. This was taken December 9th -- 14th of 2019, at 2:08 p.m., at least that's what it indicates, and that carriage, which will show is a Charleston Carriage Works' carriage, clearly ran the stop sign; is that right?
MR. GOLDSTEIN: Object to the form of the question.
BY MS. PALMER:
Q Did it run the stop sign, Mr. Riccio?
MR. GOLDSTEIN: Object to the form of the

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question.
A It appeared that he ran the stop sign.
(Defendants' Deposition Exhibit No. 14 was marked for identification.)
BY MS. PALMER:
Q Okay. All right. That file, which I will send to the court reporter is named 12.14.19 CCW1. So that would be Exhibit 15 -- 14. CCW2, 12:53 p.m. Same day. Does it appear to you that that carriage ran the stop sign?
(Defendants' Deposition Exhibit No. 15 was marked for identification.)
MR. GOLDSTEIN: Object to the form of the questions.
A Yes.
(Defendants' Deposition Exhibit No. 16 was marked for identification.)
BY MS. PALMER:
Q This is CCW3, 3:53 p.m. Does it appear to you that that horse ran the stop sign?
MR. GOLDSTEIN: Objection to the form of the question.
A Could you back -- redo that?
BY MS. PALMER:
Q Sure.

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A I don't see the stop sign, but the lines are there.
Q Okay.
A I can --
Q Fair enough.
A I don't see the stop sign. So I can't say he ran the stop sign.
Q He ran past the solid white line?
A Solid white line, yes.
Q All right. This one is going to be CCW4. So I guess would be on 17. Exhibit 17?
MS. HERDINA: 16.
(Defendants' Deposition Exhibit No. 17 was marked for identification.)
BY MS. PALMER:
Q Exhibit 16. 12:55 p.m. Same day. Again, does it appear to you that that horse ran --
A Yes.
Q Okay.
MR. GOLDSTEIN: Object to the form of the question.
MS. PALMER: This is CCW5, marked as Exhibit --
MS. HERDINA: I think this is 17.
MS. PALMER: -- 17.

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(Defendants' Deposition Exhibit No. 18 was marked for identification.)
BY MS. PALMER:
Q That one is -- went on through it -- the stop sign, didn't it?
MR. GOLDSTEIN: Object to the form of the question.
BY MS. PALMER:
Q And let's take that one back a second. Is it concerning that the driver is not even facing forward going through the intersection?
MR. GOLDSTEIN: Object to the form of the question.
BY MS. PALMER:
Q All right. And then, doing this just for the record. I know it's repetitive. CCW6 at 4:03 p.m. That one was cut off early. So fairly, you can't tell if that was stopped or not.
A Yeah.
Q But -- all right. So we have got five in a period of four hours running the stop sign. Is that concerning to you?
A I think it's concerning. They should stop at stop signs.
Q So is that five different violations of

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the law in a period of four hours?
A They are disregarding the traffic control device, so yes.
Q All right. Is it dangerous for these carriages to run stop signs?
MR. GOLDSTEIN: Object to the form of the question.
A It's dangerous for anyone to run a stop sign.
BY MS. PALMER:
Q And it puts not just the horse at risk but, also, the passengers and people on the street?
A Yes.
Q Especially in the market area?
A Yes.
Q Tons of pedestrian traffic?
A Yes.
Q All right. I might come back to the Blondie report. Were the proposed ordinances or the agendas marked 2, 3 and 4 -- I'm assuming that's what you did. Were these marked 2, 3 and 4?
MR. THOMPSON: I didn't mark --
MS. HERDINA: Oh, no. I don't think so.
MR. THOMPSON: I didn't mark any of those.
MS. PALMER: Okay. I didn't know what 2

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and 3 were because I started on 4.
MR. THOMPSON: 2 and 3 were the incident --
MS. PALMER: Oh, oh, got you. Okay.
MR. THOMPSON: The equine manager reports.
BY MS. PALMER:
Q And we don't need to actually mark these. I brought them just to help refresh the deponent's memory. If you'll agree, these are the agendas from the tourism commission, routes, parking and tourism rules committee that was held on June 13th of 2019. The agenda of a tourism commission meeting held on June 26th, 2019, and, then, a second agenda of a tourism commission meeting on August 28th, 2019.
I understand that these ordinances were proposed by your department. That there was some changes to the ordinances regarding the carriages --
A Yes.
Q -- proposed. And what was -- can you describe generally what -- what you proposed?
A Regarding the accident reporting?
Q Yeah.
A Okay. Thank you.
MS. HERDINA: We may want to take a minute

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just to --
A Yeah. I do. We had a lot going on during this time.
BY MS. PALMER:
Q Right. And it looks like the June 13, 2019, when the agenda for the routes, parking and tourism rules committee, I believe that's the first time that they came up, and it has all of them included.
A Right.
MS. HERDINA: Did you mark this, Beth?
MS. PALMER: No. I did not.
MS. HERDINA: Okay.
A So you're -- what are you asking?
MS. PALMER: You know what? We'll just go ahead and stop. He's got to change the tape, and I don't want to --
THE WITNESS: Oh, okay.
MR. THOMPSON: And he can take the time to read through them.
MS. PALMER: Yeah. Just read through them.
VIDEOGRAPHER: All right. This is the end of Tape Number 3 in the deposition of Dan Riccio. We are off the record at 12:58 p.m.

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(There was a pause in the proceedings).
(Jenkins Mann is now attending by phone.)
VIDEOGRAPHER: This is the beginning of Media Number 4 in the deposition of Dan Riccio. We are on the record at 2:05 p.m.
BY MS. PALMER:
Q Mr. Riccio, we were discussing -- or, actually, I handed you three agendas containing some ordinances that I understand your department proposed recently concerning the carriage industry.
A Yes.
Q Can you describe generally what those proposals entailed or the proposed ordinances?
A Well, collectively as a group, meaning myself and the deputy director, we were doing a comprehensive review of the entire ordinance of changes that -- or amendments that would make more sense. A lot of the -- the ordinances or the requirements and ordinances were outdated, and as you see, pertaining to the -- well, starting at the bottom, private passenger vehicle, things like that, they still had station wagon listed. No one drives a station wagon. I don't think anyone.
Anyway, we were just updating the

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ordinances and felt that it was necessary to update the -- the emergency reporting as well for all tour vehicles.
Q Okay. One of those proposals and -- I'd like to mark that. Are you looking at the tourism commission routes parking and tourism rules committee agenda?
A 2-13 -- or June 13th?
Q June 13th, yes.
A Yes.
Q I'd like to mark that as Exhibit 19.
(Defendants' Deposition Exhibit No. 19 was marked for identification.)
BY MS. PALMER:
Q And I see that first --
MR. GOLDSTEIN: Wait. You got to wait for her.
BY MS. PALMER:
Q I see that first ordinance -- proposed ordinance was an amendment to Section 29-240?
A Yes.
Q It's the reporting of incidents and accidents. And you-all are proposing that upon any incident involving injury to person, animal or property, that emergency services be notified?

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A Yes.
Q Has -- did that ordinance get any pushback, or did anyone oppose -- I guess express any opposition to it?
A Well, there was a lot of concerns from the industry that prompted some meetings to follow. It was not only this one but the emergency closure -- hold on. Number -- Letter D.
Q Okay.
A Regarding carriages, carriage touring during weather, emergencies and/or other emergency conditions as to closing -- having the authority to close them down in -- in the event of a -- a potential emergency.
Q Okay. And that -- again, that would just give your department the ability to -- or the discretion to stop tours if you deemed an emergency situation to be present?
A Yes. Yes.
Q All right. And what kind of opposition -- what was the opposition that you received?
A Well, the -- the industry as a whole didn't feel that I should have that authority. That they should rely on the existing ordinance. That, whereas, if you read it word for word, it says

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giving them the discretion to halt the activities or the tours, rather than the impotence being on the City.

So I felt I -- long story short, there was a storm approaching. I became concerned. I halted the tours. That the storm passed. It was supposed to be hail and high winds. It passed. I said, you know, I -- I have got to be able to intervene. I, technically, didn't have the authority, but I chose to -- to halt them and we halt them for probably 30 minutes. And I won't say all the companies, but a majority of the companies were not happy that I did that. And they felt that I shouldn't have the authority to do so.

Q Did -- did you receive any opposition specifically to the proposal that accidents be required to be reported to EMS?

A That was part of the conversation, but quite honestly, it wasn't the -- the focus. The focus from the carriage industry was just that emergency closure. With the accident reporting, which would be not only them, everyone, whether it's a coach bus or a certified bus, we felt that we needed to know right away collectively as an industry when an accident occurred, they -- they

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really need to notify us after notifying emergency services.

Q What -- what we've marked as Exhibit 19 apparently was when they were brought up for discussion at the routes, parking and tourism rules committee. Were they then put before the entire -- the full tourism commission?

A Yes, ma'am.

Q And was there a vote?

A Yes.

Q What -- can you tell me what happened? Where are they now?

A Okay. Most of them have gone through, except for the reporting of the tour vehicles, emergency -- or accident reporting and the emergencies. The accident reporting actually went to City Council after approval for first reading, and at that City Council meeting for the -- not that one. When it came up to second reading at the next Council meeting, not these individuals but -- or this company, but one company stood up and said they did not have buy-in and they didn't want to talk about it. So it was deferred. And we went -- we conducted some meetings with them regarding those two ordinances.

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Q Those two being the requirement that they report incidents to EMS?

A Yes.

Q And the ordinance that would give you the discretion to stop tourism emergencies?

A Yes. Uh-huh.

Q And so what's the status currently?

A Okay. It was a -- we're -- we have a -- we came to the understanding that I would monitor this emergency reporting. Not the accident but it -- in times of an emergency, that I will use the existing ordinance only if they keep in contact with me during -- or before, during and after, which they have done.

They -- they felt that they should have some discretion, and the conversations and meetings we had, we all agreed, okay, we'll monitor this situation with this ordinance or proposal, and if I get cooperation, I guess, and it's working, then, we'll -- we'll go as a policy. But -- which it has been working. Now, quite honestly, the accident reporting, we're due to have another meeting soon, and I don't think there's any more opposition on that one from anyone.

Q All right. So it's still sort of in the

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pipeline?

A Still -- yeah.

Q All right.

A Too long winded.

Q I'm going to go back to Exhibit 1, which was the ordinances, and looking at Section 29-204, and it relates to drivers. I'll give you a second to get there. It's on the third page.

A Yeah. Gotcha.

Q And it says, all drivers of animal-drawn vehicles shall have a current automotive vehicle driver's license and demonstrate competence in handling animal -- animal-drawn vehicles. How -- how do they satisfy this? How are drivers able to demonstrate competence?

A That is self-regulated by the industry during their training process. There is no mechanism that the City has to witness the competency test. It's just that they are competent in doing so, and they normally include that in their training protocol.

Q Okay. And that next sentence, all drivers of animal-drawn vehicles shall be required to pass an animal-drawn vehicle competency examination. So I'm assuming the City doesn't have any examination.

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A No.
Q Do you expect that the different carriage companies have some sort of competency examination?
A Yes.
Q And do you --
A It's my understanding they do.
Q Okay. So it's your understanding that Charleston Carriage Works has a training program and a competency exam?
A I feel certain they do.
Q Okay. And then, the last part of that sentence I was reading was the exam, which will satisfy the City that the driver is knowledgeable and capable of handling horses and animal-drawn vehicles in emergency situations. So, again, is it the City's expectation that the carriage companies train their drivers to handle emergency situations?
A Yes.
Q Has the City ever requested any records of training, or does it maintain any records of training?
A We don't maintain any. If it's their company records, we don't maintain any of those.
Q I think we just talked about this, but I believe that there was a GPS system budgeted for

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2019?
A Yes. 2019.
Q And was that implemented?
A Yes. It is.
Q And what does that entail?
A GPS system is really predominantly for the reporting of waste that an animal -- that's difficult to talk about sometimes.
Q Right.
A It's to mark the urine and/or feces that the horse drops.
Q Okay. And that was something that was purchased by the City and, I guess, required to be installed on the carriages?
A Yes. We -- initially, we purchased it, the program, and, basically, defer it -- now, deferring the cost to the industry, as they do for the -- their -- they pay a fee monthly -- or I think it's monthly -- monthly fee to the City for the number of tours that they do and they operate. That fee goes back into our waste management system, if that makes sense --
Q Uh-huh.
A -- to pay for it. We manage that money, but we don't -- we don't incur a cost or a burden

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for that money.
Q The GPS system, does it allow you to track the carriages?
A The capabilities are there.
Q Okay.
A Do we use it for that? No.
Q And, again, was there any pushback from the industry on the City's implementation of this device?
A Yes. As with anything new, it was really a lot of their employees not wanting the extra -- our indication was not wanting the extra burden. You know, they have to stop there anyway and get this, that and the other.
It was one more inconvenience is what we were gathering, and they were concerned -- they made it very clear, and I'm talking the drivers. I never heard it from -- I don't think I heard it from the industry, but the drivers would sense that we were following them and tracking their every move. So there was a lot of uncomfortableness about it on their end.
Q All right. Does your department get comments from the public whenever there is an incident involving a carriage horse?

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A Yes, ma'am. All the time.
Q And was that the case previous to April 14th, 2017?
A I don't recall before that. Only --
Q How about the Blondie incident?
A You know, I don't think it was near as bad as it is now, but there was some social media frenzies going on about it.
Q Has it been -- I guess the issue from your perspective, has it gained public attention as time has gone on?
A Yes. Yes. Very much so.
Q Do you -- do you get it from both sides of the debate?
A Absolutely. From the industry from the -- from everyone.
Q Can't do right?
A I just can't do it right. From the advocates to the citizens and people that visit the city.
Q Has Mr. Christoff, the owner of Charleston Carriage Works, been an active and vocal participant in this public debate from your perspective?
A He is a part -- his company is a part of the carriage group. They seem to be a more unified

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group, the three companies. There are other two that are not a party of that group, but I still -- we still meet collectively together. So to say he personally does, I can't say yes, but his representative, who speaks on behalf of the companies, is quite vocal, yes.

Q Has Mr. Christoff himself been a spokesperson at any of the tourism or the heat and index committee, any of these meetings relating to the carriage industry, has he been a spokesperson --

A Yes.

Q -- in those meetings?

A Well, particularly with the heat and the -- the heat index and the temperature. He was on our -- on the committee.

Q We talked a little bit about the involvement of the traffic department giving you guys the heads up as to road closure. What different departments of the City are involved in supporting the carriage industry?

A Supporting the carriage industry? I don't know if I'd phrase it that way. Really, it could be the police department if they -- they know of an issue, but, regularly, it's traffic and transportation who issue permits for street closures

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that notify us in advance, and, then, we then notify and make arrangements with the -- the gate of -- of route changes to -- to maneuver the horses and animals around the, you know, possible dangerous area.

Q Does the revenue that the City receives from the carriage industry cover the cost of oversight?

A No. The revenue -- well, they pay a franchise fee yearly. So I guess the answer is possibly yes.

Q But you don't know for sure?

A I don't know for sure, though.

Q Okay. If the carriage industry didn't exist, how would that change the makeup of your department?

A It wouldn't change -- it wouldn't change it much, but it would definitely lessen the load a bit.

Q How much -- let me see how to word this. Does your department -- I mean, you oversee all tourism, so not just the carriage industry.

A Right.

Q You have got the buses, the petty cabs, the walking tours --

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A The coach -- the big coach buses. Certified buses, yes.

Q And your tourism enforcement officers are in charge with overseeing all of those, correct?

A Yes. All of them.

Q What percentage of the time would you estimate that they spend on the carriage industry?

A Probably, conservatively, 80 percent.

Q Has there been any discussion yet about how all of the construction projects in the market area are going to affect the carriage industry?

A Yes. We have. That project has been delayed so many times. Actually, quite a while. We have met with the industry and our engineering department at the onset of when they were planning to do the construction, and we all worked collectively even outside of that meeting to come up with alternate routes during construction periods. So we did work very well together during that period.

Q All right. Talking about the temperature, and I'm going to be jumping around just to get these last questions --

A Yeah.

Q -- covered. The temperature ordinance as

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it exists now, if someone were to say the horses are pulled as soon as it hits 95 degrees, that's not accurate, is it?

A No. It's not.

Q It could be up to nearly an hour, 59 minutes of 95 degrees heat before they're pulled?

A Usually, it's -- I'll read this. When either the ambient temperature reaches 95 degrees Fahrenheit or heat index reaches 110 degrees Fahrenheit, as determined by the Department of Livability and Tourism, or the police department, after having received four consecutive ambient temperature and/or heat index readings that were taken 15 minutes apart that demonstrate that the ambient temperature and heat index or heat index equals or is above the stated ambient temperature or heat index herein, the carriage industry, obviously, operators will discontinue their work. Four consecutive readings --

Q Okay.

A -- at 15 minutes.

Q So the horses can stay out while it's still 95 degrees for some period of time?

A Yes. It must go through that cycle of time to ensure that the -- the ambient temperature

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or heat index maintains. Yeah. It doesn't -- it often fluctuates.

Q When -- let's say you got your first reading at noon, and it's 95 degrees. You got your second at 12:15, 95. You've got your third 12:30, 95 degrees. A tour goes out 12:30. Can you stop that tour at 12:45 --

A No.

Q -- if there's a third or fourth reading?

A They're already gone.

Q So if a tour were to go out at 12:55 and at 1:00, there is that fourth reading of 95 degrees where you, you know, cut everything off, that tour has been out for five minutes. Is it still going to be allowed to continue and finish its tour?

A Once it departs the gate, yes.

Q Okay. Does your office maintain the certification of appropriateness applications?

A Yes.

Q All right. Do you know anything about the contract between Charleston Animal Society and the County?

A No. I don't.

Q All right. Have you-all ever considered having some sort of driver training program

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requirements?

A We have had discussions.

Q Tell me more about those.

A Just, again, we always do a comprehensive review of the ordinance, and we kind of identify areas that we'd -- we would like to amend. And that's, basically, how we kind of decide. I say we, it will be me, my deputy and usually my tourism commission manager.

Q Would it -- it'd be concerning to you to -- if you found out that one more of the companies had no training program in place for its drivers?

A Well, I think it should be -- what we're told is there is a training process. So it's really the impotence is on the companies for training them.

Q And is that something that you would -- that Shannon Tilman -- is that one of her responsibilities to ensure -- to oversee training or to ensure --

A No.

Q -- ask about training?

A That's not -- no. That's not in her purview.

Q The ordinances -- and I'm looking at Page

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9, and this is Ordinance Number -- I've got to go back for the number. It's the general health care and management requirements, Section 29-212, and in Subsection E-10, Page 19 -- I mean, 9, I'm sorry.

A Uh-huh. Here we go.

Q It states that animals shall not be sold or disposed of except in a humane manner in accordance with the American Association of Equine Practitioners Guidelines. What does that mean? Do you --

MR. GOLDSTEIN: Can you -- my Number 9 says animals shall not be subject to any cruel or harassing treatment or equipment. So can you --

A Yeah. Which one?

MS. PALMER: Yeah. Page 9. It was Subsection 10.

MR. GOLDSTEIN: Subsection 10.

THE WITNESS: 10?

MR. GOLDSTEIN: Oh, sorry. I apologize.

A That goes -- yeah. I got you.

BY MS. PALMER:

Q Okay. I just don't know what that means, and I was wondering if you did. What is -- how are -- what's a humane manner of disposing of these

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animals?

A That's a part of the ordinance that the company has to maintain and make sure that they are doing the humane thing in disposing of an animal. The City doesn't have oversight of that.

Q All right. So the City can't control what they do? If they send them to auction or -- you guys can't control that, can you?

A No. They give us a certificate of service ability when they come in stock, and when they leave. And they do -- a reason. They're sold -- usually, they're either sold or kept for pasture.

Q Do you see a lot of turnover in the number of animals within the different companies?

A I can't -- really, I can't answer that. I'd have to review files and things like that. I'm not certain.

MS. PALMER: Give me one second. I think I may be done. Well, Tommy, if you'd like to ask your questions. Thank you, Mr. Riccio.

THE WITNESS: Thank you.

EXAMINATION

BY MR. GOLDSTEIN:

Q All right, Mr. Riccio. My name is Tommy Goldstein. I represent Brody's Company, Classic

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Carriage, and I'm going to try to be -- Charleston Carriage company. Used to be Classic. Now, Charleston Carriage company. I've got just a few questions for you. Do you remember the Big John incident?

A Only what was reported to me.

Q Okay. Did you get a lot of e-mail, text, phone call response?

A Yes.

Q Would you characterize a lot of that response as being aggressive and hateful, threatening?

A I think aggressive and hateful -- hateful.

Q Okay. Do you know who Joe Elmore is?

A I do.

Q Do you know who Ellen Harley is?

A I know of her, yes.

Q Okay. Have you dealt with either one of them in connection with your duties as director of liveability?

A We had one -- one formal meeting when the two of them -- and I can't remember the other lady -- came in representing the animal society when Mayor Tecklenburg was first sworn in, which did not go well.

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Q Well, I'm going to ask you about that in a minute. Is it fair to characterize your interactions with the representatives of these two companies that they are intent on eliminating the carriage industry in Charleston?

MS. PALMER: Object to the form.

A From what I see on e-mails, I would have to say yes.

BY MR. GOLDSTEIN:

Q Okay. Have you received e-mails from Ellen Harley?

A I believe we've -- if not directly, we either received e-mails or telephone compliance.

Q Okay. How about Joe Elmore?

A Not -- not lately. I don't think I've had any e-mails from him.

Q Did either or both of these organizations advocate that the use of horses to pull carriages is a cruel and inhumane use of the animals?

A Yes.

Q All right. Is treating an animal cruelly a crime in South Carolina?

A I don't even think it is. I'm not sure.

Q Is animal abuse a crime in South Carolina?

A Right. That's -- animal abuse.

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Q Okay. If you saw -- what was your rank when you transferred over from the police department? Weren't you a captain?

A Lieutenant.

Q Lieutenant?

A Yeah.

Q As a lieutenant in the Charleston City Police Department, if you saw someone abusing an animal, what would you do?

A I would take them to jail.

Q Okay. How about as director of planning and a director of livability and tourism? What if you saw --

A I would definitely intervene until the police got there.

Q Have you ever seen Brody or anybody at his place abuse an animal?

A No.

Q Okay. Do you deal with Brody on a fairly regular basis?

A I wouldn't say fairly regular.

Q From time to time?

A From time to time.

Q Okay. And how would you characterize his demeanor and treatment of you?

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A He's very cordial and cooperative, and we -- I have always considered us to have a mutual good working relationship.

Q Okay. Has he ever been rude or discourteous to you?

A No.

Q Okay. Has he ever expressed anything to you that you would characterize as being hateful or mean?

A No.

Q Okay. And you-all don't always agree on everything, do you?

A Not at all.

Q Okay. And when Ms. Palmer was asking you about the incident with Luke on King Street where the -- where the parade was coming --

A Right.

Q -- were you aware that the City of Charleston actually paid the medical bills for that incident, or do you have any information about it?

A I have no idea.

Q Okay. All right. Mr. Thompson kept asking you a series of questions, and he kept using the word wagon. Do you remember any of those questions?

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A I guess I -- you'd have to refresh my memory.
Q Okay. Well, the record will reflect the words he's -- wagons are not allowed, are they under the ordinance?
A No. Carriages are allowed.
Q Right. And as a matter of fact, Section 29-207 says, wagons, which patently were designed for cargo instead of passengers, will not be approved. Is that in the ordinance Section 29-207?
A Hold on.
Q It's Page 5 of 14 on Exhibit 1.
A Page 5. Okay.
Q Yeah. The very top of the page.
A Okay. There you go. I'm sorry.
Q Yeah. It begins animal-drawn vehicles shall be authentically-styled passenger carriages.
A Yes.
Q Okay. And while we're on the ordinance, and like Ms. Palmer, I'm jumping around, but while we're on the ordinance, if you'll turn to Page 10, which is Section 29-212, General Healthcare Management Requirements. If you go to the Subsection 9 and 10 that we're talking about, Number 9 says animals shall not be subject to any cruel or

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harassing treatment or equipment. Is that in the ordinance?
A Yes. It is.
Q Have you ever seen Brody or anybody in his company treat a horse in a cruel or harassing manner?
A No. I haven't.
Q If you did see that or if you learned about it, what would you do?
A I would take action against them.
Q Okay. Have you ever had to take action against Brody?
A No. I have not.
Q Okay. Would you characterize Brody and his company as being generally compliant and cooperative with the -- in conformity with the ordinances that require?
A I do.
Q Okay. Now, to be fair, as you testified earlier, in order to operate a carriage, you have to pay a franchise fee, correct?
A Uh-huh.
Q And you have to make the applications that Ms. Palmer and Mr. Thompson asked you about, certificate of appropriateness and all that.

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A Yes.
Q You have to furnish the weight of the carriage.
A Right.
Q You have to furnish training or at least verify that training has been provided to the drivers.
A Right.
Q And you rely on Brody to give you that information?
A Right.
Q In other words, if he says to you, yeah, all our drivers, we trained them, you rely on that, don't you?
A Yes.
Q Okay. For example, we're sitting here today on March 11th, 2020, and I'm going to make this short. I'm not going to keep you here long.
A You're fine.
Q Been here long enough. But I'm asking you questions because I represent myself as being a lawyer representing a client, correct?
A Yes, sir.
Q Okay. Do you know one way or another if I am or am not a lawyer?

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A No.
Q You don't have any idea, do you?
A No. I don't.
Q You haven't examined my transcript?
A No.
Q You haven't seen my diploma?
A No.
Q You don't know if I have a license from the State of South Carolina?
A No.
Q Okay. You're assuming I'm representing to you that I'm a lawyer and properly licensed to be here today to ask you these questions?
A Yes.
Q And if you take that assumption based on good faith, and I wouldn't come in here and lie to you?
A Right.
Q Okay. Is that the same kind of good-faith assumptions that you extend to the -- to Brody's company when you ask him for information?
A Yes.
Q Okay. All right. I just got a few more. You said -- I'd ask you if you had gotten e-mails from Ellen Harley, and I believe you said you had.

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A I believe I have. I'd have to go back and look.
Q Okay. And I can write your lawyer later and ask him for that.
A Okay.
Q And would you charac- -- would you characterize Ms. Harley as being aggressive in her statements and attitudes toward horse-drawn carriages?
A I would say she's strongly opinionated.
Q Okay. Is it fair to characterize her treatment of you and others associated with the carriages as a bully?
A Well, yes.
Q Okay. And how about Charleston Animal Society?
A In the meeting that I attended, I would say yes.
Q Okay. Oh, Dr. Jacobs -- you got some questions, and I forget which lawyer asked you about Dr. Jacobs as being, quote, the City veterinarian.
A Yes.
Q Is that --
A Yes.
Q -- right? And Dr. Jacobs is a

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veterinarian in Aiken, South Carolina; is that correct?
A Yes.
Q All right. And I believe it's a she; is that right?
A She, yes.
Q A she. All right. And do you have confidence in her abilities as a veterinarian?
A Yes. I do.
Q And when Brody furnishes records to you, and when I say you, I don't mean you personally, I mean the department --
A Right.
Q -- as part of his licensing requirements. When he furnishes records to you from Dr. Miller or Dr. Bird, do you rely on those?
A Yes.
Q Okay. And do you rely on them because they're licensed veterinarians?
A Yes.
Q Qualified to practice veterinarian medicine?
A Yes.
Q All right. Has any veterinarian ever expressed to you, in connection with your duties of

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director of livability, that a horse pulling a fully-loaded carriage is cruel or inhumane?
A No.
Q Okay. Have people told you or asserted that Big John collapsed and died in this incident on April 19th?
A Yes.
Q Did you attempt to convey to those persons that no, that is not what happened?
A Yes. I did.
Q And were you successful?
A I believe so.
Q Okay. Have you received e-mail, communications, text messages, letters, faxes, from anyone on behalf of Charleston Animal Society?
A I'm sure, yes. I have.
Q And do you think those records are still available?
A Yeah. I'm sure, yes.
Q And how have they run with regard to the Big John incident, if you recall? Did you get any communications from them about the Big John incident?
A Actually, I think most of it was through a Charleston Carriage Horse Advocates.

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Q Okay. As -- and this next question, you may want to defer to Ms. Tilman if you want to. Entirely up to you. In your experience as director of tourism and --
A Yeah.
Q -- tourism, is there anything about horses pulling carriage that concerns you? In other words, that it's overexertion?
A No.
Q Okay. Was temperature at all related to the Big John incident on April 19th, 2017?
A To my knowledge, no.
Q Okay. And if I represent to you that the ambient temperature that day was in the 70s, would -- would you think that's approximately correct?
A I would say yes.
Q Okay. Did people assert to you that the horse collapsed from exhaustion and/or heat over -- being overworked?
A Yes.
Q Okay. If you thought that Big John had been worked to exhaustion or overworked or mistreated in any way, what would you have done?
A Conducted a -- a full investigation with

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the police department for animal cruelty.
MR. GOLDSTEIN: Okay. Thank you, Mr. Riccio. I appreciate your answering the questions.
THE WITNESS: Thank you.
RE-EXAMINATION
BY MR. THOMPSON:
Q Mr. Riccio, I have a couple of questions for you.
VIDEOGRAPHER: Excuse me, Counsel. Don't forget your mic.
BY MR. THOMPSON:
Q Over the several hours that we have deposed you and you have offered testimony, it occurs to me that the industry is allowed a wide range of self-regulation; is that correct?
A I say self-regulation -- could you rephrase that?
Q Yeah. I mean, for example, you don't check to see whether they've actually trained their drivers, correct?
A Correct. So yes.
Q You don't take any rectal temperatures, do you?
A No.

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Q You don't know when the rectal temperatures are actually taken?
A Only from the documents that are --
Q Do you know when they're actually taken after a tour?
A No.
Q Okay. Again, and I can probably go through quite a number of examples that we talked about, and your answers would be I rely on them to either keep those records or provide that information, correct?
A That's correct. Yes.
Q Okay. In other words, they're allowed a great deal of independence, and you're relying on them to provide accurate information to you?
A That is correct.
Q Okay. You also in the questioning generally described or answered the question as to whether Charleston Carriage Works was generally compliant with the ordinances and regulations. You watched, as I did, a series of videos of Charleston Carriage Works' drivers running through stop signs, in other words, not stopping. Did you see those videos?
A I did.

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Q Is that generally compliant with the ordinances?
A No.
Q Is that even generally compliant with the laws of the State of South Carolina with regard to moving vehicles?
A No.
Q Okay. I mean, you know those as a police officer, right?
A Correct.
Q That's not generally compliant, is it?
A No.
Q All right. Fair to say you're not there and your enforcement officers are not there to observe Mr. Christoff's operations on an hourly basis?
A No.
Q Not even on a daily basis?
A No.
Q Not even on a weekly basis?
A I'd say weekly, yes.
Q And that would be a check-in?
A Yeah. Check -- check-in.
Q All right. Again, you're relying on Mr. Christoff to maintain the records, do the things

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that he's supposed to do in compliance with the ordinances?
A Yes.
Q Okay. You were asked questions about Ms. Harley and her intents or intentions. Has Ms. Harley advocated for studies -- scientific studies?
A Yes.
Q Okay. And the advocation for that -- those scientific studies would be to what?
A For the ambient heat -- ambient temperature and heat index.
Q To determine scientifically appropriate measures with regard to the operation of carriage horses in certain points of year, correct?
A Yes.
Q All right. Now, if she wanted to abolish the industry, would she be asking for scientific studies to determine the safe working environment of the horse?
MR. GOLDSTEIN: Object to the form of the question.
BY MR. THOMPSON:
Q Would that make any sense?
MR. GOLDSTEIN: Object to the form of the question.

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BY MR. THOMPSON:
Q You can answer the question.
MS. HERDINA: Can you repeat the question? I think you had two questions there.
BY MR. THOMPSON:
Q So my second question was whether the answer to my question would make any sense or not and that is simply with Ms. Harley -- does it make any sense that Ms. Harley would advocate for scientific studies to determine appropriate temperatures for the horse to operate under if she wanted to abolish the industry?
MR. GOLDSTEIN: Object to the form of the question.
A Correct.
BY MR. THOMPSON:
Q She wouldn't do that, would she? She would just be advocating to get rid of the horses.
MR. GOLDSTEIN: Object to the form of the question.
BY MR. THOMPSON:
Q Correct?
A I would say so, yes.
Q Okay. So you understand over the course of time, she and the Animal Society have advocated

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for scientific studies to investigate hazardous temperatures, perhaps, for horses operating in the Charleston city area?
A Yes.
Q Okay. Now, obviously, those temperature issues wouldn't be an issue during eight months of the year, seven months of the year --
MR. GOLDSTEIN: Object to the form of the question.
BY MR. THOMPSON:
Q Six months of the year? Huh?
A It's hard to say anymore as hot as it is.
Q That's right. Global warming, right?
A Yeah. At least during the peak -- the times of the summer.
Q And by her advocating for these scientific studies, she's interested in the welfare of the horses involved?
MR. GOLDSTEIN: Object to the form of the question.
BY MR. THOMPSON:
Q That's what she has said.
A But I can't answer that.
Q She has not said that to you?
A No. I haven't had but one meeting,

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conversation with her, and it didn't -- it wasn't nice.
Q Okay. You've had one conversation with Ms. Harley?
A Yeah.
Q And when was that?
A 2016, when the mayor -- I don't know what date, but it was in the mayor's office.
Q Was that before the Big John incident?
A Yes.
Q Okay. And that's the only interaction that you've had with Ms. Harley?
A That I can remember just in person. That was the only time that I know. She's been at -- she's -- not personal interaction, but I believe she's attended tourism commission meetings in the past. There was a rally once that they did she attended that I was nearby, but we didn't engage in conversation.
Q Okay. But you're forming your opinion of her based on one encounter with her?
A No.
Q Okay. What are you forming your opinion on that she's a bully then? Answer the question, please.

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A Because I have been accused of things by her that are not true.
BY MR. THOMPSON:
Q Okay. Where and in what context?
A Social media. Facebook.
Q Okay. Do you have copies of those?
A Yeah. Want me to read it?
Q I want to ask you first what you brought with you here today.
A These are Facebook posts from the Charleston Carriage Horse Advocates.
Q Okay. And who -- who drafted those posts?
A It's Ellen Harley's -- to my understanding, it's her Facebook page.
Q Okay. Now, let's be clear, right, because you were saying earlier that Ellen Harley has said things, and Ellen Harley has been a bully to you. And now, you've pulled out something from Charleston Carriage Horse Advocates; is that correct?
A Yes.
Q Do you have anything from Ellen Harley specifically?
A Other than her claiming that that's her organization that she is responsible for.
Q Do you know that whatever you have in your

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hand, and we'll go over it, whether Ms. Harley drafted what you have in front of you?
A No. Only that she presents herself as the person that through this organization is posting these posts.
Q And do you know who is responsible for posting on her Facebook page or not --
A No.
Q -- her Facebook but Charleston Carriage Horse Advocate's Facebook page?
A It's my understanding that she is the responsible person.
Q Okay. Have you researched or been provided any information as to how information is posted on the Charleston Carriage Horse Advocates --
A No.
Q -- website or social media pages?
A No.
Q All right. So as you sit here today, what you have pulled out in front of you is simply a social media posting on the Charleston Carriage Horse Advocates' Facebook page?
A Yes.
Q Is that correct?
A Uh-huh.

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Q And that's all you know?
A Yes.
Q Okay. Can I see it, please?
A You want me to break it down for you?
Q No. If you can just hand me whatever you have brought here with you, please.
A There's two different ones there.
Q Okay. I'll take a look at them.
(Defendants' Deposition Exhibit Nos. 20 and 21 were marked for identification.)
MS. HERDINA: Do you want to mark these as an exhibit?
MR. THOMPSON: Yes, I do. Thank you.
MS. HERDINA: Can we get a couple of copies of these?
MR. THOMPSON: Sure. We'll go off the record for a minute, and we'll get copies for everyone.
VIDEOGRAPHER: Off the video at 2:53 p.m.
(Off-the-record discussion.)
VIDEOGRAPHER: On the record at 2:56 p.m.
BY MR. THOMPSON:
Q All right. Mr. Riccio, we just took a moment to make copies of what you brought with you here today, and, generally, I marked Exhibits 20 and

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21, which I -- I don't want to put words in your mouth, but I believe that 20 is -- is intended to be two pages?
A Yes.
Q And then --
A Comments.
Q Correct. And then, 21 is intended to be two pages; is that correct?
A Yes.
Q That's the way what you brought to me today or brought it here today?
A That's it.
Q You didn't bring it to me, did you?
A No. I just --
Q You had it in your pocket with you?
A It's always been in my pocket.
Q Why did you have this in your pocket today?
A I always leave things in my pocket that are reminders of how untrue things could be perceived and interpreted, and I happened -- part of me wanted to say something about this and part of me didn't, and I wasn't sure until I felt that maybe -- maybe it is appropriate.
Q Okay. And so with regard to Exhibit 20,

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and it is a Charleston Carriage Horse Advocates -- it appears to be, I guess, a print of a Facebook post?
A And Post & Courier article.
Q All right. Well, the date is September 20 -- is that 8?
A I think it is.
Q The Facebook page post?
A Yeah.
Q Right?
A Yes, sir.
Q Of what year?
A 2017.
Q Okay. And the post includes an article from the News & Courier; is that correct?
A Yes.
Q And what's the date of the News & Courier article?
A I don't have that with me, but it is on that same date, I believe.
Q Okay. And then, the post includes a comment of -- from Charleston Carriage Horse Advocates; is that correct?
A Yes.
Q All right. And so what -- what caused you

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concern or heartburn about what was said on September 28th by the Charleston Carriage Horse Advocates?

A The article in question is just the screenshot of the article is indicating that, according to their post, that by saying the ruse is up. You compromised your job in public service to serve in the interest of the carriage industry. Now, you're looking for a way to fix it. In all actuality, the article that -- they don't publish the whole article. It was to keep the horses off the street longer for the rotation so it's for the betterment of the horse.

So I take offense to that if I'm trying to make things better, yet, social media is painting me as a -- a bad person for changing -- or wanting to change the rules, but it doesn't give the full context of the article.

Q All right.

A And then, following these people, one or two of them, it's like they're believing everything this organization is saying.

Q Okay. Well, let's make sure I understand what's going on here. The -- the post on September 28th included, or did it not include, a

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link to the Charleston News & Courier -- the Post & Courier's article?

A I don't -- I didn't see a link to it.

Q Do you know if it did or didn't?

A No.

Q Okay. But do you -- or did you attempt to click through or link to that article?

A No. Because -- well, I did after the fact and clicked on it, and that was the article, yes. I did.

Q Okay. So you were able to get to the article and --

A I didn't go by Facebook.

Q Okay. But you were able to get to the article?

A Yes.

Q And you found it?

A Through the Post & Courier.

Q And it was properly cited by Charleston Carriage Horse Advocates?

A Yes.

Q The -- the article itself?

A Yes.

Q The title of the article?

A Of this article?

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Q Yes, sir.

A Charleston -- no, no. This was -- this article was an article in the Post & Courier as an amendment proposal to the heat -- and/or the temperature and heat index ordinance.

Q Right. What I'm asking you, though, is on the post of September 28th that you're taking issue with --

A Uh-huh.

Q -- right? Everything from the photograph down to where it says Postandcourier.com, that's all information or -- from the Post & Courier, itself, correct?

A That was from -- this is from a Facebook page.

Q I understand that, and the Charleston Carriage Horse Advocates put on as a post --

A Yes.

Q -- the image of a Post & Courier article, correct?

A This is what I received.

Q Right. I want you to tell me what part of this post was created by or posted by -- well, let me ask you this: First of all, what was posted by Charleston Carriage Horse Advocates in that?

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A This quote or whatever the -- or the indication that I have -- the ruse is up.

Q Okay. Where it says -- it starts with Dan?

A Yeah. Dan Riccio.

Q And then, it ends with it, period?

A Yeah.

Q That is information -- right. That was the information that was provided by Charleston Carriage Horse Advocates in its post, correct?

A It was posted just like that with the article picture.

Q I understand. I'm asking what is -- do you believe came from Charleston Carriage Horse Advocates and what of it came from the Post & Courier?

A I think it all came from the advocates' reposting this article.

Q Okay. So the picture came from the Charleston Carriage Horse Advocates?

A The picture is from the Post & Courier but --

Q All right. The Charleston considering another rule change for carriage horses, is that by the Post & Courier, or is that from the Charleston

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Carriage Horse Advocates?
A That is a Post & Courier article that was forwarded through this Facebook page.
Q And then, under that, it says, the City of Charleston is considering another change in the rules to determine whether carriage horses can conduct tours on hot summer days, period.
A Yes.
Q Is that a direct quote from the Post & Courier article?
A Yes.
Q Okay. So all of that, again, the photograph, the title of the article and that one sentence, blurb about the article, that all came from the Post & Courier, correct?
A Yes.
Q All right. So the only original content, if you will, from the Charleston Carriage Horse Advocates is the part that says Dan Riccio and then ends with fix it?
A Right.
Q Is that correct?
A Yes.
Q All right. And so what about the information that was original from the Charleston

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Carriage Horse Advocates that caused you a problem?
A It's not an accurate and fair statement about my service to the City of Charleston.
Q Okay. Where does it say and tell me how you get that out of that.
A You compromised your job in the public service, and you're looking at the -- to serve the interest of the carriage industry. Now, you're looking for a way to fix it. They constantly are saying that I side with the industry, and I don't. I'm neutral, but they're painting a picture that I'm part of the problem. I'm not.
Q Okay. Has the Charleston Carriage Horse Advocates expressed an opinion in the past that they believed you were siding with the industry?
A Yes.
Q This isn't the first time that they said that, is it?
A No.
Q That's an opinion that the Charleston Carriage Horse Advocates has with regard to what they perceive to be how your operate, correct?
A Yes.
Q Okay.
A If you read the people that are following

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them, this Kay Chandler, Dan Riccio has always been in the pocket of the carriage industry. They hold hands, and it's pathetic. I don't know this lady.
Q Okay. Who is Kay Chandler?
A I have no idea.
Q Is she a member of Charleston Carriage Horse Advocates?
A I have no idea.
Q Does she have any interest in any fashion with Charleston Carriage Horse Advocates?
A I have no idea. She follows the page so --
Q All right. Well, you have a real problem. It looks like you highlighted Kay Chandler, correct?
A I did.
Q All right. You don't like what she said, did you -- do you?
A No. I don't like what she said.
Q All right. Did Carriage -- Charleston Carriage Horse Advocates post for Kay Chandler?
A I don't -- no. No. They did not.
Q Okay. Kay Chandler said whatever Kay Chandler said --
A That's right.
Q -- correct?

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A Yes.
Q The second post you brought with you here has been marked as Exhibit 21. It appears a post from October 27th; is that correct?
A Yes.
Q How -- how did you obtain these Facebook posts?
A Shannon Tilman gave them to me.
Q Okay. And when did she give them to you?
A I can't say if it was that day of each incident or the day after.
Q Okay. Do you regularly monitor or access any of the Charleston Carriage Horse Advocates' social media pages?
A No. Not at all. I don't -- I don't even have a Facebook page.
Q Okay. So the only reason you would have access to the -- to these Facebook pages that you have provided today is if somebody else provided them to you?
A Someone -- yes.
Q And as I understand, you don't have a Facebook account?
A I do not. It's been inactive since dealing with all this.

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Q Okay. When -- when did you have an active Facebook account?
A Several years ago.
Q Okay. When did you deactivate it?
A Several years ago.
Q Well, what does that mean? '17, '18?
A Two, three years, maybe four years ago.
Q Was it before or after the Big John incident?
A I don't recall honestly. It was probably after these. I don't know. It could be. I don't know.
Q All right. October 27th, you believe that was 2017?
A Yes.
Q And there are two photographs; is that correct?
A That is correct.
Q And who -- who is in the photographs?
A Of course, I can't remember his name, but it was, I think, Classic Carriage Company manager, and it was following a tourism commission meeting.
Q Okay. Is that you in the picture?
A That's me.
Q Okay. Do you know what time of day this

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was the photographs were taken?
A It was -- had to have been -- they usually convene at 6:00. So they -- or conclude at 6:00. So it was right after -- probably around 6 p.m.
Q Do you know who took the photographs?
A No. I don't. Just who -- no. I don't.
Q And what do you take issue with in this post?
A It's false information.
Q Which is?
A I'm not having a gab session. I was actually admonishing him.
Q I'm sorry?
A I'm not having a gab session. I was actually admonishing him.
Q Okay. Admonishing who?
A I can't remember the guy's name. I really don't remember his name.
Q All right. Is gab session in quotations in the post?
A Yes. Good-ole-boy hug, gab session, yes.
Q Quote gab session, end quote?
A Right.
Q Like if you had some kind of expression --
A Good-ole-boy hug. Gab session.

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Q Do you know what was --
A Well, that I'm siding with the industry. It's painting the picture that I do, and I don't.
Q Okay. That's somebody's opinion, though?
A Yes. It is.
Q Okay. And then, it says in August, Dan Riccio stood on the corner to capture footage of Carriage Horse Advocates participating in a peaceful march. Is that true?
A That is true.
Q Okay. Why in the world would you stand on a corner and capture footage of the Carriage Horse Advocates participating in a peaceful march?
A I wasn't capturing footage. I was there to ensure that it went smooth and went well, even though the police were there.
Q I was getting ready to say. Is that part of your job duty --
A Yes, it is.
Q -- to monitor free speech, peaceful marches?
A Not them but my people, my employees are at the epicenter of that activity, and I stood across from my employees' gate and made sure the police were nearby because I didn't know what to

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expect. So out of the abundance of caution for my employees is why I went.
Q Okay. And you videotaped?
A I don't videotape anything. I had -- I had my phone to make it look like I was talking on the phone because I saw Ellen Harley looking at me and waiving. So I'm, like, whatever. I'll just ignore her and just be on my phone, and, hey, and that was it.
Q Okay. Did you take any photographs?
A No. I don't take photographs of that.
Q All right. Was there any violence in that march?
A No. There was not. Thank --
Q Was it a peaceful march?
A It was very peaceful.
Q Was it in keeping with what you would expect of a peaceful demonstrative-type march?
A Yes.
Q Okay. And they're allowed to do that, right?
A Absolutely.
Q Then, it's looks like, second page that you brought with her, it's from Kay Chandler again.
A There is Kay, whoever she is.

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Q All right. She still doesn't particularly have a fine attitude about you?
A No. I'm blatantly in favor of the industry. There is not a neutral bone in his body. Shame on him and Mayor Tecklenburg who employs him. Don't know that lady.
Q Okay. Do you have any information to suggest that Kay Chandler has any connection with Charleston Carriage Horse Advocates?
A I do not.
Q All right. And the best you can tell me here today, you started with Ellen Harley posted these, but you agree that --
A There's no --
Q These are all posts from Charleston Carriage Horse Advocates, correct?
A Yes.
Q And as you sit here today, you don't know the individual person who actually posted these posts onto the Charleston Carriage Horse Advocates website, do you?
A That's fair to say. I don't.
Q Okay. Are you -- or have you testified today that you have never received a negative or bully-like comment from anybody supporting the

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carriage industry?
A I always get them.
Q Okay. I just wanted -- it sounded like you --
A No. Not just her.
Q It was --
A It's from all over the world.
Q Okay. But they are folks on the side of the industry that send you not so happy-type e-mails?
A They usually do it in person.
Q Okay. As in show up?
A As in verbal.
Q All right. And you don't think that's bullying?
A I think it's very -- I wouldn't say bullying, but I think, at times, it can be pretty heated.
Q Okay. But you're getting the same flack?
A I get the same flack, yes, sir.
Q From both sides?
A Uh-huh.
Q Is that yes?
A That is absolutely yes.
Q All right.

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A But I'm neutral. That's all I'm trying to say.
Q I understand you're neutral, but -- but what I'm also -- also trying to understand today is that it sounds like you're suggesting that the Carriage Horse Advocates are more of a bully --
A No.
Q -- or more of an outstanding --
A I do not.
Q -- pain in your back side?
A Nope. They're all equal.
Q All right. Well, I just want to make sure we're clear on that.
A They're all equal. I'm just --
Q Okay.
A -- making that statement because I'm just here in the middle.
MR. THOMPSON: All right. Thank you, Mr. Riccio. I appreciate your time.
THE WITNESS: Thank you.
RE-EXAMINATION
BY MS. PALMER:
Q I have a few follow-ups. Sorry.
A Let's go.
Q Has anyone, Joe Elmore, or anyone else

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associated with Charleston Animal Society ever specifically told you that their intent is to abolish the carriage industry in Charleston?
A No.
Q Has Joe Elmore, or anyone at Charleston Animal Society, ever accused Charleston Carriage -- or ever said to you, or have you ever heard them say, that Charleston Carriage Works is inhumane and cruel to its animals?
A Not them particularly.
Q And same thing with Mr. Christoff. Have you ever heard Joe Elmore, or anyone associated with Charleston Animal Society, say that Mr. Christoff is cruel or inhumane to any animals?
A No.
Q And with regard to this statement about cruelty and inhumanity, what specifically were you thinking of or referring to? I believe you testified that you had -- well, let me just ask you have you ever heard Joe Elmore or Charleston Animal Society say that the simple act of a horse pulling a carriage is cruel and inhumane?
A I haven't heard him say that.
Q Would you agree with me that Charleston Animal Society has consistently expressed its belief

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that the conditions under which carriage horses operate in Charleston can be inhumane?
A I have heard that, yes.
Q Okay. And would you agree with me that Charleston Animal Society has consistently acted or expressed its purpose to be to improve the working conditions for the animals?
A Yes.
MR. GOLDSTEIN: Object to the form of the question.
MS. PALMER: Okay. That's all I have.
THE WITNESS: Thank you.
RE-EXAMINATION
BY MR. GOLDSTEIN:
Q Just a few. Less than two minutes.
A Yeah.
Q Some of the -- and I don't want to put words in your mouth. Whatever you would characterize this as, I would call it abuse, but maybe that's not the word you would choose. What word do you want to put on this?
A Just untrue and sad.
Q Okay. Have any of your employees received similar attacks?
A Not that -- I'm not 100 percent sure.

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Q Okay. And when you said you have got comments from over the world --
A Yes.
Q -- and is that as a result of the postings from Charleston Carriage Horse Advocates?
A The e-mail would say from Charleston Carriage Horse Advocates, e-mail the mayor and Dan Riccio in his e-mails.
Q And were a lot of them consistently asserting that Big John was worked to death or collapsed from exhaustion?
A Yes.
Q And are either of those true?
A No.
Q Okay. How do you feel sitting here about these photos being -- going out on Charleston Carriage Horse Advocates' Facebook page?
A I don't like it.
Q Okay.
A I just don't like it.
Q I wouldn't like it either.
A Yeah.
Q Oh, last question. Then, I'm done.
A Okay.
Q Two questions. You told us earlier -- I think you said you didn't know who Kay Chandler was.
A I don't.
Q Okay. So you don't know one way or another if she's one of the biggest supporters of Charleston Animal Society?
A She could be. I don't know.
Q Okay. And likewise, I'm assuming the question will be the same, do you know who Jodi Weidiker (phonetic) is?
A No.
Q Are you familiar with the attack on the -- the arson attack on the barn in Chicago that burned to the ground with free the horses written in it?
A No. I'm not.
Q Okay. You don't know anything about that then?
A I don't know anything about that.
MR. GOLDSTEIN: Okay. Thank you, sir. That's it. We're done.
MS. PALMER: Thank you, Mr. Riccio.
VIDEOGRAPHER: All right. This concludes the deposition of Dan Riccio. We are off the record at 3:19 p.m., Media Number 4.
(Videotaped deposition was concluded at 3:19 p.m.)

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
I, Trisha G. Rarick, a Court Reporter and Notary Public of the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.
Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.
I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.
Witness my hand, I have hereunto affixed my official seal on _____, 2020, at Charleston, Charleston County, South Carolina.

_____
Trisha G. Rarick
Court Reporter
My commission expires:
January 9, 2029

ERRATA SHEET

IN RE: Charleston Carriage Works v. Charleston Animal Society, et al
DEPOSITION OF: Dan Riccio
DATE TAKEN: 3-11-2020

Please read this original deposition with care, and if you find any corrections or changes you wish made, list them by page and line number below. DO NO WRITE IN THE DEPOSITION ITSELF. Return the deposition to this office after it is signed. We would appreciate your prompt attention to this matter.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

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SIGNATURE PAGE:

SIGNED:_____
Signature of deponent

SUBSCRIBED and SWORN TO before me this

_____ day of _____, 20__

_____
NOTARY PUBLIC

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO. 18-CP-10-04083

CHARLESTON CARRIAGE WORKS, LLC,

PLAINTIFF,

-VS-

CHARLESTON ANIMAL SOCIETY, ELLEN HARLEY, and CHARLESTON CARRIAGE HORSE ADVOCATES, INC.,

DEFENDANTS.

30(b)(6)

VIDEO DEPOSITION OF:

CHARLESTON CARRIAGE HORSE ADVOCATES, INC.

ELLEN HARLEY

JANUARY 31, 2020

McCarn Court Reporting, Inc.

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Steven M. Abrams
Broderick J. Christoff

Videographer:

Zachary White

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(Reading and signing of transcript waived.)

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THE VIDEOGRAPHER: The date today is January 31st, 2020, and the time on video record is 10:05 a.m. This is a 30(b)(6) deposition in the matter of Charleston Carriage Works, LLC, versus Charleston Animal Society, et al, in the Court of Common Pleas, Ninth Judicial Circuit, Case No. 2018-CP-10-04083. This deposition is being taken at Belk Cobb Infinger located at 2344 Cosgrove Avenue, Charleston, South Carolina.

At this time, will counsel and all parties present please state their appearances for the record.

MR. GOLDSTEIN: Tommy Goldstein for the Plaintiff. Oh, and also with me is Expert Witness Steve Abrams and my client, Broderick -- Brody Christoff.

MS. PALMER: Beth Palmer for Defendant, Charleston Animal Society.

MR. THOMPSON: Trey Thompson for Defendants, Ellen Harley and Charleston Carriage Horse Advocates, Inc.

MR. MANN: Jenkins Mann for Ellen Harley and Charleston Carriage Horse Advocates.

THE VIDEOGRAPHER: All right. Would you please swear in the witness.

COURT REPORTER: Will you raise your hand,

please.

ELLEN HARLEY,

having been duly sworn, testified as follows:

EXAMINATION

BY MR. GOLDSTEIN:

Q Ms. Harley, my name is Tommy Goldstein. I apologize for my voice, but I had a little bit of a surgical matter that impacted my voice. So if you don't understand me or can't understand me or have difficulty understanding me, let me know, and I will slow down and restate the question and try to speak more clearly so you can hear me, okay?

A Yes.

Q All right. Have you ever given a deposition before?

A Yes.

Q Okay. So I don't need to go over the rules with you and all that, you've been through all that before?

A Correct.

Q All right. Now, this is really -- the reason we corrected the videographer at the beginning is this isn't a deposition of you, this is what lawyers call a 30(b)(6) deposition. Does that mean anything to you --

A Yes, it does.

Q -- that terms? It does, okay. And under the Rules of Civil Procedure, a 30(b)(6) deposition says to the corporate entity in this case, Charleston Carriage Horse Advocates, you tell us who the witness is who's most knowledgeable about certain items, and you have appeared on behalf of Charleston Carriage Horse Advocates; is that correct?

A Correct.

Q Okay. And so by doing so, you agree that you're the person most knowledgeable about the matters that are outlined in the notice of deposition, correct?

A That's correct.

Q Okay. Now, you have before you five -- and so I've provided copies to counsel. You have before you five exhibits. I'd like to go through these with you briefly, if I may. Exhibit 1 is the Notice of Deposition, a 30(b)(6) deposition, that brings you to my office here today. Have you had a chance to review this?

A I have.

Q Okay. Now, let's just briefly go through all the -- all the items that are listed and ask if you are the person on behalf of Charleston Carriage Horse

Advocates who is the most knowledgeable about certain things. Are you the person who's most knowledgeable about the Charleston Carriage Horse Advocates' web presence, whether it be Facebook or Instagram or any other social medial?

MR. THOMPSON: At this point, I'm going to interject an objection with regard to your characterization of the 30(b)(6) requirement for the representative of the corporate entity and what they are here today to say. The rule is what the rule is.

MR. GOLDSTEIN: Okay. Go ahead and answer the question.

THE WITNESS: I'm sorry, can you restate that question?

BY MR. GOLDSTEIN:

Q Sure. Yes. Number one is asking for the knowledge of the identity or identities of such person or persons who have possession of defendant's, Charleston Carriage Horse Advocate, Inc.'s computer, computers, laptops, tablets, or other electronic devices used to maintain the Charleston Carriage Horse Advocates' website. Are you the person who has the most knowledge about where those devices are and who has possession of them?

A There are none.

Q Okay. But --

MR. THOMPSON: And, Tommy, for purposes of your questioning, if you continue to say "the most knowledgeable," can I have a running objection as to those questions?

MR. GOLDSTEIN: Sure.

MR. THOMPSON: Okay. And then are you asking her just on an overall at this point, because I think she just answered the question about that topic area as opposed to just whether she is the person or not?

MR. GOLDSTEIN: Yeah. I plan on having --

MR. THOMPSON: Okay.

MR. GOLDSTEIN: -- some follow-up questions.

MR. THOMPSON: Well, the answer was not responsive, so I'm just trying to figure out where you -- are we going through it initially, is she the right person and then answer --

MR. GOLDSTEIN: Right. If y'all want to stipulate that she's the right person for all these, we can move on.

MR. THOMPSON: We have presented her in accordance with the rule.

MR. GOLDSTEIN: Okay. All right. Well, in that case, let's -- so we do have a stipulation that all of the items set forth in the second rescheduled

Plaintiff's Notice of Deposition -- 30(b)(6) Notice of Deposition that Ms. Ellen Harley is the person most knowledgeable on behalf of Charleston Carriage Horse Advocates, Inc.?

MR. THOMPSON: I'm not going to stipulate to what you have just described. I will stipulate in accordance with the rule that she has been presented in accordance with the rule. And --

MR. GOLDSTEIN: All right. I'll ask it another way.

MR. THOMPSON: -- I also, Tommy, sent you an e-mail -- or not an e-mail, I sent you a letter on Tuesday regarding objections to certain topic areas that we were not intending to present. So to the extent that I understand you didn't receive that letter, it was sent to you by e-mail and by regular mail, and those objections would be incorporated into any alleged stipulation at this point.

MR. GOLDSTEIN: Okay. Well, since I don't know what they are and -- when I get them, I'll read them.

MR. THOMPSON: Well, that's why I can't stipulate to all of them because we have objected to them.

MR. GOLDSTEIN: Okay. All right. Well, I'm

going to ask it a different way and try to cut through some of the back and forth.

BY MR. GOLDSTEIN:

Q Who's the person at Charleston Carriage Horse Advocates who's most knowledgeable about the operation of that entity?

A I am.

Q Okay. And does Charleston Carriage Horse Advocates, Inc. own any electronic devices?

A Yes.

Q Okay. And where are those devices stored? Who has possession of them?

A I have.

Q Okay. And are they laptops, desktops? Are they tablets? Are they cellphones? What are they?

A Laptop.

Q Okay. And as the person appearing today on behalf of Charleston Carriage Horse Advocates, Inc., do you have any objection to Mr. Abrams here obtaining a mirror image of those electronic devices?

MR. THOMPSON: Objection.

BY MR. GOLDSTEIN:

Q Okay. Do you have an objection to Mr. Abrams obtaining a mirror image of those?

MR. THOMPSON: Objection. And I think that's

a legal conclusion and a legal decision to be made as to whether that is appropriate or not. I think if you ask her questions about when she obtained the laptop, that will also be instructive.

BY MR. GOLDSTEIN:

Q Okay. Do you have an objection to making the devices owned and operated by Charleston Carriage Horse Advocates available to Mr. Abrams for imaging?

A No, I don't.

MR. THOMPSON: And a continued objection because the complete mirroring or imaging of the hard drive would be more intrusive than necessary given that there may very well be other things on that laptop that are not business-related. Again, I repeat, the question about whether that hard drive should be mirrored or in any way copied is going to be a legal decision, and we will file a motion to prevent that, I can just state that for the record regardless of her answer.

MR. GOLDSTEIN: Okay. You realize, Mr. Thompson, that you're coaching the witness, which is a direct violation of the rules covered in the conduct of depositions?

MR. THOMPSON: I am -- I am --

MR. GOLDSTEIN: You can put your -- you can

put your objection on the record, but the witness testified that she has no objection, and then you overrode her decision and put your objection on the record, but you're not the witness.

MR. THOMPSON: I -- I also described at the very beginning that it was a legal decision, and you persisted by asking the question to the witness for a legal determination and decision, and that's for her lawyer, not for her.

MR. GOLDSTEIN: All right. Well, let's -- let's talk about that.

BY MR. GOLDSTEIN:

Q Let's go to Exhibit 2. Those are the 2017 tax returns filed by Charleston Carriage Horse Advocates; is that correct?

A I believe so.

Q Okay. And they were prepared by a tax preparer in Pennsylvania; is that correct?

A That's correct.

Q Why would the Charleston Carriage Horse Advocates use a -- and I'm sure I'm going to butcher the pronunciation, Erdenheim, Pennsylvania?

A Because I believe that they're the most qualified to -- to do this.

Q What's your association with -- whose

decision was it to hire a Pennsylvania tax accountant?

A It was Charleston Carriage Horse Advocates' decision.

Q Was that reached in a board meeting, in a vote recorded and so forth --

A No, it was not recorded, just a general discussion.

Q Well, is there anybody on the board of directors or employed by Charleston Carriage Horse Advocates who is from Erdenheim, Pennsylvania?

A No.

Q Are you from Pennsylvania?

A No.

Q Did you used to reside in Pennsylvania?

A I did.

Q Didn't you serve as a Republican representative in the Pennsylvania House of Representatives?

A I did.

MR. THOMPSON: Objection. And, Tommy, that's outside the scope of the 30(b)(6). If you can identify anywhere in the 30(b)(6) topics that her service in any political body is relevant to any of these topics then I'm happy to hear it.

BY MR. GOLDSTEIN:

Q Okay. Are you looking at Plaintiff's Exhibit 2? Do you have it in front of you, the tax return?

A Yes, I am.

Q And you see it says in boldface letters, "Open to Public Inspection"?

A Yes.

Q Okay. Isn't Charleston Carriage Horse Advocates a charitable organization?

A It is.

Q Okay. And isn't it -- and did you sign this return when you filed it with the Internal Revenue Service, under penalties of perjury?

A I did.

Q Okay. And so you agree that Charleston Carriage Horse Advocates organization is a charitable organization?

A It is a nonprofit, a 501(c)(3).

Q Okay. And that obligates the organization to follow certain rules of transparency, doesn't it?

A Yes.

Q Okay. Well, I'm wondering why I'm having all this struggle to get to information when your organization is supposed to be a charitable organization that's open to public inspection?

A I don't know. I don't know why you're not

able to. I mean, it's -- we -- we filed these reports as required by law, and we are within the guidelines of a 501(c)(3).

Q Which includes being open to public inspection, correct?

A Which includes being open to public inspection.

Q All right. And so you also agree that as the 30(b)(6) witness that the purpose of the Charleston Carriage Horse Advocates is not to harass or injure citizens in Charleston, South Carolina, correct?

A Our mission is to advocate and educate on the humane treatment of working animals on city streets and humane treatment of livestock.

Q Right. Well, that's not exactly what your -- what your mission statement says. Let's turn to that. Your mission statement, which is part of the return that you filed, states that your mission is to -- includes "needed to report carriage animal incidents and abuse;" is that correct?

A Where are you looking, please?

Q 990, schedule zero, supplemental information.

A Okay. I'll have to look at it.

Q Yeah. Take your time.

A "Our mission is to advocate -- is to educate

the public and advocate for the humane treatment of livestock and animals that work in urban environments. We serve the Charleston community by providing up-to-date information on the carriage industry and resources needed to report carriage animal incidents and abuse."

Q That's your mission statement?

A That is our mission statement.

Q Who wrote that?

A I suppose we probably did.

Q Who's "we"?

A Charleston Carriage Horse Advocates.

Q Okay. And in your tax return, you list four members of the board of directors; is that correct?

A That was correct at the time of this filing, yes.

Q Yeah, at the time of this filing, I should have --

A Uh-huh.

Q I stand corrected. At the time of this filing, you listed four directors, Ellen Harley, Elizabeth Slagsvol, Catherine Poag, and Elizabeth Fort; is that correct?

A That is correct.

Q Okay. So can we assume therefore or deduce

therefore that those four persons were the author of the mission statement you just read?

A The Charleston Carriage Horse Advocates Board of Directors put together that mission statement.

Q Okay. Does the Carriage Horse Advocates have any employees?

A No.

Q Has it ever had any employees?

A No.

Q Okay. Because you list approximately $68,000 in administrative expenses. What were -- what were those used to pay?

A We used -- we use consulting firms to do all of our social media.

Q Oh, okay. Well, now we're getting somewhere. Who do you use to do your social media?

A In 2016, 2017, and 2018, we used Domangue Consulting.

Q I think I might have to ask you for the court reporter to spell that because that's sort of an ambiguous word.

A D-O-M-A-N-G-U-E Consulting.

Q D-O-M-A-N-G-U-E?

A Correct.

Q Where are they located?

A I'm not sure.

Q Okay. Well, how do you communicate with them?

A I don't. That was in 2016, '17, and '18.

Q Okay. Who hired them?

A And in 2000 -- the Board of Directors did.

Q Okay.

A They maintain and -- they maintained and produced all of our social media.

Q How do you pay them?

A How?

Q Uh-huh.

A With checks.

Q And where do you mail the checks to?

A To whatever was their address.

Q Okay. What is their address?

A I don't -- I don't -- I can look. I'm happy to look for that address.

Q Do you know what state?

A I -- I can't be sure now. At the time, they were in South Carolina, the State of South Carolina.

Q Okay. And who's handling all that for the Charleston Carriage Horse Advocates in 2019?

A Let's see, it's called Digital Solutions, but there's some -- a word in front of it. I can't

remember -- I don't recall the name -- the first word, I'm losing it. Something consulting, digital -- Custom, Custom Digital Solutions.

Q Do you know where they're located?

A In the State of South Carolina.

Q Okay. Who's on the Board of Directors now?

A That's -- we also use Cause Media in Florida.

Q Do you have written contracts with these organizations?

A I don't believe so.

Q Who was the point person for contact with each of these three?

A The first one was Amy Dye. The second is Audrey Coates.

Q C-O-A-T-E-S?

A Correct.

Q Okay.

A The third is Sarah Symoens, S-Y-M-O-E-N-S.

Q Okay. Do you know anything about how the digital ads and information is prepared?

A In 2016, 2017, and 2018, the consulting firm, we, as a board, gave them guidelines. We asked them to only use truthful information that -- we asked them to -- our policy is not to -- to speak of any individual or any specific carriage company in -- in

our -- in any of our posts and to -- and we try to back up all of the facts with nationally-recognized literature, be it journals, scientific studies, extracts, reputable nationally-recognized animal welfare organizations.

Q And what would you characterize as a "reputable animal welfare organization"?

A The American Society for the Prevention of Cruelty to Animals, the Royal Society for the Prevention of Cruelty to Animals, the American Veterinary Association, the American Equine -- I forget the name, how they specifically call themselves. Equine Journals where there are extracts -- nationally-recognized Equine Journals, where there are extracts and articles from studies.

Q On that search engine optimization, what steps do you take in order to employ that in your digital presence?

A We -- we rely on our consultants to -- to do -- to work across any of the social medial forms -- platforms.

Q How is your fee structure with them, is it a flat fee, an hourly fee, is it --

A We pay them by the month.

Q How much do you pay them a month?

A I would have to look.
Q Well, just take a guess, ballpark.
A I can't ballpark.
Q Is it more than a million dollars a month?
A (Laughing) No, sir.
Q Okay. Because if it were, you would remember that?
A I would remember that.
Q Okay. Is it more than $1,000 a month?
A I would have to look.
Q Okay. So if it's more than $1,000 a month, you wouldn't -- you would not necessarily remember that?

MR. THOMPSON: Objection.

BY MR. GOLDSTEIN:

Q Who writes the checks for Charleston Carriage Horse Advocates?
A We have an accountant.
Q Who's that?
A A-1 Bookkeeping.
Q Where are they located?
A In the State of South Carolina.
Q Who is on the Board of Directors now?
A Myself, Catherine Poag, Liz Rawl.
Q And you said Elizabeth?

A R-A-W-L.

Q R-A-W-L, okay. And today, are there any employees of Charleston Carriage Horse Advocates?

A No.

Q Charleston Carriage Horse Advocates depends on fundraising for all of its money; is that correct?

A That is -- yes, that is correct.

Q Contributions from other people?

A Correct.

Q And do y'all track these contributions?

A Yes, we do.

Q Do you report them?

A To the extent that the law requires.

Q Okay. Is the -- Charleston Carriage Horse Advocates still using the same accounting firm in Pennsylvania that -- today as it was in 2017?

A Yes, it is.

Q Okay. Would you say the contributions as reflected in your 19 -- 2017 tax returns have gone up or down since 2017?

A Where -- I'd have to look at this. I'm sorry, can you identify the page --

Q Sure, it's the first page. It shows $68,719 in program service revenue, including government fees and -- I'm sorry, contributions, gifts, grants, and

similar amounts received, line one.

A So I'm sorry, what is your question?

Q Has it gone up or down since 2017?

A I -- I would have to look at other tax returns and compare them to be able to give you that information.

Q Well, can we look at them?

A I don't have them here.

Q No, I don't mean right this minute. I mean, can we look at them is my question?

A Well, I think they're available online. So you can certainly pull them up.

Q Okay. If they're not available online, do you have any objection to us looking at them?

MR. THOMPSON: Objection. We have offered previous objections and have been challenging the production of certain financial information records. To the extent that the information is public record, we'll provide that; otherwise, we have not produced any other financials to date, and we object to that question to the extent that it's not public.

BY MR. GOLDSTEIN:

Q Okay. Now that the objection is on the record, would you mind answering the question?

A I'm going to defer to my lawyers.

Q You can't do that now. That's -- that is absolutely not allowed now. He had -- he can tell you "don't answer the question." Now, he can do that. He does that at his own peril, and he can place an objection on the record, but once he's placed his objection on the record, you answer the question. And if you refuse, then we --

A Well, if I am required to do so, I certainly shall.

Q Okay. You are required to answer the question. Do you have any objection to us or anyone taking a look at the 2018, 2019 returns?

MR. THOMPSON: Of what, of CCHA?

MR. GOLDSTEIN: Of Charleston Carriage Horse Advocates Form 990-EZ.

MR. THOMPSON: Same objection, but you can answer the question.

THE WITNESS: I have no objection.

BY MR. GOLDSTEIN:

Q Okay. And as you sit here today as the point person for the organization, you don't know one way or another whether the contributions have gone up or down or stayed flat?

A I would have to look them. I would have to look at all of them.

Q Okay. Is your inability to recall based on a deficiency in memory or is it because you just don't spend that much time looking at that kind of information?

A I have not looked at these -- at these forms for a while. We -- we spend our time at Charleston Carriage Horse Advocates educating and advocating on behalf of working animals in Charleston. Our focus is not on how much money we make or don't make, that's not our focus, that's not why we're in existence. We're in existence because we want to educate and advocate the public on the current working conditions of carriage animals.

Q Well, but -- now, to be fair, Charleston Carriage Horse Advocates has called for a total ban of carriage tours, correct?

A That is not correct.

Q Okay. You have been to tourism commission meetings?

A I have.

Q Okay. And you've spoken on behalf of Charleston Carriage Horse Advocates?

A I have.

Q And you've spoken on behalf of Charleston Animal Society at tourism commission meetings?

A I don't think I have -- I have done that.

Q Okay.

A But I -- I don't recall that.

Q Okay. Let me draw your attention to Exhibit 3, that's an April 25th, 2017, letter from me to you. Do you recall getting that letter?

A I do.

Q Okay. And what steps did the Charleston Carriage Horse Advocates take as a result of receiving that letter?

MR. THOMPSON: Okay. I'm going to object for the record. At this time, Tommy, this is outside of the scope of any of the topics that you've listed on your 30(b)(6) notice. I've also served notice to you that for the purposes of this deposition, any and all questions outside of the bounds of the topics that you have presented are objectionable and will not be bound against Charleston Carriage Horse Advocates today.

MR. GOLDSTEIN: Okay.

BY MR. GOLDSTEIN:

Q Now, can you answer the question? What steps did Charleston Carriage Horse Advocates take as a result of receipt of the letter of April 25th, 2017?

A I consulted with two different attorneys and --

MR. THOMPSON: Objection. You need to stop right there because if you consulted and whatever information you discussed with them is attorney-client privileged information, Mr. Goldstein knows that.

BY MR. GOLDSTEIN:

Q And I'm not asking for any conversations you had with your lawyers. I'm asking which steps did Charleston Carriage Horse Advocates take as a result of this letter? And if your answer is, "well, I talked to lawyers," and that's the end of your answer then that's the end of your answer.

A That's the end of my answer.

Q Okay. Now, does Charleston Carriage Horse Advocates -- it was incorporated on January 3rd, 2017; is that correct?

A Yes.

Q Okay. Now, in the notice of 30(b)(6) deposition, there are a number of requests for documents related to the formation and the maintenance of Charleston Carriage Horse Advocates. Did you bring any of those documents with you today?

A I brought the Articles of Incorporation.

Q Okay. Which is deposition Exhibit 4?

A Right.

Q Okay.

A And the -- you asked for something else, too, which I brought --

MR. THOMPSON: I have them, she may not. I brought records. So as you ask for them, I'll hand them to you.

MR. GOLDSTEIN: Okay. Well, then that would satisfy the requirements of the 30(b)(6). I'd like to get -- do you want me to copy them and hand the originals back to you?

MR. THOMPSON: I'm going to hand you as you ask for them.

MR. GOLDSTEIN: Okay.

MR. THOMPSON: Whatever you ask for, if I've got it then we'll give it to you.

MR. GOLDSTEIN: Okay. Well, I'd like to see all the --

MR. THOMPSON: We talked about the Articles of Incorporation. I'll provide those to you.

THE WITNESS: And the bylaws.

MR. THOMPSON: And the bylaws.

MR. GOLDSTEIN: Okay. Now, is this my copy to keep, or is it -- do I need to copy it?

MR. THOMPSON: You can do with it whatever you want.

MR. GOLDSTEIN: Okay.

MR. THOMPSON: You can make a copy as an exhibit to the deposition or you can just have them. It's up to you. I've got multiple copies.

MR. GOLDSTEIN: We don't need to clutter up the deposition. We'll just make reference because they obviously have been produced in discovery because they're Bates-stamped.

MR. THOMPSON: No, they're Bates-stamped for the purposes of today.

MR. GOLDSTEIN: Oh. Well, then I will mark them for the deposition. Okay.

MR. THOMPSON: You're going to have them. I'm going to give these to you.

BY MR. GOLDSTEIN:

Q All right. Now, when did -- when did the bylaws get formed?

A Um...

Q It says March 24th, 2017, is that --

A I think that's -- that would be correct.

Q Okay. These aren't backdated, are they?

A No.

Q Okay. Do you recall who prepared them?

A Wolf and Wolf.

Q Say again?

A Wolf and Wolf.

Q Oh, the law firm Wolf and Wolf?

A Correct.

Q On Meeting Street?

A Correct.

Q Okay. Now, your lawyer's been kind enough to hand me a report from the Secretary of State as well as the bylaws and another copy of the Articles of Incorporation. Are there any -- does Charleston Carriage Horse Advocates maintain any other written documents related to its legal constitution as a corporation? Does it have minutes? Does it have -- I don't know what else it might have other than minutes.

A Yes.

Q And where are those documents?

MR. THOMPSON: I have those here.

MR. GOLDSTEIN: Okay.

MR. THOMPSON: (Looking through documents.)

BY MR. GOLDSTEIN:

Q While he's looking, let's give him a break and I'll ask you another question. Does the Charleston Carriage Horse Advocates have officers?

A Yes.

Q Who are the officers?

A Currently, myself as president and Catherine Poag as treasurer.

Q Are those the only two officers?

A Yes.

Q Okay. Has that traditionally been the only two officers, or have there been other people who've served?

A Traditionally that's been us.

Q Okay. So since the creation in 2017, you've been president and she's been treasurer?

A Correct.

Q All right. So --

A No, no, no, that's not true.

Q Okay.

A 2017 and 2018, Beth Slagsvol was the treasurer.

Q Okay. And did the Charleston Carriage Horse Advocates maintain separate financial accounts, checking account, savings account, investment accounts, any other kind of accounts?

A We have only a checking account.

Q And in what bank is that maintained?

A South State Bank.

Q And what is the name on the account?

A Charleston Carriage Horse Advocates.

Q And who has signatory authority over that?

A I do.

Q And no one else?

A No one else.

Q Okay. So if I ask any questions about paying bills and so forth, you would be the one to know? There wouldn't be anybody else?

A Correct -- well, that is true for 2019. In 2017 and '18, it would have been Beth Slagsvol.

Q Okay.

MR. GOLDSTEIN: Are y'all looking at the minutes?

MR. THOMPSON: Yeah, there is -- can we go off the record?

MR. GOLDSTEIN: Sure.

THE VIDEOGRAPHER: Off the record at 10:39 a.m.

(Recess taken.)

THE VIDEOGRAPHER: On the record at 10:45 a.m.

BY MR. GOLDSTEIN:

Q All right. You have been kind enough to hand us what looks to be seven pages of minutes. Have you had an opportunity to look at these?

A I have.

Q Okay. And these are all the minutes that have been created and maintained by Charleston

Carriage Horse Advocates, correct?

A Correct.

Q Okay. Who typed these minutes up?

A Those particular ones, may I just have a little bit closer look?

Q Sure. Sure.

A I believe Beth Slagsvol probably did those.

Q Okay. You're talking about Page 1 of the minutes?

A Right.

MR. THOMPSON: How about the date?

MR. GOLDSTEIN: Yeah. Let her do it.

THE WITNESS: I'm sorry?

MR. THOMPSON: If you could just --

THE WITNESS: Oh, it's December 12th.

BY MR. GOLDSTEIN:

Q 2017?

A '17. And the same thing -- I mean, this was obviously a continuation. That's the 4th of May. So that would be Catherine -- probably Catherine Poag would have done those. I'm not sure about the November 7th. I may have written those. It looks like my -- the typeface that I use.

Q Okay. So it could be -- I'll mark all these but I'm going to mark them as one. So are there any

other written documents maintained by Charleston Carriage Horse Advocates other than the ones that you've handed me, being the report from the Secretary of State, the bylaws, and the minutes that we have just discussed, are there any other documents maintained by Charleston Carriage Horse Advocates?

A You mean legal documents?

Q Anything in writing. It could be correspondence, it could be memorandum, it could be outlines, it could be talking points, it could be press releases, it could --

A Yes.

Q Okay. And where are those documents?

A Well, they would be on --

MR. THOMPSON: Hold on. Stop. Stop.

(Interruption.)

BY MR. GOLDSTEIN:

Q They would be where?

A They would be on various computers.

Q Okay. And who -- who would maintain those computers?

A They would be personal computers of board members.

Q Okay. So whatever has been prepared in writing by Charleston County -- Charleston Carriage

Horse Advocates would be on a computer owned by you or one of the other directors; is that a fair statement?

A Yes.

Q Okay. Now, did you bring any other documents with you here today pursuant to the notice of deposition and subpoena?

MR. THOMPSON: She did. I have them.

MR. GOLDSTEIN: Okay. Can you tell me what you brought?

MR. THOMPSON: I think you've asked the questions, and to the extent you ask the questions and we have documents that are relevant to those questions, we will present them.

MR. GOLDSTEIN: Okay.

BY MR. GOLDSTEIN:

Q All right. Here's my question: Did you bring any other documents with you here today, "yes" or "no"?

A Yes.

Q Okay. Can you tell me what they are?

A Can you tell me what you want?

Q I don't want to guess, Ms. Harley. This isn't an exercise in guessing. I just want to know what documents --

MR. THOMPSON: I will tell you what we have.

MR. GOLDSTEIN: Okay.

MR. THOMPSON: We have the U.S. Treasury 501(c)(3) records. We have the -- I can't remember exactly what these are supposed to be, but these are the mailings or communications seeking donations or providing information.

MR. GOLDSTEIN: Okay.

MR. THOMPSON: I have Charleston Carriage Horse Advocates's social media on four separate thumb drives. It's my understanding that they are the complete Facebook, Instagram, and Twitter accounts for CCHA.

MR. GOLDSTEIN: Okay. Well, that's very helpful, and I would like for Mr. Abrams to have an opportunity to review the information contained upon them. So how would you propose to do that? What's the way that's most convenient?

MR. THOMPSON: You can do that on your time.

MR. GOLDSTEIN: Okay. Well --

MR. THOMPSON: We're here for a 30(b)(6) deposition --

MR. GOLDSTEIN: All right.

MR. THOMPSON: -- and you asked for this information --

MR. GOLDSTEIN: And who's going to be --

who's going to be in possession of the four thumb drives so that I can make arrangements for Mr. Abrams to review them?

MR. THOMPSON: These are yours.

MR. GOLDSTEIN: Oh.

MR. THOMPSON: And actually, when I say "four," I think there's just one. I think there's one and three copies.

MR. GOLDSTEIN: Okay.

MR. THOMPSON: I'm pretty confident because I was supposed to provide that many copies to everybody, so I think it's just one thumb drive.

MR. GOLDSTEIN: Okay. So I get pink, light blue, dark blue, or black?

MR. THOMPSON: You can pick your color.

MR. GOLDSTEIN: Okay. Well, I'll take pink.

MR. THOMPSON: (Hands thumb drive to counsel.)

MR. GOLDSTEIN: All right. So now, may I look at the other written documents that you made reference to? And just to move things along, I'm going to --

MR. THOMPSON: And for the purposes as well, Tommy, we filed a motion for a protective order and confidentiality.

MR. GOLDSTEIN: Right.

MR. THOMPSON: Yesterday, we had discussed that --

MR. GOLDSTEIN: I will state on the record that these records will remain confidential and will not be distributed to any person who's not directly involved in the preparation of work product connected with this case, and upon completion of the case, will be returned to counsel.

MR. THOMPSON: We discussed that during your client's deposition as well, so it will apply equally.

MR. GOLDSTEIN: Equally, neutrally, correct.

MR. THOMPSON: Right.

MR. GOLDSTEIN: What's good for the goose is good for the gander. All right. And those written documents are the -- those are the solicitation letters?

MR. THOMPSON: Well, they are what they are. I'm not going to say what --

MR. GOLDSTEIN: Okay.

MR. THOMPSON: You can call them whatever you want to call them. Now, they are -- they were sent to me, and so it has my e-mail letterhead --

MR. GOLDSTEIN: Yeah, I understand, because you printed them.

MR. THOMPSON: Correct.

MR. GOLDSTEIN: I get it. Okay.

MR. THOMPSON: I don't have any better --

MR. GOLDSTEIN: Right. I'm going to mark these as Deposition Exhibit 6, and I will go through them without burdening opposing counsel or the witness with that exercise. So now we can move on to the --

(Exhibit No. 6 marked.)

BY MR. GOLDSTEIN:

Q Oh, I did have one more question for you before we move on to the electronic media: Does Charleston Carriage Horse Advocates in any way -- you see what's been marked Plaintiff's Exhibit 5? That is a series of property records from Edgartown, Massachusetts.

MR. THOMPSON: And Mr. Goldstein, have you previously produced those records to us?

MR. GOLDSTEIN: Without adjourning the deposition, I can't answer that question.

MR. THOMPSON: Well, it's important because pursuant to the rule, if you have not previously produced those to us, we do have the opportunity --

MR. GOLDSTEIN: Oh, sure. No, y'all take your time and go talk about them. I don't care. Take all the time you want. Absolutely.

MR. THOMPSON: -- to discuss it with the witness without you inquiring about our conversation with the witness.

MR. GOLDSTEIN: No, absolutely -- you have the right -- if you say you haven't seen that until now and I don't -- I can't say one way or another, but I'm going to give you the benefit of the doubt. Y'all take as much time as you want.

MR. THOMPSON: It is your record and your documents. You --

MR. GOLDSTEIN: Yes.

MR. THOMPSON: I'm asking you, did you produce them or not?

MR. GOLDSTEIN: I think I did, but I'm not going to sit here and tell you -- with all the documents in this case, I could not possibly tell you with absolute certainty.

MR. THOMPSON: All right. Well, I need to know your position with regard to --

MR. GOLDSTEIN: My position --

MR. THOMPSON: -- talking to my client and I'll be discussing these documents that I don't believe I've seen before.

MR. GOLDSTEIN: Okay. If you say you haven't seen them, you haven't seen them.

MR. THOMPSON: I don't know.

MR. GOLDSTEIN: Okay. It doesn't matter --

MR. THOMPSON: It doesn't matter if they were produced or not, that's the issue. 30(j) is -- is the issue.

MR. GOLDSTEIN: I'm giving you the benefit of the doubt. So y'all take a break and discuss it with your client, and then I'll ask her some questions about them.

MR. THOMPSON: What is your position on whether that communication is privileged or not?

MR. GOLDSTEIN: Oh, no, no. I'm not going to -- of course not. You're entitled to do that.

MR. THOMPSON: Okay. I just wanted to make sure.

MR. GOLDSTEIN: Yeah. Yeah.

THE VIDEOGRAPHER: Off the record at 10:55 a.m.

(Recess taken.)

MR. THOMPSON: Is everybody back? All right. We're back on the record. All right. Tommy, what you've handed us are -- appear to be property records regarding Ellen Harley individually. I'm not sure how this fits into any aspect of any of the topics that you have identified for the 30(b)(6) of CCHA. Of

course, CCHA is an incorporated entity, it's a 501(c)(3). The information in the documents that you've provided concern property records of Ms. Ellen Harley, who is an individual who is not subject to this deposition at this time.

So unless you can identify how it is germane and relevant to any of the topics in this 30(b)(6), we are going to instruct her not to answer those questions, that they are abusive, irrelevant, and beyond the scope of this deposition notice.

MR. GOLDSTEIN: Okay. Don't you want to hear the question first?

MR. THOMPSON: I want to know what the purpose of these documents are first.

MR. GOLDSTEIN: I'll -- you'll find out when I ask her the question. I think they're related -- there's a direct relation. There may not be, and I don't know until I ask my question. And I don't have to preview my questions with you.

MR. THOMPSON: Well, I think that we have the right when we present a witness --

MR. GOLDSTEIN: You can instruct her not to answer. If you want to do that, instruct her not to answer.

MR. THOMPSON: -- with advanced notice, to

have our witnesses prepared for those topics that are listed on the notice, and Ms. Ellen Harley's property records, which I question whether they were ever even produced prior to today's date have nothing to do with CCHA, an incorporated entity --

MR. GOLDSTEIN: Okay --

MR. THOMPSON: -- or any of these topics.

MR. GOLDSTEIN: They might and they might not. I'm going to find out, unless you instruct her not to answer.

MR. THOMPSON: Well, I'm going to instruct her not to answer --

MR. GOLDSTEIN: Okay. Well, I get to ask my question.

MR. THOMPSON: Okay. That's fine.

MR. GOLDSTEIN: Okay.

THE VIDEOGRAPHER: Is it all right if we go back on video?

MR. GOLDSTEIN: Yes.

THE VIDEOGRAPHER: All right. On the record at 11 o'clock a.m.

BY MR. GOLDSTEIN:

Q Okay. Ms. Harley, I have handed you Exhibit 5 -- I think it's 5, which are property records from Massachusetts. Have you had a chance to review those?

A No, I have not.

Q Oh, I thought you just stepped out and talked to your lawyers privately about them?

A I didn't review the specific -- only just generally.

Q Okay. Does Charleston Carriage Horse Advocates underwrite the maintenance or financial obligations for property in Massachusetts?

A No.

Q Okay. The reason I ask that is according to the property records in Massachusetts, the tax bill on that is less than the tax bill on your personal residence in Charleston, South Carolina. So the only explanation that I'm able to come up with is, is the property in Massachusetts maintained as a agricultural or horse refuge?

MR. THOMPSON: Objection.

THE WITNESS: I think what you might want to do is to call the tax assessor and find out how taxes are delineated with properties in that particular area, and that might be enlightening for you and you might better understand how that -- they come to those conclusions.

BY MR. GOLDSTEIN:

Q Okay. Well, I -- those records are actually

right in front of you as Deposition Exhibit 5, so I don't know why I would have to call the tax assessor to read me his or her documents. So my question to you is: Is the property in Massachusetts maintained as a eleemosynary or some type of horse refuge?

MR. THOMPSON: Objection --

THE WITNESS: It's a private residence.

BY MR. GOLDSTEIN:

Q Okay. So it's not connected with horse rescue or welfare or animal welfare or anything like that?

MR. THOMPSON: Objection.

THE WITNESS: It's a private residence.

BY MR. GOLDSTEIN:

Q Okay. All right. Now that we've cleared that out of the way, let's get to the electronic media, which is really -- really the heart of today's inquiry. I would like to know every individual who has designed and maintained the website of Charleston Carriage Horse Advocates from 2016 until today.

A Now, repeat that again, please.

Q Sure. You have a web presence. You have a web page.

A Uh-huh.

Q I mean, you can pull it up and look at it.

It's very skillfully done.

A (Nods head up and down.)

Q I want to know every person who was involved in the creation and maintenance of that web presence, the design, the creation, and so forth.

A The -- I gave you a list of the Domangue Consulting was --

Q Right.

A -- originally involved in that and did that creation. Beth Slagsvol had administrative access to the website from 2016, '17, and '18.

Q And how about today?

A I'm sorry, today?

Q Uh-huh.

A The -- the other consulting firm, Custom Digital Solutions, does that exclusively. Catherine Poag and I have administrative access but we do not -- we do not maintain it at all. We do not access it at all.

Q Okay. But --

A We have the passwords to it.

Q Okay. But the three individuals you've identified had -- either had or currently have administrative access?

A Correct.

Q All right. So if -- and the information supplied to the -- and I don't know what shorthand you want to use for the -- the consulting, you want to call them a webmaster or what term -- what shorthand term can we apply to talk about the -- the consultant versus the members of Charleston Carriage Horse Advocates?

A The members of Charleston Carriage Horse Advocates did not -- do not actually manipulate the page or write things on the page. The people who do that are the consultants.

Q And where do they get their information from?

A A variety of sources.

Q Well, I'll give you an example. On your web page, it says that either me or Brody or someone on our behalf went to the newspapers and boasted about filing our suit. Where did that information come from?

A Probably a press release.

Q From who?

A Well, I would have to look specifically, sir, at what you're talking about. This is very vague. So would you like to show me? If you could show me --

Q Well, we could pull it up. I could show you --

A Why don't you show me, yeah, that would be helpful.

Q Okay. Let me ask you another question: Who -- whose decision is it to ban commenters on your web page?

A We have on -- on our site very clearly -- ours is a supporter's page. It is for information to educate and advocate. We make -- we try to make that very clear, but we have a disclaimer on our Facebook and on our -- on our social media, it's very clearly written, that explains our position.

Q Yeah. Okay. That's what it says but in practice -- I'll give you an example: If -- if someone writes in -- in a comment and says, "Big John's not dead, he's fine. He was -- he was checked by a veterinarian and released for work the same day," and that comment is then deleted and then that poster is then banned, whose decision is it to do that?

A It's based on our policy that is very clearly written.

Q So is your policy to -- to bar or ban any commenter that might provide truthful information?

MR. THOMPSON: Objection.

THE WITNESS: We rely on nationally-recognized sources for -- for the information, and we

rely on facts.

BY MR. GOLDSTEIN:

Q Okay.

A We rely on -- it is -- we -- we educate and we advocate for these animals.

Q Is it a fact that Big John died on the day he fell down?

A We know that not to be true.

Q Okay. Is it -- is it true that Big John did not suffer any permanent or serious injury on the day he fell down?

MR. THOMPSON: Objection.

THE WITNESS: We -- we don't know that.

BY MR. GOLDSTEIN:

Q Okay. Well, now that brings up an interesting question. Does anybody at CCHA have any veterinary experience?

MR. THOMPSON: Objection.

THE WITNESS: That's not the point. We don't -- that's -- that's not the point. The point is is that we rely on nationally-recognized authorities, journals, extracts, scientific studies for information.

BY MR. GOLDSTEIN:

Q Is it Charleston Carriage Horse Advocates'

position that a horse pulling a carriage with 16 or 17 people on it is animal abuse?

MR. THOMPSON: Objection, outside the scope of the 30(b)(6).

THE WITNESS: We adhere to scientific information. We rely on facts. There -- certainly, we -- in our opinion, there is -- the loads are excessive. As a matter of fact, in 2006, when it was debated for the ordinance, the -- the two studies that were used, one was from 1923, the other was from 1917, which was an Army manual of 1917, and in that Army manual it said that -- that draft horses could pull up to 4,500 pounds, but that was four draft horses, four draft horses. Now, that was 1917. 1923 there was another study. We believe that in 100 years that hopefully we've come a little farther.

BY MR. GOLDSTEIN:

Q Can you give --

A We have --

Q I'm sorry. Finish your answer.

A So we have calculated, and we have calculated based on CDC figures in 2006 of weights of average human beings, which let's face it, people might be a little heavier now, but based on those figures, we have estimated that the -- that the weight is

approximately a little over 2 tons. We feel -- we feel, it is our opinion that that is excessive. We -- we -- it is our opinion that the -- that the temperature is the most extreme in the United States. It's 95, but it's with four readings.

What that means is if the temperature during those four readings that are taken 15 minutes apart dip at any point below .01, the readings start all over again. That can essentially put a horse out on the street in a 95-degree temperature for at least another hour, 45 minutes to an hour.

In 2009, there was a study -- an independent veterinarian did a study on the Charleston Carriage animals. There were many, many troublesome infractions that were cited with regards to -- to that inspection. Charleston Carriage Horse Advocates has advocated time and again for an independent scientific peer-reviewed study to determine what exactly are humane conditions, but it is our opinion that that has not been done and that there are some very serious issues.

Q Okay. Now, could you please identify the study title so we can locate the study that you just made reference to?

A Yeah. The city, you can -- you can pull it

FOIA from the City of Charleston. It was done between May and June in 2009 by a veterinarian called Amy Hayeck, H-A-Y -- I think E-C-K. I'm not sure of the spelling.

Q Okay. Now, are you able to do the calculations to the amount of force necessary to move a fully-ladened carriage?

MR. THOMPSON: Objection, outside the scope of the 30(b)(6).

MR. GOLDSTEIN: Well, you're right, it is, but she just gave us a whole big narration, and the door is wide open. So --

MR. THOMPSON: No, it's not.

MR. GOLDSTEIN: -- don't give me that.

MR. THOMPSON: No, it's not. And you don't get to turn already non-topic related information into topic-related information just because she talks about it. The 30(b)(6) provides the topics that you're entitled to ask her questions about and against which the company would be bound. You're far afield of those topics. And instead of telling her not to answer, we've allowed those answers to continue. However, you're cautioned that none of those answers will be held against CCHA if they are not the subject of these topics that you've provided prior notice for.

Advocates's Facebook account, and you answered the question up to 2019. And then you started to say in 2019 it was something different, then we ran out of tape.

A And actually, as it relates to that question, it's not different, it's only the administrator, it's only the consultant that -- that actually does those things.

Q Okay. So if I -- well, never mind, I'll save that for the discovery deposition.

And then I -- I may have asked you this already, and I apologize if it's redundant but -- and I just don't remember if you answered it or not. Are the Facebook posts regularly deleted?

MR. THOMPSON: Objection.

BY MR. GOLDSTEIN:

Q I think you said you didn't know; is that right, or do you know?

MR. THOMPSON: Objection.

THE WITNESS: I don't understand what you mean by that. You mean when people make comments?

BY MR. GOLDSTEIN:

Q Right. Yeah.

A The comments, not the actual posts that we put up --

and then you asked additional questions, and Ms. Harley was in the middle of an answer, and you stopped her. I don't think it's appropriate. It wouldn't be appropriate for you to stop her in the middle of an answer at any other point. It's not appropriate just because it inconveniences the videotape situation. So I request that in the future you use the time wisely and not interrupt the witness's answer, okay? Thank you.

MR. GOLDSTEIN: Well, I -- let me apologize to all counsel for my failure to see into the future. I realize it's a shortcoming of mine, and I will try to prognosticate better.

(Recess taken.)

THE VIDEOGRAPHER: On the record at 11:30 a.m.

BY MR. GOLDSTEIN:

Q Okay. Do you want me to remind you where you were?

A Please.

Q Okay.

A Ask the question again from the beginning.

Q All right. I started off, I asked you who's been authorized to read and respond and/or delete posts on the carriage -- Charleston Carriage Horse

information?

A Verbal.

Q Okay.

A We just -- you know, we talk about it. And -- and in -- if we have -- if we have photographs or if we have videos that we have taken, we will send them to the social media consultants. If we have -- if we -- the -- well, let's do it this way: 2016, 2017, and 2018, Domangue Consulting, we gave her just an overall sort of, you know, set of parameters, and then she would -- she had complete and only access to social media, and so she would write these things, and we would give her very broad overarching instructions.

In 2019 --

Q Okay. Let me stop you there, and we're going to pick back up on 2019 because he's out of tape, so just hold that thought for a minute. It's just a technological matter.

MR. THOMPSON: And that's fine for the record, and you can go off the video record.

THE VIDEOGRAPHER: This is the end of Media No. 1. We are off the record at 11:29 a.m.

MR. THOMPSON: We're off the video record. On the audio record: Tommy, you were informed with three minutes left that you were running out of tape,

A Right.

Q Okay. And they decide independent of you who to delete and ban and who not to delete and ban?

A Based on the -- on our very visible procedures and information on our pages.

Q But the relationship between you and the consultants is not in writing anywhere, it's just an oral agreement, "hey, look after our thing and do what you think is right"?

MR. THOMPSON: Objection.

THE WITNESS: Can you rephrase that?

BY MR. GOLDSTEIN:

Q Yeah. It sounds like Charleston Carriage Horse Advocates really doesn't do anything, that the consultants do everything is the picture I'm getting, and I'm trying to figure out if that's a correct picture or not?

MR. THOMPSON: Objection.

THE WITNESS: We have given -- we have asked the social media consultants -- we give them overarching information.

BY MR. GOLDSTEIN:

Q Who does?

A The Board of Directors.

Q All right. Where is that overarching

A The media consultant.

Q Nobody else?

A No.

Q Do you have a written contract with the consultant?

A No.

Q It's just an oral contract?

A Correct.

Q Are Facebook posts regularly deleted?

MR. THOMPSON: Objection.

THE WITNESS: What do you mean by "Facebook posts"?

BY MR. GOLDSTEIN:

Q Facebook posts where people put -- don't they post comments?

A You mean are individual posts deleted, is that what --

Q Yeah.

A I don't do Facebook, so I -- I have to have a little -- you'll have to help me out a little bit.

Q So who does the Facebook then, if you don't do it?

A Well, I don't do the -- I don't do any of the social media.

Q Okay. And it's all the consultants?

or a dot, other than that, it's the same?

A Uh-huh. But if it's not, if you have problems, I'm happy to look at it and tell you.

Q Okay. Where are those e-mails stored?

A On various computers.

Q Belonging to who?

A To consultants, some would be on personal computers.

Q But the only e-mail account is the Gmail account, there wouldn't be any others, correct?

A Not that I am aware of.

Q Okay. Do y'all back up these e-mails?

A No.

Q Okay. Who has administrative access to the e-mail account?

A The social media consultant and the Board of Directors.

MR. GOLDSTEIN: Do you want to go ahead and stop now?

THE VIDEOGRAPHER: Three minutes left.

MR. GOLDSTEIN: All right. Well, just let me know when we get to one.

BY MR. GOLDSTEIN:

Q Who -- who does CCHA authorize to read and respond and/or delete posts on the Facebook account?

its website?

A I -- I am not -- I would have to check that.

Q I mean, those people, you want those -- you want to identify those people because you need them to fund your organization, right?

MR. THOMPSON: Objection.

THE WITNESS: We ask for contributions on our website, and I'm assuming that you gave him that information as well. We certainly ask for donations on our website.

BY MR. GOLDSTEIN:

Q Since 2016, how many visits have there been to the website? I know you don't know an exact number but --

A No, I don't.

Q -- it's in the millions though, right?

A I can't -- I can't tell you. I would have to actually look for that.

Q Okay. Now, what e-mail accounts are used by Charleston Carriage Horse Advocates?

A One.

Q Okay.

A CCHA-join@Gmail or it's CCHA.join@Gmail, but I can't remember which it is.

Q Okay. But either way, it's either a hyphen

MR. THOMPSON: Objection.

THE WITNESS: Big John was a horse. Big John was not a company. Big John was not -- was not an individual human being.

BY MR. GOLDSTEIN:

Q So what do you think he is, just property?

MR. THOMPSON: Objection.

THE WITNESS: I think -- I'm not a lawyer, and so that would be a guess on my part, and I'm not -- I'm not a lawyer.

BY MR. GOLDSTEIN:

Q How many social media followers does Charleston Carriage Horse Advocates have?

A I've told you that we have over a million --

Q Yeah, that's Facebook, but what about Instagram and Twitter and the other ones you were talking about?

A Oh, I don't -- I'm not -- I don't -- I'm not sure. I'd have to check.

Q You think it's more than a million?

A No, it's less than that.

Q Okay. All right.

A It might be -- it might be 100,000, maybe.

Q Does Charleston Carriage Horse Advocates have a means or mechanism to track the number of visits to

Q So the answer is "no," you wouldn't have an objection then, right, since they have been provided?

A Right.

Q Okay. As you've created content for Charleston Carriage Horse Advocates over the years, have you created any kind of backup for the web page and the other media presence?

A I don't understand what you're asking.

Q A hard drive backup or burn it to a CD for reference in case you lose your data?

A No, not that I'm aware of.

Q Okay. Do you know how many Facebook friends Charleston Carriage Horse Advocates has currently, just approximately?

A We have -- we have over a million users in the past year.

Q And since you have over a million users, does Charleston Carriage Horse Advocates, as you've told us previously, you acknowledge a responsibility to disseminate only truthful information, correct?

A We -- we very -- we try very hard to disseminate truthful information. We do not -- we do not -- it is not our policy to name any individual or any individual company in our social media.

Q Well, y'all certainly identified Big John.

here, I'll read them, but it very clearly says that this is a supporters' page. Unfortunately, we have had some pretty violent comments on those pages. We have had lots of opinions on those pages, and to the extent that they do not meet the criteria of our stated procedures, they will -- they will be taken off.

Q So all the computers, tablets, and smartphones that were used to create content are either in the individual's possession you've previously identified and/or the consultants, correct?

MR. THOMPSON: Objection.

THE WITNESS: They are -- the posts are maintained by the consultants.

BY MR. GOLDSTEIN:

Q Okay. And as the president of Charleston Carriage Horse Advocates, does the Charleston -- does the Charleston Carriage Horse Advocates have any objection to Mr. Abrams having access to that information maintained by the consultants?

MR. THOMPSON: Objection. And for the record, I have provided you the complete posts of all social media today.

MR. GOLDSTEIN: Okay.

BY MR. GOLDSTEIN:

what appears on social media comes from those consulting firms, that's why we hire them.

BY MR. GOLDSTEIN:

Q Okay. And whose decision is it to ban certain commenters on your Facebook and other media pages?

A It is -- it is derived from a very clearly written policy that is on our pages.

Q Okay. But who's the -- who's the final decisionmaker, who decides who gets to appear and who doesn't get to appear?

A I would just have to go back to the same thing.

Q Okay --

A It's if -- it's if the social media people see that it does not -- the consultants see that it is outside of the procedures that are out -- that are clearly stated, then those -- those consultants will proceed to remove those -- those posts.

Q So if someone posts accurate, truthful information that's at variance with Charleston Carriage Horse Advocates' message and that person is banned, who makes that decision?

A If you read the -- the procedures, it -- it very clearly states that -- in fact, if we have them

We know about Facebook. Is there an Instagram --

A Instagram and Twitter.

Q And Twitter, okay. And who owns those accounts?

A Charleston Carriage Horse Advocates.

Q For all three?

A Yes.

Q And the administrators would be the same as the people you gave us earlier?

A Yes.

Q All right. Now, you told us earlier that you rely on the consultants but the information maintained by Charleston Carriage Horse Advocates are on the laptops owned by the people that you've previously identified?

MR. THOMPSON: Objection.

THE WITNESS: They are maintained by the -- by the consultants so that they are given -- the consultants write those -- those posts. They come up with them and they write them. They sometimes consult with us; they did not do that in 2016, '17 and '18. We gave them general parameters, truthfulness, check your facts, rely on nationally-recognized animal welfare organizations, journals, extracts, general information, but the -- the posts themselves that --

Q What is your background?

A What do you mean what's my --

Q Do you have a background in physics, engineering, veterinary science?

A No, I don't. We don't -- we don't -- Charleston Carriage Horse Advocates -- you're asking me as an individual if I do, and Charleston Carriage Horse Advocates does not rely on -- on -- that's irrelevant to what Charleston Carriage Horse Advocates does. We rely on -- on reputable organizations, reputable journals, extracts, and scientific studies.

Q All right. Who has designed and maintained the Charleston Carriage Horse Advocates Facebook content, is it the same people that you've already told us?

A Yes.

Q Okay. So the answer wouldn't be any different from the answer you gave previously for media presence as for Facebook?

A Right.

Q The same administrative?

A Right.

Q Okay. Now, what social media accounts are used by Charleston Carriage Horse Advocates, and who are the subscriber or accountholder for each account?

MR. GOLDSTEIN: Okay. And you please be cautioned to stop coaching the witness during the deposition --

MR. THOMPSON: I haven't coached her on anything. I am providing you the legal response to your question.

BY MR. GOLDSTEIN:

Q Okay. Are you able to give the calculations, "yes" or "no"?

MR. THOMPSON: Objection.

BY MR. GOLDSTEIN:

Q Can you do them?

MR. THOMPSON: Objection.

THE WITNESS: You're going to have to ask the question again.

BY MR. GOLDSTEIN:

Q Okay. Do you agree that -- do you agree that the world operates on principles of physical immutable laws that are -- that are measured the same by everyone everywhere?

MR. THOMPSON: Objection. Tommy, you're crossing the line.

THE WITNESS: I don't even know how to answer your question; I'm sorry, sir.

BY MR. GOLDSTEIN:

you deposed her, and I think she probably gave you that information.

BY MR. GOLDSTEIN:

Q Did you take a video of the incident that day?

A I did.

Q Okay. Where is your video maintained?

A I have that video.

Q Okay. And where would we obtain a copy -- how would we obtain a copy of it?

A I'm happy to share that with you.

Q Okay. Well, I appreciate that very much. If you'd send that to your lawyer, he'll forward it right over to me.

All right. I think I'm getting near the end. Let me take a break, and I'm assuming y'all will not have any questions but maybe I shouldn't assume that. So let me take a break and go through my notes.

THE VIDEOGRAPHER: Off the record at 11:46 a.m.

(Recess taken.)

THE VIDEOGRAPHER: On the record at 11:59 a.m.

BY MR. GOLDSTEIN:

Q All right. Ms. Harley, I have a few more

MR. THOMPSON: Tommy, objection. And I want to make sure you understand, the -- all of the Facebook and Insta and Twitter were provided by those companies. In other words, Facebook sends the information. Twitter sends the information. It was compiled in that fashion.

MR. GOLDSTEIN: Okay.

MR. THOMPSON: You've suggested that they've kept it, and it's available through those outlets.

BY MR. GOLDSTEIN:

Q Now, the video of Big John's incident, how did you have -- and again, when I say "you," Charleston Carriage Horse Advocates, how did you obtain a copy of that video?

A Of which video?

Q Big John's incident.

A There were a number of people who took videos is my understanding. There were a number of people who were on the streets and that were taking videos.

Q Right. Okay. Every copy that we've been able to obtain has been edited, so I want to know if you have any unedited versions? I would like to see them.

MR. THOMPSON: Objection.

THE WITNESS: I think Elizabeth Fort, I think

-- I'm not opposed to carriage tours. Charleston Carriage Horse Advocates does not oppose working horses. We do not oppose working horses, as long as they are humanely treated.

BY MR. GOLDSTEIN:

Q Okay. But the question is: Those visual images that you take, where do you keep them? And when I say "you," Charleston Carriage Horse Advocates. Where are they kept?

A They're kept on that disk right there that you have, that apparently you have that.

Q So every image -- every image you've taken is on this disk?

A That we have posted, yes.

Q Okay. Does Charleston Carriage Horse Advocates maintain a cache, a library, or database of photos and videos that have been used or are available for use?

A I think what you have there is a compilation of everything.

Q Okay. Now, let me go to Deposition Exhibit 1. The images that you have provided us on the flash drive and that you've kept, do you have the -- do you know the identity of the person who supplied the images to you?

Q Okay. So the images that you take on behalf of Charleston Carriage -- well, let me ask you this: You wouldn't go out and photograph Brody for your own personal pleasure, would you? I mean, that seems kind of weird.

MR. THOMPSON: Objection.

THE WITNESS: Well, I haven't thought about it.

BY MR. GOLDSTEIN:

Q Well, are you that attracted to him that you --

MR. THOMPSON: Objection. That's outside of the bounds of this deposition for sure.

BY MR. GOLDSTEIN:

Q So when you go and you take these images, you're taking them on behalf of Charleston Carriage Horse Advocates?

A I'm taking them because -- because I -- because I see them and I take them.

Q Exactly.

A Right.

Q To support your message of being opposed to carriage tours?

MR. THOMPSON: Objection.

THE WITNESS: Not necessarily. And it's not

that submission and they submit a form, and they will send them or they'll send them to the CCHA e-mail address.

Q But when you're out taking a video and you now have the image or the sequence of images that you wanted, where do you store it?

A In my phone.

Q Okay. And would you have any objection to providing -- not you, Charleston Carriage Horse Advocates, have any objection to providing those images to Mr. Abrams here?

MR. THOMPSON: Objection. What images? I mean, you're talking about her personal phone, right? We're outside the bounds of CCHA. That's not -- that's not her phone -- I mean, that's her phone, not CCHA's phone. So I've provided you copies of all Instagram, Twitter, and Facebook posts with every image. I think the Facebook is like 3,200 images.

MR. GOLDSTEIN: They're all -- they're all in here? (Referring to pink thumb drive.)

MR. THOMPSON: Yes.

MR. GOLDSTEIN: Okay.

MR. THOMPSON: So everything that's ever been posted is on that digital content there.

BY MR. GOLDSTEIN:

correct?

A I would -- we have taken photographs and videos --

Q Right.

A -- of carriage company animals, yes.

Q Okay. And so my question is: Where is that information stored? Where are those images stored?

A They are stored in telephones for the most part.

Q All right. And how would we get them? How would we get a copy of them? Who would we have to go to to get a copy of them?

A The people who took them.

Q Okay. And who would they be?

A Well, there would be lots of people. You're talking about in terms of what we use on our -- on our sites?

Q Well, let me --

A We get -- we get -- we get photographs and videos sent in often.

Q Right. Where are they stored is my question? I want to be --

A It's on -- we normally receive them through Charleston Carriage Horse Advocates. That -- that -- we have a form submission and -- so people can go on

address?

A My personal e-mail account?

Q Yeah.

A Ellen.Harley@Gmail.com.

Q Are any of your directors also on the directors of Charleston Animal Society?

A I was, and I am no longer.

Q What year were you on the Charleston Animal Society Board of Directors or years?

A Let's see, 2014 to 2019 -- through 2019.

Q Now, you have taken various digital photographs and videos of various carriage companies including Charleston Carriage Company, correct?

MR. THOMPSON: Objection, outside the scope of the 30(b)(6). Are you asking her personally or --

MR. GOLDSTEIN: No. No, I'm not --

BY MR. GOLDSTEIN:

Q Listen, when I say "you," the second -- the second person singular or plural pronoun "you," I mean Charleston Carriage Horse Advocates.

A And so would you restate the question?

Q Sure. Sure. Either you or another member of Charleston Carriage Horse Advocates have taken numerous photographs and videos of various carriage companies, including Charleston Carriage Company,

BY MR. GOLDSTEIN:

Q Okay. What about e-mails, who's authorized to read and respond and delete e-mails on the Gmail account?

MR. THOMPSON: Objection.

THE WITNESS: The Board of Directors as well as the -- the consultant.

BY MR. GOLDSTEIN:

Q Okay. And are e-mails regularly deleted?

MR. THOMPSON: Objection.

THE WITNESS: Not that I'm aware.

BY MR. GOLDSTEIN:

Q Okay. Now, any correspondence that went out on behalf of Charleston Carriage Horse Advocates would be on the Gmail account and only the Gmail account; is that correct? I think I understood that to be your answer.

MR. THOMPSON: Objection.

THE WITNESS: As far as I can recollect.

BY MR. GOLDSTEIN:

Q Okay. Have you ever used your personal e-mail account to conduct any Charleston Carriage Horse Advocates --

A I have.

Q Okay. What is the address that -- that

Q How would you find that out?

A I can look at what our accounting is. In fact, maybe -- maybe there's even information in here as to -- I'd have to look. Maybe we -- if you want to take a break, I can see if some of that information -- we have profit and loss statements. We have -- that would delineate all of that information. I don't see anything in here.

Q Okay. Well, I've looked at them, and I couldn't find it either, so --

A Okay.

Q But what you're -- the answer to the question is "we don't delete, it's our consultants," that was your answer, okay.

MR. THOMPSON: Objection.

BY MR. GOLDSTEIN:

Q Well, wasn't that your answer?

MR. THOMPSON: Objection.

THE WITNESS: We have -- in 2016, 2017, 2018, no one but the consultant, Domangue Consulting, had access to that -- to those social media accounts. So by definition, no one -- no one else had access. In 2019, I and Catherine Poag have the passwords, but we do not maintain nor do we access those social media accounts.