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STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Thomas A. Russo, Circuit Court Judge

RECEIVED

NOV 19 2013

SC Court of Appeals

Appellate No.: 2012-212327
Civil Action No.: 2009-CP-46-3103

Felicia Dicks Wilson.....Appellant

vs.

Cedar Fair Entertainment Co.
Cedar Fair, L.P. d/b/a Carowinds
Amusement Park.....Respondent.

**MOTION TO COMPEL COMPLIANCE WITH THE APPELLATE COURT RULES
AND STAY OF FILING FINAL BRIEFS PENDING RESOLUTION OF THIS MOTION**

Respondent Cedar Fair Entertainment Co. Cedar Fair, L.P. d/b/a Carowinds Amusement Park hereby moves to compel Appellant to comply with the Appellate Court Rules regarding the contents of the Record on Appeal. The grounds of this motion, stated more fully in the attached memorandum, are that the served Record on Appeal does not contain all the information from the parties' Designation of Matters to be Included in the Record on Appeal nor is the served Record on Appeal properly paginated. Additionally, Respondent would request an order staying the deadline in which to file the parties' Final Briefs pending the resolution of this Motion. Appellant's certificate of service indicates the incomplete Record on Appeal was served on November 5, 2013, although it was not received by our office until November 12, 2013. Accordingly, without a stay in the filing requirements, the Final Briefs would be due to this Court on November 25, 2013.

[SIGNATURE TO FOLLOW]

- 1 -
SMB

Respectfully submitted,

Sheila M. Bias

Sheila M. Bias, Esquire

Steven J. Pugh, Esquire

Joseph E. Thoensen, Esquire

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*Counsel for Respondent Cedar Fair Entertainment
Co. Cedar Fair, L.P. d/b/a Carowinds Amusement
Park*

November 19, 2013

smB

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY

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Thomas A. Russo, Circuit Court Judge

Civil Action No. 09-CP-46-3103
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SC Court of Appeals

Felicia Dicks Wilson.....Appellant,

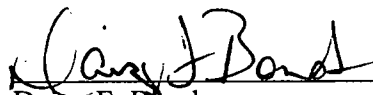
v.

Cedar Fair Entertainment Company
Cedar Fair, L.L.C. d/b/a Carowinds
Amusement Park.....Respondent.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Respondent Cedar Fair Entertainment Company, Cedar Fair, L.L.C. d/b/a Carowinds Amusement Park, do hereby certify that I have this date served the foregoing Motion to Compel Compliance with the Appellate Court Rules and Stay of Filing Final Briefs Pending Resolution of this Motion by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

Felicia Dicks Wilson
Post Office Box 31562
Augusta, GA 30903-3051


Daisy F. Bonds

Dated: November 19, 2013

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Thomas A. Russo, Circuit Court Judge

Appellate No.: 2012-212327
Civil Action No.: 2009-CP-46-3103

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NOV 19 2013

SC Court of Appeals

Felicia Dicks Wilson.....Appellant

vs.

Cedar Fair Entertainment Co.
Cedar Fair, L.P. d/b/a Carowinds
Amusement Park.....Respondent.

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL COMPLIANCE WITH
THE APPELLATE COURT RULES AND STAY OF FILING FINAL BRIEFS PENDING
RESOLUTION OF THIS MOTION**

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*Counsel for Respondent Cedar Fair Entertainment
Co. Cedar Fair, L.P. d/b/a Carowinds Amusement
Park*

November 19, 2013

INTRODUCTION

In the instant appeal, Appellant and Respondent have each filed their Initial Briefs and Designations of Matters to be Included in the Record on Appeal. However, the Record on Appeal served upon Respondent only contains those matters which were designated in Appellant's Designation of Matter to be Included in the Record on Appeal—thereby rendering the Record on Appeal incomplete. In addition, the served Record on Appeal is not properly paginated. Accordingly, Respondent moves this honorable Court for an order compelling Appellant to create and serve a Record on Appeal which includes the matters designated by both parties to be included in the Record on Appeal. Additionally, because the Record on Appeal, in its current iteration, is incomplete, neither party can accurately serve and file their Final Briefs since some of the necessary documents are missing. Therefore, Respondent would respectfully request an order staying the filing deadlines for the Final Briefs until such time as this Court rules on the instant motion.

RELEVANT BACKGROUND

This appeal arises from a jury trial in which the jury returned a verdict in favor of Respondent. Appellant's Complaint alleged that during a visit to Respondent, Carowinds Amusement Park ("Carowinds"), in July of 2006, she sustained "severe personal injuries" while attempting to exist the Wild Thornberry's Log Ride. Appellant contended Carowinds was negligent in, *inter alia*, failing to properly staff the ride, assist in her disembarkation, and failing to advise her of any present danger. This matter was tried by a jury in York County on May 15-16, 2012. The jury found in favor of Carowinds. The instant appeal follows.

ARGUMENT

I. Appellant must be compelled to comply with the South Carolina Appellate Court rules regarding the contents and format of the Record on Appeal.

Pursuant to Rule 210(c), SCACR, the “Record on Appeal shall include all matter designated to be included by any party under Rule 209 . . .” Appellant’s Designation of Matter to be Included in the Record of Appeal, attached to this Memorandum as Exhibit A, listed the following items to be included in the Record on Appeal: “(1) Judgment Entered May 17, 2012; (2) Complaint; (3) Answer; (4) Transcript of Proceedings pp. 33-34, 129-130, 179-182, 185-196; and 197-199; [and] (5) Defendant’s Exhibit 1.”

Respondent’s Designation of Matter to be Included in the Record on Appeal, attached to this Memorandum as Exhibit B, lists the following items be included in the Record on Appeal: “(1) Jury Verdict Form; (2) Complaint; (3) Answer; (4) Trial Transcript – May 15-26¹ [sic], 2012; [and] (5) Deposition Testimony of Felecia Dicks Wilson (pp.1,4,76, and 77).” However, the Record on Appeal, attached as Exhibit C, only contains those items listed in Appellant’s Designation of Matter to be Included in the Record on Appeal.

Appellant has failed to include the entire trial transcript and pages 1, 4, 76, and 77, of the deposition of Felecia Dicks Wilson; both of which were designated in Respondent’s Designation of Matter to be Included in the Record on Appeal. Moreover, the items missing from the Record on Appeal and proposed by Respondent are not irrelevant or immaterial to this appeal. The entirety of the trial transcript is needed for meaningful appellate review because Appellant assigns error, in part, with the jury

¹ The Designation of Matter contains a typographical error, indicating the trial went from May 15-26, 2012, instead of May 15-16, 2012. However, this minor error in the date is not so egregious as to cause confusion regarding what matter was designated.

charges. Although it is Respondent's position that this issue is not preserved, should the Court wish to review the merits of the issue, a review of the entire trial testimony is needed to ascertain whether the trial judge erred with respect to the jury charges. See Wells v. Halyard, 341 S.C. 234, 237, 533 S.E.2d 341, 343 (Ct. App. 2000) ("When reviewing a jury charge for alleged error, an appellate court must consider the charge as a whole in light of the evidence and issues presented at trial."). Because this Court will only review those facts which appear in the Record on Appeal, see Rule 210(h), SCACR, Respondent will be prejudiced if this Court cannot review the entire trial transcript to determine, based on the facts and evidence presented at trial, if the jury charge was proper.

The deposition testimony is not irrelevant and is necessary for inclusion in the Record on Appeal because, as noted in our Initial brief, a portion of this testimony was read at trial, but the court reporter either transcribed the particular statement incorrectly, or it was read incorrectly at trial. Either way, the inclusion of the deposition testimony helps to clarify the testimony from trial.

In addition, the served Record on Appeal is also not "numbered consecutively beginning with the index." See Rule 210(c), SCACR ("Each page of the Record on Appeal shall be numbered consecutively beginning with the index."). As discussed more fully below, the failure to paginate the Record on Appeal makes converting the Initial Briefs to Final Briefs virtually impossible. Consequently, Respondent requests an order compelling Appellant serve and file a Record on Appeal in accordance with Rule 210, SCACR—a Record which is properly paginated and contains all matters purposed by both parties.

II. The Court should issue an order staying the deadlines for filing the Final Briefs.

Based on the date of service of the incomplete Record on Appeal, the parties' Final Briefs are due to this Court on November 25, 2013. However, due to the above errors in the served Record on Appeal, filing Final Briefs in accordance with the South Carolina Appellate Court Rules is virtually impossible. Both parties will be unable to convert their references to the transcript, answer, or other materials to respective pages in the Record on Appeal because the Record on Appeal is not properly paginated. Further, in Respondent's case, some materials referenced in our Initial Brief are not even included in the served Record on Appeal. See Rule 211, SCACR(b) ("Content. The final Briefs shall be identical to the brief(s) previously served under Rule 208, except for the following: References to the Record. The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. . . ."). Consequently, Respondent requests this Court issue an order staying the time in which to file the Final Briefs until such time as this Court can rule on this Motion and/or Appellant files a proper and complete Record on Appeal.

CONCLUSION

Based on the foregoing, Respondent respectfully requests this Court issue an Order compelling Appellant's compliance with the South Carolina Appellant Court Rules, to include the serving of a complete and correct Record on Appeal. Further, Respondent respectfully requests an Order from this Court staying the time frame in which to file Final Briefs with this Court until such time as the Court rules on this motion.

[SIGNATURE TO FOLLOW]

-5-
SMB

Respectfully submitted,

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Park*

November 19, 2013

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUL 19 2013

APPEAL FROM YORK COUNTY
Court of Common Pleas

BY:

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2012-212327

Felecia Dicks Wilson

Appellant

v.

Cedar Fair Entertainment Co.
Cedar Fair, LP d/b/a Carowinds
Amusement Park

Respondent.

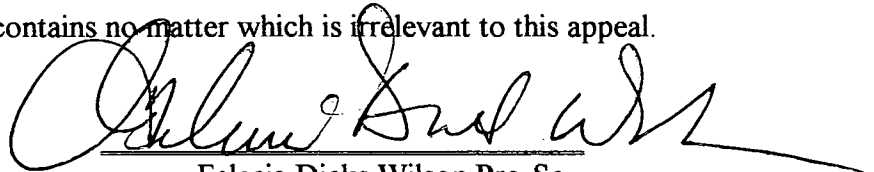
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Judgment entered May 17,2012
2. Complaint;
3. Answer;
4. Transcript of Proceedings pp.33-34; 129-130;179-182;185-196;and 197-199
5. Defendant's Exhibits 1

I certify that this designation contains no matter which is irrelevant to this appeal.

July 15, 2013



Felecia Dicks Wilson Pro-Se
Post Office Box 31562
Augusta, GA 30903
706-951-3051

EXHIBIT B

**IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

SEP 06 2013
SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Civil Action No.: 09-CP-46-3103
Appellate Case No.: 2012-212327

Felecia Dicks WilsonAppellant,

vs.

Cedar Fair Entertainment Company
Cedar Fair, L.L.C. d/b/a Carowinds
Amusement ParkRespondent.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following be included in the Record on Appeal:

1. Jury Verdict Form
2. Complaint
3. Answer
4. Trial Transcript – May 15-26, 2012.
5. Deposition Testimony of Felecia Dicks Wilson (pp. 1, 4, 76, and 77).

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

Sheila M. Bias

Steven J. Pugh

Joseph E. Thoensen

Sheila M. Bias

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Attorneys for Respondent

Columbia, South Carolina
September 6, 2013

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM YORK COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Civil Action No. 09-CP-46-3103
Appellate Case No.: 2012-212327

Felecia Dicks Wilson.....Appellant,


v.

Cedar Fair Entertainment Company
Cedar Fair, L.L.C. d/b/a Carowinds
Amusement Park.....Respondent.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Respondent Cedar Fair Entertainment Company, Cedar Fair, L.L.C. d/b/a Carowinds Amusement Park, do hereby certify that I have this date served the foregoing Designation of Matter by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

Felicia Dicks Wilson
Post Office Box 31562
Augusta, GA 30903-3051


Daisy F. Bonds

Dated: September 6, 2013

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2012-212327
Case No. 2009-CP-46-3103

Felecia Dicks Wilson

Appellant

v.

Cedar Fair Entertainment Co.
Cedar Fair, LP d/b/a Carowinds
Amusement Park

Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
COUNTY OF YORK**

IN THE COURT OF COMMON PLEAS

**FELECIA DICKS WILSON
Plaintiff,**

**COMPLAINT
Case No. 09-CP-46 03103
(JURY TRIAL DEMANDED)**

vs.

**CEDAR FAIR ENTERTAINMENT CO.
CEDAR FAIR, LP
dba CAROWINDS AMUSMENT PARK
Defendant**

**FILED-RECEIVED
2009 JUL 17 PM 4:20
DAVID HAMILTON
C.C.J.P. & G.S.
YORK COUNTY, SC**

The Plaintiff, complaining of the Defendant above-named, would show unto the Court as follows:

1. That the Plaintiff is a resident of Richmond County, Georgia and was at the time of the occurrence mentioned herein, at which time she was visiting the Carowinds Amusement Park.
2. That the Defendant is a corporation, doing business York County, South Carolina as Carowinds Amusement Park, at which time was responsible for the safe operation of the water ride Wild Thornberry's Log Ride.
3. That on or about July 20, 2006, the Plaintiff was exiting the ride on the disabled side after completing the ride. While in the midst of exiting the Plaintiff's log was struck by another log which was not attended. The collision caused severe physical injuries to the Plaintiff.
4. That as a result of the collision, the Plaintiff has sustained serious personal injuries, physical harm, pain and suffering, medical and drug expense, loss of enjoyment of life, emotional distress and other personal injuries. Such injuries have continued to cause pain and suffering and are of a permanent nature.
5. That the direct and proximate cause of the Plaintiff's damages and person injuries without which the same would not have occurred, was the

negligence, willfulness, wantonness carelessness and gross negligence of the Defendant in the following particulars.

- a) In failing to have proper staff to man the entering and exiting of the ride,
- b) In failing to advise of any present danger,
- c) In failing to assist with exiting of the ride,
- d) In failing to keep a proper outlook,
- e) In failing to keep the operation of the ride under proper control,
- f) In failing to warn the Plaintiff when the Defendant became aware of the perilous situation,
- g) In creating a perilous situation, and
- h) In failing to act as a reasonable and prudent person would under the circumstances then and there existing.

6. The plaintiff is informed and believes that she is entitled to judgment against the Defendant for the damages and injuries she sustained in this collision.

7. The Plaintiff does demand a jury trial.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in an appropriate amount, for such punitive damages as the Court would deem just and proper, for the costs of the action, and for such other and further relief as the Court would deem just and proper

By 

July 17, 2009

Answer 2009-CP-46-03103 filed August 20, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Felecia Dicks Wilson,)
)
Plaintiff,)
)
vs)
)
Cedar Fair Entertainment Company)
Cedar Fair, LP d/b/a Carowinds)
Amusement Park,)
)
Defendant.)

C/A No. 09-CP-46-3103

ANSWER

FILED - RECEIVED
2009 AUG 20 AM 9:56
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Defendant Cedar Fair, L.P. d/b/a Carowinds Amusement Park ("Carowinds") (incorrectly identified as "Cedar Fair Entertainment Company Cedar Fair, LP d/b/a Carowinds Amusement Park") files this Answer to Plaintiff's Complaint and would respectfully show unto the Court:

FOR A FIRST DEFENSE

1. Carowinds denies each and every allegation of the Complaint not specifically admitted or explained herein and demands strict proof thereof.
2. Carowinds lacks sufficient information to form a belief as to the truth of the allegations of paragraph 1, and, therefore, denies the same.
3. As to paragraph 2 of the Complaint, it is admitted that a portion of the park known as "Carowinds" lies within York County, South Carolina. The remaining allegations of paragraph 2 of the Complaint are denied.
4. Carowinds denies the allegations contained in paragraphs 3 through and including 6, including all subparagraphs, of the Complaint.

5. Paragraph 7 of the Complaint requires no substantive response from Carowinds.

6. Carowinds denies the allegations contained in the Prayer of the Complaint.

FOR A SECOND DEFENSE

7. Carowinds asserts that the Complaint, in whole or in part, fails to state a claim upon which relief may be granted against Carowinds and should therefore be dismissed.

FOR A THIRD DEFENSE

8. If it is determined that Carowinds was negligent as alleged in the Complaint, which is expressly denied, then the negligence of Carowinds, the Plaintiff and any other's negligence should be compared, and the damages awarded to the Plaintiff, if any, should be apportioned by the amount of each party's fault and negligence in accordance with the Comparative Negligence Law of this State.

FOR A FOURTH DEFENSE

9. The Plaintiff's alleged injuries and damages were caused by concurring, superseding and/or intervening causes.

FOR A FIFTH DEFENSE

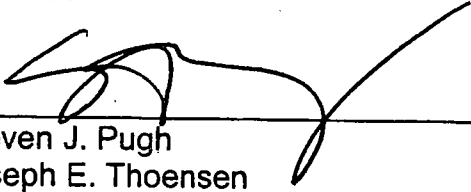
10. The Plaintiff's claim for punitive damages is violative of both the United States Constitution and the South Carolina Constitution and is, therefore, barred.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant Cedar Fair, L.P., as successor to Paramount Parks, Inc., d/b/a Paramount's Carowinds prays for a jury trial, that Plaintiff take nothing by this cause and that it recover its costs. This

Defendant prays for such other and further relief, both general and special, legal and equitable, to which it may be justly entitled.

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By: _____


Steven J. Pugh
Joseph E. Thoensen

ATTORNEYS FOR DEFENDANT CEDAR FAIR, L.P.,
d/b/a CAROWINDS AMUSEMENT PARK

August 17, 2009

**Opening Argument of Joe Thoensen regarding the testimony of Mr. Ed
Bailey**

Transcript Pages 33-34

1 Mr. Thoensen: Ladies and gentlemen, good afternoon. I introduced myself to you
2 earlier. My name is Joe Thoensen. I'm an attorney from Columbia, South Carolina, right
3 down the interstate. I'm with Richardson, Plowden and Robinson. I'm here representing
4 Carowinds, the defendant in the case. Mr. Bailey is here with us. I introduced him to you
5 earlier, as an employee of Carowinds. He's the manager of safety and security. I'm also
6 joined by Ms. Kathy Hawkinson. Kathy is with Cedar Fair Entertainment Company. They're
7 the parent company of Carowinds. Kathy's down from Sandusky, Ohio.
8 This is a very important case to Carowinds. They've give it a lot of attention. They're very
9 serious about it. We have Ed, we have Kathy, as I said, all the way from Ohio, who's here.
10 The plaintiff in this case alleges that she had an unpleasant experience at Carowinds.
11 Something happened to her on the log flume ride while she was there. And certainly anytime
12 a guest at Carowinds has any type of unpleasant experience we regret that. It's a place for
13 families to come and enjoy themselves, have fun, have a good time. And so anytime
14 anything happens that causes anyone any sort of unpleasantness we regret it. And obviously
15 something happened to her that caused her to file a lawsuit and bring her case into court.

16 But the issue that you're gonna be asked to decide is not whether or not something
17 happened to the plaintiff at Carowinds. That's not the issue. The issue you're gonna be asked
18 to decide is what is Carowinds' negligence. Did they fail to do something they should have
19 done or did they do something they should not have done. And then, beyond that, did the
20 negligence of the park cause the injuries that the plaintiff claims she suffered. That's what
21 you'll be asked to decide.

22 You're going to hear testimony from the plaintiff herself. She's gonna get on the
23 witness stand and tell you some more about her case. She may offer a couple of other
24 witnesses to talk to you about her case as well. I'm gonna ask you to pay close attention to

1 all of the evidence that you see and all the documents that might come into evidence. But I
2 also want you to keep in mind the evidence that you don't see during the course of this trial.

3 You will not see any of the plaintiff's doctors walk through that door and take this
4 witness stand and talk to you about her condition, whether or not it's related to what
5 happened to her at Carowinds. You won't see or hear any evidence in this trial that a
6 Carowinds employee did something he or she was not supposed to do, did something that he
7 or she was not trained to do, or did anything in violation of any of their training and
8 procedures. You won't see or hear anything with regard to that.

9 You will hear from Mr. Bailey, and Ed's gonna talk to you about this ride, the things
10 that guests can experience on this ride, the type of changes in speed and elevation and that
11 kind of thing. He's gonna talk to you about the duties and responsibilities of the attendants
12 on this ride, what they're trained to do, what they're supposed to do. He's also gonna tell you
13 that in his more than thirteen years at the park there has never been another incident where
14 someone claimed to have been injured on this ride in the way that plaintiff claims that she
15 was injured. So, keep that in mind as well when you consider how did this happen and could
16 it have possibly caused the injuries that plaintiff said that it did.

17 As the judge told you, after you hear all the evidence, he's gonna tell you what the
18 law is. Y'all are gonna have to determine what the facts are. As I have said in my opening,
19 you are gonna have to determine whether Carowinds did something negligent to cause these
20 injuries. And I think once you hear all the witnesses and see all the testimony and look t the
21 documents that we introduce, you're gonna have to answer that question in the negative. And
22 when that time comes I'll ask you to respectfully render a verdict in favor of Carowinds.

23 Thank you.

24 The Court: Thank you, Mr. Thoensen. Ms. Wilson, call your first witness.

25 Ms. Wilson: Thank you, Your Honor. I call to the stand Juanita Chaney.

Testimony of Juanita D. F. Chaney

**Direct Examination of Juanita Chaney by Felecia Dicks Wilson...
Transcript.Pages 35-37**

1 The Court: Ms. Chaney, if you would please come up and be sworn, ma'am.

2 **JUANITA CHANEY**, duly sworn, testified as

3 follows:

4 **DIRECT EXAMINATION BY MS. WILSON:**

5 Q Could you state your name again for the record?

6 A Juanita Chaney.

7 Q Your relationship to me?

8 A I am your daughter.

9 Q When were you born?

10 A June 7, 1988.

11 Q And do you remember when we went to Carowinds July 20 of '06?

12 A Yes.

13 Q Can you tell me what you remember and tell the court what you remember?

14 A About the incident?

15 Q From the incident, yes.

16 A I remember getting off the ride and I was holding a bag and I was waiting for
17 you to get off the ride. And I turned my head and I heard ow, really, really loud. And
18 you were standing there and you had one foot up and the other foot was still on the
19 boat. And....

20 Q Okay. After you heard me say Ow, what did I do then? Do you remember?

21 A I don't remember exactly what you did. I did watch you get out of the boat.

22 Q Okay. And after I got out the boat, do you remember me calling for any
23 assistance or anything like that that?

24 A I remember you looking for attendants.

25 Q Okay. And do you remember when the attendant came?

1 A I think it was just a few minutes, maybe three minutes after.

2 Q After I was looking for one?

3 A Yeah.

4 Q And after we got off the ride do you remember how long it was before
5 someone came to assist me with the injury?

6 A No, I don't remember exactly.

7 Q I wanted to ask you this: Have I done anything since that accident occurred to
8 coerce you or put words in your mouth or try to make you remember this incident
9 during this, during this time, preparing for court?

10 A No.

11 Q Okay. Did we discuss these things in detail?

12 A No.

13 Q And I don't know if you... What changes have you noticed in me physically
14 since the accident occurred?

15 A I noticed since then you have a lot of pain in your leg. You have a lot of pain
16 in your leg and you will say that your back is hurting so bad and your hip is hurting
17 so bad. *And you and be cramping up so bad and I would have to get your medicine
18 or

19 Q How long did that go on for?

20 A Still. I remember being at home not too long ago and you were in the lawn
21 and couldn't get up. You sat down and said come here and give me my medicine and
22 bring some water.

23 Q Okay. And I call you May-May?

24 A Yes. May-May is my childhood name.

25 Q Have I ever as far as you can remember back asked you to lie for me?

1 A No. No. You always told me to tell the truth.

2 Ms. Wilson: I have no further questions, Your Honor.

3 The Court: Mr. Thoensen.

4 Mr. Thoensen: Thank you, Your Honor.

5 **CROSS EXAMINATION BY MR. THOENSEN:**

6 Q You were with your mother on the date of the incident?

7 A Yes.

8 Q And you said you turned around and her say ow, and she had one foot in the
9 boat and one foot out of the boat?

10 A Yeah, I heard her holler ow.

11 Q Did you see anything that to your impression that would have caused her to be
12 hurt?

13 A Well, did I see anything? No.

14 Q Okay.

15 A I remember her being hurt while she was there.

16 Q Did you have any conversations with any Carowinds employee about the
17 incident that occurred on the log ride?

18 A No, I did not.

19 Q And you don't have any information about how the attendants on that ride are
20 trained to operate that ride, do you?

21 A No.

22 Q And you don't have any information regarding whether or not any of the
23 attendants that day did anything wrong, do you?

* 24 A No. I know there was no one there.

25 Q Okay.

Testimony of Ed Bailey

**Direct Examination of Ed Bailey by Attorney Joseph Thoensen
Describing the Carowinds Wild Thornberry Ride in Defendants Exhibit 1
Transcript Pages 129-130**

1 would, I'll ask you to stand on that side facing this way and keep your voice up loud
2 so the court reporter can hear you. Okay?

3 A Understood.

4 The Court: Thank you, sir.

5 Q You're free to come around.

6 A Thank you.

7 (Whereupon witness exited witness stand for demonstration with Defendant's Exhibit
8 Number One)

9 Q Mr. Bailey, what I'm going to ask you to do is just sort of narrate for the jury
10 what we're seeing as this video is played.

11 (Whereupon video is played for the jury)

12 A We'll start with a couple of quick slides and then we'll move along. Here's an
13 overall layout of what the ride looks like, and the person who produced it actually did
14 a good job of fading it in.

15 That's lift two. That's the coming down that lift into a splash run-off and into
16 the station. This is coming around into the station itself.

17 At the beginning of the ride, the boat is still in the station, just leading the load
18 point, and now you can see the guests actually riding the ride.

19 And the boat will go around to what we call lift one. A conveyer system takes
20 it up to the top of the lift.

21 This is the splash down. In fact, we have a couple of little s-turns here. These
22 are both contacting the sides and bumping.

23 The boat's coming into a section of the spillway. The boats are designed with
24 a guide wheel so when it bumps it will guide it around.

1 This is the spillway here and the break here. The release from the break. It
2 comes around now to the second lift. And here's the base of lift two.

3 Here we have at this point in time what's known as freewheeling, rolling.
4 And it runs out into the splash.

5 From here it will wind its way back around to where the actual unload section.
6 You can see it as the boat comes around.

7 There is a gate that actually directs the boats to one side or the other side of
8 the section. This boat is coming into the unload and I think they-- You see the
9 attendant. The boat stops just then and the video ends there.

10 The Court: Thank you, Mr. Bailey. You may return to your seat.

11 (Whereupon witness returns to witness stand)

12 Q Mr. Bailey, near the end of that video we saw an attendant sort of stick his
13 foot out to stabilize the boat as it came in. Correct?

14 A Yes, once the boat's in the station itself.

15 Q Is the proper method and the way those folks are trained?

16 A That's my understanding, yes.

17 Mr. Thoensen: May I approach the witness, Your Honor?

18 The Court: Yes sir.

19 Q Mr. Bailey, I'm handing you a document entitled, Guide For Guests With
20 Disabilities.

21 A Okay.

22 Q Please take a look at that and tell us if you can identify it and tell us what it is.

23 A This is the Paramount Carowinds', which is the name we were using at the
24 time, Guide For Guests With Disabilities.

25 Q Is there a copyright date on this particular guide?

Closing Argument of Appellant regarding Jury Charge

Transcript Pages 196-199

1 Remember, ladies and gentlemen, that your verdict in this case must be
2 unanimous.

3 Madam forelady, the verdict form is in the front of this notebook. It's in the
4 pocket here in the front. It's a simple verdict form. You basically have two choices.
5 You will either find in favor of the plaintiff or you will find in favor of the defendant.
6 And the verdict form is self-explanatory. If you have any questions, certainly you can
7 let me know.

8 Now, I'm gonna get you to do me a favor. I want you to step back in the jury
9 room. Don't begin deliberations yet. I'm gonna confirm with the parties that I've
10 covered everything that needs to be covered. If I have left anything out or omitted
11 anything I'll bring you back out and give you that.

12 If I have included everything then we'll gather up the exhibits. When you
13 receive the exhibits and this notebook, that's your clue to begin your deliberations.
14 So, please, if you would retire to the jury and await the delivery of those items.

15 (Whereupon the jury exited the courtroom)

16 Are there any exceptions or objections to the charge by the plaintiff?

17 Ms. Dicks Wilson: I have a question, Your Honor. I was just trying to find
18 where... Okay. Maybe it's just my understanding. But this assumption of the risk?

19 The Court: Yes ma'am.

* 20 Ms. Dicks Wilson: It says the defendant in this case takes the position that the
21 ride in question was not dangerous. However, the defendant believes that if there was
22 a dangerous element to this ride, then by voluntarily exposing herself to an obvious
23 danger with appreciation thereof, the plaintiff assumes the risk of such danger,
24 thereby nullifying any duty that may be owed to the plaintiff.

25 The Court: Yes ma'am.

1 Ms. Dicks Wilson: And I guess... I guess what I'm saying is, if it's not a
2 dangerous ride and there is some, they know it's not dangerous, well, of course, when
3 I got on that I just, that it wasn't dangerous, it's like saying because I got on I didn't
4 care if it was dangerous.

5 The Court: The law in this state and most states is... Here's an example:
6 Somebody's got a lawsuit. There's a lawsuit right now going on, a huge lawsuit
7 going on now in the NFL. Players are suing the NFL because they were injured. The
8 NFL position is you know football is a dangerous sport, a contact sport, and there's
9 opportunity. Yet, you chose to voluntarily expose yourself to those dangers. That's
10 an assumption of risk. Okay?

11 Ms. Dicks Wilson: Okay.

12 The Court: In this case, the position of the defendant is we don't believe this
13 is a dangerous ride. But if you think it's a dangerous ride, if you find that it is a
14 dangerous ride, then our duty has been relieved because the plaintiff knew of the
15 dangers, exposed, voluntarily exposed herself to those dangers. And that relieves of
16 any duty that we may have owed. That's the law. It's a question of fact. The jury
17 has to decide that.

18 But it is true, the law in this state and in most states is that if you voluntarily
19 expose yourself to a known danger, then you may very well be relieving the other
20 party of any responsibility.

21 Ms. Dicks Wilson: That's what I thought. And I was just looking... I guess
22 the part that you said, you made it seem not right to me, because if they didn't
23 believe, the defendant didn't believe that it was---

24 The Court: It doesn't matter what the defendant believed.

1 Ms. Dicks Wilson: ---not a danger. Then I guess the part that I'm not reading
2 in this is they figured that it's dangerous. And I don't see that in the reading of it.

3 It's like---

4 The Court: They don't believe it's dangerous.

5 Ms. Dicks Wilson: Right. The defendant believe that there was a dangerous
6 element.

7 The Court: No, I didn't---

8 Ms. Dicks Wilson: Believes that if there was a dangerous element to this ride,
9 then by voluntarily exposing herself to such an obvious danger with appreciation
10 thereof, the plaintiff assumes the risk of such danger, thereby nullifying any duty that
11 may be owed to the plaintiff.

12 Okay. And then the end, under South Carolina law if you find that the
13 plaintiff knowingly and impliedly assumed risk inherent with the activity she
14 participated in at the park, then there is no duty owed to the plaintiff by this
15 defendant.

16 The Court: Correct.

17 Ms. Dicks Wilson: And it's like saying... And I guess, maybe, I'm trying to
18 figure out where they would come in and be able to say, well, there was no danger, or
19 there-- It's no opening for that. That's what I don't see.

20 The Court: I'm not understanding your questions. The law is as it says right
21 here, ---

22 Ms. Dicks Wilson: Uh-huh.

23 The Court: ---and that is in this case, they don't believe that it's a dangerous
24 ride.

25 Ms. Dicks Wilson: Uh-huh.

1 The Court: But what they're saying is, even if it was a dangerous ride – and
2 I'm paraphrasing – Ms. Wilson knew of the dangers. She knew about the ride. She
3 watched it operate. She's been on it before. And she assumed the risk. She took on
4 voluntarily, of her own, decided that even in the face of the possible dangers, I'm
5 gonna ride this ride. And so, she did so, and by doing that, that relieves us of any
6 duty that we have. That's their position, the law says.

7 Now, the jury may find-- The jury can look at that and go, well, we disagree,
8 because we don't think she knew of that danger. We think it was maybe a hidden
9 danger. Maybe it was something that she couldn't be appreciate and be aware of. So,
10 we don't think she did. We don't think she did assume the risk, and therefore, we do
11 find that there is a duty. They may find that.

12 That's a question of fact for the jury to find based on the testimony and the
13 evidence that's before it. But the law on assumption of risk is just as it's written
14 there. And that is, if you find these four things, and you find that the plaintiff has
15 voluntarily exposed herself to that danger, then she assumes risk and there would be
16 no duty on the defendant's part.

17 Anything from the defendant regarding the charge?

18 Mr. Thoensen: No object to the charge or the verdict form, Your Honor.

19 The Court: Ms. Wilson and Mr. Thoensen, if y'all would get with the madam
20 court report and look over the exhibits and just make sure that everything that's
21 supposed to be there is there. This is the deposition and it doesn't go back.

22 (whereupon parties reconciled exhibits)

23 Now, once they verify they've got everything there, y'all take this notebook
24 and these exhibits on back.

25 Have you got everything?

Jury Charge

Jury Charge: Transcript pages 184-196


1 that a verdict should be returned in my favor. And it can just be, just a tiny, little
2 percentage more or evidence that makes it weigh.

3 If you had items on a scale, no matter how slight the extra weight was on one
4 side, it would still weigh to the other side.

5 So, what I'm saying to you is I really look to you all being just as I am, a
6 normal person, although I did take this on myself. So, I didn't get things in that
7 maybe should have gotten in. But the injury was there, nonetheless. The money's
8 been spent. The time has gone by. The loss of life and things that I should have done
9 are gone. And I'm just asking that you do bring back the verdict in my favor. And
10 just so I can go forward and live my life.

11 But I thank you once again, ladies and gentlemen. I couldn't have done
12 anything without any of you. And I really appreciate your doing your civil duty. You
13 know, not everybody wants to do jury duty, I know, but I thank you guys for staying
14 and doing your duty. Thank you again.

15 The Court: Thank you, ma'am.

16  Ladies and gentlemen, during the course of the trial, as the parties have
17 presented the evidence to you it has been appropriate to sit up at the bench and be out
18 of their way while they view the evidence in this case because you are the fact
19 finders, you are the judges of the facts.

20 Now, we are in this together, you as the judges of the facts and me as the
21 judge of the law. So, I think it's appropriate that I come down and be with you and
22 give you the charge, the charge on the law.

23 Now, madam forelady, this charge will be back in the jury room with you, so
24 you will have this for your verdict. But, if you would, please give me your attention

1 as I charge you the law as it relates to this case. I'm going to read it verbatim, so that
2 I don't misspeak or leave anything out. Okay?

3 Members of the jury, please give me your attention. I will now instruct you or
4 charge you the law as it applies to the facts as you find them to be.

5 The plaintiff claims that she has been injured or damaged by the actions of the
6 defendant. In bringing this lawsuit, the plaintiff claims that the defendant should
7 compensate her for her injuries or damages.

8 By the constitution and the law of the State of South Carolina, you the jury are
9 the sole judges of the facts and the evidence in this case. I am not permitted to
10 intimate any opinion that I may have about this case or to show any feeling to you as
11 to what I think about the facts and the evidence. I am not permitted to indicate how I
12 feel about the merits of the case.

13 I tell you now I do not have an opinion in this case, nor am I entitled to an
14 opinion under the law.

15 Members of the jury, in determining what the facts are in this case, you of
16 necessity must upon the credibility of the witnesses who have testified. Credibility of
17 the law simply means believability, the value and weight to be given to the testimony
18 in your sound discretion. You alone must decide the force, the effect and the truth of
19 the testimony.

20 In making a determination as to the credibility of a witness, there are many
21 factors that you may and should take into consideration, such as the appearance or the
22 manner of a witness as he or she gave testimony from the stand. This is known in the
23 law as the demeanor of the witness.

1 Did the witness have an interest in the outcome of the trial. Was the witness
2 forthright or hesitant. Was the witness' testimony consistent or did it contain
3 discrepancies.

4 You may consider the ability of the witness to know about the facts to which
5 that witness testified. Did the witness have a cause or a reason to be biased or
6 prejudiced in favor of the testimony that he or she gave.

7 Was the testimony of the witness corroborated or made stronger by other
8 testimony and evidence. Or was it made weaker and impeached by other testimony
9 and evidence.

10 As jurors you have the right to believe a small portion of a witness' testimony
11 and disregard the larger portion. Or you may believe a larger portion of a witness'
12 testimony and disregard the smaller portion.

13 You may disregard a witness' testimony entirely if you have sound reason in
14 the record for doing so. You may believe the testimony of a single witness against
15 that of many, or believe many witnesses against one.

16 Most certainly, you do not determine the matter of credibility or believability
17 merely by counting the number of witnesses for either side.

18 Throughout this entire process you have but one single objective and that is to
19 seek the truth regardless of from what source that truth may come.

20 Now, by the very same constitution and laws which make you the finders of
21 the facts and the evidence in this case, I am as the trial judge made the sole and only
22 instructor on the law. You must accept as correct the law as I charge it to you to be
23 the correct law. And finally, in that regard, neither you nor I should be concerned
24 with what the law ought to be in this state, but rather what I charge you the law is in
25 this state.

1 The questions of fact that you are called upon to decide in this case are raised
2 by the pleadings. The complaint on behalf of the plaintiff and the answer on behalf of
3 the defendant.

4 Now, the fact that the defendant is a corporation or a business organization
5 must not enter into or affect your verdict. A corporation or business organization is
6 entitled to the same fair trial at your hands as a private individual. All parties are
7 equal before the law and each should be given the same fair and equal treatment by
8 you.

9 You are to decide this case solely and exclusively on the evidence alone,
10 except that you shall be guided at all times by your oath in your deliberations, by the
11 law as the court explains it to you, regardless of any opinion you may have as to what
12 the law ought to be. It would be a violation of your sworn duty to base a verdict upon
13 any view of the law other than that which is given to you in these instructions by the
14 court.

15 Now, madam forelady and members of the jury, the mere fact that an accident
16 happened standing alone does not prevent you the jury to conclude that the accident
17 was caused by anyone's negligence. Rather, the plaintiff has the burden of proving
18 each element of her claim in this case. She must meet this burden by proving her
19 claim by the preponderance, or the greater weight of the evidence.

20 It is evidence which taken as a whole shows that the facts sought to be proved
21 is more likely true than not true. This can be illustrated by imaging a set of scales.
22 When the case began the scales are even. After all of the evidence has been
23 presented, if the scales remain even, or if they tip even slightly in favor of the
24 defendant, then the plaintiff has failed to meet the burden of proof and would not be
25 entitled to recover in this case.

1 If, on the other hand, the scales tip even slightly in favor of the plaintiff, then
2 the plaintiff will have met the burden of proof and you should return a verdict for the
3 plaintiff.

4 Now, during this trial we have had testimony by way of deposition by a
5 witness taken outside the courtroom. The deposition was taken in the manner
6 prescribed by law and you should consider the testimony of the deposition just as if
7 the witness was here on the stand testifying.

8 You take this deposition testimony in connection with all other testimony and
9 you assess the credibility of that witness from anything that is in the record that will
10 aid you in doing so.

11 To state a cause of action against the defendant the law requires the plaintiff to
12 set out in her complaint three essential claims. Since the plaintiff has initiated and
13 brought this lawsuit against the defendant, the burden of proof is upon her to establish
14 all three by the greater weight or the preponderance of the evidence.

15 The three essential claims are: One: That the defendant was negligent or
16 careless, and/or reckless, willful and wanton in one or more of the particulars of
17 wrongful conduct alleged in the complaint.

18 Two: That the plaintiff was injured or damaged in her person or property or
19 both.

20 And Three: That the defendant's negligence or carelessness and/or
21 recklessness, willfulness, and wantonness contributed to the infliction of the
22 plaintiff's injuries.

23 These elements have been denied by the defendant in its answer.

1 Now, this is an action in which the plaintiff claims that she has suffered
2 injuries to her person due to the negligence of the defendant and for which the
3 defendant is responsible for damages.

4 So, what is negligence? Negligence is defined in the law as the absence of
5 due care. The want or lack of due care or ordinary care. The word, carelessness,
6 conveys the same idea as negligence. Those two terms are synonymous.

7 Negligence is a breach of a duty of care owed to the plaintiff by the defendant.
8 Negligence is the failure by the omission or commission to exercise due care as a
9 person or ordinary reason and prudence would exercise in the same circumstances. It
10 is doing of some act which a person of ordinary prudence would not have done under
11 similar circumstances, or failure to do what a person of ordinary prudence would have
12 done under similar circumstances.

13 In determining whether a particular act is negligent the test you apply is what
14 a person of ordinary reason and prudence would do under those circumstances at that
15 time and place.

16 It is incumbent upon the plaintiff to prove the defendant was negligent in one
17 or more of the particulars as alleged in the complaint. It is not required that the
18 plaintiff prove all of the allegations, but it is absolutely essential that the plaintiff
19 prove at least one. Otherwise, you would be required to find a verdict for the
20 defendant.

21 Negligence is a fact which, like any other fact in this case, must be proven.
22 The mere happening of an accident or the filing of a complaint, or the fact that
23 damages have been sustained raises no presumption of negligence. A surmise or
24 conjecture that the defendant was negligent is not evidence thereof. The mere fact
25 that an innocent party sustained an injury or damage does not place any responsibility

1 on another party unless you find that there was some act of negligence on the part of
2 that party which caused the injury or damage.

3 Now, if you find that the plaintiff has proved the defendant was negligent,
4 then your next inquiry would be whether the plaintiff has proved that such negligence
5 was the proximate cause of the injury or damage.

6 Negligence is not actionable unless it proximately causes the plaintiff's injuries.
7 A plaintiff may only recover from injuries that are proximately caused by the
8 defendant's negligence.

9 The law defines the proximate cause of an injury to be something that
10 produces a nature chain of events which in the end brings about the injury. In other
11 words, proximate cause is the direct cause without which the injury would have
12 occurred.

13 To prove that the defendant's negligence proximately caused the plaintiff's
14 injuries, the plaintiff must first prove causation in fact. This is proven by show that
15 the injuries would not occurred but for the defendant's negligence.

16 The plaintiff must also prove legal cause. Legal cause is proved by showing
17 that the injuries are foreseeable. This means that the injuries occurred as a natural
18 and a probable consequence of the defendant's negligence.

19 The plaintiff must prove that some injury from the defendant's negligence was
20 foreseeable, but not have to prove that the particular injury that occurred was
21 foreseeable.

22 However, liability cannot rest on mere possibilities. The defendant cannot be
23 held responsible for things which could not be expected to happen. The general
24 principle applies that where the cause of the plaintiff's damages may be reasonably
25 attributed to an act for which a defendant is not liable as to one for which it is liable,

1 then the plaintiff has failed to carry the burden of establishing that her damages were
2 the proximate cause of a defendant's acts.

3 Should you find that the plaintiff has proved the defendant was negligent but
4 has failed to prove such negligence was the proximate cause of the injury, the
5 plaintiff would have failed to make out her case and you would be required to find for
6 the defendant.

7 However, if the plaintiff has proved these two propositions then it would be
8 necessary for her to prove her damages.

9 Now, the defendant in this case takes the position that the ride in question was
10 not dangerous. However, the defendant believes that if there was a dangerous
11 element to this ride, then by voluntarily exposing herself to such an obvious danger
12 with appreciation thereof, the plaintiff assumed the risk of such danger, thereby
13 nullifying any duty that may be owed to the plaintiff.

14 In the law there are four elements to establish assumption of risk. The first:
15 that the plaintiff must have knowledge of the facts constituting a dangerous condition.

16 Two: that the plaintiff must know the condition is dangerous.

17 Three: the plaintiff must appreciate the nature and the extent of the danger.

18 And Four: that the plaintiff must voluntarily expose himself to the danger.

19 Under South Carolina law if you find that the plaintiff knowingly and
20 impliedly assumed risk inherent in the activity that she participated in at the park,
21 then there is no duty owed to the plaintiff by the defendant.

22 Now, should you decide that the plaintiff is entitled to a verdict, your next step
23 would be to decide how much money the defendant should be required to pay. We
24 call such an award damages.

1 Actual damages are intended to compensate the injured party; that is, to put
2 her as near as possible in the same position that she was in before the incident
3 occurred.

4 In other words, actual damages would be the actual losses and expenses which
5 the plaintiff has suffered because of the defendant's carelessness.

6 Actual damages for a plaintiff who has been physically injured include
7 medical charges related to the injury, pharmacy charges, related expenses, pain and
8 suffering, both past and future, loss of enjoyment of life as well as mental anguish,
9 and impairment of health or physical condition.

10 If you determine from the evidence and under the law as it is given to you that
11 the plaintiff is entitled to recover damages, including medical, hospital, or other
12 health care costs, I charge you that the plaintiff can only recover such sums as you
13 determine from the evidence introduced that are both reasonable and necessary for the
14 treatment of the condition.

15 I charge you that while the amount actually charged and paid may be
16 considered by you, you are not bound by that amount. You must find only such sums
17 as are both reasonable and necessary.

18 In determining the amount of compensation for personal injuries it is proper to
19 consider past and present aspects of the injury. This would include physical and
20 mental pain and suffering, expenses incurred for necessary medical treatment, loss of
21 the time and income from which, which resulted from the impairment of the ability to
22 work and earn a livelihood, the loss and enjoyment of life suffered as a result of the
23 injury and any other losses which are reflected by the character of the injury.

24 The injured party may recover from those future damages that are reasonably
25 sure to result from the injury.

1 The principle underlying compensation for future damages is that only one
2 action can be brought and therefore, only one recovery paid.

3 It is proper to include in the future damages compensation for loss of capacity
4 for work or attention to the plaintiff's ordinary business, future medical expenses and
5 pain and suffering which will with reasonable certainty result.

6 Now, pain and suffering is recognized by the courts of this state as a very
7 material element of damages upon which recovery may be grounded. Pain and
8 suffering is recognized as a separate kind of damage and is separate and distinct from
9 loss and enjoyment of life and such other actual damages.

10 Damages for pain and suffering are unliquidated and indeterminate in
11 character. And the assessment of unliquidated damages must rest in the sound
12 discretion of you the jury.

13 Pain and suffering have no market price. They not capable of being exactly
14 and accurate determined. And there is no fixed rule or standard whereby damages for
15 them can be measured.

16 You may, though you're not required, to compute damages for pain and
17 suffering on a daily or a per diem basis. The amount of damages to be awarded for
18 pain and suffering must be left up to your sound discretion.

19 The universal principle of actual damages is that an injured party should
20 receive compensation equal to his or her losses and no more.

21 Loss of enjoyment of life compensates the plaintiff for limitations on the
22 plaintiff's ability to participate in and derive pleasure from the normal activities of
23 daily life.

24 The injured party may recover from mental anguish brought about by bodily
25 injury and suffering. If you find that the injured party is entitled to recover damages,

1 you may take into account anxiety or worry about the plaintiff's condition that they
2 have suffered since the time of the accident.

3 You may also consider anxiety or worry about the possible future difficulties
4 or condition resulting from the injury that the plaintiff received, if you are satisfied to
5 a reasonable degree of certainty that the plaintiff will suffer such anxiety and worry.

6 The plaintiff has the burden of proving her actual damages by the great weight
7 of the evidence. I charge you that the existence or amount of damages cannot be left
8 to conjecture, guesswork or speculation. Damages must be susceptible to
9 ascertainment with a reasonable degree of certainty.

10 However, this does not mean that the plaintiff must prove them to a
11 mathematical certainty or produce evidence of the precise amount of the actual
12 damages she has suffered. Rather, the evidence put forth by the plaintiff should be
13 such as to enable you the jury to determine what amount of damages is fair, just, and
14 reasonable.

15 The verdict in this case cannot be based on sympathy, passion, prejudice or
16 emotion or some other consideration that is not found in the evidence. The universal
17 principle of actual damages is that an injured party is entitled to be compensated in an
18 amount to put her in as near as possible the same position she was in prior to the
19 injury, as far as money damages can do this.

20 Now, madam forelady and ladies and gentlemen, I am now drawing near the
21 end of my charge. And I want to tell you and want you to clearly understand that you
22 are not partisan or advocates for the plaintiff or for the defendant. You do not serve
23 as jurors to reward your friends or punish your enemies.

24 In this regard you have been selected by both the plaintiff and the defendant to
25 be fair and impartial jurors. It is your duty by your joint deliberation to determine the

1 truth in this case, keeping in mind that the plaintiff has the burden of proving each
2 and every element of her case.

3 Then to the facts which you determine to be true, you should take and apply
4 the law which has been given to you by this court and thus arrive at a verdict which
5 speaks the truth in this case.

6 In fact, the word, verdict, comes from the Latin word, verdict, which means a
7 true saying. Thus, when you have accomplished these responsibilities you will have
8 satisfied your oath as jurors and you will have discharged your duty to this court.

9 You are not called upon to serve as jurors very often. And the proper
10 performance of the duties requires each of you to reach the height of freeing your
11 mind of all improper influences.

12 You and I are acting for this community and that is why we must see to it that
13 this trial is fair and that this verdict is just.

14 The work, juror, also comes from Latin. The word mean oath person. A juror
15 is a person taking a solemn oath to bring their best talents and capabilities to the task
16 of rendering a fair and an impartial verdict.

17 Your oath designates you as an official of this court. This oath is
18 commensurate with the oath taken by the judge. The judge and the jury lend their
19 duties and their responsibilities so as to achieve and an impartial verdict.

20 Everyone is entitled to justice in this case, both the plaintiff and the defendant.
21 All are entitled to justice, nothing more, nothing less. You are not of support or
22 sympathy to anyone.

23 The court is of the confirmed opinion that whatever verdict you reach will
24 represent truth and justice for all parties involved.

1 Remember, ladies and gentlemen, that your verdict in this case must be
2 unanimous.

3 Madam forelady, the verdict form is in the front of this notebook. It's in the
4 pocket here in the front. It's a simple verdict form. You basically have two choices.
5 You will either find in favor of the plaintiff or you will find in favor of the defendant.
6 And the verdict form is self-explanatory. If you have any questions, certainly you can
7 let me know.

8 Now, I'm gonna get you to do me a favor. I want you to step back in the jury
9 room. Don't begin deliberations yet. I'm gonna confirm with the parties that I've
10 covered everything that needs to be covered. If I have left anything out or omitted
11 anything I'll bring you back out and give you that.

12 If I have included everything then we'll gather up the exhibits. When you
13 receive the exhibits and this notebook, that's your clue to begin your deliberations.
14 So, please, if you would retire to the jury and await the delivery of those items.

15 (Whereupon the jury exited the courtroom)

16 Are there any exceptions or objections to the charge by the plaintiff?

17 Ms. Dicks Wilson: I have a question, Your Honor. I was just trying to find
18 where... Okay. Maybe it's just my understanding. But this assumption of the risk?

19 The Court: Yes ma'am.

* 20 Ms. Dicks Wilson: It says the defendant in this case takes the position that the
21 ride in question was not dangerous. However, the defendant believes that if there was
22 a dangerous element to this ride, then by voluntarily exposing herself to an obvious
23 danger with appreciation thereof, the plaintiff assumes the risk of such danger,
24 thereby nullifying any duty that may be owed to the plaintiff.

25 The Court: Yes ma'am.

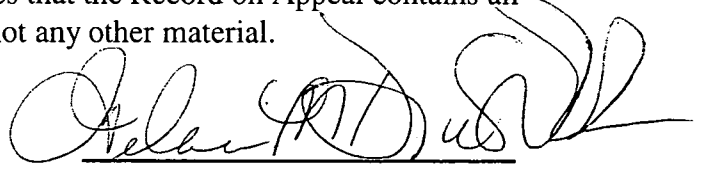
Defendant's Exhibit 1

**DVD of Wild Thornberry Ride recorded from You-Tube, on file with
court documents.**

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included and not any other material.

November 5, 2013

A handwritten signature in black ink, appearing to read 'Felecia M Dicks Wilson', written over a horizontal line.

Felecia M Dicks Wilson
(Pro-Se)
PO Box 31562
Augusta Georgia 30903
706-951-3051

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Civil Action No. 09-CP-46-3103
Appellate Case No.: 2012-212327

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NOV 19 2013

SC Court of Appeals

Felecia Dicks Wilson.....Appellant,

v.

Cedar Fair Entertainment Company
Cedar Fair, L.L.C. d/b/a Carowinds
Amusement Park.....Respondent.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Respondent Cedar Fair Entertainment Company, Cedar Fair, L.L.C. d/b/a Carowinds Amusement Park, do hereby certify that I have this date served the foregoing Memorandum in Support of Motion to Compel Compliance with the Appellate Court Rules and Stay of Filing Final Briefs Pending Resolution of this Motion by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

Felicia Dicks Wilson
Post Office Box 31562
Augusta, GA 30903-3051


Daisy F. Bonds

Dated: November 19, 2013

November 19, 2013

Columbia
Direct Dial: (803) 576-3718
sbias@RichardsonPlowden.com

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Felecia Dicks Wilson v. Cedar Fair Entertainment Co., Cedar Fair L.P., d/b/a Carowinds Amusement Park*
Appellate Case # 2012-212327
Our File No. 6611.014

Dear Ms. Kitchings:

As counsel for the Respondent Cedar Fair Entertainment Company, Cedar Fair, L.L.C. d/b/a Carowinds Amusement Park, I have enclosed for filing an original and six copies of Respondent's Motion to Compel Compliance with the Appellate Court Rules and Stay of Filing Final Briefs Pending Resolution of this Motion to be Included in the Record on Appeal and supporting memorandum in the above referenced matter, along with our original Certificates of Service for each. I have also enclosed one additional copy of our Motion and would request that it be file stamped and returned to our courier.

We are this day serving a copy of Respondent's Motion on the *pro se* Appellant.

Thank you for your assistance.

Sincerely,

Sheila M. Bias

Sheila M. Bias
SC Bar # 100005

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NOV 19 2013

SC Court of Appeals

SMB/dfb

cc: Felecia Dicks Wilson, *pro se*
Joseph E. Thoensen
Steven J. Pugh